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6-15-79
Vol. 44—No. 117
BOOK 1:
PAGES
34461-34698

BOOK 2:
PAGES
34699-34910

federal register

Book 1 of 2 Books
Friday, June 15, 1979

Highlights

34468 **Residual Fuel Oil** DOE/ERA adopts amendment to domestic crude oil allocation program, holds hearing, and requests comments; comments by 10-1-79, hearing 8-15-79, request to speak by 8-2-79

34603 **Gaseous Emissions** EPA gives additional information, holds hearing and extends comment period on proposed rules for 1983 and later model year heavy-duty engines; comments by 6-29-79, hearing 7-16 and 7-17-79

34472, 34473, 34475, 34511 **Natural Gas** DOE/FERC proposes amendments and promulgates other rules relating to lawful prices; (4 documents)

34605 **Medicaid Quality Control** HEW/HCFA proposes to amend rules to specify time periods for completion of case reviews

34479 **Social Security Benefits** HEW/SSA publish final rules regarding requirements to become entitled to benefits; effective 6-15-79

34606 **Financial Assistance Programs** HEW/SSA plans to amend rules regarding quality control system

34651 **Juvenile Justice and Delinquency Prevention** Justice requests comments on draft guideline on Youth Advocacy Initiative; comments by 8-14-79

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Highlights

34784 **National Pollutant Discharge Elimination System** EPA establishes criteria for applications for permits which modifies requirements of secondary treatment under Clean Water Act; effective 6–22–79 (Part IV of this issue)

34754, 34780 **Day Care** HEW/Secy proposes revisions and holds meetings regarding services provided to children outside their homes, except the Headstart program; comments by 9–21–79, meetings in July and September 1979 (Part III of this issue) (2 documents)

34856 **Nursery Stock, Plants, and Seeds** USDA/APHIS proposes rules and holds hearing concerning prohibitions and restrictions regarding importation; comments by 9–13–79, hearing 8–21 and 8–22–79 (Part VII of this issue)

34840 **Glass Manufacturing Plants** EPA proposes rules and holds hearing on standards of performance for new stationary sources; comments by 8–14–79, hearing 7–9–79, request to speak by 6–29–79 (Part VI of this issue)

34466 **Irradiated Reactor Fuel** NRC establishes requirements for physical protection of spent fuel in transit; effective 7–16–79

34515 **Blood and Blood Components** HEW/FDA proposes to relieve restrictions on performance checks and calibrations of certain related equipment; comments by 8–14–79

34618 **Child Nutrition Programs** USDA/FNS publishes income poverty guidelines for determining eligibility for free and reduced-price meals and free milk; effective 7–1–79

34606 **Indochinese Refugee Assistance** HEW/SSA plans to develop rules on eligibility requirements, services for cash assistance, social services, employment services and training

34892 **Certain Toys** CPSC classifies as banned hazardous substances certain toys and other articles intended for use by children under 3 years of age (Part IX of this issue)

34698 **Sunshine Act Meetings**

Separate Parts of This Issue

34702 **Part II, Labor/ESA**
34754 **Part III, HEW/Secy**
34784 **Part IV, EPA**
34834 **Part V, Interior/BLM**
34840 **Part VI, EPA**
34856 **Part VII, USDA/APHIS**
34884 **Part VIII, SEC**
34892 **Part IX, CPSC**
34909 **Part X, Interior/BLM**

Contents

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

Agricultural Marketing Service
RULES
34464 Lemons grown in Ariz. and Calif.
34645 Limes grown in Fla. and imported
PROPOSED RULES
34508 Potatoes (Irish) grown in Idaho and Oreg.

Agricultural Stabilization and Conservation Service
RULES
Indemnity payment programs:
34464 Beekeeper
34463 Peanuts; marketing quotas and acreage allotments

Agriculture Department
See Agricultural Marketing Service; Agricultural Stabilization and Conservation Service; Animal and Plant Health Inspection Service; Farmers Home Administration; Food and Nutrition Service; Food Safety and Quality Service; Rural Electrification Administration.

Animal and Plant Health Inspection Service
PROPOSED RULES
Plant quarantine, domestic:
34501 Witchweed
Plant quarantine, foreign:
34856 Nursery stock, plants, and seeds

Army Department
See Engineers Corps.

Arts and Humanities, National Foundation
NOTICES
Meetings:
34671 Museum Advisory Panel

Blind and Other Severely Handicapped, Committee For Purchase From
NOTICES
34626 Procurement list, 1979; additions and deletions (3 documents)

Census Bureau
NOTICES
34624 Population censuses, special; results
Surveys, determination, etc.:
34625 Manufacturers; supplemental inquiry of consumption of materials, parts, containers, and supplies
34625 Mineral industries supplemental inquiry of supplies used, 1977

Civil Aeronautics Board
NOTICES
34623 Certificate of public convenience and necessity; applications
Hearings, etc.:
34623 Federal Express Corp.
34624 Newark International Airport, domestic and overseas flight; nonstop route authority
34624 Yucatan service case

Commerce Department
See Census Bureau; Economic Development Administration; National Oceanic and Atmospheric Administration.

Consumer Product Safety Commission
See also Interagency Regulatory Liaison Agency for document relating to the supplemental agreement of the Group.
RULES
Hazardous substances and articles; administration and enforcement, etc.:
34892 Toys, small parts; ingestion hazards; identification method

Customs Service
RULES
Organization and functions; field organization; ports of entry, etc.:
34478 Puget Sound, Wash., etc.

Defense Department
See also Engineers Corps.
RULES
34495 Reserve forces units; allocation and determination of manpower in local communities
NOTICES
Meetings:
34627 Science Board task forces
34627 Per diem rates; civilian personnel; publication of changes

Economic Development Administration
NOTICES
Import determinations petitions:
34625 H. Freeman & Sons, Inc.

Economic Regulatory Administration
RULES
Petroleum allocation and price regulations:
34468 Residual fuel oil; entitlements program; hearing; extension of time
NOTICES
Consent orders:
34631 Freeport Minerals Co.
34632 Lyon County Co-Operative Oil Co.
Remedial orders:
34633 Polaris Production Corp.

Employment and Training Administration
PROPOSED RULES
Unemployment compensation:
34512 Federal extended benefits; "on" and "off" indicators; computation

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, modifications, and supersedeas decisions:
34702 Alabama, D.C., Fla., Ill., Ind., Iowa, Kans., Mich., Va., Wisc.

Energy Department
See also Economic Regulatory Administration; Federal Energy Regulatory Commission.
NOTICES
34628 Interpretation requests filed with General Counsel's Office
Meetings:
34631 International Energy Agency Industry Advisory Board

Engineers Corps
PROPOSED RULES
Administrative procedures:
34519 Shipping safety fairways and anchorages, Gulf of Mexico
NOTICES
Environmental statements; availability, etc.:
34626 Colorado River, Blythe, Calif.; proposed bank stabilization permit

Environmental Protection Agency
See also Interagency Regulatory Liaison Agency for document relating to the supplemental agreement of the Group
RULES
Water pollution control; National discharge elimination system and State program elements:
34784 Secondary treatment requirements modification; discharges into marine waters
PROPOSED RULES
Air pollution; standards of performance for new stationary sources:
34840 Glass manufacturing plants
Air pollution control, new motor vehicles and engines:
34603 Heavy-duty engines; 1983 and later
34524 Air programs; assessment and collection of noncompliance penalties; corrections and republication of appendix
Air quality control regions; criteria and control techniques:
34603 Attainment status designations
Air quality implementation plans; approval and promulgation; various States, etc.:
34519 New Hampshire
Air quality implementation plans; delayed compliance orders:
34520, 34521 Iowa (2 documents)
34522 Ohio
NOTICES
34693 Environmental impact statements; availability
Pesticides; experimental use permit applications:
34692 Lontrel etc.
Pesticides; temporary tolerances:
34692 [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl) alanine methyl ester]
Pesticides; tolerances in animal feeds and human food:
24693 BASF Wyandotte Corp. et al.
Toxic and hazardous substances control:
34685 Toxic pollutants; list; petition to remove 1,1,1-trichloroethane and methylene chloride

Environmental Quality Council
NOTICES
34698 Meetings; Sunshine Act

Equal Employment Opportunity Commission
RULES
34494 Equal employment opportunity in the Federal government; interim rules and inquiry
Procedural regulations:
34494 Interpretation and opinion issuance

Farmers Home Administration
NOTICES
34618 Rural rental housing loan policies, procedures, and authorizations; memorandum of understanding with Aging Administration

Federal Communications Commission
PROPOSED RULES
Television broadcasting:
34606 Auxiliary and CARS stations; transmitting equipment type acceptance and antenna radiation characteristics; correction

Federal Deposit Insurance Corporation
PROPOSED RULES
Information:
34510 Disclosure; public access to confidential records

Federal Election Commission
NOTICES
34698 Meetings; Sunshine Act

Federal Energy Regulatory Commission
RULES
Natural Gas Policy Act of 1978:
34473 High-cost natural gas; maximum lawful price
34472 Regulated sales of natural gas
34475 Review of jurisdictional agency determinations
34471 Tax normalization treatment for deferred taxes of regulated companies; interim procedures
PROPOSED RULES
Natural Gas Policy Act of 1978:
34511 Ceiling prices; high cost natural gas
NOTICES
Hearings, etc.:
34633 Equitable Gas Co.
34637 Tenneco Oil Co. et al.
34638 Transcontinental Gas Pipe Line Corp.
34698 Meetings; Sunshine Act
Natural Gas Policy Act of 1978:
34636 Determination process report receipts
34634, 34635 Jurisdictional agency determinations (3 documents)

Federal Highway Administration
PROPOSED RULES
Right-of-way and environment:
34516 Highway beautification program; outdoor advertising and junkyard control programs; advance notice; hearings schedule and procedures changes

Federal Home Loan Bank Board
NOTICES
34698 Meetings; Sunshine Act

Federal Reserve System
NOTICES
34698 Meetings; Sunshine Act

Federal Trade Commission
PROPOSED RULES
Consent orders:
34511 Howard Johnson Co.; correction
NOTICES
Octane certification and posting:
34639 Amoco Oil Co.; extension of time
Premerger notification waiting periods; early terminations:
34639 Donaldson, Lufkin & Jenrette, Inc.
34640 Florida Power Corp.

Fish and Wildlife Service
NOTICES
34649, 34650 Endangered and threatened species permits (2 documents)
34649 Marine mammal permits; applications
34649 Marine mammal permits; applications; correction

Food and Drug Administration
See also Interagency Regulatory Liaison Agency for document relating to the supplemental agreement of the Group.
RULES
Food additives:
34493 Polyethersulfone resins
PROPOSED RULES
Biological products:
34515 Calibration of hematocrit centrifuges and vacuum blood agitators
Food additives:
34513 Hydrogenated 4,4'-isopropylidenediphenolphosphite ester resins
GRAS or prior-sanctioned ingredients:
34515 Dextrin; correction
34513 Formic acid, sodium formate, and ethyl formate; correction
NOTICES
Animal drugs, feeds, and related products:
34644 Chlortetracycline soluble tablets; hearing; correction
GRAS or prior-sanctioned ingredients:
34646 Starter distillate; hearings
Medical devices:
34641 Corab; premarket approval
34640 Havab; premarket approval
34643 Preflex® and Flex-care™ solutions; premarket approval
34642 Soft mate sterile cleaning solution for soft contact lenses; premarket approval
34641 Soft-therm (preserved isotonic saline) solution; premarket approval
Meetings:
34644 Advisory committees, panels, etc.

Food and Nutrition Service
NOTICES
Child nutrition programs:
34618 Income poverty guidelines; eligibility for free and reduced-price meals and milk

Food Safety and Quality Service
See Interagency Regulatory Liaison Agency for Document relating to the supplemental agreement of the Group.

General Services Administration
See National Archives and Records Service.
RULES
Procurement:
34498 Miller Act bonds and bond premiums
NOTICES
Public utilities; hearings, etc.:
34640 Maryland Public Service Commission

Geological Survey
NOTICES
Environmental statements; availability, etc.:
34650 Cache Creek oil and gas test well, Jackson, Wyo.
34650 Outer Continental Shelf (OCS) Order No. 5 production safety systems

Health, Education, and Welfare Department
See also Food and Drug Administration; Health Care Financing Administration; Museum Services Institute; National Institute for Occupational Safety and Health; Social Security Administration.
PROPOSED RULES
34754 Child day Care
34780 Child day care; public meetings
NOTICES
Meetings;
34646 National Council on Health Care Technology; correction

Health Care Financing Administration
PROPOSED RULES
Medical assistance programs (Medicaid):
34605 Medicaid quality control; time periods for completion of case review; advance notice

Interagency Regulatory Liaison Group
NOTICES
34648 Public health and the environment, regulatory cooperation; supplementary agreement

Interior Department
See Fish and Wildlife Service; Geological Survey; Land Management Bureau; Reclamation Bureau.

Interstate Commerce Commission
NOTICES
Petitions filing:
34684 Boston and Maine Corp.
Railroad operation, acquisition, construction etc.:
34680 Consolidated Rail Corp. et al.
34681 Norfolk and Western Railway Co. et al.
34682 Southern Railway Co. et al.

Justice Department
See Law Enforcement Assistance Administration; Parole Commission.

Labor Department
See also Employment and Training Administration; Employment Standards Administration; Mine Safety and Health Administration; Occupational Safety and Health Administration; Pension and Welfare Benefit Programs Office.
NOTICES
Adjustment Assistance:
34660 Aberdeen Sportswear, Inc.
34660 Act III et al.
34661 Adkins Coal Co.
34662 Allied Chemical Corp.
34662 Apache Trucking Co.
34662 Aurora Products
34663 B & G Trucking Co., Inc.
34663 Bethehem Mines et al.
34664 Bethlehem Steel Corp.
34664 Betty Coal Co.
34665 Black Mountain Coal Co., Inc.
34665 Bowen Trucking Co.
34666 Brady Cline Coal Co.
34666 Brierwood Shoe Corp.
34666 Buckeye Sugars, Inc.
34667 Byars Trucking
34667 Casey Manufacturing Co.
34668 Clausing Corp.
34668 Coal King Corp. (2 documents)
34669 Cooldridge Equipment & Mining Co.
34669 Cooper-Wiss
34669 Crescent Sea Food Products Co.
34670 Cyclops Corp.
34670 Diego Trucking Co.
34670 Essex Group, Inc.

Land Management Bureau
RULES
Recreation management:
34834 Off-road vehicles; use of public land
NOTICES
Meetings:
34648 Worland District Grazing Advisory Board
Withdrawal and reservation of lands, proposed, etc.:
34648 Idaho

Law Enforcement Assistance Administration
NOTICES
Grants solicitation, competitive research:
34651 Youth Advocacy Initiative; guidelines; inquiry

Legal Services Corporation
NOTICES
34671 Grants and contracts; applications

Management and Budget Office
PROPOSED RULES
Improving Government regulations:
34616 Regulatory agenda

Mine Safety and Health Administration
NOTICES
Petitions for mandatory safety standard modification:
34654 Garden Creek Pocahontas Co. (2 documents)

Museum Services Institute
NOTICES
Meetings:
34646 National Museum Services Board

National Archives and Records Service
RULES
Records management:
34499 Transfer of permanent records; temporary regulations

National Institute for Occupational Safety and Health
NOTICES
Research projects initiation:
34647 Morbidity and industrial hygiene study of cement workers
34647 Reproductive history study of women pharmaceutical research workers

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
34607 Foreign fishing; billfish, oceanic sharks, wahoo and mahimahi in Pacific

Nuclear Regulatory Commission
RULES
Plants and materials; physical protection:
34466 Irradiated reactor fuel in transit
NOTICES
Applications, etc.:
34672 Commonwealth Edison Co. (2 documents)
34672 Consumers Power Co.
34672 Public Service Co. of Colorado
Meetings:
34671 Reactor Safeguards Advisory Committee

Occupational Safety and Health Administration
See Interagency Regulatory Liaison Agency for document relating to the supplemental agreement of the Group.

Parole Commission
RULES
Federal prisoners, paroling, recommiting and supervising:
34494 Youth guidelines and reports; correction

Pension and Welfare Benefit Programs Office
PROPOSED RULES
Fiduciary responsibility:
34517 Eligible individual account plans; advance notice
NOTICES
Employee benefit plans:
34655–34659 Prohibitions on transactions; exemption proceedings, applications, hearings (5 documents)

Personnel Management Office
RULES
34461 Senior executive service; appointment, reassignment, transfer and development

Postal Service
RULES
Postal Service Manual:

34497 Express mail metro service; additional metropolitan areas
34497 Second-class bulk mailings; key rate publications

Reclamation Bureau
RULES
34909 Motor vehicle use, off-road; area designation procedure, etc.

Rural Electrification Administration
NOTICES
Telephone borrowers:
34619 Direct burial splice closures for buried telephone cable

Securities and Exchange Commission
RULES
Brokers:
34889 Focus reporting system; financial reporting requirements
34884 Net capital requirements
NOTICES
Hearings, etc.:
34676 Steinroe Cash Reserves, Inc.
34680 Registration of securities; short form S–18; regional processing
Self-regulatory organizations; proposed rule changes:
34673 Boston Stock Exchange Clearing Corp.
34674, 34677 National Association of Securities Dealers, Inc. (2 documents)
34679 Pacific Stock Exchange Inc.

Social Security Administration
RULES
Old age, survivors, and disability insurance:
34479 Benefits; period of disability
PROPOSED RULES
Financial assistance programs:
34606 Quality control system; advance notice
34606 Indochinese refugee assistance; eligiblity requirements, etc.; advance notice

State Department
NOTICES
Passports, foreign; validity:
34680 Costa Rica et al.

Transportation Department
See Federal Highway Administation.

Treasury Department
See Customs Service.

MEETINGS ANNOUNCED IN THIS ISSUE

DEFENSE DEPARTMENT
Office of the Secretary—
34627 Defense Science Board Task Force on Naval Surface Ship Vulnerability, 7–12–79

ENERGY DEPARTMENT
34631 Various meetings, 6–25 and 6–26–79

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
34644 Various public advisory, committees, July 1979
Museum Services Institute—
34646 National Museum Services Board, 6–22–79

INTERIOR DEPARTMENT
Land Management Bureau—
34648 Worland District Grazing Advisory Board, 8–1–79

NUCLEAR REGULATORY COMMISSION
34671 Advisory Committee on Reactor Safeguards, Subcommittee on the LaCrosse Nuclear Power Plant, 6–30–79

CHANGED MEETINGS

NATIONAL ENDOWMENT FOR THE ARTS
34671 Museum Advisory Panel, status change, 6–11 and 6–12–79

HEARINGS

HEALTH, EDUCATION, AND WELFARE DEPARTMENT
Food and Drug Administration—
34646 Hearing on starter distillate, 7–16–79

INTERIOR DEPARTMENT
Geolgical Survey—
34650 Hearing on Draft Environmental Assessment of Cache Creek oil and gas, 7–13 and 8–2–79

CHANGED HEARINGS

TRANSPORTATION DEPARTMENT
Federal Highway Administration—
34516 Hearing on Highway Beautification Program Reassessment, location change, June and July 1979

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
317 34461

7 CFR
729 34463
760 34464
910 34464
911 34465
944 34465
Proposed Rules:
301 34501
319 34856
945 34508

10 CFR
73 34466
212 34468

12 CFR
Proposed Rules:
309 34510

16 CFR
1500 34892
1501 34892
Proposed Rules:
13 34511

17 CFR
240 34884
249 34883

18 CFR
101 34471
104 34471
141 34471
201 34471
204 34471
260 34471
270 34472
271 34473
275 34475
Proposed Rules:
271 34511

19 CFR
101 34478

20 CFR
404 34479
Proposed Rules:
615 34512

21 CFR
177 34493
Proposed Rules:
172 34513
178 34513
184 34515
606 34515

23 CFR
Proposed Rules:
750 34516
751 34516

28 CFR
2 34494

29 CFR
1613 (2 documents) 34494
Proposed Rules:
Ch. XXV 34517

32 CFR
67 34495
68 34495

33 CFR
Proposed Rules:
209 34519

39 CFR
111 (2 documents) 34497

40 CFR
125 34784
Proposed Rules:
52 34519
60 34840
65 (3 documents) 34520–34522
66 34524
67 34524
81 34603
86 34603

41 CFR
1–7 34498
1–10 34498
1–16 34498
101–11 34499

42 CFR
Proposed Rules:
431 34605

43 CFR
420 34909
8340 34834

45 CFR
Proposed Rules:
II 34606
71 (2 documents) 34754, 34780
205 34606

47 CFR
Proposed Rules:
74 34606
78 34606

50 CFR
Proposed Rules:
611 34607

Rules and Regulations

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 317

Appointment, Reassignment, Transfer and Development in the Senior Executive Service

AGENCY: Office of Personnel Management.

ACTION: Amendment to interim regulation.

SUMMARY: The amended interim regulations implement Sec. 413 of Title IV of the Civil Service Reform Act of 1978. They cover the conversion of employees to the Senior Executive Service.

DATES: Effective Date: June 15, 1979, and until final regulations are issued. Comment Date: August 14, 1979.

ADDRESS: Send written comments to the Associate Director, Executive Personnel and Management Development, Office of Personnel Management, Room 6R54, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT: Jack Vincent, (202) 632-6820.

SUPPLEMENTARY INFORMATION: Subpart B of Part 317 is being revised to cover appointment, reassignment, transfer, and development in the Senior Executive Service. Subpart B of Part 317 was issued on March 30, 1979 as an interim regulation. Comments on the interim regulations indicated that certain excepted service employees were not being given equitable conversion offers. The amendments to Subpart B set forth below extend the entitlement to a career appointment in the Senior Executive Service to excepted service employees currently in noncareer-type positions who previously had substantial career-oriented service under a career-type appointment and define career-type appointment.

1. In each of the following subsections:
317.302(a)(1)(v)
317.302(a)(1)(vi)
317.305(b)(3)
317.306(b)(3)
add: "or, as determined by the Office of Personnel Management, have substantially career-oriented service under career-type appointments as defined in § 317.304(a)(2).

2. At the end of each of the following subsections:
317.305(b)(3)(i)
317.306(b)(3)(i)
add: "The name of the individual and basis for approving the request must be published in the **Federal Register**."

3. In § 317.306(a)(3) following the words "served under a career appointment" add: "or career-type appointments."

4. In § 317.306(a) replace paragraph 2 with the following:

(2) A similar type of appointment ("career-type" appointment) in an excepted service position, as determined by the Office.

A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position authorized to be filled by noncareer executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential administrations.

Office of Personnel Management.

Beverly M. Jones,

Issuance Systems Manager.

Accordingly, Subpart B of Part 317 is revised to read as follows:

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 317.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement subchapter VIII of chapter 33 of title 5, U.S.C. and section 413 of title IV of the Civil Service Reform Act of 1978.

§ 317.301 Conversion coverage.

(a) *When applicable.* These conversion provisions apply during:

(1) The initial conversion to the Senior Executive Service to be completed by July 13, 1979; and

(2) Conversion to the Senior Executive Service following revocation of a Presidential exclusion under 5 U.S.C. 3132(e).

(b) *Employees covered.* This subpart covers:

(1) An employee serving in a position at the time it is designated a Senior Executive Service position;

(2) An individual appointed or reinstated to a position after it has been designated a Senior Executive Service position;

(3) An employee transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position;

(4) An employee involuntarily reassigned or involuntarily demoted to a position after it has been designated a Senior Executive Service position; and

(5) An employee serving in a position which meets the grade level but not the functional criteria for designation as a Senior Executive Service position.

(c) *Employees excluded.* The following employees are excluded from coverage of this subpart and are not entitled to conversion to the Senior Executive Service.

(1) An employee in a position designated as Senior Executive Service who is serving under a time limited appointment which will terminate before the operational date of the Senior Executive Service.

(2) An employee serving under a temporary promotion, detail, or temporary assignment in a position designated as Senior Executive Service unless the position which the employee encumbered on a permanent basis just prior to the current temporary action has been designated as Senior Executive Service.

§ 317.302 Conversion procedures.

(a) *Employees appointed prior to designation; employees involuntarily reassigned or demoted after designation*—(1) *Notice.* Each employee covered by this subpart who was

appointed prior to the designation of his or her position as a Senior Executive Service position, or who was involuntarily reassigned or involuntarily demoted to a position after it was designated a Senior Executive Service position, shall be given a written notice which includes the following information:

(i) A statement that the employee's position has been designated as either "general" or "career reserved";

(ii) A statement that the employee is being offered an appointment under the Senior Executive Service or that the employee is not being offered an appointment under the Senior Executive Service but will be separated from the civil service pursuant to § 317.305(b)(4) or § 317.306(b)(4); If the employee is offered conversion, the notice shall also include:

(iii) A statement that the employee has 90 calendar days from the date of receipt of the written notice to elect either to join the Senior Executive Service or to remain in his or her current appointment system;

(iv) Identification of the position, SES pay rate, and kind of appointment which the employee will receive if the employee elects to convert to the Senior Executive Service;

(v) For excepted appointees who have reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), a statement that the employee may request conversion to career appointment;

(vi) For employees under limited executive assignment who have reinstatement eligibility to a position in the competitive service or, as determined by the Office of Personnel Management, have substantial career-oriented service under career-type appointments as defined in § 317.304(a)(2), and who are covered under § 317.306(b)(3), a statement that the employee may request conversion to career appointment;

(vii) A summary of the features of the Senior Executive Service (this can be accomplished by appending descriptive material prepared by the Office);

(viii) A statement that the employee must submit his or her decision with regard to paragraphs (a)(1) (iii), (v) and (vi) of this section, in writing, on or before the end of the notice period; and

(ix) A statement of the employee's right to appeal an action under this subpart to the Merit Systems Protection Board.

An employee whose involuntary reassignment or involuntary demotion to a designated position occurs less than 90 days before the operational date of the Senior Executive Service, shall be given this notice at the time of the personnel action. The employee shall have 90 calendar days from the date of receipt of the notice to make an election on conversion.

(2) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to an employee upon conversion shall not be less than the employee's basic payable salary just prior to conversion. An employee's payable salary upon conversion is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(3) *Freedom of choice.* The employee shall decide whether he or she accepts conversion to the Senior Executive Service. The employing agency shall not attempt to influence the employee's decision through coercion, intimidation or duress.

(4) *Employee's election.* On or before the end of the notice period, the employee shall signify in writing his or her decision to accept or to decline an appointment under the Senior Executive Service. An excepted or limited assignment employee covered under § 317.305(b)(3) or § 317.306(b)(3), respectively, shall also indicate whether he or she request conversion to career appointment. Failure to respond shall be deemed declination.

(b) *Employees receiving appointments after designation but before the operational date of the Senior Executive Service.*—(1) *Condition of appointment.* Each individual appointed, reinstated, transferred, promoted, voluntarily reassigned or voluntarily demoted to a position after it has been designated a Senior Executive Service position shall be required to accept conversion to the Senior Executive Service. The agency shall advise the individual of this requirement prior to the appointment or other personnel action. The individual shall signify his or her acceptance of conversion in writing at the time of the personnel action.

(2) *Notice.* At the time of the personnel action, or 90 days before the Senior Executive Service becomes operational, whichever is later, the agency shall give the employee a written notice which identifies the position, SES pay rate, and kind of appointment the employee will receive under the Senior Executive Service.

(3) *Pay.* Pay shall be set at an authorized SES pay rate. The pay rate given to a Federal employee who enters the Senior Executive Service without a break in service shall not be less than the employee's basic payable salary just prior to his or her entry into the Senior Executive Service. An employee's payable salary under the Senior Executive Service is subject to pay limitations, if any, imposed by chapter 53 of title 5, United States Code, or other statutes.

(c) *Employees whose positions are not designated Senior Executive Service positions. Notice.* Each employee covered by § 317.301(b)(5) shall be given a written notice advising the employee that his or her position is not designated a Senior Executive Service position; that the employee is not entitled to conversion to the Senior Executive Service; and that the employee has a right to appeal an action under this subpart to the Merit Systems Protection Board.

§ 317.303 Status of employees who decline voluntary conversion to the Senior Executive Service.

(a) An employee who declines conversion pursuant to § 317.302(a)(4) shall remain in his or her current appointment and pay system, and shall retain the grade, seniority, and other rights and benefits associated with such type of appointment and pay system. The employee may continue in the current SES position or be reassigned to another position within or outside the Senior Executive Service.

(b) The assignment of an employee who declines conversion under this subpart shall not result in the separation or reduction in grade of any other employee in the agency.

(c) Nothing in these regulations affects an agency's right to terminate a limited executive appointment pursuant to Civil Service Rule IX.

§ 317.304 Conversion of career and career-type appointees.

(a) *Coverage.* This section covers employees serving under:

(1) A career or career-conditional appointment; or

(2) A similar type of appointment ("career-type" appointment) in an excepted service position as determined by the Office.

A career-type appointment is an appointment in the excepted service other than an appointment:

(i) To a Schedule C position established under Part 213 of this chapter;

(ii) To a position authorized to be filled by noncareer executive assignment under Part 305 of this chapter;

(iii) To a position which meets the same criteria as a Schedule C position or a position authorized to be filled by non-career executive assignment; or

(iv) To a position where the incumbent is traditionally changed upon a change in Presidential Administrations.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be converted to a Senior Executive Service career appointment. The employee may be assigned to either a "general" or a "career reserved" position.

§ 317.305 Conversion of excepted appointees.

(a) *Coverage.* This section covers employees serving under an excepted appointment in a position:

(1) In Schedule C of Subpart C of Part 213 of Title 5, Code of Federal Regulations:

(2) Filled by noncareer executive assignment under subpart F of Part 305 of Title 5, Code of Federal Regulations;

(3) In the Executive Schedule under subchapter II of chapter 53 of title 5, United States Code, other than a career Executive Schedule position; or,

(4) Filled under an authority equivalent to paragraph (a) (1), (2), or (3) of this section.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the employee's position is designated a "general" position, the agency may convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(2) If the employee's position is designated a "career reserved" position, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position. The employee cannot remain in a "career reserved" position.

(3) If the employee has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the request is approved by the Office, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the **Federal Register.**

(ii) If the employee's request for conversion to career is not approved by the Office, or if the employee elects not to make such a request, the agency will convert the employee to a Senior Executive Service noncareer appointment. The employee may be assigned only to a "general" position.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

§ 317.306 Conversion of employees under time limited appointments.

(a) *Coverage.* This section covers employees serving under:

(1) A limited executive assignment under Subpart E of Part 305 of Title 5, Code of Federal Regulations; or

(2) A similar type of time limited appointment in an excepted service position.

(b) *Senior Executive Service appointment.* An employee covered by this section shall be subject to one of the following actions.

(1) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service limited term appointment.

(2) If the position in which the employee is serving under a limited executive assignment or similar type of time limited appointment will not terminate within three years from the date of the proposed conversion action, the agency may convert the employee to a Senior Executive Service noncareer appointment and assign the employee to a "general" position.

(3) If the employee under a limited executive assignment has reinstatement eligibility to a position in the competitive service, or, as determined by the Office of Personnel Management, had substantial career-oriented service under a career-type appointment as defined in § 317.304(a)(2), and if immediately prior to the limited executive assignment and without a break in service the employee served under a career appointment or career-type appointment in a position now being designated a Senior Executive Service position then the employee may request conversion to a career appointment. Such request must be made on or before the end of the notice period.

(i) If the employee requests conversion to career, the agency will convert the employee to a Senior Executive Service career appointment. The employee may be assigned to a "general" or a "career reserved" position. The name of the individual and basis for approving the request must be published in the **Federal Register.**

(ii) If the employee does not request conversion to career, the agency will convert the employee as provided for in paragraphs (b) (1) and (2) of this section.

(4) In lieu of action under paragraph (b) (1), (2), or (3) of this section, the agency may separate the employee from the civil service.

[FR Doc. 79-18618 Filed 6-14-79; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR 729

[Amendment 1]

Peanuts; Acreage Allotments, Marketing Quotas, and Poundage Quotas for 1978 and Subsequent Crops

AGENCY: Agricultural Stabilization and Conservation Service, Department of Agriculture.

ACTION: Final rule.

SUMMARY: This amendment redefines peanut undermarketings to provide that all segregation 1 peanuts marketed or considered marketed from a farm will be considered in determining undermarketing credit for a farm and announces the basic penalty rate for the 1979 crop of peanuts. The revised definition of undermarketings is being made to prevent abuse of the undermarketing provision where all segregation 1 peanuts are marketed under contract rather than as quota peanuts.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Paul P. Kume, Production Adjustment Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, D.C. 20013 (202) 447-4695.

SUPPLEMENTARY INFORMATION: Since producers have planted their 1979 crop of peanuts and are now entering into contracts with handlers under chapter 1446 of this title for the marketing of

additional peanuts and need to know the definition of undermarketing, I have determined that compliance with the notice of proposed rulemaking and public procedure of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impracticable and contrary to the public interest. Accordingly, this notice is being issued without compliance with such procedure and requirements.

Final Rule

Accordingly, 7 CFR 729.3 (11)(1) is amended and 7 CFR 729.46(c) is added, effective for the 1979 and subsequent crops of peanuts, to read as follows:

1. Subparagraph (1) of paragraph (11) of § 729.3 is revised to read as follows:

§ 729.3 Definitions.

* * * * *

(11) *Undermarketings.*

(1) *Actual undermarketings.* The pounds by which the effective farm poundage quota exceeds the larger of (1) the total production of segregation 1 peanuts on the farm or (2) the marketing of quota peanuts from the farm.

* * * * *

2. Paragraph (c) is added to § 729.46 to read as follows:

§ 729.46 Penalty rate.

* * * * *

(c) *1979–80 Marketing Year.* The basic support price for quota peanuts for the 1979–80 marketing year is $420 per ton. Therefore, the basic penalty rate for the 1979 crop of peanuts is $504 per ton or 25.2 cents per pound.

(Secs. 301, 358, 358a, 359, 361–368, 373, 375, 377, 52 Stat. 38, as amended, 55 Stat. 88, as amended, 81 Stat. 658, 55 Stat. 90, as amended, 52 Stat. 62, as amended, 63, as amended, 64, 65, as amended, 66, as amended, 70 Stat. 206, as amended (7 U.S.C. 1301, 1358, 1358a, 1359, 1361–1368, 1372, 1373, 1375, 1377) and Secs. 801, 802, 803, 804, 805, 806, 91 Stat. 944 (7 U.S.C. 1358, 1358a, 1359, 1373, 1377).)

Note.—This regulation has been determined not significant under the USDA criteria implementing Executive Order 12044. These provisions are required to announce the basic penalty rate, which is based on the basic support rate announced February 15, 1979, for which an approved impact statement is available.

Signed at Washington, D.C., on June 11, 1979.

Ray Fitzgerald,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-18653 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-05-M

7 CFR Part 760

Indemnity Payment Programs; Beekeeper Indemnity Payment Program (1978–1981) (Amendment 1)

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the Beekeeper Indemnity Payment Program Regulations to provide that payment of indemnity claims filed after the effective date of this amendment will be conditioned upon there being funds available to the Department for the payment thereof.

EFFECTIVE DATE: June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Robert M. Cook, Emergency and Indemnity Programs Division, ASCS, USDA, Room 4095, South Building, Washington, D.C. 20013, Telephone: (202) 447–7997.

SUPPLEMENTARY INFORMATION: The Beekeeper Indemnity Payment Program is authorized pursuant to section 804 of the Agriculture Act of 1970, as amended. The Food and Agriculture Act of 1977 extended authority for the program through September 30, 1981. It is not mandatory that this program be conducted.

The program is funded by separate annual appropriations. Unless further appropriations are made for this program, sufficient funds may not be available for indemnification under this program of bee losses.

Executive Order 12044 (43 FR 12661, March 24, 1978) requires at least a 60-day public comment period on proposed significant regulations except where the Agency determines that this is not possible or in the best interests of the producers. Since the period of extensive pesticide use has begun which will result in bee losses and funds are currently not available to indemnify such losses, it is in the best interests of beekeepers to publish this regulation immediately. Therefore, I have determined that compliance with the notice of proposed rulemaking and public procedure requirements of 5 U.S.C. 553 and the requirements of Executive Order 12044 is impossible and contrary to the public interest. Accordingly, this notice is issued without compliance with such procedure and requirements.

Final Rule

Accordingly, 7 CFR Part 760 is amended by adding a new § 760.119, effective for calendar year 1979 and subsequent years, to read as follows:

§ 760.119 Availability of funds.

Payment of indemnity claims filed after (effective date of amendment) will be contingent upon availability of funds to the Department to pay such claims.

(Sec. 804, 84 Stat. 1382 (7 U.S.C. 135b note); sec. 1(27), 87 Stat. 237 (7 U.S.C. 135b note); and sec. 207, 91 Stat. 921 (7 U.S.C. 135b note).)

Note.—This regulation has been determined to be not significant under the USDA criteria implementing Executive Order 12044. An approved impact analysis on the program regulations is available from Robert M. Cook (ASCS) (202) 447–7997.

Signed at Washington, D.C. on June 5, 1979.

Weldon B. Denny,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 79-18527 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 203]

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 during the period June 17–23, 1979. Such action is needed to provide for orderly maketing of fresh lemons for this period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: June 17, 1979.

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

SUPPLEMENTARY INFORMATION: Findings. This regulation is issued under the marketing agreement, as amended, and Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The action is based upon the recommendations and information submitted by the Lemon Administrative Committee, and upon other information. It is hereby found that this action will tend to effectuate the declared policy of the act. This regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

The committee met on June 12, 1979, to consider supply and market conditions and other factors affecting the need for regulation and

recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons continues good.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the act. Interested persons were given an opportunity to submit information and views on the 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.

§ 910.503 Lemon Regulation 203.

Order. (a) The quantity of lemons grown in California and Arizona which may be handled during the period June 17, 1979, through June 23, 1979, is established at 320,000 cartons.

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

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

Dated: June 14, 1979.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 79 19004 Filed 6–14–79; 11:16 am]

BILLING CODE 3410-02-M

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7 CFR Parts 911 and 944

[Lime Regulation 39, Amendment 1; Lime Regulation 7, Amendment 1]

Limes Grown in Florida and Fruits, Import Regulations; Grade and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: These amendments extend minimum grade and size requirements for limes grown in Florida, and for limes imported into the United States through April 30, 1980. Unless extended, these requirements would expire June 17, 1979. Extension of these requirements is designed to assure the continued shipment and importation of supplies of limes of acceptable grades and sizes for the rest of the 1979–80 season, in the interest of producers and consumers.

DATES: Effective June 18, 1979, through April 30, 1980.

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

SUPPLEMENTARY INFORMATION: Findings. The amendment to the Florida lime regulation currently in effect (§ 911.341 Lime Regulation 39; 44 FR 24561) is issued under the marketing agreement, as amended, and Order No. 911, as amended (7 CFR Part 911; 43 FR 39319), regulating the handling of limes grown in Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674). The amendment to the lime import regulation currently in effect (§ 944.206 Lime Regulation 7; 44 FR 24561) is issued under § 8e (7 U.S.C. 608e–1) of this act. The grade and size requirements applicable to Florida lime shipments were recommended by the Florida Lime Administrative Committee, which locally administers this marketing order program. Notice of these proposed amendments was published in the May 10, 1979, issue of the **Federal Register** (44 FR 27424). No comments were received during the 25 days provided in the notice. It is hereby found that these actions will tend to effectuate the declared policy of the act. These amendments have not been determined significant under the USDA criteria for implementing Executive Order 12044.

These grade and size requirements reflect the Department's appraisal of the need for regulating limes during the period June 18, 1979, through April 30, 1980, based on the available supply and market demand conditions. Production of Florida limes for the 1979–80 season is expected to amount to a record 1,800,000 bushels, a level which indicates a complete recovery from the 1977 freeze. About 900,000 bushels of Florida limes are expected to be shipped to fresh markets in 1979–80, with the remainder of the crop being utilized in processing. Mexico is expected to continue supplying substantial quantities of limes to the U.S. market, during the 1979–80 season. More than adequate supplies of limes should be available to fill domestic fresh market demands.

Under these amendments, both Florida limes and imported limes would need to continue meeting the following minimum requirements: *True "seeded" limes*—U.S. No. 2 grade, except as to color, with no minimum size; and *Persian "seedless" limes*—U.S. Combination, Mixed Color, except that stem length is not considered a factor of grade, and a minimum diameter of 1¾ inches. Florida limes shipped within the production area would be exempted from the grade requirements, if they have at least 42% juice content and are in containers not authorized for shipment of Florida limes out of the production area. Appropriate packing tolerances, with respect to the minimum size requirement, for limes smaller than 1¾ inches apply. The requirements for imported limes are consistent with § 8e of the act. This section requires that when specified commodities, including limes, are regulated under a federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity.

The language in these amendments relating to the application of tolerances has been modified slightly for clarification purposes from that in the current regulations and in the notice. Such modifications are not substantive, and are intended to make such provisions easier to interpret and apply.

After consideration of all relevant matter presented, including the proposals in the notice and other available information, it is found that amendment of the regulations, as hereinafter set forth, is necessary to establish and maintain orderly marketing conditions, and that such action is in accordance with this marketing agreement and order, and will tend to effectuate the declared policy of the act.

It is hereby further found that it is impracticable and contrary to the public interest to postpone the effective date of this amendment until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making the provisions hereof effective as hereinafter set forth in that (1) shipments of Florida limes and imported limes are currently regulated by grade and size through June 17, 1979, and these regulatory requirements will expire at such time unless extended; (2) the Florida lime and lime import regulations should be extended to cover, insofar as practicable, all of this season's shipments of Florida limes, as well as all limes imported into the United States over a corresponding period, in order to effectuate the declared policy of the act; (3) notice of the proposed extension of the current regulations for limes grown in Florida and for limes imported into the United States was published in the May 10, 1979, issue of the **Federal Register** (44 FR 27424), and no comments

relating to the proposed amendments or their effective date were received during the 25 days provided; (4) the recommendations upon which the current regulation and this amendment for Florida limes are based were developed by the committee at an open meeting on April 4, 1979, after due notice thereof, and all interested persons present were given an opportunity to express their views; (5) the regulatory requirements herein specified for Florida limes and imported limes are the same as those in the proposed amendments, except for minor changes made for clarification purposes in the language relating to application of tolerances; (6) the requirements of the amended import regulation are imposed pursuant to section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), which makes such import requirements mandatory; (7) such amendment to the import regulation imposes the same grade and size requirements on imports of limes as are being made applicable to the shipment of limes grown in Florida under the amendment to Lime Regulation 39, which is also to become effective June 18, 1979; (8) such amendments to the domestic and import regulation should become effective at as near the same time as is reasonable practicable; and (9) three days notice thereof, the minimum prescribed by said § 8e, is given with respect to this amendment to the import regulation.

Accordingly, it is found that § 911.341 Lime Regulation 39, and § 944.206 Lime Regulation 7, should be and are amended to read as follows:

§ 911.341 Lime Regulation 39.

(a) During the period June 18, 1979, through April 30, 1980, no handler shall handle:

(1) Any limes of the group known as true "seeded" limes (also known as Mexican, West Indian, and Key limes and by other synonyms), grown in the production area, which do not meet the requirements of at least U.S. No. 2 Grade for Persian (Tahiti) Limes, except as to color: *Provided,* That true limes, grown in the production area, which fail to meet the requirements of such grade may be handled within the production area, if such limes meet all other applicable requirements of this section and the minimum juice content requirement prescribed in the U.S. Standards for Persian (Tahiti) Limes, and are handled in containers other than the containers prescribed in § 911.329 for the handling of limes between the production area and any point outside thereof;

(2) Any limes of the group known as large-fruited or Persian "seedless" limes (including Tahiti, Bearss, and similar varieties) which do not grade at least U.S. Combination, Mixed Color: *Provided,* That stem length shall not be considered a factor of grade, and tolerances for fruit affected by decay and for fruit failing to meet the requirements for such grade in the U.S. Standards for Persian (Tahiti) Limes shall apply: *Provided further,* That Persian limes, grown in the production area, which fail to meet the requirements of such grade may be handled within the production area, if such limes meet all other applicable requirements of this section and meet the same minimum juice content requirement prescribed in the U.S. Standards for such limes and are handled in containers other than the containers prescribed in § 911.329 for the handling of limes between the production area and any point outside thereof; or

(3) Any limes of the group known as large-fruited or Persian "seedless" limes (including Tahiti, Bearss, and similar varieties) which are of a size smaller than 1¾ inches in diameter: *Provided,* That not more than 10 percent of the limes, by count, in any lot of containers may fail to meet the minimum size requirement: *Provided further,* That not more than 15 percent of the limes, by count, in any individual container containing more than four pounds of limes may fail to meet the minimum size requirement.

(b) Terms used in this section shall have the same meaning as in the marketing order, and terms relating to grade and diameter shall have the same meaning as in the U.S. Standards for Persian (Tahiti) Limes (7 CFR 2851.1000–1016).

§ 944.206 Lime Regulation 7.

(a) *Applicability to imports.* Pursuant to § 8e of the act, Part 944—Fruits; Import Regulations, the importation into the United States of any limes is prohibited during the period June 18, 1979, through April 30, 1980, unless such limes meet the minimum grade and size requirements specified in § 911.341 Lime Regulation 39.

(b) The Federal or Federal-State Inspection Service, Fruit and Vegetable Quality Division, Food Safety and Quality Service, United States Department of Agriculture, is designated as the governmental inspection service for certifying the grade, size, quality, and maturity of limes that are imported into the United States. Inspection by the Federal or Federal-State Inspection Service with evidence thereof in the form of an official inspection certificate, issued by the respective service, applicable to the particular shipment of limes, is required on all imports. The inspection and certification services will be available upon application in accordance with the rules and regulations governing inspection and certification of fresh fruits, vegetables, and other products (7 CFR Part 2851) and in accordance with the Procedure for Requesting Inspection and Designating the Agencies to Perform Required Inspection of Certification (7 CFR Part 944; 43 FR 19340).

(c) *Minimum quantity exemption.* Any person may import up to 250 pounds of limes exempt from the requirements specified in this section.

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

Dated: June 12, 1979, to become effective June 18, 1979.

D. S. Kuryloski,

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

[FR Doc. 79-18671 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-02-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

Physical Protection of Irradiated Reactor Fuel in Transit

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Interim final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission has decided to establish requirements for protection of spent fuel in transit. A recent study suggests that the sabotage of spent fuel shipments has the potential for producing serious radiological consequences in areas of high population density. It will be some time before confirmatory research relative to the estimated consequences resulting from a successful act of sabotage on spent fuel can be completed. In the meantime, the Commission believes that interim requirements for the protection of such shipments should be issued immediately. This rule is subject to reconsideration or revision based on public comments received subsequent to its publication. Concurrently, the NRC is issuing guidance documentation (NUREG–0561) to assist licensees in the implementation of these requirements. The Public is invited to submit its views

and comments on both the Rule and the Guidance.

EFFECTIVE DATE: July 16, 1979.

DATE: Comment period expires August 17, 1979.

ADDRESSES: Written comments should be submitted to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Docketing and Service Branch.

FOR FURTHER INFORMATION CONTACT: Mr. L. J. Evans, Jr., Regulatory Improvements Branch, Division of Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Phone (301) 427–4181.

SUPPLEMENTARY INFORMATION: The U.S. Nuclear Regulatory Commission is amending 10 CFR 73 of its regulations to provide interim requirements for the protection of spent fuel in transit. This amendment is being published in effective form without benefit of public comment in the interest of the public health and safety.

Previous studies (NUREG–0194, Calculations of Radiological Consequences from Sabotage of Shipping Casks for Spent Fuel and High-Level Waste, February 1977; NUREG–0170, FES on the Transportation of Radioactive Material by Air and Other Modes, December 1977), estimated the health effects of a radiological release in a non-urban area resulting from a high-explosive assault on a spent fuel cask. The estimated risks were not considered so substantive as to warrant regulatory action. A subsequent study by Sandia Laboratories includes a chapter on the sabotage of spent fuel in urban areas of high population density (SAND–77–1927, Transport of Radionuclides in Urban Environs: A working Draft Assessment). This study suggests that the sabotage of spent fuel shipments has the potential for producing serious radiological consequences in areas of high population density. The Commission has concluded that, in order to protect health and to minimize danger to life and property (Sections 161b and 161i(3) of the Atomic Energy Act of 1954, as amended), it is prudent and desirable to require certain interim safeguards measures for spent fuel shipments. The interim rule would be in effect until the results of confirmatory research are available and analyzed.

The focus of concern is on possible successful acts of sabotage in densely populated urban areas. Because of the possibility that spent fuel shipments could be hijacked and moved from low population areas to high population areas, the interim requirements apply to all shipments even though the planned shipment route may not pass through densely populated urban areas.

Prior to publication of this rule, informal contact was made with the carriers primarily involved in spent fuel shipments as well as with other interested parties, and their comments are known to the staff. It was ascertained that the imposition of these requirements would probably double the cost per mile rate for these shipments for an increase of approximately $200,000 per year for the estimated 200 annual shipments involved.

Because spent fuel shipments are on-going and the time of sabotage cannot be predicted, the Commission is of the opinion that time is of the essence in this matter, and that health and safety considerations override the necessity for public comment before issuance of an effective rule. Accordingly, the Commission, for good cause, finds that notice and public procedure are unnecessary and contrary to the public interest.

Although this rule is being published in effective form without a prior public comment period, the public is invited to submit its views and comments. After reviewing these views and comments, the Commission may reconsider or modify the interim rule as it deems necessary.

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and sections 552 and 553 of Title 5 of the United States Code, the following amendments to Title 10, Chapter I, Code of Federal Regulations, Part 73, are published as a document subject to codification.

1. Section 73.1 of 10 CFR Part 73 is amended by adding a new paragraph (b)(5) as follows:

§ 73.1 Purpose and scope.

* * * * *

(b) * * *

(5) This part also applies to shipments of irradiated reactor fuel of any quantity which has a total external radiation dose rate in excess of 100 rems per hour at a distance of 3 feet from any accessible surface without intervening shielding.

2. A new § 73.37 is added to 10 CFR Part 73 to read as follows:

§ 73.37 Requirements for physical protection of irradiated reactor fuel in transit.

(a) *General requirements.* Each licensee who transports or delivers to a carrier for transport irradiated reactor fuel in any amount that is exempt from the requirements of §§ 73.30 through 73.36 in accordance with § 73.6 shall make arrangements to assure that:

(1) The Nuclear Regulatory Commission is notified in advance of each shipment in accordance with § 73.72 of this Part, and that NRC has approved the route in advance of the shipment,

(2) Arrangements have been made with law enforcement agencies along the route of shipments for their response to an emergency or a call for assistance,

(3) The route is planned to avoid, where practicable, heavily populated areas,

(4) The shipment is scheduled where practicable without any intermediate stops except for refueling and obtaining provisions, and that at all stops at least one individual maintains surveillance of the transport vehicle,

(5) Individuals serving as escorts have successfully completed a training program in accordance with Appendix D of this Part,

(6) Procedures for coping with threats and safeguards emergencies have been developed.

(b) *Shipments by road.* For shipments by road, the licensee shall make arrangements to assure that:

(1) Each shipment is accompanied by (i) at least one driver and one escort in the transport vehicle, or (ii) at least one driver in the transport vehicle and two escorts in a separate vehicle,

(2) The transport or separate vehicle is equipped with a radiotelephone and CB radio or approved equal communications equipment and that calls are made at least every 2 hours to a designated location to advise of the status of the shipment,

(3) The transport vehicle is equipped with features that permit immobilization of the cab or the cargo-carrying portion of the vehicle.

(c) *Shipments by rail.* For shipments by rail, the licensee shall assure that:

(1) Each shipment is accompanied by at least one escort in the shipment car or in a separate car that will permit observation of the shipment car,

(2) Two-way voice communication capability is available and that calls are made at least every 2 hours to a designated location to advise of the status of the shipment,

(3) At least on escort maintains visual surveillance of the shipment car during periods when the train is stopped on sidings or in rail yards.

(d) If it is not possible to avoid heavily populated areas, the Commission may require, depending on individual circumstances of the shipment, additional protective measures.

(e) A period of 60 days from the effective date of the rule is allowed for the implementation of requirements that involve equipment modification or training.

3. A new Appendix D is added to 10 CFR Part 73 to read as follows:

Appendix D—Physical Protection of Irradiated Reactor Fuel in Transit, Training Program Subject Schedule.

Pursuant to the provision of § 73.37 of 10 CFR Part 73, each licensee who transports or delivers to a carrier for transport irradiated reactor fuel is required to assure that individuals used as shipment escorts have completed a training program. The subjects that are to be included in this training program are as follows:

Security Enroute

—Route planning and selection
—Vehicle operation
—Procedures at stops
—Detours and use of alternate routes

Communications

—Equipment operation
—Status reporting
—Contacts with law enforcement units
—Communications discipline
—Procedures for reporting incidents

Radiological Considerations

—Description of the radioactive cargo
—Function and characteristics of the shipping casks
—Radiation hazards
—Federal, State and local ordinances relative to the shipment of radioactive materials
—Responsible agencies

Response to Contingencies

—Accidents
—Severe weather conditions
—Vehicle breakdown
—Communications problems
—Radioactive "spills"
—Use of special equipment (flares, emergency lighting, etc.)

Response to Threats

—Reporting
—Calling for assistance
—Use of immobilization features
—Hostage situations
—Avoiding suspicious situations.

Effective date: July 16, 1979.

(Sec. 53, 161b, 161i, Pub. L. 83–703, 68 Stat. 930, 948, 949; Sec. 201, Pub. L. 93–438, 88 Stat. 1242–1243 (42 U.S.C. 2073, 2201, 5841))

Dated at Washington, D.C. this 12th day of June, 1979.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 79-18681 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Economic Regulatory Administration

10 CFR Part 212

[Docket No. ERA-R-76-01]

Mandatory Petroleum Allocation Regulations; Amendments to Extend Current Provisions of Entitlements Program Relating to Residual Fuel Oil

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Final Rule and Notice of Hearing and Request for Further Comments.

SUMMARY: On October 17, 1978, the Economic Regulatory Administration (ERA) of the Department of Energy (DOE) adopted amendments to the domestic crude oil allocation ("entitlements") program with respect to residual fuel oil in order to implement Congressional policy. These amendments, which were made effective for the period July 1, 1978 through June 30, 1979, provided for automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions previously in effect. We are hereby adopting amendments, effective July 1, 1979, which will extend through December 31, 1979 the effects of the current provisions of the entitlements program providing that imports of residual fuel into the East Coast market or the State of Michigan receive 50 percent of the per barrel entitlements runs credit and that an entitlement penalty ("reverse entitlements") shall only apply to domestically refined residual fuel oil which is transported by foreign flag tankers for sale or use in those markets. We are requesting further comments as to what entitlements provisions, if any, should be in effect with respect to residual fuel after December 31, 1979.

DATES: Further comments by October 1, 1979, 4:30 p.m.; requests to speak by August 2, 1979, 4:30 p.m.; hearing: August 15, 1979, 9:30 a.m.

ADDRESSES: All comments and requests to speak to: Department of Energy, Economic Regulatory Administration, Office of Public Hearing Management, Docket No. ERA-R-76-01B, Room 2313, 2000 M Street, NW., Washington, D.C. 20461. Hearing location: Room 2105, 2000 M Street, NW., Washington, D.C. 20461.

FOR FURTHER INFORMATION CONTACT:

Robert C. Gillette (Office of Public Hearing Management), Economic Regulatory Administration, Room 2222 A, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–5201.

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

Josette L. Maxwell (Regulations and Emergency Planning), Economic Regulatory Administration, Room 8202, 2000 M Street, NW., Washington, D.C. 20461, (202) 632–5133.

Douglas W. McIver (Entitlements Program Office), Economic Regulatory Administration, Room 6128, 2000 M Street, NW., Washington, D.C. 20461, (202) 254–8660.

Jack O. Kendall (Office of General Counsel), Department of Energy, Room 6A–127, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–6739.

SUPPLEMENTARY INFORMATION:

I. Background
II. Amendments Adopted
III. Comment Procedures
IV. Other Matters

I. Background

On June 15, 1978 (43 FR 26551, June 20, 1978) we issued a further notice of proposed rulemaking and public hearing to amend the residual fuel oil provisions of the entitlements program. The proposed amendments generally would have provided for elimination of the reverse entitlements rule applicable to domestically refined residual fuel oil sold into the East Coast and would have increased entitlement benefits for residual fuel oil imported into the East Coast market. This proposal was cast as a further notice of proposed rulemaking, since three alternative amendments on the residual fuel oil progam had been proposed on December 23, 1976 (41 FR 56821, December 30, 1976).

A public hearing on the June 1978 proposal was held July 26 through 28, 1978 in Washington, D.C. Commenters representing a broad range of interests which might be affected by the proposed amendments presented their views at the hearing. We also received written comments on the proposal through August 25, 1979.

While we were considering the comments submitted in response to the June 1978 proposal, Congress initiated legislative proceedings on the subject of entitlements for residual fuel oil. These proceedings resulted in the inclusions of requirements under section 307 of the Act Making Appropriations for the Department of Interior and Other Related Agencies for the Fiscal Year Ending September 30, 1979 ("1979 Appropriations Act," Pub. L. 95–465) which in effect mandated the DOE to amend the entitlements program.

On October 17, 1978, we issued a final rule adopting amendments to implement the provisions of section 307. These

amendments provide for three changes in the residual fuel oil entitlements provisions to be in effect during the period July 1, 1978 through June 30, 1979: First, domestically refined residual fuel oil is not subject to an entitlement penalty unless transported by foreign flag tankers into the East Coast market; second, the entitlement benefit issuable for imports of residual fuel into the East Coast market is increased from 30 percent to 50 percent of the per barrel entitlements runs credit; and third, the scope of the residual fuel oil entitlements program is expanded, by amending the definition of East Coast market, to include the State of Michigan. The October 1978 final rule also provided for automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisons which were in effect immediately prior to adoption of the rule.

Since the amendments described under section 307 were required to be implemented within 30 days of the 1979 Appropriations Act's date of enactment, opportunity for public comment prior to the adoption of the October 1978 final rule was impracticable. However, in the preamble to the final rule we announced our intent to keep open our pending rulemaking proceeding regarding entitlements for residual fuel oil in order to receive further comments through February 1, 1979. We requested that comments discuss the performance of the market under the October 1978 amendments and any further action which might be necessary or appropriate in view of the June 30, 1979 expiration date of the October 1978 amendments.

We received 33 comments in response to the October 1978 notice. After reviewing these comments, we determined that the provisions of section 307 of the 1979 Appropriations Act had been fully implemented. Therefore, we issued on February 14, 1979 a notice that no further action would be taken with respect to implementation of that statutory provision (44 FR 10702, February 19, 1979). We also indicated at that time our intention to continue our review of residual fuel oil market factors in order to determine whether any further action should be taken in this rulemaking proceeding to prevent automatic reversion on July 1, 1979 to the residual fuel oil entitlements provisions in effect prior to adoption of the October 1978 amendments.

Since the closing on February 1, 1979 of the period for further public comment in this rulemaking proceeding, several significant events have occurred. First, prices for imported crude oil have escalated rapidly, resulting in a reversal in the decline in the value of an entitlement runs credit. Second, the President has suspended fees and duties on all petroleum imports for the period April through June 1979 and delegated to the Secretary of Energy authority to extend this suspension for two additional 6-month periods. Finally, the President has announced the gradual deregulation of crude oil prices by September 30, 1981.

In view of the above considerations, we believe reversion on July 1, 1979 to the residual fuel oil entitlements provisions in effect prior to adoption of the October 1978 final rule could threaten the ability of historically import-dependent consumers to obtain adequate supplies of residual fuel oil in the current world market environment. It is our further belief that, in view of the relatively short time they have been in effect, the current residual fuel oil entitlements provisions should be extended through December 31, 1979 to provide continuity and stability during the present tight world market supply situation. In addition, extension of the current provisions beyond June 30, 1979 will permit opportunity for public comment as to any further action which may be necessary or appropriate after December 31, 1979.

II. Amendments Adopted

Under the amendments adopted today, imports of residual fuel oil into the Bureau of Mines East Coast Refining District and the State of Michigan will continue during the period July 1, 1979 through December 31, 1979 to be eligible to earn 50 percent of the per barrel entitlements runs credit. In addition, domestic refiners will continue during this period to receive 100 percent of an entitlements runs credit for each barrel or residual fuel oil it produces for sale into the East Coast market or the State or Michigan which is not shipped in a foreign flag tanker.

These changes are effectuated through the following specific amendments to the current entitlements program regulations:

We are eliminating the definition of "East Coast market" in 10 CFR 211.62 and adding a definition of "eligible market" which will include the Bureau of Mines East Coast Refining District and the State of Michigan. References elsewhere in the regulations to the term "East Coast market" are amended to read "eligible market" where appropriate.

The defined term "eligible product" is amended to continue the restriction that residual fuel oil which is processed in the refinery located in the U.S. Virgin Islands and them imported into the eligible market is not considered to be an "eligible product" and, therefore, is not eligible for imported product entitlements issuances. In contrast, residual fuel oil refined abroad, rather than in the U.S. Virgin Islands, and imported into the East Coast market by a U.S. Virgin Islands refiner will continue to qualify as an "eligible product" through December 31, 1979.

The definition of "national domestic crude oil supply ratio" is amended to provide for a 50 percent entitlement benefit for imports of eligible products during the period July 1, 1979 through December 31, 1979.

The reporting requirements in § 211.66 are amended to continue to make importers of record which are the ultimate consumers of the residual fuel oil, as well as those importing for resale, subject to this reporting requirement.

Section 211.67(a)(3) is amended to provide that for the period July 1, 1979 through December 31, 1979, the benefits granted to imported residual fuel oil will continue to be 50 percent of the per barrel crude oil entitlements runs credit. Subparagraph (d)(4) of that section is amended to continue the elimination of the exemption of the first 5,000 barrels per day of domestically produced residual fuel oil from the 50 percent entitlement penalty and to continue to provide for application of the 50 percent entitlement penalty only in that situation where residual fuel oil processed by a domestic refiner is transported by a foreign flag tanker for sale or use in the eligible market.

III. Comment Procedures

A. *Written Comments.* You are invited to participate in this proceeding by submitting data, views or arguments with respect to any matters relevant to this notice. All comments should be submitted by 4:30 p.m., e.s.t., October 1, 1979 to the appropriate address indicated in the "Addresses" section of this preamble and should be identified on the outside envelope and on documents submitted with the designation "Amendments to the Entitlements Program with Respect to Residual Fuel Oil," Docket No. ERA-R-76-01B. Ten copies should be submitted. All comments received by the ERA will be available for public inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

You should identify any information or data considered by you to be confidential and submit it in writing, one copy only. We reserve the right to determine the confidential status of the information or data and to treat it according to our determination.

B. *Public Hearing.* 1. *Procedure for requests to make oral presentation.* The time and place for the hearing are indicated in the "Dates" and "Addresses" sections of this preamble. If necessary to present all testimony, the hearing will resume at 9:30 a.m. on the next business day following the first day of the hearing.

You may make a written request for an opportunity to make an oral presentation. If so, you should describe the interest concerned; if appropriate, state why you are a proper representative of a group or class of persons that has such an interest; and provide a concise summary of the proposed oral presentation and a phone number where you may be contacted through the day before the hearing. If you are selected to be heard at the hearing, we will notify you before 4:30 p.m., August 7, 1979. You will be required to make 100 copies of your statement available in Room 2214, 2000 M Street, NW., Washington, D.C. 20461 by 4:30 p.m., August 14, 1979.

2. *Conduct of the hearing.* We reserve the right to select the persons to be heard at the hearing (in the event there are more requests to be heard than time allows), to schedule their respective presentations, and to establish the procedures governing the conduct of the hearing. The length of each presentation may be limited, based upon the number of persons requesting to be heard.

An ERA official will be designated to preside at the hearing. This will not be a judicial-type hearing. Questions may be asked only by those conducting the hearing. At the conclusion of all initial oral statements, each person who has made an oral statement will be given the opportunity, if he or she so desires, to make a rebuttal statement. The rebuttal statements will be given in the order in which the initial statements were made and will be subject to time limitations.

You may also submit questions to be asked of any person making a statement at the hearing to the address indicated above for requests to speak by 4:30 p.m., August 7, 1979. If you wish to ask a question at the hearing, you may submit the question, in writing, to the presiding officer. The ERA or, if the question is submitted at the hearing, the presiding officer will determine whether the question is relevant, and whether time limitations permit it to be presented for answer.

Any further procedural rules needed for the proper conduct of the hearing will be announced by the presiding officer.

A transcript of the hearing will be made. The entire record of the hearing, including the transcript, will be retained by the ERA and made available for inspection in the DOE Freedom of Information Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C., and in the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. You may purchase a copy of the transcript from the reporter.

IV. Other Matters

A regulatory analysis of the potential impacts of the October 1978 amendments currently in effect was prepared and made publicly available on October 20, 1978. Since today's actions will continue the effectiveness of the current entitlements provisions relating to residual fuel oil, today's rule will not result in any significant changes in current prices or competitive factors in the marketplace. However, we have reviewed our October 1978 findings and are making revised findings publicly available in the ERA Office of Public Information, Room B-110, 2000 M Street, NW., Washington, D.C., between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday.

We have concluded that today's actions do not constitute a major federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act and, therefore, that the preparation of an Environmental Impact Statement for this proposal is not required under 10 CFR Part 208.

Section 553(d) of the Administrative Procedure Act requires that a substantive rule not become effective less than thirty days after its publication unless the agency promulgating the rule finds good cause to waive this requirement and publishes this finding together with the rule. As discussed above, we believe the current residual fuel oil entitlements provisions should be extended through December 31, 1979 to provide continuity and stability during the present tight world market supply situation. We believe such action is especially important to prevent the interruption of adequate supplies of residual fuel oil for historically import-dependent consumers. Therefore, we have determined that good cause is found to waive the section 553(d) requirement in order to make today's amendments effective July 1, 1979.

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

In consideration of the foregoing, Part 211 of Chapter II, Title 10 of the Code of Federal Regulations is amended as set forth below, effective July 1, 1979. These amendments shall remain in effect through December 31, 1979.

Issued in Washington, D.C., June 10, 1979.

David J. Bardin,

Administrator, Economic Regulatory Administration.

1. Section 211.62 is amended by deleting the definition of "East Coast market"; revising the definitions of "eligible firm," "eligible product," and "national domestic crude oil supply ratio"; and adding a definition of "eligible market" in appropriate alphabetical order to read as follows:

§ 211.62 Definitions.

* * * * *

"Eligible firm" means any firm that imports an eligible product into the Bureau of Mines East Coast Petroleum Refining District or the State of Michigan for sale or use in those market areas, that is the importer of record under a license issued pursuant to Part 213 of this chapter and that owns the eligible product at the time of importation thereof pursuant to that license. Importation for the purpose hereof shall be as defined in paragraph (j) of § 213.27 of Part 213 of this chapter.

* * * * *

"Eligible market" means the geographical area coextensive with the Bureau of Mines East Coast Petroleum Refining District and the State of Michigan.

* * * * *

"Eligible product" means residual fuel oil imported into the eligible market in the period July 1, 1979 through December 31, 1979 except that an import of residual fuel oil into United States customs territory which has been processed in the U.S. Virgin Islands shall not be considered an eligible

product: *And provided,* That, Canadian residual fuel oil imported into the State of Michigan will qualify as an eligible product.

* * * * *

"National domestic crude oil supply ratio" means, for a particular month, the volume of deemed old oil (as defined in § 211.67(b)) included in the aggregate adjusted crude oil receipts of all refiners, decreased by a number of barrels of deemed old oil equal to the number of entitlements issuable to small refiners under § 211.67(e) and the number of entitlements issuable under §§ 211.67(a)(4) and 211.67(a)(5), divided by the sum of the total volume of the crude oil runs to stills for all refiners for that month and fifty percent (50%) of the total volume of imports of eligible products by eligible firms for that month. The calculation of the national domestic crude oil supply ratio for each month shall take into account entitlement purchase or sale requirements resulting from the correction of reporting errors pursuant to paragraph (j) of § 211.67.

* * * * *

2. Section 211.66 is revised in paragraph (j) to read as follows:

§ 211.66 Reporting requirements.

* * * * *

(j) *Monthly report by eligible firms.* On or prior to the fifth day of each month, commencing with the month of April 1976, each eligible firm that has imported an eligible product in the second month preceding that month shall file with the ERA a report certifying the following:

(1) The identity, volumes and ports of origin and entry of any eligible products imported by the eligible firm in that preceding month.

(2) That the eligible product was imported for sale or use in the eligible market.

(3) Such other information as the ERA may request.

* * * * *

3. Section 211.67 is revised in subparagraph (3) of paragraph (a) and in subparagraph (4) of paragraph (d) to read as follows:

§ 211.67 Allocation of domestic crude oil.

(a) *Issuance of entitlements.* * * *

(3) For each month in the period July 1, 1979 through December 31, 1979, each eligible firm that has imported an eligible product in that month shall be issued a number of entitlements equivalent to fifty percent (50%) of the number of entitlements that would be received by a refiner (without giving effect to the provisions of § 211.67(e)) in that month with respect to inclusion of a number of barrels of crude oil in that refiner's crude oil runs to stills equal to a number of barrels of that eligible product imported by that eligible firm. An eligible product is imported for purposes of this paragraph (a)(3) in the month, as specified on Customs Forms 7501 and 7505, as appropriate, in which importation takes place.

* * * * *

(d) *Adjustments to volume of crude oil runs to stills.* * * *

(4) For the period July 1, 1979 through December 31, 1979, paragraph (a)(1) of this section and the calculations for the national domestic crude oil supply ratio (but not for purposes of paragraph (e) of this section), the volume of crude oil runs to stills of any domestic refinery attributable to production of residual fuel oil transported in foreign flag tankers for sale (whether directly for consumption or for resale) or use in the eligible market (as defined in § 211.62) shall be reduced by fifty (50%) percent. Any export sales of residual fuel oil giving rise to a deduction under paragraph (d)(2) above shall not be considered as residual fuel oil production for purposes of this paragraph (d)(4).

* * * * *

[FR Doc. 79-18761 Filed 6-13-79; 10:15 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

18 CFR Parts 101, 104, 141, 201, 204 and 260

[Docket Nos. R-424 and R-446]

Order Establishing Interim Procedures

AGENCY: Federal Energy Regulatory Commission (FERC).

ACTION: Interim procedures.

SUMMARY: The United States Court of Appeals for the District of Columbia circuit remanded Order No. 530-B (41 FR 28474) to the FERC for further action not inconsistent with its opinion. Order No. 530-B set forth a rule which, *inter alia,* permitted tax normalization treatment for deferred taxes of regulated companies. This order continues the effectiveness of Order No. 530-B pending a final order by the Commission on remand.

EFFECTIVE DATE: June 8, 1979.

FOR FURTHER INFORMATION CONTACT: Kenneth F. Plumb, (202) 275-4166, Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, (Reference Docket Nos. R-424 and R-446).

SUPPLEMENTARY INFORMATION:

In the matter of Part 101—Uniform System of Accounts For Public Utilities and Licensees (Class A and Class B); and Part 104—Uniform System of Accounts For Public Utilities and Licensees (Class C and Class D); and Part 141—Statements and Reports (Schedules); and Part 201—Uniform System of Accounts Prescribed for Natural Gas Companies Subject to the Provisions of the Natural Gas Act (Class A and Class B); and Part 204—Uniform System of Accounts Prescribed for Natural Gas Companies Subject to The Provisions of the Natural Gas Act (Class C and Class D); and Part 260—Statement and Reports (Schedules).

By Order No. 530-B, issued July 6, 1976, in these proceedings, the Federal Power Commission [1], *inter alia,* set forth a rule permitting tax normalization treatment for deferred taxes of regulated companies. On appeal, the United States Court of Appeals for the District of Columbia Circuit remanded Order No. 530-B to the Commission for further action not inconsistent with its opinion,[2] which found (*mimeo,* p. 14) that the Commission orders before it "fail to (1) assess the consequences of its action for the industry, and (2) indicate 'fully and carefully' the purposes behind the order".

The court's remand would require this Commission to further consider its action on the subject of tax normalization of the items contained in Order No. 530-B. The Commission is presently determining whether to seek further judicial review or, if not, remand to determine:

> how, in light of internal organizational considerations, it may best proceed to develop the needed evidence and how its prior decision should be modified in light of such evidence as develops. . . .[3]

In the interim, presiding law judges and participants in rate proceedings may be uncertain as to the proper standard to be followed regarding interperiod tax allocation in ongoing or prospective hearings. The court's remand did not reverse Order No. 530-B and, while we are not here anticipating the result that might ultimately be

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[1] This proceeding was commenced before the FPC. By the joint regulation of October 1, 1977 (10 CFR 1000.1), it was transferred to the FERC. The term "Commission", when used in the context of action taken prior to October 1, 1977, refers to the FPC; when used otherwise, the reference is to the FERC.

[2] *Public Systems, et al. v. FERC,* —— F2d ——, CADC Nos. 76-1609, *et al.,* issued February 16, 1979, rehearing denied, March 30, 1979.

[3] *FPC v. Transcontinental Gas Pipe Line Corp., et al.,* 423 U.S. 326, 331-33 (1976).

reached on remand, we believe that maintenance of the *status quo* under Order No. 530–B will be the most orderly administrative way to proceed during the interim period.

Unless and until the Commission changes its position on remand, we believe that it would be administratively wasteful to *require* all utilities seeking normalization of tax items, in accordance with Order No. 530–B, to file evidence to demonstrate that a tax deferral rather than a tax savings would occur under tax normalization. However, a utility will be *permitted* to introduce such evidence. Only in the event that the utility submits evidence on the issue will the Intervenors or Staff be allowed to submit evidence in support of or in opposition to such a showing, or will cross-examination on the issue be permitted.

Any final decision which requires a refund of amounts otherwise in excess of the just and reasonable rate level shall not require a refund of that portion of the rate related to interperiod tax allocation. That portion shall continue in effect, subject to refund, pending a final order in these dockets.

The Commission orders: Order No. 530–B shall remain in effect, as qualified above, as the Commission's interim policy regarding interperiod tax allocation (tax normalization) pending further judicial review of *Public System, supra*, or Commission action on remand.

By the Commission.

Lois D. Cashell,

Acting Secretary.

[FR Doc. 79–18652 Filed 6–14–79, 8:45 am]

BILLING CODE 6450–01–M

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18 CFR Part 270

[Docket No. RM79–22; Order No. 23–A]

Regulated Sales of Natural Gas; General Rules and Definitions

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interpretive rule.

SUMMARY: Although the Natural Gas Policy Act of 1978 (NGPA) sets maximum lawful prices for first sales of natural gas, the NGPA does not supersede or nullify the effectiveness of the price established under existing contracts. This interpretive rule states that the NGPA does not prohibit the amendment of an existing contract to collect any applicable NGPA rate.

DATES: Effective June 12, 1979.

ADDRESSES: All filings should reference Docket No. RM79–22 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275–0427

Introduction

This interpretive rule addresses the extent to which existing contracts for the sale of natural gas may be amended to provide for the payment of some or all of the prices established under the NGPA. The Commission has considered this question in Docket No. RM79–22, the proceeding which resulted in Order No. 23, relating to the effect of the NGPA on price escalator clauses. In a proposed rule issued February 13, 1979, we took the same substantive position on contract modifications as we now adopt. The comments on the proposed rule which were relevant to this subject did not, as a general matter disagree with that position. Rather, the comments were directed at the related question of pipeline pass-through discussed below.

General Rule

Section 101(b)(5) of the NGPA provides that if any natural gas qualifies under more than one maximum lawful price, the highest price for which the gas is eligible becomes the applicable maximum lawful price. The Commission believes contractual amendments consistent with this section are permitted in both interstate and intrastate contracts. The most common, though not the only example of situations arising under the NGPA which illustrates this principle is when natual gas from a well subject to an existing contract is subsequently determined to be eligible for a higher price under sections 102, 103, 107 or 108 of the Act. If this occurs, the NGPA does not preclude parties from negotiating for and executing amendments providing for the payment of the higher price. This is true without regard to whether the contract was an "interstate" or "intrastate" contract.

Although the rule stated above applies in all cases, special attention should be given to contracts governed by section 105(b)(1) of the NGPA. That section applies to intrastate contracts under which the contract price on November 9, 1978, did not exceed the new gas price established in section 102 of the Act. For these contracts the maximum lawful price is the price under the terms of the contract as such contract was in effect on November 9, 1978.

With respect to these contracts, amendments may only be executed to provide for payment of any higher maximum lawful price for which natural gas sold under the contract is determined to be eligible. For example, assume that on November 9, 1978, natural gas was sold under an existing intrastate contract for $1.50/MMBtu, (or any price less than $2.06, the new natrural gas price in November). Since under section 105(b)(1), the price under the terms of the contract, ($1.50 per MMBtu) is the maximum lawful price, no contractual amendment could provide for a higher price. But if subsequent to enactment a well covered by the contract was determined to be a stripper well, under section 101(b)(5) the gas from that well would be eligible under both sections 105(b)(1) and 108. In that case the applicable miximum lawful price would be the stripper well price. Accordingly, an amendment providing for the payment of that higher price would be permitted. The same result would occur any time gas sold under the contract was determined to be eligible for any price higher than $1.50 per MMBtu (e.g., 102 new natural gas or 103 new onshore production well gas).

The operation of the rule on contracts governed by section 105(b)(2) of the Act is also worth noting. In these cases, the contract price exceeded the section 102 price on November 9, 1978, and the applicable maximum lawful price exceeded $2.06. Under section 105(b)(2), the ceiling price is the contract price plus the monthly inflation adjustment. Accordingly, if the contract did not already permit it, amendments to contracts subject to the maximum lawful price in 105(b)(2) could be executed to provide for the payment of the inflation adjustment. Also, amendments could be executed to provide for payment of the stripper well price established in section 1208 of the NGPA, if wells covered by the contract were determined to be eligible for that price.

Other general examples may be helpful. If contractual authorization does not exist in an interstate contract to collect the inflation adjustment provided in section 104 of the Act, the NGPA does not preclude an amendment providing for its payment. Similarly, the NGPA does not preclude amendments to interstate contracts to provide for the payment of prices under sections 102, 103, 107 and 108 if natural gas under the contract qualifies for those prices.

Two associated points should be noted. First, since collection of the higher price may be contractually authorized, amendments providing for the interim collection of such prices,

pursuant to Part 273 of the regulations, are similarly permissible. Second, for the same reasons, all contracts may be amended to provide for a clause authorizing the payment of the highest NGPA price for which any natural gas sold under the contract may become eligible, i.e., both interstate and intrastate contracts may be amended to include escalator clauses which reference the highest applicable NGPA prices.

Pass-through of NGPA Prices

In the preamble to the February 13, 1979, proposal, we indicated that pass-through of increased gas purchase costs resulting from contract modifications providing for a price not in excess of the maximum lawful price is permissible in the absence of fraud, abuse, or similar grounds. We also indicated that pass-through would not be precluded if modifications were negotiated in an arms length transaction.

A number of participants in Docket No. RM79–22 suggested that the Commission affirmatively state that contract modifications must be supported by additional consideration. Other comments suggested that the Commission define arms-length bargaining. Upon consideration of these comments, we have determined that it is neither useful nor necessary to impose the requirement or define that term. We note particularly the difficulties of defining arms-length bargaining because of the wide diversion of views expressed on this part. Accordingly, we are convinced that we should abandon our previous reference to that test.

Section 601(c)(2) of the NGPA provides that the Commission may not deny an interstate pipeline the recovery of maximum lawful prices paid by the pipeline unless ". . . the Commission determines that the amount paid was excessive due to fraud, abuse, or similar grounds." The Joint Statement (pg. 124) indicates that "[t]he conferees do not intend to guarantee passthrough of costs of natural gas purchases in cases of fraud or abuse as *determined by the Commission.*" [emphasis supplied] A number of comments requested that we define the term "fraud, abuse or similar grounds."

The statute and the statement quoted would permit the Commission to make the determination on a case-by-case basis, or to prescribe general rules defining in part or fully the phrase "fraud, abuse or similar grounds." We are aware that general guidance as to the circumstances that would constitute grounds for a determination of fraud abuse or similar grounds would be desirable. However, we believe that if such guidance or general rules can be developed, they must emerge from a number of individual cases in which the Commission considers this issue. Until sufficient experience under the law is acquired we believe that general statements concerning the application of the standard cannot be formulated with sufficient precision to assist those pipelines concerned with its application.

The Commission will revise section 270.205 of its regulations by adding a paragraph entitled "Modification of existing contracts." This paragraph will summarize the foregoing discussion.

(Natural Gas Act, as amended, 15 U.S.C. 717 *et. seq.*, Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350, Department of Energy Organization Act, Pub. L. 95–91, E. O. 12009, 42 FR 46267)

In consideration of the foregoing Part 270 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, is amended as set forth below. Because this is an interpretive rule, deferral of the effective date of the rule is not required. Accordingly, the rule will be effective immediately.

By the Commission. Commissioner Sheldon voted present.

Kenneth F. Plumb,

Secretary.

Section 270.205 is amended by redesignating paragraph (c) as paragraph (d) and by adding a new paragraph (c) to read as follows:

§ 270.205 Contractual authorization to collect NGPA rates.

* * * * *

(c) *Modification of existing contracts.* The NGPA does not prohibit the parties to an existing contract for the first sale of natural gas from amending or modifying such contract to permit the seller to charge and collect any applicable NGPA rate. If natural gas sold under such contract is subject to section 105(b)(1) of the NGPA and qualifies for no higher maximum lawful price under any other provision of the NGPA, no amendment or modification of such contract may provide authorization for a seller to charge and collect a price which exceeds the price under the terms of the contract as in effect on November 9, 1978.

[FR Doc. 79–18759 Filed 6–14–79; 8:45 am]

BILLING CODE 6450–01–M

18 CFR Part 271

[Docket No. RM79–3]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission promulgates final regulations implementing section 107(a) of the Natural Gas Policy Act of 1978, which deals with the maximum lawful price for deep, high-cost natural gas.

DATES: June 13, 1979.

ADDRESSES: All findings should reference Docket No. RM79–3 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, 202–275–4212.

SUPPLEMENTARY INFORMATION: On December 1, 1978, the Federal Energy Regulatory Commission issued Interim Regulations in Docket No. RM79–3 implementing the Natural Gas Policy Act of 1978 (NGPA). (43 FR 56448). Subpart G of Part 271 set forth regulations implementing section 107(a) of the NGPA, to provide incentive prices for deep, high-cost natural gas.

Section 107(b)(2)–(4) also authorized the Commission to establish incentive prices for gas from geopressured brine, occluded natural gas produced from coal seams, gas from Devonian shale, as well as gas produced from other conditions which have been determined by the Commission to present extraordinary risks or costs. However, due to statutory deadlines imposed by the NGPA, the Commission did not promulgate regulations to implement section 107(b).

During the 60-day comment period on the interim regulations, ten comments were received addressing the issuance of section 107(b) regulations. Some made general requests for expeditious promulgation, others suggested specific definitions for the particular categories listed in section 107(c).

The comments in favor of rapid implementation of section 107(b) took the position that incentive prices are required to maximize natural gas production. However, one comment indicated that the maximum lawful prices allowable under other provisions of the NGPA may provide sufficient incentives to produce adequate natural

gas supplies. Further, the comment suggested that it may be exceedingly difficult to determine what is "necessary" incentive pricing, and what is a windfall to a producer.

Concurrently with this final rulemaking, the Commission is issuing a notice of inquiry, requesting comments to assist it in a policy examination of rules implementing section 107(b) and (c) of the Natural Gas Policy Act of 1978. Additionally, we are requesting comments on a notice of proposed rulemaking issued today, in which we set forth proposed definitions for those categories specifically listed in section 107. The issues raised by the comments on the proposed definitions will be considered together with the responses to the notice of inquiry.

Eleven other comments were received on Subpart 271 G. Three made reference to the Commission's statement in the order of December 1, 1978, in Appalachian Exploration and Development, Inc., *et al.*, Docket No. CI76–590, *et al.*, that it intended to issue, in the near future, a "transitional rule governing the processing of all optional procedure cases [18 C.F.R. § 275] filed before December 1, 1978." On February 7, 1979, the Commission issued an Order Granting Rehearing For Purposes of Further Consideration in Docket No. CI76–590. We expect to consider a transitional rule in the near future.

Several comments requested that measurement of well depth in § 271.704 be made from the top of the "Kelly bushing" [1] rather than "surface of the ground." One rationale for this proposed change is that well logs refer to this point. More importantly for offshore wells the reference to the Kelly bushing will include the depth of the water in the measurement of the 15,000 foot depth.

Section 107 does not establish a cost-based maximum lawful price for deep wells. However, the costs involved in producing gas from deep wells is a factor which the Commission may consider in implementing the section. Recognizing the costs of constructing offshore drilling platforms, we believe that it is reasonable to conclude that it is consistent with the statute to include in the measurements of well depth, the depth of the water in which a producer must drill. In order to effectuate this conclusion, the Commission by this order amends § 270.102(6), which defines "surface location." Pursuant to this order, "surface location" will remain the same for onshore wells; i.e., the earth's surface. However, for wells drilled in permanent surface waters, the "earth's surface" means "the mean elevation of the surface of the water." In conformance with this amendment, § 271.704 is amended to require measurement of depth for section 107(a) purposes to be "from the surface location to the highest perforation point in the completion location."

Two other comments addressed the use of "true *vertical* depth" in § 271.704. It is asserted that all wells tend to corkscrew as they are drilled. Also, offshore wells are drilled directionally, to allow more undersea acreage to be tapped from one drilling platform. Since the cost of a well is determined by the length of the bore, and not the vertical depth of the highest penetration, these comments recommend replacing "true vertical depth" with a reference to actual well bore length.

There is validity to these statements regarding costs. However, Congress has explicitly adopted the standard of "true vertical depth" in section 101(b)(1) of the NGPA. Thus, the Commission is precluded from adopting a different standard in § 271.704.

The Joint Explanatory Statement of the Committee on Conference, at page 88, anticipated that "some new wells will produce from depths close to 15,000 feet, and some reentries will produce from depths below 15,000 feet, both possibly involving costs greater than normal . . ." The Statement went on to acknowledge that "[t]he Commission may determine that such wells should receive special price treatment under this section. . . ."

It appears that the wells described in the comments, like the wells described in the Statement, may qualify under section 107(c)(5), as natural gas "produced under such other conditions as the Commission determines to present extraordinary risks or costs." Accordingly, these comments will be considered in the notice of inquiry concerning section 107(c)(5), issued today. The Commission invites additional comments addressing this issue.

One other comment addressed § 271.704 of the interim regulations, requesting that the Commission's definition of deep, high-cost natural gas include wells begun before February 19, 1977, if redrilling the well entails substantial expense. Alternatively, the comment suggested such redrilled deep wells be classified as high-cost gas under section 107(c)(5). The Commission will not amend § 271.704 in the manner suggested; it is contrary to the plain language of section 107(a) and (c)(1), and inconsistent with the intent of the section as evidenced by the above quoted passage from The Joint Explanatory Statement of the Committee on Conference. The comment's alternative suggestion will be examined with comments elicited by the notice of inquiry addressing section 107(c)(5).

The regulations in Subpart G of Part 271 were originally proposed for comment in November of 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448 (Dec. 1, 1978)). For 60 days thereafter comments were received and during that period public hearings were held on these regulations. By this process the Commission complied with the provisions of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA.

The amendments to Subpart G of Part 271 contained in this order rest upon considerations given to the information received during the above described, comment, and hearing process. Accordingly, the Commission finds that further notice and public procedure on these rules are unnecessary and impractical and that good cause exists to dispense with additional notice and procedure. Subpart G of Part 271, as amended, will be effective in 30 days as final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, et seq.; Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.*; Natural Gas Policy Act of 1978, Pub. L. 95–621, 92 Stat. 3350; Department of Energy Organization Act, Pub. L. 95–91, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Subpart G of Part 271 of Subpart H, Chapter I, Title 18, Code of Federal Regulations, issued as interim regulations (43 FR 56448 (December 1, 1978)), are promulgated as final regulations and amended as set forth below, effective 30 days from the issuance of this order.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. § 270.102 is amended by revising subparagraph (6) of paragraph (b) to read as follows:

§ 270.102 Definitions.

* * * * *

(b) * * *

(6) "Surface location" means the point on the Earth's surface from which drilling of a well is commenced except that in the case of a well drilled in

[1] The "Kelly bushing" is that part of the drilling rig which transfers the power from the rotary table to the pipe in the ground. For onshore wells, it may be as high as 20 feet from the surface of the ground.

permanent surface waters, "the Earth's surface" means the mean elevation of the surface of the water.

* * * * *

2. Section 271.704 is amended by revising it to read as follows:

§ 271.704 Special rule.

For purposes of determining depth under this subpart and section 107(c)(1) of the NGPA, measurement shall be the true vertical depth from the surface location to the highest perforation point in the completion location.

[FR Doc. 79-18738 Filed 6-14-79; 8:45 am]
BILLING CODE 6450-01-M

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18 CFR Part 275

[Docket No. RM79-3]

Commission Determinations and Review of Jurisdictional Agency Determinations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rules.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing final regulations implementing section 503 (b) and (d) of the Natural Gas Policy Act of 1978 (NGPA) which deals with Commission review of jurisdictional agency determinations of the NGPA pricing category for natural gas.

EFFECTIVE DATE: July 16, 1979.

ADDRESSES: All filings should reference Docket No. RM79-3 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, D.C. 20426, (202) 275-4212.

I. Background

On December 1, 1978, the Federal Energy Regulatory Commission (Commission) issued interim regulations implementing the Natural Gas Policy Act of 1978 (NGPA) (43 F.R. 56448). In the 60-day comment period on the interim regulations, 28 comments were received on Part 275; some of the suggestions made by the comments have been incorporated into the final rule.

II. Discussion of Comments

Part 275 generally describes the procedures by which the Commission will review jurisdictional agency determinations. It reflects section 503 of the NGPA in setting forth the grounds on which determinations may be reversed or remanded. It also provides a 15-day protest procedure under which persons may object to determinations and submit documentary evidence relative to the determination. Finally, it establishes procedures for reopening and possibly vacating determinations on the basis of material facts which were either untrue or omitted from the record before the jurisdictional agency. Section 275.201 of the interim regulations provides that the Commission will publish a notice in the **Federal Register** of the receipt of a jurisdictional agency's determination, and specifies the contents of that notice. One comment requested that the notice contain the following additional information:

1. The rate schedule number, so that interested parties can inspect the producer's contract,

2. A summary by the state agency of information in its files inconsistent with its determination, and

3. The price sought and the statutory regulatory authority sought to be invoked.

The comment indicated that the rate schedule number is necessary so that interested parties may inspect contracts in the Commission's files to ascertain, "among other things, the nature of the contractual authority for the price sought." The inclusion of the rate schedule number will not be included at this time. However, the Commission is actively engaged in preparing an order establishing the proper procedure for examining questions of contractual authority. This issue will be more fully discussed in that order.

The comment's second request, for the publication of a summary by the jurisdictional agency of information inconsistent with its determination, is more properly addressed in connection with § 274.104, which contains the requirements of the jurisdictional agency's notice to the Commission. Section 274.104 does not presently require such a summary. The comment will be considered with other comments on that section.

However, if such a summary is required to be sent to the Commission, we do not believe that it should be included in the notice published in the **Federal Register**. The published notice is designed to bring to the attention of interested persons, through a synopsis of the basic facts, that a particular well has been determined to qualify for a certain NGPA pricing category. The notice itself, by definition, does not provide the public with enough information to permit a complete analysis. That information is available in the public files for inspection. For the Commission to provide in the notice the amount of information suggested for the thousands of jurisdictional agency determinations would be administratively infeasible and would place an impossible burden upon the Commission and the **Federal Register**.

The third request, for the price charged, is also unnecessary. The section of NGPA under which the determination is made is included in the notice. Reference to that NGPA section will show what price can be charged, assuming contractual authority exists to collect that price.

Section 275.201(d) of the interim regulations provides that the notice in the **Federal Register** shall provide that protests may be filed within 15 days of the Commission's public notice. Some comments recommended that this time limit be reduced from 15 days to 10 days, with an additional 10-day period provided for the filing of responses to protests.

The time period for protests was originally set by attempting to balance the need for adequate time for interested persons to review the determination and make filings, against the statutory requirement that the Commission act on determiniations within 45 days. Since no protests have yet been received, and the comments are not based on arguments that the time limits are unreasonable, there is no reason to change this requirement. As more experience is gained under this section, we may determine that some adjustment in the time and procedures for protests may be necessary. At present, the 15-day period will not be changed; however, to make the regulations clearer, the 15-day limit has been made explicit in § 275.203(a).

One comment suggested that Part 275 be amended to provide that notice of a preliminary finding or a reopening of a determination be sent by all those persons who are purchasing gas at the wellhead to all those to whom the purchaser tenders payment for the gas. The concern underlying this request is valid. A subsequent purchaser of a well may not receive notice of a preliminary finding or reopening because the Commission will not be aware that the person who filed for the pricing determination is no longer the owner of the well.[1] However, without reaching the question of the Commission's legal authority to require such notice, we conclude that this is a matter to be

[1] Section 503(b)(3) requires that the notice be sent to "those parties identified in the notice [sent] to the Commission of [the pricing] determination.

resolved between the buyer and seller of a natural gas well. Thus, the Commission declines to require wellhead purchasers of natural gas to supply the notice requested by the comment.

Two comments suggested that the Commission include additional grounds for issuing a preliminary finding. One suggested that the Commission issue a preliminary finding if the Commission believes the jurisdictional agency determination may be unreasonable. Another suggested that a preliminary finding issue on the grounds of absence of contractual authority for the determination.

A preliminary finding is a required step under our regulations, before the Commission can issue an order reversing or remanding a jurisdictional agency determination. The statutory grounds for a reversal or remand are clear: (1) a reversal is required if the Commission finds that a determination is not supported by substantial evidence in the record upon which the determination was made. (Section 503(b)(1)(A)); and (2) a remand may occur if the Commission finds that its files contain information inconsistent with a determination. (Section 503(b)(1)(B)). A preliminary finding will not issue unless the Commission concludes that one of the statutory grounds for reversal or remand may exist. Neither of the comments' suggested grounds are included in the statutory grounds for remand or reversal. Thus, a preliminary finding cannot be issued solely because the Commission feels that a jurisdictional agency determination is unreasonable or that contractual authorization is lacking to collect the highest price allowable under an NGPA pricing category.

Several comments addressed the 45-day period in which the finding under § 275.202(b) may be made that the notice of the determination sent by the jurisdictional agency to the Commission is incomplete. One suggested that the 45-day period begin on the date the notice of determination is published in the **Federal Register.** Some indicated that such a finding could be made in a shorter time, others felt that the period was unnecessary, given the certification which must be filed under § 274.104(a)(5), stating that all required information has been supplied. Still others expressed the opinion that tolling the 45-day statutory time period by issuing an incomplete notice is an unwarranted intrusion by the Commission into state jurisdiction and that this provision is subject to administrative abuse.

The full 45-day period will be retained, beginning upon the receipt of the determination by the Commission. The full period is required because it is estimated that 40 to 50 thousand jurisdictional agency determinations will be filed in the first year of the NGPA. The beginning date for the 45-day period is statutorily required under section 503(b)(1)(B). The tolling provision is required because the certification required by § 274.104(a)(5) may not be accurate; the Commission must have time to reach its own conclusion as to the adequacy of the information filed by the jurisdictional agency. Finally, all the information required to be filed may be necessary for the Commission to make a "substantial evidence" determination, as required by section 503(b)(1)(A). If the information is not supplied, the jurisdictional agency's determination may not be supported by substantial evidence;[2] unless a tolling provision is provided, filings by jurisdictional agencies which lack material information would require reversal.

It is anticipated that once state agencies become familiar with the determination process, this section will be little used. However, at present, our experience has shown it to be necessary. It would be foolish to expect state agencies, in making their first determinations, to do so completely without error. In fact, it is remarkable how well most are performing.

One comment suggested that informal conferences after preliminary findings be eliminated because of the possibility of *ex parte* communication; instead, the commentor would allow only written filings. This suggestion is rejected; *ex parte* problems will be no more substantial in this context than in any other informal conference with staff.

Several comments address § 275.202(e), indicating confusion with respect to the procedures to be followed if the Commission makes a preliminary finding on its own motion. These comments are well taken. Section 275.202(e) is amended to make clear that the procedures which the Commission will follow after a preliminary finding are the same without regard to whether or not a protest has been filed. The only difference is that the Commission will issue a final order in any case in which both a protest was filed and a preliminary finding was made, whereas if the preliminary finding is made by the Commission on its own motion, the issuance of a final order is not required. If none is issued, § 275.202(e)(3) states that the jurisdictional agency determination will become final 120 days after the date of the preliminary finding.

A number of comments suggested that protests should be made under oath and that protestors should be limited to those persons who participated in the state agency proceeding, absent a showing of good cause for failure to participate. The Commission addressed both of these issues in the preamble to the interim regulations. We indicated that if the protest procedure was being abused, the oath requirement could be imposed. We also indicated that the Commission could not prescribe procedures applicable to jurisdictional agency determinations, and that the limited time within which the Commission must act would not allow for resolution of controversies over good cause for failure to appear before the jurisdictional agency. Again, until experience dictates the need for these types of changes, the position previously articulated in the preamble will be maintained.

Two comments suggested that a preliminary finding not issue if a protest raises only harmless error. We believe that section 503(b)(2) now provides this discretion. Thus, there is no need for the regulation to be amended, because § 275.202(a)(1)(ii) tracks the language of the statute.

One jurisdictional agency suggested that it is inconsistent with the NGPA to permit protestors to submit information with their protest, and have that information become part of the "public records of the Commission," within the meaning of section 503(b)(1)(B). The Commission believes that it is not only consistent with the statute but is required by the framework of the NGPA. Section 501(a) requires the Commission to "issue . . . such rules and orders as it may find necessary or appropriate to carry out its functions under this Act." One of those functions is the review of jurisdictional agency determinations. It would be unreasonable for the Commission not to consider reliable evidence submitted by a protestor, within the 45-day statutory period, in reviewing a determination. Consequently, § 275.203(b)(3) will be retained.

Two comments would have the Commission remand all determinations that are required to be reopened, rather than have the Commission take initial jurisdiction of the matter. It is indicated that section 503 of the NGPA contemplates that initial jurisdiction for

[2] Although our practice has not been to declare a filing incomplete for a minor technical deficiency, the final rule in § 275.202(b)(1) has been amended to make clear that an incomplete notice will not be issued unless the deficiency is material.

pricing determinations lies with the jurisdictional agency.

Section 503(d) states that jurisdictional agency determinations, if no longer subject to review by the Commission or the courts, "shall thereafter be binding." However, the determination is *not* binding if it was based on (1) any untrue statement of material fact or (2) a misleading omission of material fact. The section does not indicate the procedure which should be utilized to ascertain whether the determination was based on such misinformation. Pursuant to the authority granted in section 501(a), the Commission has set out in § 275.205 what it considers to be the appropriate procedure for "reopening" jurisdictional agency determinations. Section 275.205(d) has been amended slightly to clarify the effect of an order vacating a jurisdictional agency determination.

The procedure set out entails four distinct steps: (1) an initial finding by the Commission, on its own motion or in response to a petition, that a material misstatement or omission may have occurred; (2) an opportunity for a presentation of views on that issues; (3) a determination by the Commission, based on the information supplied by all interested parties, whether the misstatement or omission occurred, and if so whether the determination should be vacated because the misstatement or omission was relied upon by the jurisdictional agency, and (4) if the determination is vacated, the Commission must then decide how much of the producer collections were in excess of the otherwise applicable maximum lawful price, and if appropriate, order that amount refunded.

In the process described above, the Commission will not make determinations which section 503(a)(1) assigns to jurisdictional agencies; we will merely vacate a determination based on a material misstatement or omission. The procedure will be free at that point to apply to the jurisdictional agency for a determination. Consequently, the flexibility of § 275.205(d) will be retained.

One comment would have the Commission preclude reopening a pricing determination if the material misinformation was supplied in good faith, to provide producers with truly final determinations. This suggestion is contrary to the statutory provisions of section 503(d), which make no reference to good faith, and is rejected.

The 10-day period in the last sentence of § 275.206(b) has been reduced to 5 days, because 10 days is the maximum time that is allowed for the processing of requests under the Freedom of Information Act, 5 U.S.C. § 522. The Commission requires some time to make the initial determination that the information will be released before notice of the release is given.

Finally, § 275.201(b) has been amended to delete the reference to "Part I" of FERC Form No. 121, since that form does not have a "Part I."

III. Public Procedures and Effective Date

The regulations in Part 275 were originally proposed for comment in November 1978 and issued as interim regulations on December 1, 1978 (43 FR 56448 (Dec. 1, 1978)). For 60 days thereafter comments were received and during that period public hearings were held on these regulations. By this process the Commission complied with the provisions of section 502(b) of the NGPA which requires that "[t]o the maximum extent practicable," an opportunity for the oral presentation of data, views, and arguments be afforded for certain regulations under the NGPA. The amendments to Part 275 contained in this order rest upon considerations given to the information received during the above described notice, comment, and hearing process. Accordingly, the Commission finds that further notice and public procedure on these rules is unnecessary and impractical and that good cause exists to dispense with additional notice and procedure, and to make Part 275, as amended, effective in 30 days as final regulations.

(Natural Gas Act, as amended, 15 U.S.C. 717, *et seq.;* Energy Supply and Environmental Coordination Act, 15 U.S.C. 791, *et seq.;* Natural Gas Policy Act of 1978, P.L. 95-621, 92 Stat. 3350; Department of Energy Organization Act, Pub. L. 95-91, E.O. 12009, 42 FR 46267)

In consideration of the foregoing, Part 275 of Subchapter H, Chapter I, Title 18, Code of Federal Regulations, issued as interim regulations (43 FR 56448 (Dec. 1, 1978)), are promulgated as final regulations and amended as set forth below, effective 30 days from the date of issuance of this final order.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. Section 275.201(b) is amended by revising paragraph (b) to read as follows:

§ 275.201 Publication of notice from jurisdictional agency.

* * * * *

(b) certain information contained in FERC Form No. 121;

2. Section 275.202 is amended by revising subparagraph (b)(1), and revising paragraph (e) to read as follows:

§ 275.202 Commission review of final determination.

* * * * *

(b)(1) The notice forwarded to the Commission pursuant to Subpart A of Part 274 does not contain all the material information required in § 274.104(a) (4) and (5); and

* * * * *

(e) *Final orders*

(1) In any case in which a protest was filed with the Commission pursuant to this subpart and a preliminary finding was issued, the Commission shall issue a final order within 120 days after issuance of the preliminary finding.

(2) In any case in which no protest was filed with the Commission pursuant to this subpart, and a preliminary finding was issued, the Commission may issue a final order within 120 days after issuance of the preliminary finding.

(3) A final order issued under subparagraphs (1) or (2) shall either affirm, reverse, or remand the determination of the jurisdictional agency. Such order shall state the specific basis for the Commission's action. Notice of the issuance of such order shall be given to the jurisdictional agency, to participants in the proceeding before the jurisdictional agency, and to participants in the proceeding before the Commission under paragraph (d) of this section and under § 275.203.

(4) In the event that the Commission fails to issue a final order within 120 days after issuance of the preliminary finding, the determination of the jurisdictional agency shall become final.

3. § 275.203 is amended by revising paragraph (a) to read as follows:

§ 275.203 Protests to the Commission.

(a) *Who may file.* Any person may file a protest with the Commission with respect to a determination of a jurisdictional agency within 15 days after the publication of notice of that determination pursuant to § 275.201 of this subpart.

* * * * *

4. § 275.205 is amended by revising paragraph (d) to read as follows:

§ 275.205 Procedure for reopening determinations.

(d) *Final order of Commission.* Within 150 days after issuance of the notice under paragraph (c)(1) of this section, the Commission shall issue a final order. If the Commission finds that the grounds referred to in paragraph (a) of this

section exist, it shall vacate the determination, and if appropriate, order refund or other action. The right to collect the previously determined maximum lawful price shall terminate on the date of the order vacating the determination.

5. Section 275.206 is amended by revising the last sentence of paragraph (b) to read as follows:

§ 276.206 Confidentiality.

* * * * *

(b) * * * Before making any information public under this paragraph, the Commission shall provide at least 5 days notice to the person who submitted the information.

[FR Doc. 79-18737 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

[T.D. 79-169]

General Provisions; Changes in the Customs Field Organization; Section 101.3, Customs Regulations, Amended

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document changes the field organization of the Customs Service by: (1) Extending the existing port limits of the Puget Sound, Washington, port of entry to include Renton Municipal Airport and Seaplane Base on Lake Washington; (2) extending the existing port limits of the Buffalo-Niagara Falls, New York, port of entry to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York; (3) extending the existing port limits of the Providence, Rhode Island, port of entry to include the townships of East Greenwich and North Kingstown, Rhode Island; and (4) abolishing the present port of entry of South Bend-Raymond, Washington, and extending the existing port limits of the port of entry of Aberdeen, Washington, to include the territory currently encompassed by the port of South Bend-Raymond.

EFFECTIVE DATE: July 16, 1979.

FOR FURTHER INFORMATION CONTACT: Robert Schenarts, Inspection and Control Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8151).

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the public, on December 14, 1978, Customs published a notice in the **Federal Register** (43 FR 58383), proposing to make the following changes in its field organization:

1. To extend the existing port limits of the Puget Sound, Washington, port of entry (Region VIII), to include Renton Municipal Airport and Seaplane Base on Lake Washington.

2. To extend the existing port limits of the Buffalo-Niagara Falls, New York, port of entry (Region I), to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York.

3. To establish a combined port of entry of Owensboro-Paducah, Kentucky (Region IX), to include the corporate limits of both cities and the connecting highway known as Green River Parkway, south from Owensboro to the junction of the Western Kentucky Parkway, west to U.S. Highway 62, and west to Paducah, all in the State of Kentucky.

4. To extend the existing port limits of the Providence, Rhode Island, port of entry (Region I), to include the townships of East Greenwich and North Kingstown, Rhode Island.

5. To abolish the present port of entry of South Bend-Raymond, Washington (Region VIII), and extend the existing port limits of the Aberdeen, Washington, port of entry to include the territory currently encompassed by the port of South Bend-Raymond.

Comments

Interested parties were given until February 12, 1979, to submit comments regarding these proposed changes. No comments were received. After review of the proposal, it has been determined that to expedite the extensions of the existing Customs ports of entry, it would be advisable to separate the proposal to establish the new combined port of entry of Owensboro-Paducah, Kentucky, from the other proposed changes. Establishment of the Owensboro-Paducah, Kentucky, combined port of entry will be the subject of a separate document published in the **Federal Register.**

Changes in the Customs Field Organization

Under the authority vested in the President by section 1 of the Act of August 1, 1914, 38 Stat. 623, as amended (19 U.S.C. 2), and delegated to the Secretary of the Treasury by Executive Order No. 10289, September 17, 1951 (3 CFR 1949-1953 Comp., Ch. II), and pursuant to authority provided by Treasury Department Order No. 101-5 (44 FR 31057), the following changes in the Customs field organization are adopted:

Puget Sound, Wash.

The limits of the Puget Sound, Washington, port of entry (Region VIII), are extended to include Renton Municipal Airport and Seaplane Base. As extended, the geographical boundaries of the Puget Sound, Washington, port of entry include the following:

The ports of Seattle, Anacortes, Bellingham, Everett, Friday Harbor, Kenmore Air Harbor (sections 1, 2, 12, and 13 of Township 26 North, Range 3 East, West Meridian, and sections 1 to 16, inclusive, of Township 26 North, Range 4 East, West Meridian), Neah Bay, Olympia, Port Angeles, Port Townsend; Renton Municipal Airport and Seaplane Base (sections 7 and 18, Township 23 North, Range 5 East, West Meridian); and the territory in Tacoma beginning at the intersection of the westernmost city limits of Tacoma and The Narrows and proceeding in an easterly, then southerly, then easterly direction along the city limits of Tacoma to its intersection with Pacific Highway (U.S. Route 99), then proceeding in a southerly direction along Pacific Highway to its intersection with Union Avenue Extended and continuing in a southerly direction along Union Avenue Extended to its intersection with the northwest corner of McChord Air Force Base, then proceeding along the northern, then western, then southern boundary of McChord Air Force Base to its intersection, just west of Lake Mondress, with the northern boundary of the Fort Lewis Military Reservation, then proceeding in an easterly direction along the northern boundary of the Fort Lewis Military Reservation to its intersection with Pacific Avenue, then proceeding in a southerly direction along Pacific Avenue to its intersection with National Park Highway, then proceeding in a southeasterly direction along National Park Highway to its intersection with 224th Street, East, then proceeding in an easterly direction along 224th Street, East, to its intersection with Meridian Street, South, then proceeding in a northerly direction along Meridian Street to the northern boundary of Pierce County, then proceeding in a westerly direction along the

northern boundary of Pierce County to its intersection with Puget Sound, then proceeding in a generally southwesterly direction along the banks of the East Passage of Puget Sound, Commencement Bay, and The Narrows to the point of intersection with the westernmost city limits of Tacoma, including all points and places on the southern boundary of the Juan de Fuca Strait from the eastern port limits of Neah Bay to the western port limits of Port Townsend, all points and places on the western boundary of Puget Sound, including Hood Canal, from the port limits of Port Townsend to the northern port limits of Olympia, all points and places on the southern boundary of Puget Sound from the port limits of Olympia to the western port limits of Tacoma, and all points and places on the eastern boundary of Puget Sound and contiguous waters from the port limits of Tacoma north to the southern port limits of Bellingham, all in the State of Washington.

Buffalo-Niagara Falls, N.Y.

The limits of the Buffalo-Niagara Falls, New York, port of entry (Region I), are extended to include the townships of Porter, Lewiston, and Wheatfield, located in Niagara County, New York. As extended, the geographical boundaries of the Buffalo-Niagara Falls, New York, port of entry include the following:

All the territory within the corporate limits of the cities of Buffalo, Niagara Falls, Lewiston, Lackawanna, Tonawanda, and North Tonawanda, and the townships of Grand Island, Tonawanda, Amherst, Cheektowaga, Hamburg, West Seneca, and Orchard Park in the county of Erie, and the townships of Porter, Lewiston, Wheatfield, and Niagara, in the county of Niagara, all in the State of New York.

Providence, R.I.

The limits of the Providence, Rhode Island, port of entry (Region I), are extended to include the townships of East Greenwich and North Kingstown, Rhode Island. As extended, the geographical boundaries of the Providence, Rhode Island, port of entry include the following:

All the territory within the corporate limits of the city of Providence and the townships of Central Falls, Cranston, East Providence, Barrington, Pawtucket, Warwick, Woonsocket, Cumberland, Johnston, North Smithfield, Smithfield, Lincoln, West Warwick, East Greenwich, and North Kingstown, all in the State of Rhode Island.

South Bend-Raymond and Aberdeen, Washington

The South Bend-Raymond, Washington, port of entry (Region VIII), is abolished. The limits of the Aberdeen, Washington, port of entry (Region VIII), are extended to include the territory currently encompassed by the port of South Bend-Raymond. As extended, the geographical boundaries of the Aberdeen port of entry include the following:

The corporate city limits of Aberdeen, Hoquiam, and Cosmopolis; all the territory within the corporate limits of South Bend and Raymond; all points on the Willapa River lying between the corporate limits of South Bend and Raymond; and that part of U.S. Highway 101 which connects the city limits of Aberdeen, Hoquiam, and Cosmopolis to the corporate limits of South Bend and Raymond, all in the State of Washington.

Amendments to the Regulations

To reflect these changes, the table in § 101.3(b), Customs Regulations (19 CFR 101.3(b)), is amended by:

1. Substituting "T.D. 79–169." for "T.D. 78–241." in the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

2. Substituting "(T.D. 79–169)." for "(T. D. 56512)." in the column headed "Ports of entry" in the Buffalo, New York, customs district (Region I).

3. Substituting "T.D. 79–169." for "T.D. 67–3." in the column headed "Ports of entry" in the Providence, Rhode Island, Customs district (Region I).

4. Deleting "South Bend-Raymond (T. D. 53576)." from the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

5. Substituting "T.D. 79–169." for "T.D. 56229." in the reference to "Aberdeen, including territory described in * * *" in the column headed "Ports of entry" in the Seattle, Washington, Customs district (Region VIII).

Inapplicability of Executive Order 12044

This document is not subject to the Treasury Department directive (43 FR 52120) implementing Executive Order 12044, "Improving Government Regulations", because the regulation was in the process of development before May 22, 1978.

Drafting Information

The principal author of this document was Lawrence P. Dunham, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

Dated: May 29, 1979.

Richard J. Davis,

Assistant Secretary of the Treasury.

[FR Doc. 79-18769 Filed 6-14-79; 8:45 am]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Social Security Administration

20 CFR Part 404

Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

AGENCY: Social Security Administration, HEW.

ACTION: Final rule.

SUMMARY: These final regulations reorganize and restate in simpler language the rules on what is required to become entitled to social security benefits, when benefits begin and end, and how benefit amounts are determined. Also included are the rules we use to determine family relationships when benefits are sought as the worker's dependent or survivor. The relationship rules were formerly set out separately in Subpart L. Also included in these final regulations are two changes resulting from the 1977 Amendments to the Social Security Act and two changes resulting from court decisions interpreting the benefit entitlement provisions of the Act.

EFFECTIVE DATE: These amendments are effective June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Ray Worley, Operational Policy and Procedures, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, 301–594–6813.

SUPPLEMENTARY INFORMATION:

Background

This final regulation is a recodification of the rules stating what entitles a person to social security benefits, when these benefits begin and end, how the benefit amounts are determined, and how we decide what family relationship a person has to the worker. The proposed recodification of these rules was published in the **Federal Register** with a Notice of Proposed Rulemaking on November 14, 1978 (43 FR 52936–52950). The primary purpose of this recodification is to restate the rules so that they will be easier for the public to understand and use. Other changes reflect two statutory amendments to the Social Security Act and two court decisions interpreting the Act.

One statutory amendment, reflected in section 404.338 of the final regulations, permits widows and widowers who remarry at age 60 or later to receive full widow's or widower's benefits after remarriage, instead of the one-half benefit reduction that was required

before the Act was amended. The other statutory amendment, reflected in sections 404.331 and 404.336 of the final regulations, permits divorced spouses to qualify for spouse's or surviving spouse's benefits if they were married to the worker for at least 10 years, instead of 20 years as formerly required. Both of these statutory changes are effective for months after December 1978.

Sections 404.331 through 404.333 of the final regulations reflect the June 1977 court decision in *Oliver* v. *Califano*. This decision requires that husband's benefits be provided for divorced husbands under the same rules as benefits are provided for divorced wives under the Act. Section 404.361 of the final regulations reflects the June 1976 Supreme Court decision in *Mathews* v. *Lucas*. This decision stated that a worker's natural child born out of wedlock who could inherit his or her personal property under applicable State law should be considered dependent upon the worker. The changes due to the court decisions apply as of the dates of the decisions.

Response to Public Comments

We received 49 comments: 16 from State government agencies, 5 from legal aid and civil rights groups, 8 from other public and private groups, and 20 from individuals. Virtually all of the comments were favorable. Several commenters, while commending the recodification effort, raised questions or made suggestions that resulted in our making a number of nonsubstantive changes in the final rules. These changes are intended to make the rules clearer and more readable.

Discussion of Major Comments

1. *Eliminate gender-based distinctions.* Several commenters pointed out that gender-based distinctions affecting benefit entitlement remained in the proposed regulations and recommended that they be removed. Specifically, the commenters recommended that husband's benefits be provided for the husband of an entitled individual who has a child of the individual in his care and that widower's benefits be provided for a surviving divorced husband. It was the view of the commenters that the Supreme Court decisions in *Weinberger* v. *Wiesenfield* and *Califano* v. *Goldfarb*, and the court decision in *Oliver* v. *Califano* require the payment of these benefits. We do not agree that these decisions provide authority for the payment of these additional benefits, and until the existing law is changed, we are unable to extend benefits as suggested by the commenters. We are aware that several gender-based distinctions remain in the Social Security Act, and as a matter of policy we have recommended the enactment of legislation which would eliminate these differences.

2. *Redefine contributions for support.* A commenter for a legal assistance organization recommended removing two provisions that were contained in proposed § 404.366(a) defining contributions for support. First, the commenter felt that the requirement that contributions must be made regularly and must be large enough to provide an important part of a claimant's ordinary living costs created an unnecessarily stringent standard for determining entitlement to child's benefits under section 216(h)(3)(C) of the Act. This statutory provision is reflected in § 404.355(d) of the final regulations. When it is necessary under this section of the Act to determine whether the insured had been contributing to the support of his child, we believe it is reasonable and appropriate to take into consideration the frequency of the contributions and the extent to which they provided assistance in meeting the costs of the child's support. For this reason we have not deleted this requirement from the final regulations.

The commenter also recommended removing the provision which stated that routine household services performed by the insured when the insured lives in the same household as the claimant are not contributions for support. It was felt that this provision was vague and that it discriminated against working mothers of children seeking benefits under section 216(h)(3)(C) of the Act. In reviewing the statute, we believe that the regulatory provision is unnecessary. The dependency test is met if the claimant was living with the insured at the appropriate time. See sections 404.355(d), 404.361, and 404.365. In those situations, the claimant does not have to show that contributions for support were received from the insured. For this reason, the sentence has been removed.

3. *Provide effective dates.* A commenter asked that the effective date of the regulatory provisions be included in the text of the regulations. This practice was followed in the past, but given the frequent changes in the Social Security Act, we decided not to retain this information. We believe that the regulations will be easier to use and more understandable if they reflect only the current rules. In situations where it is necessary to know the effective date of a rule, the information is readily available from other sources. We have, however, continued to provide the effective date of new rules in the preamble that accompanies proposed and final rulemaking documents.

A related comment indicated that there was some misunderstanding about the changes due to the *Oliver* decision. We stated in the Notice of Proposed Rulemaking that the changes would apply as of the date of the decision. The commenter has incorrectly concluded from this statement that we were not implementing that part of the June 1977 decision which affected a class of persons whose application for divorced husband's benefits had been denied after August 28, 1976. Because this part of the decision affected a relatively small number of identified individuals, its implementation is reflected only in our operating instructions.

4. *Permit oral applications.* A commenter recommended that the regulations and a long-standing SSA policy be changed to permit oral applications. Subpart G of the regulations sets out the rules we follow regarding applications, and we will consider this comment as part of the recodification of that subpart. So that persons reading Subpart D on benefits may more easily refer to the subpart on applications, a cross reference to that subpart has been included in section 404.302 of the final regulations.

Discussion of Miscellaneous Comments

1. *Definition of living with the insured.* A commenter pointed out that the proposed definition of living with the insured differed from the definition found in the former regulations in that it did not contain a reference to the right a parent may have to exercise parental control and authority. No change in the definition was intended, and in the final regulations we have revised § 404.366(c) to include this provision, which was inadvertently omitted from the proposed rule.

2. *Duration of marriage.* A commenter noted that the rules concerning the exemptions to the 9-month duration of marriage requirement for widow's and widower's benefits and for establishing relationship as a stepchild were not fully explained in the proposed regulations. Accordingly, §§ 404.335(a)(2) and 404.357 of the final regulations have been revised by inserting a statement explaining that the exceptions apply only if, at the time of the marriage, the insured was reasonably expected to live for nine months.

3. *Editorial comments.* In response to comments recommending that we use simpler language, shorter, single-subject

sections, and fewer cross-references, we have made a number of editorial changes in the final regulations. We have, for example, included three separate sections to explain who may be entitled to wife's or husband's benefits as a divorced spouse and who may be entitled to widow's and mother's benefits as a surviving divorced wife. We have also simplified the language in several sections and reviewed the use and need for cross-references. A number of commenters found proposed § 404.304 concerning the general rules used to determine benefit amounts difficult to understand. In the final regulations this section has been revised, and to clarify these rules we have included a definition of the term primary insurance amount.

4. *Comments beyond the scope of the Notice.* A number of comments were received that went beyond the scope of the Notice of Proposed Rulemaking or beyond the scope of our authority. These included:

(a) State the requirement for Supplementary Security Income benefits;

(b) Revise the retirement test; and

(c) Provide old-age benefits for the month in which the insured died.

Accordingly, the final rule is adopted as set forth below.

(Secs. 205 and 1102 of the Social Security Act, 53 Stat. 1368; 49 Stat. 647; 42 U.S.C. 405 and 1302.)

(Catalog of Federal Domestic Assistance Program Nos. 13.802-Social Security Disability Insurance; 13.803-Social Security Retirement Insurance; 13.804-Social Security Special Benefits for Persons Aged 72 and Over; 13.805-Social Security Survivors' Insurance.)

Dated: May 9, 1979.

Stanford G. Ross,

Commissioner of Social Security.

Approved: June 1, 1979.

Joseph A. Califano, Jr.,

Secretary of Health, Education, and Welfare.

Part 404 of Chapter III of Title 20 of the Code of Federal Regulations is amended as follows:

Subpart L [Reserved]

1. Subpart L is deleted and reserved.

2. Subpart D is revised to read as follows:.

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

General

Sec.
404.301 Introduction.
404.302 Other regulations related to this subpart.
404.303 Definitions.
404.304 General rules on benefit amounts.
404.305 When you may not be entitled to benefits.

Old-Age and Disability Benefits

404.310 Who is entitled to old-age benefits.
404.311 When entitlement to old-age benefits begins and ends.
404.312 Old-age benefit amounts.
404.315 Who is entitled to disability benefits.
404.316 When entitlement to disability benefits begins and ends.
404.317 Disability benefit amounts.
404.320 Who is entitled to a period of disability.
404.321 When a period of disability begins and ends.
404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

Benefits for Spouses and Divorced Spouses

404.330 Who is entitled to wife's or husband's benefits.
404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.
404.332 When wife's and husband's benefits begin and end.
404.333 Wife's and husband's benefit amounts.
404.335 Who is entitled to widow's or widower's benefits.
404.336 Who is entitled to widow's benefits as a surviving divorced wife.
404.337 When widow's and widower's benefits begin and end.
404.338 Widow's and widower's benefit amounts.
404.339 Who is entitled to mother's or father's benefits.
404.340 Who is entitled to mother's benefits as a surviving divorced wife.
404.341 When mother's and father's benefits begin and end.
404.342 Mother's and father's benefit amounts.
404.344 Your relationship by marriage to the insured.
404.345 Your relationship as wife, husband, widow, or widower under State law.
404.346 Your relationship as wife, husband, widow, or widower based upon a deemed valid marriage.
404.347 "Living in the same household" defined.
404.348 When a child living with you is "in your care."
404.349 When a child living apart from you is "in your care."

Child's Benefits

404.350 Who is entitled to child's benefits.
404.351 Who may be reentitled to child's benefits.
404.352 When child's benefits begin and end.
404.353 Child's benefit amounts.
404.354 Your relationship to the insured.
404.355 Who is the insured's natural child.
404.356 Who is the insured's legally adopted child.
404.357 Who is the insured's stepchild.
404.358 Who is the insured's grandchild or stepgrandchild.
404.359 Who is the insured's equitably adopted child.
404.360 When a child is dependent upon the insured person.
404.361 When a natural child is dependent.
404.362 When a legally adopted child is dependent.
404.363 When a stepchild is dependent.
404.364 When a grandchild or stepgrandchild is dependent.
404.365 When an equitably adopted child is dependent.
404.366 "Contributions for support," "one-half support," and "living with" the insured defined.
404.367 When are you a "full-time student."
404.368 When may you be considered a full-time student during a period of non-attendance.

Parent's Benefits

404.370 Who is entitled to parent's benefits.
404.371 When parent's benefits begin and end.
404.373 Parent's benefit amounts.
404.374 Parent's relationship to the insured.

Special Payments at Age 72

404.380 General.
404.381 Who is entitled to special age 72 payments.
404.382 When special age 72 payments begin and end.
404.383 Special age 72 payment amounts.
404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

Lump-Sum Death Payment

404.390 General.
404.391 Who is entitled to the lump-sum death payment as a widow or widower.
404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.
404.393 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.
404.394 Who is not entitled to the lump-sum death payment.

Authority: Subpart D is issued under sections, 202, 205, 216, 223, 228, 1102 of the Social Security Act, 49 Stat. 623, 53 Stat. 1368, 64 Stat. 492, 70 Stat. 815, 80 Stat. 67, 49 Stat. 647; Section 5, reoganization Plan No. 1 of 1953, 67 Stat. 631; 42 U.S.C. 402, 405, 416, 423, 428, and 1302; and 5 U.S.C. Appendix.

Subpart D—Old-Age, Disability, Dependents' and Survivors' Insurance Benefits; Period of Disability

General

§ 404.301 Introduction.

This subpart sets out what requirements you must meet to qualify for social security benefits, how your benefit amounts are figured, when your right to benefits begins and ends, and how family relationships are determined. These benefits are provided by title II of the Social Security Act. They include—

(a) *For workers,* old-age and disability benefits and benefit protection during periods of disability;

(b) *For a worker's dependents,* benefits for a worker's wife, divorced wife, husband, divorced husband, and child;

(c) *For a worker's survivors,* benefits for a worker's widow, widower, divorced wife, child, and parent, and a lump-sum death payment; and

(d) *For uninsured persons age 72 or older,* special payments.

§ 404.302 Other regulations related to this subpart.

This subpart is related to several others. Supart H sets out what evidence you need to prove you qualify for benefits. Subpart P describes what is needed to prove you are disabled. Subpart E describes when your benefits may be reduced or stopped for a time. Subpart G describes the need for and the effect of an application for benefits. Part 410 describes when you may qualify for black lung benefits. Part 416 describes when you may qualify for supplemental security income. Also 42 CFR Part 405 describes when you may qualify for hospital and medical insurance if you are aged, disabled, or have chronic kidney disease.

§ 404.303 Definitions.

As used in this subpart:

"Apply" means to sign a form or statement that the Social Security Administration accepts as an application for benefits under the rules set out in Subpart G.

"Eligible" means that a person would meet all the requirements for entitlement to benefits for a period of time but has not yet applied.

"Entitled" means that a person has applied and has proven his or her right to benefits for a period of time.

"Insured person" or "the insured" means someone who has enough earnings under social security to permit payment of benefits on his or her earnings record. The requirements for becoming insured are described in Subpart B.

"Permanent home" means the true and fixed home (legal domicile) of a person. It is the place to which a person intends to return whenever he or she is absent.

"Primary insurance amount" means an amount that is determined from the average monthly earnings creditable to the insured person. This term and the manner in which it is computed are explained in Subpart C.

"We" or "Us" means the Social Security Administration.

"You" means the person who has applied for benefits or the person for whom someone else has applied.

§ 404.304 General rules on benefit amounts.

This subpart describes how the highest monthly benefit amount you ordinarily could qualify for under each type of benefit is determined. However, the highest monthly benefit amount you could qualify for may not be the amount that you actually are paid each month. In a particular month, your benefit amount may be reduced or not paid at all. Under some circumstances, your benefit amount may be increased. The most common reasons for a change in the amount of your benefit payments are listed below:

(a) *Reductions based on age or earnings.* As explained in §§ 404.410–404.413, your old-age, wife's, husband's, widow's, or widower's benefits may be reduced if you choose to receive them before age 65. Also, as explained in §§ 404.415–404.417, deductions may be made from your benefits if your earnings or the insured person's earnings go over certain limits.

(b) *Overpayments and underpayments.* Your benefits may be increased or decreased for a time to make up for any previous overpayment or underpayment that was made on the insured person's record. For more information about this, see Subpart F.

(c) *Sole survivors.* If you are the only person entitled to a survivor's benefit on the insured's earnings record, the amount of your benefit may be increased. If you are entitled to child's or parent's benefits, the amount of your benefit will be increased to an amount equal to the minimum primary insurance amount. If you are entitled to widow's or widower's benefits, the amount of your benefit will be no less than $84.50 reduced for any months you were entitled before you became 62 years old.

(d) *Family maximum.* As explained in § 404.403, there is a maximum amount set for each insured person's earnings record that limits the total benefits payable on that record. If you are entitled to benefits as the insured's dependent or survivor, your benefits may be reduced to keep total benefits payable to the insured's family within these limits.

(e) *Government pension offset.* If you are entitled to wife's, husband's, mother's, father's, widow's or widower's benefits and receive a Government pension for work that was not covered under social security, your benefits may be reduced by the amount of that pension. Special age 72 payments are also reduced by the amount of a Government pension. For more information about this, see § 404.408(a) which covers benefits and § 404.384(c) which covers special age 72 payments.

§ 404.305 When you may not be entitled to benefits.

In addition to the situations described in § 404.304 when you may not receive a benefit payment, there are special circumstances when you may not be entitled to benefits. These circumstances are—

(a) *Waiver of benefits.* If you have waived benefits on religious grounds as described in § 404.1086, no one may become entitled to any benefits or payments on your earnings record and you may not be entitled to benefits on anyone else's earnings record; and

(b) *Insured's death by homicide.* You may not become entitled to any survivor's benefits or payments on the earnings record of a person if you were finally convicted of a felony for intentionally causing his or her death.

Old-Age and Disability Benefits

§ 404.310 Who is entitled to old-age benefits.

You are entitled to old-age benefits if—

(a) You are at least 62 years old;

(b) You have enough social security earnings to be "fully insured" as defined in § 404.109; and

(c) You apply; or you are entitled to disability benefits up to the month you become 65 years old. At age 65, your disability benefits automatically become old-age benefits.

§ 404.311 When entitlement to old-age benefits begins and ends.

(a) You are entitled to old-age benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. (b) Your entitlement to benefits ends with the month before the month of your death.

§ 404.312 Old-age benefit amounts.

(a) If your old-age benefits begin at age 65, your monthly benefit is equal to the primary insurance amount. (b) If your old-age benefits begin after you become 65 years old, your monthly benefit is your primary insurance amount plus an increase for retiring after age 65. See § 404.282 for a description of these increases. (c) If your old-age benefits begin before you become 65 years old, your monthly benefit amount is the primary insurance amount minus a reduction for each month you are entitled before you

become 65 years old. These reductions are described in §§ 404.410–404.413.

§ 404.315 Who is entitled to disability benefits.

You are entitled to disability benefits while disabled before age 65 if—

(a) You have enough social security earnings to be "insured for disability," as described in § 404.116;

(b) You apply;

(c) You have a disability, as defined in § 404.1501, or you are not disabled, but you had a disability that ended within the 12-month period before the month you applied; and

(d) You have been disabled for 5 consecutive months. This 5-month waiting period begins with a month in which you were both insured for disability and disabled. Your waiting period can begin no earlier than the 17th month before the month you apply—no matter how long you were disabled before then. No waiting period is required if you were previously entitled to disability benefits or to a "period of disability" under § 404.320 anytime within 5 years of the month you again became disabled.

§ 404.316 When entitlement to disability benefits begins and ends.

(a) You are entitled to disability benefits beginning with the first month coverd by your application in which you meet all the other requirements for entitlement. If a waiting period is required, your benefits cannot begin earlier than the first month following that period. (b) Your disability benefits end with the earliest of these months: (1) the month before you become 65 years old; (2) the second month after the month your disability ends; or (3) the month before the month of your death.

§ 404.317 Disability benefit amounts.

Your monthly benefit is equal to the primary insurance amount. This amount is computed under the rules in Subpart C as if it were an old-age benefit, and as if you were 62 years old at the beginning of the 5-month waiting period mentioned in § 404.315(d). If the 5-month waiting period is not required because of your previous entitlement, your primary insurance amount is figured as if you were 62 years old when you become entitled to benefits this time. Your monthly benefit amount may be reduced if you receive workmen's compensation payments before you become 62 years old as described in § 404.408. Your benefits may also be reduced if you were entitled to other retirement-age benefits before you became 65 years old.

§ 404.320 Who is entitled to a period of disability.

(a) *General.* A period of disability is a continuous period of time during which you are disabled. If you become disabled, you may apply to have our records show how long your disability lasts. You may do this even if you do not qualify for disability benefits. If we establish a period of disability for you, the months in that period of time will not be counted in figuring your average earnings. If benefits payable on your earnings record would be denied or reduced because of a period of disability, the period of disability will not be taken into consideration.

(b) *Who is entitled.* You are entitled to a period of disability if you meet all the following conditions:

(1) You have or had a disability as defined in § 404.1501(b).

(2) You are "insured for disability", as defined in § 404.116 in the calendar quarter in which you became disabled, or in a later calendar quarter in which you were disabled.

(3) You file an application while disabled, or no later than 12 months after the month in which your period of disability ended. If you were unable to apply within the 12-month period after your period of disability ended because of a physical or mental condition as described in § 404.322, you may apply not more than 36 months after the month your disability ended.

(4) At least 5 consecutive months go by from the month in which your period of disability begins and before the month in which it would end.

§ 404.321 When a period of disability begins and ends.

(a) Your period of disability begins at the start of the first calendar quarter in which you were both disabled and insured for disability. Your period of disability may not begin after you become 65 years old. (b) Your period of disability ends on the last day of the month before the month in which you become 65 years old or, if earlier, the last day of the second month following the month in which your disability ended.

§ 404.322 When you may apply for a period of disability after a delay due to a physical or mental condition.

If because of a physical or mental condition you did not apply for a period of disability within 12 months after your period of disability ended, you may apply not more than 36 months after the month in which your disability ended. Your failure to apply within the 12-month time period will be considered due to a physical or mental condition if during this time—

(a) Your physical condition limited your activities to such an extent that you could not complete and sign an application; or

(b) You were mentally incompetent.

Benefits for Spouses and Divorced Spouses

§ 404.330 Who is entitled to wife's or husband's benefits.

You are entitled to benefits as the wife or husband of an insured person who is entitled to old-age or disability benefits If—

(a) You are the insured's wife or husband based upon a relationship described in §§ 404.345–404.346 and one of the following conditions is met:

(1) Your relationship to the insured as a wife or husband has lasted at least 1 year;

(2) You and the insured are the natural parents of a child; or

(3) In the month before you married the insured you were entitled to, or if you had applied and been old enough you could have been entitled to, any of these benefits or payments: Wife's, husband's, widow's, widower's, or parent's benefits; disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(b) You apply;

(c) You are 62 years old or older; or you are the insured's wife and have "in your care", as defined in §§ 404.348–404.349, his child who is entitled to benefits on his earnings record and the child is either under 18 years old or disabled; and

(d) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.331 Who is entitled to wife's or husband's benefits as a divorced spouse.

You are entitled to wife's or husband's benefits as the divorced wife or divorced husband of an insured person who is entitled to old-age or disability benefits if—

(a) You are the insured's divorced wife or divorced husband and—

(1) You were validly married to the insured under State law as described in § 404.345; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply;

(c) You are not married;

(d) You are 62 years old or older; and

(e) You are not entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

§ 404.332 When wife's and husband's benefits begin and end.

(a) You are entitled to wife's or husband's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement under § 404.330 or § 404.331.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to an old-age or disability benefit based upon a primary insurance amount that is equal to or larger than the full wife's or husband's benefit.

(2) You are the wife or husband and are divorced from the insured person unless you meet the requirements for benefits as a divorced wife or divorced husband as described in § 404.331.

(3) You are the divorced wife or divorced husband and you remarry. Your benefits will not end if your remarriage is to someone entitled to benefits as a widow, widower, father, mother, parent, or disabled child. If your remarriage is to someone entitled to benefits as a disabled child and the person recovers from the disability, your benefits will end with the same month as his or her benefits end.

(4) If you are under 62 years old, the child who was in your care is no longer entitled to child's benefits.

(5) The insured person dies or is no longer entitled to old age or disability benefits.

(6) If your benefits are based upon a deemed valid marriage, you marry someone other than the insured or someone else becomes entitled to the same benefits as described in § 404.346.

(7) You die.

§ 404.333 Wife's and husband's benefit amounts.

Your wife's or husband's monthly benefit is equal to one-half the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304.

§ 404.335 Who is entitled to widow's or widower's benefits.

You may be entitled to benefits as the widow or widower of a person who was fully insured when he or she died. You are entitled to these benefits if—

(a) You are the insured's widow or widower based upon a relationship described in §§ 404.345–404.346, and one of the following conditions is met:

(1) Your relationship to the insured as a wife or husband lasted for at least 9 months immediately before the insured died.

(2) Your relationship to the insured as a wife or husband did not last 9 months before the insured died, but at the time of your marriage the insured was reasonably expected to live for 9 months, and—

(i) The death of the insured was accidental. The death is accidental if it was caused by an event that the insured did not expect; it was the result of bodily injuries received from violent and external causes; and as a direct result of these injuries, death occurred not later than 3 months after the day on which the bodily injuries were received. An intentional and voluntary suicide will not be considered an accidental death;

(ii) The death of the insured occurred in the line of duty while he or she was serving on active duty as a member of the uniformed services as defined in § 404.1013(f) (2) and (3); or

(iii) You had been previously married to the insured for at least 9 months.

(3) You and the insured were the natural parents of a child; or you were married to the insured when either of you adopted the other's child or when both of you adopted a child who was then under 18 years old.

(4) In the month before you married the insured you were entitled to, or if you had applied and been old enough could have been entitled to, any of these benefits or payments: widow's, widower's, father's, mother's, wife's, parent's, or disabled child's benefits; or annuity payments under the Railroad Retirement Act for widows, widowers, parents, or children 18 years old or older;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's or husband's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to either old-age or disability benefits; or

(2) You are entitled to mother's or father's benefits for the month before the month in which you become 65 years old;

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(a) and—

(1) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's or father's benefits or to widow's or widower's benefits based upon a disability (which occurred last); and

(2) Your disability continued during a waiting period of 5 full consecutive months. This waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or widower's benefits the 5th month before your entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, the waiting period is not required;

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(e) You are unmarried unless you are a widow who has remarried after you became 60 years old; or if you are a widower, you have not remarried since the insured's death unless you remarried after you became 60 years old.

§ 404.336 Who is entitled to widow's benefits as a surviving divorced wife.

You may be entitled to widow's benefits as the surviving divorced wife of a person who was fully insured when he died. You are entitled to these benefits if—

(a) You are the insured's surviving divorced wife and—

(1) You were validly married to the insured under State law as described in § 404.345; and

(2) You were married to the insured for at least 10 years immediately before your divorce became final;

(b) You apply, except that you need not apply again if—

(1) You are entitled to wife's benefits for the month before the month in which the insured dies and you are 65 years old or you are not entitled to old-age or disability benefits; or

(2) You are entitled to mother's benefits for the month before the month in which you become 65 years old;

(c) You are at least 60 years old; or you are at least 50 years old and have a disability as defined in § 404.1501(b) and—

(1) The disability started not later than 7 years after the insured died or 7 years after you were last entitled to mother's benefits or to widow's benefits based upon a disability, whichever occurred last; and

(2) Your disability continued during a waiting period of 5 consecutive months. This waiting period may begin no earlier than the 17th month before you applied; the fifth month before the insured died; or if you were previously entitled to mother's, father's, widow's, or

widower's benefits, the 5th month before your previous entitlement to benefits ended. If you were previously entitled to widow's or widower's benefits based upon a disability, the waiting period is not required.

(d) You are not entitled to an old-age benefit that is equal to or larger than the insured person's primary insurance amount; and

(e) You are unmarried.

§ 404.337 When widow's and widower's benefits begin and end.

(a) You are entitled to widow's or widower's benefits under § 404.335 or § 404.336 beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends at the earliest of the following times:

(1) The month before the month in which you remarry except your benefits will not end if—

(i) You are the widow or widower and remarry when you are 60 years old or older; or

(ii) You marry someone entitled to: wife's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. However, if you are the widow or surviving divorced wife and marry a person entitled to disabled child's benefits and his disabled child's benefits end because he recovers from his disability, your benefits will end with the same month his benefits end.

(2) The month before the month in which you become entitled to an old-age benefit that is equal to or larger than the insured's primary insurance amount.

(3) If your widow's or widower's benefit is based upon a disability, the month before the third month after you recover from your disability (unless you are 65 years old then and would still be eligible by meeting the other requirements for these benefits).

(4) If you are entitled to benefits based upon a deemed valid marriage, the month before the month in which another person becomes entitled to the same benefits as described in § 404.346.

(5) The month before the month in which you die.

§ 404.338 Widow's and widower's benefits amounts.

Your widow's or widower's monthly benefit is equal to the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304. In addition, your monthly benefit will be reduced if the insured person had been entitled to old-age benefits that were reduced for age because he or she chose to receive them before becoming 65 years old. In this instance, your benefit is reduced, if it would otherwise be higher, to either the amount the insured would have been entitled to if still alive or 82½ percent of his or her primary insurance amount, whichever is larger.

§ 404.339 Who is entitled to mother's or father's benefits.

You may be entitled as the widow or widower to mother's or father's benefits on the earnings record of someone who was fully or currently insured when he or she died. You are entitled to these benefits if—

(a) You are the widow or widower of the insured and meet the conditions described in § 404.335(a)(1);

(b) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(c) You are unmarried;

(d) You are not entitled to widow's or widower's benefits, or to an old-age benefit that is equal to or larger than the full mother's or father's benefit; and

(e) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under 18 years old or is disabled. Sections 404.348 and 404.349 describe when a child is "in your care."

§ 404.340 Who is entitled to mother's benefits as a surviving divorced wife.

You may be entitled to mother's benefits as the surviving divorced wife of someone who was fully or currently insured when he died. You are entitled to these benefits if—

(a) You were validly married to the insured under State law as described in § 404.345(a) but the marriage ended in a final divorce and—

(1) You are the mother of the insured's child; or

(2) You were married to the insured when either of you adopted the other's child or when both of you adopted a child and the child was then under 18 years old;

(b) You apply for these benefits; or you were entitled to wife's benefits for the month before the insured died;

(c) You are unmarried;

(d) You are not entitled to widow's benefits, or to an old-age benefit that is equal to or larger than the full mother's benefit; and

(e) You have "in your care" the insured's child who is entitled to child's benefits because he or she is under age 18 or disabled and this child is your natural or adopted child who is entitled to child's benefits on the insured person's record. Sections 404.358 and 404.359 describe when a child is "in your care."

§ 404.341 When mother's and father's benefits begin and end.

(a) You are entitled to mother's or father's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to a widow's or widower's benefit or to an old-age benefit that is equal to or larger than the full mother's or father's benefit.

(2) The child in your care is no longer entitled to child's benefits.

(3) You remarry. Your benefits will not end if your remarriage is to someone entitled to old-age, disability, wife's, husband's, widow's, widower's, father's, mother's, parent's, or disabled child's benefits. If your remarriage is to someone entitled to disability or disabled child's benefits and the person recovers from the disability, your benefits will end with the same month his or her benefits end.

(4) If you are entitled to benefits based upon a deemed valid marriage, another person becomes entitled to benefits as the widow or widower as described in § 404.346(d).

(5) You die.

§ 404.342 Mother's and father's benefit amounts.

Your mother's or father's monthly benefit is equal to 75 percent of the insured person's primary insurance amount. The amount of your monthly benefit may change as explained in § 404.304.

§ 404.344 Your relationship by marriage to the insured.

You may be eligible for benefits if your are related to the insured person as a wife, husband, widow, or widower. To decide your relationship to the insured, we look first to State laws. The State laws that we use are discussed in § 404.345. If your relationship cannot be established under State law, you may still be eligible for benefits if your relationship as the insured's wife, husband, widow, or widower is based upon a "deemed valid marriage" as described in § 404.346.

§ 404.345 Your relationship as wife, husband, widow, or widower under State law.

To decide your relationship as the insured's wife or husband, we look to the laws of the State where the insured

had a permanent home when you applied for wife's or husband's benefits. To decide your relationship as the insured's widow or widower, we look to the laws of the State where the insured had a permanent home when he or she died. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we look to the laws of the District of Columbia. For a definition of permanent home, see § 404.303. If you and the insured were validly married under State law at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits, the relationship requirement will be met. The relationship requirement will also be met if under State law you would be able to inherit a wife's, husband's, widow's, or widower's share of the insured's personal property if he or she were to die without leaving a will.

§ 404.346 Your relationship as wife, husband, widow or widower based upon a deemed valid marriage.

(a) *General.* If your relationship as the insured's wife, husband, widow, or widower cannot be established under State law as explained in § 404.345, you may be eligible for benefits based upon a deemed valid marriage. You will be deemed to be the wife, husband, widow, or widower of the insured if, in good faith, you went through a marriage ceremony with the insured that would have resulted in a valid marriage except for a legal impediment. A legal impediment means only that there was a defect in the procedure followed in connection with the ceremony, or that a previous marriage of the insured had not ended at the time of the ceremony. For example, a defect in the procedure may be found where a marriage was performed through a religious ceremony in a country that requires a civil ceremony for a valid marriage. Good faith means that at the time of the ceremony you did not know that a legal impediment existed, or if you did know, you thought that it would not prevent a valid marriage.

(b) *Entitlement based upon a deemed valid marriage.* To be entitled to benefits as the result of a deemed valid marriage, you and the insured must have been living in the same houshold (see § 404.347) at the time the insured died, or if the insured is living, at the time you apply for benefits. If at the time you apply another person is or has been entitled to benefits as the wife, husband, widow, or widower of the insured, and such person's relationship to the insured was determined under State law as explained in § 404.345, you will not be entitled to benefits. Also, if after your entitlement, we find that another person is the wife, husband, widow, or widower of the insured under State law as explained in § 404.345, you entitlement will end with the month before the month in which this determination is made.

§ 404.347 "Living in the same household" defined.

You may be eligible for benefits as a wife, husband, widow, or widower because your relationship to the insured is based upon a deemed valid marriage, as described in § 404.346, only if you and the insured were living in the same household at the time you apply for wife's or husband's benefits or at the time the insured died if you apply for widow's, widower's, mother's, or father's benefits. Living in the same household means that you and the insured customarily lived together as husband and wife in the same residence. You may be considered to be living in the same household although one of you is temporarily absent from the residence. An absence will be considered temporary if it was due to service in the U.S. Armed Forces. An absence of less than 6 months is also considered temporary if neither you nor the insured were outside of the United States during this time and the absence was due to business or employment; or to confinement in a hospital, nursing home, other medical institution, or a penal institution. Other absences may be considered temporary if it is shown that you and the insured could have reasonably expected to live together in the near future.

§ 404.348 When a child living with you is "in your care".

To become entitled to wife's benefits before you become 62 years old or to mother's or father's benefits, you must have the insured's child "in your care." A child who has been living with you for at least 30 days is in your care unless—

(a) The child is in active military service;

(b) The child is 18 years old or older and not disabled;

(c) The child is 18 years old or older with a mental disability, but you do not actively supervise his or her activities and you do not make important decision about his or her needs, either alone or with help from your spouse; or

(d) The child is 18 years old or older with a physical disability, but it is not necessary for you to perform personal services for him or her. Personal services are service such as dressing, feeding and managing money that the child cannot do alone because of a disability.

§ 404.349 When a child living apart from you is "in your care".

(a) *In your care.* A child living apart from you is in your care if—

(1) The child lived apart from you for not more than 6 months, or the child's current absence from you is not expected to last over 6 months;

(2) The child is under 18 years old, you supervise his or her activities and make important decisions about his or her needs, and one of the following circumstances exist:

(i) The child is living apart because of school but spends at least 30 days vacation with you each year unless some event makes having the vacation unreasonable; and if you and the child's other parent are separated, the school looks to you for decisions about the child's welfare;

(ii) The child is living apart because of your employment but you make regular and substantial contributions to his or her support; see § 404.366(a) for a definition of "contributions for support";

(iii) The child is living apart because of a physical disability that the child has or that you have; or

(3) The child is 18 years old or older, and is mentally disabled but you supervise his or her activities, make important decisions about his or her needs, and help in his or her upbringing and development.

(b) *Not in your care.* A child living apart from you is not in your care if—

(1) The child is in active military service;

(2) The child is living with his or her other parent;

(3) The child is removed from your custody and control by a court order;

(4) The child is 18 years old or older, is mentally competent, and either has been living apart from you for 6 months or more, or begins living apart from you and is expected to be away for more than 6 months;

(5) You gave your right to have custody and control of the child to someone else; or

(6) You are mentally disabled.

Child's Benefits

§ 404.350 Who is entitled to child's benefits.

You are entitled to child's benefits on the earnings record of an insured person who is entitled to old-age or disability benefits or who has died if—

(a) You are the insured person's child, based upon a relationship described in §§ 404.355–404.359;

(b) You are dependent on the insured, as defined in §§ 404.360–404.365;

(c) You apply;

(d) You are unmarried; and

(e) You are under age 18; or you are 18 years old or older and have a disability that began before you became 22 years old; or you are under age 22 and a full-time student, as defined in § 404.367; or you become 22 years old in a month in which you are a full-time student and you have not completed the requirements for, or received, a degree from a 4-year college or university.

§ 404.351 Who may be reentitled to child's benefits

If your entitlement to child's benefits has ended, you may be reentitled on the same earnings record if you have not married and if you apply for reentitlement. Your reentitlement may begin with—

(a) The first month in which you are a full-time student and either you have not become 22 years old, or you become 22 years old in a month in which you are a full-time student and you have not completed the requirements for, or received, a degree from a 4-year college or university;

(b) The first month in which you are disabled, if your disability began before you became 22 years old; or

(c) The first month you are under a disability that began before the end of the 84th month following the month in which your benefits had ended because an earlier disability had ended.

§ 404.352 When child's benefits begin and end.

(a) You are entitled to child's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement. (b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become 18 years old, unless you are disabled or a full-time student. If you become 18 years old and you are disabled, your entitlement ends with the second month following the month in which your disability ends. If you become 18 years old and you are a full-time student who is not disabled, your entitlement ends with the last month you are a full-time student or, if earlier, the month before the month you become age 22. If the become age 22 in a month in which you are a full-time student and you have have not completed the requirements for, or received, a degree from a 4-year college or university, your entitlements will end with the month in which the quarter or semester in which you are enrolled ends. If the school you are attending does not have a quarter or semester system, your benefits will end with the month you complete the course, of if earlier, the first day of the third month following the month in which you become 22 years old.

(2) You marry. Your benefits will not end if you are 18 years old or older, disabled, and you marry a person entitled to child's benefits based on disability or a person entitled to old-age, divorced wife's, divorced husband's, widow's, widower's, mother's, father's, parent's, or disability benefits. If you are a woman entitled to child's benefits based on disability and you marry a man entitled to either child's benefits based on disability or disability benefits and he recovers from the disability, your benefits will end with the same month as his benefits end.

(3) The insured's entitlement to old-age or disability benefits ends for a reason other than death or the attainment of age 65.

(4) You die.

§ 404.353 Child's benefit amounts.

(a) *General.* Your child's monthly benefit is equal to one-half of the insured person's primary insurance amount if he or she is alive and three-fourths of the primary insurance amount if he or she has died. The amount of your monthly benefit may change as explained in § 404.304.

(b) *Entitlement to more than one benefit.* If you are entitled to a child's benefit on more than one person's earnings record, you will ordinarily receive only the benefit payable on the record with the highest primary insurance amount. If your benefit before any reduction would be larger on an earnings record with a lower primary insurance amount and no other person entitled to benefits on that record would receive a smaller benefit as a result of your entitlement, you will receive benefits on that record. If you are entitled to a child's benefit and to other dependent's or survivor's benefits, you can receive on the highest of the benefits.

§ 404.354 Your relationship to the insured.

(a) *General.* You may be related to the insured person in one of several ways and be entitled to benefits as his or her child—as a natural child, legally adopted child, stepchild, grandchild, stepgrandchild, or equitably adopted child. (b) *Use of State laws.* To decide your relationship to the insured, we look to the laws of the State where the insured had a permanent home when you applied, or where the insured had a permanent home when he or she died if you apply after his or her death. If the insured's permanent home is not or was not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, we will look to the laws of the District of Columbia. For a definition of permanent home see § 404.303. The State laws we use are the ones the courts would use to decide whether you could inherit a child's share of the insured's personal property if he or she were to die without leaving a will. If these laws would not permit you to inherit the insured's personal property as his or her child, you may still be eligible for child's benefits if you are related to the insured in one of the other ways described in §§ 404.355–404.359.

§ 404.355 Who is the insured's natural child.

You may be eligible for benefits as the insured's natural child if one of the following conditions is met:

(a) You could inherit the insured's personal property as his or her natural child under State inheritance laws as described in § 404.354.

(b) Before your birth, your mother or father entered into a deemed valid marriage with the insured as described in § 404.346.

(c) Your mother has not married the insured but the insured is your father and he has either acknowledged in writing that you are his child, been decreed by a court to be your father, or been ordered by a court to contribute to your support because you are his child.

(d) Your mother has not married the insured, but you have evidence other than the evidence described in paragraph (c) of this section to show that the insured in your natural father. Additionally, you must have evidence to show that the insured was either living with you or contributing to your support at the time you applied for benefits. See § 404.366 for an explanation of the terms "living with" and "contributing to your support". If the insured is not alive at the time of your application, you must have evidence to show that the insured was either living with you or contributing to your support when he died.

§ 404.356 Who is the insured's legally adopted child.

You may be eligible for benefits as the insured's child if you were legally adopted by the insured. If you were legally adopted after the insured's death

by his or her surviving spouse you may also be considered the insured's legally adopted child.

§ 404.357 Who is the insured's stepchild.

You may be eligible for benefits as the insured's stepchild if, after your birth, your natural or adopting parent married the insured. The marriage between the insured and your parent must be a valid marriage under State law or a deemed valid marriage as described in §§ 404.345–404.346. If the insured is alive when you apply, you must have been his or her stepchild for at least 1 year immediately preceding the day you apply. If the insured is not alive when you apply, you must have been his or her stepchild for at least 9 months immediately preceding the day the insured died. This 9-month requirement will not have to be met if the marriage between the insured and your parent lasted less than 9 months under the conditions described in § 404.335(a)(2).

§ 404.358 Who is the insured's grandchild or stepgrandchild.

(a) *Grandchild and stepgrandchild defined.* You may be eligible for benefits as the insured's grandchild or stepgrandchild if you are the natural child, adopted child, or stepchild of a person who is the insured's child as defined in §§ 404.355–404.357, or § 404.359. Additionally, for you to be eligible as a grandchild or stepgrandchild, your natural or adoptive parents must have been either deceased or under a disability, as defined in § 404.1501(a), at the time your grandparent or step-grandparent became entitled to old-age or disability benefits or died; or if your grandparent or stepgrandparent had a period of disability that continued until he or she became entitled to benefits or died, at the time the period of disability began.

(b) *Legally adopted grandchild or stepgrandchild.* If you are the insured's grandchild or stepgrandchild and you are legally adopted by the insured or by the insured's surviving spouse after his or her death, you are considered an adopted child and the dependency requirements of § 404.362 must be met.

§ 404.359 Who is the insured's equitably adopted child.

You may be eligible for benefits as an equitably adopted child if the insured had agreed to adopt you as his or her child but the adoption did not occur. The agreement to adopt you must be one that would be recognized under State law so that you would be able to inherit a child's share of the insured's personal property if he or she were to die without leaving a will. The agreement must be in whatever form, and you must meet whatever requirements for performance under the agreement, that State law directs. If you apply for child's benefits after the insured's death, the law of the State where the insured had his or her permanent home at the time of his or her death will be followed. If you apply for child's benefits during the insured's life, the law of the State where the insured has his or her permanent home at the time or your application will be followed.

§ 404.360 When a child is dependent upon the insured person.

One of the requirements for entitlement to child's benefits is that you be dependent upon the insured. The evidence you need to prove your dependency is determined by how you are related to the insured. To prove your dependency you may be asked to show that at a specific time you lived with the insured, that you received contributions for your support from the insured, or that the insured provided at least one-half of your support. These dependency requirements, and the time at which they must be met, are explained in §§ 404.361–404.365. The terms "living with", "contributions for support," and "one-half support" are defined in § 404.366.

§ 404.361 When a natural child is dependent.

If you are the insured's natural child, as defined in § 404.355, you are considered dependent upon him or her. However, if you are legally adopted by someone else during the insured's lifetime and after the adoption you apply for child's benefits on the insured's earnings record, you will be considered dependent upon the insured (your natural parent) only if he or she was either living with you or contributing to your support at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until he or she died or became entitled to disability or old-age benefits, at the beginning of the period of disability or at the time he or she became entitled to benefits.

§ 404.362 When a legally adopted child is dependent.

(a) *General.* If you were legally adopted by the insured before he or she became entitled to old-age or disability benefits, you are considered dependent upon him or her. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits during the life of the insured, you must meet the dependency requirements stated in paragraph (b) of this section. If you were legally adopted by the insured after he or she became entitled to old-age or disability benefits and you apply for child's benefits after the death of the insured, you are considered dependent upon him or her. If you were adopted after the insured's death by his or her surviving spouse, you may be considered dependent upon the insured only under the conditions described in paragraph (c) of this section.

(b) *Adoption by the insured after he or she became entitled to benefits.*

(1) *General.* If you are legally adopted by the insured after he or she became entitled to benefits and you are not the insured's natural child, stepchild, grandchild, or stepgrandchild, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for the year before he or she became entitled to benefits or became entitled to a period of disability that continued until entitlement to benefits began. If you were born within this 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The "substantially all" requirement will be met if, at the time of the insured's entitlement, he or she was living with you and providing at least one-half of your support, and any period during which he or she was not living with you or providing one-half of your support did not exceed the lesser of 3 months or one-half of the period beginning with the month of your birth.

(2) *Grandchild of the insured or the insured's spouse.* If you legally adopted by the insured after he or she became entitled to benefits and you are the insured's grandchild or the grandchild of the insured's spouse, you are considered dependent upon the insured during his or her lifetime only if—

(i) Your adoption took place in the United States;

(ii) You began living with the insured before you became 18 years old; and

(iii) You were living with the insured in the United States and receiving at least one-half of your support from him or her for either the 1-year period before the month you applied or for one of the

periods described in paragraph (b)(1)(iii) of this section. If you were born within this 1-year period, the insured must have lived with you and provided one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in paragraph (b)(1)(iii) of this section.

(3) *Natural child and stepchild.* If you were legally adopted by the insured after he or she became entitled to benefits and you are the insured's natural child or stepchild, you are considered dependent upon the insured.

(c) *Adoption by the insured's surviving spouse.*

(1) *General.* If you are legally adopted by the insured's surviving spouse after the insured's death, you are considered dependent upon the insured as of the date of his or her death if—

(i) You were living in the insured's household at the time of his or her death;

(ii) You were not receiving regular contributions for your support from someone other than the insured or his or her spouse, or from any public or private welfare organization at the time of the insured's death; and

(iii) The insured had started adoption proceedings before he or she died; or if the insured had not started the adoption proceedings before he or she died, his or her surviving spouse began and completed the adoption within 2 years of the insured's death.

(2) *Grandchild or stepgrandchild adopted by the insured's surviving spouse.* If you are the grandchild or stepgrandchild of the insured and any time after the death of the insured you are legally adopted by the insured's surviving spouse, you are considered the dependent child of the insured as of the date of his or her death if—

(i) Your adoption took place in the United States;

(ii) At the time of the insured's death, your natural, adopting or stepparent was not living in the insured's household and making regular contributions toward your support; and

(iii) You meet the dependency requirements stated in § 404.364.

§ 404.363 When a stepchild is dependent.

If you are the insured's stepchild, as defined in § 404.357, you are considered dependent upon him or her if you were either living with or receiving at least one-half of your support from him or her at one of these times—

(a) When you applied;

(b) When the insured died; or

(c) If the insured had a period of disability that lasted until his or her death or entitlement to disability or old-age benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.364 When a grandchild or stepgrandchild is dependent.

If you are the insured's grandchild or stepgrandchild, as defined in § 404.358(a), you are considered dependent upon the insured if—

(a) You began living with the insured before you became 18 years old; and

(b) You were living with the insured in the United States and receiving at least one-half of your support from him for the year before he or she became entitled to old-age or disability benefits or died; or if the insured had a period of disability that lasted until he or she became entitled to benefits or died, for the year immediately before the month in which the period of disability began. If you were born during the 1-year period, the insured must have lived with you and provided at least one-half of your support for "substantially all" of the period that begins on the date of your birth. The term "substantially all" is defined in § 404.362(b)(1)(iii).

§ 404.365 When an equitably adopted child is dependent.

If you are the insured's equitably adopted child, as defined in § 404.359, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at the time of his or her death. If your equitable adoption is found to have occurred after the insured became entitled to old-age or disability benefits, your dependency cannot be established during the insured's life. If your equitable adoption is found to have occurred before the insured became entitled to old-age or disability benefits, you are considered dependent upon him or her if you were either living with or receiving contributions for your support from the insured at one of these times—

(a) When you applied; or

(b) If the insured had a period of disability that lasted until he or she became entitled to old-age or disability benefits, at the beginning of the period of disability or at the time the insured became entitled to benefits.

§ 404.366 "Contributions for support," "one-half support," and "living with" the insured defined.

To be eligible for child's or parent's benefits, you must be dependent upon the insured at a particular time or be assumed dependent upon him or her. What it means to be a dependent child is explained in §§ 404.360–404.365 and what it means to be a dependent parent is explained in § 404.370(f). Your dependency upon the insured may be based upon whether at a specified time you were receiving "contributions for your support" or "one-half of your support" from the insured, or whether you were "living with" him or her. These terms are defined in paragraphs (a)–(c) of this section.

(a) *"Contributions for support".* The insured makes a contribution for your support if the following conditions are met:

(1) The insured gives some of his or her own cash or goods to help support you. Support includes food, shelter, routine medical care, and other ordinary and customary items needed for your maintenance. The value of any goods the insured contributes is the same as the cost of the goods when he or she gave them for your support. If the insured provides services for you that would otherwise have to be paid for, the cash value of his or her services may be considered a contribution for your support. An example of this would be work the insured does to repair your home. The insured person is making a contribution for your support if you receive an allotment, allowance, or benefit based upon his or her military pay, veterans' pension or compensation, or social security earnings.

(2) Contributions must be made regularly and must be large enough to meet an important part of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. If the insured person only provides gifts or donations once in a while for special purposes, they will not be considered contributions for your support. Although the insured's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the insured person's control, such as illness or unemployment, will be disregarded unless during this interruption someone else takes over responsibility for supporting you on a permanent basis.

(b) *"One-Half Support".* The insured person provides one-half of your support if he or she makes regular contributions for your support and the amount of these contributions exceeds one-half of your ordinary living costs. Ordinary living costs are the costs for your food, shelter, routine medical care, and similar necessities. A contribution may be in cash, goods, or services. The insured is not providing at least one-half of your support unless he or she has done so for a reasonable period of time. Ordinarily, we consider a reasonable period to be the 12-month period immediately

preceding the time when the one-half support requirement must be met under the rules in §§ 404.362–404.364 (for child's benefits) or in § 404.370(f) (for parent's benefits). A shorter period will be considered reasonable under the following circumstances:

(1) At some point within the 12-month period, the insured person started providing at least one-half of your support on a permanent basis and this was a change in the way you had been supported up to then. In these circumstances, the time from the change, when the insured started providing one-half or more of your support, up to the end of the 12-month period may be considered a reasonable period. The change in your source of support must be permanent and not temporary. Changes caused by seasonal employment or customary visits to the insured's home are considered temporary.

(2) The insured provided one-half or more of your support for at least 3 months of the 12-month period, but was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over the responsibility for providing at least one-half of your support on a permanent basis. Any support you received from a public assistance program is not considered as a taking over of responsibility for your support by someone else. Under these circumstances, a reasonable period is that part of the 12-month period before the insured was forced to reduce or stop providing at least one-half of your support.

(c) *"Living with" the insured.* You are living with the insured if you ordinarily live in the same home with the insured and he or she is exercising, or has the right to exercise, parental control and authority over your activities. You are living with the insured during temporary separations if you and the insured expect to live together in the same place after the separation. Temporary separations may include the insured's absence because of active military service or imprisonment if he or she still exercises parental control and authority. However you are not considered to be living with the insured if you are in active military service or in prison.

§ 404.367 When are you a "full-time student".

You may be eligible for child's benefits if you are a full-time student. A full-time student means a person who is in full-time attendance at an educational institution. You will be considered a full-time student if all the following conditions are met:

(a) You attend an educational institution that is a school (including a technical, trade, or vocational school), junior college, college, or university that meets any one of the following conditions:

(1) It is operated or directly supported by the United States, or by any State, local government or by a political subdivision of any State or local government.

(2) It is approved by a State agency or subdivision of the State or accredited by a State or nationally-recognized accrediting body. A national recognized accrediting body is one determined to be such by the U.S. Commissioner of Education. A State-recognized accrediting body is one designated or recognized by a State as the proper authority for accrediting schools, colleges, or universities. Approval by a State agency or subdivision includes approval of a school, college, or university as an educational institution, or approval of one or more of the courses offered by a school, college or university.

(3) It is a nonaccredited school, college, or university, but its credits are accepted by at least three educational institutions that have been accredited by a State or nationally recognized accrediting body.

(b) You are enrolled in a noncorrespondence course and carrying a subject load that is considered full-time for day students under the practices and standards of the educational institution. If you are enrolled in a junior college, college, or university, your course of study must last at least 13 weeks. If you are enrolled in any other educational institution, your course of study must last at least 13 weeks and your scheduled attendance must be at least 20 hours a week. If your full-time attendance either begins or ends in a month, you will be considered a full-time student for that month. You will not be considered a full-time student in the month you graduate if you completed your course of study and stopped carrying a full-time subject load in a month before the month preceding the month you graduate.

(c) You are not being paid while attending the educational institution by an employer who has requested or required that you attend the educational institution.

§ 404.368 When may you be considered a full-time student during a period of nonattendance.

If you are a full-time student at an educational institution, your eligibility may continue during a period of nonattendance (including part-time attendance) if all the following conditions are met:

(a) The period of nonattendance is 4 consecutive months or less.

(b) You show us that you intend to resume your studies as a full-time student at the end of the period; or at the end of the period you are a full-time student.

(c) The period of nonattendance is not due to your expulsion or suspension from the educational institution.

Parent's Benefits

§ 404.370 Who is entitled to parent's benefits.

You may be entitled to parent's benefits on the earnings record of someone who has died and was fully insured. You are entitled to these benefits if all the following conditions are met:

(a) You are related to the insured person as his or her parent in one of the ways described in § 404.374.

(b) You are at least 62 years old.

(c) You have not married since the insured person died.

(d) You apply.

(e) You are not entitled to an old-age benefit equal to or larger than the parent's benefit amount.

(f) You were receiving at least one-half of your support from the insured at the time he or she died, or at the beginning of any period of disability he or she had that continued up to death. See § 404.366(b) for a definition of "one-half support." If you were receiving one-half of your support from the insured at the time of the insured's death, you must give us proof of this support within 2 years of the insured's death. If you were receiving one-half of your support from the insured at the time his or her period of disability began, you must give us proof of this support within 2 years of the month in which the insured filed his or her application for the period of disability. You must file the evidence of support even though you may not be eligible for parent's benefits until a later time. There are two exceptions to the 2-year filing requirement:

(1) If there is a good cause for failure to provide proof of support within the 2-year period, we will consider the proof you give us as though it were provided within the 2-year period. Good cause does not exist if you were informed of the need to provide the proof within the

2-year period and you neglected to do so or did not intend to do so. Good cause will be found to exist if you did not provide the proof within the time limit due to—

(i) Circumstances beyond your control, such as extended illness, mental or physical incapacity, or a language barrier;

(ii) Incorrect or incomplete information we furnished you;

(iii) Your efforts to get proof of the support without realizing that you could submit the proof after you gave us some other evidence of that support; or

(iv) Unusual or unavoidable circumstances that show you could not reasonably be expected to know of the 2-year time limit.

(2) The Soldiers' and Sailors' Civil Relief Act of 1940 provides for extending the filing time.

§ 404.371 When parent's benefits begin and end.

(a) You are entitled to parent's benefits beginning with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to benefits ends with the month before the month in which one of the following events first occurs:

(1) You become entitled to an old-age benefit equal to or larger than the parent's benefit.

(2) You marry, unless your marriage is to someone entitled to wife's, widow's, widower's, mother's, father's, parent's, or disabled child's benefits. If you marry a person entitled to these benefits, the marriage is disregarded unless you are a woman and marry someone entitled to disabled child's benefits, in which instance your benfits will end with the same month your spouse's benefits end should he recover from his disabililty.

(3) You die.

§ 404.373 Parent's benefit amounts.

Your parent's monthly benefit before any reduction that may be made as explained in § 404.304, is figured in one of the following ways:

(a) *One parent entitled.* Your parent's monthly benefit is equal to 82½ percent of the insured person's primary insurance amount if you are the only parent entitled to benefits on his or her earnings record.

(b) *More than one parent entitled.* Your parent's monthly benefit is equal to 75 percent of the insured person's primary insurance amount if there is another parent entitled to benefits on his or her earnings record.

§ 404.374 Parent's relationship to the insured.

You may be eligible for benefits as the insured person's parent if—

(a) You are the mother or father of the insured and would be considered his or her parent under the laws of the State where the insured had a permanent home when he or she died;

(b) You are the adoptive parent of the insured and legally adopted him or her before the insured person became 16 years old; or

(c) You are the stepparent of the insured and you married the insured's parent or adoptive parent before the insured became 16 years old. The marriage must be valid under the laws of the State where the insured had his or her permanent home when he or she died. See § 404.303 for a definition of "permanent home".

Special Payment at Age 72

§ 404.380 General.

Some older persons had little or no chance to become fully insured for regular social security benefits during their working years. For those who became 72 years old several years ago but are not fully insured, a "special payment" may be payable as described in the following sections.

§ 404.381 Who is entitled to special age 72 payments.

You are entitled to a special age 72 payment if—

(a) You became 72 years old before 1968 or you have credit for at least 3 quarters of social security work for each calendar year between 1966 and the year you became 72 years old (see Subpart B for a description of these work credits);

(b) You reside in one of the 50 states, the District of Columbia, or the Northern Mariana Islands;

(c) You apply; and

(d) You are a U.S. citizen or a citizen of the Northern Mariana Islands; or you are an alien who was legally admitted for permanent residence in the United States and who has resided here continuously for 5 years. Residence in the United States includes residence in the Northern Mariana Islands, Guam, American Samoa, Puerto Rico, and the Virgin Islands.

§ 404.382 When special age 72 payments begin and end.

(a) Your entitlement to the special age 72 payment begins with the first month covered by your application in which you meet all the other requirements for entitlement.

(b) Your entitlement to this payment ends with the month before the month of your death.

§ 404.383 Special age 72 payment amounts.

If both you and your spouse are entitled to the payment, the husband's payment amount is $83.70 and the wife's payment amount is $41.90. If you are entitled to the special payment but your spouse is not, your payment amount is $83.70. The special payment amounts of $83.70 and $41.90 are payable for months after May 1978; these amounts will increase because of cost-of-living increases that occur after 1978. The special payment may be reduced, suspended, or not paid at all as explained in § 404.384.

§ 404.384 Reductions, suspensions, and nonpayments of special age 72 payments.

(a) *General.* Special age 72 payments may not be paid for any month you receive public assistance payments. The payment may be reduced if you or your spouse are eligible for a government pension. In some instances, the special payment may not be paid while you are outside the United States. The rules on when special payments may be suspended, reduced, or not paid are provided in paragraphs (b)–(e) of this section.

(b) *Suspension of special age 72 payments when you receive certain assistance payments.* You cannot receive the special payment if supplemental security income or aid to families with dependent children (AFDC) payments are payable to you, or if your needs are considered in setting the amounts of these assistance payments made to someone else. However, if these assistance payments are stopped, you may receive the special payment beginning with the last month for which the assistance payments were paid.

(c) *Reduction of special age 72 payments when you or your spouse are eligible for a government pension.* Special payments are reduced for any regular government pension (or lump-sum payment given instead of a pension) that you or your spouse are eligible for at retirement. A government pension is any annuity, pension, or retirement pay from the Federal Government, a State government or political subdivision, or any organization wholly owned by the Federal or State government. Also included as a government pension is any social security benefit. The term govenment pension does not include workmen's compensation payments or

Veterans Administration payments for a service-connected disability or death.

(d) *Amount of reduction because of a government pension.* If your spouse is eligible for a government pension but is not entitled to the special payment, your special payment is reduced by the difference between the pension amount and the special payment amount due a wife. This is in addition to any reduction to be made in your payment if you are also entitled to, or eligible for, a government pension. If both you and your spouse are entitled to the special payment, each one's payment is first reduced by the amount of his or her own government pension (if any). Then, the wife's special payment is reduced by the amount that the husband's government pension exceeds the husband's special payment. The husband's special payment is also reduced by the amount that the wife's government pension exceeds the wife's special payment.

(e) *Nonpayment of special age 72 payments when you are not residing in the United States.* No special payment is due you for any month you are not a resident of one of the 50 States, the District of Columbia, or the Northern Mariana Islands. Also, payment to you may not be permitted under the rules in § 404.463 if you are an alien living outside the United States.

Lump-Sum Death Payment

§ 404.390 General.

If a person is fully or currently insured when he or she dies, a lump-sum death payment of $255 may be paid to the widow or widower of the deceased if he or she was living in the same household with the deceased at the time of his or her death. If the insured is not survived by a widow or widower who meets this requirement, all or part of the $255 payment may be made to someone else as described in § 404.392.

§ 404.391 Who is entitled to the lump-sum death payment as a widow or widower.

You are entitled to the lump-sum death payment as a widow or widower if—

(a) You are the widow or widower of the deceased insured individual based upon a relationship described in §§ 404.345 or 404.346;

(b) You apply for this payment within two years after the date of the insured's death. You need not apply again if, in the month prior to the death of the insured, you were entitled to wife's or husband's benefits on his or her earnings record; and

(c) You were living in the same household with the insured at the time of his or her death. The term "living in the same household" is defined in § 404.347.

§ 404.392 Who is entitled to the lump-sum death payment when there is no eligible widow or widower.

If the deceased individual is not survived by a widow or widower who meets the requirements of § 404.391, the lump-sum death payment shall be paid as follows:

(a) If all or part of the burial expenses of the deceased incurred by a funeral home remain unpaid, the funeral home may receive the lump-sum death payment to the extent of the unpaid expenses if—

(1) A person who has assumed the responsibility for paying these expenses applies for the lump-sum death payment within 2 years of the insured's death, asking that the payment be made to the funeral home; or

(2) At least 90 days have gone by since the death of the insured, no person has assumed responsibility for paying the burial expenses, and the funeral home director or other official of the funeral home applies for the payment.

(b) If all the burial expenses of the insured that were incurred by a funeral home have been paid, and any part of the lump-sum death payment remains, it may be paid to a person who paid these burial expenses and who applies for the payment within 2 years of the insured's death.

(c) If the body of the deceased is not available for burial, but expenses were incurred in connection with a memorial service or any other item for which expenses are customarily incurred in connection with disposing of a deceased's remains, the lump-sum death payment may be paid to a person who paid the expenses and applies for the payment within 2 years of the insured's death.

(d) If any part of the lum-sum death payment remains after payments have been made under paragraphs (a), (b), and (c) of this section, that part of the payment may be made to a person who applies within 2 years of the insured's death and who has paid other expenses of a burial in the following order of priority—

(1) Expenses of opening and closing the grave;

(2) Expenses of providing the burial plot; and

(3) Any remaining expenses in connection with the burial.

§ 404.393 Who is entitled to the lump-sum death payment when burial expenses are paid from the deceased's funds.

If funds of a deceased person were used to pay any of the burial expenses for which payment of the lump-sum can be made under the rules in § 404.392, the deceased person's estate may be entitled to the lump-sum death payment. If you apply for the payment on behalf of a person's estate, you must show you are the legal representative (administrator or executor) of the estate. If there is no legal representative and none will be appointed, you must agree to divide the payment among those who have a right to it under State law, or under foreign law, that applies where the deceased had his or her permanent home at death. We may also require that you get written approval to receive the payment from any of the deceased's closest relatives who are available. A person's closest relatives follow this order: widower or widow; children and the children of any deceased children; parents; brothers and sisters and the children of any deceased brothers and sisters; and other relatives by blood or adoption.

§ 404.394 Who is not entitled to the lump-sum death payment.

The following persons and organizations are not entitled to the lump-sum payment—

(a) The U.S. Government or a foreign government;

(b) Any person who has received or will receive repayment from any other source for the burial expenses he or she paid;

(c) Persons and organizations who are required by a contract to pay the burial expenses except for a tax-exempt, nonprofit home for the sick or aged that paid for burial of a deceased resident or guest or a tax-exempt, nonprofit fraternal organization that paid a member's burial expenses not covered by an express contract;

(d) An employer or organization that paid burial expenses of an employee or member under a plan, system, or general practice other than a home for the sick or aged or a fraternal organization mentioned in paragraph (c) of this section; and

(e) A person or organization that furnished goods or services for the burial unless the goods or services were furnished by—

(1) A State or a political subdivision of a State;

(2) An organization exempt from income tax under § 501(c)(3) or (13) of the Internal Revenue Code; or

(3) A funeral director in connection with burial of a close relative.

Subpart H [Amended]

3. Subpart H is amended by adding the phrase "or divorced husband" to the first sentences of §§ 404.723 and 404.728(a) so as to read as follows:

§ 404.723 When evidence of marriage is required.

If you apply for benefits as the insured person's husband or wife, widow or widower, divorced wife or divorced husband, we will ask for evidence of the marriage and where and when it took place.* * *

§ 404.728 Evidence a marriage has ended.

(a) *When evidence is needed that a marriage has ended.* If you apply for benefits as the insured person's divorced wife or divorced husband, you will be asked for evidence of your divorce.* * *

4. Subpart H is further amended by revising the first sentence of section 404.780(a) so as to read as follows:

§ 404.780 Evidence of "good cause" for exceeding time limits on accepting proof of support or application for a lump-sum death payment.

(a) *When evidence of "good cause" is needed.* We may ask for evidence that you had "good cause" (as defined in § 404.370(f)) for not giving us sooner proof of the support you received from the insured as his or her parent. We may also ask for evidence that you had "good cause" (as defined in § 404.621(b)) for not applying sooner for the lump-sum death payment. You may be asked for evidence of "good cause" for these delays if—* * *

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Food and Drug Administration

[Docket No. 77F-0441]

21 CFR Part 177

Indirect Food Additives: Polymers Polyethersulfone Resins

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: This document amends the food additive regulations to provide for the safe use of polyethersulfone resins as articles or components of articles intended for repeated use in contact with food. ICI Americas, Inc., filed a petition for such use.

DATES: Effective June 15, 1979; objections by July 16, 1979.

ADDRESS: Written objections to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF-334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St., SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: A notice published in the **Federal Register** of February 7, 1978 (43 FR 5071) announced that a food additive petition (FAP 7B3343) had been filed by ICI Americas, Inc., Wilmington, DE 19897, proposing that Part 177 (21 CFR Part 177), Subpart C, of the food additive regulations be amended to provide for the use of polyethersulfone resins as articles or as components of articles intended for repeated use in contact with food.

The Food and Drug Administration has evaluated data in the petition and other relevant material and concludes that the food additive regulations should be amended as set forth below to provide for the use of the petitioned additive.

Therefore, under the Federal Food, Drug, and Cosmetic Act (sec. 409, 72 Stat. 1785-1788 as amended (21 U.S.C. 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), Part 177 is amended by adding new § 177.2440 to read as follows:

§ 177.2440 Polyethersulfone resins.

Polyethersulfone resins identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated use in contact with food, at use temperatures not exceeding 212° F, in accordance with the following prescribed conditions:

(a) For the purpose of this section, polyethersulfone resins (poly(oxy-*p*-phenylenesulfonyl-*p*-phenylene) resins) (CAS Reg. No. 25667-42-9) consist of basic resins produced by the polymerization of the monopotassium phenate salt prepared from 4,4'-dichlorodiphenylsulfone such that the finished resins have a minimum number average molecular weight of 16,000, as determined by reduced viscosity in dimethyl formamide in accordance with ASTM Method D2857-70 (Reapproved 1977),[1] which is incorporated by reference.

(b) The basic resins identified in paragraph (a) of this section may contain optional adjuvant substances used in their production. These adjuvants may include substances described in § 174.5(d) of this chapter and the following:

List of substances	*Limitations*
Diphenylsulfone	Not to exceed 0.2 percent as residual solvent in the finished basic resin.
Dimethyl sulfoxide	Not to exceed 0.01 percent as residual solvent in the finished basic resin.

(c) The finished food-contact article, when extracted at reflux temperatures for 2 hours with the following four solvents, yields net chloroform-soluble extractives in each extracting solvent not to exceed 0.02 milligram per square inch of food-contact surface: distilled water, 50 percent (by volume) ethyl alcohol in distilled water, 3 percent acetic acid in distilled water, and *n*-heptane. (Note: In testing the finished food-contact article, use a separate test sample for each required extracting solvent.)

(d) In accordance with good manufacturing practice, finished food-contact articles containing the polyethersulfone resins shall be thoroughly cleansed before their first use in contact with food.

Any person who will be adversely affected by the foregoing regulation may at any time on or before July 16, 1979, submit to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857, written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Four copies of all documents shall be submitted and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this regulation. Received objections may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Effective date. This regulation shall become effective June 15, 1979.

[1] Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103.

(Sec. 409, 72 Stat. 1785–1788 as amended (21 U.S.C. 348).)

Dated: June 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

Note.—Incorporation by reference was approved by the Director of the Office of the Federal Register on April 27, 1979 and is on file in the Federal Register Library.

[FR Doc. 79-18637 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF JUSTICE

Parole Commission

28 CFR Part 2

Paroling, Recommitting and Supervision Federal Prisoners; Correction

AGENCY: U.S. Parole Commission.

ACTION: Final rule; correction.

SUMMARY: This document further corrects and clarifies the final rule relating to Parole, Recommitting and Supervising Federal Prisoners appearing at 43 FR 38822, Thursday, August 31, 1978 as amended at 44 FR 3409, Tuesday, January 16, 1979 and corrected at 44 FR 31637, Friday, June 1, 1979.

EFFECTIVE DATE: Friday, June 1, 1979.

FOR FURTHER INFORMATION CONTACT: Michael A. Stover, phone (202) 724–7567.

SUPPLEMENTARY INFORMATION: In FR 78–24603 issue of Thursday, August 31, 1978 page 38822 in § 2.32(a)(1) the quotation marks should be removed around: Parole to the actual physical custody of the detaining authorities only.

In 2.32(a)(2) the quotation marks should be removed around: Parole to the actual physical custody of the detaining authorities or an approved plan.

In 2.32(b) the quotation marks should be removed around: Parole to the actual physical custody of the immigration authorities or an approved plan.

In 2.32(c) the quotation marks should be reinserted in the first sentence of that subsection as follows: As used in this section "parole to a detainer" means release to the "physical custody" of the authorities who have lodged the detainer.

Dated: June 11, 1979.

Cecil C. McCall,

Chairman, United States Parole Commission.

[FR Doc. 79-18677 Filed 6-14-79; 8:45 am]

BILLING CODE 4410-01-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interpretation of Commission regulation.

SUMMARY: This document sets forth the Commission's interpretation of the phrase "receipt of his [or her] agency's notice of final decision on his [or her] complaint" as used in the Commission's regulations governing the processing of a Federal EEO appeal from a final agency decision (29 CFR 1613.233(a), formerly 5 CFR 713.233(a)).

DATES: Notice of this interpretation is effective June 15, 1979.

SUPPLEMENTARY INFORMATION: Pursuant to Reorganization Plan No. 1 of 1978 (43 FR 19807 (May 9, 1978)), the administration and enforcement of equal opportunity in Federal employment vested in the Civil Service Commission pursuant to section 717 (b) and (c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16 (b) and (c), were transferred to the Equal Employment Opportunity Commission as of January 1, 1979. 43 FR 60984 (December 29, 1978). The Commission adopted certain of the regulations of the Civil Service Commission which were codified at 5 CFR Part 713, and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. 43 FR 60900 (December 29, 1978). In addition, certain technical changes were made in the regulations in order to reflect the transfer of authority with respect to Federal EEO from the Civil Service Commission to the Equal Employment Opportunity Commission.

The regulations adopted from the Civil Service Commission (43 FR 60900, December 29, 1978) provide that a complainant may appeal the final agency decision on a claim of discrimination to the EEOC, but the appeal must be filed within 15 days from receipt of the final agency decision. 29 CFR § 1613.233(a) (formerly 5 CFR § 713.233(a)). The date of receipt is crucial because it triggers the running of the time period within which the complainant must file his or her appeal. In many cases, however, evidence of receipt of the final agency decision is lacking. Accordingly, the Commission hereby adopts the presumption that in all cases in which evidence of the actual date of receipt is lacking, the final agency decision will be deemed to have been received 5 days following the date of the decision. This is a rebuttable presumption. 29 CFR § 1633.233(b).

Signed at Washington, D.C. this 12th day of June, 1979.

For the Commission.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

[FR Doc. 79-18742 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-06-M

29 CFR Part 1613

Equal Employment Opportunity in the Federal Government

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim revised regulations with comments invited for consideration in final rulemaking.

SUMMARY: The Equal Employment Opportunity Commission adopted certain of the regulations of the Civil Service Commission, which were codified at 5 CFR Part 713, with respect to equal employment opportunity in the federal government and moved the regulations to Title 29, Part 1613, of the Code of Federal Regulations. 43 FR 60900 (December 29, 1979). The Commission is now revising § 1613.221 and § 1613.233 of these regulations.

DATE: The interim regulations will become effective on June 22, 1979 and will remain effective until final regulations are issued. Written comments on the interim regulations must be received on or before August 15, 1979.

ADDRESSES: Interested persons are invited to submit written comments on the proposed revised regulations to Marie Wilson, Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, Northwest, Washington, D.C. 20506. Copies of the comments submitted by the public will be available for review at the Social Sciences Library, Room 2003, EEOC, 2401 E Street, Northwest, Washington, D.C. 20506, between the hours of 9:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Constance L. Dupre, Associate General Counsel, EEOC, 2401 E Street, Northwest, Washington, D.C. 20506, 202–634–6595.

SUPPLEMENTARY INFORMATION: 29 CFR 1613.221(b)(1) currently provides that the decision of the agency shall be transmitted by letter to the complainant and his representative, but this section

does not contain any provision relating to proof of receipt. Therefore, the Commission is revising its regulations to require a method of delivery by the agencies which will allow proof of receipt to be established. The Commission is also revising § 1613.221(d) to require agencies to cite § 1613.233 (a) and (b) (concerning time limitations) in final agency decisions so as to ensure that complainants are fully aware of their appeal rights.

It should be noted that the form letters prescribed in FPM letter 713.21 are necessarily also modified by the adoption of the revision to § 1613.221(d).

Section 1613.233(a) currently requires that a complainant file his appeal not later than 15 calendar days after receipt of the agency decision. There has been some confusion on the part of the complainants as to whether they were required to file a brief or statement of reasons for their appeal within the fifteen days, or whether the filing of a notice of appeal was sufficient to preserve their appeal rights. Section 1613.233(a), as proposed, makes two changes. It provides that a complainant will have *20* days within which to file a "notice of appeal". This provision will be applied retroactivily to pending appeals. The revised regulation also provides for an additional 30 calendar days after the filing of a "notice of appeal" within which to submit a brief or statement in support of the appeal. The Commission has also reworded § 1613.233(b) to change its emphasis.

Prior to publication in the **Federal Register**, the proposed regulations were circulated to all affected federal agencies for comment. They were revised to incorporate certain agency suggestions received.

These regulations have been reviewed in accordance with Executive Order 12044. These regulations are not "substantial regulations" under section 2(e) of that Order nor do they require regulatory analysis under section 3 of that Order.

Pursuant to 5 U.S.C. 553(d)(3), the Commission finds that good cause exists for making these revised regulations effective in less than 30 days, in order to provide continuity of operation in the processing of Federal EEO appeals. The interim revised regulations appear below.

Signed at Washington, D.C. this 12th day of June, 1979.

For the Commission.

Eleanor Holmes Norton,

Chair Equal Employment Opportunity Commission.

PART 1613—EQUAL EMPLOYMENT OPPORTUNITY IN THE FEDERAL GOVERNMENT

29 CFR Part 1613 is amended by revising § 1613.221(b)(1) and (d) to read as follows:

§ 1613.221 Decision by head of agency or designee.

(a) * * *

(b)(1) The decision of the agency shall be in writing, shall reflect the date of its issuance. and shall be transmitted to the complainant and his or her representative either by certified mail, return receipt requested, or by any other method which enables the agency to show the date of receipt.

(c) * * *

(d) The decision letter shall inform the complainant of his or her right to appeal the decision of the agency to the Commission and shall include the text of 29 CFR § 1613.233 (a) and (b). The decision letter shall also inform the complainant of his or her right to file a civil action.

29 CFR Part 1613 is amended by revising § 1613.233 (a) and (b) to read as follows:

§ 1613.233 Time limit.

(a) Except as provided in paragraph (b) of this section, a complainant may file a notice of appeal at any time up to 20 calendar days after receipt of the agency's notice of final decision on his or her complaint. An appeal shall be deemed filed on the date it is postmarked, or. in the absence of a postmark, on the date it is received by the Commission. Any statement or brief in support of the appeal must be submitted to the Commission and to the defendant agency within 30 calendar days of filing the notice of appeal.

(b) The 20-day time limit within which a notice of appeal must be filed will not be extended by the Commission unless, based upon a written statement by the complainant showing that he or she was not notified of the prescribed time limit and was not otherwise aware of it or that circumstances beyond his or her control prevented the filing of a Notice of Appeal within the prescribed time limit, the Commission exercises its discretion to extend the time limit and accept the Appeal.

(42 U.S.C 2000e–16: Reorg Plan No. 1 of 1978)

[FR Doc 79–18743 Filed 6–14–79: 8:45 am]

BILLING CODE 6570–06–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Parts 67 and 68

[DoD Directive 1200.1] [1]

Allocation of Reserve Forces Units to and Determination of Manpower in Local Communities

AGENCY: Office of the Secretary of Defense.

ACTION: Final rule.

SUMMARY: This rule consolidates this Part 67 and 32 CFR Part 68 to update and clarify DoD policy and procedures regarding the allocation of Reserve forces units to local communities. These procedures outline certain factors for the Secretaries of the Military Departments to consider when formulating plans for the allocation of a Reserve unit to a local community These procedures are to ensure that Reserve component units in local communities do not exceed the number that may reasonably be expected to be maintained at authorized strength.

EFFECTIVE DATE: April 21, 1979.

FOR FURTHER INFORMATION CONTACT: Colonel Giles A. Bax, Office of the Deputy Assistant Secretary of Defense (Reserve Affairs), The Pentagon, Washington, D.C. 20301, Telephone: 202–697–0626.

SUPPLEMENTARY INFORMATION: In FR Doc. 71–18183, appearing in the **Federal Register** (36 FR 23626) on December 11, 1971, the Office of the Secretary of Defense published Part 67 effective on July 14, 1970. which established a uniform procedure in the allocation of reserve forces units of the military departments to local communities in accordance with the reserve manpower potential. This rule updates the July 14, 1970 directive and incorporates Part 68 (DoD Directive 1200.10) which is being canceled as a separate action (44 FR 33399). Part 68 was entitled, "Determination of Manpower Available for Reserve Units in Specific Areas." This Part now includes the provisions of manpower determinations in accordance with 10 U.S.C. 2234(1).

Accordingly. we are revising Part 67, 32 CFR, Chapter I, reading as follows:

[1] Copies may be obtained. if needed, from the U.S. Naval Publications and Forms Center. 5801 Tabor Avenue, Philadelphia, PA 19120. Attention: Code 301.

PART 67—ALLOCATION OF RESERVE FORCES UNITS TO AND DETERMINATION OF MANPOWER IN LOCAL COMMUNITIES

Sec.
67.1 Purpose.
67.2 Applicability and Scope.
67.3 Policy.
67.4 Responsibilities.
67.5 Limitation.
67.6 Procedures.

Authority.—The provisions of this Part 67 issued under 5 U.S.C. 301.

§ 67.1 Purpose.

This Part consolidates into a single document § 67 and § 68 and provides standard procedures (a) in the allocation of Reserve forces units of the Military Departments to local communities in accordance with the Reserve manpower potential, and (b) for making manpower determinations in accordance with Title 10, U.S.C. Section 2234(1), Chapter 133.

§ 67.2 Applicability and Scope.

(a) The provisions of this Directive apply to the Office of the Secretary of Defense and the Military Departments. The term "Military Services," as used here, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) Its provisions do not apply to actions involving Guard and Reserve units of the same Service being relocated within a 15-mile radius of the present location.

§ 67.3 Policy.

(a) Reserve component units located or to be located in a local community will not be larger than the number that may reasonably be expected to be maintained at authorized strength.

(b) The manpower potential of the area will be reviewed to determine if it is adequate to meet and maintain authorized strengths in accordance with 10 U.S.C. 2234(1) prior to granting approval for construction of a Reserve forces facility.

(c) Procedures in § 67.6 will be followed to comply with above policy.

§ 67.4 Responsibilities.

The *Assistant Secretary of Defense (Manpower, Reserve Affairs, and Logistics)* (ASD (MRA&L)), or designee, shall:

(a) Provide tentative approval when a Military Department formulates a plan for the allocation of a Reserve unit to a local community where a unit of that department did not formerly exist.

(b) Resolve cases where complete coordination cannot be effected under the procedures of paragraphs (a) and (b) of § 67.6.

(c) Make final construction determination with respect to the requirements of paragraph (e) of § 67.6 and 10 U.S.C. 2234(1).

§ 67.5 Limitation.

Nothing in this Part shall be construed in any way to limit the rights of the Governors of the several States to fix the location of units of the National Guard within their respective borders, as authorized by 32 U.S.C. 104(a), Chapter 1.

§ 67.6 Procedures.

(a) When a Millitary Department formulates a plan for the allocation of a Reserve unit to a local community where a unit of that department did not formerly exist, the Secretary of the Military Department concerned will consider the factors in paragraph (d), below, and coordinate such tentative location with the ASD (MRA&L), the Secretaries of the other Military Departments and, when appropriate, with the Governor of the State concerned.

(b) The Military Department may also, through command channels, utilize the advice of all military and civilian agencies concerned with Reserve facilities, including the State Reserve Forces Facilities Boards (DoD Directive 5126.24,[1] "Duties and Responsibilities of State Guard/Reserve Forces Facilities Boards," August 1, 1973), and the Reserve Forces Policy Board, Office of the Secretary of Defense.

(c) If complete coordination cannot be effected, the plan will be forwarded to the ASD (MRA&L) for resolution. The plan will include how the factors in paragraph (d), below, were considered. Final coordination must be completed prior to the announcement establishing a unit.

(d) When approval is sought for the construction of a Reserve forces facility for a unit or units, the Military Service concerned shall review the Reserve component manpower potential of the area to determine whether it is adequate to meet and maintain the authorized strengths (approved manning levels) of its Reserve component units considering the factors outlined below. This review shall address, but not be limited to:

(1) The manpower marked potential of the area to include: (i) The age and educational/skill distribution of the population;

(ii) The number of prior service personnel in the area by skills (requests for this information may be submitted directly to: Director, Defense Manpower Data Center, 300 N. Washington Street, Alexandria, VA 22314); and,

(iii) Any other manpower factors which would affect Reserve component participation in the area.

(2) The history of authorized and actual strengths of National Guard and Reserve units in the area; and the authorized strengths of units allocated to the area but not yet activated of all Reserve Components (Army and Air National Guard, and Army, Navy, Air Force, Marine Corps, and Coast Guard Reserve).

(3) Community attitude toward National Guard and Reserve units.

(4) Industrial and professional composition of the community as related to the skill requirements of the units.

(5) Projected growth and composition of the population.

(6) Environmental impact of unit location on the community.

(e) If a positive determination is made following the procedures in (d), above, the Military Service concerned shall coordinate this determination with other Services having Reserve component units in the area. Based on this coordinated determination, the following statement shall be included in project justification documents:

"The Reserve manpower potential to meet and maintain authorized strengths of all Reserve units in the area in which this facility is to be located has been reviewed in accordance with the procedures described in § 67. It has been determined, in coordination with all other Services having Reserve units in the area, that the number of units of the Reserve components of the Armed Forces presently located in the area, and those which have been allocated to the area for future activation, is not and will not be larger than the number that reasonably can be expected to be maintained at authorized strength."

(1) The above statement will be retained in the project file by the Reserve component concerned.

(2) Individual manpower determination statements will be consolidated by the Reserve components and included as a program statement when the military construction program is submitted to the Secretary of Defense for congressional review in accordance with 32 CFR § 246.

(f) Programing of construction projects and authorizations for construction will be in accordance with 32 CFR § 246.

[1] Copies may be obtained, if needed, from the U.S. Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA. 19120 Attention: Code 301.

PART 68—[Removed]

2. Part 68 is removed.

Dated: June 12, 1979.

H. E. Lofdahl,

Director, Directive Division, Washington Headquarters Services, Department of Defense.

[FR Doc. 79-18735 Filed 6-14-79; 8:45 am]

BILLING CODE 3810-70-M

POSTAL SERVICE

39 CFR Part 111

Express Mail Metro Service—Additional Metropolitan Areas

AGENCY: Postal Service.

ACTION: Notice of additional expansion of temporary implementation for Express Mail Metro Service.

SUMMARY: Pursuant to prior notices in the **Federal Register** on April 19, 1979 (44 FR 23396) and on June 8, 1979 (44 FR 33068), the Postal Service hereby gives notice that temporary implementation of Express Mail Metro Service will be expanded to include the metropolitan areas of Atlanta, Georgia; Cleveland, Ohio; Detroit, Michigan; Houston, Texas; Miami, Florida; Minneapolis/St. Paul, Minnesota; New York, New York; Pittsburgh, Pennsylvania; Anaheim and San Diego, California; and Seattle, Washington.

Notice 77, *Express Mail Metro Service Directory*, for the selected metropolitan areas may be obtained at participating post offices.

EFFECTIVE DATE: June 25, 1979 and until such time as the Postal Rate Commission submits a recommended decision to the Governors of the Postal Service and resultant action is taken.

FOR FURTHER INFORMATION CONTACT: Walter (Cap) Neilson, (202) 245-5624.

(39 U.S.C. 401, 403, 404, 3621, 3623, 3641)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-18626 Filed 6-14-79; 8:45 am]

BILLING CODE 7710-12-M

39 CFR Part 111

Preparation for Mailing; Second-Class Bulk Mailings, Key Rate Second-Class Publications

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This rule amends postal regulations to require publishers of second-class publications, for which the key rate method of computing postage is used, to submit a statement on Form 3541, Statement of Mailing—Second-Class Publications, showing the number of subscribers' copies of an issue to each zone, at six month intervals, instead of the current twelve month interval. This rule also requires publishers to submit such a statement when there is a postage rate change. The purpose of the rule is to enable the Postal Service to compute key rates which reflect more up-to-date circulation data, increasing the likelihood that the proper postage can be calculated and collected.

EFFECTIVE DATE: July 16, 1979.

FOR FURTHER INFORMATION CONTACT: Ernest J. Collins at (202) 245-4749.

SUPPLEMENTARY INFORMATION: On December 11, 1978, the Postal Service published for comment in the **Federal Register** proposed changes to Part 125 of the Postal Service Manual as described above (43 FR 57924). Interested persons were invited to submit written comments concerning the proposed changes by January 10, 1979.

Written comments were received from three publications and an oral comment was received from another publication.

Two commenters disagreed with the proposed changes regarding when a new zone statement must be submitted. One of those commenters objected to the proposed requirement that publishers submit a new zone statement every six months. The commenter would prefer the Postal Service require a new zone statement only when there is a rate change or when the postmaster requests it.

The other commenter took the opposite view and objected to the proposed requirement that publishers submit a new zone statement when there is a postage rate change. The objection was on the grounds that, if a new zone statement is prepared every six months, the proper postage rates should be assessed regardless of rate changes.

One of the major causes of inaccurate postage payments when the key rate is used is the failure of publishers to submit a new zone statement when a change in zone distribution occurs between the time the key rate is computed and a mailing is made. If the publisher performs a periodic analysis of zone distribution any changes in that distribution should be discovered. For this reason, the Postal Service considers routine zone distribution analysis by publishers essential. We believe that every six months is a reasonable period for requiring a zone analysis. Although sometimes post offices will notice that there is a change in zone distribution when a mailing is made and request a publisher to submit a new zone analysis, reliance cannot be placed on post offices to always detect those changes.

Because key rates are based on postage rates as well as distribution, it seems apparent that a new key rate should be computed every time second-class postage rates change. To compute an accurate key rate, it is necessary to use both current postage rates and the most up-to-date zone distribution data.

The Postal Service recognizes that a rate change may occur close to the time when a publisher's semi-annual statement is due. We do not wish to unduly burden publishers by requiring the submission of a statement when there is a rate change and then requiring a routine semi-annual statement to be submitted a month or two later. Accordingly, the Postal Service has revised the final rule, in section 125.722 (which corresponds to section 125.73 of the proposal), to provide that when a new statement is filed because of a rate change the next semi-annual statement need not be filed until six months after the rate change statement was filed.

One comment was a suggestion that all post offices allow second-class publishers to use the key rate method of computing postage. The commenter complained that because all post offices do not permit postage computations based on the key rate, publishers are sometimes required to use two different methods for preparation of the Form 3541, one for key rate computation and another for regular computation.

The key rate should only be used when the zone distribution and circulation of a publication remain stable, when the volume of mail is large, and when the publisher submits accurate and timely data. Postmasters have the option of allowing a publisher to use the key rate because the local postmaster, using the above criteria, is best able to determine whether a publisher's use of the key rate is justified.

Another commenter voiced his support for the proposal provided that his statement of distribution could be submitted during November and May. We have no objection to the publisher submitting his statement during those months. Section 125.721 of the final rule, which was section 125.72 of the proposal, only requires that a statement of distribution be submitted at six month intervals; it does not specify particular months the statement must be submitted.

The fourth commenter mistakenly appeared to believe that the proposed regulation was intended to apply to controlled circulation publications.

However, the regulation applies only to second-class publications.

This regulation amends Chapter I of the Postal Service Manual. The Postal Service plans to replace Chapter I of the Postal Service Manual with the Domestic Mail Manual (see 44 FR 24432). Existing regulations which will be included in the Domestic Mail Manual have been reviewed, restructured and rewritten in order to make the Domestic Mail Manual easier to read and understand than the present Postal Service Manual. Sentence structure, grammar and language have been changed in many regulations to accomplish this goal. In keeping with the format of the Domestic Mail Manual, the Postal Service has reorganized, rewritten, and renumbered this regulation. None of these changes are intended to alter the substance of the regulation as it was proposed.

In view of the considerations discussed above, the Postal Service hereby adopts, as amended, the following revision of the Postal Service Manual:

PART 125—SECOND-CLASS BULK MAILINGS

In 125.7 revise .72 and add new .721, .722, .723 to read as follows; delete existing .73; and renumber .74 as .73, .741 as .731, .742 as .732, .743 as .733; and revise .731 to read as follows:

.72 *Statements of Distribution*

.721 *Semi-Annual Statements.* The publisher must submit twice each calendar year, at 6-month intervals, a Form 3541, showing the number of subscribers' copies of an issue mailed to each zone.

.722 *Other Statements.* The publisher must submit a Form 3541, showing the mailings to each zone at any time during the 6-month intervals when the volume of mailings to the zones varies, when there is an increase in the total number of copies, or when there is a postage rate change. When the form 3541 is filed because of a rate change, the semi-annual statement need not be filed until six months after the filing of the rate change statement.

.723 *Between Statements.* During the 6-month period or other intervals, the publisher need not complete the lines for zones 1 to 8 on Form 3541. The publisher must enter only total zone mailings on the "Total Copies" lines.

125.73 *Computation*

.731 *When To Compute.* A new key rate must be computed by the postmaster and used whenever a Form 3541 is submitted in accordance with 125.72.

These changes will be renumbered and incorporated in the Domestic Mail Manual upon its adoption. The Domestic Mail Manual will replace chapter I of the Postal Service Manual (See 44 FR 24432). The Postal Service Manual is incorporated by reference in the Federal Register (See 39 CFR 111.3).

(39 U.S.C. 401(2), 403.)

W. Allen Sanders,

Acting Deputy General Counsel.

[FR Doc. 79-18639 Filed 6-14-79; 8:45 am]

BILLING CODE 7710-12-M

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 1-7, 1-10, 1-16

[FPR Amendment 200]

Miller Act Bonds and Bond Premiums

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This amendment of the Federal Procurement Regulations (FPR) modifies the requirement for Miller Act bonds and the payment of premiums. The amendment codifies the telegram sent to Executive Agencies on November 13, 1978, concerning Pub. L. 95-585 which increased the level at which Miller Act bonds are required from $2,000 to $25,000. The amendment also implements the Comptroller General Decision B-189402, October 12, 1977, which reversed an earlier position and now permits payment of full bond premiums if the contract specifically so provides. The intended effect of this amendment is to provide uniform administration of the two items and to permit contractors to recover the amount of premiums early in the performance of the contract.

EFFECTIVE DATE: This amendment is effective July 16, 1979, but may be observed earlier.

FOR FURTHER INFORMATION CONTACT: Philip G. Read, Director of Federal Procurement Regulations Directorate (APR), 703-557-8947.

PART 1-7—CONTRACT CLAUSES

Subpart 1-7.6 Fixed-Price Construction Contracts

Section 1-7.602-7 is amended to redesignate paragraph (e) of the clause prescribed by the section as paragraph (f), and to add a new paragraph (e) as follows:

§ 1-7.602-7 Payments to contractor.

Payments to Contractor

* * * * *

(e) If Miller Act (40 U.S.C. 270a-270e) performance or payment bonds are required under this contract, the Government shall pay to the Contractor the total premiums paid by the contractor to obtain the bonds. This payment shall be paid at one time to the contractor together with the first progress payment otherwise due after the contractor has (1) furnished the bonds (including coinsurance and reinsurance agreements, when applicable), (2) furnished evidence of full payment to the surety company, and (3) submitted a request for such payment. The payment by the Government of the bond premiums to the contractor shall not be made as increments of the individual progress payments and shall not be in addition to the contract price.

(f) Upon completion and acceptance of all work, the amount due the Contractor under this contract shall be paid upon the presentation of a properly executed voucher and after the Contractor has furnished the Government with a release of all claims against the Government, arising by virtue of this contract, other than claims in stated amounts as may be specifically excepted by the Contractor from the operation of the release. If the Contractor's claim to amounts payable under the contract has been assigned under the Assignment of Claims Act of 1940, as amended (31 U.S.C. 203, 41 U.S.C. 15), a release may also be required of the assignee.

PART 1-10—BONDS AND INSURANCE

Subpart 1-10.1—Bonds

1. Section 1-10.103-1 is amended to revise paragraph (a), as follows:

§ 1-10.103-1 Policy on use.

(a) The use of bid guarantees is required when a performance bond or a performance and payment bond is required.

* * * * *

2. Section 1-10.103-3 is amended to revise paragraph (a)(1), as follows:

§ 1-10.103-3 Invitation for bids provisions.

(a) When a bid guarantee is required, the invitation for bids shall contain:

(1) A statement that a bid guarantee is required with the bid and that identifies details which will enable bidders to determine the amount of the bid guarantee.

* * * * *

3. Section 1-10.104-1 is amended to revise paragraph (a), as follows:

§ 1-10.104 Performance bonds.

§ 1-10.104-1 Construction contracts.

(a) Under the Miller Act, as amended (40 U.S.C. 270a-270e), a performance bond shall be required in connection

with any construction contract exceeding $25,000 in amount, except that this requirement may be waived (1) by the contracting officer for work to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as otherwise authorized by law.

* * * * *

(4) Section 1–10.105–1 is amended to revise paragraph (a), as follows:

§ 1–10.105 Payment bonds.

§ 1–10.105–1 Construction contracts.

(a) Under the Miller Act, as amended (40 U.S.C. 270a–270e), a payment bond shall be required in connection with any construction contract exceeding $25,000 in amount, except that this requirement may be waived (1) by the contracting officer for work to be performed in a foreign country, if he finds that it is impracticable for the contractor to furnish such bond, and (2) as otherwise authorized by law.

* * * * *

PART 1–16—PROCUREMENT FORMS

Subpart 1–16.4—Forms for Advertised Construction Contracts

Section 1–16.401 is amended to revise paragraphs (a) and (e), as follows:

§ 1–16.401 Forms prescribed.

* * * * *

(a) Invitation, Bid and Award (Construction, Alteration, or Repair) (Standard Form 19, July 1973 edition). Pending the publication of a new edition of the form, the following modifications are authorized.

(1) *Face of form.* (i) Under the section designated "Bid", change the second sentence to read, as follows: "The undersigned further agrees, if any contract award resulting from this bid exceeds $2,000, to comply with the provisions of Standard Form 19–A, Labor Standards Provisions Applicable to Contracts in Excess of $2,000."

(ii) Under the section designated "Award", line through or otherwise delete the block and the words "Notice to proceed will be issued upon receipt of acceptable payment and performance bonds."

(2) *Back of form.* The Examination of Records by Comptroller General clause, the Utilization of Small Business Concerns clause and the Utilization of Minority Business Enterprises clause shall be deleted in their entirety; the Convict Labor clause prescribed by § 1–12.204 shall be substituted for the Convict Labor Clause in Article 10; the Employment of the Handicapped clause in § 1–12.1304–1 shall be added as an additional article of the General Provisions; and the following clause shall be substituted for the Payments to Contractor clause in Article 6:

6. *Payments to contractor.* (a) Progress payments equal to the value of the work performed shall be made monthly or at more frequent intervals as determined by the Contracting Officer on estimates approved by him. Upon payment, therefor, title to the property shall vest in the Government, but this provision shall not be construed as relieving the Contractor from the sole responsibility for all material and work upon which payments have been made. The Contractor will notify the Government when all work is complete. Final payment will be made after final acceptance.

* * * * *

(e) Bid Form (Construction Contract) (Standard Form 21, February 1979 edition). Pending the publication of a new edition of the form, the back of the form shall be modified as follows:

(1) Change the first sentence to read:

The undersigned agrees that, upon written acceptance of this bid, mailed or otherwise furnished within ———— calendar days (**calendar days unless a different period is inserted by the bidder) after the date of opening of bids, he will within 15 calendar days (unless a longer period is allowed) after receipt of the prescribed forms, execute Standard Form 23, Construction Contract, and give performance and payment bonds*, as required, on Government standard forms with good and sufficient surety.

(2) Add as a footnote:

*Performance and payment bonds shall be furnished when (1) the contract award resulting from this bid exceeds $25,000, or (2) bonds are specifically required by the Invitation for Bids (Standard Form 20).

* * * * *

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c))

Dated: May 30, 1979.

Clarence A. Lee, Jr.,

Acting Administrator of General Services.

[FR Doc. 79–18638 Filed 6–14–79; 8:45 am]

BILLING CODE 6820–61–M

National Archives and Records Service

41 CFR Part 101–11

[FPMR Temp. Reg. B–4]

Records Management; Transfer of Permanent Records

AGENCY: National Archives and Records Service, General Services Administration.

ACTION: Temporary regulation.

SUMMARY: This temporary regulation amends GSA regulations relating to the transfer of Federal agency records to the National Archives. Public Law 95–416, signed by the President on October 5, 1978, reduces the age to 30 years of records that the Administrator of General Services may direct and effect the transfer of to the National Archives and Records Service (NARS). In addition, the National Archives is authorized to accession records of any age offered by a Federal agency or the Congress and appraised by the National Archives as permanent and appropriate for deposit. The National Archives will determine which records over 30 years old are kept in agency space and how those records are being maintained.

DATES: Effective date: June 15, 1979. Expiration date: June 1, 1980. Comments due: August 14, 1979.

FOR FURTHER INFORMATION CONTACT: Adrienne C. Thomas, Director, Planning and Analysis Division, Office of the Executive Director, National Archives and Records Service, General Services Administration (NAA), Washington, DC 20408. 202–523–3214.

SUPPLEMENTARY INFORMATION: The General Services Administration has determined that this regulation will not impose unnecessary burdens on the economy or on individuals and, therefore, is not significant for the purposes of Executive Order 12044.

(Sec. 205(c), 63 Stat. 390; 40 U.S.C. 486(c)).

In 41 CFR Chapter 101, the following temporary regulation is added to the appendix at the end of Subchapter B to read as follows:

Federal Property Management Regulations; Temporary Regulation B–4

To: Heads of Federal agencies.

Subject: Transfer of permanent records.

1. *Purpose.* This temporary regulation contains revised information concerning the age at which the Administrator of General Services may direct and effect the transfer of Federal agency records to the National Archives of the United States (NARS).

2. *Effective date.* This regulation is effective upon publication in the **Federal Register** (June 15, 1979).

3. *Expiration date.* This regulation expires June 1, 1980, unless revised or superseded earlier. Prior to that date, this regulation will be codified in the permanent regulations of GSA appearing in Title 41, CFR, Public Contracts and Property Management.

4. *Applicability.* The provisions of this regulation apply to all executive agencies.

5. *Background.*

a. Federal law (44 U.S.C. 2103) provides legal authority to the Administrator of General Services to ". . . direct and effect the transfer of the National Archives of the United States . . . records of a Federal agency that have been in existence for more than fifty years and determined by the Archivist of the United States to have sufficient historical or other value to warrant their continued preservation by the United States Government, unless the head of the agency which has custody of them certifies in writing to the Administrator that they must be retained in his custody for use in the conduct of the regular current business of the agency. . . ."

b. On October 5, 1978, the President signed Public Law 95–416 amending chapter 21 of Title 44, U.S.C. This law reduces the age at which Federal agency records may be transferred to the National Archives of the United States. The Administrator of General Services may direct the transfer of Federal records over 30 years old to the National Archives which are determined by the Archivist of the United States to be sufficiently valuable for preservation by the United States Government and are not required by the agency for the conduct of current business. In addition, 44 U.S.C. 2103 also authorizes the National Archives to accession records of any age offered by a Federal agency or the Congress and appraised by NARS as permanent and appropriate for preservation. Based on information provided on Standard Form 136, Annual Summary of Records Holdings, NARS will review Federal records over 30 years old which are currently retained in agency space and examine how those records are being maintained.

6. *Agency action.* FPMR 101–11.102–7 requires Federal agencies to report on Standard Form 136, the Annual Summary of Records Holdings. For fiscal year 1979, agencies should include in the "remarks" section of Standard Form 136 a description of all records under their control that are over 30 years old. Agencies should also provide inclusive dates and volume, specific location, and the type of equipment used to house the records. The location should indicate whether the records are in office space, an agency records center or storage area, or a special storage area established to house the historical records of the agency. Reference and non-record materials, and records that have been approved for disposal on Standard Form 115, Request for Records Disposition Authority, should not be included.

7. Effect on other directives. This regulation modifies the provisions of §§ 101.11.102–7, 101–11.411–2, and 101–11.411–3.

Dated: May 30, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79–18762 Filed 6–14–79; 8:45 am]

BILLING CODE 6820–26–M

Proposed Rules

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 301]

Witchweed Quarantine; Miscellaneous Amendments to Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposal would amend the supplemental regulations which designate generally infested regulated areas and suppressive regulated areas subject to the Witchweed Quarantine. It would remove, add, or extend parts of certain counties in North Carolina and South Carolina to the list of suppressive regulated areas. These changes appear to be necessary in order to prevent the spread of witchweed.

DATE: Comments must be received on or before August 10, 1979.

ADDRESS: Submit written data, views, or arguments to: H. V. Autry, Regulatory Support Staff, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

SUPPLEMENTARY INFORMATION: All written submissions made pursuant to this notice will be made available for public inspection at the Federal Building, 6505 Belcrest Road, Room 633, Hyattsville, MD 20782, during regular hours of business, 8 a.m. to 4:30 p.m., Monday to Friday, except holidays, unless the person makes the submission to the Regulatory Support Staff, Plant Protection and Quarantine Programs, and requests that it be held confidential. A determination will be made whether a proper showing in support of the request has been made on grounds that its disclosure could adversely affect any person by disclosing information in the nature of trade secrets or commercial or financial information obtained from any person and privileged or confidential. If it is determined that a proper showing has been made in the support of the request, the material will be held confidential; otherwise, notice will be given of the denial of such request and an opportunity afforded for withdrawal of the submission. Requests for confidential treatment will be held confidential (7 CFR 1.27(c)).

Witchweed, is a parasitic plant which causes the degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina. Areas within these States have been designated as suppressive areas where a witchweed eradication program is currently being undertaken.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread or is likely to spread to certain areas beyond the outer perimeter of the current designated suppressive areas. Therefore, in order to prevent the spread of witchweed and to facilitate its ultimate eradication, the current designated suppressive areas would be extended in the countries of: Brunswick, Columbus, Craven, Duplin, Lenoir, Onslow, Pender, Pitt, Richmond, Scotland, and Wayne in North Carolina; and Florence in South Carolina. Suppressive areas would be established in the formerly unregulated county of Beaufort in North Carolina. The surveys also establish that witchweed has been eradicated in parts of the following counties which would be deleted from the list of suppressive areas: Columbus, Duplin, Harnett Johnston, Lenoir, Onslow, Pender, Richmond, Scotland, and Wayne in North Carolina.

Other changes would also be made to reflect changes in property ownership. Certain property descriptions would also be revised in order to more accurately describe the regulated areas.

Accordingly, the list of regulated areas in the States of North Carolina and South Carolina specifically designated as generally infested areas and suppressive areas by § 301.80–2a of the Witchweed Quarantine and regulations (7 CFR 301.80–2a) would be amended to read as set forth below:

1. In § 301.80–2a relating to the State of North Carolina under suppressive area, the entire State would be redescribed to read as follows:

§ 301.80–2a Regulated areas; suppressive and generally infested areas.

* * * * *

North Carolina

(1) *Generally infested area.*

Robeson County. The entire county.

(2) *Suppressive area.*

Beaufort County. The Jefferson, Russell M., farm located on the southwest side of State Secondary Road 1609 and 0.6 mile southeast of the junction of said road and State Highway 32.

The Osborne, H. R., farm located on both sides of State Secondary Road 1609 and 0.5 mile southeast of the junction of said road and State Highway 32.

Bladen County. The entire county.

Brunswick County. The Babson, N. L., farm located on the west side of State Secondary Road 1321 and 0.4 mile south of its junction with State Highway. 130.

The Bryant, Ottice, farm No. 1 located at the end of a farm road 1.0 mile west of State Secondary Road 1342, 2.5 miles northwest of said State Secondary Road and its junction with State Highway 211.

The Bryant, Ottice, farm No. 2 located on both sides of State Secondary Road 1342, 2.3 miles northwest of said road and its junction with State Highway 211.

The Hewett, Jr., R. B., farm located at the end of a farm road on the northeast side of State Secondary Road 1132, 0.4 mile northeast of said road and its intersection with N.C. Highway 130.

The Meares, Hobson, farm located on both sides of State Secondary Road 1165 and 2.0 miles south of the junction of said road with U.S. Highway 17.

The Register, W. C., farm located on the south side of State Secondary Road 1147 and 0.3 mile east of the junction of said road and State Secondary Road 1143.

The Register, W. T., farm located on the west side of State Secondary Road 1151 and 0.4 mile south of its junction of State Secondary Road 1147.

The Sanders, Albert C., farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

The Smith, B. Coda, farm located on the west side of a dirt road and 0.6 mile north of its junction with State Secondary Road 1322, said junction being 0.1 mile west of the junction of State Secondary Road 1322 and State Secondary Road 1321.

The Todd, Lester, farm located on the east side of State Secondary Road 1143 at the end of a dirt road located 0.5 mile south of the junction of State Secondary Roads 1143 and 1147.

Columbus County. That part of the county lying north and west of a line beginning at a

point where State Highway 211 intersects the Bladen-Columbus County line, thence south along said Highway 211 to its intersection with State Secondary Road 1740, thence southwest and south along said State Secondary Road 1740 to its junction with U.S. Highways 74 and 76, thence west along said highways to its intersection with White Marsh Swamp, thence south along said swamp to its junction with Cypress Creek, thence southwest along said creek to its intersection with State Highway 130, thence northwest along said highway to its junction with State Secondary Road 1166, thence southwest along said road to its junction with State Secondary Road 1157, thence southwest along said road to its junction with U.S. Highway 701, thence south and west along said highway to its intersection with State Secondary Road 1314, thence west along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with the North Carolina-South Carolina State line.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of said road 1847 with State Secondary Road 1740.

The Long, J. M., farm located on the southwest side of State Secondary Road 1113 and 0.4 mile northwest of its junction with State Secondary Road 1108.

The McLamb, H. M., farm located on the southwest side of State Secondary Road 1113 and 0.5 mile northwest of its junction with State Secondary Road 1108.

The Owen, J. A., farm located on the southwest side of State Highway 87 and 0.3 mile southeast of the intersection of said Highway 87 with the Bladen-Columbus County line.

The Shaw, Archie, farm located 0.2 mile southeast of State Secondary Road 1864 and 0.5 mile southeast of the junction of said Road 1864 with State Secondary Road 1808.

The Shaw, Charles H., farm located 0.1 mile north of State Secondary Road 1847 and 0.9 mile northeast of the junction of said Road 1847 with State Secondary Road 1908.

The Shipman, C. S., farm located on the east side of State Secondary Road 1909 and 0.6 mile southeast of the junction of said Road 1909 with State Secondary Road 1908.

The Spivey, D. M., farm located in the northeast corner of the intersection of U.S. Highway 701 and Gum Swamp.

The Suggs, Lacy, farm located at the end of a dirt road 0.5 mile southeast of the junction of said road with State Secondary Road 1108, said junction being 0.7 mile northeast of the junction of State Secondary Road 1108 and State Secondary Road 1118.

The Young, Grace, farm located on the west side of N.C. State Secondary Road 1914 and 0.2 mile south of the junction of said road with N.C. State Secondary Road 1904.

Craven County. The Chapman, Idel M., farm located on the west side of State Secondary Road 1459 and 0.1 mile north of junction of State Secondary Road 1463 with said road 1459 and 0.3 mile off west side of State Secondary Road 1459.

The Goodman, W. D., farm located on both sides of State Secondary Road 1263 and 2.6 miles east of its southern junction with State Secondary Road 1262.

The Hawkins, Annie A., farm located on both sides of State Secondary Road 1263 and 1 mile east of the junction of said Road 1263 with State Secondary Road 1262.

The Hawkins, Mattie, farm located on the west side of State Secondary Road 1263 and 1.2 miles east and north of its southern junction with State Secondary Road 1262.

The Hodges, Mary K., farm located on both sides of State Secondary Road 1263 and 2.2 miles east of its southern junction with State Secondary Road 1262.

The West, Gladys W., farm located on both sides of State Secondary Road 1263 and 1.4 miles east of its southern junction with State Secondary Road 1262.

The White, Raymond E., farm located on both sides of State Secondary Road 1263 and 0.2 mile east of its northern junction with State Secondary Road 1262.

Cumberland County. All of Cumberland County excluding the Fort Bragg Military Reservation, the area within the corporate limits of the city of Fayetteville, and the unincorporated communities of East Fayetteville and Bonnie Doone.

Duplin County. That area bounded by a line beginning at a point where State Secondary Road 1337 intersects the Duplin-Sampson County line, thence northeast along said road to its junction with State Highway 50, thence northwest along said highway to its junction with State Secondary Road 1355, thence northeast along said road to its junction with State Secondary Road 1332, thence northeast along said road to its junction with State Secondary Road 1304, thence southeast along said road to its intersection with Bear Swamp, thence east along said swamp to its junction with Goshen Swamp, thence southeast along said swamp to its intersection with State Secondary Road 1004, thence southeast along said road to its intersection with Nahunga Creek, thence southwest along said creek to its intersection with State Secondary Road 1301, thence northwest along said road to its junction with State Secondary Road 1346, thence southwest along said road to its junction with State Secondary Road 1385, thence west along said road to its junction with State Highway, 50, thence southeast along said highway to its junction with State Secondary Road 1900, thence southeast along said road to its junction with State Secondary Road 1003, thence east along said road to its junction with State Highway 11, thence south along said highway to its junction with State Secondary Road 1922, thence southwest along said road to its junction with State Secondary Road 1909, thence south along said road to its junction with State Secondary Road 1912, thence west along said road to its intersection with the Magnolia city limits, thence south, west, and north along said city limits to its intersection with State Secondary Road 1003, thence southwest along said road to its junction with State Secondary Road 1101, thence southeast along said road to its intersection with State Secondary Road 1102, thence southwest along said road to its junction with State Secondary Road 1126, thence west along said road to its intersection with State Secondary Road 1100, thence southeast along said road to its intersection with State Secondary Road 1102, thence south along said road to its junction with State Secondary Road 1129, thence southwest along said road to its intersection with State Secondary Road 1128, thence northwest along said road to its intersection with Duplin-Sampson County, thence north along said county line to the point of beginning.

The Alphin, Clara, farm located in the north junction of State Secondary Road 1004 and State Secondary Road 1505.

The Beard, Mary Lou, farm located on both sides of State Secondary Road 1961 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bostic, Jake, farm located on both sides of State Secondary Road 1961 and 0.5 mile west of the intersection of said road and the Northeast Cape Fear River.

The Bradshaw, Gene A., farm located on the south side of State Secondary Road 1321 and 0.8 mile west of the junction of said road with State Secondary Road 1302.

The Bradshaw, Milton J., farm located at the northwest end of State Secondary Road 1980.

The Branch, Hall, farm located on the southeast side of State Highway 11 and 0.6 mile southwest of the junction of said higway and State Secondary Road 1004.

The Britt, Ben, farm located on the north side of State Secondary Road 1306 and 0.1 mile east of its junction with State Secondary Road 1361.

The Britt, Cornia, farm located on both sides of State Secondary Road 1545 and 0.5 mile east of the junction of said road and State Secondary Road 1564.

The Brock, Jack, farm located on both sides of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Brown, George, farm located on the west side of State Secondary Road 1004 and 0.8 mile north of its junction with State Secondary Road 1504.

The Dail, Albert D., farm located on both sides of State Secondary Road 1524 and 0.1 mile north of the junction of said road and State Secondary Road 1525.

The Davis, Jimmie, farm located on the eas side of State Highway 111 and the south side of State Secondary Road 1546.

The Davis, Wenzell, farm located on the south side of State Secondary Road 1560 and 0.3 mile south of the junction of said road anc State Secondary Road 1537.

The English, James Earl, farm located on the north side of State Secondary Road 1980 and 0.3 mile southwest of the junction of said road and State Secondary Road 1979.

The Garner, S. C., farm located on the south side of State Secondary Road 1306 and 0.5 mile west of the junction of said road and State Secondary Road 1511.

The Goodson, Emma, farm located on the south side of State Secondary Road 1501 and 0.3 mile west of the junction of said road and State Secondary Road 1505.

The Grady, E. C., farm located on both sides of State Secondary Road 1700 and 0.7

mile west of the intersection of said road and the Northeast Cape Fear River.

The Grady, Robert, farm located on the east side of State Secondary Road 1560 and the south side of State Secondary Road 1537.

The Grady, S. Leland, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of the intersection of said road and the Northeast Cape Fear River.

The Green, Willie, farm located on both sides of State Secondary Road 1971, and 0.6 mile southwest of the junction of said road and State Highway 50.

The Harper, Milo, farm located on the northwest side of State Secondary Road 1539 and 0.6 mile northeast of the junction of said road and State Secondary Road 1540.

The Herring Estate, Jeff, farm located on the north side of State Secondary Road 1545 and 0.6 mile east of the junction of said road and State Secondary Road 1564.

The Horne, Harry, farm located on the south side of State Secondary Road 1961 and 0.8 mile west of the intersection of said road and State Secondary Road 1962.

The Howard, Henry, farm located on the north side of State Secondary Road 1700 and 0.8 mile west of the intersection of said road and the Northeast Cape Fear River.

The Hussey Estate, M. W., farm located on the east side of State Secondary Road 1560 and 0.2 mile south of the junction of said road and State Secondary Road 1537.

The Ivey, Jr., C. C., farm located on the east side of State Secondary Road 1361 and 0.3 mile south of its junction with State Secondary Road 1362.

The Ivey, Foy, No. 1, farm located on the north side of State Secondary Road 1306 and 0.3 miles east of its junction with State Secondary Road 1361.

The Ivey, Foy, No. 2, farm located on both sides of State Secondary Road 1004 and 0.1 miles south of its junction with State Secondary Road 1561.

The Jernigan, Cornelia, farm located on the west side of State Secondary Road 1360 and 0.4 mile south of its junction with State Secondary Road 1004.

The Johnson, Eldora, farm located on both sides of State Secondary Road 1123 and 1.2 miles west of the junction of said road and State Secondary Road 1103.

The Jones, Billy, farm located on both sides of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, H. A., farm located on south side of State Secondary Road 1700 and 0.7 mile west of the intersection of said road and the Northeast Cape Fear River.

The Jones, Nora, farm located on west side of State Secondary Road 1004 and 0.3 mile south of its junction with State Secondary Road 1365.

The Kalmar, J. N., farm located on the south side of State Highway 403 and 0.5 mile west of its junction with State Secondary Road 1304.

The Kennedy, Owen, farm located on the east side of State Secondary Road 1726 and the southeast side of State Secondary Road 1702.

The Kennedy, Sidney J., farm located on the east side of State Secondary Road 1718 and 0.2 mile south of the junction of said road and State Highway 41.

The King, W. R., farm located on the east side of State Secondary Road 1302 and 0.1 mile south of the junction of said road and State Secondary Road 1308.

The Kornegay, Byrus, farm located on the east side of State Highway 403 and 0.1 mile north of its junction with State Secondary Road 1369.

The Kornegay, Ethyl, farm located 0.2 mile east of State Secondary Road 1501 and 0.6 mile south of the intersection of said road and State Secondary Road 1519.

The Kornegay Estate, Issac, located on the southwest side of State Secondary Road 1306 and 0.7 mile northwest of the junction of said road and State Secondary Road 1305.

The Lane, David, farm located 0.1 mile east of State Secondary Road 1369 and 0.1 mile south of its junction with State Highway 403.

The Lewis, Merle S., farm located on the east side of State Secondary Road 1004 and both sides of State Secondary Road 1508.

The Marshburn, Freeman J., farm located on both sides of State Secondary Road 1128 and 0.7 mile southeast of the intersection of said road and State Secondary Road 1129.

The Maxwell, Myra, farm located on the southeast side of State Secondary Road 1306 and the west side of State Secondary Road 1562.

The McCullen, Larry, farm located on the northeast side of State Highway 24 and 0.2 mile northwest of the junction of said highway and State Secondary Road 1904.

The McGowan, Woodell, farm located on the south side of State Secondary Road 1961 and 1.1 mile west of the intersection of said road and State Secondary Road 1962.

The Mercer, Cathleen, farm located on the south of State Secondary Road 1703 and 1.1 mile east of the intersection of said road and State Secondary Road 1704.

The Mercer, Herbert C., farm located on the south side of State Secondary Road 1703 and 0.7 mile west of the junction of said road and State Secondary Road 1732.

The Norris, Maggie T., farm located on the south side of State Secondary Road 1700 and 1.4 mile east of the intersection of said road and State Secondary Road 1701.

The Outlaw, Bennie F., farm located on both sides of State Secondary Road 1524 and north side of State Secondary Road 1525.

The Outlaw, Emma, farm located on the south of State Secondary Road 1509 and 0.5 mile southwest of the junction of said road and State Secondary Road 1510.

The Parrott, Jr., Mrs. Frank, farm located on the south side of State Secondary Road 1703 and 0.3 mile east of the intersection of said road and State Secondary Road 1704.

The Pate, Robert Lee, farm located on both sides of State Secondary Road 1357 and 0.9 mile southwest of the junction of said road and State Secondary Road 1306.

The Powell, William F., farm located on both sides of State Secondary Road 1128 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1129.

The Precythe, Harold, farm located on the east side of U.S. Highway 117 and 0.1 mile south of the junction of said highway and State Secondary Road 1354.

The Rivenbark, George W., farm located on the northwest side of State Secondary Road 1131 and 0.4 mile southwest of the junction of said road and State Secondary Road 1128.

The Rouse, Beatrice S., farm located on both sides of State Secondary Road 1980 and at the west end of said road.

The Rouse, Jim, farm located on both sides of State Secondary Road 1537 and 0.3 mile north of the junction of said road and State Secondary Road 1306.

The Rouse, Rouke, farm located on the north side of State Secondary Road 1537 and the west side of State Secondary Road 1538.

The Shepard, J. T., farm located on both sides of State Secondary Road 1732 and 0.2 mile north of the junction of said road and State Secondary Road 1703.

The Smith, R. J., farm located on the north side of State Highway 11 and 1.2 miles east of the junction of said highway and State Highway 111.

The Smith, Sallie P., farm located on the northeast side of State Highway 111 and 0.8 mile southeast of the Duplin-Wayne County line.

The Stokes, Fred, farm located on the south side of State Secondary Road 1980 and 2.4 miles west of the junction of said road and State Secondary Road 1979.

The Stokes, William C., farm located at the southwest end of State Secondary Road 1980.

The Summerlin, D. C., farm located on the north side of State Secondary Road 1513 and 0.4 mile east of the junction of said road and State Secondary Road 1565.

The Summerlin, Lannie, farm located on the both sides of State Secondary Road 1359 and 0.3 mile southwest of its junction with State Secondary Road 1306.

The Summerlin, Oliver, farm located on the south side of State Highway 403 and 0.1 mile east of the corporate limits of the town of Faison.

The Sumner, India, farm located on the southwest side of State Highway 111 and 1.2 miles south of the intersection of said highway and State Secondary Road 1700.

The Sutton, Effie O., farm located on the northeast side of State Secondary Road 1004 and 0.7 mile northwest of its junction with State Secondary Road 1504.

The Turner, Lumas, farm located on the south side of State Secondary Road 1703 and 0.6 mile west of the junction of said road and State Secondary Road 1732.

The Walker, C. P., Estate, farm located on the west side of State Secondary Road 1368 and 1.2 miles north of its junction with State Secondary Road 1364.

The Whaley, Bennie, farm located on the southeast side of State Secondary Road 1961 and 0.3 mile northeast of the junction of said road and State Secondary Road 1800.

The Whitman, Herman E., farm located on the south side of State Secondary Road 1300 and 0.1 mile west of the junction of said road and State Road 1361.

The Whitman, Herman E., farm located on the north side of State Secondary Road 1300 and 0.8 mile of the intersection of said road and State Secondary Road 1301.

The Williams, McArthur, farm located on the south side of State Secondary Road 1961

and 1 mile west of the intersection of said road and State Secondary Road 1962.

The Wilson, Mammie, farm located on the east side of State Highway 111 and 1.0 mile south of the intersection of said highway and State Secondary Road 1700.

Green County. That area bounded by a line beginning at a point where State Highway 102 intersects State Highway 123 and extending south along State Highway 123 to its intersection with Contentnea Creek, thence northwest along said creek to its junction with Panther Swamp. Thence northerly along said Panther Swamp to its intersection with U.S. Highway 13–258, thence easterly along said highway to the point of beginning.

The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with North Carolina Highway 102.

The Dixon, John, farm located on the east side of State Secondary Road 1004 at the junction on State Secondary Road 1405.

The Dixon, Sudie, farm located on the west side of State Secondary Road 1004 and 0.2 mile south of its junction of State Secondary Road 1405.

The Murphrey, Edward, farm located on the east side of State Secondary Road 1004 and 0.3 mile south of its junction with State Highway 102.

The Whitaker, J. H., farm located on the east side of State Secondary Road 1004 and 0.6 mile south of its junction with State Highway 102.

Harnett County. That area bounded by a line beginning at a point on the Harnett-Lee County line due west of the head of Barbecue Swamp and extending east to the head of said swamp, thence south and east along Barbecue Swamp to its intersection on State Secondary Road 1201, thence south and southeast along said road to its junction with State Highway 27, thence southeast along said highway to its junction with State Highway 24, thence southeast along said highway to its junction with State Secondary Road 1111, thence southwest along said road to its intersection with Harnett-Moore County line, thence northwest along the Harnett-Moore County line to its junction with the Moore-Harnett-Lee County line, thence northeast along the Harnett-Lee County line to the point of beginning.

That area bounded by a line beginning at a point where the Harnett-Cumberland County line and McLeod Creek intersect and extending northwest along said creek to its intersection with State Secondary Road 1117, then northeast, northwest and north along said road to its intersection with Anderson Creek, thence southeast along said creek to its intersection with the State Highway 210, thence northeast along said highway to its junction with State Secondary Road 2030, thence southeast along said road to its junction with State Secondary Road 2031, thence southwest along said road to its intersection with the Harnett-Cumberland County line, thence southwest and west along said county line to the point of beginning.

The Cook, A. L., farm located on the east side of State Secondary Road 1201 and 1.5 miles southeast of the junction of said road with State Secondary Road 1203.

The Gilchrist, Leonard W., farm located on the southeast side of State Secondary Road 1111, 0.4 mile north of the junction of said road with State Secondary Road 1110.

The Johnson, Sr., Jonah C., farm located at the junction of State Secondary Roads 1553 and 1555: The farm lies in the northeast portion of this junction.

The Keath, Vick, farm located on the east side of State Secondary Road 1293 and 0.7 mile southwest of the junction of said road with State Secondary Road 1114.

The McAden, J. L., farm located on southeast side of State Highway 27 and 0.6 mile southwest of the intersection of said highway with State Highway 87.

The Proctor, T. G., farm located on the northeast side of State Highway 27 at that point where said highway forms on overpass over State Highway 87.

The Thomas, Floyd, E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of the junction of said road with State Secondary Road 1117.

The Womack, E. H., farm located on east side of State Highway 27, and 1.0 mile north of the junction of said highway with State Highway 24.

Hoke County. The entire county excluding Fort Bragg Military Reservation.

Johnston County. The Baker, Mrs. Lula, farm located on the east side of State Highway 242 and 0.2 mile south of the intersection of said highway and State Secondary Road 1116.

The Blackman, Dewey, farm located on the south side of State Secondary Road 1146, and 0.4 mile east of the junction of said road with State Secondary Road 1145.

The Braswell, J. G., farm located on the east side of State Secondary Road 2519 and 0.4 mile north of the junction of State Secondary Roads 2519 and 2520.

The Davis, I. H., farm located on the southwest side of State Secondary Road 1197 and 0.1 mile southeast of the junction of said road with State Secondary Road 1198.

The Edwards, Archie, farm located on the south side of State Secondary Road 2542 and 0.6 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on the west side of State Secondary Road 2541 and 0.5 mile south of the junction of said road with State Secondary Road 1007.

The Everett, Betty, farm located on a farm road and 0.6 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Everett, Jaspar, farm located on a farm road and 0.5 mile west of its junction with State Secondary Road 2541, said junction being 1.9 miles south of the junction of State Secondary Roads 2541 and 1007.

The Hudson, Price, Estate farm located on a farm road and 0.4 mile north of its junction with State Secondary Road 1008, said junction being 0.8 mile northeast of the intersection of State Secondary Road 1008 with U.S. Highway 701.

The Johnson, Annie, farm located on the west side of State Secondary Road 1138 and 0.5 mile south of its junction with State Secondary Road 1144.

The Johnson, Corby, farm located on the southwest side of State Highway 50 and 0.4 mile southeast of the intersection of said highway and State Secondary Road 1124.

The Johnson, Floyd, farm located on the west side of State Secondary Road 1124 and 0.2 mile south of the intersection of said road and State Secondary Road 1122.

The Johnson, Wade, farm located on both sides of State Secondary Road 1144 and 0.2 mile west of the junction of said road with State Secondary Road 1138.

The Jones, U. E., farm located on the south side of State Secondary Road 1128 and 0.7 mile east of the junction of said road with State Secondary Road 1124.

The Martin, Emitt, farm located on the east of State Secondary Road 2519 and 0.3 mile north of the junction of State Secondary Roads 2519 and 2520.

The Martin, John L., farm located on the west side of State Secondary Road 1201 and 0.3 mile north of the juction of said road with State Secondary Road 1200.

The McArthur, Margaret, farm located on a farm road and 1.4 miles north of its junction with State Secondary Road 1199 and 0.9 mile west of the junction of said road with State Secondary Road 1008.

The Naylor, Mrs. Luby, farm located on the southwest side of State Highway 50 and 0.3 mile northwest of the intersection of said highway and State Secondary Road 1124.

The Smith, Clifton, farm located on the east side of State Highway 96 at the junction of said highway and State Secondary Road 1120.

The Summerlin, Everett L., farm located on the north side of State Secondary Road 1008, and 0.6 mile west of the junction of said road with State Secondary Road 1199.

The Tart, Allen, farm located on the southwest corner of the junction of State Highway 96 and State Secondary Road 1120.

The Williams, D. C., farm located on the south side of State Secondary Road 1128 and 0.3 mile east of the junction of said road with State Secondary Road 1124.

Jones County. The Franck, Mrs. Wilber, farm located on the south side of State Secondary Road 1116 and 1.9 miles west of junction of said road with State Secondary Road, 1115.

The Simpson, Eugene T., farm located on the south side of State Secondary Road 1116 and 2.5 miles west of the junction of said road at State Secondary Road 1115.

Lee County. The McGilvary, Aquilla, farm located north of State Secondary Road 1188 and 0.6 mile east of the junction of said road with State Secondary Road 1001.

Lenoir County. The Barber, Clarence, farm located on the both sides of State Secondary Road 1301 with 0.2 mile northeast of its junction with State Secondary Road 1302.

The Braxton, Clyde, Estate located on the both sides of State Secondary Road 1802 and 0.9 mile northeast of the junction of State Secondary Road. 1802 and State Highway 11.

The Brown, Nannie H., farm located in the southwest junction of State Secondary Roads 1152 and 1309.

The Carey, Jack, farm located on the both sides of State Secondary Road 1906 and 1.0 mile east of its junction with U.S. Highway 285.

The Carr, Lillian, farm located on the southwest side of State Secondary Road 1524 and 0.1 mile south of its junction with State Secondary Road 1526.

The Carter, Ephrom, farm located on the south side of State Secondary Road 1116 and 1.5 miles east of its junction with State Highway 11.

The Elmore, Lucy H., No. 1, farm located on the south side of State Secondary Road 1324 and 0.2 mile west of its junction with State Secondary Road 1333.

The Foss, Reginal D., farm located on the north side of State Secondary Road 1316 and 0.6 mile northwest of its junction with State Secondary Road 1318.

The Hamilton, C. W., farm located on the southeast side of State Secondary Road 1802 and 1.2 miles northeast of its junction with State Highway 11.

The Herring, Ben D., No. 1, farm located on the both sides of State Secondary Road 1330 and 0.2 mile west of the junction of State Secondary Roads 1330 and 1331.

The Herring, Ben D., No. 2, farm located on the west side of State Secondary Road 1310 and 0.3 mile south of its junction with State Secondary Road 1311.

The Herring, Lewis R., No. 1, farm located on the south side of State Secondary Road 1324 and 0.3 mile west of its junction with State Secondary Road 1333.

The Howard, Clarence, farm located on the south side of State Secondary Road 1105 and 0.1 mile east of its intersection with State Secondary Road 1118.

The Jarman, F. R., farm located on the southeast side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

The Jones, Edward S., farm located on the west side of U.S. Highway 258 and 0.3 mile north of its junction with State Secondary Road 1116.

The Joyner Farms, Inc., farm located on the both sides of State Secondary Road 1324 and 0.5 mile east of its junction with State Secondary Road 1335.

The Moody, Alton, farm located on the south side of State Highway 55 and 0.6 mile northeast of its junction with State Secondary Road 1161.

The Moye, Lenton G., farm located on the west side of State Secondary Road 1335 and 0.3 mile north of its junction with State Secondary Road 1324.

The Parrott Farms, Inc., farm located on the northwest side of State Secondary Road 1157 and 0.7 mile northwest of its intersection with State Highway 55.

The Rouse, Forrest, farm located on the northwest side of State Secondary Road 1143 and 2.9 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Jim W., farm located on the northeast side of State Secondary Road 1143 and 2.8 miles northwest of its intersection with State Secondary Road 1154.

The Rouse, Leon, farm located on the both sides of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1324.

The Singleton, Ruby S., farm located on the east side of State Secondary Road 1802 and 0.6 mile south of its junction with State Secondary Road 1801.

The Sutton, George Hodges, No. 1, farm located on the southwest junction of State Secondary Roads 1324 and 1307.

The Sutton, Iris, farm located on the east side of State Secondary Road 1152 and 0.6 mile south of its junction with State Secondary Road 1324.

The Sutton, John W., farm located on the southeast junction of State Secondary Roads 1330 and 1333.

The Sutton, M. L., farm located on the southeast side of State Secondary Road 1311 and 0.8 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Nathan, farm located on the southeast side of State Secondary Road 1311 and 0.6 mile southwest of its junction with State Secondary Road 1318.

The Sutton, Norman, farm located on the northwest side of State Secondary Road 1308 at the end of Farm road located 0.3 mile southwest of junction of State Secondary Roads 1308 and 1324.

The Sutton, Prentice, farm located on the south side of State Secondary Road 1503 and 0.3 mile southeast of its intersection with State Secondary Road 1327.

The Sutton, Robert H., farm located on the south side of State Secondary Road 1324 and 0.2 mile east of its junction with State Secondary Road 1327.

The Sutton, Woodrow W., farm located on the north side of State Secondary Road 1331 and 0.5 mile west of its junction with State Secondary Road 1333.

The Taylor, Heber, farm located on the north side of State Secondary Road 1161 and 0.3 mile east of its juction with State Highway 55.

The Walters, H. F., farm located on both sides of State Secondary Road 1335 and 0.4 mile north of its junction with State Secondary Road 1324.

The Waters, Thomas, Estate located on both sides of State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1317.

The Wood, C. W., farm located on the northwest side of State Secondary Road 1311 and 0.7 mile southwest of its junction with State Secondary Road 1318.

Moore County. The Bryant, R. E., farm located on both sides of State Secondary Road 1815 and 0.5 mile southwest of the junction of said road with U.S. Highway 15 501.

The Hardy, N. W., farm located on both sides of State Secondary Road 2007 and 0.2 mile southeast of the junction of said road with State Secondary Road 2005.

The Laton, William A., farm located on the east side of State Secondary Road 1004 and 0.3 mile north of the intersection of said road with State Secondary Road 1113.

The Marks, E. M., farm located on the south side of State Secondary Road 2019 and 2.5 miles east of the junction of said road and State Secondary Road 2018.

The McLaurin, Hattie J., farm located on the north side of N.C. Highway 211 and 0.5 mile west of the junction of said highway with State Secondary Road 2075.

The McNeill, Lena Bell, farm located on the northwest side of State Secondary Road 2077 and 0.5 mile southwest of the junction of said road with State Highway 211.

The Thomas, Claude and Ted, farm located on the west side of State Secondary Road 1128 and 0.5 mile northwest of the junction of said road with State Secondary Road 1122.

Onslow County. The Cox, Robert B., farm located on the southeast side of State Secondary Road 1224, and 0.7 mile from the junction of said road and State Secondary Road 1222.

The Lewis, L. Bryan, farm located on the southeast side of State Secondary Road 1224, and 0.9 mile from the junction of said road and State Secondary Road 1222.

The Marshburn, James B., farm located on the southeast side of State Secondary Road 1224, and 0.8 mile from the junction of said road and State Secondary Road 1222.

The McAllister, Henry, farm located on both sides of State Secondary Road 1316 and 1 mile southwest of said road and its junction with State Secondary Road 1308.

Pender County. That area bounded by a line beginning at a point where State Secondary Road 1104 intersects the Pender-Bladen County line, and extending northeast along said county line to its junction with Black River, thence southeast along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1103, thence southeast along said road to its junction with State Secondary Road 1104, thence southwest and northwest along said road to the point of beginning.

That area bounded by a line beginning at a point where Moore's Creek intersects State Highway 53, and extending east along said highway to its intersection with State Secondary Road 1121, thence south along said road to its intersection with State Secondary Road 1125, thence west along said road to its intersection with Moores Creek, thence northeast along said creek to the point of beginning.

That area bounded by a line beginning at a point where State Secondary Road 1517, junctions with U.S. Highway 117, and extending northwest along said highway to its intersection with Walker Swamp, thence northeast along said swamp to its junction with Pike Creek, thence southeast along said creek to its junction with the Northeast Cape Fear River, thence south along said river to its intersection with State Highway 210, thence southwest along said highway to its junction with State Secondary Road 1518, thence southeast along said road to its junction with State Secondary Road 1517, thence westerly along said road to the point of beginning.

The Alderman, Bessie, farm located on the north side of State Highway 53 and 0.1 mile west of its intersection with State Secondary Road 1121.

The Anderson, Julian W., farm located on both sides of State Secondary Road 1108 and

0.9 mile northwest of the junction of said road and State Secondary Road 1107.

The Armstrong, Willie, farm located 0.5 mile west of State Secondary Road 1408 and 0.3 mile south of the junction of said road with State Highway 210.

The Colvin, Alex, farm located on the northwest side of State Secondary Road 1120 and 1.4 miles southwest of the intersection of said road and U.S. Highway 421.

The Corbett, P. P. Estate, farm located 0.1 mile west of State Secondary Road 1202 and 0.2 mile north of its junction with State Secondary Road 1100.

The Kea, Leo, farm located 0.5 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The Kea, Nora, farm located 0.1 mile west of the end of State Secondary Road 1108.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of said road and State Secondary Road 1104.

The McCallister, Mary K., farm located 0.2 mile east of State Secondary Road 1105 and 1 mile southwest of the junction of said road and State Secondary Road 1104.

The McLendon, Evander, farm located 0.4 mile north of State Secondary Road 1411 and 0.3 mile east of its intersection with Pike Creek.

The Murphy, Henry, farm located 0.1 mile west of State Secondary Road 1121 and 0.4 mile north of its intersection with State Highway 53.

The Stringfield Estate, John, located on the southwest side of State Secondary Road 1517 and 1.4 miles east of the junction of said road and U.S. Highway 117.

The Thomas, Kenneth, farm located on the west side of State Secondary Road 1125 and 0.2 mile north of its junction with State Secondary Road 1121.

The Walker, Janie N., farm located on both sides of State Secondary Road 1125 and on the west side of State Secondary Road 1121.

The Williams, John H., and Heirs, farm located on the east side of State Secondary Road 1520 and 2.7 miles north of the junction of said road and State Highway 210.

Pitt County. That area bounded by a line beginning at a point where State Secondary Road 1919 intersects the Pitt-Craven County Line, thence southwest along said county line to its intersection with State Highway 118, thence westward along said highway to it's intersection with State Secondary Road 1753, thence northward along said road to its junction with State Secondary Road 1919, thence eastward to the point of beginning.

The Garris, Bruce E., farm located in the south junction of State Highway 118 and State Secondary Road 1916.

The Hodges, M. B., farm located on the east side of State Secondary Road 1907 and 1.1 miles north of State Highway 118.

Richmond County. The Autry, J. H., farm located on the north side of State Secondary Road 1803 and 0.7 miles east of Osborne.

The Beck, Lacy A., farm located on both sides of State Secondary Road 1607 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1608.

The Bethea, Queen, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile southeast of the intersection of said road and State Secondary Road 1825.

The Chappell, Fred, Jr., located on the northwest side of N.C. Highway 177 and 0.5 mile northeast of the junction of said road and State Secondary Road 1607.

The David, Ethel, farm located on both sides of State Secondary Road 1803, on the west side of the intersection of said road with State Secondary Road 1825.

The Davis, Climon, farm located on the northwest side of N.C. Highway 38 and 0.5 mile northeast of the intersection of said road and State Secondary Road 1803.

The Davis, Katherine, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 88.

The Dial, Dormic, farm located on the north side of State Secondary Road 1607 and 0.8 mile west of the intersection of said road and State Secondary Road 1608.

The Dumas, Elnora, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The Dumas, Reba, farm located on the northeast side of State Secondary Road 1803 and 0.3 mile northwest of said intersection of N.C. Highway 38.

The Elizhbugar, Charity, farm located on the northeast side of State Secondary Road 1003 and 2 miles northwest of its junction with State Secondary Road 1475.

The Godfrey, J. R., farm located on the northwest side of State Secondary Road 1318 and 0.2 mile north of its junction with State Secondary Road 1310.

The Hailey, Annie, farm located on the north side of State Secondary Road 1475 and 1.7 miles west of its junction with U.S. Highway 1.

The Hailey, Maria, farm located on the southwest side of State Secondary Road 1440 and 0.3 mile southeast of its junction with State Secondary Road 1433.

The Hamlet Gin & Supply Co., farm located on both sides of State Secondary Road 1803 and on the east side of the intersection of said road and State Secondary Road 1825.

The Ingram, Rome, farm located on the southwest side of State Secondary Road 1003 and 1.8 miles northwest of its junction with State Secondary Road 1475.

The Little, John, farm located on the southeast side of State Secondary Road 1442 and at the junction of said road with State Secondary Road 1476.

The McLaurin, Meta, farm located on the southwest side of State Secondary Road 1803 and 0.3 mile southeast of the intersection of said road and State Secondary Road 1825.

The McNeill, Dalton, farm located on the southwest side of State Secondary Road 1003 and 1.9 miles northwest of its junction with State Secondary Road 1475.

The Quick, Julius, farm located on the northeast side of State Secondary Road 1992 and 0.6 mile northeast of its junction with State Secondary Road 1994.

The Rush, Eli, farm located on the northwest side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Rush, James, farm located on the southeast side of State Secondary Road 1442 and 0.7 mile northeast of its junction with State Secondary Road 1489.

The Sorenzen, Gladys, farm located on the southwest side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

The Steen, Willard, farm located on the southwest side of State Secondary Road 1803 and 0.2 mile southeast of the intersection of said road and State Secondary Road 1825.

The Terry, Ruth, farm located on both sides of State Secondary Road 1442 and 0.2 mile northeast of its junction with State Secondary Road 1477.

The Terry, Tom, farm located on both sides of State Secondary Road 1442 and 0.3 mile northeast of its junction with State Secondary Road 1477.

The Terry, W. C., farm located on the west side of State Secondary Road 1424 at its junction with State Secondary Road 1507 at Roberdel, N.C.

The Thomas, Walter, farm located on both sides of U.S. Highway 220 and 0.4 mile northeast of its junction with State Secondary Road 1433.

The Wall, Ben, farm located on the northeast side of State Secondary Road 1440 and 0.4 mile southeast of its junction with State Secondary Road 1433.

The Waters, Will, farm located on both sides of State Secondary Road 1623 and 0.4 mile southwest of its junction with State Secondary Road 1607.

The Watkins, John Q., farm located on the southeast side of State Secondary Road 1476 and 0.3 mile northeast of its junction with State Secondary Road 1442.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

The York, Will, farm located on the northeast side of State Secondary Road 1803 and 0.4 mile northwest of the intersection of said road and N.C. Highway 38.

Sampson County. The entire county.

Scotland County. That area bounded by a line beginning at a point where U.S. Highway 15–401 intersects the North Carolina-South Carolina State line and extending northeast along said highway to its junction with U.S. Highway 15A–401A, thence north along said highway to its junction with U.S. Highway 501, thence north along said highway to its intersection with U.S. Highway 15–401, thence southwest along said highway to its intersection with State Secondary Road 1300, thence northwest along said road to its junction with State Secondary Road 1116, thence northwest along said road to its junction with State Secondary Road 1324, thence north along said road to its junction with State Secondary Road 1345, thence northwest along said road to its intersection with State Secondary Road 1341, thence northeast along said road to its junction with State Secondary Road 1328, thence north along said road to its intersection with the southern boundary of the Sandhills Game Management Area, thence east along said

boundary to its intersection with U.S. Highway 15–1501, thence north along said highway to its intersection with the Scotland-Hoke County line, thence southeast along said county line to the Scotland-Robeson County line, thence south and southwest along said county line to the North Carolina-South Carolina State line, thence northwest along said State line to the point of beginning, excluding the area within the corporate limits of the city of Laurinburg and the town of East Laurinburg.

The Butler, Luther, farm located on the south side of State Secondary Road 1154 and 0.2 mile east of the junction of said road with State Secondary Road 1155.

The Calhoun, L. E., farm located on the south side of State Highway 79 and and 0.3 mile west of its junction with State Secondary Road 1118.

The Gibson, H. P., Estate, farm located on the north side of State Highway 79 and 0.4 mile west of its junction with State Secondary Road 1118.

McCoy, R. F., farm located on the east side of State Secondary Road 1346 and 0.4 mile north of its junction with State Secondary Road 1343.

The Morgan, J. D., farm located on the east side of State Secondary Road 1346 and 0.5 mile north of the junction of said road with State Secondary Road 1343.

The Morgan, J. D., farm located on both sides of State Secondary Road 1345 and 0.1 mile northwest of its junction with State Secondary Road 1342.

The Newton, Peter F., farm located at the intersection of State Secondary Roads 1334, 1336, and 1345.

The Sharpe, Preston, farm located on the south side of U.S. Highway 74 and 0.2 mile west of the junction of said highway with State Secondary Road 1153.

The Steele, J. D., farm located on both sides of State Secondary Road 1351 and 0.9 mile northwest of the junction of said road with State Secondary Road 1346.

Wayne County. That area bounded by a line beginning at a point where the State Highway 111 and State Highway 55 intersect, thence southwest and west along State Highway 55 to its intersection with State Secondary Road 1937, thence northerly on said road to its junction with State Secondary Road 1932, thence north on said road to the intersection with State Secondary Road 1120, thence easterly along said road to its junction with State Secondary Road 1915, thence east along a line projected from a point at the junction of State Secondary Roads 1120 and 1915 to the junction of said line with a point located at the junction of Sleepy Creek and Neuse River, thence east along said river to its intersection with State Highway 111, thence south along said highway to the point of beginning.

The Barwick, George, farm located on the east side of State Secondary Road 1931 and 0.1 mile south of its junction with State Secondary Road 1930.

The Baucom, Howard, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its junction with State Secondary Road 1927.

The Benton, Bernice L., farm located on the south side of State Secondary Road 1730 and 0.3 mile east of its junction with State Highway 111.

The Brock, Odell, farm located on the north side of State Secondary Road 1210 and 0.3 mile east of its junction with State Secondary Road 1209.

The Carraway, Ethel, farm located on the east side of State Secondary Road 1915 and 0.1 mile north of the junction of said road and State Secondary Road 1120.

The Casey, Emma, E., farm located 7 miles east of Goldsboro on the north side of U.S. Highway 70 and 0.4 mile east of the junction of State Secondary Road 1721 and said highway.

The Coor, O. S., farm located on both sides of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Crawford, William P., farm located on the south side of State Secondary Road 1330 and 0.9 mile west of State Highway 581.

The Daly, N. B., farm located on the north side of State Secondary Road 1730 and 0.8 mile east of the junction of said road with State Highway 111.

The Dawson, L. A., farm located on the west side of State Highway 111 and 0.5 mile south of the junction of said highway and State Secondary Road 1730.

The Edwards, Julia, farm located in the northeast intersection of State Highway 111 and State Secondary Road 1745.

The Flowers, Willie, farm located on the north side of U.S. Highway 13 and 0.4 mile east of its junction with State Secondary Road 1207.

The Grady, Gertrude W., farm located on the south side of State Secondary Road 1741 and 0.7 miles east of its junction with State Secondary Road 1740.

The Grady, Mrs. Sim, farm located in the north junction of State Highway 111 and State Secondary Road 1730.

The Grady, Vernie C., farm located on the west side of State Secondary Road 1931 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Grant, Maggie, Estate located on the west side of N.C. Highway 111 and 1.9 miles south of the junction of State Secondary Road 1730 with said highway.

The Grant, Nannie, farm located on both sides of State Secondary Road 1741 and 0.8 miles east of its junction with State Secondary Road 1740.

The Grantham, Barfield, farm located on the west side of State Secondary Road 1931 and 0.4 mile north of its intersection with State Secondary Road 1120.

The Gray, Albert, farm located on the east side of State Secondary Road 1719 and 0.9 mile south of its intersection with U.S. Highway 70.

The Green, Bessey, farm located at the southern end of the State Secondary Road 1741 and 1.3 miles east of its junction with State Secondary Road 1740.

The Griffin, McKinley, farm located on the north side of State Secondary Road 1737 and 0.2 mile east of its junction with State Secondary Road 1731.

The Griffin, Oliver H., farm located 0.6 mile north of Dudley and 0.2 mile west of U.S. Highway 117

The Griffin, W. A., farm located on the northeast side of State Secondary Road 1731 and 0.8 mile north of its junction with State Secondary Road 1737.

The Gurley, Clara Lee, farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Haggin, Joe, No. 1, farm located on the east side of State Secondary Road 1931 and 0.7 mile north of its intersection with State Secondary Road 1120.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, George E., farm located southeast of Seymour Johnson Air Base on the south side of State Secondary Road 1909 and 0.7 mile west of the junction of said road with State Secondary Road 1910.

The Herring, Charles F., farm located on the south side of State Secondary Road 1741 and 0.3 mile east of its junction with State Secondary Road 1740.

The Herring, Harmon, farm located on the south side of State Secondary Road 1734 and 0.4 mile east of its junction with State Secondary Road 1731.

The Herring, Thel, farm located on the west side of State Secondary Road 1711 and 0.4 mile north of its junction with U.S. Highway 70A.

The Hines, J. D., farm located on both sides of State Secondary Road 1236 and 0.8 mile east of the intersection of said road with State Highway 581.

The Hollaman, R. J., farm located on the northwest corner of State Secondary Road 1125 and 0.7 mile north of the junction of said road and State Secondary Road 1122.

The Humphrey, Josephine, farm located on east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Ivey, W. H., farm located on the south side of State Secondary Road 1734 and 0.3 mile east of its junction with State Secondary Road 1731.

The Johnson, J. R., farm located on the south side of State Secondary Road 1330 and 0.1 mile west of the junction of said road and State Secondary Road 1332.

The Jones, Mary, farm located on both sides of State Secondary Road 1730 and its junction with State Secondary Road 1731.

The Lane, Alfred, farm located on the south side of State Secondary Road 1730 and 0.4 mile east of its junction with State Highway 111.

The Lofton, Burt & Davis, King, farm located on the east side of State Secondary Road 1739 and 0.3 miles south of its junction with State Highway 55.

The McClenny, G. A. farm located on the south side of State Secondary Road 1007 and 0.1 mile west of the junction of said road with State Highway 581.

The McClenny, G. A., No. 2, farm located on both sides of State Secondary Road 1332 and 0.1 mile north of junction of said road and State Secondary Road 1330.

The Newsome, Paul, farm located on the east side of State Secondary Road 1719 and 1 mile south of its intersection with U.S. Highway 70.

The Oliver, Estella J., farm located on the west side of U.S. Highway 117 and 0.8 mile north of Brogden School.

The Oliver, H. H., farm located on the south side of State Secondary Road 1219 and 0.4 mile east of its junction with State Secondary Road 1218.

The Parks, Robert, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Perkins, Joe D., farm located on the northwest side of State Secondary Road 1711 and 0.2 mile southwest of the intersection of said road with U.S. Highway 70 Bypass.

The Price, James, farm located in the southeastern intersection of State Highway 111 and State Secondary Road 1745.

The Ray, Cora Pate, farm located on both sides of State Secondary Road 1730 and 0.8 mile west of its junction of State Secondary Road 1731.

The Raynor, A. B., farm located on the south side of U.S. Highway 13 and 0.1 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Raynor, Early, No. 2, farm located on the north side of State Secondary Road 1101 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Raynor, Elester, farm located on the east side of State Secondary Road 1105 and 0.8 mile south of its intersection with U.S. Highway 13.

The Sasser, Rosa, farm located on both sides of State Highway 111 and 0.1 mile south of its junction with State Secondary Road 1912.

The Smith, Alfred, farm located on the north side of State Secondary Road 1330 and 0.9 mile west of the junction of said road and North Carolina Highway 581.

The Smith, Arnold, farm located on the southeast side of State Secondary Road 1932 and 0.5 mile northeast of its intersection with State Secondary Road 1120.

The Smith, Olivia, farm located on the southeast side of State Secondary Road 1122 and both sides of State Secondary Road 1124.

The Sutton, D. M., farm located on the east side of State Secondary Road 1731 and 0.9 mile north of the Neuse River.

The Sutton, Gordon, farm located on the south side of State Secondary Road 1730 and 1.6 miles east of its junction with State Highway 111.

The Talton, Lillian D., farm located on the south side of State Secondary Road 1730 and 0.6 mile east of its junction with State Highway 111.

The Tart, John, No. 1, farm located on the south side of U.S. Highway 13 and 0.7 mile east of its intersection with State Secondary Road 1105.

The Thornton, S. E., farm located on the southeast junction of State Secondary Roads 1210 and 1209.

The Turnage, W. H., farm located on the northwest side of State Secondary Road 1932 and 0.3 mile northeast of its junction with State Secondary Road 1927.

The Weaver, Luby W., farm located on both sides of State Secondary Road 1106 and 0.2 mile east of its junction with State Secondary Road 1101.

The Williams, Eddie, farm located on the north side of State Highway 581 and the east side of State Secondary Road 1236 at the junction of said roads.

The Wise, Ella, farm located on the south side of State Secondary Road 1208 and 1 mile west of its junction with State Secondary Road 1209.

Wilson County. The Eatmon, Ralph, farm located on both sides of State Secondary Road 1302 and 0.5 mile east of its intersection with State Secondary Road 1301.

2. In § 301.80–2a relating to the State of South Carolina under suppressive area, the description for Florence County is changed to add three properties in alphabetical order to read as follows:

South Carolina

(1) *Generally infeasted area.* None.

(2) *Suppressive area.*

* * * * *

Florence County.

* * * * *

The Canal Timber Company, farm located at the junction of State Secondary Highway 57 and State Secondary Highway 791. Said farm being on all sides of said junction.

* * * * *

Done at Washington, D.C. this 8th day of June, 1979.

Note.—This proposal has been reviewed under the USDA criteria established to implement E. O. 12044, "Improving Government Regulations." A determination has been made that this action should not be classified "significant under these criteria." A draft Impact Analysis is available from Plant Protection and Quarantine Programs, APHIS, Room 633, Federal Building, Hyattsville, MD 20782.

James O. Lee, Jr.,

Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Health Inspection Service.

[FR. Doc. 79–18378 Filed 6–14–79; 8:45 am]

BILLING CODE 3410–34–M

Agricultural Marketing Service

[7 CFR Part 945]

Irish Potatoes Grown in Certain Designated Counties in Idaho and Malheur County, Oreg.; Proposed Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed regulation would require fresh market shipments of potatoes grown in certain counties in Idaho and Malheur County, Oregon, to be inspected and meet minimum grade, size, cleanliness, maturity and pack requirements during the period August 1, 1979 through August 15, 1980. The regulation would promote orderly marketing of such potatoes and keep less desirable sizes and qualities from being shipped to consumers.

DATE: Comments due July 15, 1979.

ADDRESSES: Comments should be sent to: Hearing Clerk, Room 1077 South Building, U.S. Department of Agriculture, Washington, D.C. 20250. Two copies of all written comments shall be submmitted, and they will be made available for public inspection at the office of the Hearing Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Donald S. Kuryloski, Acting Deputy Director, Fruit and Vegetable Division, AMS, U.S. Department of Agriculture, Washington, D.C. 20250. Telephone: (202) 447–6393.

SUPPLEMENTARY INFORMATION: Marketing Agreement No. 98 and Order No. 945, both as amended (7 CFR Part 945), regulate the handling of potatoes grown in designated counties in Idaho and Malheur County, Oregon. It is effective under the Agricultural Marketing Act of 1937, as amended (7 U.S.C. 601–674). The Idaho-Eastern Oregon Potato Committee, established under the order, is responsible for its local administration.

This regulation is based upon recommendations made by the committee at its public meeting in Pocatello, Idaho, on May 31, 1979.

The proposed regulation is similar to those issued during past seasons. The grade, size, cleanliness,maturity, pack and inspection requirements recommended herein are necessary to prevent potatoes of low quality or undesirable sizes from being distributed to fresh market outlets. The specific proposed requirements would benefit consumers and producers by standardizing and improving the quality of the potatoes shipped from the production area, thereby promoting orderly marketing, and would tend to effectuate the declared policy of the act.

Exceptions would be provided to certain of these requirements to recognize special situations in which such requirements would be inappropriate or unreasonable.

A specified quantity of potatoes would be exempt from maturity requirements in order to (1) permit

growers to make test diggings without loss of the potatoes so harvested or (2) to allow a lot to be shipped which after regrading, meets the grade and size requirements but then fails to meet the maturity requirements, possibly due to further "skinning" as a result of running the potatoes over the grader again.

Shipments would be permitted to certain special purpose outlets without regard to minimum grade, size, cleanliness, maturity and pack requirements, provided that safeguards were met to prevent such potatoes from reaching unauthorized outlets. Since no purpose would be served by regulating potatoes used for charity purposes, such shipments would also be exempt. Certified seed and seed pieces cut from stock eligible for certification would be exempt, because requirements for this outlet differ greatly from those for fresh market.

Potatoes used for experimentation have special requirements and do not normally enter commercial channels of trade. Potatoes for most processing uses are exempt under the legislative authority for this part.

Requirements for export shipments differ from those for domestic markets. While the standard quality requirements are desired in foreign markets, smaller sizes are more acceptable. In commercial prepeeling, operators can use potatoes with surface defects which would be undesirable for the tablestock market, and smaller sizes are acceptable. Therefore, different requirements are proposed for export and prepeeling shipments.

In order to maximize the benefits of orderly marketing the proposed regulation should become effective on August 1, when the marketing season is expected to begin. Interested persons were given an opportunity to comment on the proposal at an open public meeting on May 31, where it was unanimously recommended by the committee. This proposal is similar to regulations in effect for past seasons. It is hereby determined that the period allowed for comments should be sufficient under these circumstances and will effectuate the declared policy of the act.

The proposal is as follows:

§ 945.337 [Removed]

Section 945.337 is removed and § 945.338 is added to Part 945 of Title 7 CFR to read as set forth below.

§ 945.338 Handling regulation.

During the period August 1, 1979, through August 15, 1980, no person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c) and (d) of this section, or unless such potatoes are handled in accordance with paragraphs (e) and (f), or (g) of this section.

(a) *Minimum quality requirements.*— (1) *Grade. All varieties.* U.S. No. 2 or better grade.

(2) *Size.* (i) *Round red varieties.* 1⅞ inches minimum diameter.

(ii) *All other varieties.* 2 inches minimum diameter, or 4 ounces minimum weight.

(iii) *All varieties.* Size B if U.S. No. 1 grade.

(3) *Cleanliness. All varieties.* "Fairly clean."

(b) *Minimum maturity requirements.*—(1) *White Rose and red skin varieties.* Each season from August 1 through December 31, "moderately skinned"; thereafter no maturity requirements.

(2) *Norgold varieties.* Each season from August 1 through August 15, "moderately skinned"; thereafter "slightly skinned."

(3) *All other varieties.* "Slightly skinned."

(4) *Exceptions.* (i) Subject to compliance with subdivision (iii) of this subparagraph, any lot of potatoes not exceeding a total of 50 hundredweight of each variety may be handled for any producer without regard to the foregoing maturity requirements.

(ii) If an officially inspected lot of potatoes meets the foregoing maturity requirements, but fails to meet the grade and size requirements, the lot may be regraded. If, after regrading, such lot then meets the grade and size requirements but fails to meet the maturity requirements, as indicated by the applicable Federal-State inspection certificate, such lot if not exceeding 100 hundredweight shall be exempt from the foregoing maturity requirements if the handler complies with subdivision (iii) of this subparagraph.

(iii) Prior to each shipment of potatoes exempt from the foregoing maturity requirements, the handler thereof shall report to the committee the name and address of the producer of such potatoes, and each such shipment shall be handled as an identifiable entity.

(c) *Pack.* (1) When 50-pound containers (except master containers) of long varieties of potatoes are marked with a count, size or similar designation they must meet the count, average count and weight ranges for the count designation listed below.

	Range		
	Count	Average count*	Weight
Larger than 50 size	10 percent over or under	5 percent over or under	15 ounces or larger
Larger than:			
50 size	45 to 55	48 to 53	12 to 19.
60 size	54 to 66	57 to 63	10 to 16.
70 size	63 to 77	67 to 74	9 to 15.
80 size	72 to 88	76 to 84	8 to 13.
90 size	81 to 99	86 to 95	7 to 12.
100 size	90 to 110	95 to 105	6 to 10.
110 size	99 to 121	105 to 116	5 to 9.
120 size	108 to 132	114 to 126	4 to 8.
130 size	117 to 143	124 to 137	4 to 8.
140 size	126 to 154	133 to 147	4 to 8.
Smaller than 140 size	10 percent over or under	5 percent over or under	4 to 8.

*Applicable to lots.

The following tolerances by weight, are provided for potatoes in any lot which fail to meet weight range for the designated count:

(i) Not to exceed 5 percent for undersize; and

(ii) Not to exceed 10 percent for oversize.

(2) Potatoes packed in 50-pound cartons shall be U.S. No. 1 or better grade. However, potatoes of U.S. Extra No. 1 grade shall be no smaller than 110 size nor larger than 60 size.

(d) *Inspection.* (1) No handler shall handle potatoes unless such potatoes are inspected by either the Idaho Federal-State Inspection Service or Oregon Federal-State Inspection Service and are covered by a valid inspection certificate except when relieved of such requirement pursuant to paragraphs (e) and (f), or (g) of this section.

(2) Each lot moving by truck shall be accompanied by a copy of a valid inspection certificate.

(e) *Special purpose shipments.* (1) The minimum grade, size, cleanliness, maturity and pack requirements set

forth in paragraphs (a), (b) and (c) of this section shall not be applicable to shipments of potatoes for any of the following purposes:

(i) Charity;

(ii) Certified seed;

(iii) Seed pieces cut from stock eligible for certification as certified seed;

(iv) Experimentation; and

(v) Canning, freezing and "other processing" as hereinafter defined: Except shipments of potatoes for the purpose specified in this subdivision (v) shall be exempt from inspection requirements specified in § 945.65 and paragraph (d) of this section and from assesssment requirements specified in § 945.42.

(2) The minimum grade, size, cleanliness, maturity and pack requirements set forth in paragraphs (a), (b) and (c) of this section shall be applicable to shipments of potatoes for each of the following purposes:

(i) *Export.* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than U.S. No. 2; and

(ii) *Prepeeling.* Except potatoes of a size not smaller than 1½ inches in diameter may be shipped if the potatoes grade not less than Idaho Utility or Oregon Utility grade.

(f) *Safeguards.* (1) Each handler making shipments of potatoes for charity, seed pieces cut from stock eligible for certification, experimentation, export, or for prepeeling pursuant to paragraph (e) of this section shall:

(i) First, apply to the committee for and obtain a Certificate of Privilege to make shipments for each purpose;

(ii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iii) At the time of applying to the committee for a Certificate of Privilege, or promptly thereafter furnish the committee with a receiver's or buyer's certification that the potatoes so handled are to be used only for the purpose stated in the application and that such receiver will complete and return to the committee such periodic receiver's reports that the committee may require.

(iv) Mail to the office of the committee a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable receiver.

(2) Each handler making shipments of potatoes for canning, freezing, or "other processing" pursuant to paragraph (e) of this section shall:

(i) First apply to the committee for and obtain a Certificate of Privilege to make shipments for processing;

(ii) Make shipments only to those firms whose names appear on the committee's current list of manufacturers of potato products;

(iii) Upon request by the committee, furnish reports of each shipment pursuant to the applicable Certificate of Privilege;

(iv) Mail to the committee's office a copy of the bill of lading for each Certificate of Privilege shipment promptly after the date of shipment;

(v) Bill each shipment directly to the applicable processor.

(3) Each receiver of potatoes for processing pursuant to paragraph (e) of this section shall:

(i) Complete and return an application form for listing as a manufacturer of potato products;

(ii) Certify to the committee and to the Secretary that potatoes received from the production area for processing will be used for such purposes and will not be placed in fresh market channels;

(iii) Report on shipments received as the committee may require and the Secretary approve.

(g) *Minimum quantity exception.* Each handler may ship up to, but not to exceed, five hundredweight of potatoes any day without regard to the inspection and assessment requirements of this part, but this exception shall not apply to any shipment that exceeds five hundredweight of potatoes.

(h) *Definitions.* The terms "U.S. Extra No. 1," "U.S. No. 1," "U.S. No. 2," "Size B," "fairly clean," "moderately skinned," and "slightly skinned," shall have the same meaning as when used in the United States Standards for Potatoes (7 CFR 2851.1540–2851.1566), including the tolerances set forth therein. The term "prepeeling" means the commercial preparation in a prepeeling plant of clean, sound, fresh potatoes by washing, peeling or otherwise removing the outer skin, trimming, sorting, and properly treating to prevent discoloration preparatory to sale in one or more of the styles of peeled potatoes described in § 2852.2422 of the United States Standards for Peeled Potatoes (7 CFR 2852.2421–2852.2433). The term "other processing" has the same meaning as the term appearing in the act and includes, but is not restricted to, potatoes for dehydration, chips, shoestrings, starch, and flour. It includes only that preparation of potatoes for market which involves the application of heat or cold to such an extent that the natural form or stability of the commodity undergoes a substantial change. The act of peeling, cooling, slicing, dicing, or applying material to prevent oxidation does not constitute "other processing." The terms "Idaho Utility" grade and "Oregon Utility" grade shall have the same meaning as when used in the standards for potatoes for the respective State. Other terms used in this section shall have the same meaning as when used in Marketing Agreement No. 98 and Order No. 945, both as amended.

(i) *Applicability to imports.* Pursuant to § 8e of the act and § 980.1 "Import regulations" (7 CFR 980.1), Irish potatoes of the long varieties imported during the effective period of this section shall meet the grade, size, quality and maturity requirements specified in paragraphs (a) and (b) of this section.

Dated: June 12, 1979.

Note.—This proposed regulation has not been determined significant under the USDA criteria for implementing Executive Order 12044.

D. S. Kuryloski,

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

[FR Doc. 79-18654 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL DEPOSIT INSURANCE CORPORATION

[12 CFR Part 309]

Routine Public Disclosure of Trust Department Annual Reports of Assets Filed by State Nonmember Insured Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Proposed Amendment to existing Regulations.

SUMMARY: The Board of Directors of FDIC has voted to amend Part 309 of its regulations so as to allow for routine public disclosure of the Trust Department Annual Reports of Assets filed with the FDIC by State nonmember insured banks. All interested persons are invited to submit written comments on the proposed amendment.

DATES: Comments must be received by July 16, 1979.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, D.C. 20429.

FOR FURTHER INFORMATION CONTACT: Pamela E. F. LeCren, Attorney, legal Division (202–389–44553), or John Harvey, Review Section Chief (202–389–4620).

SUPPLEMENTARY INFORMATION: The FDIC currently obtains Trust Department Annual Reports of Assets from nonmember insured banks. The information compiled from these reports is used in a publication of statistical data on trust activities. The publication contains in some instances the data supplied by individual banks. The reports are themselves exempt from public disclosure under the Freedom of Information Act (5 U.S.C. § 552(b)(8)), but may be disclosed at the FDIC's discretion. As it is the opinion of the Board of Directors of the FDIC that the public will be benefited by the release of this information and that State nonmember insured banks will not be harmed thereby, the Board of Directors proposes to make these reports available to the public on a routine basis. In order to do so, § 309.4(b) of FDIC's regulations must be amended to allow for such disclosure.

* * * * *

In consideration of the foregoing, the Board of Directors of the FDIC proposes to amend 12 CFR § 309.4(b)(1) by adding at the end thereof:

§ 309.4 Information made available for public inspection.

(b) * * *

(1) * * *

(v) Annual Trust Department Report of Assets for commercial banks and mutual savings banks.[*]

By order of the Board of Directors of the Federal Deposit Insurance Corporation 11th day of June, 1979.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 79-18851 Filed 6-14-79; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL TRADE COMMISSION

[16 CFR Part 13]

[File No. 791 0077]

Howard Johnson Co.; Consent Agreement With Analysis To Aid Public Comment

Correction

In FR Doc. 79-17289 appearing at page 32231 in the issue for Tuesday, June 5, 1979, on page 32232, third column, delete the first sentence of the first paragraph under the Analysis of Proposed Consent Order and insert the following:

"The Federal Trade Commission has accepted an agreement to a proposed consent order from Howard Johnson Company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons."

BILLING CODE 1505-01

[*] Trust Department report number 8020/33.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[18 CFR Part 271]

[Docket No. RM79-44]

Ceiling Prices; High-Cost Natural Gas

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of Inquiry.

SUMMARY: The Federal Energy Regulatory Commission (Commission) requests comments on what regulations should be promulgated for the implementation of section 107(b) of the Natural Gas Policy Act of 1978. Section 107(b) deals with the authority of the Commission to set incentive prices for high-cost natural gas.

DATES: Comments should be filed by July 16, 1979.

ADDRESSES: All filings should reference Docket No. RM79-44 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT: Philip Yates, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426 (202) 275-4212.

The Federal Energy Regulatory Commission (Commission) gives notice that it is considering proposing regulations implementing all or portions of sections 107 (b) and (c) of the Natural Gas Policy Act (NGPA). It hereby invites comments, data, and suggestions from interested persons on the matters more fully set forth below.

Section 107(b) of the NGPA gives the Commission authority to "prescribe a maximum lawful price applicable to any first sale of any high-cost natural gas which exceeds the otherwise applicable maximum lawful price to the extent that such price is necessary to provide reasonable incentives for the production of such high-cost natural gas." Section 107(a) establishes a maximum lawful price for deep, high-cost natural gas, i.e., natural gas produced from wells the surface drilling of which began on or after February 19, 1977, if the production is from a completion location of more than 15,000 feet. Because of the limited time the Commission had to adopt interim regulations under the NGPA, only the rules necessary for determining whether or not natural gas qualified as deep, high-cost natural gas have been promulgated. However, section 107 authorizes the Commission to set prices for other categories of high-cost gas. Whether or not and how this authority should be implemented is the subject of this notice of inquiry.

In section 107(c) (2), (3), and (4) the term "high-cost natural gas" is defined to include natural gas determined to be "produced from geopressured brine," "occluded natural gas produced from coal seams," and natural gas "produced from Devonian shale." The Commission has addressed the appropriate definitions for these categories of gas in a Notice of Proposed Rulemaking issued today in this docket.

Section 121 of the NGPA provides that deep, high-cost gas, as well as the gas covered by the proposed definitions, will no longer be subject to price controls under the NGPA when the incremental pricing rule becomes effective. Section 201 of the NGPA requires that the Commission make that rule effective no later than November 8, 1979. Comments on the need or desirability of establishing incentive prices for categories listed in sections 107(c) (2) through (4) should discuss the limited period of applicability of such prices, and its effect on the position taken in the comments.

In addition to the specific categories of natural gas described above, section 107(c)(5) authorizes the Commission to establish incentive prices for any category of high-cost natural gas "produced under such other conditions as the Commission determines to present extraordinary risks or costs." It should be noted that any categories the Commission establishes under section 107(c)(5) are not included in section 121, and thus will remain subject to NGPA pricing regulation.

Comments concerning the implementation of section 107(c)(5) are solicited. Specifically, the Commission is interested in identifying those general categories of natural gas which interested persons believe should be considered under this provision and the price believed to be necessary to "provide reasonable incentives for the production" of that gas.

In this regard, the Commission received on March 9, 1979, a Petition of Rulemaking, in Docket No. RM79-27, filed by Exxon Corporation, for thirty-six producers and entitled "In the Matter of Determinations Whether Wells Drilled in More Than 500-foot Water Depth Should Be Determined to be 'High-Cost Gas' Under Section 107(c)(5) of the Natural Gas Policy Act." The petition requests that the Commission institute a rulemaking

proceeding to determine whether natural gas produced from new wells drilled on submerged land located beneath more than 500 feet of water should be classified as high-cost natural gas in order to "encourage the timely exploration in an area inherently risky and costly and involving long-term commitments of vast amounts of capital." The Commission also requests comments concerning this petition, copies of which are available at the Commission's Office of Public Information.

All submissions in response to this Notice of Inquiry should be accompanied by supporting data. Comments should include a description of the conditions which are believed to present extraordinary risks or costs. All comments suggesting an incentive price for any category of high-cost gas, including those categories specifically set forth in the statute, should include whatever economic analysis exists to support any suggested price, including the data supporting such analysis, and the methodology used to determine the suggested price. The Commission is particularly interested in receiving specific information for each category; comments should avoid general statements. Further, comments should not recommend a single incentive price for a group of categories, unless there are data supporting the need for that price with respect to each category.

Comment Procedures

Comments should be filed no later than July 16, 1979. Any interested person may submit to the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426, data, comments, or suggestions in writing, concerning all or part of the matters raised in this notice. An original and 14 conformed copies should be filed with the Secretary of the Commission. Comments should indicate the name, title, mailing address, and telephone number of the person to whom communications concerning the proposal may be addressed. Comments should reference Docket No. RM79–44 on the outside of the envelope and on all documents submitted to the Commission. Written comments will be placed in the Commission's public files and will be available for public inspection at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426 during regular business hours.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18760 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

[20 CFR Part 615]

Extended Benefits; Revision of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: This is a proposal to amend the Department of Labor's regulation on the computation of the National and State "on" and "off" indicators for an Extended Benefit period. The regulation is amended so as to eliminate weeks claimed for Federal-State Extended Benefits and State additional benefits from the computation of the indicators.

DATES: Comments: All comments on the changes in this proposal must be received on or before August 14, 1979. Proposed effective date: October 1, 1979.

ADDRESSES: Send comments on this proposal to Employment and Training Administration, U.S. Department of Labor, Room 7000, Patrick Henry Building, 601 D Street, NW, Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in Room 7000, at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Manning, Chief, Division of Actuarial Services, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, Room 7410, Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213, telephone 202–376–7231.

SUPPLEMENTARY INFORMATION: The Federal-State Extended Unemployment Compensation Act of 1970 (Title II of Pub. L. 91–373; 84 Stat. 695, 708; 26 U.S.C. 3304 note) created a program of extended unemployment benefits (referred to as Extended Benefits) as a permanent part of the Federal-State Unemployment Compensation Program, for unemloyed individuals who have exhausted their rights to regular unemployment benefits under State and Federal unemployment conpensation laws. Extended Benefits are payable in a State during an Extended Benefit Period, which is triggered "on" when unemployment in the State or in all States collectively reaches the high levels set in the Act. The Act and the State unemployment compensation laws also provide that an Extended Benefit Period in a State will trigger "off" when unemployment in the State is no longer at the high levels set in the Act.

National and State "on" and "off" indicators are triggered by the national or state "rate of insured unemployment", a term which is defined in section 203(f)(1) of the Act as meaning—

* * * the percentage arrived at by dividing—

(A) the average weekly number of individuals filing claims for weeks of unemployment with respect to the specified period, as determined on the basis of the reports made by all State agencies (or, in the case of subsection (e), by the State agency) to the Secretary, by

(B) the average monthly covered employment for the specified period.

Accordingly, the Department of Labor prescribed and published in Part 615 the method for determining the "average weekly number of individuals filing claims for weeks of unemployment" in 20 CFR 615.12(d)(2) and (e)(2) as follows:

(d)(2) *Method of computing the National indicator rate.* The seasonally adjusted weekly average number of weeks claimed in all States is computed in the following manner:

(i) The number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The National total of unadjusted weeks claimed for each week in the 13-week period obtained in subdivision (i) of this subparagraph is seasonally adjustment factor of factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) To these seasonally adjusted weekly volumes of insured unemployment (weeks claimed) are added weeks claimed for additional compensation and for Extended Benefits for which there are no seasonal factors.

(iv) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e)(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

(i) The number of weeks claimed for regular compensaton, additional compensation, and Extended Benefits are added for the current week and for each of the preceding 12 weeks.

(ii) The weekly totals obtained in subdivision (i) of this subparagraph are added for the 13 weeks and divided by 13 to

obtain the average weekly volume for the 13-week period.

Claims for Extended Benefits and additional compensation were included in the calculations because of the broad wording of section 203(f)(1). At that time there was no precedent to look to for guidance and no data which would indicate how much impact the inclusion of Extended Benefit claims would have in prolonging an extended benefit period once it had started. Over the ensuing years enough data have been gathered to warrant a reconsideration of the matter.

Proposed Amendments

The proposed amendment revises the regulation so that only those weeks claimed for regular compensation are used in the calculation of National and State "on" and "off" indicators. Under the present regulation the inclusion of Extended Benefit and State additional benefit weeks claimed in the calculation of the indicator rate (1) renders inadequate use of the rate as an economic indicator, and (2) tends to define the level of unemployment differently for "on" and "off" triggers.

National Indicator

With respect to the National indicator, under the present regulation, Extended Benefit weeks claimed will be zero during a period in which no State is triggered "on," but in turn can add up to 20 percent more claims to the calculation during times when the National trigger is "on." As an economic indicator, this can change the rate quite abruptly at the time of triggering nationally or by large States. Further, a 4.5 percent "on" trigger includes Extended Benefit weeks claimed only for States that were previously "on," while the "off" trigger includes Extended Benefit weeks claimed for all States such that the "real" rate of unemployment is higher to trigger "on" than to trigger "off." This has the further effect of causing a national Extended Benefit period to begin sooner and end later than it would without the addition of Extended Benefit and additional compensation weeks claimed. The proposed change, therefore, deletes subsection (d)(2)(iii) from § 615.12.

State Indicator

Under the present regulation, State indicators can be affected both "on" and "off." They may be delayed triggering "on" because of the requirement that the current rate be 20 percent higher than the average of the 2 previous years' rates which may include Extended Benefit weeks claimed. State "off" triggers may be postponed since the indicator rate is increased by the inclusion of Extended Benefit and additional compensation weeks claimed. The proposed change deletes weeks claimed for additional compensation and Extended Benefits from subsection (e)(2)(i) of § 615.12.

In addition, subsection (e)(3) is changed to correct an error in a reference.

Note.—The Department of Labor has determined that this document does not contain a major proposal requiring preparation of a regulatory analysis under Executive Order 12044 and applicable guidelines.

This document was prepared under the direction and control of Robert B. Edwards, Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW, Washington, D.C. 20213.

Accordingly, 20 CFR 615.12 (d)(2) and (e)(2) and (e)(3) are proposed to be revised to read as follows:

§ 615.12 Determination of "on" and "off" indicators.

* * * * *

(d) * * *

* * * * *

(2) *Method of computing the National indicator rate.* The seasonally adjusted weekly average number of weeks claimed in all States is computed in following manner:

(i) the number of weeks claimed for regular compensation reported by all State agencies is compiled for the current week and for each of the preceding 12 weeks.

(ii) The national total of unadjusted weeks claimed for each week in the 13-week period obtained in subdivision (i) of this paragraph is seasonally adjusted, using the applicable seasonal adjustment factor or factors developed and published by the Bureau of Labor Statistics of the U.S. Department of Labor.

(iii) The resulting weekly totals are added for the 13 weeks and divided by 13 to obtain the average weekly volume for the 13-week period.

* * * * *

(e)(2) *Method of computing the State indicator rates.* The unadjusted weekly average number of weeks claimed in the State is computed in the following manner:

The number of weeks claimed for regular compensation for the current week and for each of the preceding 12 weeks are added and divided by 13 to obtain the average weekly volume for the 13-week period.

(e)(3) *Rates for preceding 2 years.* Determinations of State rates for the corresponding 13-week periods in the preceding 2 years shall be made in the same manner as provided in subsections (e) (1) and (2) of this section.

* * * * *

Signed at Washington, D.C., on June 12, 1979.

Ernest G. Green,

Assistant Secretary for Employment and Training.

[FR Doc. 79-18815 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 172]

[Docket No. 78N-0174]

Formic Acid, Sodium Formate, and Ethyl Formate; Proposed Affirmation of GRAS Status as Direct and Indirect Human Food Ingredients

Corrections

In FR Doc. 79-9171 appearing at page 18242 in the issue for Tuesday, March 27, 1979; make the following changes:

(1) On page 18243, second column, in the heading for the table, "or" should read "of".

(2) On page 18244, in the table, the third entry under Route now reading "i.v" should need "i.p".

(3) On page 18245, first column, second line of the paragraph which begins "Therefore", "(a)" should read "(s)".

(4) On page 18245, first column, the first line of the amendment numbered 1 should read:

"1. In § 172.515 *Synthetic Flavoring Substances".*

BILLING CODE 1505-01-M

[21 CFR Part 178]

[Docket No. 78N-0293]

Indirect Food Additives; Proposed Revocation of Use of Hydrogenated 4,4'-Isopropylidenediphenolphosphite Ester Resins

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the regulations for indirect food additives by terminating the listing of hydrogenated 4,4'-

isopropylidenediphenolphosphite ester resins. This proposal is based on a previous proposal issued on the initiative of the Food and Drug Administration (FDA) together with additional data not considered in that proposal.

DATE: Comments by August 14, 1979.

ADDRESS: Written comments to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: John J. McAuliffe, Bureau of Foods (HFF–334), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, DC 20204, 202–472–5690.

SUPPLEMENTARY INFORMATION: An order published in the Federal Register of January 17, 1968 (33 FR 569) amended § 178.2010 (21 CFR 178.2010) (formerly 21 CFR 121.2566, before recodification published in the Federal Register of March 15, 1977 (42 FR 14302)) to provide for the use of hydrogenated 4,4′-isopropylidenediphenolphosphite ester resins in vinyl chloride polymer resins when such resins are used in the manufacture of rigid polyvinyl chloride bottles intended for contact with edible oils and all types of dressing for salads. The regulation was amended in the Federal Register of August 8, 1969 (34 FR 12885) to provide for the additional use of the additive in the manufacture of rigid polyvinyl chloride bottles intended for contact with dry foods of types VIII and IX, as described in table 1 of § 176.170(c) (21 CFR 176.170(c)). The regulation was further amended in the Federal Register of November 18, 1969 (34 FR 18382) to provide for the additional use of the additive in vinyl chloride-propylene copolymers complying with § 177.1980 (21 CFR 177.1980).

When the additive was first authorized for use under § 178.2010, and when the regulations were amended to provide for additional uses, available data indicated that the compound would be safe for those uses. Data subsequently became available to showing that a very closely related compound, one that shares a common reactant (hydrogenated bisphenol-A) in its synthesis with the compound in question, caused neurological hind-quarter paralysis when fed to dogs. In the absence of detailed knowledge as to the exact cause of the toxic effect (i.e., whether due to the actual compound, a reactant impurity, or a breakdown product), a notice of proposed rulemaking to revoke the listing of hydrogenated 4,4′-isopropylidenediphenolphosphite ester resins was issued in the Federal Register of April 16, 1974 (39 FR 13667). The agency has since received, in addition to the comments on that proposal, new toxicological data submitted by a manufacturer that have a direct bearing upon the safety of the compound in question and that were not available to those who commented on the first proposal. It is the purpose of the present proposal to review the comments to the original proposal, to address the implications of the new toxicological data, and to solicit further comments.

The two comments submitted in response to the request for comments to the original proposal and the Commissioner's replies to those comments are as follows:

1. The first comment argued two main points. First, the comment claimed that there was no public mention of any change in FDA's standards of toxicology or migration since the original order regulating the phosphite was issued, nor was there any indication in the proposal for revocation that the compound in question failed to meet any old or new requirements of toxicology or migration. The comment argued that any claims by FDA that the revocation of this compound's approval being carried out in order to exercise "all due caution" in favor of the consumer were redundant because FDA had already exercised "all due caution" by virtue of the fact that it saw fit to regulate this compound in the first place.

Second, the comment argued that no known properties of the organic phosphite in question justify revocation of its approval, and that the unfavorable properties of a "related compound" do not justify the revocation. Moreover, the comment claimed that the concepts of "related compound" and "chemical similarity" are open-ended and indefinite and thus should not have been used as a basis for the proposal to revoke.

As to the first point, the agency may reassess the status of a regulation on its own initiative under the general administrative provisions of § 10.25 (21 CFR 10.25). It has done so in the past and will continue to do so when a food additive regulation becomes suspect because of new or modified analytical techniques or data indicating a greater degree of toxicity than first suspected. This has been the case with the present compound.

There has been no change in the toxicology or migration standards used to evaluate the safety of the compound in question. The decision to issue a food additive regulation for the use of hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resins was based upon migration and toxicity data originally thought sufficient to ensure its safe use. However, after the regulation was issued, it was learned that the substance could migrate to a degree much greater than had been originally thought (possibly by as much as a factor of thirteen). This is due partly to the fact that the original migration levels, which were based on a measurement of the concentration of a chemical derivative (i.e., organophosphates) of the stabilizer, were improperly converted to the concentration of the stabilizer itself. A correction factor of 5 must be applied to obtain the actual concentration of the stabilizer. In addition, data became available after the substance was initially regulated that indicated that the migration level in water under certain conditions can be as high as 0.13 part per million (ppm) after the application of the correction factor. This level of possible migration is not considered safe in view of new toxicological findings about the stabilizer, as discussed below.

The new toxicological data resolve the question of whether the observed adverse effects and caused by the specific compound in question or by a related compound and thus render the comment's second objection moot. Screening studies were submitted by a manufacturer of the compound to establish the existence of any toxic component(s). Several substances were fed to dogs over a 90-day period. Among these were hydrogenated bisphenol-A and triphenylphosphite (component moieties of the stabilizer in question) and the compound itself, hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resin. In these particular studies, 4 groups of dogs were exposed to hydrogenated 4,4Δ-isopropylidenediphenolphosphite ester resin at a level of 1,000 ppm in the diet. Results showed that in each of the 4 groups neurological hind-quarter paralysis occurred within 9 to 32 days. The dose level at which the neurotoxic effects would not occur was not established by these studies. (Copies of the report and data from these studies, as well as the data indicating higher than previously expected migration, are on file at the office of the Hearing Clerk (address above).) Therefore, to support a food additive regulation for this compound it would be necessary to conduct toxicological studies to determine a "no-effect" level to which appropriate safety factors could be applied to establish a safe level of use

for the stabilizer. Then it would be necessary to determine whether this safe level of use would be less than or greater than the level expected to migrate to food.

2. The second comment agreed that the toxicological data originally submitted to justify the "no extraction" level of 0.0001 milligram (mg) of organophosphates per square inch of food-contact surface may be inadequate and that the additive in question should be revoked on the basis of an inadequate showing of toxicological safety. The comment did not object specifically to the original proposed revocation, but to the justification given, namely, the earlier use (as mentioned in the April 1974 proposal to revoke) of data on one compound to incriminate another compound.

This objection is no longer pertinent due to the above-cited toxicological test results on the subject compound.

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

In view of the newer estimates of increased migration and studies demonstrating toxic effects of the regulated phosphite stabilizer, the agency finds that there are insufficient data to prescribe safe conditions of use for the compound. Thus, having evaluated the relevant data, the agency concludes that § 178.2010 should be amended by revoking the authorization for the use of hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resins.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 178 be amended in § 178.2010 *Antioxidants and/or stabilizers for polymers* by deleting from the list of substances in paragraph (b) the item "Hydrogenated 4,4μ-isopropylidenediphenolphosphite ester resins * * *."

Interested persons may, on or before August 14, 1979, submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments are to be submitted, except that individuals may submit single copies of comments. Comments are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

Note.—In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

Dated: June 6, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18375 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[21 CFR Part 184]

[Docket No. 78N-0198]

Dextrin; Affirmation of GRAS Status as a Direct and Indirect Human Food Ingredient

Corrections

In FR Doc. 79–9170 appearing at page 18246 in the issue for Tuesday, March 27, 1979; make the following changes:

(1) On page 18246, third column, sixth line of the first full paragraph, insert "with other linkages" after "linkages".

(2) On page 18246, third column, the second line from the bottom of the second full paragraph should read "(see § 136.110(c)(11) (21 CFR".

(3) On page 18247, second column, last line of the first full paragraph, "wright" should read "weight".

(4) On page 18248, third column, eighth line of § 184.1277(b)(1), insert "D" in front of "25°"

(5) On page 18249, first column, insert footnote 1 (as it was omitted) directly above footnote 2.

"[1] Copies may be obtained from: National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20037."

BILLING CODE 1505-01

[21 CFR Part 606]

[Docket No. 78N-0439]

Calibration of Hematocrit Centrifuges and Vacuum Blood Agitators; Proposal on Calibration

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The FDA is proposing to amend the biologics regulations to require less frequent performance checks and calibrations of hematocrit centrifuges and vacuum blood agitators. This action is being taken because the equipment is rarely subject to significant malfunctions, and because if a malfunction does occur that could affect compliance with the requirements for donor protection and the product, it is usually audibly and/or visually obvious.

DATE: Comments by August 14, 1979.

ADDRESS: Written comments to the office of the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Robert J. Meyer, Bureau of Biologics (HFB–620), Food and Drug Administration, Department of Health, Education, and Welfare, 8800 Rockville Pike, Bethesda, MD 20205, 301–443–1306.

SUPPLEMENTARY INFORMATION: Section 606.60(b) of the biologics regulations (21 CFR 606.60(b)) requires the observation, standardization, and calibration of equipment used in the collection, processing, compatibility testing, storage, and distribution of blood and blood components by specifying the frequency of performance checks and calibration. The use of accurate and reliable equipment is essential for compliance with the requirements for determining donor suitability and for the manufacture of products that are safe, pure, potent, and effective. To ensure that the hematocrit centrifuge and the vacuum blood agitator are operating correctly, § 606.60(b) requires that for each day of use a performance check be conducted by standardizing the equipment with a control cell preparation and a container of known mass or volume, respectively. However, both items of equipment are not subject to significant malfunctions during their operation, and any aberrations in their expected performance that could affect compliance with the requirements for donor protection and the product are usually audibly and/or visibly obvious. Therefore, the agency concludes that the required performance checks are excessive and subject blood facilities to an unnecessary quality control burden.

Accordingly, the FDA is proposing to amend § 606.60(b) to change the presently required performance checks and frequency of calibrations and to require instead that (1) the hematocrit centrifuge be standardized and calibrated with a control preparation

before initial use, after repairs or adjustments and annually and that the timer be calibrated every 3 months, and (2) the performance of the vacuum blood agitator be checked by observing the weight of the first container of blood filled for correct results each day of use and be standardized with a container of known mass or volume before initial use and after repairs or adjustments.

The agency concludes that the proposed performance checks and the frequency of calibration for the hematocrit centrifuge and the vacuum blood agitator would be adequate to determine that the equipment is performing in the manner for which it was designed to ensure compliance with the requirements concerning donor suitability and the manufacture of products that are safe, pure, potent, and effective.

§ 606.60 Equipment.

* * * * * * * *

(b) * * *

Equipment	Performance check	Frequency	Frequency of calibration
* * * * * * *			
Hematocrit centrifuge	Standardize with control preparation.		Before initial use, after repairs or adjustments, and annually. Timer every 3 mo
* * * * * * *			
Vacuum blood agitator	Observe weight of the first container of blood filled for correct results.	Each day of use	Standardize with container of known mass or volume before initial use, and after repairs or adjustments.
* * * * * * *			

Interested persons may, on or before August 14, 1979 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of all comments shall be submitted, except that individuals may submit single copies of comments, and shall be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Received comments may be seen in the above office between the hours of 9 a.m. and 4 p.m., Monday through Friday.

In accordance with Executive Order 12044, the economic effects of this proposal have been carefully analyzed, and it has been determined that the proposed rulemaking does not involve major economic consequences as defined by that order. A copy of the regulatory analysis assessment supporting this determination is on file with the Hearing Clerk, Food and Drug Administration.

The agency has carefully considered the environmental effects of the proposed regulation and, because the proposed action will not significantly affect the quality of the human environment, has concluded that an environmental impact statement is not required. A copy of the environmental impact assessment is on file with the Hearing Clerk, Food and Drug Administration.

Therefore, under the Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1), it is proposed that Part 606 be amended in § 606.60 by revising the entries for the hematocrit centrifuge and the vacuum blood agitator in the table in paragraph (b) to read as follows:

Dated: June 6, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18518 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[23 CFR Parts 750 and 751]

[FHWA Docket No. 79–10, Notice 3]

Highway Beautification Program Reassessment; Amendment to Public Hearing Schedule and Procedures

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Hearing site change in Washington, D.C., and procedure modification.

SUMMARY: This amendment changes the location for a public hearing in Washington, D.C., from the Nassif Building to the Departmental Auditorium and changes procedures to permit a speaker to relinquish time to another under certain conditions.

FOR FURTHER INFORMATION CONTACT: Mr. Richard W. Moeller, Chief, Junkyard and Outdoor Advertising Branch, (202) 245–0021, or Mr. Edward Kussy, Deputy Assistant Chief Counsel for Right-of-Way and Environmental Law, (202) 426–0791. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration (FHWA) announced in the **Federal Register** at 44 FR 28946, May 17, 1979, the schedule and procedures for a series of public hearings to be held for the purpose of soliciting comments from all interested parties who may wish to express their ideas about the future direction of the Highway Beautification Program, and in particular, the outdoor advertising and junkyard control programs as set forth in 23 U.S.C. §§ 131 and 136. The purpose of this Notice is to amend certain information included in the May 17 Notice of hearing schedules and procedures.

The Washington, D.C. hearing site has been changed. The hearing will not be held at the address listed in the May 17 Notice (Department of Transportation, Nassif Building, Room 2230, 400 Seventh Street, SW.). Instead, the hearing will be held in the Departmental Auditorium which is located on Constitution Avenue between 12th and 14th Streets, NW., Washington, D.C.

The hearing procedure noted in paragraph 2b of the Supplementary Information Section of the May 17 Notice has been modified in part. The procedure stated in part that "... Speakers may not relinquish their speaking time to others ...." That procedure is hereby revised to read as follows. "A speaker may relinquish his/her speaking time to another provided that any one speaker may speak only for himself/herself and no more than two other persons who have relinquished their time."

All other schedules and procedures remain as published on May 17.

Issued on: June 12, 1979.

John S. Hassell, Jr.,

Deputy Administrator.

[FR Doc. 79–18644 Filed 6–14–79; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF LABOR

Office of Pension and Welfare Benefit Programs

[29 CFR Ch. XXV]

Rules and Regulations for Fiduciary Responsibility; Eligible Individual Account Plans

AGENCY: Department of Labor.

ACTION: Notice of intent to propose a regulation.

SUMMARY: This document is a notice to interested persons that the Department of Labor has under consideration the publication of a proposed regulation which would clarify the definition of the term "eligible individual account plan." Under the Employee Retirement Income Security Act of 1974 such plans are not subject to certain restrictions with respect to the acquisition and holding of employer securities and employer real property. Any regulation which is adopted would affect participants and beneficiaries of certain pension benefit plans as well as the sponsors and fiduciaries of such plans. This notice is given in order to facilitate early public participation in the development of the regulation.

DATES: Written comments should be received by the Department of Labor on or before August 14, 1979.

ADDRESSES: Written comments (preferably, at least six copies) should be addressed to the Office of the Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, Washington, D.C. 20216. Attention: Section 407(d)(3) Notice. All comments received will be available for public inspection at the Public Documents Room, Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: William A. Schmidt, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 523–7931. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department of Labor (the Department) has under consideration the publication of a proposed regulation under Title I of the Employee Retirement Income Security Act of 1974 (ERISA) which would clarify the definition of the term "eligible individual account plan" under section 403(d)(3) of ERISA. By this notice, the Department is inviting public comment on certain issues which have arisen in the development of the regulation.

Statutory Provisions

Section 407(a) of ERISA prohibits an employee benefit plan from acquiring or holding any securities issued by, or real property leased to, an employer of employees covered by the plan, or an affiliate of such employer, unless the securities are qualifying employer securities or the real property is qualifying employer real property, as those terms are defined in sections 407(d) (4) and (5). Section 407(a) also provides that a plan may not acquire any qualifying employer securities or qualifying employer real property if immediately after the acquisition the fair market value of such investments exceeds 10 percent of plan assets. Further, section 407(a) provides that, subject to certain transitional rules, a plan may not hold such securities or real property if the fair market value of such investments exceeds 10 percent of plan assets. Under section 407(b) of ERISA, however, eligible individual account plans, as defined in section 407(d)(3), are exempt from the 10 percent limitation. Further, section 404(a)(2) of ERISA provides that in the case of an eligible individual account plan a fiduciary does not violate his obligation of prudence in the management of plan assets under section 404(a)(1)(B) (insofar as it requires diversification), or his obligation to diversify investments under section 404(a)(1)(C), by acquiring or holding qualifying employer real property or qualifying employer securities. In addition, section 408(e) of ERISA exempts eligible individual account plans from the prohibited transaction rules of section 406 with respect to the acquisition or disposition of qualifying employer securities and qualifying employer real property, provided such acquisition or disposition is for adequate consideration and no commission is charged with respect to the transaction.[1]

Section 407(d)(3)(A) of ERISA defines the term "eligible individual account plan" as:

> * * * an individual account plan which is (i) a profit-sharing, stock bonus, thrift, or savings plan; (ii) an employee stock ownership plan; or (iii) a money purchase plan which was in existence on the date of enactment of * * * [ERISA] and which on such date invested primarily in qualifying employer securities. Such term excludes an individual retirement account or annuity described in section 408 of the Internal Revenue Code of 1954.

[1] Section 4975(d)(13) of the Internal Revenue Code (the Code) exempts from the taxes imposed by sections 4975(a) and 4975(b) of the Code any transaction which is exempt from section 406 of ERISA by reason of section 408(e) thereof.

Section 407(d)(3)(B) provides that only those plans which explicitly provide for the acquisition and holding of qualifying employer securities or qualifying employer real property may be treated as eligible individual account plans.

An individual account plan is defined in section 3(34) of ERISA as "a pension plan which provides for an individual account for each participant and for benefits based solely upon the amount contributed to the participant's account, and any income, expenses, gains and losses, and any forfeitures of accounts of other participants which may be allocated to such participant's account."

A pension plan other than an individual account plan is a "defined benefit plan" under section 3(35) of ERISA. Section 3(35) also contains rules for the treatment of plans which have some characteristics of defined benefit plans and some characteristics of individual account plans.

Discussion

In developing a regulation under section 407(d)(3), it has come to the attention of the Department that certain plans provide an individual account for each participant, but also are part of an arrangement under which each participant is guaranteed, among other things, a minimum rate of return on the amount contributed to his account or a minimum benefit (collectively referred to as "guarantee arrangements"). For example, a sponsoring employer may promise a participant a minimum rate of return on amounts contributed to his individual account. An employer may be maintaining such guarantees on an unfunded basis, in contemplation that the amount, if any, necessary to provide such a minimum rate of return would be paid from the general assets of the employer when the participant ceases to participate in the plan.

Other guarantee arrangements may provide a minimum benefit. For example, an employer may sponsor a plan which provides an individual account for each participant with benefits based on the participant's account balance. The employer also may sponsor a defined benefit plan which provides benefits to the extent necessary to ensure that benefits from both the individual account plan and the defined benefit plan are not less than a guaranteed minimum. Under such an arrangement ("floor plan arrangement"), each participant is, in effect, promised a minimum benefit which may be supplemented by a potential additional

benefit, the amount of which varies with the participant's account balance.[2]

A plan with individual accounts which is part of a guarantee arrangement may, therefore, provide a benefit derived from sources other than the balance of a participant's separate account. It appears that not only is such a plan not an eligible individual account plan, as defined in section 407(d)(3) of ERISA, because it is not, strictly speaking, any of the plans described therein, but it also is, in some respects, quite similar to a conventional defined benefit plan because of the promise of a specified benefit. If such a plan makes substantial investments in employer securities or real property, a participant may be more dependent on the continued financial well-being of his employer for receipt of a specified benefit than he would be under a conventional defined benefit plan that is subject to the 10 percent limitation on the acquisition and holding of qualifying employer securities and real property. For these reasons, it may be inappropriate to treat such a plan as an eligible individual account plan, which would be exempt from this percentage limitation. In this regard, the legislative history of the limitation indicates that Congress intended that a participant not be overly dependent on his employer for the receipt of a promised pension.[3]

Issues Under Consideration

This notice is being published in order to provide interested persons with an opportunity to submit written comments which will be considered by the Department in developing a proposed regulation clarifying the definition of the term "eligible individual account plan" for purposes of section 407(d)(3). In this regard, it should be noted that the Internal Revenue Service (Service) announced in Revenue Ruling 76–259,[4] that, in the case of a floor plan arrangement, a profit-sharing plan may be established and funded separately from a companion defined benefit plan. While the Department is considering, among other things, the treatment of this type of arrangement under section 407(d)(3), the resolution of that issue would relate only to Part 4, Title I of ERISA and section 4975 of the Code.[5] It is contemplated that any regulation which the Department may issue pursuant to this rulemaking proceeding would describe certain plans which are not eligible individual account plans because they are not profit-sharing, stock bonus, thrift or savings plans, employees stock ownership plans, or money purchase plans as those terms are used in section 407(d)(3) of ERISA. Therefore, such a regulation would not affect the issue of whether a plan which is part of a guarantee arrangement should be considered an individual account plan under section 3(34) of ERISA or section 414(i) of the Code, and would not affect the application of Rev. Rul. 76–259 to matters under the jurisdiction of the Service.

As a general framework for comments, the following is a list of issues under consideration by the Department. The list does not describe all issues relevant to the development of a regulation concerning eligible individual account plans, and comments on other matters raised by section 407(d)(3) also are invited.

A. *Kinds of Guarantee Arrangements*

1. What kinds of guarantees are made to participants in plans which provide a separate account for each participant, and how are those guarantees determined?

2. Under what circumstances does a plan which provides for individual accounts but also is part of a guarantee arrangement still provide a benefit derived solely from a participant's account balance?

B. *Treatment of Guarantee Arrangements Under ERISA*

1. Under what circumstances, if any, should a plan which provides a separate account for each participant, but which is part of a guarantee arrangement, be treated as an eligible individual account plan as defined in section 407(d)(3) of ERISA?

2. In the case of a floor plan arrangement:

(a) If the plan which provides for separate accounts is not treated as an eligible individual account plan because of the availability of a guaranteed benefit through the "floor plan," should the two plans be treated as separate plans, neither of which would qualify as an eligible individual account plan under section 407(d)(3)(A), or should the entire arrangement be treated as one plan for purposes of section 407(d)(3)(A)? Specifically, should each plan be subject to a 10 percent limitation on the acquisition or holding of qualifying employer securities and qualifying employer real property or should the 10 percent limitation be imposed only in the aggregate?

(b) To what extent is it necessary or appropriate to make assumptions concerning the level of investment performance of the plan which provides for separate accounts in determining the level of contributions necessary to fund the "guaranteed" benefit portion of the arrangement?

3. Are there instances in which the nature and extent of a guarantee should affect the treatment of a guarantee arrangement under section 407(d)(3)? For example, are there circumstances under which it is appropriate to consider the likelihood that benefits derived from the individual accounts will be "insufficient," so as to require the application of the guarantee, in determining whether the limitation of section 407(d)(3) should apply?

Written Comments

All interested persons are invited to submit written comments on the subject matter of this notice to the address and within the time period set forth above. Copies of plan documents, or relevant portions thereof, might be helpful to the Department in its consideration of various guarantee arrangements. In addition, data regarding the number of participants in guarantee arrangements, the value of the assets of plans which are part of such arrangements, and the amount invested by such plans in qualifying employer securities and qualifying employer real property would be of assistance to the Department in developing a proposed regulation. All comments will be made a part of the record of this proceeding and will be available for public inspection.

Signed at Washington, D.C., this 11th day of June, 1979.

Ian D. Lanoff,

Administrator of Pension and Welfare Benefit Programs, Labor Management Services Administration, Department of Labor.

[FR Doc. 79–18734 Filed 6–14–79; 8:45 am]

BILLING CODE 4510–29–M

[2] These arrangements sometimes are referred to as offset arrangements because the benefits from the defined benefit plan are "offset" by benefits from the individual account plan. The tax consequences of a floor plan arrangement are discussed in Rev. Rul. 76–259, 1976–2 C.B. 111, *Superseding* Rev. Rul. 69–502, 1969–2 C.B. 94.

[3] *See e.g.*, S. Rep. No. 127, 93d Cong., 1st Sess. 33 (1973); S. Rep. No. 383, 93d Cong., 1st Sess. 32–33, 100 (1973).

[4] Note 2, above.

[5] Effective, December 31, 1978 (44 FR 1065, January 3, 1979), section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred, with certain exceptions, the authority of the Secretary of the Treasury to issue regulations under section 4975 of the Code to the Secretary of Labor.

DEPARTMENT OF DEFENSE

Department of the Army

[33 CFR Part 209]

Administrative Procedures; Shipping Safety Fairways and Anchorages, Gulf of Mexico

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corps of Engineers proposes to amend the regulations which establish the Galveston Entrance Fairway and Anchorage Areas in the Gulf of Mexico. The purpose of the proposed amendment is to facilitate the production and movement of oil and gas from wells located within the anchorage areas and surrounding area by permitting pipeline construction.

DATE: Comments must be received on or before July 16, 1979.

ADDRESS: HQDA, DAEN–CWO–N, Washington, D.C. 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph T. Eppard (202) 693–5070.

SUPPLEMENTARY INFORMATION: Shipping safety fairways and anchorages have been established by the Department of the Army to control the erection of structures in shipping approaches to major coastal ports. Department of the Army permits are required for the construction of any structure in or over any navigable water of the United States pursuant to Section 10 of the River and Harbor Act of 1899 and for artificial islands and fixed structures located on the outer continental shelf in accordance with Section 4(e) of the Outer Continental Shelf Lands Act Amendments of 1953. The Corps in effect established the fairways and anchorages by denying permits for the erection of structures within certain designated areas. The Galveston Fairway and Anchorage Areas were established in 33 CFR 209.135 on 18 December 1968.

The Galveston District Engineer has received an application for a permit to construct a pipeline extending from the Galveston Anchorage Area across the Galveston Fairway and East Anchorage Area. The Corps proposes to delete a small portion of the anchorages at the southerly boundaries to facilitate the pipelines. The existing anchorage areas encompass approximately 146.7 square nautical miles. The proposed change would reduce this area by approximately 9.0 square nautical miles or six percent. The seaward boundary of the triangular easterly anchorage area would be relocated landward about 5 nautical miles, truncating the anchorage area to a more practical quadrangular shape. The seaward boundary of the westerly anchorage would be relocated landward approximately 0.5 nautical miles. The pipelines are required to accommodate the production and transmission of vitally needed oil and natural gas. The corps will continue to restrict the erection of platforms and other structures within the areas affected by this proposal.

The Corps of Engineers proposes to amend the regulations in 33 CFR 209.135 (d)(11) as set forth below:

§ 209.135 Shipping safety fairways and anchorage areas, Gulf of Mexico.

* * * * *

(d) The areas.

* * *

(11) Galveston Entrance Anchorage Areas. The areas enclosed by rhumb lines joining points at:

Latitude	*Longitude*
29°18'10"	94°39'16"
29°08'04"	94°28'12"
29°03'13"	94°36'48"
29°14'48"	94°45'12"
29°18'10"	94°39'16"

and rhumb lines joining points at:

29°19'23"	94°37'08"
29°22'18"	94°32'00"
29°14'23"	94°25'53"
29°13'24"	94°27'33"
29°19'23"	94°37'08"

* * * * *

(30 Stat. 1151, 33 U.S.C 403 and 43 U.S.C 1333(e). The Corps of Engineers has determined that this document does not contain a major proposal requiring preparation of an Inflation Impact Statement under Executive Order 11821 and OMB Circular A–107.

Dated: June 9, 1979.

Thorwald R. Peterson,

Colonel, Corps of Engineers, Executive Director, Engineer Staff.

[FR Doc. 79–18645 Filed 6–14–79; 8:45 am]

BILLING CODE 3710–92–M

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 52]

[FRL 1249–1]

Availability of Implementation Plan Revision for the State of New Hampshire

AGENCY: Environmental Protection Agency.

ACTION: Notice of Receipt of Plan for Proposed Rulemaking.

SUMMARY: This notice is to announce the receipt of a State Implementation Plan (SIP) revision for New Hampshire which is available for public review and comment.

Under the requirements of Part D of the Clean Air Act, the State of New Hampshire submitted to EPA on May 29, 1979 a revision to its SIP for certain areas designated as not attaining the National Ambient Air Quality Standards (NAAQS) for specific air pollutants. As required by the Act, the purpose of this revision is to implement new measures for controlling air pollution and to demonstrate that these measures will provide for attainment of the primary NAAQS as expeditiously as practicable, but no later than December 31, 1982 (in certain instances December 31, 1987). A Notice of Proposed Rulemaking describing the revision and EPA's intended approval or disapproval action will be published in the **Federal Register** at a later date.

DATES: See Supplementary Information.

ADDRESSES: Copies of the SIP revision are available for inspection at the following addresses: Environmental Protection Agency, Region I, Air Branch, Room 1903, J.F.K. Federal Building, Boston, Massachusetts 02203; Environmental Protection Agency, Public Information Reference Unit, 401 M Street, S.W., Washington, DC 20460; and the Air Pollution Control Agency, Department of Health and Welfare, State Laboratory Building, Hazen Drive, Concord, NH 03301.

WRITTEN COMMENTS SHOULD BE SENT TO: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

FOR FURTHER INFORMATION CONTACT: Frank J. Ciavattieri, Chief, Air Branch, Environmental Protection Agency, Region I, J.F.K. Federal Building, Room 1903, Boston, Massachusetts 02203.

SUPPLEMENTARY INFORMATION: On March 3, 1978 (43 FR 8962), and on September 11, 1978 (43 FR 40412), pursuant to the requirements of Section 107 of the Clean Air Act, EPA designated areas in each state as non-attainment with respect to the criteria air pollutants. The non-attainment areas in New Hampshire are:

New Hampshire	CO	O_x	TSP Primary	TSP Secondary	SO_x
N.H. portion of Merrimack Valley S. N.H. Interstate AQCR 121		X			
Metropolitan Berlin			X		X
Metropolitan Keene				X	
Metropolitan Manchester	X			X	

Part D of the Clean Air Act requires each state to revise is SIP to meet specific requirements in the non-attainment areas. These SIP revisions were due on January 1, 1979 and must demonstrate attainment of the NAAQS, as expeditiously as practicable, but no later than December 31, 1982, or in limited instances for carbon monoxide and oxidants, no later than December 31, 1987. An 18-month extension may be granted for plans to demonstrate attainment of secondary standards for total suspended particulates.

On May 29, 1979 EPA received the revised SIP for New Hampshire and is currently reviewing the revision. The revision includes a CO attainment plan for Manchester; redesignation of Keene for TSP attainment; a request for an 18-month extension for Manchester TSP attainment plan; redesignation of AQCR 149 for O_x; Statewide strategies for control of O_x; New Source Review and Permit Requirements; Program for Prevention of Significant Deterioration (PSD); and public participation requirements. At the completion of this review, a notice will be published in the **Federal Register** proposing approval or disapproval of the revision.

All interested persons are advised that the proposed revision is available for review at the locations listed, and are invited to comment on its approvability. A file of documents explaining EPA's criteria for approval is also available at EPA offices. The proposed notice referred to above will announce the last day for public comment. This public comment period will end not less than 60 days from this date and not less than 30 days from the published date of EPA's proposal for approval or disapproval.

Dated: June 10, 1979.

William R. Adams, Jr.,

Regional Administrator, Region I.

[FR Doc. 79-18744 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 65]

[Docket No. VII-79-DCO-15; FRL 1247-6]

Proposed Approval of an Administrative Order Issued by the Iowa Department of Environmental Quality to Norris Construction Co., Ottumwa, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality to Norris Construction Company. The order requires the company to bring air emissions from its asphalt plant in Ottumwa, Iowa into compliance with certain regulations contained in the federally-apporve Iowa State Implementation Plan (SIP) by June 15, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order. The purpose of this notice is to invite public comment on EPA's proposed approval of the order as a delayed compliance order.

DATE: Written comments must be received on or before July 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 E. 11th, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompange, Environmental Protection Agency, Region VII, Enforcement Division, 324 East 11th Street, Kanasa City, Missouri 64106, telephone 816/374-2576.

SUPPLEMENTARY INFORMATION: Norris Construction Company operates an asphalt plant at Ottumwa, Iowa. The order under consideration addresses emissions from the asphalt plant at the facility, which are subject to subrule 400—4.4(2) Iowa Administrative Code, Asphalt batching plants. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by June 15, 1979. The source has consented to the terms of the order. The source has satisfied increments 1 and 2 contained in the order.

Because this order has been issued to a major source of particulates emissions and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 17, 1979.

David R. Alexander,

Acting Regional Administrator—Region VII.

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.201 to reflect approval of the following order: Docket No. VII-79-DCO-15.

2. The text of the order reads as follows:

Before the Iowa Department of Environmental Quality, Air Quality Commission, Des Moines, Iowa

In the matter of: Norris Construction Co., Plant No. 51, Ottumwa, Iowa; *Order*, Docket No. 78-A-015 Revised.

Whereas employees of the Department of Environmental Quality conducted an inspection of the Norris Construction Co., a major source facility in Ottumwa, Iowa, on August 4, 1978, and determined that the emissions from the asphalt plant no. 51

exceeded the emission standards of subrule 400—4.4(2) I.A.C.;

Whereas the said subrule is a part of the federally-approved implementation plan applicable to Air Quality Control Region 091 in which the asphalt plant no. 51 in Ottumwa, Iowa, is located:

Whereas Norris Construction Co. has acknowledged that it is in violation of subrule 400—4.4(2) I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

Whereas Norris Construction Co. is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A–5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 U.S.C. 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

Whereas after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

Therefore, it is ordered by the Air Quality Commission:

A. That Norris Construction Co. complete the following acts with respect to the asphalt plant no. 51 on or before the dates specified.

1. January 1, 1979—Submit final control plan. *Completed.*

2. February 1, 1979—Award bids and execute contracts for emission control equipment. *Completed.*

3. May 1, 1979—Initiate on-site construction or installation of emission control equipment.

4. June 15, 1979—Complete on-site construction or installation of emission control equipment.

5. June 15, 1979—Complete shakedown operations and preformance tests on system and achieve final compliance with subrule 400—4.4(2) I.A.C.

B. That specific interim requirements, prior to final compliance as specificed in Subparagraph A–5, are not feasible.

C. That Norris Construction Co. shall monitor such emissions and report such information as required by the Executive Director of the Department of Environmental Quality pursuant to subrule 400–2.1(6) (455B) I.A.C.

D. That Norris Construction Co., prior to the initiation of on-site construction or installation of emission control equipment required by paragraph A–3, obtain a permit for the proposed equipment or related control equipment from the Permits Section of the Air and Land Quality Division of the Department of Environmental Quality, as defined in subrule 400—3.1 I.A.C.

E. That Norris Construction Co. certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmmental Quality no later than seven (7) days after the deadline for completing such increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

F. That Norris Construction Co., 15 days prior to conducting the performance tests required by this order give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Dated: April 12, 1979.

Air Quality Commission.

Hal B. Richerson,

Chairman.

Dated: February 8, 1979.

Norris Construction Co.

M. G. Norris

President.

A public notice was published on March 2, 1979 in the Ottumwa Courier regarding this order, (and the schedule for compliance contained herein), and a public hearing was held before the Iowa Air Quality Commission on April 12, 1979 at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

Department of Environmental Quality, Des Moines, Iowa

In the matter of: Norris Construction Co., Plant No. 51, Ottumwa, Iowa; Waiver.

Norris Construction Co. acknowledges that it is in violation of subrule 400—4.42) I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Norris Construction Co. has reviewed Order 78–A–015, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Norris Construction Co. regarding asphalt plant no. 51 in Ottumwa, Iowa, and it consents to the terms of the order. Finally, Norris Construction Co. acknowledges that compliance with Order 78–A–015 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

Dated: February 8, 1979.

Norris Construction Co.

M. G. Norris.

[FR Doc. 79–18746 Filed 6–14–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Part 65]

Docket No. VII–79–DCO–11; FRL 1239–5]

Proposed Approval of an Administrative Order Issued by the Iowa Department of Environmental Quality to Northwestern State Portland Cement Co. Mason City, Iowa

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve an administrative order issued by the Iowa Department of Environmental Quality (IDEQ) to Northwestern States Portland Cement Company (Northwestern). The order requires the company to bring air emissions from its waste dust silo vents in Mason City, Iowa into compliance with certain regulations contained in the federally approved Iowa State Implementation Plan (SIP) by July 1, 1979. Because the order has been issued to a major source and permits a delay in compliance with provisions of the SIP, it must be approved by EPA before it becomes effective as a delayed compliance order under the Clean Air Act (the Act). If approved by EPA, the order will constitute an addition to the SIP. In addition, a source in compliance with an approved order may not be sued under the federal enforcement or citizen suit provisions of the Act for violations of the SIP regulations covered by the Order.

The purpose of this notice is to invite public comment on the order as a delayed compliance order.

DATE: Written comments must be received on or before July 16, 1979.

ADDRESSES: Comments should be submitted to Director, Enforcement Division, EPA, Region VII, 324 East Eleventh Street, Kansas City, Missouri 64106. The State order, supporting material, and public comments received in response for this notice may be inspected and copies (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Peter J. Culver or Henry F. Rompage, EPA, Enforcement Division, 324 East Eleventh Street, Kansas City, Missouri 64106, telephone (816) 374–2576.

SUPPLEMENTARY INFORMATION: Northwestern operates a portland cement plant at Mason City, Iowa. The order under consideration addresses emissions from the waste dust silo vents at the facility, which are subject to subrule 400—43(2)a Process Weight Rate, Iowa Administrative Code. The regulation limits the emissions of particulates, and is part of the federally approved Iowa State Implementation Plan. The order requires final compliance with the regulation by July 1, 1979, through installation of a baghouse. The source has consented to the terms of the order. The source has satisfied increments A 1 and 2 contained in the Order.

Because this order has been issued to a major source of particulates emissions

and permits a delay in compliance with the applicable regulation, it must be approved by EPA before it becomes effective as a delayed compliance order under Section 113(d) of the Clean Air Act (the Act). EPA may approve the order only if it satisfies the appropriate requirements of this subsection.

If the order is approved by EPA, source compliance with its terms would preclude federal enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the order during the period the order is in effect. Enforcement against the source under the citizen suit provision of the Act (Section 304) would be similarly precluded. If approved, the order would also constitute an addition to the Iowa SIP.

All interested persons are invited to submit written comments on the proposed order. Written comments received by the date specified above will be considered in determining whether EPA may approve the order. After the public comment period, the Administrator of EPA will publish in the **Federal Register** the Agency's final action on the order in 40 CFR Part 65.

(42 U.S.C. 7413, 7601)

Dated: May 17, 1979.

David R. Alexander,

Acting Regional Administrator, Region VII

In consideration of the foregoing, it is proposed to amend Part 65 of Chapter 1, Title 40, Code of Federal Regulations as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in § 65.201 to reflect approval of the following order: Docket No. VII–79–DCO–11.

2. The text of the order reads as follows:

Before the Iowa Department of Environmental Quality, Air Quality Commission, Des Moines, Iowa

In the matter of: Northwestern States Portland Cement Co., Mason City, Iowa; *Order;* Docket No. 78–A–027.

Whereas employees of the Department of Environmental Quality conducted an inspection of the Northwestern States Portland Cement Company, a major source facility in Mason City, Iowa, on September 28, 1978, and determined that the emissions from the waste dust silo vents exceeded the emission standard(s) of paragraph 400—4.3(2)a I.A.C.

Whereas the said paragraph is a part of the federally-approved implementation plan applicable to Air Quality Control Region 089 in which the Northwestern States Portland Cement Company in Mason City, Iowa, is located;

Whereas Northwestern States Portland Cement Company has acknowledged that it is in violation of paragraph 400—4.3(2)a I.A.C. and has agreed to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and to waive its rights under section 455B.17 of the Iowa Code;

Whereas Northwestern States Portland Cement Company is hereby given notice that in the event it fails to meet any requirement of this order, it will be subject to civil penalties for such noncompliance, and that if it fails to achieve final compliance as specified in Subparagraph A–5 by July 1, 1979, it shall be required to pay a noncompliance penalty under Section 120 of the Clean Air Act as amended (42 U.S.C. 7420) or under Iowa Law subsequently enacted to obtain delegation under that section;

Whereas after full consideration of relevant facts, including the seriousness of the violation and any good faith efforts to comply the source cannot immediately comply and compliance with the order below is reasonable and expeditious;

Therefore, it is ordered by the Air Quality Commission:

A. That Northwestern States Portland Cement Company complete the following acts with respect to the waste dust silo vents at its plant in Mason City, Iowa, on or before the dates specified.

1. December 18, 1978—Submit final control plan. *Completed.*

2. March 2, 1979—Award bids and execute contracts for emission control equipment.

3. April 23, 1979—Initiate on-site construction or installation of emission control equipment.

4. June 22, 1979—Complete on-site construction or installation of emission control equipment.

5. July 1, 1979—Complete shakedown operations and performance tests on system and achieve final compliance with paragraph 400–4.3(2)a I.A.C.

B. That specific interim requirements for emission reduction, prior to final compliance as specified in paragraph A–5, are not feasible.

C. That no specific monitoring prior to final compliance will be required.

D. That Northwestern States Portland Cement Company, prior to the initiation of on-site construction or installation of emission control equipment required by paragraph A–3, obtain a permit for the proposed equipment or related control equipment from the Permits Section of the Air and Land Quality Division of the Department of Environmental Quality, as defined in subrule 400—3.1 I.A.C.

E. That Northwestern States Portland Cement Company certify to the Chief of the Surveillance Section of the Air and Land Quality Division of the Department of Environmental Quality no later than seven (7) days after the deadline for completing such increment of progress, whether such increment has been achieved; if an increment has not been achieved by the deadline date, a full report of the reasons why the increment was not achieved and of whether the failure is expected to put the subsequent deadline dates in jeopardy should be submitted.

F. That Northwestern States Portland Cement Company, 15 days prior to conducting the performance tests required by this order give notice of such scheduled test to the Chief of Surveillance Section to afford him an opportunity to have an observer present.

Dated: March 15, 1979.

Air Quality Commission.

Hal B. Richerson,

Chairman.

Dated: January 5, 1979.

Northwestern States Portland Cement Co.

Jack MacNider.

A public notice was published on January 23, 1979 in the Mason City Globe-Gazette regarding this order, (and the schedule for compliance contained herein), and a public hearing was held before the Iowa Air Quality Commission on March 15, 1979 at the Department of Environmental Quality, Henry A. Wallace Building, 900 East Grand Avenue, Des Moines, Iowa.

Department of Environmental Quality; Des Moines, Iowa

In the matter of: Northwestern States Portland Cement Company, Mason City, Iowa; Waiver.

Northwestern States Portland Cement Company acknowledges that it is in violation of paragraph 400—4.3(2)a I.A.C. and agrees to waive its rights to a contested case hearing under the Iowa Administrative Procedure Act and its rights under 455B.17 of the Iowa Code. Furthermore, Northwestern States Portland Cement Company has reviewed Order 78–A–027, believes it to be a reasonable means to attain compliance with the applicable regulations in that it accords with the intentions of Northwestern States Portland Cement Company regarding the waste dust silo vents at its plant in Mason City, Iowa, and it consents to the terms of the order. Finally, Northwestern States Portland Cement Company acknowledges that compliance with Order 78–A–027 does not relieve it of the responsibility to comply with the provisions of the Rules of the Air Quality Commission.

Dated: January 5, 1979.

Northwestern States Portland Cement Co.

Jack MacNider.

[FR Doc. 79–18747 Filed 6–14–79; 8:45 am]

BILLING CODE 6560–01–M

[40 CFR Part 65]

[FRL 1247–7]

Proposed Delayed Compliance Order for Amoco Oil Co.

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes to issue an Administrative Order to Amoco Oil

Company. The Order requires the Company to bring its volatile organic material loading rack (the source) into compliance with Ohio Regulation AP–5–07(E), part of the federally approved Ohio State Implementation Plan (SIP). Because the Company is unable to comply with this regulation at this time, the proposed Order would establish an expeditious schedule requiring final compliance by July 1, 1979. Source compliance with the Order would preclude suits under the Federal enforcement and citizen suit provisions of the Clean Air Act (Act) for violation of the SIP regulation covered by the Order.

The purpose of this notice is to invite public comment and to offer an opportunity to request a public hearing on U.S. EPA's proposed issuance of the Order.

DATES: Written comments must be received on or before the thirtieth day from the date of this notice and requests for a public hearing must be received on or before the fifteenth day from the date of this notice. All requests for a public hearing should be accompanied by a statement of why the hearing would be beneficial and a text or summary of any proposed testimony to be offered at the hearing. If there is significant public interest in a hearing, it will be held after twenty-one days prior notice of the date, time, and place of the hearing has been given in this publication.

ADDRESSES: Comments and requests for a public hearing should be submitted to Director, Enforcement Division, U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604. Material supporting the Order and public comments received in response to this notice may be inspected and copied (for appropriate charges) at this address during normal business hours.

FOR FURTHER INFORMATION CONTACT: Mr. Roger M. Grimes, Attorney, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, at (312) 353–2082.

SUPPLEMENTARY INFORMATION: Amoco Oil Company owns a volatile organic material loading rack at Aurora, Ohio. The proposed Order addresses emissions from this facility, which is subject to AP–5–07(E) of the Ohio Implementation Plan. The regulation limits the emissions of volatile organic material and is part of the federally approved Ohio State Implementation Plan. The Order requires final compliance with the regulation by July 1, 1979, and the source has consented to its terms.

The proposed Order satisfies the applicable requirements of Section 113(d) of the Act. If the Order is issued, source compliance with its terms would preclude further U.S. EPA enforcement action under Section 113 of the Act against the source for violations of the regulation covered by the Order during the period the Order is in effect. Enforcement against the source under the citizen suit provisions of the Act (Section 304) would be similarly precluded.

Comments received by the date specified above will be considered in determining whether U.S. EPA should issue the Order. Testimony given at any public hearing concerning the Order will also be considered. After the public comment period and any public hearing, the Administrator of U.S. EPA will publish in the **Federal Register** the Agency's final action of the order in 40 CFR Part 65.

Dated: June 4, 1979.

John McGuire,

Regional Administrator, Region V.

In consideration of the foregoing, it is proposed to amend 40 CFR Chapter I, as follows:

PART 65—DELAYED COMPLIANCE ORDERS

1. By amending the table in Section 65.400 to reflect approval of the following order:

§ 65.400 Federal Delayed Compliance Orders issued under Section 113(d)(1), (3), and (4) of the Act.

2. [insert entire contents of the Order]

U.S. Environmental Protection Agency, Region V

In the Matter of: AMOCO Oil Company, Aurora, Ohio; Proceeding Pursuant to Section 113(d) of the Clean Air Act, as Amended (42 U.S.C. Section 7413(d)).

Introduction

This Order is issued this date pursuant to Section 113(d) of the Clean Air Act, as amended, 42 U.S.C. Section 7401 *et seq.* (hereafter the "Act") and contains a schedule for compliance, interim control requirements, and reporting requirements. Public notice, opportunity for a public hearing, and thirty (30) days notice to the State of Ohio have been provided pursuant to Section 113(d)(1) of the Act.

Findings

1. On December 29, 1978, the United States Environmental Protection Agency (hereafter "U.S. EPA" or "Agency") issued a Notice of Violation (hereafter "NOV") to the Amoco Oil Company (hereafter "Amoco" or the "Company") pursuant to Section 113(a)(1) of the Act, 42 U.S.C. 7413(a)(1), for alleged violation of Ohio Air Pollution Control Regulation AP–5–07(E).

2. AP–5–07(E), creates certain requirements applicable to facilities which load volatile organic materials in specified quantities into certain tanks or tank trucks. (Regulation AP–5–07(E) has been recodified by the State of Ohio as Regulation 3745–21–07(E); however, this designation has not yet been made part of the Ohio plan. Consequently, this document will use the prior designation.)

3. AP–5–07(E), is part of the State of Ohio Implementation Plan, which was created under Section 110 of the Act, 42 U.S.C. 7410.

4. In satisfaction of Section 113(a)(4) of the Act, 42 U.S.C. 7413(a)(4), an opportunity to confer with the Administrator's delegate was extended to Amoco in the NOV. The conference was waived by Amoco.

5. After receipt of the NOV, Amoco stated that it intended to install an Edwards low temperature refrigeration vapor recovery unit by July 1, 1979, at its Aurora, Ohio, volatile organic materials loading facility.

6. It has been determined by the U.S. EPA that the Amoco Oil Company is unable to immediately comply with AP–5–07(E) of the State of Ohio Implementation Plan.

Order

After a thorough investigation of all relevant facts, including public comment, it is determined that the schedule for compliance set forth in this Order is as expeditious as practicable, and that the terms of this Order comply with Section 113(d) of the Act. Therefore, it is hereby Agreed and ordered that:

1. The Amoco Oil Company will comply with the State of Ohio Implementation Plan, AP–5–07(E), which requires the installation of a vapor collection and disposal system at the volatile organic material loading rack associated with Amoco Oil Company's Aurora, Ohio, facility in accordance with the following schedule:

a. February 23, 1979—Bids received.

b. March 5, 1979—Place equipment orders for process equipment.

c. April 30, 1979—Start construction on foundation.

d. June 15, 1979—Process equipment received; start construction and installation.

e. July 1, 1979—Complete installation and achieve compliance.

2. The Amoco Oil Company shall adopt and implement operation and maintenance procedures to maximize the control efficiency of the vapor collection and recovery system and submit a copy of such procedures to the U.S. EPA.

3. The Amoco Oil Company shall use the best practicable interim system of emission reduction at its Aurora, Ohio loading facility so as to minimize hydrocarbon emissions, avoid any imminent and substantial endangerment to the health of persons, and minimize product spillage.

4. The Amoco Oil Company shall comply with the following emission monitoring and reporting requirements on or before the dates specified below:

a. *Emission Monitoring*

(1) Amoco Oil Company shall, beginning as soon as reasonably practical, maintain a record of the quantity of gasoline which passes through the loading facility.

(2) Amoco Oil Company shall, by August 1, 1979 complete manufacturers performance tests on the vapor control equipment.

(3) Amoco shall, beginning as soon as reasonably practical, maintain a record of any malfunctions of the vapor collection and disposal system (including the reasons for such malfunctions) and the down-time of the system, whether caused by malfunctions or other causes.

b. *Reporting Requirements*

(1) No later than fifteen (15) days after any date for achievement of an incremental step of the compliance schedule specified in this Order, Amoco Oil Company shall notify U.S. EPA in writing of its compliance or noncompliance with the requirement.

Amoco Oil Company shall, by August 15, 1979, submit performance test results associated with start up of the vapor collection and disposal system.

If Amoco fails to complete any of the actions required by the dates specified in the Order, it shall include a detailed explanation of such failure in the notification required in this paragraph 4.b.(1).

(2) Amoco shall, beginning with the calendar quarter April–June, 1979, report on quarterly basis the information required to be maintained under paragraph 4.a. of this Order. Such reporting requirement shall terminate following Amoco's submission covering the calendar quarter April–June, 1980.

(3) All submittals, notifications and reports to U.S. EPA pursuant to this Order shall be made to Mr. Eric Cohen, Chief, Compliance Section, Enforcement Division, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604.

5. Amoco is hereby notified that it is the position of the U.S. EPA that failure to achieve final compliance by July 1, 1979, at the Aurora, Ohio loading facility may result in a requirement to pay a noncompliance penalty in accordance with Section 120 of the Act, 42 U.S.C. 7420. In the event of such failure, Amoco will be formally notified by the U.S. EPA, pursuant to Section 120(b)(3), 42 U.S.C. 7420(b)(3), and any regulations promulgated thereunder, of its noncompliance.

6. This Order shall be terminated in accordance with Section 113(d)(8) of the Act if the Administrator or his delegate determines on the record, after notice and hearing, that an inability to comply with regulation AP–5–07(E), Ohio Implementation Plan no longer exists.

7. Violation of any substantive requirement of this Order may result in one or more of the following actions:

a. Enforcement of such requirement pursuant to Section 113 (a), (b), or (c) of the Act, 42 U.S.C. 7413 (a), (b) or (c).

b. Revocation of this Order, after notice and opportunity for a public hearing, and subsequent enforcement of Ohio Implementation Plan regulation AP–5–07(E), in accordance with the preceding paragraph.

c. If such violation occurs on or after July 1, 1979, notice of noncompliance and subsequent action pursuant to Section 120 of the Act.

8. This Order is effective upon final promulgation in the **Federal Register.**

Date _____

Administrator, U.S. Environmental Protection Agency

Consent To Order

The Amoco Oil Company, by the duly authorized undersigned, hereby consents to the requirements of this Order.

Date _____

Amoco Oil Company

[FR Doc. 79–18745 Filed 6–14–79; 8:45 am]
BILLING CODE 6560–01–M

[40 CFR Parts 66 and 67]

[FRL 1245–1]

Assessment and Collection of Noncompliance Penalties

AGENCY: Environmental Protection Agency.

ACTION: Amendments to proposed rulemaking.

SUMMARY: In the **Federal Register** of March 21, 1979 (44 FR 17309), several portions of Appendix B to the Agency's proposed rules for the assessment and collection of a noncompliance penalty were not printed legibly. In order to avoid any confusion, EPA is reprinting this Appendix in its entirety.

In addition, EPA wishes to clarify some discrepancies that exist between the proposed Computer Program (Appendix C) and the Instruction Manual. Lastly, the Agency is proposing a minor change to the lump sum settlement calculation and offering for public comment an alternative data source for the appropriate rate of return on equity for certain sources. Each of these matters is discussed below.

DATES: In the March 21, **Federal Register** Notice, EPA provided for a 90 day public comment period, 30 days more than the Clean Air Act would require. EPA noted that the Act requires that the noncompliance penalty program take effect on August 7, 1979. For this reason, EPA stated that it would not be able to provide any further extension of time for the public to comment on the March 21 proposal.

For the two proposed amendments discussed below EPA is announcing a 30 day comment period. The amendments noted today are minor in nature and do not alter any of the fundamental aspects of the noncompliance penalty program as originally published. For this reason, EPA believes that 30 days affords the public ample time in which to comment on these two amendments. This 30 day comment period applies only to the two amendments that are being proposed today. It does not provide the public with additional time in which to comment on the March 21 proposal.

Thus, comments on the two amendments proposed today will be accepted until July 16, 1979. Comments on any other portion of the proposed rulemaking must be submitted to EPA on or before June 19, 1979, in order to be considered in the Agency's final rulemaking.

ADDRESS: Questions or comments on this proposal should be directed to the Director, Division of Stationary Source Enforcement, EN–341, Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Robert Homiak, Attorney-Advisor, Division of Stationary Source Enforcement, Environmental Protection Agency at (202) 755–2581.

SUPPLEMENTARY INFORMATION: In the March 21, 1979, **Federal Register**, EPA published its proposed rules for the assessment and collection of noncompliance penalties under Section 120 of the Clean Air Act. Included as Appendix B to this rulemaking proposal was an Instruction Manual designed to inform sources how to calculate a penalty amount. The Manual contained several computer print-outs of the penalty calculations of a hypothetical company. Some of these computer print-outs did not reproduce legibly. This caused some confusion among people who have attempted to verify their own calculations with those produced by EPA's computer. Rather than reprinting only the illegible print-outs, EPA is reprinting the entire Instruction Manual.

EPA would also like to clarify a minor discrepancy between the proposed Instruction Manual and the Computer Program, which appeared as Appendix C to the proposed rule. The Instruction Manual indicates that a person using the computer program must enter only the equity share and the preferred stock share for a new investment. In actuality, the Computer Program also requires the entry of the debt share of the source's investment. Requiring explicit entry of the debt share of the investment reduces the chance of error in data entry. It in no way affects the magnitude of the penalty.

Another point that has caused some confusion is the inability of different computers to arrive at penalty figures

identical to those calculated by EPA's computer. Persons who anticipate using the computer program on their own computers should be cautioned that it will usually not be possible to reproduce exactly the calculations illustrated in the Instruction Manual. The large number of arithmetic operations needed to calculate the penalty payments will inevitably result in round-off errors within the computer itself. The magnitude and direction of these round-off errors will vary from computer to computer. However, in no case should there be a discrepancy of more than one-tenth of one percent. Differences larger than this are only likely to result from a faulty reproduction of the computer program.

Finally, EPA is proposing for comment two possible amendments to its March 21, 1979 proposal. A discussion of these changes follows.

A. Amount of Initial Penalty Payment

A fundamental precept of the noncompliance penalty calculation as it has been developed to date is that the total penalties paid by a source should equal the savings realized by that source. Since proposing its noncompliance penalty regulations on March 21, EPA has discovered that this attempt to recover the full economic value of noncompliance is compromised by EPA's current interpretation of Section 120(d)(3)(B) of the Act, which provides that the first penalty payment will not be due until 180 days after issuance of a notice of noncompliance. As presently formulated, EPA's economic model does not calculate earnings on the penalty payments delayed for the first six months of noncompliance. This means that the source pays total penalties less than economic savings realized from delayed compliance if it chooses to delay payment.

In order to enable capture of the total economic savings realized over the period of noncompliance, EPA is proposing to assess penalties based on the earnings a source realizes by delayig its initial payment for 180 days. Should the source make its first payment prior to the expiration of this 180 day period, the earnings calculation would be adjusted accordingly.

Adoption of this proposed change would require changes to the following pages of the Instruction Manual and Computer Program: III–17, III–19–22, IV–5, and IV–15.

These changes have been incorporated into both the Instruction Manual and Computer Program that are published today.

B. Use of All Maufacturing Average as Appropriate Discount Rate

In calculating the economic savings from noncompliance, EPA recognizes that the appropriate inflation rate and shareholders' return on equity (discount rate) are the long term future rates that apply to new investments. As presently formulated, the proposed noncompliance penalty regulations specify the use of the industry average return on equity as the discount rate in penalty calculations. These rates are reported in the Federal Trade Commission's (FTC's) *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*

Because of the administrative difficulty involved in estimating the appropriate long term rates, EPA has found it necessary to rely on historical data. However, the use of historical data can result in relationships between the inflation rate and the equity rate that make little economic sense. It is possible for some industries to have historical rates of return that are less than or equal to the historical inflation rate. However, as profit-maximizing investors, source owners will seek out their most profitable investment opportunity. A source owner with an expected inflation rate that exceeds the anticipated rate of return from investing in his own business would be expected to make new investments in another alternative, one that would yield a rate of return in excess of the inflation rate.

Therefore, as an alternative to using the FTC industry average as the appropriate discount rate, EPA is proposing use of the higher of the industry average and the average rate of return for *all* manufacturing companies. This "all manufacturing" rate is published by the FTC in its *Quarterly Financial Report for Manufacturing, Mining and Trade Corporations.*

EPA believes that use of the industry "all manufacturing" rate of return is a reasonable representation of the equity-investor's opportunity cost if the actual return on equity for the industry is less than the inflation rate. If the investor's own industry is yielding a rate of return equal to or less than the inflation rate, the investor would find it more attractive to invest in a range of other industries. By investing funds which should have been used for pollution control over a broad spectrum of U.S. industry, the investor can realize a rate of return that approximates the "all manufacturing" rate. If investing in his own particular industry yields a higher rate of return than the "all manufacturing" rate, however, the proposal assumes the investor would continue to put his funds into that industry.

EPA's proposal today would not apply to regulated utilities or Federal, State and municipal facilities. These facilities would continue to use the data sources specified in EPA's March 21 proposal.

Adoption of this proposal will result in larger noncompliance penalty assessments against certain source categories, including the iron and steel industry. EPA is presently assessing the effects of this proposed alternative on the iron and steel industry. The results should be completed in about 3 weeks, and will be placed in the public docket for inspection as part of the Economic Impact Analysis. EPA solicits comment on the appropriateness of this approach.

Dated: June 5, 1979.

Douglas M. Costle,

Administrator.

BILLING CODE 6560-01-M

Appendix B

Clean Air Act

Section 120

Noncompliance Penalties

Instruction Manual

Table of Contents

I. INTRODUCTION

II. DATA REQUIREMENTS AND DATA SOURCES

III. USING THE COMPUTER PROGRAM

IV. CALCULATION OF THE POST-COMPLIANCE SETTLEMENT

V. SPECIAL CONDITIONS

SECTION I

INTRODUCTION

This appendix describes the procedures used to calculate the noncompliance penalty imposed by the 1977 ammendments to the Clean Air Act (the Act). The penalty, stipulated under Section 120 of the Act, removes the economic benefits which accrue to a firm from delaying investment in pollution control.

The method used to calculate the noncompliance penalty is based on the concept of costs avoided. The costs avoided by delaying the installation of pollution control equipment have two components. First, the firm benefits by delaying the capital expenditure needed for pollution control equipment. For this component, the cost avoided equals the return the firm expects on the money that should have been invested in pollution control equipment. That is, funds which should have been invested in pollution control equipment, but were not, can be invested in other assets, thus yielding a return. The second cost avoided through noncompliance results from the absence of operating and maintenance expenses for the equipment. In this case, the costs avoided equal the value of all operating and maintenance expense avoided plus the earnings on such costs avoided.

IMPLEMENTING THE NONCOMPLIANCE PENALTY

A detailed discussion of the economic rationale for the noncompliance penalty and the computational method used is contained in Appendix A, the Technical Support Document. This appendix is designed to aid the user in determining the appropriate data for calculating the penalty and to describe the computer program which performs the actual computation.

To the extent practicable, the computer program has been written to accept data as it appears in the source. However, it is necessary in some instances to adjust the data for entry. When this adjustment requires several computations, a worksheet has been provided.

Level Of Knowledge Required

The appendix has been written on the assumption that the user has had little formal training in business finance. Use of this manual and the computer program do not require a knowledge of the mathematical formulae in the Technical Support Document. It is assumed, however, that the reader is familiar with the discussion sections in the Technical Support Document.

Plan Of The Document

Section II describes the sources of data needed to calculate the penalty and how the various data items are converted to a form suitable for entry into the computer program. As an aid in exposition, a hypothetical noncomplying firm is described and relevant penalty calculations are illustrated.

Section III describes the procedures necessary to operate the computer. An example of an actual use of the program to calculate a penalty is included. This example will utilize data calculated in Section II.

Section IV describes the calculation of the post compliance settlement based on data used in Sections II and III.

Section V discusses the calculation of the penalty under special conditions. These conditions include investments financed with industrial development bonds and penalties for limited life facilities.

SECTION II

DATA REQUIREMENTS AND DATA SOURCES

Calculation of the noncompliance penalty requires a substantial amount of financial data. It is expected that most of this data, as well as the calculation itself, will be provided by the firm. This is in accordance with Section 120 of the Clean Air Act which will:

> "...require each person to whom is given under paragraph (3) to--
>
> > (A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2)) and the schedule of payments, (determined in accordance with subsection (d)(3) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator".

However, some firms may not comply with the requirement. Section 120 further stipulates that if the firm fails to submit a calculation of the penalty, the State or the Administrator may contract with a third party to determine the penalty payments. This will require collection of data from several public sources. This section discusses the method used to collect data and prepare it for the calculation of the penalty.

CASE STUDY

As an aid to understanding the issues discussed in this and the next section, an example has been formulated involving a hypothetical fertilizer company. While this case will utilize data from an actual corporation, the firm is not in the fertilizer industry. The example was created to illustrate many of the features of the computer program and thus may be more complex than many "real life" situations. Data prepared in the case discussion below will be entered in the computer program to determine a penalty in Section III.

THE FERTILIZER COMPANY

On September 1, 1979 the Fertilizer Company was issued a notice of noncompliance with Section 120 of the Clean Air Act. The source of emissions was an incinerator used for the disposal of a waste by-product from the manufacture of the firm's most profitable product.

A preliminary engineering study had been performed in which it had been determined that compliance could be reached with an investment of $500,000. The investment would involve the purchase of a baghouse and modifications to the firm's incinerator in order to reduce particulate emissions.

In addition to the capital investment, it was estimated that $15,000 in operating and maintenance expense would be needed each year the pollution control equipment was operated. It was also estimated that $1,890 in precompliance maintenance expense was necessary to make the equipment operational.

Engineers for the Fertilizer Company believed that it would be at least eleven months before the equipment was installed and shake-down was completed. Because the waste could be safely stored for short periods, production of fertilizer would not be interrupted while the incinerator was being modified.

The Fertilizer Company is a publicly-owned corporation with assets of $770 million. The company is mainly financed with investment by the common stockholders but some preferred stock and long term debt also exists.

The firm, in accordance with the Act, had computed the penalty owed and a schedule of payments. It had also submitted the data used in calculating the penalty. The enforcement official now had to arrange the data in the order it would be requested by the computer and verify that it was from an appropriate source. The computer program would check the accuracy of the firm's penalty calculation.

Preparing Data For Entry Into The Program

The computer program will request data in a specific sequence. Although the data submitted by the firm can be verified in any order, it is useful to verify the data in the same way so that omissions are avoided. The following paragraphs follow the same sequence as is used to enter data into the computer program.

1. The number of months the source will be out of compliance. The period of noncompliance is measured from the day on which the notice of noncompliance is issued until the time standards are actually met.[1] This will include installation time and shakedown period for the equipment. If the firm indicates that compliance will be achieved in the first fifteen days of a month, it is assumed to be in compliance for the entire month. In the Fertilizer Company example, the firm stated that it will come into compliance in eleven months.

2. Limited Life Facility. The program calculates a penalty based on eventual compliance at the source. However, some firms will attain compliance by shutting down the source or by replacing it with a new source. This option is discussed in detail in Section V. For the Fertilizer Company, the source is not a limited life facility.

[1] This date cannot be before August 7, 1979.

3. Industrial Development Bonds. The calculation of the percentage of a pollution control investment financed by tax-exempt industrial development bonds is discussed in Section V. For the Fertilizer Company, none of the investment is financed by issuing tax-exempt bonds.

4. Schedule of capital investments. This is an estimate, provided by the firm, of monthly capital expenditures for the purchase and installation of the pollution control equipment. It is assumed that all capital expenditures are completed when compliance is achieved.

The sources which firms will use to estimate monthly expenditures include engineering estimates, quotations from manufacturers, or estimates by management. They will consist of not only the direct purchase cost, including sales taxes, but also site preparation, engineering design work, shipping costs and installation expense. All costs must be stated in terms of dollars as of the beginning of the noncompliance period. Thus, a firm which will comply eleven months late should not inflate the cost estimates to reflect price changes during the period of noncompliance. The computer program automatically takes this into account.

The Fertilizer Company estimated that the total expenditure needed was $500,000. It submitted the data in Exhibit II-1 to justify the estimate. Expenditures to the manufacturer for the equipment will be made in three equal installments, during the second, fourth, and eleventh months of noncompliance. Each payment will thus be $166,666.67 ($500,000 ÷ 3).

5. Schedule of pre-compliance operating and maintenance expenditures and post-compliance annual operating and maintenance expense. These are costs the firm will incur for operation of the equipment. They may include operating and supervisory labor, power for equipment operation, supplies necessary for operation and a portion of the firm's overhead. If a by-product is created during equipment operation, disposal costs are included as an operating expense. If the by-product can be sold or used in another process, the value of the by-product should be subtracted from operating and maintenance expense.

In addition, operating and maintenance should include the incremental cost of changing plant operations to conform to the Act. For example, a firm forced to shift from high sulfur coal to low sulfur coal would include the increase in fuel costs as an operating expense. Operating expenses would also include the additional cost incurred if compliance requires shifting production to a less efficient or more expensive method.

EXHIBIT II-1

CALCULATION OF THE CAPITAL EXPENDITURE INPUT
FERTILIZER COMPANY[1]

1.	List price or estimated price of the equipment:	$485,908.65
2.	Less: Discount from manufacturer:	9,718.17
3.	Equals net price of equipment:	476,190.48
4.	Plus: Sales tax on equipment[2]:	23,809.52
5.	Plus: Freight and delivery charge:	0
6.	Equals estimated cost of equipment delivered:	$500,000.00
7.	Plus: Installation charge:	0
8.	Plus: Value of lost production:	0
9.	Plus: Cost of building modifications:	0
10.	EQUALS TOTAL CAPITAL EXPENDITURE:	$500,000.00

[1]This calculation uses Worksheet A in Attachment V.

[2]Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

EXHIBIT II-1
(CONTINUED)

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT:

$$\frac{\text{Line 6}}{\text{Line 10}} = \frac{\$500,000}{\$500,000} \times 10^{*} = 10\%$$

*If the depreciable life of the equipment is less than seven years, this figure must be adjusted as described on page II-16.

Sources for operating and maintenance expense are engineering reports, manufacturer specifications, estimates by owners or actual data from similar operations. Two different estimates of operating and maintenance expense are necessary--those incurred before compliance and those estimated for the period after compliance. These amounts should be stated in dollar terms as of the beginning of the noncompliance period. Dollar estimates should not be increased by an estimate of inflation.

The Fertilizer Company supplied the data in Exhibit II-2 as estimated pre-compliance operating and maintenance expense.

EXHIBIT II-2

ESTIMATE OF MONTHLY PRE-COMPLIANCE OPERATING AND MAINTENANCE EXPENSE FERTILIZER CORPORATION

PRE-COMPLIANCE OPERATING EXPENSE

Months 1-8		$ 0
Month 9		
Labor (10 hrs @ $10)	$100.00	$ 100.00
Month 10		
Labor (100 hrs @ $10)	1,000.00	
Power (1500 Kwh @ .0333 Kwh)	50.00	
Total		$1,050.00
Month 11		
Labor (50 hrs @ $10)	500.00	
Power (7200 Kwh @ .0333 Kwh)	240.00	
Total		$ 740.00

Pre-compliance monthly operating and maintenance expense cannot be larger than one-twelfth of the initial annual expense. For example, if the estimated initial annual expense is $15,000, no individual quarterly pre-compliance expenditure can be greater than $1,250 ($15,000 ÷ 12). If the pre-compliance operating and maintenance expense in a month is larger than the monthly equivalent of the initial annual expense, the computer program for calculating the penalty will not accept the data and will print an error message.[1]

For post-compliance operating and maintenance expense the Fertilizer Company supplied the data in Exhibit II-3.

[1] Monthly pre-compliance expenditures are used to adjust a penalty based on an estimate of the annual operating and maintenance expense throughout the life of the project. The requirement that pre-compliance expenditures be no more than one-twelfth of annual expense reflects the assumption that pre-compliance expenditures are similar to the annual expenditures avoided by noncompliance and do not include start-up costs and installation charges. These additional costs for installation and start-up should be included as a capital expenditure.

EXHIBIT II-3

POST-COMPLIANCE ANNUAL OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY

1.	Annual Labor Expense 840 Hours x $10 per hour =	$8,400.00
2.	Power Cost 90090 Kwh x $.0333 per Kwh =	3,000.00
3.	Water Cost Gallons x $ per gallon =	0
4.	Raw Materials and Supplies 1000 Lbs x $1 per Lb =	1,000.00
5.	Yearly Increase in Property Tax =	3,000.00
6.	Cost of Production Lost Due to Maintenance or Use of Equipment =	0
7.	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	$15,400.00
8.	Less: Value of By-Products 800 Lbs at $.50 per Lb =	400.00
9.	Annual Operating and Maintenance (7 - 8) =	$15,000.00

[1] This calculation uses Worksheet D in Attachment V.

EXHIBIT II-3

(CONTINUED)

Note: One-twelfth of line 9 is the maximum amount of any monthly pre-compliance expenditure.

$\frac{\text{Line 9}}{12}$ = $1,250 Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

6. Investment tax credit rate.[1] The investment tax credit is a percentage of the investment which can be used to directly reduce federal income tax. Although the federal-tax credit for an investment is currently ten percent, this rate may have to be adjusted to reflect two restrictions in the revenue code:[2]

- Investments of less than seven years do not receive the entire ten percent.
- Certain investments do not qualify for the credit.

An investment with a depreciable life of less than seven years does not qualify for the maximum investment tax credit. Currently, percentages allowed for such investments are as follows:

[1]Information on the investment tax credit is contained in the Internal Revenue Service Code, Chapter 1, Subpart B--Rules for Computing Credit for Investment in Certain Depreciable Property.

[2]In addition to the two listed restrictions, investments financed with industrial development bonds qualify for only a portion of the credit when rapid amortization is used. This adjustment is made automatically by the computer program. Further, for the purposes of noncompliance penalties the entire investment tax credit as calculated is used regardless of taxable income amount.

Depreciable Life (years)	Investment Tax Credit (percent)
Less than 3	0
At least 3 but less than 5	3.33
At least 5 but less than 7	6.67
7 or more	10.00

Items such as buildings and land are not usually allowable for purposes of computing the investment tax credit, so the percentage rate must be adjusted to yield a correct tax credit figure.[1] This adjustment is made by calculating the percentage of the investment qualifying for the tax credit and multiplying it by the percentage tax credit for equipment of similar depreciable life.

The state of Connecticut allows an investment tax credit to be applied against state taxes if the investment occurs in certain depressed areas. Because this credit reduces a tax deductible expense for federal income taxes, the credit must be adjusted to an after-tax basis. The adjustment is made by multiplying the state investment tax

[1]The Revenue Act of 1978 allows an investment tax credit for rehabilitation expenditures in connection with business and productive structures in use at least twenty years since first placed in service or since the last qualifying rehabilitation. Thus, the adjustment described above should be ignored for qualified rehabilitation investments.

credit by one minus the marginal federal tax rate. The adjusted state credit is then added to the federal credit.[1]

For the Fertilizer Company, the entire investment qualifies for the investment tax credit. If $150,000 of the investment had not been qualified, only a seven percent credit would be allowed.[2]

If the Fertilizer Company had a depreciation tax life of five years and the entire investment qualified for the investment, only a 6.67 percent credit would be allowed.

7. Income tax rate. The income tax rate to be entered into the program must be the marginal rate--that is, the rate which the firm would pay on an additional dollar of income. The firm must estimate its marginal federal income tax rate and, where applicable, its marginal state and local income tax rates. The state and local tax rates should not include sales tax, inventory tax, charter tax

[1]The formula for determining the investment tax credit in a state having a tax credit is:

$$t_{ITC} = ITC_{FEDERAL} + \left[(1\text{-Tax Rate}_{FEDERAL}) * ITC_{STATE}\right]$$

This must be multiplied by one hundred for entry into the computer.

[2]Computed as $\frac{(\$500,000 - 150,000)}{500,000} \times 10\% = 7\%$.

or taxes on property. If any of these taxes are material to the analysis, they should be included in either the investment or operating and maintenance expenditures, as appropriate. Sales tax has already been shown to increase investment while property taxes would be included in operating and maintenance expense.

In most cases involving large firms, the marginal tax rate will be 46 percent.[1] Small corporations and some partnerships or privately owned firms could have lower rates. In many penalty calculations it will be necessary to adjust the state and local tax rates to reflect the fact that the state and local income taxes are also deductible from federal taxes. The steps for calculation are as follows.

[1]As of January 1979. This rate must be adjusted for future changes in the tax laws. The rate applicable to a firm is determined by the amount of taxable income expected in the next year. The ranges of taxable income and the corresponding marginal tax rate are shown below.

Taxable Income	Marginal Tax Rate
$0 - $25,000	17%
$25,000 - $50,000	20%
$50,000 - $75,000	30%
$75,000 - $100,000	40%
$100,000 and above	46%

- The marginal federal, state and local income tax rates are determined.
- The adjusted local tax rate given state taxes is computed[1].
- The local and state tax are adjusted for the federal tax.
- The effective tax rate is computed.

Exhibit II-4 contains a calculation of the tax rate for the Fertilizer Company.

[1] If the local tax is not deductible from the state tax, the numbers should be added.

EXHIBIT II-4

CALCULATION OF THE TAX RATE[1]
FERTILIZER CORPORATION

1. Marginal Federal tax rate.	46%
2. Marginal State tax rate.	5%
3. Marginal Local tax rate.	2%

CALCULATION OF ADJUSTED LOCAL TAX

(1 - State Tax Rate) x Local Tax Rate
= (1 - .05) x .02
= .95 x .02
= .019 = Adjusted Local Tax Rate.

CALCULATION OF ADJUSTED STATE AND LOCAL TAX

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - .46) x (.05 + .019)
= .54 x .069
= .0373 = Adjusted Local and State Tax.

CALCULATION OF TAX RATE

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (.46 + .0373)
= 100 x .4973
= 49.73 = Tax Rate.

[1] This calculation uses Worksheet C in Attachment V.

8. Inflation rate. This is the estimated future increase in the capital and operating cost of pollution control equipment.[1] The inflation rate to be used in the Fertilizer Company penalty calculation is 8.3 percent. This was the compound rate of increase in the Chemical Engineering Plant Cost Inflation Index for the years 1972-1977.[2]

9. Discount rate. The discount rate is an estimate of the firm's cost of new equity capital. For a manufacturing firm, calculation of the discount rate requires averaging the twenty most recent quarters of the after-tax return on equity as reported for the firm's industry in Table 4 of the Federal Trade Commission's Quarterly Report for Manufacturing, Mining and Trade. Attachment I contains a copy of Table 4 for the year 1977.

[1] Chemical Engineering, McGraw Hill, Inc., April 28, 1975 and subsequent issues. The compound rate of increase is computed as:

$$\left(\left[(\text{Index in Final Year}) \div (\text{Index in Initial Year})\right]^{1/N} - 1\right) \times 100$$

where N equals the number of years between the first and last years.

[2] The inflation rate of 8.3 percent is only applicable to the example described in the manual. Actual penalty determination will require calculation of the inflation rate using the above formula and the past Plant Cost Inflation Indices for the most recent twenty quarters.

The annual rates of return on equity after taxes are reported by the FTC in broad industrial categories. To categorize a firm, the Standard Industrial Classification Manual published by the Office of Management and Budget should be used.

The FTC does not report rates of return on equity for public utilities. For these organizations, the annual percent return on net worth published in the April Monthly Economic Letter by Citibank (New York) should be used instead. Attachment I includes a table listing this information for 1973 to 1977.

For the Fertilizer Company, the correct category to use is Chemicals and Allied Products. The calculation of the average return on equity for twenty quarters is shown in Exhibit II-5.

EXHIBIT II-5

FERTILIZER COMPANY
JULY 1978
AVERAGE RETURN ON EQUITY, CHEMICALS AND ALLIED PRODUCTS

YEAR	QUARTER	RETURN %
1973	1	14.4
	2	15.5
	3	14.8
	4	15.5
1974	1	18.1
	2	21.3
	3	18.9
	4	14.8
1975	1	14.2
	2	16.2
	3	15.6
	4	15.2
1976	1	16.6
	2	17.2
	3	15.3
	4	12.8
1977	1	14.9
	2	16.8
	3	14.8
	4	13.8
	Total:	316.7

Average: 15.84%

10. Interest rate. The interest rate is the estimated cost of new debt for the firm. Determination of the firm's interest rate requires two steps.

- The quality rating for the firm's bonds is found in Moody's Bond Record. If the firm does not have rated debt, an "A" rating is assumed. If it has more than one issue, that with the highest rating is used.

- The most recent monthly yield reported for bonds of the same rating is found in the Corporate Bond Yield Averages section of the Bond Record.

Bonds are rated by Moody's in a system ranging from a high of "Aaa" to a low of "C". The lowest average yield reported is "Baa"; a firm whose bonds have a rating of "Baa" or lower will use the yield reports for the "Baa" average. The bonds are listed in the Bond Record in alphabetical order by corporation. Convertible bonds are considered in the same manner as all other bonds.

Note that the interest rate is not taken from the so-called coupon rate on the bond. For example, in Table II-1, rates of 9.75 percent and 4.5 percent are listed. These are historical rates which were in effect at the time the bonds were issued. They do not reflect current market rates.

The Bond Record reports a number of different yields. If the firm is a utility, the Public Utility Average is used. If the firm is not a utility, the Industrial Bond average is used.

For the Fertilizer Company, the debt was not rated, so the industrial bond average for "A" bonds is used (8.76). Attachment II contains the average bond yields as reported in a recent issue of the Bond Record.

11. Preferred dividend rate. The method used for determining the preferred dividend rate is identical to that used to select the interest rate. The quality rating of the firm's preferred shares is found in Moody's Bond Record in the Preferred Stock section. If the stock is not rated, an "a" rating is assumed.

Average yields are reported for only "aa", "a", and "baa" preferred stocks issued by utilities. However, these figures should be used for non-utilities as well. If the stock has a rating of "baa" or lower, use the "baa" average yield. Preferred rated "aa" or higher should use the "aa" yield.

The latest monthly average is used and entered exactly as shown in the averages. Attachment III contains an example of the Bond Record preferred averages.

The Fertilizer Company's preferred stock is not rated so the yield entered for the penalty calculation is 8.88 percent, the rate found by using the return on "a" rated preferred stock.

12. Preferred stock share of investment. This is the percentage amount of preferred equity in the firm's capital structure. The capital structure of the firm is the dollar amount invested in the firm for periods over one year. Thus it does not include current liabilities or deferred federal income tax.

The preferred share of the investment is calculated using data contained in the firm's five most recent annual reports.[1] The procedure involves the following steps:

[1] This is available either directly from the firm or, for large corporations, in Moody's Industrial Manual. An advantage to using Moody's is that the percent equity is reported and can be used as a check on the calculation.

- The sum of all the firm's equity accounts on each year's balance sheet is added to the total of its long term debt. This total represents the firm's long term financing or its capital structure for that year. It will include paid-in capital, retained earnings, capital surplus, preferred stock and long term debt. If Treasury stock is shown as an asset on the balance sheet, it should be subtracted from the total capital.
- The dollar amount of all preferred stock shown in the equity section of the balance sheet for the year is divided by the total capital found in the previous step. This is the preferred share of the investment for the year.
- The preferred shares for each of the five most recent years are averaged to yield a preferred share for input to the penalty calculation.

13. Equity share of the investment. The sum of all equity accounts not used in the numerator of the preferred stock calculation is the amount of common equity in the capital structure each year. This sum is also divided by the yearly total capital found in step one yielding the equity share of the investment for the year. These figures are then averaged to yield an equity share for input to the penalty calculation.

The sum of the equity share of the investment and the preferred share of the investment cannot be greater than one hundred percent.

The hypothetical Fertilizer Company has the following balance sheet.

Table II-1

Fertilizer Company
Balance Sheet
December 31, 1978
(000's)

Assets	1976	Liabilities	
Cash	$18,881	Notes payable to bank	$122
Marketable Securities	60,552	Accounts payable & accruals	54,109
Notes & accts. rec.(net)	79,156	Preferred dividends payable	23
Income tax refunds		Income tax	28,335
Inventories	116,940	Current maturities long term debt	8,929
Prepaid expenses	4,290	TOTAL CURRENT LIABILITIES	$91,518
TOTAL CURRENT ASSETS	$279,819		
		Deferred fed. income taxes	57,663
Property-plant & equip.	828,703	4.5% debentures	21,531
Less: reserve for		9.75% notes	60,000
depreciation	423,554	Long term lease obligation	43,932
NET PROPERTY ACCOUNT	$405,149	Pollution control facil.rev.bds.	46,000
		Other long term debt	9,230
Const. funds held by			
trustee	3,913	4 1/2% preferredstock ($100 par)	22,044
Other assets	83,495	Common stock ($5 par)	100,000
		Capital surplus	58,236
		Retained earnings	262,799
		TOTAL STOCKHOLDERS' EQUITY	$423,079
		Less: Treasury Stock	477
		NET STOCKHOLDER'S EQUITY	$422,602
TOTAL	$772,376	TOTAL	$772,376

Exhibit II-6 illustrates the calculation of the equity and preferred share of the investment for a single year.

EXHIBIT II-6

CALCULATION OF THE EQUITY AND PREFERRED SHARE OF THE INVESTMENT[1]
FERTILIZER COMPANY
(000's)

The first step in obtaining the equity and preferred share of the investment is to sum the equity and long term debt.[2]

4.5% debentures	$ 21,531
9.75% notes	60,000
Long term lease	43,932
Pollution control rev bonds	46,000
Other long term debt	9,230
4.5% preferred stock	22,044
Common stock	100,000
Capital surplus	58,236
Retained earnings	262,799
	$623,772
Less: Treasury Stock	(477)
Total long term capital	$623,295

[1]For the purposes of this example, preferred and equity share are calculated for one year only.

[2]Deferred taxes are not included in the calculation of the equity and preferred share of the investment.

EXHIBIT II-6
(CONTINUED)

The second step is to divide the preferred stock by the total long term capital.

$$\frac{\text{Preferred stock}}{\text{Total Long Term Capital}} = \frac{22,044}{623,295} = .035 \text{ or } 3.5\%$$

The third step is to sum all common equity accounts. Do not include the preferred stock. Divide this number by the total long term capital.

Common Stock	$100,000
Capital Surplus	58,236
Retained Earnings	262,799
Total	421,035
Less Treasury Stock	(477)
Total Common Equity	$420,558

$$\frac{\text{Total Common Equity}}{\text{Total Long Term Capital}} = \frac{\$420,558}{623,295} = .675 \text{ or } 67.5\%$$

Thus, 67.5 percent is the equity share of the investment and 3.5 percent is the preferred share of the investment.

14. Depreciation life in years. This is the number of years over which the firm's pollution control equipment will be depreciated for tax purposes. It is found by taking the lower limit on the asset depreciation range for the appropriate class of assets given in the Internal Revenue Service publication Revenue Procedure 77-10. If the lower limit is greater than ten years, the regulations require that ten years be used. If the lower limit contains a fractional part of a year, the program should be run with the year lower than the fraction. If the rounding reduces the investment tax credit, the depreciation life should be rounded up and the program run again. The calculation giving the lower penalty should be used.

15. The useful life in years. The useful life is used to determine the length of each replacement cycle in the penalty calculation. It is also provided by Revenue Procedure 77-10. Instead of using the lower limit, the asset guideline period is used. If this contains a fractional part of a year the number should be rounded up to the next integer. The useful life must always be greater than or equal to the depreciation life in years.

For the Fertilizer Company example, the "Asset Guideline Period" for chemicals and allied products is used. This is eleven years. Had it been 11.5 years, it would have been rounded up to twelve.

II-32

Attachment I

TABLE 4. ANNUAL RATES OF PROFIT ON STOCKHOLDERS' EQUITY, BY INDUSTRY

(Percent)

Industry	Before income taxes 2/					After taxes				
	4Q 1976 3/	1Q 1977 3/	2Q 1977	3Q 1977	4Q 1977	4Q 1976 3/	1Q 1977 3/	2Q 1977	3Q 1977	4Q 1977
All Manufacturing Corporations	21.0	21.3	26.3	21.8	23.4	13.1	13.0	16.0	13.3	14.4
Nondurable Manufacturing Corporations	20.5	20.9	24.3	22.1	21.8	12.9	13.0	15.0	13.7	13.7
Food and Kindred Products	21.7	19.8	24.4	21.9	21.7	13.1	11.4	15.0	13.	13.8
Tobacco Manufactures	27.9	29.5	36.3	30.3	31.8	15.4	16.3	19.0	14.-	16.9
Textile Mill Products	9.3	13.2	15.4	17.6	19.1	5.3	6.8	7.0	8	11.1
Paper and Allied Products	17.9	17.4	21.8	19.9	18.3	10.9	11.2	14.1	1.	12.-
Printing and Publishing	29.3	23.6	32.3	33.2	36.8	15.4	12.7	18.4	17.	20.8
Chemicals and Allied Products	20.4	24.6	27.4	24.3	21.4	12.8	14.9	16.8	1-.3	13.3
Industrial chemicals and synthetics 1/	17.3	22.3	26.5	19.8	17.7	11.0	13.7	16.0	11.1	11.3
Drugs 1/	25.5	29.5	29.6	29.0	27.4	16.5	18.4	18.8	18	1 .4
Petroleum and Coal Products	19.5	19.6	21.0	19.4	19.5	13.8	11.9	13.9	11.-	13.1
Rubber and Miscellaneous Plastics Products	20.5	21.4	26.3	18.4	17.7	11.4	12.4	15.0	10.1	2
Other Nondurable Manufacturing Corporations	21.8	21.0	27.3	24.8	28.5	11.4	10.6	15.6	1.	1. .4
Durable Manufacturing Corporations	21.6	21.7	28.3	21.4	25.0	13.4	13.0	17.1	1-.8	15.1
Stone, Clay and Glass Products	17.5	10.1	27.7	28.1	22.3	11.1	5.1	17.0	1-.	14.1
Primary Metal Industries	8.7	7.2	13.9	-3.1	7.9	7.3	5.1	9.6	0.-	5.3
Iron and steel 1/	10.0	4.6	12.4	-9.6	9.5	7.9	3.5	8.8	-5.-	6.2
Nonferrous metals 1/	6.3	12.0	16.6	8.0	5.0	6.1	8.1	11.1	7.-	3.2
Fabricated Metal Products	22.9	24.3	31.5	26.7	25.3	12.9	13.7	18.8	1-.-	15.2
Machinery, except Electrical	24.2	24.2	29.2	26.2	28.3	15.5	14.8	17.8	16.2	17.8
Electrical and Electronic Equipment	25.3	23.2	29.2	26.2	28.7	14.5	12.5	16.-	1-.9	16.9
Transportation Equipment	25.3	30.9	36.9	20.5	29.2	15.4	18.6	22.1	1-.2	15.3
Motor vehicles and equipment 1/	27.3	34.3	40.5	18.6	31.0	16.9	21.0	24.4	11.1	15.0
Aircraft, guided missiles and parts 1/	21.0	24.4	28.1	26.1	28.3	12.0	14.0	16.1	15.-	15.
Instruments and Related Products	23.8	24.3	26.4	29.4	32.7	13.9	15.0	15.4	17.-	18.8
Other Durable Manufacturing Corporations	22.9	20.6	29.6	29.7	24.5	13.8	12.6	17.9	1-.-	1-.0
All Mining Corporations	24.2	22.2	27.6	24.0	22.0	15.8	14.-	18.8	1-.	1 .
All Retail Trade Corporations	35.2	20.7	28.7	29.4	34.5	23.0	11.7	20.-	1-.-	23.0
All Wholesale Trade Corporations	23.5	23.7	28.9	28.9	20.6	14.9	15.2	19.5	1-.	1 .5

1/ Included in major industry above.
2/ Based on profit figure which includes net income (loss) of foreign branches and equity in earnings (losses) of non-consolidated subsidiaries, net of foreign taxes.
3/ Some of the rates in this column have been revised since their first appearance.
See footnotes to Tables A - K.

Attachment I
(Continued)

UTILITY AFTER-TAX RETURN ON EQUITY
(PERCENT)

	Electric Power and Gas	Telephone and Telegraph
1977	11.7	12.7
1976	11.5	11.5
1975	11.6	9.9
1974	10.9	9.8
1973	10.7	10.5

Source: Monthly Economic Letter, Citibank, New York, April 1978 and April issues of prior years.

II-34

Attachment II

MOODY'S CORPORATE BOND YIELD AVERAGE

FOR FERTILIZER COMPANY 8.76

Moody's Corporate Bond Yield Averages

	Av. Corp.	Corporate by Ratings Aaa	Aa	A	Baa	Corporate by Groups P.U.	Ind.	R.R.
1972								
June	7.66	7.23	7.51	7.69	8.20	7.83	7.38	7.98
July	7.66	7.21	7.50	7.71	8.23	7.80	7.39	8.00
Aug.	7.61	7.19	7.43	7.64	8.19	7.69	7.35	7.99
Sept.	7.59	7.22	7.41	7.64	8.09	7.63	7.36	7.97
Oct.	7.59	7.21	7.45	7.64	8.06	7.63	7.36	7.97
Nov.	7.52	7.12	7.39	7.58	7.99	7.55	7.28	7.96
Dec.	7.47	7.08	7.36	7.50	7.93	7.48	7.22	7.91
1973								
Jan.	7.49	7.15	7.37	7.53	7.90	7.51	7.27	7.87
Feb.	7.57	7.22	7.47	7.60	7.97	7.61	7.34	7.92
Mar.	7.62	7.29	7.49	7.68	8.03	7.64	7.43	7.94
Apr.	7.62	7.26	7.49	7.64	8.09	7.64	7.43	7.96
May	7.62	7.29	7.49	7.64	8.06	7.63	7.41	8.01
June	7.69	7.37	7.55	7.71	8.13	7.69	7.49	8.07
July	7.80	7.45	7.64	7.88	8.24	7.81	7.59	8.17
Aug.	8.04	7.68	7.84	8.11	8.53	8.06	7.91	8.32
Sept.	8.06	7.63	7.86	8.11	8.63	8.09	7.89	8.37
Oct.	7.96	7.60	7.84	7.98	8.41	8.04	7.78	8.24
Nov.	8.01	7.67	7.90	8.07	8.42	8.11	7.81	8.28
Dec.	8.03	7.63	7.92	8.11	8.48	8.17	7.84	8.28
1974								
Jan.	8.12	7.83	8.00	8.17	8.48	8.27	7.97	8.34
Feb.	8.17	7.85	8.05	8.25	8.53	8.33	8.01	8.27
Mar.	8.28	8.01	8.13	8.33	8.62	8.44	8.12	8.34
Apr.	8.54	8.25	8.43	8.61	8.87	8.88	8.29	8.51
May	8.71	8.37	8.58	8.83	9.05	8.85	8.55	8.73
June	8.89	8.47	8.75	9.07	9.27	9.08	8.69	8.89
July	9.15	8.72	9.01	9.40	9.48	9.34	8.95	9.07
Aug.	9.13	9.00	9.28	9.67	9.77	9.70	9.16	9.30
Sept.	9.78	9.24	9.56	10.04	10.18	10.11	9.44	9.48
Oct.	9.92	9.27	9.64	10.29	10.48	10.31	9.53	9.64
Nov.	9.70	8.89	9.34	9.96	10.60	10.12	9.27	9.58
Dec.	9.63	8.89	9.20	9.80	10.63	10.02	9.23	9.59
1975								
Jan.	9.65	8.83	9.13	9.81	10.81	10.10	9.19	9.53
Feb.	9.43	8.62	8.91	9.51	10.65	9.83	9.01	9.32
Mar.	9.36	8.67	8.91	9.37	10.43	9.57	9.05	9.25
Apr.	9.59	8.95	9.19	9.62	10.53	9.68	9.30	9.39
May	9.66	8.90	9.24	9.79	10.69	9.93	9.37	9.49
June	9.55	8.77	9.13	9.67	10.62	9.81	9.29	9.40
July	9.54	8.84	9.13	9.61	10.56	9.81	9.28	9.37
Aug.	9.61	8.95	9.23	9.63	10.59	9.93	9.29	9.41
Sept.	9.67	8.93	9.35	9.74	10.81	9.98	9.35	9.43
Oct.	9.63	8.86	9.31	9.72	10.62	9.94	9.32	9.40
Nov.	9.55	8.78	9.23	9.64	10.56	9.83	9.27	9.38
Dec.	9.57	8.79	9.25	9.67	10.58	9.87	9.28	9.37
1976								
Jan.	9.42	8.60	9.13	9.54	10.41	9.68	9.16	9.32
Feb.	9.31	8.55	9.02	9.43	10.24	9.50	9.12	9.25
Mar.	9.26	8.52	9.01	9.40	10.12	9.43	9.10	9.16
Apr.	9.12	8.40	8.89	9.26	9.94	9.27	8.98	9.05
May	9.16	8.58	8.92	9.28	9.86	9.31	9.00	8.96
June	9.16	8.62	8.89	9.24	9.89	9.26	8.96	8.98
July	9.08	8.56	8.81	9.14	9.82	9.26	8.90	8.81
Aug.	8.93	8.45	8.66	8.98	9.64	9.07	8.79	8.75
Sept.	8.79	8.38	8.54	8.81	9.40	8.91	8.66	8.66
Oct.	8.71	8.32	8.45	8.73	9.29	8.83	8.58	8.54
Nov.	8.66	8.25	8.46	8.69	9.23	8.77	8.54	8.48
Dec.	8.47	7.98	8.24	8.53	9.12	8.61	8.33	8.39
1977								
Jan.	8.41	7.98	8.16	8.45	9.08	8.59	8.24	8.27
Feb.	8.48	8.04	8.26	8.49	9.12	8.63	8.33	8.26
Mar.	8.51	8.10	8.28	8.53	9.12	8.66	8.36	8.26
Apr.	8.49	8.04	8.28	8.55	9.07	8.65	8.32	8.17
May	8.47	8.03	8.28	8.55	9.01	8.64	8.30	8.12
June	8.38	7.95	8.19	8.46	8.91	8.53	8.23	8.06
July	8.33	7.94	8.12	8.40	8.87	8.48	8.18	8.02
Aug.	8.34	7.98	8.17	8.40	8.82	8.47	8.21	8.05
Sept.	8.31	7.92	8.15	8.37	8.80	8.43	8.19	8.03
Oct.	8.42	8.04	8.26	8.48	8.89	8.56	8.27	8.07
Nov.	8.48	8.08	8.34	8.58	8.95	8.61	8.38	8.10
Dec.	8.54	8.19	8.40	8.57	8.99	8.65	8.42	8.10
1978								
Jan.	8.74	8.41	8.59	8.76	9.17	8.87	8.60	8.20
Feb.	8.78	8.47	8.65	8.79	9.20	8.90	8.65	8.32
Mar.	8.80	8.47	8.66	8.83	9.22	8.93	8.66	8.41
Apr.	8.88	8.56	8.73	8.93	9.32	9.05	8.72	8.49

	Public Utility Bonds Aaa	Aa	A	Baa	Industrial Bonds Aaa	Aa	A	Baa	Railroad Bonds Aaa	Aa	A
June	7.53	7.71	7.77	8.31	6.93	7.11	7.37	8.01	---	7.72	7.94
July	7.43	7.58	7.82	8.36	6.93	7.17	7.39	8.01	---	7.75	7.92
Aug.	7.41	7.49	7.64	8.22	6.98	7.10	7.35	8.00	---	7.70	7.92
Sept.	7.41	7.48	7.61	8.01	7.03	7.10	7.35	7.93	---	7.66	7.95
Oct.	7.40	7.50	7.66	7.94	7.01	7.12	7.34	7.98	---	7.71	7.91
Nov.	7.30	7.42	7.60	7.86	6.94	7.02	7.29	7.84	---	7.73	7.87
Dec.	7.26	7.38	7.48	7.78	6.90	6.97	7.23	7.80	---	7.72	7.79
Jan.	7.33	7.42	7.52	7.77	6.96	7.04	7.26	7.89	---	7.67	7.80
Feb.	7.41	7.52	7.62	7.88	7.04	7.12	7.35	7.85	---	7.75	7.81
Mar.	7.45	7.50	7.66	7.95	7.12	7.20	7.44	7.94	---	7.77	7.87
Apr.	7.44	7.51	7.63	7.90	7.08	7.19	7.44	8.00	---	7.77	7.86
May	7.44	7.51	7.63	7.91	7.13	7.19	7.41	7.89	---	7.76	7.89
June	7.51	7.59	7.71	7.94	7.23	7.26	7.46	7.99	---	7.79	7.91
July	7.62	7.70	7.82	8.10	7.28	7.36	7.64	8.10	---	7.87	8.12
Aug.	7.81	7.92	8.04	8.47	7.58	7.72	8.02	8.34	---	7.90	8.27
Sept.	7.78	7.94	8.04	8.61	7.48	7.73	7.99	8.35	---	7.91	8.29
Oct.	7.77	7.94	8.02	8.44	7.43	7.67	7.80	8.12	---	7.92	8.12
Nov.	7.83	8.01	8.15	8.44	7.50	7.67	7.83	8.17	---	8.02	8.17
Dec.	7.86	8.07	8.24	8.51	7.50	7.69	7.89	8.29	---	7.99	8.20
Jan.	8.00	8.15	8.36	8.53	7.65	7.85	7.98	8.38	---	7.92	8.32
Feb.	8.01	8.20	8.42	8.68	7.70	7.90	8.07	8.37	---	7.50	8.29
Mar.	8.14	8.35	8.48	8.81	7.87	8.00	8.19	8.42	---	7.99	8.38
Apr.	8.36	8.56	8.77	9.04	8.13	8.29	8.45	8.69	---	7.99	8.63
May	8.47	8.71	9.00	9.23	8.26	8.44	8.66	8.85	---	8.10	8.88
June	8.58	8.93	9.32	9.48	8.34	8.57	8.82	9.03	---	8.14	9.02
July	8.83	9.17	9.66	9.72	8.60	8.85	9.13	9.23	---	8.28	9.27
Aug.	9.09	9.53	10.03	10.14	8.89	9.03	9.31	9.39	---	8.62	9.50
Sept.	9.36	10.05	10.45	10.59	9.12	9.26	9.62	9.78	---	8.74	9.64
Oct.	9.50	9.93	10.78	11.03	9.03	9.35	9.80	9.92	---	8.92	9.71
Nov.	9.10	9.54	10.46	11.38	8.69	9.13	9.44	9.81	---	8.72	9.70
Dec.	9.02	9.37	10.27	11.40	8.74	9.03	9.31	9.85	---	8.69	9.67
Jan.	8.99	9.45	10.37	11.57	8.65	8.81	9.25	10.02	---	8.70	9.85
Feb.	8.79	9.23	9.99	11.32	8.44	8.60	9.03	9.98	---	8.59	9.40
Mar.	8.82	9.17	9.72	10.94	8.52	8.67	9.01	10.01	---	8.57	9.25
Apr.	9.11	9.48	10.06	10.86	8.73	8.89	9.22	10.30	---	8.70	9.61
May	9.05	9.50	10.23	10.93	8.75	8.96	9.34	10.42	---	8.67	9.82
June	8.93	9.34	10.10	10.85	8.61	8.91	9.23	10.39	---	8.56	9.68
July	9.04	9.38	10.01	10.80	8.62	8.88	9.22	10.30	---	8.54	9.67
Aug.	9.20	9.52	10.17	10.87	8.69	8.94	9.24	10.31	---	8.62	9.74
Sept.	9.21	9.64	10.19	10.89	8.68	9.06	9.28	10.35	---	8.61	9.75
Oct.	9.14	9.55	10.16	10.89	8.57	9.08	9.28	10.34	---	8.55	9.77
Nov.	9.03	9.45	10.04	10.78	8.52	9.00	9.24	10.33	---	8.46	9.72
Dec.	9.07	9.51	10.11	10.79	8.51	8.99	9.23	10.33	---	8.47	9.69
Jan.	8.86	9.39	9.90	10.53	8.33	8.87	9.18	10.26	---	8.45	9.63
Feb.	8.80	9.16	9.71	10.31	8.29	8.87	9.15	10.17	---	8.38	9.54
Mar.	8.74	9.12	9.67	10.17	8.30	8.88	9.12	10.07	---	8.28	9.47
Apr.	8.59	9.00	9.53	9.95	8.20	8.78	9.00	9.92	---	8.23	9.27
May	8.73	9.06	9.55	9.91	8.43	8.78	9.00	9.81	---	8.14	9.17
June	8.84	9.07	9.54	10.01	8.40	8.71	8.97	9.76	---	8.12	9.11
July	8.78	9.02	9.37	9.84	8.33	8.59	8.91	9.75	---	8.04	9.11
Aug.	8.64	8.83	9.13	9.67	8.26	8.48	8.82	9.61	---	7.99	9.06
Sept.	8.57	8.69	8.90	9.47	8.18	8.39	8.72	9.33	---	7.96	8.92
Oct.	8.50	8.60	8.79	9.41	8.14	8.38	8.66	9.17	---	7.82	8.85
Nov.	8.39	8.61	8.76	9.34	8.12	8.30	8.63	9.12	---	7.72	8.82
Dec.	8.15	8.45	8.62	9.21	7.81	8.04	8.43	9.03	---	7.67	8.69
Jan.	8.14	8.41	8.61	9.17	7.77	7.99	8.28	8.99	---	7.52	8.54
Feb.	8.21	8.45	8.65	9.19	7.86	8.05	8.33	9.04	---	7.59	8.52
Mar.	8.27	8.49	8.70	9.20	7.92	8.07	8.40	9.04	---	7.70	8.48
Apr.	8.21	8.51	8.71	9.17	7.86	8.05	8.39	8.97	---	7.63	8.37
May	8.22	8.49	8.71	9.13	7.87	8.06	8.39	8.88	---	7.61	8.21
June	8.12	8.37	8.58	9.02	7.77	8.00	8.33	8.80	---	7.55	8.08
July	8.10	8.32	8.51	8.97	7.78	7.92	8.28	8.75	---	7.53	7.89
Aug.	8.13	8.36	8.49	8.91	7.82	7.97	8.30	8.72	---	7.56	7.89
Sept.	8.07	8.32	8.48	8.85	7.76	7.97	8.27	8.74	---	7.62	7.83
Oct.	8.18	8.44	8.61	9.01	7.83	8.03	8.35	8.77	---	7.74	7.87
Nov.	8.23	8.48	8.64	9.06	7.93	8.20	8.46	8.84	---	7.79	7.91
Dec.	8.34	8.55	8.64	9.08	8.04	8.25	8.49	8.90	---	7.83	7.93
Jan.	8.52	8.76	8.92	9.27	8.31	8.42	8.60	9.07	---	7.93	8.04
Feb.	8.57	8.79	8.97	9.29	8.37	8.50	8.62	9.11	---	8.09	8.18
Mar.	8.57	8.79	8.98	9.37	8.38	8.53	8.69	9.07	---	8.10	8.30
Apr.	8.69	8.86	9.09	9.34	8.43	8.59	8.76	9.10	---	8.08	8.45

II-35

Attachment III

MOODY'S PUBLIC UTILITY PREFERRED STOCK YIELD AVERAGE

FOR FERTILIZER COMPANY 8.88

Moody's Public Utility Preferred Stock Yield Averages

"aa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	---	---	---	---	---	---	9.38	9.55	9.64	9.42	9.31	9.33
1976	8.79	8.74	8.92	8.77	8.90	8.92	8.80	8.72	8.58	8.49	8.57	8.28
1977	8.36	8.23	8.21	8.16	8.14	8.03	7.91	8.03	7.95	8.08	8.15	8.14
1978	8.31	8.38	8.35	8.51	---	---	---	---	---	---	---	---

"a"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	---	---	---	---	---	---	10.29	10.49	10.72	10.27	10.22	10.25
1976	9.43	9.42	9.52	9.24	9.46	9.48	9.37	9.31	9.04	8.95	8.99	8.80
1977	8.83	8.80	8.75	8.61	8.64	8.47	8.23	8.30	8.32	8.50	8.55	8.58
1978	8.70	8.74	8.79	8.88	---	---	---	---	---	---	---	---

"baa"

	Jan.	Feb.	Mar.	Apr.	May	Jun.	Jul.	Aug.	Sep.	Oct.	Nov.	Dec.
1975	---	---	---	---	---	---	10.70	10.98	11.11	10.81	10.55	10.67
1976	9.78	9.57	9.73	9.62	9.78	9.79	9.74	9.67	9.45	9.30	9.30	9.15
1977	9.01	8.98	9.01	9.00	9.04	8.92	8.63	8.72	8.57	8.98	8.96	9.03
1978	9.17	9.17	9.34	9.34	---	---	---	---	---	---	---	---

NOTE: There is no "aaa" average because of the dearth of prime-quality preferred stocks. Yields are based on prices for the last Friday of each month.

Title	Moody's Rating	Dividend Dates	Par or Stated Value	Shares Outstanding (000's)	Current Call Price	Sinking Fund	[1]New Money Preferred
Alabama Power Co.							
4.20% Cum. preferred	"ba"	J, A, J & O1	100	364	105.00 (no change)	No	No
4.52% Cum. preferred	"ba"	J, A, J & O1	100	50	102.93 (no change)	No	Yes
4.60% Cum. preferred	"ba"	J, A, J & O1	100	100	104.20 (no change)	No	Yes
4.64% Cum. preferred	"ba"	J, A, J & O1	100	60	101.30 (to 5-1-79)	No	Yes
4.72% Cum. preferred	"ba"	J, A, J & O1	100	50	103.36 (to 9-1-80)	No	Yes
4.92% Cum. preferred	"ba"	J, A, J & O1	100	80	103.23 (no change)	No	Yes
5.96% Cum. preferred	"ba"	J, A, J & O1	100	70	104.88 (to 10-1-81)	No	Yes
6.88% Cum. preferred	"ba"	J, A, J & O1	100	50	105.34 (to 11-1-73)	No	Yes
9.24% Cum. preferred	"ba"	J, A, J & O1	100	100	108.46 (to 11-1-80)	No	No
*8.28% Cum. preferred	"ba"	J, A, J & O1	100	380	108.43 (to 1-1-82)	No	Yes
8.04% Cum. preferred	"ba"	J, A, J & O1	100	200	107.80 (to 4-1-82)	No	Yes
*8.16% Cum. preferred	"ba"	J, A, J & O1	100	500	109.60 (to 12-1-73)	No	Yes
*9.44% Cum. preferred, 1974 Series	"ba"	J, A, J & O1	100	350	110.69 (fr. 4-1-79)	No	Yes
*11% Cum. preferred	"ba"	J, A, J & O1	100	500	111.00 (fr. 1-1-81)	Yes	Yes
9% Cum. preferred	"ba"	J, A, J & O1	100	500	109.50 (fr. 9-1-82)	No	Yes
[2]8.72% {Cum. preferred	"ba"	J, A, J & O1	100	[3]	108.72 (fr. 12-1-82)	No	Yes
{Depositary preferred	"ba"	J, A, J & O1	[3]	[3]	----- -----------	---	---
AMAX Inc.							
*$3 Cv. preferred ser. B	"a"	M, J, S & D1	$50	2,000	[4]53.00 (to 3-1-79)	No	Yes
American Airlines Inc.							
*$2.1675 Cum. preferred units	"ba"	J, A, J & O1	$25	5,000	25.00 (Fr. 4-1-82)	[5]Yes	Yes
American Telephone & Telegraph Co.							
*$4.00 Cum. conv. preferred	"aaa"	F, M, A & N1	50	27,433	50.00 (no change)	No	Yes
*$3.64 Cum. perferred	"aaa"	F, M, A & N1	50	10,000	103.12 (to 4-30-79)	[6]Yes	Yes
*$3.74 Cum. preferred	"aaa"	F, M, A & N1	50	10,000	103.10 (to 1-31-81)	[7]Yes	Yes
Appalachian Power Company							
4.5% Cum. preferred	"baa"	F, M, A & N1	100	300	110.00 (no change)	No	No
4.50% Cum. Preferred	"baa"	F, M, A & N1	100	33	102.00 (no change)	Yes	Yes
*7.40% Cum. preferred	"baa"	F, M, A & N1	100	250	106.92 (to 2-1-82)	No	Yes
*8.12% Cum. preferred	"baa"	F, M, A & N1	100	300	107.50 (to 8-31-81)	No	Yes
8.52% Cum. preferred	"baa"	F, M, A & N1	100	200	109.52 (fr. 3-1-79)	No	Yes
Arizona Public Service Co.							
$1.10 Cum. preferred	"a"	M, J, S & D1	25	156	27.50 (no change)	No	[8]
$2.50 Cum. preferred	"a"	M, J, S & D1	50	103	51.00 (no change)	No	[8]
$2.36 Cum. preferred	"a"	M, J, S & D1	50	40	51.00 (no change)	No	Yes
$2.40 Cum. preferred, ser. A	"a"	M, J, S & D1	50	240	50.50 (no change)	No	Yes
$3.25 Cum. preferred, ser. E	"a"	M, J, S & D1	50	320	51.50 (to 2-28-83)	No	Yes
*$10.70 Cum. preferred, ser. I	"a"	M, J, S & D1	100	300	110.70 (fr. 12-1-80)	Yes	Yes
$3.32 Cum. preferred Ser. J	"a"	M, J, S, & D1	100	500	103.32 (fr. 9-1-82)	No	Yes

Note: Moody's ratings are subject to change. Because of the possible time lapse between Moody's assignment or change of a rating and your use of this monthly publication, we suggest you verify the current rating of any security or issuer in which you are interested.

II-36

Attachment IV

This attachment is IRS Revenue Procedure 77-10.

Revenue Procedure 77-10
Administrative, Procedural, and Miscellaneous

Reprinted from Internal Revenue Bulletin No. 12,
dated March 21, 1977

Department of the Treasury

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability.

Rev. Proc. 77-10

SECTION 1. PURPOSE.

.01 The purpose of this Revenue Procedure is to restate, pursuant to sections 167(m) and 263(f) of the Internal Revenue Code of 1954, with certain substantive modifications as noted below, the asset guideline classes, asset guideline depreciation periods and ranges, and annual asset guideline repair allowance percentages for the Class Life Asset Depreciation Range (CLADR) System.

.02 This Revenue Procedure supersedes Rev. Proc. 72-10, 1972-1 C.B. 721, and the supplements and revisions of the asset guideline classes, periods, and repair allowance percentages published since the publication of Rev. Proc. 72-10. These Revenue Procedures are as follows:

73-2, 1973-1 C.B. 747
73-3, 1973-1 C.B. 749
73-23, 1973-2 C.B. 474
73-24, 1973-2 C.B. 475
73-25, 1973-2 C.B. 477
73-26, 1973-2 C.B. 479
73-27, 1973-2 C.B. 480
73-28, 1973-2 C.B. 482
73-30, 1973-2 C.B. 484
74-27, 1974-2 C.B. 480
74-28, 1974-2 C.B. 481
74-29, 1974-2 C.B. 482
74-30, 1974-2 C.B. 483
74-31, 1974-2 C.B. 487
74-32, 1974-2 C.B. 487
74-37, 1974-2 C.B. 491
74-50, 1974-2 C.B. 506
76-16, 1976-1 C.B. 556
76-17, 1976-1 C.B. 557
76-18, 1976-1 C.B. 559
76-27, 1976-2 C.B. 644
76-37, 1976-2 C.B. 659
77-2, 1977-3 I.R.B. 24
77-3, 1977-3 I.R.B. 24
77-8, 1977-10 I.R.B. 12

.03 In addition, certain changes are made in the numbering system of asset guideline classes to facilitate the understanding and use of the CLADR system.

Broad title headings and asset guideline class number designations for several related guideline classes have been deleted wherever feasible to eliminate confusion over the appropriate asset guideline class number designations.

The asset guideline classes for "Office Furniture, Fixtures, and Equipment," "Information System," and "Data Handling Equipment, except Computers," were established in Rev. Proc. 73-2 as asset guideline classes 70.11, 70.12, and 70.13, respectively. These classes have been redesignated asset guideline classes 00.11, 00.12, and 00.13, respectively. In addition, the asset guideline class for Industrial Steam and Electric Generation and Distribution Systems, designated asset guideline class 49.5, has been redesignated asset guideline class 00.4. The redesignations group these asset guideline classes with certain other asset guideline classes by types of depreciable assets rather than by the activity or the product of an activity.

04 Numerous changes and modifications have been made to the language of the asset guideline class descriptions. These changes are not intended to modify the composition of the existing classes of Rev. Proc. 72-10.

.05 The following substantive modifications of the classes of Rev. Proc. 72-10 have been made:

(i) Assets used in the ginning of cotton have been reclassified from class 39.0 to class 01.1.

(ii) Assets used by plumbing contractors have been reclassified from class 70.2 to class 15.1.

(iii) The description of assets included in class 15.2, "Marine Contract Construction," has been modified to be consistent with Rev. Proc. 66-18, 1966-1 C.B. 646.

(iv) Subclass 49.121, "Electric Utility Nuclear Fuel Assemblies," is part of class 49.12, "Electric Utility Nuclear Production Plant," to which it is related. Assets included in subclass 49.121 are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations. See Section 2.02(i) of this Revenue Procedure.

SEC. 2. RULE OF APPLICATION

.01 The asset guideline classes, asset guideline periods and ranges, and annual asset guideline repair allowances percentages set forth are for use under the rules set forth in section 1.167(a)-11 of the Income Tax Regulations.

.02 It should be noted that the following special rules apply as specified:

(i) It is expressly provided that asset guideline classes and subclasses 00.4, 20.5, 30.11, 30.21, 32.11, 33.11, 33.21, 34.01, 35.11, 35.21, 36.11, 37.12, 37.32, 37.33, and 49.121 are part of existing activity classes to which the assets included in them relate as stated in the Revenue Procedures establishing these subclasses; therefore, assets included in these classes and subclasses are not separately subject to possible exclusion from an election to apply section 1.167(a)-11(b)(5)(v) of the regulations.

(ii) "Service assets," as defined in classes 50.1 and 70.21, the cost of which is properly deductible under section 162 of the Code, are not eligible property under the CLADR system. Further, service assets may be treated as mass assets as defined in section 1.47-1(e)(4) of the regulations. Service assets may be depreciated under a method not described in section 167(b)(1), (2), or (3), if the requirements of section 1.167(a)-11(b)(5)(v) are met.

(iii) If the asset guideline class repair allowance for class 32.1 is elected in accordance with section 1.167(a)-11(d)(2)(ii) of the regulations, "cold tank repairs," including refractory relining expenditures to glass furnaces, shall be treated as deductible repairs within the provisions and limitations of section 1.167(a)-11(d)(2)(iv)(a) dealing with the application of the asset guideline class repair allowance.

(iv) General rebuilding or rehabilitation costs for the special tools defined in class 30.11 that have been traditionally capitalized as the cost of a new asset are included in class 30.11.

(v) Asset guideline class 00.3, "Land Improvements," includes "other tangible property" that qualifies under section 1.48-1(d) of the regulations. However, a structure that is essentially an item of machinery or equip-

ment or a structure that houses property used as an integral part of an activity specified in section 48(a)(1)(B)(i) of the Code, if the use of the structure is so closely related to the use of the property that the structure clearly can be expected to be replaced when the property it initially houses is replaced, is included in the asset guideline class appropriate to the equipment to which it is related.

.03 Property that is used predominantly outside the United States may be eligible property if the requirements of section 1.167(a)-11(b)(2) of the regulations are met. In the case of property first placed in service and used predominantly outside the United States during the taxable year of election, an asset guideline period, but no asset depreciation range is in effect. Accordingly, such property shall not be treated as included in the same asset guideline class as property used predominantly inside the United States, for purposes of determining the asset depreciation period under section 1.167(a)-11(b)(4). Thus, for this purpose each asset guideline class described in this Revenue Procedure has an exact counterpart that consists of property otherwise includable within the class, but used predominantly outside the United States during the taxable year of election. Generally, for this purpose property is used predominantly outside the United States if such property is physically located outside the United States during more than 50 percent of days of the taxable year of election, beginning with the date the property is first placed in service. However, there are ten exceptions to this general rule and these are contained in section 48(a)(2) of the Code. The asset depreciation period for property, which is determined in the taxable year of election, will not be changed because of a change in predominant use after the close of such taxable year. Although treated as in a separate class for purposes of determining the asset depreciation period, property predominantly used outside the United States shall be included in the same asset guideline class as property predominantly used inside the United States for purposes of applying the asset guideline class repair allowance under section 1.167(a)-11(d)(2).

SEC. 3. ASSET GUIDELINE CLASSES AND PERIODS, ASSET DEPRECIATION RANGES, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGES.

The asset guideline classes, asset guideline periods, asset depreciation ranges, and annual asset guideline repair allowance percentages are prescribed as set forth below:

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
SPECIFIC DEPRECIABLE ASSETS USED IN ALL BUSINESS ACTIVITIES, EXCEPT AS NOTED:					
00.11	**Office Furniture, Fixtures, and Equipment:** Includes furniture and fixtures which are not a structural component of a building. Includes such assets as desks, files, safes, and communications equipment. Does not include communications equipment that is included in other CLADR classes	8	10	12	2
00.12	**Information Systems:** Includes computers and their peripheral equipment used in administering normal business transactions and the maintenance of business records, their retrieval and analysis. Information systems are defined as: 1) Computers: A computer is an electronically activated device capable of accepting information, applying prescribed processes to the information, and supplying the results of these processes with or without human intervention. It usually consists of a central processing unit containing extensive storage, logic, arithmetic, and control capabilities. Excluded from this category are adding machines, electronic desk calculators, etc. 2) Peripheral equipment consists of the auxiliary machines which may be placed under control of the central processing unit. Non limiting examples are: Card readers, card punches, magnetic tape feeds, high speed printers, optical character readers, tape cassettes, mass storage units, paper tape equipment, keypunches, data entry devices, teleprinters, terminals, tape drives, disc drives, disc files, disc packs, visual image projector tubes, card sorters, plotters, and collators. Peripheral equipment may be used on-line or off-line.				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	Does not include equipment that is an integral part of other capital equipment and which is included in other CLADR classes of economic activity, i.e., computers used primarily for process or production control, switching and channeling	5	6	7	7.5
00.13	**Data Handling Equipment, except Computers:** Includes only typewriters, calculators, adding and accounting machines, copiers, and duplicating equipment	5	6	7	15
00.21	**Airplanes (airframes and engines),** except those used in commercial or contract carrying of passengers or freight, and all helicopters (airframes and engines)	5	6	7	14
00.22	**Automobiles, Taxis**	2.5	3	3.5	16.5
00.23	**Buses**	7	9	11	11.5
00.241	**Light General Purpose Trucks:** Includes trucks for use over the road (actual unloaded weight less than 13,000 pounds)	3	4	5	16.5
00.242	**Heavy General Purpose Trucks:** Includes heavy general purpose trucks, concrete ready-mix truckers, and ore trucks, for use over the road (actual unloaded weight 13,000 pounds or more)	5	6	7	10
00.25	**Railroad Cars and Locomotives,** except those owned by railroad transportation companies	12	15	18	8
00.26	**Tractor Units For Use Over-The-Road**	3	4	5	16.5
00.27	**Trailers and Trailer-Mounted Containers**	5	6	7	10
00.28	**Vessels, Barges, Tugs, and Similar Water Transportation Equipment,** except those used in marine contract construction	14.5	18	21.5	6
00.3	**Land Improvements:** Includes improvements directly to or added to land, whether such improvements are section 1245 property or section 1250 property, provided such improvements are depreciable. Examples of such assets might include sidewalks, roads, canals, waterways, drainage facilities, sewers, wharves and docks, bridges, fences, landscaping, shrubbery, or radio and television transmitting towers. Does not include land improvements that are explicitly included in any other class, and buildings and structural components as defined in section 1.48-1(e) of the regulations. Excludes public utility initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102.		20		
00.4	**Industrial Steam and Electric Generation and/or Distribution Systems:** Includes assets, whether such assets are section 1245 property or 1250 property, providing such assets are depreciable, used in the production and/or distribution of electricity with rated total capacity in excess of 500 Kilowatts and/or assets used in the production and/or distribution of steam with rated total capacity in excess of 12,500 pounds per hour, for use by the taxpayer in his industrial manufacturing process or plant activity and not ordinarily available for sale to others. Does not include buildings and structural components as defined in section 1.48-1(e) of the regulations. Assets used to generate and/or distribute electricity or steam of the type described above of lesser rated capacity are not included, but are included in the appropriate manufacturing equipment classes elsewhere specified.				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	Steam and chemical recovery boiler systems used for the recovery and regeneration of chemicals used in manufacturing, with rated capacity in excess of that described above, with specifically related distribution and return systems are not included but are included in appropriate manufacturing equipment classes elsewhere specified. An example of an excluded steam and recovery boiler system is that used in the pulp and paper manufacturing industry	22.5	28	33.5	2.5
	DEPRECIABLE ASSETS USED IN THE FOLLOWING ACTIVITIES:				
01.1	**Agriculture:** Includes machinery and equipment, grain bins, and fences but no other land improvements, that are used in the production of crops or plants, vines, and trees; livestock; the operation of farm dairies, nurseries, greenhouses, sod farms, mushroom cellars, cranberry bogs, apiaries, and fur farms; the performance of agricultural, animal husbandry, and horticultural services	8	10	12	11
01.11	**Cotton Ginning Assets**	9.5	12	14.5	5.5
01.21	**Cattle, Breeding or Dairy**	5.5	7	8.5	
01.22	**Horses, Breeding or Work**	8	10	12	
01.23	**Hogs, Breeding**	2.5	3	3.5	
01.24	**Sheep and Goats, Breeding**	4	5	6	
01.3	**Farm Buildings**	20	25	30	5
10.0	**Mining:** Includes assets used in the mining and quarrying of metallic and nonmetallic minerals (including sand, gravel, stone, and clay) and the milling, beneficiation and other primary preparation of such materials	8	10	12	6.5
13.1	**Drilling of Oil and Gas Wells:** Includes assets used in the drilling of onshore oil and gas wells and the provisions of geophysical and other exploration services; and the provision of such oil and gas field services as chemical treatment, plugging and abandoning of wells and cementing or perforating well casings. Does not include assets used in the performance of any of these activities and services by integrated petroleum and natural gas producers for their own account	5	6	7	10
13.2	**Exploration for and Production of Petroleum and Natural Gas Deposits:** Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities	11	14	17	4.5
13.3	**Petroleum Refining:** Includes assets used for the distillation, fractionation, and catalytic cracking of crude petroleum into gasoline and its other components	13	16	19	7
13.4	**Marketing of Petroleum and Petroleum Products:** Includes assets used in marketing petroleum and petroleum products, such as related storage facilities and complete service stations, but not including any of these facilities related to petroleum and natural gas trunk pipelines	13	16	19	4

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
15.1	**Contract Construction Other than Marine:** Includes assets used by general building, special trade, and heavy construction contractors. Does not include assets used by companies in performing construction services for their own account	4	5	6	12.5
15.2	**Marine Contract Construction:** Includes assets used by general building, special trade, and heavy construction contractors predominantly in marine construction work. Does not include assets used by companies in performing marine construction services for their own account except for floating, self-propelled, and other drilling platforms and support vessels used in offshore drilling for oil and gas which are included whether used for their own account or others	9.5	12	14.5	5
20.1	**Manufacture of Grain and Grain Mill Products:** Includes assets used in the production of flours, cereals, livestock feeds, and other grain and grain mill products	13.5	17	20.5	6
20.2	**Manufacture of Sugar and Sugar Products:** Includes assets used in the production of raw sugar, syrup, or finished sugar from sugar cane or sugar beets	14.5	18	21.5	4.5
20.3	**Manufacture of Vegetable Oils and Vegetable Oil Products:** Includes assets used in the production of oil from vegetable materials and the manufacture of related vegetable oil products	14.5	18	21.5	3.5
20.4	**Manufacture of Other Food and Kindred Products:** Includes assets used in the production of foods and beverages not included in classes 20.1, 20.2 and 20.3	9.5	12	14.5	5.5
20.5	**Manufacture of Food and Beverages-Special Handling Devices:** Includes assets defined as specialized materials handling devices such as returnable pallets, palletized containers, and fish processing equipment including boxes, baskets, carts, and flaking trays used in activities as defined in classes 20.1, 20.2, 20.3, 20.4. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	4	5	20
21.0	**Manufacture of Tobacco and Tobacco Products:** Includes assets used in the production of cigarettes, cigars, smoking and chewing tobacco, snuff, and other tobacco products	12	15	18	5
22.1	**Manufacture of Knitted Goods:** Includes assets used in the production of knitted and netted fabrics and lace. Assets used in yarn preparation, bleaching, dyeing, printing, and other similar finishing processes, texturing, and packaging, are elsewhere classified	6	7.5	9	7
22.2	**Manufacture of Yarn, Thread, and Woven Fabric:** Includes assets used in the production of spun yarns including the preparing, blending, spinning, and twisting of fibers into yarns and threads, the preparation of yarns such as twisting, warping, and winding, the production of covered elastic yarn and thread, cordage, woven fabric, tire fabric, braided fabric, twisted jute for packing, mattresses, pads, sheets, and industrial belts, and the processing of textile mill waste to recover fibers, flocks, and shoddies. Assets used to manufacture carpets, man-made fibers, and nonwovens, and assets used in texturing, bleach-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	ing, dyeing, printing, and other similar finishing processes, are elsewhere classified	9	11	13	16
22.3	**Manufacture of Carpets, and Dyeing, Finishing, and Packaging of Textile Products:** Includes assets used in the production of carpets, rugs, mats, woven carpet backing, chenille, and other tufted products, and assets used in the joining together of backing with carpet yarn or fabric. Includes assets used in washing, scouring, bleaching, dyeing, printing, drying, and similar finishing processes applied to textile fabrics, yarns, threads, and other textile goods. Includes assets used in the production and packaging of textile products, other than apparel, by creasing, forming, trimming, cutting, and sewing, such as the preparation of carpet and fabric samples, or similar joining together processes (other than the production of scrim reinforced paper products and laminated paper products) such as the sewing and folding of hosiery and panty hose, the creasing, folding, trimming, and cutting of fabrics to produce nonwoven products, such as disposable diapers and sanitary products. Assets used in the manufacture of nonwoven carpet backing, and hard surface floor covering such as tile, rubber, and cork, are elsewhere classified	7	9	11	15
22.4	**Manufacture of Textured Yarns:** Includes assets used in the processing of yarns to impart bulk and/or stretch properties to the yarn. The principal machines involved are falsetwist, draw, beam-to-beam, and stuffer box texturing equipment and related high-speed twisters and winders. Assets, as described above, which are used to further process man-made fibers are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	6.5	8	9.5	7
22.5	**Manufacture of Nonwoven Fabrics:** Includes assets used in the production of nonwoven fabrics, felt goods including felt hats, padding, batting, wadding, oakum, and fillings, from new materials and from textile mill waste. Nonwoven fabrics are defined as fabrics (other than reinforced and laminated composites consisting of nonwovens and other products) manufactured by bonding natural and/or synthetic fibers and/or filaments by means of induced mechanical interlocking, fluid entanglement, chemical adhesion, thermal or solvent reaction, or by combination thereof other than natural hydration bonding as occurs with natural cellulose fibers. Such means include resin bonding, web bonding, and melt bonding. Specifically includes assets used to make flocked and needle punched products other than carpets and rugs. Assets, as described above, which are used to manufacture nonwovens are elsewhere classified when located in the same plant in an integrated operation with man-made fiber producing assets. Assets used to manufacture man-made fibers and assets used in bleaching, dyeing, printing, and other similar finishing processes, are elsewhere classified	8	10	12	15
23.0	**Manufacture of Apparel and Other Finished Products:** Includes assets used in the production of clothing and fabricated textile products by the cutting and sewing of woven fabrics, other				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	textile products, and furs; but does not include assets used in the manufacture of apparel from rubber and leather	7	9	11	7
24.1	**Cutting of Timber:** Includes logging machinery and equipment and roadbuilding equipment used by logging and sawmill operators and pulp manufacturers for their own account	5	6	7	10
24.2	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in permanent or well-established sawmills	8	10	12	6.5
24.3	**Sawing of Dimensional Stock from Logs:** Includes machinery and equipment installed in sawmills characterized by temporary foundations and a lack, or minimum amount, of lumber-handling, drying, and residue disposal equipment and facilities	5	6	7	10
24.4	**Manufacture of Wood Products, and Furniture:** Includes assets used in the production of plywood, hardboard, flooring, veneers, furniture, and other wood products, including the treatment of poles and timber	8	10	12	6.5
26.1	**Manufacture of Pulp and Paper:** Includes assets for pulp materials handling and storage, pulp mill processing, bleach processing, paper and paperboard manufacturing, and on-line finishing. Includes pollution control assets and all land improvements associated with the factory site or production process such as effluent ponds and canals, provided such improvements are depreciable but does not include buildings and structural components as defined in section 1 48-1(e)(1) of the regulations. Includes steam and chemical recovery boiler systems, with any rated capacity, used for the recovery and regeneration of chemicals used in manufacturing. Does not include assets used either in pulpwood logging, or in the manufacture of hardboard	10.5	13	15.5	10
26.2	**Manufacture of Converted Paper, Paperboard, and Pulp Products:** Includes assets used for modification, or remanufacture of paper and pulp into converted products, such as paper coated off the paper machine, paper bags, paper boxes, cartons and envelopes. Does not include assets used for manufacture of non-wovens that are elsewhere classified	8	10	12	15
27.0	**Printing, Publishing, and Allied Industries:** Includes assets used in printing by one or more processes, such as letterpress, lithography, gravure, or screen; the performance of services for the printing trade, such as book-binding, typesetting, engraving, photoengraving, and electrotyping; and the publication of newspapers, books, and periodicals	9	11	13	5.5
28.0	**Manufacture of Chemicals and Allied Products:** Includes assets used in the manufacture of basic chemicals such as acids, alkalies, salts, and organic and inorganic chemicals; chemical products to be used in further manufacture, such as synthetic fibers and plastics materials, including petrochemical processing beyond that which is ordinarily a part of petroleum refining; and finished chemical products, such as pharmaceuticals, cosmetics, soaps, fertilizers, paints and varnishes, explosives, and compressed and liquified gases. Does				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	not include assets used in the manufacture of finished rubber and plastic products or in the production of natural gas products, butane, propane, and byproducts of natural gas production plants	9	11	13	5.5
30.1	**Manufacture of Rubber Products:** Includes assets used for the production of products from natural, synthetic, or reclaimed rubber, gutta percha, balata, or gutta siak, such as tires, tubes, rubber footwear, mechanical rubber goods, heels and soles, flooring, and rubber sundries; and in the recapping, retreading, and rebuilding of tires	11	14	17	5
30.11	**Manufacture of Rubber Products—Special Tools and Devices:** Includes assets defined as special tools, such as jigs, dies, mandrels, molds, lasts, patterns, specialty containers, pallets, shells, and tire molds, and accessory parts such as rings and insert plates used in activities as defined in class 30.1. Does not include tire building drums and accessory parts and general purpose small tools such as wrenches and drills, both power and hand-driven, and other general purpose equipment such as conveyors and transfer equipment	3	4	5	
30.2	**Manufacture of Finished Plastic Products:** Includes assets used in the manufacture of plastics products and the molding of primary plastics for the trade. Does not include assets used in the manufacture of basic plastics materials nor the manufacture of phonograph records	9	11	13	5.5
30.21	**Manufacture of Finished Plastic Products—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 30.2. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools. such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	3	3.5	4	5.5
31.0	**Manufacture of Leather and Leather Products:** Includes assets used in the tanning, currying, and finishing of hides and skins; the processing of fur pelts; and the manufacture of finished leather products, such as footwear, belting, apparel, and luggage	9	11	13	5.5
32.1	**Manufacture of Glass Products:** Includes assets used in the production of flat, blown, or pressed products of glass, such as float and window glass, glass containers, glassware and fiberglass. Does not include assets used in the manufacture of lenses	11	14	17	12
32.11	**Manufacture of Glass Products—Special Tools:** Includes assets defined as special tools such as molds, patterns, pallets, and specialty transfer and shipping devices such as steel racks to transport automotive glass, used in activities as defined in class 32.1. Special tools are specifically designed for the production or processing of particular parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2	2.5	3	10
32.2	**Manufacture of Cement:** Includes assets used in the production of cement, but does not include any assets used in the manufacture of concrete and concrete products nor in any mining or extraction process	16	20	24	3
32.3	**Manufacture of Other Stone and Clay Products:** Includes assets used in the manufacture of products from materials in the form of clay and stone, such as brick, tile, and pipe; pottery and related products, such as vitreous-china, plumbing fixtures, earthenware and ceramic insulating materials; and also includes assets used in manufacture of concrete and concrete products. Does not include assets used in any mining or extraction processes	12	15	18	4.5
33.1	**Manufacture of Primary Ferrous Metals:** Includes assets used in the smelting and refining of ferrous metals from ore, pig, or scrap; the rolling, drawing, and alloying of ferrous metals; the manufacture of castings, forgings, and other basic products of ferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	14.5	18	21.5	8
33.11	**Manufacture of Primary Ferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.1, manufacture of Primary Ferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.11 but are included in class 33.1	5	6.5	8	4
33.2	**Manufacture of Primary Nonferrous Metals:** Includes assets used in the smelting, refining, and electrolysis of nonferrous metals from ore, pig, or scrap, the rolling, drawing, and alloying of nonferrous metals; the manufacture of castings, forgings, and other basic products of nonferrous metals; and the manufacture of nails, spikes, structural shapes, tubing, wire, and cable	11	14	17	4.5
33.21	**Manufacture of Primary Nonferrous Metals—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities as defined in class 33.2, Manufacture of Primary Nonferrous Metals. Special tools are specifically designed for the production or processing of particular products or parts and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particu-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	lar part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices. Rolls, mandrels, and refractories are not included in class 33.21 but are included in class 33.2	5	6.5	8	4
34.0	**Manufacture of Fabricated Metal Products:** Includes assets used in the production of metal cans, tinware, nonelectric heating apparatus, fabricated structural metal products, metal stampings, and other ferrous and nonferrous metal and wire products not elsewhere classified	9.5	12	14.5	6
34.01	**Manufacture of Fabricated Metal Products—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and returnable containers and drawings concerning such special tools used in the activities as defined in class 34.0. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	3.5
35.1	**Manufacture of Metalworking Machinery:** Includes assets used in the production of metal cutting and forming machines, special dies, tools, jigs, and fixtures, and machine tool accessories	9.5	12	14.5	5.5
35.11	**Manufacture of Metalworking Machinery—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.1. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6	7	12.5
35.2	**Manufacture of Other Machines:** Includes assets used in the production of such machinery as engines and turbines; farm machinery, construction, and mining machinery; general and special industrial machines including office machines and nonelectronic computing equipment; miscellaneous machines except electrical equipment and transportation equipment	9.5	12	14.5	5.5
35.21	**Manufacture of Other Machines—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, used in activities as defined in class 35.2. Special tools are specifically designed for the production or processing of particular machine components and have no significant utilitarian value and cannot be adapted to further				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	12.5
36.1	**Manufacture of Electrical Equipment:** Includes assets used in the production of machinery, apparatus, and supplies for the generation, storage, transmission, transformation, and utilization of electrical energy such as; electric test and distributing equipment, electrical industrial apparatus, household appliances, electric lighting and wiring equipment; electronic components and accessories, phonograph records, storage batteries and ignition systems	9.5	12	14.5	5.5
36.11	**Manufacture of Electrical Equipment—Special Tools:** Includes assets defined as special tools such as jigs, dies, molds, patterns, fixtures, gauges, returnable containers, and specialty transfer devices used in activities as defined in class 36.1. Special tools are specifically designed for the production or processing of particular machine components, products or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	4	5	6	
36.2	**Manufacture of Electronic Products:** Includes assets used in the production of electronic detection, guidance, control, radiation, computation, test, and navigation equipment or the components thereof including airborne application. Also includes assets used in the manufacture of electronic airborne communication equipment or the components thereof. Does not include the assets of manufacturers engaged only in the purchase and assembly of components	6.5	8.0	9.5	7.5
37.11	**Manufacture of Motor Vehicles:** Includes assets used in the manufacture and assembly of finished automobiles, trucks, trailers, motor homes, and buses. Does not include assets used in mining, printing and publishing, production of primary metals, electricity, or steam, or the manufacture of glass, industrial chemicals, batteries, or rubber products, which are classified elsewhere. Includes assets used in manufacturing activities elsewhere classified other than those excluded above, where such activities are incidental to and an integral part of the manufacture and assembly of finished motor vehicles such as the manufacture of parts and subassemblies of fabricated metal products, electrical equipment, textiles, plastics, leather, and foundry and forging operations. Does not include any assets not classified in manufacturing activity classes, e.g., does not include assets classified in asset guideline classes 00.11 through 00.4. Activities will be considered incidental to the manufacture and assembly of finished motor vehicles only if 75 percent or more of the value of the products produced under one roof are used for the manufacture and assembly of finished motor vehicles. Parts that are produced as a normal replacement stock complement in connection with the manufacture and as-				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	sembly of finished motor vehicles are considered used for the manufacture and assembly of finished motor vehicles. Does not include assets used in the manufacture of component parts if these assets are used by taxpayer not engaged in the assembly of finished motor vehicles	9.5	12	14.5	9.5
37.12	**Manufacture of Motor Vehicles—Special Tools:** Includes assets defined as special tools, such as jigs, dies, fixtures, molds, patterns, gauges, and specialty transfer and shipping devices, owned by manufacturers of finished motor vehicles and used in qualified activities as defined in class 37.11. Special tools are specifically designed for the production or processing of particular motor vehicle components and have no significant utilitarian value, and cannot be adapted to further or different use, after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	2.5	3	3.5	12.5
37.2	**Manufacture of Aerospace Products:** Includes assets used in the manufacture and assembly of airborne vehicles and their component parts including hydraulic, pneumatic, electrical, and mechanical systems. Does not include assets used in the production of electronic airborne detection, guidance, control, radiation, computation, test, navigation, and communication equipment or the components thereof	8	10	12	7.5
37.31	**Ship and Boat Building Machinery and Equipment:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.32 and 37.33. Specifically includes all manufacturing and repairing machinery and equipment, including machinery and equipment used in the operation of assets included in asset guideline class 37.32. Excludes buildings and their structural components	9.5	12	14.5	8.5
37.32	**Ship and Boat Building Dry Docks and Land Improvements:** Includes assets used in the manufacture and repair of ships, boats, caissons, marine drilling rigs, and special fabrications not included in asset guideline classes 37.31 and 37.33. Specifically includes floating and fixed dry docks, ship basins, graving docks, shipways, piers, and all other land improvements such as water, sewer, and electric systems. Excludes buildings and their structural components	13	16	19	2.5
37.33	**Ship and Boat Building—Special Tools:** Includes assets defined as special tools such as dies, jigs, molds, patterns, fixtures, gauges, and drawings concerning such special tools used in the activities defined in classes 37.31 and 37.32. Special tools are specifically designed for the production or processing of particular machine components, products, or parts, and have no significant utilitarian value and cannot be adapted to further or different use after changes or improvements are made in the model design of the particular part produced by the special tools. Does not include general purpose small tools such as wrenches and drills, both hand and power-driven, and other general purpose equipment such as conveyors, transfer equipment, and materials handling devices	5	6.5	8	0.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
37.41	**Manufacture of Locomotives:** Includes assets used in building or rebuilding railroad locomotives (including mining and industrial locomotives). Does not include assets of railroad transportation companies or assets of companies which manufacture components of locomotives but do not manufacture finished locomotives	9	11.5	14	7.5
37.42	**Manufacture of Railroad Cars:** Includes assets used in building or rebuilding railroad freight or passenger cars (including rail transit cars). Does not include assets of railroad transportation companies or assets of companies which manufacture components of railroad cars but do not manufacture finished railroad cars	9.5	12	14.5	5.5
38.0	**Manufacture of Professional, Scientific, and Controlling Instruments:** Includes assets used in the manufacture of mechanical measuring, engineering, laboratory and scientific research instruments, optical instruments and lenses; surgical, medical, and dental instruments, equipment and supplies; ophthalmic goods, photographic equipment and supplies; and watches and clocks	9.5	12	14.5	5.5
39.0	**Manufacture of Athletic, Jewelry and Other Goods:** Includes assets used in the production of jewelry; musical instruments; toys and sporting goods; motion picture and television films and tapes; and pens, pencils, office and art supplies, brooms, brushes, caskets, etc.	9.5	12	14.5	5.5
	Railroad Transportation: Classes with the prefix 40 include the assets identified below that are used in the commercial and contract carrying of passengers and freight by rail. Assets of electrified railroads will be classified in a manner corresponding to that set forth below for railroads not independently operated as electric lines. Excludes the assets included in classes with the prefix beginning 00.1 and 00.2 above, and also excludes any nondepreciable assets included in Interstate Commerce Commission accounts enumerated for this class.				
40.1	**Railroad Machinery and Equipment:** Includes assets classified in the following Interstate Commerce Commission accounts: Roadway Accounts: (16) Station and office buildings (freight handling machinery and equipment only) (25) TOFC/COFC terminals (freight handling machinery and equipment only) (26) Communication systems (27) Signals and interlockers (37) Roadway machines (44) Shop machinery Equipment Accounts: (52) Locomotives (53) Freight train cars (54) Passenger train cars (57) Work equipment	11	14	17	10.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
40.2	**Railroad Structures and Similar Improvements:** Includes assets classified in the following Interstate Commerce Commission road accounts: (6) Bridges, trestles, and culverts (7) Elevated structures (13) Fences, snowsheds, and signs (16) Station and office buildings (stations and other operating structures only) (17) Roadway buildings (18) Water stations (19) Fuel stations (20) Shops and enginehouses (25) TOFC/COFC terminals (operating structures only) (31) Power transmission systems (35) Miscellaneous structures (39) Public improvements construction	24	30	36	5
40.3	**Railroad Wharves and Docks** Includes assets classified in the following Interstate Commerce accounts: (23) Wharves and docks (24) Coal and ore wharves	16	20	24	5.5
40.51	**Railroad Hydraulic Electric Generating Equipment**	40	50	60	1.5
40.52	**Railroad Nuclear Electric Generating Equipment**	16	20	24	3
40.53	**Railroad Steam Electric Generating Equipment**	22.5	28	33.5	2.5
40.54	**Railroad Steam, Compressed Air, and Other Power Plant Equipment**	22.5	28	33.5	7.5
41.0	**Motor Transport-Passengers:** Includes assets used in the urban and interurban commercial and contract carrying of passengers by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11.5
42.0	**Motor Transport-Freight:** Includes assets used in the commercial and contract carrying of freight by road, except the transportation assets included in classes with the prefix 00.2	6.5	8	9.5	11
44.0	**Water Transportation:** Includes assets used in the commercial and contract carrying of freight and passengers by water except the transportation assets included in classes with the prefix 00.2. Includes all related land improvements	16	20	24	8
45.0	**Air Transport:** Includes assets (except helicopters) used in commercial and contract carrying of passengers and freight by air. For purposes of section 1.167(a)-11(d)(2)(iv)(*a*) of the regulations, expenditures for "repair, maintenance, rehabilitation, or improvement" shall consist of direct maintenance expenses (irrespective of airworthiness provisions or charges) as defined by Civil Aeronautics Board uniform accounts 5200, maintenance burden (exclusive of expenses pertaining to maintenance buildings and improvements) as defined by Civil Aeronautics Board uniform accounts 5300, and expenditures which are not "excluded additions" as defined by section 1.167(a)-11(d)(2)(vi) of the regulations and which would be charged to property and equipment accounts in the Civil Aeronautics Board uniform system of accounts	9.5	12	14.5	15

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
45.1	**Air Transport (restricted)** Includes each asset described in the description of class 45.0 which was held by the taxpayer on April 15, 1976, or is acquired by the taxpayer pursuant to a contract which was, on April 15, 1976, and at all times thereafter, binding on the taxpayer. This criterion of classification based on binding contract concept is to be applied in the same manner as under the general rules expressed in section 49(b)(1), (4), (5), and (8) of the Code	5	6	7	15
46.0	**Pipeline Transportation:** Includes assets used in the private, commercial, and contract carrying of petroleum, gas, and other products by means of pipes and conveyors. The trunk lines and related storage facilities of integrated petroleum and natural gas producers are included in this class. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102, but includes all other related land improvements	17.5	22	26.5	3
	Telephone Communications: Includes the assets identified below and that are used in the provision of commercial and contract telephonic services such as:				
48.11	**Telephone Central Office Buildings:** Includes assets intended to house central office equipment, as defined in Federal Communications Commission Part 31 Account No. 212 whether section 1245 or section 1250 property	36	45	54	1.5
48.12	**Telephone Central Office Equipment:** Includes central office switching and related equipment as defined in Federal Communications Commission Part 31 Account No. 221	16	20	24	6
48.13	**Telephone Station Equipment:** Includes such station apparatus and connections as teletypewriters, telephones, booths, private exchanges, and comparable equipment as defined in Federal Communications Commission Part 31 Account Nos. 231, 232, and 234	8	10	12	10
48.14	**Telephone Distribution Plant:** Includes such assets as pole lines, cable, aerial wire, underground conduits, and comparable equipment, and related land improvements as defined in Federal Communications Commission Part 31 Account Nos. 241, 242.1, 242.2, 242.3, 242.4, 243, and 244	28	35	42	2
48.2	**Radio and Television Broadcastings:** Includes assets used in radio and television broadcasting, except transmitting towers	5	6	7	10
	Telegraph, Ocean Cable, and Satellite Communications (TOCSC) Includes communications-related assets used to provide domestic and international radio-telegraph, wire-telegraph, ocean-cable, and satellite communications services; also includes related land improvements.				
48.31	**TOCSC-Electric Power Generating and Distribution Systems:** Includes assets used in the provision of electric power by generation, modulation, rectification, channelization, control, and distribution. Does not include these assets when they are installed on customer's premises	15	19	23	

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
48.32	**TOCSC-High Frequency Radio and Microwave Systems:** Includes assets such as transmitters and receivers, antenna supporting structures, antennas, transmission lines from equipment to antenna, transmitter cooling systems, and control and amplification equipment. Does not include cable and long-line systems	10.5	13	15.5	
48.33	**TOCSC-Cable and Long-line Systems:** Includes assets such as transmission lines, pole lines, ocean cables, buried cable and conduit, repeaters, repeater stations, and other related assets. Does not include high frequency radio or microwave systems	21	26.5	32	
48.34	**TOCSC-Central Office Control Equipment:** Includes assets for general control, switching, and monitoring of communications signals including electromechanical switching and channeling apparatus, multiplexing equipment, patching and monitoring facilities, in-house cabling, teleprinter equipment, and associated site improvements	13	16.5	20	
48.35	**TOCSC-Computerized Switching, Channeling, and Associated Control Equipment:** Includes central office switching computers, interfacing computers, other associated specialized control equipment, and site improvements	8.5	10.5	12.5	
48.36	**TOCSC-Satellite Ground Segment Property:** Includes assets such as fixed earth station equipment, antennas, satellite communications equipment, and interface equipment used in satellite communications. Does not include general purpose equipment or equipment used in satellite space segment property	8	10	12	
48.37	**TOCSC-Satellite Space Segment Property:** Includes satellites and equipment used for telemetry, tracking, control, and monitoring when used in satellite communications	6.5	8	9.5	
48.38	**TOCSC-Equipment Installed on Customer's Premises:** Includes assets installed on customer's premises, such as computers, terminal equipment, power generation and distribution systems, private switching center, teleprinters, facsimile equipment, and other associated and related equipment	8	10	12	
48.39	**TOCSC-Support and Service Equipment:** Includes assets used to support but not engage in communications. Includes store, warehouse, and shop tools, and test and laboratory assets	11	13.5	16	
	Cable Television (CATV): Includes communications-related assets used to provide cable television (community antenna television services). Does not include assets used to provide subscribers with two-way communications services.				
48.41	**CATV-Headend:** Includes assets such as towers, antennas, preamplifiers, converters, modulation equipment, and program non-duplication systems. Does not include headend buildings and program origination assets	9	11	13	5
48.42	**CATV-Subscriber Connection and Distribution Systems:** Includes assets such as trunk and feeder cable, connecting hardware, amplifiers, power equipment, passive devices, directional taps, pedestals,				

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
	pressure taps, drop cables, matching transformers, multiple set connector equipment, and converters	8	10	12	5
48.43	**CATV-Program Origination:** Includes assets such as cameras, film chains, video tape recorders, lighting, and remote location equipment excluding vehicles. Does not include buildings and their structural components	7	9	11	9
48.44	**CATV-Service and Test:** Includes assets such as oscilloscopes, field strength meters, spectrum analyzers, and cable testing equipment, but does not include vehicles	7	8.5	10	2.5
48.45	**CATV-Microwave Systems:** Includes assets such as towers, antennas, transmitting and receiving equipment, and broad band microwave assets if used in the provision of cable television services. Does not include assets used in the provision of common carrier services	7.5	9.5	11.5	2
	Electric, Gas, Water and Steam, Utility Services: Includes assets used in the production, transmission and distribution of electricity, gas, steam, or water for sale, including related land improvements.				
49.11	**Electric Utility Hydraulic Production Plant:** Includes assets used in the hydraulic power production of electricity for sale, including related land improvements, such as dams, flumes, canals, and waterways	40	50	60	1.5
49.12	**Electric Utility Nuclear Production Plant:** Includes assets used in the nuclear power production of electricity for sale and related land improvements. Does not include nuclear fuel assemblies	16	20	24	3
49.121	**Electric Utility Nuclear Fuel Assemblies:** Includes initial core and replacement core nuclear fuel assemblies (i.e. the composite of fabricated nuclear fuel and container) when used in a boiling water, pressurized water, or high temperature gas reactor used in the production of electricity. Does not include nuclear fuel assemblies used in breeder reactors	4	5	6	
49.13	**Electric Utility Steam Production Plant:** Includes assets used in the steam power production of electricity for sale, combustion turbines operated in a combined cycle with a conventional steam unit and related land improvements	22.5	28	33.5	5
49.14	**Electric Utility Transmission and Distribution Plant:** Includes assets used in the transmission and distribution of electricity for sale and related land improvements. Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403, 1972-2 C.B. 102	24	30	36	4.5
49.15	**Electric Utility Combustion Turbine Production Plant:** Includes assets used in the production of electricity for sale by the use of such prime movers as jet engines, combustion turbines, diesel engines, gasoline engines, and other internal combustion engines, their associated power turbines and/or generators, and related land improvements. Does not include combustion turbines operated in a combined cycle with a conventional steam unit	16	20	24	4

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
49.21	**Gas Utility Distribution Facilities:** Including gas water heaters and gas conversion equipment installed by utility on customers' premises on a rental basis	28	35	42	2
49.221	**Gas Utility Manufactured Gas Production Plants:** Includes assets used in the manufacture of gas having chemical and/or physical properties which do not permit complete interchangeability with domestic natural gas	24	30	36	2
49.222	**Gas Utility Substitute Natural Gas (SNG) Production Plant (naptha or lighter hydrocarbon feedstocks):** Includes assets used in the catalytic conversion of feedstocks of naphtha or lighter hydrocarbons to a gaseous fuel which is completely interchangeable with domestic natural gas	11	14	17	4.5
49.23	**Natural Gas Production Plant**	11	14	17	4.5
49.24	**Gas Utility Trunk Pipelines and Related Storage Facilities:** Excludes initial clearing and grading land improvements as specified in Rev. Rul. 72-403	17.5	22	26.5	3
49.25	**Liquefied Natural Gas Plant:** Includes assets used in the liquefaction, storage, and regasification of natural gas including loading and unloading connections, instrumentation equipment and controls, pumps, vaporizers and odorizers, tanks, and related land improvements. Also includes pipeline interconnections with gas transmission lines and distribution systems and marine terminal facilities	17.5	22	26.5	4.5
49.3	**Water Utilities:** Includes assets used in the gathering, treatment, and commercial distribution of water	40	50	60	1.5
49.4	**Central Steam Utility Production and Distribution:** Includes assets used in the production and distribution of steam for sale	22.5	28	33.5	2.5
50.0	**Wholesale and Retail Trade:** Includes assets used in carrying out the activities of purchasing, assembling, storing, sorting, grading, and selling of goods at both the wholesale and retail level. Also includes assets used in such activities as the operation of restaurants, cafes, coin-operated dispensing machines, and in brokerage of scrap metal	8	10	12	6.5
50.1	**Wholesale and Retail Trade Service Assets:** Includes assets such as glassware, silverware (including kitchen utensils), crockery (usually china) and linens (generally napkins, tablecloths and towels) used in qualified activities as defined in class 50.0	2	2.5	3	
70.2	**Personal and Professional Services:** Includes assets used in the provision of personal services such as those offered by hotels and motels, laundry and dry cleaning establishments, beauty and barber shops, photographic studios and mortuaries. Includes assets used in the provision of professional services such as those offered by doctors, dentists, lawyers, accountants, architects, engineers, and veterinarians. Includes assets used in the provision of repair and maintenance services and those assets used in providing fire and burglary protection services. Includes equipment or facilities used by cemetery organizations, news agencies, teletype wire services, frozen food lockers, and research laboratories	8	10	12	6.5

Asset guideline class	Description of assets included	Asset depreciation range (in years)			Annual asset guideline repair allowance percentage
		Lower limit	Asset guideline period	Upper limit	
70.21	**Personal and Professional Services Service Assets:** Includes assets such as glassware, silverware, crockery, and linens (generally sheets, pilowcases and bath towels) used in qualified activities as defined in class 70.2	2	2.5	3	
79.0	**Recreation:** Includes assets used in the provision of entertainment services on payment of a fee or admission charge, as in the operation of bowling alleys, billiard and pool establishments, theaters, concert halls, and miniature golf courses. Does not include amusement and theme parks and assets which consist primarily of specialized land improvements or structures, such as golf courses, sports stadia, race tracks, ski slopes, and buildings which house the assets used in entertainment services	8	10	12	6.5
80.0	**Theme and Amusement Parks:** Includes assets used in the provision of rides, attractions, and amusements in activities defined as theme and amusement parks, and includes appurtenances associated with a ride, attraction, amusement or theme setting within the park such as ticket booths, facades, shop interiors, and props, special purpose structures, and buildings other than warehouses, administration buildings, hotels, and motels. Includes all land improvements for or in support of park activities, (e.g. parking lots, sidewalks, waterways, bridges, fences, landscaping, etc.) and support functions (e.g. food and beverage retailing, souvenir vending and other nonlodging accommodations) if owned by the park and provided exclusively for the benefit of park patrons. Theme and amusement parks are defined as combinations of amusements, rides, and attractions which are permanently situated on park land and open to the public for the price of admission. This guideline class is a composite of all assets used in this industry except transportation equipment (general purpose trucks, cars, airplanes, etc., which are included in asset guideline classes with the prefix 00.2), assets used in the provision of administrative services (asset guideline classes with the prefix 00.1), and warehouses, administration buildings, hotels and motels	10	12.5	15	12.5

SEC. 4. EFFECT ON OTHER DOCUMENTS.

Rev. Procs. 72-10, 73-2, 73-3, 73-23, 73-24, 73-25, 73-26, 73-27, 73-28, 73-30, 74-27, 74-28, 74-29, 74-30, 74-31, 74-32, 74-37, 74-50, 76-16 76-17, 76-18, 76-27, 76-37, 77-2, 77-3 and 77-8 are superseded for property placed in service in taxable years ending on or after March 21, 1977, the date of publication of this Revenue Procedure in the Internal Revenue Bulletin, in accordance with section 1.167(a)-11(b)(4) of the regulations. However, the taxpayer may at his option apply Rev. Proc. 72-10, as previously modified by the aforementioned documents, without regard to this Revenue Procedure for such property placed in service in a taxable year beginning before March 21, 1977, and ending on or after that date. Such option shall be exercised in making the election to apply section 1.167(a)-11 for such year and may not be revoked after the latest time for making such election.

The asset guideline classes, asset guideline depreciation periods and ranges, and asset guideline repair allowance percentages set forth in this Revenue Procedure will from time to time be supplemented and revised as provided by section 1.167(a)-11(b)(4) of the regulations. Taxpayers using this Revenue Procedure should apply it as supplemented and revised.

GPO 913-769

News Release

Department of the Treasury
Internal Revenue Service
Washington, DC 20224
Tel. (202) 964-4021

For Release: 12/30/77

IR-1924

Washington, D.C.--The Internal Revenue Service today announced a new procedure that reclassifies assets used in the offshore pipeline transportation of petroleum and natural gas for taxpayers who elect the Class Life Asset Depreciation Range system.

Revenue Procedure 78-5 , which is attached, makes a reclassification of offshore pipeline transportation assets of producers and others that affects the depreciation period and repair allowance percentage of such assets. The class for assets used by producers in the exploration for and production of petroleum and natural gas deposits now includes the offshore pipeline transportation assets of producers and others.

The new procedure, which will appear in Internal Revenue Bulletin No. 1978-5 , dated January 30, 1978 supplements and modifies related material previously published in Revenue Procedure 77-10.

X X X

PART III. ADMINISTRATIVE, PROCEDURAL, AND MISCELLANEOUS

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also Part I, Section 167; 1.167(a)-11.)

REV. PROC. 78-5

SECTION 1. PURPOSE.

The purpose of this Revenue Procedure is to prescribe under section 1.167(a)-11 of the Income Tax Regulations a revised asset guideline class for assets used in the exploration for and production of petroleum and natural gas deposits to include assets used by petroleum and natural gas producers and others in the offshore pipeline transportation of oil and natural gas. These assets were formerly included in Class 46.0.

The revised asset guideline class, the associated asset guideline depreciation period and range, and annual asset guideline repair allowance percentage are set forth in Section 2 of this Revenue Procedure.

SEC. 2. ASSET GUIDELINE CLASS, ASSET GUIDELINE DEPRECIATION PERIOD AND RANGE, AND ANNUAL ASSET GUIDELINE REPAIR ALLOWANCE PERCENTAGE FOR ASSETS USED IN THE EXPLORATION FOR AND PRODUCTION OF PETROLEUM AND NATURAL GAS DEPOSITS.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage are prescribed as set forth below.

(MORE)

Asset Guideline Class	Description of Assets Included	Asset Depreciation Range (in years) Lower Limit	Asset Guideline Period	Asset Depreciation Range (in years) Upper Limit	Annual Asset Guideline Repair Allowance Percentage
13.2	Exploration for and Production of Petroleum and Natural Gas Deposits: Includes assets used by petroleum and natural gas producers for drilling of wells and production of petroleum and natural gas, including gathering pipelines and related storage facilities. Also includes petroleum and natural gas offshore transportation facilities used by producers and others consisting of platforms (other than drilling platforms classified in Class 15.2), compression and pumping equipment, and gathering and transmission lines to the first onshore transshipment facility. The assets used in the first onshore transshipment facility are also included and consist of separation equipment (used for separation of natural gas, liquids, and solids), compression or pumping equipment (other than equipment classified in Class 49.23), and liquid holding or storage facilities (other than those classified in Class 49.25). Does not include support vessels---	11	14	17	4.5

SEC. 3. EFFECT ON OTHER DOCUMENTS.

Rev. Proc. 77-10, 1977-1 C.B. 548 , is modified by the prescription of revised asset guideline class 13.2, Exploration for and Production of Petroleum and Natural Gas Deposits, with the associated asset guideline depreciation period and range and annual asset guideline repair allowance percentage as set forth in Section 2 of this Revenue Procedure. Class 13.2, as modified, now includes offshore transportation assets formerly included in Class 46.0.

SEC. 4 EFFECTIVE DATE.

The asset guideline class, asset guideline depreciation period and range, and the annual asset guideline repair allowance percentage for the activity class set forth in this Revenue Procedure are effective for property first placed in service in taxable years beginning after December 31, 1976.

Attachment V

WORKSHEETS

This attachment contains worksheets which can be used to calculate input data. Each worksheet will also contain reminders for points which may be overlooked in calculations.

WORKSHEET A

Calculation Of The Capital Expenditure Input

1.	List price or estimated price of the equipment =	$
2.	Less: Discount from manufacturer =	_____
3.	Equals net price of equipment =	
4.	Plus: Sales tax on equipment[1] =	
5.	Plus: Freight and delivery charge =	_____
6.	Equals estimated cost of equipment delivered =	
7.	Plus: Installation charge =	
8.	Plus: Value of lost production =	
9.	Plus: Cost of building construction or modifications =	_____
10.	Equals Total Capital Expenditure =	$

Note: Line 6 divided by line 10 is the percentage of qualified investment for calculation of the investment tax credit.

QUALIFIED PERCENTAGE INVESTMENT TAX CREDIT

$\frac{\text{Line 6}}{\text{Line 10}}$ = _____ X 10 = _____%

If the depreciable life of the equipment is less than 7 years, this figure must be adjusted as described on page II-16.

[1]Some corporations subtract sales tax from revenue in the year of purchase. If this is the case, the sales tax is multiplied by (1 - Tax Rate) and subtracted from the cost of the equipment rather than added as in step four.

WORKSHEET B

Operating And Maintenance Expense

1. Annual Labor Expense

_____ Hours X $_____ per hour = _____

2. Power Cost

_____ Kwh X $_____ per Kwh = _____

3. Water Cost

_____ Gallons X $_____ per gallon = _____

4. Raw Materials and Supplies

_____ lbs X $_____ per lbs = _____

5. Yearly increase in property tax = _____

6. Cost of production lost due to maintenance or use of equipment = _____

7. Total Cost (1 + 2 + 3 + 4 + 5 + 6) = _____

8. Less: Value of by-products

_____ lbs at $_____ per lbs = _____

9. Annual Operating and Maintenance (7-8) $_____

Note: Line 9 divided by 12 is the maximum amount of any monthly pre-compliance expenditure.

$$\frac{\text{Line 9}}{12} = \$_____$$

Maximum amount which may be entered as a pre-compliance monthly operating and maintenance expense.

BILLING CODE 6560-01-C

WORKSHEET C

Calculation Of Income Tax Rate

1. Marginal Federal tax rate. _____
2. Marginal State tax rate. _____
3. Marginal Local tax rate. _____

Calculation of Adjusted Local Tax.

(1 - State Tax Rate) x Local Tax Rate
= (1 - _____) x _____
= _____ x _____
= _____ = Adjusted Local Tax Rate.

Calculation of Adjusted State and Local Tax.

(1 - Federal Tax Rate) x (State Tax Rate + Adjusted Local Rate)
= (1 - _____) x (_____ + _____)
= _____ x _____
= _____ = Adjusted Local and State Tax.

Calculation of Tax Rate.

100 x (Federal Tax Rate + Adjusted Local and State Tax)
= 100 x (_____ + _____)
= 100 x _____
= _____ = Tax Rate.

Section III

USING THE COMPUTER PROGRAM

Gaining Access To The System

The computer program used to calculate the non-compliance penalty is written in the language FORTRAN. It is designed to operate on a time sharing computer. The method used to access, or load, the program on a particular computer system will vary slightly from that on any other system. The following description of the accessing procedure applies to EPA's Washington Computer Center. The procedure at other installations will be somewhat different.

1. Switch on the terminal. The on/off switch is usually located on the keyboard, but some models have switches on the top or back of the terminal.

2. Contact the computer system. This usually involves dialing the computer's number on a telephone and then connecting the telephone to a coupler. When a connect signal is obtained, push the Return key once more. The computer will then respond with an indication that contact is established.

3. Account and code number. At this time, the computer will ask for a user number, a password and an account number. This number is specific to the computer system and must be known beforehand. These are entered by typing on the keyboard and pressing the "return" key.

4. Running the program. The command
EXEC PENALTY:EPABOH,GREGION=20CK
will start the program.

   Additional questions will follow each data input (and "return"). Caution: When user demand is high, response time can be very slow. Be certain the computer has given you your complete prompt before answering input questions. A prompt is generally a two digit alpha-nureric job identifier and a questior mark (e.g., 2B?)

Exhibit III - 1 illustrates the procedure used to access the computer.

Exhibit III-1

ACCESSING THE COMPUTER

```
ALPH
READY TO WCC

ALPHA System at COMNET

PLEASE ENTER: userid,password,account,term id
EPAAWS,********

EPAAWS/PMMC on line 28 at 17:49:1 , 3/ 5/79

?EXEC PENALTY:EPABOH,GREGION=200K

199:  M2  SUBMITTED
?
```


Entering The Data

It is important in using a computer to understand that the computer requires a specific form of data entry. For example, if the item in question has the value of ten percent and the computer program is designed to accept a figure expressed in percentage terms, only the entry 10 is acceptable. Entries such as 10%, TEN, and .10 are all incorrect. The first two will result in an error message being typed at the terminal, followed by a command to re-enter the data. The third entry will be interpreted by the computer as 0.10 percent and used in the computation as that value. The result will be an incorrect figure for that penalty. If a wrong number is entered and the Return key has not been pushed, the mistake can be corrected by detecting the error and re-entering the number. To delete a number before the Return key is pushed, simply backspace the typing element (by pushing the Control and H keys simultaneously). If during data entry a wrong number is entered and the Return key is pushed, operation of the program can be halted by pushing the Break key. The computer will respond by printing OPTION?. To stop the program, type CANCEL. However, in most cases it will be more convenient to continue entering data, allow the computations to be made, and then change the erroneous value.

The following paragraphs discuss general rules to be followed in entering data into the computer program. Exhibit III - 2 contains an example of the completed entry for the Fertilizer Company. Figures which are underlined have been entered by the program user. After each line is entered the carriage return should be pressed. It should also be noted that each question asked by the computer must be answered. Thus, for example, if a firm has no debt and the interest rate is inapplicable, a zero must be entered for the interest rate. Certain questions asked by the computer refer to special types of analysis such as post-compliance settlements, limited life facilities and industrial development bonds. These special cases are discussed in a later chapter.

Exhibit III-2
ENTERING DATA

```
IS THIS A POST-COMPLIANCE SETTLEMENT CALCULATION (1=YES,0=NO)?0

IS THIS A LIMITED LIFE FACILITY (1=YES,0=NO)?0

ENTER PERCENTAGE OF TOTAL PROJECT FINANCED BY INDUSTRIAL
DEVELOPMENT BONDS?0

 1 HOW MANY MONTHS WILL THE SOURCE BE OUT OF COMPLIANCE?11

* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0,0

MONTH # 2 ?166666.67,0

MONTH # 3 ?0,0

MONTH # 4 ?166666.67,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?0,100

MONTH # 10 ?0,1050

MONTH # 11 ?166666.66,740

TOTAL CAPITAL EXPENDITURE $  500000

 2 INITIAL ANNUAL O+M EXPENSE?15000
 3 INVESTMENT TAX RATE?10
 4 INCOME TAX RATE?49.73
 5 INFLATION RATE?8.3
 6 DISCOUNT RATE?15.84
 7 INTEREST RATE?8.76
 8 PREFERRED DIVIDEND RATE?8.88
 9 PREFERRED SHARE OF INVESTMENT?3.5
10 EQUITY SHARE OF INVESTMENT?67.5
11 DEPRECIATION LIFE IN YEARS?9
12 USEFUL LIFE IN YEARS?11
```

- Post-Compliance Settlement. This number is entered only as a 0 or 1. For the Fertilizer Company this is an initial calculation and a 0 is entered.

- Limited Life Facility. This number is entered as 0 or 1. For the Fertilizer Company this is not a limited life facility and a 0 is entered.

- Percent Financed by Industrial Development Bonds. This is entered as a percent. For the Fertilizer Company, a 0 is entered.

- Number of Months out of Compliance. This number is entered only as an integer. Fractions or decimals are not allowed. For the Fertilizer Company, compliance will be achieved in eleven months. This is entered as 11.

- Schedule of Capital Investments and Pre-Compliance Operating and Maintenance Expense. The program will ask for an estimate of such expenditures for each month which the firm will be out of compliance. If the firm will not make a pre-compliance capital expenditure in a particular month, a zero is entered. If no pre-compliance expenditures are to be made, the entire capital expenditure is entered in the last month.

  For the Fertilizer Company, capital expenditures of $166,666.67 will be made in the second, fourth, and eleventh months. All other months will be entered as 0.

  After entering the capital expenditure in each month, the user types a comma and then enters the operating and maintenance expense in each month. These are expenses to be incurred during the period of noncompliance on a month-by-month basis. If in any month a pre-compliance operating and maintenance expense is not incurred, a zero must be entered.

For the Fertilizer Company, pre-compliance operating and maintenance expenses will not be incurred in the first eight months. In the ninth month, the estimated expense is $100. In the tenth month it is $1,050. In the eleventh month it is $740. These are entered without dollar signs.

- Initial Annual OM Expense. The initial annual operating and maintenance expense is the expense which would be incurred if the equipment were installed and operating. The program is designed to reject monthly pre-compliance expenditures larger than one-twelfth of the annual operating and maintenance expense. For the Fertilizer Company, operating and maintenance expenses are $15,000.

- Investment Tax Rate. This is entered as a percent and not as a decimal. Thus, for example, 7.5 percent would be entered as 7.5. The program is designed to test for data entered as a decimal and print an error message. In the Fertilizer Company example, the investment tax rate was 10 percent.

- Income Tax Rate. This is also entered as a percent. For the Fertilizer Company the tax rate is 49.73 percent.

- Inflation Rate. The inflation rate is entered as 8.3 percent.

- Discount Rate. This is entered as a percent. The lower bound for any discount rate used is the rate of inflation. The program will not accept discount rates lower than the rate of inflation and will print an error message.

  For the Fertilizer Company, the discount rate is the twenty quarter average after tax return on equity for the chemicals and allied products industry. This is calculated to be 15.84 percent.

- Interest Rate. The interest rate is entered as a percent. For the Fertilizer Company this is the average return on "A" rated industrial bonds. The latest reported average is 8.76 percent.

- Preferred Dividend Rates. This is entered as a percent. If the firm does not have preferred stock, both the dividend rate and the preferred share of the investment are entered as zero. For the Fertilizer Company this was the latest monthly average yield on "a" rated utility preferred stocks. It is entered as 8.88 percent.

- Preferred Share of Investment. The preferred share of the investment is entered as a percent. For the Fertilizer Company this was computed at 3.5 percent.

- Equity Share of Investment. This is entered as a percent. It was computed to be 67.5 percent for the Fertilizer Company. If the sum of the preferred share of the investment and the equity share of the investment is greater than 100 percent, an error message is printed.

- Depreciation Life in Years. This number must be entered as an integer. Decimals or fractions cannot be used. For the Fertilizer Company the depreciation life was nine years.

- Useful Life in Years. The useful life in years must also be entered as an integer. For the Fertilizer Company, the useful life is eleven years.

Error Messages For Data Entry

The program for computing the noncompliance penalty was designed to test for errors in the data as it is entered into the computer. If the program detects an error, a message is printed informing the user and requesting that the mistake be corrected. Examples of such error messages follow.

1. Pre-Compliance Expenditure. As discussed in Section II, it is not possible to enter a pre-compliance monthly operating and maintenance expenditure which is larger than one-twelfth of the annual operating and maintenance expense. Exhibit III-3 shows an annual operating and maintenance expense of $15,000. The error message is printed because the user entered $2,000 for a pre-compliance expenditure.

Exhibit III-3

ERROR IN ENTERING PRE-COMPLIANCE O&M EXPENDITURES

```
 2 INITIAL ANNUAL O+M EXPENSE?5000
>>>>>>MONTHLY PRE-COMPLIANCE O+M EXPENSE CANNOT
      BE LARGER THAN ONE-TWELFTH ANNUAL O+M EXPENSE
      RE-ENTER DATA:
* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE   * * *

MONTH # 1 ?0,0

MONTH # 2 ?166666.67,0

MONTH # 3 ?0,0

MONTH # 4 ?166666.67,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?0,100

MONTH # 10 ?0,1050

MONTH # 11 ?166666.66,740

TOTAL CAPITAL EXPENDITURE $  500000

INITIAL ANNUAL O+M EXPENSE?15000
```

2. Equity and Preferred Share. The program will print an error message if the sum of the equity share of the investment and the preferred share of the investment are greater than 100 percent. This is illustrated in Exhibit III-4.

Exhibit III-4

EQUITY AND PREFERRED SHARE OF INVESTMENT GREATER THAN 100 PERCENT

```
 9 PREFERRED SHARE OF INVESTMENT?3.5
 10 EQUITY SHARE OF INVESTMENT?97.5
>>>>>SUM OF EQUITY SHARE OF INVESTMENT AND PREFERRED
     SHARE OF INVESTMENT CANNOT BE GREATER THAN 100%.
     ENTER EQUITY AND PREFERRED PERCENTAGES AGAIN.
PREFERRED SHARE OF INVESTMENT?3.5
EQUITY SHARE OF INVESTMENT?67.5
```


3. Entering Data As a Decimal. An error message will be printed if the investment tax rate is entered as a decimal. This is illustrated in Exhibit III-5.

Exhibit III-5

DATA ENTERED AS A DECIMAL AND THE CORRECTION

```
 3 INVESTMENT TAX RATE?.1
>>>>>THE DATA JUST ENTERED IS LESS THAN ONE PERCENT. DATA
     SHOULD BE ENTERED AS AN INTEGER NOT AS A DECIMAL. SEE
     SECTION 3 OF THE USER MANUAL FOR FURTHER INFORMATION.
     IF A DECIMAL IS CORRECT, RE-ENTER IT.
INVESTMENT TAX RATE?10
```

4. Inflation Rate Higher Than Discount Rate. The program will print an error message if the inflation rate is higher than the discount rate. For this type of error the program allows the user to continue to enter data. At the end of data entry an error message is printed and the user can change either the inflation rate or the discount rate. This is illustrated in Exhibit III-6 where the discount rate of 15.84 percent was erroneously entered as 5.84 percent.

Exhibit III-6

ENTERING INFLATION RATE
THAT IS HIGHER THAN DISCOUNT RATE

```
 5 INFLATION RATE?8.3
 6 DISCOUNT RATE?5.84
 7 INTEREST RATE?8.76
 8 PREFERRED DIVIDEND RATE?8.88
 9 PREFERRED SHARE OF INVESTMENT?3.5
 10 EQUITY SHARE OF INVESTMENT?67.5
 11 DEPRECIATION LIFE IN YEARS?9
 12 USEFUL LIFE IN YEARS?11


>>>>>INFLATION RATE MUST NOT EXCEED THE DISCOUNT RATE
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?1
SPECIFY WHAT YOU WANT TO CHANGE BY ITEM NUMBER.
     PRESS THE RETURN KEY AFTER EACH REQUEST.
?6
DISCOUNT RATE?15.84
```


Output From The Program

The output from the computer program will also require several responses from the user. In general, the output is structured in the following way.

- The amortization and depreciation method used in calculating the penalty is printed. For example, for the Fertilizer Company, rapid amortization and straight line depreciation are used.
- The program asks the user how many months will elapse between the first day of violation and the date of the first penalty payment.
- The program prints the quarterly penalty payments the firm must make during the period of noncompliance.
- The option to compute a lump sum settlement is offered. The user can specify the date for that payment.
- The program asks if changes to the input data are desired.

An example of the output for the Fertilizer Company appears in Exhibit III-7. Once again, the presence of underlining indicates data entered by the user.

Exhibit III-7

CALCULATION OF NONCOMPLIANCE PENALTY

```
STRAIGHT LINE, RAPID AMORTIZATION

HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE INITIAL PENALTY
PAYMENT BE MADE?
KA? 0

        MONTH        PAYMENT
          1          5214.65
          4          5319.64
          7          5426.75
         10          5536.01

DO YOU WISH TO SEE A LUMP SUM
SETTLEMENT? 1=YES,0=NO:
KA? 1
HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE LUMP SUM
SETTLEMENT BE MADE?
KA? 2
THE VALUE OF THE NONCOMPLIANCE PENALTY
COMPUTED AS OF   0 MONTHS AFTER THE DATE
OF NONCOMPLIANCE IS                    20342.32
                                       ========
```


The output printed in Exhibit III-6 illustrates only a few of the possible variations in penalty calculation possible with the computer program. The remainder of this section discusses in detail the output from the Fertilizer Company example and the program options available to alter that output.

1. Amortization and Depreciation Method. The computer program calculates the capital investment portion of the penalty using standard and rapid amortization. Under both types of amortization the program calculates the depreciation tax savings using straight line, sum-of-the-years-digits and double-declining balance depreciation methods. The formulae for these calculations are contained in the Technical Support Document. The program automatically chooses the method which will result in the lowest penalty. This method is then used to calculate the penalty shown.

2. Delay in the Penalty. The program asks the user how many months the first penalty payment will be delayed. The months of delay are calculated from the day a notice of noncompliance is issued until the first payment is made. Exhibit III-7 illustrated the payment made if the firm paid the first quarterly penalty on

the day that the notice of noncompliance was issued. The first quarterly payment was 5214.65. The second payment would be made ninety days later and it would equal the penalty shown for the number four (5319.64).

A more realistic example might involve a six-month delay in the first payment. In this case, the output would appear as in Exhibit III-8. The first penalty payment includes the amounts that should have been paid at the first, fourth and seventh months, discounted forward to the time of actual payment. Such discounting is required to keep the present value of all penalties paid equal to the present value of savings from non-compliance. The next quarterly penalty payment is due three months later, putting the firm back on the original penalty schedule. The present value of the payments in Exhibit III-8 is equal to the present value of the penalty payments in Exhibit III-7.

Exhibit III-8

SIX-MONTH DELAY IN PAYMENT OF PENALTY

```
HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE INITIAL PENALTY
PAYMENT BE MADE?
KA? 6

   MONTH        PAYMENT
     7          16558.05
    10           5536.01
```


3. Lump Sum Settlement. A lump sum settlement is sometimes made instead of quarterly payments. For example, if the firm was going to be out of compliance for four quarters, it could either pay the four quarterly payments shown in the output or pay the lump sum settlement. In terms of present value, the amount eventually paid is the same in each case.

If the firm wishes to pay a lump sum settlement but will delay payment, the number of months of delay must be entered. Exhibit III-9 illustrates a seven month delay for the Fertilizer Company.

Exhibit III-9

SEVEN MONTH DELAY IN PAYMENT
OF LUMP SUM SETTLEMENT

```
DO YOU WISH TO SEE A LUMP SUM
SETTLEMENT? 1=YES,2=NO:
KA? 1
HOW MANY MONTHS AFTER THE FIRST DAY OF
NONCOMPLIANCE WILL THE LUMP SUM
SETTLEMENT BE MADE?
KA? 7
THE VALUE OF THE NONCOMPLIANCE PENALTY
COMPUTED AS OF   7 MONTHS AFTER THE DATE
OF NONCOMPLIANCE IS                22164.17
                                   ********
```

Thus, for the Fertilizer Company, delaying the lump sum settlement seven months increased the settlement to 22,164.17 from the 20,342.32 shown in Exhibit III-7. The 1,821.85 difference between the lump sum settlement delayed seven months and the settlement paid on the date of noncompliance is the result of discounting the initial lump sum settlement forward to the time of actual payment.

Only a single payment is required if the first penalty payment is delayed longer than the firm is out of compliance. In this event, the firm will not make quarterly payments but will make one lump sum settlement. Exhibit III-10 shows the output from the program if a twelve-month delay in penalty payment occurs. The Fertilizer Company was out of compliance eleven months.

5. New Computation. The user has several options here. By typing in 0 (zero) and pushing the carriage return, the program can be terminated. Typing 999 will result in all of the data that is currently in the program being printed; the program will then once again ask if any changes are to be made. An example of typing 999 is shown in Exhibit III-11.

Exhibit III-10

PENALTY PAYMENT WHEN DELAY
IS LONGER THAN NONCOMPLIANCE PERIOD

```
    STRAIGHT LINE, RAPID AMORTIZATION

    HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE INITIAL PENALTY
    PAYMENT BE MADE?
KG? 12

          MONTH        PAYMENT
            13        23564.57

    DO YOU WISH TO SEE A LUMP SUM
    SETTLEMENT? 1=YES,0=NO:
KG? 1
    HOW MANY MONTHS AFTER THE FIRST DAY OF
    NONCOMPLIANCE WILL THE LUMP SUM
    SETTLEMENT BE MADE?
KG? 12
    THE VALUE OF THE NONCOMPLIANCE PENALTY
    COMPUTED AS OF  12 MONTHS AFTER THE DATE
    OF NONCOMPLIANCE IS                        23564.58
                                               ========

    HOW MANY VARIABLES DO YOU WISH TO CHANGE ?
KG? 0
KG ENDED
```

Exhibit III-11

PRINTING DATA THAT HAS BEEN ENTERED IN PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?999
NUMBER OF MONTHS OUT OF COMPLIANCE = 11

MONTH    CAPITAL EXPENDITURES     OPERATING  MAINTENANCE
                                      EXPENSE

   1          0                        0
   2          166666.67                0
   3          0                        0
   4          166666.67                0
   5          0                        0
   6          0                        0
   7          0                        0
   8          0                        0
   9          0                        100
   10         0                        1050
   11         166666.66                740
              ============
TOTAL CAPITAL  500000
ANNUAL OM EXPENSE 15000

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 49.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.84
INTEREST RATE = 8.76
PREFERRED DIVIDEND RATE= 8.88
PREFERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 9
USEFUL LIFE IN YEARS = 11
```


If changes are desired in the input, the following steps must be taken.

- The number of changes desired must be entered.
- For each change, the computer will respond with a question mark. When the question mark is printed, type in the number of the item that you wish to change. (For example, 4 for the marginal income tax rate).
- The computer will print the name of the item. Enter the new data desired and push the carriage return.

The following is an example using the Fertilizer Company. Suppose that the interest rate, which has been entered as 8.76 percent, should be 9.76 percent and that the preferred share of the investment, which was entered as 3.5 percent, should be 10 percent.[1] Two changes are thus necessary.

[1] The equity share will remain at 67.5 percent. The program sums the equity and preferred shares and calculates automatically the debt share. Thus, the increase in preferred share from 3.5 to 10 percent while the equity share is held constant, will result in a decrease in debt share.

Exhibit III-11
ALTERING DATA IN THE PROGRAM

```
* * * NEW COMPUTATION * * *

HOW MANY CHANGES TO THE INPUT DATA (0=EXIT FROM PROGRAM)?2
SPECIFY WHAT YOU WANT TO CHANGE BY ITEM NUMBER.
     PRESS THE RETURN KEY AFTER EACH REQUEST.
?7
INTEREST RATE?9.76
?9
PREFERRED SHARE OF INVESTMENT?10
```

When the return key is pressed after entering the 10, the computation will be made using these new values. It should be noted that these new values permanently replace the previous values in the program.

BILLING CODE 1505-01-C

Section IV

CALCULATION OF THE POST-COMPLIANCE SETTLEMENT

The post-compliance settlement adjusts the penalty payment to reflect the firm's actual capital and operating expenditures rather than the estimates used in the original penalty calculation. For this purpose, six types of data are needed:

- A schedule of actual capital expenditures made by the firm in reaching compliance.
- A schedule of actual operating and maintenance expenditures made by the firm prior to compliance.
- A new estimate of post-compliance annual operating and maintenance expense based on the firm's experience prior to the post-compliance settlement.
- The number of months between the day of compliance and date of post-compliance settlement.
- A post-compliance settlement interest rate chosen by the Department of the Treasury.
- A listing of the actual penalty payments made by the firm and the months in which they were made.

In addition to these new data, it will be necessary to have available the financial parameters originally used to calculate the noncompliance penalty for the firm. To continue the example of the hypothetical Fertilizer Company, Exhibit IV-1 contains the data originally used to calculate the noncompliance penalty.

Exhibit IV-1

FERTILIZER COMPANY
July 1979

DATA USED FOR ORIGINAL NONCOMPLIANCE PENALTY CALCULATIONS[1]

* * * DATA REQUIRED FOR POST-COMPLIANCE SETTLEMENT * * *

INVESTMENT TAX RATE= 10
INCOME TAX RATE = 48.73
INFLATION RATE = 8.3
DISCOUNT RATE = 15.84
INTEREST RATE = 8.75
PREFERRED DIVIDEND RATE= 8.88
PREFERRED SHARE OF INVESTMENT = 3.5
EQUITY SHARE OF INVESTMENT= 67.5
DEPRECIATION LIFE IN YEARS = 9
USEFUL LIFE IN YEARS = 11

[1]Listed during original penalty calculation by typing 999 when changes in input data were requested.

Preparing New Data For Entry Into The Program

In order to calculate the post-compliance settlement, the computer program should be accessed in the manner described on pages III-1 to III-3. After the RUN command has been typed, the terminal will ask if the penalty calculation is for a post-compliance settlement. This is illustrated in Exhibit IV-2.

Exhibit IV-2

CALCULATING A POST-COMPLIANCE SETTLEMENT

```
03/28/79      EPA NON-COMPLIANCE PENALTY PROGRAM  VERSION 1.0    10:19

IS THIS A POST-COMPLIANCE SETTLEMENT CALCULATION (1=YES,0=NO)?1
```

The computer program will then ask for data on the actual penalty payments made by the firm and the month in which each payment was made. The data are entered in the following order.

1. Number of penalty payments made by the firm. This is the actual number of payments made by the firm. If more than one payment is made in a month, they should be totalled and counted as one payment.

2. Month of the penalty payment. This is the number of the month in which the penalty payment is received by EPA, beginning with the month the firm is out of compliance. For example, a firm making a payment at the time notice of noncompliance is issued would enter a one. If a six-month delay in payment occurred, a seven would be entered.

3. Actual penalty payment. This is the dollar amount of the penalty actually received from the firm in each month. The payment entered should not include the 20 percent penalty for late payment. The data entered in the Fertilizer Company example is shown in Exhibit IV-3. As can be seen in the exhibit, these payments are identical to the penalties calculated in the last section and shown in Exhibit III-7.

Exhibit IV-3

ENTRY OF DATA ON ACTUAL PENALTY PAYMENTS

```
   14. HOW MANY PENALTY PAYMENTS WERE MADE?
KB? 4
      14. PAYMENT NUMBER  1: ENTER MONTH,AMOUNT
KB? 1,5214.65
      14. PAYMENT NUMBER  2: ENTER MONTH,AMOUNT
KB? 4,5219.64
      14. PAYMENT NUMBER  3: ENTER MONTH,AMOUNT
KB? 7,5428.75
      14. PAYMENT NUMBER  4: ENTER MONTH,AMOUNT
KB? 10,5526.01
```

The terminal now asks for data on the Treasury interest rate, months out of compliance, limited life facilities, and financing with industrial development bonds. These data are entered in the following order.

1. Treasury interest rate. This is an annual interest rate set by the Secretary of the Treasury for the post-compliance settlement. It is entered as a percent. For the Fertilizer Company, the rate was chosen as 15.84 percent, which is the firm's return on equity.

2. Months out of compliance. This is the actual number of months the firm was out of compliance beginning on the date notice of noncompliance was issued and continuing until the firm demonstrates compliance was achieved.

3. Limited life facility. The limited life facility requires a slightly different method of calculation for the post-compliance settlement. This method is discussed in detail in the next section. For the Fertilizer Company, a zero is entered.

4. Industrial Development Bonds. This is an option explained in detail in the next section. For the Fertilizer Company, industrial development bonds were not sold. A zero is entered at the terminal. All four of the above data entries are shown in Exhibit IV-4.

Exhibit IV-4

ADDITIONAL QUESTIONS ASKED BY TERMINAL
DURING POST-COMPLIANCE SETTLEMENT CALCULATION

TREASURY INTEREST RATE?15.84
IS THIS A LIMITED LIFE FACILITY (1=YES,2=NO)?2

ENTER PERCENTAGE OF TOTAL PROJECT FINANCED BY INDUSTRIAL DEVELOPMENT BONDS?0

1 HOW MANY MONTHS WAS THE SOURCE OUT OF COMPLIANCE?11

The computer program now requests data on the actual expenditures the firm made in order to reach compliance. These new data are entered in the following order.

1. Schedule of Actual Capital Expenditures. These are the payments the firm made, or capital costs the firm incurred, in each month during the period of noncompliance. They are entered in actual dollars as of the period the expenditure was made. No adjustment for inflation during the period of noncompliance should be made, since the program will automatically convert the actual dollars to real dollars as of the first day of noncompliance.

The sources for data on the actual monthly expenditures for noncompliance include cancelled checks to manufacturers and shippers, accounting entries in the firm's fixed asset accounts, or manufacturers invoices. The Fertilizer Company submitted the data in Exhibit IV-5 to show capital expenditures made during the period of noncompliance.

2. Schedule of Actual Operating and Maintenance Expense. This schedule indicates the actual pre-compliance expenditures made by the firm in each month. This data will be calculated by the firm from accounting information and will include labor, utilities, supplies, property taxes and the value of any by-

Exhibit IV 5

FERTILIZER COMPANY

CALCULATION OF ACTUAL CAPITAL EXPENDITURE

1.	List price or estimated price of the equipment =	$536,588.92
2.	Less: Discount from manufacturer	(10,731.78)
3.	Equals net price of equipment =	525,857.14
4.	Plus: Sales tax on equipment[1] =	26,292.86
5.	Plus: Freight and delivery charge =	0
6.	Equals estimated cost of equipment delivered	$552,150.00
7.	Plus: Installation charge =	0
8.	Plus: Value of lost production =	0
9.	Plus: Cost of building construction or modifications =	0
10.	Equals Total Capital Expenditure =	$552,150.00

The capital expenditures were made in three equal payments of $184,050.00 starting in the ninth month of noncompliance.

[1] Sales tax in this case was not subtracted from revenue in the year of purchase.

products. The Fertilizer Company submitted the data in Exhibit IV-6 for pre-compliance expenditures. These values are adjusted for inflation by the program.

The program is designed to print an error message if any monthly precompliance operating and maintenance expenditure is larger than one-twelfth of the new post-compliance operating and maintenance cost.[1] When this occurs, it is likely that equipment start up costs which should have been included in capital expenditures have been incorrectly charged to precompliance operating and maintenance expense. In such a case, precompliance capital expenditures and operating and maintenance expenses should be adjusted accordingly.

3. Estimate of Annual Operating and Maintenance Expenditures. Because the post-compliance settlement will occur before the new equipment has operated for a full year, it will be necessary to estimate post-compliance annual operating and maintenance expenses based on the firm's experience from compliance to the time of the post-compliance settlement. These estimates should be in the actual dollars as of compliance. Thus, for the

[1] Precompliance operating and maintenance expenditures are used to adjust the operating and maintenance component of the penalty. Quarterly precompliance expenditures larger than one twelfth of the annual would result in negative penalties.

Exhibit IV-6

ACTUAL MONTHLY PRE COMPLIANCE OPERATING AND MAINTENANCE EXPENSE

FERTILIZER COMPANY
August 1, 1980

Pre-compliance Operating Expense

Months 1-9		$ 0
Month 10		
Labor (84 hrs @ $10)	$840.00	
Power (1700 Kwh @ .0333 Kwh)	39.96	
Total		$ 879.96
Month 11		
Labor (110 hrs @ $10)	$1100.00	
Power (6739 Kwh @ .0333 Kwh)	224.40	
Total		$1,324.40

Fertilizer Company, which will come into compliance in 1980, the estimate for post-compliance annual operating and maintenance expenses should be in 1980 dollars. The program will automatically deflate this number to real terms as of the date of noncompliance. The Fertilizer Company submitted the data in Exhibit IV-7 as an estimate of post-compliance annual operating and maintenance expenditures.

Entry of the actual expenditures by the Fertilizer Company is shown in Exhibit IV-8. In addition, the data used to calculate the original penalty, such as the investment tax rate, income tax rate, etc., are entered in exactly the same manner as entered for the original penalty calculation. This is also shown in Exhibit IV-8. Note that the entry for all data after the annual operating and maintenance expense is identical to Exhibit II, the initial penalty calculation.

Exhibit IV-7

Fertilizer Company

OPERATING AND MAINTENANCE EXPENSE
August 1, 1980

1.	Annual Labor Expense	
	1072 Hours X $10.81 per hour =	$11,588.32
2.	Power Cost	
	89991.5 Kwh X $.038 per Kwh	3,419.68
3.	Water Cost	
	____ Gallons X $ per gallon =	0
4.	Raw Materials and Supplies	
	1200 Lbs X $1.20 per Lbs. =	1,440.00
5.	Yearly increase in property tax =	0
6.	Cost of production lost due to maintenance or use of equipment =	0
7.	Total Cost (1 + 2 + 3 + 4 + 5 + 6) =	16,448.00
8.	Less: Value of by-products	
	800 Lbs. at $.56 per Lbs. =	(448.00)
9.	Annual Operating and Maintenance (7-8)	$16,000.00

Exhibit IV-8

DATA ENTRY FOR POSTCOMPLIANCE SETTLEMENT

THE FOLLOWING QUESTIONS ON CAPITAL EXPENDITURES AND OPERATING AND MAINTAINCE EXPENSE REFER TO THE ACTUAL CAPITAL EXPENDITURE AND O+M EXPENSE

* * * IN EACH MONTH ENTER CAPITAL EXPENDITURES * * *
* * * THEN OPERATING AND MAINTENANCE EXPENSE * * *

MONTH # 1 ?0,0

MONTH # 2 ?0,0

MONTH # 3 ?0,0

MONTH # 4 ?0,0

MONTH # 5 ?0,0

MONTH # 6 ?0,0

MONTH # 7 ?0,0

MONTH # 8 ?0,0

MONTH # 9 ?184050,0

MONTH # 10 ?184050,879.96

MONTH # 11 ?184050,1324.40

TOTAL CAPITAL EXPENDITURE $ 552150

2 INITIAL ANNUAL O+M EXPENSE?16000
3 INVESTMENT TAX RATE?10
4 INCOME TAX RATE?49.78
5 INFLATION RATE?8.5
6 DISCOUNT RATE?15.84
7 INTEREST RATE?8.75
8 PREFERRED DIVIDEND RATE?8.58
9 PREFERRED SHARE OF INVESTMENT?4.5
10 EQUITY SHARE OF INVESTMENT?67.5
11 DEPRECIATION LIFE IN YEARS?9
12 UTILITY LIFE IN YEARS?11

Output From The Post-Compliance Settlement Calculation

The output from the post compliance settlement calculation incorporates the data on penalty payments made by the firm and compares these payments to a penalty schedule based on actual expenditures made to achieve compliance. The output consists of two parts

- Printing of the penalty paid in each month and the penalty determined from actual expenditures. The difference between the actual penalty and the payment made by the firm is calculated in each month.

- The program allows the option of delaying the post-compliance settlement

The output from the post compliance settlement for the Fertilizer Company is shown in Exhibit IV-10. The first column prints the month in which a penalty payment was made or a penalty payment was required based on the post compliance penalty calculation. The second column contains the actual payment made by the firm. The third column is the penalty based on actual expenditures made coming into compliance.

The program next calculates the difference between the penalty payment in each month and the new penalty calculation based on actual expenditures. The difference between the payment made and the actual penalty is than charged interest at the rate specified by the Treasury for the number of months after payment that the firm remained out of compliance.

Exhibit IV-10

THE POST-COMPLIANCE SETTLEMENT

STRAIGHT LINE, RAPID AMORTIZATION

MONTH	PAID	PENALTY	DUE EPA	DUE FIRM
1	5214.65	8252.33	3037.68	0.0
4	5319.64	8418.48	3098.84	0.0
7	5426.75	8587.97	3161.22	0.0
10	5536.01	8760.88	3224.87	0.0

MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=
K8? 2

SETTLEMENT DUE EPA= 13896.23

The post-compliance settlement was calculated and paid two months after the Fertilizer Company came into compliance. For this reason, a 2 was entered when the program asked for the number of months between compliance and payment of the post-compliance settlement. Thus, the total post-compliance settlement paid by the firm to EPA is 13,896.23.

SPECIAL CONDITIONS

The preceding four sections enable the user to calculate the noncompliance penalty and post-compliance settlement when the source is privately owned and when compliance is achieved by modification of existing plant and equipment. In addition, it is assumed that financing would not involve industrial development bonds. Section V will expand the number of cases in which the penalty program is applicable and enable the user to compute the noncompliance penalty in the following situations.

- Plant and equipment necessary for compliance are financed through the sale of tax-exempt industrial development bonds.
- The source is operated by a local, state or federal government.
- The source has a limited useful life.

The noncompliance penalty in all three cases is calculated using the program PENALTY. However, it is necessary to modify some of the data entered into the program to reflect the unique characteristics of each of these situations. The following section describes special data requirements and modifications in data entry. It should be stressed that all data and data entry procedures discussed in the four previous sections are applicable to these special conditions except where specific changes are required.

INDUSTRIAL DEVELOPMENT BONDS

Industrial development bonds for pollution control equipment are used by firms in order to secure debt financing at an interest cost lower than the current rate on industrial bonds. This lower interest rate is possible because the development bonds are issued by a local or state government for the corporation and the interest payments received by the bond holder are exempt from federal income tax. The corporation pays the principal and interest payments, but because of the tax-exempt status of the interest, the interest charges are often several percentage points below corporate debt of similar quality.

The Revenue Act of 1978 requires that firms financing with industrial development bonds receive only one-half of the investment tax credit when rapid amortization is used. For firms financing in part with development bonds, a pro-rata portion of this financing should be applied to the facility for determining the investment tax

credit. The computer program will automatically pro-rate the investment tax credit. The user must provide two types of data.

- The percentage of the investment financed by industrial development bonds.
- Interest rate on development bonds.

Data are gathered for the calculation of the penalty in the same manner as described in Section II. In addition, the user must perform the following calculations.

1. Percent financed with industrial development bonds. This percentage is obtained by dividing the total issue of tax-exempt pollution control industrial development bonds by the capital investment.[1] In the Fertilizer Company example, the estimated capital investment was $500,000. If the firm sold $200,000 in industrial development bonds, the percentage entered would be forty. This would be entered as 40.

2. Interest rate on industrial development bonds. The interest rate used for pollution control industrial development bonds is published by Smith, Barney, Harris Upham & Co. in the Bond Markets Review. The review is published weekly and the current yield on bonds is printed on the last page.

[1] The firm may issue bonds in a volume much higher than the capital investment. In this case financing is entered as 100 percent. The program will not accept data higher than 100 percent.

For the Fertilizer Company example, the latest reported yield on pollution control industrial development bonds is 6.85 percent. This yield is entered as the interest rate in the penalty program.

There are thus only two changes in the data entered for industrial development bonds as opposed to the example described in Section III. A percentage of the project financed with tax-exempt bonds is entered, and the interest rate used is for pollution control industrial development bonds. All other data entry remains the same.

GOVERNMENT-OWNED FACILITIES

The use of the noncompliance penalty program for government facilities requires that all cash flows related to taxes be eliminated. In addition, no debt financing is considered and the discount rate is entered at ten percent. Exhibit V-1 shows the data entry procedure for non-complying sources owned by governments. Data labelled "no change" are calculated using the methods described in Section II.

Exhibit V-1

DATA ENTRY FOR GOVERNMENT FACILITIES

DATA CATEGORY	PROGRAM ENTRY
Pre-compliance Capital Expenditures	No Change
Pre-compliance Operating and Maintenance	No Change
Annual Operating and Maintenance	No Change
Investment Tax Credit	0
Income Tax Rate	0
Inflation Rate	No Change
Discount Rate	10.0
Interest Rate	0
Preferred Dividend Rate	0
Preferred Share of Investment	0
Equity Share of Investment	100.0
Depreciation Life in Years	No Change
Useful Life in Years	No Change

FACILITIES WITH LIMITED USEFUL LIVES

The noncompliance penalty computer program will calculate penalties for facilities with limited useful lives. In cases where a noncomplying facility is to be operated for a period of time and then retired, the current program may be used. Capital and operating and maintenance cost estimates are made based on what it would cost to bring the source into compliance and the calculation proceeds in the normal manner. In such cases there are no precompliance operating and maintenance expenditures and the total capital expenditure is entered in the last month. There is no post-compliance settlement.

In cases where the noncomplying source is to be replaced by a new, complying facility after some period of noncompliance, program inputs and operation will be slightly different than at present. In such cases, the program will

- ask if the calculation is for a limited life facility that is being replaced,
- request an estimate of the capital and annual operating expenses required to bring the old source into compliance,
- request a schedule of precompliance total capital expenditures (for productive capability plus pollution control equipment) required to build the new source,

- request a schedule of precompliance O&M expenditures (for productive capability and pollution control equipment) associated with the new source, and
- request an estimate of annual production costs including pollution control operating and maintenance expenses at the new source.

The program will then calculate the penalty based on the costs of compliance at the old source but will be adjusted for precompliance expenditures on the new source. Once the new source is in operation and the old source is retired (and, thus, full compliance is achieved), a postcompliance settlement can be made. Such a settlement will consider only changes in the precompliance expenditures associated with the new source relative to the estimates made when the initial penalty calculation was carried out.

APPENDIX C

CLEAN AIR ACT

SECTION 120

NONCOMPLIANCE PENALTIES

COMPUTER PROGRAM

```
C
C       THIS PROGRAM COMPUTES THE NONCOMPLIANCE PENALTY
C       PRESCRIBED IN SECTION 120 OF THE CLEAN AIR ACT.
C
C       IT WAS WRITTEN BY ROBERT L HAYES OF TCS FINANCIAL
C       CONSULTANTS, NASHVILLE, TENNESSEE, UNDER CONTRACT
C       WITH THE UNITED STATES ENVIRONMENTAL PROTECTION
C       AGENCY.
C
C       THE PROGRAM FOLLOWS CLOSELY THE FEBRUARY 1979
C       TECHNICAL SUPPORT DOCUMENT.
C
C
C VARIABLE DICTIONARY
C
C   VECTORS
C       AC(J)           ADJUSTED CAPITAL COMPONENT IN MONTH J
C       AO(J)           ADJUSTED O & M COMPONENT IN MONTH J
C       D(K,J)          DEPRECIATION FRACTION IN YEAR J, TYPE K
C       DEP(J)          DEPRECIATION TAX SAVINGS IN YEAR J
C       CSHFLO(J)       NET CASH FLOW IN YEAR J
C       CSHOUT(J)       TOTAL CASH OUTFLOW IN YEAR J
C       DEDUCT(J)       TOTAL DEDUCTIONS FOR TAX PURPOSES
C       DELTA(J)        RECOMPUTED PENALTY LESS AMOUNT PAID
C       DIV(J)          PREFERRED STOCK DIVIDENDS PAID
C                         AT END OF YEAR J
C       INT(J)          INTEREST PAID AT END OF YEAR J
C       M(J)            O & M EXPENSE AT END OF YEAR J
C       P(J)            PENALTY PAYMENT DUE IN MONTH J
C       PAID(J)         PENALTY ACTUALLY PAID IN MONTH J
C       PRIN(J)         PRINCIPAL REPAYMENT AT END OF
C                         YEAR J
C       PRNOUT(J)       PRINCIPAL OUTSTANDING AT THE BEGINNING
C                         OF YEAR J
C       PRECAP(J)       PRE-COMPLIANCE CAP EXP IN MONTH J
C       PREF(J)         PREFERRED STOCK REDEEMED AT END OF
C                         YEAR J
C       PRFOUT(J)       PREFERRED STOCK OUTSTANDING AT BEGINNING
C                         OF YEAR J
C       PROM(J)         PRE-COMPLIANCE O & M EXP IN MONTH J
C       QUART(J)        QUARTERLY PENALTY DUE IN MONTH J
C       SC(J)           EQUIVALENT CAPITAL COMPONENT IN MONTH J
C       SO(J)           EQUIVALENT O & M COMPONENT IN MONTH J
C       TAXSAV(J)       TAX SAVINGS ON TAX DEDUCTIBLE EXPENSE
C       X(J)            FRACTION OF CAPITAL SPENT PRIOR TO MONTH J
C       Y(J)            FRACTION OF O & M SPENT IN MONTH J
C       Z(J)            DELTA(J) ADJUSTED TO COMPLIANCE DATE
C
C   VARIABLES
C       B       DEBT FRACTION OF CAPITAL STRUCTURE
C       CUMDEP  FRACTION OF ASSET ALREADY DEPRECIATED
C       DBTSHR  DEBT SHARE OF CAPITAL INVESTMENT ($)
C       DD      MONTHS FROM COMPLIANCE DATE TO SETTLEMENT
C       DDIV    DUMMY INDICATING COSTS DIVIDED BY 1000
C       DLIM    DUMMY INDICATING LIMITED LIFE FACILITY
C       DLOOP   DUMMY INDICATING VARIABLES BEING CHANGED
C       DLUMP   DUMMY INDICATING A LUMP SUM SETTLEMENT
C       DPOST   DUMMY INDICATING POST-COMPLIANCE SETTLEMENT
C       E       DISCOUNT RATE
C       E1      DISCOUNT RATE ON MONTHLY BASIS
C       E4      DISCOUNT RATE ON A QUARTERLY BASIS
C       EI      EQUITY SHARE OF CAPITAL INVESTMENT ($)
C       F       PREFERRED STOCK FRACTION OF CAPITAL STRUCTURE
C       FIDB    FRACTION FINANCED BY INDUSTRIAL DEVELOPMENT BONDS
C       FRAPID  FRACTION OF DEPRECIATION SUBJECT TO RAPID
C                 AMORTIZATION
C       I       FORECAST INFLATION RATE
C       I1      INFLATION RATE ON MONTHLY BASIS
C       I4      INFLATION RATE ON A QUARTERLY BASIS
C       II      CAPITAL COST IN DOLLARS (INITIAL INVESTMENT)
C       IIOLD   CAPITAL COST FOR OLD FACILITY
C       J       INDEX INDICATING THE YEAR
C       K       INDEX INDICATING THE YEAR
C       L       PERIOD OF DELAYED COMPLIANCE(MONTHS)
C       LDPP    DELAY BEFORE INITIAL PENALTY PAYMENT (MONTHS)
C       LDTS    DUMMY INDICATING DEPRECIATION METHOD
C       MDS     MONTHS DELAY IN SETTLEMENT
C       M0      INITIAL ANNUAL O & M EXPENSE ($)
C       MOOLD   O & M COST FOR OLD FACILITY
C       M12     INITIAL MONTHLY O & M EXPENSE ($)
C       NDFP    DEPRECIATION LIFE (YEARS)
C       NLOOP   NUMBER OF VARIABLES TO BE CHANGED
C       NPP     NUMBER OF PENALTY PAYMENTS ACTUALLY MADE
C       NUSE    USEFUL LIFE (YEARS)
C       NVAR    VARIABLE NUMBER BEING CHANGED
C       PVACR   PRESENT VALUE OF ANNUAL CAPITAL RELATED FLOWS
C       PVADJ   PRESENT VALUE OF CASH FLOWS ADJ FOR PRE-COMPL EXP
C       PVDLA   PRESENT VALUE OF DELAYED CASH FLOWS
C       PVIN    PRESENT VALUE OF INITIAL CASH FLOWS
C       PVOM    PRESENT VALUE OF O & M CASH FLOWS
C       PVPCE   PRESENT VALUE OF CASH FLOWS IN ALL CYCLES
C       PVPEN   PRESENT VALUE OF PENALTY
C       PVLPCE  PRESENT VALUE OF CASH FLOWS IN FIRST CYCLE
C       Q       EQUITY FRACTION OF CAPITAL STRUCTURE
C       R       INTEREST RATE FOR POST-COMPL SETTLEMENT
C       RDIV    PREFERRED STOCK DIVIDEND RATE
C       RINT    INTEREST RATE ON DEBT
C       SAVING  PRESENT VALUE OF ECONOMIC SAVINGS OF DELAY
C       SETTLE  POST-COMPLIANCE SETTLEMENT AMOUNT
C       TITC    INVESTMENT TAX CREDIT RATE(%)
C       TTR     MARGINAL INCOME TAX RATE (%)
C       ZDELAY  ZTOTAL ADJUSTED TO SETTLEMENT DATE
C       ZTOTAL  SUM OF Z(J) ADJUSTED TO COMPLIANCE DATE
C
C     OTHER VARIABLES BEGINNING WITH Z ARE USED TO CONVERT
C       FROM INTEGER TO REAL
C
C
C MAIN PROGRAM
C
C
      DIMENSION D(6,50),DEP(100),CSHFLO(100),DEDUCT(100)
      DIMENSION M(100),PRIN(100),PRNOUT(100),PREF(100)
      DIMENSION PRFOUT(100),INT(100),TAXSAV(100)
      DIMENSION CSHOUT(100),DELTA(100),Z(100)
      DIMENSION DIV(100),OF(100),PV(100)
      DIMENSION X(100),PRECAP(100),PROM(100),P(100)
      DIMENSION SC(100),SO(100),AC(100),AO(100),PAID(100)
      DIMENSION PVDTS(6),QUART(100),Y(100)
```

```
C                                                                      00012300
CC                                                                     00012400
C                                                                      00012500
      INTEGER DEPMET,DRAPID,DLOOP,DDIV,DLIM                            00012600
      INTEGER DPRCAP,DPROM,DPOST,DD,DATA                               00012700
      REAL II,I,ITC,I1,M0,M12,M9                                       00012800
      REAL INT,M,I4,LUMP,MONEW,MOOLD                                   00012900
      REAL E1,E4,M4,IACT,IACT1                                         00013000
C                                                                      00013100
CC                                                                     00013200
C   DATA INPUT                                                         00013300
CC                                                                     00013400
CC                                                                     00013500
      KW=6                                                             00013600
      KR=5                                                             00013700
   90 WRITE(KW,7400)                                                   00013800
      WRITE(KW,7401)                                                   00013900
      WRITE(KW,7402)                                                   00014000
 7400 FORMAT(5X,'IS THIS AN INITIAL PENALTY CALCULATION')              00014100
 7401 FORMAT(5X, 'OR A POST-COMPLIANCE SETTLEMENT CALCULATION?')       00014200
 7402 FORMAT(5X,'0=INITIAL, 1=POST-COMPLIANCE:')                       00014300
      READ(KR,*)DPOST                                                  00014400
      IF(DPOST)93,93,80                                                00014500
   80 WRITE(KW,7410)                                                   00014600
      WRITE(KW,7411)                                                   00014700
 7410 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW AMOUNTS ACTUALLY')          00014800
 7411 FORMAT(5X, 'EXPENDED')                                           00014900
C                                                                      00015000
   93 WRITE(KW,7422)                                                   00015100
 7422 FORMAT(5X,'IS THIS A LIMITED LIFE FACILITY? 1=YES, 0=NO')        00015200
      READ(KR,*)DLIM                                                   00015300
      IF(DLIM)97,97,95                                                 00015400
   95 WRITE(KW,7425)                                                   00015500
      WRITE(KW,7426)                                                   00015600
 7425 FORMAT(5X,'ITEMS 1 AND 2 SHOULD SHOW COSTS FOR THE')             00015700
 7426 FORMAT(5X,'REPLACEMENT FACILITY')                                00015800
C                                                                      00015900
   97 WRITE(KW,7535)                                                   00016000
 7535 FORMAT(5X,'PERCENTAGE FINANCED BY INDUSTRIAL DEVELOP',           00016100
     C  'MENT BONDS=')                                                 00016200
      READ(KR,*)FIDB                                                   00016300
      FIDB=FIDB/100.                                                   00016400
C                                                                      00016500
  100 DLOOP=1                                                          00016600
      DDIV=1                                                           00016700
      DATA=0                                                           00016800
      R=0.                                                             00016900
 4000 FORMAT(F20.5)                                                    00017000
 4001 FORMAT(I20)                                                      00017100
 4002 FORMAT(I5,5F10.2)                                                00017200
 6000 FORMAT(10X)                                                      00017300
  110 WRITE(KW,4005)                                                   00017400
 4005 FORMAT(5X,29H 1. MONTHS OUT OF COMPLIANCE=)                      00017500
      READ(KR,*)L                                                      00017600
      WRITE(KW,4010)                                                   00017700
      WRITE(KW,4011)                                                   00017800
 4010 FORMAT(5X,'FOR EACH MONTH ENTER CAPITAL EXPENDITURE')            00017900
 4011 FORMAT(5X,'THEN OPERATING AND MAINTENANCE EXPENSE')              00018000
      WRITE(KW,6000)                                                   00018100
      II=0.                                                            00018200
      DO 133 J=1,L                                                     00018300
      WRITE(KW,4015)J                                                  00018400
 4015 FORMAT(5X,'MONTH',I3,' ENTER CAPITAL, O & M')                    00018500
  133 READ(KR,*)PRECAP(J),PROM(J)                                      00018600
  200 GO TO (210,3000),DLOOP                                           00018700
  210 WRITE(KW,4020)                                                   00018800
 4020 FORMAT(5X,33H 2. INITIAL ANNUAL O & M EXPENSE=,F10.2)            00018900
      READ (KR,*)MONEW                                                 00019000
      DO 212 J=1,L                                                     00019100
  217 IF(PROM(J)-MONEW/12.)212,212,213                                 00019200
  212 CONTINUE                                                         00019300
      GO TO (220,3000),DLOOP                                           00019400
  213 WRITE(KW,4025)                                                   00019500
      WRITE(KW,4026)                                                   00019600
 4025 FORMAT(5X,'PRE-COMPLIANCE O & M LARGER THAN ONE=')               00019700
 4026 FORMAT(5X,'TWELFTH OF ANNUAL O & M EXPENSE')                     00019800
      GO TO 100                                                        00019900
  220 WRITE(KW,4030)                                                   00020000
 4030 FORMAT(5X,31H 3. INVESTMENT TAX CREDIT RATE=,F6.2)               00020100
      READ(KR,*)TITC                                                   00020200
      IF(TITC-1.)223,227,227                                           00020300
  223 IF(TITC)227,227,224                                              00020400
  224 DATA=1                                                           00020500
  227 TITC=TITC/100.                                                   00020600
      GO TO (230,3000),DLOOP                                           00020700
  230 WRITE(KW,4040)                                                   00020800
 4040 FORMAT(5X,20H 4. INCOME TAX RATE=,F6.2)                          00020900
      READ(KR,*)TTR                                                    00021000
      IF(TTR-1.)233,237,237                                            00021100
  233 IF(TTR)237,237,234                                               00021200
  234 DATA=1                                                           00021300
  237 TTR=TTR/100.                                                     00021400
      GO TO (240,3000),DLOOP                                           00021500
  240 WRITE(KW,4050)                                                   00021600
 4050 FORMAT(5X,28H 5. FORECAST INFLATION RATE=,F6.2)                  00021700
      READ(KR,*)I                                                      00021800
      IF(I-1.)243,247,247                                              00021900
  243 IF(I)247,247,244                                                 00022000
  244 DATA=1                                                           00022100
  247 I=I/100.                                                         00022200
      I1=(1.+I)**(1./12.)-1.                                           00022300
      GO TO (250,3000),DLOOP                                           00022400
  250 WRITE(KW,4060)                                                   00022500
 4060 FORMAT(5X,18H 6. DISCOUNT RATE=,F6.2)                            00022600
      READ(KR,*)E                                                      00022700
      IF(E-1.)253,255,255                                              00022800
  253 IF(E)255,255,254                                                 00022900
  254 DATA=1                                                           00023000
  255 E=E/100.                                                         00023100
      GO TO (256,3000),DLOOP                                           00023200
  256 IF(E-I)258,258,260                                               00023300
  258 WRITE(KW,4065)                                                   00023400
 4065 FORMAT(5X,'DISCOUNT RATE NOT GREATER THAN INFLATION RATE')       00023500
      GO TO 240                                                        00023600
  260 WRITE(KW,4070)                                                   00023700
 4070 FORMAT(5X,18H 7. INTEREST RATE=,F6.2)                            00023800
      READ(KR,*)RINT                                                   00023900
      IF(RINT-1.)263,267,267                                           00024000
  263 IF(RINT)267,267,264                                              00024100
  264 DATA=1                                                           00024200
  267 RINT=RINT/100.                                                   00024300
      GO TO (270,3000),DLOOP                                           00024400
```

```
 270   WRITE(KW,4080)                                                  00024500
4080   FORMAT(5X,34H 8, PREFERRED STOCK DIVIDEND RATE=,F6.2)           00024600
       READ(KR,*)RDIV                                                  00024700
       IF(RDIV-1.)273,277,277                                          00024800
 273   IF(RDIV)277,277,274                                             00024900
 274   DATA=1                                                          00025000
 277   RDIV=RDIV/100.                                                  00025100
       GO TO (300,3000),DLOOP                                          00025200
 300   WRITE(KW,4090)                                                  00025300
4090   FORMAT(5X,31H 9, EQUITY SHARE OF INVESTMENT=,F6.2)              00025400
       READ(KR,*)Q                                                     00025500
       IF(Q-1.)303,307,307                                             00025600
 303   IF(Q)307,307,304                                                00025700
 304   DATA=1                                                          00025800
 307   Q=Q/100                                                         00025900
       GO TO (280,3000),DLOOP                                          00026000
 280   WRITE(KW,4100)                                                  00026100
4100   FORMAT(5X,26H10, PREFERRED STOCK SHARE=,F6.2)                   00026200
       READ(KR,*)F                                                     00026300
       IF(F-1.)283,287,287                                             00026400
 283   IF(F)287,287,284                                                00026500
 284   DATA=1                                                          00026600
 287   F=F/100.                                                        00026700
       GO TO (290,3000),DLOOP                                          00026800
 290   WRITE(KW,4110)                                                  00026900
4110   FORMAT(5X,29H11, DEBT SHARE OF INVESTMENT=,F6.2)                00027000
       READ(KR,*)B                                                     00027100
       IF(B-1.)313,317,317                                             00027200
 313   IF(B)317,317,314                                                00027300
 314   DATA=1                                                          00027400
 317   B=B/100.                                                        00027500
       GO TO (324,3000),DLOOP                                          00027600
 324   IF(ABS(Q+F+B-1.)-.005)350,325,325                               00027700
 325   WRITE(KW,6000)                                                  00027800
       WRITE(KW,4500)                                                  00027900
4500   FORMAT(5X,'EQUITY+PREFERRED+DEBT NOT = 100, TRY AGAIN')         00028000
       GO TO 300                                                       00028100
 350   WRITE(KW,4130)                                                  00028200
4130   FORMAT(5X,22H12, DEPRECIATION LIFE=,I4)                         00028300
       READ(KR,*)NDEP                                                  00028400
       GO TO (320,3000),DLOOP                                          00028500
 320   WRITE(KW,4140)                                                  00028600
4140   FORMAT(5X,16H13, USEFUL LIFE=,I4)                               00028700
       READ(KR,*)NUSE                                                  00028800
       GO TO (321,3000),DLOOP                                          00028900
 321   IF(DPOST)360,360,322                                            00029000
 322   WRITE(KW,4190)                                                  00029100
4190   FORMAT(5X,'14, HOW MANY PENALTY PAYMENTS WERE MADE?')           00029200
       READ(KR,*)NPP                                                   00029300
       DO 412 J=1,100                                                  00029400
 412   PAID(J)=0.                                                      00029500
       IF(NPP)416,416,411                                              00029600
 411   DO 415 J=1,NPP                                                  00029700
       WRITE(KW,7420)J                                                 00029800
7420   FORMAT(9X,'14, PAYMENT NUMBER',I3,': ENTER MONTH,AMOUNT')       00029900
       READ(KR,*)N9,PYMT                                               00030000
       IF(J-1)413,413,415                                              00030100
 413   LOPP=N9-1                                                       00030200
 415   PAID(N9)=PYMT                                                   00030300
 416   GO TO (417,3000),DLOOP                                          00030400
 417   WRITE(KW,7415)                                                  00030500

7415   FORMAT(5X,'15, TREASURY INTEREST RATE=',F6.2)                   00030600
       READ(KR,*)R                                                     00030700
       IF(R-1.)403,407,407                                             00030800
 403   IF(R)407,407,404                                                00030900
 404   DATA=1                                                          00031000
 407   R=R/100.                                                        00031100
       GO TO (360,3000),DLOOP                                          00031200
 360   IF(DLIM)420,420,365                                             00031300
 365   WRITE(KW,7440)                                                  00031400
       WRITE(KW,7441)                                                  00031500
7440   FORMAT(5X,'16, CAPITAL COST WHICH WOULD HAVE ',                 00031600
     C  'BEEN INCURRED')                                               00031700
7441   FORMAT(5X,'    TO BRING EXISTING FACILITY INTO',                00031800
     C  ' COMPLIANCE')                                                 00031900
       READ(KR,*)IIOLD                                                 00032000
 375   GO TO (385,3000),DLOOP                                          00032100
 385   WRITE(KW,7447)                                                  00032200
       WRITE(KW,7448)                                                  00032300
7447   FORMAT(5X,'17, O & M COST TO KEEP EXISTING FACILITY')           00032400
7448   FORMAT(5X,'    IN COMPLIANCE=')                                 00032500
       READ(KR,*)MOOLD                                                 00032600
       IF(DPOST)389,389,387                                            00032700
 387   MOOLD=MOOLD*(1.+I1)**L                                          00032800
 389   GO TO (420,3000),DLOOP                                          00032900
C                                                                      00033000
C                                                                      00033100
C                                                                      00033200
C      DATA CHECKS AND INITIALIZATIONS                                 00033300
C                                                                      00033400
C                                                                      00033500
C                                                                      00033600
C      COMPUTE MONTHLY AND QUARTERLY EQUIVALENT VALUES OF              00033700
C      E AND I FOR USE LATER IN THE PROGRAM.                           00033800
 420   E1=(1.+E)**(1./12.)-1.                                          00033900
       E4=(1.+E)**(.25)-1.                                             00034000
       I4=(1.+I)**(.25)-1.                                             00034100
       R1=(1.+R)**(1./12.)-1.                                          00034200
C                                                                      00034300
       MO=MONEW                                                        00034400
       IF(ABS(Q+F+B-1.)-.005)422,421,421                               00034500
 421   WRITE(KW,4500)                                                  00034600
       GO TO 100                                                       00034700
 422   DO 423 J=1,L                                                   00034800
       IF(PROM(J)-MO/12.)423,423,213                                   00034900
 423   CONTINUE                                                        00035000
C                                                                      00035100
       IF(MO)428,428,426                                               00035200
 426   IF(DPOST)140,140,145                                            00035300
 140   DO 427 J=1,L                                                   00035400
 427   Y(J)=12.*PROM(J)/MO                                             00035500
       GO TO 431                                                       00035600
 145   DO 146 J=1,L                                                   00035700
 146   Y(J)=(12.*PROM(J)*(1.+I1)**L)/(MO*(1.+I1)**(J-1))               00035800
       GO TO 431                                                       00035900
 428   DO 429 J=1,L                                                   00036000
 429   Y(J)=0.                                                         00036100
 431   CONTINUE                                                        00036200
       II=0                                                            00036300
       DO 153 J=1,L                                                   00036400
       IF(DPOST)125,125,130                                            00036500
 125   II=II+PRECAP(J)                                                 00036600
```

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      GO TO 153                                                          00036700
  130 II=II+PRECAP(J)/(1.+I1)**J                                         00036800
  153 CONTINUE                                                           00036900
 6059 X(1)=0.                                                            00037000
      IF(II)6060,6060,6070                                               00037100
 6060 DO 6065 K=1,L                                                      00037200
 6065 X(K)=1.                                                            00037300
      GO TO 154                                                          00037400
 6070 DO 6077 K=2,L                                                      00037500
      IF(DPOST)6075,6075,6076                                            00037600
 6075 X(K)=X(K-1)+PRECAP(K-1)                                            00037700
      GO TO 6077                                                         00037800
 6076 X(K)=X(K-1)+PRECAP(K-1)/(1.+I1)**(K-1)                             00037900
 6077 CONTINUE                                                           00038000
      DO 6078 K=1,L                                                      00038100
 6078 X(K)=X(K)/II                                                       00038200
C                                                                        00038300
C                                                                        00038400
  154 IF(DLIM)432,432,430                                                00038500
  430 II=IIOLD                                                           00038600
      MO=MOOLD                                                           00038700
  432 CONTINUE                                                           00038800
  440 IF(II-1000000.)445,450,450                                         00038900
  445 IF(MO-100000.)475,450,450                                          00039000
  450 II=II/1000.                                                        00039100
      DDIV=2                                                             00039200
      MO=MO/1000.                                                        00039300
      DO 460 J=1,L                                                       00039400
      PAID(J)=PAID(J)/1000.                                              00039500
      PRECAP(J)=PRECAP(J)/1000.                                          00039600
  460 PROM(J)=PROM(J)/1000.                                              00039700
      WRITE(KW,6000)                                                     00039800
      WRITE(KW,6000)                                                     00039900
      WRITE(KW,6600)                                                     00040000
 6600 FORMAT(5X,'NOTE THAT FIGURES BELOW ARE IN THOUSANDS')              00040100
  475 CONTINUE                                                           00040200
      IF(DATA)457,457,453                                                00040300
  453 WRITE(KW,6570)                                                     00040400
      WRITE(KW,6571)                                                     00040500
 6570 FORMAT(5X,'NOTE THAT AT LEAST ONE OF YOUR DATA ENTRIES')           00040600
 6571 FORMAT(5X,'HAS A PERCENTAGE VALUE OF LESS THAN ONE')               00040700
      DATA=0                                                             00040800
  457 CONTINUE                                                           00040900
      IF(E-I)480,480,483                                                 00041000
  480 WRITE(KW,4065)                                                     00041100
      GO TO 100                                                          00041200
  483 CONTINUE                                                           00041300
      ZNDEP=NDEP                                                         00041400
      DO 490 J=1,100                                                     00041500
      DEP(J)=0.                                                          00041600
      Z(J)=0.                                                            00041700
      DELTA(J)=0.                                                        00041800
      CSHFLO(J)=0.                                                       00041900
      DEDUCT(J)=0.                                                       00042000
      M(J)=0.                                                            00042100
      PMIN(J)=0.                                                         00042200
      PRNOUT(J)=0.                                                       00042300
      PREF(J)=0.                                                         00042400
      PROUT(J)=0.                                                        00042500
      INT(J)=0.                                                          00042600
      TAXSAV(J)=0.                                                       00042700
      CSHOUT(J)=0.                                                       00042800
      DIV(J)=0.                                                          00042900
      DF(J)=0.                                                           00043000
      P(J)=0.                                                            00043100
      QUART(J)=0.                                                        00043200
  490 PV(J)=0.                                                           00043300
      DO 491 K=1,6                                                       00043400
      PVDTS(K)=0.                                                        00043500
      DO 491 J=1,50                                                      00043600
  491 D(K,J)=0.                                                          00043700
C                                                                        00043800
C                                                                        00043900
C     IF THIS IS A POST-COMPLIANCE CALCULATION,                          00044000
C     ADJUST CAPITAL AND O & M VALUES TO REFLECT                         00044100
C     INFLATION DURING THE NONCOMPLIANCE PERIOD                          00044200
C                                                                        00044300
      IF(DPOST)499,499,492                                               00044400
  492 DO 495 J=1,L                                                       00044500
      PRECAP(J)=PRECAP(J)/(1.+I1)**L                                     00044600
  495 PROM(J)=PROM(J)/(1.+I1)**L                                         00044700
      MO=MO/(1.+I1)**L                                                   00044800
C                                                                        00044900
C     BEGIN COMPUTING PENALTY                                            00045000
C                                                                        00045100
C                                                                        00045200
C     EQUATION (1) = EQUITY INVESTMENT                                   00045300
  499 EI=II*Q                                                            00045400
C                                                                        00045500
C     EQUATION (2) = INVESTMENT TAX CREDIT                               00045600
      ITC=II*TITC*(1.-FIDB/2.)                                           00045700
C                                                                        00045800
C     DEPRECIATION CALCULATIONS FROM APPENDIX C                          00045900
C                                                                        00046000
      DTSMAX=0.                                                          00046100
      LDTS=99                                                            00046200
C                                                                        00046300
C     STRAIGHT LINE DEPRECIATION                                         00046400
  500 DO 550 J=1,NDEP                                                    00046500
      D(1,J)=1/ZNDEP                                                     00046600
  550 PVDTS(1)=PVDTS(1)+D(1,J)/(1.+E)**J                                 00046700
      IF(PVDTS(1)-DTSMAX)600,600,560                                     00046800
  560 DTSMAX=PVDTS(1)                                                    00046900
      LDTS=1                                                             00047000
C                                                                        00047100
C     SUM OF YEARS DIGITS                                                00047200
  600 ZN8=ZNDEP*(ZNDEP+1)/2                                              00047300
      DO 650 J=1,NDEP                                                    00047400
      D(2,J)=(ZNDEP+1-J)/ZN8                                             00047500
  650 PVDTS(2)=PVDTS(2)+D(2,J)/(1.+E)**J                                 00047600
      IF(PVDTS(2)-DTSMAX)700,700,660                                     00047700
  660 DTSMAX=PVDTS(2)                                                    00047800
      LDTS=2                                                             00047900
C                                                                        00048000
C     DOUBLE DECLINING BALANCE                                           00048100
  700 IF(NDEP-1)800,800,705                                              00048200
  705 CUMDEP=0                                                           00048300
      DO 750 J=1,NDEP                                                    00048400
      IF (NDEP-2*J+2) 725,710,710                                        00048500
  710 D(3,J)=(1-CUMDEP)*2/ZNDEP                                          00048600
      PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                                 00048700
      GO TO 750                                                          00048800
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  725   D(3,J)=(1-CUMDEP)/(ZNDEP-J+1)                                    00048900
        PVDTS(3)=PVDTS(3)+D(3,J)/(1.+E)**J                               00049000
  750   CUMDEP=CUMDEP+D(3,J)                                             00049100
        IF(PVDTS(3)-DTSMAX)800,800,760                                   00049200
  760   DTSMAX=PVDTS(3)                                                  00049300
        LDTS=3                                                           00049400
C                                                                        00049500
C       RAPID AMORTIZATION                                               00049600
  800   IF(NDEP-15)790,795,795                                           00049700
  790   FRAPID=1.                                                        00049800
        GO TO 799                                                        00049900
  795   FRAPID=15./ZNDEP                                                 00050000
  799   DO 810 K=4,6                                                     00050100
        DO 801 J=1,NDEP                                                  00050200
        D(K,J)=D(K-3,J)*(1.-FRAPID)                                      00050300
  801   PVDTS(K)=PVDTS(K)+D(K,J)/(1.+E)**J                               00050400
        DO 805 J=1,5                                                     00050500
        D(K,J)=D(K,J)+FRAPID/5.                                          00050600
  805   PVDTS(K)=PVDTS(K)+(FRAPID/5.)/(1.+E)**J                          00050700
        PVDTS(K)=PVDTS(K)-TITC*FIDR/2.                                   00050800
        IF(PVDTS(K)-DTSMAX)810,810,808                                   00050900
  808   DTSMAX=PVDTS(K)                                                  00051000
        LDTS=K                                                           00051100
  810   CONTINUE                                                         00051200
C                                                                        00051300
C                                                                        00051400
C       EQUATION (3) - DEPRECIATION TAX SAVINGS                          00051500
  900   DO 950 J=1,NDEP                                                  00051600
  950   DEP(J)=II*D(LDTS,J)*TTR                                          00051700
C                                                                        00051800
C       EQUATION (4) - DEBT SHARE OF INVESTMENT                          00051900
        DBTSHR=II*B                                                      00052000
C                                                                        00052100
C       INITIAL PRIN OUTSTANDING EQUALS DEBT SHARE                       00052200
        PRNOUT(1)=DBTSHR                                                 00052300
C                                                                        00052400
C       EQUATION(11) - PREFERRED STOCK SHARE OF INVESTMENT               00052500
        PRFSHR=II*F                                                      00052600
C                                                                        00052700
C       INITIAL PREFERRED OUTSTANDING IS PREFERRED SHARE                 00052800
        PRFOUT(1)=PRFSHR                                                 00052900
C                                                                        00053000
C                                                                        00053100
C       THE FOLLOWING SECTION CALCUALATES THE ANNUAL CAPITAL-            00053200
C       RELATED CASH FLOWS                                               00053300
C                                                                        00053400
        DO 1100 J=1,NDEP                                                 00053500
C                                                                        00053600
C       EQUATION (5) - PRINCIPAL PAYMENT                                 00053700
        PRIN(J)=D(LDTS,J)*II*B                                           00053800
C                                                                        00053900
C       COMBINING EQUATIONS (8) AND (9)                                  00054000
        PRNOUT(J+1)=PRNOUT(J)-PRIN(J)                                    00054100
C                                                                        00054200
C       EQUATION (7) - INTEREST CASH FLOW                                00054300
        INT(J)=RINT*PRNOUT(J)*(1-TTR)                                    00054400
C                                                                        00054500
C       EQUATION (12) - PREFERRED STOCK REDEMPTION                       00054600
        PREF(J)=D(LDTS,J)*II*F                                           00054700
C                                                                        00054800
C       COMBINING EQUATIONS (14) AND (15)                                00054900
        PRFOUT(J+1)=PRFOUT(J)-PREF(J)                                    00055000
C                                                                        00055100
C       EQUATION (13) - PREFERRED STOCK DIVIDEND PAYMENT                 00055200
        DIV(J)=RDIV*PRFOUT(J)                                            00055300
C                                                                        00055400
 1100   CONTINUE                                                         00055500
C                                                                        00055600
C       NOTE: EQUATION (17), O & M, IS COMBINED BELOW WITH               00055700
C       EQUATIONS (21) AND (22)                                          00055800
C                                                                        00055900
C       DISCOUNTING CASH FLOWS                                           00056000
C                                                                        00056100
C       EQUATION (18) - INITIAL CASH FLOW                                00056200
        PVIN=II*B-ITC                                                    00056300
C                                                                        00056400
C       COMBINING EQUATIONS (19) AND (20) - ANNUAL CAPITAL               00056500
C       RELATED                                                          00056600
        PVACR=0                                                          00056700
        DO 1200 J=1,NDEP                                                 00056800
 1200   PVACR=PVACR+(-DEP(J)+PRIN(J)+INT(J)+PREF(J)+DIV(J))/             00056900
     C  (1.+E)**J                                                        00057000
C                                                                        00057100
C       EQUATIONS (17),(21)AND (22) COMBINED - O AND M                   00057200
        PVOM=0                                                           00057300
        DO 1300 J=1,NUSE                                                 00057400
        M(J)=M0*(1.+I)**J                                                00057500
 1300   PVOM=PVOM+M(J)*(1.-TTR)/(1.+E)**J                                00057600
C                                                                        00057700
C       EQUATION (23) - PRESENT VALUE OF FIRST CYCLE FLOWS               00057800
        PV1PCE=PVIN+PVACR+PVOM                                           00057900
C                                                                        00058000
C                                                                        00058100
C       EQUATION (24) - PRESENT VALUE OF FLOWS FOR ALL CYCLES            00058200
        PVPCE=PV1PCE*(1./(1.-((1.+I)/(1.+E))**NUSE))                     00058300
C                                                                        00058400
C       EQUATION (26) - PRESENT VALUE OF DELAYED FLOWS                   00058500
        PVDLA=PVPCE*((1.+I1)/(1.+E1))**L                                 00058600
C                                                                        00058700
C       EQUATION (27) - ECONOMIC SAVINGS CALCULATION                     00058800
        SAVING=PVPCE-PVDLA                                               00058900
C                                                                        00059000
C                                                                        00059100
C                                                                        00059200
C                                                                        00059300
C       CONVERT SAVINGS INTO A MONTHLY PENALTY                           00059400
C                                                                        00059500
C       EQUATION (33) AND (34) - MONTHLY SAVINGS EQUIVALENTS             00059600
 6025   SC(1)=((E1-I1)/(1.+E1))*(PVIN+PVACR)*                            00059700
     C    (1./(1.-((1.+I)/(1.+E))**NUSE))                                00059800
        SO(1)=((E1-I1)/(1.+E1))*PVOM*(1./(1.-((1.+I)/(1.+E))             00059900
     C  **NUSE))                                                         00060000
 6040   DO 6050 K=1,L                                                    00060100
        SC(K)=SC(1)*(1.+I1)**(K-1)                                       00060200
 6050   SO(K)=SO(1)*(1.+I1)**(K-1)                                       00060300
C                                                                        00060400
C       EQUATION (35) - ADJUSTED SAVINGS EQUIVALENT                      00060500
 6080   DO 6100 K=1,L                                                    00060600
        AC(K)=(1.-X(K))*SC(K)                                            00060700
        AO(K)=(1.-Y(K))*SO(K)                                            00060800
        IF(AO(K))6090,6100,6100                                          00060900
 6090   AO(K)=0                                                          00061000
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 6100   CONTINUE                                                          00061100
C                                                                        00061200
C       EQUATION (36) = PRESENT VALUE OF ADJUSTED SERIES                 00061300
        PVADJ=0.                                                         00061400
        DO 6150 K=1,L                                                    00061500
 6150   PVADJ=PVADJ+(AC(K)+AO(K))/((1.+E1)**(K-1))                       00061600
C                                                                        00061700
C       EQUATIONS (38) & (39) = PENALTY PAYMENT SERIES                   00061800
        DENOM=0.                                                         00061900
        DO 6175 K=1,L                                                    00062000
 6175   DENOM=DENOM+((1.+I1)/(1.+E1))**(K-1)                             00062100
        P(1)=PVADJ/DENOM                                                 00062200
        DO 6200 K=1,L                                                    00062300
 6200   P(K)=P(1)*(1.+I1)**(K-1)                                         00062400
C                                                                        00062500
C                                                                        00062600
C       PRINT OUT THE DEPRECIATION METHOD                                00062700
        WRITE(KW,6000)                                                   00062800
        WRITE(KW,6000)                                                   00062900
        GO TO (6210,6215,6220,6225,6230,6235),LDTS                       00063000
 6210   WRITE(KW,6211)                                                   00063100
 6211   FORMAT(5X,'STRAIGHT LINE, STANDARD AMORTIZATION')                00063200
        GO TO 6240                                                       00063300
 6215   WRITE(KW,6216)                                                   00063400
 6216   FORMAT(5X,'SUM OF YEARS DIGITS, STANDARD AMORTIZATION')          00063500
        GO TO 6240                                                       00063600
 6220   WRITE(KW,6221)                                                   00063700
 6221   FORMAT(5X,'DOUBLE DECLINING BALANCE, STANDARD AMORTIZATION')     00063800
        GO TO 6240                                                       00063900
 6225   WRITE(KW,6226)                                                   00064000
 6226   FORMAT(5X,'STRAIGHT LINE, RAPID AMORTIZATION')                   00064100
        GO TO 6240                                                       00064200
 6230   WRITE(KW,6231)                                                   00064300
 6231   FORMAT(5X,'SUM OF YEARS DIGITS, RAPID AMORTIZATION')             00064400
        GO TO 6240                                                       00064500
 6235   WRITE(KW,6236)                                                   00064600
 6236   FORMAT(5X,'DOUBLE DECLINING BALANCE, RAPID AMORTIZATION')        00064700
 6240   CONTINUE                                                         00064800
C                                                                        00064900
C                                                                        00065000
        PVPEN=0.0                                                        00065100
        DO 6300 K=1,L                                                    00065200
 6300   PVPEN=PVPEN+P(K)/(1.+E1)**(K-1)                                  00065300
        WRITE(KW,6000)                                                   00065400
C                                                                        00065500
C                                                                        00065600
C       COMPUTE QUARTERLY PENALTY AMOUNTS AND PRINT THEM                 00065700
        IF(DPOST)7190,7190,6308                                          00065800
 7190   WRITE(KW,7601)                                                   00065900
        WRITE(KW,7602)                                                   00066000
        WRITE(KW,7603)                                                   00066100
 7601   FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')              00066200
 7602   FORMAT(5X,'NONCOMPLIANCE WILL THE INITIAL PENALTY')              00066300
 7603   FORMAT(5X,'PAYMENT BE MADE?')                                    00066400
        READ(KR,*)LDPP                                                   00066500
 6308   ZL=L                                                             00066600
        Z6=0                                                             00066700
        NQ=AINT((ZL-.01)/3.)+1                                           00066800
        DO 6310 J=1,NQ                                                   00066900
 6310   Z6=Z6+((1.+I4)/(1.+E4))**(J-1)                                   00067000
        QUART(1)=PVPEN/Z6                                                00067100
        IF(NQ-1)6315,6315,6312                                           00067200
 6312   DO 6314 J=2,NQ                                                   00067300
 6314   QUART(3*J-2)=QUART(3*J-5)*(1.+I4)                                00067400
 6315   CONTINUE                                                         00067500
C                                                                        00067600
C       CALCULATE BASE FOR LUMP SUM SETTLEMENT                           00067700
        SETTLE=0.                                                        00067800
        DO 6316 J=1,L                                                    00067900
 6316   SETTLE=SETTLE+QUART(J)/(1.+E1)**(J-1)                            00068000
C                                                                        00068100
        IF(LDPP)7150,7150,6317                                           00068200
 6317   DO 6335 J=1,LDPP                                                 00068300
        QUART(LDPP+1)=QUART(LDPP+1)+QUART(J)*(1.+E1)**(LDPP-J+1)         00068400
 6335   QUART(J)=0.                                                      00068500
 7150   IF(DPOST)7151,7151,6390                                          00068600
 7151   WRITE(KW,6000)                                                   00068700
        WRITE(KW,7550)                                                   00068800
 7550   FORMAT(5X,'      MONTH       PAYMENT')                           00068900
        DO 6343 J=1,50                                                   00069000
        IF(QUART(J))6343,6343,6340                                       00069100
 6340   WRITE(KW, 7505)J,QUART(J)                                        00069200
 6343   CONTINUE                                                         00069300
        WRITE(KW,6000)                                                   00069400
C                                                                        00069500
C                                                                        00069600
        WRITE(KW,7560)                                                   00069700
        WRITE(KW,7561)                                                   00069800
 7560   FORMAT(5X,'DO YOU WISH TO SEE A LUMP SUM')                       00069900
 7561   FORMAT(5X,'SETTLEMENT? 1=YES,0=NO1')                             00070000
        READ(KR,*)DLUMP                                                  00070100
        IF(DLUMP)7299,7299,6380                                          00070200
C                                                                        00070300
C       COMPUTE THE VALUE OF THE NONCOMPLIANCE PENALTY MDS               00070400
C       MONTHS AFTER THE DATE OF NONCOMPLIANCE                           00070500
 6380   WRITE(KW,7575)                                                   00070600
        WRITE(KW,7576)                                                   00070700
        WRITE(KW,7577)                                                   00070800
 7575   FORMAT(5X,'HOW MANY MONTHS AFTER THE FIRST DAY OF')              00070900
 7576   FORMAT(5X,'NONCOMPLIANCE WILL THE LUMP SUM')                     00071000
 7577   FORMAT(5X,'SETTLEMENT BE MADE?')                                 00071100
        READ(KR,*)MDS                                                    00071200
C                                                                        00071300
 7195   SETTLE=SETTLE*(1.+E1)**MDS                                       00071400
 7199   WRITE(KW,7200)                                                   00071500
 7200   FORMAT(5X,'THE VALUE OF THE NONCOMPLIANCE PENALTY')              00071600
        WRITE(KW,7201)MDS                                                00071700
 7201   FORMAT(5X,'COMPUTED AS OF',I4,' MONTHS AFTER THE DATE')          00071800
        WRITE(KW,7203)SETTLE                                             00071900
 7203   FORMAT(5X,'OF NONCOMPLIANCE IS',28X,F13.2)                       00072000
        WRITE(KW,7205)                                                   00072100
 7205   FORMAT(57X,8H========)                                           00072200
        GO TO 7299                                                       00072300
C                                                                        00072400
C                                                                        00072500
C       COMPUTE POST-COMPLIANCE SETTLEMENT                               00072600
C                                                                        00072700
C                                                                        00072800
 6390   ZTOTAL=0.0                                                       00072900
 6385   DO 6350 J=1,100                                                  00073000
        DELTA(J)= PAID(J)-QUART(J)                                       00073100
 6355   Z(J)=DELTA(J)*(1.+R1)**(L-J+1)                                   00073200
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 6350   ZTOTAL=ZTOTAL+Z(J)                                                00073300
C                                                                        00073400
       WRITE(KW,7580)                                                    00073500
 7580  FORMAT(1X,'MONTH      PAID   PENALTY   DUE EPA   DUE FIRM')       00073600
       DO 6440 J=1,100                                                   00073700
       ZE=0                                                              00073800
       ZF=0                                                              00073900
       IF(QUART(J))6410,6410,6420                                        00074000
 6410  IF(PAID(J))6440,6440,6420                                         00074100
 6420  IF(DELTA(J))6450,6450,6460                                        00074200
 6450  ZE=-DELTA(J)                                                      00074300
       GO TO 6430                                                        00074400
 6460  ZF=DELTA(J)                                                       00074500
 6430  WRITE(KW,4002)J,PAID(J),QUART(J),ZE,ZF                            00074600
 6440  CONTINUE                                                          00074700
       WRITE(KW,6000)                                                    00074800
       WRITE(KW,7755)                                                    00074900
 7755  FORMAT(5X,'MONTHS FROM COMPLIANCE UNTIL SETTLEMENT=')             00075000
       READ(KR,*)DD                                                      00075100
       ZDELAY=ZTOTAL*(1.+R1)**DD                                         00075200
       WRITE(KW,6000)                                                    00075300
       IF(ZDELAY)6461,6461,6465                                          00075400
 6461  ZDELAY=-ZDELAY                                                    00075500
       WRITE(KW,7756)ZDELAY                                              00075600
 7756  FORMAT(5X,'SETTLEMENT DUE EPA=',F10.2)                            00075700
       GO TO 6475                                                        00075800
 6465  WRITE(KW,7757)ZDELAY                                              00075900
 7757  FORMAT(5X,'SETTLEMENT DUE FIRM=',F10.2)                           00076000
 6475  CONTINUE                                                          00076100
C                                                                        00076200
C                                                                        00076300
C                                                                        00076400
C                                                                        00076500
C      CREATE THE OPTION TO CHANGE SOME OF THE VARIABLES                 00076600
C                                                                        00076700
       WRITE(KW,6000)                                                    00076800
       WRITE(KW,6000)                                                    00076900
       WRITE(KW,6000)                                                    00077000
 7299  CONTINUE                                                          00077100
       WRITE(KW,7300)                                                    00077200
 7300  FORMAT(5X,'HOW MANY VARIABLES DO YOU WISH TO CHANGE ',            00077300
     C '?')                                                              00077400
       READ(KR,*)NLOOP                                                   00077500
       IF(NLOOP)99999,99999,2700                                         00077600
 2700  IF(NLOOP-999)2800,2710,2710                                       00077700
 2710  WRITE(KW,7501)                                                    00077800
 7501  FORMAT(5X,'1. PRECOMPLIANCE EXPENDITURES')                        00077900
       WRITE(KW,7502)                                                    00078000
 7502  FORMAT(5X,'      MONTH      CAPITAL          O & M')              00078100
       DO 2715 J=1,L                                                     00078200
       IF(DPOST)2712,2712,2714                                           00078300
 2712  ZC=PRECAP(J)                                                      00078400
       ZM=PROM(J)                                                        00078500
       GO TO 2715                                                        00078600
 2714  ZC=PRECAP(J)*(1.+I1)**L                                           00078700
       ZM=PROM(J)*(1.+I1)**L                                             00078800
 2715  WRITE(KW,7505)J,ZC,ZM                                             00078900
 7505  FORMAT(12X,I2,F15.2,F15.2)                                        00079000
       IF(DLIM)2719,2719,2718                                            00079100
 2718  ZM0=MONEW                                                         00079200
       GO TO 2724                                                        00079300
 2719  IF(DPOST)2720,2720,2723                                           00079400
 2720  ZM0=M0                                                            00079500
       GO TO 2724                                                        00079600
 2723  ZM0=M0*(1.+I1)**L                                                 00079700
 2724  WRITE(KW,4020)ZM0                                                 00079800
       ZTITC=100*TITC                                                    00079900
       WRITE(KW,4030)ZTITC                                               00080000
       ZTTR=100.*TTR                                                     00080100
       WRITE(KW,4040)ZTTR                                                00080200
       ZI=100.*I                                                         00080300
       WRITE(KW,4050)ZI                                                  00080400
       ZE=100.*E                                                         00080500
       WRITE(KW,4060)ZE                                                  00080600
       ZRINT=100.*RINT                                                   00080700
       WRITE(KW,4070)ZRINT                                               00080800
       ZRDIV=100.*RDIV                                                   00080900
       WRITE(KW,4080)ZRDIV                                               00081000
       ZQ=100.*Q                                                         00081100
       WRITE(KW,4090)ZQ                                                  00081200
       ZF=100.*F                                                         00081300
       WRITE(KW,4100)ZF                                                  00081400
       ZB=100.*B                                                         00081500
       WRITE(KW,4110)ZB                                                  00081600
       WRITE(KW,4130)NDEP                                                00081700
       WRITE(KW,4140)NUSE                                                00081800
       IF(DPOST)2735,2735,2725                                           00081900
 2725  WRITE(KW,7524)                                                    00082000
 7524  FORMAT(5X,'14. PENALTY PAYMENTS')                                 00082100
       WRITE(KW,7525)                                                    00082200
 7525  FORMAT(5X,'     MONTH        PAYMENT')                            00082300
       DO 2733  J=1,100                                                  00082400
       IF(PAID(J))2733,2733,2730                                         00082500
 2730  WRITE(KW,7505)J,PAID(J)                                           00082600
 2733  CONTINUE                                                          00082700
       ZR=R*100.                                                         00082800
       WRITE(KW,7415)ZR                                                  00082900
       WRITE(KW,6000)                                                    00083000
 2735  GO TO 7299                                                        00083100
 2800  DLOOP=2                                                           00083200
       IF(DPOST)2811,2811,2805                                           00083300
 2805  DO 2809 J=1,L                                                     00083400
       PRECAP(J)=PRECAP(J)*(1.+I1)**L                                    00083500
 2809  PROM(J)=PROM(J)*(1.+I1)**L                                        00083600
       II=II*(1.+I1)**L                                                  00083700
       M0=M0*(1.+I1)**L                                                  00083800
 2811  IF(DDIV-1)2820,2820,2812                                          00083900
 2812  II=II*1000.                                                       00084000
       M0=M0*1000.                                                       00084100
       DO 2815 J=1,L                                                     00084200
       PAID(J)=PAID(J)*1000.                                             00084300
       PRECAP(J)=PRECAP(J)*1000.                                         00084400
 2815  PROM(J)=PROM(J)*1000.                                             00084500
       DDIV=1                                                            00084600
 2820  WRITE(KW,7310)                                                    00084700
 7310  FORMAT(5X,'TYPE NUMBER OF VARIABLE:')                             00084800
       READ(KR,*)NVAR                                                    00084900
       GO TO (110,210,220,230,240,250,260,270,                           00085000
     C  300,280,290,350,320,322,417,365,385),NVAR                        00085100
 3000  NLOOP=NLOOP-1                                                     00085200
       IF(NLOOP)420,420,2820                                             00085300
99999  STOP                                                              00085400
```

[FR Doc. 79-18663 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-C

[40 CFR Part 81]

Commonwealth of Pennsylvania; Section 107 Attainment Status Designations

[FRL 1248-2]

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Commonwealth of Pennsylvania has revised its air quality attainment designation for the Monongahela Air Basin, with respect to sulfur dioxide, from nonattainment to unclassifiable. On December 29, 1978, Pennsylvania submitted this revision to the Administrator of the Environmental Protection Agency, along with supporting information for promulgation under Section 107(d).

EPA proposes to promulgate this designation change submitted by Pennsylvania. The purpose of this notice is to solicit public comments on this proposed action.

DATE: Comments on this proposed designation change should be submitted on or before July 16, 1979.

ADDRESSES: Copies of the associated support material are available for public inspection during normal business hours at the following locations:

U.S. Environmental Protection Agency, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106.

Pennsylvania Department of Environmental Resources, Bureau of Air Quality and Noise Control, 200 North Third Street, Fulton Building, 10th floor, Harrisburg, PA 17120.

Public Information Reference Unit, Room 2922, EPA Library, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

All comments should be addressed to:

Mr. Howard R. Heim, Jr., Chief (3AH10), Air Program Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th floor, Philadelphia, PA 19106, Attn: 107PA-1.

FOR FURTHER INFORMATION CONTACT:

Mr. Harold A. Frankford (3AH12), U.S. Environmental Protection Agency, Region III, Curtis Building, 10th floor, 6th & Walnut Streets, Philadelphia, PA 19106, (Phone) 215/597-8392.

SUPPLEMENTARY INFORMATION:

Background

Section 107(d) of the Clean Air Act requires the States to submit to the Administrator a list identifying all air quality control areas, or portions thereof, that have not attained the National Ambient Air Quality Standards. The Act further requires that the Administrator promulgate this list, with such modifications as he deems necessary, as required by Section 107(d)(2) of the Act. On March 3, 1978, the Administator promulgated nonattainment designations for Pennsylvania for total suspended particulates (TSP), sulfur dioxide (SO_2), carbon monoxide (CO), ozone (O_3) and oxides of nitrogen (NO_X) (43 FR 8962). These designations were effective immediately and public comment was solicited. On September 12, 1978, in response to the comments received, the Administrator revised and amended certain of the original designations (43 FR 40502). The Act also provides that a State, from time to time, may review and revise its designations list and submit these revisions to the Administrator for promulgation (Section 107(d)(5) of the Act). The criteria and policy guidelines governing these revisions and the Administrator's review of them are the same that were used in the original designations and which are summarized in the **Federal Register** on March 3, 1978 (43 FR 8962), September 11, 1978 (43 FR 40412) and September 12, 1978 (43 FR 40502). Pennsylvania has revised its original designations list and on December 29, 1978, submitted these revisions to EPA.

In support of this redesignation request for the Monogahela Valley Air Basin with respect to sulfur dioxide, the Commonwealth of Pennsylvania provided air quality data showing that no violations of either the primary or secondary SO_2 standards occurred during calendar year 1978. The State also indicated that attainment of standards is supported by emission reductions in the area over the past year. In addition, results of an ongoing modeling study indicate no violations of the primary annual SO_2 standard for the base year (1976) and for the situation assuming all sources in compliance with the existing SIP limitations. Until the modeling study is complete and additional air quality data are available, the State has chosen to designate the Monongahela Valley Air Basin as "cannot be classified." In view of the fact that SO_2 emission reductions have occurred, that current air quality meets primary and secondary SO_2 standards, and that modeling of all sources in compliance with the existing SIP does not show violations of the SO_2 standards, it is EPA's proposed determination that a revision to the existing SIP by July 1, 1979, is not necessary.

Request for Public Comment

In view of the rapidly approaching (July 1, 1979) date by which the Administrator must make final determinations on nonattainment SIP's and in view of the fact that the issues pertaining to this proposed redesignation are straightforward and well defined, the Regional Administrator feels justified to limit the public comment period to 30 days. All comments received on or before July 16, 1979 will be considered. The Regional Administrator will consider extending the comment period if a prospective commenter provides adequate justification for such extensions.

All comments should be addressed to:

Mr. Howard R. Heim, Jr., Chief (3AH10), Air Program Branch, U.S. Environmental Protection Agency, Region III, 6th & Walnut Streets, Curtis Building, 10th Floor, Philadelphia, PA 19106, Attn: 107PA-1.

(Secs. 107(d), 171(2), 301[a), Clean Air Act, as amended (42 U.S.C. 7407(d), 7501(2), 7601(a)))

Dated: May 30, 1979.

Jack J. Schramm,

Regional Administrator.

[FR Doc. 79-18748 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[40 CFR Part 86]

[FRL 1249-2]

Control of Air Pollution From New Motor Vehicles and New Motor Vehicle Engines; Gaseous Emissions Regulations for 1983 and Later Model Year Heavy-Duty Engines

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Additional Information Relating to Proposed Rule, Notice of Public Hearing, and Notice of Extension to Comment Period.

SUMMARY: In proposed regulations for 1983 and later model year heavy-duty engines published on February 13, 1979 (44 FR 9464), approximate numerical values were given for the proposed standards for hydrocarbons and carbon monoxide because EPA had not completed its baseline testing. EPA has completed that testing, and exact numerical values derived from the testing are contained in this notice. EPA

has also completed sufficient testing of 1979 engines to provide a numerical value for the proposed 1983 oxides of nitrogen standard.

A public hearing has been scheduled for the submission of testimony relating to (1) the proposed standards contained in today's notice, and (2) the supporting material which has been placed in the public docket. Additionally, both the closing date for the record of the May 14–15, 1979 public hearing (44 FR 22131), and the closing date for the comment period which was specified as June 13, 1979 in the February 13, 1979 proposal, have been extended to June 29, 1979.

DATES: The hearing will be convened at 8:30 A.M., July 16, 1979 and reconvened at 8:30 A.M., July 17, 1979. Sessions will be adjourned at 5:00 P.M. each day, or at a later time if necessary to complete the business of the hearing.

LOCATION: All sessions of the hearing will be held at the West Bank Holiday Inn, 2900 Jackson Road, Ann Arbor, Michigan 48103.

PUBLIC COMMENT: The record of the July 16–17, 1979 hearing will be left open for 30 days following the close of the hearing to allow submission of rebuttal and supplementary information. Relevant comments received by close of day August 16, 1979 will be considered. The scope of materials which may be submitted at the hearing or during the ensuing 30 day comment period is limited to those aspects of the February 13, 1979 proposal directly affected by the supplementary information contained n today's notice and the supportive material which has been placed in the public docket.

FOR FURTHER INFORMATION CONTACT: Mr. Chester J. France, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105, Phone: (313) 668–4338.

SUPPLEMENTARY INFORMATION: Section 202(a)(3)(A)(ii) of the Clean Air Act, as amended (the Act), provides that "regulations applicable to emissions from [heavy-duty] vehicles or engines manufacturered during and after model year 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent * * * from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during [1969]."

EPA implemented a 1969 model year baseline test program in order to generate the data needed to define standards representing the 90% reduction. At the time of the February 13, 1979 proposal, this test program had not been completed. However, based on the data then available, approximate standards representing the required 90% reductions in hydrocarbon (HC) and carbon monoxide (CO) emissions were included in the proposal as follows: 1.4 grams per brake horsepower-hour (g/BHP-hr) for HC, 14.7 g/BHP-hr for CO, 1400 parts per million of carbon (ppm C) for idle HC, and .55 percent for idle CO. EPA also included "lower limits" for the above standards, and stated that standards more stringent than the lower limits would not be promulgated without reproposing. The lower limits specified in the proposal were .76 g/BHP-hr for HC, 11.4 g/BHP-hr for CO, 530 ppm C for idle HC, and .30 percent for idle CO.

EPA has now completed its 1969 baseline test program, in which 23 engines were tested for transient emissions and 19 engines were tested for idle emissions. Each baseline engine was tested two or more times using the EPA transient and idle test procedures. The average of the tests for each engine was used to represent emissions from all engines of that type sold in 1969. In combining individual engine results into the final baseline, the emissions from each engine were given a weighting factor. The weighting factor corresponded to the fraction of total sales represented by each engine using the combined sales of all the test engines as a base. The test samples represent approximately 80 percent of the 1969 heavy-duty engine market.

Based on the data generated by this testing, the proposed standards representing 90% reductions from sales-weighted 1969 baseline emissions levels are 1.3 g/BHP–hr for HC, 15.5 g/BHP–hr for CO, 970 ppm C for idle HC and .47 percent for idle CO. Since these standards are above the lower limits identified in the February 13, 1979 proposal, they do not provide a reason for EPA to repropose.

The February 13, 1979 proposal indicated that EPA intended to set an oxides of nitrogen (NO_x) standard for 1983 which would not substantially increase the stringency of the current NO_x standard. The proposal also indicated that EPA intended to base such a standard on testing of 1979 gasoline engines. Manufacturers were invited to submit ideas on how to derive such a standard. At the time of the proposal, no specific numbers for the NO_x standard were proposed.

EPA has now completed the testing of 4 gasoline and 2 diesel engines (certified to the 1979 Federal standards) using the transient test procedure. Based upon that sample, EPA has calculated a numerical level representing the 1983 proposed NO_x standard. Though the February 13, 1979 proposal indicated that a sales-weighted average would form the basis for the standard, by its nature as an average, such a basis would create a standard more stringent than the current NO_x standard for approximately half of the engines. Therefore, the following procedure has been used to derive the level identified in this notice.

The transient test data for the 6 engines tested were first deteriorated by adding the certification deterioration factors (D.F.'s) for each engine to the NO_x transient test results. A level corresponding to the mean plus two standard deviations from the mean was then determined from this deteriorated data. Finally, that value was multiplied by a factor corresponding to the ratio of the current NO_x standard to the single highest NO_x emission rate exhibited by the six engines as tested on the current procedure. This factor compensates for the fact that current engines are certified somewhat below rather than at the current standard.

In order to compare emissions on the current test procedure to the current standard, the NO_x equivalent of the current 10 g/BHP–hr HC plus NO_x Federal standard was required. An equivalent NO_x level of 9 g/BHP–hr was developed in the EPA report, "An Examination of Interim Emission Control Strategies for Heavy-Duty Vehicles" (a regulatory support document for the 1979 heavy-duty engine regulations).

The following table lists the test data and the calculations using the above described procedure to establish the proposed standard. As indicated, the level of the proposed NOx emission standard is 10.7 g/BHP-hr.

Heavy-Duty Engine NOx Emissions

Engine	Year	Fuel	HC+NOx	NOx Emissions (g/BHP-hr)	
			Cert. D.F.	Proposed procedure	Current procedure
CAT-3208	1979	Diesel	0.0	5.55	[1]6.50
DDA 6V-92T	1979	Diesel	0.0	6.69	
GM 454	1979	Gas	0.0	6.92	6.73
GM 350	1979	Gas	0.0	6.23	7.75
GM 292	1979	Gas	0.0	9.74	8.32
IHC 446	1979	Gas	[2]0.53	5.25	5.17

Mean of deteriorated data for proposed procedure=6.82
Standard deviation=1.52
Mean plus two standard deviation=9.86
Compensating factor=9/8.32=1.082
Proposed standard=9.86×1.082=10.7

[1] Caterpillar Data.
[2] HC D.F.=0.0.

Testing of 1979 engines is not yet completed. EPA plans to test 10 to 20 additional 1979 gasoline and diesel engines prior to finalizing the 1983 standard. If that testing indicates, by applying the above calculation method, that the NOx standard should be higher than 10.7 g/BHP-hr, the increase will be included in the final rule. However, under no circumstances will EPA promulgate a final NOx standard below this level without reproposing. Therefore, the level of 10.7 g/BHP-hr for NOx should be considered as the proposed standard, and comments regarding the technological feasibility of achieving the proposed standard should be directed at this level. EPA believes this level is consistent with the originally stated intent of setting a standard that would not substantially increase the stringency of the current NOx standard.

A tabulation of engine test data making up the final HC and CO baseline has been prepared and is available in the public docket for this rulemaking proposal (OMSAPC–78–4). This docket is located at the Environmental Protection Agency, Central Docket Section, Waterside Mall, Room 290B (EPA Library), 401 M Street, S.W., Washington, D.C. 20460. (As provided in 40 CFR Part 2, EPA may charge a reasonable fee for copying services.) In addition, by separate letter dated May 8, 1979, summaries of the engine test data have been made available to heavy-duty engine and vehicle manufacturers and associations, and to other parties which have expressed an interest in the February 13, 1979 proposal.

A detailed technical report on the HC and CO baseline has also been prepared, and is now available in the public docket. This report includes discussions of vehicle/engine selection and procurement, engine testing, and data compilation and standards computation. (It should be noted that the "cycle validation criteria" used for the baseline test program were revised from the criteria originally proposed on February 13, 1979. In particular, the stringency of the "regression line tolerances" was relaxed somewhat. The report contains a full description of these revisions.) Copies of the technical report are also available through the Director, Emission Control Technology Division, Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, Michigan 48105.

Section 307(d)(5) of the Act requires the Administrator to "give interested persons an opportunity for the oral presentation of data, views, or arguments * * *" relating to the February 13, 1979 proposal. A public hearing was held on May 14–15, 1979 (44 FR 22131) to provide this opportunity. However, to provide an opportunity for specific comment on the additional information relating to proposed standards provided by this notice, and the material supportive to the development of those standards which has been placed in the public docket, a second public hearing has been scheduled for July 16–17, 1979, as discussed earlier. The scope of this hearing will be limited to those aspects of the February 13, 1979 proposal directly affected by this additional information and supportive material. Developmental data and other information relating to alternative test cycles to the proposed transient test procedure will be acceptable for submission at the July 16–17, 1979 hearing and during the ensuing comment period.

Opportunity for public comment on all other aspects of the proposed rule was provided during the May 14–15, 1979 hearing. The record for that hearing was scheduled to close on June 14, 1979. However, EPA has received requests from manufacturers for an extension of this closing date. EPA is therefore keeping the record of the May 14–15, 1979 hearing open through June 29, 1979. The date of closing for the public comment period which was specified as June 13, 1979 in the original proposal is also extended to June 29, 1979. This closing date applies to the submission of comments on all aspects of the February 13, 1979 proposal not directly affected by the additional information and supportive material discussed in today's notice.

Participation in the July 16–17 Public Hearing

Any person desiring to make a statement at the hearing or to submit material for inclusion in the record of the hearing should provide written notice of such intention, together with a copy of the proposed statement or material for inclusion in the record. All such documents should be submitted to EPA no later than Friday, July 6, 1979, at the following address: Administrator, Environmental Protection Agency, Attention: Director, Emission Control Technology Division, 2565 Plymouth Road, Ann Harbor, MI 48105. It is strongly requested, but not required, that at least 150 copies accompany any documents which cannot be submitted prior to the start of the hearing.

Participants are advised to adhere to these guidelines if possible. Documents submitted late may not receive full staff consideration prior to the hearing. Further, participants who submit documents on the scheduled day of appearance, without the requested 150 copies, may be rescheduled for a later time or session of the hearing if duplication of the documents cannot be completed by EPA prior to the scheduled time of appearance.

Mr. Charles L. Gray is hereby designated as the Presiding Officer for the hearing. He will be responsible for maintaining order, excluding irrelevant or repetitious material, scheduling presentations, and, to the extent possible, notifying participants of the time at which they may appear. The hearing will be conducted informally. Technical rules of evidence will not apply.

Dated: June 12, 1979.

Douglas M. Costle,

Administrator.

[FR Doc. 79-18766 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Health Care Financing Administration

[42 CFR Part 431]

Medicaid Quality Control

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

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: We are proposing to amend the Medicaid regulations on Medicaid Quality Control (MQC) to specify time periods for completion of reviews of the cases in the monthly MQC samples. We are also requiring a monthly report on eligibility and payment error findings. No time period requirements for review completion are imposed under current regulations. The purpose of these regulations is to ensure timely completions of MQC reviews and submittal of information on these reviews. The regulations will also improve program management of the quality control system at both State and Federal levels.

FOR FURTHER INFORMATION, CONTACT: Carlton Stockton, Medicaid Bureau, Health Care Financing Administrator, Department of Health, Education and Welfare, 330 C Street, SW., Washington, D.C. 20201, (202) 472–3796.

Dated: April 4, 1979.

Leonard D. Schaeffer,

Administrator, Health Care Financing Administration.

[FR Doc. 79-18739 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-35-M

Social Security Administration

[45 CFR Part II]

Indochinese Refugee Assistance; Eligibility Requirements, Coverage and Scope of Services for Cash Assistance, Medical Assistance, Social Services, Employment Services and Training for Refugees—Including Federal Financial Participation

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: The Social Security Administration plans to publish regulations to carry out Section 2 of the Indochina Migration and Refugee Assistance Act of 1975, as amended, which authorizes cash assistance, medical assistance, social services, and special training programs for Indochinese refugees. When the Indochinese Refugee Assistance Program was established in 1975, we decided to issue program guidelines by administrative instructions because the program was to be temporary. Because of the continued growth of these programs and because we expect additional Indochinese refugees to be admitted, we are developing regulations to establish a more formal and uniform base for program operations and management.

The Department of Health, Education, and Welfare has classified the proposed regulation as policy significant.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Hofeling, 330 C Street, S.W., Washington, D.C. 20201, telephone (202) 245–8817.

Dated: June 11, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-18741 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

[45 CFR Part 205]

Financial Assistance Programs; Quality Control System

AGENCY: Social Security Administration, HEW.

ACTION: Notice of Decision to Develop Regulations.

SUMMARY: We are proposing to amend the Aid to Families with Dependent Children (AFDC) and adult assistance (under titles I, X, XIV, or XVI of the Social Security Act) program regulations on Quality Control (QC) to specify time periods for completion of reviews of the cases in the monthly QC samples. We will also require States to submit, on a monthly basis, the individual sample case review data. No time requirements for the completion of reviews of individual sample cases are imposed under current regulations. The purpose of these regulations is to ensure timely completion of QC reviews and submittal of information on these reviews. The regulations will also improve program management of the quality control system at both State and Federal levels.

The Department of Health, Education, and Welfare has classified the proposed regulations as technical.

FOR FURTHER INFORMATION CONTACT: Sean Hurley, 330 C Street, SW, Washington, D.C. 20201, Telephone (202) 245–8999.

Dated: May 19, 1979.

Stanford G. Ross,

Commissioner of Social Security.

[FR Doc. 79-18740 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-07-M

FEDERAL COMMUNICATIONS COMMISSION

[47 CFR Parts 74 and 78]

[Docket No. 21505; RM-2208]

Requiring Type Acceptance for Transmitting Equipment Used in Bands, A, B, and D by Television Auxiliary Stations; Also Proposing Standards to Govern the Radiation Characteristics of Antennas Used by Stations in Cars and Broadcast Auxiliary; Correction

AGENCY: Federal Communications Commission.

ACTION: Erratum.

SUMMARY: This document corrects the Commission's Further Notice of Proposed Rulemaking which was published in the **Federal Register** of June 6, 1979 concerning similar technical standards for both Cable Television Relay Service and Broadcast Auxiliary Service. In FR Doc. 79–17499, paragraph 25, for additional information, persons were instructed to contact Mel Murray at the Office of Chief Engineers. This document corrects the office designation as set forth below.

DATES: Nonapplicable.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Melvin Murray, Spectrum Allocation Division, Office of Science and Technology, (202) 632–6350.

Erratum

[44 FR 32420]

Released: June 5, 1979.

In the matter of Amendment of Parts 2 and 78 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Cable Television Relay Service Stations and, Amendment of Parts 74 and 78 of the Commission's Rules and Regulations to set aside 13.15–13.20 GHz for usage by Television and Cable Television Relay Service Pickup Stations on a coequal basis and, an inquiry to determine public interest and need to establish similar technical standards for both the Cable Television Relay Service and the Broadcast Auxiliary Service in the 12.7–13.20 GHz band; Docket No. 21505; RM–2208.

Paragraph 25 of the Commission's Further Notice of Proposed Rule Making in Docket No. 21505, FCC 79–310, released June 1, 1979, is corrected as follows:

1. Substitute *Office of Science and Technology* in lieu of *Office of Chief Engineer.*

Federal Communications Commission.
William J. Tricarico,
Secretary.
[FR Doc. 79-18855 Filed 6-14-79; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[50 CFR Part 611]

Foreign Fishing for Billfish, Oceanic Sharks, Wahoo and Mahimahi in the Pacific Ocean

AGENCY: National Oceanic and Atmospheric Administration/ Commerce.

ACTION: Amendments to the Preliminary Management Plan for Billfish, Oceanic Sharks and Associated Species in the Pacific Ocean (PMP); and proposed implementing regulations.

SUMMARY: The plan and proposed regulations apply to vessels of foreign nations engaged in longline fishing which results in the catching of billfish, oceanic sharks, wahoo or mahimahi (dolphin fish) in the fishery conservation zone (FCZ) of the Pacific Ocean. Comments are requested on the proposed regulations and draft regulatory analysis.

DATE: Comments are invited until August 12, 1979.

ADDRESS: Comments may be submitted in writing to: Mr. Gerald V. Howard, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, California 90731. Telephone: 213-548-2575.

FOR FURTHER INFORMATION AND COPIES OF THE DRAFT REGULATORY ANALYSIS CONTACT: Mr. Gerald V. Howard (see address stated above).

SUPPLEMENTARY INFORMATION:

a. Background.

The proposed regulations would implement the Preliminary Management Plan for Billfish, Oceanic Sharks and Associated Species in the Pacific Ocean (PMP), as amended. The PMP applies to foreign longline fishing, pursuant to a Governing International Fishery Agreement, which results, or can reasonably be expected to result, in the catching of billfish, oceanic sharks, wahoo and mahimahi (dolphin fish) in the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska).

The Fishery Conservation and Management Act of 1976, as amended (the Act) states, in part, " * * * no foreign fishing is authorized within the fishery conservation zone * * * unless such foreign fishing * * * is conducted under . . . a valid and applicable permit * * * ". (The Act, section 204(a)). The definition of "fishing" includes " * * * any other activity which can reasonably be expected to result in the catching, taking, or harvesting of fish * * * ." (The Act, section 3(9)(c)).

A foreign longline fishery for tuna has been conducted in the Pacific Ocean for many years. Although the primary target species is tuna, incidental catches of billfish, sharks, wahoo and mahimahi are unavoiable in this fishery. The Act provides for the management of all "fish". "Highly migratory species", as defined in § 611.2(x) of this Part, are specifically excluded from the definition of "fish". Other pelagic species such as billfish, oceanic sharks, wahoo and mahimahi are not considered highly migratory under the Act. The purpose of this PMP, as amended, is to establish a conservation and management plan for these pelagic species.

The PMP was prepared pursuant to the authority of section 201(h) of the Act, and a final environmental impact statement (EIS) was filed with the Environmental Protection Agency on June 2, 1978. Proposed implementing regulations and the approved PMP were published on July 21, 1978 for public comment (43 FR 31374). Several of the comments received stated that further recognition should be given to the special social and economic impacts of the plan on various areas of the Pacific, particularly American Samoa. The Comments also reflected some misunderstanding about actions vessels must, or may, take in order to comply with the implementing regulations. In response to the comments, the proposed regulations were withdrawn on September 14, 1978 (43 FR 41062). Amendments to the PMP were developed and a draft supplemental EIS/PMP was filed with the Environmental Protection Agency on March 15, 1979.

b. The Amendments and Proposed Regulations

The amendments and proposed implementing regulations incorporate five major changes to the PMP as originally approved.

1. The area covered by the PMP has been divided into five fishing areas. The optimum yield (OY), expected domestic harvest, and total allowable level of foreign fishing (TALFF) for each species has been specified for each of the five fishing areas: mainland west coast; the State of Hawaii and Midway Island; American Samoa; Guam and the Northern Mariana Islands; and U.S. possessions. The major purposes of this change are (a) recognition of varying social, economic and recreational interests in these areas; and (b) closer adherence to a major objective of the PMP, which is maintenance of the status quo with respect to total catches for the species concerned.

Division of the FCZ into five fishing areas restricts retention of billfish, oceanic sharks and associated species to amounts based on historical harvest in each area. Under the original PMP, foreign vessels could have harvested the entire TALFF for a particular species in one area covered by the PMP, thus upsetting the historical balance of catch and, depending upon where the fish are harvested, adversely affecting the economic, recreational, or social interests recognized in the PMP.

2. The fishery has been expanded to include wahoo and mahimahi. These species are often taken in conjunction with billfish and oceanic sharks, by the same vessels and gear. They have been included in order that the PMP will address all of the species harvested by similar gear in the FCZ.

3. The managment unit includes the Northern Mariana Islands, to which the Act is now applicable.

4. An amount of fish has been set aside in a "reserve" to accommodate the possibility that domestic catches will exceed the estimated levels. The amount of fish which will be harvested by domestic fishermen is in part dependent upon wide fluctuations in availability. This factor, combined with uncertainty about the extent to which U.S. vessels having the capacity will actually harvest these species has led to establishment of reserve amounts to help assure that the OY will not be exceeded if the amount of U.S. harvest is underestimated. A reserve for sharks has been established in the Hawaii and Midway Island fishing area because of indications that a U.S. shark fishery may be developing in that area.

5. The reporting and inspection requirements have been modified and clarified to avoid misunderstandings reflected in the comments received. Reporting requirements have been minimized; the number of ports where the holds of fishing vessels may be sealed has been increased; and provisions has been made for the Administrator, Western Pacific Program Office, National Marine Fisheries Service (NMFS), to authorize alternatives to hold sealing in special circumstances. Use of logbooks combined with notices (see § 611.4 of

this Part) is one of the alternatives which may be considered in situations where hold sealing may be impracticable.

c. *The Proposed Implementing Regulations.* These regulations apply only to foreign longline vessels "fishing" (as defined in § 611.2(r) of this part) in the FCZ. Longline vessels in transit through the FCZ would not be subject to the requirements of this section or the other provisions of Part 611.

Any foreign vessel desiring to engage in longline fishing in the FCZ of the Pacific Ocean must possess a permit for that purpose, whether or not the billfish, oceanic sharks, wahoo, or mahimahi caught will be retained.

Permits are required even though the foreign longline vessel is rigged and fishes primarily for the purpose of taking highly migratory species over which the United States does not exercise exclusive fishery management authority. Any foreign nation whose vessels wish to retain billfish, oceanic sharks, wahoo, or mahimahi caught in the FCZ must also hold a national allocation from the total allowable level of foreign fishing (TALFF) for the applicable species and fishing area.

The PMP establishes the OY, U.S. harvesting capacity, and TALFF for billfish, oceanic sharks, wahoo, and mahimahi, as shown on Table 1 of the PMP amendments.

The TALFF's are established on an annual basis. The PMP establishes the TALFF's and reserves for 1979 and 1980. The regulations implement the 1979 TALFF's (to be prorated on the basis of the number of months remaining after the effective date of final regulations). TALFF's established for 1980 will be implemented by amendment to Part 611 prior to the 1980 fishing season. The FMP also provides for reassessment of the OY and U.S. harvesting capacity in May of 1980 on the basis of updated information related to status of stocks, estimated and actual performance of domestic and foreign fleets, and other relevant factors. This provision will also be implemented by 1980 amendments to Part 611. Foreign longline vessels holding applicable permits may fish as authorized under these regulations throughout the FCZ beyond 12 miles from the baseline used to measure the U.S. territorial sea. Until the applicable national allocation is reached, vessels of a nation holding an oceanic shark, wahoo, or mahimahi allocation may retain oceanic sharks, wahoo, or mahimahi caught in the applicable fishing area beyond 12 nautical miles from the baseline used to measure the U.S. territorial sea.

However, the proposed regulations establish retention and non-retention zones for billfish within each fishing area (see Table I of § 611.81(b)(2) of the proposed regulations). National allocations for species of billfish must be taken outside non-retention zones. Even if a foreign nation has a billfish allocation, all billfish caught by foreign vessels within the non-retention zones must be returned to the sea without removing the fish from the water. Billfish caught in non-retention zones are not counted against national allocations.

When a national allocation for a species of billfish or oceanic sharks is reached, any additional catch of that species must be returned to the sea without removing the fish from the water. When a national allocation for wahoo or mahimahi is reached, additional catch of these species are treated as a prohibited species (see 50 CFR 611.13).

d. *Boundaries of Fishing Areas.* A new Figure 5 has been added to Appendix II, Area Codes § 611.9 of this Part showing approximate boundaries of fishing areas of the Pacific. This Figure 5 is currently incomplete as to the outer limits of the FCZ in some areas. It is recognized that national allocations in these areas cannot be enforced until boundaries are specified.

e. *Regulatory Analysis.* A draft regulatory analysis of the proposed regulations has been prepared. Among the alternatives considered were taking no action, implementing the PMP as originally proposed, prohibiting all retention of billfish in the FCZ, and establish areas closed to any taking of billfish and associated species. The major reasons for the regulatory approach selected include: (1) considerations of foreign policy and consistency with U.S. international posture in relation to highly migratory species; (2) recognition of special economic, social and recreational interests in various fishing areas of the FCZ; and (3) minimizing reporting and recordkeeping requirements consistent with research and enforcement needs.

The Assistant Administrator has made an initial determination under section 201 of the Act that the PMP and proposed amendments conform to the national standards, the other requirements of the Act, and other applicable law.

The PMP is amended as follows:

1. In II.B1., insert "the Northern Mariana Islands," between "Guam," and "and other . . .".

2. IN II.B.2. substitute the following for the original first paragraph: "2. Biological systems—The foreign catch of bill-fish, sharks, and related species generally occurs as incidental catch in high seas tuna operations, for example, incidental to longlining. In some areas of the Pacific, foreign vessels target on bill fish. The by-catch of sharks probably is discarded at sea. The tuna, billfish, oceanic sharks, and related species taken by foreign fishing vessels are listed in the following table:"

3. Add to the end of the table in II.B.2. the following:

Related species: Wahoo dolphin *(Acanthocybium solandri Coryphaena hippurus; and C. equisetis).*

4. In II.B.3.:

(a) add after the second sentence in the first paragraph: "Wahoo and dolphin (hereafter called mahimahi) also are of recreational and commercial value to U.S. fishers."

(b) add after the second sentence of the fifth paragraph: "Wahoo and mahimahi also are caught by foreign vessels based in American Samoa and are delivered for consumption in local markets. The amount caught within 200 miles of American Samoa is small, but total deliveries may be as high as 300–400 Mt. per year."

(c) add to the end of the fifth paragraph: "The domestic fishery in the Northern Mariana Islands presently is quite small but is expected to grow rapidly."

5. In II.B.4.:

(a) revise second paragraph to read, "First, any actions taken under this preliminary management plan will not be effective in conserving oceanwide stocks of billfish, sharks and related species unless complementary actions are taken by other nations under an international management regime. These species are harvested primarily outside the FCZ. Foreign catches within the FCZ constitute a very small portion of total Pacific Ocean catches of billfish, oceanic sharks, and related species. Thus, regulations governing foreign harvest of these species within the FCZ is unlikely to have any impact on total catches of these species or on status of the stocks."

(b) in the first sentence of the fourth paragraph, substitute "stocks of billfish, oceanic sharks and related species" for "billfish and shark stocks"; and in the second sentence of the fourth paragraph, substitute "billfish, oceanic sharks, and related species" for "billfish and sharks"; and in the same sentence, substitute "availability of these species" for "availability of billfish and sharks".

(c) add a sixth paragraph as follows:

"Fifth, the private sector economy of American Samoa is dependent on

continued U.S. cannery operations, which in turn are dependent on continued deliveries of tuna by foreign longliners. Foreign longliners also catch and deliver to American Samoa billfish, wahoo, and mahimahi. This provides additional income for the vessels and provides foodfish for local consumption. Thus, it is in the interest of the U.S. to maintain such deliveries to the extent consistent with the FCMA."

6. In II.C.I.a.:

(a) substitute "stocks of billfish, oceanic sharks, and related species" for "billfish and shark stocks" in the first sentence of the first paragraph; and substitute "species" for "billfish and sharks" in the third sentence of the first paragraph.

(b) immediately after the listing of oceanic sharks, add:

"The other species covered by this plan are: Wahoo mahimahi *(Acanthocybium solandri Coryphaena hippurus; and C. equisetis)*

also add immediately after the paragraph ending "throughout the FCZ." the following: "Similarly, virtually no information is available on stock size, structure, or availability for wahoo and mahimahi."

7. In II.C.I.b., add the following:

(8) Wahoo is a circumtropical species. Generally they are found between 30°N and 31°S in the Pacific. They usually are found close to land; they are not abundant in the open ocean.

(9) Mahimahi are cosmopolitan in tropical and subtropical waters, but no information is available on stock structure or centers of abundance.

8. In II.C.I.c.(1), add to the first paragraph:

"Total Pacific Ocean shark catches have been as high as 132,000 MT, of which only a portion is of the oceanic shark species covered by this plan. Ocean-wide mahimahi catches averaged about 14,600 MT per year 1971–75, but no estimates of wahoo catch are available."

9. In II.C.I.c.(2).:

(a) substitute the following for the first sentence of the second paragraph:

"In California, a harpoon fishery harvested about 350 MT of swordfish in 1975, with an ex-vessal value of about $2.7 million, but the 1971–75 average harvest was about 223 MT (see Table 10).

(b) substitute the following for the fourth and fifth sentence in the fourth paragraph:

"It is estimated that only 9% of total average annual landings of sharks were of the oceanic shark species covered by this plan."

(c) add to the fifth paragraph, "Commercial vessels harvest substantial amounts of wahoo and mahimahi in Hawaii. The Northern Marianas commercial fishery is very limited and there are few data on harvests."

10. In II.C.I.c.(3), substitute the following for the fourth and fifth paragraphs:

"The Southwest Fisheries Center-Honolulu Laboratory completed recently an analysis of foreign longline data to estimate catch and effort by foreign longline in the FCZ in the period 1971–75. The analysis shows that foreign, billfish and shark catches in most areas of the FCZ declined steadily in that period. Foreign catch estimates are summarized in Table 3."

11. In II.C.I.c.(4).:

(a) revise the second sentence of the first paragraph to read: "The recreational catch in Hawaii is not recorded officially."

(b) substitute the following for the first two sentences of the third paragraph:

"The recreational fishery in Hawaii has been growing rapidly, and a recent study by the Southwest Fisheries Center-Honolulu Laboratory indicates that previous estimates understated considerably the domestic catch especially of blue marlin. Recreational catch exceeds by far the commercial catch, although many billfish caught by anglers are subsequently sold. In addition, the social and economic values of the recreational fishery exceed those of the commercial fishery."

(c) add a new last paragraph:

"There is no documented recreational fishery in American Samoa. In the Northern Mariana Islands, there is some recreational fishing, but no estimates of catch and effort are available."

12. In II.C.I.d., add at end of section:

Northern Mariana Islands

Domestic commercial: 4 vessels 35–72 feet in length, type of gear unknown.

Foreign commercial: Unknown number of Japanese and possibly Korean longliners.

Domestic commercial: 97 outboards 12–25 feet in length (1975); and three charter vessels.

13. In II.C.2.b. (2), add the following:

(h) *Wahoo and mahimahi.* No estimates of MSY for these species can be derived using the production model; however, there is no indication that these species are overfished on an oceanwide or a localized basis. Therefore MSY is considered to equal or exceed historical levels of fishing.

14. In II.C.2.c.:

(a) revise the sentence in the third paragraph to read: "A summary of recent estimated catches of billfish, oceanic sharks, and related species is presented in Table 3."

(b) delete the last sentence of the section.

15. In II.C.3., substitute in the first sentence of the second paragraph the phrase "billfish, oceanic sharks, and related species" for "billfish and sharks".

16. In II.C.3., substitute the following for the portion of the section beginning with "Optimum yield (OY) for the FCZ . . ." and ending ". . . available for all portions of the FCZ.":

It also is necessary, however, to recognize the variety of social and economic conditions in different areas of the FCZ. Only striped marlin and swordfish are caught by domestic vessels off the West Coast; and no foreign longlining has been documented in that area of the FCZ. All billfish species as well as wahoo and mahimahi are quite important to domestic recreational and commercial interests in Hawaii, but sharks are not very important domestically. Foreign fishing in the Hawaii portion of the FCZ has been declining in recent years. Domestic fishing for billfish, wahoo and mahimahi appears to be increasing rapidly in Guam and the Northern Marianas; here too, however, sharks are of no domestic importance at this time. There is little domestic fishing in American Samoa. Rather, the economy of American Samoa is dependent on foreign longliners deliveries of tuna, and large amounts of wahoo and mahimahi are caught by foreign longliners (mainly outside the FCZ) and enter local food markets.

To accommodate these differences, it is necessary to derive OY on a subarea basis, viewing each portion of the FCZ as a separate management area. This can be done on a consistent basis by defining OY for each subarea as the average annual total catch, by species, in each subarea. These determinations would be based on 1971–75 data, where available; the survey of Hawaii recreational and commercial catches of 1976; and preliminary data for areas such as Guam and the Northern Marianas, which have not collected catch data in the past. The resulting OY's are summarized in Table 4.

17. In II.C.4.:

(a) substitute the following for the first sentence of the first paragraph: "Domestic commercial and recreational catch data were summarized in Table 1."

(b) revise the end of the first sentence of the second paragraph to read: ". . ., the extent to which U.S vessels will harvest the OY in each subarea is defined as the average annual domestic catch in the subarea (Table 1) plus 10% for increased participation in the fishery. The 10% increase factor is justified by the rapid increases in the number of vessels registered in California, Hawaii, Guam, and the Northern Marianas, and by the planned development of additional berthing facilities in Guam and the Northern Marianas. Expected domestic harvests are summarized in Table 5."

(c) delete the remainder of this section.

18. Add a new section II.C.5. as follows:

5. *Reserve and TALFF.* As indicated, domestic catches are highly variable and may exceed the average catch considerably in any single year. Domestic interests will not be affected by this plan, however, it is appropriate to establish unallocated "reserves" of billfish in the event domestic harvests exceed present estimates. this would provide some degree of control against fishing beyond OY in the FCZ. For blue marlin, which is such an important target species for domestic fishing and which is overfished, the "reserve" would be 8.8 MT and 23.9 MT for Hawaii and the Guam-Northern Marianas area. For other species of billfish in the FCZ around Hawaii and the Guam-Northern Marianas area, the "reserves" would be 10% of the difference between OY and expected domestic harvest. No "reserves" would be needed around American Samoa and U.S. Possessions throughout the Pacific because domestic fishing pressure is so light. Expected U.S. harvest on the West Coast is sufficient to take the OY, thus, no "reserves" would be set up there.

Total allowable levels of foreign fishing (TALFF's) for each subarea are then derived by the formula:

OY—expected U.S. harvest—"reserve"=TALFF.

The TALFF's are summarized by subarea in Table 6.

19. Renumber present II.C.5. to II.C.6.

20. In new II.C.6.a., revise first sentence to read "The previous section specifies the TALFF for each species in each of the five subareas of the FCZ covered by this plan."

21. In new II.C.6.b., add two new subsections as follows:

(6) Within 50 nautical miles of the major Northern Mariana Islands, i.e., Rota, Aquijan, Tinian and Saipan Islands.

(7) Within 12 nautical miles of the remaining Northern Mariana Islands.

22. Substitute the following for II.6.d.:

d. Other limitations, conditions and requirements:

(1) A foreign longline fishing vessel which will not fish in the FCZ will not be affected by the PMP. The operator is not required to obtain a permit and has full freedom to transit the FCZ with billfish, oceanic sharks, and other species on board.

(2) A foreign longline fishing vessel which intends to fish in the FCZ must obtain a permit, and when that vessel is fishing in the FCZ, it shall be a rebuttable presumption that all billfish, oceanic sharks, wahoo, and mahimahi on board that vessel, were caught in the FCZ. A vessel may (but is not required to) request U.S authorities to arrange an inspection of its hold *before fishing* in the FCZ to determine the amount of billfish, oceanic shark, wahoo, and mahimahi caught outside the FCZ, and thus rebut the presumption. A vessel also may report prior to fishing in the FCZ its catch of billfish, oceanic sharks, wahoo, and mahimahi outside the FCZ, and may arrange for an inspection of its catches when unloading to verify the accuracy of this report and of logs maintained during their fishing operations. Ports where it may be possible to arrange inspections include Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(3) Foreign vessels which fish exclusively outside the FCZ are not required to maintain logs or provide data to the U.S. Foreign vessels which fish in the FCZ are required to maintain logs and provide data to the U.S., but only with respect to their operations in the FCZ. However, documentation (e.g., logbooks) concerning fishing and catches outside the FCZ may be requested by U.S. authorities as evidence to substantiate radio reports of catches prior to entering the FCZ to fish.

(4) The requirement to release fish by cutting the line or leader without removing the fish from the water would apply only to billfish which are caught in a non-retention zone or to billfish and oceanic sharks which are caught after that particular species allocation has been reached. The requirement does not apply to wahoo, mahimahi or other non-billfish species; when release of these species is required, it would be permissible to bring the fish aboard the vessel and remove the hook before returning the fish to the ocean.

(5) The National Marine Fisheries Service will prepare the logbook form to be used by foreign vessels.

23. Substitute new Tables 3, 4, 5, and 6 for original Tables 3–8 and renumber original Table 9 to Table 7.

Table 3.—*Estimated Average Annual Catch by Portion of the FCZ*

[In metric tons]

Location	Sword-fish	Blue marlin	Black marlin	Striped marlin	Sailfish/ spearfish	Sharks	Wahoo	Mahimahi
Hawaii (including Midway Islands):								
Domestic [1]	5.4	548.6	95.2	61.8	21.3	.....	288.9	105.0
Foreign [2]	88.2	63.4	2.5	161.4	21.4	1,111.6	.....	.....
Total	93.6	612.0	97.7	223.2	42.7	1,111.6	288.9	105.0
West Coast (California):								
Domestic	[3] 318.4	.....	.....	[4] 43.2	.....	[3] 27.6	.....	.....
Foreign [2]	.....	.....	.....	.....	.....	.....	.....	.....
Total	318.4	.....	.....	[4] 43.2	.....	27.6	.....	.....
Guam and Northern Marianas:								
Domestic [4]	0.2	2.7	.....	0.3	0.2	.....	6.4	4.2
Foreign [2]	3.9	24.2	0.6	4.7	4.6	31.9	unk.	unk.
Total	4.1	26.9	0.6	5.0	4.8	31.9	6.4	4.2
American Samoa:								
Domestic	.....	.....	.....	Not available	.....	.....	.....	.....
Foreign [2]	2.4	34.9	5.3	7.8	2.2	101.6	2.0	2.0
Total	2.4	34.9	5.3	7.8	2.2	101.6	2.0	2.0
Possessions:								
Domestic	.....	.....	.....	Not available	.....	.....	.....	.....
Foreign [2]	28.1	114.4	6.2	46.6	14.3	651.4	unk.	unk.
Total	28.1	114.4	6.2	46.6	14.3	651.4	.....	.....
Grand total	436.6	788.2	109.8	325.8	64.0	1,924.1	297.3	111.2

[1] Based on SWFC-Hon Lab survey of 1976 catches.
[2] Based on SWFC-Hon. Lab analysis of foreign longline catches, 1971–75.
[3] 1973–77 average 4, 1972–76 average.

Table 4.—*OY for Billfish, and Oceanic Sharks, and Related Species, by Species, by Area*

[In metric tons]

Area	Swordfish	Blue marlin	Black marlin	Striped marlin	Sailfish/spearfish	Sharks	Wahoo	Mahimahi
West coast	318.4	0	0	43.2	0	27.6	0	0
Hawaii and Midway Islands	93.6	612.0	97.7	223.2	42.7	1,111.6	288.9	105.0
Guam and Northern Marianas	4.1	26.9	0.6	5.0	4.8	31.9	6.4	4.2
American Samoa	2.4	34.9	5.3	7.8	2.2	101.6	2.0	2.0
Possessions	28.1	114.4	6.2	46.6	14.3	651.4	0	0
Total	446.6	788.2	109.8	325.8	64.0	1,924.1	297.3	111.2

Table 5.—*Expected Domestic Harvest, by Species, by Area*

[In metric tons]

	Swordfish	Blue marlin	Black marlin	Striped marlin	Sailfish/spearfish	Sharks	Wahoo	Mahimahi
West Coast	350.2	0	0	47.5	0	0	0	0
Hawaii (including Midway Islands)	5.9	603.4	104.7	67.9	23.4	0	317.8	115.5
Guam and Northern Marianas	0.2	3.0	0	0.3	0.2	0	7.0	4.6
American Samoa	0	0	0	0	0	0	0	0
Possessions	0	0	0	0	0	0	0	0
Total	356.3	606.4	104.7	115.7	23.6	0	324.8	120.1

Table 6.—*OY, Expected Domestic Harvest, and TALFF, by Species, by Area*

[In metric tons]

	OY	Expected domestic harvest	Reserve	TALFF
A. West Coast:				
Swordfish	318.4	350.2	0	0
Striped marlin	43.2	47.5	0	0
Sharks	27.6	30.4	0	0
B. Hawaii (including Midway Islands):				
Swordfish	93.6	5.9	8.8	78.9
Blue marlin	612.0	603.4	8.6	0
Black marlin	97.7	104.7	0	0
Striped marlin	223.2	67.9	15.5	139.8
Sailfish/spearfish	42.7	23.4	1.9	17.4
Sharks	1,111.6	0	111.1	1,000.5
Wahoo	288.9	317.8	0	0
Mahimahi	105.0	115.5	0	0
C. Guam and Northern Marianas:				
Swordfish	4.1	0.2	0.4	3.5
Blue marlin	26.9	3.0	23.9	0
Black marlin	0.6	0	0.1	0.5
Striped marlin	5.0	0.3	0.5	4.2
Sailfish/spearfish	4.8	0.2	0.5	4.1
Sharks	31.9	0	0	31.9
Wahoo	6.4	7.0	0	0
Mahimahi	4.2	4.6	0	0
D. American Samoa:				
Swordfish	2.4	0	0	2.4
Blue marlin	34.9	0	0	34.9
Black marlin	5.3	0	0	5.3
Striped marlin	7.8	0	0	7.8
Sailfish/spearfish	2.2	0	0	2.2
Sharks	101.6	0	0	101.6
Wahoo	2.0	0	0	2.0
Mahimahi	2.0	0	0	2.0
E. Possessions:				
Swordfish	28.1	0	0	28.1
Blue marlin	114.1	0	0	114.4
Black marlin	6.2	0	0	6.2
Striped marlin	46.6	0	0	46.6
Sailfish/spearfish	14.3	0	0	14.3
Sharks	651.4	0	0	651.4
Wahoo	0	0	0	0
Mahimahi	0	0	0	0

Signed in Washington, D.C. this 8th day of June, 1979.

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

Jack W. Gehringer,

Deputy Assistant Administrator for Fisheries, National Oceanic and Atmospheric Administration.

(A) It is proposed to add the following § 611.81 to CFR Part 611, Subpart F:

§ 611.81 Pacific billfish, oceanic sharks, wahoo and mahimahi.

(a) *Purpose.*—(1) *General.* This section regulates all foreign longline fishing conducted under a Governing International Fishery Agreement which involves the catching of any species of billfish, oceanic sharks, wahoo or mahimahi (dolphin fish) in the Fishery Conservation Zone (FCZ) of the United States in the Pacific Ocean, excluding the portion of the FCZ seaward of the State of Alaska.

(2) *Species Definitions.* For the purposes of this section, the following terms have the following meanings: (A) "mahimahi" means "dolphin fish" (*Coryphaena hippurus* and *C. equisetis*); and (B) "oceanic sharks" means sharks of the families *Carcharhinidae, Alopiidae, Sphyrnidae,* and *Lamnidae.*

(b) *Authorized Fishery.*— (1) *Fishing Areas.* For the purposes of this section, the FCZ of the Pacific Ocean (excluding the FCZ seaward of Alaska) is divided into five fishing areas: West Coast, Guam and Northern Mariana Islands, Hawaii and Midway Islands, American Samoa, and U.S. Possessions.

(2) *Zones.* The fishing areas are comprised of the following "Billfish retention" and "Billfish non-retention" zones (each zone is measured from the baseline used to measure the U.S. territorial sea.):

Table I

Fishing area	Billfish retention zones	Billfish non-retention zones
West Coast	Beyond 100 nautical miles	Between 12 and 100 nautical miles.
Guam and Northern Mariana Islands	(1) Beyond 50 nautical miles from Guam, Rota, Tinian, Aguijan and Saipan; and (2) beyond 12 nautical miles of the remaining Northern Mariana Islands.	Between 12 and 50 nautical miles from Guam, Rota, Tinian, Aguijan, and Saipan.
Hawaii and Midway Islands	(1) Beyond 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau, and Oahu and (2) beyond 50 nautical miles from the remaining islands of the State of Hawaii and Midway Island.	(1) Between 12 and 100 nautical miles from the islands of Hawaii, Kahoolawe, Kauai, Lanai, Maui, Molokai, Niihau and Oahu; and (2) between 12 and 50 nautical miles from the remaining islands of the State of Hawaii and Midway Island.
American Samoa	Beyond 12 nautical miles from American Samoa	No non-retention zone.
U.S. Possessions	Beyond 12 nautical miles from any other possession of the United States	No non-retention zone.

(3) *General.* Foreign vessels subject to this section are authorized to fish in the FCZ of the Pacific Ocean beyond 12 miles from the baseline used to measure the U.S. territorial sea, subject to the requirements of this section.

(i) *Non-Retention Fishery.* Except as provided in paragraph (b)(3)(ii) of this section, and in section 611.80 of this Part, all billfish, oceanic sharks, wahoo, mahimahi and other fish caught by foreign vessels in the course of fishing under this section shall be returned to the sea in accordance with the requirements of paragraph (c) of this section.

(ii) *Retention Fishery.* Foreign vessels fishing subject to this section may retain billfish, oceanic sharks, wahoo and mahimahi to the extent that retention is authorized by pargraphs (b)(4) and (5) of this section.

(4) *Total Allowable Level of Foreign Fishing (TALFF); National Allocations; and Reserves.*

(i) *Total Allowable Level of Foreign Fishing (TALFF) and National Allocations.*

(A) The total amount of each species of billfish, oceanic sharks, wahoo and mahimahi which may be caught and retained in each fishing area by foreign vessels subject to this section is limited to the TALFF's set out in Table I of this paragraph for each applicable fishing area, and to the amount of the applicable national allocation.

Table I.—*Pacific Billfish and Oceanic Sharks TALFF and Reserve by Fishing Areas September Through December 1979 (Metric Tons)*

[Fishing areas]

Species		West Coast	Hawaii (including Midway)	Guam and N. Marianas	American Samoa	Possessions
Swordfish	TALFF	0	26.3	1.2	0.8	9.4
	Reserve	0	2.9	0.1	0	0
Blue Marlin	TALFF	0	0	0	11.6	25.4
	Reserve	0	2.9	5.9	0	0
Black Marlin	TALFF	0	0	0.2	1.8	2.1
	Reserve	0	0	0.03	0	0
Striped Marlin	TALFF	0	46.6	1.4	2.6	15.5
	Reserve	0	5.2	0.2	0	0
Sailfish/Spearfish	TALFF	0	5.8	1.4	0.7	4.8
	Reserve	0	.6	0.2	0	0
Sharks	TALFF	0	333.2	10.6	33.8	216.9
	Reserve	0	40.0	0	0	0
Wahoo	TALFF	0	0	0	0.7	0
	Reserve	0	0	0	0	0
Mahimahi	TALFF	0	0	0	0.7	0
	Reserve	0	0	0	0	0

(B) No foreign vessel subject to this section may retain billfish caught within the billfish non-retention zones set out in Table I of paragraph (b)(2) of this section.

(ii) *Reserves.* (A) *Amounts.* The amounts of fish held in reserve are shown in paragraph (b)(4)(i), Table I of this section.

(B) *Apportionment to TALFF.* (1) As soon as possible after September 1, the Regional Director, Southwest Region, shall determine the amount of fish of each species for which a reserve has been established which has been harvested to date by U.S. vessels in each applicable fishing area. (2) If the Regional Director determines that the amount of fish of a species harvested by vessels of the United States in an area is less than 80 percent of the estimated U.S. harvest for that species in that fishing area, the Regional Director, Southwest Region, shall apportion to TALFF the entire amount of the reserve for the applicable species in the applicable fishing area. (See Table 5 of the PMP, as amended, for estimated U.S. harvest by species and area.)

(C) *Notice.* The Assistant Administrator shall publish in the **Federal Register** a notice of determinations made under paragraph (b)(4)(ii)(B) of this section.

(5) *Cancellation of Authority to Retain.* (i) The authority of a foreign vessel to retain an applicable species is cancelled: (A) when the national

allocation for the applicable species is reached; or (B) at the date and time specified in the notification issued by the Assistant Administrator under paragraph (b)(5)(ii) of this section.

(ii) The Assistant Administrator shall determine, on the basis of the information specified in § 611.15(b) of this Part, when the TALFF or optimum yield (OY) for a billfish species, oceanic sharks, wahoo or mahimahi will be reached. At least forty-eight hours before the applicable TALFF or OY will be reached, the Assistant Administrator shall notify both the affected foreign nation(s) and the designated representative for any affected fishing vessel that authority to retain the applicable species is cancelled.

(iii) Any cancellation under this section hall remain in effect until a new or increased allocation becomes available.

(iv) The closure provisions of § 611.15 of this Part do not apply to foreign vessels fishing subject to this section.

(c) *Prohibited Species.* (1) *General.* The following are prohibited species under this section:

(i) All species of fish over which the United States exercises exclusive fishery management authority and for which there is no national allocation;

(ii) All billfish, oceanic sharks, wahoo and mahimahi caught in excess of any OY, TALFF or national allocation; and

(iii) All billfish caught in a billfish non-retention zone. (See Table I of paragraph (b)(2) of this section).

(2) *Treatment.* (i) All prohibited species shall be treated in accordance with § 611.13 of this Part.

(ii) *Additional Requirements for Billfish and Oceanic Sharks.* Unless otherwise specifically instructed by a U.S. observer or authorized officer, all prohibited billfish and oceanic sharks must be released by cutting the line (or by other appropriate means) without removing the fish from the water.

(3) *Rebuttal of Presumption.* Foreign vessels fishing subject to this section may rebut the presumption of § 611.13(c) of this Part by: (A) storing all prohibited species caught outside the FCZ in a separate part of the vessel hold which can be sealed; and arranging inspection and sealing of the vessel's hold by U.S. authorities before commencing fishing in the FCZ or in billfish non-retention zones; or (B) other reasonable means which may be authorized by the Administrator of the Western Pacific Program Office if, in consultation with the U.S. Coast Guard, the Administrator determines that special circumstances warrant alternative arrangements.

(4) *Procedure for Hold Sealing.* (i) Inspection and sealing of a foreign vessel's hold may be arranged by contacting the Administrator, Western Pacific Program Office (Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone 808–946–2181) at least 48 hours in advance of the date for which inspection is requested.

(ii) Ports at which such inspections may be made are Honolulu and Kahului, Hawaii; Pago Pago, American Samoa; Agana, Guam; Saipan, Northern Mariana Islands; and San Diego, California.

(iii) Additional ports for hold inspections may be arranged with the Administrator of the Western Pacific Program Office.

(5) *Other Requirements.* The designation of ports for hold inspection and sealing does not modify any port entry arrangements or requirements (if any) of Governing International Fishery Agreements or the notification requirements of any other laws or regulations of the United States.

(d) *Statistical Reporting.* (1) *Retention fishery.* The operator of each vessel of a foreign nation with an allocation for billfish, oceanic sharks, wahoo or mahimahi shall comply with all of the requirements of § 611.9 of this Part, except that the daily cumulative catch log required by § 611.9(d) must be in the format illustrated in Appendix I of this § 611.81, and shall contain the following information:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Date;

(iv) Number and weight (in kilograms) of each species (by species code) of billfish, oceanic sharks, wahoo, and mahimahi caught and retained;

(v) Number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and other fish caught and released, and whether each fish released was alive or dead at the time of release;

(vi) Noon-day location of vessel, to the nearest tenth of a degree of longitude and latitude;

(vii) Number of hooks set by type of bait.

(2) *Non-Retention Fishery.* The operator of each vessel of a foreign nation without an allocation fishing subject to this section is exempt from the reporting requirements of § 611.9(d) and (e) of this Part, but shall provide a quarterly report containing the following information for the applicable quarter:

(i) Name and call sign of the vessel;

(ii) Permit number;

(iii) Time period covered by the report;

(iv) Total number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and other fish caught;

(v) Number of each species (by species code) of billfish, oceanic sharks, wahoo, mahimahi and othe fish released, and whether each fish was alive or dead at time of release;

(vi) Average daily number of hooks set by type of bait;

(vii) Total number of days fished in the FCZ, by area code set forth in § 611.9, Appendix II.

(3) All reports by vessels fishing subject to this section in areas designated by code numbers 81–84, (see § 611.9, Appendix II of this Part) shall be submitted to: Administrator, Western Pacific Program Office, Southwest Region, National Marine Fisheries Service, Post Office Box 3830, Honolulu, Hawaii 96812, telephone 808–946–2181.

(4) All reports by vessels fishing subject to this section in areas designated by code numbers 71–74 (see § 611.9, Appendix II of this Part) shall be submitted to: Regional Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731, telephone 213–548–2575.

(5)(i) The weekly catch report shall be submitted in accordance with the schedule in § 611.9 of this Part.

(ii) The quarterly catch report shall be submitted not later than 60 days from the end of the calendar year quarter for which the report is being made.

(Appendix I, Daily Cumulative Catch Log. Reserved.)

(*B*) It is further proposed to amend 50 CFR 611 as follows:

(1) Section 611.9, Appendix II, *add:* Figure 5. Fishing Areas of the Pacific Billfish, Oceanic Shark and Associated Species Fishery.

BILLING CODE 3510-22-M

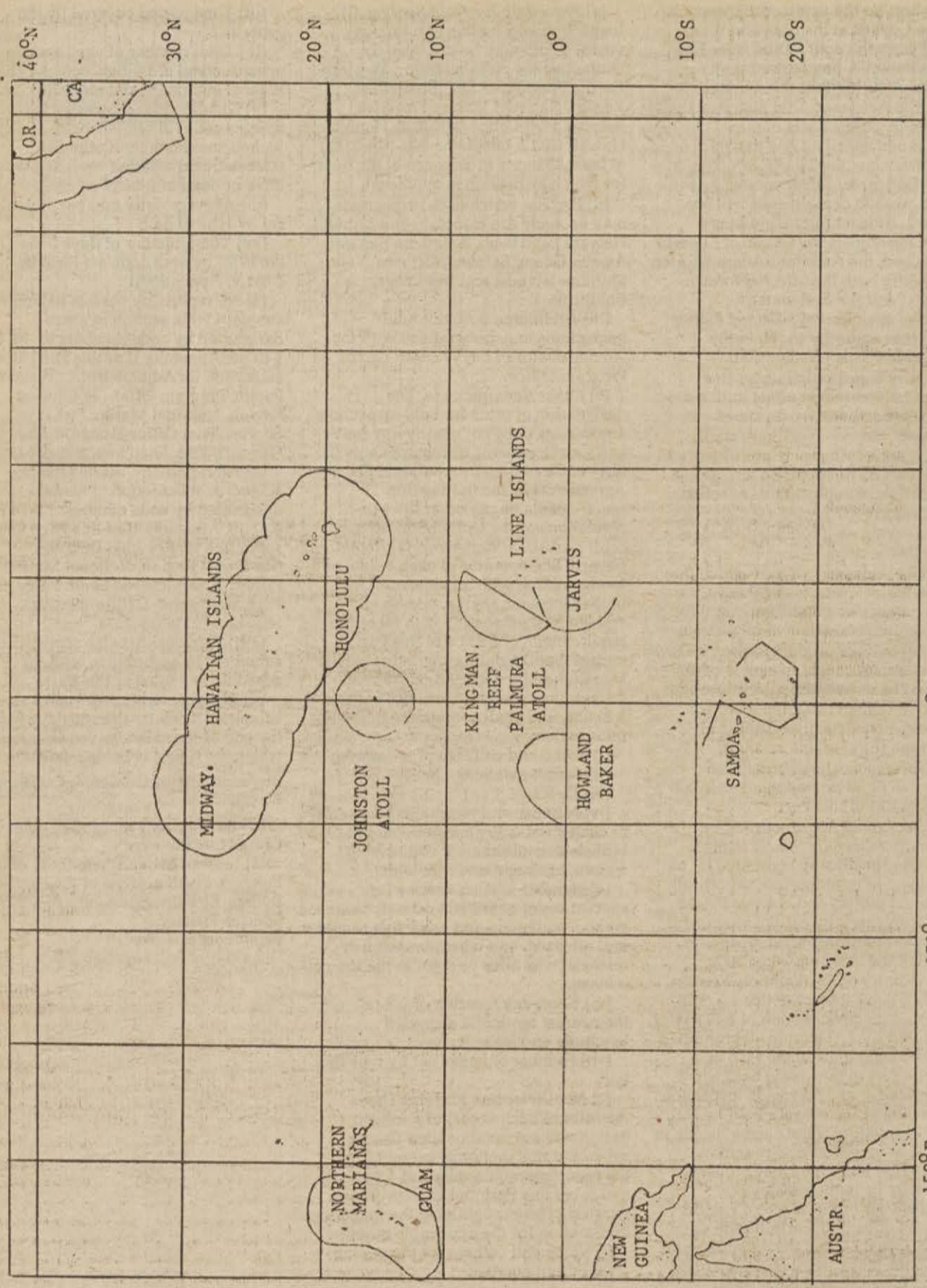

Figure 5. Approximate Boundaries of Fishing Areas of the Pacific Billfish, Oceanic Shark, and Associated Species Fishery

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(2) Section 611.9, Appendix II, under "Area Codes-Pacific", *add* "84 Other U.S. Possessions and Territories FCZ"; and amend the line beginning "81" by *adding* "and Midway Island" between the words "Islands" and "FCZ".

(3) Section 611.9, Appendix I—Species Codes B. Pacific Ocean Fishes, Finfishes, add:

Code		
469	Sharks (NS)	Squaliformes

(4) Section 611.20, Table I, add the following:

Fishery	Species	Species code	TALFF (metric tons)
Pacific Billfish and Sharks	Swordfish	264	[1]37.7
	Blue Marlin	260	[1]37.0
	Black Marlin	253	[1]4.1
	Striped Marlin	261	[1]66.1
	Sailfish/Spearfish	252	[1]12.7
	Sharks	263, 265, 266, 267.	[1]594.5
	Wahoo	255	0.7
	Mahimahi (dolphin fish)	237, 238	0.7

(E) Section 611.80(a) is amended by *adding* between the words "fishing" and "conducted", the phrase "for pelagic armorheads and alfonsins".

[FR Doc. 79-18578 Filed 6-14-79; 8:45 am]
BILLING CODE 3510-22-M

OFFICE OF MANAGEMENT AND BUDGET

Improving Government Regulations; OMB Directives Covered by Executive Order 12044; Semiannual Agenda of Upcoming Action

June 8, 1979.

AGENCY: Office of Management and Budget.

ACTION: Publication of semiannual agenda of regulations.

SUMMARY: The Office of Management and Budget is publishing the semiannual agenda of upcoming action on OMB directives covered by Executive Order 12044, Improving Government Regulations. This action is in accordance with OMB's internal guidelines for implementing Executive Order 12044, as published in the Federal Register on February 28, 1979.

FOR FURTHER INFORMATION CONTACT: See agency contact person listed for each entry in the agenda, c/o Office of Management and Budget, 726 Jackson Place, N.W., Washington, D.C. 20503.

James T. McIntyre, Jr.,
Director.

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Federal Management Circular 73-8, "Cost principles for educational institutions."	1. Draft of revised Circular published in FEDERAL REGISTER March 10, 1978. 2. Approximately 300 comment letters received from Members of Congress, Federal agencies, university administrators, faculty members, professional associations, and members of the public. 3. During December special briefings on a final draft of the Circular were held with university representatives, Federal agencies, and congressional staff members. These meetings were open to the public.	Revised Circular issued as Circular No. A-21 on Mar. 6, 1979 (rather than January 1979 as previously anticipated.	1. Circular is being revised at the urging of Congress to clarify existing cost principles in order to "bring spiraling indirect cost rates under control" and on recommendations for changes suggested by the Department of Health, Education, and Welfare. 2. Major issues— ● Adequate documentation of personnel costs. ● Paperwork burden imposed by accountability requirements. ● Methods of allocating indirect costs. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Circular A-40, "Management of Federal Reporting Requirements." This Circular sets forth the requirements for seeking OMB approval for reporting and recordkeeping requirements.	1. Comments on issues may be received at any time. 2. Publication of proposed circular, June 1979, rather than March, as previously reported.	August, rather than June 1979, as previously reported.	Circular A-40 is being reviewed in order to reorganize, update, and clarify the existing circular. The circular is based on the Federal Reports Act of 1942. 1. Should guidelines of President's reporting burden reduction program or significant portions of them be incorporated into the circular? 2. Should circular be limited in subject matter to public reporting? 3. Are all terms defined? Are definitions clear? *Contact Person:* Stanley Morris, Regulatory Policy and Reports Management, 395-5867.

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives—Continued

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Circular No. A-108, "Responsibilities for the maintenance of records about individuals by Federal agencies."	1. Comments on issues may be submitted at any time. 2. Proposed revisions will be published in the FEDERAL REGISTER and circulated to interested parties for comment.	September, rather than July 1979, as previously reported.	Circular No. A-108 was issued pursuant to the Privacy Act of 1974, for which OMB has oversight responsibility. This review is part of the Presidential Privacy Initiative, undertaken in response to the recommendations of the Privacy Protective Study Commission. Specific issues to be reviewed are: 1. Extension of the applicable provisions of the Act to certain recipients of discretionary Federal grants. 2. Strengthening the administration of the routine use provision of the Privacy Act. 3. Assignment of Privacy Act oversight and development of new information systems to one office in each department and agency. 4. Establishment of guidelines on the responsibility, training and appointment of the system managers required by the Act. 5. Adoption of mechanisms to improve oversight of the privacy implications of new Federal information systems at an early stage in the planning process; and 6. Promulgation of baseline standards for Federal regulations which require private sector record-keepers to report personal information about their clients, customers, or employees to the government. It should be noted that OMB carries out its Privacy Act oversight through guidelines as well as Circular A-108. The issues listed above may be addressed in guidelines rather than Circular A-108. Public comment will be sought on any revision or additions to the guidelines. *Contact Person:* Leslie Greenspan, Information Systems Policy, 395-3785.
Revision of Circular A-106, Reporting Requirements in Connection with Federal Compliance with Pollution Control Standards. This circular sets forth the procedures to be followed by Federal agencies in carrying out the provision of Sections 1-4 and 1-5 of Executive Order No. 12088 pertaining to the control of pollution from Federal facilities.	1. Comments may be received at any time.	September rather than May 1979, as previously reported.	Circular 1-106 is being reviewed to clarify the procedures that must be followed by Federal agencies in controlling pollution at Federal facilities pursuant to Executive Order 12088. 1. Are the requirements for agency information on pollution control clear? 2. Does the schedule for agency reporting allow sufficient time for project review? 3. Does the schedule for reporting insure that all projects that are needed will be included? 4. Are the information requirements for EPA's evaluation of agency proposals clear and adequate? *Contact Person:* Kathleen O'Halloran, Natural Resources, 395-6827.
Revision of OMB Circular No. A-102, "Uniform administrative requirements for grants-in-aid to State and local governments".	Proposed revision was published for comment in the FEDERAL REGISTER on October 18, 1978.	July, rather than May 1979, as previously reported.	1. Proposed revision will bring the circular into line with Treasury requirements. 2. Major issue— ● Whether to reimburse recipients only for amounts which have been actually been paid to contractors. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of OMB Circular No. A-102, "Uniform Administrative Requirements for Grant-in-Aid to State and Local Governments" to call for coordinated audits, and to incorporate a standard audit guide.	1. Comment by Federal agencies requested on December 6, 1978. 2. Publication for comment in the FEDERAL REGISTER expected in July, rather than in April, 1979 as previously reported.	September rather than May, 1979, as previously reported.	1. Continuation of the long-term goal of grant standardization, and placing greater reliance on State and local governments. 2. Major issues— ● One guide would replace almost one hundred now in use. ● Emphasis on total audit of an organization, rather than grant by grant audits. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Procurement Standards attachment to OMB Circular No. A-102, "Uniform Administrative Requirements for Grants-in-Aid to State and local Governments."	1. Public meeting held on January 16, 1979. 2. Published for comment in the FEDERAL REGISTER on December 6, 1978.	June rather than May 1979, as previously reported.	1. Attachment being revised to reduce administrative cost, paperwork, and other factors which contribute to inefficiency and delay in implementing programs. 2. Major issues— ● Rescinds nonconforming provisions of current agency subordinate regulations. ● Creates a grantee procurement review certification program to reduce Federal agency review of individual procurement. *Contact Person:* Jack Nadol, Office of Federal Procurement Policy, 395-6166.

Office of Management and Budget Agenda for Upcoming Actions on OMB Directives—Continued

Directive under development	Opportunity for public participation	Completion date	Reasons for review and major issues
Revision of Federal Management Circular No. 74-4, "Cost principles applicable to grants and contracts with State and local governments."	1. Proposed revision concerning expenses of officials has been circulated for comment to all the major public interest groups. 2. Extensive discussions on the interest issue have taken place with State and local officials and representatives of public interest groups. 3. Publication for comment in the FEDERAL REGISTER is expected in June 1979; however, publication of the interest issue is dependent upon comments received from Federal agencies.	October rather than April 1979, as previously reported.	The circular is being revised at the request of State, local and Federal officials. Major issues— 1. Whether to recognize travel cost of local legislators and chief executives as an expense when their work directly benefits grant programs. 2. Whether to recognize interest incurred in borrowing to construct building site as a reimbursable cost. *Contact Person:* John J. Lordan, Financial Management, 395-6823.
Revision of OMB Circulars No. A-102 and A-110 to include a set of standard legal assurances for grants to State and local governments, universities, hospitals, and other nonprofit organizaitons.	Publication for comment in the FEDERAL REGISTER expected in July, rather than February 1979, previously reported.	October, rather than May 1979, as previously reported.	1. Update of assurances in OMB Circular No. A-102 is needed because of the changes that have taken place in Executive Orders and Acts of Congress. Inclusion of standard assurances in OMB Circular No. A-110 will further the goal of standardization and simplification for grantees. 2. Major issue— ● Standardization of assurance language, assurance formats and forms. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
A new OMB circular covering "Principles for determining costs of grants and contracts with certain non-profit organizations."	1. Proposed circular was published for comment in the FEDERAL REGISTER on April 26, 1977. 2. Recirculated to Federal agencies and intereested parties in October 1978.	July rather than February 1979, as previously reported.	1. Proposed Circular was developed to assist nonprofit agencies by providing single set of cost principles as part of Federal effort to standardize and simplify grant procedures. 2. Major issues— ● Methods of allocating indirect costs. ● Uniform set of allowable costs. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Circulars A-102 and A-110	Publication for comment in the FEDERAL REGISTER expected in July 1979.	October 1979	1. Closeout attachment being revised as the result of reports that substantial amounts of funds advanced to grantees but not spent for program purposes are being held by grantees. 2. Major issues— ● Prompt refund of unspent cash advances. ● Greater specifiicity of closeout requirements. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Circular A-110, "Uniform Administrative Requirements for grants and agreements with universities, hospitals, and other nonprofit organizations."	Publication for comment in the FEDERAL REGISTER expected in September 1979.	December 1979	Property management attachment is being revised to make it consistent with Circular A-21 and to further the goal of simplification of grant requirements and reduced paperwork. *Contact Person:* John J. Lordan, Financial Management, Branch/BRD, 395-6823.
Revision of Circular A-73, "Audit of Federal Operations and Programs."	Proposed revision will be published in the FEDERAL REGISTER for comment in June 1979 and circulated to interested parties for comment.	August 1979	Circular A-73 will be revised to expand the section dealing with audit followup. Specific criteria will be provided Federal agencies to assure the timely and proper resolution of audit findings and any attendant collection actions. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.
Revision of Circular 73-6, "Coordinating indirect cost rates and audits at educational institutions."	Proposed revisions will be published in the FEDERAL REGISTER for comment in June 1979.	October 1979	1. Circular will be reissued under its original designation of OMB Circular A-88. 2. Proposed revision is based in part on recommendations made by an interagency task force chaired by the Department of Health, Education, and Welfare. 3. The proposed revision would continue the existing policy of relying on a single agency to act for all agencies in auditing educational institutions and in negotiating their indirect cost rates. It would add to those duties the responsibility to followup on audits by: ● Assuring correction of systems deficiencies; and, ● Negotiating appropriate monetary recoveries. *Contact Person:* John J. Lordan, Financial Management Branch/BRD, 395-6823.

[FR Doc. 79-18724 Filed 6-14-79; 8:45 am]

BILLING CODE 6325-01-M

Notices

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

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

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Rural Rental Housing Loan Policies, Procedures, and Authorizations; Memorandum of Understanding Between Farmers Home Administration and Administration on Aging

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA), gave Notice on May 18, 1979, of the selection of the 10 counties for participation in the Joint FmHA and Administration on Aging (AOA) demonstration effort to provide congregate housing projects with adequate support services in rural areas. This Notice extends the timetable by seven days for submission in final form of all preapplication to the FmHA State Director and also extends by seven days the timetable for complete review and submission of the preapplication to the FmHA National Office by the FmHA State Director.

FOR FURTHER INFORMATION CONTACT: Mr. Paul Conn, telephone: 202–447–7207.

SUPPLEMENTARY INFORMATION: On May 18, 1979, FmHA published in the Federal Register (44 FR 29131) a Notice of the selection of the 10 counties for participation in the Joint Farmers Home Administration and Administration on Aging's demonstration effort to provide congregate housing projects with adequate support services in rural areas. In an effort to provide additional time for the preparation of all applicant proposals and subsequent review by the FmHA and the AOA, the date for submission of all preapplciations in final form to the FmHA has been extended from June 15 until June 22, 1979, and the date for submission of all recomended preapplications to the National Office for review by FmHA and AOA has been extended from June 30 until July 6, 1979. These two changes reflect the only changes in the Notice of May 18, 1979.

(42 U.S.C. 1480; delegation of authority by the Secretary of Agriculture, 7 CFR 2.23; delegation of authority by the Assistant Secretary for Rural Development, 7 CFR 2.279)

Dated: June 12, 1979.

Gordon Cavanaugh,

Administrator, Farmers Home Administration.

[FR Doc. 79-18807 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-07-M

Food and Nutrition Service

Child Nutrition Program; Income Poverty Guidelines for Determining Eligibility for Free and Reduced-Price Meals and Free Milk

Pursuant to sections 9 and 17 of the National School Lunch Act, as amended (42 U.S.C. 1785 and 42 U.S.C. 1766), and sections 3 and 4(e) of the Child Nutrition Act of 1966, as amended (42 U.S.C. 1772 and 1773(e)), the income poverty guidelines for determining eligibility of children for free and reduced-price meals in the National School Lunch Program (7 CFR Part 220), Child Care Food Program (7CFR Part 226), and commodity only schools (7 CFR 210.15(a)) and for free milk in the Special Milk Program (7 CFR Part 215) during the period July 1, 1979–June 30, 1980 are prescribed by the Secretary in the following tables.

Under the legislation and applicable regulations, schools and institutions which charge for meals separately from other fees are required to serve free meals and free milk to all children from families whose incomes are at or below 25 percent above the applicable family size income level indicated by the Secretary's guidelines. Schools and institutions which charge for meals separately from other fees are required to serve reduced-price meals to all children from families whose incomes are at or below 95 percent above the applicable family size income level in the guidelines.

Each state agency is required to prescribe income guidelines for both free and reduced-price meals and free milk by family size for use by schools and institutions in the State. The State guidelines for free meals and for free milk must be 25 percent above the applicable family size income level prescribed by the Secretary. The State guidelines for reduced-price meals must be established at 95 percent in excess of the Secretary's guidelines.

For the convenience of State agencies, the tables also show the Secretary's income poverty guidelines when increased by 25 percent and when increased by 95 percent. The increased figures represent the levels to be prescribed by State agencies in determining eligibility for free meals and free milk, and the mandatory levels for reduced-price meals, respectively. The Secretary's guidelines, when increased by 25 percent, shall be the prescribed level for free meals and free milk. Guidelines for the Island of Guam are identical to those established for the State of Hawaii.

Income Poverty Guidelines July 1, 1979—June 30, 1980

Family size	Secretary's guidelines	Guideline levels when increased by	
		25 pct	95 pct
48 States, District of Columbia, Territories Excluding Guam			
1	3,670	4,590	7,160
2	4,830	6,040	9,420
3	5,990	7,490	11,680
4	7,150	8,940	13,940
5	8,310	10,390	16,200
6	9,470	11,840	18,470
7	10,630	13,290	20,730
8	11,790	14,740	22,990
Each additional family member	1,160	1,450	2,260
Alaska			
1	4,590	5,740	8,950
2	6,040	7,550	11,780
3	7,490	9,360	14,610
4	8,940	11,180	17,430
5	10,390	12,990	20,260
6	11,840	14,800	23,090
7	13,290	16,610	25,920
8	14,740	18,430	28,740
Each additional family member	1,450	1,810	2,830
Hawaii and Guam			
1	4,240	5,300	8,270
2	5,570	6,960	10,860
3	6,900	8,630	13,460
4	8,230	10,290	16,050
5	9,560	11,950	18,640
6	10,890	13,610	21,240
7	12,220	15,280	23,830
8	13,550	16,940	26,420
Each additional family member	1,330	1,660	2,590

The Secretary's income poverty guidelines are determined by adjusting the nonfarm income poverty guidelines prescribed by the Office of Management and Budget to reflect the change between the 1978 average of the Consumer Price Index of March 1979. As specified in Section 8 of Public Law 95–627, the most current procedures of the office of Management and Budget are used to make this adjustment for price level changes and to make necessary adjustments to determine guidelines applicable to Hawaii, Guam, and Alaska.

"Income", as the term is used in this notice is similar to that defined in the Bureau of the Census report, "Characteristics of the Low-Income Population: 1971," Current Population Reports, series P–60, No. 86, December 1972. "Income" means income before deductions for income taxes, employees' social security taxes, insurance premiums, bonds, etc. It includes the following:

(1) Monetary compensation for services, including wages, salary, commissions, or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) social security; (5) dividends or interest on savings or bonds, income from estates or trusts, or net rental income; (6) public assistance or welfare payments; (7) unemployment compensations; (8) Government civilian employee, or military retirement, or pensions or veterans' payments; (9) private pensions or annuities; (10) alimony or child support payments; (11) regular contributions from persons not living in the household; (12) net royalties; and (13) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts, and other resources which would be available to pay the price of a child's meal.

"Income", as the term is used in this notice, does not include any income or benefits received under any Federal program which are excluded from consideration as income by any legislative prohibition, for example, income received by volunteers for services performed in the National Older Americans Volunteer Program as stipulated in the Domestic Volunteer Services Act of 1973, Public Law 93–113, Title IV, c 418 (87 Stat. 413, 42 U.S.C. 5058); nor does the term include income used for the following special hardship conditions which could not be reasonably anticipated or controlled by the household:

(1) Unusually high medical expenses; (2) shelter costs in excess of 30 percent of income as defined herein; (3) special education expenses due to the mental or physical condition of a child; and (4) disaster or casualty losses. Furthermore, the value of assistance to children or their families shall not be considered as income if prohibited by the authorizing legislation, e.g., the National School Lunch Act, the Child Nutrition Act of 1966, and the Food Stamp Act of 1964.

In applying guidelines, school food authorities may consider both the income of the family during the past 12 months and the family's current rate of income to determine which is the better indicator of the need for free and reduced-price meals; *Provided, however,* That children whose parents or guardians become unemployed shall be eligible for free or reduced-price meals or free milk during the period of unemployment, if the loss of income causes the current rate of family income to be within the eligibility criteria of the school food authority.

Effective date: This notice shall become effective July 1, 1979.

Dated: June 11, 1979.

Carol Tucker Foreman,

Assistant Secretary for Food and Consumer Services.

[FR Doc. 79-18529 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-30-M

Rural Electrification Administration

Development of Direct Buried Field Splice Closures for Buried Telephone Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice.

SUMMARY: The Rural Electrification Administration (REA) is notifying interested parties that funds are available for the partial financing of a research and development project to develop and make available on the market a direct burial splice closure for buried telephone cable that will:

1. Eliminate damage from direct exposure to rain, snow, ice, storms, floods, temperature extremes, sunlight and minimize damage from other natural forces;

2. Be dependable and craftible; and

3. Eliminate much of the need for above-ground pedestals, which have high maintenance cost and are a form of visual pollution.

The notice outlines the type of proposal the REA is particularly interested in funding and sets forth the basic standards which will be used in determining which proposal if any, will ultimately be funded by the REA.

Dated: June 12, 1979.

Joseph Vellon,

Acting Administrator.

NOTICE: Notice is hereby given that, in accordance with all applicable laws and regulations, applications will be accepted from all interested and eligible parties for a grant to partially fund the development of a direct buried field splice closure system for buried telephone cable.

Background

The Rural Electrification Administration (REA) is a federal lending agency which finances electric and telephone facilities in rural areas. The REA was established on May 11, 1935, by Executive Order of the President as an emergency relief program. Statutory authority was provided by the Rural Electrification Act of 1936, which established REA as a lending agency with responsibility for developing a program for rural electrification. On October 28, 1949, amendment to the Act authorized REA to make loans to improve and extend telephone service in rural areas.

Telephone loans may be made to telephone companies, to public bodies and to cooperative nonprofit, limited-dividend or mutual associations. The agency also provides engineering and management assistance to its borrowers. Under Section 11 of the Rural Electrification Act and under the Federal Grant and Cooperative Agreement Act of 1977, the Administrator is authorized, to make such expenditures as are appropriate and necessary to carry out the provisions of the Rural Electrification Act.

It has been determined by appropriate telephone program officials that there is a need to assist REA telephone borrowers by stimulating the industry in perfecting a buried telephone cable splice closure system. Although there have been significant advances made in the field of direct buried cable design and methods of construction, there has been no comparable advancement in the development of splice closures either above or below ground.

In recent years the public has been demanding a buried cable splice closure that would be more pleasing in appearance or, better yet, "out of sight." The ideal closure should reduce damage from exposure to the elements, resist damage from vandalism, and should not be a source of visual environmental

pollution. At the same time, it is important that these features be provided without a significant increase in cost.

Currently known direct burial splice cases are unreliable due primarily to craftibility problems. For this reason telephone companies have relied on using above ground pedestals for splice protection, regardless of their higher overall initial installation cost, unsightly appearance, high trouble rates and vulnerability to vandalism.

In an effort to assist its telephone borrowers in providing better service to their customers, REA needs to take a leadership role in the development of an improved direct burial splice closure that will be dependable and craftible. The availability of such an item would result in direct savings to REA borrowers since both initial installation cost and maintenance costs would be greatly reduced.

REA is unable to develop this splice closure "in-house" due to a lack of research personnel and the necessary research and development facilities.

Therefore, a total of $100,000 has been made available for a grant to an eligible and capable state or local agency, nonprofit institution, university, or other public or private organization to partially fund the cost of developing, testing and proving the craftibility and marketability of the buried splice case. Proposals submitted in response to this notice should include in the budget outline the amount and sources of funding to be made available by the prospective grantee in support of the project.

Objectives and Outline

The objective of this project is the design of an improved direct burial splice closure that will:

1. Eliminate damage from direct exposure to rain, snow, ice, storms, floods, temperature extemes and sunlight, and minimize damage from other natural forces;

2. Be dependable and craftible; and

3. Eliminate much of the need for above-ground pedestals, which have high maintenance cost and are a form of visual pollution.

The design and development of the splice case shall be in conformance with the following requirements and performance specifications:

1. The completed closure shall meet all requirements in REA Specification PE–74 (copies available from REA on request). In addition, the closure should meet other listed requirements contained herein.

2. The closure series shall accept cables from 0.4" to 4" outside diameter.

3. The closures series shall allow for straight, branch and butt splice configurations. These are deined as follows:

Straight—An opening is provided for only one cable to enter each end of the closure.

Branch—Openings are provided for two cables to enter each end of the closure.

Butt—Openings are provided such that two or more cables enter one end of the closure and no cables enter the other end of the closure.

Note: All splice closure shall be capable of accommodating at least 4 buried service wires.

4. The closure shall have optional provisions to accommodate single or double jacketed cable or a mixture of both.

5. The closure must be fire retardant and not emit toxic fumes if scorched or burned.

6. The closure together with its filling compound shall exclude moisture from the splice bundle.

7. Assembly of the splice case shall be a one-man operation. Special training of over 2 hours shall not be required for a telco craftsperson to assemble the closure.

8. The splice closure kit shall contain all materials that will be needed to close the splice. This should include all tapes, mechanical strength bars, fasteners, etc. All materials called for in the installation instructions must be included in the kit, with the exception of telco standard shield bonding connectors and harnesses.

9. No external heat or power sources shall be needed for assembly.

10. The use of specialized tools or equipment not normally at the craftsperson's disposal should be avoided, unless justifiable by the overall cost of the system, or for protection from tampering.

11. The final closing of the closure shall use a minimal number of screws, bolts or locking devices. The tightening shall not be critical as to sequence and torque.

12. The completed closure must meet the corrosive test requirements in the specifications mentioned above.

. The closure must be rodent proof and resistant to environmental damage.

14. The splice case design shall permit the use of cable shield bonding clamps and harnesses of the types and conductivity complying with REA Specification PE–33.

15. The closure must be rigid. When a uniform distributed weight of 200 pounds is placed on the upper rigid surface of the closure for 15 minutes, the diameter of the closure must not deform more than 10 percent at both −18' C and +38' C. The encapsulant or filling compound shall not fracture.

16. If the closure design is based on the use of inside-out filling materials, it is desirable, but not essential, that it form a watertight seal with the cable jacket and with itself if split halves or screw on types are used. If it uses an outside—in filling material, than a watertight seal at the cable jacket is a requirement.

17. The filling material must be chemically compatible with all splicing connectors shown in the "REA List of Materials" as well as cable filling and floodant materials covered in REA Specifications PE–39 and PE–52.

18. The filling compound must also be chemically compatible with the cable conductor insulations and cable jackets of REA Specification PE–39.

19. Buried splice closures for use with feeder cable, distribution cable junctions, or service entrance junctions shall be re-enterable. Re-enterability shall not require solvents for the filling compound. Access to center pairs should not require a longer period of time than the original filling operation.

20. Except as outlined in Paragraph 16, the filling compound shall adhere to outer cable jackets covered in REA Specification PE–39.

21. The filling compound shall not be two or more parts, requiring field mixing. It should not become rigid and must be able to be applied between −18°C and 60°C use metric without external heat.

22. How well the cable filling compound has been cleaned from conductors shall not be critical to splice case performance.

23. A chart shall be set up relating closure size to recommended cable size. When using the largest size cable recommended for a closure, the complete conductor splice bundle (including splice locator if used) shall not occupy more than 75 percent of the splice closure working volume.

Note: A splice locator is not part of the closure design.

24. The splice closure shall be clearly marked as to the manufacturer, model number and date of manufacture.

25. Clear and concise installation instructions shall be included.

26. Methods of testing the completed splice, from wire connection to completed splice shall be included in the instructions.

27. A Material Safety Data Sheet regarding the filling compound must be submitted to REA for review and all packaging shall be properly labeled as

to any safety precautions required when using the compound.

Craftability Test

The splices closure must pass craftability testing as follows:

Ten splice are to be completed by ten different craftspersons selected by REA, using only the instruction sheets provided with the splice kits. Splice kits shall be forwarded by the Grantee to addresses provided by REA.

These completed closures shall then be tested in accordance with selected tests outlined specified in item 26 above.

Upon passing the craftability test, the Grantee will be required to test the ten (10) completed closures against the design and development requirements and performance specifications outlined in above.

Application Procedures

An original and two copies of the application for a grant shall be submitted on Form AD–623, "Application for Federal Assistance (Non-Construction Programs)." Copies of this Form may be obtained from:

Contracting Officer, Rural Electrification Administration, U.S. Dept. of Agriculture, Room 4024 South Agri. Bldg., Washington, D.C. 20250, Phone (202) 447–6148.

The completed application must be received at the above address no later than 45 days after publication of this notice.

Applications should include:

1. Project Summary (See Below)
2. Project Description (See Below)
3. Location where project will be conducted
4. Time schedule for completion
5. Capability of the applicant to conduct the project, based on:

a. Qualifications of staff;

b. Availability of necessary facilities, staff and other resources; and

c. Previous experience in similar projects.

6. Budget statement, in detail, for entire grant period, including funds to be used other than approved grant funds.
7. Provisions for submitting a final report to REA which:

a. Outlines the results of the project;

b. Explains how the objectives were met;

c. Includes copies of printed materials and other by-products of the project; and

d. Provides a financial statement showing amount actually expended under each budget heading listed in the original project plan.

Project Summary

The Project Summary should be one or two pages long and should focus on overall objectives and goals, relevance and significance of the project and the applicants approach to the project.

The Project Summary is not intended for publication, so it should be written in language which will be meaningful to others in the field of telecommunications.

Project Description

The project summary should be followed by a more detailed statement of the research to be undertaken and how it will relate to the program objectives. Such a statement should include:

objectives and expected significance; relation to the present state of knowledge in the field and to previous work done on this project and to related work in progress elsewhere; and a bibliography of pertinent literature. A description of experimental methods and procedures should be included. Brevity is desirable, but not at the sacrifice of important information needed for evaluation. To the extent possible, the project description should conform to the following outline:

1. *Introduction.* State the overall objectives, review the most significant previous work and describe the current status of research in the field of buried splice closures.

2. *Rationale.* Present concisely the rationale behind the proposed plan. Discuss any novel ideas or extra contributions expected, if any.

3. *Methodology.* Give details of the development plan, including a description of the experiments or other work proposed; methods and techniques to be employed; the kinds of results expected; and the means by which the data will be analyzed and interpreted. Include a discussion of problems that might be encountered. Point out any procedures, situations or materials that may be hazardous to personnel and the precautions to be exercised. Indicate a tentative schedule for the completion of the project.

4. *Facilities and Equipment.* Describe the facilities available for this project. List major items of instrumentation and equipment which will be made available for the necessary design, testing and other research and development activities.

5. *Collaborative Arrangements.* If the proposal requires collaboration with other organizations, describe the extent of collaboration and provide evidence to assure application reviewers that the organizations involved are in agreeent.

Proposal Review and Evaluation

Proposals received as a result of this notice will be evaluated for technical excellence by an ad hoc committee in REA consisting of individuals who are considered expert in the field of telecommunications systems. Proposals will also be reviewed by members of the Management Services Division Staff to assure conformance with government-wide grant policies. Applicants who have not previously done so must furnish the basic organizational information and assurances prescribed in Appendix I.

Applications (proposals) will be evaluated under the following criteria:

1. Technical excellence of the proposal, including the suitability and feasibility of the proposed approaches and methodology
2. Probable effectiveness in achieving the project objectives
3. Qualifications of the project leader and other assigned personnel
4. Adequacy of available or obtainable facilities, equipment, instrumentation and technical support.

Grant Award and Administration

The proposal judged most meritorious under the above criteria will be awarded a grant not to exceed one hundred thousand dollars ($100,000). In order to provide optimum freedom for research and development activities, the grant will be awarded under terms and conditions which are as minimal and flexible as possible, consistent with the need to ensure that Federal funds are wisely spent for the intended purposes. The grant will be administered under the provisions of OMB Circular A–102 or A–110, with necessary modifications and additional general provisions as negotiated.

Patent Rights

The following patent provisions will apply to any grant awarded as a result of this notice:

The rights to any patentable items, processes or inventions resulting from this grant will accrue to the grantee. However, the Government shall reserve a royalty-free, non-exclusive license to such items, processes or inventions for Government purposes. Furthermore, since the primary purpose of this grant is to stimulate the industry for the benefit of REA borrowers, the Grantee, as holder of these patent rights, agrees to license other interested capable manufacturers, at a reasonable fee, to manufacture and market such patented

items required to assure the availability of the closure system on the open market.

The Rural Electrification Administration expects to announce the recipient and the amount of grant award, if any, within seventy-five (75) days after publication of this notice.

Appendix I

Organizational Information and Assurances

A. Federal Standards.

1. OMB standards. Although not specifically applicable to research support under grants, Subpart 1–1.12 of the Federal Procurement Regulations (FPR) establishes the policy that contracts shall be awarded only to responsible prospective contractors. It prescribes minimum standards and requires acceptable evidence of a contractor's ability to obtain equipment, facilities, and personnel. Comparable standards applicable to colleges and universities, hospitals, and other quasi-public and private nonprofit organizations are contained in three attachments to OMB Circular A–110. These are:

F—Standards for Financial Management Systems,

O—Procurement Standards, and,

N—Property Management Standards.

2. Title VI of the Civil Rights Act of 1964. Title VI of the Civil Rights Act of 1964 provides that no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federeal financial assistance. A USDA regulation implementing this requirement is published at 7 CFR Part 15, Subpart A. Every submitting organization is required to have an Assurance of Compliance (see format below) on file with REA before a grant may be made to that organization.

Prospective grantees may reproduce the Assurance of Compliance format. The "applicant" referred to in the form is the organization itself whose Chief Executive Officer or comparable official should sign the Assurance. The name and title of the organization and of the official should be typed on the form. The signed original should be mailed as in 3, below. Once a properly executed form has been filed with REA, it will cover all future proposals to REA. Acceptance of a subsequent grant constitutes affirmation that the Assurance of Compliance will be fully applicable to the grant.

B. Prospective Grantee Organizational Information.

The following information is to be submitted: (a) The commonly-used name of the organization, together with the legal (registered) name, if different, and mailing address.

(b) Organization type. Indicate the organizational type, e.g., private university, etc. If a U.S. college or university, show the Federal Interagency Committee on Education (FICE) code and category of control or affiliation as shown in the most recent DHEW Education Directory of Colleges and Universities.

(c) Federal Employer Identification No. Employer identification number as assigned by Internal Revenue Service.

(d) Congressional District.

(e) Organization Affiliations. Describe relationship of the organization to a parent organization or to subsidiaries or other affiliates. If the organization is a successor in interest to a predecessor or if changes in organizational affiliation are anticipated, describe briefly.

(f) Statement of Purposes and Powers. Enclose an official or published statement of the major purposes of the organization and certify as required in C, below, as to the powers which have been granted to it to enter into contractual relationships and/or to accept grants (e.g., articles or incorporation, terms of reference, or by-laws).

(g) Key officials. List the name, title, address, and telephone number of the following officials and their alternates (if any):

(1) Chief Executive Officer;

(2) Authorized Organizational Representative; and

(3) Business Officer.

(h) Affiliations of Key Officials. If the organization is other than a college or university or a State of local government, indicate whether or not each official listed in (g) above is affiliated with any Federal, State, or local agency or with any college or university. If so, describe such affiliation.

(i) Whether or not the organization currently is a grantee or contractor of any component of the U.S. Department of Health, Education, and Welfare.

NOTE—This information will assist in implementing certain interagency procedures for which DHEW is the lead agency.

(j) A copy of the most recent indirect cost agreement negotiated between the organization and some Federal agency or, if lacking such an agreement, an indirect cost rate proposal.

(k) If other than a college or university or a State or local government, also submit the following:

(1) A certified statement of financial condition covering at least the preceding 2 years; and

(2) Bank or other references.

C. Required Certifications.

In addition to the basic information described above, REA requires that a prospective grantee organization submit a certification substantially as follows, signed by the Chief Executive Officer or authorized organizational representative:

(a) I certify that (name of institution or organization) has legal authority to accept grants as evidenced by the attached (describe document), and the requisite policies, procedure, and personnel to ensure stewardship of Federal funds and management of Federally supported projects, specifically including standards for financial management, procurement, and property management, which meet those described in Attachments F, O, and N to OMB Circular A–110 (Note: in the event this is not the case, list exceptions and provide a realistic estimate of when such standards might be met.)

(b) Each proposal will be consistent with the policies and goals of ———— and will be submitted in accordance with its procedure and pursuant to appropriate authority.

(c) In the event that a grant is awarded as a result of any such proposal, I agree that ———— will:

(1) Make available the necessary facilities, equipment, services, and personnel to conduct the project substantially as outlined in the proposal or such modifications thereof as may be mutually agreed;

(2) Conduct such project oversight as may be appropriate, manage the Federal funding with probity and prudence, and comply with the terms and conditions of the grant; and

(3) Comply with applicable laws and regulations.

(d) I further affirm that the "Assurance of Compliance with Department of Agriculture Regulations under Title VI of the Civil Rights Act of 1964," attached, will be fully applicable to any such grants.

_____

(Signature.)

_____

(Typed name and title.)

_____

(Date.)

Assurance of Compliance With the Department of Agriculture Regulations Under Title VI of the Civil Rights Act of 1964

_____ (hereinafter called the "Applicant") hereby agrees that it will comply with Title VI of the Civil Rights Act of 1946 and all requirements imposed by or pursuant to the Regulations of the Department of Agriculture, 7 CFR Part 15, Subpart A, issued pursuant thereto, to the end that, in accordance with Title VI of that Act and the regulations, no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant receives Federal financial assistance from the Department of Agriculture; and hereby gives assurance that it will immediately take any measures necessary to effectuate this agreement.

This assurance is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts or other Federal financial assistance extended after the date hereof to the Applicant by the Department, including installment payments after such date on account of applications for Federal financial assistance which were approved before such date. The Applicant recognizes and agrees that such Federal financial assistance will be extended in reliance on the representation and agreements made in the assurance, and that the United States shall have the right to seek judicial enforcement of this insurance. This assurance is binding on the Applicant, its successors, transferees, and assignees, and the person or persons whose signatures appear below are authorized to sign this assurance on behalf the Applicant.

Dated:_____

_____

(Applicant.)

By _____

(Signature of director, administrative-technical representative or research coordinator.)

_____

_____

_____

(Applicant's Mailing address.)

[FR Doc. 79-18731 Filed 6-14-79; 8:45 am]

BILLING CODE 3410-15-M

CIVIL AERONAUTICS BOARD

Compania de Aviacion "Faucett," S. A.; Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed under Subpart Q of the Board's Procedural Regulations

Notice is hereby given that, during the week ended CAB has received the applications listed below, which request the issuance, amendment, or renewal of certificates of public convenience and necessity or foreign air carrier permits under Subpart Q of 14 CFR Part 302.

Answers to foreign permit applications are due 28 days after the application is filed. Answers to certificate applications requesting restriction removal are due within 14 days of the filing of the application. Answers to conforming applications in a restriction removal proceeding are due 28 days after the filing of the original application. Answers to certificate applications (other than restriction removals) are due 28 days after the filing of the application. Answers to conforming applications or those filed in conjunction with a motion to modify scope are due within 42 days after the original application was filed. If you are in doubt as to the type of application which has been filed, contact the applicant, the Bureau of Pricing and Domestic Aviation (in interstate and overseas cases) or the Bureau of International Aviation (in foreign air transportation cases).

Subpart Q Applications

Date filed	Docket No.	Description
June 5, 1979	35755	Compania de Aviacion "Faucett," S. A., c/o John D. Lane, Esq., Hedrick and Lane, 1211 Connecticut Avenue, N.W., Washington, D. C. 20036. Application of Compania de Aviacion "Faucett," S.A. pursuant to section 402 of the Act for amendment of its foreign air carrier permit so as to: a. Add thereto authority: To engage in scheduled foreign air transportation with respect to persons between Iquitos (Peru), the intermediate point Panama City, Panama, and the terminal point Miami, Florida. b. Otherwise conform the permit to the terms of the understandings and agreements between the Republic of Peru and the United States. Answers to the Application due on July 3, 1979.
June 8, 1979	35790	Ozark Air Lines, Inc., Lambert-St. Louis International Airport, St. Louis, Missouri 63145. Application of Ozark Air Lines, Inc. requests the Board pursuant to Section 401 of the Act for amendment of its certificate of public convenience and necessity for Route 107 so as to authorize it to engage in nonstop scheduled air transportation of persons, property, and mail in the following city-pair markets between: Boston ... Miami, Fort Lauderdale New York ... Miami, Fort Lauderdale, Orlando, Tampa, West Palm Beach Newark ... Fort Lauderdale, Orlando, Tampa, Miami, West Palm Beach Philadelphia ... Miami, Fort Lauderdale Pittsburgh ... Miami, Fort Lauderdale Washington ... Miami Indianapolis ... Tampa, Fort Lauderdale Cincinnati ... Miami Columbus ... Fort Lauderdale, Tampa St. Louis ... Sarasota, West Palm Beach, Jacksonville, Daytona

Answers due on June 22, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18686 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

Federal Express Corp.; Application for Tariff-Filing Authority: Pickup and Delivery Zone

June 8, 1979.

In accordance with Part 222 (14 CFR Part 222) of the Board's Economic Regulations, notice is hereby given that the Civil Aeronautics Board has received an application, Docket 35758, from Federal Express Corporation to file tariffs for pickup and delivery service for points beyond 25 miles of the airport being served.

Under the provisions of § 222.3(c) of Part 222, interested persons may file an answer in opposition to this application on or before July 2, 1979. An executed original and nineteen copies of such answer shall be addressed to the Docket Section, Civil Aeronautics Board,

Washington, D.C. 20428. It shall set forth in detail the reasons for the position taken and include such economic data and facts as are relied upon. The answer shall be served upon the applicant and state the date of such service.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18688 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

Newark Show-Cause Proceeding

AGENCY: Civil Aeronautics Board.

ACTION: Notice of Order 79-6-79, Newark Show-Cause Proceeding.

SUMMARY: The Board is proposing, on its own initiative, to grant nonstop authority to any fit, willing and able applicant desiring to serve any domestic or overseas-Newark International Airport market that files an illustrative service proposal within 21 days and whose fitness can be established by officially noticeable data. The Board tentatively found that increased service to Newark is consistent with the public convenience and necessity since the concentration of schedules at other New York Airports has discouraged the use of the Newark Airport by passengers who would otherwise find this Airport comparably or more conveniently located. Further, the Board tentatively determined that this proposal would support the efforts of local and regional planning and airport authorities to promote the use of the underutilized Newark facility as a response to the overcrowding at LaGuardia and Kennedy Airports. Finally, the Board tentatively concluded on the basis of a concurrently published environmental assessment that its proposed action would not be a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the Environemtal Policy Act. The complete text of this order is available as noted below.

DATES: Applications: Any fit, willing and able carrier whose fitness can be established by officially noticeable data on file with the Board may file, and serve on all parties listed below, an application accompanied by an illustrative service proposal for any domestic or overseas-Newark market no later than July 5, 1979.

Objections: All interested persons having objections to the Board issuing the proposed authority shall file, and serve upon all parties listed below, and any affected applicant, no later than July 30, 1979, statements of objections, together with a summary of the testimony, statistical data, and other material expected to be relied upon to support the stated objections.

ADDRESSES: Applications, objections or additional data should be filed in Docket 35805, Docket Section, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428.

FOR FURTHER INFORMATION CONTACT: Susan B. Jollie, Trial Attorney, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428; (202) 673-5010.

SUPPLEMENTAL INFORMATION: Applications and Objections should be served upon the Port Authority of New York and New Jersey, the Tri-State Regional Planning Commission, the Mayor of Mewark, New Jersey, and the governor of New Jersey.

The complete text of Order 79-6-79 is available from our Distribution Section, Room 516, 1825 Connecticut Avenue, NW., Washington, D.C. Persons outside the metropolitan Washington, D.C., area may send a postcard request for Order 79-6-79 to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: June 11, 1979.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 79-18887 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

[Docket No. 33220]

Yucatan Service Case; Cancellation of Hearing

The hearing set herein for 14 June 1979 (44 FR 24899, 27 April 1979) is cancelled since no party has advised the presiding administrative law judge on or before 8 June 1979 that it wishes to be heard, as required by the notice of hearing.

Dated at Washington, D. C., 11 June 1979.

Rudolf Sobernheim,

Administrative Law Judge.

[FR Doc. 79-18689 Filed 6-14-79; 8:45 am]

BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Special Censuses

The Bureau of the Census conducts a program whereby a local or State government can contract with the Bureau to conduct a special census of population. However, because of the need to avoid conflicts with activities involving the conduct of the 1980 census, no additional special censuses will be conducted during the period from August 1, 1979 to January 1, 1981. The Bureau is, therefore, not accepting requests for cost estimates for special censuses at this time. Beginning in the fall of 1980 the Bureau will resume accepting such requests.

The content of a special census is ordinarily limited to questions on household relationship, age, race, and sex, although additional items may be included at the request and expense of the sponsor. The enumeration in a special census is conducted under the same concepts which govern the decennial census.

Summary results of special censuses are published semiannually in the *Current Population Reports*—Series P-28, prepared by the Bureau of the Census. For each area which has a special census population of 50,000 or more, a separate publication showing data for that area by age, race, and sex is prepared. If the area has census tracts, these data are shown by tracts.

The data shown in the following table are the results of special censuses conducted since June 30, 1978, for which tabulations were completed between April 1, 1979 and April 30, 1979.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

State/place special area	County	Date of census	Population
Alabama: Hamilton city	Marion	January 22	4,999
Arizona: Lake Havasu City	Mohave	January 18	13,524
Arkansas: Diamond City town	Boone	January 16	653
Illinois: Woodridge village	DuPage	August 23	19,997
North Dakota: Washburn city	McLean	January 15	1,745

[FR Doc. 79-18660 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

1977 Census of Manufactures Supplemental Inquiry of Consumption of Materials, Parts, Containers, and Supplies; Determination

In conformity with title 13, United States Code, sections 193 and 225, and due notice having been published on March 29, 1979 (44 FR 18719), I have determined that the data received from this supplement will provide basic statistical data for use in preparing the input-output tables. These tables provide the benchmark for the regular gross national product estimates. The input-output tables also indicate the intermediate flows of goods and services among industry groups. Knowledge of the intermediate flows of goods and services facilitates the study of the impact of changes in the relative importance of the final markets on various industries and the labor forces. These data are also of importance in the computation of the net output per employee-hour indexes, prepared by the Bureau of Labor Statistics (BLS). (The numerator of these indexes is from the Bureau of Economic Analysis studies of net output and the denominator is from BLS studies of employee-hours.) Additionally, the data will be of use in the development of the new Producer Price Index (formerly the Wholesale Price Index). These data are not available from other governmental or nongovernmental sources.

This survey is a supplement to the 1977 Census of Manufactures and will request supplementary information on materials consumed. Data will be collected from a sample of manufacturing establishments and the selection of establishments will be determined on an industry-by-industry basis. This procedure insures that the reporting burden will not fall on the smaller establishments that generally consume a smaller portion of materials for production purposes.

Copies of the report forms are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed this supplement be conducted for the purpose of collecting the data hereinabove described.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-18661 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

1977 Census of Mineral Industries Supplemental Inquiry of Supplies Used; Determination

In conformity with title 13, United State Code, sections 193 and 225, and due notice having been published on March 23, 1979 (44 FR 17765), I have determined that the data received from this supplement will provide basic statistical data for use in preparing the input-output tables. These tables provide the benchmark for the regular gross national product estimates. The input-output tables also indicate the intermediate flows of goods and services among industry groups. Knowledge of the intermediate flows of goods and services facilitates the study of the impact of changes in the relative importance of the final markets on various industries and the labor forces. These data are also of importance in the computation of the net output per employee-hour indexes, prepared by the Bureau of Labor Statistics (BLS). (The numerator of these indexes is from the Bureau of Economic Analysis studies of net output and the denominator is from BLS studies of employee-hours.) Additionally, the data will be of use in the development of the new Producer Price Index (formerly the Wholesale Price Index). These data are not available from other governmental or nongovernmental sources.

This survey is a supplement to the 1977 Census of Mineral Industries and will request supplementary information on supplies used. Data will be collected from a sample of mineral establishments and the selection of establishments will be determined on an industry-by-industry basis. This procedure insures that the reporting burden will not fall on the smaller establishments that generally consume a smaller portion of supplies for production purposes.

Copies of the report forms are available upon request to the Director, Bureau of the Census, Washington, D.C. 20233.

I have, therefore, directed this supplement be conducted for the purpose of collecting the data hereinabove described.

Dated: June 12, 1979.

Daniel B. Levine,

Acting Director, Bureau of the Census.

[FR Doc. 79-18662 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-07-M

Economic Development Administration

Petitions by Ten Producing Firms for Determinations of Eligibility To Apply for Trade Adjustment Assistance

Petitions have been accepted for filing from ten firms: (1) H. Freeman & Son, Inc., 33rd & Arch Streets, Philadelphia, Pennsylvania 19104, a producer of men's suits and coats (accepted June 4, 1979); (2) Columbian Rope Company, 1 Columbian Drive, Auburn, New York 13021, a producer of rope (accepted June 5, 1979); (3) Alps Sportswear Manufacturing Company, Inc., 15 Union Street, Lawrence, Massachusetts 01840, a producer of men's sweaters (accepted June 5, 1979); (4) Renee Manufacturing Company, Inc., 6634 Woodland Avenue, Philadelphia, Pennsylvania 19142, a producer of women's tops, pants and skirts (accepted June 6, 1979); (5) Paterson Cloaks & Suit Company, Inc., 238 Lewis Street, Paterson, New Jersey 07503, a producer of women's coats (accepted June 6, 1979); (6) L. W. Foster Sportswear Company, Inc., Hancock & Westmoreland Streets, Philadelphia, Pennsylvania 19140, a producer of men's suits and sportcoats (accepted June 6, 1979); (7) David Witherspoon, Inc., 901 Old Maryville Pike, P.O. Box 806, Knoxville, Tennessee 37901, a recycler of scrap metal with an affiliate producing steel bars (accepted June 6, 1979); (8) Dante Jewels, Inc., 580 Fifth Avenue, New York, New York 10036, a producer of jewelry (accepted June 7, 1979); (9) Cody Knitting Mill, Inc., 1130 Wyckoff Avenue, Brooklyn, New York 11227, a producer of women's sweaters (accepted June 7, 1979); and (10) Reece Foods, Inc., 336 West Marion Street, Mt. Victory, Ohio 43340, a processor of mushrooms (accepted June 7, 1979).

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (Pub. L. 93-618) and § 315.23 of the Adjustment Assistance Regulations for Firms and Communities (13 CFR Part 315).

Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request

a public hearing on the matter. A request for a hearing must be received by the Chief, Trade Act Certification Division, Economic Development Administration, U.S. Department of Commerce, Washington, D.C. 20230, no later than June 25, 1979.

Jack W. Osburn, Jr.,

Chief, Trade Act Certification Division, Office of Eligibility and Industry Studies.

[FR Doc. 79-18730 Filed 6-14-79; 8:45 am]

BILLING CODE 3510-24-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1979; Proposed Deletion

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Deletion from Procurement List.

SUMMARY: The Committee has received a proposal to delete from Procurement List 1979 a commodity produced by workshops for the blind or other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 18, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

It is proposed to delete the following commodity from Procurement List 1979, November 15, 1978 (43 FR 53151):

Class 7520

Pencil, Mechanical, 7520-00-634-3475

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18673 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1979 commodities to be produced by and service to be provided by workshops for the blind and other severely handicapped.

COMMENTS MUST BE RECEIVED ON OR BEFORE: July 18, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77.

If the Committee approves the proposed additions, all entities of the Federal Goverment will be required to procure the commodities and service listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities and service to Procurement List 1979, November 15, 1978 (43 FR 53151):

NO NSN

Toothbrush, Aspiration

Class 8445

Belt, Trousers, Cotton Webbing with Clip
8445-01-068-8339
8445-01-068-8340

SIC 7399

Packaging—Canteen Water Disposable, 1-Quart (8465-01-062-5854)

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18674 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1979; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to Procurement List 1979 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: June 15, 1979.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, 2009 14th Street North, Suite 610, Arlington, Virginia 22201.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 2, 1979 and April 16, 1979 the Committee for Purchase from the Blind and Other Severely Handicapped published notices (44 FR 11821 and 44 FR 22503) of proposed additions to Procurement List 1979, November 15, 1978 (43 FR 53151).

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat. 77.

Accordingly, the following commodities are hereby added to Procurement List 1979:

Class 7530

Folder, File
7530-00-286-8571
7530-00-286-7286

Folder Set, File
7530-00-286-7080
7530-00-286-7244
7530-00-286-7253
7530-00-286-7287
7530-00-286-8570

Class 6530

Catheter, Male, External
6530-00-NIB-0001A
6530-00-NIB-0001B
(Total requirements for Veterans Administration only)

Class 7930

Glass Cleaner, 7930-00-664-6910

C. W. Fletcher,

Executive Director.

[FR Doc. 79-18675 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Army Department

Intent To Prepare a Draft Environmental Impact Statement for a Proposed Bank Stabilization Permit, Colorado River, near Blythe, Calif.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Intent to Prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY: 1. Permit applicant proposes to emplace 4,000 linear feet of rock riprap to stabilize the bank of a 144-acre parcel prior to residential development.

2. Alternatives include no project, or alternative methods of erosion protection such as bulkheading.

3. Scoping Process:

a. Affected Federal, State, and local agencies, affected Indian tribes, and other interested private organizations

and parties are invited to participate. A Draft Environmental Impact Statement will be sent or made available to all interested parties and all comments will be addressed in the Final Environmental Impact Statement.

b. Significant issues include shortage of adequate housing, public recreational access to the Colorado River, and wildlife habitat.

4. No scoping meeting will be held.

5. DEIS estimated to be available to the public 1 July 1979.

ADDRESS: Questions about the proposed action and DEIS can be answered by:

Glenn A. Emigh, Environmental Resources Branch, U.S. Army Corps of Engineers, Los Angeles District, P.O. Box 2711, Los Angeles, California 90053.

Dated: May 18, 1979.

Gwynn A. Teague,

Colonel, CE, District Engineer.

[FR Doc. 79-18690 Filed 6-14-79; 8:45 am]

BILLING CODE 3710-XX-M

Office of the Secretary

Defense Science Board Task Force on Naval Surface Ship Vulnerability; Advisory Committee Meeting

The Defense Science Board Task Force on Naval Surface Ship Vulnerability will meet in closed session on 12 July 1979, The Pentagon, Washington, D.C.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Research and Engineering on scientific and technical matters as they affect the perceived needs of the Department of Defense.

A meeting of the Defense Science Board Task Force on Naval Surface Ship Vulnerability has been scheduled for 12 July 1979 to review, evaluate, and summarize the vulnerability of naval surface ships with consideration of their effectiveness in carrying out future naval missions.

In accordance with 5 U.S.C. App. I § 10(d) (1976), it has been determined that this Defense Science Board Task Force meeting concerns matters listed in 5 U.S.C. § 552b(c)(1) (1976), and that accordingly this meeting will be closed to the public.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 12, 1979.

[FR Doc. 79-18732 Filed 6-14-79; 8:45 am]

BILLING CODE 3810-70-M

Per Diem, Travel and Transportation Allowance Committee; Publication of Per Diem Rate Changes

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of Changes in Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 86. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Canal Zone, and possessions of the United States. Bulletin Number 86 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: June 12, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick W. Weiser, 325-9330.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem, Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Per Diem Bulletins by mail was discontinued effective June 1, 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of changes in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

Civilian Personnel Per Diem Bulletin Number 86

To the Heads of Executive Departments and Establishments

Subject: Table of maximum per diem rates in lieu of subsistence for United States Government civilian officers and employees for official travel in Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States.

1. This bulletin is issued in accordance with Memorandum for Heads of Executive Departments and Establishments from the Deputy Secretary of Defense dated August 17, 1966, SUBJECT: Executive Order 11294, August 4, 1966, "Delegating Certain Authority of the President to Establish Maximum Per Diem Rates for Government Civilian Personnel in Travel Status" in which this Committee is directed to exercise the authority of

the President (5 U.S.C. 5702(a)(2)) delegated to the Secretary of Defense for Alaska, Hawaii, the Commonwealth of Puerto Rico, the Canal Zone, and possessions of the United States. When appropriate and in accordance with regulations issued by competent authority, lesser rates may be prescribed.

2. The maximum per diem rates shown in the following table are continued from the preceding Bulletin Number 85 except in the case identified by an asterisk which rate is effective on the date of this Bulletin. The date of this Bulletin shall be the date the last signature is affixed hereto.

3. Each Department or Establishment subject to these rates shall take appropriate action to disseminate the contents of this Bulletin to the appropriate headquarters and field agencies affected thereby.

4. The maximum per diem rates referred to in this Bulletin are:

Locality	Maximum rate
Alaska:	
Adak [1]	$9.65
Anchorage	62.00
Annette	61.00
Barrow	94.00
Bethel	84.00
College	60.00
Cordova	76.00
Deadhorse	110.00
Delta Junction	59.00
*Dutch Harbor	82.00
Eielson AFB	60.00
Elmendorf	62.00
Fairbanks	60.00
Ft. Greely	59.00
Ft. Richardson	62.00
Ft. Wainwright	60.00
Galena	52.00
Juneau	60.00
Ketchikan	61.00
King Salmon	62.00
Kodiak	68.00
Kotzebue	91.00
Murphy Dome	60.00
Noatak	91.00
Nome	90.00
Noorvik	91.00
Petersburg	61.00
Shemya AFB [1]	11.00
Shungnak	91.00
Sitka-Mt. Edgecombe	61.00
Skagway	61.00
Spruce Cape	68.00
Tanana	90.00
Valdez	70.00
Wainwright	79.00
Wrangell	61.00
Other	62.00
American Samoa	54.00
Canal Zone	50.00
Guam, M.I	54.00
Hawaii:	
Hawaii	56.00
Kauai	52.00
Maui	45.00
Molokai	54.00
Oahu	58.00
Other	45.00
Johnston Atoll	15.00
Midway Islands [1]	9.65
Puerto Rico:	
Aguadilla (Incl. CG Air Station Borinquen)	60.00
Bayamon:	
12-16—5-15	66.00
5-16—12-15	52.00
Dorado	54.00
Fajardo:	
12-16—5-15	66.00
5-16—12-15	52.00
Ft. Buchanan (Incl. GSA Service Center, Guaynabo):	
12-16—5-15	66.00
5-16—12-15	52.00
Mayaguez	60.00
Ponce (Incl. Ft. Allen NCS)	58.00
Roosevelt Roads:	
12-16—5-15	66.00
5-16—12-15	52.00
Sabana Seca:	
12-16—5-15	66.00
5-16—12-15	52.00
San Juan (Incl. San Juan Coast Guard Units):	
12-16—5-15	66.00
5-16—12-15	52.00
Other	52.00
Virgin Islands of U.S.:	
12-1—4-30	66.00
5-1—11-30	52.00
Wake Island [2]	17.00
Other localities	15.00

[1] Commercial facilities are not available. This per diem rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meal, and incidental expenses.

H. E. Lofdahl,

Director, Correspondence and Directives, Washington Headquarters Services, Department of Defense.

June 12, 1979.

[FR Doc. 79-18733 Filed 6-14-79; 8:45 am]

BILLING CODE 3810-70-M

DEPARTMENT OF ENERGY

Requests for Interpretation Filed With the Office of General Counsel; Months of April and May 1979

Notice is hereby given that during the months of April and May 1979, the requests for interpretation listed in the Appendix to this notice were filed pursuant to 10 CFR Part 205, Subpart F with the Office of General Counsel, Department of Energy (DOE). Notice of subsequently received requests will be published at the end of each calendar month. Copies of the requests for interpretion listed herein are on file in and should be obtained from the DOE's Public Reading Room, Information Access Office, Room GA-152, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252-5968.

The statement of issue that follows

each request for interpretation listed in the Appendix is not intended to be definitive or final. Rather, the issue statement should be regarded as the initial restatement by the DOE of the question that appears to have been presented for resolution. The issue may, of course, be refined and modified during the interpretative process.

Interested parties may submit written comments on the listed interpretation requests on or before July 16, 1979. Comments should be identified on the outside envelope and on documents submitted with the file number of the interpretation request and all comments should be filed with the Office of General Counsel, Department of Energy, Room 1111, 12th and Pennsylvania Avenue, NW., Washington, D.C. 20461, Attention: Diane Stubbs. Aggrieved parties, as defined in 10 CFR 205.2, will continue to receive actual notice of pending interpretation requests in accordance with the current practice of the Office of General Counsel.

For further information contact Diane Stubbs, Office of General Counsel, 12th and Pennsylvania Avenue, NW., Room 1111, Washington, D.C. 20461, (202) 633–9070.

Everard A. Marseglia, Jr.,
Assistant General Counsel for Interpretations and Rulings.
June 11, 1979.

Appendix.—*List of Requests for Interpretation Received by the Office of General Counsel*

[Months of April and May 1979]

Dated Received	Name and location of requestor	File No.
April 2	Triad Oil Co., Gene A. Farber, Evans, Farber & Fronebergar, 540 Pacific Avenue, San Francisco, Calif. 94133. Issue: Does a wholesale purchaser-reseller qualify as a new purchaser entering into business in May 1978 within the meaning of Paragraph IV(B) of Standby Regulations Activation Order No. 1 and 10 CFR 211.12(e)(2) if it purchased certain assets from a commission agent that had gone out of business six months earlier?.	A–398
April 3	Edmondson Oil, Harold Hancock, P.O. Box 618, South Boston, Va. 24592..... Issue: Does a wholesale purchaser-reseller's failure to meet the payment obligations of its predecessor constitute a breach of the normal business practice rule (10 CFR 210.62) for which the supplier may suspend deliveries of motor gasoline?.	A–399
April 13	Texaco, Inc., Stephen H. Bard, 2000 Westchester Ave., White Plains, N.Y. 10650. Issue: Where high sulfur crude oil is desulfurized in Caribbean or other foreign refineries, is such desulfurized crude regarded as "crude oil" for purposes of the entitlements program (10 CFR 211.67) if it is imported into the United States?.	A–400
April 13	The Gulf Companies, Karen M. Richardson, P.O. box 3725, Houston, Tex. 77001. Issue: Do the amendments to 10 CFR 212.83, 41 FR 54919 (December 16, 1976), effective December 1, 1976, give a refiner the option of calculating increased costs of purchased product in accordance with the amendments as of January 1976?.	A–401
April 13	Ben's Service and Don's Service, Ben's Service, 1000 Washington Ave., So., Minneapolis, Minn. 55415.. Issue: Are service station operators who purchase motor gasoline and resell it to end-users and pay substantially all operating expenses considered wholesale purchaser-resellers and retailers as those terms are defined in 10 CFR 211.51 and 212.31?.	A–402
April 13	Mobil Oil Corp., R. Bruce McLean, Edward L. Rubinoff, Akin, Gump, Hauer & Feld, 1333 New Hampshire Ave., NW., Washington, D.C. 20036. Issue: Is a refiner permitted by the Special Propane Rule of 10 CFR 212.83(h)(2)(ii) to pass through greater increased product costs to its retail and independent marketer classes of purchaser so long as it calculates its unrecouped increased costs in accordance with § 212.83(h)(1)?.	A–404
April 19	Amoco Oil Co., Gail Wickens, Eastern Region, P.O. Box 507, One North Charles Street, Baltimore, Md. 21203. Issue: Does the Standby Regulation Activation Order No. 1 apply to a non-branded independent marketer?.	A–405
April 26	Johnson Oil Co., Inc., Stephen G. Crockett, Robert G. Holt, Martineau, Rooker, Larsen & Kimball, 1800 Beneficial Life Tower, 36 South State Street, Salt Lake City, Utah 84111. Issue: May a reseller of crude oil terminate a supplier/purchaser relationship pursuant to 10 CFR 211.63 based upon the consent of both parties under the terms of a contract and a settlement agreement?.	A–406
April 27	Wilson A. Chase, Harvey E. Deutsch, Isaacson, Rosenbaum, Spiegleman & Friedman, P.C., Suite 2300, First of Denver Plaza Building, Denver, Colo. 80202. Issue: Is the right to an allocation transferred to a successor pursuant to 10 CFR 211.106(e) where a firm has established a new retail outlet on a site contiguous to the predecessor's and serves substantially the same market as the predecessor served?.	A–407
May 2	Hamilton Exxon Service Center, Terrence P. McMahon, Campbell, Warburton, Britton, Fitzsimmons & Smith, Eighth Floor, First National Bank building, Two West Santa Clara Street, San Jose, Calif. 95109.	A–408

Appendix.—*List of Requests for Interpretation Received by the Office of General Counsel—Continued*

[Months of April and May 1979]

Dated Received	Name and location of requestor	File No.
Issue: Does a wholesale purcahser-reseller quality as a new purchaser entitled to use the updated motor gasoline base period for product allocation specified under the Standby Regulation Activation Order No. 1, which amends 10 CFR 211.12(e)(2), if it purchased an existing service station which had been closed to the public during the preceding five months?.		
May 4	State of Alaska, Avrum M. Gross, Attorney General, Pouch K, State Capital, Juneau, Alaska 99811. Issue: (1) Is Cranite Point Fleld in Cook Inlet, Alaska, a "field" for the purposes of the Mandatory Petroleum Price Regulations so that all royalty oil in kind produced from that field would qualify for the highest posted price for that field regardless of the pipeline through which it was delivered for sale? (2) Whether the State has properly calculated lower tier ceiling prices for crude oil of 33° API gravity or less..	A–409
May 11	Mobil Oil Corp., William C. Streets, 150 East 42nd Street, New York, N.Y. 10017. Issue: Does the fact that Mobil at one time lifted equity crude oil or otherwise received crude oil on a preferential basis in a particular country means that the disallowance provisions of 10 CFR 212.84 are applicable to arms-length transactions which occur after the termination of preferential treatment that had been extended to Mobil and its affiliated entities in that country?.	A–410
May 11	Ethyl Corp., R. S. Silver, Research and Development Department, 1600 West Eighth Mile Road, Ferndale, Mich. 48220. Issue: Does a purchaser's use of motor gasoline used in fleet testing of a new "energy extending anti-knock mixture" constitute "energy production" as defined in 10 CFR 211.51 in order to qualify the purchaser for the allocation level of 100 percent of current requirements subject to an allocaton fraction as specified in 10 CFR 211.103(c)(1)(ii)?.	A–411
May 15	LaJet, Inc., John Allen Chalk, P.O. Box 5198, Abilene, Tex. 79605 Issue: Should payment received by a producer for the leasing of property to store domestic crude oil purchased from that producer in a first sale be considered in its ceiling price determinations under 10 CFR 212.31, 212.73 and 212.74?.	A–413
May 18	Santa Clara County Service, Station Dealers Association, Paul R. Hay, 236 East California Drive, Sunnyvale, Calif. 94086. Issue: General interpretative questions regarding retail pricing of motor gasoline under Part 212, Subpart F..	A–414
May 25	Siegel Oil Co., Larry Siegel, 1380 Zuni Street, Denver, Colo. 80204 Issue: (1) Is a gasoline dealer that does not operate a service station entitled to increase its selling prices in sales of gasoline to wholesale-purchaser consumers to recover its vapor recovery system cost under 10 CFR 212.93(b)(1)(ii)(D)? (2) Is the cost for a spillage control system considered a vapor recovery system cost? (3) May such costs, if recoverable, be allocated between retail and non-retail sales of gasoline?.	A–415
May 24	National Soft Drink Association, Thomas A. Daly, 1101 Sixteenth Street, NW., Washington, D.C. 20036.. Issue: Are bottlers of soft drinks engaged exclusively in "agricultural production," as defined in 10 CFR 211.51, entitling them to 100 percent of current requirements for motor gasoline under 10 CFR 211.103(b), including gasoline used in distributing the soft drinks?.	A–416
May 25	Energy Consumers and Producers Association, Patti Gibson, P.O. Box 1726, Seminole, Okla. 74868. Issue: May a crude oil producer redesignate a property subsequent to January 1, 1979, on a reservoir basis, where the property had previously been designated on a lease basis, in order to qualify the property for the additional price incentives for newly discovered crude oil under 10 CFR 212.79?.	A–417

[FR Doc. 79–18659 Filed 6–14–79; 8:45 am]

BILLING CODE 6450–01–M

Voluntary Agreement and Plan of Action To Implement the International Energy Program; Meetings

In accordance with Section 252(c)(1)(A)(i) of the Energy Policy and Conservation Act (42 U.S.C. 6201 *et seq.*) notice is hereby provided of the following meetings:

I. A meeting of the Industry Advisory Board (IAB) to the International Energy Agency to be held on June 25, 1979, at the offices of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 9:00 a.m. The agenda is as follows:

1. Opening remarks.
2. Matters arising from record note of IAB meeting on May 10, 1979.
3. Report on SEQ/SOM meeting of May 18, 1979.
4. Position of Reporting Companies under EEC competition regulations and U.S. Voluntary Agreement, including:
A. Attendance of IAB representatives at SEQ/SOM meetings during discussion of oil market developments.
B. Status of U.S. legislation and Voluntary Agreement after June 30, 1979.
5. Report by IEA on worldwide supply outlook and current situation in IEA member countries.
6. ISAG manpower considerations if a general or selective trigger is activated in the near term, including:
A. Full or partial ISAG with U.S. company participation.
B. Full or partial ISAG without U.S. company participation.
7. Operation of emergency allocation system if U.S. companies cannot participate.
8. Review IEA proposed amendment to Emergency Management Manual to allow established seasonality patterns to be taken into account in reallocation of oil between countries.
9. Report on ISAG Training Seminar at Dusseldorf on June 5–7.
10. Dispute Settlement Center.
11. Future work program and meeting schedule.

II. A meeting of Industry Advisory Board (IAB) to the International Energy Agency (IEA) to be held on June 25 1979, at the headquarters of the IEA, 2 rue Andre Pascal, Paris, France, beginning at 2:30 p.m. The purpose of this meeting is to permit attendance by representatives of the IAB at a meeting of the IEA Standing Group on Emergency Questions (SEQ) which is being held at Paris beginning at 2:30 p.m. on June 25, and at a joint meeting of the SEQ and the IEA Standing Group on the Oil Market (SOM), which is being held at Paris beginning at 10:00 a.m. on June 26. The agendas for the meetings are under the control of the SEQ and the SOM. The agenda for the SEQ meeting is as follows:

1. Approval of draft agenda.
2. Summary record of twenty-sixth meeting.
3. Dispute Settlement Centre (revised proposal by the IAB).
4. Emergency Reserves.
A. Treatment of consumer stocks in IEA reporting system.
B. Emergency reserves of Participating Countries on January 1, 1979.
5. Demand Restraint.
A. Counterseasonal adjustments and time shift of demand in crisis management.
—IAB comments.
—EMM amendments.
B. In-depth review of United Kingdom.
C. Dates for Sweden, Norway, Canada, U.S. reviews.
6. The EEC Emergency Management System (presentation by DG XVII of the European Commission).
7. Seasonalization of trigger and allocation calculations.
A. Seasonalization of triger calculations. (Reactions by Participating Countries.)
B. Comments by the IAB on special crisis situations.
C. Emergency Management Manual amendment to allow ISAG/Allocation Coordinator to take established seasonality patterns into account in reallocation of oil between countries.
8. IAB and ISAG.
A. Role of IAB in advising IEA on matters concerning harmonization of IEA and EEC emergency management systems.
B. Quarterly oil forecast contributions by Reporting Companies.
C. Framework for antitrust clearances.
D. Report on ISAG Training Seminar at Dusseldorf, Germany, June 5–8.
E. Mini-ISAG in case of a selective trigger situation.
9. Special section of the Information System.
A. Base period final comsumption—1st Quarter 1978–4th Quarter 1978 and preliminary 2nd Quarter 1978–1st Quarter 1979.
B. Quarterly oil forecast.
C. Questionaire "A" and "B" reporting instructions.
10. Preparation for the Third Allocation Systems Test (AST–3).
A. Optimum design of allocation tests.
B. Optimum date for test.
C. Joint preparation by SEQ and IAB for AST–3 (working group to be set up for November, 1979).
D. Delay of product imbalance workshop.
11. Future meeting dates.
12. Any other business.

III. The agenda for the June 26 meeting of the SEQ and the SOM is as follows:

1. Adoption of the preliminary agenda.
2. Record of the third joint meeting.
3. Developments in the international oil market:
—Current supply/demand/stock situation and scenario update.
—Oil market developments.
4. Monitoring of IEA response to oil supply/demand situation:
—Update of countries' assessments (Questionnaire results).
—Possibilities for acceleration of demand restraint program.
5. Progress report on study of spot cargo markets and their effects on the international oil market.
6. Report on the operation of the emergency data system during the first half of 1979 (based on governments' input).
7. Future meeting dates and arrangements for future Questionnaire "A" and "B" submissions.
8. Any other business.

As provided in section 252(c)(1)(A)(ii) of the Energy Policy and Conservation Act, this meeting will not be open to the public.

Issued in Washington, D.C., June 11, 1979.

Robert C. Goodwin, Jr.,

Assistant General Counsel, International Trade and Emergency Preparedness.

[FR Doc. 79-18588 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Economic Regulatory Administration

Freeport Minerals Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of Action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATES: Effective date: June 4, 1979. Comments by: July 16, 1979.

ADDRESS: Send comments to: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235.

FOR FURTHER INFORMATION CONTACT: Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235 (Phone) 214/749–7626.

SUPPLEMENTARY INFORMATION: On June 4, 1979, the Office of Enforcement of the ERA executed a Consent Order with Freeport Minerals Company of New York, New York. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

Because the DOE and Freeport Minerals Company wish to expeditiously resolved this matter as agreed and to avoid delay in the

payment of refunds, the DOE has determined that it is in the public interest to make the Consent Order with Freeport Minerals Company effective as of the date of its execution by the DOE and Freeport Minerals Company.

I. Consent Order

Freeport Minerals Company, with its home office in New York, New York, is a firm engaged in the production and sale of crude oil and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR Parts 210, 211, 212. The Office of Enforcement of the Economic Regulatory Administration (ERA) and Freeport Minerals Company entered into a Consent Order to resolve certain civil actions which could be brought by ERA as a result of its audit of the crude oil sales by Freeport Minerals Company and Brock Exploration Corporation from the Wilbert Minerals lease, Iberville, Louisiana. This Consent Order only settles those matters relative to Freeport's interest in the crude oil sold from the Wilbert Minerals lease. Settlement between ERA and Brock Exploration Corporation is the subject of separate action.

The significant terms of the Consent Order with Freeport Minerals Company are as follows:

1. The period covered by the audit was September 1, 1973, through December 31, 1975.

2. Freeport Minerals Company and Brock Exploration Corporation improperly applied the provisions of 10 CFR 212.73 and its predecessor, 6 CFR 150.354 when determining the prices to be charged for the crude oil sold from the Wilbert Minerals lease.

3a. Freeport Minerals Company agrees to refund to the DOE the initial sum of $7,738.37, plus interest. This amount will be refunded within 30 days of the effective date of the Consent Order, June 4, 1979.

3b. Freeport also agrees to refund its proportionate share (attributable to its overriding royalty) of any remaining overpayments (plus interest) that are finally determined by ERA to be owed by Brock Exploration Corporation in this matter. The method and disposition of the refund will be established upon final settlement.

4. The provisions of 10 CFR 205.199J, including the publication of this Notice, are applicable to the Consent Order.

II. Disposition of Refunded Overcharges

Refunded overcharges as described in I. 3a. above will be in the form of a certified check made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset through devices such as the Old Oil Allocation (Entitlements) Program, 10 CFR 211.67. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants:* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the clain to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions, or procedural aspects of this Consent Order.

You should sent your comments or written notification of a claim to Wayne I. Tucker, District Manager of Enforcement, Southwest District Office, Department of Energy, P.O. Box 35228, Dallas, TX 75235. You may obtain a free copy of this Consent Order by writing to the same address or by calling 214/749–7626.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Freeport Minerals Company Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 16, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Dallas, TX on the 5th day of June 1979.

Wayne I. Tucker,

District Manager of Enforcement, Southwest District Office, Economic Regulatory Administration.

[FR Doc. 79-18657 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Lyon County Co-Operative Oil Co.; Action Taken on Consent Order

AGENCY: Economic Regulatory Administration, Department of Energy.

ACTION: Notice of action taken and opportunity for comment on Consent Order.

SUMMARY: The Economic Regulatory Administration (ERA) of the Department of Energy (DOE) announces action taken to execute a Consent Order and provides an opportunity for public comment on the Consent Order and on potential claims against the refunds deposited in an escrow account established pursuant to the Consent Order.

DATE: Effective date: June 6, 1979. Comments by: July 16, 1979.

ADDRESS: Send comments to Robert D. Gerring, Central District Manager of Enforcement Department of Energy, 324 East 11th Street; Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Jeannine C. Fox, Chief, Refined Products Programs Management Branch, 324 East 11th Street, Kansas City, Missouri 64106. (phone) 816–374–5932.

SUPPLEMENTARY INFORMATION: On June 6, 1979, the Office of Enforcement of the ERA executed a Consent Order with Lyon County Co-Operative Oil Company of Marshall, Minnesota. Under 10 CFR 205.199J(b), a Consent Order which involves a sum of less than $500,000 in the aggregate, excluding penalties and interest, becomes effective upon its execution.

I. The Consent Order

Lyon County Co-Operative Oil Company (Lyon), with its home office located in Marshall, Minnesota, is a firm engaged in the marketing of motor gasoline and middle distillates to

resellers and end-users, and is subject to the Mandatory Petroleum Price and Allocation Regulations at 10 CFR, Parts 210, 211, 212. To resolve certain civil actions which could be brought by the Office of Enforcement of the Economic Regulatory Administration as a result of its audit of Lyon, the Office of Enforcement, ERA, and Lyon entered into a Consent Order.

The Consent Order encompasses Lyon's sale of covered products during the period November 31, 1974. As more fully described in the Remedial Order issued July 25, 1977 and upheld in the Office of Hearing and Appeals Decision and Order issued December 14, 1978, and applies specifically to Lyon's sales of motor gasoline and middle distillates to non-member resellers and end-users.

II. Disposition of Refunded Overcharges

In this Consent Order, Lyon agrees to refund, in full settlement of any civil liability with respect to actions which might be brought by the Office of Enforcement, ERA, arising out of the transactions specified in I. above, the sum of forty thousand dollars ($40,000) in five (5) installments scheduled over the first year the document is effective. Refunded overcharges will be in the form of a certified checks made payable to the United States Department of Energy and will be delivered to the Assistant Administrator for Enforcement, ERA. These funds will remain in a suitable account pending the determination of their proper disposition.

The DOE intends to distribute the refund amounts in a just and equitable manner in accordance with applicable laws and regulations. Accordingly, distribution of such refunded overcharges requires that only those "persons" (as defined at 10 CFR 205.2) who actually suffered a loss as a result of the transactions described in the Consent Order receive appropriate refunds. Because of the petroleum industry's complex marketing system, it is likely that overcharges have either been passed through as higher prices to subsequent purchasers or offset. In fact, the adverse effects of the overcharges may have become so diffused that it is a practical impossibility to identify specific, adversely affected persons, in which case disposition of the refunds will be made in the general public interest by an appropriate means such as payment to the Treasury of the United States pursuant to 10 CFR 205.199I(a).

III. Submission of Written Comments

A. *Potential Claimants.* Interested persons who believe that they have a claim to all or a portion of the refund amount should provide written notification of the claim to the ERA at this time. Proof of claims is not now being required. Written notification to the ERA at this time is requested primarily for the purpose of identifying valid potential claims to the refund amount. After potential claims are identified, procedures for the making of proof of claims may be established. Failure by a person to provide written notification of a potential claim within the comment period for this Notice may result in the DOE irrevocably disbursing the funds to other claimants or to the general public interest.

B. *Other Comments.* The ERA invites interested persons to comment on the terms, conditions or procedural aspects of this Consent Order.

You should send your comments or written notification of a claim to Robert D. Gerring, Central District Manager of Enforcement, Department of Energy, 324 East 11th Street, Kansas City, Missouri 64106. You may obtain a free copy of this Consent Order by writing to the same address or by calling 816–374–5932.

You should identify your comments or written notification of a claim on the outside of your envelope and on the documents you submit with the designation, "Comments on Lyon Consent Order." We will consider all comments we receive by 4:30 p.m., local time, on July 16, 1979. You should identify any information or data which, in your opinion, is confidential and submit it in accordance with the procedures in 10 CFR 205.9(f).

Issued in Kansas City, Missouri on the 6th day of June, 1979.

Robert D. Gerring,

District Manager of Enforcement.

[FR Doc. 79-18656 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Polaris Production Corp.; Proposed Remedial Order

Pursuant to 10 CFR 205.192(c), the Economic Regulatory Administration (ERA) of the Department of Energy hereby gives notice of a Proposed Remedial Order which was issued to Polaris Production Corporation, P.O. Box 1749, Midland, Texas 79702. This Proposed Remedial Order charges Polaris Production Corporation (Polaris) with pricing violations in the amount of $297,902.55 caused by Polaris' having made sales of crude oil at prices in excess of those permitted by 10 CFR Part 212, Subpart D during the time period September 1, 1973 through April 30, 1977 in the State of New Mexico.

A copy of the Proposed Remedial Order, with confidential information deleted, may be obtained from Wayne I. Tucker, District Manager, Southwest District Enforcement, Department of Energy, Economic Regulatory Administration, P.O. Box 35228, Dallas, Texas 75235, or by calling (214) 749–7626. On or before July 2, 1979, any aggrieved person may file a Notice of Objection with Office of Hearings and Appeals, 2000 M Street, NW., Washington, D.C. 20461, in accordance with 10 CFR 205.193.

Issued in Dallas, Texas, on the 6th day of June 1979.

Wayne I. Tucker,

District Manager, Southwest District Enforcement.

[FR Doc. 79-18658 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket No. RP79-65]

Equitable Gas Co.; Order Accepting for Filing and Suspending Proposed Rate Increase

Issued June 6, 1979.

On April 30, 1979, Equitable Gas Company (Equitable) filed tariff sheets [1] to effect an increase in the transportation rate set out under Rate Schedule X–2, applicable to Carnegie Natural Gas Company. Equitable's currently effective transportation rate for this service is 3.154 cents per Mcf, which has been in effect since 1954. In this filing, Equitable proposed a transportation rate for Carnegie of 16.2 cents per Mcf.

Equitable is primarily a gas distribution company operating in Pennsylvania, West Virginia and Kentucky with transmission facilities extending from West Virginia into Pennsylvania. Equitable makes one jurisdictional sale to Revere Natural Gas Company under Rate Schedule E–1. Total deliveries to Revere in 1978 were 108,481 Mcf (about 0.14% of total sales). In addition, Equitable renders a jurisdictional transportation service for Carnegie Natural Gas Company under Rate Schedule X–2. Deliveries thereunder constitute about 2% of transmission system deliveries.

Rate Schedule X–2 covers an exchange-transportation arrangement

[1] Third Revised Sheet Nos. 25 and 29 to FERC Gas Tariff First Revised Volume No. 2.

with Carnegie. The agreement provides that Carnegie may, from time to time, at its option, deliver up to 5,000 Mcf to Equitable and Equitable shall return an equal volume less 5% for leakage and unaccounted for gas. Carnegie pays 3.158 cents per Mcf delivered which represents the differential in value between gas delivered by Equitable and gas received by Equitable at a point more distant from the principal markets. The rate of 3.158 cents per Mcf has been in effect since 1954. The subject filing increases the rate from 3.158 cents to 16.2 cents per Mcf. This amounts to $198,539 per year.

Notice of the filing was issued on May 1, 1979, with comments due on or before May 17, 1979.

Based upon a review of Equitable's filing, the Commission finds that the proposed increase may be unjust, unreasonable, unduly discriminatory, or otherwise unlawful. Accordingly, we shall accept the tariff sheets for filing, grant waiver of the requirements of §§ 154.22 and 154.51, and suspend the effectiveness of the proposed rates until May 2, 1979. We shall also set the matter for hearing.

The Commission orders: (A) The effectiveness of Third Revised Sheet Nos. 25 and 29 to FERC Gas Tariff, First Revised Volume No. 2 is hereby suspended for one day, until May 2, 1979, at which time they will be made effective subject to refund.

(B) Equitable's case-in-chief in support of the proposed rate shall be filed with the Commission no later than July 6, 1979.

(C) Staff's statement of position shall be filed on or before August 3, 1979.

(D) A Presiding Administrative Law Judge to be designated by the Chief Administrative Law Judge (18 CFR 3.5(d)) shall convene a settlement conference in this proceeding to be held within 10 days after the service of Staff's statement of position in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. The Presiding Administrative Law Judge is authorized to establish such further procedural dates as may be necessary and to rule on all motions (except motions to sever consolidate or dismiss) as provided for in the rules of practice and procedure.

(E) The Secretary shall cause prompt publication of this order in the Federal Register.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18630 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

February 28, 1979.

On February 12, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-533
API Well Number: 30-015-22333
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: Marquess Com #1
Field: Carlsbad South Morrow
County: Eddy
Purchaser: El Paso Natural Gas Co.
Volume: 20 MMcf.

FERC Control Number: JD79-534
API Well Number: 30-045-22587
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: State Com #43
Field: Blanco Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 45 MMcf.

FERC Control Number: JD79-535
API Well Number: 30-045-22586
Section of NGPA: 103
Operator: Mesa Petroleum Co.
Well Name: State Com 13A PC/MV
Field: Blanco Mesa Verde/Pictured Cliffs
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 154/210 MMcf.

FERC Control Number: JD79-536
API Well Number: 30-025-25652
Section of NGPA: 103
Operator: Mobil Oil Corp.
Well Name: Conoco—State #1
Field: North Vacuum Abo
County: Lea
Purchaser: Phillips Petroleum Co.
Volume: 9.0 MMcf.

FERC Control Number: JD79-537
API Well Number: 30-015-22548
Section of NGPA: 103
Operator: Yates Petroleum Corporation
Well Name: Kennedy JQ Com No. 1
Field: Kennedy Farms Morrow
County: Eddy
Purchaser: Transwestern Pipeline Co.
Volume: 268.160 MMcf.

FERC Control Number: JD79-538
API Well Number: 30-039-21821
Section of NGPA: 103
Operator: Kimbark Operating Co.
Well Name: St. Bancos #1
Field: Blanco Mesaverde
County: Rio Arriba
Purchaser: Southwest Gas Corporation
Volume: 1131 MMcf.

FERC Control Number: JD79-539
API Well Number: 30-045-22871
Section of NGPA: 103
Operator: Kimbark Operating Co.
Well Name: Horton #9
Field: Blanco Pictured Cliffs
County: San Juan
Purchaser: Southwest Gas Corporation
Volume: 1000 MMcf.

FERC Control Number: JD79-540
API Well Number: 30-005-60353
Section of NGPA: 108
Operator: Marathon Oil Company
Well Name: State "27" Well No. 1
Field: Newmill Strawn South (Gas)
County: Chaves
Purchaser: Transwestern Pipeline Co.
Volume: .01 MMcf.

FERC Control Number: JD79-541
API Well Number: 30-025-25457
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: New Mexico "S" State, Well No. 37
Field: Wantz Abo Pool
County: Lea
Purchaser: El Paso Natural Gas Co.
Volume: 10.0 MMcf.

FERC Control Number: JD79-542
API Well Number: 30-025-25457
Section of NGPA: 103
Operator: Exxon Corporation
Well Name: New Mexico "S" State, Well No. 37
Field: Wantz Granite Wash Pool
County: Lea
Purchaser: El Paso Natural Gas Co.
Volume: 1.0 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18634 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

February 28, 1979.

On February 26, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies

listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

New Mexico Energy and Minerals Department, Oil Conservation Division

FERC Control Number: JD79-543
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #3
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 4 MMcf.

FERC Control Number: JD79-544
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #2
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 6 MMcf.

FERC Control Number: JD79-545
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Hampton #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 5 MMcf.

FERC Control Number: JD79-546
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Harris #1
Field: Basin Dakota
County: San Juan
Purchaser: Gas Company of New Mexico
Volume: 2 MMcf.

FERC Control Number: JD79-547
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Jensen #1
Field: Blanco Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 8 MMcf.

FERC Control Number: JD79-548
API Well Number: None
Section of NGPA: 108
Operator: Southland Royalty Co.
Well Name: Alston #1
Field: Aztec Pictured Cliffs
County: San Juan
Purchaser: Southern Union Gathering Co.
Volume: 2 MMcf.

FERC Control Number: JD79-549
API Well Number: 30-045-23199
Section of NGPA: 103
Operator: Dugan Production Corp.
Well Name: Com #2
Field: Harper Hill Fruitland PC
County: San Juan
Purchaser: El Paso Natural Gas Co.
Volume: 30 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18635 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

Notice of Determination by a Jurisdictional Agency Under the Natural Gas Policy Act of 1978

June 5, 1979.

On May 17, 1979, the Federal Energy Regulatory Commission received notices from the jurisdictional agencies listed below of determinations pursuant to 18 CFR 274.104 and applicable to the indicated wells pursuant to the Natural Gas Policy Act of 1978.

United States Geological Survey—Louisiana

FERC Control Number: JD79-6570
API Well Number: 427114021800D1
Section of NGPA: 102
Operator: Aminoil Development, Inc.
Well Name: OCS-G-2421 Well No. A-13
Field: High Island A-330
County:
Purchaser: Natural Gas Pipeline Co. of America
Volume: 72 MMcf.

FERC Control Number: JD79-6571
API Well Number: 17-700-40304-00-51
Section of NGPA: 102
Operator: C & K Marine Production Company
Well Name: OCS-G-2531 No. 2
Field: West Cameron Block 41
County:
Purchaser: Transcontinental Gas Pipeline Corp.
Volume: 500 MMcf.

FERC Control Number: JD79-6572
API Well Number: 17-719-40121-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-5
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-6573
API Well Number: 427114015500S1
Section of NGPA: 102
Operator: Aminoil USA, Inc.
Well Name: Well No. A-2
Field: High Island A-309
County:
Purchaser: Natural Gas Pipeline Company
Volume: 913 MMcf.

FERC Control Number: JD79-6574
API Well Number: 4271140175
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-3
Field: High Island Area Blk. A-350
County:
Purchaser: Trunkline Gas Company
Volume: 4300 MMcf.

FERC Control Number: JD79-7142
API Well Number: 17-719-40132-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-6
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 2190 MMcf.

FERC Control Number: JD79-7143
API Well Number: 4271140276
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A-16
Field:
County:
Purchaser: Transcontinental Gas P/L Co.
Volume: 3588 MMcf.

FERC Control Number: JD79-7144
API Well Number: 17-719-40117-00-D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 62 Well A-3
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-7145
API Well Number: 427114023800S1
Section of NGPA: 102
Operator: Aminoil USA, Inc.
Well Name: A-5
Field: High Island Area Blk. A-309
County:
Purchaser: Natural Gas Pipeline Company
Volume: 1825 MMcf.

FERC Control Number: JD79-7146
API Well Number: 17721401330152
Section of NGPA: 102
Operator: Arco Oil and Gas Company
Well Name: OCS-G-2137 D-9
Field:
County:
Purchaser: Southern Natural Gas Company
Volume: 550 MMcf.

FERC Control Number: JD79-7147
API Well Number: 17-719-40117-00-D2
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A-3D
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79-7148
API Well Number: 17-713-40024-00-S1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: South Pelto Blk 8 Well A-5
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 1825 MMcf.

FERC Control Number: JD79–7149
API Well Number: 4271140247
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–12
Field:
County:
Purchaser: Trunkline Gas Company
Volume: 4000 MMcf.

FERC Control Number: JD79–7150
API Well Number: 17–713–40035–00–D1
Section of NGPA: 102
Operator: Mesa Petroluem Co.
Well Name: South Pelto Blk 8 Well A–7
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 650 MMcf.

FERC Control Number: JD79–7151
API Well Number: 177024046400S1
Section of NGPA: 102
Operator: Exxon Corporation
Well Name: OCS–G 2560, No. A–1
Field:
County:
Purchaser: Columbia Gas Transmission Corp.
Volume: 500 MMcf.

FERC Control Number: JD79–7152
API Well Number: 17–719–40127–00–D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A–4
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79–7153
API Well Number: 4271140169
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–2
Field:
County:
Purchaser: Trunkline Gas Company
Volume: 6700 MMcf.

FERC Control Number: JD79–7154
API Well Number: 177214005701S1
Section of NGPA: 102
Operator: Arco Oil and Gas Company
Well Name: OCS–G 2943 No. C–30
Field:
County:
Purchaser: Southern Natural Gas Company
Volume: 45 MMcf.

FERC Control Number: JD79–7155
API Well Number: 17702403620051
Section of NGPA: 102
Operator: Shell Oil Company
Well Name: A–10
Field: West Cameron Block 565
County:
Purchaser: Natural Gas Pipeline Co. of America
Volume: 730 MMcf.

FERC Control Number: JD79–7156
API Well Number: 177024037600 D2
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 617, A–5C
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 2007 MMcf.

FERC Control Number: JD79–7157
API Well Number: 17–719–40125–00–D1
Section of NGPA: 102
Operator: Mesa Petroleum Co.
Well Name: West Delta Blk 61 Well A–7
Field:
County:
Purchaser: Tennessee Gas Pipeline Company
Volume: 1095 MMcf.

FERC Control Number: JD79–7159
API Well Number: 177024037600
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 617, A–5B
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 1110 MMcf.

FERC Control Number: JD79–7160
API Well Number: 177024043000S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 609, B–5A
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 6,606 MMcf.

FERC Control Number: JD79–6270
API Well Number: 177024044100S1
Section of NGPA: 102
Operator: Mobil Oil Corporation
Well Name: West Cameron Block 609, B–8
Field:
County:
Purchaser: Northern Natural Gas Company
Volume: 3,651 MMcf.

The applications for determination in these proceedings together with a copy or description of other materials in the record on which such determinations were made are available for inspection, except to the extent such material is treated as confidential under 18 CFR 275.206, at the Commission's Office of Public Information, Room 1000, 825 North Capitol Street, N.E., Washington, D.C. 20426.

Persons objecting to any of these final determinations may, in accordance with 18 CFR 275.203 and 18 CFR 275.204, file a protest with the Commission on or before July 2, 1979. Please reference the FERC Control Number in any correspondence concerning a determination.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79–18636 Filed 6–14–79; 8:45 am]

BILLING CODE 6450–01–M

[Docket No. GP79–21]

State of New Mexico, Section 108 NGPA Determination, Phillips Petroleum Co., Santa Fe No. 124 Well, API Well No. 30–025–24126; Notice of Preliminary Finding

Issued June 7 1979.

On April 23, 1979, the Oil Conservation Division of the New Mexico Department of Energy and Minerals (New Mexico) submitted to this Commission a notice of determination concerning a well for which classification as a stripper well under section 108 of the Natural Gas Policy Act of 1978 (NGPA) is sought. The notice states that the Phillips Petroleum Company (Phillips) Santa Fe No. 124 well does not qualify as a stripper well. The Commission published New Mexico's notice of determination on May 4, 1979. The notice then was published in the **Federal Register** on May 14, 1979.

On May 22, 1979, Phillips filed a protest with this Commission (pursuant to 18 CFR 275.203 and 204) contending that New Mexico misinterpreted the qualifying requirements of the Commission's regulations. According to Phillips, New Mexico "erroneously relied on [18 CFR 271.804(d)(4)(ii)], which states that the Agency shall make a negative determination if the production data submitted by the applicant indicates that for a 12-month period the well produced a nonassociated gas at a rate exceeding an average of 60 Mcf per production day." Phillips requests that the Commission issue a preliminary finding that the negative determination by New Mexico is not supported by substantial evidence and that the Commission reverse New Mexico's determination pursuant to 18 CFR 275.202 and 503(b)(1) of the NGPA.

Generally, to qualify as a stripper well under Section 108, a well must have produced nonasssociated natural gas at an average rate not greater than 60 Mcf per day of production during a 90-day period. The well also must have been producing at its maximum efficient rate of flow during the same period.

Under our interim regulations, nonassociated gas is gas produced from a well that does not produce more than certain small quantities of crude oil during the production period on which the determination is based. For a well producing an average of less than 30 Mcf of gas per day during the 90-day production period, the allowable quantity of crude oil is an average of 3 barrels or less per day during that period 18 CFR 271.803(b). Moreover, in the absence of applicable recognized conservation practices designed to maximize the ultimate recovery of natural gas established by a jurisdictional agency for determining the maximum efficient rate of flows of wells producing natural gas, a well which has produced nonassociated gas at an average rate of 60 Mcf per day or less during the 90-day period is presumed to

be producing at its maximum efficient rate of flow, if during the 12-month period ending concurrently with the 90-day period, the well produced nonassociated gas at an average rate of 60 Mcf per day or less. 18 CFR 271.804(d)(2).

The production records accompanying the notice of determination show that the average daily production of natural gas from the Santa Fe No. 124 well did not exceed 10 Mcf for either the relevant 90-day or 12-month period. Moreover, the production records show that the average daily production of crude oil from the well did not exceed 3 barrels for the qualifying 90-day period, although the average daily production of crude oil did exceed 3 barrels for the 12-month period.

The evidence indicates that the Sante Fe No. 124 well produced natural gas and crude oil within the allowable limits, as noted, during the relevant 90 day period which determines whether the gas is nonassociated gas within the meaning of the Commission's regulations pertaining to stripper wells. Thus, it appears that New Mexico's negative determination is not supported by substantial evidence as Phillips contends.

Accordingly, the Commission hereby makes a preliminary finding (pursuant to 18 CFR 275.202(a)(1)(i)) that the determination by the Oil Conservation Division of the New Mexico Department of Energy and Minerals, that Santa Fe No. 124 well does not qualify as a stripper well under Section 108 of the NGPA, is not supported by substantial evidence in the record on which the determination was made.

By direction of the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18631 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CI75-45, et al.]

Tenneco Oil Co., et al.; Order Setting Matter for Oral Argument, Denying Motion and Granting Intervention

Issued June 5, 1979.

Tenneco Oil Company, Placid Oil Company, Hunt Petroleum Corporation, Hunt Industries, Hunt Oil Company, Kewanee Oil Company, Tenneco Oil Company, Shell Oil Company, Ashland Oil Inc., TransOcean Oil, Inc., Tennessee Gas Pipeline Company, a Division of Tenneco Inc., Trunkline Gas Company, Tennessee Gas Pipeline Company, Trunkline Gas Company, Southern Natural Gas Company, United Gas Pipe Line Company and Florida Gas Transmission Company, Southern Natural Gas Company, Tennessee Gas Pipeline Company, a Division of Tenneco Inc., and Tenneco Chemicals, Inc., Highland Resources; *Docket Nos.* CI75-45, CI75-59, CI75-66, CI75-67, CI75-68, CI75-69, CI75-105, CI75-684, CI75-107, CI75-122, CI75-138, CP73-339, CP75-330, CP75-19, CP75-23, CP75-119, CP75-120, CP75-149, CP75-316, CP75-151, CP75-153, CP75-163, CP75-258, CI-733.

On April 23, 1979, First Mississippi Corporation (FMC) filed an "emergency petition for extraordinary relief" in the above consolidated proceeding. The petition asks that the Commission sever from the proceeding the certificate applications in dockets No. CP75-330, CP75-316, CP75-59, CI75-66, CI75-67, and CI75-68 and reconsider its disapproval of interstate pipeline transportation of specified volumes of offshore natural gas for feedstock and process gas requirements at First Mississippi's AMPRO fertilizer plant at Donaldsonville, Louisiana. Among other things, FMC alleges that its AMPRO plant is deteriorating as a result of not being operated since its construction in 1977 and that other than the offshore gas for which FMC has a contract, there are not viable sources of gas for operating the plant.

On May 3, 1979, a letter order was sent to FMC concerning the need for information about the availability of gas to the AMPRO plant from onshore sources. In the letter, FMC was directed to supplement its petition by indicating (1) total gas supply available to the AMPRO plant from all onshore sources (including sources controlled by First Mississippi and its affiliates), (2) what conditions, if any, would make such sources inadequate or so impractical as to justify, as an alternative, the relief requested here, and (3) what efforts, if any, have been made to locate and obtain onshore gas for the AMPRO plant.

On May 18, 1979, FMC responded to the Commission's letter order with a filing indicating the various sources controlled by the Placid Group, FMC's partners in constructing the AMPRO plant.[1]

Upon review of FMW's May 18, 1979, response we find that it is not sufficient to allow a meaningful evaluation of whether the onshore gas available for the AMPRO plant and FMC's efforts to obtain such gas meet the criteria estblished in Opinion No. 10 for the relief provided therein.[2] FMC states, "There are no onshore supplies available for use in the AMPRO plant in substitution for the offshore South Marsh Island reserves . . ." From this statement, it is not clear to us whether there might be some gas available to reduce the amount of relief FMC says it needs, or whether FMC is unwilling to consider any source an adequate substitute unless it can provide the same amount of gas as the South Marsh Island reserve.

In response to the third question of the Commission's letter order FMC states in general that it engages in a continuing effort to locate new supplies. Nevertheless, there is no description of the nature or extent of FMC's effort to locate onshore gas for the AMPRO plant. FMC says that its exploriation efforts are discussed and tabulated in Appendix I of its response. But this appendix lists only those reserves already controlled by FMC. It says nothing of any efforts to locate new reserves, much less of efforts to locate reserves specifically for the AMPRO plant.

FMC's response indicates that a significant amount of gas has been committed to other customers by FMC and its partners, the Placid Group, since Opinion No. 10 was issued. FMC, however, does not explain why none of this gas could have been made available to the AMPRO plant.

Further, FMC states simply that "it would have been difficult to persuade Transco to transport" any gas from onshore reserves to the AMPRO plant. FMC, however, does not explain whether it tried to negotiate with Transco in this regard and the results of those negotiations.

We are concerned about the allegations of the emergency conditions at the AMPRO plant and the need for special relief. We had hoped that the questions of FMC's qualification for special relief under Opinion No. 10 could be resolved on the basis of FMC's written submission. Unfortunately, we find, as discussed above, the information to be ambiguous. In an effort to resolve the matter with the expedition that the allegation of an emergency implies, we have decided to set this matter for oral argument. FMC will be expected to clarify the matters

[1] The Placid Group includes Placid Oil Co., Hunt Oil Co., Hunt Petroleum Corp., Hunt Industries, Hamilton Brothers Oil Co., and Hamilton Brothers Exploration Co.

[2] In this regard, the Commission fully realizes that Opinion Nos. 10 and 10-A are pending review in the Court of Appeals. Any decision to grant FMC's request for relief would not in the Commission's view amount to a modification of Opinion Nos. 10 and 10-A. Rather, it would be an exemption to the requirements of those opinions based on the particular facts presented.

set-out above and to respond to questions by the Commission relevant to FMC's petition that it requires and qualifies for Opinion No. 10's special relief provisions.

Certain issues have been raised by Trunkline Gas Company (Trunkline) and by Associated Gas Distributors (AGD) and the Public Service Commission of the State of New York (PSCNY) in answers filed opposing FMC's petition (see discussion at page 4, *infra*). Among other things, Trunkline challenges FMC's assertion that if relief is granted, interstate gas supplies will not be significantly affected. Trunkline also asks whether FMC's alleged emergency could have been alleviated by using short-term or other gas supplies following completion of the AMPRO plant. AGD and PSCNY argue that the corrosion that has occurred at the AMPRO plant is reparable at a cost that is slightly more than one percent of the $80 million investment in the facility. AGD and PSCNY also suggest that FMC could use a different insulating method to mothball the plant until onshore gas is available. We believe these arguments raise significant questions that FMC should address at oral argument.

The oral argument concerning FMC's petition will be held on June 15, 1979. It will not be a judicial or evidentiary type proceeding. Any party, including Commission Staff, interested in participating may make a presentation at the hearing provided a written request to participate is received by the Secretary of the Commission prior to 4:30 p.m. on June 12, 1979. The request should include a reference to Docket Nos. CI75–45, *et al.*, as well as a concise summary of the proposed oral presentation and a phone number where the person making the request may be reached. An original and fourteen copies of the party's proposed statement to be presented must be filed with the Secretary of the Commission prior to 4:30 p.m. on June 14, 1979. The Commission may limit the length and substance of the oral presentations.

There will be no cross-examination of parties participating, but the Commission may, of course, ask questions of those appearing before it. Any further procedural rules will be announced at the oral argument.

On April 26, 1979, motions in support of FMC's pleading were filed by the Louisiana Delegation [3] and by United States Senator Thad Cochran on behalf of himself and United States Senator John C. Stennis and United States Representatives David Bowen, John Hinson, Trent Lott, G. V. Montgomery, and Jamie L. Whitten. Answers opposing FMC's petition were filed on May 18, 1979, by AGD and PSCNY jointly and on May 21, 1979, by Trunkline. As noted, we believe that certain issues raised in these answers should be discussed by FMC at oral argument.

On May 25, 1979, FMC filed a response to Trunkline's answer opposing FMC's petition. The Commission's Rules of Practice and Procedure do not provide for replies to answers. FMC's response, therefore, will not be considered.

On May 25, 1979, FMC also filed a "Motion Ne Recipiatur" in which it urged that Trunkline's answer opposing FMC's petition should not be received. FMC points out that Trunkline is a party to a contract for transportation of part of the South Marsh Island reserves and should not be heard to argue in favor of an effective abrogation of that contract. FMC says that denial of its petition will benefit Trunkline financially and, in support of its motion, advances the equitable doctrines of estoppel and "clean hands."

The arguments advanced by FMC must give way in this instance to the Commission's need to be fully informed on all issues pertaining to FMC's petition. FMC is seeking an exemption from our recent decision eliminating producer reservations with respect to offshore gas (Opinion Nos. 10 and 10–A). Before we decide whether to grant such a petition, we should hear arguments on all sides of the issues involved. FMC's motion that Trunkline should not be heard on this matter is therefore denied.

On May 3, 1979, notice was issued of FMC's petition for relief. Transcontinental Gas Pipe Line Corporation (Transco) petitioned to intervene on May 18, 1979. On May 25, 1979, FMC filed a pleading opposing Transco's petition to intervene on the ground that Transco lacks a direct interest in the outcome of this proceeding.

The Commission's Rules of Practice and Procedure do not require a petitioner to show "direct interest" for intervention to be granted. It is only required that the interest be of such nature that petitioner's participation may be in the public interest.[4] In the circumstances of this proceeding, we find that Transco meets this standard.

The Commission finds: (1) It is necessary and appropriate in carrying out the provisions of the Natural Gas Act that FMC's petition for relief be set for oral argument in accordance with the procedures set forth in the body of this order and hereinafter detailed.

(2) FMC's motion that we reject Trunkline's answer to FMC's petition for relief should be denied for the reasons set forth in the body of this order.

(3) Participation by Transco in this proceeding may be in the public interest.

The Commission orders: (A) An oral argument before the Commission as described in the body of this order, will be held on June 15, 1979, at 10:00 a.m. in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

(B) This hearing is limited to the need for the relief requested by FMC and whether FMC qualifies for the special relief provided for in Opinion No. 10 as these issues are more specifically set out in the questions referred to above.

(C) FMC's motion to reject Trunkline's answer is denied.

(D) Transco is permitted to intervene subject to the rules and regulations of the Commission: *Provided, however,* that participation by Transco shall be limited to matters affecting asserted rights and interests as specifically set forth in the petition to intervene; and *Provided, further,* that the admission of Transco shall not be construed as recognition by the Commission that Transco might be aggrieved because of any order of the Commission entered in this proceeding.

By the Commission. *SMITH,* Commissioner, *concurs* with the decision to provide further explication of Applicants' efforts to develop alternative sources of natural gas, as a condition precedent to relief under Opinion No. 10, but believes that the procedure set out may deny procedural due process to Intervenors.

Kenneth F. Plumb,

Secretary.

[FR Doc. 79-18632 Filed 6-14-79; 8:45 am]

BILLING CODE 6450-01-M

[Docket Nos. CP77-402 and CP77-435]

Transcontinental Gas Pipe Line Corp.; Notice of Proposed Change in FERC Gas Tariff

June 5, 1979.

Take notice that on May 31, 1979, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77001, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2 for effectiveness on July 1, 1979:

[3] The Louisiana Delegation is composed of United States Senators Russell B. Long and J. Bennett Johnston, Jr., and United States Representatives Lindy B. Boggs, John B. Breaux, Jerry Huckaby, Claude Leach, Robert L. Livingston, Gillis W. Long, W. Henson Moore, and David C. Treen.

[4] 18 CFR 1.8(b)(3).

1. *Rate Schedule X–157*
(Transportation Agreement between Transco and Florida Gas Transmission Company (Florida Gas), dated March 18, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1417, 1419, 1420, 1421, 1426, 1428 and 1429

2. *Rate Schedule X–158*
(Transportation Agreement between Transco and Southern Natural Gas Company (Southern), dated April 5, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1434, 1436, 1438, 1443, 1446 and 1447

3. *Rate Schedule X–159*
(Transportation Agreement between Transco and United Gas Pipe Line Company (United), dated May 20, 1977, as amended August 30, 1978): First Revised Sheet Nos. 1451, 1453, 1455, 1460, 1463 and 1464

Transco states that under the foregoing transportation arrangements, Transco provides transportation services for Florida Gas, Southern and United from a point of receipt on Transco's Central Louisiana Gathering System in the Pecan Island Area, Vermilion Parish, Louisiana to points of connection between the Transco system and these three pipelines, or to points of connection between Transco and other pipelines where delivery is made for such three pipelines' account. Transco further states that the principal purpose of the revised tariff sheets is to change the form of the rate for the transportation services rendered for Florida Gas, Southern and United from a demand charge based on a fixed daily Contract Demand Quantity to a commodity charge applied to the volume of gas actually transported for each of the three pipelines. The change in rate, Transco states, is in consideration for transportation services which Florida Gas and Sea Robin Pipeline Company propose to render for Transco pursuant to applications pending in Docket Nos. CP79–171 and CP79–172, utilizing, on a best efforts basis and without charge, a portion of their capacity in pipeline facilities jointly owned with Transco, extending from Shell Oil Company's production platform in Block 22, Vermilion Area, offshore Louisiana to a point of connection with Transco's Central Louisiana Gathering System in the Pecan Island Area, to assist Transco in delivering into its system gas supplies from Blocks 56 and 57, East Cameron Area which will be connected to Block 22 by pipeline facilities which Transco has been authorized to construct and operate in a certificate issued in Docket No. CP79–131.

Transco states that copies of the instant filing have been served upon Florida Gas, Southern and United.

Any person 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 Sections 1.8 and 1.10 of the Commission's Rules of Practice and Procedure (18 CFR 1.8, 1.10). All such petitions or protests should be filed on or before June 18, 1979. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Kenneth F. Plumb,
Secretary.

[FR Doc. 79–18633 Filed 6–14–79; 8:45 am]
BILLING DATE 6450–01–M

FEDERAL TRADE COMMISSION

Donaldson, Lufkin & Jenrette, Inc.; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commision.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Donaldson, Lufkin & Jenrette, Inc. is granted early termination of the 30-day waiting period provided by law and the premerger notification rules with respect to its proposed acquisition of certain voting securities of SEI Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acquisition during the waiting period.

EFFECTIVE DATE: June 6, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580 (202–523–3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the Federal Register.

By direction of the Commission.

Carol M. Thomas,
Secretary.

[FR Doc. 79–18872 Filed 6–14–79; 8:45 am]
BILLING CODE 6750–01–M

Octane Certification and Posting

AGENCY: Federal Trade Commission.

ACTION: Extension of Time to Comply with Commission Rule.

SUMMARY: The Commission has responded to the petition of Amoco Oil Company requesting an extension of time to comply with the Commission's Octane Certification and Posting Rule. The Commission has granted the request for extension with respect to the posting requirements of the Rule until June 15, 1979.

EFFECTIVE DATE: June 1, 1979.

FOR FURTHER INFORMATION CONTACT: James Mills, Federal Trade Commission, PE–S–7317.

SUPPLEMENTARY INFORMATION: On March 30, 1979, the Commission published the Octane Certification and Posting Rule in the Federal Register (44 FR 19160). The Rule establishes procedures for determining, certifying and posting, by means of a label on the fuel dispenser, the octane rating of automotive gasoline intended for sale to consumers. The Rule took effect on June 1, 1979.

By letter, dated May 4, 1979, the Amoco Oil Company (Amoco) requested that the effective date of the Commission's Octane Certification and Posting Rule be extended from June 1 to June 15, 1979. Amoco has made a good faith effort to comply with the octane label posting provisions of the Rule by the effective date of June 1, 1979. However, due to circumstances beyond Amoco's control, Amoco will not be able to comply with the Rule until June 15, 1979.

Since Amoco has made a good faith effort to obtain and post labels in compliance with the Rule by the prescribed effective date and since the reasons Amoco could not post were beyond Amoco's control, the Commission has decided to grant to

Amoco an extension of the effective date of the duty to post under the Octane Certification and Posting Rule to June 15, 1979.

By direction of the Commission.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18765 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-01-M

Transmittal Rules; Early Termination of Waiting Period of the Premerger Notification Rules

AGENCY: Federal Trade Commission.

ACTION: Granting of request for early termination of the 30-day waiting period of the premerger notification rules.

SUMMARY: Florida Power Corporation is granted early termination of the 30-day period provided by law and the premerger notification rules with respect to its proposed acquisition of certain assets of Amvest Corporation. The grant was made by the Federal Trade Commission and the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice in response to requests for early termination submitted by both parties to the transaction. Neither agency intends to take any action with respect to this acqusition during the waiting period.

EFFECTIVE DATE: June 5, 1979.

FOR FURTHER INFORMATION CONTACT: Malcolm R. Pfunder, Assistant Director for Evaluation, Bureau of Competition, Room 394, Federal Trade Commission, Washington, D.C. 20580, (202-523-3404).

SUPPLEMENTARY INFORMATION: Section 7A of the Clayton Act, 15 U.S.C. section 18a, as added by sections 201 and 202 of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Commission and Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act and § 803.11 of the rules implementing the Act permit the agencies, in individual cases, to terminate this waiting period prior to its expiration and to publish notice of this action in the **Federal Register.**

By direction of the Commisson.

Carol M. Thomas,

Secretary.

[FR Doc. 79-18764 Filed 6-14-79; 8:45 am]

BILLING CODE 6750-01-M

GENERAL SERVICES ADMINISTRATION

[Intervention Notice 92; Docket No. 7305]

Proposed Intervention in Rate Increase Proceeding; Maryland Public Service Commission, Chesapeake & Potomac Telephone Co.

The Acting Administrator of General Services seeks to intervene in a proceeding before the Maryland Public Service Commission involving an application of the Chesapeake and Potomac Telephone Company for an increase in its annual telephone rates. The Acting Administrator of General Services represents the interests of the executive agencies of the United States Government as users of utility services.

Persons desiring to make inquiries of GSA concerning this case should submit them, in writing, to Mr. Spence W. Perry, Assistant General Counsel, Regulatory Law Division, General Services Administration, 18th & F Streets, NW., Washington, DC 20405, telephone (202) 566-0726, on or before July 16, 1979, and refer to this notice number.

Persons making inquiries are put on notice that the making of an inquiry shall not serve to make any persons parties of record in the proceeding.

[Section 201(a)(4), Federal Property and Administrative Services Act, 40 U.S.C. 481(a)(4)]

Dated: June 4, 1979.

Paul E. Goulding,

Acting Administrator of General Services.

[FR Doc. 79-18627 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-38-M

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[Docket No. 79M-0145]

Abbott Laboratories; Premarket Approval of HAVAB

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the HAVAB (Antibody to Hepatitis A Virus ^{125}I (Human)/Hepatitis A Virus (Primate)) sponsored by Abbott Laboratories. After reviewing the Clinical Chemistry and Hematology Device Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK-402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL 60064, submitted an application for premarket approval of the HAVAB (Hepatitis A Virus ^{125}I (Human)/Hepatitis A Virus (Human)) to FDA on November 3, 1978. The application was reviewed by the Clinical Chemistry and Hematology Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director, Bureau of Medical Devices, FDA.

A detailed summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition shall designate the form of review that the petitioner requests (hearing or independent advisory committee) and shall be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition,

FDA will decide whether to grant or deny the petition by notice published in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place of the review, and other details.

Petitioners may at any time on or before July 16, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18305 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79M–0144]

Abbott Laboratories; Premarket Approval of CORAB

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the CORAB (Antibody to Hepatitis B Core Antigen ^{125}I (Human)/Hepatitis B Core Antigen (Human)) sponsored by Abbott Laboratories. After reviewing the Clinical Chemistry and Hematology Device Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Request for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Abbott Laboratories, North Chicago, IL 60064, submitted an application for premarket approval of the CORAB (Antibody to Hepatitis B Core Antigen ^{125}I (Human)/Hepatitis B Core Antigen (Human)) to FDA on November 3, 1978. The application was reviewed by the Clinical Chemistry and Hematology Panel, an FDA advisory committee, which recommended approval of the application. On January 19, 1979, FDA approved the application by a letter to the sponsor from the Director, Bureau of Medical Devices, FDA.

A detailed summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorized any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition shall designate the form of review that the petitioner requests (hearing or independent advisory committee) and shall be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by notice published in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place of the review, and other details.

Petitioners may at any time on or before July 16, 1979, file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18309 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79M–0103]

Barnes-Hind Pharmaceuticals, Inc.; Premarket Approval of Soft-Therm (Preserved Isotonic Saline)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of Soft-Therm (Preserved Isotonic Saline) sponsored by Barnes-Hind Pharmaceuticals, Inc. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recomended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Barnes-Hind Pharmaceuticals, Inc., Sunnyvale, CA 94086, submitted an application for premarket approval of Soft-Therm (Preserved Isotonic Saline) to FDA on September 15, 1977. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 26, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of

the term "device" in section 201 (h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Soft-Therm (Preserved Isotonic Saline) Solution, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition shall be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant to deny the petition by a notice published in the Federal Register. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 16, 1979 file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supportng data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18307 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79M–0101]

Barnes-Hind Pharmaceuticals, Inc.; Premarket Approval of Soft Mate Sterile Cleaning Solution for Soft Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Device Amendments of 1976 of Soft Mate Sterile Cleaning Solutions for soft contact lenses sponsored by Barnes-Hind Pharmaceuticals, Inc. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Barnes-Hind Pharmaceuticals, Inc., Sunnyvale, CA 94086, submitted an application for premarket approval of the Soft Mate sterile cleaning solution for soft contact lanses to FDA on September 6, 1977. The application was reviewed by the Ophthalmology Device Classification Panel, an FDA advisory committee, which recommended approval of the application. On January 26, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the Federal Register of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Soft Mate sterile cleaning solution for soft contact lenses, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other approved lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360(e)(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and the agency's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33 (b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 16, 1979 file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissiner for Regulatory Affairs.

[FR Doc. 79–18308 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 79M–0115]

Burton, Parsons & Co.; Premarket Approval of Preflex[R] and Flex-Care™ Solutions

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) announces approval of the application for premarket approval under the Medical Device Amendments of 1976 of the Preflex[R] and Flex-Care™ solutions as a two-part system sponsored by Burton, Parsons and Co., Washington, DC. After reviewing the Ophthalmology Device Classification Panel's recommendation, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by July 16, 1979.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Keith Lusted, Bureau of Medical Devices (HFK–402), Food and Drug Administration, Department of Health, Education, and Welfare, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

SUPPLEMENTARY INFORMATION: The sponsor, Burton, Parsons and Co., Washington, DC 20021, submitted an application for premarket approval of Preflex[R] and Flex-Care™ solutions to FDA on March 24, 1978. The application was reviewed by the Ophthalmology Device Classification Panel, and FDA advisory committee, which recommended approval of the application. On February 23, 1979, FDA approved the application by a letter to the sponsor from the Director of the Bureau of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (Pub. L. 94–295; 90 Stat. 539–583) (the amendments), soft contact lenses and solutions were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) (the act), soft contact lenses and solutions are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to insure continuation of premarket approval requirements for class III devices formerly considered new drugs.

Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses or solutions comply with the records and reports provisions of 21 CFR Part 310, Subpart D, until these provisions are replaced by similar requirements under the amendments.

A summary of the information on which FDA's approval is based is available upon request from the Hearing Clerk (address above). Requests should be identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document.

The labeling of the Preflex[R] and Flex-Care™ solutions, like that of other approved solutions for use with soft contact lenses, states that the solution is for use with several named brands of soft contact lenses. Such restrictive labeling may be revised to refer to other approved lenses, if the sponsor conducts necessary tests and obtains FDA's approval. FDA is considering alternatives to the current restrictive labeling requirements for soft contact lenses and solutions.

Opportunity for Administrative Review

Section 515(g) of the act (21 U.S.C. 360e(g)) authorizes any interested person to petition for administrative review of the FDA decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of the FDA administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition must be in the form of a petition for reconsideration of FDA action under § 10.33(b) (21 CFR 10.33(b)). A petition must designate the form of review that the petitioner requests (hearing or independent advisory committee) and must be accompanied by supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing any petition, FDA will decide whether to grant or deny the petition by a notice published in the **Federal Register.** If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may at any time on or before July 1, 1979 file with the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–65, 5600 Fishers Lane, Rockville, MD 20857, four copies of each petition and supporting data and information, identified with the name of the device and the Hearing Clerk docket number found in brackets in the heading of this document. Received petitions may be seen in the above office from 9 a.m. to 4 p.m., Monday through Friday.

Dated: June 5, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79-18306 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

[Docket No. 79N-0011]

Chlortetracycline Soluble Tablets for Animal Use; Drug Efficacy Study Implementation; Followup Notice and Opportunity for Hearing; Correction

AGENCY: Food and Drug Administration.

ACTION: Notice; Correction.

SUMMARY: FR Doc. 79-9266 appearing at page 19030 in the **Federal Register** for Friday, March 30, 1979 (44 FR 19030) is corrected in column two under paragraph V.1.a. *Indications for use* for calves and in column three under paragraph V.2.a. *Indications for use* for swine on page 19031 by adding "and *Salmonella* spp." after the word "*coli*".

FOR FURTHER INFORMATION CONTACT: Donald A. Gable, Bureau of Veterinary Medicine (HFV-100), Food and Drug Administration, Department of Health, Education, and Welfare, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4313.

Dated: June 5, 1979.

Lester M. Crawford,

Director, Bureau of Veterinary Medicine.

[FR Doc. 79-18311 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

Advisory Committees; Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770-776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meetings are announced:

Committee name	Date, time, place	Type of meeting and contact person
1. Hematology Devices Section and the Clinical Chemistry Section of the Clinical Chemistry and Hematology Devices Panel.	July 9, 9 a.m., Rm. 1409, 200 C St. SW., Washington, DC.	Open public hearing, 9 a.m. to 10 a.m.; open committee discussion, 10 a.m. to 5 p.m.; Kaiser Aziz (HFK-440), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7550.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views, orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify Kaiser Aziz by June 29, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied upon, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss current efforts by the Food and Drug Administration and the medical device industry to assure that currently marketed in vitro diagnastic radioassays for serum vitamin B_{12} determination are safe and effective.

Committee name	Date, time, place	Type of meeting and contact person
2. Physical Medicine Devices Section of the Surgical and Rehabilitation Devices Panel.	July 10 and 11, Claremont Hotel, Oakland, CA	Open public hearing July 10, 9 a.m. to 10 a.m.; open committee discussion July 10, 10 a.m. to 5 p.m. July 11, 9 a.m. to 5 p.m.; Johnsie W. Bailey (HFK-410), 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7238

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons are encouraged to present data, information, or views orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify Johnsie Bailey by June 26, 1979, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, references to any data to be relied upon, and also an indication of the approximate time required to make their comments.

Open committee discussion. The Committee will discuss new designs and innovations of wheelchairs to reduce the failure rate and identify existing safety problems of wheelchairs. There will be a site visit to the Center for Independent Living to view a wheelchair prototype model, and to discuss the major problems experienced by wheelchair users due to malfunctions and breakdowns of the wheelchair. Also, the Committee will classify breath and voice operated control units, cast accessories, cast cutter blades, ambulation safety belts, foot supports and molds, prosthesis suspension harness, hip socket belts and buckets, and any additional devices.

Committee name	Date, time, place	Type of meeting and contact person
3. Antimicrobial Panel	July 20 and 21, 9 a.m., Conference Rm. K, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD (July 20); Holiday Inn, Bethesda, MD (July 21).	Open public hearing July 20, 9 a.m. to 10 a.m.; open committee discussion July 20, 10 a.m. to 4:30 p.m.; July 21, 9 a.m. to 4:30 p.m.; Lee Geismar (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-6057.

Committee name	Date, time, place	Type of meeting and contact person
4. Miscellaneous Internal Drug Products Panel	July 21 and 22, Holiday Inn, Bethesda, MD	Open public hearing July 21, 9 a.m. to 10 a.m.; open committee discussion July 21, 10 a.m. to 4:30 p.m., July 22, 8:30 a.m. to 3:30 p.m.; Armond Welch (HFD-510), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4960.

General function of the Committee. The Committee reviews and evaluates available data concerning the safety and effectiveness of nonprescription drug products.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those who desire to make such a presentation should notify the contact person before July 17, 1979, and submit a brief statement of the general nature of the data, information, or views they wish to present, the names and addresses of proposed participants, and an indication of the approximate time desired for their presentation.

Open committee discussion. The Committee will review data submitted in response to the over-the-counter (OTC) review's call for data for this panel (see also 21 CFR 330.10(a)(2)). The Panel will be reviewing, voting upon, and modifying the content of summary minutes and categorization of ingredients and claims.

Committee name	Date, time, place	Type of meeting and contact person
5. Ophthalmic Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	July 23, 9 a.m., Conference Rm. G, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing 9 a.m. to 10 a.m., open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4310.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee.

Open committee discussion. The Committee will review the labeling claims for reduction of intraocular pressure with drugs used in glaucoma: Diopine (dipivalyl epinephrine) NDA 18-239; and Vasacon-A (naphazoline HCl, antazoline) NDA 6-340.

Committee name	Date, time, place	Type of meeting and contact person
6. Dermatologic Drugs Subcommittee of the Anti-Infective and Topical Drugs Advisory Committee.	July 24, 9 a.m., Conference Rm. B, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.	Open public hearing 9 a.m. to 10 a.m.; open committee discussion 10 a.m. to 4:30 p.m.; Mary K. Bruch (HFD-140), 5600 Fishers Lane, Rockville, MD 20857, 301-443-4310.

General function of the Committee. The Committee reviews and evaluates available data on the safety and effectiveness of marketed and investigational prescription drugs for use in infectious diseases, dermatological disorders, and ocular disease.

Agenda—Open public hearing. Any interested persons may present data, information, or views, orally or in

writing, on issues pending before the Committee.

Open committee discussion. The Committee will discuss topical hydrocortisone—discussion of OTC panel recommendation that hydrocortisone be marketed over-the-counter; consideration of adrenal suppression as part of guidelines for testing topical corticosteroids; Dapsone—development of labeling for use in dermatitis herpetiformis.

Any interested person who wishes to be assured of the right to make a oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairman's discretion.

Persons interested in specific agenda items to be discussed in open session may ascertain from the contact person the approximate time of discussion.

A list of committee members and summary minutes of meetings may be obtained from the Public Records and Documents Center (HFC–18), 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., and Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

The Commissioner approves that scheduling of meetings at locations outside of the Washington, DC, area on the basis of the criteria of 21 CFR 14.22 of FDA's regulations relating to public advisory committees.

Dated: June 11, 1979.

William F. Randolph

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18622 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

[Docket No. 78N–0105]

GRAS Safety Review of Starter Distillate; Public Hearing

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that public hearings will be held on starter distillate so that data, information, and views can be presented orally to determine if it is generally recognized as safe (GRAS) or subject to a prior sanction.

DATE: Hearings will be held on July 16, 1979 for starter distillate.

ADDRESS: The hearings will be held in the Conference Room, Lee Building, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014.

FOR FURTHER INFORMATION CONTACT:

Corbin I. Miles, Bureau of Foods (HFF–335), Food and Drug Administration, Department of Health, Education, and Welfare, 200 C St. SW., Washington, D.C. 20204, 202–472–4750, or George W. Irving, Jr., Life Sciences Research Office, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014, 302–530–7033.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 12, 1979 (44 FR 2687), the Commissioner of Food and Drugs issues a notice advising the public that an opportunity would be provided for the oral presentation of data, information, and views at public hearings to be conducted by the Select Committee on GRAS Substances of the Life Sciences Research Office, Federation of American Societies for Experimental Biology (hereafter referred to as the Select Committee), concerning the safety of the following five categories of food ingredients and the Select Committee's tentative determination of whether or not they are GRAS or subject to a prior sanction: starter distillate, hydrochloric acid, tartrates, riboflavin, and propionates.

No requests were received for hearings on propionates, tartrates, and riboflavin. Accordingly, no hearings will be held on these food ingredients.

The Select Committee received a request for a hearing on hydrochloric acid from Morton Chemical Co., Woodstock Research Center, 1275 Lake Ave., Woodstock, IL 60098, but the request was subsequently withdrawn. No other requests for a hearing on hydrochloric acid were received, and accordingly no hearing will be held on this food ingredient.

The Select Committee received a request from Chr. Hansen's Laboratory, Inc., 9015 West Maple St., Milwaukee, WI 53214, asking for an opportunity to appear at a public hearing on starter distillate to make an oral presentation. No other requests were received for a hearing on starter distillate.

In accordance with the procedures set forth in the January 12, 1979 **Federal Register** notice, the agency announces that a hearing on starter distillate will be held at 10:30 a.m., on July 16, 1979, in the Conference Room of Lee Building, Federation of American Societies for Experimental Biology, 9650 Rockville Pike, Bethesda, MD 20014. Those persons who have requested an opportunity to make oral presentations will be expected to complete their presentations within the period indicated and in accordance with the following schedule:

July 16, 1979, 10:30 a.m. to 11:15 a.m., Neil Dinesen, Chr. Hansen's Laboratory, Inc., Milwaukee, WI.—30 minutes.

Dated: June 11, 1979.

William F. Randolph,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 79–18623 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–03–M

Institute of Museum Services

National Museum Services Board; Meeting

The National Museum Services Board (NMSB) will hold an open meeting June 22–23 in Washington, D.C. to discuss future policy directions of the Institute of Museum Services (IMS), including the Institute's museum grants program, reauthorization, budget request, and regulations pertaining to the FY 1980 grants program. In addition, the Board will review grant applications for Fiscal Year 1979.

The Board will meet from 9:00 a.m. to 5:00 p.m. June 22 in the Subcommittee on Education and Labor Hearing Room #2261 of the Rayburn House Office Building, Independence Avenue and South Capitol Street; and from 9:00 a.m. to 12:15 p.m. June 23 in the Director's Conference Room of the National Air and Space Museum, 7th Street & Independence Avenue, S.W.

For further information, contact Sam Eskenazi or Loretta Ingraham, 202/472–3325.

Dated: June 12, 1979.

Lee Kimche,

Director.

[FR Doc. 79–18729 Filed 6–14–79; 8:45 am]

BILLING CODE 4110–24–M

Office of the Assistant Secretary for Health

National Council on Health Care Technology; Meeting

Correction

In FR Doc. 79–18077, published in the issue of June 11, 1979, on page 33497 make the following correction. On page 33497, the last line of the first full

paragraph, the telephone number should have read: "(202) 472–4248".

BILLING CODE 1505-01-M

Public Health Service

Occupational Safety and Health Field Research Project

AGENCY: National Institute for Occupational Safety and Health (NIOSH). Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Morbidity and Industrial Hygiene Study of Cement Workers". The study is designed to determine the risks of developing chronic lung disease in the cement industry in the United States. This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Alan L. Engelberg, M.D., Division of Respiratory Disease Studies, NIOSH, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, Telephone: (304) 599–7223.

SUPPLEMENTARY INFORMATION: On July 11, 1978, NIOSH published in the **Federal Register** (43 FR 29834) a list of proposed field research projects. That notice stated that more specific information would be provided to the public 6 weeks before starting field work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about July 15, 1979:

Title: Morbidity and Industrial Hygiene Study of Cement Workers.

Project Officer: Alan L. Engelberg, M.D., Division of Respiratory Disease Studies, NIOSH.

Purpose: The purpose of this study is to determine the prevalence of lung disease in workers in the cement industry.

Background: The potential for lung disease among cement workers has been investigated for many years both in this country and abroad. The earliest studies searched primarily for fibrotic disease. Recent foreign studies searched primariy for fibrotic disease. Recent foreign studies suggest the possibility of an obstructive component to lung disease in these workers. This study will investigate the extent of both restrictive and obstructive lung disease and the relationship to occupational exposure to cement dust.

Study Description: The proposed study group will consist of approximately 2,500 workers from the cement industry.

A questionnaire covering occuaptional history, respiratory history and symptoms, and smoking history will be completed for each of the 2,500 workers.

Each of the 2,500 workers will be given a limited medical examination including a chest X-ray and spirometry test. Personal dust exposure data will be collected on a sub-group of these workers on days that will not coincide with the days chosen for their medical examinations. Participation in this study by employees is voluntary. The data from the study group will be compared with data from a comparison group of 3,000 workers from non-dusty industries. This comparison group will be selected as part of an ongoing NIOSH research project.

The NIOSH field research project described above will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: June 8, 1979.

Anthony Robbins,

Director, National Institute for Occupational Safety and Health.

[FR Doc. 79-18624 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-87-M

Occupational Safety and Health Field Research Project

AGENCY: National Institute for Occupational Safety and Health (NIOSH). Center for Disease Control, PHS, HEW.

ACTION: Notice of Research Project Initiation.

SUMMARY: NIOSH announces that it is ready to begin data collection on a field research project entitled "Reproductive History Study of Women Pharmaceutical Research Workers". This project is part of the NIOSH industrywide research effort conducted under the Occupational Safety and Health Act of 1970.

This notice does not constitute a request for proposal.

DATES: Field work is scheduled to begin on or about July 15, 1979.

FOR FURTHER INFORMATION CONTACT: Cynthia Robinson, Division of Surveillance, Hazard Evaluations and Field Studies, NIOSH, Robert A. Taft Labaoratories, 4676 Columbia Parkway, Cincinnati, Ohio 45226, Telephone: (513) 684–2761.

SUPPLEMENTARY INFORMATION: On September 20, 1978, NIOSH published in the **Federal Register** (43 FR 42306) a list of proposed field research projects. That notice stated that more specific information would be provided to the public 6 weeks before starting work on any of the proposed projects. Field investigation and data collection on the following study will begin on or about July 15, 1979.

Title: Reproductive History Study of Women Pharmaceutical Research Workers.

Project Officer: Cynthia Robinson, Divison of Surveillance, Hazard Evaluations and Field Studies, NIOSH.

Purpose: To determine if women working in a pharmaceutical research laboratory are experiencing adverse reproductive effects.

Background: In 1976 NIOSH received a Health Hazard Evaluation request from women employed at a pharmaceutical research laboratory. The request alleged employees who worked in the laboratory area were experiencing adverse reproductive effects. In response, NIOSH conducted a walk-through survey at the factility. The survey revealed that the potential exposures to the women employees included many organic chemicals used in the production and testing of various drugs. Some of the chemicals are known or suspected carcinogens, embryotoxins, teratogens, and mutagens. The present study will examine what effects, if any, the potential exposures in the laboratory have had upon the reproductive outcomes of women.

Study Description: The proposed study population has been defined as 600 women who worked at the research laboratory facility for at least 6 months between January 1, 1968 and June 8, 1977 and who were between the ages of 18 and 45. The exposed group will consist of about 200 women who worked in the laboratory area. The comparison group will consist of 400 randomly selected women who worked in the clerical and administrative areas of the facility. The women will be interviewed using a questionnaire covering demographic data, medical, reproductive, and

occupational histories. Participation by employees in this study is voluntary.

The NIOSH field research project described above will be conducted under the authority of section 20 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 669) and in accordance with the provisions of Part 85a of Title 42, Code of Federal Regulations. The protocol for this type of project has been reviewed by the Office of Management and Budget and determined to be in compliance with the Federal Reports Act.

Dated: June 11, 1979.

John R. Froines,

Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 79-18625 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-87-M

INTERAGENCY REGULATORY LIAISON GROUP

Supplementary Agreement

I. Background

On September 26, 1977, four regulatory agencies charged with protecting the public and the environment from the adverse effects of toxic and hazardous substances—the Consumer Product Safety Commission (CPSC), the Environmental Protection Agency (EPA), the Food and Drug Administration (FDA) of the Department of Health, Education and Welfare, and the Occupational Safety and Health Administration (OSHA) of the Department of Labor—entered into an interagency agreement to increase their cooperative efforts as far as practicable to make the most efficient use of resources, achieve consistent regulatory policy, and improve the protection of the public health and environment. The agreement was published in the **Federal Register** of October 11, 1977 (42 FR 54856). Pursuant to the agreement, the four agencies formed the Interagency Regulatory Liaison Group (IRLG) to carry out their cooperative efforts.

The agencies now believe that the purposes of the original agreement will be better served by adding as a party to that agreement and as a full member of the IRLG a fifth agency that is charged with protecting the public and the environment from the adverse effects of toxic and hazardous substances: the Food Safety and Quality Service (FSQS) of the Department of Agriculture. FSQS already has participated in several IRLG activities.

II. Supplementary Agreement

The five agencies—CPSC, EPA, FDA, OSHA, and FSQS—hereby agree that FSQS is a party to the original interagency agreement and a full member of the IRLG.

The five agencies further agree that (a) whenever the original agreement (42 FR 54856) refers to "the four agencies" it is to be understood to be referring to all five agencies; (b) supplementary agreements of the kind referred to in Section IV.B. of the original agreement (42 FR at 54857) may be entered into by authorized representatives of any two, three or four of the five agencies; and (c) supplementary agreements of the kind referred to in Section IV.C. of the original agreement (42 FR 54857) may be entered into by authorized subordinate officials of the five agencies or of any two, three, or four of the agencies.

III. Agreement Authority

This supplementary agreement is entered into under the authority of the Economy Act of 1932, various provisions for interagency cooperation appearing in the legislative authorities of the five agencies, and Section IV of the original interagency agreement (42 FR at 54857).

IV. Effective Date

This agreement will take effect when it has been accepted by the five agencies.

For the Consumer Product Safety Commission:

Susan B. King,

Chairman.

For the Food and Drug Administration:

Donald Kennedy,

Commissioner.

For the Food Safety and Quality Service:

Carol Tucker Foreman

Assistant Secretary of Agriculture.

For the Environmental Protection Agency:

Douglas M. Costle,

Administrator.

For the Occupational Safety and Health Administration:

Eula Bingham,

Assistant Secretary of Labor.

May 24, 1979.

[FR Doc. 79-18310 Filed 6-14-79; 8:45 am]

BILLING CODE 4110-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Serial No. I-4445]

Idaho; Notice of Termination of Proposed Withdrawal and Reservation of Lands

June 7, 1979.

Notice of an application, serial number I-4445, for withdrawal and reservation of lands was published as Federal Register Document No. 71-11972 on Page 15763 of the issue for August 18, 1971. The applicant agency has cancelled its application insofar as it involved the lands described below. Therefore, pursuant to the regulations contained in 43 CFR, Subpart 2091, such lands will be at 10:00 a.m. on July 16, 1979, relieved of the segregative effect of the above mentioned application.

The lands involved in this notice of termination are:

Boise Meridian

T. 2 N., R. 4 W.,
Sec. 22, NW¼NW¼, S½NE¼NW¼.

The area described aggregates 60 acres in Owyhee County.

William E. Ireland,

Acting Chief, Branch of L&M Operations.

[FR Doc. 79-18691 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-84-M

Worland District Grazing Advisory Board Meeting

June 7, 1979.

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92-463), that a meeting of the Worland District Grazing Advisory Board will be held at 1:00 p.m., August 1, 1979, in the Hospitality Room of the Stockgrowers State Bank, 700 Big Horn Avenue, in Worland, Wyoming.

The agenda for this meeting includes (1) review of fiscal year 1979 range improvement projects, (2) range improvement projects proposed for fiscal year 1980, and (3) communication on maintenance and the Allotment Management Plan (AMP).

The meeting will be open to the public. Interested persons may make oral statements to the board, or file written statements for the board's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 1700 Robertson, Worland, Wyoming 82401, by 4:30 p.m., July 27, 1979.

Summary minutes of this meeting will be on file in the district office and

available for public inspection (during regular business hours) within 30 days following the meeting.

John A. Kwiatkowski,

District Manager.

[FR Doc. 79-18692 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-84-M

Fish and Wildlife Service

California Department of Fish and Game; Notice of Correction

Notice is hereby given that an error occurred in a notice published in the **Federal Register**, May 14, 1979, Vol. 44, Number 94, page 28115, concerning an application for an amendment to PRT 2-319 to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18) and in a Notice of Correction published on May 29, 1979, Vol. 44, Number 104, page 30780. The applicant is the California Department of Fish and Game.

Item number three initally stated that the permit was for 100 sea otters and the first Notice of Correction stated that it was for 140 sea otters. This figure should read 240. This is the number of sea otters originally authorized to be taken in the permit. The amendment requested will not change the number of animals to be taken by the permittee, only some of the research activities to be carried out.

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this notice to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-319A. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, on or before July 16, 1979. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Director.

Dated: June 4, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18727 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Endangered Species Permit; Receipt of Application

The applicants listed below wish to be authorized to conduct the specified activity with the indicated Endangered Species:

PRT 2-4225

Applicant: Minnesota Zoological Garden, 12101 Johnny Cake Ridge Road, Apple Valley, Minnesota 55124.

The applicant requests a permit to import one (1) male captive born Bactrian camel (*Camelus bactrianus*) from the Calgary Zoo, Alberta, Canada for zoological exhibition and enhancement of propagation.

PRT 2-4246

Applicant: Dewey S. Bouldin, Route 2, Box 329, Ridgeway, Virginia 24148.

The applicant requests a permit to purchase in interstate commerce two (2) Scarlet-chested parakeets (*Neophema splendida*) from Herchel Frey, Pittsburgh, Pennsylvania for enhancement of propagation.

PRT 2-4266

Applicant: Thomas S. Carter, P.O. Box 875, Mertzon, Texas 76941.

The applicant requests a permit to purchase in interstate commerce four captive born masked bobwhite quail (*Colinus virginianus ridgwayi*) for enhancement of propagation.

PRT 2-4277

Applicant: Arlan R. Vaughn, 375 Midnight, Pueblo, Colorado 81005.

The applicant requests a permit to import two male Edward's pheasants (*Lophura edwardsi*) from British Columbia, Canada for enhancement of propagation.

PRT 2-4280

Applicant: Charles Sivelle, 41 Westcliff Drive, Dix Hills, New York 11746.

The applicant requests a permit to export in foreign commerce two male and two female white-eared pheasants (*Crossoptilon crossoptilon*) to Dr. Jesus Estudillo Lopez, Mexico City, Mexico for enhancement of propagation.

PRT 2-4267

Applicant: Zoological Society of Philadelphia, 34th Street and Girard Avenue, Philadelphia, Pennsylvania 19104.

The applicant requests a permit to import in the course of a commercial activity two (2) Indian rhinoceros from the Basel Zoological Garden, Switzerland for zoological exhibition and enhancement of propagation.

PRT 2-4272

Applicant: Chicago Zoological Park, Brookfield, Illinois 60513.

The applicant requests a permit to import on breeding loan one female Asian tapir (*Tapirus indicus*) from the Metropolitan Toronto Zoo, Ontario, Canada for zoological exhibition and enhancement of propagation.

Humane care and treatment during transport, if applicable, has been indicated by the applicant.

Documents and other information submitted with these applications are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service, WPO, Washington, D.C. 20240.

Interested persons may comment on these applications within 30 days of the date of this publication by submitting written data, views, or arguments to the Director at the above address.

Dated: June 11, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18725 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Receipt of Application for Permit

Notice is hereby given that an Applicant has applied in due form for a permit to take sea otters as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 18).

1. Applicant: a. Name: Donald B. Siniff and John R. Tester.

b. Address: Department of Ecology and Behavioral Biology, University of Minnesota, Minneapolis, MN 55455.

2. Type of permit: Marine Mammal and Threatened Species.

3. Name and number of animals: Sea otter (Enhydra lutris nereis), 20; E.l. lutris, 300.

4. Type of Activity: Scientific research.

5. Location of activity: California and Alaska.

6. Period of activity: Three years.

The purpose of this application *is to gain additional knowledge concerning the population dynamics of the sea otter. Some experimentation with oiling and cleaning compounds, behavior after cleaning, and the effects of immobilization drugs will be carried out with sea otters in Alaska.*

Concurrent with the publication of this notice in the **Federal Register** the Federal Wildlife Permit Office is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

The application has been assigned file number PRT 2-4114. Written data or views, or requests for copies of the complete application or for a public hearing on this application should be submitted to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240, within 30 days of the

publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Director.

All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the United States Fish and Wildlife Service.

Documents submitted in connection with the above application are available for review during normal business hours in Room 534, 1717 H Street NW., Washington, D.C.

Dated: June 11, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office.

[FR Doc. 79-18726 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Threatened Species Permit; Receipt of Application

Applicant: Marc A. McKay, Rt. 8, Box 419-A, Jackson, Mississippi 39213.

The applicant wishes to apply for a Captive-Self Sustaining Population permit authorizing the purchase and sale in interstate commerce, for the purpose of propagation, those species of pheasants listed in 50 CFR 17.11 as T(C/P). Humane shipment and care in transit is assured.

Documents and other information submitted with this application are available to the public during normal business hours in Room 601, 1000 N. Glebe Road, Arlington, Virginia, or by writing to the Director, U.S. Fish and Wildlife Service (WPO), Washington, D.C. 20240.

This application has been assigned file number PRT 2-4263. Interested persons may comment on this application by submitting written data, views, or arguments to the Director at the above address within 30 days of the date of this publication. Please refer to the file number when submitting comments.

Dated: June 4, 1979.

Donald G. Donahoo,

Chief, Permit Branch, Federal Wildlife Permit Office, U.S. Fish and Wildlife Service.

[FR Doc. 79-18728 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-55-M

Geological Survey

Draft Environmental Assessment—Oil and Gas; Public Hearing

The Conservation Division of the U.S. Geological Survey will hold a hearing to receive public comments on its Draft Environmental Assessment of the Cache Creek exploratory oil and gas test well proposed by National Cooperative Refinery Association. The proposed well is located 7 miles southeast of Jackson, Wyoming, in the Teton National Forest on Federal Lease No. W-20066.

The public hearing will be held July 31 and August 1, 1979, in the Grand Room of the Ramada Inn in Jackson, Wyoming. The hearing sessions will commence at 7:00 p.m. on Tuesday, July 31, and at 9:00 a.m. and 1:00 p.m. on Wednesday, August 1. The sessions will continue until all present have had a chance to speak or until 10:00 p.m. for the evening session on July 31, 12:00 noon for the morning session, and 5:00 p.m. for the afternoon session on August 1. Interested individuals, representatives of organizations, and public officials wishing to appear at the hearing should write to:

Conservation Division, Central Region, U.S. Geological Survey, MS609, Attention: Floyd Johnson, Box 25046, Denver Federal Center, Denver, Colorado 80225

no later than July 20, 1979, and designate the session during which they wish to give their comments. Written comments from those unable to attend and from those wishing to supplement their oral presentations at the hearings will be considered if received at the above address on or before August 13, 1979.

All written statements received pursuant to this notice will also be included in the hearing record. Oral statements at the hearing will be limited to a period of 10 minutes. Individuals will be allotted time for the specific session requested in the order their requests are received. Once a session is filled, individuals will be assigned a time in the next available session. To the extent that time is available after presentation of oral statements by those who have given advance notice, the hearings officer will give others present an opportuniy to be heard in the order that their names appear on the session register.

Notice is also given that copies of the Cache Creek Draft Environmental Assessment will be available for public inspection during regular business hours at the following locations:

U.S Forest Service, Hoback District, 140 E. Broadway, Jackson, Wyoming.

U.S. Forest Service, Bridger-Teton National Forest, 340 N. Cache Street, Jackson, Wyoming.

U.S. Geological Survey, District Oil and Gas Office, 126 Elk Street, Rock Springs, Wyoming.

U.S. Geological Survey, Area Oil and Gas Office, 100 E. B Street, Casper, Wyoming.

U.S. Geological Survey, Conservation Division, Central Region, Building 85, Denver Federal Center, Denver, Colorado.

Jackson Public Library, Jackson, Wyoming.

Dated: June 12, 1979.

Hillary A. Oden,

Acting Chief, Conservation Division.

[FR Doc. 79-18646 Filed 6-14-79; 8:45 am]

BILLING CODE 4310-31-M

Outer Continental Shelf (OCS) Order No. 5 Production Safety Systems

By Federal Register Notice of May 18, 1979, revised OCS Orders were published for all OCS Areas to be effective July 1, 1979. This Order requires that surface- and subsurface-safety valves installed on new installations or replaced on existing installations after July 1, 1979, conform to the American National Standards Institute/American Society of Mechanical Engineers Standards "Quality Assurance and Certification of Safety and Pollution Prevention Equipment Used in Offshore Oil and Gas Operations" ANSI/ASME SPPE-1-1977.

Due to the comparatively low number of valve manufacturers certified to date to the ANSI/ASME SPPE standards and the number of applications currently pending for certification, the U.S. Geological Survey has determined that, in order to proceed with the implementation of the quality assurance requirements of OCS Order No. 5 in an orderly and responsible manner, a modification of the July 1, 1979, date referenced above is necessary. Therefore, the requirement as modified is as follows:

"All subsurface- and surface-safety valves installed on new installations or replaced on existing OCS installations after February 1, 1980, shall conform to the requirements of ANSI/ASME SPPE-1-1977. After July 1, 1979, all such valves ordered from manufacturers for installation after February 1, 1980, shall conform to the requirements of ANSI/ASME SPPE-1-1977.

For the purposes of this requirement, the term replacement is defined as occurring when that portion of the valve assembly containing the serial number is removed from inventory and a new certified valve is placed in the inventory.

For further information, contact Mr. Richard B. Krahl, Chief, Branch of Marine Oil and Gas Operations, Conservation Division, U.S. Geological Survey, National Center, Mail Stop 620, Reston, Virginia 22092, Telephone: (703) 860–7531.

Dated: June 13, 1979.

J. R. Balsley,

Acting Director.

[FR Doc. 79–18911 Filed 6–14–79; 8:45 am]

BILLING CODE 4310–31–M

DEPARTMENT OF JUSTICE

Law Enforcement Assistance Administration

Office of Juvenile Justice and Delinquency Prevention; Request for Comments on the LEAA Draft Guideline: Youth Advocacy Initiative

Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention, Law Enforcement Assistance Administration, pursuant to the Juvenile Justice and Delinquency Prevention Act of 1974, as amended, proposes to announce competitive action grants for the Youth Advocacy Initiative.

The Office of Juvenile Justice and Delinquency Prevention invites any interested comments and will consider such comments before the final publication of this guideline. This guideline is being announced for 60 days. A 60–90 day notification period will allow applicants time to develop applications and permit award of funds in the early Spring of 1980. All comments must be received on or before August 14, 1979.

For any additional information, please contact Ms. Bettina Wallach at (202) 724–7765, Office of Juvenile Justice and Delinquency Prevention, 633 Indiana Avenue, N.W., Washington, D.C. 20531.

Juvenile Justice and Delinquency Prevention Programs

Youth Advocacy

a. *Program Objectives.* Pursuant to the 1977 Amendments to the Juvenile Justice and Delinquency Prevention Act of 1974, the Office of Juvenile Justice and Delinquency Prevention (OJJDP) is sponsoring a major program to develop, test and support methods of advocacy which stimulate and acilitate needed changes and enhanced accountability in the administration of juvenile justice, and the delivery of education and social services. The specific objectives are:

(1) To realize specific system reforms at the state and local levels leading to greater availability and better quality of services to youth by juvenile justice, education and social service agencies and institutions; and,

(2) To increase knowledge about elements essential to development and implementation of effective youth advocacy projects in order to facilitate replication of such projects in other states and localities.

b. *Program Description.* (1) *Background.* Youth advocacy is a process whereby the administration of juvenile justice, social service and education can be improved through the active support and representation of youth interests and needs by advocacy groups. Advocacy approaches which are the major thrust of this program include, but are not limited to: (1) Effective coalition building among public and private groups and organizations to impact the needs of youth; (2) meaningful youth participation in policy decisions affecting youth for the purpose of better defining youth needs and impacting on the policies, practices and utilization of funds in youth serving institutions.

(2) *Problem Addressed.* In an era of diminishing resources the effective use of existing funds takes on added significance. Moreover, advocacy on behalf of a disenfranchised population becomes of critical significance if they are to realize their fair share of available resources. In its passage of the JJDP Act of 1974, and in the 1977 Amendments, Congress recognized that the major youth serving institutions—the juvenile justice, educational and social service systems—have proven inadequate in meeting the needs of youth. This program is aimed at challenging policies and practices of youth serving institutions that systematically exclude youth from meaningful participation in programs that supposedly exist for them, and as a consequence provide services which are not responsive to the real needs of youth. These institutions have contributed to the inability of youth to survive and compete in society, and to their alienation, isolation and delinquency. The major areas of concern include: (a) Lack of accessibility to quality services, (b) lack of due process safeguards in agency proceedings, (c) inequitable and improper classification and disposition of youth cases, (d) lack of accountability of agency officials, (e) adverse elements in statutes, agency regulations, and procedures affecting youth, and (f) lack of resources, and inequitable deployment of resources for youth programs.

(3) *Program Target.* The targets for this program are statutes, regulations, policies and practices of the juvenile justice system, education system and the social services system, which are insensitive or detrimental to the needs and best interests of youth.

(4) *Result Sought.* Results sought in this initiative are:

(a) *Juvenile Justice System Changes.* (1) The adoption of practices, procedures, policies, and statutes which provide accurate classifications and equitable disposition of cases handled by the juvenile justice system.

(2) Establishment of policies, practices, and statutes which safeguard the rights of youth, assure due process, strengthen family ties, and reduce inappropriate intervention into the lives of youth and their families.

(3) Adoption of statutes, policies, practices and procedures which provide for and safeguard the rights of institutionalized youth to quality rehabilitative services, education, vocational training and humane treatment.

(4) The allocation of new, and reallocation of existing Federal, state and local resources to increase and improve required services which reduce the inappropriate placement of juveniles outside of their homes and communities.

(b) *Social Service System Changes.* (1) Increase public support for increased resources for youth services, protection of the rights of youth, and quality services.

(2) Modification and adoption of procedures and eligibility criteria which increase access to social services for youth, and modification of those policies and practices of youth serving institutions which are adverse to the positive development of youth.

(3) Redefinition of agency priorities, and allocation of new and reallocation of existing public and private resources, to increase and improve appropriate services to which youth are entitled.

(4) Establishment of mechanisms for public accountability of youth serving agencies.

(c) *School System Changes.* (1) Modification of policies and practices which limit full educational opportunities for youth, e.g., tracking, ability-grouping.

(2) Adoption of school policies, procedures and practices which limit referrals of youth to the juvenile justice system.

(3) Adoption of school policies, procedures and practices which reduce pushouts and dropouts and limit the number of suspensions and expulsions.

(4) Establishment of policies, procedures and practices which provide for the protection of rights and assure due process in disciplinary actions.

(5) Establishment of innovative educational programs and approaches for youth who require special assistance.

(5) *Working Assumptions.* (a) Juvenile justice in the United States can be improved through advocacy in behalf of youth.

(b) Many problems assoicated with preventing juvenile delinquency and reducing youth crime involve youth serving institutions and organizations not located within the formal juvenile justice system. Therefore, advocacy activities must be aimed at the education system and the social services system as well as justice system agencies.

(c) Independent organizations employing methods of advocacy can stimulate and facilitate needed changes in juvenile justice agencies, social service agencies and schools. Such advocacy will complement and strengthen reform initiatives arising from within these agencies.

(d) Youth serving institutions' responses to the needs of youth will improve with meaningful youth involvement in the planning, operation and evaluation of policies and programs. Youth in the juvenile justice system, those alienated from school systems and those placed away from their families should play a vital role in youth advocacy programs.

c. *Program Strategy.* (1) *Program Design.* Applications are invited for action projects which influence one of the three systems described in b(4), i.e., juvenile justice, social service, or education. It is expected that by focusing on one system, other systems will also be impacted. Projects are to reflect the following characteristics:

(a) Selective, limited involvement in case advocacy for the purpose of contesting or establishing principles, policies and practices affecting classes of youth, as one element of the advocacy strategy is acceptable. Projects which focus *solely upon providing advocacy, representation or service to individual youth on a case by case basis will be considered unresponsive.*

(b) Goals and objectives must have primary impact upon: (1) Local juvenile justice, social service or education agencies or; (2) state legislatures, state elected and appointed officials and state juvenile justice, social service, or educational agencies. Applications that propose to focus on more than one state will not be considered; however, funds for coordination with other advocacy projects may be included in the budgets of both state and local projects.

(c) Projects must incorporate four key elements: (1) Organizational independence from the system(s) in which change will be sought; (2) extensive participation by influential and interested persons from various community sectors (government, business, political, industry, labor, churches, indigenous neighborhood groups, etc.); (3) extensive participation by youth of the population to be affected by the project in all aspects of the project, (e.g. staff, consultants, advisors, investigators, board members, negotiators, etc.); youth employed by projects must reside in neighborhoods having high levels of crime and socio-economic disadvantage; and (4) the employment of skillful staff, knowledgeable and experienced both with respect to the system in which change is sought and with respect to problems associated with system change and advocacy.

(d) Action plans must be specific and manageable with respect to anticipated change and must include but not be limited to the following:

(1) Community education activities which foster public understanding of the needs of youth, clarify the associated issues, and build consensus about what to do to meet these needs through the use of variety of communications and media techniques;

(2) Monitoring of public and private youth serving institutions to: protect the rights of youth, assure that existing laws and policies mandating appropriate services to which youth are entitled are enforced and, identify policies and practices which are harmful to youth;

(3) Review and analysis of existing and proposed statutes, and expert testimony to facilitate responsiveness of decision makers to the needs of youth for positive development; and,

(4) Approaches which utilize administrative negotiation to facilitate systems change.

(2) *Dollar Range, Duration of Grants.* The grant period for this program is three years with awards made in increments of 24 months and 12 months. Third year continuation awards are contingent upon satisfactory grantee performance in achieving stated objectives in the previous program year(s), availability of funds and compliance with the terms and conditions of the grants. Grants will range up to $200,000 for local projects and $300,000 for statewide projects for each project year with the amount of funding for each grant based upon: (a) the types of statutes, policies and practices to be addressed, (b) the potential for impact on large numbers of youth; and, (c) the cost-effectiveness of the project design. Funds for this program are allocated from the Juvenile Justice and Delinquency Prevention Act of 1974, as amended in 1977, and require no match. Grants may be terminated at any point for failure to meet program process objectives or grant requirements.

(3) *Applicant Eligibility.* Applications are invited from public and private non-profit agencies, and organizations which are in no way affiliated with the organizations, and institutions, they intend to impact.

(4) *Applicant Capability.* The applicant must: (a) demonstrate knowledge of and experience with juvenile justice and delinquency prevention issues, the system(s) in which changes are to be sought, and the problems, strategies and advocacy approaches necessary to meaningful change in youth serving institutions;

(b) have the demonstrated capability or experience to develop management and fiscal systems necessary for the administration of Federal funds; and,

(c) demonstrate the ability to generate public confidence and support for the proposed objectives.

d. *Application Requirements.* These requirements are to be used in lieu of Part IV—Program Narrative Instructions of the Federal Application Form 424. In order to be considered for funding, applications must include the following information. Applicants are requested to use the order outlined in this guideline:

(1) *Problem Definition and Data Needs.* (a) Provide statistical and qualitative documentation of the specific issues and problems to be addressed regarding the harmful effects on youth of the statutes, policies and practices that are to be targetted by the project. Describe the youth affected in terms of: Number, age range, sex, race, ethnic and economic status. Discuss anticipated difficulties and problem areas, together with recommended approaches for solutions.

(b) Provide a description of the area in which the project will operate in terms of: geographic boundaries, crime and delinquency rates, race/ethnic population and adult and youth unemployment rates.

(c) Provide a list of existing youth advocacy projects within the target jurisdiction, include a brief description of each, and indicate how coordination with these projects will be achieved in

order to complement existing programs and avoid any duplication of effort.

(d) Provide a description of the implementing organization as required in Paragraph c.(4), a copy of the governing by-laws, a list of board members, organizational chart, a description of experience with similar programs completed or now underway.

(e) Provide documentation with sufficient detail to make clear the applicant's public sanction for leadership, coordination, and standard setting.

(f) Describe the formal and informal decision-making structures which influence the systems targetted.

(g) Describe the social, economic and political relationships which will influence the targetted outcomes.

(h) Provide letters of written agreements which indicate the types of participation and resources available from the community sectors of political business, industry, labor, church, and indigenous neighborhood groups and organizations.

(i) Provide resumes of key staff and profiles of board members.

(2) *Project Objectives.* Project goal statements should be related to intended impact, and objective statements should be related to activities necessary to produce desired impact. Both statements should be written in measurable terms and specifically related to: (1) Specific statutes, policies, and practices which adversely effect large numbers of youth: (2) the target agencies, organizations, and local or state systems which will be affected, and (3) the specific problems addressed in *Problem Definition and Data Needs.*

(3) *Program Methodology.* The applicant must provide a definitive methodology with explanation of approaches and a detailed description of specific activities for implementing the project and achieving its objectives.

(a) Describe the advocacy strategies to be employed and the reason for believing that they will influence processes which shape the policies, programs, and practices in question as required in Paragraph c.(1)(d).

(b) Describe how the four elements required in Paragraph c.(1)(c) are incorporated in the proposed project design.

(c) Clearly describe the administrative and fiscal organizational structures, coordination mechanisms to be employed in implementation of the project, (including the role of other groups, agencies and systems in any phase of the project), and the information system which will be used to document change.

(4) *Workplan.* Prepare a detailed work schedule which outlines specific program objectives in relation to milestones, activities and timeframes for accomplishing the objectives. The workplan and budget should be prepared to allow for a three month start-up period.

(5) *Budget.* Prepare a budget of the total costs to be incurred in carrying out the proposed project over three years, with a detailed categorical itemization and narrative for the first two budget years. Include in the budget funds to support travel for three (3) staff persons (at least one must be a youth) to attend four (4) technical assistance and training sessions for the first grant period (two years) for an average of three (3) days per trip. Budget up to 15% of total projected outlays to cover the costs of a management information system. No match will be required for these grants. Travel budgeted for coordination with other advocacy projects must be confined to not more than two (2) trips over the two (2) year project period.

(6) *Management Information System.* Each application must include a proposed management information system. This system will seek aggregate data as opposed to information specific to individual groups or persons.

e. *Criteria for Selection of Projects.*

Applications will be rated and selected using the following criteria. Only those applications meeting criteria at the highest level will be considered for grant award.

(a) The extent to which applicants meet the capability and eligibility requirements as outlined in Paragraph c.(3)(4). (100 points)

(b) The extent to which the proposed project addresses the program targets of statutes, policies and practices and establishes that those selected for impact are harmful to large numbers of youth. (15 points)

(c) The extent to which the project design provides youth advocacy strategies and approaches which include youth, minorities, other citizen groups, and key leadership groups of the communities. (15 points)

(d) The extent to which the proposed activities are cost effective in relation to their potential for effecting changes in statutes, policies, and practices which adversely affect large numbers of youth and improve services to youth within youth serving institutions. (15 points)

(e) The extent to which the applicant demonstrates understanding of the problems associated with affecting change in the proposed program targets. (15 points)

(f) The extent to which the applicant demonstrates effective use of advocacy strategies, has available the skilled and experienced personnel essential to implementing these strategies, and establishes the ability to gain and maintain public support and confidence. (25 points)

(g) The extent to which the proposed strategy has the potential for modifying the targeted statutes, policies, priorities and practices. (15 points)

f. *Submission Requirements.*

(1) *Submission Procedures.* The Youth Advocacy initiative has been determined to be of national impact and awards will be made directly to the successful applicants. Applications must be submitted to the Office of Juvenile Justice and Delinquency Prevention in accordance with the form outlined in Appendix 2, Section 2, Paragraphs 4b and 5 Guide for Discretionary Grant Programs, M 4500.1G, September 30, 1978. Refer to Appendix 5, Part II and Part IV for instructions on how to prepare the budget, budget narrative and program narrative. Applicants must consult and coordinate the applications with the relevant State Planning Agencies as provided by M 4500.1G; Appendix 2, Section 2. Prior to submission of applications to the Office of Juvenile Justice and Delinquency Prevention, applicants must also submit applications to appropriate A–95 Clearinghouses in accordance with A–95 requirements. Letters of verification indicating appropriate contacts with State Planning Agencies and A–95 Clearinghouses must be included in the applications. Addresses are included in Appendices 1 and 2.

2. *Deadline for Submission of Applications.* One (1) original and two (2) copies of the application must be mailed or hand delivered to the Office of Juvenile Justice and Delinquency Prevention, LEAA, Room 442, 633 Indiana Avenue, NW., Washington, D.C. 20531, by ————. Applications sent by mail will be considered to be received on time if sent by registered or certified mail no later than ———— as evidenced by the U.S. Postal Service postmark on the original receipt from the U.S. Postal Service.

g. *Evaluation Requirements.* The projects funded under the program will be evaluated by an independent evaluator selected by the Office of Juvenile Justice and Delinquency Prevention. As stated in d. (6) *Application Requirements,* each applicant must submit a proposed management information system. The national evaluator will provide training and technical assistance in

implementing the management information system. All applicants must include assurances in their application agreeing to fully cooperate with the national evaluators.

h. *Technical Assistance.* Technical assistance will be provided to applicants in refining their application subsequent to final selection. Ongoing technical assistance in program implementation will be provided by OJJDP to the funded projects.

i. *Definitions.* (1) *Youth Advocacy*—is a method of positive intervention by individual advocates or by advocacy groups on behalf of large numbers of youth to assure that problems confronting youth are effectively solved or managed through existing youth serving entitles in the public, private and/or community sectors of society. A major objective of youth advocacy activities is to penetrate the blockages and obstacles between youth and service delivery systems which occur within complex social organizations. A further objective is the accomplishment of institutional (agency) change which results in improved service delivery to youths and reallocation of available resources. The level of effort required of advocacy in the representation process (negotiation, arbitration, contesting) is to support the needs and rights of youth as if they were the advocates' own.

(2) *Citizen Participation*—is active, continuous and meaningful involvement of youth, neighborhood residents and representatives of neighborhood organizations and city-wide institutions (minority, business, industry, labor, religious) in the planning, development and monitoring of programs affecting young people.

High Risk Communities—are communities where youth live that are characterized by high rates of crime and delinquency, high infant mortality rates, high unemployment and under employment, sub-standard housing, physical deterioration and low incomes.

(4) *Education System*—includes elementary, junior high schools and senior high schools, both public and private; also includes variations of the above as part of public educational systems or private educational systems or institutions (e.g. vocational schools, special education programs, including educational programs in juvenile correctional facilities, and alternative education prgrams); also, includes the governing bodies of the educational system (state/local boards of education, other authorities).

(5) *Social Service System*—(Youth Serving Agencies) includes the state and/or local private and public departments/agencies which provide services to youth (e.g. social services, welfare, mental health, health, employment, recreation, and others). Also includes private youth service bureaus, other service referral networks and specific services or programs such as crisis intervention, counseling, alcohol/drug treatment), coummuntiy-based prevention, treatment programs and others.

(6) *Juvenile Justice System*—refers to official structures, agencies, and institutions with which juveniles may become involved including, but not limited to, juvenile courts, law enforcement agencies, probation, aftercare, detention facilities, and correctional institutions.

(7) *Jurisdiction*—is any unit of general govenment such as a city, county, state township, borough, parish, village, or combination of such units.

(8) *Delinquency*—is the behavior of a juvenile, in violation of a statute or ordiance in a jurdisdiction, which would constitute a crime if committed by an adult.

(9) *Disposition*—is that procedure in the juvenile court process which results in the imposition of a sentence, e.g., probation or commitment.

(10) *Program*—refers to the National Youth Advocacy Initiative to establish programs supported by OJJDP and the overall activities related to implementing the Advocacy Program.

(11) *Project*—refers to the specific of advocacy activities at given site(s) designed to achieve the overall goal of improving services to youth and protection of the rights of youth.

(12) *Needs of Youth*—for the purposes of this Guideline is defined as family, education, employment, skills training, emotional support, health aids, medical care, legal advice and assistance in assuring recognition and enforcement of the rights of youth.

David D. West,

Acting Associate Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 79-18754 Filed 6-14-79; 8:45 am]

BILLING CODE 4410-18-M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

[Docket No. M-79-85-C]

Garden Creek Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Garden Creek Pocahontas Company, P.O. Box 11430, Lexington, Kentucky 40575, has filed a petition to modify the application of 30 CFR 75.326 (airways and belt haulage entries) to its V.P. No. 6 Mine located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977, Pub. L. 95-164. The substance of the petition follows:

1. The petitioner is developing its mine for use of longwall mining techniques.

2. Due to experience from other mines in the same coal bed and from early development of this mine the petitioner believes it will encounter large quantities of methane gas in the mine.

3. The methane gas will require large quantities of air for dilution.

4. Roof conditions and a maximum overburden of 2600 feet limit the number of airways that can be safely driven to supply these quantities of air.

5. For these reasons the petitioner requests permission to conduct air through the belt haulage entries to working places to assist in diluting the methane concentrations.

6. To provide the same measure of protection for its miners as provided by the standard, the petitioner proposed to install an early warning and telemetry system to detect carbon monoxide and excessive heat in the belt haulage entries.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 16, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 7, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79-18695 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-79-86-C]

Garden Creek Pocahontas Co.; Petition for Modification of Application of Mandatory Safety Standard

Garden Creek Pocahontas Company, P.O. Box 11430, Lexington, Kentucky 40575, has filed a petition to modify the application of 30 CFR 75.1103-4 (automatic fire warning devices) to its V.P. #6 Mine located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine safety and Health Act of 1977, Pub. L.

95–164. The substance of the petition follows:

1. The petitoner proposes the use of an alternative automatic fire warning system in the belt haulage entries of its mine.

2. Within each belt flight carbon monoxide (CO) sensors will monitor the air conducted in the entries. These sensors will transmit an alarm through a telementry system to a central location if levels of more than 5 ppm of CO occur. At levels of 10 ppm above the warning level, the mine will be evacuated.

3. In addition to the CO sensor at the belt drive unit, three (3) point heat sensors will be installed. These sensors will automatically actuate deluge-type water sprays when they detect a temperature rise indicating a fire.

4. The petitioner states that this alternative system will provide its miners the same measure of protection as the standard.

Request for Comments

Persons interested in this petition may furnish written comments on or before July 16, 1979. Comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health administration, 4015 Wilson Boulevard, Arlington, Virginia 22203. Copies of the petition are available for inspection at that address.

Dated: June 7, 1979.

Robert B. Lagather,

Assistant Secretary for Mine Safety and Health.

[FR Doc. 79–18696 Filed 6–14–79; 8:45 am]

BILLING CODE 4510–43–M

Pension and Welfare Benefit Programs

Notice of Proposed Exemption for Certain Transactions Involving Cochran Electric Co., Inc., Profit Sharing Trust

[Application No. D–241]

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt a loan from Cochran Electric Co., Inc. Profit Sharing Trust (the Trust) to Cochran Elecrtic Co., Inc. (the Employer) which was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in section 414 and 2003 of the Act. The proposed exemption, if granted, would affect participants and beneficiaries of the Trust, the Applicant, and other persons participating in the transaction.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 16, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1975.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, Attention: Application No. D–241. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, N.W., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, (202) 523–8530. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). The application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Employer is a Washington corporation engaged in the electrical contracting business in Seattle, Washington. As of December 31, 1974 the Trust had 17 participants and net assets of $430,688. Investment decisions are made by an investment committee composed of employees elected by the Trust participants.

2. Prior to the effective date of the Act, the Employer regularly borrowed funds from the Trust to purchase construction equipment. Loans were made in an amount equivalent to 80% of the purchase price of the equipment being financed. Each piece of equipment acquired served as collateral for its underlying loan and each loan agreement was recorded with the clerk of King County, Washington. Interest was charged at prevailing bank rates with loans being repaid in monthly installments ranging from 24 to 36 months.

3. On September 5, 1974, the Trust loaned the Employer $3,700 at 10½% interest (which was the prevailing bank rate for a similar type transaction at the time), payable in 24 equal monthly installments beginning September 30, 1974. The loan was secured by property valued at $4,400. All payments were made in a timely fashion and the loan was repaid in full as of September 30, 1976.

4. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) the interest rate paid to the Trust was identical to the prevailing bank rate at the time of the transaction, (2) the loan was adequately secured at all times, and (3) all payments on the loan were made on schedule, and the loan has been repaid in full to the Trust.

Finally, the applicant represents that the loan was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the loan was a prohibited transaction, the applicant submitted a good faith request for a exemption instead of terminating the loan transaction.

Notice to Interested Parties

Within ten days after the notice of proposed exemption is published in the Federal Register, a copy of the notice and a statement that interested persons have a right to comment within the thirty day period set forth in the notice

will be provided to interested parties. Notice to interested parties will be mailed by first class mail or delivered to them by hand.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which require, among other things, that a fiduciary discharge his duties respecting the plan solely in the interests of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the loan of $3,700 by the Trust to the Employer that was entered into on September 5, 1974 and was repaid in September 1976. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction.

Signed at Washington, D.C. this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18607 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-27]

Employee Benefit Plans; Exemption From Prohibitions for Certain Transactions Involving Drug City, Inc., Profit Sharing Plan and Drug City, Inc., Pension Plan

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption would permit the sale of a one-third interest in a 40 acre parcel of unimproved real property by the Drug City, Inc. Profit Sharing Plan (the Profit Sharing Plan) and the Drug City, Inc. Pension Plan (the Pension Plan) (collectively, the Plans) to Martin Feldman, a trustee of both Plans and sole shareholder of Drug City, Inc. (the Employer), the sponsoring Employer of the Plans.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Sandler of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, (202) 523–8882. (This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 10, 1979 notice was published in the **Federal Register** (44 FR 21399) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1) (A) through (E) of the Code, for a transaction described in an application filed by the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his or her duties respecting the plan solely in the interests of the participants and

beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plans and of their participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the Plans.

The restrictions of section 406(a) and 406 (b)(1) and (b)(2) of the Act and section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the sale of a one-third interest in a 40 acre parcel of real property legally described as the West one-half of the East one-half of the Southwest quarter of section 13, Township 49 South, Range 25 East, Collier County, Florida by the Plans to Martin Feldman, for an aggregate cash consideration of $58,667, each Plan receiving a portion of the consideration proportional to its fractional holding of the one-third interest, provided that the aggregate amount is not less than the fair market value of the one-third interest in the property.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79–18609 Filed 6–14–79; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–207]

Notice of Proposed Exemption for a Transaction Involving the Profit Sharing Plan of Allied Investment Credit Corp.

AGENCY: Department of Labor.

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed exemption from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and from certain taxes imposed by the Internal Revenue Code of 1954 (the Code). The proposed exemption would exempt the loan of $24,852.21 by the Allied Investment Credit Corporation Profit Sharing Plan (the Plan) to the Allied Investment Credit Corporation (the Employer). The loan was entered into before the effective date of the Act, but after July 1, 1974, the date specified in the transition rules contained in sections 414 and 2003 of the Act. The proposed exemption, if granted, would affect the Employer and participants and beneficiaries of the Plan.

DATES: Written comments and requests for a public hearing must be received by the Department of Labor on or before July 16, 1979.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective January 1, 1975.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. D–207. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N–4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department of Labor, (202) 523–8530. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed exemption from the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act and from the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code. The proposed exemption was requested in an application filed by the Employer, pursuant to section 408(a) of the Act and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). This application was filed with both the Department and the Internal Revenue Service. However, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of the Labor. Therefore, this notice of pendency is issued solely by the Department.

Summary of Facts and Representations

The application contains facts and representations with regard to the proposed exemption which are summarized below. Interested persons are referred to the application on file with the Department for the complete representations of the applicants.

1. The Plan is a profit sharing plan which as of June 10, 1975, had 4 participants.

2. The Employer is exclusively engaged in the commercial loan business. It makes commercial loans to local businessmen, usually in amounts not in excess of $15,000. The average loan is about $10,000. All loans are secured by a first lien upon all of the business assets of the borrower, and are also usually secured by real estate owned by the borrower of the principals thereof. The Employer has been engaged in this business for over 20 years and has always made a profit.

3. On December 3, 1974, the Plan loaned $24,852.21 to the Employer. This sum represented approximately 25 percent of the Plan's assets. The interest rate for the loan was 10 percent per annum. The Employer could have borrowed the funds from a bank for about 8 percent.

4. As security for the loan of December 3, 1974, and two loans make in 1973, which comprise a total principal amount of $68,985.75, the Plan has had assigned to it nine notes, together with

security agreements and real estate mortgages, which the Employer had received from its debtors. The balances due on the notes totaled $100,357. The security for the nine notes given to the Employer and subsequently assigned to the Plan was appraised at $356,500. In addition, the Plan received the personal guarantee of the Employer's major shareholders, who have about 85 percent of the funds in the Plan allocated to their individual accounts.

5. The Employer will have repaid the loan of December 3, 1974 in full, plus accumulated interest thereon, not later than July 1, 1979.

6. In summary, the applicant represents that the statutory criteria contained in section 408(a) of the Act have been satisfied as follows: (1) interest rate paid to the Plan was higher than the rate the Employer would have been charged by an independent bank for such a loan, (2) the loan was adequately secured at all times by the assignment to the Plan of nine highly-collateralized notes due the Employer, as well as the personal guarantee of the Employer's major shareholders, and (3) the loan will have been repaid in full not later than July 1, 1979.

Finally, the applicant represents that the loan was entered into prior to the effective date of the Act without knowledge that the transaction would become prohibited on January 1, 1975. As soon as the applicant realized that the loan was a prohibited transaction, the applicant submitted a good faith request for an exemption instead of terminating the loan transaction.

Notice to Interested Persons

Within ten days after receipt by the Employer of a copy of this notice of proposed exemption, written notice will be provided to all employee participants and other interested persons by means of personal delivery or first class mail.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act which among other things require that a fiduciary discharge his duties respecting the Plan solely in the interest of the participants and beneficiaries of the Plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the Plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) The proposed exemption, if granted, will not extend to transactions prohibited under section 406(b)(3) of the Act, and section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of the Act and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the Plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the Plan; and

(4) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the proposed exemption to the address above, within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the application for exemption at the address set forth above.

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1. If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, effective January 1, 1975, to the loan agreement entered into on December 3, 1974, in which the Plan loaned $24,852.21 to the Employer. The proposed exemption, if granted, will be subject to the express conditions that the material facts and representations are true and complete, and that the application accurately describes all material terms of the transaction.

Signed at Washington, D.C. this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18606 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 79-26]

Exemption From the Prohibitions Respecting a Transaction Involving Restated Coburn Optical Industries, Inc. Profit Sharing Plan and Trust (D-492)

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Restated Coburn Optical Industries, Inc. Profit Sharing Plan and Trust (the Plan) to sell certain parcels of real property to O. W. Coburn and/or Superior Investments, Inc., parties in interest with respect to the Plan.

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen, Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216, telephone (202) 523-8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On January 16, 1979, notice was published in the **Federal Register** (44 FR 3330) of the pendency before the Department of Labor (the Department) of an exemption from the provisions of sections 406(a)(1)(A) and (D) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by sections 4975(a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of section 4975(c)(1)(A), (D) and (E) of the Code, for a transaction described in an application filed on behalf of the First National Bank and Trust Company of Muskogee, Oklahoma, Jim Liquidating Corp., and O. W. Coburn.

The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for

public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition, the notice stated that any interested person might submit a written request that a hearing be held relating to the requested exemption.

One public comment was received by the Department and subsequently withdrawn. No requests for a hearing were received by the Department.

The application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interests of participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirements of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under sections 406(a)(1) (B), (C), and (E), 406(a)(2) and 406(b)(3) of the Act and section 4975(c)(1) (B), (C), and (F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code, the procedures set forth in ERISA Proc. 75–1 (40 FR 18471, April 28, 1975) and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the Plan and of its participants and beneficiaries; and

(c) It is protective of the rights of participants and beneficiaries of the Plan.

Accordingly, the following exemption is hereby granted under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Proc. 75–1.

The restrictions of sections 406(a)(1) (A) and (D) and 406(b)(1) and (b)(2) of the Act and the taxes imposed by sections 4975(c)(1) (A), (D) and (E) of the Code shall not apply to the cash sale of the remaining twenty-one lots in the Indian Drive subdivision at a price not less than the greater of either the 1977 appraised value of $135,000 or the fair market value at the time of sale, nor to the cash sale of the Tastee Freeze located at 604 East Side Boulevard, Muskogee, Oklahoma, at a price not less than the greater of either $58,500, or the fair market value of the property at the time of sale from the Plan to either O. W. Coburn or Superior Investments, Inc.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete and that the application accurately describes all material terms of the transaction consummated pursuant to the exemption.

Signed at Washington, D.C., 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor

[FR Doc. 79–18608 Filed 6–14–79; 8:45 am]

BILLING CODE 4510–29–M

[Prohibited Transaction Exemption 79–28; Application No. D–854]

Exemption From the Prohibitions for Certain Transactions Involving the Retirement Plan for Employees of King Chevrolet Co.

AGENCY: Department of Labor.

ACTION: Grant of individual exemption.

SUMMARY: This exemption enables the Retirement Plan for Employees of King Chevrolet Company (the Plan) to sell a parcel of real property and the improvements thereon to King Chevrolet Company (the Employer).

FOR FURTHER INFORMATION CONTACT: Ronald D. Allen of the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C–4526, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20216, (202) 523–8883. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: On April 13, 1979, notice was published in the **Federal Register** (44 FR 22226) of the pendency before the Department of Labor (the Department) of a proposal to grant an exemption from the restrictions of sections 406(a) 406(b) (1) and (2) of the Employee Retirement Income Security Act of 1974 (the Act) and from the taxes imposed by section 4975 (a) and (b) of the Internal Revenue Code of 1954 (the Code) by reason of sections 4975(c)(1) (A) through (E) of Code, for transactions described in an application filed by the Citizens First National Bank of Tyler, Texas, the Trustee of the Plan, the Plan and the Employer. The notice set forth a summary of facts and representations contained in the application for exemption and referred interested persons to the application for a complete statement of the facts and representations. The application has been available for public inspection at the Department in Washington, D.C. The notice also invited interested persons to submit comments on the requested exemption to the Department. In addition the notice stated that any interested person might submit a written request that a public hearing be held relating to this exemption. No public comments and no requests for a hearing were received by the Department.

This application was filed with both the Department and the Internal Revenue Service. However, the notice of pendency was issued and the exemption is being granted, solely by the Department because, effective December 31, 1978 section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption granted under section 408(a) of the Act and section

4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan to which the exemption is applicable from certain other provisions of the Act and the Code. These provisions include any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things, require a fiduciary to discharge his or her duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does the fact the transaction is the subject of an exemption affect the requirement of section 401(a) of the Code that a plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries.

(2) This exemption does not extend to transactions prohibited under section 406(b)(3) of the Act and section 4975(c)(1)(F) of the Code.

(3) This exemption is supplemental to, and not in derogation of, any other provisions of the Act and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption or transitional rule is not dispositive of whether the transaction is, in fact, a prohibited transaction.

Exemption

In accordance with section 408(a) of the Act and section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following determinations:

(a) The exemption is administratively feasible;

(b) It is in the interests of the plan and of its participants and beneficiaries; and

(c) It is protective of the rights of the participants and beneficiaries of the plan.

Therefore, the prohibitions of sections 406(a) and 406(b)(1) and (2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the sale by the Plan of real property, consisting of the land and building located at 517 West Irwin Street and legally described as lots 8, 9, and 10 in block 91, City of Tyler, Smith County, Texas, to the Employer for an aggregate cash consideration of $127,115, provided that this amount is not less than the fair market value of the property on the date of sale.

The availability of this exemption is subject to the express conditions that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material terms of the transaction to be consummated pursuant to this exemption.

Signed at Washington, D.C., this 8th day of June, 1979.

Ian D. Lanoff,

Administrator, Pension and Welfare Benefit Programs Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 79-18610 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-29-M

Office of the Secretary

[TA-W-5203]

Aberdeen Sportswear, Inc., Trenton, N.J.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 10, 1979 in response to a worker petition received on April 4, 1979 which was filed by the Amalgamated Clothing and Textile Workers' Union on behalf of workers and former workers producing men's outerwear (suits, jackets, shirts) at the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated. The investigation revealed that the plant produces primarily men's outer coats. It is concluded that all of the requirements have been met.

U.S. imports of men's and boys' non-tailored outer jackets increased both absolutely and relative to domestic production in 1977 compared to 1976 and increased absolutely in 1978 compared to 1977.

U.S. imports of men's, boys', women's, misses', juniors', and children's leather coats and jackets increased absolutely in 1977 compared to 1976 and increased both absolutely and relative to domestic production in 1978 compared to 1977.

A Departmental survey of Aberdeen's customers revealed that customers accounting for a significant proportion of the decline in Aberdeen's sales, in 1978 compared to 1977, increased purchases of imported outer coats during the same time period. Additionally, these customers have reduced orders placed with Aberdeen for delivery in 1979.

Conclusion

After careful reviw of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's outer coats produced at the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the Trenton, New Jersey plant of Aberdeen Sportswear, Incorporated who became totally or partially separated from employment on or after September 30, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 8th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18607 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5-527, et al.]

Act III; Spartanburg, S.C., et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of

a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not late than June 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 8th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Act III (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,527	Knitted cloth and fabrics for women's clothing.
Andrew Knit (ILGWU)	Tuscaloosa, Ala	6/4/79	5/23/79	TA-W-5,528	Women's jackets, vests, blouses, pants, skirts, blazers.
Armstrong Rubber Company, Southeastern Div. (URW).	Madison, Tenn	6/4/79	5/31/79	TA-W-5,529	Passenger car replacement tires and truck replacement tires.
Butte Knitting Mills (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,530	Knitted cloth and fabrics for women's clothing.
Columbus Fashions, (ILGWU)	Columbus, GA	6/4/79	5/23/79	TA-W-5,531	Women's blouses, vests, skirts, jackets.
Debra Fashions (ILGWU)	Northport, Ala	6/4/79	5/31/79	TA-W-5,532	Women's blouses,vest, jackets, skirts.
Eufala Fashions (ILGWU)	Eufala, Ala	6/4/79	5/23/79	TA-W-5,533	Women's blouses, skirts, jackets, vests.
Greene Manufacturing Company (ILGWU)	Greenville, Tenn	6/4/79	5/23/79	TA-W-5,534	Women's blouses, skirts, jackets vests.
Jonathan Logan Transportation (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,535	Knitted cloth and fabrics for women's clothing.
Kim Fashions (ILGWU)	Hialeah, Fla	6/4/79	5/29/79	TA-W-5,536	Women's blouses, pants, jackets.
Livingston Fashions (ILGWU)	Livingston, Ala	6/4/79	5/23/79	TA-W-5,537	Women's blouses, skirts, jackets, vests.
Lynn Fashions (ILGWU)	Brent, Ala	6/4/79	5/23/79	TA-W-5,538	Women's blouses, skirts, jackets, vests.
Margaret Fashions (ILGWU)	Panama City, Fla	6/4/79	5/23/79	TA-W-5,539	Women's blouses, skirts, vests.
Michael Fashions, Inc. (ILGWU)	Miami, Fla	6/4/79	5/29/79	TA-W-5,540	Women's blouses, pants, skirts.
Moncio Mining (workers)	Sharples, W. Va	6/4/79	5/25/79	TA-W-5,541	Mining of steam coal.
Nancy Fashions (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,542	Knitted cloth and fabrics for women's clothing.
Oxford Fashions (ILGWU)	Oxford, Ala	6/4/79	5/23/79	TA-W-5,543	Women's blouses, skirts, jackets, vests.
Plaza Manufacturing (ILGWU)	Spartanburg, S.C	6/4/79	5/23/79	TA-W-5,544	Knitted cloth and fabrics for women's clothing.
Roanoke Fashions (ILGWU)	Roanoke, Ala	6/4/79	5/23/79	TA-W-5,545	Women's blouses.
Salem Sportswear Company (ACTWU)	Salem, Mo	6/4/79	5/29/79	TA-W-5,546	Men's and boy's jackets.
Sandra Fashions (ILGWU)	Sanford, Fla	6/4/79	5/23/79	TA-W-5,547	Women's blouses, skirts, jackets, vests.
Stevens Fashions (ILGWU)	Carrollton, Ala	6/4/79	5/23/79	TA-W-5,548	Women's blouses, skirts, vests, jackets.
Terrance Fashions, Inc. (ILGWU)	Miami, Fla	6/4/79	5/29/79	TA-W-5,549	Women's blouses, pants, skirts, jackets.

[FR Doc. 79-18698 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5112]

Adkins Coal Co., McDowell County, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at the Adkins Coal Company, Adkins Truck Mine, McDowell County, West Virginia. The investigation revealed that the correct name of the company is the Adkins Coal Company and that the firm mines metallurgical coal. In the following determination, at least one of the criteria has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Norfolk and Western Railroad is the only rail source is McDowell County where Adkins Coal Company is located. There was a strike at Norfolk and Western which lasted from July 7, 1978 until October 10, 1978, which forced the mine to reduce its operations during this time. There also was a strike by the United Mine Workers of America from December 6, 1977 until March 27, 1978 which caused Adkins Coal to cease operations for the duration for the Strike.

When the months unaffected by strikes are compared, employment did not decline in 1978 compared to 1977. As a contractor, Adkins' sales and production are equal. Production of metallurgical coal increased during the first quarter of 1979 compared to the first quarter of 1977.

Conclusion

After careful review, I determine that all workers of the Adkins Coal

Company, McDowell County, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18699 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5270 and 5271]

Allied Chemical Corp., Harewood Mine and Preparation Plant, Montgomery, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with sectioni 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 23, 1979 in response to a worker petition received on April 18, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers producing metallurgical coal at the Harewood Mine and Preparation Plant of Allied Chemical Corporation's Semet-Solvay Division, Montgomery, West Virginia. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Coke is metallurgical coal at a later stage of processing. Since a domestic article may be "directly competitive" with an imported article at a later stage of processing, imports of both coke and metallurgical coal can be considered in determining import injury to workers producing metallurgical coal at Allied Chemical's Harewood mine and preparation plant.

Evidence developed during the course of the investigation revealed that none of the customers of Allied Chemical's Harewood mine purchased imported metallurgical coal and only one customer purchased imported coke. That customer represented an insignificant proportion of the mine's sales in 1977 and 1978 and has not purchased coal from Harewood since April 1978, one year before layoffs at the mine and preparation plant took place.

Conclusion

After careful review, I determine that all workers of the Harewood Mine and Preparation Plant of Allied Chemical Corporation's Semet-Solvay Division, Montgomery, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 7th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18700 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5144]

Apache Trucking Co.; Iaeger, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Apache Trucking Company, Iaeger, West Virginia, engaged in transporting coal.

Apache Trucking Company is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Apache Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Apache Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Apache Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Apache Trucking Company are employed by that firm. All personnel actions and payroll transactions are controlled by Apache Trucking Company. All employee benefits are provided and maintained by Apache Trucking Company. Workers are not, at any time, under employment or supervision by customers of Apache Trucking Company. Thus, Apache Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Apache Trucking Company, Iaeger, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18701 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5007]

Aurora Products, Secaucus, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on March 21, 1979, in response to a worker petition received on March 16, 1979, which was filed on behalf of workers and former workers producing plastic toys and model kits at Aurora Products, Secaucus, New Jersey. The investigation revealed that the plant produces primarily electric race car sets, model kits and air hockey games. In the

following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

A Departmental survey of Aurora Products' customers for 1976, 1977 and 1978 revealed that none of the respondents purchased any imported electric race car sets, model kits or air hockey games in the 1976–1978 period.

Conclusion

After careful review, I determine that all workers of Aurora Products, Secaucus, New Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18702 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5146]

B & G Trucking Co., Inc., Princeton, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of B & G Trucking Company, Incorporated, Princeton, West Virginia, a contract hauler.

B & G Trucking Company, Incorporated is engaged in providing the service of transporting coal by truck from a customer's mine to a tipple and transporting rock.

Thus, workers of B & G Trucking Company, Incorporated do not produce an article within the meaning of section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to B & G Trucking Company, Incorporated by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

B & G Trucking Company, Incorporated and its customers have no controlling interested in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at B & G Trucking Company, Incorporated are employed by that firm. All personnel actions and payroll transactions are controlled by B & G Trucking Company, Incorporated. All employee benefits are provided and maintained by B & G Trucking Company, Incorporated. Workers are not, at any time, under employment or supervision by customers of B & G Trucking Company, Incorporated. Thus, B & G Trucking Company, Incorporated, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of B & G Trucking Company, Incorporated, Princeton, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18703 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5,510 et al.]

Bethlehem Mine Corp.; Charleston, W. Va. et al.; Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, has instituted investigations pursuant to section 221(a) of the Act and 29 CFR 90.12.

The purpose of each of the investigations is to determine whether absolute or relative increases of imports of articles like or directly competitive with articles produced by the workers' firm or an appropriate subdivision thereof have contributed importantly to an absolute decline in sales or production, or both, of such firm or subdivision and to the actual or threatened total or partial separation of a significant number or proportion of the workers of such firm or subdivision.

Petitioners meeting these eligibility requirements will be certified as eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act in accordance with the provisions of Subpart B of 29 CFR Part 90. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

Pursuant to 29 CFR 90.13, the petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 29, 1979.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 7th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

Appendix

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Mines Corp., (U.M.W.A.)	Kayford, Div. Charleston, W. Va	5/21/79	5/16/79	TA-W-5, 510	Mining of coal.

Appendix—Continued

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bethlehem Mines Corp., Boone Div. (U.M.W.A.).	Charleston, W. Va	5/21/79	5/16/79	TA-W-5, 511	Mining of coal.
Bethlehem Mines Corp., Nicholas Division (U.M.W.A.).	Charleston, W. Va	5/21/79	5/16/79	TA-W-5, 512	Mining of coal.
Bis Mark (workers)	Logan, W. Va	5/23/79	5/21/79	TA-W-5, 513	Mining of coal.
Big Fork Coal Company, Inc., Mine #9 (Southern Labor Union).	Summersville, W. Va	5/25/79	5/21/79	TA-W-5, 514	Mining of coal.
Brockton Stay Corp. (workers)	Haverhill, Mass	5/25/79	5/22/79	TA-W-5, 515	Shoe trims and vamps of leather and vinyl.
Gould, Inc., Industrial Battery Division (United Electrical, Radio & Machine Workers of Amer.).	Trenton, N.J	5/29/79	5/25/79	TA-W-5, 516	Stationary and motive power industrial batteries and parts.
Hatco Chemical Corp. (workers)	Fords, N.J	5/29/79	5/23/79	TA-W-5, 517	Synthetic lubricants and plasticizers.
Island Creek Coal Company, Mine #4 (workers).	Paintsville, Ky	5/29/79	5/21/79	TA-W-5, 518	Mining of coal.
Island Creek Coal Company, Mine #7 (workers).	Paintsville, Ky	5/29/79	5/21/79	TA-W-5, 519	Mining of coal.
JLS Coal Corp., Mine #3 (U.M.W.A.)	Raleigh County, W. Va	5/29/79	5/15/79	TA-W-5, 520	Mining of coal.
New Balance Athletic Shoe, Inc. (workers)	Lawrence, Mass	5/29/79	5/16/79	TA-W-5, 521	Athletic shoes for men, women and children.
Pharmaseal Corp. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 522	Disposable medical supplies (plastic).
Pharmaseal Laboratory, Inc. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 523	Disposable medical supplies (plastic).
Pharmaseal, Inc. (company)	Toa Alta, P.R	5/29/79	5/22/79	TA-W-5, 524	Disposable medical supplies (plastic).
Phelps Dodge Corporation (Teamsters)	Carolina, P.R	6/1/79	6/1/79	TA-W-5, 525	Telephone and high voltage cables.
Waldo Shoe Corporation (workers)	Belfast, Maine	5/29/79	5/22/79	TA-W-5, 526	Women's novelty shoes.

[FR Doc. 79-18705 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-4747]

Bethlehem Steel Corp., Sparrows Point Shipyard, Sparrows Point, Md.; Revised Certification of Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 26, 1979, applicable to all workers of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland. Notice of Certification was published in the **Federal Register** on March 30, 1979, (44 FR 19067).

On the basis of additional information, the Office of Trade Adjustment Assistance, on its own motion, reviewed the certification. The review of the case revealed that numerous layoffs occurred in certain Departments in May and June, 1978 of workers employed in the early phase of ship construction. These layoffs were not covered by the impact date of July 1, 1978.

The intent of the certification is to cover all workers who were affected by the decline in production of merchant vessels related to import competition. The certification, therefore, is revised to include workers in Departments 42, 82, 65, 58 and 75 who became separated from employment on or after May 1, 1978.

The revised certification applicable to TA-W-4747 is hereby issued as follows:

All workers in Departments 42, 82, 65, 58 and 75 of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland, who became totally or partially separated from employment on or after May 1, 1978, and all other workers of the Sparrows Point Shipyard of the Bethlehem Steel Corporation, Sparrows Point, Maryland, who became totally or partially separated from employment on or after July 1, 1978, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C., this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18705 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5162 and 5163]

Betty Coal Co., Betty Mine #13B, Betty Mine #8; Iaeger, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining metallurgical coal at the Betty Coal Company's Betty Mine #13B (TA-W-5162) and Betty Mine #8 (TA-W-5163), Iaeger, West Virginia. In the following determination, without regard to whether any of the criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The Department's investigation revealed that the Betty Coal Company's customers export all of the coal they purchase from the subject firm, therefore any imports of coal or coke will have a negligible impact of employment.

Conclusion

After careful review, I determine that all workers of the Betty Coal Company's Betty Mine #13B and Bety Mine #8, Iaeger, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administrtion, and Planning.

[FR Doc. 79-18706 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5116 and 5116A]

Black Mountain Coal Co., Inc., T/A Algoma Energy Corp., No. 16 Mine, No. 12 Mine, McDowell County, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers mining coal at Black Mountain Coal Company, Incorporated, Black Mountain Truck Mine, McDowell County, West Virginia. The investigation revealed that the Black Mountain Coal Company operates two mines, #16 Mine and #12 Mine, in McDowell County, West Virginia and the investigation revealed that in West Virginia the company operates under the title of the Black Mountain Coal Company, Incorporated, T/A Algoma Energy Corporation. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased absolutely and relatively in 1977 compared to 1976 and in 1978 compared to 1977.

Black Mountain Coal Company is a contract mining operation and must deliver all of its coal to the larger coal company with whom it contracts. This larger coal company reduced the amount of its orders from Black Mountain as a result of declines in its own sales of metallurgical coal in 1978 compared to 1977. A Department survey established that one major customer sharply reduced its purchases of metallurgical coal from the larger coal company in 1978 compared to 1977 due to a decline in its owns sales of metallurgical coal to two large U.S. steel producers. This customer accounted for the preponderance of the decline in sales in 1978 compared to 1977 by the larger coal company for whom Black Mountain contracts. Further investigation revealed that these steel producers increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the #16 Mine and the #12 Mine of the Black Mountain Coal Company, T/A Algoma Energy Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the #16 Mine and the #12 Mine of the Black Mountain Coal Company, T/A Algoma Energy Corporation, McDowell County, West Virginia who became totally or partially separated from employment on or after January 12, 1979, are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18707 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5164]

Bowen Trucking Co., Bowen Mine, Maben, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America, District 29 on behalf of workers and former workers mining metallurgical coal at Bowen Trucking Company, Bowen Mine, Maben, West Virginia. It is concluded that all of the requirements have been met.

The petition was filed on behalf of workers mining metallurgical coal. In accordance with section 222 of the Trade Act and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers mining metallurgical coal.

Although U.S. imports of metallurgical coal have been negligible, U.S. imports of coke increased absolutedly and relative to domestic production from 1976 to 1977 and from 1977 to 1978.

Bowen mines coal on a contract basis for a single coal company. A Departmental Survey of that coal company revealed that it had reduced its purchases of coal from Bowen as a result of a decline in its own sales of metallurgical coal to its customers. The Department of Labor also conducted a survey of the major customers purchasing metallurgical coal from the coal company. Several of these customers reduced purchases from the coal company and increased purchases of imported coke from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined by Bowen Trucking Company, Bowen Mine, Maben, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Bowen Trucking Company, Bowen Mine, Maben, West Virginia who become totally or partially separated from employment on or after October 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18708 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W 5218, 5222, and 5228]

Brady Cline Coal Co., Gauley Coal Sales Co., Margaret Peerless Coal Co., Summersville, W. Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigations were initiated on April 12, 1979 in response to worker petitions received on April 9, 1979 which were filed by the United Mine Workers of America on behalf of workers and former workers producing coal for Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company, Summersville, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, in accordance with Section 222 of the Trade Act of 1974 and 29 CFR 90.2, a domestic article may be "directly competitive" with an imported article at a later stage of processing. Coke is metallurgical coal at a later stage of processing. Therefore, imports of coke as well as imports of metallurgical coal should be considered in determining import injury to workers producing metallurgical coal.

U.S. imports of coke increased in 1977 from 1976 and again in 1978 from 1977, both absolutely and relative to domestic production.

The Department of Labor conducted a survey of the major customers purchasing metallurgical coal from Brady Cline Coal Company and Margaret Peerless Coal Company. Some customers reduced purchases from Brady Cline and Margaret Peerless and increased imports of metallurgical coal and/or coke from 1977 to 1978.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of Brady Cline Coal Company, Gauley Coal Sales Company and Margaret Peerless Coal Company engaged in employment related to the production of metallurgical coal who became totally or partially separated from employment on or after the respective impact dates (see below) are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

TA-W-	Facility	Impact date
5218	Brady Cline Coal Company.	
	Mine # 5	March 30, 1979.
	Mine # 7	December 22, 1978.
	Mine # 14	July 21, 1978.
5222	Gauley Coal Sales Company.	December 29, 1978.
5228	Margaret Peerless Coal Company.	March 1, 1979.

Signed at Washington, D.C. this June 8, 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18709 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5193 and 5194]

Brierwood Shoe Corp., De Witt Division, Clarendon, Ark., and De Witt, Ark.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 6, 1979, in response to a worker petition received on April 3, 1979, which was filed on behalf of workers and former workers producing men's and boys' shoes at the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas. It is concluded that all of the requirements have been met.

U.S. imports of men's dress and casual footwear, except athletic, increased absolutely and relative to domestic production from 1976 to 1977. Imports decreased absolutely but increased relatively from 1977 to 1978.

U.S. imports of youth's and boys' dress and casual footwear, except athletic, decreased absolutely and increased relative to domestic production from 1976 to 1977. Imports decreased absolutely and relatively from 1977 to 1978.

A survey of major customers of the DeWitt Division revealed that one major customer increased its purchases of imported men's and boys' footwear and decreased its purchases of footwear from DeWitt Division in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with men's and boys' casual footwear produced at the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

All workers of the DeWitt Division of Brierwood Shoe Corporation, Clarendon, Arkansas and DeWitt, Arkansas who became totally or partially separated from employment on or after March 28, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18710 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5219]

Buckeye Sugars, Inc., Ottawa, Ohio; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification

of eligibility to apply for adjustment assistance, each of the group eligibility requirements of Section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 9, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing refined beet sugar at Buckeye Sugars, Inc., Ottawa, Ohio. It is concluded that all of the requirements have been met.

United States imports of refined sugar increased in value in 1977 from 1976, declined in 1978 from 1977 and increased in January–March 1979 compared to January–March 1978.

A survey conducted by the U.S. Department of Commerce revealed that some customers who reduced purchases from Buckeye Sugars, Inc. in 1978 from 1977 purchased imported refined sugar during the same period. On April 4, 1979 the Department of Commerce issued a certification of eligibility to Buckeye Sugars, Inc. to apply for firm adjustment assistance under the Trade Act of 1974.

The annual beet acreage harvested by independent growers for buckeye Sugars, Inc. declined in crop year 1977 from crop year 1976 and declined again in crop year 1978 from crop year 1977. No beet acreage will be harvested for Buckeye Sugars in crop year 1979.

Sales of refined beet sugar by Buckeye Sugars, Inc. declined in 1978 from 1977. Buckeye Sugars will not conduct a sugar campaign in 1979.

Compared to the same quarter of the previous year, average employment of production workers by Buckeye Sugars declined during three consecutive quarters from the third quarter of 1978 through the first quarter of 1979.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with refined beet sugar produced at Buckeye Sugars, Inc., Ottawa, Ohio contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Buckeye Sugars, Inc., Ottawa, Ohio engaged in employment related to the production of refined beet sugar who became totally or partially separated from employment on or after July 3, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. June 6, 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18777 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5148]

Byars Trucking, McGraws, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 5, 1979, in response to a worker petition received on April 2, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Byars Trucking, McGraws, West Virginia, a contract hauler.

Byars Trucking was engaged in providing the service of transporting coal by truck from a customer's mine to a tipple. The company ceased operations in January 1979.

Thus, workers of Byars Trucking did not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Byars Trucking by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Byars Trucking and its customers had no controlling interest in one another. The subject firm was not corporately affiliated with any other company.

All workers engaged in transporting coal by truck at Byars Trucking were employed by that firm. All personnel actions and payroll transactions were controlled by Byars Trucking. All employee benefits were provided and maintained by Byars Trucking. Workers were not, at any time, under employment or supervision by customers of Byars Trucking. Thus, Byars Trucking, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Byars Trucking, McGraws, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 4th day of June 1979.

Harry J. Gilman,

Supervisory International Economist, Office of Foreign Economic Research.

[FR Doc. 79-18712 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5390]

Casey Manufacturing Co., Casey, Ill.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on May 15, 1979 in response to a worker petition received on May 14, 1979 which was filed on behalf of workers and former workers producing children's shoes at Casey Manufacturing Company, Casey, Illinois. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The average number of production workers at Casey Manufacturing increased in 1978 compared with 1977 and in each of the four quarters in 1978 compared to the same quarters of the

previous year. Casey experienced temporary declines in employment and production in early 1979 due to normal business fluctuations. Employment and production began increasing in March 1979 and have continued to increase to date.

Conclusion

After careful review, I determine that all workers at Casey Manufacturing Company, Casey, Illinois are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18713 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5044]

Clausing Corp., Warsaw, Ind.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 28, 1979, in response to a worker petition received on March 23, 1979, which was filed by the United Steelworkers of America on behalf of workers and former workers producing lathes at Clausing Corporation, Warsaw, Indiana. It is concluded that all of the requirements have been met.

U.S. imports of engine lathes increased absolutely and relative to domestic production from 1976 to 1977 and decreased from 1977 to 1978. Despite the decrease, imports were greater in 1978 than in 1976.

The Department surveyed Clausing Corporation's major customers. Customers whose purchases of lathes from Clausing accounted for a significant proportion of its declines in production in 1978 increased their purchases of imported lathes in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with lathes produced at the Warsaw, Indiana plant of Clausing Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Clausing Corporation, Warsaw, Indiana who became totally or partially separated from employment on or after March 21, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18714 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5169]

Coal King Corp., Beckley, W. Va.; Matthew Meade Mine, Shady Spring, W. Va.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed on behalf of workers and former workers mining metallurgical coal at Matthew Meade Mine in Shady Spring, West Virginia of Coal King Corporation, Beckley, West Virginia.

The Notice of Investigation was published in the **Federal Register** on April 13, 1979 (44 FR 22209-10). No public hearing was requested and none was held.

During the course of the investigation, it was established that all workers of the Matthew Meade Mine of Coal King Corporation were separated from employment in November 1977. Section 223(b) of the Trade Act of 1974 states that no certification under this section may apply to any worker whose last total or partial separation from the firm or appropriate subdivision of the firm occurred more than one year prior to the date of the petition.

The date of the petition in this case is March 27, 1979 and, thus, workers terminated prior to March 27, 1978 are not eligible for program benefit under Title II, Chapter 2, Subchapter B of the Trade Act of 1974. The investigation of the Matthew Meade Mine is therefore terminated.

Signed at Washington, D.C. this 5th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18715 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5170-5172 et al.]

Coal King Corp., Beckley, W. Va., et al.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of investigations regarding certifications of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers formerly mining metallurgical coal at the following mines of Coal King Corporation, Beckley, West Virginia: Bonnie Beth Mine of Shady Spring, West Virginia; Tarrah Leigh Mine of Daniels, West Virginia; and LSQ #2 Mine of Daniels, West Virginia.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 compared to 1976 and in 1978 compared to 1977.

Coal King Corporation sold all of its coal to one preparation plant. A Labor Department survey of the major customers who bought the coal from the preparation plant revealed that these customers significantly decreased purchases of metallurgical coal from that firm while increasing purchases of imported coke in 1978 as compared to 1977.

Conclusion

After a careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal produced at the Bonnie Beth Mine, Shady Spring, West Virginia; the Tarrah Leigh Mine, Daniels, West Virginia; and the LSQ #2 Mine,

Daniels, West Virginia of Coal King Corporation contributed importantly to the decline in sales or production and to the total or partial separation of workers of those mines. In accordance with the provisions of the Act, I make the following certifications:

"All workers of the following mines of Coal King Corporation of Beckley, West Virginia who became totally or partially separated from employment on or after the indicated impact date are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

TA-W-	Mine location	Impact date
5170	Bonnie Beth Mine; Shady Spring, WV.	Oct. 6, 1978.
5171	Tarrah Leigh Mine; Daniels, WV	Sept. 22, 1978.
5172	LSQ No. 2 Mine; Daniels, WV	June 2, 1978.

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18716 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5173]

Coolridge Equipment & Mining Co., Shady Spring, W.Va.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 2, 1979 which was filed by the United Mine Workers of America on behalf of workers and former workers of Coolridge Equipment and Mining Company, Shady Spring, West Virginia who mine coal at the L & F Strip Mine, Raleigh County, West Virginia. It is concluded that all of the requirements have been met.

U.S. imports of metallurgical coal are negligible. However, coke is metallurgical coal in a later stage of processing, and is therefore "directly competitive" with metallurgical coal. U.S. imports of coke increased on an absolute basis and relative to domestic production in 1977 as compared to 1976 and in 1978 as compared to 1977.

Coolridge Equipment and Mining Company is a mining contractor which sells all its coal to a single coal company. A Departmental survey of that coal company revealed that it had reduced its purchases of coal as a result of a decline in its own sales of metallurgical coal to large U.S. steel producers. A secondary survey revealed that several of these steel producers had increased imports of coke in 1978 compared to 1977.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with metallurgical coal mined by Coolridge Equipment and Mining Company of Shady Spring, West Virginia, at the L & F Strip Mine in Raleigh County, West Virginia contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of Coolridge Equipment and Mining Company, Shady Spring, West Virginia who became totally or partially separated from employment on or after December 1, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 5th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18717 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5437]

Cooper-Wiss, Maplewood, N.J.; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974 (19 U.S.C. 2273), an investigation was initiated on May 21, 1979 in response to a worker petition received on May 18, 1979 which was filed on behalf of workers and former workers producing pocket knives at Cooper Wiss, Maplewood, New Jersey.

During the course of the investigation, it was established that all workers at the Cooper Wiss, Maplewood, New Jersey plant were previously certified eligible under TA-W-3294. Since all workers separated, totally or partially, form the Cooper Wiss, Maplewood, New Jersey plant on or after December 10, 1977 (impact date), and before October 20, 1980 (expiration date) are covered by an existing certification, a new investigation would serve no purpose. Consequently, the investigation has been terminated.

Signed at Washington, D.C. this 8th day of June 1979.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 79-18718 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5174]

Crescent Sea Food Products Co., Paterson, N.J.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 6, 1979 in response to a worker petition received on April 4, 1979 which was filed on behalf of workers and former workers wholesaling fresh and frozen fish at Crescent Sea Food Products Company, Paterson, New Jersey. The investigation revealed that the company was also engaged in the distribution and filleting of fresh fish. In the following determination, without regard to whether any of the other criteria have been met, the following criterion has not been met:

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Evidence developed during the course of the investigation revealed that the Crescent Sea Food Products Company is almost exclusively engaged in the wholesaling and distribution of fresh and frozen fish. Crescent was primarily engaged in the purchase of fish for resale. Filleting fish, which was the only production work Crescent performed, accounted for a minor portion of the firm's sales.

Conclusion

After careful review, I determine that all workers of Crescent Sea Food Products Company, Paterson, New

Jersey are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18719 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5221]

Cyclops Corp., Detroit Strip Division, Hamden, Conn.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on April 12, 1979 in response to a worker petition received on April 10, 1979 which was filed by the United Steelworkers of America on behalf of workers and former workers producing cold rolled carbon steel strip at the Hamden, Connecticut plant of the Detroit Strip Division of the Detroit Steel Corporation. The investigation revealed that the correct name of the firm for which the petition was filed is the Detroit Strip Division of the Cyclops Corporation. In the following determination, at least one of the criteria has not been met:

That sales or production, or both, of the firm or subdivision have decreased absolutely.

Plant sales and production of cold rolled carbon steel strip increased in 1978 compared to 1977 and continued to increase in the first quarter of 1979 compared to the like quarter in 1978.

Conclusion

After careful review, I determine that all workers of the Detroit Strip Division of the Cyclops Corporation in Hamden, Connecticut are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 5th day of June 1979.

C. Michael Aho,

Director, Office of Foreign Economic Research.

[FR Doc. 79-18720 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5208]

Diego Trucking Co., Glen Jean, W. Va.; Negative Determination Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance each of the group eligibility requirements of section 22 of the Act must be met.

The investigation was initiated on April 10, 1979, in response to a worker petition received on March 30, 1979, which was filed by the United Mine Workers of America on behalf of workers and former workers of Diego Trucking Company, Glen Jean, West Virginia, engaged in coal transporting.

Diego Trucking Company is a contractor engaged in subcontracting the service of transporting coal by truck from a customer's mine to a tipple.

Thus, workers of Diego Trucking Company do not produce an article within the meaning of Section 222(3) of the Act. Therefore, they may be certified only if their separation was caused importantly by a reduced demand for their services from a parent firm, a firm otherwise related to Diego Trucking Company by ownership, or a firm related by control. In any case, the reduction in demand for services must originate at a production facility whose workers independently meet the statutory criteria for certification and that reduction must directly relate to the product impacted by imports.

Diego Trucking Company and its customers have no controlling interest in one another. The subject firm is not corporately affiliated with any other company.

All workers engaged in subcontracting coal transporting operations at Diego Trucking Company are employed by that firm. All personnel actions and payroll transactions are controlled by Diego Trucking Company. All employee benefits are provided and maintained by Diego Trucking Company. Workers are not, at any time, under employment or supervision by customers of Diego Trucking Company. Thus, Diego Trucking Company, and not any of its customers, must be considered to be the "workers' firm".

Conclusion

After careful review, I determine that all workers of Diego Trucking Company, Glen Jean, West Virginia are denied eligibility to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974.

Signed at Washington, D.C. this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18721 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-28-M

[TA-W-5090]

Essex Group, Inc., Wire Assembly Division, Lafayette, Ind.; Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents the results of an investigation regarding certification of eligibility to apply for worker adjustment assistance.

In order to make an affirmative determination and issue a certification of eligibility to apply for adjustment assistance, each of the group eligibility requirements of section 222 of the Act must be met.

The investigation was initiated on March 30, 1979 in response to a worker petition received on March 26, 1979 which was filed by the International Association of Machinists and Aerospace Workers on behalf of workers and former workers producing automotive wire harness assemblies at the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Incorporated. It is concluded that all of the requirements have been met.

U.S. imports of automotive wire harnesses increased in value in 1978 from 1977.

All production activities by the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. were discontinued in March 1979. After the closing of the Lafayette plant, production of wire harnesses manufactured by the plant was transferred to a Canadian wire harness assembly plant operated by the Division.

Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with automotive wire harness assemblies produced at the Lafayette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. contributed importantly to the decline in sales or production and to the total or partial separation of workers of that firm. In accordance with the provisions of the Act, I make the following certification:

"All workers of the Layette, Indiana plant of the Wire Assembly Division of Essex Group, Inc. who became totally or partially separated from employment on or after September 18, 1978 are eligible to apply for adjustment assistance under Title II, Chapter 2 of the Trade Act of 1974."

Signed at Washington, D.C. this 6th day of June 1979.

James F. Taylor,

Director, Office of Management, Administration, and Planning.

[FR Doc. 79-18722 Filed 6-14-79; 8:45 am]

BILLING CODE 4510-26-M

LEGAL SERVICES CORPORATION

Grants and Contracts

June 15, 1979.

The Legal Services Corporation was established pursuant to the Legal Services Corporation Act of 1974, Pub. L. 93-355 88 Stat. 378, 42 U.S.C. 2996-2996*l*, as amended, Pub. L. 95-222 (December 28, 1977). Section 1007(f) provides: "At least 30 days prior to the approval of any grant application or prior to entering into a contract or prior to the intiation of any other project, the Corporation shall announce publicly * * * such grant, contract or project."

The Legal Services Corporation hereby announces publicly that it is considering the grant application submitted by: Utah Legal Services, Inc. in Salt Lake City, Utah to serve Carbon, Daggett, Duchesne, Emery, Grand, San Juan, Uintah, Beaver, Garfield, Iron, Kane, Millard, Piute, Sanpete, Sevier, Wayne and Washington Counties.

Interested persons are hereby invited to submit written comments or recommendations concerning the above application to the Regional Office of the Legal Services Corporation at: Legal Services Corporation, Denver Regional Office, 1726 Champa Street, Suite 500, Denver, CO 80202.

Dan J. Bradley,

President.

[FR Doc. 79-18758 Filed 6-14-79; 8:45 am]

BILLING CODE 6820-35-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Museum Advisory Panel; Amended Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Museum Advisory Panel to the National Council on the Arts which appeared in the Federal Register, Vol. 44, No. 104, Tuesday, May 29, 1979, page 30783 is amended as follows:

The portion of this meeting which will be open to the public has been changed from June 11, 1979, from 9 a.m. to 5 p.m. to June 12, 1979, from 9 a.m. to 5 p.m.

The remaining sessions of this meeting on June 11, 1979, from 9 a.m. to 5 p.m. 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. In accordance with the determination of the Chairman published in the Federal Register March 17, 1977, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 634-6070.

John H. Clark,

Director, Office of Council and Panel Operations, National Endowment for the Arts.

June 8, 1979.

[FR Doc. 79-18893 Filed 6-14-79; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on the La Crosse Nuclear Power Plant; Meeting

The ACRS Subcommitte on the La Crosse Nuclear Power Plant, will hold a meeting on June 30, 1979 in Room 1046, 1717 H St., N.W., Washington, DC 20555. The purpose of this meeting is to review the overall condition of the reactor plant, and the status of the NRC systematic evaluation. Notice of this meeting was published on May 24, 1979 (44 FR 30177).

In accordance with the procedures outlined in the Federal Register on October 4, 1978 (43 FR 45926), 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 agenda for subject meeting shall be as follows: *Saturday, June 30, 1979, 8:30 a.m. until the conclusion of business.*

The Subcommittee may meet in Executive Session, with any of its consultants who may be present, to explore and exchange their preliminary opinions regarding matters which should be considered during the meeting and to formulate a report and recommendations to the full Committee.

At the conclusion of the Executive Session, the Subcommittee will hear presentations by and hold discussions with representatives of the NRC Staff, the Dairyland Power Cooperative, et al., and their consultants, pertinent to this review.

The Subcommittee may then caucus to determine whether the matters identified in the initial session have been adequately covered and whether any aspects need to be reviewed by the full Committee.

In addition, it may be necessary for the Subcommittee to hold one or more closed sessions for the purpose of exploring matters involving proprietary information. I have determined, in accordance with Subsection 10(d) of Pub. L. 92-463, that, should such sessions be required, it is necessary to close these sessions to protect proprietary information (5 U.S.C. 552b(c)(4)).

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 Designated Federal Employee for this meeting, Mr. John C. McKinley

(telephone 202/634-3265), between 8:15 a.m. and 5 p.m., EDT.

Background information concerning items to be considered at this meeting can be found in documents on file and available for public inspection at the NRC Public Document Room, 1717 H Street, N.W., Washington, DC 20555 and at the La Crosse Public Library, 800 Main Street, La Crosse, WI 54601.

Dated: June 11, 1979.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 79-18664 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-454 and 50-455]

Commonwealth Edison Co., Byron Station, Units 1 and 2; Special Prehearing Conference

Take notice that a special prehearing conference in this proceeding will be held on Wednesday, July 25, 1979, at 9:30 a.m., at the Industrial Commission Courtroom (4th Floor), Winnebago County Courthouse, 400 West State Street, Rockford, Illinois.

Those petitioners who have made adequate statements of their interest in the proceeding are reminded that, pursuant to § 2.714(b), no later than 15 days prior to the holding of this prehearing conference, they must "file a supplement to [their petitions] which must include a list of those contentions [the petitioners seek] to have litigated . . . and the bases for each contention [must be] set forth with reasonable specificity."

Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at the July 25 prehearing conference at the discretion of the Board within such limits and on such conditions as may be set by the Board.

Dated at Bethesda, Maryland this 8th day of June 1979.

Edward Luton,

Chairman.

[FR Doc. 79-18666 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-456 and 50-457]

Commonwealth Edison Co., Braidwood Nuclear Power Station, Units 1 and 2; Special Prehearing Conference

Take notice that a special prehearing conference in this proceeding will be held Thursday, July 26, 1979, at 9:30 a.m., at the City Council Chamber, City Hall, 150 West Jefferson Street, Joliet, Illinois.

Those petitioners who have made adequate statements of their interest in the proceeding are reminded that, pursuant to § 2.714(b), no later than 15 days prior to the holding of this prehearing conference, they must "file a supplement to [their petitions] which must include a list of those contentions [the petitioners seek] to have litigated. . . . and the bases for each contention [must be] set forth with reasonable specificity."

Members of the public may request permission to make a limited appearance pursuant to § 2.715(a) of the Commission's Rules of Practice, 10 CFR Part 2. A person making a limited appearance does not become a party but may state his position on the issues and may raise relevant questions which he wishes to have answered by the parties. Limited appearances will be received at the July 26 prehearing conference at the discretion of the Board within such limits and on such conditions as may be set by the Board.

Dated at Bethesda, Maryland this 8th day of June 1979.

Edward Luton,

Chairman.

[FR Doc. 79-18667 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-255]

Consumers Power Co.; Issuance of Amendment to Provisional Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 49 to Provisional Operating License No. DPR-20, issued to Consumers Power Company (the licensee), which revised Technical Specifications for operation of the Palisades Plant (the facility), located in Covert Township, Van Buren County, Michigan. The amendment is effective as of its date of issuance.

The amendment increases the enrichment limit for fuel assemblies in the new and spent fuel storage racks.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR § 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action, see (1) the application for amendment dated December 18, 1978, and supplement thereto dated January 12, 1979, (2) Amendment No. 49 to License No. DPR-20, and (3) the Commission's related Safety Evaluation. All of these items are available for public inspection at the Commission's Public Document Room, 1717 H Street, N.W., Washington, D.C. and at the Kalamazoo Public Library, 315 South Rose Street, Kalamazoo, Michigan 49006. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, Attention: Director, Division of Operating Reactors.

Dated at Bethesda, Maryland, this 29th day of May, 1979.

For the Nuclear Regulatory Commission.

Dennis L. Ziemann,

Chief, Operating Reactors Branch #2, Division of Operating Reactors.

[FR Doc. 79-18668 Filed 6-14-79; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-267]

Public Service Co. of Colorado; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 21 to Facility Operating License No. DPR-34, issued to Public Service Company of Colorado, which revised Technical Specifications for operation of the Fort St. Vrain Nuclear Generating Station, located in

Weld County, Colorado. The amendment is effective as of its date of issuance.

The amendment revised the Technical Specifications to: (1) Modify the fire protection system for the three room complex, the Auxiliary Electric Room, the 480 Volt Switchgear Room and the congested cable areas; this constitutes Stage III fire protection implementation; (2) Convert the Interim Alternate Cooling method to the final Alternate Cooling Method; (3) Test the reactor building louver system on a quarterly basis; (4) Eliminate the manual isolation of the high pressure helium supply from the helium circulator buffer supply header; and (5) add two firewater booster pumps to the firewater system to provide adequate capacity to operate a circulator water turbine and supply emergency cooling water for safe shutdown cooling.

The applications for the amendment comply with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of this amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of this amendment will not result in any significant environmental impact and that pursuant to 10 CFR 51.5(d)(4) an environmental impact statement or negative declaration and environmental impact appraisal need not be prepared in connection with issuance of this amendment.

For further details with respect to this action see: (1) the applications for amendment dated December 11, 1978, September 8, 1978, April 2, 1979, November 16, 1977, and October 5, 1978, (2) Amendment No. 21 to License No. DPR–34, and (3) the Commission's related Safety Evaluation. These items are available for public inspection at the Commission's Public Document Room, 1717 H Street, NW., Washington, D.C., 20555, and at the Greeley Public Library, City Complex Building, Greeley, Colorado 80631.

A copy of items (2) and (3) may be obtained upon request addressed to the United States Nuclear Regulatory Commission, Washington, D.C. 20555. Attention: Director, Division of Project Management, Office of Nuclear Reactor Regulation.

Dated at Bethesda, Maryland, this 6th day of June, 1979.

For The Nuclear Regulatory Commission

William P. Gammill,

Assistant Director for Standardization and Advanced Reactors, Division of Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 79–18669 Filed 6–14–79; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–15903 File No. SR–BSECC–79–3]

Self-Regulatory Organizations; Proposed Rule Change, Boston Stock Exchange Clearing Corp.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94–29, 16 (June 4, 1975), notice is hereby given that on April 9, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change imposes a 2 cents per share charge on members of Boston Stock Exchange Clearing Corporation ("BSECC") on trades made through the Intermarket Trading System ("ITS"), other than those executed on the Boston Stock Exchange ("BSE") as a result of commitments to trade received at the BSE.

Statement of Basis and Purpose

The proposed rule change would amend the proposed rule change, SR–BSECC–79–1, filed on March 8, 1979, and published at 44 FR 21512. The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change ("Rule Change") is to reimburse the clearing agency for certain additional costs which it incurs in connection with the clearance and settlement of trades made through ITS. The Rule Change imposes a fee for trades other than trades on the Boston Stock Exchange made through the ITS of 2 cents per share on settled transactions.

The Rule Change related to the capacity of the BSECC to facilitate the prompt and accurate clearance and settlement of securities transactions by enabling it to carry on its functions in a profitable manner. The clearing agency will incur additional expenses in connection with ITS trades principally for the additional personnel required to report and reconcile ITS trades.

The Rule Change is effective from its filing with the Commission until six months from March 8, 1979. However, the BSECC has also filed, contemporaneously with the filing of the Rule Change, an additional proposed rule change, to be considered by the Commission pursuant to section 19(b)(2) of the Securities Exchange Act of 1934, which would adopt the substance of the Rule Change on a permanent basis.

On August 30, 1978, the BSECC filed a rule change to impose a fee to recover both the personnel and finance expenses associated with the Boston Stock Exchange's participation in ITS. In addition to the 2 cents per share fee, the August 30, 1978 rule change imposed a fee equal to the interest rate, charged at the time of any ITS trade by the BSECC's principal lender, times the dollar amount of any such trade. *See* Securities Exchange Act Rel. No. 15120 (September 1, 1978), 43 FR 40968. The Commission summarily abrogated the August 30, 1978 rule change. *See* Securities Exchange Act Rel. No. 15192 (September 26, 1978), 43 FR 46391.

As indicated, in contrast to the August 30, 1978 rule change, the Rule Change is principally designed to recover personnel expenses, is effective for a limited period of time, and has been submitted to the Commission contemporaneously with a proposed rule change, to be considered pursuant to Section 19(b)(2), which would adopt the substance of the Rule Change on a permanent basis. The Rule Change is an interim measure to allow the BSECC to recover certain costs associated with clearing and settling ITS transactions while the Commission considers, pursuant to Section 19(b)(2), the questions such a fee raises regarding the financing of the costs of implementing and operating national market system facilities.

No comments have been or are to be solicited; however, an organization representing specialists on the floor of the Boston Stock Exchange has expressed opposition to the amendment.

No burden on competition is expected.

The foregoing rule change has become effective, pursuant to Section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file 6 copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L St., NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 6, 1979.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 6, 1979.

[FR Doc. 79-18619 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15905, File No. SR-NASD-79-2]

Self-Regulatory Organizations; Proposed Rule Change By National Association of Securities Dealers, Inc.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. 94-29, 16 (June 4, 1975), notice is hereby given that on June 1, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

NASD's Statement of the Terms of Substance of the Proposed Rule Change

The following is the text of proposed new Part IV of Schedule D of Article XVI of the Association's By-Laws, which replaces in full existing Part IV of Schedule D and existing Section 4 of Schedule G of Article XVIII of the Association's By-Laws

IV. Schedule of Charges

A. System Services

1. NASDAQ Level 1 Service. The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 1 Service is $8.75 per month.

2. NASDAQ Level 2/3 Service. The charge to be paid by the subscriber for each terminal receiving NASDAQ Level 2 or NASDAQ Level 3 Service shall be $150 per month and $0.01 per quotation request, plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

3. Consolidated Quotation Service. The charge to be paid by the subscriber for each terminal receiving Consolidated Quotation Service shall be $50 per month and $0.01 per quotation request plus the monthly charges established by the NYSE and AMEX for receiving last sale information and bid/ask quotations plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges.

4. Transaction Reporting for Listed Securities. The charge to be paid by the subscriber for transactions required to be reported under Schedule G of the By-Laws shall be $0.10 per transaction reported, plus equipment related charges as detailed in Parts B, C and D below. Equipment related charges include an installation charge, a terminal charge and conversion, removal and relocation charges. There shall be no charge for transactions reported in writing in conformance with Schedule G.

B. Equipment Charges

The charge for using NASDAQ terminal equipment shall be $180 per month for the first terminal and $125 per month for each additional terminal where all terminals are located on the same premises.

C. Special Options

1. Receive only printer option		$175/month
2. Spare terminal equipment (uninstalled).	CRT/Keyboard-uninstalled (no cabling provided) usable only as a spare replacement for an already installed terminal for Level 2 or 3 Service.	
	Keyboard	$20/month
	CRT display	$60/month
3. Special CRT	For each special CRT ordered to replace the standard NASDAQ CRT, in addition to all other charges specified above.	$45/month
4. Local posting	Permits subscriber to use NASDAQ level 3 terminals to enter quotations simultaneously into an internal computer system.	$60/month

D. Installation, Conversion, Removal or Relocation

Upon installation, conversion, removal or relocation of terminal equipment, the subscriber shall pay the following charges:

1. Control unit	New installation or complete removal	$250/unit
	Relocation to new address (interoffice)	$325/unit
	Relocation within same address (intraoffice)	$200/unit
2. CRT terminal	New installation of complete removal:	
	Units 1-5	$175/terminal
	Units 6-10	$150/terminal
	Units 11 and over	$125/terminal
	Relocation to new address (interoffice):	
	Units 1-5	$200/terminal
	Units 6-10	$175/terminal
	Units 11 and over	$150/terminal
	Relocation within same address (intraoffice):	
	Units 1-15	$125/terminal
	Units 6-10	$115/terminal
	Units 11 and over	$105/terminal
	Conversion charge for replacement of standard CRT with the special CRT option (9-inch).	$25/unit
3. Local posting system option	New installation or complete removal	$150
	Relocation of new address (interoffice)	$175
	Relocation within same address (intraoffice)	$100
4. Receive only printer	New installation or complete removal	$175
	Relocation to new address (interoffice)	$200
	Relocation within same address (intraoffice)	$125

E. Other Services

1. Daily Reports to Newspapers. Reports for regular public release, such as market summary information for newspaper publication, shall be produced in a format acceptable to most publishers without charge. Should such information be transmitted to another location at the request of any firm, a charge may be imposed for such services by the Corporation.

2. Other Requests for Data. The Corporation may impose and collect

compensatory charges for data from the System, supplied upon request, where there is no provision elsewhere in this Part IV for charges for such service or sale.

3. Correspondents. The charge for registration and display of a correspondent firm for a registered market maker shall be $3.50 per month for each correspondent displayed per security.

F. Partial Month Charges

The charges for the month of commencement or termination of service will be a pro rata share of the full monthly charge computed by dividing the number of business days the service was provided during that month by a standard 20 business day month.

G. Late Fees

All NASDAQ charges which are past due for 60 days or more shall be subject to a late fee of 10% of the amount past due.

H. Minor Modifications in Charges

In order to compensate for minor variations in annual net income, the Board of Governors may increase or decrease the total charges in this Schedule by 10 percent from the base charges as adopted on ——— upon filing such change with the Commission pursuant to Section 19(b)(3) of the Act.

NASD's Statement of Basis and Purpose of Proposed Rule Change

The NASDAQ System was purchased by the Association on February 9, 1976. This decision by the Association's Board of Governors was based on (1) the financial soundness of the System; (2) the belief that Association ownership would allow more economical upgrading of the System and benefit regulatory functions related to the System; and (3) the probability that System charges to subscribers could be reduced after repayment of the loan used to buy the System.

Experience has demonstrated the financial soundness of the System, and upgrading of the System's functions has continued to keep pace with the industry's needs. Plans for further enhancements necessitated by the emergence of a National Market System have been considered and incorporated into the future budget for the NASDAQ System.

Experience has also demonstrated that the Association's goal of reduction of NASDAQ System charges to its users has now become fully attainable. During the past two years of System operation the Association has been able to accumulate from System charges a reserve to cover unforeseen operational expenses. During this same period, the Association has refunded $2.3 million to System users.

In order to fulfill its stated goal of reduction in System rates, the Association's Board, with the assistance of the NASDAQ Board and its Rate Review Committee, developed and proposed a revised rate structure for NASDAQ services which reduces the charges now being paid by all users of the NASDAQ System and revises and simplifies the structure of charges by placing a greater emphasis on usage based charges. The Board reviewed projected revenues and expenses for the next five years and arrived at a revenue projection which it believed sufficient to support operation of the System, implement future System development projects and to maintain a level of retained earnings equal to one year's expenses which will provide adequate working capital. The details of this projection are set forth in Exhibit 2.

The five year projection includes estimates for all projects and expenses which can reasonably be foreseen at this time. Even at the levels of expenditure necessary to implement the foregoing, the Association found that the cost savings experienced by it in operating the System over the past several years will permit an overall reduction of $5 million per year during the next five years without adverse impact on the System. Although the percentage of reduction under the proposed rule change will vary among individual System users, there will be an overall reduction in costs of approximately 32 percent to system users.

In order to assure a fair allocation of the reduction among all subscribers,[1] the Board adopted a simplified rate structure based on recovering the cost of Level 2 and 3 equipment and communication expenses and allocation of all other administrative and operating costs among all system users and services.

Level 1 charges are reduced from $20 for the first terminal and $10 for each additional terminal to one charge of $8.75 per terminal. For Levels 2 and 3 service, the standard, high and unlimited usage plans are eliminated and replaced by a terminal charge, a service charge and a usage charge. The terminal charge is $180 per month for the first terminal and $125 per month for each additional terminal. NASDAQ Level 2 or 3 service is $150 per month per terminal and CQS is $50 per month per terminal. The usage charge is $0.01 per quotation request with no maximum charge. The stock listing charge of $5 per month for each security in which a market maker is registered in excess of 5 per terminal has been eliminated. The charge for registration and display of a correspondent firm for a registered market maker has been reduced from $5 to $3.50 per month for each correspondent displayed per security. Special equipment charges, trade reporting charges and installation, removal and relocation charges remain the same except for minor changes.

The proposed rate structure also contains a provision which authorizes the Association's Board to increase or decrease the rates by a maximum of 10 percent. Changes in rates made pursuant to this provision will be filed pursuant to Section 19(b)(3) of the Act, and shall be effective upon filing with the Commission. This limited flexibility in the rate structure is intended to permit minor modifications in the rates to cover annual adjustments for fluctuations in revenues.

Section 15A(b)(5) provides that an association of brokers and dealers shall not be registered as a national securities association unless the Commission determines that the rules of the association provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system which the association operates or controls.

Comments from the membership were neither solicited nor received.

The Association believes that no burden on competition is imposed by the proposed rule change. Although the percentage of reduction under the proposed rule change will vary among individual system users, there will be an overall reduction in costs of approximately 32 percent to System users. Thus, the charges now being paid by all users of the NASDAQ System will be reduced and the structure of the charges revised and simplified by placing a greater emphasis on usage based charges.

Within 35 days of the date of publication of this notice in the **Federal Register**, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and

[1] NASDAQ issuers will not participate in the reduction in light of the fact that funds derived from NASDAQ issuers are Association revenues which are intended to provide a limited sharing by the NASDAQ companies of the Association's costs in connection with the regulation of the trading markets in MASDAQ-quoted securities. NASDAQ issuers do not and have not participated in the cost of operating and maintaining the System.

publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six (6) copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying at the Public Reference Room, 1100 L Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 16, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 8, 1979.

[FR Doc. 79-18620 Filed 6-14-79; 8:45 am]

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[Rel. No. 10720; 812-4479]

Steinroe Cash Reserves, Inc.; Application Pursuant to Section 6(c) of the Act for Order of Exemption From Rules 2a-4 and 22c-1 Under the Act

June 5, 1979.

In the matter of Steinroe Cash Reserves, Inc., 150 South Wacker Drive, Chicago, Illinois 60606.

Notice is hereby given that Steinroe Cash Reserves, Inc. ("Applicant"), registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on May 23, 1979, for an order of the Commission, pursuant to Section 6(c) of the Act, exempting Applicant from the provisions of Rules 2a-4 and 22c-1 under the Act to the extent necessary to permit Applicant to compute its net asset value per share, for the purpose of effecting sales, redemptions and repurchases of its shares, to the nearest one cent on a share value of one dollar. Applicant represents that in all other respects, its protfolio securities will be valued in accordance with the views of the Commission, set forth in Investment Company Act Release No. 9786 (May 31, 1977) ("IC-9786"). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below.

Applicant states that it is a "money market" fund that seeks to obtain maximum current income consistent with preservation of capital and the maintenance of liquidity by investing in short-term money market instruments such as United States government obligations and commercial paper. Applicant states that it values United States government obligations with a maturity of more than 60 days at the most recent bid price or yield equivalent at the time of valuation and other money market securities with a maturity of more than 60 days at a fair value using a procedure determined in good faith by Applicant's Board of Directors. Applicant represents that this procedure includes the use of a matrix prepared by its investment adviser which classifies money market instruments according to various characteristics, including type, maturity and quality, assigning valuations to each such security based on yield equivalent quotations obtained by the investment adviser from dealers. If the adviser believes that such a valuation does not represent a fair value, it presents, for approval by a committee of Applicant's Board of Directors, such other valuation (which may be a "readily available market quotation") as the adviser considers to represent a fair valuation. Applicant further states that securities having maturities of 60 days or less from the date of valuation are valued on an amortized cost basis. Applicant represents that it determines net asset value for purposes of effecting sales, redemptions and repurchase of its shares as of the close of trading on each day the New York Stock Exchange is open for trading.

Rule 22c-1 under the Act provides, in part, that no registered investment company issuing any redeemable security shall sell, redeem, or repurchase any such security except at a price based on the current net asset value of such security which is next computed after receipt of a tender of such security for redemption or of an order to purchase or sell such security. Rule 2a-4 under the Act provides, as here relevant, that "current net asset value" of a redeemable security issued by a registered investment company used in computing its price for the purposes of distribution and redemption shall be determined with reference to (1) current market value for portfolio securities with respect to which market quotations are readily available and (2) for other securities and assets, fair value as determined in good faith by the board of directors of the registered company. In IC-9786 the Commission expressed its view that it is inconsistent with Rule 2a-4 for certain money market funds to "round off" calculations of their net asset value of $1.00, because such a calculation might have the effect of masking the impact of changing values of portfolio securities and therefore might not "reflect" its portfolio valuation as required by Rule 2a-4.

Section 6(c) of the Act provides, in part, that the Commission may, upon application, exempt any person, security, or transaction, or any class or classes of persons, securities or transactions, from any provision or provisions of the Act and the rules thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicant requests an exemption to permit it to maintain its net asset value at $1.00 per share by rounding off its calculation of net asset value to the nearest cent. Applicant submits that the granting of such exemption would be appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicant represents that many shareholders, including both financial institutions and individuals, have advised Applicant that they strongly favor a stable $1.00 net asset value per share, and that its management believes that a stable $1.00 net asset value would benefit Applicant and its shareholders because:

1. Shareholders would have the convenience of being able to determine the value of their holdings simply by knowing the number of shares they own. Consequently, their maintenance of investment records would be simplified.

2. Applicant could be more competitive with the increasing number of money market mutual funds that attempt to maintain a $1.00 net asset value per share.

3. Shareholders and potential shareholders generally are not concerned with the minor differences which might occur between yield achieved through "market" pricing and the yield computed by using the "penny

rounding" valuation method described herein.

4. If the net asset value were in fact maintained at a constant price, there would be no realization of nominal capital gains and losses that might otherwise occur with a "floating" net asset value.

Applicant represents that to maintain the stability of its net asset per share at $1.00, its Board of Directors may reduce or suspend the payment of dividends on Applicant's shares if the net asset value per share should decline below $.997 and may supplement such dividends with other distributions if the net asset value per share should arise above $1.003. Applicant states that, in addition, in order to maintain the stability of its price per share, Applicant will adhere to the following conditions:

1. Applicant's Board of Directors, in supervising Applicant's operations and delegating special responsibilities involving portfolio management to Applicant's investment adviser, undertakes (as a particular responsibility within the Board's overall duty of care owed to Applicant's shareholders) to assure, to the extent reasonably practicable, taking into account current market conditions affecting Applicant's investment objective, that Applicant's net asset value per share as computed for purposes of effecting sales, redemptions and repurchases of its shares, rounded to the nearest one cent, will not deviate from $1.00.

2. Applicant will seek to maintain a dollar-weighted average portfolio maturity appropriate to its objective of maintaining a stable price per share, and Applicant will not (i) purchase an instrument with a remaining maturity greater than one year, or (ii) maintain a dollar-weighted average portfolio maturity in excess of 120 days.

3. Applicant's purchases of portfolio investments will be limited to the following:

a. Securities issued or guaranteed by the United States government.

b. Obligations issued or guaranteed by agencies or instrumentalities of the United States government.

c. Certificates of deposit and bankers' acceptances of United States banks having total assest in excess of $1 billion and of foreign branches of such United States banks.

d. Commercial paper at time of purchase rated Prime-1 by Moody's Investors Service, Inc. ("Moody's"), A–1 by Standard & Poor's Corporation ("S&P") or, if unrated, issued or guaranteed by a corporation with outstanding debt rated Aa or better by Moody's or AA or better by S&P.

e. Corporate notes, bonds, and debentures rated Aa or better by Moody's or AA or better by S&P at time of purchase.

f. Repurchase agreements pertaining to securities issued or guaranteed by the United States government or its agencies or instrumentalities, provided that such agreements are limited to transactions with financial institutions believed by Applicant's investment adviser to present minimal credit risks.

Notice if further given that any interested person may, not later than July 2, 1979, at 5:30 p.m., submit to the Commission in writing a request for a hearing on the matter accompanied by a statement as to the nature of his interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted, or he may request that he be notified if the Commission shall order a hearing thereon. Any such communication should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request shall be served personally or by mail upon Applicant at the address stated above. Proof of such service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed contemporaneously with the request. As provided by Rule 0–5 of the rules and Regulations promulgated under the Act, and order disposing of the application will be issued as of course following said date unless the Commission thereafter orders a hearing upon request or upon the Commission's own motion. Persons who request a hearing, or advice as to whether a hearing is ordered, will receive any notices and orders issued in this matter, including the date of the hearing (if ordered) and any postponements thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

George. A. Fitzsimmons,

Secretary.

[FR Doc. 79–18621 Filed 6–14–79; 8:45 am]

BILLING CODE 8010–01–M

[Release 34–15907; File No. SR–NASD–78–14]

National Association of Securities Dealers, Inc., Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94–29, 16 (June 4, 1975) notice is hereby given that on May 14, 1979 the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Text of Proposed Rule Change

The following is the full text of the proposed amendments to Article III, Section 2 and Article XVI, Section 3 and Schedule D thereunder of the By-Laws of the National Association of Securities Dealers, Inc. ("Association"). Brackets ([ ]) indicate deletions; *italics* indicate new material.

By-Laws

Article III

Section 2

(a) Each member shall promptly furnish all information or reports requested by the Board of Governors in connection with the determination of the amount of admission fees, dues, assessments or other charges payable by members during any given fiscal year.

(b) Each member shall report promptly such information in connection with securities for which quotations are displayed on the NASDAQ System as the Board of Governors deems appropriate.

Article XVI

Section 3 **(First Paragraph)**

Taking into account relevant matters including the type of business done, securities traded, and service rendered, the Board of Governors may publish operating rules for the automated quotations systems, establish reasonable qualifications and classifications for registered market makers and other subscribers, provide standards for authorized securities, *require members to report promptly such information with respect to authorized securities as the Board of Governors deems appropriate* and specify and publish the charges to be collected from subscribers [by the operator of automated quotations systems]. Services shall be provided to members on a nondiscriminatory basis and at reasonable and uniform rates designed to encourage maximum utilization by all members, with due allowance for the geographic remoteness of members or their branch offices receiving service outside of the 48 contiguous states.

Schedule D

Part I

Section C.3.(c)

(iii) Reports of All Members.

(1) Each member shall report to the NASDAQ Department in New York City by 4:30 p.m. Eastern Time, each business day, its transactions of block-size in NASDAQ securities, other than convertible debentures, for which such member is not registered with the NASDAQ System as a market maker and which are executed with persons other than registered NASDAQ market makers in that security.

(2) "Block-size" shall mean 10,000 shares or more executed at a price of $1 or more.

(3) The report of each transaction shall include the following information:

a. Security name and NASDAQ symbol;

b. Number of shares;

c. Whether the transaction was a purchase or sale;

d. Whether the transaction was executed as principal, agent or dual agent; and

e. The name of the contra-broker/dealer or if the contra-side is a retail account, the symbol, "RA."

NASD's Statement on Purpose of Proposed Rule Change

The amendments to Article III, Section 2 and Article XVI, Section 3 of the By-Laws would give the Board of Governors specific authority to require members to report information related to NASDAQ securities. Currently, NASDAQ market makers are required to report, through the NASDAQ System, their daily volume in those securities in which they are registered market makers, but volume in NASDAQ securities that does not involve registered market makers is presently not required to be reported. The Association believes that volume reports as to block-size transactions constitute meaningful information for investors which should be incorporated into the NASDAQ volume data released for publication.

The proposed amendment to Schedule D would require all members who are not registered market makers to transmit, via telephone, Telex, TWX, their block-size purchases and sales in NASDAQ securities, other than convertible debentures, to the NASDAQ Department in New York City. The volume would be entered into the System and the data would be included in the individual security statistics, the aggregate NASDAQ statistics and the NASDAQ regulatory reports.

Members would report only that volume involved in principal or agency transactions of block-size executed with others who, at the time of execution of the transaction, were not registered market makers in the NASDAQ security. A block is defined as a transaction involving 10,000 shares or more, executed at a price of $1 or more.

For each transaction that meets or exceeds the definition of block-size a firm would report the following information:

1. Security name and NASDAQ symbol;
2. Number of shares;
3. Whether the transaction was a purchase or sale;
4. Whether the transaction was executed as principal, agent or dual agent; and
5. The name of the contra-broker/dealer or if the contra-side is a retail account, the symbol, "RA".

Members would be required to report their block purchases and sales by 4:30 p.m. Eastern Time in order to have the data entered into the System prior to the 4:45 p.m. Eastern Time volume cutoff deadline.

The Board of Governors has also proposed a technical amendment to Article XVI, Section 3 of the By-Laws to reflect the acquisition of the NASDAQ System by the Association. The amendment would delete a reference to the responsibility of the operator of the NASDAQ System to collect charges from subscribers since this function is now performed by the Association.

NASD's Basis Under the Act for Proposed Rule Change

Section 11A(a)(1) of the Act provides:

> The Congress finds that * * * [i]t is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure . . . the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities * * *

Section 15A(b)(6) of the Act, which applies to registered securities associations, requires that "[t]he rules of the association [be] designed * * * to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest * * *" These provisions give the Association authority to require that all members report their volume in NASDAQ securities in order to provide more complete information to the investing public. Accordingly, the proposed amendments are consistent with the requirements of the Act.

Comments Received From NASD Members, Participants or Others on Proposed Rule Change

Comments from members were solicited in Notice to Members 78–8. Six comment letters were received. One expressed no objection to the rule change, and the others expressed general concern over the additional reporting burden. Specific questions focused on the need to report convertible bond transactions when trading activity is negligible. The Board of Governors considered these comments meriterious and, in view of the fact that volume in convertible debentures, although released by the Association, is not generally published, the Board eliminated this requirement. Two members questioned the need of reporting the name of the contra-broker/dealer. The Association requires this information in order to prevent double reporting. Finally, two comment letters expressed the view that the reporting of total volume for NASDAQ securities might mislead the public by giving the impression that all trading occurred over the NASDAQ System. The Association does not believe the public will be misled, since the inclusion of non-market maker volume in the volume release will more accurately disclose the changes of ownership in NASDAQ securities. The NASDAQ staff in New York City will maintain a log of all telephone reports and will enter volume from non-NASDAQ market makers into the NASDAQ System under a special code to identify it as block volume from non-registered market makers.

NASD's Statement on Burden on Competition

The Association has determined that the proposed rule changes do not impose a burden on competition which is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, four comment letters expressed the view that the block volume reporting requirement would impose an operational and financial burden that would not be outweighed by the value of the information received. Three of these commentators, however, were concerned primarily with the reporting of convertible bond transactions in amounts greater than $100,000. After considering these comments, the Board of Governors decided not to require the reporting of block transactions in convertible debentures.

Only one member complained specifically that the proposed changes with regard to equity securities would require it to implement new operational and supervisory procedures. The member estimated that it experiences no more than one trade per month of the kind covered by the proposal, out of several hundred thousand transactions per year. The Association recogizes that

any change in reporting requirements necessarily requires some time and cost to implement. But since, as all commentators agreed, the daily number of reportable transactions per member will be relatively small, the Association has concluded that the reporting requirement does not outweigh the benefits of dissemination of more complete information to the public.

The proposed changes would not affect the present requirement that registered NASDAQ market makers report daily volume in the securities in which they are registered market makers. This volume is reported through the market maker's terminal. NASDAQ market makers who handle block transactions in securities for which they are not registered market makers will transmit their daily block volume figures in the same manner as do non-NASDAQ market makers: via telephone, Telex, or TWX. This method was chosen because the NASDAQ System cannot technically accommodate the entry of block volume data by non-registered market makers. The Board of Governors has concluded that the difference in reporting methods does not outweigh the benefits of dissemination of more complete information to the public.

On or before July 20, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with George A. Fitzsimmons, Secretary, Securities and Exchange Commission, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of the filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization.

All submissions should refer to the file number referenced in the caption above and should be submitted on or before July 16, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18685 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-15910; June 11, 1979; File No. SR-PSE-79-8]

Pacific Stock Exchange Inc.; Proposed Rule Change

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), as amended by Pub. L. No. 94-29, (June 4, 1975), notice is hereby given that on June 4, 1979, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

Exchange's Statement of the Terms of Substance of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE") hereby requests to amend Rule VI, Section 37 by incorporating Commentary .03 as follows (brackets indicate deletions; italics indicate additions):

Rule VI. Exchange Options Trading

Trading Halts and Suspensions

Sec. 37. No Change.

Commentary:

.01 No Change.

.02 No Change.

.03 Pursuant to this rule, whenever a regulatory halt takes place on an exchange where more than 50 percent of the total volume in the underlying security over the past six months has been traded, trading in the options class will be halted coincident with the halt in the underlying security.

A situation may arise where a halt in the underlying security occurs and there is a delay in receiving the announcement by the proper Exchange authority. In such a situation, option transactions effected during the halt in the underlying security will be voided.

A regulatory halt includes trading halts for such reasons as dissemination of information concerning the company and suspension of trading by a regulatory body because of trading irregularities. It would not include, for instance, a trading halt because of an imbalance in orders at a specialist post.

Exchange's Statement of Basis and Purpose

The basis and purpose of the foregoing proposed rule change is as follows:

The purpose of the proposed rule change is to clarify the timing of the implementation of a trading halt in the event of a regulatory halt in the underlying security.

The proposed rule change promotes just and equitable principles of trade and fosters greater accuracy in trading halts and suspensions to prevent fraudulent and manipulative acts and practices as provided in Section 6(b)(5) of the Act.

Comments have neither been solicited nor received from members on the proposed rule change.

The proposed rule change imposes no burden upon competition.

On or before July 20, 1979, or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the above-mentioned self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons desiring to make written submissions should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and of all written submissions will be available for inspection and copying in the Public Reference Room, 1100 L Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file referenced in the captain above and should be submitted on or before July 6, 1979.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

June 11, 1979.

[FR Doc. 79-18684 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 6076/June 7, 1979]

Regional Processing of Registration Statements on Form S-18

In Securities Act Release No. 6049 (April 3, 1979) [44 FR 21562] the Commission announced the adoption of Form S-18, a simplified form available to certain corporate issuers for the registration of securities to be sold to the public for cash not exceeding an aggregate offering price of $5 million. At that time the Commission indicated that processing of Form S-18 registration statements in the Commission's nine Regional Offices would be permitted subsequent to a brief training program. The first segment of the training program has been completed. The Regional Offices located in Atlanta, Boston, Chicago, Denver and Los Angeles will accept Form S-18 filings beginning on June 15, 1979. After completion of the second training program, the Regional Offices in Fort Worth, New York, Seattle and Washington will accept Form S-18 filings beginning September 15, 1979.

For further information contact Paul A. Belvin, Office of Small Business Policy, Division of Corporation Finance, Securities and Exchange Commission, 500 North Capitol Street, Washington, D.C. 20549 (202-755-1290).

By the Commission.

George A. Fitzsimmons,

Secretary.

June 7, 1979.

[FR Doc. 79-18683 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 672]

Certain Foreign Passports; Validity

Costa Rica and Morocco are added to the list of countries which have entered into agreements with the Government of the United States whereby their passports are recognized as valid for the return of the bearer to the country of the foreign-issuing authority for a period of at least six months beyond the expiration date specified in the passport.

In addition, travel documents issued by the Government of the Trust Territory of the Pacific Islands are considered to be valid for the return of the bearer to the Trust Territory for a period of six months beyond the expiration date specified therein.

This notice amends Public Notice 633 of October 19, 1978 (43 FR 48751).

Dated: June 1, 1979.

Hume A. Horan,

Acting Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 79-18694 Filed 6-15-79; 8:45 am]

BILLING CODE 4710-06-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 28905 (Sub-No. 18) and (Sub-No. 19)]

Consolidated Rail Corp. Acquisition of Baltimore & Ohio Railroad Co. Trackage and Acquisition of Chesapeake & Ohio Railway Trackage

Consolidated Rail Corporation (Conrail), Six Penn Center Plaza, Philadelphia, PA 19104, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, and the Commission has accepted, applications under 49 U.S.C. 11343 (formerly section 5(2) of the Interstate Commerce Act) for authority to purchase (a) in F.D. No. 28905 (Sub-No. 18), the line of railroad owned by the Baltimore and Ohio Railroad (B&O) from CB Junction to Clearfield, PA, subject to a reservation of trackage rights in the B&O to permit continued operation of its local and overhead freight trains, and (b) in F. D. No. 28905 (Sub-No. 19), the line of railroad owned by the Chesapeake and Ohio Railway Company (C&O) between Kanauga and Hobson, OH, a distance of 9.0 miles, in Gallia and Meigs County, OH, subject to a reservation in the C&O of trackage rights for the continued operation of its freight trains to serve power plant at Chesire, OH.

The proposed transactions allegedly involve no change in the operations of either Conrail, B&O, or C&O, and no change in service to the public and no effect on the employees of any of the railroads. The stated purpose of the transactions is to permit Conrail, principal user of the involved lines, to gain control of the dispatching of trains and the maintenance of each line.

Conrail's attorney is Charles E. Mechem, 1138 Six Penn Center Philadelphia, Philadelphia, PA 19104.

These applications were filed in response to the applications in Finance Docket No. 28905 (Sub-No. 1) *et. al., CSX Corp.-Control-Chessie System, Inc., and Seaboard Coast Line Industries, Inc.* In Finance Docket No. 28905 (Sub-No. 1), CSX Corporation (CSX) seeks to acquire control of the rail carriers subsidiary to Chessie System, Inc. (CSI), and Seaboard Coast Line Industries, Inc. (SCLI), by CSX engaging in a merger with CSI and SCLI. Notice of this application, as well as the directly related applications, was published in the **Federal Register** on February 15, 1979, at 44 Fed. Reg. 9839 (1979). The lines sought to be purchased by ConRail in Finance Docket No. 28905 (Sub-Nos. 18 and 19) are portions of CSI property.

These two applications will be consolidated for disposition with the applications in Finance Docket No. 28905 (Sub-No. 1) *et. al.* The latter matters will be the subject of an oral hearing to commence on June 25, 1979, before Administrative Law Judge David H. Allard. Interested parties will be advised when a prehearing conference on the applications in Finance Docket No. 28905 (Sub-Nos. 18 and 19) will be held.

The Commission will exercise its authority under 49 U.S.C. 11345 and waive the initial decision in these proceedings. The determination of the merits of the applications will be made by the entire Commission.

Conrail operates a railroad system serving the following states: CT, DE, IL, IN, KY, MD, MA, MI, MO, NY, OH, PA, RI, VA, NV, WV, DC, and two Canadian provinces.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC.

Because Conrail's applications themselves seek proposed conditions to approval of the application in Finance Docket No. 28905 (Sub-No. 1), the Commission will entertain no requests for affirmative relief to Conrail's proposals. Parties may only participate in direct support of, or direct opposition to, Conrail's applications as filed.

In filing comments pursuant to directions given in the last paragraph of this notice, interested persons must state specifically which application is the subject of the comments. Persons must file separate comments if they wish to comment on each application. In addition, commentators must also state specifically whether they intend to participate in the oral hearings or whether they wish only to be placed on the service list to receive all notices and decisions issued by the Commission. Failure to state an intention to

participate will result in the commentator being placed in the latter category.

Interested persons may participate formally in a proceeding by submitting written comments regarding the applications. Such submissions shall indicate the particular proceeding designation (F.D. No. 28905 (Sub-No. 18) or F.D. No. 28905 (Sub-No. 19)), and the original and ten copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the **Federal Register**. Such written comments shall include the following: the person's position, e.g., party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment, may file such statements and informaton as they may desire, subject to the filing and service requirements specified. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon Conrail and B&O in Finance Docket No. 29805 (Sub-No. 18), Conrail and C&O in Finance Docket No. 28905 (Sub-No. 19), the Secretary of Transportation, and the Attorney General.

Dated June 11, 1979.

By the Commission. Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18756 Filed 6-14-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, and 4)]

Norfolk & Western Railway Co.; Acquisition of Interest in the Louisville & Nashville Railroad Co.; Leasehold Control of Carolina, Clinchfield & Ohio Railway; Acquisition of Stock Interest in the Winston-Salem Southbound Railroad Co. and in Detroit, Toledo & Ironton Railroad Co.

Norfolk and Western Railway Company (N&W), 8 North Jefferson Street, Roanoke, VA 24042, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, four applications under 49 U.S.C. 11343 to acquire certain properties of the rail carrier subsidiaries of Chessie System, Inc., and Seaboard Coast Line Industries, Inc., as conditions to approval of the application in Finance Docket No. 28905 (Sub-No. 1), *et al., CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.*, of which notice of acceptance of the application was published in the **Federal Register** on February 15, 1979, 44 FR 9839. N&W has filed its four applications as inconsistent applications to the proposal in Finance Docket No. 28905 (Sub-No. 1). The Commission has accepted N&W's applications conditioned upon the submission on or before August 14, 1979, of certain specified information otherwise required to be filed with the applications pursuant to 49 CFR Part 1111. By decision served May 10, 1979, the Commission granted to N&W this extension of time to file information.

N&W's attorney is John S. Shannon, Vice President-Law, Norfolk and Western Railway Company, 8 North Jefferson Street, Roanoke, VA 24042.

N&W's applications are as follows: (1) In Finance Docket No. 29009 (Sub-No. 1), N&W seeks to acquire a 50 percent interest in the lines of the Cumberland Valley Subdivision of Louisville and Nashville Railroad Company (L&N). The acquisition would be achieved through the creation of a joinly owned N&W–L&N subsidiary which would acquire and operate the lines as agent for N&W and L&N. The Cumberland Valley Subdivision of L&N's Corbin Division serves the Harman-Middlesboro coal fields in eastern Kentucky. The principal lines and branches of L&N'S Cumberland Valley Subdivision extend from Corbin, KY, to Norton, VA, via Loyall, KY; from Loyall to Lynch, KY; between Harbell and Hagans, KY; and between Harlan and Glenbrook, KY. N&W's point of interchange with L&N's Cumberland Valley Subidivision of its Corbin Division is at Norton, VA. (2) In Finance Docket No. 29009 (Sub-No. 2), N&W seeks to acquire all of the rights and properties of the Clinchfield Railroad Company (Clinchfield) and thereby acquire control over the Carolina, Clinchfield and Ohio Railway Company (CC&O). The Clinchfield is an unincorporated lessee organization, controlled by Seaboard Coast Line Railroad Company (SCL) and the L&N, which owns a leasehold interest in substantially all of the properties of CC&O. N&W proposes to operate the Clinchfield as a separate property in a manner similar to that of its present operation under SCL and L&N. N&W would grant overhead trackage rights to SCL and L&N over CC&O to and from Elkhorn City, KY. The principal line of the Clinchfield extends from Elkhorn City, KY, to Spartanburg, SC, via Dante and St. Paul, VA, and Kingsport, Johnson City and Erwin, TN. N&W's point of interchange with Clinchfield is at St. Paul, VA. (3) In Finance Docket No. 29009 (Sub-No. 3), N&W seeks to acquire all of the stock of the Detroit, Toledo and Ironton Railroad Company (DT&I) which the Baltimore and Ohio Railroad Company (B&O) will obtain if its joint application in Finance Docket No. 28499, now pending before the Commission, is approved. In Finance Docket No. 28499, N&W and B&O filed a joint application for each to purchase one-half of the stock of DT&I owned by Pennsylvania Company (PennCo). PennCo owns substantially all of the stock of DT&I. If the transactions in Finance Docket Nos. 28499 and 29009 (Sub-No. 3) are approved, N&W would own substantially all of the stock of DT&I. N&W proposes no changes in DT&I's present rail operations and facilities. N&W's interchange points with DT&I are at Detroit (Oakwood Junction), MI, and Delta, Toledo, Napoleon, Leipsic, Lima, Glen Jean, and Ironton, OH. (4) In Finance Docket No. 29009 (Sub-No. 4), N&W seeks to purchase all of the stock of the Winston-Salem Southbound Railway Company (WSSB) owned by the SCL, and thereby acquire 100 percent control over WSSB. N&W and SCL each presently own 50 percent of the outstanding stock of WSSB. N&W proposes to maintain WSSB as a separate operating subsidiary. WSSB operates 95 miles of line in North Carolina, the principal line extending from Winston-Salem via Lexington, High Rock and Albemarle to Wadesboro, NC. N&W's point of interchange with WSSB is at Winston-Salem, NC.

Those persons filing comments on one or more of N&W's inconsistent applications, pursuant to instructions in the last paragraph of this notice, must specifically state which subnumber is the subject of the comments. These applications will be consolidated for disposition with the applications in Finance Docket No. 28905 (Sub-No. 1), *et al.* Commentators, including those who wish to become parties, must address each application separately, however, in order to participate in its consideration.

N&W is the ony initiating applicant in these four applications. The Commission's Railroad Consolidation Procedures, however, define "applicants" to include all carriers with properties directly involved in the transaction, other than those carriers over which trackage rights are sought. Therefore the following carriers are considered applicants to one or more of

these applications, even though their inclusion is involuntary: Louisville and Nashville Railroad Company, 908 West Broad Street, Louisville, KY 40202; Winston-Salem Southbound Railway Company, Clinchfield Railroad Company, and Carolina, Clinchfield and Ohio Railway Company, all of 500 Water Street, Jacksonville, FL 32202; Seaboard Coast Line Railroad Company, 3600 West Broad Street, Richmond, VA 23230; the Baltimore and Ohio Railroad Company, 2 North Charles Street, Baltimore, MD 21201; and Detroit, Toledo and Ironton Railroad Company, One Parklane Boulevard, Dearborn, MI 48126.

N&W's properties are located in IL, IN, IA, KY, MD, MI, MO, NE, NY, NC, OH, PA, VA, WV, and in the Province of Ontario, Canada.

The applications and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, D.C.

Any protestant who proposes to file traffic studies as evidence in opposition to these applications shall use studies that relate to the calendar year January 1, 1977, through December 31, 1977.

Because these applicaitons are themselves proposed conditions to approval of the applications in Finance Docket No. 28905 (Sub-No. 1), *et al.*, the Commission will entertain no requests for affirmative relief to N&W's proposals. Interested parties may only participate in direct support of, or direct opposition to, the applications as filed.

The Commission will exercise its authority under 49 U.S.C. 11345(e) and waive the initial decision in these proceedings. The determination of the merits of the applications will be made by the entire Commission.

All commentators must state specifically whether they intend to participate in the hearings on these applications, or whether they wish only to be placed on the service list to receive all Commission notices and decisions. Failure to indicate an intention to participate formally will result in the commentator being placed in the latter category.

Interested persons may participate formally in a proceeding by submitting written comments regarding an application. Such submissions shall indicate the proceeding designation (Finance Docket No. 29009 (Sub-Nos. 1, 2, 3, or 4)), and the original and ten copies shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the **Federal Register**. Any written comments shall include the following: the person's position, *e.g.*, party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment, may file such statements and information as they may desire, subject to the filing and service reuqirements specified. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicants, the Secretary of Transportation and the Attorney General.

Dated: June 11, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18755 Filed 6-14-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 28961 (Sub-No. 1)]

Southern Railway Co., Eastern Kentucky Railway Co., and Western Florida Railway Co.—Acquisition of Properties—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.

Southern Railway Company (Southern), 920 15th Street, N.W., Washington, DC 20005, Eastern Kentucky Railway Company (EKR), 2600 Citizens Plaza, Louisville, KY 40202, and Western Florida Railway Company (WFR), 1500 American Heritage Life Building, Jacksonville, FL 32202, on May 16, 1979, filed with the Interstate Commerce Commission at Washington, DC, a joint application under 49 U.S.C. §§ 11343–11345 (formerly section 5(2) of the Interstate Commerce Act) seeking imposition by the Commission of certain conditions to any Commission approval of the pending application in Finance Docket No. 28905 (Sub-No. 1), *CSX Corporation—Control—Chessie System, Inc., and Seaboard Coast Line Industries, Inc.*, notice of which was published in the **Federal Register** on February 15, 1979, 44 FR 9839. The Commission has accepted the application, conditioned on the submission by applicants on or before August 14, 1979, of certain specified material required to be included in the application pursuant to the Commission's Railroad Consolidation Procedures, 49 CFR Part 1111. Applicants have filed the application in response to the Commission's directive contained in the **Federal Register** notice accepting the application in Finance Docket No. 28905 (Sub-No. 1) that all inconsistent applications to that proceeding had to be filed by May 16, 1979.

Applicants' attorneys are R. Allen Wimbish, Southern Railway Company, P.O. Box 1808, Washington, DC 20013, and Charles A. Horsky, Covington and Burling, 888 Sixteenth Street, N.W., Washington, DC 20006.

EKR and WFR are recently incorporated railroad companies established by Southern to facilitate several requested conditions if the consolidation application in Finance Docket No. 28905 (Sub-No. 1) is approved. Although they have no assets, liabilities, or income presently, these two companies would become carriers if the requested conditions are imposed, the Chessie/Seaboard consolidation is consummated, and the relevant acquisitions by EKR and WFR are consummated.

Southern, EKR, and WFR are the initiating parties in the application, but the Commission's Railroad Consolidation Procedures defines "applicants" to include all carriers with properties directly involved in the transaction, other than those carriers over which trackage rights are sought. The following carriers, therefore, are considered applicants also, although their inclusion in the application is involuntary:

Kentucky and Indiana Terminal Railroad (KIT), 2910 Northwestern Parkway, Louisville, KY 40212, Detroit, Toledo and Ironton Railroad Company (DTI), One Parklane Boulevard, Dearborn, MI 48126, the Baltimore and Ohio Railroad Company (B&O), 2 North Charles Street, Baltimore, MD 21201, Seaboard Coast Line Railroad Company (SCL), 3600 West Broad Street, Richmond, VA 23230, and Louisville and Nashville Railroad Company (L&N), 908 West Broad Street, Louisville, KY 40202.

By their application Southern, EKR, and WFR seek to acquire the following properties, rights, and interests from railroad subsidiaries of Chessie System, Inc., and Seaboard Coast Line Industries, Inc.:

(a) Acquisition by Southern of the Louisville and Nashville Railroad Company's (L&N) line from Louisville (Youngtown Yard), KY, to Hammond (State Line), IN, including South Hammond Yard and other yards at Bloomington and Lafayette, branch lines between Orleans and Paoli, IN, between Wallace Junction and Midland, IN, between Monon and Indianapolis, IN,

and all other appurtentant trackage, yards, rail properties, and rail facilities.

(b) Acquisition by Southern of the L&N's (former Monon Railroad) ownership interest in and right to operate over properties of the Chicago and Western Indiana Railroad Company (CWI) and the Belt Railway Company of Chicago (BRC).

(c) Acquisition by Southern of perpetual trackage rights over certain trackage of The Baltimore & Ohio Chicago Terminal Railroad Company (BOCT).

(d) Acquisition by Southern of sole control of the Kentucky & Indiana Terminal Railroad Company (KIT) through acquisition of the stock and other ownership interests in KIT of the Baltimore and Ohio Railroad Company (B&O) and of the L&N.

(e) Acquisition by Southern of joint control with the Norfolk and Western Railway Company (N&W) of the Detroit, Toledo and Ironton Railroad Company (DTI) through acquisition by Southern of B&O's 50 percent stock interest should the Commission approve the pending N&W/B&O application for joint control of DTI (Finance Docket No. 28499 (Sub. No. 1)).

(f) Acquisition by Southern of the Seaboard Coast Line Railroad Company's (SCL) line from Jacksonville, FL, via Sanford and Orlando, FL, to Uceta Yard in or near Tampa, FL, including the classification yard and piggyback facility at Uceta Yard and other yards at Sanford, Orlando, Lakeland, and Winston, branch lines from Deland Junction to Deland, FL, from Sanford to Aloma and Beck Hammock, FL, and from Haines City to Waverly, FL, and all appurtenant trackage, yard, properties, and facilities.

(g) Acquisition by Eastern Kentucky Railway Company (EKR) of all trackage, rail properties, yards, and appurtenant facilities constituting L&N's Cumberland Valley Subdivision (with the exception of lines between Cumberland Gap, TN, and Norton, VA), and certain locomotives now used in operations on the Cumberland Valley Subdivision.

(h) Acquisition by Southern of joint control with L&N of EKR through acquisition by Southern of 50 percent of the stock of EKR.

(i) Acquisition by Southern of perpetual trackage rights over trackage of EKR, in lieu of Southern's present trackage rights over L&N, between Cumberland Gap, TN, and Middlesboro, KY.

(j) Acquisition by Western Florida Railway Company (WFR) of certain trackage, rail properties, yards, and appurtenant facilities, including port facilities, constituting SCL's Tampa Division (with the exception of the main line and certain branch lines to be acquired by Southern between Jacksonville and Tampa, branch lines between Sanford and Umatilla, FL, between Orlando and Tavares, FL, and between Sanford and Dr. Phillips and Groveland, FL, and the line between Zephyrhills, FL, and Yeoman Yard in or near Tampa, FL, via Plant City, FL), and certain locomotives and specialized equipment now used in operations in the Tampa Division.

(k) Acquisition by WFR of perpetual trackage rights for the sole purpose of handling traffic originating at or destined to Central, Park, and Tenoroc, FL, over trackage of Southern between Auburndale, FL, and Uceta Yard.

(l) Acquisition by WFR of perpetual trackage rights over trackage of SCL between Central, FL, and Yeoman Yard in or near Tampa, FL, and between Tenoroc and Winter Haven, FL.

(m) Acquisition by Southern of joint control with SCL of WFR through acquisition by Southern of 50 percent of the stock of WFR.

Persons filing comments pursuant to instructions given in the last paragraph of this notice must state which of the lettered paragraphs above relating to Southern's proposed conditions are the subject of the comments, by referring to the letter designation specifically. For example, if a commentator wishes to opppose Southern's requests in paragraphs (a), (d), and (j), that person should identify those paragraphs in the comments.

Rail properties operated by Southern are located in AL, GA, IL, IN, KY, MS, NC, SC, TN, VA, and DC. Properties proposed to be operated by WFR are located in FL. Properties proposed to be operated by EKR are located in KY, VA, and TN.

If the application were approved in its entirety, Southern would acquire directly the following lines: Louisville (VI Tower), KY to Hammond (State Line), IN, main line (296.8 miles); Monon, IN, to Michigan City, IN, branch line (59.6 miles); Monon, IN, to Indianapolis, IN, branch line (92.0 miles); Wallace Jct., IN, to Midland, IN, branch line (42.0 miles); Orleans, IN, to Paoli, IN, branch line (7.6 miles); Jacksonville, FL, to Tampa, FL (Uceta Yard), main line (238.6 miles); Deland Jct., FL, to Deland, FL, branch line (10.0 miles); Stanford, FL, to Beck Hammock and Aloma, FL, branch line (27.8 miles); and Haines City, FL, to Waverly, FL, branch line (10.0 miles). Principal points of interchange on these lines would be Chicago, IL (Hammond, IN, via connections), Lafayette, IN, Louisville, KY, and FJ Junction (Jacksonville, FL).

Southern would acquire control through stock ownership of KIT which owns and operates 26.9 miles of track classified as main line and 68.25 miles of track classified industrial, yard, and side track, leases 26.22 miles of track, owns and operates jointly 4.92 miles of track, and operates jointly but does not own 3.22 miles of track. KIT interchanges traffic with linehaul railroads only in Louisville, KY.

Southern would also acquire trackage rights over approximately 110 miles of trackage owned or operated by BOCT in the Chicago terminal area. Also in the Chicago terminal area, Southern would obtain from L&N the former Monon's rights to operate, as a part owner, over approximately 25 miles of CWI trackage and over approximately 10 miles of BRC trackage.

WFR would acquire approximately 625 miles of track in Florida. In general, these lines extend north, south, and west of Tampa along the western coast of Florida. In addition, WFR would obtain trackage rights over Southern between Auburndale and Uceta Yard and over SCL between Tenorac and Winter Haven.

EKR would acquire approximately 250 miles of line in eastern Kentucky, of which 23.6 miles (between Evarts and Glenbrook) are not operated currently. These lines include main line between Corbin and Loyall, KY (67.5 miles), between Loyall, KY, and Hagans, VA (20.7 miles), and between Harbell, KY, and Cumberland Gap, TN (13.9 miles).

The application and exhibits are available for inspection in the Public Docket Room at the office of the Interstate Commerce Commission in Washington, DC. As noted, applicants have until August 14, 1979, to submit certain information. This extension of time to file was granted by decision in Finance Docket No. 28961, served May 10, 1979. Included in that decision was approval to late-file directly related securities applications. When filed, these securities applications will be docketed as Finance Docket No. 28961 (Sub-Nos. 2, 3, and 4). The applications in Finance Docket No. 28961 (Sub-Nos. 1 through 4) will be consolidated for disposition with the application in the Chessie/Seaboard proceeding.

Any protestant who proposes to file traffic studies as evidence in opposition to any of the proposals in this application shall use studies that relate to the calendar year January 1, 1977, through December 31, 1977.

Because this application is itself filed in the form of conditional proposals to the consolidation application in Finance Docket No. 28905 (Sub-No. 1), the Commission will entertain no requests for affirmative relief in response to Finance Docket No. 28961 (Sub-No. 1). Parties' participation will be limited to direct support of or direct opposition to the various requested conditions as filed.

By statute the evidentiary phase of these proceedings must be concluded by February 15, 1981. The initial decision will be waived, and the determination of the merits of the applications will be made by the entire Commission, pursuant to 49 U.S.C. 11345(e).

Interested persons may participate formally in a proceeding by submitting written comments regarding the application. Such submissions shall indicate the proceeding designation (F.D. No. 28961 (Sub No. 1)), and the original and ten copies thereof shall be filed with the Secretary, Interstate Commerce Commission, Washington, D.C. 20423, not later than 45 days after the date notice of the filing of the application is published in the **Federal Register**. Such written comments shall include the following: the person's position, *e.g.*, party protestant or party in support, regarding the proposed transaction, and specific reasons why approval would or would not be in the public interest. Additionally, interested persons who do not intend to participate formally in a proceeding but who desire to comment thereon, may file such statements and information as they may desire, subject to the filing and service requirement specified herein. Persons submitting written comments to the Commission shall, at the same time, serve copies of such written comments upon the applicant, the Secretary of Transportation, and the Attorney General. Each commentator shall indicate clearly whether it seeks to be considered a formal party or whether it wishes only to receive all notices and decisions issued by the Commission. All commentors who do not specifically indicate their intention to participate formally in the proceeding will be placed in the latter category.

Dated: June 11, 1979.

By the Commission, Chairman O'Neal, Vice Chairman Brown, Commissioners Stafford, Gresham, Clapp and Christian.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18757 Filed 6-14-79; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 26115 (Sub-No. 5)]

Boston & Maine Corp.; Reorganization, Exemption Under 49 U.S.C. 10505 From 49 U.S.C. 11343-11347

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed exemption.

SUMMARY: Boston and Maine Corporation, pursuant to the authority of its Reorganization Trustees and approval of the Reorganization Court, and the Northern Railroad intend to enter into a settlement agreement and a new lease. A petition was filed on January 17, 1979, seeking exemption from 49 U.S.C. §§ 11343–11347, which requires prior consideration and approval of the transaction by the Interstate Commerce Commission. Boston and Maine Corporation is seeking an exemption from these sections pursuant to 49 U.S.C. § 10505 on the basis that prior Commission review of the transaction is unnecessary.

DATES: Comments must be received on or before July 16, 1979.

ADDRESS: Send comments to the: Office of the Secretary, Interstate Commerce Commission, 12th St. and Constitution Ave., NW., Washington, DC 20423. The docket number should be indicated in the top right hand corner of all statements. All written statements will be available for public inspection during regular business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Michael Erenberg, 202–275–7245.

SUPPLEMENTARY INFORMATION: On January 17, 1979, a petition was filed by the Boston and Maine Corporation (B&M) pursuant to 49 U.S.C. 10505, seeking to have its settlement agreement and new lease with the Northern Railroad (Northern) exempted from the requirement of obtaining prior Commission approval under 49 U.S.C. 11343–11347.

The B&M is the assignee of a lease ("Lowell Lease") entered into on December 30, 1889, between the Northern and the Boston and Lowell Railroad Corporation. The lease provided in pertinent part that the B&M shall make annual rental payments of $189,104.00; maintain the Northern property in as good condition as it was when the lease was entered into; at the termination of the lease, certain personal property must be returned in as good condition as it was when the lease was entered into; and, to pay certain real estate and franchise taxes assessed upon the Northern's property.

The present lease expires on December 31, 1979; the B&M will not be able to comply with the provision requiring that certain of the Northern's originally leased personal property be returned, due to the passage of time. In addition, since March 12, 1970, the B&M has not made any payments to the Northern. It was on that date that the B&M's creditors, seeking its reorganization, filed an involuntary petition in bankruptcy with the United Stated District Court for the District of Massachusetts (Reorganization Court).

On November 22, 1977, the Northern filed an objection to the B&M's petition which requested that the Reorganization Court set the priority of its creditors claims in accordance with a proposed schedule. In lieu of that petition, the Northern submitted its own proposal under which it would have priority over the First Mortgage Bondholders. In veiw of the B&M's desire to continue its operations over the Northern's property and in an effort to resolve the impasse, the Reorganization Court in an Order dated December 19, 1978, granted the Reorganization Trustees authority to enter into a cettlement agreement with the Northern and to enter into a new lease subject to the Court's approval and that of any governmental agency having jurisdiction over this transaction.

The Transaction

The Reorganization Trustees of the B&M and the Northern have agreed that it is in their best interests and that of the public to settle Northern's outstanding claims. These claims state that the Northern is the legal title owner of real, personal and mixed property leased to the B&M; that the B&M is in arrears to the Northern for the use of its property for the period March 12, 1970 to the date of the proposed agreement and from the date of the proposed agreement to December 31, 1989 and; for the B&M's failure to maintain the Northern property to satisfactory standards.

The new lease will be substanially the same as the "Lowell Lease" and is contingent upon approval of the settlement agreement. The lease changes are as follows:

1. The new lease will not contain the provision requiring the B&M to return all personal property originally leased from the Northern.

2. The original lease required the B&M to maintain the property and return it in the same condition without exception. The proposed lease will require the B&M to spend a minimum of $20,000 per year to maintain the Northern property to either Federal Railroad Administration Class I Track Standards or the present condition of the property, whichever is greater.

3. The annual rental payments of $189,109.00 would be reduced to $80,000.00 per year.

In consideration of the settlement agreement, the Northern agrees that all claims it now has or will ever have against the B&M for breaches of the lease shall be forever settled upon payment of $1,200,000.

The reorganization Trustees, in order that they may effectuate the settlement and the new lease, proposed to the Reorganization Court that they be allowed to withdraw the needed monies from Restricted Funds. By Order dated May 20, 1977, the Reorganization Court approved the request but made it subject to repayment.

Finally, the B&M will still be responsible for all federal, state, and local taxes, past due, present and future, including interest. One exception to that involves a 1969 Federal Income Tax Lien, totalling $24,461.00 which the Northern will waive.

The Statute

When two carriers enter into a lease, whereby one carrier will operate the other carriers tract and equipment, they must first seek the approval and authority of the Commission under 49 U.S.C. 11343. To seek Commission approval an application must be filed in compliance with the ICC *Railroad Acquisition, Control, Merger, Consolidation, Coordination Project, Trackage Rights and Lease Procedures*, 49 C.F.R. Part 1111 (1977) (Railroad Consolidation Procedures). B&M has requested an exemption from 49 U.S.C. 11343 so that it will not have to file an application under the Consolidation Procedures.

We can exempt a matter related to a rail carrier under 49 U.S.C. 10505. This section provides:

(a) In a matter related to a rail carrier providing transportation subject to the jurisdiction of the Interstate Commerce Commission under this subchapter, the Commission shall exempt a person, class of persons, or a transaction or service because of the limited scope of the transaction or service, when the Commission finds that the application of a provision of this subtitle—

(1) is not necessary to carry out the transportation policy of section 10101 of this title;

(2) would be an unreasonable burden on a person, class of persons, or interstate and foreign commerce; and

(3) would serve little or no useful public purpose.

(b) the Commission may begin a proceeding under this section on its own initiative or on application by the Secretary of Transportation or an interested party. The Commission may specify the period of time during which the exemption is effective.

(c) The Commission may revoke an exemption, to the extent it specifies, when it finds that application of a provision of this subtitle to the person, class, or transportation is necessary—

(1) to carry out the transportation policy of section 10101 of this title;

(2) to achieve effective regulation by the Commission; and

(3) to serve a useful public purpose.

(d) The Commission may act under this section only after an opportunity for a proceeding.

The Reorganization Trustees of the B&M believe that because the new lease will be substantually a mirror image of the present lease and because the proposed effective date of the new leave is January 1, 1979, we should exempt them from the requirements of the Railroad Consolidation Procedures. The Reorganization Trustees are also of the opinion that the proposed new lease will be in the public interest.

Before granting an exemption, we are required to provide the opportunity for a proceeding. This request for comments on the requested exemption of the proposed transaction is that opportunity. All comments filed in response to this notice, along with B&M's petition, will be used to determine whether or not the exemption under 49 U.S.C. 10505 should be granted.

This proceeding is instituted under the authority of 49 U.S.C. 10505 and pursuant to 4 U.S.C. 553, 559.

This proceeding is not a major Federal action significantly affecting energy consumption or the quality of the human environment.

H. G. Homme, Jr.,

Secretary.

[FR Doc. 79-18955 Filed 6-14-79; 8:45 am]

BILLING CODE 7035-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL (1216-6)]

Petition to Remove 1,1,1-Trichloroethane and Methylene Chloride from List of Toxic Pollutants

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of receipt and proposed denial of petition to remove 1,1,1-trichlorethane and methylene chloride (dichloromethane) from list of toxic pollutants under section 307(a) of the Clean Water Act, as amended, 33 U.S.C. 1317(a).

SUMMARY: This action gives notice of receipt of a petition from the Dow Chemical Company to remove 1,1,1-trichloroethane and methylene chloride from the toxic pollutant list. It reviews information available to the agency regarding these chemicals, and proposes that 1,1,1-trichloroethane and methylene chloride be retained on the toxic pollutant list.

DATES: Public comments on this petition will be received on or before August 14, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth M. Mackenthun, Director, Criteria and Standards Division (WH-585), Office of Water Planning and Standards, Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 (202-755-0100).

SUPPLEMENTARY INFORMATION: This notice responds to a petition dated August 2, 1978 from Dow Chemical U.S.A. requesting that 1,1,1-trichloroethane, found under the general class chlorinated ethanes, and methylene chloride, found under the general class halomethanes, be removed from the toxic pollutant list. The argument presented by Dow was that these compounds fail to meet EPA's criteria for listing chemicals as toxic pollutants under section 307(a)(1) of Pub. L. 92-500. The petition also asserted that leaving these substances on the list dilutes the Agency's efforts and diverts attention from more serious environmental issues, introduces unwarranted barriers to the introduction of new products containing the compounds, and results in needless expenditures of funds by industry and Government for expensive monitoring, analysis, and reporting.

In support of its assertion that 1,1,1-trichloroethane does not meet EPA criteria for listing under section 307(a), Dow made the following assertions:

(1) 1,1,1-trichloroethane is not persistent in the aquatic environment.

(2) There is no evidence cited for the carcinogenicity or teratogenicity of 1,1,1-trichloroethane and it has only moderate fish toxicity.

In support of its petition, Dow chemical submitted the following references:

(1) Dilling, W.L. et al. 1975. Evaporation rates and reactivities of

methylene chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, and other chlorinated compounds in dilute aqueous solution. Environmental Science and Technology. 9:833.

(2) Rampy, L.W. et al. 1977 (abstract). Results of long-term inhalation toxicity studies on rats of 1,1,1-trichloroethane and perchloroethylene formulations. Presented at International Congress of Toxicology, Toronto, Canada, Apr., 1977.

(3) Schwetz, B.A. et al. 1975. The effect of maternally inhaled trichloroethylene, perchloroethylene, methyl chloroform, and methylene chloride on embryonal and fetal development in mice and rats. Toxicology and Applied Pharmacology 32:84.

In support of its assertion that methylene chloride does not meet EPA criteria for listing under section 307(a), Dow made the following assertions:

(1) Methleny chloride is not persistent in the aquatic environment. Removal mechanism is mainly by volatilization.

(2) Methylene chloride is the least toxic of the chloromethanes. No evidence has been cited for the carcinogenicity or teratogenicity of this compound from the results of laboratory animal studies. There is no reason to consider methylene chloride a potential human carcinogen based on the results of an epidemiology study.

(3) Methylene chloride has only low fish toxicity.

(4) Methylene chloride is not likely to be found in significant quantities in surface or ground water except as a result of accidental spills. Most end uses of this compound involve processes and applications where losses to the environment occur predominantly as vapors and nearly all of the small amount that does enter the aquatic environment rapidly evaporates.

In support of its petition, Dow Chemical submitted the following references:

(1) Dilling, W.L. et al. 1975. Evaporation rates and reactivities of methylene chloride, chloroform, 1,1,1-trichloroethane, trichloroethylene, tetrachloroethylene, and other chlorinated compounds in dilute aqueous solutions. Environmental Science and Technology. 9:833.

(2) Schwetz, B.A. et al. 1975. The effect of maternally inhaled trichloroethylene, perchloroethylene, methyl chloroform, and methylene chloride on embryonal and fetal development in mice and rats. Toxicology and Applied Pharmacology. 32:84.

Klimmer, O.R. 1970. Working Paper "Dichloromethane." Paper presented to the meeting of the Committee on Foreign Substances in Food of Deutsche Forschungsgemeinschaft. Bad Godesberg. July 5, 1968.

(4) Farber, H.A. 1978a. Update on methylene chloride. Dow Chemical Company report. July 18, 1978.

(5) Farber, H.A. 1978b. Remarks by Dr. Hugh A. Farber at the New York City press briefing on the results of the Dow methylene chloride toxicology study. Dow Chemical Company report. July 18, 1978.

(6) Anonymous. Solvent clears cancer test. Dow Chemical News Release. July 18, 1978.

Background

The Clean Water Act of 1977 (the Act) directed the Administrator to publish as toxic pollutants those substances listed in table 1 of Committee Print Number 95–30 of the Committee on Public Works and Transportation of the House of Representatives. Substances on this list were classified as toxic pollutants pursuant to section 307(a) on January 31, 1978 (43 FR 4109). The list contained as item 15, "Chlorinated ethanes (including 1,2-dichloroethane, *1,1,1-trichloroethane* and hexachloroethane)" and as item 38, "Halomethanes (other than those listed elsewhere; includes *methylene chloride*, methyl chloride, methyl bromide, bromoform, dichlorobromomethane, trichlorofluoromethane and dichlorodifluoromethane)."

The Act also authoirizes the Administrator to add to or remove from such list any pollutant. In revising the toxic pollutant list, the Administrator is directed to take into account the toxicity of the pollutant, its persistence, degradability, the usual or potential presence of the affected organisms in any waters, the importance of the affected organisms, and the nature and extent of the effect of the pollutant on such organisms. It is not necessary that a pollutant meet any particular criteria within these categories in order to be listed under section 307.

The legislative history of the Clean Water Act of 1977 indicates Congress' clear intent that the Administrator have "the widest latitude" in designating pollutants as toxic and that "no pollutant listed in House Report 95–30 should be deleted without a clear finding that delisting will not compromise adequate control over the discharge of toxic pollutants" (Cong. Rec. daily ed. S. 19649). Thus, for instance, a pollutant which demonstrates high acute toxicity but low persistence may be listed under section 307, or conversely, a pollutant with low acute toxicity but high persistence may be so listed.

The Agency in 1979 published guidance on factors to be addressed in petitions to revise the toxic pollutant list (44 FR 18279 March 27, 1979). The purpose of this notice was to provide guidance relating to the information necessary to support any petition to the Environmental Protection Agency for a change in the toxic pollutant list.

The factors to be addressed by a petitioner include, but are not necessarily limited to, the following:

(1) Toxicity of the pollutant:

a. acute (96-hour LC50) toxicity to freshwater and marine organisms;

b. maximum acceptable toxicant concentration to freshwater and marine organisms;

c. embryo-larval and egg-fry tests on freshwater organisms;

d. information on dose-related, lethal or chronic sub-lethal effects on man, nonhuman mammals, vertebrates including aquatic vertebrates, and other aquatic organisms;

e. information relating to known or suspected carcinogenicity, teratogenicity, and mutagenicity in man or in other animals.

(2) Persistence of a pollutant including mobility and degradability in water of the substance.

(3) Bioconcentration, bioaccumulation, and biomagnification of a pollutant or of its degradation products or metabolites.

(4) Synergistic propensities and effects of the pollutant.

(5) Water solubility and octanol-water partition coefficient determinations for the pollutant.

(6) Extent of point source discharges into water including qualitative presence and quantitative concentrations of the pollutant in effluents, ambient water, benthic sediments, fish and other plant and animal aquatic organisms.

(7) Potential exposure of persons to the pollutant through drinking water, surface water, fish or shellfish consumption. Potential exposure of aquatic organisms and wildlife to the pollutant.

(8) Annual production of the pollutant in the United States.

(9) Use patterns.

(10) The capability of analytical methods to identify and quantitatively determine the presence of the pollutant in ambient water or wastewaters.

If data for any of the above are not known, the petition should indicate this fact. All significant information that is known to the petitioner regarding either a quantitative or qualitative measure for description of the above information factors, or that may relate to an assessment of the merit of the petition,

shall be submitted as a part of the petition.

The compounds on the list of 65 were themselves chosen on the basis of different sets of criteria. These criteria are described in Committee Print Number 95–32, Hearings before the Subcommittee on Investigations and Review of the Committee on Public Works and Transportation, U.S. House of Representatives, pages 399–405. Each of the 65 toxic pollutants was classified in one of three priority lists based upon three sets of overlapping criteria. The criteria described in the Committee Print Number 95–32 for the first two priority lists are:

Priority List I contains those chemicals for which human exposure via the water route gives rise to the greatest concern. This list contains some 29 substances and/or generic categories. Essentially chemicals on the Priority List Number I satisfy the following criteria:

(1) There is known occurrence of these compounds in point source effluents, in aquatic environments, in fish, and/or drinking water.

(2) There is substantial evidence of carcinogenicity, mutagenicity, and/or teratogenicity in human epidemiological studies or in animal bioassay systems.

(3) There is also a likelihood that point source effluents contribute substantially to human hazards, at least locally.

Priority List II contains 18 compounds and/or generic categories. These 18 satisfy the same first criteria as those on Priority List I, i.e., there is known occurence in point source effluents, in aquatic environments, in fish and/or drinking water. However, the evidence with respect to the toxicity of these compounds differs from Priority List I. In some cases the evidence of carcinogenicity, mutagenicity, and teratogenicity is based primarily upon structural similarity to compounds in List I, or upon mutagenic activity in bacterial screening systems, in the absence of adequate confirmation in mammalian systems. In other cases, the testing has given some evidence regarding the carcinogenicity, mutagenicity, or teratogenicity, but these results presently appear to be incomplete or equivocal. Also, for these compounds the possibility of significant human exposure attributable to the point source effluent is judged to be less than that for compounds in List I. This judgment could be based on a relatively small volume of effluents, or relatively low propensity to persist in water or accumulate in organisms. In addition, several compounds included in List II are included on the basis of serious toxic effects other than carcinogenicity, mutagenicity, or teratogenicity, combined with evidence for substantial release in effluents and likely exposure of humans and aquatic organisms. These other toxic effects primarily refer to toxicity to aquatic organisms.

1,1,1-Trichloroethane as a member of the generic category "chlorinated ethanes" and methylene chloride as a member of the generic category "halomethanes" are both found on priority list II.

The following sections of this notice state and elaborate on the assertions used by Dow to support its request to remove 1,1,1-trichloroethane and methylene chloride from the toxic pollutant list and also present the Agency's response to these assertions.

1,1,1-Trichloroethane

Persistence

Dow Chemical states in its petition that 1,1,1-trichloroethane is not persistent in the aquatic environment and the removal mechanism from agitated surface waters is mainly by volatilization with a minor amount removed by hydrolysis.

They base these conclusions on a Dow study by Dilling et al., 1975 which suggests that 1,1,1-trichloroethane in a concentraction of 1 ppm volatilizes from water to the extent of 50 percent in 17 minutes when stirred in an open container at a rate of 200 rpm and a temperature of approximately 25 degrees C.

Although the study shows that volatilization is a major pathway by which 1,1,1-trichloroethane is lost from water, there are reasons why this chemical could be more persistent in nature than is indicated by the experimentally—determined half-life. These reasons include differences in environmental and laboratory conditions, retransport of 1,1,1-trichloroethane from the atmosphere to water, and decreased volatilization rates in stagnant waters.

Dilling et al., 1975 caution that it is difficult to use their experimental data to predict actual loss rates from surface waters, where concentrations of 1,1,1-trichloroethane detected are significantly lower than those used experimentally. They also point out that variations in the amount of stirring/agitation (which directly influences loss rate) and free air space may account for different loss rates from environmental and experimental water systems.

The volatilization of 1,1,1-trichloroethane from water can be reversible because this chemical is stable in the atmosphere and is retransported to surface waters via precipitation. Tropospheric half-lives of 20 weeks (Pearson and McConnell, 1975) to 8 years (McConnell and Shiff, 1978) indicate that 1,1,1-trichloroethane is highly stable in the troposphere. Dilling et al. (1976) estimated the decomposition rate of 1,1,1-trichloroethane under simulated atmospheric conditions to be less than 5 percent after 23.5 hrs. (5 ppm NO_x) indicating stability in the atmosphere. 1,1,1-Trichloroethane has been detected in rainwater in the U.S. and in England (Pearson and McConnell, 1975) (Su and Goldberg, 1976) and is thus retransported to surface waters in this manner.

Dow stated that 1,1,1-trichloroethane is partially insoluble in water having a solubility of 700 mg/1 and is hydrolytically reactive having a half-life of approximately 415 days at 20 degrees C. Dow did not cite the source from which it got the data on the water solubility and hydrolytic half-life of 1,1,1-trichloroethane.

Various solubility and hydrolysis constants have been reported for 1,1,1-trichloroethane. Hardie (1964) reports the solubility of 1,1,1-trichloroethane in water at 20 degrees C to be 4,400 mg/1 (4,400 ppm) and a U.S. EPA (1978) study reported a solubility of 1,332 mg/1 at 25 degrees C. Hydrolytic half-lives of 6 to 9 months have been reported for 1,1,1-trichloroethane, indicating that this chemical has low hydrolytic reactivity (Dilling et al., 1975 Pearson and McConnell, 1975).

The appreciable water solubility of 1,1,1-trichloroethane coupled with its low rate of hydrolysis indicate a potential for greater persistence of this chemical in stagnant water.

Dow cites acetic and hydrochloric acids as the major hydrolytic products. Another potentially hazardous hydrolytic product of 1,1,1-trichloroethane is 1,1–dichloroethylene. 1,1–Dichloroethylene (vinylidene chloride), a known animal carcinogen with a water solubility of 2,500 mg/1 (Maltoni, 1977; Patty, 1963; Maltoni et al., 1977), has been reported as a minor product of hydrolysis at 25 degrees C by Dilling et al. (1975).

Pearson and McConnell (1975) report that at a lower temperature (10 degrees C) and under slightly alkaline conditions (pH 8), the major hydrolytic end product is vinylidene chloride.

The experimental evidence indicates that 1,1,1-trichloroethane, even though short-lived in water due to volatilization, has the potential for increased persistence and toxicity in the aquatic environment because of its appreciable water solubility, its long hydrolytic half-life, and its potentially hazardous, appreciably soluble hydrolytic product, vinylidene chloride.

Toxicity

Dow Chemical stated in its petition that no evidence has been cited for the carcinogenicity or teratogenicity of 1,1,1-

trichloroethane and that the compound has only moderate fish toxicity. They cited as evidence a National Cancer Institute (NCI, 1977) study (unpublished), a Dow report by Rampy et al. (unpublished), and a report by Schwetz et al., 1975. Dow did not present data on fish toxicity. They conluded that 1,1,1-trichloroethane does not meet EPA's criterion of toxicity for designating it a Toxic Pollutant under Section 307(a)(1) of Pub L. 92–500.

The 1977 NCI carcinogenic bioassay of 1,1,1-trichloroethane (cited by Dow as failing to establish any relationship between the dosage groups, the species, sex type, type of neoplasm, or site of occurrence) was considered inconclusive by the NCI, due to poor survival of treated animals.

Due to the problems associated with this study, the NCI Clearing House on Environmental Carcinogens concluded that the carcinogenicity of 1,1,1-trichloroethane could not be determined (NCI Clearing House minutes 3–25–77). A two-year carcinogenesis animal bioassay is being repeated at the National Cancer Institute.

The study cited by Dow of Rampy et al. (unpublished), which reported no increased tumor incidence in rats after 1,1,1-trichloroethane (1750 or 875 ppm) inhalation exposure, suffers from several drawbacks:

(1) The study doesn't show that animals were given highest does of 1,1,1-trichloroethane that they could tolerate. No adverse effects were observed at any point in the 12 month treatment period in animals treated with 1,1,1-trichloroethane, even at the higher does. NCI recommends that cancer studies be conducted with a known maximum tolerated doses (MTD), determined from a subchronic study. Maximum tolerated doses should be selected for each sex of each species used in the chronic study.

(2) Animals were treated for only 12 months. The NCI recommends that the test agent be given for the greater part of the animals' life spans to insure sufficient time to produce a maximum response. The carcinogen bioassay program at NCI usually requires a 24 month treatment period for both mice and rats.

(3) Only one animal species (Sprague-Dawley rats) was tested. NCI recommends the use of 2 species and both sexes of each species. A negative response in one species is not sufficient evidence to show that 1,1,1-trichloroethane is not carcinogenic.

Positive responses in two *in vitro* systems currently used to detect chemical carcinogens, indicate that 1,1,1-trichloroethane has the potential for carcinogenicity in animals. Fischer rat embryo cells (F1706) transformed by 1,1,1-trichloroethane produced fibrosarcomas in all animals (8/8) receiving injections of the cells (Price et al., 1978). Based on these results, 1,1,1-trichloroethane is a suspected carcinogen.

Another *in vitro* study of the mutagenicity of this chemical provided additional evidence that 1,1,1-trichloroethane is a potential carcinogen. 1,1,1-Trichloroethane was mutagenic to *Salmonella typhimurium* TA100 in the presence and absence of metabolic activation (Simon et al., 1977). Its mutagenic potency was similar to that of trichloroethylene, a know animal carcinogen (NCI, 1976).

The fact that 1,1,1-trichloroethane-transformed cells produced fibrosarcomas *in vivo* and the fact that 1,1,1-trichloroethane was mutagenic in the *Salmonella* test (McCann and Ames, 1976) indicate that 1,1,1-trichloroethane is suspect as an animal carcinogen.

Dow cites the teratology study by Schwetz et al., 1975 as evidence that 1,1,1-trichloroethane has no adverse effects on developing embryos and fetuses.

Schwetz et al. exposed pregnant mice and rats to 875 ppm 1,1,1-trichloroethane vapors for 7 hours daily on days 6–15 gestation. The authors concluded that this dose, which is twice the maximum allowable excursion limit for human industrial exposure, caused no maternal, embryonal or fetal toxicity, nor did it elicit a teratogenic response.

The Agency agrees with Dow's assertion that the Schwetz study presents no evidence of the teratogenicity of 1,1,1-trichloroethne. The Schwetz study highlights the need for further evaluation of the embryotoxic, fetotoxic, and teratogenic properties of this chemical. The Agency advises repeating the study at higher doses since increases in the incidence of certain fetal anomalies were observed in treated animals, although they were not considered statistically significant from controls. Although practical, the concentration of 1,1,1-trichloroethane tested was low.

Dow stated that 1,1,1-trichloroethane has only moderate fish toxicity but did not submit any aquatic toxicity data to support its assertion. Evidence available to the Agency indicates that 1,1,1-trichloroethane is toxic to marine and freshwater organisms, including commercially and recreationally important species in the United States. It is soluble in water at a level (4,400 mg/1) well above its toxicity to aquatic organisms, and therefore has the potential for toxicity under environmental conditions. The experimental results of acute toxicity test in fresh water and saltwater fish are presented below in Table 1.

Table 1.—*Acute Toxicity Test Results for 1,1,1-trichloroethane in Freshwater and Marine Aquatic Organisms*

Organism	Toxic effect	Test condition	Conc. (mg/1)	Reference
Bluegill (*Lepomis macrochirus*)	LC50 (96 hr)	Static	69.7	U.S. EPA, 1978a
Fathead minnow (*Pimephales promelas*)	LC50 (96 hr)	Static	105	Alexander et al., 1978
		Flow-through	52.8	
	EC50 (96 hr)	Flow-through	11.1	Alexander et al., 1978
Sheepshead minnow (*Cyprinodon variegatus*)	LC50 (96 hr)	Static	70.9	U.S. EPA, 1978a
Dab (*Limanda limanda*)	LC50 (96 hr)	Flow-through	33	McConnell et al., 1975

Contrary to Dow's assertion, 1,1,1-trichloroethane does meet EPA's criteria of toxicity for designating it a Toxic Pollutant based on the acute toxicity of 1,1,1-trichloroethane to freshwater and marine organisms and on information relating to the mutagenicity and suspected carcinogenicity of this chemical.

Usual and Potential Presence of the Compound in Water

Available evidence indicates that 1,1,1-trichloroethane is found in U.S.

water. It is estimated that 454,230 pounds of 1,1,1-trichloroethane are discharged into water annually (U.S. EPA, 1979a). The primary sources of waterborne 1,1,1-trichloroethane are effluents from publicly owned treatment works and direct industrial discharges to surface waters. Dow Chemical submitted data, which showed that when the drinking water of 14 cities was sampled and analyzed, all cities were found to have levels of 1,1,1-trichloroethane. The majority of these cities had 1 μg/1 or less 1,1,1-trichloroethane and 1 sample showed 17 μg/1 (reference unknown). Additional evidence shows that 1,1,1-trichloroethane has been detected in industrial effluents, surface waters, and drinking water (U.S. EPA, 1979d; U.S. EPA, 1977; Kopfler, et al., 1976). A concentration of 1,1,1-trichloroethane as high as 7,100 μg/1 has been detected in one industrial effluent (U.S. EPA, 1979d). Although 1,1,1-trichloroethane is found in water, the extent and severity of water contamination by this chemical can't be assessed without further monitoring.

Annual U.S. Production of the Pollutant and Use Patterns

1,1,1-Trichloroethane is produced in large volume and has several dispersive uses. The United States produced an estimated 600 million pounds of 1,1,1-trichloroethane in 1977 for use in metal degreasing and cleaning, for use as an intermediate in the manufacture of vinylidene chloride, for miscellaneous uses, and for exports (U.S. EPA, 1979a).

Methylene Chloride

Persistence

Dow Chemical states in its petition that methylene chloride is not persistent in the aquatic environment and that the removal mechanism from agitated natural water bodies is mainly through volatilization. Dow submitted a laboratory study by Dilling, et al. 1975 which showed that a system containing a 1 mg/l concentration of methylene chloride in water when stirred at 200 rpm in an open container at 25 degrees C lost 50 percent of its methylene chloride in less than 30 minutes and 90 percent of the compound in less than 90 minutes. In an attempt to simulate environmental conditions with respect to the presence of sediments, dissolved solids, or the presence of other pollutants, clay, limestone, sand, salt, peat moss, and kerosene were added to this laboratory system with little effect on the evaporation or disappearance rate of methylene chloride. While this study demonstrates the high volatility of methylene chloride from a stirred aqueous system under laboratory conditions, one cannot extrapolate this degree of volatilization to all natural water bodies under a variety of actual environmental conditions. For example this laboratory system is probably not predictive for a stagnant natural water body whereas this model might simulate conditions in fast flowing rivers or streams. Several field studies on methylene chloride volatilization from the aquatic environment must be performed before a definitive statement on its persistence can be made.

Toxicity

Dow Chemical states in its petition that methylene chloride does not meet reasonable toxicity criteria for listing chemicals under section 307. The following information based on data which was submitted by the Dow Chemical Co. and available to EPA in the literature questions this assertion and indicates that methylene chloride is toxic both to aquatic life and to humans and non-human mammals.

Dow Chemical states that no evidence has been cited for the carcinogenicity or teratogenicity of methylene chloride. They submitted a report by Klimmer (1970) in which the results of a study of Mosinger (1966) were reported. This chronic toxicity study involved both rats and hamsters in a two-year exposure to methylene chloride via pharyngeal tube administration. No abnormal incidence of tumors, no adverse effects on fertility and the pups of F_1 and F_2 generations, and no other adverse effects on the parent generation were observed. However in this study, methylene chloride was administered not as the pure compound but as a mixture with water and ground coffee so that the potential toxic effect of the compound alone could not be assessed. In addition, Mosinger's study was not submitted to the Agency for evaluation of the data and the test protocol used. The reported results of this study are therefore insufficient for toxicity evaluation of methylene chloride.

Dow also described a newly released *interim* report on another two-year chronic toxicity study on methylene chloride (Farber, 1978a,b; Anonymous, 1978). This study is being conducted by Dow and supported by four other companies. Rats and hamsters were exposed to methylene chloride vapor at 0, 500, 1,500, 3,500 ppm concentrations for 6 hours per day, 5 days per week, for 104 weeks to simulate lifetime exposure in human workers. Dow reported no increase in *malignant* tumors compared to controls in either species at any level of exposure. However, a significant increase in *benign* mammary tumors for both sexes in the rats were observed, especially at the higher methylene chloride exposure levels. Dow claimed that this increase in benign tumor formation for the treated rat groups was due to the rat strain used in the study which is prone to spontaneously develop benign and malignant tumors. Microscopic examination of the livers from the methylene chloride exposed rats showed some toxic effects although Dow claimed that these effects were not severe enough to be life-shortening. The Carcinogen Assessment Group (CAG) of the Agency will review the final report of this study when it is made available by Dow in September of 1979 (personal communication from Dr. Hugh A. Farber) to assess the adequacy of the data and experimental protocol. At that time a carcinogenic or unit risk calculation on methylene chloride will be performed by CAG (U.S. EPA, 1979b). Only then will the Agency be able to comment on Dow's conclusion from this study that the chemical should not be considered a potential human carcinogen.

A bioassay for carcinogenicity has been undertaken by the National Cancer Institute in a 2-year chronic gavage study with rats and mice. Again CAG will review this study when it is available (September, 1981) and another unit risk assessment will be performed at that time (U.S. EPA, 1979b).

Dow reported on a human epidemiological study (Friedlander, et al., 1978) conducted by the Eastman-Kodak Company. This study has been reviewed by CAG. This study involved examination of the mortality of male Kodak employees continuously exposed to methylene chloride vapor in the work environment for periods of up to 30 years. Air levels were measured at 5 intervals between 1959 and 1975 and were in the range of 30–120 ppm. From this study, Dow concluded that the mortality pattern of the study group was consistent with industrial controls (other Kodak employees). Dow also concluded that this study showed no increase in the incidence of cancer-related or other causes of death in the study group and was less than the New York State male population. CAG (U.S. EPA, 1979b) agrees with these conclusions, namely "no increase in neoplasms or heart disease or any other causes of death were found compared to 3 control groups, other Kodak employees, New York State males, and United States males". It should be noted however that the Kodak study does not reveal any

data on cancer incidence among living workers.

In a supporting document, Dow reports a joint human health study with Celanese Fibers Company (Anonymous, 1978). This study is in progress. Dow asserts that preliminary results of this study show no adverse effects related to methylene chloride exposure. Analysis of data is continuing with a final report anticipated by the end of 1978. To date, the Agency has not received this report an any comment on Dow's conclusion must be based on the Agency's review of the final report.

There is suggestive evidence for methylene chloride carcinogenicity based on marginally positive pulmonary adenoma response in a 24 week study in strain A mice (Theiss, 1977). At present, this has been the only positive mammalian *in vivo* test for carcinogenicity reported in the literature. The chemical was administered by interpertoneal injection 3 times per week for a total of 16 or 17 injections at doses of 0, 10, 400 and 800 mg/kg. The data obtained from this study is judged qualitatively informative but quantitatively inadequate for carcinogenic risk extrapolation.

Other suggestive evidence for carcinogenicity is based on positive responses in two short term tests. Methylene chloride was mutagenic in at least one bacterial strain, *Salmonella* TA 100, when the compound was run in the Ames test (Simon, et al., 1977). Methylene chloride demonstrated mutagenicity in this system without the requirement of metabolic activation and was approximately 8 times as potent as 1,1,1-trichloroethane and trichloroethylene, the latter compound being a known animal carcinogen.

A second test, an *in vitro* test of cell transformation, was performed using Fischer rat embryo cell line F 1706 (Price, et al., 1978). Methylene chloride transformed the cells and these transformed cells produced, when injected, fibrosarcomas in 5 out of 5 rats. Again methylene chloride was more potent than 1,1,1-trichloroethane and trichloroethylene in this test.

In summary, there are not adequate studies that completely describe the carcinogenic potential of methylene chloride. The data base for this compound is neither extensive of adequate. A long term animal bioassay is required and two are currently in progress at NCI and Dow Chemical Co. When final results from these tests are available, carcinogenic risk assessments will be performed for methylene chloride. Suggestive evidence for carcinogenicity is based on one positive animal bioassay and two *in vitro* tests one of which demonstrates mutagenic potential for the compound as well.

Dow asserts that a study by Schwetz, et al. (1975) has demonstrated that methylene chloride does not cause significant maternal, embryonal, or fetal toxicity, and is not teratogenic in mice or rats. The Agency agrees with this interpretation of the study. However, some minor toxic effects were observed in both dams and fetuses for both species during and after exposure to the chemical (inhalation of 1225 ppm, 7 hours per day on days 6–15 of gestation). Pregnant mice experienced an 11 to 15 percent increase in mean body weight. The absolute liver weights of pregnant females of both species were elevated compared to controls. Elevated carboxyhemoglobin content was observed in pregnant females of both species. In addition exposure to the chemical did cause effects on embryonal and fetal development in both species as evidenced by an increase in the incidence of variation of sternum development (both species) and an increase in soft tissue anomalies (rats).

Other questions arise from the above study. For pregnant rats, the daily intake of methylene chloride via inhalation was calculated to be approximately 800 mg/kg. Methylene chloride demonstrated an oral LD50 value of 945 mg/kg in the rat (Marhold, 1977). This datum when considered with the calculated daily intake of 800 mg/kg in the teratogenicity study suggests that the most sensitive and/or appropriate route of methylene chloride administration, i.e., oral, should also be used in assessing the toxicity and/or teratogenicity of the compound in rats. In addition, exposure data for other potentially more sensitive species should be gathered before a final determination of teratogenic potential can be determined for methylene chloride.

Dow assets that methylene chloride has only low fish toxicity. Dow did not submit any aquatic life toxicological data with its petition to support this assertion. Data available to the Agency (U.S. EPA, 1978a) show a moderate degree of methylene chloride toxicity toward aquatic life. Acute toxicity values (48 and 96 hour LC50 values) ranged from 224 mg/1 for the water flea, *Daphnia magna*, and the bluegill, *Lepomis macrochirus*, to 331 mg/1 for the sheepshead minnow, *Cyprinodon variegatus*.

Usual and Potential Presence of the Compound in Water

Dow asserts that with the exception of accidental spills, methylene chloride is not likely to be found in significant quantities in surface or ground waters. Dow submitted no monitoring data to support this assertion. The following information, available to EPA suggests that this assertion is inaccurate.

Even though methylene chloride is quite volatile with a vapor pressure of 426 mm Hg at 25 degrees C (Hardie, 1964), its potential for solubility in water, particularly stagnant and cool water bodies, is great (solubility of 19,800 mg/1 at 25 degrees C (Hardie, 1964)). Methylene chloride is one of the ten halogenated methanes identified in United States' finished drinking waters as of 1975 by the U.S. Environmental Protection Agency (U.S. EPA, 1975). In EPA's Region V Organics Survey at 83 sites, the Agency reported concentrations of methylene chloride in 8 percent of the finished municipal water sites with a median concentration for all sites surveyed of less than 1 ug/1 and a maximum concentration found of 7 ug/1 (U.S. EPA, 1975). U.S. EPA's National Organic Monitoring Survey (NOMS) conducted in 1976 and 1977 sampled 113 water supplies representing various sources and treatments (U.S. EPA, 1978b,c). Methylene chloride was found in 15 of 109 water supplies tested with a mean concentration for all positive samples of 6.1 ug/1.

Annual United States Production of the Pollutant and Use Patterns

Methylene chloride has a significant potential for environmental contamination because it is produced in large amounts in the U.S. (538,241,000 lbs in 1976) and because most of its uses are dispersive in nature (U.S. EPA, 1979c). Of the 580,577,000 lbs consumed in the U.S. in 1976, 470,547,000 lbs or 81% was discharged into the environment as airborne emissions as a result of its production and uses (U.S. EPA, 1979c). The compound's primary uses are as a paint remover, a solvent in plastic processing, an aerosol vapor pressure depressant, and a metal degreaser. Each of these uses are approximately 100 percent dispersive via volatilization involving high human exposure. Most of the chemical is released into home and factory air through these uses. The number of workers exposed is estimated at 2,500,000 (U.S. EPA, 1979b).

In 1976, approximately 27,000 lbs. of methylene chloride was discharged into the aquatic environment as a result of the chemical's production. Of this

amount, 96% was discharged directly into waterways and the balance injected into deep wells. Methylene chloride discharges from these production plants to publicly owned treatment works (POTWs) and to land-destined waste are believed to be negligible (U.S. EPA, 1979c). However, data on total direct aquatic discharges and discharges to POTWs from methylene chloride uses are not available, so that complete assessment of methylene chloride aquatic discharges cannot be made at this time.

Historically, annual growth for methylene chloride has been 8 to 10 percent over the past 10 years. Projections for future annual growth are 10 percent with prospects for even higher growth rates being achieved as new end-uses develop and existing ones expand (U.S. EPA, 1979c). Therefore the potential for increased annual environmental discharges exists.

Other Considerations

The petition states that leaving 1,1,1-trichloroethane and methylene chloride on the list of Toxic Pollutants dilutes the Agency's efforts and diverts attention from more serious environmental issues, introduces unwarranted barriers to the introduction of new products containing the compounds, and results in needless expenditures of funds by industry and Government for expensive monitoring, analysis, and reporting.

Listing chemicals under section 307(a) does not preclude a company from producing, marketing, and selling a product. The purpose of the section 307 list of toxic pollutants is to focus attention on the potential environmental harm which might result if such pollutants are discharged to the aquatic environment and to control such harmful discharges through the development and implementation of appropriate effluent limitations. Since 1,1,1-trichloroethane and methylene chloride are on the section 307(a) toxic pollutant list, they may be subject to effluent limitations sooner than if they were nonconventional pollutants, and they are not eligible for waivers on water quality or eocnomic grounds. However, 1,1,1-trichloroethane and mentylene chloride would be subject to BAT effluent limitations whether they are classified as toxic or nonconventional pollutants.

In summary 1,1,1-trichloroethane meets several of EPA's criteria for listing it as a Toxic Pollutant:

(1) It is acutely toxic to freshwater and marine organisms.

(2) There is evidence relating to its mutagenicity and suspected carcinogenicity.

(3) There is limited evidence of its presence in effluents, ambient water, and aquatic organisms.

(4) It has been detected in some drinking water supplies and there is potential for exposure of humans through drinking water and surface water.

(5) Annual production of 1,1,1-trichloroethane in the U.S. exceeds 600 million pounds.

In summary, methylene chloride meets several of EPA's criteria for listing it as a Toxic Pollutant:

(1) Methylene chloride does not persist in water under laboratory conditions but its large potential for solubility in water and lack of data for its persistence under field conditions warrant further study.

(2) Evidence exists for its carcinogenicity in at least two animal species. Results from one chronic toxicity test will not be available for Agency review and subsequent cancer risk calculations until September 1981.

(3) Evidence exists for its mutagenicity.

(4) One study submitted by the petitioner did not demonstrate teratogenicity although skeletal and soft tissue anomalies were found in two laboratory animal species.

(5) A human epidemiological study involving long term, low level exposure to the chemical via inhalation does not show the involvement of methylene chloride in cases of mortality but does not give information on contribution to incidences of cancer and other diseases in living workers. The results of another epidemiological study are preliminary and an Agency review of the study is expected pending receipt of the final results.

(6) Aquatic life toxicity is moderate.

(7) Methylene chloride has been found in some finished U.S. drinking waters.

(8) Discharges of this chemical into the environment represent a substantial percentage of its production and consumption volume. As methylene chloride use rises, increased environmental discharges can be expected.

Based on the physical and/or toxicological properties of 1,1,1-trichloroethane and methylene chloride and their large annual production volume and dispersive uses as discussed in this report, it is proposed that 1,1,1-trichloroethane and methylene chloride should remain on the toxic substances list under the general classification of chlorinated ethanes and halomethanes, respectively.

Dated: May 30, 1979.

Douglas M. Costle,

Administrator.

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[FR Doc. 79-18603 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1247-8; PP 8G2121/T211]

Pesticide Programs; Notice of Establishment of a Temporary Tolerance for [N-(2,6-dimethylphenyl)-N-(methoxyacetyl)alanine methyl ester]

Ciba-Geigy Corp., Agricultural Div., PO Box 11422, Greensboro, NC 27409, submitted a pesticide petition (PP 8G2121) to the Environmental Protection Agency (EPA). This petition requested that a temporary tolerance be established for residues of the fungicide [*N*-(2,6-dimethylphenyl)-*N*-(methoxyacetyl)alanine methyl ester] in or on the raw agricultural commodity potatoes at 0.05 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with an experimental use permit (100-EUP-1) that has been issued under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136).

An evaluation of the scientific data reported and other material showed that the requested tolerance was adequate to cover residues resulting from the proposed experimental use, and it was determined that the temporary tolerance would protect the public health. The temporary tolerance has been established for the pesticide, therefore, with the following provisions:

1. The total amount of the pesticide to be used must not exceed the quantity authorized by the experimental use permit.

2. Ciba-Geigy Corp. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The firm must also keep records of production, distribution, and performance, and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This temporary tolerance expires January 30, 1981. Residues not in excess of 0.05 ppm remaining in or on potatoes after this expiration date will not be considered actionable if the pesticide is legally applied during the term of and in accordance with the provisions of the experimental use permit and temporary tolerance. This temporary tolerance may be revoked if the experimental use permit is revoked or if any scientific data or experience with this pesticide indicates such revocation is necessary to protect the public health. Inquiries concerning this notice may be directed to Mr. Henry Jacoby, Product Manager 21, Registration Division (TS-767), Office of Pesticide Programs, 401 M St., SW, Washington, DC 20460 (202/755-2562). (Statutory Authority: Section 408(j) of the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 346a(j)]).

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18749 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1248-1; DPP-50431]

Issuance of Experimental Use Permits

The Environmental Protection Agency (EPA) has issued experimental use permits to the following applicants. Such permits are in accordance with, and subject to, the provisions of CFR Part 172, which defines EPA procedures with respect to the use of pesticides for experimental purposes.

No. 464-EUP-55. Dow Chemical Company, Midland, Michigan 48640. This experimental use permit allows the use of 350 gallons of the herbicide Lontrel (700# a.e. of 2,4-D and 175# a.e. of 3,6-dichloro-2-pyridinecarboxylic acid) on wheat and barley to evaluate control of broadleaf weeds. A total of 1,400 acres is involved; the program is authorized only in the States of Montana, Nebraska, North Dakota, South Dakota, and Washington. The experimental use permit is effective

from May 7, 1979 to March 31, 1981. This permit is being issued with the limitation that all crops will be destroyed or used for research purposes only. (PM-23—Robert Ikeda, Room: E-351, Telephone: 202/755-1397)

No. 20954-EUP-11. Zoecon Corporation, Palo Alto, California 94304. This experimental use permit allows the use of 50 pounds of the insecticide methoprene on various mosquito breeding sites to evaluate control of mosquitoes. A total of 2,650 acres is involved; the program is authorized only in the States of Arizona, Arkansas, California, Florida, Georgia, Illinois, Louisiana, Minnesota, New Jersey, New Mexico, New York, North Carolina, Tennessee, Texas and Utah. The experimental use permit is effective from April 26, 1979 to April 25, 1980. (PM-17—Adam Heyward, Room: E-229, Telephone: 202/426-9425)

No. 27586-EUP-15. U.S. Department of Agriculture, Forest Service, Washington, D.C. 20250. This experimental use permit allows the use of 7 pounds of the insecticides α-cubebene, 4-methyl-3-heptanol, and α-multistratin in urban and forest areas to evaluate control of the Elm bark beetle. A total of 20,000 traps is involved; the program is authorized only in the States of California, Colorado, Connecticut, Delaware, District of Columbia, Illinois, Massachusetts, Michigan, Minnesota, New York, North Carolina, Rhode Island, South Carolina, South Dakota, Virginia, and Wisconsin. The experimental use permit is effective from March 30, 1979 to October 1, 1979. (PM-17—Adam Heyward Room: E-229, Telephone: 202/426-9425)

Interested parties wishing to review the experimental use permits are referred to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M Street, S.W., Washington, D.C. 20460. The descriptive paragraph for each permit contains a telephone number and room number for information purposes. It is suggested that interested persons call before visiting the EPA Headquarters Office, so that the appropriate permit may be made conveniently available for review purposes. The files will be available for inspection from 8:30 a.m. to 4:00 p.m. Monday through Friday.

STATUTORY AUTHORITY: Section 5 of the Federal Insecticide, Fungicide, and Rodenticide, Act (FIFRA), as amended in 1972, 1975, and 1978 (92 Stat. 819; 7 U.S.C. 136)

Dated: June 7, 1979.

Douglas D. Campt,

Director, Registration Division.

FR Doc. 79-18750 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1248-7; PF-133]

Pesticide Programs; Notice of Filing of Pesticide Petitions

Pursuant to section 408(d)(1) of the Federal Food, Drug, and Cosmetic Act, the Environmental Protection Agency (EPA) gives notice that the following petitions have been submitted to the Agency for consideration.

PP 9F2205. BASF Wyandotte Corp., 100 Cherry Hill Road, PO Box 181, Parsippany, NJ 07054. Proposes that 40 CFR 180 be amended by establishing a tolerance for the combined residues of the fungicide 3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione and its dichloroaniline-containing metabolites in or on the raw agricultural commodity strawberries at 10 parts per million (ppm). The proposed method for determining residues is by gas chromatography using an electron capture detector.
PM21-Mr. Henry Jacoby, Rm. E-305, 202/755-2562.

PP9F2206. Boots Hercules Agrochemicals Co., 910 Market St., Wilmington, DE 19899. Proposes that 40 CFR 180 be amended by establishing tolerances on the combined residues of the herbicide diethatyl-ethyl [*N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester] and its major metabolites, *N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester glutahione conjugate and *N*-chloroacetyl-*N*-(2,6-diethylphenyl) glycine ethyl ester cysteine conjugate in or on the raw agricultural commodities sugar beet roots and sugar beet tops at 0.05 ppm and soybeans at 0.2 ppm. The proposed analytical method for determining residues is a gas chromatography method.
PM23-Ms Willa Garner, Rm. E-353, 202/755-7012.

Interested persons are invited to submit written comments on these petitions. Comments may be submitted, and inquiries directed, to the designated Product Manager (PM), Registration Division (TS-767), Office of Pesticide Programs, EPA, 401 M St., SW, Washington, DC 20460, or by telephone at the numbers cited. Written comments should bear a notation indicating the petition number to which the comments pertain. Comments may be made at any time while a petition is pending before the Agency. All written comments filed pursuant to this notice will be available for public inspection in the Product Manager's office from 8:30 a.m. to 4:00 p.m. Monday through Friday.

Dated: June 11, 1979.

Douglas D. Campt,

Director, Registration Division.

[FR Doc. 79-18751 Filed 6-14-79; 8:45 am]

BILLING CODE 6560-01-M

Availability of Environmental Impact Statements

AGENCY: Office of Environmental Review, Environmental Protection Agency.

PURPOSE: This Notice lists the Environmental Impact Statements which have been officially filed with the EPA and distributed to Federal Agencies and interested groups, organizations and individuals for review pursuant to the Council on Environmental Quality's Regulations (40 CFR Part 1506.9).

PERIOD COVERED: This Notice includes EIS's filed during the week of June 4 to June 8, 1979.

REVIEW PERIODS: The 45-day review period for draft EIS's listed in this Notice is calculated from June 15, 1979 and will end on July 30, 1979. The 30-day wait period for final EIS's will be computed from the date of receipt by EPA and commenting parties.

EIS AVAILABILITY: To obtain a copy of an EIS listed in this Notice you should contact the Federal agency which prepared the EIS. This Notice will give a contact person for each Federal agency which has filed an EIS during the period covered by the Notice. If a Federal agency does not have the EIS available upon request you may contact the Office of Environmental Review, EPA for further information.

BACK COPIES OF EIS'S: Copies of EIS's previously filed with EPA or CEQ which are no longer available from the originating agency are available from the Environmental Law Institute, 1346 Connecticut Avenue, Washington, D.C. 20036.

FOR FURTHER INFORMATION CONTACT: Kathi Weaver Wilson, Office of Environmental Review A-104, Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, (202) 755-0780.

SUMMARY OF NOTICE: Appendix I sets forth a list of EIS's filed with EPA during the week of June 4 to June 8, 1979, the Federal agency filing the EIS, the name, address, and telephone number of the Federal agency contact for copies of the EIS, the filing status of the EIS, the

actual date the EIS was filed with EPA, the title of the EIS, the State(s) and County(ies) of the proposed action and a brief summary of the proposed Federal action and the Federal agency EIS number if available. Commenting entities on draft EIS's are listed for final EIS's.

Appendix II sets forth the EIS's which agencies have granted an extended review period or a waiver from the prescribed review period. The Appendix II includes the Federal agency responsible for the EIS, the name, address, and telephone number of the Federal agency contact, the title, State(s) and County(ies) of the EIS, the date EPA announced availability of the EIS in the **Federal Register** and the extended date for comments.

Appendix III sets forth a list of EIS's which have been withdrawn by a Federal agency.

Appendix IV sets forth a list of EIS retractions concerning previous Notices of Availability which have been made because of procedural noncompliance with NEPA or the CEQ regulations by the originating Federal agencies.

Appendix V sets forth a list of reports or additional supplemental information on previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which have been called to EPA's attention.

Dated: June 12, 1979.

William N. Hedeman, Jr.,

Director, Office of Environmental Review.

Appendix I—EIS's Filed with EPA During the Week of June 4 to 8, 1979

DEPARTMENT OF AGRICULTURE

Contact: Mr. Barry Flamm, Coordinator, Environmental Quality Activities, Office of the Secretary, U.S. Department of Agriculture, Room 412A, Washington, D.C. 20250, (202) 447–3965.

Forest Service

Final

Boulder Planning Unit Land Mgmt. Plan, Boundary, Bonner County, Idaho, June 5: Proposed are eight alternatives for a land and resource management plan for the 58,000 acre Boulder Planning Unit, Idaho Panhandle National Forests in Boundary and Bonner Counties, Idaho. This revised final statement replaces the original final EIS, #70542, filed 5–22–77. This statement reflects changes in allocations for timber, big game summer range, and dispersed recreation. Roadless areas contiguous to the Boulder Unit have been reevaluated to determine whether they should be recommended for inclusion in the national wilderness preservation system. (USDA–FS–ADM–01—04—76—22). Comments made by: COE, DOI, EPA, FPC, State, and local agencies, individuals. (EIS Order No. 90560.)

Final Supplement

Oregon Dunes NRA Management Plan, Siuslaw National Forest, Coos, Douglas, and Lane Counties, Oreg., June 4: This statement supplements final EIS #70042, filed 1–11–77 concerning a management plan for the Oregon Dunes National Recreation area located in Coos, Douglas, and Lane Counties, Oregon. The purpose of the supplement is to: (1) delete references for the nonwilderness recommendation, (2) update information regarding land status, and (3) to indicate that the implementation of the management plan will recognize the reevaluation process, and that no developments or activities will be permitted on the unroaded areas which would adversely affect wilderness values that may be present. (USDA–FS–R6—FES(ADM)–75—01—SUPP.) (EIS Order No. 90554.)

U.S. ARMY CORPS OF ENGINEERS

Contact: Mr. Richard Makinen, Office of Environmenatl Policy, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, NW, Washington, D.C. 20314, (202) 272–0121.

Draft

Folly Beach, beach erosion control, Charleston County, S.C., June 7: Proposed is a beach erosion control and hurricane protection project for Folly Beach on Folly Island, Charleston County, South Carolina. The improvements include restoration and periodic renourishment of a countinuous reach of beach for 16,860 feet, which would require 684,000 cubic yards of fill material. A berm 25 feet wide would be constructed along the entire length of the project. Additional sanitary facilities will also be constructed. (Charleston District.) (EIS order No. 90571.)

Final

West Des Moines-Des Moines Flood Protection, Polk County, Iowa, June 4: This statement proposes a Plan for Flood Protection for the Cities of West Des Moines and Des Moines, near the confluence of the Raccoon River and Walnut Creek in Polk County, Iowa. The project will protect an area of approximately 927 acres from the standard project flood of these watercourses. Project elements include refurbishment of existing levees and construction of new levees along the north bank of Jordon Creek. The original draft, No. 50416, filed 3–25–75, was replaced by revised draft No. 61241, filed 8–23–76. (Rock Island District.) Comments made by: EPA, DOI, USDA, DOT, HUD, AHP, HEW, State, and local agencies, groups and businesses. (EIS order No. 90556.)

Final

Fifth Unit Installation, Hartwell Lake, Savannah River, Hart County, S.C.: Anderson County, Ga., June 4: Proposed is the installation of an 80,000 kilowatt fifth generating unit at Hartwell Dam located on Hartwell Lake in Hart County, Georgia and in Anderson County, South Carolina. The installation would include modification and additions to the existing power intake works and powerhouse structure downstream; addition of a transformer and tower on the transformer deck; and oil circuit breakers, high voltage bus insulators, disconnect switches, turning tower, and pull-off tower at the switchyard. The original draft, No. 80302, filed 3–29–78 was replaced by revised draft, No. 81177, filed 10–30–78. (Savannah District) Comments made by: EPA, USDA, HEW, HUD, AHP, FERC, and State agencies. (EIS Order No. 90555.)

Final Supplement

Corpus Christi Ship Channel, M/D (FS–1), Aransas, Nueces, and San Patricia Counties, Tex., June 4: This statement supplements a final EIS No. 60074, filed 1–19–76. The proposed action involves use of the Tule Lake area from the Tule Lake turning basin to Viola turning basin for disposal of dredged material from maintenance of the Corpus Christi Ship Channel, Texas. The project provides deep draft navigation channels extending from the Gulf of Mexico through a jettied entrance channel in Aransas Pass to a turning basin at Harbor Island and thence across Corpus Christi Bay to turning basins at La Quinta, Corpus Christi, Avery Point, Chemical, Tule Lake, and Viola. This project is located in Aransas, Nueces, and San Patricia Counties, Texas. (Galveston District) Comments made by: DOC, DOI, EPA, USDA, AHP, DOT, State, and local agencies, individuals. (EIS Order No. 90569.)

Department of Commerce

Contact: Dr. Sidney R. Galler, Deputy Assistant Secretary, Environmental Affairs, Department of Commerce, Washington, D.C. 20230, 202–377–4335.

Nat'l Oceanic and Atmospheric Admin.

Draft supplement

Surf Clam and Ocean Quahog Industries, FMP (DS–2), Atlantic Ocean, June 8: This statement supplements final EIS, No. 71292, filed Oct. 17, 1977. Proposed is amendment No. 2 to the Surf Clam and Ocean Quahog FMP for the Northwest Atlantic Ocean. This amendment would extend the current FMP through the end of calendar year 1980. The FMP remains in the existing form which includes: Rebuilding the declining Surf Clam populations; minimize short-term economic dislocations to the extent possible; and prevent the harvest of Ocean Quahog from exceeding maximum sustainable yield and direct the fishery toward maintaining optimum yield. (EIS Order No. 90573.)

Department of Energy

Contact: Dr. Robert Stern, Acting Director, NEPA Affairs Division, Department of Energy, Mail Station E–201 GTN, Washington, D.C. 20545, 202–376–5998.

Bonneville Power Administration

Draft supplement

BPA Okanogan Area Service, Facility Location (DS–2), Okanogan, Douglas County, Wash. June 8: This statement supplement the final EIS on the BPA 1976 Fiscal Year

program, No. 50349, filed March 14, 1975. Proposed are facility locations for transmission facilities to serve the Okanogan Valley area of Okanogan and Douglas Counties, Washington. The preferred alternative extends for 63 miles from the Chief Joseph Substation in Okanogan County to the Tonasket Substation in Douglas County. (DOE/EIS–0048–DS–1.) (EIS Order No. 90574.)

Environmental Protection Agency

Contact: Mr. Eugene Wojcik, Chief, EIS section, Region V, Environmental Protection Agency, 230 South Dearborn Street, Chicago, IL 60604, 312–353–2157.

Final

Metropolitan Area WWT Facilities, Columbus, Franklin County, Ohio, June 8: The subject action is the approval of the facilities plans for the city of Columbus in Franklin County, Ohio to expand and upgrade wastewater collection, treatment, and disposal facilities within the Columbus metropolitan area. The proposed project includes selection of additional liquid treatment facilities for sewage processing; construction of two sludge incinerators and dewatering facilities; and construction of separate sanitary sewer interceptors. (EPA–5–OH–Franklin-Columbus–WWTP + INT–79.) Comments made by: COE, HEW, DOI, DOT, State and local agencies, individuals. (EIS Order No. 90575.)

General Services Administration

Contact: Mr. Carl W. Penland, Acting Director, Environmental Affairs Division, General Services Administration, 18th and F Streets NW., Washington, D.C. 20405, 202–566–1416.

Draft

Key West Naval Air Station, Disposal of Property, Monroe County, Fla., June 5: Proposed is the disposition by GSA of surplus Federal properties at the Naval Air Station located at Key West, Monroe County, Florida. The Action will include portions of the Harry S. Truman Annex and Trumbo Point, Annex. It will also include the former Coast Guard Station at the north end of the Truman Annex. The properties include approximately 123 acres of land and improvements. The major alternatives considered include: (1) No action or delayed action; (2) disposition alternatives; and (3) reuse alternatives. (N–FLA–635–G–EIS–D–1.) (EIS Order No. 90558.)

Department of HUD

Contact: Mr. Richard H. Broun, Director, Office of Environmental Quality, Room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, 202–755–6306.

Draft

Sunblest Subdivision, Mortgage Insurance, Fishers, Hamilton County, Ind., June 7: Proposed is the issuance of HUD home mortgage insurance for the Sunblest Subdivision located in Fishers, Hamilton County, Indiana. The insurance will apply to the installation of all infrastructure (sewers, water, roads) for the development of the first 502 residential building lots and for the acquisition of the entire 658.99 acre tract. The final project will consist of 545.99 acres developed for residential use and 113 acres developed for commercial industrial use. (HUD–R05–EIS–78–07.) (EIS Order No. 90566.)

Final

Lexington South Development, Eagan, Dakota County, Minn., June 6: Proposed is the issuance of HUD home mortgage insurance for a portion of the Lexington South Development located in Eagan, Dakota County, Minnesota. The area to be developed encompasses approximately 448 of the total 1,108 acre Lexington site. This EIS discusses the cumulative impacts of Lexington South and a related, nearby development known as Blackhawk Park for which a separate EIS will be prepared. (HUD–R05–EIS–78–12–(F).) Comments made by: COE, AHP, EPA, State and local agencies. (EIS Order No. 90561.)

Blackhawk Park Planned Unit Development, Eagan, Dakota County, Minn., June 6: Proposed is the issuance of HUD home mortgage insurance for the Blackhawk Park planned unit development located in Eagan, Dakota County, Minnesota. The insurance will apply to 542 acres of the 603 acre site which will be developed to provide a mixture of land uses and housing types. (HUD–R05–78–14–(F).) Comments made by: DUC, DOT, AHP, DOI, EPA, State agencies. (EIS Order No. 90562.)

Section 104(H)

The following are commuity development block grant statements prepared and circulated directly by applicants pursuant to section 104 (H) of the 1974 Housing and Community Development Act. Copies may be obtained from the office of the Appropriate local executive. Copies are not available from HUD.

Draft

High Service Transmission Main, Alexander City, Tallapoosa County, Ala., June 4: Proposed is the Issuance of CDBG funds for the construction of a water main to connect the proposed new water treatment facility near Lake Martin, to the presently existing Alexander City Water Distribution System. The water main will be of adequate size to provide the housholds, businesses, and industries in Alexander City, Tallapoosa County, Alabama with sufficient potable water for their daily needs and will also provide fire protection. The alternatives considered include: (1) No action, (2) enlargement of present facilities, and (3) construction of new facilities with a new source of supply. (HUD–8–78–NH–01–0001.) (EIS Order No. 90557.)

Department of the Interior

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240 (202) 343–3891.

Bureau of Land Management

Draft

East Roswell Grazing Management Program, Chaves, Lea, and Eddy Counties, N. Mex., June 6: Proposed is the implementation of a livestock grazing management program for the East Roswell area located in Chaves, Lea and Eddy Counties, New Mexico. The plan would: Exclude approximately 6,600 acres from livestock grazing; allocate 168,111 aums of forage to livestock and 2,893 aums to big game animals; set a maximum forage utilization-level of 40 to 60 percent; treat approximately 54,300 acres with chemicals to control brush; develop grazing management systems; and specify livestock facilities necessary to implement systems. (DES–79–30.) (EIS Order No. 90563.)

Randolph Planning Unit Grazing Management Plan, Rich County, Utah, June 6: Proposed are livestock grazing management plans for the Randolph Planning Unit in Rich County, Utah. The purpose is to provide for the 140,298 acres, sustained, long term, productive use of natural resources which will be accomplished in two phases. The first phase includes: Allocation of 22,350 aums of livestock forage on 19 allotments; allotmentwide continuous grazing authorized on 15 allotments; and unchanged grazing management on 4 allotments. The second phase includes an increase of livestock forage on a sustained basis to 35,241 aums and long term management consisting of livestock grazing, vegetation treatments, fences, water developments, and cattleguards. (DES–79–31.) (EIS Order No. 90564.)

Draft Three Corners Area Grazing Management, Sweetwater County, Colo. and Unitah and Daggett Counties, Utah, June 6: Proposed is a grazing management program for 190,536 acres of public lands in the Three Corners planning unit located in Sweetwater County, Colorado and Unitah and Daggett Counties, Utah. The plan includes the following AUM allocations: 15,788 for cattle, 3,655 for sheep, 9,684 for deer, 4,838 for elk, and 378 for antelope. The plan also proposes to: Reserve one allotment for big game use, continue present allotment-wide grazing on 17 allotments, continue improved management on four allotments with existing amps, and implement improved management on 17 allotments. Other developments include: 30 miles of fencing, 52 water developments, and 1,620 acres of sage brush control. (DES–79–32). (EIS Order No. 90565.)

Department of Transportation

Contact: Mr. Martin Convisser, Director, Office of Environmental Affairs, U.S. Department of Transportation, 400 7th Street S.W., Washington, D.C. 20590, (202) 426–4357.

Federal Highway Administration

Final

Pine to Trade Street, Front Street bypass, Salem, Marion County, Oreg., June 7: The purpose of the proposed project is to divert through traffic around the Salem central business district by building connections at Ferry and Trade Streets and Division Street

to Front Street; increasing the capacity of Front Street by relocating existing railroad tracks and widening to six lanes and making traffic improvements on one or more of the alternatives north of Division Street. This project is located in the city of Salem, Marion County, Oreg. (FHWA–OR–EIS–78–06—F.) Comments made by: EPA, COE, DOT, DOE, DOI, State and local agencies, individuals, and groups. (EIS Order No. 90568.)

Final Supplement

I–393 Interchange, Fort Eddy Road, Concord, Merrimack County, N.H., June 5: This statement supplements final EIS, No. 40844, filed 5–21–74 concerning a proposed interchange on I–393 (formerly designated as relocated US–4, US–202, and NH–9) in Concord City, Merrimack County, New Hampshire. The recommended location is at relocated Fort Eddy Road. The proposed interchange is a partial cloverleaf facility which will service both east and westbound traffic to and from the bypass. This interchange will relieve traffic congestion at the Fort Eddy Road Bridge Street intersection and provide an alternate route for commercial traffic. (FHWA–NH–EIS–73–01–FS.) Comments made by: USDA, HUD, DOT, EPA, DOI, State and local agencies, groups, individuals, and businesses. (EIS Order No. 90559.)

Veterans Administration

Contact: Mr. Willard Sitler, Director, Environmental Affairs Office (66), Veterans Administration, 810 Vermont Avenue, Washington, D.C. 20420 (202) 389–2526.

Final

National Cemetary, Indiantown Gap, Lebanon County Pa., June 7: This action proposes the construction of a 675 acre national cemetery to be located on land on the south perimeter of the Fort Indiantown Gap Military Reservation in Lebanon County, 22 miles northeast of Harrisburg, Pennsylvania. The proposed development will include space for approximately 313,000 gravesites, an administration building, maintenance complex, memorial center, commital service buildings and other associated cemetery facilities. The proposed national cemetery will be an integral part of the national cemetery system and will provide burial benefits for approximately 1,500,000 veterans living within the service range of the facility. Comments made by: COE, USA, USDA, VA, DOI, USN, EPA, DOT, State and local agencies. (EIS Order No. 90567.)

EIS's Filed During the Week of June 4 to 8, 1979

[Statement Title Index—by State and County]

State	County	Status	Statement title	Accession No.	Date filed	Orig. agency No.
South Carolina	Charleston	Draft	Folly Beach, Beach Erosion Control	90571	06–07–79	COE
	Anderson	Final	Fifth Unit Installation, Hartwell Lake, Savannah River.	90555	06–04–79	COE
Alabama	Tallapoosa	Draft	High Service Transmission Main, Alexander City	90557	06–04–79	HUD
Atlantic Ocean		Supple	Surf Clam and Ocean Quahog Industries, FMP (DS–2).	90573	06–08–79	DOC
Colorado	Sweetwater	Draft	Three Corners Area Grazing Management	90565	06–06–79	DOI
Florida	Monroe	Draft	Key West Naval Air Station, Disposal of Property	90558	06–05–79	GSA
Georgia	Hart	Final	Fifth Unit Installation, Hartwell Lake, Savannah River.	90555	06–04–79	COE
Idaho	Bonner	Final	Boulder Planning Unit Land Mgmt. Plan	90560	06–05–79	USDA
	Boundary	Final	Boulder Planning Unit Land Mgmt. Plan	90560	06–05–79	USDA
Indiana	Hamilton	Draft	Sunblest Subdivision, Mortgage Insurance, Fishers	90566	06–07–79	HUD
Iowa	Polk	Final	West Des Moines—Des Moines Flood Protection	90556	06–04–79	COE
Minnesota	Dakota	Final	Lexington South Development, Eagan	90561	06–06–79	HUD
		Final	Blackhawk Park Planned Unit Development, Eagan	90562	06–06–79	HUD
New Hampshire	Merrimack	Supple	I–393 Interchange, Fort Eddy Road, Concord	90559	06–05–79	DOT
New Mexico	Chaves	Draft	East Roswell Grazing Management Program	90563	06–06–79	DOI
	Eddy	Draft	East Roswell Grazing Management Program	90563	06–06–79	DOI
	Lea	Draft	East Roswell Grazing Management Program	90563	06–06–79	DOI
Ohio	Franklin	Final	Metropolitan Area WWT Facilities, Columbus	90575	06–08–79	EPA
Oregon	Marion	Final	Pine to Trade Street, Front Street Bypass, Salem	90568	06–07–79	DOT
	Coos/Douglas/Lane	Supple	Oregon Dunes NRA Management Plan, Siuslaw National Forest.	90554	06–04–79	USDA
Pennsylvania	Lebanon	Final	National Cemetery, Indiantown Gap	90567	06–07–79	VA
Utah	Unitah/Daggett	Draft	Three Corners Area Grazing Management	90565	06–06–79	DOI
	Rich	Draft	Randolph Planning Unit Grazing Management Plan	90564	06–06–79	DOI
Texas	Arkansas/Nueces/San Patricia	Supple	Corpus Christi Ship Channel, M/D (FS–1)	90569	06–04–79	COE
Washington	Okanogan/Douglas	Supple	BPA Okanogan Area Service, Facility Location (DS–2).	90574	06–08–79	DOE

Appendix II.—*Extension/waiver of review periods on EIS's filed with EPA*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Waiver/ extension	Date review terminates
None.					

Appendix III.—*EIS's filed with EPA which have been officially withdrawn by the originating agency*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	Date of withdrawal
None.				

Appendix IV.—*Notice of official retraction*

Federal agency contact	Title of EIS	Status/number	Date notice published in "Federal Register"	Reason for retraction
None.				

Appendix V.—*Availability of reports/additional information relating to EIS's previously filed with EPA*

Federal Agency Contact	Title of Report	Date made available to EPA	Accession No.
U.S. DEPARTMENT OF DEFENSE, ARMY			
Col. Charles E. Sell, Chief of the Environmental Office Headquarters DAEN–ZCE, Office of the Assistant Chief of Engineers, U.S. Department of the Army, Room 1E676, Pentagon, Washington, DC 20310, (202) 694–4269.	National Training Center: Fort Irwin Site, Fort Irwin, California.	06/08/79	90572.

Appendix VI.—*Official correction*

Federal agency contact	Title of EIS	Filing status/accession No.	Date notice of availability published in "Federal Register"	correction
None.				

[FR Doc. 79–18940 Filed 6–14–79; 8:45 am]
BILLING CODE 6560–01–M

Sunshine Act Meetings

Federal Register
Vol. 44, No. 117
Friday, June 15, 1979

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

	Items
Council on Environmental Quality	1
Federal Election Commission	2
Federal Energy Regulatory Commission	3
Federal Home Loan Bank Board	4
Federal Reserve System	5

1

June 13, 1979.

COUNCIL ON ENVIRONMENTAL QUALITY.

TIME AND DATE: Thursday, June 21, 1979, 11:30 a.m.

PLACE: Conference Room, 722 Jackson Place, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Old Business.
2. Status Report on Agricultural Lands Study.
3. Briefing on status of agency Endangered Species Act consultations involving proposed Pittston refinery.
4. Briefing on status of agency NEPA implementing procedures.
5. Briefing on Synfuels legislation.

CONTACT PERSON FOR MORE INFORMATION: Foster Knight, 395-4616.

[S-1191-79 Filed 6-13-79; 3:51 pm]

BILLING CODE 3125-01-M

2

FEDERAL ELECTION COMMISSION.

DATE AND TIME: Wednesday, June 20, 1979 at 10 a.m.

PLACE: 1325 K Street, NW., Washington, D.C.

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Compliance. Personnel.

* * * * *

DATE AND TIME: Thursday, June 21, 1979, at 10 a.m.

STATUS: Portions of this meeting will be open to the public and portions will be closed.

MATTERS TO BE CONSIDERED:

Setting of dates for future meetings.
Correction and approval of minutes.
Thresholds for review of Presidential disclosure reports.
Convention financing regulations.
1980 Elections and related matters.
Financial control and compliance manual for Presidential candidates.
Budget execution report.
Pending legislation.
Appropriations and budget.
Classification actions.
Routine administrative matters.

Portions closed to the public:

Any matters not concluded on June 20, 1979.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred S. Eiland, Public Information Officer, Telephone: 202-523-4065.

Marjorie W. Emmons,

Secretary to the Commission.

[S-1189-79 Filed 6-13-79; 3:32 pm]

BILLING CODE 6715-01-M

3

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Published June 11, 1979, 44 FR 33547.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: June 13, 1979, 10 a.m.

CHANGE IN MEETING: Addition to the agenda meeting of June 13, 1979.

Item No., Docket No., and Company

M-1. RM79- , Small Power Production and Cogeneration Facilities—Qualifying Status.

M-10. GP79- , State of Montana Section 102 NGPA Determination Shell Oil Company Eight Wells.

CP-4(B). RM79- , Final Part 284 Regulation Under The Natural Gas Policy Act of 1978.

Kenneth F. Plumb,

Secretary.

[S-1190-79 Filed 6-13-79; 3:42 pm]

BILLING CODE 6740-02-M

4

FEDERAL HOME LOAN BANK BOARD.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Vol. 44, No. 113, Page 33548, June 11, 1979.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 9:30 a.m., June 14, 1979.

PLACE: 1700 G Street NW., Sixth Floor, Washington, D.C.

STATUS: Open meeting.

CONTACT PERSON FOR MORE INFORMATION: Franklin O. Bolling, (202-377-6677).

CHANGES IN THE MEETING:

The following items have been added to the agenda for the open meeting:

Consideration of Collateralization of Bank Advances.

Consideration of Bank Board Resolution Regarding Executive Order 12044.

No. 247, June 13, 1979.

[S-1188-79 Filed 6-13-79; 8:45 am]

BILLING CODE 6720-01-M

5

FEDERAL RESERVE SYSTEM (BOARD OF GOVERNORS).

TIME AND DATE: 10 a.m., Wednesday, June 20, 1979.

PLACE: 20th Street and Constitution Avenue NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of their routine nature, no substantive discussion of the following item is anticipated. These matters will be resolved with a single vote unless a member of the Board requests that an item be moved to the discussion agenda.

1. Proposed extension of the Survey of Six-Month Money Market Time Deposits (FR 2042).
2. Proposed extension of the Survey of Debits to Demand and Savings Deposits Accounts (FR 2573).
3. Report to the Comptroller of the Currency regarding the competitive factors involved in the proposed merger of The Peoples Bank, Cave City, Kentucky, with The New Farmers National Bank of Glasgow, Glasgow, Kentucky.
4. Proposed amendments to Regulation F (Securities of Member Banks) to maintain substantial similarity with rules of the Securities and Exchange Commission.

Discussion Agenda

1. Proposed regulation prescribing, among other things, certain exceptions for interlocking relationships that would otherwise be prohibited by Title II of the Financial Institutions Regulatory and Interest Rate Control Act. (Proposed earlier for public comment; docket no. R-0198).
2. Proposed revised amendments to Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to require that State member banks that effect certain securities transactions for customers provide confirmation and maintain certain records with respect to such transactions. (Proposed earlier for public comment; docket no. R-0142).
3. Any agenda 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: June 13, 1979.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S-1187-79 Filed 6-13-79; 11:44 am]

BILLING CODE 6210-01-M

Reader Aids

Federal Register

Vol. 44, No. 117

Friday, June 15, 1979

INFORMATION AND ASSISTANCE

Questions and requests for specific information may be directed to the following numbers. General inquiries may be made by dialing 202-523-5240.

Federal Register, Daily Issue:

202-783-3238	Subscription orders (GPO)
202-275-3054	Subscription problems (GPO)
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312-663-0884	Chicago, Ill.
213-688-6694	Los Angeles, Calif.
202-523-3187	Scheduling of documents for publication
523-5240	Photo copies of documents appearing in the Federal Register
523-5237	Corrections
523-5215	Public Inspection Desk
523-5227	Finding Aids
523-5235	Public Briefings: "How To Use the Federal Register."

Code of Federal Regulations (CFR):

523-3419	
523-3517	
523-5227	Finding Aids

Presidential Documents:

523-5233	Executive Orders and Proclamations
523-5235	Public Papers of the Presidents, and Weekly Compilation of Presidential Documents

Public Laws:

523-5266 -5282	Public Law Numbers and Dates, Slip Laws, U.S. Statutes at Large, and Index
275-3030	Slip Law Orders (GPO)

Other Publications and Services:

523-5239	TTY for the Deaf
523-5230	U.S. Government Manual
523-3408	Automation
523-4534	Special Projects

FEDERAL REGISTER PAGES AND DATES, JUNE

31599-31938.....1
31939-32192.....4
32193-32346.....5
32347-32634.....6
32635-33040.....7
33041-33390.....8
33391-33662.....11
33663-33826.....12
33827-34088.....13
34089-34460.....14
34461-34910.....15

CFR PARTS AFFECTED DURING JUNE

At the end of each month, the Office of the Federal Register publishes separately a list of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Executive Orders:
12113 (Amended by EO 12141).....32635
12141.....32635
Proclamations:
4664.....32347
4665.....34089
Administrative Orders:
Memorandums:
June 12, 1979.....34093
Presidential Determinations:
No. 79-10 of June 1, 1979.....34095
Reorganization Plans:
No. 1 of 1979.....33663

4 CFR

Proposed Rules:
331.....31655
332.....31655
351.....31655

5 CFR

294.....33041
317.....34461
720.....33046
Proposed Rules:
Ch. I.....31892
831.....33688
870.....33688
871.....33688
890.....32223, 33688

6 CFR

705.....32338

7 CFR

215.....33046
245.....33048
250.....32193
271.....33380, 33762
272.....33380, 33762
273.....33380, 33762
274.....33380
276.....33380
418.....31599
729.....34463
760.....34464
908.....32637, 34097
910.....31610, 33049, 34464
911.....34465
912.....31610
918.....31939
944.....34465
948.....33391
991.....32194
1207.....33391
1421.....31611, 31614
1427.....32637
1446.....33827
1980.....33050
Proposed Rules:
Ch. IX.....34135
301.....32224, 34501
319.....34856
800.....32394
802.....32394
803.....32394
907.....32706
916.....32224
945.....34508
948.....32706
1099.....32708
1701.....33076

9 CFR

78.....31619
82.....31620, 32195, 33050
92.....31621
113.....31622, 33051
Proposed Rules:
Ch. I.....33801
317.....31665
318.....31665
381.....31665

10 CFR

19.....32349
20.....32349
51.....31939
73.....34466
211.....31623, 31626, 32196, 32643
212.....32645, 33052, 34468
508.....32199
Proposed Rules:
2.....33883
30.....32394
35.....32394
211.....32225
212.....32622
436.....33077
445.....33344
490.....31922
508.....31677
795.....33632

11 CFR

Proposed Rules:
Ch. I.....32608
Ch. IX.....32608
4.....33368

12 CFR

205.....33837
217.....32352, 32646, 34097
302.....32353
303.....32649
329.....32353, 32356

526 33669
531 33669
545 ..... 32199, 33669
563 33669
612 31940
614 31940
700–760 33675
701 ..... 32202, 32357, 32358

Proposed Rules:

11 31984
217 ..... 32395, 32396
309 34510
329 32397
335 33077
526 33690
545 33690
563 ..... 33690, 33094
701 32202
742 33094

13 CFR

303 32359
304 32359
307 32359
311 32359

Proposed Rules:

125 33884
540 32958

14 CFR

39 ..... 31941, 31942, 32649, 32650, 33392, 34098–34102
71 ..... 31944–31947, 34102–34113
73 34111–34114
91 ..... 33389, 33396
97 ..... 31947, 34115
121 ..... 33389, 33396
129 ..... 33389, 33396
207 33053
208 33054
212 33055
214 33056
221 33056
288 34117
302 32364
323 ..... 33397, 34118
372 33060
380 33060
385 34118

Proposed Rules:

Ch. I 32001, 32708, 32709 33409, 34150
71 ..... 32001, 32002, 32709, 34150–34152
73 32003
75 34153
250a 32398
252 33410
380 32399
382 32401

15 CFR

501 32651
806 32586
2301 31629

16 CFR

13 ..... 31949, 32365
438 32207
456 33061
1500 34892
1501 34892

Proposed Rules:

13 ..... 32231, 33097, 33691, 33693, 34511
305 32013
433 34153

17 CFR

15 ..... 32209, 33839
17 33839
18 33839
140 33676
200 32366
211 ..... 33061, 33847
230 33362
239 33362
240 34884
249 34883

Proposed Rules:

240 32608
301 32224
916 32224

18 CFR

101 34471
104 34471
141 34471
204 34471
260 34471
270 34472
271 34473
275 34475
290 33847

Proposed Rules:

Ch. I 32710
35 33410
154 33099
201 33099
204 33099
271 34511
276 33677
282 33099

19 CFR

4 31950
6 31950
10 ..... 31950, 31962
11 31962
18 31962
19 31962
54 31962
101 34478
111 31962
112 31962
123 31950
133 31962
134 31962
148 31962
151 31962
153 ..... 33877, 33878
159 ..... 31972, 33063
162 ..... 31950, 31962
171 31950
172 31950

Proposed Rules:

141 31668
142 31668

20 CFR

404 34479
651 31629
655 ..... 32209, 32211

Proposed Rules:

401 31668
615 34512
655 ..... 32233, 33693
676 33376

21 CFR

5 32212
136 32213
177 34493
314 33677
430 33677
446 31636
520 32213

Proposed Rules:

2 33114
20 33238
110 33238
145 31669
172 34513
173 33693
178 34513
184 34515
189 33693
250 33694
606 34515
1312 33695

22 CFR

41 32653
211 34034

Proposed Rules:

6a 33891

23 CFR

Proposed Rules:

750 34516
751 34516

24 CFR

Ch. X 33064
300 34119
445 33679
570 33372
841 32516
1911 ..... 32214, 32215
1912 32215
1914 ..... 31973, 32654, 32656, 34119
1915 ..... 33397, 34120
1917 ..... 33065, 34121–34123

Proposed Rules:

570 32407
803 31670
811 32711
880 33804
882 31670
888 31670
1917 ..... 32003, 33416–33430, 33892–33904, 34154–34166
2205 ..... 33697, 34048
3280 32711

25 CFR

256 32190

26 CFR

1 ..... 32657, 33398

Proposed Rules:

1 32235
7 32235
31 32251

27 CFR

Proposed Rules:

4 32014
5 32014
7 32014
178 32366

28 CFR

2 ..... 31637, 31638, 34494
14 33399

Proposed Rules:

2 32252

29 CFR

451 33066
92 33697
1601 31638
1613 34494
1952 33066
2520 ..... 31639, 31640, 33708

Proposed Rules:

Ch.XXV 34517
1910 31670

30 CFR

11 33067
55 31908
56 31908
57 31908
211 33640–33655

Proposed Rules:

Ch. VII 32408
716 33626

31 CFR

306 34124

32 CFR

Ch. XIV 32681
67 34495
68 ..... 33399, 34495
195a 33399
199 33679
263 33399
505 32367
770 32408
806a 32681
807a 32681
1201 31976
1203 31976
1212 31976
1214 31976
1216 31976
1220 31976
1221 31976
1250 31976
2000 34129
2001 34129

33 CFR

3 33399
80 34129
95 34129
117 34130
164 32681
401 33402

Proposed Rules:

110 32713
117 33431
157 32713
161 ..... 32004, 33710, 34167
164 ..... 32713, 33432
209 34519

36 CFR

Proposed Rules:
Ch. II 33711
219 32715
223 32005

39 CFR

Ch. III 33880
10 32369
111 ..... 32369, 33068, 33879, 34497
10 31976
111 31976
257 33880
601 ..... 31976, 32369

40 CFR

6 32854
52 ..... 31976, 31980, 32681, 33680, 33681
60 33580
65 ..... 32682, 32683, 33681–33683, 33881
80 33069
115 32854
121 32854
122 32854
123 32854
124 32854
125 ..... 32854, 34784
162 32684
402 32854
403 32854

Proposed Rules:
Ch. I 33332, 33433
52 ..... 32005, 32253, 33116, 33433, 33437, 33438, 33712, 33713, 33905, 34519
60 34840
65 ..... 32254, 32255, 32715, 32716, 32720, 33911, 34520–34522
66 34524
67 34524
80 33116
81 34603
86 34603
100 32006
122 ..... 31673, 34244, 34393
123 ..... 31673, 34244, 34393
124 ..... 31673, 34393
125 34393
146 31673
762 34167

41 CFR

Ch. 9 34424
Ch. 18 ..... 32684, 32685, 32687
1–7 34498
1–10 34498
1–16 34498
3–50 33069
7–1 33684
16 32685
20 32685
25 32685
101–11 34499

Proposed Rules:
Ch. 51 32011
101–17 33714
101–18 33714
101–19 33714

42 CFR

57 32698
405 ..... 31641, 31802
466 32074

Proposed Rules:
51g 33913
55a 33913
431 ..... 33913, 34605

43 CFR

420 34909
2883 (Revoked by PLO 5665) 34131
3501 (Revoked by PLO 5664) 34131
3574 (Revoked by PLO 5664) 34131
3814 (Revoked by PLO 5664) 34131
5664 34131
5665 34131
8340 34834

45 CFR

5a 31981
90 33768
1611 31981
670 32699

Proposed Rules:
Ch. II 34606
71 ..... 34754, 34780
116a 34167
161d 33036
161i 34024
161j 33022
161n 33028
205 ..... 33913, 34606
228 33913

46 CFR

25 34132
34 34132
76 34132
95 34132
108 34132
162 34132
181 34132
193 34132
502 32369
512 32369
531 32369

Proposed Rules:
Ch. I 34443
30 ..... 32713, 34440
31 32720
32 ..... 32713, 34440
34 32713
35 ..... 32720, 34440
536 32408
537 33913
538 32408

47 CFR

0 32377
1 ..... 31643, 31650
2 ..... 32377, 34133
73 33070
74 ..... 32377, 34133
78 ..... 32377, 34133
81 ..... 31650, 33071
83 32383
90 ..... 32215, 34133
201 33404
202 33404

Proposed Rules:
0 32419
18 32419
73 ..... 31673, 32419, 33120–33126, 33439, 33440, 34170
74 ..... 32420, 34606
78 ..... 32420, 34606
90 ..... 31674, 33441
94 32720

49 CFR

393 31981
571 ..... 33441, 33444
601 32705
831 34418
845 34418
1033 ..... 31982, 31983, 32221, 32384
1041 33684
1047 33684
1056 32384
1082 33684
1307 33071
1310 33071

Proposed Rules:
Ch. X 32427
172 ..... 32972, 34171
830 34422
1039 33714
1252 33716
1300 32011

50 CFR

17 32604
32 33072
34 33073
263 32385
264 32388
266 32391
371 33684
450 33127
452 33127
453 33127
611 ..... 31651, 31652
661 31983
662 31654
674 33250

Proposed Rules:
17 33915
20 34082
70 33915
410 33127
611 34607
652 34171
661 32012
810 ..... 31858, 33916

AGENCY PUBLICATION ON ASSIGNED DAYS OF THE WEEK

The following agencies have agreed to publish all documents on two assigned days of the week (Monday/Thursday or Tuesday/Friday).

This is a voluntary program. (See OFR NOTICE FR 32914, August 6, 1976.)

Monday	Tuesday	Wednesday	Thursday	Friday
DOT/COAST GUARD	USDA/ASCS		DOT/COAST GUARD	USDA/ASCS
DOT/NHTSA	USDA/APHIS		DOT/NHTSA	USDA/APHIS
DOT/FAA	USDA/FNS		DOT/FAA	USDA/FNS
DOT/OHMO	USDA/FSQS		DOT/OHMO	USDA/FSQS
DOT/OPSO	USDA/REA		DOT/OPSO	USDA/REA
DOT/UMTA*	MSPB/OPM		DOT/UMTA*	MSPB/OPM
DOT/FRA*	LABOR		DOT/FRA*	LABOR
CSA	HEW/FDA		CSA	HEW/FDA

Documents normally scheduled for publication on a day that will be a Federal holiday will be published the next work day following the holiday.

Comments on this program are still invited. Comments should be submitted to the Day-of-the-Week Program Coordinator, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408

***NOTE: As of June 14, 1979, the Urban Mass Transportation Administration and Federal Railroad Administration, Department of Transportation, will publish on the Monday/Thursday schedule.**

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance. Since this list is intended as a reminder, it does not include effective dates that occur within 14 days of publication.

Rules Going Into Effect Today

CIVIL AERONAUTICS BOARD

28656 5–16–79 / Revocation of reporting data pertaining to freight loss and damage claims by certificated route air carriers

FEDERAL EMERGENCY MANAGEMENT AGENCY

31176 5–31–79 / Transfer and redesignation of Federal Insurance Administration regulations

HEALTH, EDUCATION, AND WELFARE DEPARTMENT

Food and Drug Administration—

28321 5–15–79 / Ferric ammonium ferrocyanide; revision of standard

INTERIOR DEPARTMENT

Fish and Wildlife Service—

29895 5–23–79 / National Bison Range and Satellite Areas; sport fishing regulations

NATIONAL CREDIT UNION ADMINISTRATION

27379 5–10–79 / Fees paid by Federal credit unions

List of Public Laws

Last Listing June 12, 1979

This is a continuing list of public bills from the current session of Congress which have become Federal laws. The text of laws is not published in the Federal Register but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone 202–375–3030).

H.R. 2805 / Pub. L. 96–19 To make technical and conforming changes to the financial disclosure provisions in the Ethics in Government Act of 1978. (June 13, 1979; 93 Stat. 37) Price: $.70.

S. 348 / Pub. L. 96–20 To authorize the President of the United States to present on behalf of the Congress a specially struck gold medal to Ben Abruzzo, Maxie Anderson, and Larry Newman. (June 13, 1979; 93 Stat. 45) Price: $.60.

S. 613 / Pub. L. 96–21 Authorizing the President of the United States to present a gold medal to the widow of Hubert H. Humphrey. (June 13, 1979; 93 Stat. 46) Price: $.60.

Just Released

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**See the April 1979 Federal Register Index for the list of independent agencies in each volume.*

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Vol. 44—No. 117
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BOOK 2:
PAGES
34699-34910

federal register

Book 2 of 2 Books
Friday, June 15, 1979

Part II—Labor/ESA:
Minimum Wages for Federal and Federally Assisted Construction

Part III—HEW/Sec'y:
Day Care; Proposed Revisions and Meetings

Part IV—EPA:
Modification of Secondary Treatment Requirements for Discharges into Marine Waters

Part V—Interior/BLM:
Management of Off-Road Vehicle Use on Public Lands

Part VI—EPA:
Glass Manufacturing Plants

Part VII—USDA/APHIS:
Nursery Stock, Plants, and Seeds

Part VIII—SEC:
Financial Requirements for Brokers and Dealers

Part IX—CPSC:
Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age

Part X—Interior/BLM:
Off-Road Vehicle Use

federal register

Friday
June 15, 1979

Part II

Department of Labor

Employment Standards Administration

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. 224–70) 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 Construction 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 Wage Determination Decision.

Modifications to General Wage Determination Decisions

The number of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama	
AL78–1044	Apr. 28, 1978.
AL78–1080	Sept. 22, 1978.
District of Columbia	
DC78–3098	Dec. 15, 1978.
Florida	
FL77–1060	May 20, 1977
FL79–1024	Feb. 2, 1979.
Illinois	
IL78–2039; IL78–2128	Oct. 27, 1978.
IL78–2143; IL78–2166	Dec. 8, 1978.
IL79–2027; IL79–2028; IL79–2029; IL79–2031; IL79–2033	May 4, 1979.
IL79–2034; IL79–2036; IL79–2037; IL79–2038	May 11, 1979.
IL79–2094	Oct. 20, 1979.
Indiana	
IN79–2002; IN79–2003; IN79–2004	Jan. 26, 1979.
Iowa	
IA78–4100; IA78–4101; IA78–4102; IA78–4103; IA78–4104; IA78–4105; IA78–4106; IA78–4107; IA78–4108; IA78–4109; IA78–4110; IA78–4111; IA78–4112	Nov. 24, 1978.
Kansas	
KS78–4008; KS78–4009	Feb. 3, 1978.
Michigan	
MI79–2020	June 1, 1979.
Virginia	
VA78–3074; VA78–3075; VA78–3076	Nov. 3, 1978.
Wisconsin	
WI78–2146	Oct. 27, 1978.

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.

Colorado	
CO78–5109(CO79–5117); CO78–5110(CO79–5118); CO78–5111(CO79–5119); CO78–5112(CO79–5120)	July 14, 1978.
Illinois	
IL78–2105(IL79–2051)	Oct. 20, 1978.
IL78–2123(IL79–2054)	Oct. 27, 1978.
Kansas	
KS77–4047(KS79–4067)	Feb. 25, 1977.
KS78–4007(KS79–4066)	Feb. 3, 1978.
Michigan	
MI79–2045(MI79–2057)	May 4, 1979.
Minnesota	
MN77–2032(MN79–2056)	Mar. 4, 1977.
MN77–2065(MN79–2056)	Apr. 22, 1977.

Cancellation of General Wage Determination Decisions

None

Signed at Washington, D.C. this 8th day of June 1979.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510–27–M

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision No. AL78-1044 - Mod. #1 (43-FR-18446 - April 28, 1978) Baldwin, Choctaw, Clarke, Conecuh, Escambia, Mobile, Marengo, Monroe, Washington, and Wilcox Counties, Alabama					
DESCRIPTION OF WORK: Heavy Construction excluding Sewer and Water Line Construction					
OMIT: Baldwin, Choctaw, Clarke, Conecuh, Escambia, Marengo, Monroe, Washington and Wilcox Counties.					
Decision #AL78-1080 - Mod. #2 (43 FR 43152 - September 22,1978) Calhoun County, Alabama					
Change:					
Carpenters	8.31	.50			.07
Millwrights	8.81	.50			.07
Sheet metal workers	10.80	.79	1.07		.11

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. DC78-3098 - Mod. # 6 (43 FR 58723 - December 15, 1978) District of Columbia: Maryland - Montgomery & Prince George's Counties, and D. C. Training School; Virginia - Independent City of Alexandria & Arlington					
Change:					
HEAVY CONSTRUCTION EXCLUDING WATER AND SEWER LINES: All Counties					
BUILDING CONSTRUCTION: Excluding Alexandria, Virginia					
Boilermakers	$12.875	1.07	1.00		.04
Cement masons	11.04	1.055	.70		.11
Grinding machine	11.29	1.055	.70		.11
Terrazzo and Mosaic Workers	12.35	.70	.95		.04
Steamfitters	11.48	1.00	1.00		.16
Tile setters	12.25	.70	.95		.04
WATER AND SEWER LINES: (District of Columbia and Montgomery County Only)					
Cement masons	11.04	1.055	.70		.11
Decision # FL77-1060 - Mod. # 2 (42 FR-26093 - May 20, 1977) Polk County, Florida					
Omit:					
Electricians	10.80	5.5%	3%+3%	4%	.10
Add:					
Electricians:					
Industrial Manufacturing and production facilities (excl. retail food establishments); Hospitals (over 50 beds) excluding nursing homes and clinics; shopping malls with over 10 businesses; and any business complex with elevator or escalator system.					
Wiremen	10.80	5.5%	3%+3%	4%	.10
Cable splicer	11.30	5.5%	3%+3%	4%	.10
Other Building:					
Wiremen	9.57	5.5%	3%+3%	4%	.10
Cable splicer	10.07	5.5%	3%+3%	4%	.10
DECISION #FL79-1024 - Mod. #3 (44 FR 6865 - February 2, 1979) Alachua County, Florida					
Change: Decision #FL79-1149 - Mod. #2 as published in Federal Register of June 1, 1979 to read:					
Decision #FL79-1024 - Mod. #2					

MODIFICATIONS P. 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2039 - MOD #1 (43 FR 50314 - October 27, 1978) Boone, Carroll, DeKalb, Jo-Daviess, Lee, Ogle, Stephenson, Whiteside & Winnebago Counties, Illinois					
CHANGE:					
ASBESTOS WORKERS					
Boone, Ogle, Stephenson & Winnebago Counties	$12.90	.85	.90		.07
CEMENT MASONS:					
Boone & Winnebago Counties	11.78	.55	1.00		
ELECTRICIANS:					
Boone, DeKalb, Winnebago, Stephenson, Ogle, Lee, Jo-Daviess (Warren, Rush, Nora, Stockton, Wards, Grove, Pleasant Valley, Berrenman Twps.); Carroll Co.: (Cherry Grove, Shannon, Rock Creek, Lima,					
CHANGE:					
ELECTRICIANS:					
Wysox, Elkhorn, Grove Twps.); Whiteside Co: (Genesee, Jordan, Hopkins, Sterling, Hume, Montgomery, Tampico, Hahnaman Twps. Twps.)	$12.96	.50	3%+.80		1%
PLASTERERS:					
Boone & Winnebago Counties	11.23	.55	1.00		
DECISION NO. IL78-2128 - MOD #7 (43 FR 50323 - October 27, 1978) Clark, Clay, Coles, Crawford, Cumberland, Douglas, Edgar, Edwards, Effingham, Fayette, Jasper, Lawrence, Richland, Wabash & Wayne Counties, Illinois					
CHANGE:					
CEMENT MASONS:					
Crawford, Lawrence & Wabash Counties					
Cement Masons & Plasterers	$11.05	.80	.80		
ELECTRICIANS:					
Coles & Cumberland Cos; Southern ½ of Douglas Co; Twps. of Bishop, Douglas, Lucas, Maccasin, St. Francis, Summit & Teutopuis in Effingham Co.	13.50	.50	3%+.40		.35%
PLUMBERS & STEAMFITTERS:					
Clark, Crawford, Edgar & Richland Counties	13.85	.60	1.00		.10

MODIFICATIONS P. 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL78-2143 - MOD #2 (43 FR 57781 - December 8, 1978) Bond, Calhoun, Clinton, Greene, Jersey, Macoupin, Madison, Monroe, Montgomery, St. Clair, and Washington Counties, Illinois					
CHANGE:					
LABORERS: HIGHWAY CONSTRUCTION					
ZONE I					
Area 3 - St. Clair Co. - Belleville					
Laborers	$10.60	.50	.80		.035
ZONE II					
Area 4 - Randolph Co. - Chester					
Laborers	10.30	.60	1.00		.035
ADD:					
LABORERS HIGHWAY CONSTRUCTION					
ZONE II					
Area 5 - Bond Co: Pocahantas					
Washington Co: Ashley					
Macoupin Co: Gillespie					
Laborers	11.50		.40		.035
Asphalt Raker	11.60		.40		.035
Brick Mason Tenders	12.00		.40		.035
Men working on the bottom of Sewers	11.75		.40		.035
Dynamite Men	12.925		.40		.035
Macoupin Co: Shipman					
Laborers	11.45		.45		.035
Asphalt Rakers	11.55		.45		.035
Brick Mason Tenders	11.95		.45		.035
Men working on the bottom of Sewers	11.70		.45		.035
Dynamite Men	12.875		.45		.035
Area 6					
Monroe Co: Columbia					
Laborers	11.05	.50	.35		.035
Asphalt Rakers	11.15	.50	.35		.035
Brick Mason Tenders	11.55	.50	.35		.035
Men working on the bottom of Sewers	11.30	.50	.35		.035
Dynamite Men	12.475	.50	.35		.035

DECISION NO. IL78-2166 - MOD #3
(43 FR 57767 - December 8, 1978)
Kankakee County, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS, STONEMASONS, Marble Setters, Terrazzo Workers, Tile Setters, Pointers, Caulkers & Cleaners	$12.60	.80	.75		
CEMENT MASONS	12.60	.80	.75		
CARPENTERS:					
Building Carpenters, Millwrights, Soft Floor Layers & Piledrivermen	12.72	.65	.80		.01
Residential	70%JR	.65	.80		.01
ELECTRICIANS:					
Building	13.80	.80	3%+.70		.2 of 1%
LABORERS:					
Unskilled	10.77	.65	.60		.035
Semi-Skilled	10.97	.65	.60		.035
Skilled	11.17	.65	.60		.035
PLASTERERS	12.40	.80	.75		

DECISION NO. IL79-2027 - MOD #1
(44 FR 26413 - May 4, 1979)
Adams, Brown and Pike Counties, Illinois

CHANGE:					
CARPENTERS:					
Adams County					
Carpenters & Soft Floor Layers	$11.30	.65	.45		.02
Millwrights & Piledrivermen	11.55	.65	.45		.02
ELECTRICIANS:					
Adams County	11.77	.50	3%+1.00		1%
PLUMBERS & STEAMFITTERS	12.85	.35	.60		.05

DECISION NO. IL79-2029 - MOD #1
(44 FR 26419 - May 4, 1979)
Fulton, Hancock, McDonough & Schuyler Counties, Illinois

CHANGE:					
LABORERS:					
Hancock & McDonough Counties:					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035
PAINTERS:					
Hancock & McDonough Counties					
Brush	11.50				
Structural Steel & Spray	12.00				
PLUMBERS & STEAMFITTERS:					
Fulton & McDonough Counties	13.22	.35	.35	4%	

DECISION NO. IL79-2031 - MOD #1
(44 FR 26424 - May 4, 1979)
Bureau, LaSalle, Livingston, Marshall, Putnam and Woodford Counties, Illinois

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
CARPENTERS:					
Remainder of Livingston County:					
Carpenters, Soft Floor Layers	$12.61	.40	.75		.05
Millwrights, Piledrivermen	13.11	.40	.75		.05
ELECTRICIANS:					
Northern Half and Central Sourthern part of LaSalle Co. Walnut; Ohio, LaMoille, Clarion, Bureau, Dover, Verlin and Westville, Townships in Bureau County	13.93	.88	3%+.70		.2 of 1%
Vicinity of LaSalle - S.W. part of County; Remainder of Putnam County; Arispe, Concord, Fairfield, Gold, Greenville, Hall, Indianatown, Leepertown, Macon, Manilus, Milo, Mineral, Neponset, Princeton, Sibley Wheatland, and Waynet Townships, in Bureau County	13.80	.50	3%+.50		.25%
LABORERS:					
LaSalle County					
Streator & Vicinity, LaSalle & Vicinity					
Unskilled	10.67	.55	.80		.035
Semi-Skilled	10.87	.55	.80		.035
Skilled	11.07	.55	.80		.035
Marseilles & Vicinity, Ottawa & Vicinity					
Unskilled	10.77	.45	.80		.035
Semi-Skilled	10.97	.45	.80		.035
Skilled	11.17	.45	.80		.035
Bureau, Livingston & Woodford Counties					
Unskilled	10.67	.55	.80		.035
Semi-Skilled	10.87	.55	.80		.035
Skilled	11.07	.55	.80		.035
Marshall County					
Unskilled	10.87	.55	.60		.035
Semi-Skilled	11.07	.55	.60		.035
Skilled	11.27	.55	.60		.035

MODIFICATIONS P. 7

DECISION NO. IL79-2033 - MOD #1 (44 FR 26432 - May 4, 1979) McLean County, Illinois	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BRICKLAYERS:					
Bricklayers, Stonemasons, Marble, Tile & Terrazzo Workers	$12.16	.70	1.00		
CEMENT MASONS	12.64	.75			
ELECTRICIANS:					
Remainder of County	12.85	.50	3%+.55		.002
LABORERS:					
Unskilled	10.67	.75	.60		.035
Semi-Skilled	10.87	.75	.60		.035
Skilled	11.07	.75	.60		.035
PLASTERERS	13.06				.01

DECISION NO. IL79-2034 - MOD #2 (44 FR 27856 - May 11, 1979) Macon, DeWitt, Christian, Piatt, Moultrie, Shelby & Macoupin Counties, Illinois					
CHANGE:					
ELECTRICIANS:					
Macoupin County:					
Remainder of County	$12.73	4%	3%+.65	6%	.25%
Macon & Christian Counties; DeWitt County (Townships of Wapella, Barnett, Clintonia, Harp, DeWitt, Turnbridge, Texas, Creek and Nixon); Piatt County: (Townships of Goose Creek, Willow Branch, Cerro Gordo, Bement and Unity); Shelby County: (Townships of Moweaqua, Penn, Flat Branch, Pickaway, Todds Point, Rural, Ridge, Okaw, Tower Hill, Rose, Shelbyville, Oconee, Cold Spring, Lakewood, Clarkburg, Herrick, Dry Point and Holland)					

MODIFICATIONS P. 8

DECISION NO. IL79-2034 - MOD #2 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
ELECTRICIANS:					
Moultrie County: (Townships of Dora, Lovington, Marrowbone and Sullivan at the Illinois Masonic Home and Farm in East Nelson)	$13.50	.50	3%+.40		.35%
Remainder of Moultrie & Shelby Counties	13.50	.50	3%+.40		.35%
Remainder of Piatt County	13.45	.50	3%+.40		.3%
PLUMBERS AND STEAMFITTERS:					
Macon; DeWitt; Moultrie Counties: (Townships of Pana, Assumption and Radford in Christian County; West of Route #105 in Piatt County); Shelby County: (East of Route #105 in Piatt County)	13.75	.35	1.00		.15
ROOFERS:					
Macon; Shelby; Moultrie; DeWitt County: (Southern Half of County, including Clinton); Christian County: (Townships of Assumption; Pinkle, Dollville, Owaneca, Pana, Radford, Rosamond, Stonington, Velma, Vanderville & Willeys)	12.93	.30	.40		.02

DECISION NO. IL79-2036 - MOD #2 (44 FR 27864 - May 11, 1979) Peoria and Tazewell Counties, Illinois					
CHANGE:					
CEMENT MASONS	$11.86	1.00	1.00		.05
ELECTRICIANS	12.92	.50	3%+1.00		3/4 of 1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL79-2037 - MOD #1 (44 FR 27867 - May 11, 1979) Alexander, Franklin, Gallatin, Hamilton, Hardin, Jackson, Jefferson, Johnson, Marion, Massac, Perry, Pope, Pulaski, Saline, Union, White & Williamson Counties, Illinois					
CHANGE:					
CARPENTERS:					
Remainder of Counties:					
Carpenters, Piledrivermen, Millwrights & Soft Floor Layers	$10.90	.50	.60		.05
Marion County					
Carpenters, Piledrivermen & Soft Floor Layers	10.76	.65	.50		.03
Millwrights	11.11	.65	.50		.03
CEMENT MASONS:					
Centralia & Vicinity					
Cement Masons & Plasterers	11.25				.01
DECISION NO. IL79-2028 - MOD #1 (44 FR 26415 - May 4, 1979) Champaign and Vermilion Counties, Illinois					
CHANGE:					
CARPENTERS:					
Vermilion County:					
North of Rossville					
Carpenters, Soft Floor Layers Millwrights & Piledrivermen	12.72	.65	.80		.01
Remainder of County:					
Carpenters & Soft Floor Layers	12.395	.75	.80		.05
Millwrights & Piledrivermen	12.895	.75	.80		.05
CEMENT MASONS:					
Champaign County	12.575	.45	.25		.025
ELECTRICIANS:					
Champaign County	13.45	.50	3%+.40		.3%
Vermilion County	13.17	.50	3%+.50		.25%
SHEET METAL WORKERS	11.94	..60+c	.67		
POWER EQUIPMENT OPERATORS:					
Class I	12.20	.75	.75		.08
Class II	12.10	.75	.75		.08
Class III	11.90	.75	.75		.08
Class IV	8.00	.75	.75		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. IL79-2038 - MOD #1 (44 FR 27871 - May 11, 1979) Sangamon County, Illinois					
CHANGE:					
CARPENTERS:					
Residential					
Housing - 1+2 Family Dwellings (except Building (high rise) or Steel Concrete Construction)	$ 9.20	.55	.45		.06
ELECTRICIANS:					
Building	13.17	.50	3%+.70		1/10 of 1%
PAINTERS:					
Brush & Roller	10.95	.50	.60		
Spray	11.45	.50	.60		
DECISION NO. IL79-2094 - MOD #4 (43 FR 49159 - October 20, 1978) DuPage, Grundy, Kane, Kendall, Lake, McHenry and Will Counties, Illinois					
CHANGE:					
ELECTRICIANS:					
DuPage County	$14.20	5%	9%	8%	1%
ELEVATOR CONSTRUCTION:					
DuPage, DeKalb, Lake and Will Counties					
Constructors	13.20	.745	.56	a+b	.025
Helpers	70%JR	.745	.56	a+b	.025
Helpers (Prob.)	50%JR	.745	.56	a+b	.025
PLASTERERS:					
Southern Kane, DeKalb and Kendall Cos.	12.22	.75	.70		
PLUMBERS, PIPEFITTERS & STEAMfitters:					
Will (City limits of Joliet) County; and Grundy (E. of RT. #47) County:					
Plumbers & Pipefitters	13.65	.85	.87		.10

MODIFICATIONS P. 11

DECISION NO. IN79-2002 - MOD #2
(44 FR 5606 - January 26, 1979)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Adams, Allen, Bartholomew, Benton, Blackford, Boone, Cass, Clinton, DeKalb, Delaware, Fountain, Fulton, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Monroe, Montgomery, Morgan, Noble, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Warren, Wells, White, & Whitley Cos., Indiana					
Change:					
Boilermakers	$13.25	1.175	1.00		.03
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Benton, Clinton, Fountain, Tippecanoe, Warren, & White Cos.	11.99	.48	.60		.02
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Cos.	11.85	.50	.75		.01
Cass & Fulton Cos.	11.10	1.00	.40		
Howard & Miami Cos.	11.08	.95	1.00		.05
Shelby Co.	11.30				
Carpenters; Millwrights; Piledrivermen; & Soft Floor Layers:					
Adams, Cass, Fulton, Grant, Howard, Huntington, Miami, Tipton, Wabash, & Wells Cos.:					
Carpenters; Soft Floor Layers	11.23	.80	.60		.05
Millwrights	11.73	.80	.60		.05
Piledrivermen	11.43	.80	.60		.05
Bartholomew (Camp Atterbury), Boone, Fountain, Hamilton, Hancock, Hendricks, Johnson (excl. Edinburgh), Marion, Montgomery, Morgan (excl. Twps. of Washington & Baker), Shelby (Camp Atterbury Area, Moral, & Van Buren Twps.), & Warren Cos.:					
Carpenters; Millwrights	13.15	.75	.85		.08

MODIFICATIONS P. 12

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Cement Masons:					
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Warren, & White Cos.	$10.75	.60	.75		
Boone, Hamilton (S. ½ of Co., N. to new Rte. Indiana Hwy. #32 incl. Noblesville), Hancock (Southern & Western part of Co., N. to but not incl. town of Wilkinson, & E. to, but not incl. town of Fortville), Hendricks, Johnson, Marion, Morgan (N ½), & Shelby (ending at Pleasant View) Cos.	11.16	.75	.75		.04
Fulton Co.	11.23	.85	.80		.04
Electricians:					
Adams, Allen, DeKalb, Huntington, Noble, Steuben, Wells, & Whitley Cos.	12.70	.50	3%+.50		.06
Bartholomew, Boone, Hamilton, Hancock, Hendricks, Johnson, Madison, Marion, Montgomery, Morgan, & Shelby Cos.	13.25	4%	7%		½
Blackford, Delaware, & Jay Cos.	12.40	.50	3%+.30		.2%
Fouatain & Warren Cos.	13.17	.50	3%+.50		.25%
Ironworkers:					
Adams, Allen, Blackford, DeKalb, Delaware (Northeastern 1/3 of Co.), Grant (Excluding Southwestern portion), Huntington, Jay, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.35	1.00	1.70		.02
Lathers:					
Benton, Cass, Clinton, Howard, Montgomery, Tippecanoe, Warren, & White Cos.	11.29	.55	.35		.01

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marble Setters; Terrazzo Workers; & Tile Setters:					
Blackford, Delaware, Hamilton, Jay, Madison, & Tipton Cos.:					
Tile Setters	$11.60	.50	.75		.01
Boone, Hancock, Hendricks, Johnson, Marion, Montgomery, & Morgan Cos.:					
Marble Setters; Tile Setters	12.61	.50	.55		.04
Terrazzo Workers	12.35	.50	.55		.03
Cass & Fulton Cos.	10.49	1.00	.90	e	.02
Howard & Miami Cos.	11.08	.95	1.00		.05
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Adams, Bartholomew, Blackford, Boone, Clinton, Delaware, Fountain, Grant, Hamilton, Hancock, Hendricks, Howard, Huntington, Jay, Johnson, Madison, Marion, Monroe, Montgomery, Morgan, Tippecanoe, Tipton, Wabash, & Wells Cos.:					
Marble Setters' Finishers & Tile Setters' Finishers	10.40				
Painters:					
Adams, Allen, DeKalb, Grant, Huntington, Noble, Steuben, Wabash, Wells (N ½ to & incl. Bluffton), & Whitley Cos.:					
Brush; Paperhangers; Rollers; & Tapers	9.90	.60	.85		.12
Sandblasters; Spray; Steamcleaning & Pressure Waterblasting	10.90	.60	.85		.12

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Blackford, Cass, Delaware, Fulton, Howard, Jay, Madison, Miami, Tipton, & Wells (To the South City limits of Bluffton) Cos.:					
Brush; Taping	$9.95		.70		
Pressure Cleaning Equipment; Sandblasters; Spray	10.95		.70		
Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan (N ½), & Shelby Cos.:					
Brush; Drywall Tapers & Finishers; Rollers	11.24	.78	.48		
Sandblasters; Spray	12.24	.78	.48		
Plasterers:					
Bartholomew & Shelby Cos.	11.00				
Boone, Hamilton (So. ½ No. to new Indiana Rte. #32), Hancock (So. & Western part No. to State Rd. #234 & E. to Co. Rd. #300 - W.), Hendricks, Johnson, Marion, & Morgan (N ½) Cos.	11.52	.80			.01
Fulton Co.	10.99	.85	.90		.04
Plumbers; Steamfitters:					
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	13.85	.60	1.00		.10
Roofers:					
Benton, Cass, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.:					
Composition, Damp & Waterproof	12.20	.60	.38		
Slate, Tile, & Asbestos	12.45	.60	.38		
Sheet Metal Workers:					
Adams, Allen, Blackford, Cass, DeKalb, Grant, Howard, Huntington, Jay, Miami, Noble, Steuben, Wabash, Wells, & Whitley Cos.	12.57	.50+g	.60		.12

MODIFICATIONS P. 15

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Benton, Clinton, Fountain, Montgomery, Tippecanoe, Warren, & White Cos.	$8.15	.70+g	.55		.02
Fulton Co.	8.88	.75	.65		.02
Truck Drivers:					
Benton, Cass, Clinton, Fountain, Howard, Miami, Montgomery, Tippecanoe, Tipton, Wabash, Warren, & White Cos:					
Pickups when hauling Equipment, etc.	8.23	$20.00h	$34.00h	i	
Helpers, Greaser; Tiremen	8.33	20.00h	34.00h	i	
Single Axle straight Trucks; Warehousemen	8.38	20.00h	34.00h	i	
Mechanics	8.68	20.00h	34.00h	i	
Tandem Axle & Dog-eg Straight Trucks	8.48	20.00h	34.00h	i	
Bituminous Distributors	8.53	20.00h	34.00h	i	
Tri Axles, Semis	8.68	20.00h	34.00h	i	
Bartholomew, Blackford, Delaware, Grant, Hamilton, Hancock, Jay, Madison, & Monroe Cos.:					
Group 1	$9.65	$35.50a	$23.00a	b & c	
Group 2	9.70	35.50a	23.00a	b & c	
Group 3	9.75	35.50a	23.00a	b & c	
Group 4	9.80	35.50a	23.00a	b & c	
Group 5	9.85	35.50a	23.00a	b & c	
Group 6	9.90	35.50a	23.00a	b & c	
Group 7	10.00	35.50a	23.00a	b & c	
Group 8	10.05	35.50a	23.00a	b & c	
Group 9	10.10	35.50a	23.00a	b & c	
Group 10	10.15	35.50a	23.00a	b & c	
Group 11	10.30	35.50a	23.00a	b & c	

MODIFICATIONS P. 16

DECISION NO. IN79-2002 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and or Appr. Tr.
Power Equipment Operators:					
Adams, Allen, Benton, Blackford, Cass, Clinton, DeKalb, Delaware, Grant, Hamilton, Hancock, Howard, Huntington, Jay, Johnson, Madison, Marion, Miami, Shelby, Steuben, Tippecanoe, Tipton, Wabash, Wells, White, & Whitley Cos.:					
Group 1	8.70	.55	.65		.10
Group 2	8.75	.55	.65		.10
Group 3	9.65	.55	.65		.10
Group 4	8.55	.55	.65		.10
Add:					
Cement Masons:					
Bartholomew & Shelby Cos.	11.00				

DECISION NO. IN79-2003 - MOD. #2
(44 FR 5624 - January 26, 1979)

Brown, Clark, Crawford, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Scott, Switzerland, Union, Washington, & Wayne Cos., Indiana

Change:

Asbestos Workers:					
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, & Union Cos.	14.20	.75	1.00		.02

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Randolph & Wayne Cos.	$12.87	.55	1.50		.02
Boilermakers:					
Brown, Crawford, Decatur, Fayette, Franklin, Henry, Jackson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Union, Washington, & Wayne Cos.	13.25	1.175	1.00		.03
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Clark, Floyd, & Harrison Cos.	11.44	.50	.40		.01
Dearborn, Decatur, & Ripley Cos.	11.35		.30		
Henry & Randolph Cos.	11.85	.50	.75		.01
Cement Masons; Plasterers:					
Brown, Jackson, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.	11.00				
Electricians:					
Brown Co.	12.40	.50	3%+.70		.01
Crawford, Lawrence, & Orange Cos.	13.45	.50	3%		½%
Dearborn, Ohio, & Switzerland Cos.:					
Up to & incl. 18 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.50	.70	3%+.60		½%
Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.80	.70	3%+.60		½%
Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	13.90	.70	3%+.60		½%
Over 25 mi. radius from Hamilton Co. Court House, Cincinnati, Ohio	14.05	.70	3%+.60		½%
Decatur, Jennings, Ripley, & Rush Cos.	13.25	4%	7%		½%

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Fayette, Franklin, Henry, Randolph, Union, & Wayne Cos	$12.40	.50	3%+.30		.2%
Elevator Constructors:					
Brown, Decatur, Henry, & Rush Cos.:					
Elevator Constructors	11.92	.745	.56	a&b	.035
Clark, Crawford, Floyd, Harrison, Jackson, Jefferson, Jennings, Lawrence, Orange, Scott, & Washington Cos.:					
Elevator Constructors	11.895	.745	.56	a&b	.035
Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, Union, & Wayne Cos.:					
Elevator Constructors	12.36	.745	.56	a&b	.035
Randolph Co.:					
Elevator Constructors	11.635	.745	.56	a&b	.035
Ironworkers:					
Dearborn, Decatur (Rem. of Co.), Fayette (S/E 2/3), Franklin (Rem. of Co.), Jefferson (NE Tip), Jennings (N/E 1/3), Ohio, Ripley, Switzerland (Rem. of Co.), & Union (S 1/3) Cos.:					
Ornamental; Structural	13.08	1.00	1.45		.03
Reinforcing	12.18	1.00	2.25		.02
Randolph (N part of Co. excluding Union City but including Winchester) Co.	12.35	1.00	1.70		.02
Marble Setters; Terrazzo Workers; Tile Setters:					
Henry & Randolph Cos.:					
Tile Setters	11.60	.50	.75		.01
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Brown, Fayette, Franklin, Henry, Jackson, Jennings, Randolph, Rush, Union, & Wayne Cos.:					
Marble Setters' Finishers;					
Tile Setters' Finishers	10.40				
Terrazzo Workers' Finishers	10.55				

DECISION NO. IN79-2003 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Plumbers & Steamfitters:					
Dearborn, Ohio & Ripley Cos.:					
Plumbers; Gas Fitters	$13.82	1.05	1.20		.07
Roofers:					
Dearborn, Ohio & Ripley Cos.:					
Roofers	14.32		.85		.01
Pitch	15.32		.85		.01
Sheet Metal Workers:					
Clark, Floyd, & Harrison Cos.	12.28	.90+e	1.26		.15
Crawford, Jefferson, Scott, & Switzerland Cos.	13.53	.90+e	1.26		.15
Dearborn & Ohio Cos.	12.835	1.06	.85		.06
Power Equipment Operators:					
Fayette, Henry, Randolph, Rush, Union, & Wayne Cos.:					
Group 1	12.70	.55	.65		.10
Group 2	11.75	.55	.65		.10
Group 3	9.65	.55	.65		.10
Group 4	8.55	.55	.65		.10
Truck Drivers:					
All Counties, except Crawford					
Group 1	9.65	$35.50a	$23.00a	b & c	
Group 2	9.70	35.50a	23.00a	b & c	
Group 3	9.75	35.50a	23.00a	b & c	
Group 4	9.80	35.50a	23.00a	b & c	
Group 5	9.85	35.50a	23.00a	b & c	
Group 6	9.90	35.50a	23.00a	b & c	
Group 7	10.00	35.50a	23.00a	b & c	
Group 8	10.05	35.50a	23.00a	b & c	
Group 9	10.10	35.50a	23.00a	b & c	
Group 10	10.15	35.50a	23.00a	b & c	
Group 11	10.30	35.50a	23.00a	b & c	

DECISION NO. IN79-2004 - MOD #2
(44 FR 5621 - January 26, 1979)
Clay, Daviess, Greene, Knox, Martin, Parke, Putnam, Sullivan, Vanderburgh, Vermillion & Vigo Counties, Indiana

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
BOILERMAKERS	$13.25	1.175	1.00		.03
CARPENTERS; Millwrights; Pile-drivermen; & Soft Floor Layers:					
Clay (N. of Hwy 246 including Brazil), Parke (except east of Twps. of Jessup, Rosedale, Carbondale, & Portland), Vermillion (South of Summit Grove) & Vigo Cos.:					
Millwrights	13.15	.75	.85		.08
CEMENT MASONS:					
Daviess, Knox & Martin Cos.	11.05	.80	.80		
ELECTRICIANS:					
Clay, Greene, Knox (Electrical contracts over $5,000.00), Parke, Sullivan & Vigo Cos.	12.80	.50	3%+.70		.01
Daviess, Martin & Vanderburgh Cos.	13.45	.50	3%		½%
Knox (Electrical contracts under $5,000.00) Co.	12.40	.50	3%+.70		.01
Putnam Co.	13.25	4%	7%		½%
Vermillion Co.	13.17	.50	3%+.50		.25%
IRONWORKERS (except Vanderburgh Co.)	11.85	1.00	1.30		.10
MARBLE SETTERS' FINISHERS & Tile Setters' Finishers:					
Remaining Cos.	10.40				
PAINTERS:					
Parke & Vermillion Cos.:					
Brush; Paperhangers; Tapers	10.65			.50	
Sandblasting	12.65			.50	
Spray	12.15			.50	
PLASTERERS:					
Daviess, Knox & Martin Cos.	11.05	.80	.80		
Vanderburgh Co.	12.38				
PLUMBERS; Steamfitters:					
Clay, Greene, Knox (N. of Hwy #50), Parke, Putnam, Sullivan, Vermillion & Vigo Cos.	13.85	.60	1.00		.10
OMIT:					
TERRAZZO WORKERS' FINISHERS:					
Parke, Vermillion, & Vigo Cos.	$ 7.40	.40	.70		.01
ADD:					
TERRAZZO WORKERS' FINISHERS:					
Clay, Daviess, Greene, Knox, Martin, Parke, Putnam, Sullivan, Vermillion & Vigo Cos.	10.55				

MODIFICATIONS P. 21

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4100-Mod. #2 (43 FR 55161-November 24,1978) Building Black Hawk County, Iowa					
CHANGE:					
Bricklayers & Stonemasons	$10.86	.45	.85		.01
Electricians:					
Electricians	13.19	.45	3%		3/4%
Cable Splicer	13.59	.45	3%		3/4%
Tile Setters	10.63	.45			
Decision #IA78-4101-Mod. #2 (43 FR 55162-November 24, 1978) Building Cerro Gordo County, Ia					
CHANGE:					
Electricians	13.16	.45	3%		3/4%
Decision #IA78-4102-Mod. #2 (43 FR 55164-November 24,1978) Building Clinton County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	11.00	.60	.90		.04
Piledrivermen	11.50	.60	.90		.04
Painters:					
Brush	11.52	.60	1.00		.20
Spray, Structural steel	12.02	.60	1.00		.20
Soft Floor Layers	11.00	.60	.90		.04
Decision #IA78-4103-Mod. #2 (43 FR 55165-November 24,1978) Building Des Moines, County, Ia					
CHANGE:					
Bricklayers & Stonemasons	13.00		.20		
Carpenters:					
Carpenters	11.55	.75	.90		.04
Millwrights & Piledrivermen	12.25	.75	.90		.04
Electricians	13.40	.55	3%		3/4%
Ironworkers	$12.25	.55	1.05		.06
Painters:					
Group 1-Brush	10.45		.25		
Group 2-Rollers	10.55		.25		
Group 3-Sign	10.95		.25		
Group 4- Structural steel over 25 ft. from the ground or floor bridges, water towers & Stege work	11.15		.25		
Group 5-Spray gun & sandblasting	11.45		.25		

MODIFICATIONS P. 22

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4104-Mod. #2 (43 FR 55166-November 24,1978) Building Dubuque County, Iowa					
CHANGE:					
Electricians	12.25	.75	3%+.50		.09
Decision #IA78-4105-Mod. #2 (43 FR 55168-November 24,1978) Building Johnson County, Iowa					
CHANGE:					
Plumbers and Steamfitters	13.25	.60	.70		.13
Decision #IA78-4106-Mod. #2 (43 FR 55169-November 24,1978) Building Linn County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	11.26	.55	.55		.08
Piledrivermen	11.61	.55	.55		.08
Plumbers and Steamfitters	13.25	.60	.70		.13
Soft Floor Layers	11.26	.55	.55		.08
Decision #IA78-4107-Mod. #2 (43 FR 55171-November 24,1978) Building Polk County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	$11.00	.74	.81		.11
Millwrights; Piledrivermen	11.35	.74	.81		.11
Ironworkers	11.52	.78	1.02		.04
Painters:					
Group 1-Brush, roller, drywall finisher	11.52		.80		.05
Group 2-Spray; Structural steel sandblasting; swing stage	12.02		.80		.05
Group 3-Paperhangers	11.77		.80		.05
Group 4-Stack; Tower work over 100 feet	12.62		.80		.05
Plumbers & Steamfitters	13.20	.60	1.05		.15

MODIFICATIONS P. 23

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4108-Mod. #3 (43 FR 55173-November 24,1978) Building Pottawattamie Cty. Ia					
CHANGE:					
Ironworkers	10.65	.50	.55	1.00	.05
Plasterers	11.53	.57	.50		
Roofers:					
Slate, tile	10.10	.70	.20		
Composition	10.40	.70	.20		
Decision #IA78-4109-Mod. #3 (43 FR 55174-November 24,1978) Building Scott County, Iowa					
CHANGE:					
Glaziers	11.49	.70	1.00		.02
Ironworkers	13.87	.75	.375		.11
Laborers:					
Group 1	10.52	.50	1.00		.035
Group 2	10.77	.50	1.00		.035
Group 3	11.02	.50	1.00		.035
Painters:					
Brush, roller	11.52	.60	1.00		.20
Spray; Structural steel	12.02	.60	1.00		.20
Decision #IA78-4110-Mod. #2 (43 FR 55175-November 24,1978) Building Story County, Iowa					
CHANGE:					
Carpenters:					
Carpenters, Piledrivermen	10.82		.81		
Millwrights	11.17		.81		
Ironworkers	$11.52	.78	1.02		.04
Laborers:					
Group 1	8.225	.30	.135		.05
Group 2	8.375	.30	.135		.05
Group 3	8.425	.30	.135		.05
Group 4	8.475	.30	.135		.05
Group 5	8.575	.30	.135		.05
Group 6	8.725	.30	.135		.05
Painters:					
Group 1- Brush; roller; dry-wall finisher	11.52		.80		.05
Group 2- Paperhangers	11.77		.80		.05
Group 3- Spray; Structural steel; Sandblasting	12.02		.80		.05
Group 4- Work over 100 ft.; stack	12.62		.80		.05
Plumbers & Steamfitters	13.20	.60	1.05		.15

MODIFICATIONS P. 24

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA78-4111-Mod. #2 (43 FR 55177-November 24,1978) Building Webster County, Iowa					
CHANGE:					
Electricians	11.95	.45	3%+.50		3/4%
Ironworkers	11.52	.78	1.02		.04
Painters:					
Group 1-Brush, drywall finishers, rollers	11.52		.80		.05
Group 2-Paperhangers	11.77		.80		.05
Group 3-Spray	12.02		.80		.05
Plumbers and Steamfitters	13.20	.60	1.05		.15
Decision #IA78-4112-Mod. #3 (43 FR 55178-November 24,1978) Building Woodbury County, Iowa					
CHANGE:					
Carpenters:					
Carpenters	10.30	.72	.36		.03
Millwrights and Piledrivermen	10.80	.72	.36		.03
Electricians	12.81	.50	3%+.60		3/4%
Painters:					
Group 1- Brush	$10.76	.77	.70		
Group 2-Spray; all swing work all work higher than 40 ft.-scaffords, jacks,ladders, etc pressure roller, sandblasting structural steel over 25 ft.	11.26	.77	.70		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. KS78-4008-Mod. #5 (43 FR 4812-February 3,1978) Building Sedgwick County, Kansas					
CHANGE:					
Asbestos Workers	$11.96	.945	.85		.02
Bricklayers and Stonemasons	11.23	.50	.50		.02
Carpenters:					
Carpenters	10.35	.50			
Millwrights and Piledrivermen	10.65	.50			
Electricians	11.50	.75	3%+.50		1%
Ironworkers	10.83		.75	.53	.02
Laborers:					
Group 1-Common laborers	7.60	.50	.50		.05
Group 2-Power tool operators compactors, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy, mason tenders, plaster tenders, mortar mixers for plasterers, mason and cement finishers, all stocking scafford, clean up for masons (building & wrecking), sand and concrete gun nozzleman, powderman	7.80	.50	.50		.05
Plasterers	10.50				
Glaziers	9.72	.75	.65	13.17%	.05
ADD:					
Cable Splicer	11.75	.75	3%+.50		1%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO. KS78-4009-Mod. #6 (43 FR 4812-February 3,1978) Building Shawnee County, Kansas					
CHANGE:					
Bricklayers; Stonemasons	$11.39	.40	.25		
Carpenters:					
Carpenters	10.05	.40	.60		.05
Millwrights	10.55	.40	.60		.05
Piledrivermen	10.425	.40	.60		.05
Glaziers	9.95	.75	.81	1.89	.04
Laborers: (Building Construction)					
General Laborers	8.10	.40	.50	.25	.05
Power Tool Oprs., compactors concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	8.30	.40	.50	.25	.05
Mason tenders, plaster tenders, mortar mixers for plasterers, masons and cement finishers, all stocking scafford, clean up for masons (building & wrecking)	8.40	.40	.50	.25	.05
Sand and concrete gun nozzleman, powderman	8.50	.40	.50	.25	.05
Lathers	11.10		.20		
Plumbers, Pipefitters	12.63	.80	1.00		.04
Roofers, flat, slate & tile damproofers and waterproofers	12.16		.60	a	
Roofers working in pitch, tar or creosote, coal	13.01		.60	a	
FOOTNOTE:					
a- after 6 months of employment $.96: after 5 years $.52.					
Sheet Metal Workers	11.99	3%.50	1.29		.04

MODIFICATIONS P. 27

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION #MI79-2020 - MOD. #1 (44 FR 31842 - June 1, 1979) Statewide, Michigan					
CHANGE: Power Equipment Operators: Highway Construction					
ZONE 1 Wayne, Monroe, Washtenaw, Oakland, Macomb & Genesee					
Class 1	$10.44	.95	1.50	11%	.05
Class 2	10.22	.95	1.50	11%	.05
Class 3	9.77	.95	1.50	11%	.05
Class 4	9.63	.95	1.50	11%	.05
ZONE 2 Saginaw, Bay, Gratiot, Midland, Clare, Arenac, Gladwin, Isabella, Huron Tuscola & Sanilac					
Class 1	9.44	.95	1.50	11%	.05
Class 2	9.10	.95	1.50	11%	.05
Class 3	8.65	.95	1.50	11%	.05
Class 4	8.40	.95	1.50	11%	.05
ZONE 3 Remainder of State					
Class 1	10.44	.95	1.50	11%	.05
Class 2	10.10	.95	1.50	11%	.05
Class 3	9.65	.95	1.50	11%	.05
Class 4	9.40	.95	1.50	11%	.05
Decision NO. VA78-3074-Mod. #3 (43 FR 51588-November 3,1978) Henrico and the independent City of Richmond, Virginia					
CHANGE:					
Bricklayers and Stonemasons	$10.45	.70	.30		.02
Cement Masons	8.80				
Cement MasonsMachine Man	8.90				
Ironworkers-Structural, Reinforcing & Ornamental: Zone 1- up to 10 miles from Capital Square	10.50	.55	.75		.05
Zone 2- from 10 miles to 30 mile radius	10.875	.55	.75		.05

MODIFICATIONS P. 28

VA78-3074 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Zone 3- from 30 miles and beyond	$ 11.125	.55	.75		.05
Laborers:					
Unskilled	5.95	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete saw operators, Air Tool & Vibrators operators	6.05	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble & Tile & Terrazzo Workers Helpers	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base & Terrazzo Grinders	6.35	.25	.25		.05
Wagon Drill, Air Trac & Similar Drills	6.45	.25	.25		.05
Powderman	6.70	.25	.25		.05
Lathers:					
Plasterer & Drywall Finish	9.99		.20		.01
Sheet Rock Applicator	8.29		.20		.01
Marble, Tile & Terrazzo Workers	8.65				
Millwrights	10.60	.50	.45		.01
Painters:					
Brush, Paperhangers, Tapers & Finishers	8.55				
Structural Steel, Swing Stage & Bosun Chair	8.80				
Scafford or other Hazard work over 50'	8.80				
Spray	9.05				
Sandblasting, Elevated tanks, Smoke Stacks & All Towers	9.20				
Plasterers	10.20				
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision NO.VA78-3075-Mod. #2					
(43 FR 51590-November 3,1978)					
York and the Cities of Hampton and Newport News (including Langley AFB, Fort Eustis and Fort Monroe), Virginia					
CHANGE:					
Bricklayers and Stonemasons	$ 9.75				
Carpenters and Soft Floor Layers	9.30	.50	.45		.02
Cement Masons:					
Cement Masons	8.50				
Machine and Scaffold Men	8.60				
Electricians:					
Zone 1-within a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
Wiremen	10.20	.60	8%		1%
Cable Splicer	10.45	.60	8%		1%
Zone 2- beyond a 16 air mile radius of 7812 Warwick Blvd., Newport News:					
Wiremen	11.20	.60	8%		1%
Cable Splicer	11.45	.60	8%		1%
Laborers:					
Unskilled	5.95	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen, (gunite or sandblasting), Concrete saw operstors, Air					

VA78-3075 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Tool and Vibrator Operators Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble,	$ 6.05	.25	.25		.05
Tile & Terrazzo Worker Helpers	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base,& Terrazzo Grinder	6.35	.25	.25		.05
Wagon Drill and Air Trac	6.45	.25	.25		.05
Powdermen	6.70	.25	.25		.05
Lathers	10.50		.25		
Painters:					
(York County from a point on north shore of Queens Creek at the intersection of York River due west to a point on the eastern shore of James River including all cities therein the cities of Hampton and Newport News:)					
Brush and Roller	8.00		.35		
Paperhanger, Taper, Spray, Roller with a 6' handle or over structural steel to 74' from the ground up, Swing Stage, under 40', sandblasting	8.35		.35		
Swing Stage over 40', spray apoxy	8.60		.35		
Epoxy brushed or rolled	8.25		.35		
All work over 74' from ground	8.50		.35		
Bituminous Coatings, Hot Creosite	9.40		.35		
REMAINDER OF COUNTY OF YORK:					
Brush and Roller	8.60		.35		
Paperhanging, Taper, spray, Roller with a handle 6'or over structural steel 74' from the ground up, swing stage under 40', sandblasting	8.95		.35		
Swing Stage over 40', Epoxy Sprayed	9.20		.35		
Epoxy Brushed or Rolled	8.85		.35		

VA78-3075 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
All work over 74' from the ground	$ 9.10		.35		
Bituminous Coatings, Hot Creosote	10.00		.35		
Piledrivermen and Dockbuilders	8.55	.50	.45		.02
Plasterers	10.71				
Roofers Cpompostion	6.45				
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08
Decision NO. VA78-3076- Mod. #2					
(43 FR 51592- November 3,1978)					
The cities of Chesapeake, Portsmouth, and Virginia Beach,VA					
CHANGE:					
Bricklayers	$10.08	.60	.20		.03
Carpenters and Soft Floor Layers	9.30	.50	.45		.02
Laborers:					
Unskilled	5.95	.25	.25		.05
Tenders, Motorized Georgia Buggy Operators, Nozzlemen (gunite or sandblasting), Concrete saw operators, Air Tool and Vibrator Operators	6.05	.25	.25		.05
Mortar Mixers, Hod Carriers, Pipelayers, Caulkers, Marble, Tile and Terrazzo Workers Helper	6.20	.25	.25		.05
Burners (wrecking)	6.30	.25	.25		.05
Floor, Base and Terrazzo Grinder	6.35	.25	.25		.05
Wagon Drill and Air Trac	6.45	.25	.25		.05
Powdermen	6.70	.25	.25		.05
Lathers	10.50		.25		
Line Construction:					
Linemen and Cable Splicer	10.20	.60	8%		1%

VA78-3076 Con't	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters:					
Brush and Roller	$ 8.50		.40		
Structural Steel from the ground to 74'	9.00		.40		
Spray, Paperhangers anf glove wor	8.85		.40		
Any work over 74' from the ground	9.80		.40		
Bituminous Coating & Hot Creosite	10.15		.40		
Swing stage under 40', Rollers with 6' handles & over, Epoxy brushed or rolled	8.75		.40		
Swing stage over 40'	9.00		.40		
Epoxy sprayed	9.10		.40		
Sandblasting	9.25		.40		
Piledrivermen & Dockbuilders	8.55	.50	.45		.02
Plumbers & Steamfitters	10.30	.80	.75		.09
Roofers Composition	6.45				
Sheet Metal Workers	9.80	.45	.55		.005
POWER EQUIPMENT OPERATORS:					
Group 1	9.95	.575	.50		.08
Group 2	7.90	.575	.50		.08
Group 3	6.40	.575	.50		.08
Group 4	6.20	.575	.50		.08
Group 5	6.01	.575	.50		.08
DECISION NO. WI78-2146 - MOD #2					
(43 FR 50360 - October 27, 1978)					
Milwaukee, Ozaukee, Waukesha and Washington Counties, Wisconsin					
CHANGE:					
CARPENTERS	$11.87	1.10	1.00	.51	.08
MILLWRIGHTS	12.68	1.10	1.00	.51	.08
PILEDRIVERMEN	12.57	1.10	1.00	.51	

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Eagle, Elbert, Gilpin, Grand, Jefferson, Lake, Larimer, Morgan, Park, Summit, and Weld

DECISION NUMBER: CO79-5117

DATE: Date of Publication

Supersedes Decision No. CO78-5109 dated July 14, 1978, in 43 FR 30437

DESCRIPTION OF WORK: Building projects (does not include single-family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:					
Eagle County	11.63	.85	.95		.06
Boulder and Grand Counties	10.23	.85	.95		.05
Elbert, Lake and Park Counties	10.65	.35	.95		.05
Larimer County	10.73	.85	1.05		.05
Remaining Counties	11.63	.85	.95		.06
CARPENTERS:					
Adams, Arapahoe, Boulder, Clear Creek, Denver, Douglas, Elbert, Grand, Gilpin, Jefferson and Park (Northern Area) Counties					
Area (a) Denver Metropolitan Area including Louisville, Golden, Boulder and Longmont, basing points					
Zone I (0 to 20 miles)	10.565	.90	.95	.85	.085
Zone II (20 to 50 miles)	11.88	.90	.95	.85	.085
Zone III (50 miles and over)	13.21	.90	.95	.85	.085
Morgan and Weld Counties:					
Area (b) Denver Northeastern Area of Colorado including Greeley, Loveland and Fort Morgan basing points					
Zone I (0 to 20 miles)	10.565	.90	.95	.85	.085
Zone II (20 to 50 miles)	11.88	.90	.95	.85	.085
Zone III (50 miles and over)	13.21	.90	.95	.85	.085
Larimer County (S.E. portion within Loveland basing point, Zone 1)	10.065	.80	.90	.75	.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Larimer (Remainder of County), Eagle, Lake, Park (South 40 miles) and Summit Counties					
Zone I (0-30 miles from P.O. in Leadville or Fort Collins)	$ 9.82	.90	.95	.85	.07
Zone II (30-60 miles from P.O. in Leadville or Fort Collins)	10.32	.90	.95	.85	.07
Zone III (All work outside of the 60 mile radius from P.O. in Leadville or Fort Collins)	10.57	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with composition materials and color	11.18	.52	1.15		.11
Working on scaffold, swing stage, or temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Elbert and Park Counties Electricians	10.95	.42	3%+.50		.015
Larimer, Morgan and Weld Cos. Electricians	9.00	.70	3%+1.25		3/10%
Remaining Counties Electricians	13.00	.70	3%+1.25		3/10%
Cable Splicers	13.25	.70	3%+1.25		3/10%
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	11.60	1.04	1.25		.12
LATHERS	12.04				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS:					
Elbert, Lake and Park Cos.	$ 9.86	.50	.50		.04
Remaining Counties	10.89	1.00	1.00		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Park County (Southern half)					
Brush, Roller, Taper, hand texture	8.94	.70	.50		.04
Steel and Paperhanger	9.44	.70	.50		.04
Spray	9.69	.70	.50		.04
Steel Spray	10.19	.70	.50		.04
Remaining Counties including N½ of Park County*					
Brush, Roller and Drywall Finisher	11.15	.70	1.00		.07
Spray; Swing Stage, Paperhangers	11.75	.70	1.00		.07
PLASTERERS	12.04				.01
PLUMBERS; Steamfitters:					
Southern portions of Douglas, Elbert and Park Counties*	9.05	.60	.75	1.17	.08
Boulder County	11.25	.80	1.05	.65	.10
Remaining Counties (including Northern portions of Douglas, Elbert and Park Counties)	11.17	.80	1.05	.75	.08
ROOFERS:					
Eagle and Southern portions of Lake, Jefferson, Park, Douglas and Elbert Counties**	7.91	.42	.10		
Remaining Counties including Northern portions of Lake, Park, Jefferson, Douglas and Elbert Counties	10.97	.80			.08
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TERRAZZO WORKERS	$ 10.69	$1.00	$1.00		.04
TILE LAYERS:					
Elbert, Lake and Park Counties	9.86	.50	.50		
Remaining Counties	10.89	1.00	1.00		.04
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

*Park County dividing Line:
Line from the S.W. corner of Jefferson County to the S.E. corner of Lake County

**Area South of Lake County to a point 2 miles north of the City of Leadville to a point 1/2 mile north of the City of Limon at the west border of Lincoln County

FOOTNOTE:
a. Employer contributes 8% basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65	.05	
Group 2	8.29	8.74	9.19	.55	.65	.05	
Group 3	8.57	9.02	9.47	.55	.65	.05	
Group 4	8.79	9.24	9.69	.55	.65	.05	
Group 5	8.84	9.29	9.74	.55	.65	.05	
Group 6	9.09	9.54	9.99	.55	.65	.05	

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Boilers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MP and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MP, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34B or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Paymcats			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Fireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DESCRIPTIONS

LABORERS

CITIES within ZONES 1, 2, and 3:

Boulder	Denver	Dillon
Eagle	Golden	Fort Collins
Fort Morgan	Leadville	Granby
Greeley	Littleton	Vail

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office

Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:

Boulder	Denver	Douglas
Clear Creek	Gilpin	Jefferson
Larimer	Morgan	Weld

B. Counties entirely within Zone 2:

Grand Lake Park Summit

C. Legal description of the portion sof Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 1, as follows:

All of Adams, Arapahoe, Wlbert Counties lying west of the Township line between R59W and R60W of the 8th Guide Meridian West; and all of Eagle County lying West of the Township line between R80W and R81W of the 10th Guide Meridian West

D. Legal description of the portions of Adams, Arapahoe, Eagle and Elbert Counties which are included within Zone 2, as follows:

All of Adams, Arapahoe, Elbert Counties lying East of the Township line between R59 and R60W of the 8th Guide Meridian West, and all of Eagle County lying East of the Township line between R80W and R81W of the 9th Guide Meridian West

SUPERSEDEAS DECISION

STATE: Colorado COUNTY: El Paso
DECISION NUMBER: CO79-5118 DATE: Date of Publication
Supersedes Decision No. CO78-5110 dated July 14, 1978, in 43 FR 30443
DESCRIPTION OF WORK: Building projects (does not include single-family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons	10.65	.85	.95		.04
CARPENTERS:					
Zone I (0-30 miles from Post Office in Colorado Springs)	9.82	.90	.95	.85	.07
Zone 2 (30 miles and over from Post Office in Colorado Springs)	10.32	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with Composition materials and color	11.18	.52	1.15		.11
Working on temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS	11.50	.72	3%+.65		.015
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural, Ornamental, and Reinforcing	11.60	1.04	1.25		.12
LATHERS	11.94				.01
MARBLE SETTERS	9.86	.50	.50		
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush and Roller; Tapersh, hand texture	9.69	.70	.50		.04
Paperhangers; Steel brush	10.19	.70	.50		.04
Spray Painters	10.44	.70	.50		.04
Steel, Spray	10.94	.70	.50		.04
PLASTERERS	12.04				.01
PLUMBERS; Pipefitters	10.60	.80	1.05	1.60	.10
ROOFERS	9.93	.52	.40		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$ 11.95	3%+.64	$ 1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TERRAZZO WORKERS	10.89	1.00	1.00		.04
TILE SETTERS	9.86	.50	.50		
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTES:

a. Employer contributes 8% of basic hourly rate for over 5 years' service; 6% basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Six Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65	.05	
Group 2	8.29	8.74	9.19	.55	.65	.05	
Group 3	8.57	9.02	9.47	.55	.65	.05	
Group 4	8.79	9.24	9.69	.55	.65	.05	
Group 5	8.84	9.29	9.74	.55	.65	.05	
Group 6	9.09	9.54	9.99	.55	.65	.05	

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in Colorado Springs.

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in Colorado Springs.

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office in Colorado Springs.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
(Other than for work in tunnels, shafts, and raises)					
Group 1	$ 9.25	.79	1.00	.45	.07
Group 2	9.60	.79	1.00	.45	.07
Group 3	9.95	.79	1.00	.45	.07
Group 4	10.10	.79	1.00	.45	.07
Group 5	10.25	.79	1.00	.45	.07
Group 6	10.40	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)					
Group 1	9.40	.79	1.00	.45	.07
Group 2	9.75	.79	1.00	.45	.07
Group 3	9.85	.79	1.00	.45	.07
Group 4	10.10	.79	1.00	.45	.07
Group 5	10.25	.79	1.00	.45	.07
Group 6	10.65	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodman, Chainmen, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Beckfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.78	.84	.63	.30	
Group 2	8.88	.84	.63	.30	
Group 3	8.98	.84	.63	.30	
Group 4	9.03	.84	.63	.30	
Group 5	9.08	.84	.63	.30	
Group 6	9.13	.84	.63	.30	
Group 7	9.18	.84	.63	.30	
Group 8	9.23	.84	.63	.30	
Group 9	9.33	.84	.63	.30	
Group 10	9.38	.84	.63	.30	
Group 11	9.48	.84	.63	.30	
Group 12	9.63	.84	.63	.30	
Group 13	9.68	.84	.63	.30	
Group 14	9.78	.84	.63	.30	
Group 15	9.88	.84	.63	.30	
Group 16	9.98	.84	.63	.30	
Group 17	10.08	.84	.63	.30	
Group 18	10.28	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

SUPERSEDEAS DECISION

STATE: Colorado COUNTIES: Delta, Garfield, Gunnision, Mesa, Montrose and Pitkin

DECISION NUMBER: C079-5119 DATE: Date of Publication

Supersedes Decision No. C078-5111 dated July 14, 1978, in 43 FR 30451

DESCRIPTION OF WORK: Building Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:					
Pitkin County	9.70	.60	.70	.25	.05
Remaining Counties	10.50	.85	.95		.05
CARPENTERS:					
Post Office basing points in the Cities of Leadville, Fort Collins, Glenwood Springs, Grand Junction, Gunnison and Montrose					
Zone I (0-30 miles from nearest basing point)	9.82	.90	.95	.85	.07
Zone II (30-60 miles from nearest basing point)	10.32	.90	.95	.85	.07
Zone III (60 miles and over from nearest basing point)	10.57	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with composition materials and color	11.18	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Electricians	12.40	.72	3%+.25		1⅛
Cable Splicers	12.65	.72	3%+.25		1⅛
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Structural, Ornamental and Reinforcing	$11.60	$1.04	$ 1.25		.12
LATHERS	11.94				.01
MARBLE & TILE SETTERS, TERRAZZO WORKERS	10.89	1.00	1.00		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush, Roller and Drywall Finishers	11.15	.70	1.00		.07
Paperhangers, Spray, Swing Stage	11.75	.70	1.00		.07
PLASTERERS	12.04				.01
PLUMBERS	13.00	.80	1.05		.10
ROOFERS	9.93	.52	.40		
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS	10.38	.40	.75	.30	.10
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65		.05
Group 2	8.29	8.74	9.19	.55	.65		.05
Group 3	8.57	9.02	9.47	.55	.65		.05
Group 4	8.79	9.24	9.69	.55	.65		.05
Group 5	8.84	9.29	9.74	.55	.65		.05
Group 6	9.09	9.54	9.99	.55	.65		.05

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Aspen, Glenwood Springs, Grand Junction, Gunnison, Montrose, Naturita and Rifle

ZONE 2 - That area encompassed by 20 to 70 driving miles from the Main Post Office of the above named Cities.

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office of the above named Cities.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborers

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Steamers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments Rodmen, Chainmen, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group 8	9.23	9.73	.84	.63	.30	
Group 9	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group 18	10.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

ZONE DEFINITIONS

Power Equipment Operators and Truck Drivers

A. Counties entirely within Zone 1:
Delta Garfield Mesa

B. Counties entirely within Zone 2:
Gunnison Pitkin

C. Legal description of the portion of Montrose County which is included within Zone 1, as follows:
All of Montrose County lying north of the North line of Ouray County and said North line extended West to the Township line between R11W and R12W, said part lying East of said Township line of the New Mexico Principal Meridian

D. Legal description of the portion of Montrose County which is included within Zone 2, as follows:
All of Montrose County except that part lying north of the North line of Ouray County and said North line extended West of said Township line between R11W and R12W, said point being East of said Township line of the New Mexico Principal Meridian

SUPERSEDEAS DECISION

STATE: Colorado

COUNTIES: Las Animas, Otero and Pueblo

DECISION NUMBER: CO79-5120

DATE: Date of Publication

Supersedes Decision No. CO78-5112 dated July 14, 1978, in 43 FR 30447

DESCRIPTION OF WORK: Building Projects (does not include single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$ 12.14	.55	$ 1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS	10.72	.85	.75		.07
CARPENTERS	9.82	.90	.95	.85	.07
CEMENT MASONS:					
Cement Masons	10.68	.52	1.15		.11
Working with composition material and color	11.18	.52	1.15		.11
Working on scaffold, swing stage or temporary platform over 25'	10.93	.52	1.15		.11
DRYWALL INSTALLERS	9.29	.78	.85	.65	.07
ELECTRICIANS:					
Zone I (0-12 miles from P. O.)					
Electricians	11.40	.72	3%+.80		1½%
Cable Splicers	12.54	.72	3%+.80		1½%
Zone II (12-20 miles from P.O.)					
Electricians	11.80	.72	35+.80		1½%
Cable Splicers	12.94	.72	3%+.80		1½%
Zone III (20-40 miles from P.O.)					
Electricians	12.15	.72	3%+.80		1½%
Cable Splicers	13.29	.72	3%+.80		1½%
Zone IV (Over 40 miles from P.O.					
Electricians	13.28	.72	3%+.80		1½%
Cable Splicers	14.42	.72	3%+.80		1½%
Electrical contracts under $20,000 in Zones III and IV	9.65	.72	3%+.80		1½%
ELEVATOR CONSTRUCTORS	11.71	.895	.69	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.69	a	.035
GLAZIERS	12.15				
IRONWORKERS:					
Structural; Ornamental and Reinforcing	11.60	1.04	1.25		.12
LATHERS	10.80				.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE & TILE SETTERS, TERRAZZO WORKERS	$ 10.26	.90	.85		.04
MILLWRIGHTS	11.51	.90	.85		.135
PAINTERS:					
Brush, roller, tapers, hand texture	8.82	.50	.50		.04
Steel, brush; Paperhangers	9.32	.50	.50		.04
Spray, Tapers using Automatic tools	9.82	.50	.50		.04
Steel, Spray	10.32	.50	.50		.04
PLASTERERS	12.04				.01
PLUMBERS:					
Zone I (0-15 miles from P.O.)	12.27	.80	1.05		.08
Zone II (15-20 miles from P.O.)	12.84	.80	1.05		.08
Zone III (20-40 miles from P.O.)	13.27	.80	1.05		.08
Zone IV (Over 40 miles from P.O.)	14.295	.80	1.05		.08
ROOFERS	9.93	.52	.40		
SHEET METAL WORKERS	11.95	3%+.64	1.41		.09
SOFT FLOOR LAYERS:					
Las Animas and Otero Counties	10.38	.40	.75	.30	.10
Pueblo County	9.00	.40	.75	.30	.05
SPRINKLER FITTERS	12.10	.75	1.05		.08
TILE, MARBLE & TERRAZZO HELPERS:					
Helpers	7.85	.90	.85	.50	
Floor Grinders	8.00	.90	.85	.50	
Base Grinders	8.55	.90	.85	.50	

FOOTNOTE:

a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

LABORERS	Basic Hourly Rates	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
				H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2	ZONE 3				
Group 1	$ 5.60	$ 6.05	$ 6.50	.55	.65		.05
Group 2	8.29	8.74	9.19	.55	.65		.05
Group 3	8.57	9.02	9.47	.55	.65		.05
Group 4	8.79	9.24	9.69	.55	.65		.05
Group 5	8.84	9.29	9.74	.55	.65		.05
Group 6	9.09	9.54	9.99	.55	.65		.05

ZONE 1 - That area encompassed by 0 to 30 driving miles from the Main Post Office in each of the following Cities: Pueblo, La Junta and Trinidad

ZONE 2 - That area encompassed by 30 to 70 driving miles from the Main Post Office in the above named Cities

ZONE 3 - That area encompassed by 70 driving miles and over from the Main Post Office in the above named Cities.

LABORERS

Group 1: Watchmen tending Heaters and Pumps

Group 2: Building Construction Laborer

Group 3: Laborers - Underpinning and Shoring eight (8) feet or more below working surface.
Power Tool Operators of all mechanical, air, gas and electrical tools, including Self-propelled Buggies and Cement Finishers Tenders. Laborers preparing and placing of stone or any other aggregate in sand bed to be used as exposed face of Tilt-up Panels.
Burners on Demolition and Welders, Gunnite Nozzleman and Sandblasters.

Group 4: Pipelayers on Building Construction

Group 5: Jackhammer Operator for Underpinning and Shoring over twelve (12) feet below working surface, Bellers and Stemmers on Caisson Work.

Group 6: Tender, Mason and Plaster

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
(Other than for work in tunnels, shafts, and raises)	Zone 1*	Zone 2*				
Group 1	$ 9.25	10.00	.79	1.00	.45	.07
Group 2	9.60	10.35	.79	1.00	.45	.07
Group 3	9.95	10.70	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.40	11.15	.79	1.00	.45	.07
(For work in tunnels, shafts, and raises)						
Group 1	9.40	10.15	.79	1.00	.45	.07
Group 2	9.75	10.50	.79	1.00	.45	.07
Group 3	9.85	10.60	.79	1.00	.45	.07
Group 4	10.10	10.85	.79	1.00	.45	.07
Group 5	10.25	11.00	.79	1.00	.45	.07
Group 6	10.65	11.40	.79	1.00	.45	.07

POWER EQUIPMENT OPERATORS
(Other than for work in Tunnels, Shafts and Raises)

Group 1: Air Compressor; Asphalt Screed; Oiler; Brakeman; Drill Operator - smaller than Williams MF and similar; Helper to Heavy Duty Mechanic and/or Welder; Operators of 5 or more light plants, Welding Machines, Generators, single unit conveyor; Pumps; Vacuum Well Point System; Tractor, under 70 HP with or without attachments; Rodman, Chainman, Grade Checker

Group 2: Conveyor, handling building materials; Ditch Witch and similar Trenching Machine; Fireman or Tank Heater, road; Forklift; Haulage Motor Man; Pugmill; Portable Screening Plant with or without a spray bar; Screening Plants, with classifier; Self-propelled Roller, rubber-tired under 5 tons

Group 3: Asphalt Plant; Backfiller, Bituminous Spreader or Laydown Machine; Cableway Signalman; Caisson Drill; Williams MF, similar and larger; C.M.I. and similar; Concrete Batching Plants; Concrete finish Machine; Concrete Gang Saws on concrete paving; Concrete Mixer, less than 1 yd.; Concrete Placement Pumps, under 8 inches; Distributors, Bituminous Surfaces; Drill, Diamond or Core; Drill Rigs, rotary, churn, or cable tool; Elevating Graders, Equipment Lubricating and service Engineer; Engineer Fireman; Grout Machine; Gunnite Machine; Hoist, 1 drum; Hydraulic Backhoes, wheel mounted under 3/4 yd.; Loader, Barber Green, etc.; Loader up to and including 6 cu. yds.; Machine Doctor; Mechanic; Motor Grader/Blade, rough; Road Stabilization Machine; Rollers, self-propelled, all types over 5 tons; Sandblasting Machine; single unit portable crusher, with or without washer; Tie Tamper, wheel mounted; Tractor, 70 HP and over with or without attachments; Trenching Machine Operator; Welder; Winch on truck; Instrument Man

Group 4: Cable operated Crane, track mounted; Cable operated power Shovels, Draglines, Clamshells, and Backhoes, 5 cu. yds. and under; Concrete Mixer over 1 cu. yd.; Concrete Paver 34E or similar; Concrete Placement Pumps, 8 inches and over; Crane, 50 tons and under; Hoist, 2 drums; Hydraulic Backhoe, 3/4 yd. and over; Loader, over 6 cu. yds.; Mechanic-welder, heavy duty; Mixer mobile; Motor Grader/blade, finish; Multiple unit portable Crusher, with or without washer; Piledriver; Scrapers, single bowl under 40 cu. yds.; Self-propelled Hydraulic Crane; Tractor with sideboom; Truck mounted Hydraulic Crane

POWER EQUIPMENT OPERATORS (Cont'd)
(Other than for work in Tunnels, Shafts and Raises)

Group 5: Cable operated power Shovels, Draglines, Clamshells and Backhoes over 5 cu. yds.; Crane, over 50 tons carrier mounted; Derrick; Electric rail type Tower Crane; Hoist, 3 drum or more; Quad Nine and similar push unit; Scrapers - single bowl including pups 40 cu. yds. and tandem bowls and over

Group 6: Cableway; Climbing Tower Crane; Crawler or truck mounted Tower Crane; Wheel Excavator, Tower Crane, truck type

POWER EQUIPMENT OPERATORS (Cont'd)
(For work in Tunnels, Shafts and Raises)

Group 1: Brakeman

Group 2: Motorman

Group 3: Compressor (900 CFM and over) serving Tunnels, Shafts and Raises

Group 4: Air Tractors; Grout Machine; Gunnite Machine; Jumbo Form; Mechanic; Welder

Group 5: Concrete Placement Pumps, 8" and over discharge; Mechanic-Welder, heavy duty; Mucking Machines and Front End Loaders, underground; Slusher; Mine Hoist Operator

Group 6: Mole

TRUCK DRIVERS	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	ZONE 1	ZONE 2				
Group 1	$8.78	9.28	.84	.63	.30	
Group 2	8.88	9.38	.84	.63	.30	
Group 3	8.98	9.48	.84	.63	.30	
Group 4	9.03	9.53	.84	.63	.30	
Group 5	9.08	9.58	.84	.63	.30	
Group 6	9.13	9.63	.84	.63	.30	
Group 7	9.18	9.68	.84	.63	.30	
Group	9.23	9.73	.84	.63	.30	
Group	9.33	9.83	.84	.63	.30	
Group 10	9.38	9.88	.84	.63	.30	
Group 11	9.48	9.98	.84	.63	.30	
Group 12	9.63	10.13	.84	.63	.30	
Group 13	9.68	10.18	.84	.63	.30	
Group 14	9.78	10.28	.84	.63	.30	
Group 15	9.88	10.38	.84	.63	.30	
Group 16	9.98	10.48	.84	.63	.30	
Group 17	10.08	10.58	.84	.63	.30	
Group	.28	10.78	.84	.63	.30	

TRUCK DRIVERS

Group 1: Pickups; Helpers; Scalemen; Checkers; Spotters; Dumpmen

Group 2: Dump Trucks, to and including 6 cu. yds.; Sweepers; Flat Rack, single axle; Liquid and Bulk Tankers, single axle; Warehouse men; Washers; Greasemen; Servicemen; Ambulance Drivers

Group 3: Dump Trucks, over 6 cu. yds. to and including 14 cu. yds.; Flat Rack, tandem axle; Battery Men; Mechanics' Helpers; Material Checkers; Cardex Men; Expeditors; Man Haul Shuttle Truck or Bus

Group 4: Straddle Truck; Lumber Carrier; Liquid and Bulk Tankers, tandem axle

Group 5: Fork Lift Driver; Fuel Truck; Grease Truck; Combination Fuel and Grease

Group 6: Distributor Truck Driver; Cement Mixer, Agitator Truck to and including 10 cu. yds.; Liquid and Bulk Tankers, semi or combination

Group 7: Multi-purpose Truck; Speciality and Hoisting

Group 8: Dump Trucks, over 14 cu. yds. to and including 29 cu. yds.; High Boy, Low Boy, Floats, semi; Cab operated Distributor Truck Driver, semi; Liquid and Bulk Tankers, Euclid, Electric or similar; Truck Drivers, Dumptor type Youngbuggy, Jumbo and similar type equipment

Group 9: Truck Driver, Snow Plow

Group 10: Cement Mixer, Agitator Truck, over 10 cu. yds., to and including 15 cu. yds.

Group 11: Dump Trucks, over 29 cu. yds. to and including 39 cu. yds.

Group 12: Cement Mixer, Agitator Truck, over 15 cu. yds.

Group 13: Dump Trucks, over 39 cu. yds. to and including 54 cu. yds.; Tireman

Group 14: Mechanic

Group 15: Dump trucks, over 54 cu. yds. to and including 79 cu. yds.

Group 16: Heavy Duty Diesel, Mechanic, Body Men, Welders or Combination Men

Group 17: Dump Trucks, over 79 cu. yds. to and including 104 cu. yds.

Group 18: Dump Trucks, over 104 cu. yds.

*ZONE DESCRIPTIONS

Power Equipment Operators and Truck drivers

A. Counties entirely within Zone 1:
Otero Pueblo

B. Portions of Las Animas County which are included within Zone 1, as follows:
All of Las Animas County lying west of the Township line between R59W and R60W of the 7th Guide Meridian West.

C. Portions of Las Animas County which are included within Zone 2, as follows:
All of Las Animas County lying East of the Township line between R59W and R60W of the 7th Guide Meridian West.

SUPERSEDEAS DECISION

STATE: Illinois COUNTY: Cook
DECISION NUMBER: IL79-2051 DATE: Date of Publication
Supersedes Decision No.: IL78-2105, dated October 20, 1978 in 43 FR 49165
DESCRIPTION OF WORK: Building (Including Residential), Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.01	.91	.99		.05
BOILERMAKERS	13.05	1.05+.40	1.00	5%	.03
BRICKLAYERS & STONEMASONS	11.71	.90	.85		.05
CARPENTERS:					
Building, Heavy & Highway Carpenters & Soft Floor Layers	11.50	.98	1.08		.08
Millwrights & Piledrivermen	11,50	.98	1.08		.08
CEMENT MASONS					
Building	11.25	1.25	1.15		.05
Heavy & Highway	11.25	1.25	1.15		.05
ELECTRICIANS	13.15	8.81%	11.67%	.80	.76%
ELEVATOR CONSTRUCTORS:					
Constructors	13.20	.895	.56	a+b	.025
Helpers	70%JR	.895	.56	a+b	.025
Helpers (Prob.)	50%JR	.895	.56	a+b	.025
GLAZIERS	11.89	.48	.89		.01
IRONWORKERS:					
Structrual & Reinforcing	12.30	1.24	1.22		.10
Ornamental	12.10	.75	.905		.10
Riggers & Machinery Movers	9.80	.75	1.725	1.30	.15
Red Book Fence Erector	9.07	.75	.905		.10
LATHERS	11.52	.58	.645		.04
LINE CONSTRUCTION:					
Linemen	13.30	7.00%	6.50%	7.00%	.025%
MARBLE SETTERS	12.73	.80			
MARBLE SETTERS' FINISHERS & Polisher	9.00	.62		.33	
PAINTERS:					
Brush, Decorators, Paperhangers & Tapers	10.85	.575	.65		.013
PLASTERERS	10.87	.875	.92		.045
PIPEFITTERS	14.10	.85	1.12		.03
PLUMBERS	12.50	.75	.82		.10
POINTERS, CAULKERS & CLEANERS	11.60	1.10	.90		

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Composition & Waterproofers	$12.30	1.16	.90		.03
Slate & Tile	12.07	1.16	.75		.02
SHEET METAL WORKERS	12.95	.90	.73	.50	.07
SPRINKLER FITTERS	12.50	.95	1.05		.15
SURVEY CREW:					
Layout Technician	11.95	.80	.30		
Instrument Man	9.87	.80	.30		
Rodman	8.18	.80	.30		
TERRAZZO WORKERS	8.95	.30	.30		
TILE SETTERS	10.85	.425	.45625		
TILE SETTERS' FINISHERS	8.10	2.45d	3.40d		
TRUCK DRIVERS:					
Building & Residential					
2-3 Axle Trucks	10.15	29.00c	33.00c		
4 Axle Trucks	10.40	29.00c	33.00c		
5 Axle Trucks	10.60	29.00c	33.00c		
6 Axle Trucks	10.80	29.00c	33.00c		
Heavy and Highway					
2-3 Axle Trucks	10.05	.80	.85		
4 Axle Trucks	10.30	.80	.85		
5 Axle Trucks	10.50	.80	.85		
6 Axle Trucks	10.70	.80	.85		

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day;
E-Thanksgiving Day; F-Day after Thanksgiving Day; G-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays A through G
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years. Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years
c. Per week per employee
d. Per Day

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
CLASS 1					
Common Laborers, Plasterer Laborers, Pumps for DeWatering & other Unclassified Laborers	$ 9.20	.57	1.10		
CLASS 2					
Cement Gun Laborers	9.275	.57	1.10		
CLASS 3					
Scaffold Laborers & Chimney Laborers over 40'	9.30	.57	1.10		
CLASS 4					
Windlass & Cement Gun Nozzle Laborers - Gunnite	9.30	.57	1.10		
CLASS 5					
Stone Handlers & Berrickmen	9.40	.57	1.10		
CLASS 6					
Jackhammermen	9.425	.57	1.10		
CLASS 7					
Concrete Vibrator, Plumbers' Laborer & Chain Saw Operator	9.45	.57	1.10		
CLASS 8					
Firebrick & Boiler Setters' Laborers	9.52	.57	1.10		
CLASS 9					
Chimney Laborers on Firebrick, Caisson Diggers & Well Point System Men	9.55	.57	1.10		
CLASS 10					
Boiler Setter Plastic Laborers	9.65	.57	1.10		
CLASS 11					
Jackhammer on Firebrick Only	9.755	.57	1.10		

DECISION NO. IL79-2051

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
WRECKING LABORERS:					
General Laborers	$ 8.47	.57	1.10		
Wallmen, Wreckers, Burners, Air Hammermen	9.12	.57	1.10		
Smokestack or High Man	9.47	.57	1.10		
LANDSCAPE WORK:					
Highway Construction Only:					
Landscape Plantsmen	6.18			e	
Maintenance Men	5.87			e	
Truck Driver - Tractor Trailer (3 Axle or more) and Equipment Operator	6.66			e	
Truck Driver - 2 Axle	6.24			e	

FOOTNOTE:

e. Six paid holidays; New Year's Day; Memorial Day; July Fourth Labor Day; Thanksgiving Day; Christmas Day

DECISION NO. IL79-2051

ILL-12-PEO-1

POWER EQUIPMENT OPERATORS: BUILDING & RESIDENTIAL CONSTRUCTION

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$13.25	1.10	1.10	.60	.05
CLASS II	11.95	1.10	1.10	.60	.05
CLASS III	10.80	1.10	1.10	.60	.05
CLASS IV	9.55	1.10	1.10	.60	.05

CLASS I - Asphalt Plant, Asphalt Spreader, Auto-grad, Batch Plant, Benoto (requires two engineers), Boiler & Throttle Valve, Caisson Rigs, Central Redi-mix Plant, Combination Backhoe Breaker (Truckmounted), Conveyor, Concrete Paver, Concrete Placer, Concrete Tower, Cranes (all), Derricks (all), Grader, Elevating, Grouting Machines, Highlift Shovels or Front End Loader 2½ yd. & over, Hoists, One, Two & Three Drum, Hoists, Two & Three, Drum, Hoists, Two Tugger One Floor, Hydraulic Boom Trucks, Locomotives (all), Mechanic, Motor Patrol, Pile Drivers & Skid Rig, Post-hole Digger, Pre-stress Machine, Pump Cretes Dual Ram (requiring frequent lubrication & water), Pumpcretes, Squeeze Cretes, - Screw Types Pumps, Gysum Bulker & Pump, Rock Drill (self-propelled), Rock Drill (truck mounted), Scoopes - Tractor Drawn, Slipform Paver, Straddle Buggies, Tournapull, Tractor with Boom & Side Boom, Trenching Machines

CLASS II - Boiler, Bulldozers, Broom All Power Propelled, Concrete Mixer (2 bag & over), Conveyor Portable, Forklift Truck Greaser Engineer, Highlift Shovels or Front End Loaders under 2½ yd., Hoists, Automatic, Hoists All Elevator, Hoists, Tugger Single Drum, Roller, All, Steam Generators, Stone Crushers, Tractor, All Winch Trucks with "A" Frame

CLASS III - Air Compressor - small 150 & under (1) to 5 not to exceed a total of 300 ft.), Air Compressor - large over 150, Combination - Small Equipment Opr., Generators under & over 50 KW Heaters, Mechanical Pumps, over 3" (1 to 3 not to exceed a total of 300 ft.), Pumps, Well Points, Welding Machines (2 through 5), Winches, 4 Small Electric Drill Winches

CLASS IV - Oilers

DECISION NO. IL79-2051

ILL-10-PEO-2-3

POWER EQUIPMENT OPERATORS: SEWER, HEAVY & HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS I	$12.20	1.00	1.00	.50	.05
CLASS II	11.65	1.00	1.00	.50	.05
CLASS III	10.90	1.00	1.00	.50	.05
CLASS IV	9.80	1.00	1.00	.50	.05
CLASS V	8.80	1.00	1.00	.50	.05

CLASS I - Asphalt Plant, Asphalt Heater & Planer Combination, Asphalt Spreader, Autograde, Belt Loader, Caisson Rigs, Central Redimix Plant, Concrete Breaker (truck mounted), Concrete Conveyor, Concrete Paver over 27E cu. ft., Concrete Placer, Concrete Tube Float, Cranes, All Attachments, Cranes, Linden, Peco & Machines of alike nature, Derricks, Traveling, Dredges, Euclid Loader, Elevating Type, Gradall, & Mechanics of a like nature, Derricks, All Derrick Boats, Derricks, Traveling, Dredges, Euclid Loader, Elevating Type Gradall, and Mechanics of a like nature, 1 cu. yd. & over, Mucking Machine, under 1 cu. yd., Piledrivers & Skid Rig, Pre-stress Machine, Pump Cretes Dual Ram (requiring frequent lubrication & water), Rock Drill Crane Type, Slip Form Paver, Straddle Buggies, Tractor w/boom Tractaire w/attachments, Trenching Machine, Undergound Boring &/or Mining Machine under 5 ft., Wheel Exactor Widener (Apsco)

CLASS II - Mechanic-welder, Batch Plant, Bituminous Mixer, Bulldozer, Combination Backhoe Front End Loader Machine, Concrete Breaker of Hydro-hammer, Concrete Grinding Machine, Concrete Mixer or Paver 7S Series to & including 27 cu. ft., Concrete Spreader, Concrete Curing Machine, Burlap Machine, Belting Machine & Sealing Machine, Finishing Machine, Concrete Grader, Motor Patrol Auto Patrol, Form Grader, Pull Grader, Subgrader, Highlift Shovels or Front End Loader, Hydraulic Boom Trucks (all attachments), Locomotives, Dinky, Pump Cretes; Squeeze Cretes; Srew Type Pumps Cypsum Bulker & Pump, Rock Drill (self-propelled), Roto-tiller, Seaman, etc. Self-propelled Scoops; Tractor Drawn, Self-propelled Compactor, Spreader, Chipstone, etc., Scraper, Tank Car Heater, Tractor, Push, Pulling Sheeps Foot, Disc., Compactor, etc. Tug Boats

DECISION NO. IL79-2051

POWER EQUIPMENT OPERATORS (Cont'd)

CLASS III - Boilers, Boiler & Throttle Valve, Brooms, All Power Propelled, Cement Supply Tender, Compressor Throttle Valve, Concrete Mixer (2 bags & over) Conveyor, Portable, Fireman on Boiler, Forklift Trucks, Greaser Engineer, Grouting Machine Hoists, Automatic, Hoists, All Elevators, Hoists, Tugger, Single Drum, Jeep Diggers, Pipe Power Saw, Concrete, Power-Driven, Pug Mills, Rollers, All, Steam Generators, Stone Crushers, Stump Machine, Winch Truck with "A" Frame, Work Boats, Tamper, Form Motor Driven

CLASS IV - Air Compressors, All, Generators, Heaters, Mechanical, Light Plants, all (1 through 5), Pumps, All, Pumps Well Points, Tractaire, Welding Machines (2 through 6)

CLASS V - Oilers

SUPERSEDEAS DECISION

STATE: Illinois

COUNTIES: Henderson, Henry, Knox
Mercer, Rock Island, Stark & Warren

DECISION NO. IL79-2054

DATE: Date of Publication

Supersedes Decision No. IL78-2123, dated October 27, 1978, in 43 FR 50308

DESCRIPTION OF WORK: Building Construction Projects, (excluding single family homes and garden type apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS:					
Stark County	$13.01	.91	.99		.05
Remainder of Counties	12.07	.45	.85		.10
BOILERMAKERS	11.45	.95	1.00		.03
BRICKLAYERS:					
Rock Island and Mercer Counties					
Bricklayers and Stonemasons	11.90	.65	1.30		.04
Marble, Tile, Terrazzo Workers	11.50	.50	1.30		
Plasterers	13.00				
Henry County					
Bricklayers, Stonemasons and Plasterers	12.10		.75		
Stark County					
Bricklayers and Stonemasons	12.10		.75		
Plasterers	11.20	.80	.90		.03
Marble, Tile, Terrazzo Workers	12.15	.70	1.16		.01
Marble and Tile Finishers	11.85	.60	.25		
Terrazzo Finishers and Floor Machine Operator	11.98	.60	.25		
Knox and Warren Counties					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners & Caulkers	12.40	.70	1.16		.01
Henderson County					
Bricklayers, Stonemasons, Cement Blocklayers, Pointers, Cleaners & Caulkers	12.40	.70	1.16		.01
Marble, Tile, Terrazzo Workers	12.15	.70	1.16		.01
Marble and Tile Finishers	11.85	.60	.25		
Terrazzo Finishers and Floor Machine Operator	11.98	.60	.25		
CARPENTERS:					
Stark County					
Carpenters and Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05
Knox, Henderson and Warren Cos.					
Carpenters and Soft Floor Layers	12.61	.40	.75		.05
Millwrights and Piledrivermen	13.11	.40	.75		.05

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS: (Cont'd)					
Rock Island, Henry & Mercer Cos.					
Carpenters & Soft Floor Layers	$12.01	.60	.90		.06
Piledrivermen	10.71	.45	.70		.04
Millwrights	13.40	.60	1.00		.25
CEMENT MASONS:					
Rock Island, Mercer, & Eastern Half of Henry Co.	12.02	.70	.60		
Stark Co. and Remainder of Henry County	11.65		.75		
Knox and Warren Counties					
Cement Masons & Plasterers	11.80	.50	.25		
Henderson County					
Cement Masons:					
Northern Half of Co.	11.12	.70	.60		
Central & Southern Half of County	10.78				
ELECTRICIANS:					
Knox, Henderson, Warren Cos.					
Townships of Ohio Grove, North Henderson & Suez in Mercer County	12.92	.50	3%+1.00		3/4%
Stark Co.; Townships of Essex, Valley & West Jersey	12.92	.50	3%+1.00		3/4%
Henry Co: (Townships of Annawan, Burns, Cambridge, Galva, Kewanee, Weller & Westerfield & the Remainder of Stark Co.	13.80	.50	3%+.50		.25%
Rock Island and Remainder of Henry County & Mercer Cos.	12.49	.55	7.5%		.03
ELEVATOR CONSTRUCTORS:					
Rock Island, Mercer, Henry and Knox Counties					
Constructors	11.57	.495	.32	4%+a+b	.02
Helpers	8.10	.495	.32	4%+a+b	.02
Helpers (Prob.)	5.785	.495	.32	4%+a+b	.20
GLAZIERS:					
Stark County	12.33	.55	.60		.01
Remainder of Counties	10.59	.70	1.00		.02

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
IRONWORKERS:					
Mercer, Henderson, Warren & All Areas West & Southwest of Galesburg	$12.40	.55	.90		.06
Stark Co. and All Area South and East of Galesburg in Knox County	12.825	.65	.925		
Rock Island and Henry Counties; & within Galesburg & All Area North of City in Knox County	13.87	.75	.375		.11
LABORERS:					
Stark County - Western ½					
Unskilled	9.84	.40	.60		.035
Semi-Skilled	10.04	.40	.60		.035
Skilled	10.24	.40	.60		.035
Eastern Half of Stark County					
Unskilled	10.07	.40	.60		.035
Semi-Skilled	10.27	.40	.60		.035
Skilled	10.47	.40	.60		.035
LATHERS:					
Knox County	11.75				.01
Stark County	11.92	.40	.40		.01
Rock Island, Mercer & Henry Counties	12.68		.20		.01
PAINTERS:					
Rock Island, Henry, Mercer, Henderson, Stark and Warren Counties; West of line extending from N. E. corner to S. W. corner of Knox County					
Brush and Roller	10.62	.55	.85		.18
Spray and Structural Steel	11.12	.55	.85		.18
Remainder of Knox County					
Brush and Paperhangers	10.10	.55	.15		
Structural Steel	10.35	.55	.15		
PLASTERERS:					
Stark County	11.20	.80	.90		.03
Rock Island and Mercer Counties	13.00				
PLUMBERS & STEAMFITTERS:					
Stark County	12.70	.51	1.05		.15
Remainder of Counties	12.45	.54	1.41		.20

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Stark County	$12.85	.70	.40		.025
Rock Island, Henry & Mercer Counties	12.65	.65	.80		
Remainder of Counties	10.20				
SHEET METAL WORKERS:					
Stark County	11.24	.65	.99		.06
Henderson County	11.03	.55	.55		.12
Remainder of Counties	11.23	.55	.55		.12
SPRINKLER FITTERS	12.10	.75	1.05		.08

PAID HOLIDAYS: (WHERE APPLICABLE)
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:
a. Six Paid Holidays: A through F.

b. Employer contributes 4% of regular hourly rate to Vacation Pay credit for employee who has worked in business more then 5 years. Employer contributes 2% of regular hourly rate to Vacation Pay credit for employee who has worked in business less than 5 years.

DECISION NO. IL79-2054

LABORERS: ROCK ISLAND & MERCER COUNTIES	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
UNSKILLED	$10.52	.50	1.00		.035
SEMI-SKILLED	10.72	.50	1.00		.035
SKILLED	11.02	.50	1.00		.035

UNSKILLED - Common Laborer, Carpenter Tender, Rod & Chain Man, Flagman, Gravel Boxmen, Dumpmen & Spotters, Form Handlers, Material Handlers, Fencing Laborers Cleaning Lumber, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Removal of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writers of Scale Tickets, Scaleman (Permanent-Potable or Temporary Plant), Deck Hand.

SEMI-SKILLED - Laying & Jointing of Telephone Conduit, Darco & Jackhammer Operator, Mechanical Tamper and Air Space, Wagon & Hand Drill, Vibrator Operator, Operator on Power Tools used under the Jurisdiction of Laborers, Cement Jumper; Puddler, Form Setter Helpers, Power & Hand Saw (when clearing timber), Center Strip, Reinforcing in Concrete, Wire Mesh, Concrete Saw, Mortar Mixer, Prime Mover or any Mechanical Devise taking the place of Concrete Buggy or Wheelbarrow, Sand Point Setter, Asphalt Kettleman, Mastic Asphalt Mixerman or other preparations used on joints, Sheeting Hammer Divers (2-Men) Back up man or Joint Man with Pipelayers, Laborer in Ditch or Tunnel on Sewer and Water Main & Telephone Conduit Gas Distribution Men, Pipe Setters on Laterals, Drain Tiles, Culvert Pipe & Storm Sewer Connections to Catch Basins, Manholes or Maine Line, Handling of Materials treated with Oil, Coreosote, Asphalt and/or any Foreign Material harmful to skin or clothing, Chloride Handlers, the Unloading & Laborers w/steel Workers and Re-bard, Tunnel Helpers in Free Air, Batch Dumpers, Tank Cleaners, Cofferdam Workers, Bankmen on Floating Plant

SKILLED - String (1-man), Head Form Setter, Dynamite Man, Asphalt Raker, Tunnel Miner, Pipelayer on Sewer & Water, Gunnite Nozzle Man, Welders, Cutters, Burners & Torchman, Screedman on Asphalt Pavers, Lutemen, Curb Asphalt Machine Operator, Laser Beam Operator, Concrete Burning Machine Operator, Coring Machine Operators, Head Brade Man

DECISION NO. IL79-2054

LABORERS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
HENRY COUNTY					
UNSKILLED	$10.44	.55	.80		.035
SEMI-SKILLED	10.64	.55	.80		.035
SKILLED	10.84	.55	.80		.035
KNOX, HENDERSON & WARREN COS.					
UNSKILLED	10.07	.45	.60		.035
SEMI-SKILLED	10.27	.45	.60		.035
SKILLED	10.47	.45	.60		.035

UNSKILLED - Common Laborer, Carpenter Tenders, Tool Cribmen, Firemen or Salamander Tenders, Flagmen, Gravel Box Men, Dumpmen & Spotters, Form Handlers, Fencing Laborers, Cleaning Lumber, Pitmen, Material Checkers, Dispatchers, Landscapers, Unloading Explosives, Laying of Sod, Planting of Trees, Asphalt Plant Laborers, Wrecking Laborers, Writer of Scale Tickets, Fire Shop Laborers, Fireproofing Laborers, Janitors, Wrecking-Dismantling Building, Wallmen & Housemovers, Driving of Stakes, Stringlines for all Machinery

SEMI-SKILLED - Handling of Materials treated with Oil, Creosote, Asphalt or any Foreign Material, Track Laborers, Cement Handlers, Chloride Handlers, the Unloading and Laborers w/steel Workers & Rebars, Concrete Workers (wet), Tunnel Helpers in Free Air, Batch Dumpers, Mason & Plasterer Tenders & Material Wheelers, Kettlemen & Tarmen; Tank Cleaners, Plastic Installer, Scaffold Workers, Material, Buggies or Motorized unit used for Wet Concrete or Handling of Building Materials, Laborers w/dewatering Systems, All Sewer Workers plus depth, Rod of Chainmen with Land Surveyors, Vibrator Operators, Mortar Mixer Operator, Cement Silica, Clay, Fly Ash, Lime & Plasters, Handlers (bulk or bag), Cofferdam Workers plus depth, (on concrete paving) Placing Cutting & trying or Reinforcing, Deck Hand & Shore Laborers, Bankmen on Floating Plant, Asphalt Workers w/machine, Asphalt Raker, Grader Checker

SKILLED - Dynamite Men or Blasters, Caisson Workers plus depth, Gunnite Nozzle Men, Leadmen on Sewer Work, Welders, Cutters, Burners, Trochmen, Chain Saw Operator, Jackhammer & Drill Operators Layout Man, Steel Form Setters (Street & Highway); Air Tamping Hammerman, Signal Man on Crane, Concrete Saw Operator, Screenman on Asphalt Paver, Laborers Tending Machines w/hot Materials are used, Multiple Concrete Duct-Leadmen, Lutemen, Crib Asphalt Machine Operator, Ready-Mix Scaleman, Portable or Temporary Plant, Laborers Handling Materplate or similar Materials, Laser Beam Operator, Coring Machine Operator

DECISION NO. IL79-2054

POWER EQUIPMENT OPERATORS KNOX, HENDERSON, WARREN, STARK COUNTIES; & EASTERN ½ of HENRY CO.	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP 1	$13.08	.45	.80		.05
GROUP 2	12.88	.45	.80		.05
GROUP 3	12.505	.45	.80		.05
GROUP 4	12.23	.45	.80		.05
GROUP 5	11.62	.45	.80		.05

GROUP 1 - Cranes, Escalated Rate on Crane, Derricks, Booms, $.01 per hour, per foot after 80 feet or Boom including jib, Overhead Cranes, Gradall, Cherry Pickers (and similar types over 15 ton lifting capacity require oiler), Mechanics, Central Concrete Mixing Plant Operator, Road Pavers (27E-Dual Drum-Tri Batchers), Blacktop Plant Operators and Plant Engineers, 3 Drum Hoist, Derricks, Hydro Cranes, Shovels Skimmer Scoops, Koehring Scoopers, Draglines, Backhoe, Hoptoes-Crane-Type that require Oilers, Derrick Boats, Pile Drivers and Skid Rigs, Clamshells, Locomotive Cranes, Dredge (all types), Motor Patrol, Power Blades Dumore-elevating and similar types Tower Cranes (crawler mobile) and Stationary, Crane-Type Backfiller, Drott Yumbo and similar types considered as Cranes, Casisson Rigs (require oilers) Dozer, Tourna-dozer, Work Boats, Ross Carrier and Helicopter

GROUP 2 - Trench Machine, Pumperete-Belt Crete-Squeeze-Screw Type Pumps and Gypsum Bulker and Pump, Dinkeys, Power Launches, Tournapulls (all), Multiple Unit Earth Movers, $.25 per hour for each Scoop over one, Scoops (all sizes), Push Cats, Endloaders (all types), Side Boom, P-H one Pass Soil-Cement Machine (all similar types), Wheel Tractors (industrial or Farm Types w/dozer-hoe-end-loader or other attachments), Pugmill with Pump Backfillers, Asphalt Surfacing Machine, Euclid Loader, Forklifts, Formless Finishing Machine, Jeeps w/Ditching Machine or other attachments, Tunneluger, Rock Crushers, Automatic Cement and Gravel Batching Plants, Mobile Drills (soil testing and similar types), (requiring oiler), Flaherty Spreader or similar types (require oiler), Heavy Equipment Greaser (top greaser on spread), Curries and similar type, 1 and 2 Drum Hoists (Buck Hoists and similar types Freight and Passenger Elevators Chicago Boom, Boring Machine and Pipe Jacking, Machine Hydro Boom, Starting Engineer on Pipeline, C.M.I. and similar types (require oiler) Straw Blower, Hydro Seeder and F.W.D and similar types

DECISION NO. IL79-2054

POWER EQUIPMENT OPERATORS (CONT'D)

GROUP 3 - Tractor (Track Type) without power unit pulling Rollers, Rollers on Asphalt, Brick or Macadam, Concrete Breakers, Concrete Spreaders, Mule Pulling Roller, Center Stripper, Cement Finishing Machines, Barber Greene or similar Loaders, Vibro Tamper (all similar types), Self-Propelled, Winch or Boom Truck, Mechanical Bull Floats, Mixer over 3 Bags to 27E, Tractor Pulling Power Blade or Elevating Grader, Porter Rex Rail, Clary Screed, Pugmill (without pump) Screed Man on Laydown Machine, Firemen on Spray Machine on Paving

GROUP 4 - Air Compressor, All Air and Steam Valves, Power Subgrader, Oil Distributor, Straight Tractor, Trac-Air without attachments, Curb Machines, Truck Crane Oilers, and Truck Type Hoptoe Oilers

GROUP 5 - Herman Nelson Heater, Dravo, Warner, Silent Glo and similar types, One Engineer will Operate 1-5 and After 5, Two Operators will be required, Self-Propelled Concrete Saws, Assistant Heavy Equipment Greaser on Spread, Roller, 5 tons and under on Earth or Gravel, Form Grader, Pump 1 or 2, Generator (1) or (2), Welding Machine (1) or (2) - 300 amp. or over, Mixer (3) Bag and under (standard capacity), Bulk Cement Plant, Crawler Crane and Skid Rig Oilers

DECISION NO. IL79-2054

POWER EQUIPMENT OPERATORS:

ROCK ISLAND, MERCER & WESTERN ½ of HENRY COUNTY

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CLASS 1	$11.80	.65	.80		.08
CLASS 2	11.80	.65	.80		.08
CLASS 3	10.40	.65	.80		.08
CLASS 4	10.40	.65	.80		.08
CLASS 5	9.35	.65	.80		.08

CLASS 1 - Crane, Shovel, Clamshell Dragline Backhoe, Derrick Towe Crane, Cable Way, Concrete Spreader (servicing two pavers), Asphalt Spreader, Asphalt Mixer Plant Engineer, Dipper Operator, Dipper Dredge Craneman, Dual Purpose Truck (boom or winch), Levermen or Enginemen (Hydraulic Dredge), Mechanic, Paving Mixer with tower attached (two operators required), Pile Driver. Boom Tractor, Stationary Portable or Floating Mixing Plant, Trenching Machine (over 40 H.P.), Cleaning and Priming Machine, Backfiller, (Throw Bucket), Locomotive Engineer, Qualified Welder, Tow or Push Boat, Concrete Paver, Seaman Trav-L-Plant or simialr Machine, CMI Autograder or similar Machine, Slip Form Paver, Caisson Augering Machine, Mucking Machine, Asphlat Heater-Planer Unit Hydraulic Cranes, Mine Hoists

CLASS 2 - Athey, Barber-Green, Euclid or Hasis Loader, Asphalt Pug Mill, Fireman and Driver, Concrete Pump, Concrete Spreader (servicing one paver), Bulldozer, End Loader, Elevating Grader, Group Equipment Greaser, LeTourneaupul and similar Machines, DW-10, Straddle Carrier, Hyster Winch and similar Machines, Motor Patrol, Power Blade Push Car, Tractor pulling Elevating Grader or Power Blade, Tractor Operating Scoop or Scraper Tractor with Power Attachment, Roller on Asphalt or Blacktop, Single Drum Hoists, Jaeger Mixer and Place Machine, Pipe Bending Machine, Welding Machines (3 or 4), Fuller Kenyon Cement Pump or Similar Machines, Automatic Cement and Gravel Batch Plants (one stop set-up), Seaman Pulvi-Mixer or Similar Machines, Self-Propelled Sheep Foot Roller or Compactor (used in conjunction with a grading spread), Asphalt Spreader Screed Operator Apsco Spreader, or Similar Machine, Slusher, Forklift (over 6,000 lb. cap. or working at heights above 28 ft.) Conveyors, Chip Spreader, Work Boat.

DECISION NO. IL79-2054

POWER EQUIPMENT OPERATORS: (CONT'D)

CLASS 3 - Asphalt Booster, Fireman and Pump Operator at Asphalt Plant, Compressor (500 cu. ft. and over), Concrete Finishing Machine, Form Grader With Roller on Earth, Mixers (3 bag to 16E), Power Operated Bull Float, Tractor Without Power Attachment, Dope Pot (Agitating Motor), Dope Chop Machine, Distributor (back end), Flexplane or similar machines, Portable Machine Fireman, Hydrohammer, Power Winch on Paving Work, Self-Propelled Roller or Compactor (other than provided for above), Pump Operator (more than one well-point pump) Crusher Operator, Trench Machine (40 H.P. and under), Power Subgrader (on forms) or similar machines, Forklift (6000 or less cap.) Gypsum Pump, Conveyor over 20 H.P., Fuller Kenyon Cement Pump or Similar Machines.

CLASS 4 - Air Compressor (275 c.f.m. or over) Driver on Truck Crane or similar machines, Light Plant Mixers (1 or 2 bags), Power Batching Machine (Cement Auger or Conveyor), Boiler (engineer or fireman), Water Pumps, Welding Machine, Mechanical Broom, Automatic Cement and Gravel Batch Plants (two or three stop set-up), Small Rubber - Tired Tractors (not including Backhoes or End Loaders), Self-Propelled Curing Machine.

CLASS 5 - Oiler, Mechanic's Helper, Mechanical Heater (other than steam boiler), Belt Machine, Small Outboard Motor Boats (Safety Boat and Life Boat), Engine Driven Welding Machine, and Small Tractors (used to unroll or roll wire mesh)

DECISION NO. IL79-2054

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS					
GROUP I	$10.80	.65	20.00a		
GROUP II	11.20	.65	20.00a		
GROUP III	11.40	.65	20.00a		

GROUP 1 - Drivers on 2 Axle Trucks hauling less than 9 tons, Air Compressor and Wedling Machine including those pulled by separate units, Truck Driver Helpers, Warehouseman, Mechanic Helpers, Greasers & Tiremen, Pick-up Trucks when hauling Materials, Tools, or men to and from and on the jobs site, Fork Lifts up to 6,000 lbs., capacity.

GROUP II - 2 or 3 Axle Trucks Hauling more than 9 tons, but hauling less than 16 tons, A-frame Winch Trucks, Hydrolifts Trucks, or similar equipment when used for transpotation purposes, Fork Lifts over 6,000 lb. capacity, Winch Trucks, 4-Axle combination units, Ticket Writers

GROUP III - 2,3 or 4 Axle Trucks hauling 16 tons or more, Driers on Oil Distributors, Water Pulls, Mechanics & Working Foreman, 5-Axle or more combination units, Dispatchers

FOOTNOTES

a. Per Week Per Employee

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Leavenworth
DECISION NO.: KS79-4066 DATE: Date of Publication
Supersedes Decision No. KS78-4007, dated February 3, 1978 in 43 FR 4808
DESCRIPTION OF WORK: Building Construction Projects, (does not include single family homes and garden type apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$12.67	.60	1.55		.05
BOILERMAKERS	12.00	1.15	1.00		.03
BRICKLAYERS; Stonemasons	11.025	.80	.35	1.00	
CARPENTERS; Millwrights and Pile-drivermen	12.30	.50	.40		.06
CEMENT MASONS	11.675	.65	.50		
ELECTRICIANS:					
Zone 1 - Delaware, Kickapoo, High Prairie and Leavenworth Townships)	12.77	.54	3%+.51	.95	.10
Zone 2 - Remainder of County	12.75	.45	3%+.65		.05
ELEVATOR CONSTRUCTORS	11.97	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.745	.56	3%+a	.025
ELEVATOR CONSTRUCTORS' HELPERS (PROB.)	50%JR				

FOOTNOTES: a-Employer constributes 8% of basic hourly rate for over 5 years service and 6% of basic hourly rate for 6 mos. to 5 years as vacation Pay Credit. Also 6 paid holidays.

GLAZIERS	10.72	.61	.89	18.7%	.04
IRONWORKERS	11.60	.75	1.40	1.00	.05
LABORERS:					
General laborers	7.65	.50	.45	.25	.05
Power tool operators, compactors, concrete breakers, chipping tools, drilling tools, concrete saws, mechanically operated georgia buggy	7.85	.50	.45	.25	.05
Mason tenders, plaster tenders, mortar mixers for plasterers, masons and cement finishers, all stocking scaffold, clean up for masons (building & wrecking)	7.95	.50	.45	.25	.05
Sand and concrete gun nozzleman powderman	8.05	.50	.45	.25	.05
LABORERS (Site Preparation and Grading):					
Group 1	6.85	.35	.35		.05
Group 2	7.00	.35	.35		.05
Group 3	7.10	.35	.35		.05
Group 4	7.25	.35	.35		.05
Group 5	7.35	.35	.35		.05

CLASSIFICATION DEFINITIONS

LABORERS:

Group 1 - Board mat weavers and cable tiers, georgia buggy (manually operated, mixerman-no skip lift, nailers, salamander tenders, track man, tractor swamper, truck dumper, wire mesh setter, water pump up to 4 inches, and all other general laborer including flagman

Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated) grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tender, material batch hopper and scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dumper - dry batch, vibrator operator, wagon and churn drill operator

Group 3 - Asphalt raker, barco tamper (concrete saw, creosote material - handling and applying, nozzle burner (cutting torch and burning bar)

Group 4 - Conduit pipe, tile and duct line setter, form setter and liner on concrete paving, powderman, sandblasting and gunnite nozzleman, sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution lines

Group 5 - Leadmen or pusher

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	12.55	.40			
LINE CONSTRUCTION:					
Zone 1 - Southwest 2/3 of Leavenworth County					
Lineman	11.07	.45	3%		½%
Cable splicers	11.62	.45	3%		½%
Groundman, over 1 year	6.89	.45	3%		½%
Groundman, 1st year	5.22	.45	3%		½%
Powderman	9.18	.45	3%		½%
Line Truck & Equipment Operators;					
1st year	7.05	.45	3%		½%
2nd year	8.43	.45	3%		½%
Over 2 years' experience	9.18	.45	3%		½%
Zone 2 - Remainder of Leavenworth County					
Lineman	13.26	.45	3%+.15		½%
Lineman operator	12.34	.45	3%+.15		½%
Groundman powderman	9.20	.45	3%+.15		½%
Groundman	8.74	.45	3%+.15		½%
Groundman (1st 6 mos.)	7.48	.45	3%+.15		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE AND TILE SETTERS	12.65	5%	4.25%		
MARBLE AND TILE SETTERS' HELPERS	9.65				
PAINTERS:					
Zone 1 - Northern 2/3 of County					
Brush, roller, tapers	8.95	.55	.70		
Spray	9.45	.55	.70		
Zone 2 - Remainder of County					
Brush, roller, tapers	8.70	.30	.35		
Spray	9.70	.30	.35		
PLASTERERS	13.10				
PIPEFITTERS	12.98	.67	1.50		.10
PLUMBERS	13.87	.97	1.15		.12
POWER EQUIPMENT OPERATORS (Building Construction):					
Group 1	10.60	.75	1.00	.75	.10
Group 2	10.35	.75	1.00	.75	.10
Group 3	8.95	.75	1.00	.75	.10
Group 4	9.45	.75	1.00	.75	.10
Group 5	9.70	.75	1.00	.75	.10
Group 6	10.85	.75	1.00	.75	.10
Group 7	11.10	.75	1.00	.75	.10
Group 8	10.60	.75	1.00	.75	.10
Group 9	11.60	.75	1.00	.75	.10
Group 10	11.10	.75	1.00	.75	.10
Group 11					
(a)	10.35	.75	1.00	.75	.10
(b)	10.10	.75	1.00	.75	.10
(c)	10.10	.75	1.00	.75	.10
(d)	9.20	.75	1.00	.75	.10

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS

GROUP 1 - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; backfillers; backhoe, all types; barber-green loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cable ways; cherry pickers (all types); chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane overhead; crusher, rock; derricks and derrick cars (power operated); ditching machines; dozers; dredges-any type power; gradeall-similar type; hoist, endless chain power operator with power travel; loaders-all types; mechanic and welders; mucking machine; orange peels; pumps-material-all types; push cats; scoops-all types; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONTD:

GROUP 2 - Boilers (1); brooms-power operator (all types); chip spreader (front man); clef plane operator; compressor (1) 105' or over; compressors (2) 105 ft. or over not more than 20' apart; compressors-tandem (any sizes); compressors single, truck mounted; concrete saws, self-propelled; crab-power operator; curb finishing machine; elevator; finishing machine; firemen on rigs; flex plane, floating machine; form grader; greaser; hoist, endless chain-power operated;hopper-power operated; hydra hammer (all types); lad-a-vator-similar typel rollers-all types; siphons, jets and jennies; sub-grader; tractors over 50 h.p.
GROUP 3 - Oiler
GROUP 4 - Fork lift-masonry; oiler driver-all types
GROUP 5 - "A" frame trucks; fork lift-all types and sizes (except masonry); mixers (with side loaders); pumps (with well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.
GROUP 6 - Clamshells, 80 ft. of boom or over (including jib); crane or rigs, 80 ft. of boom or over (including jib); draglines, 80 ft. of boom or over (including jib); pile drivers, 80 ft. of boom or over (including jib)
GROUP 7 - Crane or rigs, over 200 ft of boom
GROUP 8 - Hoists-each additional drum over 1 drum
GROUP 9 - Master mechanic
GROUP 10 - Crane-tower or climbing
GROUP 11 - Ready Mixed Concrete Plants:
(a) Crane operator
(b) Loader operator
(c) Plant man
(d) Conveyor operator

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS (CONTD) Site Preparation and Grading					
Group 1	10.10	.50	1.00	.75	.10
Group 2	9.85	.50	1.00	.75	.10
Group 3	9.60	.50	1.00	.75	.10
Group 4	8.60	.50	1.00	.75	.10
Group 5	9.10	.50	1.00	.75	.10
Group 6	10.35	.50	1.00	.75	.10
Group 7	10.60	.50	1.00	.75	.10
Group 8	10.10	.50	1.00	.75	.10

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:
GROUP 1 - Asphalt paver and spreader, asphalt plant console operator, auto grader, backhoe, blade operator, all types, boilers - 2; booster pump or dredge, boring machine (truck or crane mounted), bulldozer operator, clam-shell operator, compressor maintenance operator - 2; concrete plant operator, central mix, concrete mixer, paver, crane operator, derrick or derrick trucks, ditching machine, dragline operator, dredge engineman, dredge operator, drill cat with compressor mounted on cat, drilling or boring machine, rotary, self-propelled, high loader-fork lift, hoisting engine - 2 active drums, locomotive operator, standard gauge, mechanics and welders, field or shop, maintenance operator, mucking machine, piledriver operator, pitman crane operator, pump-2, quad-trac, scoop operator all types, scoops in tandem, self-propelled rotary drill (Leroy or equal - not air tac); shovel operator, side discharge spreader, sideboom cats, skimmer scoop operator, slip-form paver (CMI, REX, or equal), throttle man, truck crane welding machine maintenance operator - 2
GROUP 2 - A-frame truck asphalt hot mix silo, asphalt plant fireman, drum, or boiler, asphalt plant mixer operator, asphalt plant man, asphalt roller operator, backfiller operator, chip spreader, concrete batch plant, dry power operator, concrete mixer operator, skiploader, concrete pump operator, crusher operator, elevating grader operator, greaser, hoisting engine-1 drum, latourneau rooter, multiple compactor, pavement breaker, self-propelled, of the hydra-hammer or similar type, power shield, pug mill operator, stump cutting machine, towboat operator, tractor operator over 50 h.p.
GROUP 3 - Boilers - 1 chip spreader (front man), churn drill operator, compressor maintenance operator - 1, concrete saws, self-propelled, conveyor operator, distributor operator, finishing machine operator, fireman, rig, float operator, form grader operator, pump, pump maintenance operator, other than dredge, roller operator, other than high type asphalt, screening and washing plant operator, self-propelled street broom or sweeper, siphons and jets, sub-grading machine operator, tank car heater operator operators - combination boiler and booster, tractor, 50 h.p. or less, without attachments, vibrating machine operator,not hand, welding machine maintenance operator-1
GROUP 4 - Mechanic's helpers, oiler
GROUP 5 - Oiler, driver, all types
GROUP 6 - Clamshells, 3 yds. capacity or over, crane or rigs, 80 ft. of boom or over (including jib), draglines, 3 yds. capacity or over, piledrivers, 80 ft. of boom or over (including jib), shovels, 3 yds. capacity or over
GROUP 7 - Cranes or rigs, over 200 ft. of boom (including jib)
GROUP 8 - Hoists (each additional drum over 1 drum)

Men working in tunnels or shafts (not air shafts or coffer dams) of twenty-five (25) ft. or more in length or depth will be paid fifty cents (50¢) per hour above the regular classification

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS	11.60	.75	.75		.14
SHEET METAL WORKERS	9.96	.75	.625		.08
SPRINKLER FITTERS	11.93	.75	1.05		.08
TERRAZZO WORKERS	12.31	5%	4.25%		
TRUCK DRIVERS:					
Building Construction:					
Group 1	9.325	.75	1.00		
Group 2	9.375	.75	1.00		
Group 3	9.45	.75	1.00		
Group 4	9.575	.75	1.00		
Group 5	9.475	.75	1.00		
Group 6	9.675	.75	1.00		
Group 7	9.525	.75	1.00		
Group 8	9.425	.75	1.00		

TRUCK DRIVERS (Building Construction) (CONTD)

CLASSIFICATION DEFINITIONS

Group 1 - Warehousemen and stock man
Group 2 - Flat beds, pick-ups, dump trucks, under 10 yds.
Group 3 - Dump trucks, 10 yds. and over, steel trucks, semi truck drivers
Group 4 - Straddle trucks, wheel tractors (when used for towing), hydro lift trucks, hydraulically operated serial lifts, heavy hauling, a-frame winch and fork lifts, heavy excavating (dumpter, euclid, etc.), double bottom units (20 tons cap. and over)
Group 5 - Distributor truck drivers and operators, oilers, greasers and mechanics' helpers
Group 6 - Mechanics
Group 7 - Transit mix, 5 yds. and over
Group 8 - Transit mix, under 5 yds.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Site Preparation and Grading					
Group 1	8.89	.75	1.00	.75	
Group 2	9.09	.75	1.00	.75	
Group 3	9.40	.75	1.00	.75	
Group 4	9.55	.75	1.00	.75	
Group 5	8.665	.75	1.00	.75	

TRUCK DRIVERS
CLASSIFICATION DEFINITIONS

Group 1 - One team, station wagons, pickup trucks, material trucks, single axle, tank wagon drivers, single axle
Group 2 - Material trucks, tandem, two teams, semi-trailers, winch truck-fork trucks, distributors drivers and operators, agitator and transit mix, tank wagon drivers, single axle, tank wagon drivers tandem or semi-trailers, Insley wagon, dump trucks, excavating, 5 cu. yds. and over, dumpsters, half-tracks, speedace, euclids and other similar excavating equipment
Group 3 - A-frame, lowboy, and boom truck driver
Group 4 - Mechanics and welders
Group 5 - Mechanics' helpers, oilers and greasers

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

[FR Doc. 79-18318 Filed 6-14-79; 8:45 am]
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SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Sedgwick
DECISION NO.: KS79-4067 DATE: Date of Publication
Supersedes Decision No. KS77-4047 dated February 25,1977 in 42 FR 11212
DESCRIPTION OF WORK: Residential projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Bricklayers	$ 8.50				
Carpenters	6.16				
Cement Masons	6.38				
Elevator Constructors'	10.42	.745	.56	3%+a	.02
Elevator Constructors' Helper	70%JR	.745	.56	3%+a	.02
Elevator Constructors' Helper (Prob)	50%JR				
Electricians	6.94				
Ironworkers	10.48		.50	.53	.02
Laborers	4.29				
Lathers	10.40		.20		
Painters	6.06				
Plasterers	9.75				
Plumbers and Pipefitters	7.00				
Roofers	4.50				
Sheet Metal Workers	5.48				
Soft Floor Layers	7.00				
Truck Drivers	4.30				
Power Equipment Operators:					
Backhoe	6.00				
Bulldozer	5.25				
Finishing Machine	5.25				
Graders	5.50				
Oiler	6.33				
Rollers	5.63				
Scrapers	6.25				
Shovels	5.50				
Trenching Machines	5.00				

FOOTNOTE:
a- Employer contributes 8% of basic hourly rate for over 5 years service; and 6% of basic hourly rate for 6 months to 5 years as Vacation Pay Credit. Also 6 paid holidays.

SUPERSEDEAS DECISION

STATE: Michigan COUNTIES: INGHAM, EATON, CLINTON
DECISION NO. M179-2057 DATE: Date of Publication
Supersedes Decision No. M179-2045 dated May 4, 1979, in 44 FR 26463
DESCRIPTION OF WORK: Residential Construction Projects consisting of single family homes and garden type apartments up to and including 4 stories

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BRICKLAYERS/BLOCKLAYERS	$ 9.46				
CARPENTERS	7.53				
CEMENT MASONS/FINISHERS	8.78				
DRYWALL WORKERS:					
Hangers	8.00				
Tapers/Finishers	8.94				
ELECTRICIANS	8.47				
LABOREPS:					
Common	5.79				
Landscape	3.00				
PAINTERS	7.10				
PLUMBERS/PIPEFITTERS	8.49				
ROOFERS	8.00				
SOFT FLOOR LAYERS/CARPET LAYERS	7.39				
SHEET METAL WORKERS	6.10				
TRUCK DRIVERS	7.36				
POWER EQUIPMENT OPERATORS:					
Bulldozer Operators	9.94				
Backhoe Operators	9.55				
Crane Operators	9.82				
Grader	9.82	.90	1.25	11%	.05
Paver	9.82	.90	1.25	11%	.05
Roller Operators	9.82	.90	1.25	11%	.05

STATE: Minnesota COUNTIES: See Below
DECISION NUMBER: MN79-2056 DATE: Date of Publication
Supersedes Decision Nos. MN77-2032 dated March 4, 1977, in 42 FR 12616 and MN77-2065 dated April 22, 1977, in 42 FR 21027
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

COUNTIES: Big Stone, Chippewa, Douglas Grant, Kandiyohi, Lac Qui Parle, Pope, Renville, Stevens, Swift & Traverse

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CARPENTERS	$ 8.80	.35	.20		
CEMENT MASONS-FINISHERS	8.78				
LABORERS:					
Unskilled	6.05				
Form Setters (curb,walk pavement)	6.30				
Pipelayers	6.26				
TRUCK DRIVERS:					
Single Axle or 2 Axle Unit	7.39	.35	.20		
Tandem Axle or 3 Axle Unit	7.83	.35	.20		
Five Axle Unit, Semi Trailer	8.17	.35	.20		
Bituminous Distributor	7.83	.35	.20		
Over 8 cu. yds. up to & including 12 cu. yds.	7.83	.35	.20		
Tractor Operator (Wheel type)	7.25	.35	.20		
Machinery Hauling including Operating Winches	8.26	.35	.20		
Truck Mechanic	8.16	.35	.20		
POWER EQUIPMENT OPERATORS:					
Power Actuated Augers & Boring Machine	8.49	.35	.20		
Asphalt, Bituminous Plant	8.84	.35	.20		
Backhoe	8.63				
Bituminous Spreader & Finishing Machine	8.52	.35	.20		
Bituminous Spreader Finishing Machine Screedman	8.52	.35	.20		
Bulldozer	7.81				
Concrete Bistributor & Spreader, Finishing Machine	8.04				
Conveyors	7.25	.35	.20		
Crane, Derrick, Dragline	8.30				
Crushing Plant, Gravel Washing, Crushing & Screening Plant	8.52	.35	.20		
Front End Loader	7.94				
Grader or Motor Patrol	8.17				
Roller, Base	6.64				
Roller, Finish	7.83	.35	.20		
Scraper	8.38				
Tractor	7.90				
Truck Crane	9.32	.35	.20		
Tournapull	7.74				
Mechanic or Welder	8.52	.35	.20		

federal register

Friday
June 15, 1979

Part III

Department of Health, Education, and Welfare

Office of the Secretary

HEW Day Care Requirements—Proposed Rules; Public Meetings

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Office of the Secretary

[45 CFR Part 71]

HEW Day Care Regulations

AGENCY: Office of the Secretary.

ACTION: Proposed rules.

SUMMARY: The Department of Health, Education, and Welfare proposes revisions to the Federal Interagency Day Care Requirements. The proposed regulations apply to all HEW funded day care services provided to children outside their own homes, except the Headstart program. (The Headstart program has its own regulations). Requirements for day care centers, for day care homes, and for State agencies administering out-of-home day care services are included. In addition to the requirements, the proposed regulations will include appendices which contain recommendations and examples for day care centers and day care homes, and for State agencies, as well as a description of the Federal role in certain areas relating to day care services.

DATES: Comments must be received on or before September 21, 1979. [For a list of public meetings on this proposed rule see F.R. Doc 79-18482 in this part of this Federal Register.]

ADDRESS: Send comments in writing to: Sylvester Ligsukis, Director, Day Care Task Force, Office of the General Counsel, HEW, Room 716-E, 200 Independence Avenue, S.W., Washington, D.C. 20201, (202) 245-6734

FOR FURTHER INFORMATION CONTACT: Sylvester Ligsukis (202) 472-7462.

SUPPLEMENTARY INFORMATION:

GENERAL INFORMATION

Background

The Federal Interagency Day Care Requirements (FIDCR)

The history of the Federal Interagency Day Care Requirements, known as the "FIDCR", began in 1967, with the enactment of the Economic Opportunity Amendments of 1967, P.L. 90-222. That legislation added a provision to the 1964 Economic Opportunity Act which directed the Secretary of HEW and the Director of the Office of Economic Opportunity to work towards a common set of day care program standards and regulations for child day care funded under programs within their jurisdictions (Section 522(d)). In 1968, HEW and OEO, with the approval of the Labor Department, jointly promulgated the FIDCR; they are located at 45 CFR Part 71.

The FIDCR were made applicable to day care programs receiving funds under the Social Security Act, the Economic Opportunity Act, the Manpower Development and Training Act, and, at the discretion of State and local education agencies, Title I of the Elementary and Secondary Education Act.

The FIDCR define day care as a comprehensive and coordinated set of activities necessary for providing care and protection to children outside their own homes. The requirements address eleven major day care service areas. These areas include types of facilities providing care, grouping of children, and the physical environment of day care facilities. The FIDCR also contain requirements for educational, social, health, and nutritional services, for staff training, and for program administration, coordination, and evaluation.

In 1972, Congress affirmed the FIDCR, amending section 522(d) of the Economic Opportunity Act to require that any standards applied to HEW or OEO day care programs be "no less comprehensive" than the 1968 requirements. Congress again amended Section 522(d) (now recodified as Section 582 (d) of the Headstart Follow Through Act) in 1975 to reflect the abolishment of the Office of Economic Opportunity. The requirement to work towards a common set of standards and regulations for child day care is now applicable only to HEW supported day care programs.

Day Care Under the Social Security Act

In 1974, in Pub. L. 93-647, Congress enacted title XX of the Social Security Act. Title XX authorizes cooperative Federal-State programs for the provision of social services to certain low income individuals. A State may choose to offer day care services under its social services program. The title XX legislation required States to implement a modified version of the 1968 day care requirements as a condition of receiving Federal reimbursement of payment for day care services under title XX and under title IV-A (social services in the territories, and supportive services in the Work Incentive (WIN) program) and title IV-B (child welfare services) of the Social Security Act (the Act). For those programs, in section 2002(a)(9)(A) of the Act, Congress modified the FIDCR to make educational services optional rather than mandatory, and to allow for the relaxation of certain FIDCR staffing requirements.

Congress also directed the Secretary of HEW to set staffing requirements for children under the age of three.

Congress has amended the day care provisions of Pub. L. 93-647 on several occasions since they became effective in October, 1975. In 1976, and again in 1977, Congress authorized an extra $200 million dollars in title XX funds to be made available to States at a matching rate of 100 percent, if used for day care services. Moreover, since 1974, Congress has made significant changes in title XX day care provisions which relate to staffing requirements. In 1975, 1976 and 1977 Congress passed legislation suspending the enforcement of Federal child/staff ratio requirements for children under the age of six in day care centers and group day care homes. Instead, States were permitted to enforce their own staffing standards for that age group, if those standards were no lower than those imposed by the State on September 15, 1975, and if, for any day care facility, they were no lower than those actually applied in the facility on that date. This Congressional "moratorium" on staffing requirements for children under 6 years of age remained in effect from October 1, 1975 to September 30, 1978. (HEW has extended the moratorium, by regulation, until the promulgation of revised day care regulations in final form. 44 FR 16399 (March 19, 1979).)

In 1976, Congress amended title XX to permit States, under certain specified conditions, to waive Federal staffing standards for *all* age groups in facilities in which not more than 20% (or for day care centers, not more than 5) of the children were receiving assistance under title XX. In order to qualify for the waiver the facility was required to comply with applicable State staffing standards. A State could use this title XX waiver authority only in cases where it was not feasible to furnish care for title XX eligible children in a facility which did meet Federal staffing requirements. In 1976, Congress also made a change in title XX day care provisions by requiring States to count the children of a family day care provider in determining compliance with applicable staffing standards, only if the children were under age six.

Development of New HEW Day Care Regulations

Section 2002(a)(9)(B) of title XX required the Secretary to submit to Congress a report on the appropriateness of the day care requirements. That section also

authorized the Secretary to "... by regulation, make such modifications in the [day care requirements] ... as he determines are appropriate", no sooner than 90 days after the submission of the "Appropriateness Report". HEW transmitted the Appropriateness Report to Congress in June, 1978.

In April 1978, the Department published a Notice of Intent to issue regulations governing HEW supported child day care services in the **Federal Register**, 43 FR 81 (April 26, 1978). The Notice of Intent identified certain major issues surrounding the development of new HEW day care regulations. It also raised some basic questions concerning the appropriate roles of HEW, and of State and local governments, with respect to the establishment and enforcement of day care standards, policies, and requirements for HEW supported child day care.

The Notice explained that in developing HEW day care regulations we would seek the widespread and active participation of the public. And, since last spring we have met informally with representatives of the day care community—providers, parents, State administrators, child advocates, and child welfare experts. We have also carefully studied numerous written suggestions and comments received in response to the Notice of Intent.

The proposed regulations, to be discussed in detail below, are based, in part, on what we have learned from these public contacts. They also reflect consideration of data from several studies of child day care, including our 1978 Appropriateness Report; a 5 year National Day Care Study commissioned by HEW, and prepared by Abt Associates; a 1979 HEW Report on Out-of-Home Child Day Care Monitoring by the Administration for Public Services, Office of Human Development Services (OHDS); and a Comparative Licensing Study completed in 1979 by the Administration for Children, Youth, and Families of OHDS.

Policy Background and Assumptions

Our proposed day care requirements are based on the following assumptions:

- The Federal government shares in the responsibility for providing leadership to enhance the emotional, physical, social, and intellectual development of children in day care.
- Federal leadership can be expressed in many different ways: regulations, education, resource materials, technical assistance, training aids, and model programs and model laws.
- Regulations for Federally funded day care are an important part of a total statement of national day care policy. However, regulations cannot be the full embodiment of that policy.
- Day care regulations should establish basic standards to protect children from harm, ensure that they are cared for in a healthy environment, and enhance their well-being.
- States may set day care policies which go beyond requirements established in Federal regulations.
- Federal regulations should leave room for decision making and the exercise of judgment by States, operators, and parents of children in day care.
- The Federal government should see that States adhere to Federal day care requirements by monitoring and providing assistance to the States. States should see that operators adhere to Federal requirements by monitoring and providing assistance to day care operators.
- The Federal government should conduct a review of the day care regulations within 36 or 48 months after they take effect.

Structure of the Proposed Regulations

The proposed day care requirements are divided into two subparts. Subparts A and B include sections defining certain terms used in the requirements, and provisions concerning applicability of the requirements. Subpart A contains requirements for day care centers which govern the major day care program elements, including program of activities, health and safety, physical environment, staff training, group composition, parent involvement, social services, and nutrition. We have proposed requirements in these areas both for day care centers and, where appropriate, for State agencies.

Subpart B of the proposed regulations includes requirements for day care homes and for State agencies, in the same program areas as for centers.

Both subparts contain requirements governing the overall administration and implementation of Federal day care requirements by State agencies, including Federal financial participation (FFP) provisions as well as provisions for monitoring, waiver, rates of payment, and future review by HEW of the requirements.

In many cases, our proposed requirements for day care homes and day care centers, though directed at the same goal, are not identical. Rather we have tried to develop regulations which are sensitive to the distinctive characteristics of each kind of day care. Requirements on a day care center—typically organized to serve larger numbers of children—may be inappropriate when applied to a day care home, which provides care in a family-like setting, in a caregiver's own home, for a small number of children. We are seeking public comment on our approach to requirements for the major forms of day care.

- Should the requirements for centers and homes remain separate?
- Should centers and homes be subject to the same requirements?
- Should some requirements be the same for home and center care?
- Which requirements should be the same?

We recognize that many of the issues surrounding the revision of HEW day care requirements are complex, sensitive, and controversial. For some of these difficult issues we have set forth options (alternative requirements) for public consideration. In this way we hope to obtain specific and focused guidance on which approach we should ultimately adopt in our final day care requirements.

Finally, we have included two Appendices with the proposed requirements (one for centers, and one for homes), which contain examples to illustrate the meaning of the requirements. The Appendices also include recommendations on steps day care facilities and State agencies may take voluntarily beyond the requirements to provide day care of high quality. The Appendices also contain a statement of the Federal role with respect to each day care program area.

Section Analysis

The proposed rules are set out below, followed in some instances by a brief discussion, and specific questions to to which the public is encourage to respond. The public is requested to specify the number of the section in the proposed regulations to which their comments refer.

Definitions (§ 71.4 and § 71.44)

Text of the Proposed Rule

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health services to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

Discussion

The above definitions section warrants no discussion here. However, public comments or suggested additions to the list are welcome and will be considered.

Applicability (§ 71.6 and § 71.46)

Text of the Proposed Rule

The regulations in this part apply to day care under the following HEW assisted programs:

- Social Security Act

—Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WIN))

—Title IV–B (Child Welfare Services)

—Title XX (Social Services)

- Title I, Elementary and Secondary Education Act (ESEA)
- Title V, Community Services Act (Follow-Through)
- Special Projects Act, Education Amendments of 1978 (Preschool Partnership)
- Adult Education Act (Adult Education)
- Education of the Handicapped Act (Education for the Handicapped)
- Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)
- Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)
- Vocational Education Amendments of 1963 (Vocational Education)
- Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975. (Developmental Disabilities Special Projects)

Discussion

We propose to apply these day care requirements to all HEW programs under which Federal financial assistance is provided for the care of children outside of their own homes. The regulations will not apply to the Headstart program, which has its own performance standards. Day care arrangements made by parents whose child care costs are taken into account under the title IV–A (AFDC) provision for work related expenses are not covered by these regulations.

Moreover, the proposed regulations do not apply to kindergarten programs. If a program provides both kindergarten *and* day care, the regulations will apply, but only to the day care services receiving Federal funds.

HEW lacks the authority to make these regulations applicable to Federally supported day care programs which are not under the Department's jurisdiction. However, we encourage other Federal agencies supporting day care to study and comment on the proposed regulations and, where possible, to adopt them for their programs

Office of Education Waiver (§ 71.8 and § 71.48)

Text of the Proposed Rule

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

Discussion

We propose to allow the Commissioner of the Office of Education discretion to waive the application of these requirements for any day care program under his or her jurisdiction, and to apply additional requirements for those Office of Education programs, where her or she so chooses. The waiver authority would be used in the case of a unique type of demonstration day care program designed to meet special educational goals.

Program of Activities for Children

Text of the Proposed Rule

Day Care Center (§ 71.10)

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

Day Care Home (§ 71.50)

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

State Agency (§ 71.10 and § 71.50)

The State agency shall provide information and technical assistance to day care facilities on establishing and maintaining a planned program of age-appropriate activities.

Discussion

We propose to require a planned program of activities for children which promotes their social, intellectual, emotional, and physical development. We do not propose to specify the details of the program, but to require only that it include activities which are appropriate to the ages of children served. In addition, we propose to require that day care centers have a written plan for a program of activities which describes how the activities meet children's developmental needs. Day care homes would also be required to have their plans in writing. A day care home's plan would contain a brief description of the children's activities. Along with this requirement we have included in the Appendices examples of the kinds of activities which would be included in a day care center or day care home program.

At the same time, we propose to require that State administering agencies offer assistance to each facility in establishing and maintaining a program of activities.

We have chosen this approach, rather than to mandate the content of each day care program, in order to provide maximum flexibility to facility operators, and to the States, to create innovative day care programs which meet the developmental needs of

children of different ages cared for in a variety of different individual settings and types of communities. Under the proposed regulation, States would be free to specify further, more detailed requirements for an acceptable program of activities. For example, some States currently mandate the availability of indoor and outdoor activities and of appropriate toys and materials.

Questions for Public Consideration

- Should day care homes be required to have written program plans?
- Should we mandate any specific activities or curricula for day care facilities?

Training

Text of the Proposed Rule

Day Care Center (§ 71.12)

(1) A day care center shall provide to caregivers who have no previous experience or training in child care an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

Day Care Home (§ 71.52)

Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

State Agency (§ 71.12 and § 71.52)

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan shall specify the nature and extent of the training required for day care center staff and day care home caregivers.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

- Child Growth and Development
- Child Care Programming and Activities in Day Care Centers and Day Care Homes
- Day Care for Bilingual Children
- Handling Behavior Problems
- Health and Safety Practices
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and Use of Space
- Community Health and Social Service Resources

Discussion

The National Day Care Center Study found a critical relationship between specialized caregiver training and the quality of the day care children receive. We propose to mandate specialized training related to child care for all day care personnel working directly with children in day care centers and day care homes. Our proposal does not contain an entry level training requirement and would not preclude the hiring of previously untrained or inexperienced individuals. We would, however, require that all caregivers, regardless of their previous education or work experience, begin to participate in specialized training, on a continuing basis, within 6 months of employment. In addition, we require day care centers to provide orientation in working with children in groups to each new caregiver without prior experience or training, before the caregiver takes on child care responsibilities.

To support this requirement for regular specialized training of caregivers we are proposing two options for a training requirement applicable to State agencies. Under both proposed options a State agency must develop and implement a statewide plan for making training available to day care personnel. The plan must specify the kinds of training and the amount of training which the State requires of caregivers. The plan must also specify where the training is available.

Under option A the State agency determines the subject areas of the training available to day care personnel. However, HEW recommends several general areas which the plan should cover. Under option B, HEW mandates the general areas which the plan should cover—for example, child development and growth, child care programming, first aid, and nutrition. Under both options we recommend that a State agency make available innovative and flexible training opportunities which take into consideration the needs and time limitations of the caregivers in the State.

Our proposed training requirements do not mandate that caregivers participate in any specific number of training hours. Nor do they mandate the frequency or the source of the specialized training. Rather, they allow day care operators and State agencies to develop training content and training opportunities to fit the particular needs both of individual caregivers and day care programs.

Questions for Public Consideration

- Should the Federal government mandate the number of hours a caregiver must spend in specialized training? If so, what is a reasonable number of hours to require?
- Should the Federal government specify the subjects to be covered in specialized training? If so, what subjects should we mandate?
- Should our requirement for specialized training be different for caregivers in day care homes?
- Should we have an entry-level training requirement for caregivers? If so, what should the requirement be? Should it be different for centers and homes?

Nutrition

Text of the Proposed Rule

Day Care Center (§71.14)

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

Day Care Home (§ 71.54)

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the home shall provide an adequate and nutritious evening meal.

State Agency (§§ 71.14 and 71.54)

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

Discussion

We propose two options for a nutrition requirement for day care centers and day care homes. Under both options (as under the current FIDCR), we require day care facilities to provide nutritious meals and snacks and to prepare them with attention to safety and sanitation. Option B specifies when meals and snacks must be provided to children in care and includes an additional option under which breakfast is required only at parent request. We do not mandate the specific content of the meals and snacks in either option, however we do offer in the Appendices several examples of what constitutes nutritious meals and snacks and how they may be provided, as well as several recommendations which suggest additional activities to promote sound nutrition in a day care setting. We also propose to mandate that State agencies make the services of a qualified nutrition specialist available to day care facilities.

Questions for Public Consideration

- Should the Federal government mandate the specific type and amount of food provided to children in day care?
- Should the Federal government mandate that day care facilities provide breakfast to children in care? Should the provision of breakfast be required only at parent's request?

Health and Safety of Children in Care

Text of the Proposed Rule

Day Care Center (§ 71.16)

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) (Option A) A day care center shall provide information to parents, as needed, concerning child health services available in the community, and shall refer them to the needed health services.

or

(Option B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed child health services, and follow-up to assure that health care is secured.

Day Care Home (§ 71.56)

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

State Agency (§ 71.26 and § 71.56)

Option A

(1) The State agency shall provide information to each day care facility about the availability of health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State, or locally funded health services receive those services when needed.

Discussion

For yound children cared for in groups there is often serious risk of injury and infectious disease. Several of the proposed health requirements are directed at minimizing these risks to the childrens' health. Others are aimed at making existing child health services more readily accessible to children in day care. We propose to require that day care facilities develop plans for handling illnesses and emergencies, and for dispensing and storing medications.

In addition, we propose to require that facilities acquire, within 30 (or 60) days of a child's enrollment, a statement for each child indicating that the child has had a health assessment in accordance with standards of the Medicaid Early and Periodic Screening, Diagnosis and Treatment (EPSDT) program of the American Academy of Pediatrics (AAP). The health assessment includes as health history, and vision and hearing screenings. Also, the required statement must indicate that the child has had the immunizations recommended by the AAP or U.S. Public Health Service. The statement must also note any special dietary or medication needs of the child, and any need for restrictions on his or her activities. The statement must be

updated in accordance with the AAP's recommended shcedule. (Both the AAP and EPSDT recommend a health assessment every two years for children three years old and older and more frequently for younger children.)

We propose to mandate that day care centers and day care homes inform parents about available community health services, and refer them to those services when needed. We also include an option under which, in addition to informing and referring, a day care center (but not a day care home) assists parents in obtaining needed child health services, and follows up to determine whether parents have been able to secure the health care their children need.

The proposed health requirements place on State agencies the responsibility for establishing and implementing health standards for persons working in day care facilities. The State agency must also furnish information about available community health services to each day care facility.

We include an option under which State agencies must make arrangements in order to assure that children in day care who are eligible for health services under any existing Federal, State, or locally funded program, obtain those services. This option does not require the creation of new health resources for day care children. Rather, we simply require State agencies to make use of already existing publicly funded child health programs for the children in HEW assisted day care who are now eligible for the programs. Our examples for this option emphasize the creation of cooperative arrangements, between the State agency and a range of existing public and private community health resources as a means of making needed health resources accessible to children eligible for and in need of those services. Finally, we include in the Appendices several recommendations for facilities about good health and safety practices. Our examples and recommendations for State agencies encourage the provision of technical assistance to operators about day care health and safety.

Questions for Public Consideration

- Should the Federal government specify standards for the health assessment and list the immunizations children in day care should receive?
- Should there be Federal standards for the health of day care personnel?
- Should the Federal government require that State agencies or providers identify a person responsible for coordinating health services for children in day care?
- Should the State agency be required to provide health services to children if those services are not otherwise available in the community?
- Should we require that children be immunized before enrollment in a day care facility? If not, how long after enrollment should immunizations be required?
- Should the health assessment and immunization requirement apply to the caregivers own children in a day care home?

Physical Environment

Text of the Proposed Rule

Day Care Center (§ 71.18)

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

Day Care Home (§ 71.58)

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

State Agency (§ 71.18 and § 71.58)

The State agency shall assure that each day care facility meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care facility meets those standards.

Discussion

Recent HEW studies have shown that serious and potentially dangeous deficiencies in safety and sanitation (for example, no fire or smoke alarms or fire extinguishers) now exist in some day care facilities supported by HEW funds. The proposed requirement mandates that each facility meet all applicable State and local requirements which address physical environment.

Under the proposed regulations it is the State agency's responsibility to assure that all State and local requirements are met in each day care facility. In addition, State agencies are required to see that swimming, transportation, and equipment safety are specifically addressed in State or local day care requirements, and that day care facilities meet the State requirements in these particular areas.

In the proposed rules we do not specify Federal requirements for physical environment which States must adopt in their codes. Rather, we require only that States adhere to their own State (and local) safety and sanitation requirements.

Questions for Public Consideration

- Should the Federal government require States to address specific areas, such as transportation safety, in their codes?
- Should the Federal government specify detailed physical environment requirements in these regulations? If so, what should those requirements be?

Social Services

Text of the Proposed Rule

Day Care Center (§ 71.20)

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure the services are secured.

Day Care Home (§ 71.60)

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer them to needed social services.

State Agency

Option A

(1) The State agency shall provide information to each day care facility about the availability of social services in the community and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State or locally funded social services receive those services when needed.

Discussion

We wish to develop a social services requirement which provides assistance

to parents in obtaining the social services which their children need, without placing an undue burden on day care facilities or duplicating social services that children already receive.

We propose to require both day care homes and day care centers to inform parents about necessary social services, and to refer them to those services. We also include an option which requires day care centers (but not day care homes) to help parents to obtain services by contacting agencies and making appointments for parents when necessary. In addition, under the second option, we require centers to follow up with parents to see if a needed social service has been secured.

Under either option facilities would, of course, be free to go beyond our requirement and, for example, provide a service not available elsewhere in the community.

At the same time we propose to mandate that State agencies furnish day care facilities with the information and assistance which the facilities need to enable them to provide meaningful information and referral to parents of children in day care. As an option, we propose to require that State agencies, in addition to providing information and assistance to facilities, also assume the responsibility for arranging for necessary services for children in day care who are eligible for existing Federal, State, or locally funded services.

As in the case of the proposed option B for a health requirement on State agencies, option B for social services does not mandate States to create new social service resources for children in day care. The examples and recommendations which we provide for State agencies encourage the use of existing resources and services, including day care centers with social service staff. The examples and recommendations emphasize the need for coordination of these existing resources in the delivery of sevices to children in day care centers and homes.

Parent Involvement

Text of the Proposed Rule

Day Care Center (§ 71.22)

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers, and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

or

Option B

In addition to subsections (1)–(4) above, a day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

Day Care Home (§ 71.62)

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

State Agency (§ 71.22 and § 71.62)

(1) The State agency shall provide information and technical assistance to day care facilities on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Discussion

There is general recognition of the fundamental right of parents of children in day care to be informed about their children's development and about the day care program. However, there has been controversy over the question whether parent involvement in making decisions about general day care program policy should be mandated. We require day care facilities to provide parents with information about the day care program. In addition, we require a facility to offer parents regular opportunities to observe their children, and consult with staff about them. Moreover, the facility must allow parents to visit, and talk about their children's needs, *before* they enroll the children in the program. We do not propose to require that day care facilities involve parents in general program policy making. We invite public comment on the possible advantages and disadvantages of requiring day care facilities to provide for the involvement of parents in making decisions which specifically concern their own children.

Under option B, we propose additional requirements for day care centers which mandate that centers maintain, for a period of three years, monitoring reports and evaluations of the center prepared by Federal, State, or local authorities, and pending or approved applications for public funds. This option allows parents to review these documents on request, and is intended to assist parents in deciding whether to enroll and maintain their children in a day care center.

For State agencies we have proposed a requirement under which assistance would be offered to facilities in working with parents. We have also included a proposal under which State agencies are required to permit parents, whenever possible, to choose the day care facility for their children. Under the proposal, agencies would also be required to make copies of Federal day care requirements available to parents of children in day care. We recommend that States develop ways for parents to be involved in the evaluation of their children's day care programs.

Questions for Public Consideration

- Should the Federal government require day care facilities to provide parents with opportunities to be involved in decision making about general program policy (e.g., hiring and personnel practices, funding, etc.)?
- Should day care centers be required to maintain and make available to parents monitoring and evaluation reports, and applications for public funding?

Group Composition

Text of the Proposed Rule

Day Care Center (§ 71.24)

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (The numbers are scheduled enrollment figures.)

Infant and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	18
or	
Option B	20
School Age	**6–10 years**
Option A	16
or	
Option B	18
School Age	**10–14 years**
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in paragraph (a)(1) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if the children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the groups size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements:

(Option A) At all times of the day:

or

(Option B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5
Preschoolers	**2½–4 years**
Option A	1:7
or	
Option B	1:8
Preschoolers	**4–6 years**
Option A	1:9
or	
Option B	1:10
School Age	**6–10 years**
Option A	1:16
or	
Option B	1:18
School Age	**10–14 years**
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in paragraph (b)(2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in number (b)(2) above.

(5)(i) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 years old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year old age categories.

(6) (Option A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(Option B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours scheduled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in care of caregiver absences.

Day Care Home (§ 71.64)

Family Day Care Home

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serves children of all ages, including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months, the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

Group Day Care Home

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregivers' own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregivers' own children younger than 6 and not yet in first grade shall count towards the group size requirement.

Discussion

Day Care Centers

The staff standards in the 1968 FIDCR, and in the title XX statute and regulations, have been the focus of sustained controversy. The availability

of sufficient staff to provide care and supervision to children is fundamental to quality day care. At the same time, caregiver/child ratio has been identified as the single most important factor in determining the cost of providing day care services. Some State administrators and day care operators regard the caregiver/child ratios in the current Federal day care requirements, particularly those that apply to children under the age of 6, as unnecessarily stringent and costly. As indicated earlier, the controversy surrounding the title XX staffing requirements led Congress to impose a moratorium on the under 6 year old requirements, and to allow waiver of Federal staffing requirements for all age groups in certain day care facilities.

In 1974, HEW commissioned a nationwide study of day care centers. The National Day Care Study (NDCS), released in March 1979, concentrated on day care provided in centers to children 3 to 5 years of age. The findings of the NDCS indicate that less emphasis on child/staff ratios, and a greater emphasis on the size of groups in which children are cared for can lead to a less costly Federal staffing requirement, without any decrease in the quality of care children receive. In addition, the NDCS report made recommendations for policies to be used in applying group size and staffing requirements.

The current requirements do not state whether group size and staffing requirements are based on scheduled enrollment or on actual attendance of children. One recommendation in the National Day Care Study was that group size and staffing requirements be determined on the basis of scheduled enrollment of children rather than their actual attendance. Our proposed regulations adopt this suggestion. We believe that the use of scheduled enrollment will simplify staffing calculations for facilities and State agencies.

We also propose to require that group size requirements in paragraph (a)(1) in the proposed requirements apply at all times of the day except during lunch, nap time, and special activities, such as field trips and playground activities. For example, under option B for infants and toddlers in paragraph (a)(1), children under 2½ years old in a day care center could never be cared for in groups larger than 10, except during the parts of the day specified above.

We propose two alternatives for a requirement relating to how the staffing requirements in paragraph (b)(2) must be met. Under option 1 they would be met at all times of the day on a continuous basis. Under option 2, the staffing requirements do not have to be met at any given point during the day. Rather, a center meets the requirements if, on the average for the day it schedules the correct amount of staff time. For example, a center could schedule less than the required number of staff hours during one part of the day, if it schedules a correspondingly greater number of staff hours during another part of the day.

Under paragraphs (b)(3) and (b)(4) a center would use the total number of hours children are enrolled at the center and the total number of hours staff are scheduled to work directly with children in figuring staffing needs. In calculating required staff time, the child hours in each age category would be divided by the appropriate requirement in paragraph (b)(2).

Paragraph (b)(5) above allows for flexibility in making staff assignments. It also provides assurance that younger children are adequately supervised. Under that paragraph, the center determines the staff hours required in paragraph (b)(2) for each age group. The center could then assign staff required for children from 0–2½ years old, 2½–6 years old, and 6 years and older within those age groupings as it saw fit.

The center would then have three staffing pools from which to make assignments: one staffing pool must be used for children 0–2½ years old; another staffing pool must be used for children 2½–6 years old; the third staffing pool must be used for children over 6 years.

Furthermore, to clarify what staff time may be counted in calculating staffing requirements, we propose, as one alternative, to allow *all* staff hours spent providing direct care to children, including time spent by volunteers, cooks, and others to be counted. We also include an option, suggested by the NCDS, under which volunteer hours could be counted only if the volunteer regularly spends at least 10 hours per week working directly with children. Under either alternative, the time spent by any volunteers or other non caregiver staff could not be counted unless they participate in specialized training in child care. The proposed group composition regulation requires that day care centers find substitutes to replace absent staff scheduled to provide direct care to children.

We include a proposal which addresses group size and staffing requirements for groups containing children of different ages. Under the proposal, where a center director places a child with a group of older children (for example, a 2 year old with 3 and 4 year old children) the group size and staffing requirement of the youngest child (or 2 year old) applies if the youngest children make up more than 20 percent of the group. The requirements for the next older age group (or 3 year olds) would apply if the youngest children make up less than 20 percent of the group. In developing a requirement for mixed age groups, we wish to be sensitive to the individual developmental needs of children, whatever their chronological age. For example, we do not wish to discourage a center from placing older, more mature 2 year olds with a 3 to 4 year old group where that would be sensible and appropriate, and not merely for the sake of convenience. At the same time we wish to ensure that the needs of the younger children can be met in any mixed age group.

The proposed staffing requirements mandate that an adequate number of adults to protect their physical safety, be with children at all times. Thus, we recognize that under some circumstances—for example, on field trips or when children are swimming—more staffing than that required in paragraph (b)(2) may be necessary to protect children. In the proposed group size and staffing requirements set forth in paragraphs (a)(1) and (b)(2) above, we include two options for each age group. These proposed requirements are presented in terms of scheduled enrollment.

Requirements for Infants and Toddlers

The National Day Care Study contains a finding that, for infants and toddlers, *both* staffing requirements *and* group size are strongly associated with indicators of quality care. The NDCS also suggests that the current 4 children to 1 adult staffing requirement should be retained for infants and toddlers.

Unlike the current regulations which treat children up to 3 years old as infants and toddlers, the proposed regulations include in the infant and toddler category children from 0–2½ years. For these children we include two staffing options for public consideration.

Each of the options contain staffing requirements which, because they are based on enrollment and not actual attendance, are at least as stringent as those in the current title XX regulations, except that the present 1 child to 1 adult requirement for children 0 to 6 weeks old has been dropped. Current Federal standards applicable to infants and toddlers do not include group size requirements. We have proposed two group size options for children 0–2½

years old. We recognize that children of different ages within the broad 0–2½ year age category have different needs. We recommend that centers arrange groups of infants and toddlers so that younger children are cared for in smaller groups, with more adults, than older children.

Requirements for Preschool Children

The options which we are proposing for group size and staffing requirements for preschool children are based upon alternatives recommended in the National Day Care Study. However, unlike the NDCS, which treated children from 3 up to 6 years old alike, we have decided to establish requirements for children 2½ to 4 years old which are separate from those applicable to children who are 4 to 6 years old.

The National Day Care Study suggests that each of the proposed options for 2½ to 6 years olds would produce good quality day care with some cost reduction. Each option A has a better impact on children; each option B could result in greater cost savings. Each option contains staffing requirements less stringent than those in the 1968 and title XX day care requirements. However, each also calls for group size limits which are lower than those in the current requirements.

Requirements for School Aged Children

Congress has taken a particular interest in the staffing and group size requirements for school-age children 6 years and over. The ratios permitted for such children by Congress in the title XX legislative were: 1 adult to 15 children for 6 to 10 year olds, and 1 adult to 20 children for 10 to 14 year olds. As explained above, HEW has the authority to change these requirements.

For each school age category, option A reflects the Congressionally established group size and staffing requirements. We have also proposed for public comment, a further less stringent, option for school-aged children between 6 and 10, and an option under which there is no Federal requirement for children 10 and older. Instead, centers are required to meet State requirements for those children.

As an alternative to the proposed staffing requirements discussed above, we could require adoption of the staffing recommendations included in an appendix to the Child Fire Life Safety Code of the National Fire Protection Association. The Code bases its fire safety standards for day care centers on the following staff to child ratios:

Age	Staff ratio
0 to 2	1:3
2 to 3	1:5
3 to 5	1:10
5 to 7	1:12
7 and older	1:15

For children of some age categories, the Child Life Safety Code recommends staffing requirements which are more stringent than those in our proposed requirements; for others they are less stringent.

Day Care Homes

Our proposed group composition requirement recognizes two types of day care homes, family and group. In both family and group day care homes there may not be more than 6 children with one caregiver at any caregiver's own children who are younger than 6 years old and not attending first grade.

One exception to this requirement is when a home cares for children under 24 months. In those cases there may not be more than 5 children with one caregiver at any given time, including a caregiver's own children who are younger than 6 years old and not attending first grade.

In any event, there may not be more than 2 children under the age of 24 months in a day care home which also includes older children, except that there may be up to three children under 24 months in a home in which there are no other children besides the caregiver's own children 6 years or older.

Questions for Public Consideration

- What practical problems would result from computing child/staff ratios and group size on the basis of enrollment rather than on attendance? e.g. would a new record system be required?
- Should the staffing requirements apply at all times or on a daily basis?
- What rules should apply when younger children are grouped with older children?
- Should we allow centers the flexibility to average staffing requirements on a center wide basis across age groups?
- Are the age categories which we have proposed appropriate?
- Should we make any special provision for full day, summer and vacation programs for school age children?
- Should we limit the number of children under 24 months old who may be cared for in a day care home which includes older children?
- Are the staff/child ratios suggested in the Child Fire Safety Code preferable to the staffing requirements proposed in paragraph (b)(2)?

Monitoring (§ 71.30 and § 71.70)

Test of the Proposed Rule

Option A

The State agency must determine each facility's compliance with the requirements of this part at least annually.

or

Option B

Same as option A plus the requirement that:

The State agency shall make an on-site visit to a day care facility whenever the State has reason to believe that the facility fails to meet the requirements of this part.

Discussion

The proposed regulations place the responsibility for monitoring day care facilities on the States. The Federal government would monitor State performance.

Under the proposed regulation States would be required to make an annual review of each facility's compliance with Federal, State, and local day care requirements. The review need not be done through an onsite visit to each facility but could be made through a monitoring system which includes an examination of a facility's records and facility self-evaluation supplemented by on-site visits each year to different facilities in the State.

We have included an option under which, in addition to annual compliance determinations described above a State would be require to visit a facility if it had reason to believe that the facility does not meet Federal requirements—for example, if the State has received complaints from parents.

Questions for Public Consideration

- Should the Federal government spell out a more detailed monitoring requirement for States?
- Should annual on-site visits to all day care faciliaties be mandated?

Availability of Federal Financial Participation (FFP) (§ 71.32 and § 71.72)

Text of the Proposed Rule

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part if:

(1) It is provided by a facility which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The facility must meet the requirements of this part within the time period specified in its plan of correction; and

(2) The State agency meets its requirements as provided in this part, or has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

Discussion

Under title XX of the Social Security Act there can be no Federal reimbursement of State child day care costs unless the day care has been furnished in a facility which meets all Federal requirements. We propose, in accordance with the title XX statute, to require, as a condition of Federal financial participation (FFP), that child day care services be furnished in facilities which meet all applicable State requirements for licensing, registration, and approval and which have been approved by State agencies as meeting Federal day care requirements. We proposed to allow FFP in State expenditures for day care services provided by facilities which do not meet the Federal day care requirements only if the facilities have submitted plans satisfactory to the administering agency for meeting the Federal requirements.

Under the proposal whether a plan of correction is accepted for any particular facility is a matter for State agency discretion. However, we would require, as an FFP condition, that each plan of correction accepted by an agency specify a reasonable period of time within which Federal requirements would be met. The facility must implement its plan within the specified time period to continue to be eligible for Federal funds.

We do not intend by this proposal to permit the "waiver" by State agencies of any Federal day care requirements. Rather, in proposing this requirement, we seek to allow for the continuation of FFP for a reasonable period of time with respect to facilities which may not fully meet Federal standards, but which evidence a clear intent to meet all standards as promptly as possible and under a fixed time schedule. We believe that allowing some opportunity for State agencies to work with facilities to improve their programs before Federal funds are withdrawn will ultimately benefit children and families in need of Federally assisted day care services.

Further, our proposed FFP requirements include a provision under which FFP in a State's day care costs would also be conditioned on the State's meeting its responsibilities under this part. HEW could approve a plan of correction for any requirements which a State has been found not to meet. Again, the plan must be implemented within a reasonable time period for FFP to continue.

Questions for Public Consideration

- Should we specify detailed criteria for plans of correction?
- Are there any requirements, in addition to State standards, which facilities should be required to meet without provision for a plan of correction?

Rates of Payment (§ 71.34 and § 71.74)

Text of the Proposed Rule

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the facility of meeting the requirements of this part.

Discussion

States have traditionally had a great deal of discretion in determining the rates to be paid to facilities furnishing day care to children eligible for HEW assisted day care services. Concerns have been raised about whether the amounts which States offer to providers are sufficient to cover the costs of meeting Federal day care requirements. We do not propose to dictate to States how much they must pay to providers.

However, we do propose to require that States take into consideration the costs associated with our requirements in setting day care rates of payment. A State could recognize local variations in costs to particular facilities (or types of facilities), or it could use a reasonable statewide cost standard. Costs would be reviewed periodically to reflect any changes resulting from inflation or otherwise.

Again, our requirement does not mandate that States actually pay any particular amount to day care providers. Rather, we simply require that States consider and acknowledge the costs of meeting Federal requrements as part of their rate setting procedures.

Questions for Public Consideration

- Should States be specifically required to make public how they have taken the costs of meeting Federal requirements into account in setting rates of payment?
- Should the Federal government develop a model rate setting procedure as guidance for States?

State Agency Waiver (§ 71.36)

Text of the Proposed Rule

The State agency may waive the staffing requirements at § 71.24(b) for a day care center in which not more than 10% of the children in the center are children whose care is paid for wholly or in part with Federal funds, if the day care center meets applicable State staffing requirements.

Discussion

We propose to build a provision into our requirements under which States would be permitted to waive grouping requirements for day care centers in which not more than 10% of the children are recieiving HEW assisted care. A center would not be eligible for the waiver unless it met all applicable State staffing requirements *and* all other Federal requirements, including group size requirements proposed in § 71.24(a). In allowing for this waiver we seek to encourage centers not otherwise willing to offer care to HEW assisted children to enroll small numbers of those children, without being subject to Federal grouping requirements. We believe this will help to promote socio-economic integration in those day care centers.

Clearly we expect States to exercise this waiver authority in a responsible manner. Accordingly, States must, first and foremost, see that the interests of the children in centers not meeting Federal grouping requirements are protected.

Questions for Public Consideration

- Should we allow waiver of grouping requirements for day care homes serving only a few HEW assisted children as well as for day care centers?

Future Review of Day Care Regulations (§ 71.38 and § 71.78)

Text of the Proposed Rule

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 48) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the **Federal Register.**

Discussion

We propose to undertake a review of these Federal day care regulations in 3 (or 4) years after they take effect. The review may or may not result in revisions to the regulations. Moreover, this requirement would not preclude HEW from making appropriate changes in the regulations before the review begins.

State Agency Advisory Council (§ 71.40 and § 71.80)

Text of the Proposed Rule

Day Care Center (§ 71.40)

The State agency shall establish a Day Care Advisory Council to advise on the interpretation and implementation of HEW day care requirements.

Day Care Home (§ 71.80)

The State Agency Advisory Council required to be established under section 71.40 of this part shall advise on the interpretation and implementation of HEW day care requirements for day care homes as well as day care centers.

Discussion

We propose to require that the State agency establish an advisory council to assist States in interpreting and implementing the HEW day care requirements. Councils exist in many States now and have been considered effective in assisting States to upgrade the quality of day care.

Questions for Public Consideration

• Should the State agency be required to establish a State Agency Advisory Council?

• If so, should the Federal government specify who should be represented on the Council?

Effective Date (§ 71.40 and § 71.80)

Text of Proposed Rule

These regulations will take effect six months from the date of publication in final form in the **Federal Register**, except that the following requirements will take effect one year from that date.

(a) The training requirements at § 71.12 and § 71.52;

(b) The requirements at § 71.56(a)(4) on day care homes to inform and refer parents to child health services; and

(c) The requirements at § 1.60(a) on day care homes to inform and refer parents to social services.

Discussion

We recognize that States and day care facilities need time to learn about the revised day care requirements and to make plans for putting them into effect. In particular, we believe that the training requirement will take time to fully implement. Accordingly, we propose to delay the effective date of the new regulations for six months from the date of their publication in the **Federal Register** in final form. The training requirements at § 71.12 and § 71.52 would not take effect until a year after final promulgation. We also propose to allow a year for day care homes to meet the information and referral requirements in our health and our social services provisions. This delay should allow caregivers in day care homes adequate time to learn about available resources and about how to develop the ability to provide effective referral for parents of children in their care.

Questions for Public Consideration

• Should we allow more than 6 months for States and providers to meet all the requirements. If so, for which requirements, in addition to the one included in our proposed rule, should we allow further time?

• Is one year sufficient for implementation of the training requirements? Is one year too much time?

• Is one year sufficient for implementation of the health and social services requirements on day care home to inform parents about and refer them to needed services? Is one year to much time?

Regulatory Analysis

In accordance with the requirements of Executive Order No. 12044, the Department has prepared a Regulatory Analysis of these proposed rules. This analysis is available from the Department.

Dated: May 31, 1979.

Frank Peter S. Libassi,

General Counsel, Department of Health, Education, and Welfare.

Dated: June 7, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

The Department of Health, Education, and Welfare proposes to revise Part 71 of Title 45 of the Code of Federal Regulations, as set forth below:

PART 71—HEW DAY CARE REQUIREMENTS

Subpart A—Day Care Center Requirements

Sec.
71.4 Definitions.
71.6 Applicability.
71.8 Office of Education Waiver.
71.10 Program of Activities for Children.
71.12 Training.
71.14 Nutrition.
71.16 Health and Safety of Children in Care.
71.18 Physical Environment.
71.20 Social Services.
71.22 Parent Involvement.
71.24 Group Composition—Day Care Center.
71.30 Monitoring.
71.32 Availability of Federal Financial Participation (FFP).
71.34 Rates of Payment.
71.36 State Agency Waiver.
71.38 Future Review of Day Care Regulations.
71.40 State Agency Advisory Council.
71.42 Effective Date.

Subpart B—Day Care Home Requirements

Sec.
71.44 Definitions.
71.46 Applicability.
71.48 Office of Education Waiver.
71.50 Program of Activities for Children.
71.52 Training.
71.54 Nutrition.
71.56 Health and Safety of Children in Care.
71.58 Physical Environment.
71.60 Social Services.
71.62 Parent Involvement.
71.64 Group Composition—Day Care Home.
71.70 Monitoring.
71.72 Availability of Federal Financial Participation (FFP).
71.74 Rates of Payment.
71.78 Future Review of Day Care Regulations.
71.80 State Agency Advisory Council.
71.82 Effective Date.

Appendix A—Day Care Center.
Appendix B—Day Care Home.

Authority: Title XX of the Social Security Act, Section 2002(a)(9)(B), 42 U.S.C. 1397a(a)(9)(B); and Title V of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (Headstart-Follow Through Act), Section 582(d), 42 U.S.C. 2932(d).

Subpart A—Day Care Center Requirements

§ 71.4 Definitions.

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for periods of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health servides to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

§ 71.6 Applicability.

The regulations in this part apply to day care under the following HEW assisted programs:

(a) Social Security Act

—Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WINP))

—Title IV–B (Child Welfare Services)

—Title XX (Social Services)

(b) Title I, Elementary and Secondary Education Act (ESEA)

(c) Title V, Community Services Act (Follow-Through)

(d) Special Projects Act, Education Amendments of 1978 (Preschool Partnership)

(e) Adult Education Act (Adult Education)

(f) Education of the Handicapped Act (Education for the Handicapped)

(g) Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)

(h) Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)

(i) Vocational Education Amendments of 1963 (Vocational Education)

(j) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Developmental Disabilities Special Projects).

§ 71.8 Office of Education Waiver.

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

§ 71.10 Program of Activities for Children.

(a) *Day Care Center*

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

(b) *State Agency*

The State agency shall provide information and technical assistance to day care centers on establishing and maintaining a planned program of age-appropriate activities.

§ 71.12 Training.

(a) *Day Care Center*

(1) A day care center shall provide caregivers who have no previous experience or training in child care, an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

(b) *State Agency*

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care center personnel. The plan shall specify the nature and extent of the training required for day care center staff.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

(1) Child Growth and Development

(2) Child Care Programming and Activities

(3) Day Care for Bilingual Children

(4) Handling Behavior Problems

(5) Health and Safety Practices

(6) Working with Parents

(7) Working with Developmentally Disabled Children and other Handicapped Children

(8) Nutrition and Good Eating Habits

(9) Design and Use of Space

(10) Community Health and Social Service Resources

§ 71.14 Nutrition.

(a) *Day Care Center*

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent's request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both at mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

(b) *State Agency*

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care centers.

§ 71.16 Health and Safety of Children in Care.

(a) *Day Care Center*

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the

standards of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of reach of children.

(4) (OPTION A) A day care center shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

or

(OPTION B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed child health services, and follow-up to assure that health care is secured.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care center about the availability of child health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care center personnel.

or

Option B

This option would include two requirements in option A and would also include the following requirements:

(3) The State agency shall make arrangements (links) which assure that children in day care centers who are eligible for Federal, State, or locally funded health services receive those services when needed.

§ 71.18 Physical environment.

(a) *Day Care Center*

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

(b) *State Agency*

The State agency shall assure that each day care center meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care center meets those standards.

§ 7120 Social services.

(a) *Day Care Center*

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure that the services are secured.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care center about the availability of social services in the community and about how the services may be obtained.

or

Option B

(1) Same as option A

(2) The State agency shall make arrangements (links) which assure that children in day care centers are eligible for Federal, State, or locally funded social services receive those services when needed.

§ 71.22 Parent involvement.

(a) *Day Care Center*

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers, and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

or

Option B

In addition to subsections (1)–(4) above, as day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

(b) *State Agency*

(1) The State agency shall provide information and technical assistance to day care centers on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW funded day care.

§ 71.24 Group composition—day care center.

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (the numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	18
or	
Option B	20
School Age	**6–10 years**
Option A	16
or	
Option B	18
School Age	**10–14 years**
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in paragraph (a) (1) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the group size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements

(OPTION A) At all times of the day:

or

(OPTION B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5
Preschoolers	**2½–4 years**
Option A	1:7
or	
Option B	1:8
Preschoolers	**4–6 years**
Option A	1:9
or	
Option B	1:10
School Age	**6–10 years**
Option A	1:16
or	
Option B	1:18
School Age	**10–14 years**
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in paragraph (b)(2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in paragraph (b)(2) above.

(5) (i) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 year old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year age categories.

(6) (OPTION A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(OPTION B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours schedled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in case of caregiver absences.

§ 71.30 Monitoring.

Option A

The State agency must determine each center's compliance with these requirements at least annually.

or

Option B

Same as option A plus the requirement that: The State agency shall make an on-site visit to a day care center whenever the State has reason to believe that the facility fails to meet the requirements of this part.

§ 71.32 Availability of Federal financial participation (FFP).

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part if:

(1) It is provided by a center which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The center must meet the requirements of this part within the time perod specified in its plan of correction;

and

(2) The State agency meets its requirements as provided in this part, or the State agency has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

§ 71.34 Rates of payment.

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the day care center of meeting the requirements of this part.

§ 71.36 Waiver.

The State agency may waive the staffing requirements at § 71.24(b) for a day cae center in which not more than 10% of the children in the center are children whose care is paid for wholly or in part with Federal funds, if the day care center meets applicable State staffing requirements.

§ 71.38 Future review of day care regulations.

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 48) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of

the review and assessment in the Federal Register.

§ 71.40 State Agency Advisory Council.

The State agency shall establish a day care advisory council to advise on the interpretation and implementation of HEW day care requirements.

§ 71.40 Effective date.

These regulations will take effect six months from the date of publication in final form in the Federal Register, except that the training requirements at § 71.12 will take effect one year from that date.

Subpart B—Day Care Home Requirements

§ 71.44 Definitions.

As used in these regulations, the term:

Caregiver means a person who provides direct care, supervision, and guidance to children in a day care facility.

Day care means the care, supervision, and guidance of a child, on a regular basis, for period of less than 24 hours per day, in a place other than the child's own home.

Day care center means a place in which day care is provided to 13 or more children.

Day care facility means a day care home or a day care center.

Day care home means a private residence in which day care is provided to 12 or fewer children.

Early and Periodic, Screening, Diagnosis and Treatment (EPSDT) means a component of each State's medical assistance program mandated under title XIX of the Social Security Act (Medicaid) which provides preventive child health services to eligible low income children.

Family day care home means a day care home serving 6 or fewer children.

Family day care home means a day care home serving 6 or fewer children.

Group day care home means a day care home serving 7 to 12 children.

State agency means the agency that receives Federal funds for day care services and that has ultimate responsibility for the conduct of the day care services program.

§ 71.46 Applicability.

The regulations in this part apply to day care under the following HEW assisted programs:

(a) Social Security Act

—Title IV–A (Social Services to Guam, Puerto Rico, Virgin Islands, and the Northern Marianas; and the Work Incentive Program (WIN))

—Title IV–B (Child Welfare Services)

—Title XX (Social Services)

(b) Title I, Elementary and Secondary Education Act (ESEA)

(c) Title V, Community Services Act (Follow-Through)

(d) Special Projects Act, Education Amendments of 1978 (Preschool Partnership)

(e) Adult Education Act (Adult Education)

(f) Education of the Handicapped Act (Education for the Handicapped)

(g) Title IV, Part C, Elementary and Secondary Education Act (Improvement in Local Educational Practices)

(h) Indian Elementary and Secondary School Assistance Act (Indian Elementary and Secondary School Assistance)

(i) Vocational Educational Amendments of 1963 (Vocational Education)

(j) Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, Developmental Disabilities Services and Facilities Construction Act of 1970, Developmentally Disabled Assistance and Bill of Rights Act of 1975 (Developmental Disabilities Special Projects).

§ 71.48 Office of Education waiver.

The Commissioner of the Office of Education, Department of Health, Education, and Welfare may waive the requirements of this part for any day care program administered by the Office of Education. The Commissioner may also impose additional requirements for those programs.

§ 71.50 Program of activities for children.

(a) *Day Care Home*

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

(b) *State Agency*

The State agency shall provide information and technical assistance to day care homes on establishing and maintaining a planned program of age appropriate activities.

§ 71.52 Training.

(a) *Day Care Home*

Each caregiver shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

(b) *State Agency*

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care home personnel. The plan shall specify the nature and extent of the training required for day care home caregivers.

or

Option B

Same as option A, except that the specialized training shall address the following areas:

(1) Child Growth Development

(2) Child Care Programming and Activities in Day Care Homes

(3) Day Care for Bilingual Children

(4) Handling Behavior Problems

(5) Health and Safety Practices

(6) Working with Parents

(7) Working with Developmentally Disabled Children and other Handicapped Children

(8) Nutrition and Good Eating Habits

(9) Design and Use of Space

(10) Community Health and Social Service Resources

§ 71.54 Nutrition.

(a) *Day Care Home*

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When the children are in care during the evening and night hours, the home shall provide an adequate and nutritious evening meal.

(b) *State Agency*

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

§ 71.56 Health and safety of children in care.

(a) *Day Care Home*

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

(i) Indicate any special precautions for diet, medication, or activity;

(ii) Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;

(iii) Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

(iv) Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care home about the availability of health services in the community, and about how the services may be obtained.

(2) The State agency must establish and maintain health standards for day care home personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State, or locally funded health services receive those services when needed.

§ 71.58 Physical environment.

(a) *Day Care Home*

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

(b) *State Agency*

The State agency shall assure that each day care home meets State and local requirements for licensing, registration, or approval, and the requirements of State or local health, sanitation, building and fire safety codes applicable to residential occupancy. The State agency shall assure that standards for day care homes which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care home meets those standards.

§ 71.60 Social services.

(a) *Day Care Home*

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

(b) *State Agency*

Option A

(1) The State agency shall provide information to each day care home about the availability of social services in the community, and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State, or locally funded social services receive those services when needed.

§ 71.62 Parent involvement.

(a) *Day Care Home*

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their children's needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

(b) *State Agency*

(1) The State agency shall provide information and technical assistance to day care homes on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

§ 71.64 Group composition—day care home.

(a) *Family Day Care Home*

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serve children of all ages including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(b) *Group Day Care Home*

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than size and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregiver's own children younger than 6 and not yet in first grade shall count towards the group size requirements.

§ 71.70 Monitoring.

Option A

The State agency must determine each facility's compliance with these requirements at least annually.

or

Option B

Same as option A plus the requirement that: The State agency shall make an on-site visit to a day care facility whenever the State has reason to believe that the facility fails to meet the requirements of this part.

§ 71.72 Availability of Federal financial participation (FFP).

(a) FFP is available in the costs of day care services, only if the care meets the requirements of this part.

(b) The care is considered to meet the requirements of this part only if:

(1) It is provided by a facility which:

(i) Meets applicable State standards for licensing, registration, or approval; and

(ii) Has been approved by the State agency as meeting the requirements of this part, or has submitted to the State agency a plan of correction acceptable to the State agency for any requirement that the facility has been found not to meet. The State agency may accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The facility must meet the requirements of this part within the time period specified in its plan of correction;

and

(2) The State agency meets its requirements as provided in this part, or the State agency has submitted to HEW a plan of correction acceptable to HEW for any requirement that the State agency has been found not to meet. HEW will accept a plan of correction only if the plan specifies a reasonable time period for meeting the requirements of this part. The State agency must meet the requirements of this part within the time period specified in its plan of correction.

§ 71.74 Rates of payment.

In establishing rates of payment for child day care services, the State agency shall take into account the costs to the facility of meeting the requirements of this part.

§ 71.78 Future review of day care regulations.

The Secretary will review the effectiveness of these regulations. As part of this review, 36 (or 48) months after the effective date of these regulations, the Secretary will publish a notice of opportunity for public comment on the effectiveness of the regulations. The Secretary will assess the comments and publish the results of the review and assessment in the Federal Register.

§ 71.80 State Agency Advisory Council.

The State Agency Advisory Council required to be established under section 71.40 of this part shall advise on the interpretation and implementation of HEW day care requirements for day care homes as well as for day care centers.

§ 71.80 Effective date.

These regulations will take effect six months from the date of publication in final form in the Federal Register, except that the following requirements will take effect one year from that date:

(a) The training requirements at § 71.52;

(b) The requirements at § 71.56(a)(4) to inform parents about, and refer them to child health services; and

(c) The requirements at § 71.60(a) to inform parents about and refer them to social services.

Appendix A—Day Care Center

[Note.—The Appendix is to be included in the Code of Federal Regulations.]

This appendix contains examples to illustrate the meaning of the day care center requirements specified in Part 71, and recommendations on the steps day care centers and State agencies may take voluntarily, beyond those requirements. The Federal role is also specified.

Program of Activities for Children [§ 71.10]

Purpose

The intent of this requirement is to ensure that a day care program is more than custodial. Rather, the program must promote the social, intellectual, emotional, and physical development of the children served.

Requirements on Day Care Center

A day care center shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The planned program of activities shall be in writing, and shall contain a description of the daily activities children engage in and how those activities meet the developmental needs of the children.

Examples of What a Planned Program of Activities May Include

A planned program of activities may include:

- Conversation among children and caregivers;
- A pattern of daily activities which children can count on;
- An opportunity for child initiated play;
- Time for rest and play, including outdoor play when possible;
- Participation in a variety of activities, such as cooking, looking at books and magazines, taking walks, playing games and singing songs;
- An adequate supply of play materials for all children;
- Opportunities for school-aged children to participate in normal neighborhood activities;
- Opportunities for infants to crawl about freely;
- Holding and talking to infants;
- Feeding each infant according to his or her schedule; and
- Holding the infant while feeding.

Recommendations for Day Care Center

It is recommended that in developing and reviewing a program of planned activities, each day care center give careful consideration to the concerns of parents, the unique culture of the communities children come from, the individual needs of each child, and the special needs of children who are developmentally disabled or otherwise handicapped.

Requirements on State Agency

The State agency shall provide information and technical assistance to day care centers on establishing and maintaining a planned program of age-appropriate activities.

Examples of State Agency Technical Assistance

State agency technical assistance may include:

- Purchasing, providing or arranging consultation with a day care program specialist for day care centers; and
- Making manuals, pamphlets, and materials available to day care facilities to assist them in developing good programs in day care.

Recommendations for State Agency

It is recommended that each State agency establish or support local day care resource centers which loan equipment and materials to day care centers, and make available to day care centers information about community resources.

The Federal Role

HEW will make available:

- Research findings about the development of children and good day care programs; and
- Guides and publications describing model programs of activities.

Publications available from the Administration for Children Youth and Families, HEW:

Day Care #1: A Statement of Principles

Day Care #2: Serving Infants

Day Care #3: Serving Preschool Children
Day Care #4: Serving School Children
Day Care #8: Serving Children with Special Needs
The Ways Children Learn
More Than a Teacher
Preparing for Change
Away from Bedlam
The Vulnerable Child
A Setting for Growth
The Individual Child
Conditions for Learning
Language is for Communication

Training [§ 71.12]

Purpose

Continuous participation by caregivers in training related to child growth and development is critical to quality day care. The intent of this requirement is to ensure that children are cared for by individuals who develop and sustain the skills necessary to meet the children's needs.

Requirements on Day Care Center

(1) A day care center shall provide caregivers who have no previous experience or training in child care an on-site orientation on how to care for children in groups. This orientation shall occur before the caregiver assumes caregiving responsibilities.

(2) All caregivers shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after initial employment.

Example of How Specialized Training May Be Obtained

Caregivers may participate in specialized training courses purchased, provided, or arranged by the State agency.

Recommendations for Day Care Center

It is recommended that, in addition to having its staff participate in specialized training, each day care center provide regular on the job training to its staff.

Requirements on State Agency

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan shall specify the nature and extent of the training required for day care center staff.

Recommendations for State Agency

It is recommended that specialized training for day care center staff consist of both instruction and supervised field experience, and that innovative, flexible opportunities for participating in training be made available.

It is also recommended that specialized training address the following areas:

- Child Growth and Development
- Child Care Programming and Activities
- Day Care for Bilingual Children
- Handling Behavior Problems
- Health and Safety Practices
- Health Education for Children
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and Use of Space
- Community Resources for Health and Social Services

or

Option B

This option would be the same as option A, except that the list of training subject areas recommended under option A immediately above would be made mandatory.

Examples of Methods for the Delivery of Specialized Training

- Training sessions offered by State agency staff;
- Extension, television or correspondence courses in a child related subject;
- Specialized training sessions at a day care facility led by a child care specialist;
- Training provided by a family day care system or association;
- Child care courses offered by a college, vocational-technical school, or other adult education program;
- Training for a Child Development Associate (CDA) credential; or
- A series of seminars or workshops.

The Federal Role

HEW will provide materials and publications about training in day care, including CDA training programs and training opportunities under Vocational Education programs. HEW also supports the Child Development Associate Consortium, which awards a national credential to day care center caregivers.

Publications available from the Administration for Children, Youth and Families

Day Care #5: Staff Training
How to Become a Child Development Associate
Child Developent Associate Program: A Guide for Training
Child Development Associate Pilot Projects: Innovations in Training
A Prescriptive Guide to CDA Training Materials, Volumes 1 and 2

Nutrition [§ 71.14]

Purpose

The intent of this requirement is to ensure that children in day care receive meals and snacks which meet their nutritional needs while in care.

Requirements on Day Care Center

Option A

A day care center shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care center shall provide an adequate and nutritious breakfast (at parent's request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the center shall provide an adequate and nutritious evening meal.

Examples of How Nutritious Meals and Snacks May be Provided

Ways in which a day care center may provide nutritious meals and snacks include:

- Participating in the U.S. Department of Agriculture (USDA) Child Care Food Program when eligible;
- Offering meals and snacks prepared from the four food groups—dairy, meat, fruits and vegetables, and grain; or
- Following the standards of the National Research Council's Recommended Dietary Allowances; and
- Feeding infants formula received from parents.

Recommendations for Day Care Center

It is recommended that each day care center:

- Prepare and make available to parents written weekly menus for meals and snacks;
- Have menu plans periodically reviewed by a food service specialist;
- Recognize the personal, cultural, and ethnic food preferences of the children;
- Participate in the USDA Child Care Food Program when eligible.

Requirements on State Agency

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care centers.

Examples of Providing Consultation

Ways in which a State agency may make consultation available include:

- Providing or arranging for consultation from a USDA nutrition specialist for a facility which participates in the USDA Child Care Food Program;
- Providing the telephone number of a qualified nutritionist or food service specialist to answer questions about nutrition from caregivers.

Recommendations for State Agency

It is recommended that each State agency:

- Obtain and disseminate information on child nutrition to day care centers from the U.S. Public Health Service, Project Head Start, the U.S. Department of Agriculture, USDA Cooperative Extention Agents, schools of home economics, 4–H Centers, and local health programs, etc.;
- Furnish all dare care centers with sample menus; and
- Help and encourage eligible day care centers to participate in the USDA Child Care Food Program.

The Federal Role

The Department of Agriculture currently makes avaiable funding for food service in non-profit day care facilities (including family day care homes sponsored by a non-profit organization under its Child Care Food Program). USDA provides publications, assistance in obtaining food preparation equipment, and information about nutrition. HEW in consultation with the Department of Agriculture, will make available information and technical assistance in planning a nutrition program in day care. Information on how day care facilities can obtain financial and other assistance to support a high quality nutrition program is also available.

Publications available from the Administration for Children, Youth and Families, Head Start Bureau:

Nutrition: Better Eating for a Head Start

Nutrition Film: Jenny is a Good Thing—Leader's Guide

Nutrition Education for Young Children

Health and Safety of Children in Care [§ 71.16]

Purpose

The intent of this requirement is to protect children in day care from risks to their health and safety, and to assure children receive needed health services.

Requirements on Day Care Center

(1) A day care center shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child must:

- Indicate any special precautions for diet, medication, or activity;
- Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or the American Academy of Pediatrics;
- Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and
- Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care center shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison. These plans shall be in writing.

(3) A day care center shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) (OPTION A) A day care center shall provide information to parents, as needed, concerning health services available to the community, and shall refer parents to needed health services.

or

(OPTION B) Same as option A, except that in addition to informing and referring, a day care center shall assist parents in obtaining needed health services, and follow-up to assure that health care is secured.

Examples of Plans to Respond to Illness and Emergencies

Plans to respond to illness and emergencies may include provision for:

- Removing children from the day care center quickly in case of fire;
- Periodic fire drills;
- Contacting police, fire, rescue or poison control services;
- Contacting a health care source (such as a local health department or a Visiting Nurse Association) for advice about handling child illness or injury;
- Identifying what medical service would be used for serious illness or injury, how the child will be transported, and who will remain with the other children; and
- Informing parents about illness or emergency, and obtaining parental permission for emergency treatment.

Examples of Informing and Referring

A day care center may provide information to parents which it receives from State and local agencies about health services and how they may be obtained. A day care center may suggest to parents, when a health problem arises, agencies or clinics where health care is available.

Examples of Assisting and Following Up

A day care center may assist parents in obtaining needed health services by:

- Offering to make an appointment for the parent at the health agency; and
- Offering to arrange for transportation.

A day care center may follow-up to assure that health services are secured by:

- Checking back with the parent; or
- Calling the health agency with parent permission.

Recommendations for Day Care Center

It is recommended that a day care center:

- Establish a relationship with a health care professional who can advise on appropriate care for sick children;
- Have on hand first aid materials recommended by the American Red Cross;
- Display emergency numbers by each telephone;
- Provide for regular health education for children;
- Insure that facilities are free of lead-based paint;
- Require that children be immunized before enrollment in the facility;
- Have a procedure for reporting suspected cases of child abuse and neglect to the proper authorities;
- Provide an infant seat restraint for each child under 24 months, and a seat belt for each child 24 months or older where transportation is provided, and an adequate number of adults to supervise children being transported;
- Have an adequate number of adults to supervise children during swimming activities;
- Assure that all toys, playground equipment and other materials are safe for children;
- Assure that children brush their teeth regularly; and

• Maintain a record of each child's health history at the center.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care center about the availability of child health services in the community, and about how the services may be obtained.

(2) The State agency shall establish and maintain health standards for day care center personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State, or locally funded health services receive those services when needed.

Examples of State Agency Arrangements for Needed Health Services

Ways in which a State agency may arrange for needed health services for eligible children include:

• Making cooperative arrangements with existing public health resources such as the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) under Medicaid, or immunization and preventive health services funded under the Maternal and Child Health provisions of title V of the Social Security Act, and other public and private health clinics or providers, such as free care in Hill-Burton hospitals; or

• Reimbursing a day care center or association or other local agency (such as a coordinating council) for arranging and assuring the provision of health services for which children are eligible.

Recommendations for State Agency

It is recommended that the State agency assure that technical assistance is provided to day care facilities in health and safety practices.

The Federal Role

HEW will make available:

• Manuals and guides describing effective ways of coordinating EPSDT and other public health services with day care services;

• Guides and other resources about child health and safety; and

• Model plans for responding to illness and emergency.

Publications available from the Administration on Children, Youth and Families, HEW:

Health Services

Dental Services: A Guide for Dental Health Personnel

New Light on Old Problem: 9 Questions and Answers About Child Abuse and Neglect

Head Start Can Help Communities Fight Childhood Diseases with Immunizations (Spanish)

Head Start Can Help Communities Fight Childhood Diseases with Immunizations (English)

Day Care #6: Health Services

Day Care #7: Administration

Physical Environment [§ 71.18]

Purpose

The intent of this requirement is to ensure that children in day care are cared for in safe environments.

Requirements on Day Care Center

A day care center shall meet State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, and building and fire safety.

Requirements on State Agency

The State agency shall assure that each day care center meets applicable State and local requirements for licensing or approval, and applicable State and local codes relating to health, sanitation, building and fire safety. The State agency shall assure that standards for day care centers which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care center meets those standards.

Recommendations for State Agency

It is recommended that a State agency:

• Promote the adoption of day care center physical environment standards which are reasonably in accord with HEW's Guides for Day Care Licensing.

• In conjunction with local agencies, periodically review and update State and local codes for health, sanitation, fire, and other safety requirements to ensure that the requirements are not contradictory, and that they are appropriate for day care centers.

The Federal Role

HEW will make available model licensing codes which address health and safety in day care centers.

Publications Available from the Administration for Children, Youth and Families:

The HEW Model Licensing Act

Young Children & Accidents in the Home (Spanish on hand)

Auto Safety and Your Child (Spanish and English)

Social Services [§ 71.20]

Purpose

The intent of this requirement is to assist parents of children in day care in locating and obtaining necessary social services.

Requirements on Day Care Center

Option A

A day care center shall provide information to parents, as needed, concerning social services available in the community and refer parents to needed social services.

or

Option B

Same as option A except that, in addition to informing and referring, a day care center shall assist parents in obtaining social services, and follow up to assure that services are secured.

Examples of Informing and Referring

A day care center may provide information to parents which it receives from State and local agencies about social services and how they may be obtained.

Day care center staff may talk with parents seeking social services, and suggest agencies or programs in the community.

Examples of Assisting and Following Up

A day care center may assist parents in obtaining social services by:

• Offering to make an appointment for the parent at the Social Service agency; or

• Offering to arrange for transportation.

A day care center may follow-up to assure that services are secured by:

• Checking back with the parent.

Recommendations for Day Care Center

It is recommended that at least one staff member in each day care facility be knowledgeable about social services commonly needed by the families it serves, about the Title XX social services delivered in its State, and about existing community resources and services.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care center about the availability of social services

in the community and about how the services may be obtained.

or

Option B

(1) Same as option A

(2) The State agency shall make arrangements [links] which assure that children in day care centers who are eligible for Federal, State, or locally funded social services receive those services when needed.

Examples of Making Arrangements for Needed Social Services

Ways in which a State agency may arrange for social services for eligible children include:

- Providing services included in the State's Title XX social services plan to children in day care eligible for them;
- Contracting with a day care center or association or other local agency (such as a coordinating council or United Way] to link children with needed social services; or
- Making cooperative arrangements with other agencies that provide social services, such as mental health agencies.

The Federal Role

HEW will encourage mental health agencies and social services agencies funded by HEW to cooperate with State agencies responsible for children in day care.

Publications available from the Administration on Children, Youth and Families:

Responding to Individual Needs in Head Start (Pt. 1)

Raising a Family Alone

Parent Involvement [§ 71.22]

Purpose

The intent of this requirement is to ensure that parents receive information about and access to day care programs, and to encourage parental involvement in the operation of day care programs.

Requirements on Day Care Center

A day care center shall:

Option A

(1) Provide parents with opportunities to observe the center and to discuss their childrens' needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, meet with caregivers and advise and comment on their children's needs; and

(4) Regularly exchange information with parents about their children.

Option B

In addition to Subsection (1)–(4) above, a day care center would also be required to:

(5) Maintain for a period of three years any monitoring reports or evaluations of the center prepared by and received from Federal, State, or local authorities;

(6) Provide parents upon request the opportunity to review any of the reports or evaluations referred to in paragraph (5) above; and

(7) Make available to parents upon request pending or approved applications for funds for the current program year filed with any Federal, State, or local authorities.

Examples of Parent Involvement

Ways in which a day care center may involve parents include:

- Communicating regularly with parents;
- Organizing periodic meetings to enable parents to advise and comment on their children's needs and the day care program;
- Inviting parents to observe the day care program before and after enrollment;
- Having periodic parent-caregiver conferences; and
- Working with a parent advisory council to provide opportunities for advice and comment on the children's needs in the day care program.

Recommendations for Day Care Center

It is recommended that each day care center:

- Involve parents in evaluating the child care program;
- Provide parents with opportunities to be involved in general policy making;
- Provide parents with opportunities to review budgeting and funding activities;
- Develop parent education activities, in consultation with parents;
- Use parent skills to benefit the day care program;
- Provide information in the primary language of the parents.

Requirements on State Agency

(1) The State agency shall provide information and technical assistance to day care centers on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Recommendations for State Agency

It is recommended that the State agency provide:

- Checklists for parents to assist them in assessing the quality of their children's day care.
- Procedures by which parents may raise concerns with the State agency about the day care provided their children; and
- Information and referral services that assist parents in locating and selecting day care facilities.

The Federal Role

HEW will provide material on parent involvement in day care to day care facilities and State agencies.

Publications helpful to parents available from the Administration for Children, Youth and Families:

Day Care for Your Children

Education for Parenthood (fact folder)

So you're Going to be a New Father (English and Spanish)

One Parent Families (English and Spanish)

Group Composition—Day Care Center [§ 71.24]

Purpose

Group composition—the number of caregivers and the number of children—has a crucial impact on day care quality. The intent of this requirement is to ensure sufficient numbers of adults to provide care and supervision to children, and to ensure that children are cared for in grouping arrangements which promote their development.

Requirements on Day Care Center

(a) *Group Size*

(1) A day care center shall meet the following group size requirements at all times of the day, except during lunch, naptime, and special activities, such as field trips and playground activities: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	8
or	
Option B	10
Preschoolers	**2½–4 years**
Option A	14
or	
Option B	16
Preschoolers	**4–6 years**
Option A	18
or	
Option B	20

School Age	6–10 years
Option A	16
or	
Option B	18

School Age	10–14 years
Option A	20
or	
Option B	State Requirements

(2) Compliance with the group size requirements in parapraph (a) (l) above shall be determined on a group or cluster basis rather than a room or center-wide basis.

(3) For mixed age groups, group size shall be based upon the age of the youngest child in the group, if children in the youngest age category make up twenty percent or more of that group. If children in the youngest age category make up less than twenty percent of that group, the group size for the next highest age category shall be required.

(b) *Staffing Requirements*

(1) A sufficient number of staff shall be present at the center at all times and shall be assigned so as to protect the health and safety of the children at the center.

(2) A day care center shall meet the following staffing requirements

(OPTION A) At all times of the day:

or

(OPTION B) Averaged over the course of the day: (The numbers are scheduled enrollment figures.)

Infants and Toddlers	0–2½ years
Option A	1:4
or	
Option B	1:5

Preschoolers	2½–4 years
Option A	1:7
or	
Option B	1:8

Preschoolers	4–6 years
Option A	1:9#
or	
Option B	1:10

School Age	6–10 years
Option A	1:6
or	
Option B	1:18

School Age	10–14 years
Option A	1:20
or	
Option B	State Requirements

(3) Compliance with the staffing requirements in parargraph (b) (2) above shall be determined using the total number of hours children are scheduled to be at the center and the total number of hours staff are scheduled to work directly with children.

(4) To calculate the required staff hours, divide the total scheduled child hours for each age category by the age appropriate staffing requirement in paragraph (b) (2) above.

(5) (i) Staffing requirements in paragraph (b) (2) above may be met by averaging the staff required for the 2½ to 4 and 4 to 6 year old age categories. (For example, if a center determines that it needs 5 caregivers to meet the staffing requirement for its 2½ year old children at the center, and 10 caregivers for its 5 year old children at the center, the center would meet the staffing requirement so long as it had 15 caregivers scheduled to care for children in both categories. It need not necessarily assign 5 caregivers to care for its 2½ year old children, nor assign 10 caregivers to care for its 5 year old children.)

(ii) Staffing requirements in paragraph (b)(2) above may be met by averaging the staff required for the 6 to 10 and 10 to 14 year old age categories.

(6) (OPTION A) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer participates in specialized child care training.

or

(OPTION B) Hours scheduled to be spent providing direct care to children by a volunteer may be counted toward meeting the staffing requirements, if the volunteer works 10 hours or more each week and participates in specialized child care training.

(7) Hours scheduled to be spent providing direct care to children by a staff member who performs non-caregiving duties, such as a cook or a driver, may be counted toward meeting the staffing requirements, if he or she participates in specialized child care training.

(8) A day care center shall obtain substitutes in case of caregiver absences.

Appendix B—Day Care Home

Note.—The Appendix is to be included in the Code of Federal Regulations.

This appendix contains examples to illustrate the meaning of the day care home requirements specified in Part 71, and recommendations on the steps day care homes and State agencies may take voluntarily, beyond those requirements. The Federal role is also specified.

Program of Activities for Children [§ 71.50]

Purpose

The intent of this requirement is to ensure that a day care program is more than custodial. Rather, the program must promote the social, intellectual, emotional, and physical development of the children served.

Requirements on Day Care Home

A day care home shall establish a planned program of age-appropriate activities which promotes the social, intellectual, emotional, and physical development of the children it serves. The plan shall be in writing, and shall contain a brief description of the children's activities in the home.

Examples of What a Planned Program of Activities May Include

A planned program of activities may include:

- Conservation among children and caregivers;
- A pattern of daily activities which children can count on;
- An opportunity for child initiated play;
- Time for rest and play, including outdoor play when possible;
- Participation in a variety of activities, such as cooking, looking at books and magazines, taking walks, playing games and singing songs;
- An adequate supply of play materials for all children;
- Opportunities for school-aged children to participate in neighborhood activities;
- Opportunities for infants to crawl about freely;
- Holding and talking to infants;
- Feeding each infant according to his or her schedule; and holding the infant while feeding.

Recommendations for Day Care Home

It is recommended that in planning activities for children, each day care home consider the concerns of the parents and the special needs of the children in the home.

Requirement on State Agency

The State agency shall provide information and technical assistance to day care homes on establishing and

maintaining a planned program of age-appropriate activities.

Examples of State Agency Technical Assistance

State agency technical assistance may include:

- Purchasing, providing, or arranging consultation with a day care program specialist for day care facilities; and
- Making manuals, pamphlets, and materials available to day care homes to assist them in developing good programs in day care.

Recommendations for State Agency

It is recommended that each State agency establish or support local day care resource centers which loan equipment and materials to day care facilities, and make available to day care facilities information about community resources.

The Federal Role

HEW will make available:

- Research findings about the development of children and good day care programs; and
- Guides and publications describing model programs of activities.

Publications available from the Administration for Children, Youth and Families:

Day Care #9: Family Day Care
An Adolescent in Your Home
Child Development in the Home
Fun in the Making
The Ways Children Learn
More than a Teacher
Preparing for Change
Away from Bedlam
The Vulnerable Child
A Setting for Growth
The Individual Child
Conditions for Learning
Language is the Communication

Training [§ 71.52]

Purpose

Continuous participation by caregivers in training related to child growth and development is critical to day care. The intent of this requirement is to ensure that children are cared for by individuals who develop and sustain the skills necessary to meet the children's needs.

Requirements on Day Care Home

All caregivers shall regularly participate in specialized training related to child care. Specialized training for each caregiver shall begin as early as possible, but in no case later than 6 months after caregiving duties begin.

Examples of How Specialized Training May be Obtained

Caregivers may participate in specialized training courses purchased, provided, or arranged by the State agency.

Recommendations for Day Care Homes

It is recommended that each day care home caregiver make use of magazines and other publications related to caring for children in a home.

Requirements on State Agency

Option A

The State agency shall establish and implement a statewide plan for providing or purchasing specialized training for day care personnel. The plan must specify the nature and extent of the training required for day care home caregivers.

Recommendations for State Agency

It is recommended that specialized training for day care home caregivers consist of both instruction and supervised field experience, and that innovative, flexible opportunities for participating in training be made available.

It is also recommended that specialized training address the following areas:

- Child Growth and Development
- Child Care Programming and Activities
- Handling Behavior Problems
- Health and Safety Practices
- Health Education for Children
- Working with Parents
- Working with Developmentally Disabled Children and other Handicapped Children
- Nutrition and Good Eating Habits
- Design and use of Space
- Community Resources for Health and Social Services

or

Option B

This option would be the same as option A, except that the list of training subject areas recommended under option A immediately above would be made mandatory.

Examples of Methods for the Delivery of Specialized Training

- Training sessions offered by State agency staff;
- Extension, television, or correspondence courses in a child related subject;
- Specialized training sessions at a day care facility led by a child care specialist;
- Training provided by a family day care system or association;
- Child care courses offered by a college, vocational-technical school, or other adult education program;
- Training for a Child Development Associate (CDA) credential; or
- A series or seminars or workshops.

The Federal Role

HEW will provide materials and publications about training in day care, including CDA training programs and training opportunities under Vocational Educational programs.

Publications available from the Administration for Children, Youth and Families:

Day Care #5: Staff Training

Nutrition [§ 71.54]

Purpose

The intent of this requirement is to ensure that children in day care receive meals and snacks which meet their nutritional needs while in care.

Requirements on Day Care Home

Option A

A day care home shall provide adequate and nutritious meals and snacks prepared in a safe and sanitary manner.

or

Option B

A day care home shall provide an adequate and nutritious breakfast (at parent request) and lunch prepared in a safe and sanitary manner. Snacks shall be provided both mid-morning and mid-afternoon. When children are in care during evening and night hours, the home shall provide an adequate and nutritious evening meal.

Examples of How Nutritious Meals and Snacks May be Provided

Ways in which a day care home may provide nutritious meals and snacks include:

- Participating in the U.S. Department of Agriculture (USDA) Child Care Food Program when eligible;
- Offering meals and snacks prepared from the four food groups—dairy, meat, fruits and vegetables, and grain;
- Following the standards of the National Research Council's Recommended Dietary Allowances; or
- Feeding infants formula received from parents.

Recommendations for Day Care Home

It is recommended that each day care home:

• Recognize the personal, cultural, and ethnic food preferences of children; and

• Join a day care home sytem or be sponsored by a USDA Child Care Food Program.

Requirements on State Agency

The State agency shall make the consultative services of a qualified nutritionist or food service specialist available to day care homes.

Examples of Providing Consultation

Ways in which a State agency may make consultation available include:

• Providing or arranging for consultation from a USDA nutrition specialist for a home which participates in the USDA Child Care Food Program;

• Providing the telephone number of a qualified nutritionist or food service specialist to answer questions about nutrition from caregivers.

Recommendations for State Agency

It is recommended that each State agency:

• Obtain and disseminate information on child nutrition to day care facilities from the U.S. Public Health Service, Project Head Start, the U.S. Department of Agriculture, USDA Cooperative Extension Agents, schools of home economics, 4–H Centers, and local health programs, etc.;

• Furnish all day care homes with sample menus; and

• Help and encourage eligible day care homes to participate in the USDA Child Care Food Program and assist in developing umbrella agencies where needed for such participation.

The Federal Role

The Department of Agriculture currently makes available funding for food service in non-profit day care facilities (including family day care homes sponsored by a non-profit organization) under its Child Care Food Program. USDA provides publications, assistance in obtaining food preparation equipment, and information about nutrition. HEW in consultation with the Department of Agriculture, will make available information about technical assistance in planning a nutrition program in day care. Information on how day care facilities can obtain financial and other assistance to support a high quality nutrition program is also available.

Publications available from the Administration for Children, Youth and Families:

Prenatal Care (English and Spanish)
Infant Care (English and Spanish)
Your Child From One to Six

Health and Safety of Children in Care [§ 71.56]

Purpose

The intent of this requirement is to protect children in day care from risks to their health and safety, and to assure that children receive needed health services.

Requirements on Day Care Home

(1) A day care home shall have on record for each enrolled child, within 30 (or 60) days of enrollment, a statement from a licensed health practitioner that the child has received a health assessment and all immunizations appropriate to his or her age. The statement for each child shall:

• Indicate any special precautions for diet, medication, or activity;

• Indicate that the immunizations are in accordance with recommendations of the U.S. Public Health Service or American Academy of Pediatrics;

• Indicate that the health assessment is in accordance with the standards of the American Academy of Pediatrics or the EPSDT National Recommended Health Assessment Plan; and

• Be updated according to the recommended schedule for routine health supervision of the American Academy of Pediatrics, or the EPSDT National Recommended Health Assessment Plan.

(2) A day care home shall have plans to respond to illness and to emergencies including fire, serious injury, and ingestion of poison.

(3) A day care home shall not dispense medications to a child without the written consent of his or her parent. All medications shall be dispensed in accordance with instructions from a parent or physician. Medications shall be kept in labelled containers out of the reach of children.

(4) A day care home shall provide information to parents, as needed, concerning child health services available in the community, and shall refer parents to the needed health services.

Examples of Plans to Respond to Illness and Emergencies

Plans to respond to illness and emergencies may include provision for:

• Removing children from the day care home quickly in case of fire;

• Periodic fire drills;

• Contacting police, fire, rescue or poison control services;

• Contacting a health care source (such as a local health department or a Visiting Nurse Association) for advice about handling child illness or injury;

• Identifying what medical service would be used for serious illness or injury, how the child will be transported, and who will remain with the other children; and

• Informing parents about illness or emergency, and obtaining parental permission for emergency treatment.

Examples of Informing and Referring

A day care home may provide information to parents which it receives from State and local agencies about child health services and how the services may be obtained.

Recommendations for Day Care Home

It is recommended that a day care home:

• Establish a relationship with a health care professional who can advise on appropriate care for sick children;

• Have on hand first aid materials recommended by the American Red Cross;

• Display emergency numbers by each telephone;

• Provide for regular health education for children;

• Ensure that facilities are free of lead-based paint;

• Require that children be immunized before enrollment in the facility;

• Have a procedure for reporting suspected cases of child abuse and neglect to the proper authorities;

• Provide an infant seat restraint for each child under 24 months, and a seat belt for each child 24 months or older where transportation is provided, and an adequate number of adults to supervise children being transported;

• Have an adequate number of adults to supervise children during swimming activities;

• Assure that all toys, playground equipment and other materials are safe for children; and

• Assure that children brush their teeth regularly.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care home about the availability of child health services in the community, and how they may be obtained.

(2) The State agency shall establish and maintain health standards for day care personnel.

or

Option B

This option would include the two requirements in option A and would also include the following requirement:

(3) The State agency shall make arrangements (links) which assure that children in day care who are eligible for Federal, State or locally funded health services receive those services when needed.

Examples of State Agency Arrangements for Needed Health Services

Ways in which a State agency may arrange for needed health services for eligible children include:

• Making cooperative arrangements with existing public health resources such as the Early and Periodic Screening, Diagnosis and Treatment program (EPSDT) under Medicaid, or immunization and preventive health services funded under the Maternal and Child Health provisions of title V of the Social Security Act, and other public and private health clinics or providers, such as free care in Hill-Burton hospitals; or

• Reimbursing a day care home or association or other local agency (such as a coordinating council) for arranging and assuring the provision of health services for which children are eligible.

Recommendations for State Agency

It is recommended that the State agency assure that technical assistance is provided to day care homes in health and safety practices.

The Federal Role

HEW will make available:

• Manuals and guides describing effective ways of coordinating EPSDT and other public health services with day care services;

• Guides and other resources about child health safety; and

• Model plans for responding to illness and emergency.

Publications available from the Administration for Children, Youth and Families:

Day Care #6 Health Services

Day Care #9 Family Day Care

Physical Environment [§ 71.58]

Purpose

The intent of this requirement is to ensure that children in day care are cared for in safe environments.

Requirements on Day Care Home

A day care home shall meet State and local requirements for licensing, registration, or approval, and any State or local health, sanitation, and building and fire safety codes applicable to residential occupancy.

Requirements on State Agency

The State agency shall assure that each day care home meets State and local requirements for licensing, registration, or approval, and the requirements of State or local health, sanitation, and building and fire safety codes applicable to residential occupancy. The State agency shall assure that standards for day care homes which specifically address transportation, swimming, and equipment safety exist in the State, and that each day care home meets those standards.

Recommendations for State Agency

It is recommended that a State agency:

• Promote the adoption of day care home standards which are reasonably in accord with HEW's Guides for Day Care Licensing.

• In conjunction with local agencies, periodically review and update State and local codes for health, sanitation, fire, and other safety requirements to ensure that the requirements are not contradictory, and that they are appropriate for day care homes.

The Federal Role

HEW will make available model licensing codes which address health and safety in day care homes.

Publications available from the Administration for Children, Youth and Families:

Young Children & Accidents in the Home

HEW Model Licensing Act

Social Services [§ 71.60]

Purpose

The intent of this requirement is to assist parents of children in day care in locating and obtaining necessary social services.

Requirements on Day Care Home

A day care home shall provide information to parents, as needed, concerning social services available in the community, and refer parents to needed social services.

Examples of Informing and Referring

A day care home may provide information to parents which it receives from State and local agencies about social services and how they may be obtained.

Recommendations for Day Care Home

It is recommended that each day care home caregiver become familiar with local social service resources and agencies.

Requirements on State Agency

Option A

(1) The State agency shall provide information to each day care home about the availability of social services in the community, and about how the services may be obtained.

or

Option B

(1) Same as option A.

(2) The State agency shall make arrangements (links) which assure that children in day care homes who are eligible for Federal, State or locally funded social services receive those services when needed.

Examples of Making Arrangements for Needed Social Services

Ways in which a State agency may arrange for social services for eligible children include:

• Providing services included in the State's title XX social services plan to children in day care eligible for them;

• Contracting with a day care home or day care home association or other local agency (such as a coordinating council) to link children with needed social services; or

• Making cooperative arrangements with other agencies that provide social services, such as mental health agencies.

The Federal Role

HEW will encourage mental health agencies and social services agencies funded by HEW to cooperate with State agencies responsible for children in day care.

Publications available from the Administration for Children, Youth and Families:

A Handicapped Child in Your Home (English and Spanish)

Parent Involvement [§ 71.62]

Purpose

The intent of this requirement is to ensure that parents receive information about and access to day care programs, and to encourage parental involvement in the operation of day care programs.

Requirements on Day Care Home

A day care home shall:

(1) Provide parents with opportunities to observe the home and to discuss their childrens' needs before enrollment;

(2) Inform parents about the day care program and its policies;

(3) Regularly offer parents opportunities to observe their children, and to talk about their children's needs; and

(4) Regularly exchange information with parents about their children.

Examples of Parent Involvement

Ways in which a day care home may involve parents include:

- Arranging for brief communications when parents bring and pick up their children; and
- Inviting parents to observe the home while in operation.

Recommendations for Day Care Home

It is recommended that each day care home:

- Use parent skills to benefit the day care program when possible.

Requirements on State Agency

(1) The State agency shall provide information and technical assistance to day care homes on working with parents.

(2) The State agency shall offer parents their choice of day care facility whenever administratively feasible. The State agency shall make a copy of the HEW day care requirements available to parents using HEW-funded day care.

Recommendations for State Agency

It is recommended that the State agency provide:

- Checklists for parents to assist them in assessing the quality of their children's day care.
- Procedures by which parents may raise concerns with the State agency about the day care provided their children; and
- Information and referral services that assist parents in locating and selecting day care facilities.

The Federal Role

HEW will provide material on parent involvement in day care to day care homes and State agencies.

Publications available from the Administration for Children, Youth and Families:

Day Care for Your Children

Education for Parenthood

So You're Going to be a New Father (English and Spanish)

One Parent Families (English and Spanish)

Group Composition—Day Care Home [§ 71.64]

Purpose

Group composition—the number of caregivers and the number of children—has a crucial impact on day care quality. The intent of this requirement is to ensure sufficient numbers of adults to provide care and supervision to children, and to ensure that children are cared for in grouping arrangements which promote their development.

(a) *Family Day Care Home*

(1) At least one caregiver shall be present at all times.

(2) In a family day care home that serves children of all ages including children under the age of 24 months, the group size at any given time shall not exceed 5. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a family day care home that serves children under the age of 24 months only, the group size at any given time shall not exceed 3. There may be no other children in the home besides the caregiver's own children over the age of 6 years.

(4) In a family day care home that serves no children under 24 months the group size at any given time shall not exceed six. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(b) *Group Day Care Home*

(1) At least two caregivers shall be present at all times.

(2) In a group day care home that serves children of all ages, including children under 24 months, the group size at any given time shall not exceed 10. No more than two of these children may be under the age of 24 months. The caregiver's own children younger than six and not yet in first grade shall count towards the group size requirement.

(3) In a group day care home that serves no children under the age of 24 months, the group size at any given time shall not exceed 12. The caregiver's own children younger than 6 and not yet in first grade shall count towards the group size requirements.

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BILLING CODE 4110-92-M

[45 CFR Part 71]

Child Day Care Regulations; Public Meetings

AGENCY: Office of the Secretary, HEW.

ACTION: Proposed rules, notice of public meetings.

SUMMARY: The Department of Health, Education, and Welfare will conduct public meetings to review proposed HEW child day care regulations. The proposed regulations would apply to all HEW assisted day care services provided to children outside their homes except the Headstart program. The proposed regulations contain requirements for State agencies administering out-of-home day care services operators. They would specify the type of day care services HEW wished to purchase for children served with its funds. The oral and written comments received at the meetings will be considered in the drafting of the final regualtions.

DATES: Public meetings will be held in 10 cities and the District of Columbia. See Supplementary Information section for the address of each meeting.

FOR FURTHER INFORMATION CONTACT: See Supplementary Information section for the person to contact in each region and in Washington, D.C.

SUPPLEMENTARY INFORMATION: The schedule of meetings is set forth below. The date and location of each meeting is provided in addition to the name and address of the person to contact for further information.

Region I

July 19, 1979, Boston, Massachusetts

Contact: Ms. Tina Burrell, Administration for children, Youth and Families, Room 2000, John F. Kennedy Federal Building, Government Center, Boston, Massachusetts 02203. Telephone (617) 223–6450.

Region II

July 25, 1979, New York, New York

Contact: Ms. Gloria Sanger, Administration for Public Services, Federal Building, 26 Federal Plaza, New York, New York 10007. Telephone (212) 264–4626.

Region III

July 10, 1979, Philadelphia, Pennsylvania

Contact: Mr. Donald Barrow, Administration for Public Services, P.O. Box 13716, 3535 Market Street, Philadelphia, Pennsylvania 19101. Telephone (215) 596–6776.

Region IV

July 19, 1979, Memphis, Tennessee

Contact: Mr. James K. Vaughn, Administration for Public Services, 101 Marietta Tower, Suite 903, Atlanta, Georgia 30323. Telephone (404) 242–2128.

Region V

July 23, 1979, Chicago, Illinois

Contact: Ms. Ruth Born or Ms. Thelma Thompson, Administrator for Children, Youth and Families, 300 South Wacker

Drive, 15th Floor, Chicago, Illinois 60606. Telephone (312) 353–6503.

Region VI

July 23, 1979, San Antonio, Texas
Contact: Mr. Pat Murphy, Administration for Children, Youth and Families, 1200 Main Tower Building, Dallas, Texas 75205. Telephone (214) 767–2976.

Region VII

July 11, 1979, St. Louis, Missouri
Contact: Mr. Al Byers, Administration for Public Services, 601 East 12th Street, Kansas City, Missouri 64106. Telephone (816) 374–5975.

Region VIII

July 9, 1979, Denver, Colorado
Contact: Ms. Oneida Little, Administration for Public Services, Federal Office Building, Room 9017, 19th and Stout Streets, Denver, Colorado 80202. Telephone (303) 327–2144.

Region IX

July 26, 1979, Los Angeles, California
Contact: Mr. Warren Jones, Administration for Public Services, HEW Regional Office, 50 United Nations Plaza, San Francisco, California 94102. Telephone (415) 556–7808.

Region X

July 26, 1979, Seattle, Washington
Contact: Ms. Enid Welling, Administration for Public Services or Ms. Margaret Sanstad, Administration for Children, Youth and Families, Arcade Plaza Building, 1321 Second Avenue, Mail Stop 620, Seattle, Washington 98101. Telephone (206) 399–0526.

September 10, 1979, Washington, D.C.
Contact: Ms. Nina Sazer, Chief, Public Participation Task Force, Office of the General Counsel, Room 716E, 200 Independence Avenue, S.W., Washington, D.C. 20201. Telephone (202) 472–7461.

These meetings are being held to solicit the views and comments of individuals and organizations with respect to issues raised by the proposed day care regulations. Requests to participate in the meetings should be made in writing to the above addresses and should include the name, address and telephone number of the participant and organization represented, if any, as well as the issues each participant would like to address. Each participant will have the opportunity to submit a written statement and other data for the record. In the event that time does not permit all interested persons to make oral presentations, persons will be selected to assure that all points of view are fairly represented. The meetings will be conducted in an informal manner.

In addition, individuals or organizations wishing to sponsor a State or local meeting to review the proposed regulations may write to the above addresses to request information which will assist them in planning meetings.

Persons who are unable to attend the meetings may submit statements in writing to: Sylvester Ligsukis, Director, Day Care Task Force, U.S. Department of HEW, Office of the General Counsel, Room 716E, 200 Independence Avenue, S.W., Washington, D.C. 20201. Telephone (202) 245–6734.

Dated: May 31, 1979.

Frank Peter S. Libassi,

General Counsel, Department of Health, Education and Welfare.

Dated: June 7, 1979.

Joseph A. Califano, Jr.,

Secretary, Department of Health, Education, and Welfare.

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federal register

Friday
June 15, 1979

Part IV

Environmental Protection Agency

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 125

[1214-3]

Modification of Secondary Treatment Requirements for Discharges Into Marine Waters

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Final rule.

SUMMARY: This final rulemaking establishes the criteria which will be applied by EPA in acting upon applications for issuance of a National Pollutant Discharge Elimination System ("NPDES") permit which modifies the requirements of secondary treatment under section 301(h) of the Clean Water Act ("the Act"), 33 U.S.C. 1311(h).

EFFECTIVE DATE: 1:00 P.M. Eastern time on June 22, 1979.

FOR FURTHER INFORMATION CONTACT: Scott Berdine, 301(h) Task Force, Office of Water Program Operations (WH-546), Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202/426-8973.

SUPPLEMENTARY INFORMATION: In 1972 the Federal Water Pollution Control Act (33 U.S.C. 1251 *et seq.*) was amended to require all publicly owned treatment works ("POTWs"), to achieve by July 1, 1977, secondary treatment as defined by EPA (see sections 301(b)(1)(B) and 304(d)(1) of the Act). In 1973, EPA defined secondary treatment in terms of four parameters—biochemical oxygen demand (BOD), suspended solids (SS), pH and fecal coliform bacteria—and established national uniform minimum effluent limitations for these pollutants to be attained by all POTWs by the 1977 deadline (38 FR 22298, August 17, 1973, as amended by 41 FR 30785, July 26, 1976 (deletion of fecal coliform bacteria limitations)).

Since the enactment of the 1972 amendments and the promulgation of EPA's secondary treatment regulations, a number of municipalities, primarily from the West Coast, argued to both Congress and EPA that secondary treatment of municipal ocean discharges is not necessary to protect the marine environment or to assure the attainment and maintenance of water quality in ocean waters.

Those same municipalities contended that secondary treatment traditionally has been defined in terms of pollutant parameters and levels of pollutant reduction which are important for freshwater ecology where the discharge of oxygen-demanding wastes and sedimentation of suspended solids results in distinct environmental degradation, but which have little significance for oceanic and saline estuarine waters where wastes are rapidly assimilated and dispersed by strong currents and tidal action. POTW discharges located in West Coast estuaries exhibiting a high degree of flushing also argued that secondary treatment provides no significant environmental benefit because discharges are rapidly oxygenated, dispersed and carried into the open ocean. On this basis, these municipalities have maintained that they should be exempted from the Act's secondary treatment requirement, and the associated capital, maintenance, and operating costs. These municipalities also claimed that they had accumulated sufficient evidence to demonstrate the scientific basis for exemptions from secondary treatment requirements.

As a result of their testimony, Congress, in amending the Clean Water Act in 1977, added section 301(h), which allows a municipal marine discharger to present its case to EPA. Section 301(h) provides that the Administrator, upon application of a POTW and with the concurrence of the State, may issue an NPDES permit which modifies EPA's secondary treatment requirements if the applicant: (1) discharges into certain ocean and estuarine waters; and (2) demonstrates, to the satisfaction of the Administrator, that the modification will not result in any increase in the discharge of toxic pollutants or otherwise impair the integrity of the receiving waters.

EPA's proposed regulations governing both the criteria and procedures [1] to be used in implementing this provision were published on April 25, 1978 (43 FR 17484). On May 10, 1978, EPA announced public hearings, which were held on June 2, and June 3, 1978, in Washington, D.C. and Seattle, Washington, respectively, to receive comment on the proposal (43 FR 20024). Prior to publication of the proposal, EPA also solicited written comments and held a public meeting in San Francisco to receive oral and written comments on how it should implement the statutory criteria of section 301(h) prior to proposal of regulations (43 FR 4675, February 3, 1978). To the extent possible, pre-proposal comments were considered in developing the proposal.

In response to these requests for public participation, EPA received written and oral comments on its proposal from over a hundred groups and individuals. Based on these comments, a number of changes have been made to the proposal. A summary of the section 301(h) program is provided in Section I, below. Major generic changes, including EPA's response to comments, are discussed by topic in Section II below.

EPA also received a number of inquiries concerning various aspects of the section 301(h) program (e.g., the relationship between sections 301(h), 301(b)(2)(B) and 301(i), enforcement, and grant eligibility) which were not specifically addressed in the proposal. In response to these concerns, EPA has included Section III, which discusses how EPA intends to implement the section 301(h) program and how the section 301(h) program relates to other programs within EPA.

In response to requests that EPA provide justification for the key tests used in the section 301(h) process and to provide guidance to applicants, a draft Technical Support Document was developed and made available for public review and comment on March 21, 1979 (43 FR 17194). This document is discussed in Section IV.

The revisions and reorganization of individual sections are addressed in the section-by-section analysis in Section V. This section includes EPA's response to major comments received by EPA on the proposed regulations.

I. Program Summary

These regulations (40 CFR 125 Subpart G) establish the criteria and standards to be applied by EPA in acting upon section 301(h) applications for modifications to the requirements of secondary treatment for biochemical oxygen demand (BOD), suspended solids (SS), and pH. They also establish special permit conditions which must be imposed and terms and conditions required by the NPDES regulations under Part 122 of this Chapter. As explained in section III. A. of this preamble, these regulations were originally proposed as 40 CFR Part 233. Cross-references to the proposed regulation sections are provided throughout this preamble.

A. Scope

The opportunity to obtain a modification of applicable secondary treatment requirements is available only to publicly owned treatment works (POTWs), which do not include federal facilities. In order to be eligible for application, a POTW must have had an existing discharge into marine waters as

[1] The procedures governing section 301(h) decisionmaking are now found in 40 CFR Part 124.

of December 27, 1977. Additionally, the POTW must have submitted a preliminary application to EPA by September 24, 1978. Preliminary applications postmarked no later than September 25, 1978 were accepted as September 24th was a Sunday (43 FR 39399, September 5, 1978). POTWs which submitted preliminary applications are eligible to submit final applications as required by this Subpart, no later than September 13, 1979.

Although POTWs in communities which are considered to be Native Alaskan Villages or small coastal communities in Puerto Rico and the U.S. Territorial Possessions in the Caribbean and Pacific may apply if they so desire, a special policy has been adopted with respect to these communities as an alternative to their submitting completed section 301(h) applications. This policy was adopted to provide a better means than the section 301(h) program to assist these communities in addressing their sanitary and public health priorities in a manner consistent with their more limited economic resources and different degree of development. The regulations contain no other special provisions or exemptions based on size, location, or economic activity, and will be applied equally to all other eligible applicants. Applicants should keep in mind, however, that the amount of data and analyses required to obtain and maintain a section 301(h) permit will very likely vary with the size of the discharge, the amount and kind of industrial waste in the effluent and the nature of the receiving waters into which the waste is discharged. Accordingly, small, purely domestic POTWs discharging into open coastal waters may need less data to establish the merits of their case than that required of larger POTWs with industrial waste in their influent.

B. Application Requirements

Eligible POTWs have up to 90 days to submit a final and complete application to EPA. The final application must consist of: (1) a signed, completed NPDES application Standard Form A, Parts I, II, and III; (2) a completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment; and (3) certification in accordance with 40 CFR § 122.5 that the information contained in the application and Standard Form A is true, accurate, and correct. The final application must be signed by either a principal executive officer of the POTW or a ranking elected official of the municipality. EPA will, on a limited basis, extend the time for submission of additional information, where the application is otherwise complete.

EPA has developed an Application Format, approved by the Office of Management and Budget, which, by establishing a specific and uniform information reporting system, will improve the review process and avoid unnecessary application expenses. Since a uniform format will enable the Agency to expedite its review of applications, applicants must adhere to this format.

EPA has prepared a Technical Support Document and has made it available for public review and comment. This document, which explains the technical rationale for certain requirements, is intended to provide guidance and background information on the regulation and application requirements. It is intended to be instructive, but will not serve as a substitute for meeting the requirements of these regulations; only the criteria in this Subpart will be used as the basis for final EPA decisions. Applicants must pass all "threshold" requirements (see discussion on "prohibitions", below) as a first step toward obtaining a modification.

An application may be based either on a current discharge or an improved discharge. A current discharge means the discharge as it exists (volume, composition and point of discharge) at the time the application is submitted. An improved discharge refers to a discharge as it is projected to exist at some future date following construction of planned improvements and/or implementation of operation and maintenance programs. In both cases applicants may submit only *one* proposal, not alternative proposals; and, most important, the discharge for which the modification is requested *must* be into ocean or saline estuarine waters.

C. Prohibitions on Issuance of a Section 301(h) Modified Permit

In addition to the eligibility requirements, a POTW must meet certain other requirements as a prerequisite for EPA issuing a modified permit under section 301(h). The applicant must meet all requirements set forth in this Subpart and applicable requirements of the NPDES Permit program as set forth in 40 CFR 122.

These requirements are "threshold" criteria which, if not met, will constitute grounds for denial of the modification. POTWs are advised to review these requirements and determine if one or more present a problem before undertaking the expense and time of preparing an application. EPA will not issue a modified permit for any discharge for which the applicant proposes to apply less than primary treatment, nor for the discharge of sewage sludge. Applicants currently meeting effluent limitations based on secondary treatment will not be considered for a modified permit for less than secondary treatment. A modification will not be granted where: (1) a State or local law, regulation or ordinance requires, at a minimum, secondary treatment, unless the definition of secondary treatment is less stringent than the EPA definition; or (2) there is a conflict with applicable Federal laws and Executive Orders.

D. Application Review Criteria

Section 125.58 contains definitions of terms which are important for a clear understanding of the application requirements and criteria. Sections 125.60 through 125.67 contain the criteria and application requirements which will be the basis for EPA review of applications for modification of secondary treatment requirements. These sections implement the eight statutory requirements in section 301(h) (1)–(8) of the Act. A brief discussion of the contents of the sections which are major factors in approving or denying an application follows.

Section 125.60 (formerly section 233.12)—Section 301(h)(1) of the Act provides that there must be an applicable State water quality standard specific to the pollutant for which the modification is requested. Under § 125.60, the applicant must demonstrate not only the existence of, but compliance with such standard under section 301(b)(1)(C) of the Act. Only State water quality standards approved by EPA under section 303 of the Act are considered water quality standards for purposes of section 301(h)(1).

EPA currently defines the minimum level of effluent quality attainable by secondary treatment in terms of BOD, suspended solids and pH. If a State has no water quality standard for BOD, the applicant may satisfy the requirements of section 301(h)(1) by demonstrating compliance with an approved standard for dissolved oxygen. Similarly, if a State has no standard for suspended solids, that requirement may be met by a showing that the applicant meets an approved standard or standards for turbidity, light transmission, light scattering or maintenance of the photic zone. If a State has not promulgated and obtained EPA approval of a water quality standard for BOD, suspended solids or pH (on an appropriate surrogate or related parameter) at the

time the final application is submitted, no modification may be granted for those pollutants. For purposes of determining such dischargers' compliance with section 301(b)(1), EPA will accept State certification that its standards are applicable to the territorial seas and contiguous zone.

Section 125.61 (formerly §§ 233.13–15). An applicant must demonstrate that its modified discharge will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and which allows recreational activities in and on the water. This requirement may pose significant diffculties for some applicants because of the complexities of determining and assuring protection of a balanced, indigenous population (BIP).

Several sections of the Application Format deal with factors affecting the physical transport, dispersion, and impact of pollutants, including the physical and spatial characteristics of the discharge plume, recreational activities, water supply, and marine biology. Since the request for a modification is limited to BOD, suspended solids, and pH, an analysis of impacts on State and Federal water quality requirements for these pollutants is mandatory.

The test for maintenance of a balanced, indigenous population requires a comparison of the ecological characteristics between sites with no pollution with those of the current or planned discharge. The BIP test for any biological parameter of concern is whether or not it falls within the range of natural variability found in comparable, but unpolluted habitats. Thus, the section 301(h) applicant must compare the biological conditions at the reference (control) site with those in the area immediately beyond the zone of initial dilution (ZID). The applicant must also survey conditions within the ZID. Certain ecological perturbations are not permissible within the ZID, *e.g.*, destruction or reduction of coral reefs, kelp beds, etc. Some biological alterations such as increases in the density of opportunistic species can occur within the ZID.

The Application Format includes a questionnaire that addresses specific kinds of biological perturbations. All of the data necessary to answer the questions must be included in a Biological Conditions Summary. The questions concern the occurence of: mass mortalities, disease epicenters, and toxic phytoplankton blooms near the outfall; adverse effects on fisheries and distinctive habitats; bioaccumulation of toxic materials; and changes in the structure and function of benthic, planktonic, demersal and intertidal communities. The extent of documentation required to answer the questions is dependent on the quality and quantity of the discharge and the characteristics of the receiving environment.

There are special requirements concerning the BIP test for certain situations. For saline estuarine discharges additional restrictions are placed on impacts within the ZID. These restrictions concern bioaccumulation, interference with migratory pathways, and alterations in benthic populations. For POTWs that plan to modify or relocate their discharge, an applicant must also show that any present, unacceptable impacts on the BIP will be alleviated by the proposed modification. For discharges into stressed waters, if environmental conditions are stressed by pollution from sources other than the applicant's discharge, the applicant must demonstrate that its discharge is not contributing to or enhancing the stressed condition and will not contribute to further degradation or retard recovery if the levels of pollution from other sources increase or decrease in the future.

The BIP test requirements are summarized in Table 1. The table divides applications into eight categories depending upon whether the applicant's discharge is into the ocean or an estuary, into stressed or unstressed waters, and whether the applicant's proposal is based on its current discharge or a planned improved discharge. The BIP test is least complicated for a current discharge through an ocean outfall into unstressed waters. The biological assessment necessary to support such an application is based on descriptive surveys within and beyond the zone of initial dilution and at the unstressed control sites. Additional requirements are placed on the other seven classes of applications. The most rigorous BIP test is placed on an applicant who proposes to modify his current discharge into stressed estuarine waters. Within each class of application the complexity of the BIP test is a function of effluent quantity and quality and the sensitivity of the receiving environment.

Table 1.—*Balanced Indigenous Population Requirements Based on Classification and Location of Discharge and the Nature of the Receiving Waters*

BIP requirements	Ocean outfall				Estuarine outfall			
	Current discharge		Improved discharge		Current discharge		Improved discharge	
	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters	Unstressed waters	Stressed waters
BIP Comparisons								
1. ZID boundary and unstressed control	X		X		X		X	
2. ZID boundary and stressed control		X		X		X		X
3. Stressed control and unstressed control		X		X		X		X
4. New ZID boundary control			X	X			X	X
BIP Predictions								
1. Impact on recovery and degradation		X		X			X	X
2. Improvements due to modifications			X	X			X	X
ZID Restrictions								
1. Major perturbations	X	X	X	X	X	X	X	X
2. Migration, benthos, bioaccumulation					X	X	X	X

"X" indicetes balance, indigenous population requirements that must be addressed in the application depending upon conditions at the outfall location(s).

Section 125.62 (formerly § 233.16). An applicant must submit a monitoring program for biological, water quality and toxic pollutant parameters. The overall monitoring system must satisfy, to the extent practicable, four objectives: (1) to monitor effluent quality; (2) to assure compliance with pretreatment standards and programs to control the introduction of toxic pollutants from non-industrial sources; (3) to assure compliance with water quality standards; and (4) to measure the impact of the discharge upon indigenous populations of marine biota.

Since implementation of the monitoring program will be necessary only if a modified permit is issued under section 301(h), an applicant need not show that the program is in place at the time of application, but instead that it has the capability to implement the proposed program at the time a modified permit is issued.

The data generated by the biological monitoring program will be used by EPA to determine: (1) whether modification of the requirements of secondary treatment has adverse impacts on marine biota and ecosystems in ocean or estuarine waters; (2) whether, in any case where such adverse impacts are demonstrated, the discharger's modification should be revoked; and (3) whether upon its expiration, the discharger's modification should be extended. Similarly, the modification would be revoked if the water quality standards or toxic pollutant control requirements were violated. The monitoring program must focus on critical events (such as low flow conditions or periods of inadequate flushing, and spawning activity). The Biological Conditions Summary in the Application Format is a basis for identification and selection of the representative biota to be monitored.

An acceptable monitoring program must address not only the methods but also the frequency of monitoring and should be based on consideration of a number of factors, including the nature and volume of the wastes discharged, the nature of the receiving waters, and the nature of the ecosystem in the vicinity of the discharge. Thus a POTW which discharges toxic pollutants into an area where there are sensitive marine communities will be required to develop a more sophisticated monitoring program (requiring more frequent data gathering and analysis) than a POTW which discharges small amounts of purely domestic wastes into a relatively uninhabited area. In cases where toxic pollutants are detected in the applicant's discharge, additional requirements such as *in situ* bioassays and bioaccumulation studies are imposed.

Water quality and toxic pollutant monitoring programs must be designed in conjunction with the biological monitoring program. The purpose of the water quality monitoring program is to collect data on characteristics of the discharge and receiving water quality in order to ascertain compliance with effluent and water quality standards. The toxic pollutant monitoring program focuses on the chemical composition of the applicant's discharge during both wet and dry weather conditions. Its purpose is to aid in establishing cause and effect relationships regarding impacts on marine biota, as revealed by the biological monitoring program, and also to measure the effectiveness of all industrial pretreatment and non-industrial toxic pollutant reduction measures required by the applicant's toxic control program.

Section 125.63 (formerly § 233.17). An applicant must demonstrate that the modified discharge, by itself, will not result in additional requirements for pollutant reductions on any other point or non-point sources. This demonstration must be made by obtaining written certification from the State agency which establishes wasteload allocations, and also other agencies which advise the State agency in the wasteload allocation process.

Section 125.64 (formerly §§ 233.14(b), 233.18 and 233.19). A section 301(h) applicant must submit a program for the control of toxic pollutants from industrial and non-industrial sources. Industrial sources refer only to those sources of pollutants regulated under section 307 (b) or (c) of the Act which discharge into a POTW. Non-industrial sources means all other sources of toxic pollutants. Toxic pollutants refer to the specific list of pollutants published by the Administrator under section 307(a) of the Act.

The objective of the toxic control program is to control toxic pollutants and provide for their elimination from the applicant's discharge. It consists of a chemical analysis, an industrial pretreatment program, and a schedule of activities for the reduction and elimination of non-industrial sources of toxic pollutants.

All applicants must submit a chemical analysis, under wet and dry weather conditions, of their current discharge. Since this data is a basis for design and review of the industrial and non-industrial source control programs at least a preliminary analysis of the sources of toxic pollutants must accompany data resulting from the chemical analysis.

The industrial and non-industrial source control submission are the main elements of the toxic control program. Because of the relationship between suspended solids and toxic pollutants, applicants who receive a section 301(h) modification may be required to implement a more rigorous pretreatment program than POTWs with secondary or greater treatment. Applicants who, on the basis of their chemical analysis and preliminary source identification, certify that they have no industrial sources of toxic pollutants, do not have to submit an industrial pretreatment program; however, all applicants are required to submit a program for the development of non-industrial source controls, to the extent practicable.

EPA will require an accelerated eighteen month schedule for implementing a pretreatment program for POTWs qualifying for a section 301(h) modification. This is because Federal pretreatment standards assume that toxic pollutants introduced into POTWs by industrial sources will receive at least secondary treatment before being discharged. In addition, secondary biological treatment systems normally provide an early warning of the discharge of many toxic pollutants by exhibiting upsets and inhibitions. Unlike such secondary treatment systems, less than secondary or primary treatment may allow discharges (accidental or otherwise) of highly toxic pollutants to go unnoticed and to cause significant stress to the marine environment; thus an accelerated schedule is required.

The schedule of compliance submitted by an applicant should include, as necessary to conform with 40 CFR Part 403, identification of industrial contributors, notification of pretreatment standards, submission of an industrial discharger inventory, or a quantitative and qualitative characterization of undesignated sources of toxic pollutants. It is critical that the completion date not extend beyond eighteen (18) months from the date of approval of the section 301(h) modification.

As part of the toxic control program, an applicant for a modified permit must demonstrate that it has a schedule of activities designed to eliminate, to the extent practicable, the entrance of toxic pollutants from non-industrial sources

into its facility. To assure compliance with this requirement, the applicant must furnish a schedule of activities for identifying and monitoring toxic pollutants from non-industrial sources and their potential impacts, along with an effective control program. Additionally, the applicant must demonstrate that it has the necessary technical capability and the necessary personnel and institutional arrangements to assure that these activities and programs are fully implemented according to schedule. The program period, like that for the pretreatment schedule, is eighteen months from the issuance of the modified permit.

The applicant must ascertain the practicability of implementing certain best management practices to control toxic pollutants which may be carried into combined sewers by stormwater runoff, including street and catch basin cleaning and trash pickup. The applicant must also initiate programs to control pesticide runoff, which may include diking, banning the sale and use of certain pesticides or requiring the adoption of non-chemical pest management practices.

Section 125.65 (formerly § 233.20). An applicant must demonstrate that there will be no new or substantially increased discharges of the pollutant to which the modification applies, above the volume of discharge specified in the modified permit. Since increases in either the volume of effluent discharged or in pollutant loadings may affect the impact of the discharge upon the quality of the receiving waters and marine biota or ecosystems, both volume of effluent and mass emission limitations are addressed in this section.

Effluent volumes and mass pollutant loadings will be limited to the applicant's projected five year discharge, only if those volumes and loadings are approved by EPA for a section 301(h) modified permit. There are no restrictions on service area or system configuration.

To assure that pollutant loadings from combined sewer overflows are adequately controlled, a POTW with combined storm and sanitary sewers should submit as part of its application an analysis of its combined sewer overflow situation. The analysis should, among other things, identify the corrective measures which will be taken to eliminate or minimize these discharges in the event a modification is granted.

Section 125.66 (formerly § 233.21). Under section 301(h)(8), any funds available to a POTW under Title II of the Act are to be used to achieve the degree of effluent reduction required by sections 201(b) and 201(g)(2)(A) or to carry out the requirements of section 301(h).

Under § 125.66, an applicant with an active grant under section 201 must submit a program which delineates the manner in which funds will be used to comply with the requirements of section 301(h). In order to be eligible for construction funding under 40 CFR Part 35, an applicant must have a plan based on secondary treatment, or greater if required under the existing permit, in order to assure that any works constructed for less than secondary treatment will be compatible with a cost-effective, secondary configuration. This will enable an applicant to complete secondary treatment construction with minimal additional problems, if secondary treatment proves necessary after reviewing monitoring data obtained by the applicant during the period of the permit.

The applicant's revised funding program must include provisions which assure that alternative waste management techniques will be studied and evaluated and that the works proposed for grant assistance will be cost-effective and will provide for application of Best Practicable Wastewater Treatment Technology (BPWTT) especially reclamation and recycling of wastewater, and confined pollutant disposal. An applicant will be eligible for Title II funds in developing monitoring, pretreatment, and toxic pollutant source control programs and other activities necessary to assure compliance with the requirements of section 301(h). Operation and maintenance costs for pretreatment, non-industrial source control, biomonitoring, and other programs, however, will not be federally funded.

Section 125.67. This is a new provision which lists the special conditions which may be required in a section 301(h) permit, but are not generally found in other section 402 permits, including compliance schedules, monitoring requirements and reporting requirements. These permit terms and conditions will be based on data contained in an applicant's submission for a section 301(h) modified permit.

E. 301(h) Decision Making

Permitting under section 301(h) will follow the procedures set forth in 40 CFR Part 124. (See section III.A., below).

II. Major Issues

A. Existing Discharge

1. *Definition of "existing discharge".* Section 301(h) states that an NPDES permit modifying EPA's secondary treatment requirements may be issued only "with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters." In its proposed regulations, EPA construed "existing discharge" not only to limit section 301(h) eligibility to POTWs with an existing marine discharge as of the December 27, 1977, enactment date of the provision, but also to require those dischargers to demonstrate compliance based on the nature, volume, and location of the discharge as of the September 24, 1978, statutory application date.

The "existing discharge" definition was the subject of more comment than any other aspect of the proposed regulations. Some commenters took the position that the proposed definition represented the only legally acceptable interpretation of the Act. Others, by contrast, argued that this definition was contrary to the legislative history and would, in effect, nullify section 301(h), in that virtually no coastal discharger would be able to meet the requirements for a modification without some improvement to its current treatment system, relocation of its outfall, or both.

In response to these comments, EPA has re-examined the legislative history on this point. It seems clear, on the one hand, that Congress did intend to limit section 301(h) eligibility to existing coastal dischargers. *e.g.*, 1977 Leg. Hist. at 257, 1047.[2] It is not as clear whether Congress meant to allow EPA to take into consideration future outfall and treatment system improvements in determining whether a permit modification should be granted. The communities which sought the modification provision had planned for and studied a less than secondary treatment alternative—in some cases for five or ten years—and had accumulated the data to make their case. In making the studies, many of these communities built in the assumption of improvements in their current systems which would allow them to utilize less than secondary treatment with minimal environmental impact.

In light of the foregoing, EPA believes that the most reasonable way to construe the term "existing discharge" is

[2] Citations are to the legislative history of the Clean Water Act of 1977, as reprinted in the Committee Print for the Committee on Environment and Public Works, Serial No. 95-14 (October 1978).

to allow consideration of thoroughly studied and *planned* outfalls and/or treatment system improvements in evaluating a section 301(h) application. Accordingly, EPA has revised the definition of "existing discharge" as follows. No POTW will be eligible for a section 301(h) modification unless, on December 27, 1977, it was an existing discharger into waters of the territorial sea, contiguous zone, or saline estuarine waters, as defined in § 125.58. Such an eligible POTW may base its application on either (1) the existing volume, nature, and location of its discharger; or (2) a proposed outfall and/or treatment improvement (e.g., upgrading treatment from primary to advanced primary or relocating an outfall which has been thoroughly planned and studied by the applicant).

This revised two-part definition implements Congressional intent in a more reasonable manner than would have been the case under the proposed definition. As Congress intended, it will limit eligibility for section 301(h) modifications to existing coastal dischargers, since it requires that an applicant have had an actual marine discharge as of December 27, 1977. In contrast to the proposed definition, it will not be so inflexible as to bar permit modifications for large categories of existing dischargers—a result Congress could hardly have intended.

For example, the proposed definition was so rigid that it would have excluded even dischargers making only minor treatment or outfall improvements necessary to meet statutory requirements; those POTWs would have been required, instead, to go to secondary treatment. Additionally, many coastal communities were on NPDES permit compliance schedules for construction of improvements necessary to meet State water quality standards or other requirements at the time that section 301(h) was enacted. Congress could not have ignored—or meant to exclude—these communities.

Many POTWs simply were not able to construct planned improvements in time to meet the September 24, 1978, deadline. It would serve no purpose to penalize these communities, especially where there had been some delay on the part of EPA in providing promised funds. Finally, it makes no sense to exclude any community which has thoroughly planned and studied a less than secondary alternative, regardless of the stage of construction. The real concern of section 301(h) is that dischargers have accumulated sufficient information to make their case to the Agency.

The revised definition of "existing discharge" removes one barrier to applying for a modification. It does not, however, relax the criteria to be applied in either granting a modification or complying with the requirements of the Act once a permit is issued. EPA believes that this course of action which offers communities an opportunity to present their case for a modification based on either existing systems or thoroughly studied and planned outfall and/or treatment system improvements, is more reasonable than completely eliminating these POTWs from consideration based on a less than unequivocal Congressional mandate.

EPA's two-part construction of the term "existing discharge" is based on its conviction that the most reasonable interpretation of the term should include preliminary studies, facilities planning, design, or construction in progress at the time the final section 301(h) regulations were promulgated. Thus applicants seeking a section 301(h) modification on the basis of a thoroughly studied and planned outfall or treatment system *improvement* will be expected to show, first, that there was an existing discharge as of December 27, 1977, and second, that such an improvement was in the planning, design or construction stage as of the publication date of these final regulations. This demonstration may be made in a number of ways, for example, by showing: (1) that the improvement was actually under construction; (2) that it was considered or being considered under a Step 1 grant under Title II; (3) that it was necessary to meet a condition in the applicant's existing NPDES permit (*e.g.*, a State water quality standard); or (4) that it was part of staged construction consistent with secondary treatment facilities.

As a practical matter, it is highly unlikely that applicants which have not already undertaken extensive studies of less than secondary treatment options will be able to complete a section 301(h) application or make the showings required by this Subpart.

A number of commenters suggested that EPA's proposed definition of "existing discharge" be broadened to include planned outfall/treatment system improvements, but only those which have been proposed and approved under Step 1, 2, or 3 grants issued under Title II of the Act. Since the Act does not require a section 301(h) determination to be based solely on data generated as part of a Title II grant, and since there may be communities which have undertaken to collect such data with their own funds, EPA has not placed such a limitation in the second part of the broadened "existing discharge" definition.

A few commenters suggested that EPA's definition of "existing discharge" be revised to allow POTWs which currently discharge into inland waters, but which are considering constructing, or now have under construction, an ocean or estuarine outfall, to apply for section 301(h) modifications. While the legislative history does not unequivocally define the term "existing discharge," it does state that Congress intended that section 301(h) modifications be limited to POTWs who were discharging into *marine* waters as of December 27, 1977. *e.g.*, 1977 Leg. Hist., at 257, 639. Therefore, the suggested definition is not consistent with Congressional intent.

In the preamble to the proposed regulations, EPA was concerned about the practical ramifications of construing the statutory term "existing discharge" to include outfall and treatment system improvements. In this connection, EPA requested commenters to address several issues, set out below. The following summarizes the comments received and EPA's responses.

2. *The difficulty of predicting the impacts of future outfalls or treatment system improvements.* EPA received numerous comments on the issue of whether it was possible to make an accurate predictive judgment as to whether future construction would enable an applicant to meet the stringent water quality, physical, chemical and biological criteria set forth in Subpart B of the regulations. Some commenters felt that the predictive judgments which would be associated with assessing section 301(h) applications based on proposed improvements would be no more difficult than those required to be made in other aspects of the NPDES permit program or EPA's construction grant program. Others felt that making predictions would be difficult, but that techniques such as modeling, extrapolation, and simulation could be utilized to predict impacts. Still others expressed the view that it would be extremely difficult, if not impossible, to accurately predict the impacts of future discharges on the marine environment.

A number of commenters suggested that the accuracy of predictive judgments would vary according to the specific assessment being made (*e.g.*, physical, chemical or biological) and the volume and composition of wastes being discharged, the nature of the receiving waters, and the nature of the affected ecosystem. Some commenters felt, for

example, that it would be fairly easy to calculate the chemical composition of the effluent from a proposed treatment system, and others felt that reasonably accurate assessments of waste dispersion and other physical impacts could be made using appropriate plume and dispersion models. On the other hand, there seemed to be some agreement that making accurate predictions of biological impact could be extremely difficult.

While it is more difficult to predict the effects of a proposed discharge on the marine environment, a certain amount of predictive judgment is required for assessing the effects of an existing as well as proposed discharge; both depend on several factors such as the amount of data available, the nature of the discharge, the receiving water, and the affected biota. For this reason, EPA has concluded that the difficulty of making accurate predictive judgments of environmental impacts does not, in itself, warrant exclusion of applications for section 301(h) modifications which are based on proposed outfall and treatment system improvements.

However, applicants seeking section 301(h) modifications based on future improvements should be aware that, as a result of greater difficulty in making predictive judgments of environmental impact, they bear an additional burden in demonstrating that their proposed discharge will meet the requirements of section 301(h) of the Act and § 125.61 of these regulations. EPA cannot, as suggested by some commenters, resolve questionable assessments of future impact in favor of issuing a permit, while allowing a more accurate assessment of impacts to be developed on the basis of monitoring data compiled during the life of the permit. The Act clearly requires that the necessary showings under section 301(h) be made at the time of application. Accordingly, if a section 301(h) applicant fails to demonstrate that its improved discharge will meet these requirements, its appication will be denied.

3. *Effect of pretreatment and non-industrial source control programs.* EPA also received a large number of comments on the question of the extent to which EPA should consider the effect of pretreatment and non-industrial source control programs in evaluating an applicant's section 301(h) application. Many commenters felt that both existing and future source control efforts should be evaluated by EPA, especially where the discharge of toxic pollutants could pose a problem.

EPA recognizes that the implementation of effective source control programs will reduce the amount of toxic pollutants in POTW effluent, and may therefore lessen the impact of the discharge on the marine environment. To the extent such programs are now in place and are causing an actual, measurable reduction of pollutants in the applicant's discharge, they will be considered in EPA's evaluation of the section 301(h) application. Where such programs are not operational, however, EPA believes that it is very difficult, if not impossible, to predict their effect on the chemical composition of a POTW's waste stream. Since most major Federal pretreatment standards will not be promulgated for several years (See consent decree entered in *Natural Resources Defense Council, Inc.* v. *Train,* 8 ERC 2120 (D.D.C. 1976) as modified by *Natural Resources Defense Council* v. *Costle,* 12 ERC 1833 (D.D.C. March 9, 1979), the Agency is unable at the present time, to predict the effect of Federal pretreatment standards on the composition of individual POTW effluent. Similarly, it is impossible to assess the impact of a non-industrial source control program on a municipal discharge until non-industrial sources of pollutants have been located, their contribution to the POTW has been ascertained, the degree to which they can be controlled has been determined, and an enforceable control program has been developed.

EPA recognizes, however, that some section 301(h) applicants may now be in a position to demonstrate that a given effluent limitation will in fact be achieved by a source control program which is based on their existing pretreatment rules and regulations. In order to make this showing, the applicant is required to provide evidence of its record of enforcement and the effectiveness of existing programs. In addition, an applicant must define and demonstrate that it has the ability to enforce additional control programs which will reduce, to a specified level, the amount of the pollutant introduced by each such source into the POTW. For example, if an applicant intends to demonstrate that it would meet a State water quality standard for cadmium through source control, it is required to identify all industrial and non-industrial sources of cadmium, to determine what volumes of cadmium they contributed to the POTW, to set specific limitations on the amount of cadmium which can be introduced by each source into the POTW (based on the final effluent limitations needed to comply with the water quality standard), and to develop a program for enforcing those limitations. These requirements are contained in revised sections 125.62 thru 125.64, and are discussed in the section-by-section analysis in Section V of this preamble.

4. *Completion of modifications.* EPA received virtually no comments concerning schedules for completion of improvements under a section 301(h) permit. Congress has directed that the section 301(h) process not delay the attainment of required pollution control objectives. H.R. Rep. 95–830, 95th Cong., 1st Sess. at 74, 79 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. at 1, 50 (1977). Additionally, section 301(h) provides only for the modification of the requirements of section 301(b)(1)(B), and not the requirements of section 301(b)(2)(B). Given these considerations, section 125.59 requires that section 301(h) applicants demonstrate that they can complete such improvements as expeditiously as possible.

To assure that applicants provide sufficient information to allow EPA to determine whether improvements will be completed in a timely manner, § 125.59 has been revised to more clearly address construction schedules and Part G has been added to EPA's application format. This requires that the applicant set forth its proposed facilities planning, design and construction schedule (if any), an analysis of its ability to fund any necessary planning, design and construction according to the proposed schedule, and a history of its compliance or noncompliance with planning, design and/or construction schedules in its existing NPDES permit or an enforcement compliance schedule letter.

B. September 24, 1978 Application Deadline.

EPA received numerous comments on proposed § 233.32(b), which required applicants to submit a complete application for a modified permit (including all required supporting data) no later than September 24, 1978 (43 FR 17498) (Preliminary applications, postmarked no later than September 25, 1978, were accepted as September 24th was a Sunday (see 43 FR 39399)). Most of these comments suggested that the deadline for submission of applications should be relaxed to allow communities additional time to complete the physical, chemical and biological studies and to develop the source control programs required to comply with sections 301(h)(2), (5) and (6) of the Act.

The September 24, 1978 application date is imposed by section 301(j)(1)(A)

of the Act, and EPA is powerless to change this deadline. However, since section 301(h) criteria were not promulgated as of September 24, 1978, it would have been unreasonable to require a complete application by that date. Therefore, both the Notice of Application Filing Deadline (43 FR 39398, September 5, 1978) and these regulations provide that only a preliminary application must have been submitted by September 24, while a complete application must be submitted three months from the date of the publication of this Subpart. This two-phase application process is consistent with the approach used by EPA for other variance and modification provisions with a statutory application deadline (*e.g.*, sections 301 (g) and (c) of the Act, 33 U.S.C. 1311 (g) and (c)).

The three month requirement for submission of a complete section 301(h) application is based on section 304(a)(5)(B), of the Act, which requires EPA to publish regulations implementing section 301(h)(2) no later than June 27, 1978. Since that date is approximately three months before September 24, 1978, EPA has concluded that Congress intended section 301(h) applicants to have at least three months to prepare their applications after EPA published final regulations describing the nature of the data required.

Accordingly, section 301(h) applicants are required to submit, on or before September 13, 1979 a full application which, on its face, demonstrates that the applicant complies with section 301(h) and these regulations. Obviously an application which includes all the information requested by EPA in an appropriate level of detail will be considered adequate for this purpose. Where an application submitted on September 13, 1979 conclusively demonstrates that the applicant qualifies for a section 301(h) permit, EPA will issue a modified permit. On the other hand, if the application demonstrates on its face, that the applicant does not meet the requirements of section 301(h) and this Subpart, its application will be denied. In some cases an application may appear to indicate on its face that the requirements of section 301(h) can be met, but EPA will require some minimal additional information before a final decision can be made (e.g., information on matters peculiar to the applicant's outfall/treatment system configuration, discharge, or receiving waters, which are identified during the review process). In that event, the Agency may request that the necessary information be submitted, as expeditiously as practicable, as a supplement to the application. See generally § 124.55.

This limited opportunity to submit additional information following initial EPA review should not be construed as providing all POTWs submitting incomplete applications with an automatic extension of time in which to submit more data. The process described above is designed to be used only where an applicant submits a complete or substantially complete application, but where some small amount of additional data would be required to assure conclusively that the requirements of the Act and of this Subpart would be met. EPA expects that, as a practical matter, it will be used fairly infrequently.

EPA is aware that the time limitations set forth in these regulations may make it difficult for those applicants who have not previously assembled the required technical data to submit a complete section 301(h) application. However, the legislative history of the Act makes it clear that the relief afforded by section 301(h) was intended for those communities which had accumulated, or could accumulate on a timely basis, the information necessary to make their case for a modification. Additionally, applicants are reminded that section 301(h) was enacted on December 27, 1977, that EPA distributed a pre-proposal preliminary concept paper setting forth draft regulations implementing section 301(h) on March 16, 1978, and that the regulations were formally proposed on April 25, 1978; both the preliminary concept paper and the proposed regulations encouraged applicants to begin assembling the data necessary to support a section 301(h) application immediately, if they had not already done so. The unanticipated extension which resulted from the delay in promulgating this Subpart has also provided applicants with almost one year to gather and develop the information required by the application which has not sustantially changed from what appeared in the proposal.

C. Small Communities, Native Alaskan Villages and U.S. Territorial Possessions and Puerto Rico

1. *Small communities.* In its proposal, EPA expressly requested comment on the general issue of whether small dischargers or dischargers which have no known or suspected sources of toxic pollutants should be treated differently than larger dischargers with significant sources of toxic substances with respect to the extent or nature of the information which they must submit to EPA in applying for a modified permit. A number of commenters expressed the concerns that smaller communities, unlike larger municipalities, would be unable to accumulate the data required by the proposed regulations within the time required by the Act, would be unable to finance the collection of such data, or, in some cases, would be unable to "wade through (EPA's) regulations." These commenters suggested: (1) that EPA develop a separate, shorter application format for small dischargers; (2) that small dischargers be allowed to piggyback" section 301(h) applications submitted by larger communities discharging into similar types of waters, or (3) that EPA categorically relieve small POTWs of some of the information requirements of the proposed regulations. On the other hand, other commenters felt that all applications should be subject to the same requirements and evaluated by the same standards.

Section 301(h) does not authorize EPA to categorically exempt dischargers from any statutory requirement on the basis of size or volume. By omitting such an exemption, Congress recognized that the volume of a discharge in and of itself is not an indicator either of its toxicity or of its actual or potential effect on the marine environment.

However, as noted by several commenters, the inherent characteristics of many small POTWs or POTWs without sources of toxic pollutants will, as a practical matter, reduce the burden that section 301(h) places on them. For example, section 301(h)(5) of the Act and § 125.66 are not applicable to POTWs with no industrial sources of toxic pollutants (generally only small communities). Certain sections of the regulations, such as §§ 125.65(c) "Biological Assessment" and 125.61 "Monitoring Programs", recognize that the nature and volume of the applicant's discharge will affect the extent and type of showing which must be made to demonstrate compliance with this Subpart.

As noted above, applicants will be required to submit by September 13, 1979 an application which demonstrates, on its face, that the applicant's current discharge complies with (or that its improved discharge will comply with) section 301(h) and these regulations. Here, too, the characteristics of small POTWs and POTWs without sources of toxic pollutants may give them an inherent advantage over larger POTWs with major sources of toxic pollutants, since the failure to provide even minor portions of the required data is likely to be far more critical for a large applicant

than a small one with a non-toxic discharge.

Section 301(h), it should be noted, was enacted in response to Congressional testimony from a number of large West Coast POTWs which indicated that they had already accumulated the data necessary to demonstrate that a less than secondary treated discharge would not adversely affect the environment. As a result, the needs of many small communities for extended time and financial assistance to collect the data necessary to submit a complete application for modification have not been incorporated into the statutory scheme. EPA has attempted to accommodate these needs in its regulations insofar as possible within the confines of the statute.

2. *Native Alaskan Villages, U.S. Territorial Possessions and Puerto Rico.* In its proposed regulations, EPA solicited comments on how it should deal with 301(h) applications from coastal native villages in Alaska, and small communities in Puerto Rico and the U.S. territories in the Caribbean and Pacific. Generally, these communities generate very low volumes of wastewater, consisting mainly of domestic waste. Discharges, where they exist, are generally far apart; receiving waters are either very deep or subject to substantial dilution and flushing from tides, currents, or both.

Many of these native villages and territorial communities are not eligible for a modification even under EPA's revised regulations because they did not discharge into marine waters on December 27, 1977. In many cases, they have no existing collection and treatment systems, and wastes are transported from individual homes to beaches or tundra; in other cases, primitive collection systems which deposit sewage on beaches or in streams which flow into the ocean. Other communities, which *do* have ocean outfalls in place, may be limited in terms of available background data and their ability to acquire technical expertise needed to develop a section 301(h) application.

Additionally, as a practical matter, many of these communities operate on near subsistence economics and do not have the economic or technological ability to either build or maintain secondary treatment facilities. As noted, existing sewage treatment facilities are either non-existent or very primitive. In some areas, raw sewage is transported through the streets in open sewers directly to beaches or to the ocean; in others, over-the-water toilets are used to dispose of human wastes. In tropical climates, these open sewers and latrines serve as a breeding ground for disease vectors and intestinal parasites which afflict significant portions of the population, and they contaminate ground and surface waters and near-shore bathing areas. In many cases, the construction of secondary treatment facilities would divert funds away from projects (such as the construction of covered sewers) necessary to provide the basic public health protection which exists in most of the United States.

EPA received numerous comments on how it should handle this difficult issue. Some commenters suggested relaxing the amount and type of data which would be required from such communities in their section 301(h) applications. Other commenters suggested that no NPDES permits of any kind be issued to villages of less than 100 families with subsistence lifestyles. Many small communities simply urged the Agency to recognize their special status and to develop an intelligent solution to their wastewater treatment problems.

In response to these comments, EPA has adopted the following policy with respect to these communities. As an alternative to their submitting completed section 301(h) applications, the Agency will use its discretion in scheduling secondary treatment for Native Alaskan Villages and communities in Puerto Rico and the U.S. territorial possessions in the Caribbean and Pacific where industrial toxic wastes are not a factor, in cases where such course of action is determined to be in the interest of providing basic public health protection, and where any such delays will not result in unreasonable adverse water quality impacts. In such cases, attention will be given to planning wastewater treatment facilities for these communities with the objective of assuring that inadequacies in sewage collection or treatment which result in public health problems are remedied, and to examining alternatives to traditional secondary treatment, including individual systems and BPWTT options (including land treatment). Any of the Native Alaskan Villages and small communities in Puerto Rico and the U.S. territorial possessions in the Caribbean and Pacific that submitted preliminary applications and meet the requirements of § 125.59 may submit completed section 301(h) applications; however, it may be very difficult for these communities to adequately meet all of the applicable section 301(h) criteria for modifications as presented in this regulation.

The policy described above applies only to coastal native villages in the Trust Territory of the Pacific Islands, the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, Puerto Rico and Native Alaskan Villages. Congress has indicated its concern for the particular problems of the insular territories (particularly in the context of Federal regulatory and funding programs) in the Territories Omnibus Act, 35 U.S. 600, February 6, 1909 and of Alaskan native villages in the Clean Water Act (section 113, 33 U.S.C. 1263). For this reason, and because these communities have unique economic and public health problems, the policy announced in this section will not be extended either to other coastal communities in the United States or to communities which generate large volumes of domestic and industrial wastes.

III. Other Issues

A. Incorporation Into NPDES Regulations

After the section 301(h) regulations were proposed as 40 CFR Part 233, on April 25, 1978, EPA proposed extensive revisions to the NPDES permit program regulations. (43 FR 37078, August 21, 1978). The NPDES proposal established four new Parts (40 CFR Parts 122, 123, 124 and 125). Part 125 established criteria and standards for the NPDES program and reserved Subpart H for section 301(h) criteria. The revised NPDES regulations were published in final form on June 7, 1979 (44 FR 32854) and reserved Part 125, Subpart G for section 301(h) criteria. Part 124 of the final NPDES regulations establish NPDES decisionmaking procedures and contain some sections which were originally proposed as Subpart C to Part 233, i.e., the appeal provisions for section 301(h) determinations.

EPA decided to incorporate section 301(h) permit procedures into Part 124 of the final NPDES regulations for the following reasons: (1) to consolidate all NPDES permit decisionmaking into one Part of 40 CFR; (2) to reduce possible confusion which could result in having two separate regulatory parts which deal with NPDES procedures; and (3) to respond to the concerns of some commenters by indicating, when, where and how section 301(h) permit modifications fit into the overall NPDES permitting process. Thus, by indicating that these regulations would be incorporated into reserved Subpart G of Part 125, the final NPDES regulations set the stage for today's section 301(h) regulations. Since these regulations are

part of the entire NPDES "package" (40 CFR Parts 121–125), other sections in these Parts may be applicable to section 301(h) decisionmaking and permit issuance, *e.g.* §§ 122.3 (definitions not otherwise covered by § 125.5), 122.5 (signatories), 122.14 (conditions applicable to all permits), etc. Today's regulation, therefore, must be read together with the recently published final NPDES regulations. Since section 301(h) is a federally run permit program, however, Part 123, *State Permit Program Requirements* is not applicable. For a further discussion of the final NPDES regulations as they may relate to section 301(h), see the preamble discussion on Parts 122 and 124.

B. Multiple Applications

A number of POTWs which submitted preliminary applications to EPA indicated that they intended to apply for a section 301(h) modification based on several alternatives (*e.g.*, several possible outfall locations or treatment systems), raising the issue of how decisions should be made where an applicant presents several treatment or discharge alternatives, more than one of which may meet the requirements of the Act and this part. A related issue is whether EPA will consider alternatives to the treatment/outfall system proposed in an application if the Agency finds that the proposed system does not meet the requirements of section 301(h) or this part.

EPA will not consider alternatives to the treatment system included in a POTW's application, nor will it allow applicants to submit other options. The Act and its legislative history make it clear that the applicant must have thoroughly planned and studied the alternatives and must demonstrate that it is entitled to a modification. This can only be achieved by a showing in its application that the proposal meets the requirments of the Act and these regulations. The Agency can either make this demonstration for the applicant nor consider multiple proposals or untimely applications. Accordingly each 301(h) applicant must submit a complete application containing its proposal not later than September 13, 1979.

C. Relationship of Section 301(h) and BPWTT.

A number of commenters suggested that a section 301(h) modified discharge should automatically be considered "Best Practicable Wastewater Treatment Technology" (BPWTT) for purposes of section 301(b)(2)(B) of the Act, which requires that POTWs comply with BPWTT by July 1, 1983. The legislative history of section 301(h) and the Act itself, however, make it clear that section 301(h) only authorizes a modification of the requirements of section 301(b)(1)(B) of the Act, and not of the BPWTT requirements of section 301(b)(2)(B). Furthermore, as noted in both the House Conference and Senate Reports on the 1977 Amendments, Congress clearly recognized that BPWTT *may* "require a degree of effluent reduction which is greater than that required under (Section 301(h)) of the Act." H.R. Rep. 95–830, 95th Cong., 1st Sess. 74 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. 45 (1977).

At present, BPWTT is considered equivalent to secondary treatment. The Agency, however, is now considering expanding the definition of BPWTT to include specific effluent limitations for toxic pollutants and also to provide for the recycle and reuse of wastewater as required under section 201(g)(2)(A) of the Act and confined disposal of pollutants.

D. Section 301(i)(1) and Section 301(h) Permit Compliance Schedules

EPA received a number of inquiries during the comment period concerning compliance schedules in section 301(h) permits. Some commenters wanted to know what kinds of compliance schedules would be included in Section 301(h) permits and what action would be taken by EPA in the event of noncompliance. Others sought a clarification of the relationship between section 301(i)(1) municipal time extensions and the modification afforded by section 301(h). Still others raised more general questions concerning the legal basis for including compliance schedules extending beyond July 1, 1977 in section 301(h) permits.

1. *Sections 301(i)(1) and 301(h).* Sections 301(h) and 301(i) are independent provisions. Section 301(i)(1) authorizes EPA (or a State, where it has an approved NPDES permit program) to extend an existing municipal NPDES permit compliance schedule for achiving EPA's secondary treatment requirements. It does not address the issue of setting revised compliance schedules in section 301(h) permits.

Because sections 301(h) and 301(i)(1) are independent provisions, section 301(h) applicants which require a section 301(i)(1) extension in order to comply with the requirements of section 301(b)(1) (B) or (C) will not be deemed to have applied for such an extension merely by having submitted a section 301(h) application. There is no reason for applicants to be confused on this point, since in the interim final regulations implementing section 301(i), EPA expressly advised 301(h) applicants to apply for a section 301(i) extension if they felt they also met the criteria of section 301(h). (40 FR 21266, 21268 (May 16, 1978)).

As a general matter, EPA expects that most section 301(i) extension requests from section 301(h) applicants will be acted upon following EPA decision on the applicant's section 301(h) application, since a POTW which qualifies for a section 301(h) modification will not require a section 301(i) extension as well. Where a section 301(h) request is denied, the applicant may be eligible for a section 301(i)(1) extension, a section 309(a)(5)(A), administrative order, or be subject to possible enforcement action.

2. *Compliance schedules in section 301(h) permits.* EPA will establish revised compliance schedules for construction of improvements and for the implementation of source control programs necessary to meet the requirement of section 301(h). Accordingly, it will not be necessary for a section 301(h) applicant whose request for a modification is based on an outfall and/or treatment system improvement to demonstrate that it would also qualify for a section 301(i) time extension in order to be eligible for a section 301(h) permit. However, as noted above, in determining whether to grant a section 301(h) permit, EPA will consider (as it does under section 301(i)(1)) the applicant's record of compliance with its existing NPDES permit in determining whether it is likely to comply with requirements of section 301(h) on a timely and responsible basis.

One commenter suggested that EPA has no authority to issue a permit allowing compliance with section 301(h) after the July 1, 1977, date for achieving compliance with the secondary treatment requirements of section 301(b)(1)(B). This is an incorrect interpretation of the Act, since section 301(h) authorizes EPA to issue a permit which modifies the requirements of section 301(b)(1)(B) including the July 1, 1977 compliance deadline. Given that section 301(h) was not enacted until December 27, 1977, the commenter's interpretation would prevent EPA from issuing any section 301(h) permits.

E. Enforcement Policy

1. *Enforcement during section 301(h) decisionmaking process.* A number of commenters expressed concern that some section 301(h) applicants may attempt to utilize the section 301(h) application and decisionmaking process as a means of delaying any needed

planning, design or construction during the application decisionmaking period. It should be clear that EPA will not allow the section 301(h) process to be used as a mechanism for delay.

Section 125.59 of these regulations requires each applicant to submit, as part of its final application, a detailed description of the construction, if any, which it proposes to undertake to comply with the requirements of section 301(h), along with a detailed proposed schedule for all necessary planning, design and construction. The applicant must also (1) provide EPA with a copy of its current NPDES compliance schedule for construction of secondary treatment facilities; and (2) identify in detail all planning, design and construction activities which are common both to the applicant's existing plan for construction of secondary treatment facilities and its proposed plan for outfall and/or treatment system construction under section 301(h). EPA will use this information to determine how much planning, construction or design may proceed pending a decision on the section 301(h) modification and to formulate compliance schedules in the modified permit.

Some section 301(h) applicants, even if a 301(h) modification is granted, will need to complete planning, design or construction activities for treatment works which are less than secondary. Where such construction is compatible with full secondary treatment systems, the applicant can continue planning, design and construction without having to make a commitment to secondary treatment. EPA will require these applicants to proceed toward secondary treatment during the section 301(h) application decisionmaking process. Such applicants will be expected to meet all compliance requirements which are not affected by section 301(h) determinations or pending determinations.

Some section 301(h) applications may be based on present discharge volume, location and composition, and, therefore, the applicants cannot go forward with additional planning, design or construction until EPA has issued a decision. In general, EPA does not expect to initiate enforcement proceedings for construction related schedules against a POTW in this category pending Agency action on its final application for a modification. EPA may commence enforcement actions for activities unrelated to construction, such as violation of interim limits, poor operation and maintenance, reporting errors and omissions, and misrepresentation or falsification of data.

As noted earlier, an applicant's failure to continue planning, design or construction during the section 301(h) decisionmaking process will not only subject it to possible enforcement action, but also will draw into question the propriety of granting a section 301(h) modification. Congress' objective that the section 301(h) process not be protracted (see section II, above) cannot be achieved where POTWs obtaining section 301(h) modifications do not timely construct the improvements and implement the monitoring and source control programs on which these modifications are based. Not only does such delay postpone the achievement of the objectives of section 301(h), but it also deprives EPA of the long-term empirical monitoring data for use in decisionmaking on section 301(h) permit extensions or renewals. Accordingly, an applicant's record of planning, design and construction efforts during the section 301(h) decisionmaking period will be taken into account in determining whether a modified permit should be issued.

2. *Enforcement following denial of a section 301(h) modification.* POTWs which are denied section 301(h) modifications will be candidates for enforcement action unless they have obtained and are complying with, a section 301(i)(1) extension, or an administrative order under section 309(a)(5)(A), or comparable State order.

3. *Enforcement following issuance of a section 301(h) modification.* Violations of section 301(h) modifications will be among the highest priorities in EPA's municipal enforcement program. Compliance schedules will be closely monitored by the Agency and NPDES States; a permittee's failure to meet planning, design or construction schedules, or to comply with any monitoring, pretreatment or nonindustrial source control requirements will subject it to possible enforcement action, including revocation of its modified permit.

EPA will place major emphasis on the review of monitoring data collected as part of a modified permit requirement. Where monitoring data indicates adverse environmental impacts or a failure to attain required effluent limitations or water quality standards, the permittee will be required to identify the source of difficulty and correct it as expeditiously as possible. If it cannot do so, its modified permit will be subject to revocation, requiring the POTW to go immediately to secondary treatment or BPWTT.

IV. Technical Support Document

Several commenters suggested that many of the technical and scientific requirements which will be used to evaluate applications needed further justification and explanation. EPA agreed and on March 21, 1979, made available for public comment its Technical Support Document (44 FR 17194). A total of thirty-seven comments were submitted by various individuals and groups before the end of the thirty day comment period. Based on these, EPA has revised portions of the document to more clearly convey the intent of the section 301(h) regulations.

The purposes of the Technical Support Document are: (1) to provide further explanation and guidance on certain requirements of the regulations, and (2) to provide a rationale for those requirements. It is divided into sections that address (1) calculation of the zone of initial dilution, (2) physical oceanographic and water quality assessment procedures, (3) water quality and biological monitoring requirements, and (4) biological assessments. A final section discusses requirements of a monitoring program which must be implemented by applicants receiving modified permits.

The Technical Support Document is not published as part of these final regulations. All applicants, State agencies, and EPA regional offices have received copies of the March 21st version and will be provided with copies of the document as it was revised following the comment period. Other persons may obtain copies from:

301(h) Task Force, Office of Water Program Operations (WH–546), Environmental Protection Agency, 401 M St. SW., Washington, D.C. 20460, 202/426–8973.

V. Section-By-Section Anaylsis

Section 125.56 Scope and purpose (formerly § 233.2). This section has been changed to reflect the fact that this Part no longer contains the procedural regulations which will govern Agency action on applications for modified permits under section 301(h). These procedural regulations, which are based on the "initial licensing" [1] provisions of the Administrative Procedure Act ("APA"), 5 U.S.C. 551 *et seq.*, have been incorporated into the Agency's revised NPDES regulations at 40 CFR Part 124,

[1] The APA defines "licensing", in part, as any "agency process respecting the . . . limitation, amendment, modification, or conditioning of a license." 5 U.S.C. 551(9). A license includes a permit. 5 U.S.C. 551(8). Section 301(h) proceedings are initial licensing because they involve the first NPDES permits to be issued under section 301(h).

Subpart H (44 FR 32854). The decision to incorporate these regulations into the NPDES regulations was based on the conclusion that placing all procedures for decision-making regarding NPDES permits in one Part provides for greater clarity and consistency.

Section 125.56 also points out that permits received under this Subpart must contain special conditions and terms and conditions required under 40 CFR Part 122. These terms and conditions are discussed in this section-by-section analysis under section 125.67.

Section 125.57 Law authorizing issuance of a section 301(h) Modified permit (formerly § 233.3). This section is self-explanatory in that it simply restates the applicable legal authority under which these regulations are promulgated.

Section 125.58 Definitions (formerly § 233.1). Two major changes have been made in this section. First, all definitions which duplicate those contained in EPA's revised NPDES permit regulations (40 CFR 122.3) have been deleted. Second, as a result of public comment on this section and modifications which have been made in other parts of the regulations, a number of the remaining definitions have been clarified and several new definitions have been added.

EPA received numerous comments on its proposed definition of "balanced, indigenous population." Both the proposed and final regulations require applicants to demonstrate the existence of a balanced, indigenous population (BIP) of shellfish, fish and wildlife immediately beyond the boundary of the zone of initial dilution (ZID) of an outfall discharge. This demonstration is to be based on evidence that the composition, structure and function of the marine communities beyond the boundary of the zone of initial dilution and within the area potentially affected by the outfall discharge are comparable to (1) those of healthy marine communities existing in comparable but unpolluted waters, or (2) those of communities reasonably expected to become re-established in the polluted area from unpolluted waters if the source of pollution were removed. The second part of the definition which concerns re-establishment of communities is necessary because of its pertinence to proposed improved discharges and to discharges into waters that are stressed by sources of pollution other than the applicants discharge. In the final regulations, the definition of balanced, indigenous population has been adjusted for clarification, but the content, which is discussed further in § 125.61(c), remains essentially the same.

The new definitions which have been added to this section include "current discharge," "improved discharge," "preliminary application," "final application," "ocean," "primary treatment," and "stressed waters."

The definitions of "current" and "improved discharge" have been added as a result of EPA's revising its proposed construction of the statutory term "existing discharge." The definitions of "preliminary" and "final application" have been added as a result of the Agency's decision that preliminary, rather than final applications must have been filed by September 24, 1978. The term "ocean" has been defined to clarify an issue raised during the comment period, which is discussed below in this section. The definition of "stressed waters" was necessitated by the Agency's re-evaluation of this concept along with the test for a balanced, indigenous population; a discussion of this term is included in the Technical Support Document.

In response to comments from the public and EPA's regional offices, EPA has also provided a definition of the term "publicly owned treatment works." Consistent with the legislative history of the Act and other EPA regulations defining "POTW," it does not encompass Federal facilities. (See, *e.g.*, EPA's General Pretreatment Regulations, 40 CFR 403.3(m), (43 FR 27733, 27747, June 26, 1978); EPA's Wastewater Treatment Pond Regulations, 40 CFR 133.103 (43 FR 54464, October 7, 1977) (Preamble)). Accordingly, such facilities will not be eligible for section 301(h) modifications.

A number of commenters suggested that EPA should delineate the types of "saline estuarine waters" into which a POTW must discharge in order to be eligible for a section 301(h) modification. The legislative history of the Act indicates that strong currents and tidal movement, high flushing efficiency and thorough water circulation which insure adequate dispersion and seaward transport of wastewater are the key phenomena in defining applicable estuarine waters (*1977 Leg. Hist. 259*). Therefore, the definition of saline estuarine waters has been expanded to require a free connection with the ocean, net seaward exchange with ocean waters (*i.e.*, freshwater inflow) and salinities comparable to those of the ocean. This definition reflects the rapid dynamic exchange of wastewater with ocean waters which Congress indicated should be found in estuarine waters in order for an applicant to be considered for a section 301(h) modification. Generally, the only waters which can meet these requirements are located near the mouth of estuaries and have cross-sectional, annual mean salinity greater than or equal to 80% of ocean salinity (approximately 25 parts per thousand).

During the comment period, it came to EPA's attention that a number of open coastal waters inside the baseline of the territorial seas may have the characteristics of well-flushed open ocean waters and may therefore be appropriate receiving waters for a less-than-secondary discharge under section 301(h). Under the statutory definition of "territorial seas" (section 502(8) of the Act), dischargers into these areas would not be eligible for a modification for a "discharge into deep waters of the territorial seas." They also would not be eligible for a modification under the Agency's proposed definition of "saline estuarine waters" because that definition encompassed only "semi-enclosed" coastal waters. Because it may be possible to meet the requirements of section 301(h) in these waters, and because the legislative history of the Act indicates that Congress intended dischargers into these areas to be considered for modified permits, the regulations have been revised to make it clear that such dischargers will be eligible for a modification upon a showing that they can meet the requirements of this subpart.

Rather than revising its definition of "saline estuarine waters" to include open coastal waters inside the baseline, EPA has incorporated them in a new definition, "ocean waters". This term also includes the deep waters of the territorial seas and the waters of the contiguous zone, to emphasize that these waters have hydrological, ecological and geological characteristics much more akin ot ocean than estuarine waters (primarily because of the absence of freshwater flow). This definition should not be confused with the definition of "ocean" in section 502(1) of the Act.

In response to public comment that EPA had not identified the "shellfish, fish and wildlife" for which a balanced, indigenous population must be shown to exist under section 301(h)(2), EPA has added a definition of this term in these final regulations.

One commenter suggested that EPA's proposed definition of "toxic pollutant" conflicted with the definition of "toxic pollutant" in section 502(13) of the Act. While section 502(13) provides a generic definition of "toxic pollutant", section

307(a) of the Act clearly states that the specific "list of toxic pollutants or combinations of pollutants subject to this Act shall consist of those toxic pollutants listed in Table 1 of Committee Print Numbered 95–30 of the Committee on Public Works and Transportation of the House of Representatives." That list was reprinted to identify the "toxic pollutants" under § 233.1(w) of the proposed regulations, and is expressly incorporated by reference in the final version of § 125.57 promulgated today.

Because there were a few pesticides identified in proposed § 233.1(w) which were not included in Table 1 of Committee Print Number 95–30, those substances have been defined in these final regulations as "pesticides". See § 125.57(j). Other sections of the regulations have been changed to reflect this distinction.

The same commenter also suggested that the Agency's definition of "pollutant" as BOD, suspended solids and pH, was inconsistent with the definition of the term in section 502(6) of the Act. Since some commenters apparently felt that the use of the general term "pollutant" caused some confusion in the regulations, EPA is using the term "traditional pollutant" to refer to BOD, suspended solids, and pH both in the definition section and in other sections of the regulations. This should not be confused with the definition of "conventional pollutant" as used in section 301(b)(2)(E), 304(b)(4), or 304(a)(4) of the Act.

Several commenters noted that there were some inconsistencies in both the regulations and the preamble concerning which State water quality standards EPA would consider applicable to a particular discharger for purposes of demonstrating compliance with proposed sections 233.12 through 233.15 and section 233.20. The definition of "water quality standards" has been revised to clarify that applicants will be required to show that they presently meet (or will meet on the basis of an improved outfall or treatment system) those State water quality standards in effect as of (*3 months after date of promulgation*). However, if during the section 301(h) decisionmaking period, EPA approves either State water quality standards for additional pollutants or more stringent State water quality standards, an applicant will be required to supplement its original application to show that it meets or will meet such new or revised standards.

Finally, one commenter suggested that the term "zone of initial dilution" was unnecessarily broad and should be revised to parallel "initial dilution" as calculated in the application form. EPA agrees that an applicant's zone of initial dilution could be inconsistent with the initial dilution achieved at any one time. To remedy this problem, the term "zone of initial dilution" has been redefined as "the region surrounding or adjacent to the end of the outfall pipe or diffuser parts as calculated according to instructions in the application format."

Section 125.59. General. This new section has been added to the regulations in order to consolidate in a single place the basic criteria which must be met by a section 301(h) applicant. A few of the criteria contained in this section appeared in the proposed regulations in other sections, or are required by Federal statutes other than the Clean Water Act. Others were suggested by comments or legislative history. Still others have been added as a result of EPA's revision of its proposed definition of "existing discharge."

In addition to meeting these threshold criteria, a section 301(h) applicant will, of course, be required to meet all other applicable requirements of the Act and 40 CFR 125.21. Thus no modification will be issued under this Subpart where, for example, the discharge for which a modification is requested would violate State water quality or treatment standards or other State requirements within the meaning of section 301(b)(1)(C), or where the applicant's discharge or outfall would impair anchorage and navigation under section 402(b)(6).

Paragraph (a). This new paragraph has been added as a result of EPA's revision of its proposed definition of the term "existing discharge". It provides that a section 301(h) permit application may be based on a current or an *improved* discharge into ocean or saline estuarine waters. A POTW applying on the basis of an improved discharge must still meet the threshold criteria, including having a discharge into marine waters as of December 27, 1977.

POTWs applying for section 301(h) permits should carefully consider whether or not to grant revisions to categorical pretreatment standards under section 307(b) of the Act and 40 CFR 403.7 since such revisions may significantly contribute to adverse impacts on the marine environment which would disqualify such POTWs from receiving a section 301(h) permit.

Paragraph (b). These provisions delineate grounds for denial of a modified permit under section 301(h). These grounds are referred to as "threshold criteria" in that an applicant should determine whether it complies with these "criteria" before undertaking the more costly process of compiling the information necessary for a complete application. The paragraph incorporates a number of provisions from the proposed regulations, along with several new provisions which have been added in response to comments on the proposal.

Subparagraph (b)(1). This provision restates the general premise of these regulations, that is, that a modified permit under section 301(h) may not be issued unless the applicant shows in its application that it meets all the requirements of these regulations.

Subparagraph (b)(2). This provision incorporates the requirements of EPA's National Pollutant Discharge Elimination System (NPDES) program found in 40 CFR Part 122.

Subparagraph (b)(3). This provision originally appeared in § 233.11(b)(2) of EPA's proposed section 301(h) regulations and remains essentially unchanged in these final regulations. The basis for this provision has been discussed above.

Subparagraph (b)(4). The requirement that section 301(h) applicants demonstrate that they will provide at least primary treatment of their wastewater is a new provision which, while suggested in the preamble to EPA's proposed regulations (43 FR 17485), was not actually included in the proposed regulations themselves. To make it clear that no modifications will be granted for the discharge of untreated, raw sewage, EPA has added this provision to the final regulations.

This requirement is based on a number of grounds. First, the legislative history provides clear evidence that section 301(h) was intended to allow municipal marine dischargers to provide less-than-secondary treatment, but was not intended to allow discharges with no treatment. Testimony during Congressional hearings on various proposed secondary treatment modification amendments further supports this position, since no POTW or other witness urged that a modification from secondary treatment requirements should be issued for a less-than-primary discharge.

Secondly, EPA believes, that primary treatment which removes up to 40% of suspended solids, plus floatables and oil and grease, is the absolute minimum level of municipal wastewater treatment which will adequately protect water quality.

Finally, the State of California, in response to extensive studies conducted in the waters off the coast of California on the effect of discharging municipal wastewater into marine waters, requires

that municipal ocean dischargers remove 75% of suspended solids, as well as floatables and oil and grease. 1978 Water Quality Control Plan for Ocean Waters of California, Chapters II.B., III.B., and IV (Table A). This would require POTWs to provide *more* than primary treatment. While the Agency has not required, as a minimum, either advanced primary treatment *(i.e.,* primary with chemical or polymer addition) or a combination of secondary and primary treatment, EPA like the State of California, considers that primary treatment alone, with its minimal suspended solids removal—even with a source control program—is environmentally inadequate for most municipal marine dischargers. Thus, a section 301(h) applicant seeking a modification based on only primary treatment will bear a particularly heavy burden in demonstrating to EPA that such treatment is sufficient to protect marine waters.

Subparagraph (b)(5). One commenter on EPA's proposed regulations suggested that the regulations be revised to clarify that a sewage sludge discharge would be eligible for a permit. EPA agrees that some clarification concerning the status of sewage sludge under section 301(h) is desirable; however, contrary to the commenter's suggestion, the appropriate clarification, stated in subparagraph (b)(5) of this section, is that EPA will not issue modified permits for the discharge of sewage sludge.

The commenter's suggestion that section 301(h) permits may be issued for the discharge of sewage sludge apparently stems from the June 1977 holding in *Pacific Legal Foundation* v. *Quarles,* 440 F. Supp. 316 (C.D. Cal. 1977), that because sewage sludge could not meet EPA secondary treatment requirements under section 301(b)(1)(B), it could not be discharged into ocean waters. Apparently, the commenter believes that Congress, in amending the Act in December 1977 to allow POTWs to seek to modify secondary treatment requirements for municipal wastewater, also intended to lift its 1972 prohibition on the discharge of sewage sludge by POTWs, by allowing the discharge of any sewage sludge which would meet the requirements of section 301(h).

The legislative history of the Act emphatically negates such an intent, for the following reasons:

(1) Section 301(h) was enacted to relieve ocean dischargers of the cost of building and maintaining land and energy intensive secondary wastewater treatment facilities where they could demonstrate that a less-than-secondary discharge would have no adverse impact on the marine environment. There is no evidence in the legislative history that the provision was enacted to reduce sludge handling or disposal costs for marine dischargers by permitting them to discharge sewage sludge.

(2) As discussed above, Congress under section 301, has prohibited the discharge of untreated sewage. Since sewage sludge is, basically, the material which is removed from raw sewage during the treatment process, allowing a POTW to discharge both treated effluent and sewage sludge, or sewage sludge alone, would be equivalent to allowing it to discharge untreated sewage.

(3) The National Commission on Water Quality Report to Congress, which was the basis for many of the 1977 Amendments to the Act, including section 301(h), speaks solely of municipal "wastewaters", and not municipal sludges, in recommending a secondary treatment modification for coastal dischargers. Similarly, references in the legislative history of section 301(h) to treatment, primary treatment, and the need for toxic pollutant removal, indicate that, in enacting section 301(h), Congress was concerned solely about municipal wastewater, not municipal sludge.

(4) A December 7, 1977 letter from EPA's Assistant Administrator for Water and Waste Management discussing the secondary treatment modification, reprinted in the Congressional Record of the floor debate on the conference bill on the 1977 Amendments, expressly sets forth EPA's understanding that the modification was applicable only to "sewage effluent", not sludge. This interpretation was neither rebutted nor contradicted during Congressional debate.

(5) During various Congressional hearings on secondary treatment modifications for marine dischargers, no witness testified that the 1972 Act should be amended to permit the discharge of sewage sludge, as opposed to less-than-secondary effluent.

(6) Approximately one month before the enactment of section 301(h), Congress amended the Marine Protection, Research and Sanctuaries Act of 1972, 33 U.S.C. 1301 *et seq.,* to prohibit the ocean dumping of sewage sludge which cannot meet EPA ocean dumping criteria—*i.e.,* sewage sludge which contains toxic pollutants, and, as a practical matter, *all* sewage sludge which is currently being dumped in the ocean—after December 31, 1981. It would be incongruous for Congress to ban dumping of such sewage sludge at dumpsites anywhere from twelve to more than one hundred miles from shore, while, at the same time, to allow it to be discharged through outfalls in nearshore coastal waters.

In light of these considerations, the Agency is unable to attribute to Congress, in enacting section 301(h), an intent to reverse its 1972 prohibition on the discharge of sewage sludge by POTWs.

EPA also notes that the marine environment has been significantly degraded in the two EPA sites currently used for the ocean dumping of sewage sludge. The State of California, which, as noted above, has studied extensively the impact of municipal discharges on coastal waters, not only requires 75% removal of solids from such discharges (which would have the practical effect of prohibiting the discharge of sewage sludge), but also expressly bans sewage sludge discharges into ocean waters. 1979 Water Quality Control Plan for Ocean Waters of California Chapter IV (Table A). For these additional reasons, EPA believes that a blanket prohibition against issuing section 301(h) permits for sewage sludge discharges is appropriate.

Subparagraph (b)(6). This new provision has been added to the regulations to clarify the status of State secondary treatment laws, regulations and ordinances under section 301(h). The Act and its legislative history make it clear that while Congress has authorized EPA to modify Federal secondary treatment requirements under section 301(h) of the Act, it has not authorized EPA to modify State secondary treatment requirements. Because a POTW must meet such requirements under section 301(b)(1)(C) of the Act, EPA will not issue a modified permit under this Subpart where a State has adopted a secondary treatment requirement (or more stringent effluent limitations as well as a treatment standard), unless such requirement is less stringent than existing Federal requirements.

Subparagraph (b)(7). This is, essentially, a new provision which prohibits the issuance of a permit in those instances where the applicant's discharge would violate the requirements of a Federal statute other than the Clean Water Act or an Executive Order. The list of potentially applicable statutes included in these regulations is intended to be illustrative, not exhaustive.

Applicants will be required to demonstrate in their section 301(h) applications that, as a minimum, their discharge will comply with the specific

statutes listed. Applicants in States with approved coastal zone management programs should consult Office of Coastal Zone Management Federal consistency regulations (43 FR 10517, March 13, 1978), for information on the proper form of certification and procedures for submission of the certification to the State or its designated coastal zone management agency.

For a discharge which occurs within a designated marine sanctuary, applicants should consult the regulations governing that sanctuary to determine whether the discharge is likely to be consistent with the procedures for certification. Regulations governing the Monitor and Key Largo Coral Reef Marine Sanctuaries are found in 15 CFR 924 and 929, respectively.

The Application Format, which is discussed in Section VI of this preamble, also requires that applicants provide information pertaining to requirements of the Endangered Species Act of 1973, as amended, 16 USC 1531 *et seq.* This information is necessary to assist EPA in determining whether the discharge of effluent pursuant to a modified permit may affect a threatened or endangered species or modify the critical habitat of such species.

Subparagraph (b)(8). This provision emphasizes the basic requirement that a section 301(h) applicant must have submitted a preliminary application and must submit a final application which demonstrates, on its face, that the applicant is entitled to a section 301(h) modified permit. The preliminary and final application requirements are delineated in detail in paragraphs (c) and (d) of this section.

Subparagraph (b)(9). In response to the question whether dischargers which are currently achieving effluent limitations based on secondary treatment may apply for a section 301(h) permit, this provision makes clear that such dischargers are ineligible for modified permits. Extensive discussion in the legislative history emphasizes that section 301(h) is a narrowly drafted provision which allows certain dischargers who meet the statutory criteria to obtain permits which modify the requirements of secondary treatment. There is no indication that Congress intended to enable dischargers who have attained effluent limitations based on secondary treatment to relax their efforts, in clear contradiction of the goals and policies stated in section 101 of the Act.

Former Section 233.11. Existing discharge into marine waters. This section has been deleted from the final regulation, primarily for organizational reasons. In reviewing comments on its proposed criteria under paragraph (a)(2)(ii) of this section, EPA determined that they were largely duplicative of requirements contained in proposed § 233.14(c) (now § 125.61), and therefore unnecessary. As discussed above, the requirements of proposed paragraph (b) have been modified in response to public comment and shifted to new § 125.59. Finally, the "stressed waters" concept of paragraph (a)(2)(ii) has been incorporated in § 125.61. The reason for this shift and the changes made in this concept in response to public comment are discussed in the section-by-section analysis of § 125.61 below.

Section 125.60. Existence and compliance with applicable water quality standards. (formerly § 233.12) Section 301(h)(1) requires, as a prerequisite to EPA granting any modified permit, that the applicant demonstrate that there is a water quality standard for the pollutant for which the modification is requested. This section is meant to assure that the pollutant for which a modification is granted is covered by a specific State water quality standard which adequately regulates such pollutant.

EPA's April 25, 1978, proposed regulations provided that applicants must demonstrate that their less-than-secondary discharge would comply with a State water quality standard for BOD, suspended solids (or their surrogates) and pH. The Agency also proposed to extend State water quality standards for the territorial seas to the contiguous zone for purposes of determining compliance with section 301(h)(1). The latter proposal was designed to overcome an apparent Congressional oversight; under section 303, State water quality standards may be adopted or promulgated only for interior waters and the territorial seas.

Public comment on this section reflected a general misunderstanding of both the statutory requirement and the Agency's proposed regulation. Several commenters, for example, stated it was inappropriate to evaluate modification requests based on BOD, suspended solids and pH, and that, instead, the proper basis for assessment was the impact of the discharge on marine biota. The statute requires both. Analyses of physical and biological factors in revised § 125.62 will be used as the basis for further evaluation of compliance with water quality standards.

Another commenter suggested that section 301(h) applicants should not be required to meet either State water quality standards for BOD, suspended solids (or their surrogates) and pH or any other State water quality standards. EPA disagrees. Although section 301(h) modifies the requirements of section 301(b)(1)(B) of the Act, it does not authorize any relaxation of section 301(b)(1)(C). Section 301(b)(1)(C) requires compliance with any limitation more stringent than that required by section 301(b)(1) (A) and (B), including limitations based on State water quality standards.

Another commenter suggested that only those State water quality standards which assure compliance with section 301(h)(2) should be considered applicable State water quality standards within the meaning of section 301(h)(1). The statute clearly imposes no such requirement. A more reasonable conclusion is that section 301(h)(2) has been included in this provision to assure that public water supplies, recreational interests and the marine environment would be adequately protected in cases where State water quality standards may not adequately protect (or were not adopted to protect) such water uses. Conversely, if States have adopted water quality standards or other water pollution control requirements which are more stringent than those required under section 301(h)(2), dischargers receiving modified permits are still subject to those standards and requirements.

The same commenter claimed that EPA failed to publish information identifying marine water quality standards, as required under section 304(a)(6). In fact, prior to proposal of the section 301(h) regulations, EPA published a notice of availability of its State-by-State list of marine water quality standards under section 304(a)(6) (43 FR 13914, April 3, 1978).

The same commenter also charged that EPA had exceeded its statutory authority by allowing contiguous zone dischargers to demonstrate compliance with section 301(h)(1) by showing that they could meet a State water quality standard for discharges into the territorial seas. He urged that only section 403(c) ocean discharge guidelines could be used to demonstrate compliance with the requirements of section 301(h)(1) in the contiguous zone, where State water quality standards do not apply.

The term "water quality standard" is a term of art in the Act, referring only to *State* water quality standards adopted or promulgated under section 303. It does not refer to other water quality based pollution control requirements, such as section 302 water quality related

effluent limitations, section 403(c) ocean discharge guidelines, or section 404(b) dredged material disposal guidelines. Furthermore, the legislative history of the Act makes it clear that, Congress, in using this statutory term of art in section 301(h), expressly intended to refer only to State water quality standards. H.R. Rep. 95–830, 95th Cong. 1st Sess. at 74, 96 (1977); S. Rep. 95–370, 95th Cong., 1st Sess. 45, 72 (1977). As noted in the April 25, 1978, regulatory preamble (43 FR 17488), EPA's proposed extension of State water quality standards to the contiguous zone for purposes of section 301(h)(1) was designed to resolve an internal inconsistency in the statute which would otherwise have prevented any contiguous zone discharger from qualifying for a section 301(h) modification. This construction is wholly consistent with the intent and purpose of the Act.

One commenter urged that a new paragraph be added to this section requiring applicants to demonstrate the existence of and compliance with a State water quality standard for coliform bacteria. Since fecal coliform bacteria is not a parameter used to define secondary treatment (41 FR 30785, July 26, 1976), such a requirement would not be within the scope of section 301(h)(1). However, if an applicable State water quality standard for coliform bacteria exists, section 301(h) permittees must meet any such standard; EPA issuance of a modified permit does not change the water quality standards requirements.

Section 125.61. Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities (formerly §§ 233.13 through 233.15.) This section consolidates in a single section the physical, biological, public water supply, recreational, and stressed waters criteria which were formerly contained in §§ 233.13 through 233.15 and 233.11(a)(iv) of EPA's proposed regulations. This organizational revision is intended to clarify the interrelationships between these requirements and eliminate unnecessary duplication of criteria.

Another organizational change has been made in these sections to alleviate apparent confusion during the comment period concerning the difference between regulatory criteria and application requirements, respectively. To clarify the distinction between these two parts of the regulation, the application requirements have been shifted to the application format.

A. *Physical Assessment.* In its April 25, 1978 regulations, EPA proposed to require applicants for a section 301(h) permit to demonstrate that they met the following physical oceanographic criteria:

(i) Initial dilution is of the order achieved by accepted designs of multiport ocean outfalls at 200 or more feet and is sufficient to meet applicable water quality standards necessary for the protection of marine communities in the environment affected by the discharge under the most demanding critical conditions which are likely to exist during the life of any modified permit issued under this part;

(ii) Dilution water is continuously supplied in an amount equal to the wastewater flow times the dilution water (sic);

(iii) Following initial dilution, the partially diluted wastewater is rapidly and permanently carried away from the outfall, nearshore water use areas, and areas of particular biological sensitivity; and

(iv) Water quality at the edge of the zone of initial dilution will protect fish, shellfish, and wildlife.

Inclusion of these physical criteria was intended to reflect Congress' intent that section 301(h) modifications be granted only for those marine waters which, because of their unique hydrological and geological characteristics, provide a high degree of initial dilution, dispersion and transport of wastewater and other physical oceanographic conditions which are conducive to the attainment of water quality which assures protection of public water supplies, recreational activities, and a balanced, indigenous population of shellfish, fish and wildlife. Thus, while compliance with the physical criteria contained in the proposed regulation would not, in and of itself, guarantee protection of valuable water uses and marine life, it would indicate the presence of a water quality regime which is likely to be compatible with the attainment or maintenance of those water quality objectives. For example, if partially diluted wastewater was not carried away from the outfall site, the shoreline and sensitive biological areas, or if initial dilution was insufficient to reduce pollutant concentrations below water quality standards, indigenous populations could well suffer adverse effects.

In EPA's proposed regulations, compliance with the physical criteria was to be based on an assessment of the physical oceanographic conditions in the vicinity of the applicant's outfall and the physical impact of its discharge. This physical assessment requirement served two other major functions in the proposed regulations. First, it identified the geographical area where water quality parameters and biological impacts should be measured (the edge of the "zone of initial dilution") under proposed § 233.14. Second, it provided an analysis of wastewater dispersion and transport which could be used to determine areas of potential public water supply, recreational, and biological impacts under proposed § 233.13.

The physical criteria and physical assessment contained in the regulations promulgated today are essentially unchanged from those in the proposed regulation. EPA has made certain minor changes in the physical criteria and assessment in response to public comment.

1. *Well-designed outfall.* In the proposed regulation, EPA required applicants to demonstrate that the initial dilution of their discharge was on the order of that achieved by accepted designs of multi-port ocean outfalls at 200 feet or more. The purpose of this provision was not to establish a minimum depth or a minimum dilution requirement. Rather, it was intended to require applicants to demonstrate, like the California communities which testified in support of section 301(h), that they had a well-designed outfall and diffuser system which provided initial dilution, dispersion and transport of wastewater appropriate to their discharge volume and site conditions. Because the proposed language apparently created confusion, it has been revised in these final regulations to better convey EPA's intent.

The requirement that an applicant have a "multi-port diffuser has been deleted because in some situations a single-port diffuser may be appropriate. In most waters, however, multiple port diffusers would be necessary to provide appropriate dilution, dispersion and transport of wastewater.

2. *Initial dilution.* The proposed regulation required that applicants demonstrate that their initial dilution, as calculated in the application format, would be sufficient to meet all applicable State water quality standards under the most demanding critical conditions likely to occur during the life of any modified permit. This provision was meant to require each applicant to demonstrate that, in addition to meeting State water quality standards under conditions dictated by the State, it would also meet applicable standards using a conservative dilution model and under assumed worst case conditions. This demonstration will provide additional assurance that physical

conditions at the outfall site are compatible with the attainment and maintenance of recreational water uses, public water supplies, and a balanced, indigenous population.

a. *Critical conditions.* In its proposed regulations, EPA identified the following three factors of principal importance in calculating initial dilution: ambient current, waste flow rate and ambient density stratification. The proposed regulation required applicants to predict initial dilution using a "worst case" assumption for each of these factors — *i.e.*, zero current, maximum waste flow, and highest stratification.

Several commenters objected to the requirement that worst case or extreme critical conditions be used in making initial dilution calculations. One commenter suggested that normal or average conditions be used, as more representative of the day-to-day initial dilution actually achieved. Still other commenters contended that "critical conditions" for each of the three factors were not adequately defined in the proposed regulation.

EPA does not agree that normal or average conditions should be used to calculate initial dilution. Initial dilution is a process of rapid turbulent mixing between wastewater discharged at depth and ambient seawater, which results from the density differential between fresh and saline waters. Because the initial dilution actually achieved at a discharge site is highly variable (depending on discharge characteristics and environmental conditions), measuring compliance with water quality standards on the basis of average initial dilution would mean that those standards might be exceeded 50% of the time. Furthermore, this formulation would be inconsistent with Congress' intent that water uses and marine life be protected under "assumed worst conditions."

EPA does agree, however, that the proposed regulations did not fully define "critical conditions" in a statistical sense, and accordingly has provided a more precise definition of that term in the regulations promulgated today. The final regulations permit the applicant, in calculating both the dilution factor and the zone of initial dilution, to use the worst ten percentile on a representative cumulative frequency distribution of data describing densities and currents. Applicants should not use this value, however, if they are aware of any scientific evidence which indicates that more conservative values should be used to protect designated water uses or a balanced, indigenous population. Nor should this value be used if the density and current data have not been obtained over a sufficient period of time to be representative of conditions which may occur during the life of the permit.

The use of ten percentile values will still result in a conservative prediction of initial dilution—*i.e.*, a value which is exceeded most of the time. Because the regulations require initial dilution values to be based on several factors, each taken at the worst ten percentile, the probability that the predicted initial dilution will be exceeded is likely to be greater than 90%. For this reason, an initial dilution value computed in the manner required by these regulations will provide EPA with a reasonable indication of whether a water quality regime is likely to be compatible with the protection of marine life, recreational interests and public water supplies even during "worst case" environmental conditions. The latter include periods of high wastewater flow, low background water quality, exceptional biological activity, low flushing and extreme high and low density stratification. As a result of comments received, a number of changes have been made with respect to the critical conditions calculation required by these final regulations, including:

i. *Zero current.* EPA's proposed definition of critical conditions required applicants to calculate initial dilution assuming zero current. Several commenters criticized this requirement as too restrictive; others argued that it ignored site-specific conditions, and was therefore meaningless.

EPA has eliminated the zero current assumption in revising the definition of critical conditions. Since currents do affect the initial dilution achieved by a discharge, the Agency believes it is reasonable to allow a modest amount of current (the lowest ten percentile) in predicting initial dilution.

The effect of incorporating currents at the lowest ten percentile on calculations of initial dilution will generally be fairly small. For a site with persistent, strong current, for example, allowing currents at the worst ten percentile could double the initial dilution values calculated with zero current; in cases where the worst ten percentile is in fact zero, it obviously will have no effect. Most values will lie somewhere between these two extremes. As noted above, when coupled with other environmental conditions at the worst ten percentile, this will still result in a conservative prediction of initial dilution.

ii. *Wastewater flow.* The proposed regulations required applicants to calculate initial dilution based on a range of wastewater flows, including minimum, average and maximum flow. This requirement was included to provide an estimate of the range of initial dilution values which might result from variations in flow rates.

In response to comment, EPA has re-examined this proposed requirement and has decided that since the *maximum* flow rate is the most critical flow condition for calculating initial dilution, initial dilution values based on average or minimum flows are not essential to an Agency determination of whether an applicant meets the physical criteria in this section. Accordingly, the final regulation requires that applicants calculate initial dilution using only the maximum flows representative of the worst two to three hours per day.

iii. *Vertical ambient density stratification.* A number of commenters requested that EPA more clearly define the vertical ambient density stratification conditions which will be considered critical for purposes of calculating initial dilution. In response to these comments, EPA has revised the final regulations to clarify that the most adverse stratification is the vertical density distribution which produces the largest difference in density over the height-of-rise of the wastewater plume.

For periods when the vertical density gradient is non-linear, the worst-case stratification may be difficult to estimate. Therefore, applicants should evaluate a substantial amount of data from both the discharge site and the nearby region before selecting a vertical density profile in predicting initial dilution.

(b) *Model for calculating initial dilution.* In its proposed regulations, EPA recommended that a specific mathematical plume model be used to calculate initial dilution. A number of commenters asked whether EPA would permit the use of other models and, if so, how the modeling results would be evaluated in the physical assessment.

There is no single model or set of models which is universally acknowledged as appropriate for making the computations required by these regulations. In recommending the use of a particular model in its proposed regulation, EPA was not suggesting that the Agency would not consider results obtained from using other methods. Rather EPA's intentions were (1) to provide applicants with the assurance that a particular method for computing initial dilution had Agency approval; (2) to establish a standard reference by which other models could be evaluated; and (3) to simplify and expedite EPA's application review process and

decision-making, since the Agency would not need to evaluate plume models, but only the results of those models.

In response to commenters' inquiries about other approved methods for calculating initial dilution, EPA in the section 301(h) Technical Support Document, has recommended two additional plume models. As noted above, applicants are not required to use those methods; if they use another method, however, they must describe that method in detail and demonstrate that the results are in general agreement with those which would be obtained through use of EPA's recommended methods.

(c) *Minimum initial dilution.* A number of commenters suggested that EPA establish a minimum dilution ratio to be met by all applicants (*e.g.* 50:1 or 100:1) in order to reduce what they characterized as the vagueness of this section.

The legislative history of section 301(h) indicates that Congress intended applicants to demonstrate that they would achieve "rapid dispersion (e.g., 45 seconds) of wastewater and wastewater constituents" (*1977 Leg. Hist. at 259).* In its April 25, 1978 regulations, EPA proposed that applicants fulfill this requirement by a showing that they could meet water quality standards after initial dilution—i.e., that wastewater dilution would be sufficiently rapid during the first minute or so of discharge to protect designated water uses.

Although EPA has taken initial dilution into account in developing its section 301(h) regulations, it has been unable to establish—either on the basis of legislative history or scientific considerations—a minimum dilution ratio which would allow all dischargers to meet State water quality standards or otherwise comply with sections 301(h)(2) and 101(a)(2) of the Act. For these reasons, EPA has not included a minimum dilution requirement in these final regulations.

d. *Zone of initial dilution.* In the proposed regulations, EPA required applicants to calculate, in the physical assessment section of the application format, the size, shape and location of the region encompassing all critical initial dilution configurations. This region, which EPA termed the "zone of initial dilution" (ZID), established a boundary beyond which State water quality standards and a balanced, indigenous population must be maintained. EPA received a number of comments on both the concept and method of calculation of the ZID.

One commenter expressed concerns that the calculation of the ZID does not take into account biological conditions within the ZID. EPA agrees that the methods it has proposed for calculating the ZID are strictly based upon physical characteristics of the discharge plume. Factors which affect the biological integrity of the immediate discharge site are not considered in ZID computation (except where State regulations require it).

In order to clarify the question of biological considerations, EPA has added criteria to the biological assessment section of the application format relating to (1) protection of a balanced, indigenous population and migratory pathways, and (2) the absence of ecologically significant bioaccumulation of toxic pollutants within the ZID of discharges into saline estuarine waters. Additional explanation has been provided in the case of ocean discharges, to point out that ecological alterations which might occur within the ZID of such discharges must not constitute major impacts affecting the balanced, indigenous population, nor may such impacts extend beyond the ZID. Therefore, applicants should be aware that while size and shape are important factors in the physical assessment of the ZID, biological conditions occurring within or beyond the ZID will be decisive in determining whether or not an application is approved.

In response to another commenter who suggested that any proposed ZID should conform to State requirements, the final regulations now require that the proposed ZID be no larger than that allowed by State regulations on mixing zones or initial dilution zones.

A number of commenters also suggested that EPA establish a maximum size for the zone of initial dilution. As noted above, the zone of initial dilution can only be calculated on a case-by-case basis, considering site-specific conditions, if it is to be useful to EPA in evaluating section 301(h) applications.

One commenter suggested that unless EPA established a maximum zone of initial dilution, dischargers, in an attempt to maximize the use of a zone of initial dilution in order to assure compliance with water quality standards, would build enormous diffuser systems which would potentially disrupt large areas of the marine environment. As a practical matter, economics, maintenance problems, and physical stability of the outfall will place practical limits on length of both the pipeline and the diffuser system. The requirements discussed in section 2.a.(ii), above, and required by § 125.61 of the regulations should similarly remove any incentive to create an abnormally large outfall and diffuser system simply to maximize the use of a ZID for purposes of these regulations.

In response to public comment, the Agency has clarified how EPA-recommended methods are to be used in calculating the ZID and has added an alternative, simplified method for computing the size and shape of the zone. This latter method will yield a technically sound estimate of the size of the zone of initial dilution which would otherwise be obtained by making the detailed calculations which are set forth in the application format. This alternative will simplify the application requirements for those POTWs which choose not to make the detailed calculations. However, applicants should note that in some cases (e.g., where there are strong, persistent currents), the simplified method may result in a smaller estimated ZID than that which would be arrived at through the detailed calculations. This simplified method sets the width of the ZID as approximately twice the depth of the water plus the width of the diffuser, and the length of the ZID as twice the depth plus the length of the diffuser.

3. *Wastewater/dilution water exchange.* EPA has made two changes in the proposed requirement that dilution water be "continuously supplied in an amount equal to the wastewater flow times the dilution water." First, the term "dilution water" in the proposed regulation should have read "dilution factor." This has been corrected in the final regulation. (See § 125.61(a)(1)(iii)). Second, because it is virtually impossible to demonstrate, as a statistical matter, that dilution water will be "continuously" supplied in the volumes specified, the final regulation has been revised to require applicants to show that the required wastewater/dilution water exchange will be achieved for a very large percentage of time.

4. *Transport and dispersion.* This section has been revised to clarify that applicants must demonstrate that solids, as well as other wastewater constituents, will be transported away from water use and biologically sensitive areas.

Some commenters questioned the level of detail and purpose of the questions in the physical assessment relating to this requirement. In response, EPA has made minor revisions to

provide more flexibility in data requirements.

5. *Protection of fish, shellfish and wildlife.* Because proposed § 233.14(c)(1)(iv) contained requirements which overlapped with those in other sections of the regulations, this section has been deleted from the final regulations.

6. *Other issues.* a. *Minimum depth limitation.* A number of commenters suggested that EPA establish a minimum depth criterion for ocean dischargers to reflect the fact that section 301(h) limits the availability of modified permits to dischargers into "deep" ocean waters (or other waters with hydrological and geological characteristics which are necessary to "allow compliance with sections 301(h)(2) and 101(a)(2)."

There is no minimum depth limitation, short of a very shallow one, which would conclusively preclude the attainment of these statutory objectives in every case. For example, a POTW with a low volume, essentially domestic flow might be able to meet these objectives in fifty feet of swiftly moving, well flushed ocean waters; for a larger discharger, two hundred feet might be required. As a result, EPA has been unable to establish a scientifically defensible minimum depth limitation for inclusion in the final regulations.

One commenter suggested that the term "deep" should be given a significance apart from designating ocean waters in which the requirements of sections 301(h)(2) and 101(a)(2) could be achieved. This commenter apparently believes that Congress had a specific minimum depth limitation in mind when it enacted section 301(h).

The only depth figure which appears in the legislative history of section 301(h) is "two hundred feet", *(see, e.g.,* 1977 Leg. Hist. at 259 and 322), the approximate depth of the outfalls of the California POTWs which testified in support of a modification of secondary treatment requirements for marine dischargers. However, there is no evidence that Congress intended this figure to establish a minimum depth for ocean discharges. Furthermore, such a limitation would automatically preclude all but approximately half a dozen ocean dischargers from even being considered for a modification.

Moreover, any minimum depth requirement which was not related to the objectives of sections 301(h)(2) and 101(a)(2) would lead to absurd results. For example, it would require EPA to deny a modified permit to POTWs which could demonstrate that their discharges would fully protect designated water user and marine life simply because they were not located in the requisite depth of water. POTWs with outfalls located in waters which were a few feet short of the requirement would be barred at the threshold even though, all other factors being equal, the depth differential would have no environmental significance. Some dischargers would have to relocate their outfalls, at substantial expense, even though the additional depth, *per se,* would not afford any additional environmental benefits. It is unlikely that Congress could have intended such results. Furthermore, there is considerable scientific knowledge to suggest that depths greatly in excess of two hundred feet may be unsatisfactory for purposes of sections 301(h)(2) and 101(a)(2), because they exhibit geophysical features which prevent adequate dispersion and transport of wastewater following initial dilution.

b. *Other requirements.* One commenter suggested that EPA (1) identify in its regulations those specific geological or hydrological conditions known to prevent effective wastewater dilution, transport, and dispersion (e.g., sills, fjords) and (2) prohibit modified discharges into waters with these characteristics. EPA has not adopted this approach because the effect of these various conditions—which are discussed in the Technical Support Document—must be determined on a case-by-case basis. Where such characteristics do prevent circulation and flushing adequate to protect designated water uses and marine life, the discharge will be unable to meet the requirements of this section and no modified permit will be granted.

B. *Public Water Supply Impact Assessment.* EPA's proposed regulations also required applicants to demonstrate that their discharge would not adversely affect public water supplies, based on an assessment of the effect of the discharge on desalinization plants with intakes located within a ten mile radius of the applicant's outfall.

Because of the limited applicability of this requirement, it was the subject of very few comments. One commenter did question EPA's use of a ten mile limit for identifying potential impacts on public water supplies. Although EPA believes that, as a general matter, a discharge will have no impact on public water supplies outside this limit, it is possible that under some hydrological or meteorological circumstances, wastewater components could be identified as far as ten miles from the discharge. Accordingly, in the final regulations published today, EPA is requiring applicants to assess the impact of their discharge on public water supplies based on the analysis of actual or projected wastewater transport and dispersion required by the physical assessment.

Except for this modification, and a few other clarifying changes, this section is essentially unchanged from the way it appeared in the proposed regulations.

C. *Biological Assessment.* Section 233.14(d) of EPA's proposed regulations required applicants to demonstrate the existence of a balanced, indigenous population of shellfish, fish, and wildlife, as defined in proposed § 233.1(h), immediately beyond the boundary of the zone of initial dilution. This demonstration was to be made by means of a biological assessment, consisting of a biological impact questionnaire supported by a thorough summary of biological conditions at the applicant's existing outfall site and appropriate control sites.

The showing that less than secondary treatment will not interfere with the attainment or maintenance of a balanced indigenous population is perhaps the most important and most difficult requirement under section 301(h)(2). EPA received extensive comments on this section, especially its definition of balanced, indigenous population, and the biological assessment requirement. In response to comment, the definition of balanced, indigenous population has been clarified; impact criteria have been established for the area within the ZID; and the questionnaire and biological conditions summary have been expanded and clarified. These changes, as well as EPA's responses to other comments, are discussed below.

1. *Definition of "balanced, indigenous population".* In its April 25, 1978 regulations, EPA proposed that an applicant demonstrate the presence of a balanced, indigenous population based on evidence indicating that the structure, composition and function of marine communities near the applicant's outfall were comparable to (1) those of healthy marine communities existing in nearby unpolluted waters; or (2) those of communities reasonably expected to repopulate the polluted area from unpolluted areas if the source of pollution were removed.

The first part of this definition reflected Congress' expectation that the existence or non-existence of a balanced, indigenous population would be demonstrated based on "comparative ecosystems . . . in nearby waters (and) evidence . . . (that) the ecosystems which exist in the areas of these outfalls

are identical to those which live in unpolluted environments" (1977 Leg. Hist. at 448). The second part of the definition incorporated Congress' intent that:

> . . . the interim water quality standards be that condition of aquatic life which existed in the absence of pollution . . . Restoration of aquatic ecosystems which existed prior to the introduction of pollution from man's activities is an important element of the restoration and maintenance of the biological, physical and chemical integrity of receiving waters. *(Id.)*

Although EPA received numerous comments on its proposed definition, none warranted substantive revision of the proposed regulations. Although the definition of balanced, indigenous population has been reworded for purposes of clarity in these final regulations, the content remains the same.

A number of commenters suggested that the balanced, indigenous population test be based on a comparison between the marine populations which would exist in the vicinity of the applicant's modified discharge and a secondary discharge, respectively. The Act clearly does not require such a comparison and the legislative history indicates that Congress did not intend such a comparison. *See e.g.*, 1977 *Leg. Hist.* at 448, 1052.

Other commenters objected to the requirement that the populations at the outfall site be measured against populations existing in an unpolluted environment. As discussed in section F, below, where applicants discharge into waters where adverse biological impacts are caused by sources of pollution other than the applicant's discharge, EPA believes it is appropriate to compare marine communities at the outfall site with those at a reference site under comparable environmental (and pollution conditions), but absent the applicant's discharge, to determine whether the applicant's discharge in any way contributes to the adverse impact. In those situations where the applicant's discharge is the sole source of the impact, however, the legislative history is clear that the applicant must demonstrate that "the ecosystems which exist in the areas of these outfalls are identical to those which live in unpolluted environments."

One commenter urged EPA to establish a deadline by which repopulation or re-establishment of natural communities would have to occur following the improvement of an applicant's discharge. EPA believes that existing data are inadequate to specify a time frame which would be appropriate for all discharges.

Still another commenter suggested that marine ecosystems at the outfall site be compared not to ecosystems which "might have existed since the beginning of time" but to ecosystems of more recent origin. Although no specific time period was suggested, the commenter apparently wanted EPA to date a balanced, indigenous population from some point in time after commencement of an applicant's discharge. As noted above, this would be contrary to Congress' intent that a balanced, indigenous population date from "prior to the introduction of pollution from man's activities."

2. *Impacts within the zone of initial dilution.* Neither section 301(h)(2) nor its legislative history specifies the location at which an applicant must demonstrate the existence of a balanced, indigenous population of marine life. If EPA had required that the demonstration were required to be made at the point of discharge, then it would be unlikely that any discharger could qualify for a modified permit. Therefore, in its April 25, 1978, regulations, EPA proposed to establish an area immediately surrounding the discharge in which some adverse biological impact would be allowable, but beyond which a balanced, indigenous population must be maintained. Because section 301(h) was enacted on the premise that the thorough flushing and dilution of wastewater provided by certain marine waters would allow assimilation of less-than-secondary discharges without adverse biological impact, the area chosen by EPA was the zone of initial dilution, that area of incomplete mixing between effluent and seawater.

A number of commenters criticized EPA for failing to establish any controls on biological impacts within the zone of initial dilution, no matter how severe. EPA agrees that although a certain impact within the zone of initial dilution in the case of ocean discharges is inevitable, it should not be extreme or extend beyond the ZID. For saline estuarine discharges, balanced, indigenous populations and migratory pathways, must be maintained both within and beyond the zone of initial dilution.

In the final regulations promulgated today, therefore, EPA is requiring all applicants to demonstrate that their discharge does not cause major adverse biological impacts within the ZID, particularly impacts which are likely to affect marine life outside the ZID. Examples of unacceptable impacts would include, but are not limited to, the destruction of distinctive habitats of limited distribution (*e.g.*, coral reefs, nursery and spawning grounds, and shellfish, grass and kelp beds); the presence of disease epicenters; and the occurrence of phytoplankton blooms that result in serious oxygen depletion in the water column, causing the death of fish, shellfish or other marine organisms, or resulting in the accumulation of toxins in commercially harvested fish and shellfish.

EPA does not believe that the restrictions applicable to ocean dischargers will be sufficient to adequately protect estuarine communities. Estuaries are semi-enclosed, highly productive ecosystems subject to finite limitations on wastewater exchange and dilution, which serve as spawning and nursery grounds to numerous species of fish and shellfish. Due to their uniqueness estuaries are considered a resource of relatively greater biological significance than open coastal waters. In fact, commenting on EPA's proposed regulations, the National Oceanic and Atmospheric Administration (NOAA) stated that it knew of no coastal estuarine waters where it could confidently predict that a modification of secondary treatment requirements would not cause serious adverse impact.

For these reasons, EPA is requiring estuarine dischargers to demonstrate not only that there will be no extreme impacts within the zone of initial dilution, but also that both the area within the zone of initial dilution and the estuarine system as a whole will be only minimally impacted by their discharge. Three criteria must be met. First, the health, structure and function of the benthic community within the ZID must not differ substantially from that outside the ZID. Second, the ZID must not interfere with migratory pathways. Finally, toxic pollutants and pesticides must not accumulate in either sediments or biota within the ZID at levels which would cause adverse impacts.

EPA expects that only dischargers of predominately domestic wastes will be able to meet these criteria.

3. *Impacts outside the zone of initial dilution.* In its proposed regulations, EPA required applicants to establish the existence of a balanced, indigenous population at the "edge" of the ZID. Several commenters were apparently confused by this requirement.

In using the term "edge", EPA did not intend to suggest that applicants should restrict their biological assessment to a narrow line separating the interior of the ZID from the exterior. Since marine communities inhabit a much broader

area than the line marking the perimeter of the ZID, such a definition would obviously preclude a thorough examination of all aspects of the ecosystem.

Rather, it was EPA's intent to have applicants assess biological impacts beginning immediately outside the ZID, and extending as far as necessary to establish that a balanced, indigenous population existed everywhere outside the ZID.

As discussed in the section-by-section analysis of the public water supply impact assessment, above, and the recreational assessment, below, a number of commenters correctly noted that, as a result of wastewater dispersion and transport, a marine discharge may have adverse biological impacts far beyond the edge of the ZID. The final regulation published today has been clarified to require applicants to demonstrate that a balanced, indigenous population will be maintained not only immediately beyond the ZID, but also in any other areas outside the ZID affected or potentially affected by the applicant's discharge. Thus, where an applicant's discharge permits the maintenance of a balanced, indigenous population immediately beyond the boundary of the ZID, but adversely impacts an area at some greater distance, the applicant would be denied a modified permit under these final regulations.

One commenter suggested that applicants be required to measure biological impacts not at the edge of the ZID but at a point five hundred meters from the edge. Because no justification was given for using this distance, and because it would have the effect of substantially increasing the area in which adverse impact would be permitted, EPA has rejected this approach.

4. *Predicting biological impacts.* EPA received numerous comments on the issue of whether the impact of proposed outfall improvements on marine communities could be accurately predicted, and, if so, how much and what type of data applicants must submit in order to carry their burden of proof under section 301(h).

Some commenters felt that it was possible to make a reasonable predictive judgment about the biological impact of a future discharge. One stated that near-field and far-field dispersion models would predict initial dilution under any modified discharge condition and that an assessment of probable environmental effects could be based on these modeling data. Another suggested that "reasonable projections of actual impacts (could be extrapolated from the) large body of actual field data on outfalls of various capabilities and geographic areas." Other commenters, however, seriously questioned whether such predictions could be made with the degree of accuracy and certainty required by statute, and noted that, in any event, they would be less reliable than analyses of existing effects.

On the issue of data requirements and burden of proof, some commenters contended that applicants projecting future biological impacts should bear no greater burden of proof than applicants describing existing effects. Others suggested that applicants seeking a modified permit on the basis of proposed outfall improvements should be required only to make a general showing that adverse impact was improbable or unlikely. Still others observed that the applicant's burden of proof in these situations would be extraordinarily difficult.

EPA agrees that while the burden of proof for all dischargers is the same—i.e., all must demonstrate to EPA's satisfaction that they meet the criteria set forth in this section—the uncertainties inherent in predictive analyses will make it more difficult for POTWs seeking a modified permit based on outfall improvements to sustain this burden. As discussed in Section II.A.2., above, EPA believes that it is generally extremely difficult to make accurate predictive analyses of discharge impact.

Applicants seeking a modified permit based on treatment or outfall modifications should, therefore, be prepared to submit substantial additional data to compensate for the lack of direct, empirical evidence of impact (see section E below). As a general matter, this will require more than general extrapolations and comparisons, since the Act clearly requires detailed, site-specific analyses of biological impact.

5. *Bioaccumulation.* EPA received a number of comments urging that, since bioaccumulation might not be detected in field surveys, the Agency's regulations should require applicants to submit evidence that toxic pollutants and pesticides are not bioaccumulating in biota in the vicinity of their discharge. Some commenters urged simply that some type of bioaccumulation data be supplied. Others were more specific, suggesting that applicants be required to analyze representative aquatic organisms at the discharge site for tissue concentrations of toxic pollutants or for the levels of detoxifying enzyme systems.

In response to these comments, EPA has included a question in the marine biological assessment questionnaire requiring the applicant to determine if there is ". . . an abnormal body burden of any toxic material in marine organisms collected within or beyond the zone of initial dilution" (Question 7–8). The data necessary to support the applicant's response to this question will vary with the composition of the applicant's effluent. Where the chemical analysis required by section 125.64 indicates that the applicant's discharge contains no toxic pollutants or pesticides, or where the concentrations and mass emissions of such substances are extremely low, local environmental agencies should be contacted to ascertain whether bioaccumulation studies have been made for that biogeographic area and whether such studies have revealed any accumulation of toxic materials in the tissues of marine organisms. If bioaccumulation studies exist, the applicant should provide copies with its application, and include a comparison of the study populations with those present within and beyond the ZID. If no bioaccumulation studies exist, the applicant should provide a list of all laboratories, departments, and agencies which were contacted.

If the chemical assessment of the applicant's waste stream indicates that toxic materials are present, the applicant will be expected to conduct tissue analyses of marine organisms at the outfall site as part of its monitoring program if a modified permit is granted. The organisms should be examined for toxic pollutants and pesticides demonstrated to be present in the applicant's waste stream.

Given the extensive data already required in the biological assessment, combined with the lack of available standardized procedures for analysis of detoxifying enzyme systems, EPA does not find it necessary to require enzyme data, as suggested by one commenter.

EPA also disagrees with the implicit recommendation by certain commenters that all applicants, regardless of the characteristics of individual waste streams, be required to perform laboratory tissue analyses for all 65 toxic substances. Accordingly, EPA sees very little to be gained in requiring applicants to conduct tissue analyses for pollutants which do not show up in the chemical analysis. However, for applicants receiving modified permits, the biomonitoring program may include a requirement for tissue analysis.

Section 301(h) requires that applicants must establish a system for monitoring

the impact of their discharge on a representative sample of aquatic biota, to the extent practicable. Applicants who claim that in situ bioassays are not feasible must provide an alternate method of meeting this requirement.

6. *Use of bioassays.* In its proposed regulations, EPA required applicants to conduct a toxicity bioassay (96-hour LC_{50}) as part of a general wastewater characterization (43 FR 17506). During the comment period EPA received several inquiries as to how the results of the bioassay would be interpreted since its function in the decisionmaking process was not identified in the proposed regulation. Another commenter stated that "the only feasible way to determine the impact of pollutants on biota at this time is by the bioassay technique using a 96-hour TLM on a representative number of organisms."

In response to these comments, and suggestions that the bioassays be used for anything from an evaluative factor to a pass/fail criterion, EPA has re-examined its proposed bioassay requirements. There are two basic problems associated with running and interpreting bioassays on municipal waste discharged to the ocean, namely, conducting bioassays with fresh water effluents and marine organisms and correlating laboratory bioassay results with field impacts. EPA has developed procedures, using salts to adjust the salinity of the wastewater, which make it possible to run a bioassay which will accurately measure the acute toxicity of the wastewater. Nevertheless, EPA does not have sufficient information at the present time to correlate a particular laboratory bioassay result with the existence or non-existence of a balanced, indigenous population either within or immediately beyond the ZID. For this reason, and because other biological data requirements adequately provide the basis for evaluating ecological effects, the requirement that applicants run a 96-hour LC_{50} has been deleted from the wastewater characterization.

7. *Other issues.* Numerous commenters criticized the data required by EPA for the biological assessment as unnecessarily elaborate. One commenter contended that no biological assessment should be required where the applicant demonstrates compliance with applicable water quality standards. Other commenters characterized the proposed biological requirements as "extend(ing) beyond the realm of the standard outfall monitoring (and as) more relevant to a major research project." These commenters proposed that biological assessment of outfall effects be limited to: (1) acute data (fish kills, algae blooms), (2) chronic data (disease, abnormalities and bioaccumulation of toxics), and (3) an evaluation of "seasonal patterns of distributions and abundance."

Limiting the biological assessment to a few biological parameters would not provide the information necessary to make a section 301(h) determination. The requirement does "extend beyond the realm of standard outfall monitoring" as this is necessary to meet the requirements of section 301(h)(2). Compliance with applicable State water quality standards is essential and required by the statute, but Congress clearly intended applicants to make additional, direct, site-specific demonstrations under section 301(h)(2) of the existence of a balanced, indigenous population of shellfish, fish and wildlife.

D. *Recreational Impact Assessment.* In its proposed regulations implementing section 301(h)(2), EPA required an applicant to demonstrate, based on a detailed analysis of the impact of its discharge on existing and potential recreational activities within a three-mile radius of the outfall, that the discharge would permit the attainment or maintenance of water quality which would allow recreational activities, and comply with State water quality standards designed to protect recreational water uses.

Two changes have been made in this section in response to public comment.

1. *Impact area.* Several commenters questioned EPA's proposed requirement that recreational impacts be analyzed within a three-mile radius of the outfall. One commenter recommended that "this be reduced to that distance required to reduce pollutants to ambient receiving water conditions by mixing and dilution." Another suggested that the three (3) mile radius "is far too short, given the ability of finfish to be contaminated by an outfall and then travel or migrate far more than three miles from the outfall in a matter of hours" and urged that consideration of recreational fisheries with a radius of at least ten (10) miles be required.

Although under most circumstances the Agency would not anticipate adverse recreational impact beyond a three-mile radius, the limitation is somewhat arbitrary since adverse recreational impacts may occur in some circumstances beyond the three-mile boundary. Accordingly, in these final regulations, EPA has eliminated the requirement that applicants evaluate recreational impacts within a uniform geographical area, and instead will require applicants to analyze recreational impacts within the area of potential discharge impact, as identified in the analysis of wastewater dispersion and transport required by the physical assessment. This should provide a much better indicator of the actual areas where an applicant's discharge is likely to have an effect on recreational water uses.

2. *Federal, State and local restrictions on recreational activities.* EPA received conflicting comments on its proposed requirement that an applicant include in its recreational activities analysis a discussion of State, Federal or local restrictions on shellfishing and other recreational activities in the vicinity of its outfall. Some commenters felt that such restrictions (particularly shellfish closures) are routinely imposed on all sewage outfalls, irrespective of the degree of wastewater treatment provided, and should not be deemed a basis for denying a modification.

EPA agrees that it makes little sense to deny a modified permit on the basis of a shellfish closure, swimming ban or other recreational restriction which is imposed on an applicant's outfall simply because it is discharging municipal wastewater. However, there may be some circumstances where the level of treatment does affect the nature of the restriction. For example, a shellfish closure area for a raw discharge may be much larger than that imposed around a secondary discharge. In these cases, EPA believes it is appropriate to conclude that recreational restrictions are attributable to the applicant's level of treatment, that its less-than-secondary discharge has an adverse impact on recreational activities, and therefore that no modified permit should be granted. The proposed regulations have been revised to reflect this concept.

3. *Other issues.* Several commenters suggested that an applicant should not be required to submit a detailed inventory of recreational activities unless its discharge would violate State water quality standards. Since no modification will be issued for a discharge which does (or will) not comply with State water quality standards, the suggested approach makes little sense. Additionally, since the Act requires applicants to demonstrate that they will meet the requirements of section 301(h) *in addition to* water quality standards under section 301(b)(1)(C), Congress apparently meant that mere demonstration of compliance with State water quality standards would not

necessarily be sufficient to show compliance with sections 301(h)(2) and 102(a)(2). Accordingly, in the final regulations EPA has retained the requirement that all dischargers provide an in-depth analysis of the impact of their discharge on recreational activities.

E. *Additional application requirements for improved discharges.* As discussed in some detail in section II.A.2., above, these final regulations have been revised to allow POTWs to apply for a modified permit based on the projected impact of their discharge after completion of well-planned improvements in their outfall/diffuser system, in wastewater treatment, or both.

The regulations assume that proposed improvements are designed to alleviate adverse physical, recreational or biological impacts at the applicant's current site which would preclude granting a modified permit for its current discharge. They require applicants to (1) document those adverse impacts by completing a physical, biological, public water supply and recreational impact assessment for their current discharge; (2) provide final plans for all improvements and computations for any changes in discharge volume, flow rates, initial dilution or other factors which will result from such improvements and are likely to affect the impact of their discharge; and (3) demonstrate in detail how the completion of improvements will eliminate all identified impacts caused by their current discharge and assure compliance with the physical, biological, public water supply and recreational impact criteria contained in this section.

This analysis, however, should be tailored to site-specific conditions. Thus, for example, where natural conditions preclude certain recreational activities (*e.g.*, extremely cold water temperature limiting swimming and diving), the applicant need supply only a brief explanation under this section. On the other hand, where a discharge is located in an area currently used for, or conducive to, recreational activities, a much more extensive demonstration will be required.

One commenter proposed that the demonstration required under this section be based on a comparison of the impact of the applicant's less-than-secondary discharge with a secondary effluent. EPA disagrees. Consistent with the Act, its legislative history, and other sections of these regulations, the regulations promulgated today, like the proposed regulations, require the assessment under section 301(h)(2) to be made on the basis of the actual or projected impact of the applicant's discharge, not in comparision to the impact of a secondary discharge.

Where the improvements proposed by an applicant include outfall relocation, it should also prepare a physical, biological, public water supply and recreational assessment on its relocation site as well as its current site.

F. *Stressed waters.* In § 233.11(a)(iv) of its April 25, 1978 proposal, EPA proposed to prohibit modified discharges into marine waters which were already stressed. The theory was that where waters are already stressed by pollution, the need is for additional control, not less, for therefore, there should be no relaxation of secondary treatment requirements in such waters.

EPA received numerous comments on this section. Although several commenters supported EPA's approach, many criticized it as vague and illegal. Still other commenters charged that it was unfair because it could penalize applicants for pollution from sources over which they had no control.

In response to comment, EPA has fully re-evaluated its proposed regulation and its approach to the problem of stressed waters. The Agency has concluded that since the primary measurable indicator of whether waters are environmentally stressed is their inability to support a balanced, indigenous population, the existence or non-existence of stressed water conditions would be reflected in the biological assessment required by this section.

This approach does not, however, respond to the most difficult issue raised during the comment period—whether a modification should be issued for a discharge into waters which do not support a balanced, indigenous population, consistent with the objectives of section 301(h)(2) and 101(a)(2), as a result of sources of human perturbation other than the applicant's discharge (*e.g.*, other municipal and industrial outfalls and non-point sources of pollution). EPA agrees that since section 301(h) focuses on the effect of the applicant's discharge, as opposed to other human perturbations, a modified permit should not be denied simply because an applicant discharges into polluted waters. However, where the applicant's discharge contributes to, increases, or perpetuates the pollution and associated adverse impacts on recreational activities or marine like, or where it would contribute to such impacts if the levels of pollution from other sources were increased, it "jeopardize(s) the goal of attaining water quality which will provide for the protection (and) propagation of fish, shellfish and wildlife and allow recreation in and on the water". (1977 Leg. Hist. at 1052). Similarly, where the applicant's discharge would retard the recovery of marine life and water quality if the levels of pollution were reduced, it interferes with the "(r)estoration of aquatic ecosystems which existed prior to the introduction of pollution from man's activities. . .an essential aspect of assuring that future generations will have an adequate supply of basic life support resources." (1977 Leg. Hist. at 448). In such circumstances, the Act prohibits the issuance of a modified permit. These restrictions have been incorporated in paragraph (f) of § 125.61 of these regulations.

As a practical matter, it will be extremely difficult for most applicants discharging into stressed waters to demonstrate that their discharge will meet the requirements of section 125.61. As a factual matter, the discharge of additional pollutants into an already polluted marine environment virtually always increases or contributes to adverse impact; it is extremely difficult, as a practical matter, to demonstrate that it does not. Where, for example, an applicant claims that the failure to attain or maintain a balanced, indigenous population is due to pollution from other sources, it must (1) document the differences between the marine communities that currently exist in the vicinity of its outfall and the balanced, indigenous population that would exist in the absence of all sources of pollution; (2) demonstrate that its discharge is not contributing to the present biological degradation associated with stressed waters by comparing the marine populations at the outfall site with those at a similarly stressed control site (absent its discharge); and (3) demonstrate that its discharge will not contribute to further degradation of the biota if the level of pollution from other sources increases, and will not retard the recovery of the biota if the level of pollution from other sources decreases. This latter showing, which requires a predictive analysis of biological responses to future pollution, is so difficult that EPA is unable to provide specific guidance or suggested analytical procedures for making this demonstration.

In summary, while these final regulations do not prohibit the issuance of permits into stressed waters, and the criteria in § 233.11 of the proposed regulations have been deleted, the final regulations do require the applicant to make additional showings and may

require additional monitoring tasks regarding biological conditions if a permit is requested for discharge into stressed waters.

Section 125.62 Establishment of a monitoring system. (formerly § 233.16). EPA has adjusted it final regulations on monitoring to take into account improved discharges, new toxic control program requirements, and the approach for evaluating compliance with the balanced, indigenous population requirements. Plans for a monitoring program, along with a demonstration that it has the economic and technical resources and the personnel to implement the proposed programs immediately upon issuance of a section 301(h) permit, must accompany the application. Each monitoring program will depend on the specific site and discharge in question, and may be required to include: 1) field studies of the structure and function of the macrofaunal benthos and other biological communities that may be affected by the discharge; 2) if toxic pollutants or pesticides are identified in the applicant's discharge, in situ bioassays with caged organisms to establish effects on the survival and well-being of test specimens, and bioaccumulation of toxic substances; 3) studies of discharge effects on nearby fishery resources; 4) studies on biological effects of sediments heavily contaminated with toxic substances including pesticides; 5) water quality monitoring programs to establish compliance with applicable State water quality standards at the boundary of the zone of initial dilution and elsewhere; 6) chemical analyses of an applicant's discharge in order to measure effectiveness of its program in reducing toxic pollutants, including pesticides, in its discharge and to guide biological monitoring efforts.

Monitoring programs will vary in complexity depending on characteristics of the discharge and sensitivity of the receiving waters. For example, an applicant discharging into an estuary will be required to develop a more complex monitoring program, with more frequent sampling, than an applicant with a comparable discharge into the ocean. Though the regulations identify features common to all of the monitoring programs, the specific test procedures, organisms and sampling intervals must be chosen by applicants as appropriate for a particular waste stream and discharge site. EPA will review the monitoring program proposed in the application and determine whether it is adequate to assess discharge effects on the indigenous population. If the proposed program is not adequate, EPA will recommend necessary changes or additional procedures which an applicant shall adopt into its monitoring program.

To evaluate the actual impact of a discharge on an indigenous population, applicants must design field studies of the outfall area. These field studies must: (1) produce data which indicate whether or not the biological communities in the area of the outfall are remaining healthy and balanced, and (2) monitor specifically any community reported to be perturbed at the time of application.

To monitor the health and balance of indigenous populations, field studies must address the same parameters as the biological conditions summary. In this regard, the structure and function of the macrofaunal benthos must be monitored by all applicants. As appropriate, the following communities should also be monitored: demersal and pelagic fishes, macrofaunal benthos, phytoplankton, zooplankton, macroalgae and intertidal assemblages. Characteristics of communities that should be monitored include species composition, abundance, dominance, diversity and spatial stratification, particularly along depth contours. Changes in size frequencies, reproductive condition or incidence of disease in populations also should be reported. Sampling must be sufficiently frequent to detect changes in community composition, structure or function, especially where perturbed situations are known to exist. In the latter case, increased sampling may be in order.

Proposals for monitoring programs should include a rationale for the choice of sampling and analytical methods; the selection of test species used for *in situ* bioassays and bioaccumulation studies; the selection of biological communities to be monitored in the field; the location and frequency of field surveys, bioaccumulation studies, and bioassays; and the methods to be used in monitoring fishery resources near the outfall. The section 301(h) Technical Support Document contains additional guidance for the design of the biomonitoring program.

If data generated by field studies indicate that disruption of the balanced, indigenous population has resulted from discharge of less than secondary treated effluent, the Agency will determine whether an immediate remedy is possible through increased pretreatment, source control or other means. If not, or if there is doubt that increased control short of secondary treatment would alleviate the situation, the Agency must conclude that significant disruption of the population has occurred, and the modification will be revoked. Where the disruption can be relieved through additional controls, the permit holder will be required to design and implement these controls and to notify EPA of a time interval within which the disruption will cease. The permit holder also should increase monitoring activities. If at the end of the time interval the disruption still exists, the section 301(h) modification will be revoked.

The majority of comments received by EPA concerned the implementation date for biological monitoring and the details required for effective biological monitoring of various discharges. Commenters recommended a range of dates for implementation of monitoring programs. One commenter stated that "data from an EPA approved monitoring system must be available from at least five years" prior to the application. Another commenter suggested that monitoring programs be in effect by September 24, 1978. Another stated that a "firm commitment" to establish a monitoring system should be sufficient at time of application.

The commenter recommending five years of monitoring data as a prerequisite to any Agency decision on an application described several functions served by historical data. In the case of currently operating outfalls, such monitoring data would reveal actual impacts of the discharge on the marine environment. For new (and presumably improved) outfalls, past monitoring data would provide information about the water's flow characteristics, temperature and pH ranges and native marine life. EPA agrees that this type of information would be helpful in section 301(h) modification decisions but recognizes that such an extensive data base will not be available in many cases. Some of this information will be contained in the application in the Marine Biological Questionnaire, Biological Conditions Summary, and chemical assessment. This past data should be in a form suitable for scientific comparisons to data from planned studies.

Applicants need not install monitoring programs at the time of application since, for the purposes of section 301(h) monitoring, data are relevant only to those applicants actually receiving a section 301(h) modification. However, monitoring of the effects of modified secondary treatment requirements on the marine ecosystem must begin as soon as practicable after issuance of a section 301(h) modified permit. The mere

commitment to develop a monitoring program is insufficient to fulfill the statutory requirement for the demonstration that a monitoring program is established at the time of application.

EPA expects that the level of detail of the biological monitoring programs will reflect the specific nature of the applicant's discharge and the characteristics of the receiving marine ecosystem. Monitoring will be "continuous" in the sense that sampling will be conducted at regular intervals over the life of the project as dictated by the specific characteristics of the discharge and outfall site.

Several commenters suggested that a standardized monitoring program be conducted by all applicants at predefined intervals. EPA believes that so much variation exists among cases that adequate standardized monitoring requirements cannot be devised. Program design will be unique to each case.

Section 125.63. Effect of discharge on other point and nonpoint sources. (formerly § 233.17). EPA received two comments on this section. One stated that the regulation was vague. The other noted that the requirement that letters be obtained from agencies which have authority to *advise* in the *establishment*, as opposed to *establishing*, wasteload allocations would add additional delay and cost to the application process and would give advisory agencies a veto over State agencies which have authority to establish wasteload allocations. The latter commenter recommended that the OMB A–95 clearinghouse process be utilized to accommodate the input of advisory agencies.

While EPA believes that the regulations are sufficiently precise as written, the following narrative provides additional explanation. Section 301(h)(4) reflects Congress' concern that a relaxation of pollution control requirements for one or more dischargers in the same water body, particularly a partially enclosed water body such as an estuary, could force the remaining dischargers to utilize additional treatment, best management practices, or source controls to insure maintenance of water quality standards, uses, or compliance with other restrictions. Section 301(h)(4) is meant to assure that no modification will be granted which would have the effect of imposing additional pollution control requirements on other point and nonpoint sources discharging into the same water body.

Neither the statute nor this section should be construed as prohibiting EPA from imposing pretreatment or source control requirements on industrial or nonindustrial contributors to a POTW seeking a section 301(h) modification. Such a construction clearly would be inconsistent with sections 301(h)(2), 301(h)(5) and 301(h)(6) of the Act. Nor should section 301(h)(4) be interpreted as preventing EPA or a State from establishing additional or more stringent requirements for municipal or industrial dischargers independent of the section 301(h) process.

EPA's basic objective in requiring agencies which have an advisory role in the establishment of wasteload allocations to affirm that the issuance of a modified permit will meet the requirements of section 301(h)(4) is to assure that the diverse interests represented by such agencies are fully aired before the Agency. Since EPA must make the ultimate determination under section 301(h)(4), an adverse opinion of an advisory agency would not operate as an automatic veto of a favorable determination by a State agency with authority to establish wasteload allocations. It could, however, serve to point out deficiencies in the State agency's determination which might merit further investigation by EPA prior to making its final decision on issuance of a section 301(h) permit. EPA envisions that the agencies involved would include those which participate in a State's water quality management planning process, *e.g.*, a designated State or areawide planning agency under section 208 of the Act.

EPA considers the OMB A–95 clearance process, which does not always adequately surface opposition to a lead agency's determination, to be somewhat unsatisfactory, and therefore elects to retain the provision with minor changes for clarification.

125.64 *Toxic Control Program (formerly §§ 233.14(b), 233.18 and 233.19).* This new section incorporates the requirements for a chemical analysis, an enforceable industrial pretreatment program, and a program of activities for non-industrial source controls previously contained in three separate sections.

Under proposed § 233.14(b), applicants were required to perform a chemical assessment of the POTW effluent. Applicants had to show that the more stringent of the following requirements would be met, either: (1) their existing discharge would not exceed EPA water quality criteria both in the effluent or following initial dilution, depending upon whether the constituent criterion was for a synthetic organic chemical or a naturally occurring heavy metal; or (2) the toxic pollutant concentrations in their existing discharge are not greater than that achieved by secondary treatment (referred to as secondary equivalency).

After reviewing the public comments on the proposed regulation and re-evaluating the technical documentation, EPA determined that changes in the chemical assessment requirements were necessary. The above-mentioned requirement that the applicants meet EPA water quality criteria or secondary equivalency has been eliminated in the final regulation. Emphasis now is placed on implementation of toxics control programs by the applicant aimed at reducing toxic pollutant and pesticide concentrations in the POTW effluent after a section 301(h) modified permit is issued. However, the applicants still must submit the results of a chemical analysis with their application.

The toxic control program requirements are designed to reduce or eliminate the discharge of toxic pollutants into the applicant's wastewater collection system, develop and monitor toxic controls, and also monitor the discharge of toxic pollutants into the marine environment. The required control and monitoring programs in §§ 125.64 and 62, respectively, will be based on chemical analyses which identify toxic pollutants in the applicant's wastewater.

The toxic control program consists of the following general requirements:

1. Chemical analyses of the existing discharge effluent for the toxic pollutants and pesticides.

2. Analysis and identification of the sources of toxic pollutants in the wastewater, both industrial and non-industrial.

3. Development of source control programs to reduce or eliminate the discharge of toxic pollutants and pesticides from the wastewater.

4. Development of a monitoring program to determine the effectiveness of the source control program.

5. Development of a monitoring program to determine the impact of the identified toxic pollutants on the receiving water and marine environment.

The applicants shall submit in their final application a chemical analysis of the existing wastewater discharge (See Part E, section 1 of the Application Format). Analysis of 24-hour composite wastewater samples for wet and dry weather flows must be provided. Some municipalities have performed chemical analyses for toxic pollutants,

particularly heavy metals and pesticides, on existing effluents for some time. As a result, a data base may be available that characterizes some POTW effluents (in terms of types and concentrations of toxic pollutants) better than could be done with two 24-hour composite samples. Thus, applicants may supplement such data for those pollutants requested for the 24-composite sample, but must demonstrate that the alternate samples from which the concentrations are derived are representative of both wet and dry flow conditions.

All toxic pollutants and pesticides which are detected by the chemical analysis, even though the measurable concentrations are below the recognized limits of detection, must be incorporated in the toxic control program. These are referred to as "identified toxic pollutants." All applicants shall identify known and possible sources of the identified toxic pollutants, including industrial and non-industrial sources. At the same time, applicants shall submit programs (including implementation schedules) for the control of toxics from those sources.

The final element of the toxic control program is the applicant's monitoring program. The monitoring program should be able to determine: (1) if additional toxic pollutant coverage is needed; (2) the effectiveness of the source control programs; and (3) the impact of the discharge of toxic pollutants on the receiving waters. The chemical analysis requirements have been incorporated into the monitoring program (§ 125.62).

The toxic control program replaces compliance with EPA water quality criteria as a basis for evaluating applications. It does not prevent EPA from denying a section 301(h) permit if monitoring data shows that, because of the discharge of toxic pollutants, unacceptable bioaccumulation of toxics has occurred in the marine benthos and other organisms outside the zone of initial dilution (see Biological Assessment, § 125.61(c)). Also, it should be noted that revisions to the chemical assessment requirements will not allow an applicant to exceed either water quality standards for toxic pollutants or other substances, or federally promulgated water quality standards.

The Agency's review of applications will consider the quality of the toxics control program submitted by the applicant and its ability to implement it. The decision on whether or not to continue the section 301(h) modified permit will be based on the applicant's performance in operating the source control and monitoring programs, plus the reported results of the monitoring program. A more detailed discussion of comments made and EPA responses to previous individual sections now comprising the toxic control program requirements follows.

(A) *Chemical analysis (formerly § 233.14(b)).* In addition to a biological and physical assessment, the proposed regulations required applicants to perform a chemical assessment for toxic pollutants to show compliance with § 233.14. This assessment was required for a list of 65 toxic substances published by EPA under section 307(a) of the Act (43 FR 4108, January 21, 1978), plus six pesticides in EPA's *Quality Criteria for Water* that are not included in the list of 65 toxic substances. When generic classes of toxics are specified by compound, the list of 65 expands to 129 toxic substances.

For compliance purposes, the list was divided into two categories: (1) naturally occurring substances, such as metals; and (2) persistent organic compounds, such as PCBs. Regarding the first category, the proposed regulations required that no discharge could exceed the EPA-recommended criteria following initial dilution. For persistent organic compounds, EPA-recommended criteria were to be met in the sewage effluent with no allowance for dilution. In both cases, applicants were required to show that the effluent concentrations were equivalent to that achieved by secondary treatment. Under the proposed requirements, applicants would have had to meet the more stringent of the above limitations.

No chemical analysis was required for substances that the applicant could certify would not be in the POTW effluent. This provision was intended to provide relief to dischargers with little or no industrial inputs.

The secondary equivalency requirement was included in the proposed regulations based on Congressional statements that there should be no increase in the discharge of toxic pollutants as a result of the 301(h) modification. By including the secondary equivalency requirement, the Agency required applicants to show that the amount of toxic pollutants discharged would be no greater than that which would occur if secondary treatment was employed. The Agency recognized that this determination would be difficult since little information currently is available on the fate of many toxic pollutants when subjected to various secondary treatment technologies. Because of this, the proposed regulations stated that if the toxic pollutants removal efficiency of secondary treatment could not be determined, only compliance with EPA-recommended criteria would be required. Acknowledging the uncertainty of the proposed secondary equivalency requirements, EPA specifically solicited comments on this issue in the proposed regulations.

During the public comment period, EPA received many comments on the chemical assessment portion of the proposed regulation. Some commenters responded to specific issues raised in the proposed regulations, including: (1) secondary treatment equivalency for toxic pollutants; (2) predictive chemical analysis for proposed facilities; and (3) use of proposed pretreatment and nonindustrial source control programs in predicting the reduction in the toxic pollutants.

Additional comments on this section addressed the following issues: (1) use of an initial dilution concept to distinguish between heavy metals and synthetic organics; (2) the relationship of suspended solids discharge levels to toxic pollutants concentrations; (3) the development of water quality criteria by EPA; (4) the chemical assessment of bottom sediments; (5) analytical methods to measure toxic pollutant concentrations; (6) whether technology-based limitations are replaced by ambient water quality standards in the chemical assessment section; (7) whether dischargers have to meet State water quality standards for toxic pollutants or EPA-recommended water quality criteria; (8) the significance of pollutants not on the section 307(a) list of 65 toxic substances; and (9) whether toxic control programs should be applied to all dischargers, not just those applying for a section 301(h) modified permit.

The specific and general issues raised by commenters will be addressed in three broad categories: (1) secondary equivalency; (2) water quality criteria; and (3) general toxic pollutant issues.

(1) *Secondary equivalency.* As noted above, § 233.14(b) of the proposed regulation required applicants to show that: (1) their existing discharge would not exceed EPA water quality criteria either in the effluent following initial dilution or depending upon the nature of the toxic; or (2) toxic pollutant concentrations in their existing discharge would be equivalent to that attained by secondary treatment, whichever is more stringent.

Some commenters supported EPA's proposed secondary equivalency approach regarding toxic pollutant removal. In fact, they believed that more

stringent toxic pollutants limitations should be imposed in section 301(h) modified permits. However, the majority of comments were opposed to this part of the proposed regulation. They maintained that the legislative history of section 301(h) would not support EPA's position that toxic pollutant concentrations in less-than-secondary treatment facilities could never exceed that achieved by the application of secondary treatment. They believed that in no case would an applicant be able to meet the proposed requirements with anything less than secondary treatment technology.

Two principal arguments were presented against the secondary equivalency requirement as published in the proposed regulation. First, dischargers maintained they would still have to comply with State water quality standards, regardless of the treatment processes employed or whether the applicant received a section 301(h) modified permit. Thus, the secondary equivalency requirement would be unnecessary from the standpoint of environmental impact. Second, preliminary monitoring data submitted by some commenters indicated that toxic pollutant concentrations in chemical primary treatment process effluent were only 10–15 percent greater than in secondary treated effluent. Commenters believed this increase would not result in environmental degradation.

EPA proposed this requirement because it inferred from the legislative history that there should be no increase in the discharge of toxic pollutants as a result of section 301(h) modified permits. However, EPA agrees that requiring secondary equivalency would not have allowed any modification of secondary treatment requirements for many section 301(h) applicants. This clearly was not the outcome envisioned by Congress when they added section 301(h) to the Act. Therefore, EPA has decided not to apply the secondary equivalency requirement in the final regulations. However, under other parts of the final regulations, applicants still will be required to measure toxic pollutant concentrations in the treated sewage effluent and develop a program to prevent any adverse effects of toxic pollutants.

The proposed regulation required chemical analyses for toxic pollutants and pesticides in both settled and unsettled samples of the treated effluent. EPA anticipated that the results of both analyses could be used to estimate secondary equivalency. Some commenters said that, based on the settled sample analysis, secondary equivalency would be difficult to determine and impossible to verify. One commenter presented an alternate method for making the secondary equivalency determination, based on suspended solids analysis. After reviewing the comments, EPA concludes that good estimates of toxic pollutants removal through use of secondary treatment cannot be made at this time. Thus the secondary equivalency requirement is being removed from the final regulation.

In addition to the secondary equivalency requirement, EPA anticipated that settled and unsettled sample analyses could be used to determine solids accumulation on the seabed. However, EPA scientists have advised that, based on the existing technical data, a defensible correlation between settleable solids in POTW effluent and seabed deposition of settleable solids is not possible. As a result, EPA is eliminating the settled sample analysis from the chemical analysis requirements.

(2) *Water Quality Criteria.* (i) *Initial dilution.* The Agency received comments on part of the proposed regulation which required compliance with EPA-recommended criteria for the toxic pollutants and pesticides. The proposed regulations effectively would have made water quality criteria for the so-called synthetic organic pollutants into end-of-pipe effluent limitations. For heavy metals and potentially naturally occurring constituents, "initial dilution" was allowed.

Some commenters opposed the prohibition of "initial dilution" for synthetic organics, claiming that would place an additional and unnecessary safety factor on the water quality criteria. They argued that application factors had already been used to establish the water quality criteria in the first place. Establishing the additional no-dilution policy was tantamount to admitting that, in fact, EPA-recommended criteria for synthetic organics were not stringent enough to protect ambient marine waters.

Other commenters supported the Agency's "no initial dilution" policy. They believed the same policy should be applied to all toxic pollutants including heavy metals, because such substances are persistent, exhibit bioaccumulative properties and are not affected by biogeochemical processes. The application of this policy to a broad class of pollutants such as "synthetic organics" was also questioned. Some commenters questioned whether all the toxic pollutants and pesticides would have an effect on the marine environment.

EPA proposed the "no initial dilution" policy for synthetic organics because the long term impact of these pollutants on the marine environment is known to be independent of dilution associated with solids, oils, or surface slicks, and because they are readily accumulated in lipid fractions or marine organisms. Heavy metals were not grouped together with synthetic organics since heavy metals are found naturally in the marine environment, and many of the known effects are dilution dependent (except possibly for lead, cadmium, and mercury). California has made this distinction in its Ocean Plan since 1972. Further, EPA's proposed use of the numerical criteria for the toxic pollutants and pesticides exceeded the intended regulatory impact of those criteria under section 304(a) of the Act (see a discussion of EPA recommended criteria at 44 FR 15926, March 15, 1979). Because of this, no distinction is made between groups of toxic substances and pesticides which are naturally occurring and those classified as synthetic organic chemicals. Further, applicants will not have to demonstrate that their effluent does not exceed EPA water quality criteria (with or without dilution) for reasons described below.

(ii) *Analytical methods.* The Agency received comments on the analytical methods available to measure toxic pollutants in wastewaters. Commenters referred to the high cost of these procedures and the questionable accuracy of the proposed methods in measuring low toxic pollutant concentrations.

On June 16, 1978, EPA published a notice of availability of procedures to comply with the chemical assessment requirements of the proposed section 301(h) regulations (43 FR 26126). These procedures were contained in an EPA publication entitled *Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants* (the screening protocol). Analytical procedures for heavy metals and traditional pollutants are those published in 40 CFR Part 136 (Guidelines Establishing Test Procedures for the Analysis of Pollutants); procedures for measuring synthetic organic chemicals are described in the screening protocol, but have not been promulgated by EPA in 40 CFR Part 136.

These procedures are designed for measuring pollutants concentrations in industrial effluents, not municipal effluents. Recognizing the potential difficulty of using the screening protocol to measure municipal effluents, EPA

asked applicants to provide quality assurance/quality control data along with reported results. While such data improves the statistical confidence of the reported results, it does not reduce the analytical limits of detectability for the toxic pollutants and pesticides below 10 mg/1. Since many existing water quality criteria recommended by EPA are more stringent than 10 mg/1, it would be impossible to ensure compliance with those criteria using the screening protocol.

Since quality assurance/quality control does not improve the analytical limits of detectability and because some EPA criteria are below the analytical limits of detectability, EPA will not require applicants to prove their effluents will not exceed water quality criteria for toxic pollutants and pesticides.

(iii) *Availability of Criteria.* Some commenters asked whether or not EPA would publish water quality criteria for the 65 toxic pollutants by the time section 301(h) regulations were promulgated. EPA originally had planned to publish these criteria by July 1978, but the schedule has been extended. EPA recently published a notice of availability of 27 draft criteria documents (44 FR 15926, March 15, 1979). We do not expect to publish final criteria documents for all 65 toxic substances until the end of this year, at the earliest.

EPA believes that the comments on the availability of published water quality criteria are no longer relevant, since applicants will not be required to compare the results of their toxics control monitoring program with EPA-recommended criteria. For the purposes of section 301(h), when such criteria are available, they will be used by EPA to evaluate the effectiveness of pretreatment control programs set up by the applicants. As noted earlier, EPA-recommended criteria will not be used by themselves to determine whether or not an applicant qualifies for a section 301(h) modified permit.

(3) *General Toxic Pollutant Issues.* (i) Comments were received on alternate methods to be used by applicants to certify that toxic pollutants are not in the POTW effluent. Presumably, small POTWs receiving little or no industrial effluent would be able to affirmatively demonstrate that they had no toxic pollutants in their effluent by characterizing the toxic pollutants (if any) in the industrial wastewater. This would enable the small POTW to avoid the costly chemical analyses required for most POTWs wastewaters. However, current monitoring data shows that we cannot make such assumptions about small POTWs. Only by conducting chemical analyses required in this regulation will it be possible to conclude that toxic pollutants are not present in POTW effluents. Therefore, all applicants for section 301(h) modified permits will have to perform chemical analyses on their wastewaters.

(ii) Comments were received on the relationship of toxic pollutants to disposition of settleable solids in the bottom sediments. Much field data on the effects of ocean outfalls on marine life relate to the accumulation of settleable solids near the ocean outfall. Commenters pointed out that compliance with ambient water quality criteria in the water column does not necessarily bear any relationship to the impact of wastewaters on the benthic sediments and associated marine life. Toxic pollutants which are relatively insoluble are retained in the suspended solids fraction of the wastewater. When all or part of this fraction settles to the bottom sediment, benthic communities and fish that feed on the benthos may bioaccumulate those toxics.

EPA believes that there is sufficient technical data available to justify its concern over benthic loading near sewage outfalls. EPA disagrees with commenters who maintain that there is little accumulation of toxics in the benthic sediments due to rapid dispersion of wastewaters by strong currents and tidal action. EPA agrees that benthic loading of toxic pollutants cannot be predicted based upon ambient water concentrations. Therefore, it has included a requirement for benthic sediment evaluations for toxic pollutants as part of the physical assessment and subsequent monitoring requirements.

(iii) Finally, comments were received on the presumptive applicability of section 304(a) water quality criteria to all territorial seas of the U.S. One commenter said there was no basis for assigning a threshold concentration for certain pollutants, and that no effective techniques exist for predicting the effects of pollutants on marine communities.

EPA's current policy on use of section 304(a) criteria in State water quality standards is discussed in two recent **Federal Register** notices (43 FR 29588; July 10, 1978 and 44 FR 15926; March 15, 1979). Although site-specific conditions may warrant use of criteria other than those recommended under section 304(a), EPA now believes those criteria are sufficiently stringent to protect marine communities in most biogeographic areas. EPA policy requires that State regulatory agencies must technically justify alternative criteria less stringent than EPA-recommended criteria.

(b) *Enforceable pretreatment program (formerly section 233.18).* Since proposal of these regulations, EPA has promulgated General Pretreatment Regulations (43 FR 27736, June 26, 1978). This section has been changed as a result of those new requirements. Two major issues were raised during the comment period concerning EPA's proposed regulations implementing section 301(h)(5) of the Act (requiring a section 301(h) applicant to demonstrate that all applicable pretreatment requirements for sources discharging into its facility will be enforced):

(1) Should POTWs be allowed to grant revisions to their industrial users' National Pretreatment Standards to reflect treatment by the POTWs under § 403.7 of the General Pretreatment Regulations?

Since Congress provided in section 307(b) of the Act that POTWs can grant revisions to National Categorical Pretreatment Standards to reflect POTW removal, EPA cannot eliminate that option. However, POTWs should carefully consider whether to grant such revisions since they may significantly contribute to adverse impacts in the marine environment which would disqualify the POTWs application for a section 301(h) permit based on either the POTWs current discharge or an improved discharge.

(2) The time when section 301(h) applicants should be required to put a pretreatment program into effect—*i.e.*, prior to receipt of a section 301(h) permit, at the time a section 301(h) permit is issued, or within a reasonable time after issuance of a section 301(h) permit. One large POTW suggested that the time period for implementing the pretreatment program should be extended from eighteen to twenty-four months (or such additional period of time as EPA might allow) for all POTWs, because the proposed eighteen-month deadline was arbitrary, unattainable, and would force applicants to implement a less than comprehensive pretreatment program. No other large POTW with industrial contributors, objected to the proposed eighteen month deadline. The Agency does not view the eighteen month deadline as unreasonable, since it generally coincides with the scheduled promulgation of toxic pretreatment standards under the consent decree entered in *Natural Resources Defense Council, Inc.*, v. *Train*, 8 ERC 2120

(D.D.C. 1976), as modified by *National Resources Defense Council* v. *Costle*, 12 ERC 1833 (D.D.C. March 9, 1979). It is imperative that national pretreatment standards for the control of sources discharging into these facilities be implemented as soon as possible after their promulgation because section 301(h) POTWs will not be utilizing secondary treatment to remove toxic pollutants.

Several commenters suggested that EPA postpone its decision on section 301(h) applications until the applicant's pretreatment program is actually implemented or until all national pretreatment standards have been promulgated. Because this course of action could unnecessarily delay decisions on section 301(h) applications, with resultant delays in treatment construction, EPA has determined not to adopt it.

Where an applicant (1) would discharge increased toxic pollutants as a result of less-than-secondary treatment and (2) receives waste from one of the twenty-one industries identified as subject to pretreatment requirements in 40 CFR Part 403, the final regulations require that a pretreatment program designed to control the introduction of toxic pollutants into the municipal system be established by the time of application. Such program is to address existing problems that the POTW has experienced with the introduction of toxic pollutants, including any problems that cause or substantially contribute to violation of any effluent limitations contained in a NPDES permit, interfere with sludge treatment or disposal, or violate any existing water quality standards. The program must contain provisions to sufficiently limit introduction of such pollutants into the municipal system and adequate legal authorities to enforce such limitations. In addition, the program must provide adequate funding levels and qualified personnel to effectively implement the pretreatment program. The regulations do allow additional time (up to the expected date of issuance of a modified permit) to complete this submission where the applicant can show it has made substantial effort towards obtaining the necessary legal authorities, funding, and personnel, but cannot complete these activities prior to submittal of its application due to time constraints imposed by State or local law. Finally, the regulations require that, within eighteen months of issuance of a modified permit, the POTW must have developed and must implement a pretreatment program in full compliance with the General Pretreatment Regulations. Such a program must contain a complete inventory of all industrial sources under the twenty-one categories of industry identified in 40 CFR Part 403, together with an inventory of other industrial sources which contribute non-domestic pollutants which pass through untreated or which interfere with the POTW, including interference with water reuse and recycling, beneficial uses of sludge, and sludge treatment and disposal. The inventory must include qualitative descriptions of the industrial contributor's discharges, together with a quantitative description of those discharges for all pollutants subject to control under an established national categorical pretreatment standard, or State or local pretreatment requirement. The POTW must obtain within eighteen months full legal authorities to enforce all existing, as well as prospective Federal, State or local pretreatment standards or requirements, together with adequate sources of funding and qualified personnel to effectively implement additional national categorical pretreatment standards or State and local requirements as they become effective.

(c) *Nonindustrial source control program (formerly § 233.19).* EPA received only a few comments on its proposed regulations implementing section 301(h)(6) of the Act, which requires section 301(h) applicants to demonstrate that non-industrial sources of toxic pollutants will be controlled to the extent practicable. Some commenters noted that it would not be "practicable" to remove some of the sources of toxic pollutants identified in the regulation due to institutional, economic, or legal constraints. Others suggested that the proposed regulations were not specific enough and did not require an applicant to demonstrate that it would exercise its best efforts to eliminate the introduction of toxic pollutants from non-industrial sources into its treatment facility.

EPA acknowledges that the statute does not require elimination of all non-industrial sources of toxic pollutants. It does, however, require that the applicant take all practicable measures designed "to eliminate" the input of toxic pollutants from non-industrial sources. This implies the need for a maximum source control effort, and the regulations have been revised to reflect this intent.

With respect to each non-industrial source of toxic pollutants identified by the applicant under § 125.64(d), the applicant has the responsibility for showing the economic, institutional or legal limitations of its program to reduce or eliminate that source of toxic pollutants together with an analysis of future activities designed to strengthen its source control program. In determining economic feasibility, the applicant must consider as an offset to the costs of source control any savings in capital or operating and maintenance expenses which may accrue as a result of being issued a section 301(h) modified permit.

EPA anticipates that the toxic pollutant control requirements set forth in these regulations will require many dischargers to develop innovative ways of reducing non-industrial sources of pollutants. It should be noted, however, that even where an applicant has controlled sources of toxic pollutants to the point necessary to comply with §§ 125.60–61, it would still be required to continue to exercise its best efforts to eliminate non-industrial sources of toxic pollutants under section 301(h)(6).

To provide further guidance to section 301(h) applicants in developing non-industrial source control programs, in these final regulations, at § 125.64(c)(4), EPA has expanded its proposed list of specific programs which should be undertaken to comply with section 301(h)(6).

Section 125.65. Increase in effluent volume or amount of pollutants discharged. (formerly § 233.20). Section 301(h)(7) of the Act provides that an applicant for a section 301(h) permit must demonstrate that there will be no new or substantially increased discharges of the pollutant to which the modification applies (*i.e.*, BOD, suspended solids, and pH) above the volume of discharge specified in the modified permit. Because both the volume of effluent discharged and pollutant loadings may adversely impact marine biota, the Agency chose in its proposed regulations to limit both the volume of wastewater discharged and the mass loadings of BOD and suspended solids. Consistent with the Agency's proposed definition of "existing discharge" in § 233.11, this section, as proposed, limited effluent volume to the applicant's existing design capacity and limited increases in volume to the applicant's existing service area. Mass emissions were similarly limited to the applicant's BOD and suspended solids loadings at the time of application. As a result, any increases in flow during the life of a section 301(h) permit would have to be accompanied by a reduction in BOD and suspended solids effluent concentrations so that total mass loadings would remain constant. To assure that

pollutant loadings from combined sewer overflows ("CSO") were adequately controlled, applicants with CSO problems were asked to submit an analysis of the overflow problem(s) and an explanation of the measures being taken to correct them.

Volume limitations. EPA received numerous comments on this section, particularly on its proposed restrictions on increases in flow. Some commenters suggested that limiting increases in discharge volume to the applicant's design capacity within the service area would amount to the establishment of a no-growth policy, and would greatly restrict a POTW's ability to function as a public service agency within the district. Other commenters urged that the term "substantial" in section 301(h)(7) assumed reasonable growth, and that section 301(h) permits should, therefore, allow increases in flow resulting from normal growth, regardless of whether the increased flow originated within the permittee's service area or would exceed design flow capacity at the time of application. Others suggested that EPA allow increases in flow resulting from the construction of facilities in Step 1, 2, or 3 grants which were proposed or approved at the time of application. Still others suggested that increases in flow during the life of the permit be regulated through the monitoring program required under section 301(h)(3). These commenters proposed that increases in flow resulting from normal growth patterns be allowed so long as the monitoring program indicated that they were not having an adverse impact on the marine environment.

EPA believes that under the proposed definition of "existing discharge" the flow restriction of the proposed regulation appropriately limited growth to the existing design capacity. However, in view of the changed final definition of "existing discharge"—which allows for "planned" as well as existing discharges—the proposed flow restrictions could result in a no-growth situation for a number of municipalities that are now at or near design capacity. Section 125.65 of the final regulations has been changed to allow for reasonable growth through the five-year period of a modified permit. Flows will continue to be limited to the applicant's existing design capacity, where such design capacity provides for normal growth during the life of the modified permit. If an applicant's current design capacity does not provide for normal growth, the applicant must develop a projection of the increased flows necessary to accommodate normal growth over the period of the modified permit, utilizing the analyses performed in Step 1 facilities planning or comparable studies.

A number of commenters supported the proposed flow restrictions because they would prevent the possibility of further adverse impact on the marine environment, and also because they seemed to encourage recycle/reuse/reclamation of wastewater and water conservation generally. Several commenters from water-poor areas suggested that rather than restricting discharge volume to existing flows, EPA require, as a condition of any section 301(h) permit issued, that the permittee study the feasibility and cost-effectiveness of water reuse/recycle/reclamation projects and that, upon renewal of any section 301(h) permit, EPA require discharge volumes to be reduced by the amount of wastewater which could be recycled/reused/reclaimed. Commenters from water-rich areas of the country argued that municipalities receiving a section 301(h) permit should not be required to recycle/reuse and reclaim water unless a need exists and unless recycle/reuse and reclamation is cost-effective. Otherwise, they contended, compliance with the requirements of section 301(h) might prove to be more costly than secondary treatment.

EPA agrees with the concerns expressed in these comments and accordingly has changed the proposed § 233.21. The revised provisions of § 125.66 emphasize that POTWs under active Step 1 grants consider reclamation, reuse, and recycling in addition to other flow and waste reduction measures. This is already required in the facilities planning regulations [§ 35.917 of Subpart E of Title 40). Additionally, the Agency has determined that such alternatives for section 301(h) dischargers should be compared with the cost of secondary treatment, not less-than-secondary treatment, in the Step 1 cost-effective analysis. EPA believes this policy is consistent not only with the goals of section 301(h), but also with Congress' intent that section 301(h) be used only as an interim—not a long-term—solution to the wastewater disposal problems of coastal dischargers. Furthermore, because it is expected to have the greatest impact on those communities which have a high demand for reused water (where water sale revenues can offset recycle/reuse systems costs, and thus make recycle/reuse a cost-effective alternative), EPA believes this policy will encourage recycle/reuse/reclamation of water where it is most necessary and economically realistic.

The final regulations have deleted the proposed requirement that flows be limited to existing service areas. This change is a consequence of allowing applications on the basis of planned discharges. However, any plan to regionalize treatment services that proposes to divert flow from a non-marine discharger to a less-than-secondary marine discharger must be cost-effective based upon the cost of full secondary treatment at the less-than-secondary site. Section 125.66, which concerns the use of Title II funds, has been revised to require the applicant for a modified permit to determine those costs.

Mass limitations. EPA received relatively few comments on its proposed restrictions on mass loadings. One commenter suggested that, in addition to imposing mass loading limitations on BOD and suspended solids, EPA also require applicants to meet mass emission limitations for toxic pollutants.

While section 301(h)(7) applies specifically to those pollutants for which a modification may be issued—*i.e.*, BOD, suspended solids and pH—to the extent that increases in mass loadings of suspended solids may result in increased quantities of toxic pollutants being discharged to the marine environment, the limitations on increases in suspended solids established under this section will restrict the amount of toxic pollutants discharged. Additionally, direct limitations on permissible discharges of specific toxic pollutants will be established by EPA under §§ 125.60 through 125.62 of these regulations. This approach is supported by the legislative history and will carry out both the letter and the intent of section 301(h)(7).

Combined sewer overflows. In addition to limiting volume and mass loading increases in treated wastewater, EPA's proposed regulations implementing section 301(h)(7) attempted to establish a mechanism for reducing or eliminating the discharge of combined sewer overflows by recipients of modified permits under section 301(h). Several commenters indicated that these discharges represent a major source of pollution in coastal waters and are a significant problem for some POTWs.

One way of eliminating or reducing the pollution caused by combined sewer overflows is to route part or all of the overflow through the POTW for treatment. Under its proposed regulations implementing section 301(h)(7), this option would not have been available to most POTWs if they

received a section 301(h) modification. However, to assure that the modification afforded by section 301(h) would not have the effect of delaying community efforts to minimize or eliminate combined sewer overflows by other means EPA proposed in § 233.20(b)(2) that applicants with combined sewers submit a schedule of activities designed to minimize existing overflows and to prevent increases in the amount of pollutants discharged.

EPA received two major comments on this section. One commenter stated that the restrictions on discharge volume and mass loadings imposed under § 233.20(b)(1) would prevent many communities from eliminating nearshore combined sewer overflow discharges by routing them through a section 301(h) treatment facility. The other commenter stated that section 301(h) should be used to minimize existing combined sewer overflows and eliminate them completely where possible.

The Agency agrees that in some cases it may be more environmentally sound to discharge combined sewer overflows through a well designed outfall after a minimum of primary treatment than to allow raw wastewater to overflow collection sewers into nearshore coastal waters. However, EPA believes that such discharges should be allowed under section 301(h)(7) only where the POTW has fully examined all other means of control stormwater inflow. Applicants should ensure that the resulting increase in volume and mass loadings would allow continued compliance with the requirements of sections 301(h) (1), (2) and (4) of the Act and §§ 125.60, 125.61, 125.63 and 125.65 of these regulations, as revised. Providing this additional alternative for reducing and eliminating combined sewer overflows should increase the likelihood that such discharge will in fact be materially limited or eliminated.

Under Program Requirements Memorandum No. 75–34, combined sewer overflow projects which have been throughly studied in the Step 1 process may be funded under Title II of the Act only after provision has been made for secondary treatment of dry-weather flows in the area. Since POTWs receiving section 301(h) modifications will not be constructing secondary treatment facilities, at least for the immediate future, this requirement could prevent or significantly delay funding to control combined sewer overflows from these facilities. To remove this economic disincentive to the correction of combined sewer overflow problems for POTWs receiving section 301(h) modified permits, EPA will waive this requirement for such POTWs.

Section 125.66. Utilization of grant funds under Title II of the Act. (formerly § 233.21). Section 301(h)(8) of the Act requires applicants to demonstrate that they will utilize any Title II funds available to them to comply with the requirement of sections 201(b), 201(g)(2)(A), or section 301(h) of the Act. The purpose of this provision is to allow EPA to fund certain planning, design and construction activities which would be required in order to comply with section 301(h).

In its proposed regulations EPA stated that projects needed to meet the requirements of section 301(h) would be grant-eligible only if the applicant satisfactorily demonstrated that alternative waste management techniques had been studied and evaluated and that the works proposed for grant assistance would be cost-effective and would provide for the application of BPWTT (including reclamation and recycling of wastewater and confined disposal of pollutants). Consistent with the legislative history of section 301(h) and EPA construction grant regulations, EPA noted in the preamble that while Title II funds would be available for the development of monitoring, pretreatment and source control programs, as well as other programs and construction necessary to assure compliance with the requirements of section 301(h), they would not be granted for operating and maintenance costs associated with such programs and construction.

Most comments which EPA received on this section supported the Agency's interpretation of the statute. A few commenters suggested, however, that the scope of activities eligible for funding should either be narrowed or broadened.

In response to these comments, § 233.21 of the proposed regulations has been revised to clarify the scope of activities eligible for Title II funding. Section 125.66 of these final regulations states that Title II funds are to be used for construction of treatment works necessary to ensure the applicants proposed discharge will meet the requirements of section 301(h) of the Act. The definition of construction as contained under section 212 of the Act includes preliminary planning, plan and specification as well as physical construction. Section 35.940–1 of Subpart E of this Chapter lists such costs as allowable project costs. Section 35.901 of the construction grant regulations states that the primary purpose of Federal grant assistance is to assist municipalities in meeting enforceable requirements of the Act, particularly applicable NPDES permit requirements. Thus the construction of less-than-secondary treatment works upon which the section 301(h) modification is based is grant-eligible.

Additionally, § 125.66 of these final regulations provides more detailed information concerning the revision of the scope of work of any active Step 1, Step 2 or Step 3 grant. Subsection (b)(1)(E) requires that a section 301(h) permittee have a program to complete facility planning for additions to the less than secondary treatment facility to bring the treatment works to full secondary treatment if needed. Planning for such additions must be in accordance with all applicable requirements of § 35.917 of Subpart E. Based upon the analysis of these alternative methods of upgrading to secondary treatment, the cost-effective combination of the less-than-secondary treatment system and additional facilities is to be established. This is required because the five year modification is considered temporary until the impact of the less than secondary treatment system and toxics control programs are verified by monitoring and biomonitoring programs. Should these monitoring programs indicate that secondary treatment is required, further delay due to planning requirements will be minimized. In addition, the cost of upgrading to secondary treatment must be known in order to determine whether it is cost-effective for non-marine dischargers to regionalize with a marine discharger and to evaluate wastewater reuse, recycling and reclamation as discussed in the preamble discussion on § 125.65.

Subsection (b)(2), which has been added to the final regulations requires that plans and specifications for the less than secondary facilities include provisions to ensure compatibility with additional facilities, should they be required at a later date. It is not intended that detailed plans and specifications be developed for the additional facilities at this time. Similarly, subsection (b)(3) has been added to provide for the compatibility of construction of the less-than-secondary facilities and any additional facilities required for upgrading to full secondary treatment.

No specific mention was made in the final regulations concerning eligibility of monitoring equipment for section 301(h). Eligibility of monitoring and laboratory equipment for pretreatment and NPDES permit purposes is already established

under Subpart E of this Chapter and Program Operations Memorandum 78–4.

One commenter suggested that Title II funds which had previously been allocated to a section 301(h) applicant for another purpose should be returned to the State and reissued under the State's then current priority list. Requiring section 301(h) dischargers to remit Title II funds previously granted to construct secondary treatment would, in EPA's opinion, be contrary to Congress' expectation, expressed in section 301(h)(8), that such funds would be diverted either to the achievement of BPWTT or the requirements of section 301(h).

Another commenter raised the issue of how section 201(g)(5) would fit into the Agency's assessment of the eligibility of particular projects for funding under section 301(h). Section 201(g)(5) which was added to the Act by the 1977 Amendments, requires EPA, in making any Title II grant from funds authorized for any fiscal year beginning after September 30, 1978, to assure that, in addition to the waste management techniques which must be studied under section 201(g)(2)(A), the grant applicant has evaluated innovative and alternative wastewater treatment processes and techniques. The requirements of this section also apply to section 301(h) dischargers. Not only is there nothing in the legislative history of the Act which would suggest that section 301(h) applicants were exempted from this provision, there is no logical reason for such an exemption. To clarify this point, section 125.66 of the final regulations requires section 301(h) applicants to demonstrate that any grants received from FY 1979 (or later) funds will meet the requirements of section 201(g)(5), in addition to those of section 201(g)(2)(A).

A number of commenters urged that Title II funds be made available to communities to assist them in filling out their section 301(h) applications. EPA disagrees. First of all, the Agency has no authority under the Act to provide federal funding for this purpose. Furthermore, there is nothing in either the language or the legislative history of section 301(h)(8) to suggest that Congress intended to allow Title II funds to be granted to section 301(h) applicants to assist them in gathering the technical and scientific data necessary to complete their applications. Section 301(h)(8) authorizes EPA to provide funding to "carry out the requirements of (Section 301(h))", not to determine whether applicants meet those requirements. Moreover, since section 301(h) is premised on the theory that communities have accumulated the data necessary to demonstrate their eligibility for a modification, it seems highly unlikely that Congress would have enacted a provision permitting EPA to grant Title II funds to collect such data.

Furthermore, since the Agency believes that the information required by the regulations and application is necessary to make an informed decision on the statutory criteria established by Congress, it is not possible to reduce the amount of data required.

Small communities with no, or very limited amounts of toxic pollutants in their discharges will in many cases be able to develop a section 301(h) application with less extensive data than will a larger discharger with significant sources of toxic pollutants. Thus, the costs of their applications should, as a practical matter, be lower than those of larger dischargers.

Section 125.67. Special permit conditions. This is a new section which delineates special conditions which will be required in permits issued under section 301(h). These conditions are to insure compliance with various provisions of the subpart and will be included in all section 301(h) permits in addition to all applicable terms and conditions required by 40 CFR 122.14 through 122.23.

VI. Application Format

Numerous comments have been received by EPA regarding the proposed Application for Modification of the Requirements of Secondary Treatment. Several changes have been made to the Application Format in response to these comments and to reflect changes which have been made in the regulations.

Most of the comments address three main areas of concern, namely, (1) time limitations for submittal of applications; (2) burdensome reporting requirements, particularly as they relate to small communities; and (3) use of a single application form for dischargers which vary substantially in size, complexity and nature of waste discharged.

The comments regarding the time limitations for submittal of applications are somewhat mooted by the fact that final regulations were not published as originally scheduled. As a result of this delay, EPA accepted preliminary applications which required that applicants submit a minimum of information.

Most commenters felt that the three month period for preparation of complete applications was too short, and they suggested that EPA either extend the deadline for submission of applications or implement a "two-stage" application review. As explained in section II.B., above, EPA has no authority to extend the statutory deadline for submission of applications. The Agency recognized, however, that since final regulations were not available for guidance, it would be unreasonable to expect applicants to submit complete final applications by that deadline. Therefore, the Agency accepted preliminary applications postmarked no later than September 25th, 1978 giving applicants substantial additional time to gather data for their final applications.

The suggestions that EPA employ a "two-stage" review process had two basic objectives: (1) to provide additional time for completing final applications, and (2) to require that EPA make an initial eligibility determination, based on a minimum amount of information, prior to a POTW incurring the additional cost of completing a final application.

EPA has not adopted the "two-stage" review process. However, by delineating a number of threshold criteria in § 125.59, these regulations should enable a POTW to determine whether it should incur the cost of applying for a section 301(h) modified permit.

The latter two concerns mentioned above, namely, concerns about burdensome reporting requirements and use of a single application form, are discussed together, as they raise similar questions. Several commenters suggested that the reporting requirements would be unduly burdensome for many small communities, particularly villages in Alaska, Puerto Rico and territorial possessions. This issue has been discussed extensively in a previous section of this preamble. (See discussion on small communities in section II, Major Issues).

A number of commenters suggested that a single application form was inappropriate for obtaining necessary and useful data from POTWs which vary substantially in size, complexity and nature of waste discharged. EPA recognizes that these variables exist but at the same time, believes that certain areas must be addressed in all applications in order for the Agency to make determinations based on sufficient information. Furthermore, this review can be completed more expeditiously if the data is presented in a reasonably uniform manner. For these reasons, EPA believes that a standard Application Format should be followed.

A number of other commenters either suggested specific questions which they felt should be included, or they asked specific questions regarding the basis for various technical requirements in the Application Format. EPA has attempted to respond to most of these suggestions in the Technical Support Document which was made available for review and comment prior to publication of these regulations. (See section IV for a discussion of the Technical Support Document).

Section F of the Application Format has been revised to delineate the information which must be provided by applicants. This information pertains to requirements of the Endangered Species Act of 1973, as amended. There is additional discussion of this change in the section-by-section analysis portion of this preamble.

Accordingly, 40 CFR Part 125 is amended by adding §§ 125.56 through 125.67 to this Subpart G which has been previously reserved.

These final section 301(h) regulations will be considered issued for purposes of judicial review at 1:00 p.m. Eastern time on June 22, 1979.

Note.—The Environmental Protection Agency has determined that this regulation, because it implements a statutory provision which eases rather than imposes, pollution control costs, does not constitute a regulation requiring preparation of an Economic Impact Statement under Executive Order 11821, as amended by Executive Order 11949, and under OMB Circular A–107.

Dated: June 4, 1979.

Douglas M. Costle,

Administrator.

Part 125 is amended by the addition of new Subpart G which reads as set forth below:

PART 125—CRITERIA AND STANDARDS FOR THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

Subpart G—Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

Sec.

125.56 Scope and purpose.
125.57 Law authorizing issuance of a modified permit.
125.58 Definitions.
125.59 General.
125.60 Existence and compliance with applicable water quality standards.
125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.
125.62 Establishment of a monitoring system.
125.63 Effect of discharge on other point and nonpoint sources.
125.64 Toxics control program.
125.65 Increase in effluent volume or amount of pollutants discharged.
125.66 Utilization of grant funds under Title II of the Act.
125.67 Special permit conditions.

Subpart G—Criteria For Modifying the Secondary Treatment Requirements Under Section 301(h) of the Clean Water Act

§ 125.56 Scope and purpose.

This Subpart establishes the criteria and standards to be applied by EPA in acting on section 301(h) requests for modifications to the secondary treatment requirements. It also establishes special permit conditions which must be imposed, in addition to terms and conditions required under Part 122, in any permit incorporating a section 301(h) modification of the secondary treatment requirement ("section 301(h) modified permit").

§ 125.57 Law authorizing issuance of a section 301(h) modified permit.

Section 301(h) of the Clean Water Act provides that:

The Administrator, with the concurrence of the State, may issue a permit under section 402 which modifies the requirements of subsection (b)(1)(B) of this section with respect to the discharge of any pollutant in an existing discharge from a publicly owned treatment works into marine waters, if the applicant demonstrates to the satisfaction of the Administrator that—

(1) There is an applicable water quality standard specific to the pollutant for which the modification is requested, which has been identified under section 304(a)(6) of this Act;

(2) Such modified requirements will not interfere with the attainment or maintenance of that water quality which assures protection of public water supplies and the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities, in and on the water;

(3) The Applicant has established a system for monitoring the impact of such discharge on a representative sample of aquatic biota, to the extent practicable;

(4) Such modified requirements will not result in any additional requirements on any other point or nonpoint source;

(5) All applicable pretreatment requirements for sources introducing waste into such treatment works will be enforced;

(6) To the extent practicable, the applicant has established a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into such treatment works;

(7) There will be no new or substantially increased discharges from the point source of the pollutant to which the modification applies above that volume of discharge specified in the permit;

(8) Any funds available to the owner of such treatment works under Title II of this Act will be used to achieve the degree of effluent reduction required by section 201 (b) and (g)(2)(A) or to carry out the requirements of this subsection.

For the purposes of this subsection the phrase "the discharge of any pollutant into marine waters" refers to a discharge into deep waters of the territorial sea or the waters of the contiguous zone, or into saline estuarine waters where there is strong tidal movement and other hydrological and geological characteristics which the Administrator determines necessary to allow compliance with paragraph (2) of this subsection, and section 101(a)(2) of this Act.

§ 125.58 Definitions.

For the purpose of this Subpart:

(a) "Applicant" means an applicant for a modified NPDES permit under section 301(h) of the Act.

(b) "Application format" means EPA's "Application Format for Modification of the Requirements of Secondary Treatment" provided in Part II of this this regulation.

(c) "Balanced, indigenous population" means an ecological community which:

(1) Exhibits characteristics similar to those of nearby, healthy communities existing under comparable but unpolluted environmental conditions; or

(2) May reasonably be expected to become re-established in the polluted water body segment from adjacent waters if sources of pollution were removed.

(d) "Current discharge" means the volume, composition, and location of an applicant's discharge as of any time between December 27, 1977 and (3 months after date of publication) as designated by the applicant.

(e) "Final application" means a submission for a section 301(h) modified permit to EPA not later than (90 days after date of publication). The final application shall contain:

(1) A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment;

(2) A signed, completed NPDES application Standard Form A, Parts I, II, and III; and

(3) The following certification: "I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), and based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of

fine and imprisonment." (see § 125.59(d)(1)).

(f) "Improved discharge" means the volume, composition and location of an applicant's discharge following:

(1) Construction of planned outfall improvements, including, without limitation, outfall relocation, outfall repair, or diffuser modification; or

(2) Construction of planned treatment system improvements; or

(3) Implementation of a planned program to improve operation and maintenance of an existing treatment system; or

(4) Implementation of a planned program to eliminate or control the introduction of pollutants into the applicant's treatment works.

(g) "Industrial source" means any source of nondomestic pollutants regulated under section 307 (b) or (c) of the Act which discharges into a POTW.

(h) "Modified discharge"means the volume, composition and location of the discharge proposed by the applicant for which a modification under section 301(h) of the Act is requested.

(i) "Nonindustrial source" means any source of pollutants which is not an industrial source.

(j) "Ocean waters" means those coastal waters landward of the baseline of the territorial seas, and the deep waters of the territorial seas, or the waters of the contiguous zone.

(k) "Pesticides" means demeton, guthion, malathion, mirex, methoxychlor and parathion.

(l) "Preliminary application" means a submission to EPA postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(m) "Primary treatment" means the first stage in wastewater treatment where substantially all floating or settleable solids, are removed by floatation and/or sedimentation.

(n) "Public water supplies" means water distributed from a public water system.

(o) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least fifteen service connections or regularly serves at least twenty-five (25) individuals. This term includes (1) any collection, treatment, storage and distribution facilities under the control of the operator of the system and used primarily in connection with the system, and (2) any collection or pretreatment storage facilities not under the control of the operator of the system which are used primarily in connection with the system.

(p) "Publicly owned treatment works" ("POTW") means a treatment works, as defined in section 212(2) of the Act, which is owned by a State, municipality or intermunicipal or interstate agency.

(q) "Saline estuarine waters" means those semi-enclosed coastal waters which have a free connection to the territorial sea, undergo net seaward exchange with ocean waters, and have salinities comparable to those of the ocean. Generally, these waters are near the mouth of estuaries and have cross-sectional annual mean salinities greater than twenty-five (25) parts per thousand.

(r) "Secondary treatment" means the term as defined in 40 CFR 133.102.

(s) "Shellfish, fish and wildlife" means any biological population or community that might be adversely affected by the applicant's modified discharge.

(t) "Stressed waters" means those receiving environments in which an applicant can demonstrate, to the satisfaction of the Administrator, that the absence of a balanced, indigenous population is caused solely by human perturbations other than the applicant's discharge.

(u) "Toxic pollutants" means those substances listed in Table 1 of Committee Print No. 95–30 of the Committee on Public Works and Transportation, House of Representatives, and published at 43 FR 4108 (January 31, 1978), as from time to time revised by the Administrator under section 307(a) of the Act.

(v) "Traditional pollutant" means biochemical oxygen demand ("BOD"), suspended solids ("SS") and pH.

(w) "State water quality standards" means applicable State water quality standards which have been:

(1) Approved or left in effect by the Administrator under section 303(a) or 303(c) of the Act; or

(2) Promulgated by the Administrator under section 303(b) or 303(c) of the Act, as of the date of any final application submitted under this Subpart.

(x) "Zone of initial dilution" ("ZID") means the region surrounding or adjacent to the end of the outfall pipe or diffuser ports, as calculated according to instructions in the application format, provided that it may not be larger than allowed by mixing zone restrictions in applicable State water quality standards.

§ 125.59 General.

(a) *Basis for application.* A final application for modified section 301(h) permit under this Subpart shall be based on either:

(1) A current discharge into ocean waters or saline estuarine waters; or

(2) An improved discharge into ocean waters or saline estuarine waters, *Provided,* That:

(i) The applicant demonstrates in its final application that such improvements have been thoroughly planned and studied as an alternative to secondary treatment and that it can expeditiously complete or implement such improvements; and

(ii) The applicant submits, as part of its final application, a proposed schedule for (A) the planning, design and staged construction of secondary treatment, and (B) such other improvements which will provide for the maximum amount of planning, design and construction which can be completed by the applicant pending a final decision on its application; and

(iii) The applicant has exercised its best efforts to comply with such schedule pending a final decision on its application.

(b) *Prohibitions:* No modified section 301(h) permit shall be issued:

(1) Where such issuance would not assure compliance with all applicable requirements of this Subpart;

(2) Where such issuance would not assure compliance with all applicable requirements of Part 122;

(3) Where the applicant's discharge was not actually flowing into ocean waters or saline estuarine waters as of December 27, 1977;

(4) For a discharge receiving less than primary treatment;

(5) For the discharge of sewage sludge;

(6) For any discharge for which there is as of September 13, 1979 an applicable State or local law, regulation or ordinance requiring secondary treatment of municipal wastewater, unless it can be shown that such law, regulation or ordinance is less stringent than secondary treatment, as defined in 40 CFR 133.102.

(7) Where such issuance would conflict with applicable provisions of other Federal laws, and, to the extent that they do not conflict with requirements of law, applicable provisions of Executive Orders. This includes situations where:

(i) The applicant's modified discharge is located in an area covered by an approved State coastal zone management program, and the applicant fails to provide certification under section 307(c) of the Coastal Zone Management Act of 1972, as amended,

16 U.S.C. 1456(c), that its discharge complies with such program;

(ii) The issuance of a section 301(h) modified permit would jeopardize the continued existence of an endangered or threatened species listed under the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*, or would result in the destruction or modification of the habitat of such species; or,

(iii) The applicant's modified discharge is located in a marine or estuarine sanctuary designated by the Secretary of Commerce under Title III of the Marine Protection, Research and Sanctuaries Act, as amended, 16 U.S.C. 1431 *et seq.*, or the Coastal Zone Management Act, as amended; 16 U.S.C. 1461 *et seq.*, and the Secretary denies certification under either of these Acts;

(8) Where the applicant either did not submit a preliminary application or submits a final application which, on its face, did not demonstrate to the satisfaction of the Administrator that the applicant's modified discharge meets or will meet all the requirements of this Subpart; or,

(9) Where the applicant is currently meeting effluent limitations based on secondary treatment.

(c) *Preliminary application.* Each applicant for a section 301(h) modified permit under this Subpart must have submitted a preliminary application to EPA, postmarked no later than September 25, 1978, which contained, at a minimum, the name and address of the applicant and a statement that the applicant was seeking a modification of secondary treatment requirements under section 301(h) of the Act.

(d) *Final application.* All final section 301(h) applications shall be signed by either a principal executive officer of the POTW or ranking elected official of the municipality. (See also § 122.5(a)(3)).

(1) *Contents.* Each applicant for a modified permit under this Subpart shall submit a final application to EPA which shall contain:

(i) A signed, completed NPDES Application Standard Form A, Parts I, II, and III; and

(ii) A completed application which corresponds to EPA's Application Format for Modification of the Requirements of Secondary Treatment; and

(iii) The following certification:

I certify under penalty of law that I have personally examined and am familiar with the information submitted in the attached document(s), and based on my inquiry of those individuals immediately responsible for obtaining the information, I am convinced that the information is true, accurate and correct. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment.

(2) *Deadline and distribution.* The original and two copies of the final application must be submitted to the following no later than September 13, 1979:

(i) 301(h) Review Group, Office of Water Program Operations, 401 M Street, SW., Washington, D.C. 20460 (original);

(ii) The Regional Administrator for the EPA Region in which the applicant is located (one copy); and

(iii) The State or interstate agency (or agencies) authorized to provide certification/concurrence under § 124.21–124.23 (one copy).

(e) *Decisions on section 301(h) modifications.* (1) The decision to grant or deny a section 301(h) modification of the secondary treatment requirement shall be:

(i) Made by the Administrator, or a person designated by the Administrator, pursuant to § 124.55; and

(ii) Based on the applicant's demonstration that it has met all the criteria set forth in §§ 125.59–66.

(2) No section 301(h) modified permit shall be issued by the Administrator, or person designated by the Administrator:

(i) Until the appropriate State certification/concurrence is granted or waived pursuant to § 124.24; or

(ii) If the appropriate State denies certification/concurrence pursuant to §124.24.

(3) Any section 301(h) modified permit shall:

(i) Be issued in accordance with the procedures set forth in Part 124; and

(ii) Contain all applicable terms and conditions set forth in Part 122; and

(iii) Contain the special permit terms set forth in § 125.67.

(4) Appeals of any section 301(h) determination shall be governed by the nonadversary initial licensing procedures set forth in Part 124, Subpart I.

(5) At the expiration of the section 301(h) permit, the POTW should be prepared to support the continuation of the modification based on studies and monitoring performed during the life of the permit.

§ 125.60 Existence of and compliance with applicable water quality standards.

(a) *Criteria.* There must exist a State water quality standard or standards applicable to the pollutant(s) for which a section 301(h) modified permit is requested, including:

(1) State water quality standards for biochemical oxygen demand or dissolved oxygen;

(2) State water quality standards for suspended solids, turbidity, light transmission, light scattering or maintenance of the photic- zone; and

(3) State water quality standards for pH.

(b) *Application requirements.* To enable the Administrator to determine whether the applicant meets the criteria of paragraph (a), the applicant shall demonstrate in Part A Section 9 of its application that:

(1) An applicable State water quality standard(s) exists; and

(2) That the modified discharge will comply with these State water quality standard(s).

§ 125.61 Attainment or maintenance of water quality which assures protection of public water supplies, the protection and propagation of a balanced, indigenous population of shellfish, fish and wildlife, and allows recreational activities.

(a) *Physical characteristics of discharge.*—(1) *Criteria.* (i) The applicant's modified outfall and diffuser must be well designed, using accepted designs of outfall and diffuser systems, to provide appropriate initial dilution, dispersion and transport of wastewater, considering the volume of the discharge and site-specific physical and environmental conditions;

(ii) The initial dilution achieved by the applicant's modified discharge, as calculated in Part B, section 1 of the Application Format, must be sufficient to meet all applicable State water quality standards at and beyond the boundary of the zone of initial dilution during those conditions defined as critical in Part B, Sections 1–4, of the Application Format;

(iii) Dilution water must be supplied to that zone where entrainment takes place in an amount equal to the wastewater flow times the dilution factor as calculated in Part B, Section 1 of the Application Format;

(iv) Following initial dilution, the partially diluted wastewater and particulates must be transported and dispersed so as not to adversely affect water use areas (including recreational and fishing areas) and areas of biological sensitivity.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (a)(1), the applicant shall provide the data on the physical characteristics and hydraulics of the outfall and on the physical

oceanographic conditions in the vicinity of the outfall required by Part B, Sections 1–4, of the Application Format.

(b) *Impact of discharge on public water supplies.*—(1) *Criteria.* (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which assures protection of public water supplies.

(ii) The applicant's modified discharge must not:

(A) Prevent a planned or existing public water supply from being used, or from continuing to be used, as a public water supply; or,

(B) Have the effect of requiring treatment over and above what would be necessary in the absence of such discharge in order to comply with local, State, and EPA drinking water standards.

(iii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the requirements of paragraph (b)(1) of this section, the applicant shall provide the data on the impact of its outfall on existing and potential public water supplies required by the Public Water Supply Impact Assessment, Part B, section 5, of the Application Format.

(c) *Biological impact of discharge.*—(1) *Criteria.* (i) A balanced, indigenous population of shellfish, fish and wildlife must exist:

(A) Immediately beyond the zone of initial dilution of the applicant's modified discharge and;

(B) In all other areas beyond the zone of initial dilution where marine life is actually or potentially affected by the applicant's modified discharge.

(ii) Conditions within the zone of initial dilution must not contribute to extreme adverse biological impacts, including, but not limited to, the destruction of distinctive habitats of limited distribution, the presence of disease epicenters, or the stimulation of phytoplankton blooms which have adverse effects beyond the zone of initial dilution;

(iii) In the case of a modified discharge into saline estuarine waters the following additional restrictions are placed on impacts within the zone of initial dilution:

(A) Benthic populations within the zone of initial dilution must not differ substantially from the balanced, indigenous populations which exist immediately beyond the boundary of the zone of initial dilution;

(B) The discharge must not interfere with estuarine migratory pathways within the zone of initial dilution; and

(C) The discharge must not result in the accumulation of toxic pollutants or pesticides at levels which exert adverse effects on the biota within the zone of initial dilution.

(iv) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which provides for the protection and propagation of fish, shellfish and wildlife.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (c)(1) of this section, the applicant shall prepare a Biological Conditions Summary in accordance with the Marine Biological Assessment Part B, section 6, of the Application Format and shall answer all questions contained in the Marine Biological Assessment Questionnaire, part B, Section 7 of the Application Format, based on the summary.

(d) *Impact of discharge on recreational activities.*—(1) *Criteria.* (i) The applicant's modified discharge must allow for the attainment or maintenance of water quality which allows for recreational activities beyond the zone of initial dilution, including, without limitation, swimming, diving, boating, fishing and picnicking and sports activities along shorelines and beaches.

(ii) The applicant's modified discharge must comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which allows for recreational activites.

(iii) There must be no Federal, State or local restrictions on recreational activities within the vicinity of the applicant's modified outfall unless such restrictions are routinely imposed around sewage outfalls. This exception shall not apply where the restriction would be lifted or modified, in whole or in part, if the applicant were discharging a secondary treatment effluent.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of paragraph (d)(1) of this section, the applicant shall provide the data on the impact of its discharge on recreational uses required by the Recreation Impact Assessment, Part B, section 8 of the Application Format.

(e) *Additional application requirements for application based on improved discharge.* If an applicant is applying for a section 301(h) modified permit on the basis of an improved discharge, it must submit in its final application:

(1) Final plans for such improvements in Part A, Section 10 of the Application Format;

(2) Computer modeling or other detailed analyses projecting changes in flow rates, flow patterns, composition, volume or other parameters or characteristics of the applicant's current discharge which are expected to result from such improvements at several milestone dates (including the statutory July 1, 1983 date) reflecting conditions of severe waste loadings;

(3) The assessments required by paragraphs (a) through (d) of this section based on its current discharge;

(4) Where the improved discharge involves outfall relocation, the assessments required by paragraphs (a) through (d) of this section for the relocation site; and,

(5) A detailed analysis of how the improvements planned by the applicant will, when completed and at the milestone(s) identified in paragraph (e)(2) above, eliminate, reduce or otherwise relieve any adverse impacts identified in paragraph (e)(3) of this section and assure compliance with the criteria contained in paragraphs (a) through (d) of this section.

(f) *Stressed waters.* If an applicant believes that its failure to meet the requirements of paragraphs (a) through (d) of this section is attributable to conditions resulting from human perturbations other than its modified discharge (including, without limitation, other municipal or industrial discharges, nonpoint source runoff and the applicant's previous discharges), the applicant must demonstrate, to the satisfaction of the Administrator, that its modified discharge does not or will not:

(1) Contribute to, increase, or perpetuate such stressed conditions;

(2) Contribute to further degradation of the biota or water quality if the level of human perturbation from other sources increases; and

(3) Retard the recovery of the biota or water quality if the level of human perturbation from other sources decreases.

§ 125.61 Establishment of a monitoring system.

(a) *General requirements applicable to all proposed monitoring programs.* (1) The applicant must have a biological monitoring program, a program for monitoring compliance with State water quality standards, and a toxics control monitoring program which meet the requirements of paragraphs (a) through (c) of this section;

(2) Each program must include a detailed description of sampling techniques, times, and locations (including appropriate control sites), analytical techniques, quality control and verification procedures to be used; and,

(3) The applicant must also demonstrate that it has the economic, personnel, technical and other resources to implement the proposed programs immediately upon issuance of a section 301(h) modified permit and to carry out the proposed programs for the life of the modified permit.

(4) Each proposed monitoring program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any modified permit and during the term of any modified permit issued.

(b) *Biological monitoring program.*— (1) *Criteria.* (i) The biological monitoring program shall provide data adequate to evaluate the impact of the applicant's discharge on marine biota, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and unusual oceanographic and meteorological events) and variability of the discharge anticipated during the life of the permit. It shall be keyed to the nature and volume of the applicant's discharge, the nature of the receiving water, and the nature of the marine life affected or likely to be affected as identified in the Biological Conditions Summary prepared under § 125.61(c)(2).

(ii) For applicants seeking a section 301(h) modified permit based on:

(A) A current discharge, the biological monitoring program shall be designed to demonstrate that the discharge currently complies and will continue to comply throughout the term of the modified permit with the requirements of § 125.61(c)(1).

(B) An improved discharge other than outfall relocation, the biological monitoring program shall be designed to collect baseline data on the current impact of the discharge, to monitor the impact of the discharge as improvements are completed, and, upon completion of all improvements, to demonstrate that the discharge complies with the requirements of § 125.61(c)(1).

(C) An improved discharge involving outfall relocation, the biological monitoring shall be conducted at both the current discharge site, until such discharge ceases, and the relocation site. The biological monitoring program at the current discharge site must be designed to measure the impact of the discharge as the toxics control program is implemented and any upgrading of treatment is completed. The biological monitoring program at the relocation site shall be designed to collect baseline data for a minimum of one year, to monitor the impact of the discharge as improvements other than outfall relocation are completed, and, upon completion of all improvements, demonstrate that the discharge complies with the requirements of § 125.61(c)(1).

(iii) The biological monitoring program shall include quarterly seasonal surveys of the structure and function of the macrofaunal benthos and those other biological communities most likely to be affected by the discharge.

(iv) Where the chemical analysis conducted under § 125.64(a)(1) of this Subpart or any subsequent chemical analysis of the applicant's discharge required to be conducted under paragraph (d) of this section identifies any toxic pollutants or pesticides in the applicant's discharge, the biological program shall include:

(A) *In situ* bioassays within and immediately beyond the zone of initial dilution and at appropriate reference sites. The bioassays must be conducted with appropriate sensitive marine organisms, and shall be designed to:

(*1*) Determine the accumulation of each identified toxic pollutant and pesticide in the organisms;

(*2*) Examine other adverse effects of the discharge on the organisms, including, death, growth abnormalities, and physiological stress.

(B) Sampling of sediments within and immediately beyond the boundary of the zone of initial dilution and other areas of solids accumulation (as identified in the physical assessment prepared under § 125.61(a)(1)), and at appropriate reference sites, for accumulation of each identified toxic pollutant and pesticide. If sampling indicates the existence of elevated or increasing levels of such pollutants or pesticides, the biological monitoring program must include a specific program for measuring the impact of such substances on, at a minimum, the macrofaunal benthos.

(v) Where the applicant's discharge may affect commercial or recreational fisheries, the biomonitoring program shall include periodic assessments of the condition and productivity of fisheries likely to be affected by the discharge.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's biomonitoring program meets the criteria of (b)(1), the applicant shall submit a proposed Biological Monitoring Program in Part C, Section 1 of its final application.

(c) *Water quality monitoring program.*(1) *Criteria.* (1) The water quality monitoring program shall provide data adequate to evaluate the applicant's compliance with applicable State water quality standards, taking into account critical environmental periods (e.g., runoff, spawning periods for fish and shellfish, and unusual oceanographic and meteorological events) and variability of the discharge anticipated during the term of the modified permit;

(ii) The water quality monitoring program shall be designed to measure the applicant's compliance with applicable State water quality standards:

(A) As required by State law;

(B) At the boundary of the zone of initial dilution; and

(C) At locations beyond the zone of initial dilution where impacts on marine life, recreational interests or public water supplies may occur.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's water quality monitoring program meets the criteria of (c)(1) of this section, the applicant shall submit a proposed Water Quality Monitoring Program in Part C, Section 2 of its final application.

(d) *Toxics control minitoring program* (1) *Criteria.* (i) The toxics control monitoring program shall provide data on the chemical composition of the applicant's discharge, which can be used to:

(A) Measure the effectiveness of the applicant's toxic control program in reducing toxic pollutants and pesticides in its discharge;

(B) Assist in implementing the toxics control program; and,

(C) Guide biological monitoring efforts under paragraph (b)(1)(iv) of this section.

(ii) The toxics control monitoring program shall provide for a chemical analysis of representative wet weather and dry weather discharges for toxic pollutants and pesticides.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's toxic control monitoring program meets the criteria of

(d)(1) of this section, the applicant shall submit a proposed Toxics Control Monitoring program in Part C, section 3 of its final application.

§ 125.63 Effect of discharge on other point and non-point sources.

(a) *Criterion.* No modified discharge may result in any additional requirements on any other point or nonpoint source.

(b) *Application requirements.* To enable the Administrator to determine whether an applicant's modified discharge meets the criterion of paragraph (a) of this section, the applicant shall submit in Part D of its final application, letters from each agency having authority to establish or to advise in the establishment of waste loadings or wasteload allocations for the waters into which the applicant proposes to discharge. These letters shall indicate whether the applicant's proposed discharge will result in any additional treatment, pollution control, or other requirement on any other point or nonpoint source (including combined sewers). The letter(s) shall include the basis for the agency's conclusion.

§ 125.64 Toxics control program.

(a) *Chemical analysis.*—(1) *Criteria.* The applicant shall submit at the time of application, a chemical analysis of its current discharge for all toxic pollutants and pesticides as defined in § 125.58(k) and (u). Analysis shall be performed on two 24 hour composite samples (one dry weather and one wet weather). Applicants may supplement or substitute additional chemical analysis data if documentation is provided to show that the composition of the wastewater samples typifies that which occurs during dry and wet weather conditions.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant meets the criteria of paragraph (a)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(b) *Identification of Sources of Toxic Pollutants* (1) *Criteria.* The applicant shall submit at the time of application, an analysis of the sources of toxic pollutants identified in section 125.64(a)(1). The applicant shall categorize the sources of the toxic pollutants according to industrial and non-industrial types.

The applicant shall include in § 125.64(c) and (d) programs to reduce or remove the identified toxic pollutants from the applicant's discharge.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant meets the criteria of paragraph (b)(1) the applicant shall provide the information required by Part E, Section 1 of the Application Format.

(c) *Industrial pretreatment requirements.*—(1) *Criteria.* (i) An applicant which has known or suspected industrial sources of toxic pollutants shall have a pretreatment program capable of enforcing all applicable promulgated pretreatment standards which meets the requirements of 40 CFR 403.8(f) no later than the time the applicant's permit is modified, and which will be implemented no later than eighteen (18) months after issuance of the modified permit;

(ii) This requirement shall not apply to any applicant which has no known or suspected industrial sources of toxic pollutants and so certifies to the Administrator;

(iii) The proposed industrial pretreatment program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the term of any section 301(h) modified permit issued;

(iv) Implementation of all existing pretreatment requirements and authorities must be maintained through the period of development of any additional pretreatment requirements that may be necessary to comply with the requirements of this subpart.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant not exempted by paragraph (c)(1)(ii) of this section meets the criteria of paragraph (c)(1), the applicant shall provide in Part E, Section 2 of its final application, a proposed pretreatment program which includes the following:

(i) The evidence required by 40 CFR 403.9(a)(1)–(4);

(ii) An inventory of sources which are subject or may be subject to the pretreatment program. Such sources shall include, but not be limited to, sources in the industrial categories identified in Appendix A, Part 122 of the National Pollutant Discharge Elimination System regulations. The inventory shall include a description of the methodology used to develop the inventory and the process to be used to ensure the inventory is kept accurate and current. At a minimum, the inventory shall include a qualitative description of the type of pollutants contributed by each identified source. In addition, for sources subject to promulgated national categorical pretreatment standards, State or local pretreatment requirements, the inventory shall include a summary of industrial compliance with the quantitative and qualitative information required by 40 CFR Part 403.12(b);

(iii) A schedule of compliance which demonstrates that the program will be implemented as soon as possible but in no event later than eighteen (18) months after issuance of a section 301(h) modified permit. The compliance schedule shall include, at a minimum, the following milestones and shall specify their initiation and completion dates:

(A) Completion of the wastewater characterization of industrial sources inventoried in the final application as required by 40 CFR 403.8(f)(2)(i–iii);

(B) Development of effluent limitations for prohibited pollutants (as defined by 40 CFR 403.5) contributed to the POTW by industrial sources;

(C) Notification of industrial sources of applicable pretreatment standards and sludge management requirements, as required by 40 CFR 403.8 (f)(2)(iii);

(D) Design of a compliance monitoring program, as defined by 40 CFR 403.8(f)(1)(v);

(E) Establishment of financial programs and revenue sources to ensure adequate funding to carry out the pretreatment program;

(F) Acquisition of all qualified personnel necessary to carry out the pretreatment program; and

(G) Submission of a request for pretreatment program approval without conditions (and removal credit approval if desired and eligible) as required by 40 CFR 403.9.

(iv) Provisions, if necessary, for requesting conditional acceptance of the pretreatment program pending the acquisition of funding and/or personnel for limited aspects which do not require immediate implementation, *Provided* the applicant:

(A) Has the authority, procedures, funding and personnel to fulfill its current enforcement responsibilities for all applicable promulgated pretreatment standards;

(B) Meets the requirements of 40 CFR 403.9(b)(1)–(3);

(C) Submits a schedule of compliance and evidence demonstrating it will have sufficient resources and qualified personnel to carry out the authorities and procedures in 40 CFR 403.8(f) as soon as possible but not later than eighteen (18) months after issuance of a section 301(h) modified permit;

(D) Submits a description of its record to date in enforcing existing applicable national, State and local pretreatment standards; and

(E) Has an approvable schedule of compliance for implementing its pretreatment program.

(d) *Nonindustrial source control program.*—(1) *Criteria.* (i) The applicant shall have at the time of application, a schedule of activities designed to eliminate the entrance of toxic pollutants from nonindustrial sources into its treatment works to the extent practicable, which will be implemented no later than eighteen months after issuance of a section 301(h) modified permit.

(ii) Each proposed nonindustrial source control program submitted by the applicant under this section shall be subject to revision as determined by the Administrator prior to issuing any section 301(h) modified permit and during the life of any such permit issued.

(2) *Application requirements.* To enable the Administrator to determine whether an applicant's nonindustrial source control program meets the criteria of paragraph (d)(1) of this section, the applicant shall provide in Part E, section 3 of its final application a proposed nonindustrial source control program which includes the following:

(i) A schedule of activities for identifying nonindustrial sources of toxic pollutants, including:

(A) All nonindustrial sources, or categories of sources, which are introducing toxic pollutants into the applicant's treatment works; and,

(B) The specific toxic pollutants and volumes thereof generated by such sources or categories of sources.

(ii) A schedule of activities to determine practicability of controls, to include:

(A) An analysis of the control technologies available to the applicant, including treatment as well as control, at the sale, use, handling and disposal stage;

(B) An assessment of the effectiveness of such control technologies in eliminating or limiting the introduction of toxic pollutants from such source into the applicant's treatment facility; and

(C) An analysis of the legal, technological, socio-economic, and institutional impact of utilizing such control technologies.

(iii) A schedule for the development and implementation of control programs, to the extent practicable, for each nonindustrial source or category of sources identified under paragraphs (b)(1) and (d)(2)(i) of this section. Each such program shall include:

(A) A description of the program;

(B) A method for enforcing the program;

(C) A monitoring program which will measure compliance with and the effectiveness of the program; and

(D) A schedule for implementation.

(iv) A schedule for the development and implementation, to the extent practicable, of specific control programs, in addition to the programs for any other non-industrial source or sources identified under paragraph (b)(1) of this section. These programs shall include;

(A) A program for the development of best management practices to control urban stormwater runoff into combined sewers, including street cleaning, catch basin cleaning, trash pickup in both commercial and residential areas, and runoff controls at construction sites;

(B) A program to eliminate the discharge of waste oil from gas stations, service stations and garages into the applicant's treatment works, including programs to collect such waste oil for recycling or solid waste disposal;

(C) A program to control the introduction of herbicides, fungicides, insecticides and rodenticides into the applicant's treatment facility from residential, commercial and public works activities;

(D) A program for controlling sale, use, and/or disposal of certain household products containing toxic pollutants which, because of disposal practices, are likely to enter the applicant's treatment works (e.g., household paints, cleaning compounds); and

(E) A program to modify building and/or plumbing codes for new construction to limit the introduction of heavy metals from plumbing equipment into the applicant's treatment works.

(v) The schedules of activities shall include an assessment of the applicant's ability to provide the financial, staffing and other resources or arrangements which may be necessary to carry out the schedule of activities listed in paragraph (d)(2)(i) through (iv).

§ 125.65 Increase in effluent volume or amount of pollutants discharge.

(a) *Criteria.* No modified discharge may result in any new or substantially increased discharges of the pollutant to which the modification applies above the discaharge specified in the section 301(h) modified permit. The applicant shall provide data indicating that:

(1) There shall be no increase in effluent volume beyond the amount in the applicant's projected five year discharge;

(2) There shall be no increase in the mass loadings of any pollutant(s) for which a modification is requested over and above the amount in the applicant's projected five year discharge; and

(3) Where pollutant discharges are attributable in part to combined sewer overflows, the applicant shall minimize existing overflows and prevent increases in the amount of pollutants discharged.

(b) *Application requirements.* To enable the Administrator to determine whether the applicant meets the requirements of paragraph (a), the applicant shall demonstrate in Part F of its final application, compliance with paragraphs (a) (1) and (2) of this section, ans submit a schedule of activities designed to comply with paragraph (a)(3) of this section.

§ 125.66 Utilization of grant funds available under Title II of the Act.

(a) *Criteria.* (1) Any funds available to the applicant under Title II of the Act shall be used for:

(I) The construction of municipal treatment works necessary to ensure that the applicant's modified discharge will meet the requirements of this subpart; and

(ii) The application of best practicable wastewater treatment technology.

(2) The applicant shall prepare a revised scope of work and estimate of revised costs under any active Step 1, 2, or 3 Construction Grant awarded under 40 CFR Part 35, subpart E.

(3) The revised scope of work of any active grant awarded from funds authorized for any fiscal year beginning after September 30, 1978, shall be subject to the requirement to evaluate innovative and alternative technologies in accordance with 40 CFR Part 35, Subpart E.

(4) Any such revised scope of work and costs shall be subject to review and revision by the Administrator; such review shall not constitute approval, obligation, or award of a grant under 40 CFR Part 35.

(b) *Application requirements.* To enable the Administrator to determine whether an applicant can meet the requirements of paragraph (a) of this section the applicant shall submit as Part G of its final application a funding program which shall contain a proposed modified scope of work and estimate of revised costs for any active Step 1, 2, or 3 Construction Grants awarded under Part 35, Subpart E of this Chapter, which provides for the following:

(1) *Step 1 Grants.* (i) Application of the best practicable wastewater treatment technology (BPWIT);

(ii) Reclamation, recycle, and reuse of water and confined disposal of pollutants;

(iii) Development of a pretreatment program in accordance with the requirements of this part and 40 CFR 403 (see also 40 CFR 35.907);

(iv) An evaluation of flow and waste reduction methods including development of a non-industrial source program as required by § 125.64(d)(3) to reduce or eliminate the discharge of toxic substances to the municipal treatment works; and

(v) An analysis which establishes the cost effective combination of the proposed less-than-secondary treatment system and additional facilities required to provide for full secondary treatment (such additional facilities must be planned in accordance with the requirements of § 35.917 of 40 CFR Part 35, Subpart E).

(2) *Step 2 Grants.* Development of plans and specification for the proposed less-than-secondary treatment facilities including provision for future addition of facilities to provide for secondary treatment and BPWIT.

(3) *Step 3 Grants.* Construction of the proposed less-than-secondary facilities including provisions to ensure compatibility with future additions of facilities to provide for secondary treatment and BPWIT.

§ 125.67 Special conditions for section 301(h) modified permits.

Each section 301(h) modified permit issued shall contain, in addition to all applicable terms and conditions required by 40 CFR §§ 122.14 through 122.23, the following:

(a) Effluent limitations which will assure compliance with the requirements of this Subpart;

(b) A schedule or schedules of compliance for:

(1) Pretreatment program development required by § 125.64(c);

(2) Nonindustrial toxics control program required by § 125.64(d);

(3) Any construction required by § 125.66; and

(4) Control of combined sewer overflows required by § 125.65.

(c) Monitoring requirements that include:

(1) Biomonitoring program requirements of § 125.62(b);

(2) Water quality program requirements of § 125.62(c); and

(3) Toxic control monitoring program requirements of § 125.62(d).

(d) Reporting requirements that include:

(1) An annual report to the Enforcement Division Director on the results of the monitoring program required by paragraph (c);

(2) An annual report summarizing industrial compliance with the reporting requirements of 40 CFR 403.12(b). The report shall summarize for each industrial subcategory covered by national pretreatment standards:

(i) The number of sources reporting versus the number of sources inventoried in that subcategory;

(ii) The number of sources not in compliance with the pretreatment standard;

(iii) The number of sources with compliance schedules; and

(iv) What actions are being undertaken to develop compliance schedules for sources currently lacking but requiring a schedule.

(3) A report within 180 days of the final compliance date of a national pretreatment standard, summarizing the number of noncomplying sources in that industrial subcategory and what actions are being taken to bring non-complying sources into compliance (see industry reports required by 40 CFR 403.12(d)).

(4) An annual report on the public notification of noncomplying industries required by 40 CFR 403.8(f)(2)(vii).

[OMB No. 158—S79003; Expires December 31, 1979]

Application Format for Modification of the Requirements of Secondary Treatment

Introduction

This application format consists of the following seven (7) parts, (A through G), sections and appendices which must be provided by the applicant to constitute a final application:

Part A. General

Section 1. Description of Treatment System.
Section 2. Effluent Limitations.
Section 3. Existing Discharge.
Section 4. State Secondary Treatment Requirements.
Section 5. State Coastal Zone Management Program.
Section 6. Marine and Estuarine Sanctuaries.
Section 7. Endangered or Threatened Species.
Section 8. Other Applicable Federal Requirements.
Section 9. Existence and Compliance with State Water Quality Standards.
Section 10. Improved Discharge Construction.

Part B. Technical Evaluation Information

Section 1. Physical Assessment.
Subsection A—Initial Dilution.
Appendix I. Description of Methods used to compute initial dilution assuming EPA methods were not used.
Appendix II. Oceanographic Data.
Subsection B—Ocean Discharge.
Appendix III. Data on Ocean Discharge.
Subsection C—Saline Estuarine Discharge.
Appendix IV. Data on Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Appendix V. DO demand resulting from disturbance of bottom.
Appendix VI. Description of more critical DO situation.
Section 3. Compliance with pH.
Appendix VII. Other considerations relative to pH.
Section 4. Compliance with Suspended Solids.
Appendix VIII. Compliance with State water quality standards.
Appendix IX. Description of experimental procedure used to compute amount and areal extent of SS accumulation on seabed.
Section 5. Public Water Supply Impact Assessment.
Appendix X. Assessment of Modified Discharge on Public Water Supplies.
Section 6. Marine Biological Assessment.
Appendix XI. Biological Conditions Summary.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.
Appendix XII. Assessment of Modified Discharge on Recreational Activities.

Part C. Description of Monitoring System

Section 1. Biological Monitoring Program.
Appendix XIII. Proposed Biological Monitoring Program.
Section 2. Water Quality Monitoring Program.
Appendix XIV. Proposed Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.
Appendix XV. Proposed Toxics Control Monitoring Program.

Part D. Letter(s) From State Concerning Impact of Modified Discharge on Other Point and Non-Point Sources

Appendix XVI. Letters from State Agencies Concerning Impact on Other Point and Non-Point Sources.

Part E. Toxic Control Program.

Section 1. Chemical Analysis.
Appendix XVII. Chemical Analysis of Toxic Pollutants and Pesticides and Source Identification Analysis.
Section 2. Pretreatment Program.
Appendix XVIII. Proposed Pretreatment Program.
Section 3. Non-Industrial Source Control Program.
Appendix XIX. Proposed Non-Industrial Source Control Program.

Part F. Effluent Volume and Mass Emissions

Appendix XX. Data on Effluent Volume and Mass Emissions.
Appendix XXI. Schedule of Activities to Control Combined Sewer Overflows.

Part G. Use of Title II Funds

Appendix XXII. Funding Program for Available Title II Funds.

Each part should be completed by the applicant to the best of its ability. When completed, this application must demonstrate, on its face, that the applicant's

modified discharge will meet the requirements of 40 CFR Part 125 and section 301(h) of the Act.

Part A—General

Section 1. Description of Treatment System

Please provide a detailed description of the treatment system and outfall configuration which you propose to utilize to satisfy the requirements of section 301(h) and 40 CFR Part 125.

If you are applying for a modification on the basis of an improved discharge within the meaning of 40 CFR 125.58, please also provide a detailed description of your current treatment system and outfall configuration.

Section 2. Effluent Limitations

Please identify the final effluent limitations for biochemical oxygen demand, suspended solids and pH on which your application for a modification is based:

Biochemical oxygen demand ———mg/l

Suspended solids ———mg/l

pH ———

Section 3. Existing Discharge

Did the publicly owned treatment works for which you are requesting a modification discharge into marine waters on or prior to December 27, 1977?

Yes ——— No ———

If "yes", please provide the start-up date of the facility's discharge, the discharge volume, and the exact location of the discharge.

If "no", please provide an explanation.

Section 4. State Secondary Treatment Requirements

Does your State or locality have a law, regulation or ordinance requiring secondary treatment of municipal wastewater?

Yes ——— No ———

If "yes", please attach a copy of such law, regulation or ordinance.

Section 5. State Coastal Zone Management Program

Is your modified discharge located in an area which is included in a State coastal zone management program(s) which has been approved under the Coastal Zone Management Act of 1972, as amended?

Yes ——— No ———

If "yes", attach a certification that your modified discharge will comply with such program(s).

Section 6. Marine and Estuarine Sanctuaries

Is your modified discharge located in a marine or estuarine sanctuary designated under Title III of the Marine, Protection, Research & Sanctuaries Act of 1972, as amended or under the Coastal Zone Management Act of 1972?

Yes ——— No ———

If "yes", please attach a certification from the Secretary of Commerce that the discharge is consistent with Title III and can be carried out within any applicable regulations promulgated thereunder.

Section 7. Endangered or Threatened Species

Please attach sufficient information to demonstrate that your modified discharge will not jeopardize the continued existence of an endangered or threatened species (as determined by the Secretary of the Interior under the Endangered Species Act of 1973, as amended), and will not result in the destruction or modification of the habitat of such species.

To assist EPA in determining whether the discharge of effluent pursuant to a permit issued under section 301(h) may affect a threatened or endangered species or modify the critical habitat of such species, an application must contain the following information:

(1) the names of any threatened or endangered species listed in 44 FR 3636 *et seq.* (January 17, 1979 or subsequently listed species) that inhabit, or obtain nutrients from, waters that will be affected by the proposed discharge;

(2) an indication whether the discharge will affect an area designated as Critical Habitat in 50 CFR Sections 17.95, 19.96 or Part 226;

(3) the applicant's evaluation of whether the proposed discharge may affect threatened or endangered species or modify a Critical Habitat (if a proposed discharge may affect waters inhabited by a threatened or endangered species, or used by such species to obtain nutrients, or if a proposed discharge may affect a Critical Habitat, the applicant's evaluation should contain a detailed analysis of the direct and indirect impacts of such discharge on threatened or endangered species).

Section 8. Other Applicable Federal Requirements

Are you aware of any Federal law, other than the Clean Water Act or the three statutes identified in Sections 5, 6 and 7, or an Executive Order, which is applicable to your discharge?

Yes——— No———

If "yes", please provide sufficient information to demonstrate that your modified discharge will comply with such law(s) or order(s).

Section 9. Existence and Compliance With State Water Quality Standards

Does a State water quality standard or standards, as defined in section 125.58(w) exist, as required by § 125.60(a) that is applicable to the pollutant or pollutants for which a modified permit is requested?

Yes——— No———

If "yes", please attach a certification from your State water pollution control agency and a demonstration that the water quality of your modified discharge meets or will meet the appropriate State water quality standard or standards. Include information on the State's mixing zone policy, criteria applied, and dilution or decay studies that were undertaken to demonstrate that the appropriate mixing and effluent concentration limitations were met.

Section 10. Improved Discharge Construction

Are you applying for a section 301(h) modification based on an improved discharge within the meaning of 40 CFR 125.58?

If "yes", please provide the following information:

A. Evidence that such improvements have been throughly planned and studied as an alternative to secondary treatment.

B. Evidence that you have the financial and technical resources necessary to complete or implement such improvements expeditiously.

C. A history of your previous efforts to comply with construction schedules in your existing NPDES permit (or an enforcement compliance schedule letter). If you have not met all required dates, please provide an explanation.

D. A proposed schedule for the staged planning, design and construction of (A) secondary treatment and (B) the improvements which you propose to make to meet the requirements of this part, which will maximize the amount of planning, design and construction which you can complete pending a final Agency decision on your application.

Part B—Technical Evaluation Information

Table of Contents

Section 1. Physical Assessment.
Subsection A—Initial Dilution.
Subsection B—Ocean Discharge.
Subsection C—Saline Estuarine Discharge.
Section 2. Compliance with BOD or DO.
Section 3. Compliance with pH.

Section 4. Compliance with Suspended Solids.
Section 5. Public Water Supply Impact Assessment.
Section 6. Marine Biological Assessment.
Section 7. Biological Assessment Questionnaire.
Section 8. Recreational Impact Assessment.

General Instructions. In addition to providing the information required in this format, the applicant must include supplemental information as requested in various Sections of Part A.

Section 1. Physical Assessment

Subsection A. Initial Dilution

1–1. List the characteristics of the outfall diffuser system:

————angle of port orientation(s) from the horizontal, in degrees.

————port diameter(s) in meters to three significant figures, and the contraction coefficient of the orifice(s), if known.

————vertical distance between water surface and outfall port(s) centerline, in meters.

————density of effluent in grams per cubic centimeters at some reference temperature (degrees centigrade).

————number of ports.

————port spacing, meters; also explain in Appendix I the spatial arrangement of ports with respect to each other, and the seabed.

————design flow rate for each port if multiple ports are employed (m^3/sec).

1–2. Determine the flow rates representing the highest two to three hours during an average day of the seasonal critical periods identified in 1–3:

a. Maximum flow = ————m^3/sec.

b. Expected maximum flow at the end of the permit term = ————m^3/sec.

1–3. Provide ambient density gradient lines for the region of the outfall diffuser. Sufficient vertical data points must be given to allow an accurate representation by linear segments of the major features of the ambient density structure. Ambient stratification adversely effects initial dilution. The greatest density gradient over the height-of-rise of the plume will result in the lowest dilution period. Data can be evaluated by (1) comparing predictions for various density profiles or (2) predicting the density gradient over the height-of-rise of the plume and then using the greatest value (as explained in the Technical Support Document). Worst case conditions or those at the worst 10 percentile if sufficient data exists should be used. Since initial dilution predictions may be sensitive to the value of the density gradient, data accuracy should be consistent with generally accepted oceanographic practices. Density should be reported to five (5) significant figures. A set of data should be provided for each of the following critical environmental situations:

a. Periods of maximum hydraulic loading from the wastewater treatment facility.

b. Periods of low background water quality due to natural conditions including low DO, excessively high and low turbidity.

c. Periods of exceptional biological activity (*e.g.*, spawning, migration of anadromous or catadramous organisms, etc.)

d. Periods of low net circulation, low effective net flushing, or low intertidal mixing

e. Periods of minimum and maximum stratification.

1–4. Compute initial dilution for the flow rates identified in Section 1–2 and each of the critical environmental conditions given in Section 1–3. Currents equal to the lowest ten percentile of those measurements made near the discharge site during these periods may be used in computations.

Dilution is defined as the total volume of a parcel divided by the volume of waste it contains. Initial dilution is the flux-average dilution attained by the plume during its convective ascent through ambient water. Initial dilution may be calculated by the applicant. However, EPA will make calculations based on its own methods.[1] These methods are available upon request. If other methods are used, they, should be described in Appendix I and be in reasonable agreement with EPA calculations.

For the purposes of demonstrating impact on water quality, concentrations of waste constituents expected after initial dilution are:

$$C_f = C_a + (C_e - C_a) / Sa$$

Where:

C_f = final concentrations, C_e = effluent concentrations, C_a = ambient concentration, and Sa = predicted initial dilution.

1–5. If EPA methods of initial dilution prediction are used, check here.————

1–6. Of the initial dilutions listed in 1–4, which is most critical with respect to ambient DO requirements (See 2–7)? Explain in Appendix I.

1–7. Which is most critical for pH (See 3.3)? Explain in Appendix I.

1–8. Which is most critical for SS (See 4.5)? Explain in Appendix I.

[1] Teeter, A. M. and D. J. Baumgartner. Predictions of Initial Mixing for Municipal Ocean Discharges. EPA, Corvallis Environmental Research Laboratory Publication 043. Corvallis, Oregon, August 1978.

1–9. Provide in Appendix II an explanation of how the currents and ambient vertical density stratification in the vicinity of the outfall (using data provided in Appendices III and/or IV) may influence plume shape, trajectory, and seawater entrainment in the plume (or plumes if multiple diffusers are used). Methods cited above for initial dilution may be used. The applicant must demonstrate that coastal circulation processes supply dilution water in the amount of Sa x Q, where Q is the volumetric flux of treated wastewater, using oceanographic data discussed in Appendix II, III, or IV.

1–10. Estimate the boundary of the zone of initial dilution. This zone should bound those dilutions calculated for the flows and conditions described in Section 1–4. Use predicted plume trajectories or vertical height of rise for the critical conditions, whichever is greater, as the radial extent of the zone. Measure this distance horizontally from the discharge point(s) to the boundary of the zone. The maximum vertical height of rise will equal the water depth in most cases and is an acceptable value. The zone will then be a circle with a radius equal to the water depth in the case of a single port, or a rectangle whose width is equal to twice the depth of the water plus the width of the diffuser, and whose length is equal to twice the depth of the water plus the length of the diffuser. For purposes of compliance monitoring, a regularly shaped boundary (describing a cylinder, cube, etc.) extending vertically from the seabed to the sea surface would be acceptable. List the geometric description of the zone configurations indicating the margin for navigational error as a ± distance.

1–11. List the coordinates of the zone by latitude and longitude.

Subsection B. Ocean Discharge

1–12. If your discharge is into the ocean, provide in Appendix III an oceanographic report including:

a. Profiles with depth, representative of seasonal conditions, shall be provided for temperature, salinity, density and currents. These variables shall be given for the water column inshore of the diffuser (or pipeline end, in the case of no diffuser), over the diffuser (or end), but away from direct effluent effects, offshore of the end, and upstream and downstream of the center of the discharge. Conclusions should be drawn from direct and inferred current measurements as to the fate of material in the far field and as to plume dynamics. Oceanographic atlases or compendia of data may be used, or data

may be extrapolated from them if it is shown that they are representative of the outfall area.

b. Depending on applicable water quality standards and monitoring requirements, the following measurements shall be made simultaneously at the same stations as 1–12a, above, and additionally to monitor outfall effluents: BOD, DO, pH, suspended particulates, and light transmittance. As noted elsewhere, DO is a surrogate for BOD, and light transmittance and turbidity are surrogates for suspended solids and may be substituted where appropriate.

c. An assessment of the environmental effects of direct freshwater runoff from coastal areas is required. Runoff from estuaries may contain substances that affect measurements in the zone occupied by the outfall, hence the outfall may contribute less to the pollution load than would be the case if extraneous sources were not considered. The applicant should document the estuary mass emission rate if this situation occurs.

Subsection C. Saline Estuarine Discharge

1–13. If your discharge is to saline estuarine waters, provide in Appendix IV an oceanographic report describing the following characteristics:

a. Seasonal classification of the estuary in the vicinity of the discharge must be documented, preferably by the scheme devised by Hansen and Rattray.[2] If the Hansen-Rattray method is used, velocity and salinity data shall be presented so as to estimate pollutant flux past the outfall. Residence times of material in the vicinity of the outfall and in the estuary itself should be provided. If the Hansen-Rattray scheme is not used, *e.g.*, if the estuary is classified as "well-mixed," "partially-mixed," etc., data shall be presented to support the classification. The same calculations discussed above will be presented.

If deep estuaries, *e.g.*, fiords, are being considered, calculation of residence times throughout the water column will be given. Methods of deriving these estimates and their effect on relative pollutant distibution must be made with reference to the seasonal variation of plume configuration, *i.e.*, plume equilibrium position.

b. In conjunction with 1–13a, the freshwater budget is required to provide estimates of the non-tidal freshwater velocity, at the point of evaluation. Other uses of the freshwater budget are for calculations of flushing rates which require knowledge of tidal prisms and as input to numerical models which are discussed below. Generally, streams are gauged sufficiently above tidal effect so that the freshwater inflow can be estimated. Other estimates of runoff contributions below the gauging station are required.

If gauged stream data are not available for runoff estimates the method of estimating flow must be accompanied by a discussion of assumptions, estimates of errors and potential effect of errors.

c. Historical records of wind, tide height and tidal currents should be synthesized and a correlation made with the dispersion of surface and subsurface materials, and recirculation of material. Particular attention should be given to prevailing wind speed and direction, especially the onshore-alongshore-offshore component (as it affects the shoreward movement of surface materials), and the incidence of such events. Where possible, corrections to time of occurrence, elevations, speeds and directions should be cited with reference to NOAA current and tide table stations.

d. The effects of geographical and geomorphological features on spatial and temporal variations shall be evaluated with narrows and shoaling effects in mind.

e. Spatial and temporal scale-dependent phenomena within the outfall tidal excursion zone are to be evaluated.

f. If numerical models are used to support the modification request, complete documentation and seasonal verification at the point(s) in question must be supplied, as must methods employed to evaluate turbulent, advective, and other terms.

g. If hydraulic models are used to support the modification request, time-lapse photographs covering combinations of seasonal runoff and tidal conditions at the point(s) in question should be supplied if available. Documentations of methods employed to simulate wind, density, and velocity profiles will be required.

h. Background data on suspended solids contributions and estimates of deposition and resuspension to the estuary solids balance must be supplied.

Section 2. Compliance With BOD or DO

2–1. If the BOD of your effluent exceeds the BOD criteria described in 40 CFR 133.102(a), complete this section.

2–2. Provide applicable State water quality standards levels in receiving water. You may apply for a BOD modification if a value is entered in 2–2a or 2–2b below.

a. DO criteria ———

b. BOD criteria ———

Complete the appropriate subsection to show compliance with the criteria listed in 2–2a or 2–2b or both if applicable.

Dissolved Oxygen

2–3. Effluent sample point location ———. DO (mg/l) at sample point ———.

The location of effluent concentration measurement should be clearly indicated (*i.e.*, final clarifier overflow, final pump station). If disinfection is employed periodically, samples must be obtained for every comparable situation.

2–4. Travel time from sample point to diffuser ports:

a. Minimum flow ——— m^3/sec, time to flow ——— minutes.

b. Average flow ——— m^3/sec, time to flow ——— minutes.

c. Maximum flow ——— m^3/sec, time to flow ——— minutes.

d. Expected maximum flow at the end of the permit term ——— m^3/sec, time to flow ——— minutes.

Because anaerobic conditions in ocean outfalls may increase demand and adversely alter other chemical parameters, it is necessary to compute travel times at these flows. Applicants should enter the values for the flows indicated and compute the time to flow between the sample point and the diffuser ports.

2–5. Immediate dissolved oxygen demand (15 minutes) of the effluent after anaerobic incubation for times 2–4a through 2–4d, respectively.

a. ———.

b. ———.

c. ———.

d. ———.

The immediate dissolved oxygen demand (IDOD; APHA Standard Methods, 14th ed., except as modified to use representative seawater instead of distilled water for dilution) must be measured after anaerobic incubation at representative temperatures for the time periods computed in 2–4. This value is considered to be a conservative estimate of the oxygen demand exerted by the waste stream in the buoyant plume formed in the sea upon discharge from an ocean outfall. Show the data from which the IDOD's were calculated.

2–6. List background DO concentrations at appropriate depths and indicate possible influence by the ocean outfall for the critical environmental situations listed in question 1–3.

[2] Hansen, D. V. and M. Rattray, Jr. New dimensions in estuary classification. Limn. Ocean. *11*:319–326. 1966.

2–7. Compute the influence on ambient DO using the largest IDOD presented in 2–5, the DO concentration presented in 2–6, and the corresponding Sa from question 1–4. Respond to question 1–6. Compute the following equation (all values in mg/l):

$DO_f = DO_a + (DO_e - IDOD - DO_a)/Sa$

where:

DO_f = final dissolved oxygen,
DO_a = background dissolved oxygen,
DO_e = dissolved oxygen of samples at final sampling point in the plant,
IDOD = immediate dissolved oxygen demand, per modified standard methods,
Sa = predicted average initial dilution.

2–8. Do the results of 2–7 meet the criteria for DO presented in 2–2? If not explain.

BOD

2–9. Determine the effluent BOD taken at times corresponding to flows presented in 2–4a, b, c, and d.

a. ————.
b. ————.
c. ————.
d. ————.

2–10. Compute the final BOD following initial dilution using the appropriate flows in 2–4.

a. ————.
b. ————.
c. ————.
d. ————.

2–11. Do the results of 2–10 meet the criteria for BOD presented in 2–2b? If not explain.

2–12. Provide in Appendix V, an analysis showing that BOD exerted *after* initial dilution will not result in subsequent depletion of DO below applicable standards for DO. Describe the oxygen demand resulting from periodic disturbance of accumulated sediments, and from steady demand of undisturbed sediments, in relation to 2–13.

2–13. The demand of oxygen in the bottom 2 meters of seawater for the critical 3 month period refers to the following data:

a. Ambient DO concentration ———— mg/l.

b. DO criteria ————.

c. What months of the year are represented? ————.

2–14. How often are the 2–2a criteria exceeded? ————.

2–15. Do you believe questions 2–2 through 2–13 adequately represent the most critical evaluation of possible adverse effects that may be associated with the BOD exerted by your discharge? If not, please describe in Appendix VI a more critical situation and demonstrate that your discharge will comply with applicable State water quality standards and not cause environmental damage.

Section 3. Compliance with pH

3–1. Does your effluent pH ever exceed nine or fall below six? If so, explain why and complete this section.

3–2. List the applicable State standard for pH in the vicinity of the discharge.

3–3. List pH's resulting from mixtures of receiving seawater and effluent according to the lowest initial dilution calculated in 1–4. Respond to question 1–7. Describe the method used in determining pH.

Values must be a time series, as deemed appropriate, based on the above experimental observations. The pH may change as a result of effluent dilution with seawater. Therefore, the applicant should provide results of pH measurement in tabular form (graphs of continuous measurement may be attached). Measurements should be made immediately after mixing and at three more times following mixing as determined by observing the rate of reaction of the waste and seawater.

3–4. Is the pH standard met? How often is the pH standard exceeded? Explain.

3–5. If you have evaluated other considerations regarding pH, please provide a detailed analysis in Appendix VII.

Section 4. Compliance With Suspended Solids

4–1. If the suspended solids of your effluent exceeds the suspended solids criteria described in 40 CFR 133.102(b) complete this section.

4–2. Have you received, or are you in the process of receiving an adjusted suspended solids effluent requirement from EPA by virtue of operating an approved wastewater treatment pond? (See 40 CFR 133.103).

YES ————, please explain.
NO ————, proceed to next question.

4–3. List the State water quality standard related to suspended solids applicable to the marine waters at the discharge point. Standards for suspended solids, water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids are acceptable.

4–4. Determine the suspended solids content for the following flow conditions:

a. Minimum flow ———— m^3/sec, SS ———— mg/l.

b. Average flow ———— m^3/sec, SS ———— mg/l.

c. Maximum flow ———— m^3/sec, SS ———— mg/l.

4–5. Using the initial dilutions computed in 1–4, the ambient SS concentrations for the critical periods identified in 1–3, and corresponding SS in 4–4, compute the final suspended solids concentrations following initial mixing. Respond to question 1–8.

4–6. Do the final suspended solids concentrations meet the State water quality standard for suspended solids?
YES ———— NO ————
State does not have water quality standard for SS ————.

4–7. If the State does not have a water quality standard for SS, provide as Appendix VIII a detailed discussion of how your outfall discharge meets State water quality standards for water clarity, turbidity, light transmittance, depth of photic zone, or settleable solids. The information should relate to the critical condition explained in 1–8 and include the results of laboratory testing and field studies.

4–8 Describe in Appendix IX the experimental procedure used to compute the amount and areal extent of seabed accumulation of SS discharge under this modification.

If applicable water quality standards limit settleable solids, the applicant must experimentally determine the amount of settleable solids after appropriate initial mixing and a period of a quiescent settling. The mass of settleable material may be reported per unit volume of discharge or per unit volume of receiving water, whichever relates most directly to the applicable standard.

Water quality standards may limit the actual areal deposition[3] rate of settleable solids as a way to protect benthic communities from significantly altered sedimentary materials. An assessment of the accumulation of settleable solids must be provided in any event, in order to estimate the impact of deposited materials on oxygen levels.

The applicant must also provide an assessment of the long term fate of the sedimentary material within and outside the zone of initial dilution. It is important to assure that periodic sediment resuspension or continual drift of sediment loads will not result in deleterious accumulations in bays, estuaries, beaches, and oceanic topographic depressions. Data from seabed drifter studies, if available should be reported.

4–9. Does the discharge meet the settleable solids standards in all critical cases as identified in 1–3? Data must be

[3] As distinguished from a limit on the concentration of settleable solids in the water column.

provided to substantiate this assessment.

——— Yes,

——— No applicable standard; however the seabed accumulation is computed for use in evaluating oxygen demand at the seabed interface.

Section 5. Public Water Supply Impact Assessment

General Instructions. The applicant must prepare an assessment of the impact of its current discharge on existing and potential sources of public water supplies (Appendix X). As noted in § 125.61(e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The public water supply impact assessment must include, at a minimum:

5–1. Identification of the exact location of each planned or existing seawater intake which is being or will be used by a desalinization plant producing water for public water supplies and is likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical Assessment, Sections 1–4 of this part.

5–2. If any desalinization plant is identified under paragraph 5–1, a detailed assessment of:

(a) The impact of the applicant's modified discharge on water quality in the vicinity of the intake, considering the effect of tides, winds, currents and other meteorological or hydrological phenomena which affect the transport and dispersion of the applicant's modified discharge; and

(b) If the applicant's modified discharge has any impact on the water quality in the vicinity of the intake, the effect of that impact on the quality of the public water supply ultimately produced, including an analysis of whether it will continue to comply with local, State and EPA drinking water standards, and whether such compliance will require additional treatment.

5–3. An analysis of whether the applicant's modified discharge will comply with all applicable State water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of public water supplies.

Section 6. Marine Biological Assessment

General Instructions: To enable the Administrator to determine whether an applicant's modified discharge meets the criteria of § 125.61(b)(1), the applicant shall answer the Biological Assessment Questionnaire contained in Section 7 of this part of the application form, and shall prepare a Biological Conditions Summary (Appendix XI) that supports the response to the questionnaire. The organization of the Biological Conditions Summary should follow the format of the questionnaire. A section should be prepared for each question and it should include a synthesis of all data relevant to the issue.

The Biological Conditions Summary must examine ecological conditions at a minimum of three sites: within the zone of initial dilution, immediately beyond the boundary of the zone of initial dilution, and at a reference site that is comparable to the discharge site in all physical and chemical parameters except for the presence of ecologically significant human disturbances.

The basic requirements of § 125.61(b)(1) are the absence of extreme biological impacts within the zone of initial dilution, and the presence of a balanced, indigenous population immediately beyond the boundary of the zone. A balanced, indigenous population must also exist at any point beyond the boundary of the zone where impacts from the applicant's modified discharge might reasonably be expected to occur. A balanced, indigenous population will be considered present beyond the boundary of the zone if the applicant can demonstrate that biological conditions there fall within the natural range of variability observed at the reference site.

Section 125.61(b)(1) contains additional biological criteria for modified discharges into saline estuarine waters, for modified discharges into stressed waters, and for improved discharges. Applicants who propose a modified discharge into saline estuarine waters must demonstrate in their response to question 7–2 that their modified discharge will not cause substantial difference in benthic populations within and beyond the zone of initial dilution, will not interfere with migratory pathways within the zone, and will not result in the bioaccumulation of pollutants at levels which exert adverse effects on the biota within the zone.

Applicants who propose a discharge into stressed waters must demonstrate in their response to question 7–12 that their modified discharge will not increase or perpetuate adverse ecological alterations resulting from other sources of pollution.

Applicants who propose an improved discharge must demonstrate in their response to question 7–13 that the improvement will eliminate any adverse biological impacts attributable to their current discharge.

The other portions of the Biological Assessment Questionnaire address major ecological impacts of obvious concern. These include the occurrence of mass mortalities, disease epicenters, and phytoplankton blooms near the applicant's outfall; adverse effects on fisheries and distinctive habitats of limited distribution such as coral reefs and kelp beds; and the bioaccumulation of toxic materials. The questions also address more fundamental ecological characteristics that are likely to indicate a disruption of the natural structure and function of a balanced, indigenous population. These include species composition; patterns of diversity, abundance, and productivity; trophic structure; and the presence of pollution indicators, opportunistic, or nuisance species. Alterations in such ecological parameters may occur in benthic, phytoplankton, zooplankton, demersal, and intertidal assemblages. Sampling guidelines for each of these biological assemblages are cited in the 301(h) Technical Support Document.

The extent of documentation in the Biological Conditions Summary necessary to support the response to the Biological Assessment Questionnaire is dependent on the quality and quantity of the applicant's discharge and the sensitivity of the receiving environment. Because these factors vary greatly among potential 301(h) applicants, EPA has generally avoided specific, universal requirements for biological analyses. Applicants are given the flexibility to provide only those analyses that are warranted in individual cases.

Section 7. Biological Assessment Questionnaire

Is there reason to believe that the applicant's discharge may have caused or will cause:

7–1 Interference with the protection and propagation of a balanced, indigenous population of marine life characteristic of the biogeographic zone in which the outfall is located?

YES ——— NO ———

7–2 Biological communities within the zone of initial dilution to be different from those that would naturally occur in the absence of the outfall? YES ——— NO ———

7–3 Differences in the structure and function of biological communities (e.g., vertical and horizontal stratification, species composition, abundance,

diversity, productivity, trophic structure, etc.) beyond the zone of initial dilution from those characteristics of the biogeographic zone in which the outfall is located? YES ——— NO ———

7–4 Increases in the abundance of any marine plant or animal organism (especially nuisance or toxic species, or phytoplankton whose blooms cause adverse ecological effects) within or beyond the zone of initial dilution not characteristic of the biogeographic zone in which the outfall discharge is located? YES ——— NO ———

7–5 Domination of marine communities within or beyond the zone of initial dilution by pollution resistant species (e.g., slime forming algae or bacteria, fouling, boring, nuisance or opportunistic species of finfish, invertebrates, etc.)? YES ——— NO ———

7–6 A deleterious effect on distinctive habitats of limited distribution such as kelp beds and coral reefs either within or beyond the zone of initial dilution? YES ——— NO ———

7–7 Within or beyond the zone of initial dilution, an increased incidence of disease in marine organisms? YES ——— NO ———

7–8 An abnormal body burden of any toxic material in marine organisms collected within or beyond the zone of initial dilution? YES ——— NO ———

7–9 Adverse effects on commercial or recreational fisheries within or beyond the zone of initial dilution? YES ——— NO ———

7–10 Mass mortality of fishes or invertebrates due to a typical growth of marine algae, anoxia or other conditions within or beyond the zone of initial dilution? YES ——— NO ———

7–11 Adverse ecological impacts either within or beyond the zone of initial dilution other than those addressed in the preceding questions? If so, please explain. YES ——— NO ———

The following question must be answered only by applicants who propose a discharge into stressed waters.

7–12 Is there reason to believe that the applicant's discharge has enhanced or will perpetuate adverse ecological alterations resulting from other sources of pollution? If so, please explain. YES ——— NO ———

The following question must be answered only by applicants who propose to improve their discharge in order to qualify for a 301(h) modification.

7–13 Will the proposed improvement eliminate adverse ecological impacts attributable to the applicant's existing discharge? If so, please explain. YES ——— NO ———

Section 8. Recreational Impact Assessment

General Instructions: The applicant must prepare an assessment of the impact of its modified discharge on existing and potential recreational activities (Appendix XII). The term recreational activities includes, but is not limited to, swimming, diving, wading, boating, fishing, and picnicking and sports activities along shorelines and beaches. As noted in § 125.61(e), applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a similar assessment for the relocation site.

The recreational impact assessment must include, as a minimum:

8–1. Identification of: (1) all existing or potential recreational activities affected and likely to be affected by the applicant's modified discharge, based on the analysis of the transport and dispersion of the applicant's wastewater required by the Physical Assessment, Section 1–4 of this part; (2) all existing and potential recreational activities at a reference site(s) of comparable, but unpolluted, environmental conditions; and (3) where the applicant claims that its inability to meet the requirements of § 125.61(d) is due to pollution from sources other than its discharge, all existing and potential recreational activities at a reference site(s) of comparable environmental conditions (including comparable pollution absent the applicant's discharge).

8–2. Within the area of impact, as identified by the applicant's analysis of the transport and dispersion of its discharge contained in the Physical Assessment, a detailed analysis of the following:

(a) The impact of the applicant's discharge on existing or potential recreational fishing, incuding both finfishing and shellfishing;

(b) State, Federal, or local restrictions on the harvesting or human consumption of shellfish or finfish;

(c) State, Federal or local limitations on the concentrations of toxic pollutants, pesticides or other substances in edible fish and shellfish harvested from within the area of impact;

(d) The impact of the applicant's discharge on recreational boating, swimming, wading, and picnicking and sports activities along shorelines and beaches; and

(e) State, Federal or local restrictions on water contact sports or other activities or on the recreational uses of shorelines and beaches.

8–3. An analysis of whether the applicant's discharge will comply with all applicable water quality standards or other requirements adopted or promulgated for the purpose of attaining or maintaining water quality which assures protection of recreational activities.

Part C—Description of Monitoring System

Table of Contents

Section 1. Biological Monitoring Program.
Section 2. Water Quality Monitoring Program.
Section 3. Toxics Control Monitoring Program.

General Instructions: The applicant must prepare as Part C of the application a description of the proposed monitoring system to meet the criteria of section 125.62 that would be implemented upon receipt of a section 301(h) modified NPDES permit. As noted in section 125.62(b)(ii) applicants requesting a modified permit based on an improved discharge involving outfall relocation must submit a monitoring plan for both the existing discharge site and the relocation site as well as control site(s).

The proposed monitoring plan must include proposed programs for monitoring to demonstrate compliance with the toxics control program established to meet the requirements of § 125.64, for monitoring biological impacts of the applicant's discharge(s) on marine biota to demonstrate compliance with § 125.61, and monitoring of compliance with State water quality standards as required by §125.60. Each proposed program must include a detailed description or references of sampling techniques, frequency and locations of sampling, analytical techniques and quality control methods. In addition, applicants must demonstrate that adequate economic, personnel, technical, and other resources are available to implement the proposed programs upon issuance of a modified permit and to carry out the proposed programs for the life of the modified permit.

Section 1. Biological Monitoring Program

The applicant must submit as Appendix XIII a proposed biological monitoring program designed to provide data adequate to evaluate the impact of

the applicant's discharge on marine biota. The biological monitoring program should allow for the development and understanding of variations in the marine biota over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the biological monitoring program should be designed so that observed changes in the marine biota can be correlated with the possible influencing factors of the applicant's discharge, including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. The biological monitoring program should be keyed to the marine life affected or likely to be affected, as indicated in the biological conditions summary prepared under § 125.61(c)(2), and should emphasize those parameters most likely to impact the marine biota in the vicinity of the applicant's outfall.

The requirements of § 125.62(b) should lead to the development of a biological monitoring program which consists of:

1. Field surveys of biological communities and populations that permit comparisons with baseline conditions described in the Biological Conditions Summary;

2. An assessment of the condition and productivity of both commerical and recreational fisheries potentially affected by the applicant's discharge; and

3. *In situ* bioassays and fields surveys to determine bioaccumulation and survival of indicator organisms at various depths within and beyond the zone of initial dilution and at appropriate reference points. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location of sampling and analytical methods, and rationales for the selection of indicator organisms and biological communities used for bioaccumulation studies and various field studies.

Section 2. Water Quality Monitoring Program

The applicant must submit as Appendix XIV a proposed water quality monitoring program designed to provide data adequate to evaluate the applicant's compliance with applicable State water quality standards. The water quality monitoring program should allow for the development and understanding of variations in water quality over time and the causes of these variations, whether they are due to natural forces, the discharge itself, or other sources of pollutants. Therefore, the water quality monitoring program should be designed so that observed water quality can be correlated with the possible influencing factors of the applicant's discharge, including but not limited to variations in the wastewater flow and characteristics, and both normal and unusual meteorological and oceanographic conditions. Emphasis should be placed on critical environmental periods such as spawning periods for fish and shellfish. The proposed program should include detailed descriptions or references of sampling techniques, frequency and location sampling, and analytical and quality control methods.

Section 3. Toxics Control Monitoring Program

The applicant must submit as Appendix XV a proposed toxics control monitoring program designed to demonstrate the effectiveness of the applicant's toxic control program in reducing those toxic pollutants and pesticides identified in the required analysis of its current discharge under § 125.64(a) for the toxic pollutants and pesticides identified in § 125.58 (k) and (s). Accordingly, the toxics control monitoring program should provide data on the chemical composition of the applicant's discharge which can be used to:

1. Measure the effectiveness of the applicant's pretreatment and non-industrial source control programs and procedures;

2. Assist in implementing the overall toxics control program efforts; and

3. Guide the biological monitoring program efforts.

The proposed program should include detailed descriptions of or references to sampling techniques, frequency and location of sampling, and analytical and quality control methods. The toxics control monitoring program should provide an understanding of variations over time of both the flow rate and toxic pollutant content of the applicant's discharge; accordingly, the program should be designed to provide data on both wet weather and dry weather flows.

Part D—Letter(s) From State Concerning Impact of Modified Discharge on Other Point and Non-Point Sources

General Instructions: The applicant must submit, as Appendix XVI of the application, letters from appropriate State agencies stating whether the applicant's modified discharge will result in any additional treatment, pollution control, or other requirement on any other point or non-point source. The letter(s) should include a detailed analysis of the facts and other considerations supporting the agency's conclusion, including a thorough analysis of existing and future waste loads and waste load allocations for the waters into which the applicant has discharged and will be discharging, and the effect of granting the proposed section 301(h) modification to other POTWs and other point and non-point source discharges into these waters.

Since waste load allocations are determined by the State, letter(s) should be secured from all State agencies which have any role in setting waste loadings or waste load allocations. These agencies include the State water pollution control agency, area-wide planning or management agency, coastal zone commission, and possibly other State-level agencies.

Part E—Toxic Control Program

Table of Contents

Section 1. Chemical Analysis.
Section 2. Pretreatment Program.
Section 3. Non-Industrial Source Control Program.

General Instructions: All applicants must submit as Appendix XVII an analysis of the wastewater or effluent from their current discharge, an analysis of known or suspected sources of toxics and pesticides in the wastestream, and proposed industrial pretreatment and non-industrial source control programs designed to address the control of the toxics identified by the chemical analysis. Applicants who can certify that there are no known or suspected industrial sources of the identified toxic pollutants currently or planned that would discharge into the POTW for which a modification is being requested are not required to develop a proposed industrial pretreatment program.

Section 1. Chemical Analysis

All applicants shall submit an analysis of the waste water or effluent from their current discharge for the toxic pollutants and pesticides listed in Table 1 below, and present the results of the analyses in Appendix XVII. All analyses shall be done on a 24-hour composite sample with incremental samples collected hourly. Both dry weather and wet weather flows of the effluent shall be sampled and analyzed. The dry weather flow sample shall be collected no less than 5 days following a rainfall of measureable intensity.

The pesticides and toxic pollutants shall be analyzed using the precedures presented in the document titled "Sampling and Analysis Procedures for

Screening of Industrial Effluents for Priority Pollutants" (April, 1977 or later revisions). This document is available at no charge to the applicant. Applicants should notify the person listed under "For Further Information Contact" at the front of the regulation for a copy of the document.

This document references the analytical procedures for measuring pesticides, heavy metals, cyanides and phenols listed in 40 CFR Part 136. Applicants must report data for all detectable pesticides and toxic pollutants, not just those reported to be greater than 10ug/1, as requested on page thirty of the "Sampling and Analysis" document. Applicants should provide quality control data collected during the analysis of the wastewater samples.

Applicants may substitute or provide additional data on the concentration of priority pollutants concentrations in their discharge for those found in the two composite samples. Information must be provided to demonstrate that the concentrations are those typical of wet and dry weather flows. Where these data are not available, applicants shall provide data on the two samples listed above.

In addition to complying with the requirements of § 125.64(b), the applicant must submit as a part of Appendix XVII an analysis of known or suspected sources of the toxics and pesticides identified through the chemical analysis of the waste stream. These sources should be categorized according to their specific industrial and non-industrial origin, where possible.

For the purposes of these regulations, toxic pollutants and pesticides include: (1) those substances identified in Table 1 of Committee Print 95–30 of the House of Representatives Committee on Public Works and Transportation; and (2) those pesticides identified in *Quality Criteria for Water, 1976* but not included in Committee Print 95–30. Following is the list of toxic pollutants and pesticides which applicants must include in their toxic control program.

Table 1

Pesticides:
- Mirex
- Guthion
- Methoxychlor
- Parathion
- Demeton
- Malathion

Toxic Pollutants:
- Acenaphthene
- Acrolein
- Acrylonitrile
- Aldrin/Dieldrin
- Antimony and compounds
- Arsenic and compounds
- Asbestos
- Benzene
- Benzidine
- Beryllium and compounds
- Cadmium and compounds
- Carbon tetrachloride
- Chlordane (technical mixture and metabolites)
- Chlorinated benzenes (other than dichlorobenzenes)
- Chlorinated ethanes (including 1, 2-dichloroethane, 1,1,1-trichloroethane, and hexachloroethane)
- Chloroalkyl ethers (chloromethyl, chloroethyl, and mixed ethers)
- Chlorinated naphthalene
- Chlorinated phenols (other than those listed elsewhere; includes trichlorophenols and chlorinated cresols)
- Chloroform
- 2-chlorophenol
- Chromium and compounds
- Copper and compounds
- Cyanides
- DDT and metabolites
- Dichlorobenzenes (1,2,- 1,3-, and 1,4-dichlorobenzenes)
- Dichlorobenzidine
- Dichloroethylenes (1,1- and 1,2-dichloroethylene)
- 2,4-dichlorophenol
- Dichloropropane and dichloropropene
- 2,4-dimethylphenol
- Dinitrotoluene
- Diphenylhydrazine
- Endosulfan and metabolites
- Endrin and metabolites
- Ethylbenzene
- Fluoranthene
- Haloethers (other than those listed elsewhere; includes chlorophenylphenyl ethers, bromophenylphenyl ether, bis (dichloroisopropyl) ether, bis-(chloroethoxy) methane and polychlorinated diphenyl ethers)
- Halomethanes (other than those listed elsewhere; includes methlene chloride, methylchloride, methylbromide, bromoform, dichlorobromomethane, trichlorofluoromethane, dichlorodifluoromethane)
- Heptachlor and metabolites
- Hexachlorobutadiene
- Hexachlorocyclohexane (all isomers)
- Hexachlorocyclopentadiene
- Isophorone
- Lead and compounds
- Mercury and compounds
- Naphthalene
- Nickel and compounds
- Nitrobenzene
- Nitrophenols (including 2,4,-dinitrophenol, dinitrocresol)
- Nitrosamines
- Pentachlorophenol
- Phenol
- Phthalate esters
- Polychlorinated biphenyls (PCBs)
- Polynuclear aromatic hydrocarbons (including benzanthracenes, benzopyrenes, benzofluoranthene, chrysenes, dibenzanthracenes, and indenopyrenes)
- Selenium and compounds
- Silver and compounds
- 2,3,7,8-Tetrachlorodibenzo-p-dioxin (TCDD)
- Tetrachloroethylene
- Thallium and compounds
- Toluene
- Toxaphene
- Trichloroethylene
- Vinyl chloride
- Zinc and compounds

Section 2. Industrial Pretreatment Program

All applicants shall submit, as Appendix XVIII, a proposed pretreatment program which complies with the requirements of § 125.64(c) (1) and (2) and which is designed to address the control of toxic pollutants identified by the chemical analyses of its current discharge, as required under § 125.64(a), and reported in Appendix XVII, Section 1 of this part of the application format. In lieu of such pretreatment program, applicants may certify, as provided under § 125.64(c)(1)(ii), that no known or suspected industrial sources of toxic pollutants currently exist or are planned for construction that would discharge into the POTW for which a modification is being requested. Applicants developing proposed pretreatment programs should assure that all of the criteria and application requirements listed under § 125.64 are thoroughly addressed and that the proposed program can be implemented after issuance of a modified permit.

Section 3. Non-Industrial Source Control Program

All applicants shall submit as Appendix XIX a proposed non-industrial source control program which complies with the requirements of § 125.64(d) (1) and (2) and is designed to address the control of toxics identified by the chemical analyses of its current discharge as required under § 125.64(a) and reported in Appendix XI, Section 1 of this part of the application format. Applicants should note that they are *not* exempt from this requirement by the exemption from developing a proposed pretreatment program under § 125.64(c)(1)(ii).

Part F—Effluent Volume and Mass Emissions

General Instructions: Under § 125.65, the applicant must submit, as Appendix XX, evidence that there shall be no increase in effluent volume or mass loadings of any pollutant(s) for which a modification is requested over and above that amount identified in the applicant's projected five year discharge. Also, where combined sewer overflows contribute in part to pollutant

discharges, the applicant must submit as a part of Appendix XXI a schedule of activities designed to minimize existing overflows and prevent increases in the amount of pollutants from this source.

Part G—Use of Title II Funds

General Instructions: The applicant must submit as Appendix XXII a funding program containing a proposed modified scope of work and estimates of revised costs for any funds available to the applicant under Title II of the Clean Water Act in a manner which complies with the requirements of § 125.66 (a) and (b). This submittal should cover any active Step 1, 2, or 3 construction grants awarded under 40 CFR Part 35 Subpart E which may be affected by an approval of the applicants request for a 301(h) modified permit.

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federal register

Friday
June 15, 1979

Part V

Department of the Interior

Bureau of Land Management

Management of Off-Road Vehicle Use on Public Lands

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 8340

[Circular No. 2445]

Off-Road Vehicles, Use of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking provides for the management of off-road vehicle use on public lands. The rules have been developed because off-road vehicles, in some areas, have caused excessive damage to natural resources and conflicted with other more passive uses. Implementation of these rules will provide for continued off-road vehicle use under conditions that will protect natural resources, be less disruptive to the activities of other uses, and promote safety.

DATE: Effective July 16, 1979.

ADDRESS: Director (370), Bureau of Land Management, 1800 C Street, N.W., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mr. Larry R. Young (202) 343–9353.

SUPPLEMENTARY INFORMATION: The principal author of this final rulemaking is Larry R. Young of the Bureau of Land Management (BLM), Washington Office, Division of Recreation, assisted by the staff of the Division of Legislation and Regulatory Management.

Final rulemaking covering off-road vehicle (ORV) use on public lands was first published in the **Federal Register** on April 15, 1974. On May 2, 1975 a court order declared that these regulations violated Executive Order 11644 and the National Environmental Policy Act of 1969. After the regulations were rectified to correct their shortcomings, a proposed rule was issued on July 28, 1976. Following this, on May 25, 1977, Executive Order 11644 was amended by Executive Order 11989. This amendment required further changes in the rulemaking. The amended proposed rule appeared in the **Federal Register** of July 7, 1978 with a comment period of 90 days. A final Environmental Statement pertaining to these and other Departmental off-road vehicle regulations was made available to the public by the Department of the Interior on April 21, 1978.

Although the format of these final regulations is the same as that of the proposed regulations, the numbering has been changed. This was done to conform to the recodified recreation regulations as published in the **Federal Register** of September 12, 1978 starting on page 40734.

Approximately 400 letters were received from individuals and groups. Many contained detailed analyses, comments and suggestions. These letters have been reviewed and analyzed. The following summarizes the comments and suggestions received and the actions taken on them.

Purpose

It was suggested that lands be designated for use of "one or more types of" off-road vehicles because one type might be acceptable while another might not, e.g., a motorbike vs. a snowmobile. Sections 8341.2(a) and 8342.1 provide adequate means for coping with such a situation.

Definitions

There were numerous suggestions to clarify terms. It was felt to be preferable to leave most of these terms to dictionary definitions and interpretation in the light of the specific circumstances to which they apply. However, one new term—"spark arrester" has been added to the definitions in the final regulations.

It was suggested that the exclusions in the definition of "Off-Road Vehicle" be eliminated. This cannot be done because it contradicts Executive Orders 11644 and 11989. To eliminate redundancy, however, the 3rd exclusion in this definition has been modified by the deletion of "except use authorized under § 6294.1 of this part". Another suggestion was that there be a 6th exclusion for vehicles being used for lawful mining activities.

Lawful mining activities, including the use of off-roads vehicles may be conducted in closed or limited areas where use is expressly authorized by the authorized officer or otherwise officially approved. This specific matter will be dealt with in greater detail in regulations relating to mining which are under consideration.

Authorized activities that require the use of off-road vehicles in closed or limited areas are covered by specific authorization in a contract, permit, lease, license or temporary permit. The kinds of activities covered by the exclusions in the definition of the term "off-road vehicle" are a grazing permittee using a pickup truck to haul supplies to livestock in the area or a right-of-way holder using a vehicle to inspect or make repairs to a right-of-way. Emergency or normal administrative activities requiring the use of off-road vehicles are also covered by the exclusion.

In the second sentence of the definition of "Limited areas and trails", the words "dates and" have been inserted between the words "allowed" and "times" as a result of one comment. This will help clarify the period of use.

Concern was expressed that farmers, ranchers and miners could be prevented from conducting their businesses as a result of the closure provisions of these regulations. Circumstances of this nature can be worked out with the authorized officer through the exclusion provided in § 8340.0–5(a)(3).

Penalties

The heading of § 8340.0–7 has been changed from "Enforcement" to "Penalties" to reflect more accurately the subject of the section.

There were many comments predicting that staffing will be inadequate to enforce the regulations which carry penalties for noncompliance. These comments also suggested that the regulations should require sufficient personnel for enforcement. Regulations establish programs, but do not determine personnel requirements or ceilings. It is expected that the programs established by these regulations will be adequately funded through the normal process of budgeting.

It was suggested that these regulations provide for interim penalties such as the impoundment of vehicles until offenders are brought to trial. The authority to establish penalties stems from the Federal Land Policy and Management Act of 1976. That Act does not provide for forfeiture, impoundment or pretrial penalties.

After reviewing the comments on this penalty section, it was agreed that the section did not clearly state that punishment is imposed only after conviction. In order to clarify this point, the first sentence of § 8340.0–7 was amended by inserting the word "conviction" between the words "arrest" and "and".

Regulations Governing Use

Numerous comments wanted the regulations to control hunting, firearms and registration as they relate to off-road vehicles. These are activities in which the States have traditionally established standards of control, and there is no intent to interfere in this function. Standards of control in these regulations have been limited to situations where the States either have no controls, or their controls may be

considered insufficient for off-road vehicle activities on public lands.

There was an intense interest shown in § 8341.1(f) which establishes the requirements for operating an off-road vehicle on public lands. Many people suggested that there be no licensing required at all. Others wanted a learner's permit to be the minimum requirement for operating an off-road vehicle. Still others wanted the exception, which begins with the third word of the paragraph, to be deleted. The requirements contained in the paragraph are believed to be the best way to protect the public safety as required by Executive Order 11644 while at the same time allowing supervised youngsters to participate in off-road vehicle activities.

There were a number of suggestions to delete § 8341.1(g)(1) which states that no person shall operate an off-road vehicle on public lands in a reckless, careless, or negligent manner. In addition, many wanted the terms "reckless", "careless", and "negligent" defined. This section is necessary to fulfill the Bureau of Land Management's obligation to protect public safety. These words carry their ordinary legal meaning as interpreted by the courts.

Some people suggested that § 8341.1(g)(2), which covers speed limits, be deleted. Others suggested that the regulations specify where speed limits will apply. Speed limits are necessary to preserve public safety. However, where they will be established is determined on the basis of specific on-the-ground needs.

It was suggested that § 8341.1(g)(4), which deals with damage to natural and cultural resources and other uses, be deleted because it gives the "bureaucrat" too much latitude. This section is essential if the land manager is to effectively carry out his responsibility to minimize damage on the public lands.

Concern was also expressed about the phrase "or likely to cause" in § 8341.1(g)(4). There are many situations in which damage can be predicted on the basis of past experience. It would be poor management to wait for damage to occur before taking corrective action.

A new paragraph has been inserted as § 8341.1(h). It covers the subject of yielding right-of-way. The former § 8341.1(h) has been renumbered § 8341.1(i).

Special Rules

In line with one suggestion, § 8341.2(a) has been changed to reflect that its provisions are applicable in the given situations notwithstanding the consultation provisions of § 8342.2(a).

There were some comments expressing concern about the words "causing or will cause adverse effects", in the first sentence of § 8341.2(a), and how they would be interpreted. The wording is essentially identical to the words and intent of Executive Order 11989, and cannot be changed. The interpretation of these words, as applied to specific field conditions, will be based on past experience.

In keeping with a number of suggestions to expand the list of items in the first sentence of § 8341.2(a), there has been added "threatened or endangered species, wilderness suitability, other authorized uses, or other resources". There were also people who felt the list was too broad. However, the section fulfills the intent of Executive Order 11989.

There were expressions of concern because there was no provision for public participation in § 8341.2(a). This paragraph provides the authorized officer with a tool to take timely emergency action. Adding a provision for public discussion would defeat this purpose. Public participation is provided in other actions by § 8342.2.

It was suggested that in addition to closing an area to use there be other options such as "restrict", "reroute", "limit", or "rehabilitate". These alternatives have not been included because Executive Order 11989 provides only for closure.

Section 6291.2(b) of the proposed regulations has been deleted because it was felt that this paragraph provides the authorized officer with authority that properly belongs to the Office of the Secretary.

It was suggested that there be provision for public participation under § 8341.2(b) which authorizes State Directors to close some public lands to off-road vehicle use. Lands which are closed by State Directors will be either designated or redesignated as regards off-road vehicle use under procedures contained in Subpart 8342. That section requires public participation.

Designation Criteria

There were many suggestions to establish criteria that would confine off-road vehicles to designated roads and trails. Executive Order 11644 provides for the designation of "areas and trails" rather than the more restrictive "roads and trails".

It was suggested that areas and trails should also be located to minimize damage to air quality. This idea has been incorporated into § 8342.1(a).

There were some suggestions that off-road vehicles be prohibited from the habitats identified in § 8342.1(b). Executive Order 11644 does not direct agencies to prohibit off-road vehicles in these habitats—only to minimize significant disruption of wildlife habitats.

It was suggested that § 8342.1(c) either be deleted or rewritten because it suggests that off-road vehicle activities rank last in priority—even to recreational uses that do not exist yet. The wording used in this section is identical to that used in section 3(a)(3) of Executive Order 11644.

There was some concern shown about allowing off-road vehicles in natural areas as provided in § 8342.1(d). Again, the wording of this section is essentially that of Executive Order 11644.

There was concern expressed about the interaction of the wilderness review and designations for off-road vehicle use. During the period of wilderness review, which is to be completed by October 21, 1991, and until Congress has determined otherwise, roadless areas of 5,000 acres or more and roadless islands "* * * having wilderness characteristics * * *" are to be managed "* * * in a manner so as not to impair the suitability of such areas for preservation as wilderness * * *". This matter will be addressed in the interim management policy for wilderness study areas currently under development. The regulations do, however, list wilderness suitability as a resource to be considered in determining whether an area should be closed or limited.

Designation Procedures

Action necessary to make designations is beginning immediately. Depending upon the availability of funds and manpower, all areas will be designated by 1987. The status of the public lands prior to designation is simply undesignated.

There was a large number of suggestions recommending that only those areas be marked where off-road vehicle use is permitted. Others suggested that only closed and limited areas and trails be marked. These specific suggestions have not been adopted. Instead, the rulemaking provides flexibility to the authorized officer to mark designations on the ground in the manner which will best inform the public. This reflects the intent of Executive Order 11644, and will permit marking some areas as open, some as limited and others as closed.

There were suggestions that maps of designated areas be made available to the public. This suggestion has been

incorporated into the last sentence of § 8342.2(b).

Monitoring Use

It was suggested that under § 8342.3(a), the effects to be monitored should be spelled out in the regulations. Executive Order 11644 does not direct doing this. In addition, a comprehensive list of possible effects on the various ecosystems could be almost limitless. However, off-road vehicle use will be monitored.

Temporary Action

Section 6292.3(b) of the proposed regulations has been excluded from these regulations since full authority to temporarily close lands from any use, including off-road vehicles, when necessary to protect the public or to assure proper resource protection, is contained in 43 CFR Part 8364. An example of the use of this authority is the temporary closure during a period of high fire danger or unsafe conditions of an area designated open to off-road vehicles. This authority is in addition to that contained in § 8341.2 which allows closure of lands designated open or limited due to the considerable adverse effects of off-road vehicles on the environment.

Vehicle Operations—Standards

One suggestion was that the Bureau of Land Management should confine itself to the management of public lands and not to the management of off-road vehicle equipment. Executive Order 11644 directs that operating conditions be prescribed for off-road vehicles on public lands.

Permits

There were several suggestions that the time requirement for filing applications be shortened to less than 120 days, and that the 50-vehicle requirement for permits be reduced. These requirements are actually a part of Subpart 8372 of this title and not Subpart 8340 which is under consideration here. An opportunity for making such a change will come when Subpart 8372 is considered for revision. However, the 120 days is needed to allow the authorized officer to complete all needed administrative work, including an environmental statement, if one is needed, before issuing a permit. This administrative activity is necessary to protect the public lands and the public that uses those lands. Editorial changes and corrections have been made as necessary.

Miscellaneous

Note.—The Department of the Interior has determined that this document is a significant rule, but does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Under the authority of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.), the Taylor Grazing Act (43 U.S.C. 315a), the Wild and Scenic Rivers Act (16 U.S.C. 1281c), the Endangered Species Act (16 U.S.C. 1531 et seq.), the Act of September 18, 1960, as amended (16 U.S.C. 670 et seq.), the Land and Water Conservation Fund Act (16 U.S.C. 4601–6a), the National Trails System Act (16 U.S.C. 1241 et seq.), and Executive Order 12044 (37 FR 2877, 3 CFR 2877), as amended by Executive Order 11989 (42 FR 26959) Part 8340, Group 8300, Subchapter H, Chapter II, Title 43 of the Code of Federal Regulations is revised as set forth below.

Guy R. Martin,

Assistant Secretary of the Interior.

June 4, 1979.

PART 8340—OFF-ROAD VEHICLES

Subpart 8340—General

Sec.

8340.0–1 Purpose.
8340.0–2 Objectives.
8340.0–3 Authority.
8340.0–5 Definitions.
8340.0–7 Penalties.
8340.0–8 Applicability.

Subpart 8341—Conditions of Use of Public Lands

8341.1 Regulations governing use.
8341.2 Special rules.

Subpart 8342—Areas and Trails Designation

8342.1 Designation criteria.
8342.2 Designation procedures.
8342.3 Designation changes.

Subpart 8343—Vehicle Operation

8343.1 Standards.

Subpart 8344—Permits

8344.1 Permit requirements.

Authority: 43 U.S.C. 1201, 43 U.S.C. 315a, 16 U.S.C. 1531 et seq., 16 U.S.C. 1281c, 16 U.S.C. 670 et seq., 16 U.S.C. 460 1–6a, 16 U.S.C. 1241 et seq., and 43 U.S.C. 1701 et seq.

Subpart 8340—General

§ 8340.0–1 Purpose.

The purpose of this part is to establish criteria for designating public lands as open, limited or closed to the use of off-road vehicles and for establishing controls governing the use and operation of off-road vehicles in such areas.

§ 8340.0–2 Objectives.

Theobjectives of these regulations are to protect the resources of the public lands, to promote the safety of all users of those lands, and to minimize conflicts among the various uses of those lands.

§ 8340.0–3 Authority.

The provisions of this part are issued under the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); the Taylor Grazing Act (43 U.S.C. 315a); the Endangered Species Act (16 U.S.C. 1531 et seq.); the Wild and Scenic Rivers Act (16 U.S.C. 1281c); the act of September 15, 1960, as amended (16 U.S.C. 670 et seq.); the Land and Water Conservation Fund Act (16 U.S.C. 460 1–6a); the National Trails System Act (16 U.S.C. 1241 et seq.) and E.O. 11644 (Use of Off-Road Vehicles on the Public Lands), 37 FR 2877, 3 CFR 74, 332, as amended by E.O. 11989 42 FR 26959 (May 25, 1977).

§ 8340.0–5 Definitions.

As used in this part:

(a) "Off-Road Vehicle" means any motorized vehicle capable of, or designed for, travel on or immediately over land, water, or other natural terrain, excluding: (1) any nonamphibious registered motorboat; (2) any military, fire, emergency, or law enforcement vehicle while being used for emergency purposes; (3) any vehicle whose use is expressly authorized by the authorized officer, or otherwise officially approved; (4) Vehicles in official use; and (5) any combat or combat support vehicle when used in times of national defense emergencies.

(b) "Public Lands" means any lands the surface of which is administered by the Bureau of Land Management.

(c) "Bureau" means the Bureau of Land Management.

(d) "Official Use" means use by an employee, agent, or designated representative of the Federal Government or one of its contractors, in the course of his employment, agency, or representation.

(e) "Planning System" means the approach provided in Bureau regulations, directives and manuals to formulate multiple use plans for the public lands. This approach provides for public participation within the system.

(f) "Open areas and trails" are designated areas and trails where off-road vehicles may be operated subject to the operating regulations and vehicle

standards set forth at Subparts 8341 and 8343 of this part.

(g) "Limited areas and trails" are designated areas and trails where the use of off-road vehicles is subject to restrictions deemed appropriate by the authorized officer. Restrictions may limit the number or types of vehicles allowed, dates and times of use, and similar matters. Limited areas and trails may be designated for special or intensive use, including, but not limited to, organized events, and may be subject to but not limited to, rules set forth at Subpart 8341.2.

(h) "Closed areas and trails" are designated areas and trails where the use of off-road vehicles is permanently or temporarily prohibited.

(i) "Spark Arrester" is any device which traps or destroys 80 percent or more of the exhaust particles to which it is subjected.

§ 8340.0–7 Penalties.

Any person who violates or fails to comply with the regulations of Subparts 8341 and 8343 is subject to arrest, conviction, and punishment pursuant to appropriate laws and regulations. Such punishment may be a fine of not more than $1,000 or imprisonment for not longer than 12 months, or both.

§ 8340.0–8 Applicability.

The regulations in this part apply to all public lands, roads, and trails under administration of the Bureau.

Subpart 8341—Conditions of Use

§ 8341.1 Regulations governing use.

(a) The operation of off-road vehicles is permitted on those areas and trails designated as open to off-road vehicle use.

(b) Any person operating an off-road vehicle on those areas and trails designated as limited shall conform to all terms and conditions of the applicable designation orders.

(c) The operation of off-road vehicles is prohibited on those areas and trails closed to off-road vehicle use.

(d) It is prohibited to operate an off-road vehicle in violation of State laws and regulations relating to use, standards, registration, operation, and inspection of off-road vehicles. To the extent that State laws and regulations do not exist or are less stringent than the regulations in this part, the regulations in this part are minimum standards and are controlling.

(e) No person may operate an off-road vehicle on public lands without a valid State operator's license or learner's permit. Exceptions are: (1) A person under the direct supervision of an individual 18 years of age or older who has a valid operator's license and who is responsible for the acts of the person supervised. (2) A person certified by State government as competent to drive off-road vehicles after successfully completing a State approved operator's training program. (3) Operation of an off-road vehicle in areas of Alaska designated by the Bureau's State Director for Alaska.

(f) Any person supervising a nonlicensed driver shall be responsible for the operation of the vehicle and shall be responsible for the actions of the driver.

(g) No person shall operate an off-road vehicle on public lands:

(1) In a reckless, careless, or negligent manner;

(2) In excess of established speed limits;

(3) While under the influence of alcohol, narcotics, or dangerous drugs;

(4) In a manner causing, or likely to cause significant, undue damage to or disturbance of the soil, wildlife, wildlife habitat, improvements, cultural, or vegetative resources or other authorized uses of the public lands; and

(5) During night hours, from a half-hour after sunset to a half-hour before sunrise, without lighted headlights and taillights.

(h) Drivers of off-road vehicles shall yield the right-of-way to pedestrians, saddle horses, pack trains, and animal-drawn vehicles.

(i) Any person who operates an off-road vehicle on public lands must comply with the regulations in this part, and in § 8341.2 as applicable, while operating such vehicle on public lands.

§ 8341.2 Special rules.

(a) Notwithstanding the consultation provisions in § 8342.2(a), where the authorized officer determines that off-road vehicles are causing or will cause considerable adverse effects upon soil, vegetation, wildlife, wildlife habitat, cultural resources, historical resources, threatened or endangered species, wilderness suitability, other authorized uses, or other resources, the authorized officer shall immediately close the areas or trails affected to the type(s) of vehicle causing the adverse effect until the adverse effects are eliminated and measures implemented to prevent recurrence. Such closures will not prevent designation in accordance with procedures in part 8342 of this subpart, but these lands shall not be opened to the type(s) of off-road vehicle to which it was closed unless the authorized officer determines that the adverse effects have been eliminated and measures implemented to prevent recurrence.

(b) Each State director is authorized to close portions of the public lands to use by off-road vehicles, except those areas or trails which are suitable and specifically designated as open to such use pursuant to Subpart 8342 of this part.

Subpart 8342—Designation of Areas and Trails

§ 8342.1 Criteria.

The authorized officer shall designate all public lands as either open, limited, or closed to off-road vehicles. All designations shall be based on the protection of the resources of the public lands, the promotion of the safety of all the users of the public lands, and the minimization of conflicts among various uses of the public lands; and in accordance with the following criteria:

(a) Areas and trails shall be located to minimize damage to soil, watershed, vegetation, air, or other resources of the public lands, and to prevent impairment of wilderness suitability.

(b) Areas and trails shall be located to minimize harassment of wildlife or significant disruption of wildlife habitats. Special attention will be given to protect endangered or threatened species and their habitats.

(c) Areas and trails shall be located to minimize conflicts between off-road vehicle use and other existing or proposed recreational uses of the same or neighboring public lands, and to ensure the compatibility of such uses with existing conditions in populated areas, taking into account noise and other factors.

(d) Areas and trails shall not be located in officially designated wilderness areas or primitive areas. Areas and trails shall be located in natural areas only if the authorized officer determines that off-road vehicle use in such locations will not adversely affect their natural, esthetic, scenic, or other values for which such areas are established.

§ 8342.2 Designation procedures.

(a) *Public participation.* The authorized officer shall, to the extent practical, designate and redesignate areas and trails in conjunction with the Bureau planning system for the formulation of multiple-use management plans. Plans shall consider current and potential impacts of specific vehicle types on all resources and users in the region of the area under consideration. Prior to making designations or redesignations, the authorized officer

shall consult with interested user groups, Federal, State, county, and local agencies, local landowners, and other parties in a manner that provides an opportunity for the public to express itself and have those views taken into account.

(b) *Identification of designated areas and trails.* The authorized officer shall, after designation, take action by marking and other appropriate measures to identify designated areas and trails so that the public will be aware of locations and limitations applicable thereto. Public notice of designations or redesignations shall be given at the time of designation or redesignation through publication in the **Federal Register** and local news media. Copies of such notices shall be available to the public in local Bureau offices. The authorized officer will make available to the public appropriate informational material, including maps.

§ 8342.3 Designation changes.

Monitoring use. The authorized officer shall monitor effects of the use of off-road vehicles. On the basis of information so obtained, and whenever the authorized officer deems it necessary to carry out the objectives of this part, designations may be amended, revised, revoked, or other actions taken pursuant to the regulations in this part.

Subpart 8343—Vehicle Operations

§ 8343.1 Standards.

(a) No off-road vehicle may be operated on public lands unless equipped with brakes in good working condition.

(b) No off-road vehicle equipped with a muffler cutout, bypass, or similar device, or producing excessive noise exceeding Environmental Protection Agency standards, when established, may be operated on public lands.

(c) By posting appropriate signs or by marking a map which shall be available for public inspection at local Bureau offices, the authorized officer may indicate those public lands upon which no off-road vehicle may be operated unless equipped with a properly installed spark arrester. The spark arrester must meet either the U.S. Department of Agriculture—Forest Service Standard 5100–1a, or the 80-percent efficiency level standard when determined by the appropriate Society of Automotive Engineers (SAE) Recommended Practices J335 or J350. These standards include, among others, the requirements that: (1) the spark arrester shall have an efficiency to retain or destroy at least 80 percent of carbon particles for all flow rates, and (2) the spark arrester has been warranted by its manufacturer as meeting this efficiency requirement for at least 1,000 hours subject to normal use, with maintenance and mounting in accordance with the manufacturer's recommendation. A spark arrester is not required when an off-road vehicle is being operated in an area which has 3 or more inches of snow on the ground.

(d) Vehicles operating during night hours, from a half-hour after sunset to a half-hour before sunrise, shall comply with the following: (1) Headlights shall be of sufficient power to illuminate an object at 300 feet at night under normal, clear atmospheric conditions. Two- or three-wheeled vehicles or single-tracked vehicles will have a minimum of one headlight. Vehicles having four or more wheels or more than a single track will have a minimum of two headlights, except double tracked snowmachines with a maximum capacity of two people may have only one headlight. (2) Red taillights, capable of being seen at a distance of 500 feet from the rear at night under normal, clear atmospheric conditions, are required on vehicles in the same numbers as headlights.

Subpart 8344—Permits

§ 8344.1 Permit requirements.

Permits are required for certain types of ORV use and shall be issued in accordance with the special recreation permit procedures under part 8372 of this chapter.

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Part VI

Environmental Protection Agency

Standards of Performance for New Stationary Sources, Glass Manufacturing Plants

ENVIRONMENTAL PROTECTION AGENCY

[40 CFR Part 60]

[FRL 1203-7]

Standards of Performance for New Stationary Sources; Glass Manufacturing Plants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The proposed standards would limit emissions of particulate matter from new, modified, and reconstructed glass manufacturing plants. The standards implement the Clean Air Act and are based on the Administrator's determination that glass manufacturing plants contribute significantly to air pollution. The intended effect is to require new, modified, and reconstructed glass manufacturing plants to use the best demonstrated system of continuous emission reduction, considering costs, nonair quality health and environmental impact, and energy impacts.

A public hearing will be held to provide interested persons an opportuity for oral presentation of data, views, or arguments concerning the proposed standards.

DATES: *Comments.* Comments must be received on or before August 14, 1979.

Public Hearing. The public hearing will be held on July 9, 1979 beginning at 9:30 a.m. and ending at 4:30 p.m.

Request to Speak at Hearing. Persons wishing to present oral testimony at the hearing should contact EPA by June 29, 1979.

ADDRESSES: *Comments.* Comments should be submitted to Central Docket Section (A-130), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, Attention: Docket No. OAQPS 79-2.

Public Hearing. The public will be held at Office of Administration Auditorium, Research Triangle Park, North Carolina 27771. Persons wishing to present oral testimony should notify Mary Jane Clark, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Rsearch Triangle Park, North Carolina 27711, telephone (919) 541-5271.

Standards Support Document. The support document for the proposes standards may be obained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Glass Manufacturing Plants, Background Information: Proposed Standards of Performance," EPA-450/3-79-005a.

Docket. A docket, number OAQPS 79-2, containing information used by EPA in development of the proposed standard, is available for public inspection between 8:00 a.m. and 4:00 p.m. Monday through Friday, at EPA's Central Docket Section (A-130), Room 2903 B, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Mr. Don R. Goodwin, Director, Emission Standards and Engineering Division (MD-13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5271.

SUPPLEMENTARY INFORMATION:

Proposed Standards

The standards would apply to glass melting furnaces with glass manufacturing plants with two exceptions: day pot furnaces (which melt two tons or less of glass per day) and all-electric melting furnaces. No existing plants would be covered unless they were to undergo modification or reconstruction. Change of fuel from gas to fuel oil would be exempt from consideration as a modification and rebricking of furnaces would be exempt from consideration as reconstruction.

Specifically, the proposed standards would limit exhaust emissions from gas-fired glass melting furnaces to 0.15 grams of particulate matter per kilogram of glass produced for flat glass production; 0.1 g/kg (0.2 lb/ton) for container glass production; 0.2 g/kg (0.4 lb/ton) for wool fiberglass production; 0.1 g/kg (0.2 lb/ton) for pressed and blown glass production of soda-lime formulation; and 0.25 g/kg (0.5 lb/ton) for pressed and blown glass production of borosilicate, opal, and other formulations. A 15 percent allowance above the emission limits for gas-fired furnaces is proposed for fuel oil-fired glass melting furnaces and an additional proportionate allowance is proposed for furnaces simultaneously firing gas and fuel oil.

Summary of Environmental and Economic Impacts

Environmental Impacts

The proposed standards would reduce projected 1983 emissions from new uncontrolled glass melting furnaces from about 5,200 megagrams (Mg)/year (5,732 ton/year) to about 400 Mg/year (441 ton/year). This is a reduction of about 92 percent of uncontrolled emissions. Meeting a typical State Implementation Plan (SIP), however, would reduce emissions from new uncontrolled furnaces by about 3,700 Mg/year (4,079 ton/year), or by about 70 percent. The proposed standard would exceed the reduction achieved under a typical SIP by about 1,100 Mg/year (1,213 ton-year). This reduction in emissions would result in a reduction of ambient air concentrations of particulate matter in the vicinity of new glass manufacturing plants.

The proposed standards are based on the use of electrostatic precipitators (ESP's) and fabric filters, which are dry control techniques; therefore, no water discharge would be generated and there would be no adverse water pollution impact.

The solid waste impact of the proposed standards would be minimal. Less than 2 Mg (2.2 ton) of particulate would be collected for every 1,000 Mg (1,102 ton) of glass produced. These dusts can generally be recycled, or they can be landfilled if recycling proves to be unattractive. The current solid waste disposal practice among most controlled plants surveyed is landfilling. Since landfill operations are subject to State regulation, this disposal method would not be expected to have an adverse environmental impact. The additional solid material collected under the proposed standard would not differ chemically from the material collected under a typical SIP regulation; therefore, adverse impact from landfilling should be minimal. Also, recycling of the solids has no adverse environmental impact.

For typical plants in the glass manufacturing industry, the increased energy consumption that would result from the proposed standards ranges from about 0.1 to 2 percent of the energy consumed to produce glass. The energy required in excess of that required by a typical SIP regulation to control all new glass melting furnaces constructed by 1983 to the level of the proposed standards would be about 2,500 kilowatt-hours per day in the fifth year and is considered negligible. Thus, the proposed standards would have a minimal impact on national energy consumption.

Economic Impacts

The economic impact of the proposed standards is reasonable. Compliance with the standards would result in annualized costs in the glass manufacturing industry of about $8.5 million by 1983. For typical plants constructed between 1978-1983 capital costs associated with the proposed

standards would range from about $235,000 for a small furnace in the pressed and blown glass sector which melts formulations other than soda-lime to about $770,000 for a large pressed and blown glass furnace which melts soda-lime formulations. Annualized costs associated with the proposed standards would range from about $70,000/year to about $235,000/year for the furnaces mentioned above. Cumulative capital costs of complying with the proposed standards for the glass manufacturing industry as a whole would amount to about $28 million between 1978–1983. The percent price increase necessary to offset costs of compliance with the proposed standards would range from about 0.3 percent in the wool fiberglass sector to about 1.8 percent in the container glass sector. Industry-wide, the price increase would amount to about 0.7 percent.

The economic impact of the proposed standards may vary depending on the size of the glass melting furnace being considered. EPA is requesting comments specifically on the economic impact of the proposed standards with regard to a possible lower cut-off size for glass melting furnaces.

Rationale

Selection of Source and Pollutants

The proposed Priority List, 40 CFR 60.16, identifies various sources of emissions on a nationwide basis in terms of the quantities of emissions from source categories, the mobility and competitive nature of each source category, and the extent to which each pollutant endangers health or welfare. The sources on this proposed list are ranked in decreasing order. Glass manufacturing ranks 38th on the proposed list, and is therefore of considerable importance nationwide.

The production of glass is projected to increase at compounded annual growth rates of up to 7 percent through the year 1983. In 1975, over 17 million megagrams (18.8 million ton) of glass were produced; by 1983 this production rate is expected to increase by nearly 2.9 million Mg/year (3.2 million ton/year). Geographically, the glass manufacturing industry is relatively concentrated with plants currently located in 17 states. Total particulate emissions in the United States in 1975 were estimated to be about 12.4 million Mg/year (13.7 million ton/year); by the year 1983 new glass manufacturing plants would cause annual nationwide particulate matter emissions to increase by about 1,500 Mg/year (1,620 ton/year) with emissions controlled to the level of a typical SIP regulation.

On March 18, 1977, the Governor of New Jersey petitioned EPA to establish standards of performance for glass manufacturing plants. The petition was primarily motivated by the Governor's concern that the glass manufacturing industry might locate plants in other States rather than comply with New Jersey's air pollution regulations limiting emissions of particulate matter. The glass manufacturing industry is not geographically tied to either markets or resources. Only a few States have specialized air pollution standards for glass manufacturing plants in their SIP's, and these standards vary in the level of control required. Therefore, new glass manufacturing operations could be located in States which do not have stringent SIP regulations.

Glass manufacturing plants are significant contributors to nationwide emissions of particulate matter, especially when viewed as contributors to emissions in the limited number of States in which they are located. They rank high with regard to potential reduction of emissions. Since they are free to relocate in terms of both markets and required resources, the possibility exists that operations could be moved or relocated to avoid stringent SIP regulations, thereby generating economic dislocations. For these reasons, emissions of particulate matter from new glass manufacturing plants have been selected for control by NSPS.

Glass manufacturing plants also emit other criteria pollutants: sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide, and hydrocarbons. Carbon monoxide and hydrocarbon emissions from efficiently operated glass manufacturing plants, however, are negligible.

Nationwide, the largest aggregate emissions from glass manufacturing plants are NO_x. The techniques generally applicable to control NO_x produced by combustion are staged combustion, off-stoichiometric combustion, or reduced-temperature combustion. To date none of these techniques has been applied to the control of NO_x emissions from glass melting furnaces. Accordingly, there is no way of determining how effective they might be in such applications. Consequently, NO_x was not selected for control by standards of performance.

SO_2 emissions result from combustion of sulfur-containing fuels and from chemical reactions of raw materials. In general there are two alternatives for control of SO_2 emissions: (1) scrubbing of exhaust gases containing SO_2, and (2) reducing the sulfur content of fuel and raw materials. SO_2 emissions from glass melting furnaces are in most cases already less than the emission limits of applicable SIP's for fuel burning sources. Flue-gas scrubbing for control of SO_2 emissions from glass melting furnaces is not considered economically reasonable.

There are difficulties as well with the use of low-sulfur fuels or reduction of sulfur content of raw materials. Using low-sulfur fuel would not adequately address the problem of SO_2 control for two reasons. Natural gas is the preferred fuel for glass melting furnaces. The only alternative fuel currently in use or projected for future use by the glass manufacturing industry is distillate fuel oil, which normally contains more sulfur than natural gas. The elimination of sulfur-containing fuel oil is not considered reasonable. Alternatively, standards of performance based solely on combustion of low-sulfur fuels could distort existing fuel distribution patterns, since low-sulfur fuels could be diverted to new facilities to meet NSPS in areas that have no difficulty attaining or maintaining the National Ambient Air Quality Standards (NAAQS) for SO_2. This would reduce the supply of low-sulfur fuels for existing facilities in areas that have great difficulty attaining or maintaining the NAAQS for SO_2. Consequently, standards of performance for SO_2 emissions based on use of low-sulfur fuels do not seem reasonable.

Use of reduced-sulfur raw materials has not been demonstrated as a means of reducing SO_2 emissions from glass melting furnaces. There is a wide variety of formulations, most of which are considered by the industry to be trade secrets. The present state of glass making is such that formula alterations of the type envisioned here would lead to glass of unpredictable quality. For these reasons, standards of performance for SO_2 emissions from glass melting furnaces based on reduced-sulfur raw materials, or any other approach, do not seem reasonable and have not been proposed.

Selection of Affected Facility

Ninety-eight percent of the particulate matter emitted from glass manufacturing plants is emitted in gaseous exhaust streams from glass melting furnaces. Only two percent of the particulate matter emitted from glass manufacturing plants is emitted from raw material handling and glass forming and finishing. Therefore, the glass melting furnace has been selected as the affected facility.

The proposed standards would apply to all glass melting furnaces within glass manufacturing plants with two exceptions: day pot furnaces and all-electric melters. A day pot furnace is a glass melting furnace which is capable of producing no more than two tons of glass per day. These small glass melting furnaces constitute an extremely small percentage of total glass production and their control is not considered economically reasonable. Therefore, the regulation exempts day pot furnaces from the proposed standards.

Well operated and maintained all-electric furnaces have particulate emissions only slightly higher than fossil-fuel fired furnaces controlled to meet the proposed standards. Most of these furnaces are open to the atmosphere and do not have stacks. Thus, control and measurement of emissions from all-electric furnaces does not appear to be economically reasonable. Therefore, all-electric melting furnaces are not regulated by the proposed standards.

Selection of Format

Two alternative formats were considered for the proposed standards: mass standards, which limit emissions per unit of feed to the glass furnace or per unit of glass produced by the glass furnace; and concentration standards, which limit emissions per unit volume of exhaust gases discharged to the atmosphere.

Enforcement of concentration standards requires a minimum of data and information, decreasing the costs of enforcement and reducing chances of error. Furthermore, vendors of emission control equipment usually guarantee equipment performance in terms of the pollutant concentration in the discharge gas stream.

There is a potential for circumventing concentration standards by diluting the exhaust gases discharged to the atmosphere with excess air, thus lowering the concentration of pollutants emitted but not the total mass emitted. This problem can be overcome, however, by correcting the concentration measured in the gas stream to a reference condition such as a specified oxygen percentage in the gas stream.

Concentration standards would penalize energy-efficient furnaces, since a decrease in the amount of fuel required to melt glass decreases the volume of gases released but not the quantity of particulate matter emitted. As a result, the concentration of particulate matter in the exhaust gas stream would be increased even though the total mass emitted remained the same. Even if a concentration standard were corrected to a specified oxygen content in the gas stream, this penalizing effect of the concentration would not be overcome.

Primary disadvantages of mass standards, as compared to concentration standards, are that their enforcement is more costly and that the more numerous calculations required increase the opportunities for error. Detemining mass emissions requires the development of a material balance on process data concerning the operation of the plant, whether it be input flow rates or production flow rates. Development of this balance depends on the availability and reliability of production figures supplied by the plant. Gathering of these data increases the testing or monitoring necessary, the time involved, and, consequently, the costs. Manipulation of these data increases the number of calculations necessary; e.g., the conversion of volumetric flow rates to mass flow rates, thus compounding error inherent in the data and increasing the chance for error.

Although concentration standards involve lower resource requirements than mass standards, mass standards are more suitable for regulation of particulate emissions from glass melting furnaces because of their flexibility to accommodate process improvements and their direct relationship to quantity of particulate emitted to the atmosphere. These advantages outweigh the drawbacks associated with creating and manipulated a data base. Consequently, mass standards are selected as the format for expressing standards of performance for glass melting furnaces.

The proposed standards express allowable particulate emissions in grams of particulates per kilogram of glass pulled. While emissions data referring to raw material input as well as data referring to glass pulled were used in the development of the standards, an examination of the several sectors of the glass manufacturing industry indicated that an emission rate based on quantity of glass pulled would be more representative of industry practice. Further, emissions are more dependent on pull rate than on rate of raw material input. Accordingly, the mass of glass pulled is used as the denominator in the proposed standards. Raw material input data could be employed to estimate glass pulled from a furnace if a quantitative relationship between raw material input and glass pulled were developed following good engineering methods.

Selection of the Best System of Emission Reduction and Emission Limits

Introduction

Particulate emissions from glass melting furnaces can be reduced significantly by the use of the following emission control techniques: electrostatic precipitators, fabric filters, and venturi scrubbers. Since these emission control techniques do not achieve the same level of control for glass melting furnace emissions within all sectors of the glass manufacturing industry, they are discussed separately for each sector.

Process modifications such as batch formulation alteration and electric boosting also may be capable of reducing particulate emissions from glass melting furnaces. The test data available for furnaces where process modifications are used as emissions reduction techniques indicate that emission reduction by process modification is indifinite with respect to the effectiveness of the techniques. Accordingly, the selection of the best system of emission reduction is based on the use of add-on emission reduction techniques of known effectiveness. However, there is nothing in this proposal nor is it the intent of this proposal to preclude the use of process modifications to comply with the proposed standards.

The glass manufacturing industry is divided into four principal sectors designated by Standard Industrial Classifications (SIC's). The container glass sector (SIC 3221) manufactures containers for commercial packing and bottling and for home canning by pressing (stamping) and/or blowing (air-forming) molten glass usually of soda-lime recipe. The pressed and blown glass, not elsewhere classified, sector (SIC 3229) includes such diverse products as: table, kitchen, art and novelty glassware; lighting and electronic glassware; scientific, technical, and other glassware; and textile glass fibers. Based on the differing rates of particulate matter emissions, it is necessary to subdivide the pressed and blown glass sector into plants producing glass from soda-lime formulations and plants producing glass from other formulation (primarily borosilicate, opal and lead). Glass manufacturing plants in the wool fiberglass sector are classified under mineral wool (SIC 3296); fiberglass insulation is a major product. The flat glass sector (SIC 3211) uses continuous glass forming processes, and materials almost exclusively of soda lime

formulation, to manufacture sheet, plate, float, rolled, and wire glass.

Each of the glass manufacturing sectors is unique both from a technical and an economic standpoint. Thus, uncontrolled particulate emission rate, furnace size, and the applicability of emission control techniques vary from one sector to another. Since the products manufactured by the different sectors of the glass manufacturing industry serve different markets, each sector is working in a different economic environment. For these reasons it was apparent that no single model furnace could adequately characterize the glass manufacturing industry. Accordingly, several model furnaces were specified in terms of the following parameters: production rate, stack height, stack diameter, exhaust gas exit velocity, exhaust gas flow rate, and exhaust gas temperature. The evaluation of these parameters may be found in the Background Information document. The model furnace production rate specified for the container glass sector was 225 Mg/day (250 ton/day). For pressed and blown glass furnaces melting soda-lime and other formulations two model furnace production rates were specified: 45 Mg/day (50 ton/day) and 90 Mg/day (100 ton/day). Model furnace production rates for the wool fiberglass and flat glass sector were 180 Mg/day (200 ton/day) and 635 Mg/day (700 ton/day), respectively.

Review of the performance of the emission control techniques led to the identification of two regulatory options for each sector. These options specify numerical emission limits for glass melting furnaces in each sector of the glass manufacturing industry. The environmental impacts, energy impacts, and cost and economic impacts of each regulatory option were compared with those associated with a typical SIP regulation and those associated with no control.

Container Glass

Uncontrolled particulate emissions from container glass furnaces are generally about 1.25 g/kg (2.5 lb/ton) of glass pulled. Emission tests (using EPA Method 5) on three container glass furnaces equipped with ESP's indicate an average particulate emission of 0.06 g/kg (0.12 lb/ton) of glass pulled.

Emission test data for container glass furnaces equipped with fabric filters are not available. However, emission test results for a pressed and blown glass furnace melting a soda-lime formulation essentially identical to that used for container glass indicate that emissions can be reduced to 0.12 g/kg (0.24 lb/ton) of glass pulled with a fabric filter. This fabric filter installation was tested with the Los Angeles Air Pollution Control District particulate matter test method (LAAPCD Method), which considers the combined weight of the particulate matter collected in water-filled impingers and of that collected on a filter. EPA Method 5 also uses impingers and a filter, but considers only the weight of the particulate matter collected on the filter. The LAAPCD Method collects a larger amount of particulate matter than does EPA Method 5, and, consequently, greater mass emissions would be reported for comparable tests. An emission level of 0.1 g/kg (0.2 lb/ton) as determined by EPA Method 5, could be achieved by a container glass furnace equipped with a properly designed and operated fabric filter.

EPA Method 5 tests of four furnaces equipped with venturi scrubbers indicated an average particulate emission of 0.21 g/kg (0.42 lb/ton) of glass pulled.

Based on the data cited above, an emission level of 0.1 g/kg (0.2 lb/ton) of glass pulled from container glass furnaces can be achieved with ESP's or fabric filters. An emission level of 0.2 g/kg (0.4 lb/ton) of glass pulled can reasonably be achieved with a venturi scrubber when operated at a pressure drop somewhat higher than the average of those scrubbers tested. ESP's and fabric filters could also be designed to achieve an emission level of 0.2 g/kg (0.4 lb/ton) of glass pulled.

On the basis of these conclusions, two regulatory options for reducing particulate emissions from container glass furnaces were formulated. Option I would set an emission limit of 0.1 g/kg (0.2 lb/ton), requiring a particulate emission reduction of somewhat over 90 percent as compared with an uncontrolled furnace. Option II would set an emission limit of 0.2 g/kg (0.4 lb/ton), requiring a particulate emission reduction of about 85 percent.

By 1983 approximately 1900 gigagrams (Gg)/year (2.1 million ton/year) of additional production is anticipated in the container glass sector. About 25 new container glass furnaces of about 225 Mg/day (250 ton/day) production capacity (the size of the model furnace) would be built in order to provide this additional production. If uncontrolled, these new container glass furnaces would add about 2,400 Mg/year (2,646 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 1,000 Mg/year (1,102 ton/year). Under Option I, emissions would be reduced to about 19 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 38 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled container glass furnace producing 225 Mg/day of glass would be less than 1 $\mu g/m^3$. The annual maximum ground-level concentration resulting from compliance with a typical SIP regulation, Option I, or Option II would also be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled container glass furnace producing 225 Mg/day of glass would be approximately 10 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be 5 $\mu g/m^3$. Under Option I, with an ESP or a fabric filter being employed for control, the maximum 24-hour ground-level concentration would be reduced to 1 $\mu g/m^3$. Under Option II, with the same techniques being employed, the concentration would be reduced to 2 $\mu g/m^3$. Use of a venturi scrubber to meet the Option II emissions limit would only reduce the concentration to 6 $\mu g/m^3$ due to the decreased stack height of a scrubber-controlled plant and the resulting increased building wake effects.

With one exception, standards of performance for container glass furnaces would have no water pollution impact. The exception would be the use of a venturi scrubber to comply with a standard based on Option II. Such a system, applied to a furnace producing 225 Mg/day of glass, would discharge about 0.5 m^3/hr of waste water containing about 5 percent solids. The waste water would probably be discharged directly to an available waste water treatment system. To date, however, only a few container glass furnaces have been controlled with venturi scrubbers; dry collection techniques have been preferred. Consequently, few container glass manufacturers would be expected to install venturi scrubbers on their furnaces to comply with a standard based on Option II. The overall water pollution impact would then be negligible.

The potential solid waste impacts of the regulatory options would result from collected particulate matter. Solid waste from container glass furnaces, other than collected particulate matter, is minimal since cullet is normally

recycled back into the glass melting process. Under a typical SIP regulation, about 1,400 Mg/year (1,543 ton/year) of particulate matter would be collected from the 25 new 225 Mg/day container glass furnaces projected to come on-stream during the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 800 Mg/year (882 ton/year) and about 600 Mg/year (661 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 60 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 45 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also would not be expected to have an adverse environmental impact.

The potential energy impacts of the regulatory options would be due to the energy used to drive the fans in emission control systems and the energy used to charge the electrodes in ESP's. Since ESP's have been the predominant control system used in the industry, the energy requirements estimated for a typical SIP regulation, Option I, and Option II were based on the use of ESP's. The energy required to control particulate emissions from the 25 new container glass furnaces would be about 40 million kWh (22 thousand barrels of oil/year) for a typical SIP regulation for the new furnaces equipped with ESP's. This required energy would be about 0.2 percent of the total energy use in the container glass sector. There would be no energy impact associated with either Option I or Option II because the energy required to operate an ESP for Option I or Option II is essentially the same as the energy required to operate an ESP for a typical SIP regulation.

Incremental installed cost (cost in excess of a typical SIP regulation cost) in January 1978 dollars associated with Option I for controlling particulate emissions from a 225 Mg/day container glass furnace would be about $700 thousand for an ESP and about $1.2 million for a fabric filter. Incremental installed cost associated with Option II would be about $450 thousand for an ESP, and about $1 million for a fabric filter. The incremental installed cost of control equipment associated with Option I level of control would be about 1.6 times the incremental installed cost associated with Option II if ESP's were selected. If fabric filters were selected, the incremental installed cost associated with the Option I level of control would be about 1.2 times the incremental installed cost associated with Option II.

Incremental annualized costs associated with Option I for a 225 Mg/day furnace would be about $200 thousand/year and about $350 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $130 thousand/year for an ESP, and about $300 thousand/year for a fabric filter. The incremental annualized cost associated with Option I would be about 1.5 times the incremental annualized cost associated with Option II if ESP's were used. If fabric filters were used the incremental annualized cost associated with Option I would be about 1.2 times the incremental annualized cost associated with Option II.

Based on the use of control equipment with the highest annualized cost (worst case conditions), a price increase of about 1.8 percent would be necessary to offset the cost of installing control equipment on a 225 Mg/day container glass furnace to meet the emissions limit of Option I. A price increase of about 1.5 percent would be necessary to comply with the emission limit of Option II.

Incremental cumulative capital costs for the 25 new 225 Mg/day container glass furnaces during the 1978–1983 period associated with Option I would be about $17 million if ESP's were used. Use of ESP's to comply with a standard based on Option II would require incremental cumulative capital costs of about $11 million for the same period. Fifth-year annualized costs for controlling container glass melting furnaces to comply with Option I would be about $5 million/year. To comply with Option II, fifth-year annualized costs would be about $3 million/year.

A summary of incremental impacts (in excess of impacts of a typical SIP regulation) associated with Option I and Option II is shown in Table 1. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table I.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
Regulatory option:				
I	800	None	Negligible	~1.8
II	600	Negligible	Negligible	~1.5

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the degree of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impact, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for glass melting furnaces in the container glass sector.

Pressed and Blown Glass—Soda-Lime Formulation

Because the glass production rates, the furnace configurations, and the glass formulations melted in furnaces in this sector are very similar to those in container glass sector, the quantity and chemical composition of particulate emissions approximate those of container glass furnaces. On the basis of this similarity of process and emissions, the emission reduction techniques which have been shown to be effective for container glass furnaces would also be effective in reducing particulate emissions from furnaces in this sector.

Uncontrolled particulate emissions from pressed and blown glass furnaces melting soda-lime formulations are generally about 1.25 g/kg (2.5 lb/ton) of glass pulled from the furnace. Test data for a pressed and blown glass furnace melting a soda-lime formulation and equipped with a fabric filter indicate particulate emissions of 0.12 g/kg (0.24 lb/ton) of glass pulled using the

LAAPCD Method. No emissions data for pressed and blown glass furnaces equipped with ESP's are available. However, emission tests using EPA Method 5 on three container-glass furnaces equipped with ESP's indicate an average particulate emission rate of 0.06 g/kg (0.12 lb/ton) of glass pulled. Because of the similarities between this sector and the container glass sector, both ESP's and fabric filters would be expected to be capable of reducing emissions to about 0.1 g/kg (0.2 lb/ton) of glass pulled.

Based on the similarity of pressed and blown glass production methods in this sector to those of the container glass sector, as well as on test data available on container glass furnace emissions, two regulatory options were formulated. The regulatory options are identical to those formulated for container glass furnaces. Option I would set an emission limit of 0.1 g/kg (0.2 lb/ton) of glass pulled, which would require a particulate emission reduction of about 90 percent. Option II would set an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled, which would require about 85 percent particulate emission reduction.

By 1983 approximately 310 Mg/year (342 ton/year) of additional production is anticipated in this glass manufacturing sector. About four new 45 Mg/day (50 ton/day) (small) and six new 90 Mg/day (100 ton/day) (large) furnaces would be built in order to provide this production. Emissions from the large furnaces would have to be reduced in order to comply with a typical SIP regulation, while small furnaces would meet a typical SIP regulation without reducing emissions. If uncontrolled, the four new small furnaces would add about 80 Mg/year (88 ton/year) to national particulate emissions by 1983, while the six new large furnaces would add about 230 Mg/year (254 ton/year). Compliance with a typical SIP regulation would reduce the impact of the new large furnaces to about 70 Mg/year (77 ton/year). Under Option I, these furnace emissions would be reduced to about 26 percent of those emitted under a typical SIP regulation. Under Option II, large furnace emissions would be reduced to about 53 percent of those emitted under a typical SIP regulation.

The small furnaces would be in compliance with a typical SIP regulation without control. Under Option I, emissions would be reduced to about 8 percent of uncontrolled emissions. Under Option II, emissions would be reduced to about 16 percent of uncontrolled emissions.

The effect of a typical SIP regulation for both 90 Mg/day (100 ton/day) and 45 Mg/day (50 ton/day) furnaces would be a reduction of about 48 percent of uncontrolled emissions. Under Option I, emissions would be reduced to about 16 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled pressed and blown glass furnace producing 45 Mg/day of glass would be less than 1 $\mu g/m^3$, as would the concentrations resulting from compliance with Option I or Option II. Corresponding annual maximum ground-level concentrations near an uncontrolled pressed and blown glass furnace producing 90 Mg/day of glass would also be less than 1 $\mu g/m^3$. Emissions from uncontrolled furnaces of either size in this sector would result in calculated maximum 24-hour ground-level concentrations of 3 $\mu g/m^3$. Under Option I this concentration would be reduced to below 1 $\mu g/m^3$. Under Option II it would be reduced to about 1 $\mu g/m^3$.

Since fabric filters and electrostatic precipitators are likely to be the control systems installed on furnaces in this sector to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, no particulate matter would be collected from the four new 45 Mg/day pressed and blown glass furnaces projected to come on-stream during the 1978–1983 period. The six new 90 Mg/day furnaces would collect about 160 Mg/year (176 ton/year) under a typical SIP regulation. For the six 90 Mg/day furnaces the amounts collected in addition to those collected through compliance with a typical SIP regulation would be about 50 Mg/year (55 ton/year) for Option I and about 33 Mg/year (36 ton/year) for Option II. Compliance with standards based on Option I and Option II would result in the collection of about 72 Mg/year (79 ton/year) and about 68 Mg/year (75 ton/year), respectively, of solid waste from the four 45 Mg/day furnaces. Option I would increase the mass of solids for disposal by 100 percent and by about 31 percent over that required by a typical SIP regulation for 45 Mg/day and 90 Mg/day furnaces, respectively. Option II would increase the mass of solids for disposal by 100 percent and 21 percent over that required by a typical SIP regulation for 45 Mg/day and 90 Mg/day furnaces, respectively. The total masses of solids for disposal collected from all new furnaces would be about 122 Mg/year (135 ton/year) and 101 Mg/year (111 ton/year) for Option I and Option II, respectively.

The additional solid material collected under Option I and Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also would not be expected to have an adverse environmental impact.

Since the four new 45 Mg/day furnaces would be in compliance with a typical SIP regulation without add-on controls, there would be no associated energy requirement. The estimated energy required to control particulates emissions from the four new 45 Mg/day furnaces projected to come on-stream in the 1978–1983 period to the levels required by both Option I and Option II would be about 1.5 million kWh (900 barrels of oil/year). The energy required to control particulate emissions from the six new 90 Mg/day furnaces would be 4.4 million kWh (2,500 barrels of oil/year) for a typical SIP regulation, Option I, or Option II if ESP's were installed.

The energy required to comply with the emission limits of the regulatory options would be about 0.5 percent of the total energy use in this glass manufacturing sector. The energy impacts of both Option I and Option II are negligible (~3 barrels of oil/day) for the new 45 Mg/day furnaces. There would be no energy impact associated with either Option I or Option II for the new 90 Mg/day furnaces beyond the impact associated with the requirements to meet a typical SIP regulation.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particular emissions from a 45 Mg/day pressed and blown glass furnace melting soda-lime formulations would be about $740 thousand for an ESP and about $710 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $645 thousand for an ESP, and about $675 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 1.1 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of

control would be about 1.1 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 45 Mg/day furnace associated with Option I would be about $230 thousand/year for both ESP's and fabric filters. Incremental annualized costs associated with Option II would be about $205 thousand/year for an ESP, and about $215 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used, the incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worse case conditions), a price increase of about 0.6 percent would be necessary to offset the costs of installing control equipment on a 45 Mg/day pressed and blown glass furnace melting soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the four new 45 Mg/day furnaces would be about $2.8 million if a fabric filter were used. Use of an ESP to comply with Option II would require incremental cumulative capital costs of about $2.6 million for the same period. Fifth-year annualized costs for controlling the furnace to comply with Option I would be about $910 thousand. To comply with Option II, fifth-year annualized costs would be about $815 thousand.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 90 Mg/day pressed and blown glass furnace melting soda-lime formulations would be about $615 thousand for an ESP and about $770 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $450 thousand for an ESP, and about $680 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 1.4 times the incremental installed costs associated with Option II, if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.1 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 90 Mg/day furnace associated with Option I would be about $175 thousand/year and about $235 thousand/ year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $130 thousand/year for an ESP, and about $205 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 1.3 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated with Option I would be about 1.1 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized cost, a price increase of about 0.6 percent would be necessary to offset the costs of installing control equipment on the large pressed and blown glass furnace melting soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the six new 90 Mg/day furnaces would be about $3.7 million if ESP's were used. Use of ESP's to comply with Option II would require incremental cumulative capital costs of about $2.7 million for the same period. Fifth-year annualized costs for controlling these glass melting furnaces to comply with Option I would be about $1.1 million. To comply with Option II, fifth-year annualized costs would be about $790 thousand.

A summary of incremental impacts (in excess of impacts of the typical SIP regulation) associated with Option I and Option II is shown in Table II for both small and large furnaces. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table II.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
I	122	None	~3.0	~0.6
II	101	None	~3.0	~0.5

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the reasonableness of energy and costs impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for pressed and blown glass furnaces melting soda-lime formulations.

Pressed and Blown Glass—Other Than Soda-Lime Formulations

Uncontrolled particulate emissions from furnaces in this sector are about 5 g/kg (10 lb/ton) of glass pulled. Emission tests using EPA Method 5 on four furnaces melting borosilicate formulations and equipped with ESP's yielded a representative emission rate of about 0.50 g/kg (1.0 lb/ton) of glass pulled. A single emission test using EPA Method 5 on an ESP-controlled furnace melting fluoride/opal formulations yielded an emission rate of 0.17 g/kg (0.34 lb/ton) of glass pulled. EPA Method 5 tests of six ESP-controlled furnaces melting lead glass yielded a representative emission rate of 0.12 g/kg (0.24 lb/ton) of glass pulled. A single EPA method 5 emission test of an ESP-controlled furnace melting potash-soda-lead glass yielded an emission rate of 0.03 g/kg (0.06 lb/ton) of glass pulled. An EPA method 5 emission test on a furnace equipped with a fabric filter and melting soda-lead-borosilicate glass produced an emission rate of 0.17 g/kg (0.34 lb/ton) of glass pulled.

Upon consideration of the data cited above, an emission limit of 0.25 g/kg (0.5 lb/ton) of glass pulled was identified as a reasonable limit for control for pressed and blown glass furnaces melting other than soda-lime formulations. This limit was selected for Option I; it provides for about 95 percent particulate removal. Option II would set an emission limit of 0.5 g/kg (1.0 lb/ton) of glass pulled, which provides for a particulate removal of about 90 percent. Fabric filters and ESP's could be designed to achieve the levels of emission reduction required by either regulatory option.

By 1983 approximately 70 Gg/year (77,200 ton/year) of additional production is anticipated in this sector. One 45 Mg/day (50 ton/day) (small) furnace and two 90 Mg/day (100 ton/day) (large) furnaces would be built in order to provide this production. If uncontrolled, emissions from the one new small pressed and blown glass furnace melting formulations other than soda-lime would add about 90 Mg/year (100 ton/year) to national particulate

emissions by 1983, while the emissions from the two new large furnaces would add about 260 Mg/year (287 ton/year) during the same period.

Compliance with a typical SIP regulation would reduce the impact from the small furnace to about 27 Mg/year (30 ton/year). Control to the Option I emissions limit would reduce the emissions to about 17 percent of those emitted under a typical SIP regulation. With Option II emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation.

Compliance with a typical SIP regulation would reduce the impact of the large furnances to about 47 Mg/year (52 ton/year). Under Option I, these emissions would be reduced to about 28 percent of those emitted under a typical SIP regulation. Under Option II, the large furnace emissions would be reduced to about 56 percent of those emitted under a typical SIP regulation.

The effect of a typical SIP regulation for both large and small furnaces would be a reduction of about 79 percent. Under Option I, emissions would be reduced to about 25 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 50 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime would be less than 1 $\mu g/m^3$, as would be the concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II. Corresponding annual maximum ground-level concentrations near a 90 Mg/day furnace also would be less than 1 $\mu g/m^3$.

The calculated maximum 24-hour ground-level concentration near an uncontrolled 45 Mg/day furnace in this sector would be 11 $\mu g/m^3$. This concentration would be reduced to 3 $\mu g/m^3$ with a typical SIP regulation. With Options I and II, the concentrations would be reduced to 1 $\mu g/m^3$ or less. The calculated maximum 24-hour ground-level concentration near an uncontrolled 90 Mg/day furnance would be 14 $\mu g/m^3$. This concentration would be reduced to 3 $\mu g/m^3$ with a typical SIP regulation and to below 1 $\mu g/m^3$ with Option I; with Option II it would reach 2 $\mu g/m^3$.

Since fabric filters and ESP's are likely to be the control systems installed on furnaces in this sector to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 64 Mg/year (71 ton/year) of particulate matter would be collected from the one new 45 Mg/day furnace projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 23 Mg/year (25 ton/year) and 18 Mg/year (20 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids by about 36 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 28 percent.

Under a typical SIP regulation, about 210 Mg/year (232 ton/year) of particulate matter would be collected from the two new 90 Mg/day furnaces projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 34 Mg/year (38 ton/year) and 21 Mg/year (23 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids by about 16 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 10 percent. The total mass of solids for disposal collected from all three new furnaces in this sector, associated with Option I and Option II, would be about 57 Mg/year (63 ton/year) and about 39 Mg/year (43 ton/year), respectively.

The additional solid material collected under Option I or Option II would not differ chemically from the material collected under the typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also is not expected to have an adverse environmental impact.

Since ESP's have been the predominant control system used in the industry and are anticipated as the predominant system to be used for new plants coming on-stream between 1978–1983 regardless of which regulatory option is selected, energy requirements estimated for the typical SIP regulation, Option I, and Option II are based on the use of ESP's.

The energy required to control particulate emissions from the new 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime to the level required by the typical SIP regulation would be about 2.7 million kWh (1,500 barrels of oil/year). The energy required to comply with the Option I and Option II emissions limits would be essentially the same as that required for meeting a typical SIP regulation.

Control to the level required by a typical SIP regulation of the two new 90 Mg/day pressed and blown glass furnaces melting formulations other than soda-lime and projected to come on-stream during the 1978–1983 period would require about 6.6 million kWh (3,700 barrels of oil/year) if an ESP were used. The energy requirements to achieve the Option I and Option II emission limits would be essentially the same as the requirements for meeting a typical SIP regulation.

The energy required to comply with the emission limits of the regulatory options would be about 0.1 percent of total energy use for all new furnaces in this glass manufacturing sector. Considering the small amounts of additional oil and electricity required and the slight increase in total energy use in this sector, the energy impacts of either Option I or Option II would be negligible.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 45 Mg/day pressed and blown glass furnace melting formulations other than soda-lime would be about $760 thousand for an ESP and about $235 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $320 thousand for an ESP, and about $190 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 2.4 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.2 times the incremental installed costs associated with Option II level of control.

Incremental annualized costs for a 45 Mg/day furnace assoicated with Option I would be about $230 thousand/year and about $70 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $95 thousand/year for an ESP, and about $60 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about 2.4 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated

with Option I would be about 1.2 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worse case conditions), a price increase of about 0.4 percent would be necessary to offset the costs of installing control equipment on a 45 Mg/day pressed and blown glass furnace melting other than soda-lime formulations to meet the emission limits of Option I. A price increase of about 0.3 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the 45 Mg/day furnace would be about $235 thousand if an ESP were used. Use of an ESP to comply with Option II would require incremental cumulative capital costs of about $190 thousand for the same period. Fifth-year annualized costs for controlling this furnace in this sector to comply with Option I would be about $70 thousand. To comply with Option II, fifth-year annualized costs would be about $60 thousand.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 90 Mg/day pressed and blown glass furnace melting other than soda-lime formulations would be about $800 thousand for an ESP and about $260 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $140 thousand for an ESP, and about $180 thousand for a fabric filter. The incremental installed costs of control equipment associated with the Option I level of control would be about 5.7 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected the incremental installed costs associated with the Option I level of control would be about 1.4 times the incremental installed costs associated with Option II.

Incremental annualized costs for a 90 Mg/day furnace associated with Option I would be about $245 thousand per year and about $85 thousand per year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $45 thousand per year for an ESP, and about $55 thousand per year for a fabric filter. The incremental annualized costs associated with Option I would be about 5.4 times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used the incremental annualized costs associated with Option I would be about 1.5 times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs, a price increase of about 0.8 percent would be necessary to offset the costs of installing control equipment on the 90 Mg/day pressed and blown glass furnace melting formulations other than soda-lime to meet the emission limits of Option I. A price increase of about 0.5 percent would be necessary to comply with the emission limits of Option II.

Incremental cumulative capital costs for the 1978–1983 period associated with Option I for the two new 90 Mg/day furnaces would be about $500 thousand if fabric filters were used. Use of ESP's to comply with Option II would require incremental cumulative capital costs of about $300 thousand for the same period. Fifth-year annualized costs for controlling these glass melting furnaces to comply with Option I would be about $160 thousand. To comply with Option II, fifth-year annualized costs would be about $85 thousand.

A summary of incremental impacts (in excess of impacts of the typical SIP regulation) associated with Option I and Option II is shown in Table III for both small and large furnaces. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as soild waste.

Table III.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air[1]	Water	Energy[2]	Economic[3]
Regulatory option:				
I	57	None	Negligible	~0.7
II	39	None	Negligible	~0.4

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, lack of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for pressed and blown glass furnaces melting formulations other than soda-lime.

Wool Fiberglass

Uncontrolled particulate emissions from wool fiberglass furnaces are generally about 5 g/kg (10 lb/ton) of glass pulled. The average emission from three furnaces in the wool fiberglass sector equipped with ESP's was 0.18 g/kg (0.36 lb/ton) of glass pulled. EPA Method 5 tests of three furnaces equipped with fabric filters indicated emissions of 0.2 g/kg (0.4 lb/ton), 0.26 g/kg (0.52 lb/ton), and 0.55 g/kg (1.1 lb/ton) of glass pulled. The test data cited indicate that an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled could be met through the use of an ESP and that a limit of 0.4 g/kg (0.8 lb/ton) of glass pulled could be met through the use of either an ESP or a fabric filter.

On the basis of these conclusions, two regulatory options for reducing particulate emissions from wool fiberglass furnaces were formulated. Option I would set an emission limit of 0.2 g/kg (0.4 lb/ton) of glass pulled, which would provide for about 95 percent particulate removal. Option II would set an emission limit of 0.4 g/kg (0.8 lb/ton) of glass pulled, which would provide for about 90 percent removal of particulates.

By 1983 approximately 360 Gg/year (397,000 ton/year) of additional production is anticipated in the wool fiberglass sector. About six new wool fiberglass furnaces of about 180 Mg/day (200 ton/day production capacity (the size of the model furnace) would be built in order to provide this additional production. If uncontrolled, these new wool fiberglass furnaces would add about 1,800 Mg/year (1,984 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 210 Mg/year (232 ton/year). Under Option I, emissions would be reduced to about 33 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 66 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled wool fiberglass furnace producing 180 Mg/day of glass would be about 2 $\mu g/m^3$. The annual maximum ground-level concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II would be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled wool fiberglass furnace producing 180 Mg/day of glass would be about 29 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be about 3 $\mu g/m^3$. Under Option I, with an ESP employed for control, the maximum 24-

hour ground-level concentration would be reduced to 2 $\mu g/m^3$. Under Option II it would be reduced to 3 and 4 $\mu g/m^3$ with the fabric filter and ESP, respectively.

Since fabric filters and ESP's are likely to be the control systems installed on wool fiberglass furnaces to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 1600 Mg/year (1,764 ton/year) of particulate matter would be collected from the six new 180 Mg/day wool fiberglass furnaces projected to come on-stream during the 1978–1983 period. Compliance with standards based on Option I and Option II would add about 140 Mg/year (154 ton/year) and about 70 Mg/year (77 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 9 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 4 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recycling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulation, this disposal method also is not expected to have an adverse environmental impact.

The estimated energy required to control particulate emissions from the six new wool fiberglass furnaces expected to come on-stream in the 1978–83 period to comply with a typical SIP regulation would be about 6.8 million kWh (3,850 barrels of oil/year) if electrostatic precipitators were used. Complying with the emission limits of Option I and Option II with electrostatic precipitators would require about 6.9 million kWh (3,900 barrels of oil/year). The energy required would be about 0.3 percent of the total energy use in the wool fiberglass sector. The energy impacts of either Option I or Option II would be negligible—only about 50 barrels of oil/year.

Incremental installed costs in January 1978 dollars associated with Option I for controlling particulate emissions from a 180 Mg/day wool fiberglass furnace would be about $500 thousand for an ESP and about $70 thousand for a fabric filter. Incremental installed costs associated with Option II would be about $110 thousand and about $30 thousand for an ESP and a fabric filter, respectively. The incremental installed costs of control equipment associated with the Option I level of control would be nearly 5 times the incremental installed costs associated with Option II if ESP's were selected. If fabric filters were selected, the incremental installed costs associated with the Option I level of control would be aobut twice the incremental installed costs associated with Option II.

Incremental annualized costs associated with Option I for a 180 Mg/day wool fiberglass furnace would be about $155 thousand/year and about $20 thousand/year for an ESP and a fabric filter, respectively. Incremental annualized costs associated with Option II would be about $35 thousand/year for an ESP and about $10 thousand/year for a fabric filter. The incremental annualized costs associated with Option I would be about five times the incremental annualized costs associated with Option II if ESP's were used. If fabric filters were used, the incremental annualized costs associated with Option I would be about two times the incremental annualized costs associated with Option II.

Based on the use of control equipment with the highest annualized costs (worst case conditions), a price increase of about 0.3 percent would be necessary to offset the costs of installing control equipment on a 180 Mg/day wool fiberglass furnace to meet the emission limits of Option I. A price increase of about 0.1 percent would be necessary to complying with the emission-limits of Option II.

Incremental cumulative capital costs for the six new 180 Mg/day wool fiberglass furnaces during the 1978–1983 period associated with Option I would be about $3 million if ESP's were used. Use of fabric filters to comply with Option II would require incremental cumulative capital costs of about $185 thousand for the same period. Fifth-year annualized costs for controlling wool fiberglass furnaces complying with Option I would be about $930 thousand. To comply with Option II, fifth-year annualized costs would be about $60 thousand.

A summary of incremental impacts associated with Option I and Option II is shown in Table IV. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table IV.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air [1]	Water	Energy [2]	Economic [3]
Regulatory option:				
I	140	None	Negligible	0.3
II	70	None	Negligible	0.1

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the reasonableness of energy and cost impacts, and the general availability of demonstrated emission control technology leads to the selection of Option I as the basis for standards for glass melting furnaces in the wool fiberglass sector.

Flat Glass

Uncontrolled particulate emissions from flat glass furnaces are about 1.5 g/kg (3.0 lb/ton) of glass pulled. There are no emissions test data for flat glass furnaces equipped with control devices available for evaluation. However, the soda-lime formulations melted in these furnaces are quite similar to those melted in container glass furnaces, as are the chemical composition and physical characteristics of the particulate emissions. The primary difference between container glass and flat glass furnaces is that the uncontrolled emission rates of flat glass furnaces are greater. Given the similarity of processes, glass formulations, and emissions it is expected that the percentage reduction in particulate emissions achieved by control of container glass furnaces also could be achieved with flat glass furnaces. This conclusion is supported by the performance guarantee underwritten by an ESP manufacturer for a flat glass facility which indicates at least 90 percent control efficiency. Thus, uncontrolled emissions from flat glass furnaces can be reduced with an ESP by at least 90 percent or to about 0.15 g/kg (0.3 lb/ton) of glass pulled.

The similarity of container glass and flat glass furnace formulations and emissions and the vendor guarantee noted above provide the basis for Option I. Option I would set an emission limit of 0.15 g/kg (0.3 lb/ton) of glass pulled, which would provide about 90 percent control. The Option II emission limit for furnaces in the other glass manufacturing sectors has been found to be twice the Option I limit. For

consistency, therefore, Option II would set an emission limit of 0.3 g/kg (0.6 lb/ton) of glass pulled, which would provide about 80 percent control.

By 1983 approximately 240 Gg/year (264,555 ton/year) of additional production is expected in the flat glass sector. One new flat glass furnace of about 635 Mg/day (700 ton/day) capacity (the size of the model furnace) would be built in order to provide this additional production.

If uncontrolled, this new flat glass furnace would add about 360 Mg/year (397 ton/year) to national particulate emissions by 1983. Compliance with a typical SIP regulation would reduce this impact to about 90 Mg/year (100 ton/year). Under Option I, emissions would be reduced to about 40 percent of those emitted under a typical SIP regulation. Under Option II, emissions would be reduced to about 80 percent of those emitted under a typical SIP regulation.

Ambient dispersion modeling indicates that under worst case conditions the annual maximum ground-level particulate concentration near an uncontrolled flat glass furnace producing 635 Mg/day of glass would be about 1 $\mu g/m^3$. The annual mazimum ground-level concentrations resulting from compliance with a typical SIP regulation, Option I, or Option II, would be less than 1 $\mu g/m^3$. The calculated maximum 24-hour ground-level particulate concentration near an uncontrolled flat glass furnace producing 635 Mg/day of glass would be about 21 $\mu g/m^3$. The corresponding concentration for complying with a typical SIP regulation would be about 5 $\mu g/m^3$. Under Option I, this concentration would be reduced to about 2 $\mu g/m^3$. Under Option II it would be reduced to about 5 $\mu g/m^3$.

Since the ESP is likely to be the emission control system installed on flat glass furnaces to comply with standards, there would be no water pollution impact associated with standards based on either Option I or Option II.

Under a typical SIP regulation, about 270 Mg/year (298 ton/year) of particulate matter would be collected from the one new 635 Mg/day flat glass furnace projected to come on-stream in the 1978–1983 period. Compliance with standards based on Option I and II would add about 50 Mg/year (55 ton/year) and about 20 Mg/year (22 ton/year), respectively, to the solid waste collected under a typical SIP regulation. Option I would increase the mass of solids for disposal by about 20 percent over that resulting from compliance with a typical SIP regulation, and Option II would increase it by about 7 percent. The additional solid material collected under Option I or Option II would not differ chemically from the material collected under a typical SIP regulation. Collected solids either are recycled back into the glass melting process or are disposed of in a landfill. Recyling of the solids has no adverse environmental impact, and, since landfill operations are subject to State regulations, this disposal method also is not expected to have an adverse environmental impact.

Since the energy requirements for an electrostatic precipitator do not vary significantly over the range of emission reductions considered here, the estimate of energy required to control particulate emissions from the one new flat glass furnace would be about the same for compliance with a typical SIP regulation, Option I, or Option II—about 7.6 million kWh (4,300 barrels of oil/year). The energy required to comply with the emission limits of the regulatory options would be about 0.2 percent of the total energy use in the flat glass sector. There would be no incremental energy impact associated with either Option I or Option II as compared with a typical SIP regulation.

The incremental installed cost in January 1978 dollars associated with Option I for controlling particulate emissions from a 635 Mg/day flat glass furnace would be about $605 thousand. Incremental installed cost associated with Option II would be about $140 thousand. The incremental installed cost of control equipment associated with the Option I level of control would be somewhat more than four times the incremental installed cost associated with the Option II level of control.

Incremental annualized cost associated with Option I for a 635 Mg/day flat glass furnace would be about $190 thousand/year; the corresponding incremental annualized cost for Option II would be about $45 thousand/year. The incremental annualized cost associated with Option I would be more than four times the incremental annualized cost associated with Option II.

A price increase of about 0.4 percent would be necessary to offset the cost of installing as ESP on a 635 Mg/day flat glass furnace to meet the emission limit of Option I. A price increase of about 0.1 percent would be necessary to comply with the emission limit of Option II.

Incremental cumulative capital cost for the one new 635 Mg/day flat glass furnace during the 1978–1983 period associated with Option I would be about $605 thousand. Compliance with Option II would require an incremental cumulative capital cost of about $145 thousand for the same period. Fifth-year annualized costs for controlling the one new flat glass furnace to comply with Option I would be about $190 thousand. To meet the Option II emissions limit, fifth-year annualized costs would be about $45 thousand.

A summary of incremental impacts associated with Option I and Option II is shown in Table V. Air impacts, expressed in Mg/year of particulate matter emissions reduced, would approximate the quantity of particulate matter collected and disposed of as solid waste.

Table V.—*Summary of Incremental Impacts Associated With Regulatory Options*

	Impacts			
	Air[1]	Water	Energy[2]	Economic[3]
Regulatory option:				
I	320	None	Negligible	—0.4
II	290	None	Negligible	—0.1

[1] Mg/Yr. reduced.
[2] Barrels of oil/day.
[3] Percent price increase.

Consideration of the beneficial impact on national particulate emissions, the lack of water pollution impact, the small potential for adverse solid waste impact, the lack of energy impact, the reasonableness of cost impacts, and the general availability of demonstrated emission control technology leads to the selection of the Option I as the basis for standards for glass melting furnaces in the flat glass sector.

Summary

If uncontrolled, total particulate emissions from the 45 new glass melting furnaces projected to come on-stream between 1978 and 1983 would be about 5,200 Mg/year (5,732 ton/year). Compared to a typical SIP regulation, Option I would reduce particulate emissions by an additional 1,100 Mg/year (1,213 ton/year).

Ambient dispersion modeling indicates that the annual maximum ground-level particulate concentrations near uncontrolled glass melting furnaces would be 2 $\mu g/m^3$ or less. Both a typical SIP regulation and the Option I emission limits would reduce the annual maximum ground-level particulate concentrations to under 1 $\mu g/m$.The 24-maximum ground-level particulate concentrations near uncontrolled glass melting furnaces would be less than 30 $\mu g/m^3$, with a median concentration of about 11 $\mu g/m^3$. Under a typical SIP regulation these concentrations would be reduced to 5 $\mu g/m^3$ or less. Control to the Option I emission limits would

reduce the 24-hour maximum ground-level concentrations near glass melting furnaces to about 2 $\mu g/m^3$ or less.

The glass manufacturing process has minimal water pollution potential. Complying with a standard based on Option I would have a negligible water pollution impact, because control systems installed to meet Option I would not discharge waste water streams.

The amounts of solid waste generated in the control of particulates from glass melting furnaces would approximate the amount of particulate removed from exhaust gases. Compliance with a typical SIP regulation would produce 3,700 Mg (4,080 tons) of solid waste per year. Meeting the Option I emission limits would generate an additional 1,100 Mg/year (1,213 ton/year). Either recycling or landfilling would present minimal adverse environmental impact. Totally recycling the collected solids would have no adverse impact. Landfilling operations must meet State regulations, and therefore this disposal method would have limited potential for adverse environmental impact.

Implementing Option I would require about 1.6 million kWh of electricity to power the emission control equipment installed above the requirements for implementing a typical SIP regulation. To meet this power requirement electric utilities would require about 950 barrels of oil/year, or about 3 barrels/day. The energy that would be required to operate emission reduction sytems to meet a standard based on the Option I limits would be 2 percent or less of the total energy used in glass production.

Incremental cumulative capital costs to the glass manufacturing industry for controlling emissions from new glass melting furnaces projected to come on-stream during the 1978–1983 period to comply with a standard based on the Option I emission limits would be about $27.9 million. The fifth-year annualized costs to the glass manufacturing industry associated with compliance with the Option I emission limits would be about $8.4 million. An industry-wide price increase of about 0.7 percent would be necessary to offset the costs of installing control equipment to meet the emission limits of Option I.

Modification, Reconstruction, and Other Considerations

An exemption from provisions of the modification section (40 CFR § 60.14) is proposed for those plants which convert to fuel-oil firing, even though particulate emissions would more than likely be increased. The primary objective of the proposed standards is to control emissions of particulates from glass melting furnaces. The data and information supporting the standards consider essentially only those emissions arising from the basic melting process, not those arising from fuel combustion. It is not the prime purpose of these standards, therefore, to control emissions from fuel combustion per se. Consequently, since emissions from fuel combustion are small in comparison with those from the basic melting process, and a conversion of glass melting furnaces to firing oil rather than natural gas will aid in efforts to conserve natural gas resources, the standards proposed herein include a provision exempting fuel switching in glass melting furnaces from consideration as a modification. The proposed increment in emissions allowed fuel oil-fired glass melting furnaces is 15 percent, a small allowance; however, without this exemption there would be a large economic impact on the industry.

An exemption from reconstruction provisions (40 CFR § 60.15) is proposed for the cold refining (rebricking) of the melter of an existing furnace. Under 40 CFR § 60.15 the Administrator must be notified of intent to conduct such a procedure 60 days in advance of commencement, and will determine whether or not the rebricking constitutes a reconstruction. This rebricking procedure has been a routine operation in the glass manufacturing industry and would not generally be considered an opportunity to evade the provisions of the standard by unduly extending the useful life of an existing glass melting furnace. Therefore, the exemption of rebricking from reconstruction provision has been proposed.

Glass melting furnaces fired with number 2 fuel oil would be expected to exhibit a 10 percent increase in particulate emissions over those produced in gas-fired furnaces since particulates are formed by the combustion of oil. Similarly, furnaces fired with numer 4, 5, or 6 fuel oil would show a 15 percent increase in particulate emissions over those produced in gas-fired furnaces. This effect of fuel oil on furnace emissions being recognized, it is proposed that the emission limits for furnaces fired with fuel oil be the limits for gas-fired furnaces multiplied by 1.15. It is additionally proposed that simultaneously liquid and gas-fired furnaces have emission limits based on an equation, taking into consideraton the relative proportions of the fuels being fired.

Selection of Performance Test Methods

The use of EPA Reference Method 5—"Determination of Particulate Emissions from Stationary Sources" (Appendix A, 40 CFR § 60, **Federal Register**, December 23, 1971) is required to determine compliance with the mass standards for particular matter emissions. Emission test data used in the development of the proposed standard were obtained either by the LAAPCD sampling method or by EPA Method 5. However, results of performance tests using Method 5 conducted by EPA on existing glass melting furnaces comprise a major portion of the data base used in the development of the proposed standard. EPA Reference Method 5 has been shown to provide a respresentative measurement of particulate matter emissions. Therefore, it has been included for determining compliance with the proposed standards.

Calculations applicable under Method 5 necessitate the use of data obtained from three other EPA test methods conducted previous to the performance of Method 5. Method 1—"Sample and Velocity Traverse for Stationary Sources" must be conducted in order to obtain representative measurements of pollutant emissions. The average gas velocity in the exhaust stack is measured by conducting Method 2—"Determination of Stack Gas Velocity and Volumetric Flow Rate (Type S Pitot Tube)." The analysis of gas composition is measured by conducting Method 3—"Gas Analysis for Carbon Dioxide, Oxygen, Excess Air and Dry Molecular Weight." These three tests provide data necessary in Method 5 for converting volumetric flow rate to mass flow rate. In addition, Method 4—"Determination of Moisture Conent in Stack Gases" is suggested as an accurate mode of predetermination of moisture content.

Since the proposed standards are expressed as mass of emissions per unit mass of glass pulled, it will be neccessary to quantify glass pulled in addition to measuring particulate emissions. Glass production in Mg shall be determined by direct measurement or computed from materials balance data using good engineering practices. The materials balance computation may consist of a process relationship between feed material input rate and the glass pull rate. In all materials balance computations, glass pulled from the furnace shall include product, cullet, and any waste glass. The hourly glass pull rate for a furnace shall be determined by averaging the glass pull rate over the time of the performance test.

Selection of Monitoring Requirements

To provide a convenient means for enforcement personnel to ensure that installed emission control systems comply with standards of performance through proper operation and maintenance, monitoring requirements are generally included in standards of performance. For glass melting furnaces the most straightforward means of ensuring proper operation and maintenance is to monitor emissions released to the atmosphere. EPA has established opacity monitoring performance specifications in Appendix B of 40 CFR § 60 for industrial sources with well-developed velocity and temperature profiles.

The best indirect method of monitoring proper operation and maintenance of compliance control equipment is the determination of exhaust gas opacity limits. Determining an acceptable exhaust gas opacity limit is not presently possible because the relationship between particulate emissions and corresponding opacity levels was not evaluated for glass melting furnaces. The data base for the particulate standards does not include information on opacity. Also, currently there are no continuous particulate monitors operating on glass melting furnaces; consquently, the data base necessary for developing an opacity-emission rate relationship is not available. Resolution of the sampling problems, development of performance standards for continuous particulate monitors, and obtaining a data base for developing an opacity-emission rate relationship would entail a major development program. For these reasons, continuous monitoring of particulate emissions from glass melting furnaces would not be required by the proposed standards.

Public Hearing

A public hearing will be held to discuss these proposed standards in accordance with Section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the Docket address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, D.C. (See ADDRESSES section of this preamble).

Miscellaneous

The docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The principal purposes of the docket are: (1) to allow interested persons to identify and locate documents so that they can intelligently and effectively participate in the rulemaking process, and (2) to serve as the record for judicial review. The docket requirement is discussed in Section 307(d) of the Clean Air Act.

As prescribed by Section 111 of the Act, this proposal of standards has been preceded by the Administrator's determination that emissions from glass manufacturing plants contribute to the endangerment of public health or welfare, and by publication of this determination in this issue of the **Federal Register.** In accordance with Section 117 of the Act, publication of these proposed standards was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including the designation of glass manufacturing plants as a significant contributor to air pollution which causes or contributes to the endangerment of public health or welfare, economic and technological issues, and on the proposed test method.

It should be noted that standards of performance for new sources established under Section 111 of the Clean Air Act reflect:

> "Application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated." [Section 111(a)(1)]

Although there may be emission control technology available that is capable of reducing emissions below those levels required to comply with the standards of performance, this technology might not be selected as the basis of standards of performance because of costs associated with its use. Accordingly, these standards of performance should not be viewed as the ultimate in achievable emissions control. In fact, the Act requires (or has the potential for requiring) the imposition of a more stringent emission standard in several situations. For example, applicable costs do not necessarily play as prominent a role in determining the "lowest achievable emission rate" for new or modified sources locating in nonattainment areas; i.e., those areas where statutorily-mandated health and welfare standards are being violated. In this respect, Section 173 of the Act requires that new or modified sources constructed in an area which is in violation of the NAAQS must reduce emissions to the level which reflects the "lowest achievable emission rate" (LAER), as defined in Section 171(3), for such category of source. The statute defines LAER as that rate of emissions which reflects:

> "(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or (B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent."

In no event can the emission rate exceed any applicable new source perfomance standard [Section 171(3)].

A similar situation may arise under the prevention of significant deterioration of air quality provisions of the Act (Part C). These provisions require that certain sources (referred to in Section 169(1)) employ "best available control technology" (as defined in Section 169(3)) for all pollutants regulated under the Act. Best available control technology (BACT) must be determined on a case-by-case basis, taking energy, environmental, and economic impacts and other costs into account. In no event may the application of BACT result in emissions of any pollutants which will exceed the emissions allowed by an applicable standard established pursuant to Section 111 (or 112) of the Act.

In all events, State Implementation Plans approved or promulgated under Section 110 of the Act must provide for the attainment and maintenance of national ambient air quality standards (NAAQS) designed to protect public health and welfare. For this purpose, SIP's must in some cases require greater emission reductions than those required by standards of performance for new sources.

Finally, States are free under Section 116 of the Act to establish even more stringent limits than those established under Section 111 of those necessary to attain or maintain the NAAQS under Section 110. Accordingly, new sources may in some cases be subject to limitations more stringent than EPA's standards of performance under Section

111, and prospective owners and operators of new sources should be aware of this possibility in planning for such facilities.

EPA will review this regulation four years from the date of promulgation. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, and improvements in emission control technology.

An economic impact assignment has been prepared as required under Section 317 of the Act and is included in the Background Information Document.

Dated: May 22, 1979.

Douglas M. Costle,

Administrator.

It is proposed to amend Part 60 of Chapter I, Title 40 of the Code of Federal Regulations as follows:

Subpart CC—Standards of Performance for Glass Manufacturing Plants

Sec.

60.290 Applicability and designation of affected facility.
60.291 Definitions.
60.292 Standards for particulate matter.
60.293 Test methods and procedures.

Authority: Sections 111 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7411, 7601(a)], and additional authority as noted below.

§ 60.290 Applicability and designation of affected facility.

The affected facility to which the provisions of this subpart apply is each glass melting furnace within a glass manufacturing plant.

§ 60.291 Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A.

(a) "Glass manufacturing plant" means any plant which produces glass or glass products.

(b) "Glass melting furnace" means a unit comprising a refractory vessel in which raw materials are charged, melted at high temperature, refined, and conditioned to produce molten glass. The unit includes foundations, superstructure and retaining walls, raw material charger systems, heat exchangers, melter cooling system, exhaust system, refractory brick work, fuel supply and electrical boosting equipment, integral control systems and instrumentation, and appendages for conditioning and distributing molten glass to forming apparatuses.

(c) "Day pot" means any glass melting furnace designed to produce less than 1800 kilograms of glass per day.

(d) "All-electric melter" means a glass melting furnace in which all the heat required for melting is provided by electric current from electrodes submerged in the molten glass, although some fossil fuel may be charged to the furnace as raw material.

(e) "Glass" means flat glass; container glass; pressed and blown glass; and wool fiberglass.

(f) "Flat glass" means glass made of soda-lime recipe and produced into continuous flat sheets and other products listed in Standard Industrial Classification 3211 (SIC 3211).

(g) "Container glass" means glass made of soda-lime recipe, clear or colored, which is pressed and/or blown into bottles, jars, ampoules, and other products listed in SIC 3211.

(h) "Pressed and blown glass" means glass which is pressed and/or blown, including textile fiberglass, noncontinuous process flat glass, noncontainer glass, and other products listed in SIC 3229. It is separated into:

(1) Glass of soda-lime recipe; and

(2) Glass of borosilicate, opal, lead and other recipes.

(i) "Wool fiberglass" means fibrous glass of random texture, including fiberglass insulation, and other products listed in SIC 3296.

(j) "Recipe" means formulation of raw materials.

(k) "Glass production" means the weight of glass pulled from a glass melting furnace.

(l) "Rebricking" means cold replacement of damaged or worn refractory parts of the glass melting furnace. Rebricking includes replacement of the refractories comprising the bottom, sidewalls, or roof of the melting vefssel; replacement of refractory work in the heat exchanger; replacement of refractory portions of the glass conditioning and distribution system.

(m) "Soda-lime recipe" means raw material formulation of the following approximate proportions: 72 percent silica; 15 percent soda; 10 percent lime and magnesia; 2 percent alumina; and 1 percent miscellaneous materials.

§ 60.292 Standards for particulate matter.

(a) On or after the date on which the performance test required to be conducted by § 60.8 is completed, no owner or operator of a glass melting furnace subject to the provisions of this subpart shall cause to be discharged into the atmosphere, except as provided in paragraph (d) of this section:

(1) From any glass melting furnace, fired with a gaseous fuel, particulate matter at emission rates exceeding those specified in Table CC–1.

(2) From any glass melting furnace, fired with a liquid fuel, particulate matter at emission rates exceeding 1.15 times those specified in Table CC–1.

(3) From any glass melting furnace, simultaneously fired with gaseous and liquid fuel, particulate matter at emission rates exceeding those specified by the following equation:

$$STD = X[1.15(Y) + (Z)]$$

where:

STD = Particulate matter emission limit
X = Emission rate specified in Table CC–1
Y = Decimal percent of liquid fuel heating value to total (gaseous and liquid) fuel heating value

kilojoules

kilojoules

$Z = (1 - Y)$

(b) Conversion of a glass melting furnace to use of liquid fuel shall not be considered a modification for purposes of 40 CFR 60.14.

(c) Rebricking and the cost of rebricking shall not be considered reconstruction for the purposes of 40 CFR 60.15.

(d) This subpart shall not apply to day pots and all-electric melters.

Table CC–1—*Emission Rates*

Glass category	g of particulate/kg of glass produced
(1) Flat Glass	0.15
(2) Container Glass	.10
(3) Pressed and Blown Glass:	
(a) Other than soda-lime recipes (i.e., borosilicate, opal, lead, and other recipes, including textile fiberglass)	.25
(b) Soda-lime recipes	.10
(4) Wool Fiberglass	.20

§ 60.293 Test methods and procedures.

(a) Reference methods in Appendix A of this part, except as provided under § 60.8(b), shall be used to determine compliance with § 60.292 as follows:

(1) Method 5 shall be used to determine the concentration of particulate matter and the associated moisture content.

(2) Method 1 shall be used for sample and velocity traverses, and

(3) Method 2 shall be used to determine velocity and volumetric flow rate.

(4) Method 3 shall be used for gas analysis.

(b) For Method 5, the sample probe and filter holder shall be heated to 121°C (250°F). The sampling time for each run

shall be at least 60 minutes and the volume shall be at least 4.25 dscm.

(c) The particulate emission rate, E, shall be computed as follows:

$E = V \times C$

where:

(1) E is the particulate emission rate (g/hr),

(2) V is the average volumetric flow rate (dscm/hr) as found from Method 2; and

(3) C is the average concentration (g/dscm) of particulate matter as found from Method 5.

(d) the rate of glass production, P (kg/hr) shall be determined by dividing the weight of glass pulled in kilograms (kg) from the affected facility during the performance test by the number of hours (hr) taken to perform the performance test. The glass pulled in kilograms shall be determined by direct measurement or computed from materials balance by good engineering practice.

(e) The furnace emission rate shall be computed as follows:

$R = E/P$

where:

(1) R is the furnace emission rate (g/kg);

(2) E is the particulate emission rate (g/hr) from (c) above; and

(3) P is the rate of glass production (kg/hr) from (d) above.

[Sec. 114 of Clean Air Act as amended (42 U.S.C. 7414).]

[FR Doc. 79-18602 Filed 6-14-79; 8:45 am]

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Friday
June 15, 1979

Part VII

Department of Agriculture

Animal and Plant Health Inspection Service

Foreign Quarantine Notices; Public Hearing and Notice of Proposed Rulemaking

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[7 CFR Part 319]

Foreign Quarantine Notices; Public Hearing and Notice of Proposed Rulemaking

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule and public hearing.

SUMMARY: This document proposes to revise "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37–28a) relating to prohibitions and restrictions on the importation of certain classes of nursery stock, and certain other classes of plants, roots, bulbs, seeds, and other plant products. This appears to be necessary to update regulations and to prevent the introduction into the United States of certain injurious plant diseases, insect pests, and other plant pests. This document also gives notice of a public hearing to consider this proposal.

DATES: Written comments must be received on or before September 13, 1979.

Public hearing: August 21 and 22, 1979.

ADDRESSES: Written comments should be submitted to the Hearing Officer, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 635, Federal Building, Hyattsville, MD 20782.

Public hearing location: Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240.

FOR FURTHER INFORMATION CONTACT: H. V. Autry, 301–436–8247.

SUPPLEMENTARY INFORMATION:

Written Comments and Public Hearing

Interested persons are invited to submit written comments concerning the proposal.

Comments should bear a reference to the date and page numbers of this issue of the **Federal Register**. All written comments made pursuant to this notice will be made available for public inspection in Room 635, Federal Building, Hyattsville, MD 20782, during regular hours of business.

The public hearing to consider the proposal will be held before a representative of the Animal and Plant Health Inspection Service on August 21 and 22, 1979, at 10 a.m., at the Holiday Inn Hotel, Baltimore Washington International Airport, Templehoff Room, 6500 Elkridge Landing Road, Baltimore, MD 21240. At the hearing, a representative of the Animal and Plant Health Inspection Service will present a statement explaining the purpose and basis of this proposal. Any interested person may appear and be heard either in person, by attorney, or other representative. Also, any interested person, his attorney, or other representative will be afforded an opportunity to ask relevant questions concerning the proposal.

Background

The Plant Quarantine Act and the Federal Plant Pest Act contain authority to prohibit or restrict the importation into the United States of any classes of nursery stock, and other classes of plants, roots, bulbs, seeds, or other plant products in order to prevent the introduction into the United States of certain diseases, insects, and other plant pests. Regulations promulgated in connection with this authority are contained in 7 CFR Parts 319, 321, 330, 351, and 352. This document relates only to a revision of the current subpart of Part 319 captioned "Subpart—Nursery Stock, Plants, and Seeds" (7 CFR 319.37 through 319.37–28a) which concerns the importation or offer for importation into the United States of any such classes of nursery stock, plants, roots, bulbs, seeds, or other plant products except for articles that are subject to Part 321, i.e., potatoes, or to other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, and rice.

In particular, sections 7 and 9 of the Plant Quarantine Act (7 U.S.C. 160, 162) contain authority to prohibit the importation of articles into the United States in order to prevent the entry of tree, plant, or fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States, and sections 1, 5, and 9 of the Plant Quarantine Act (7 U.S.C. 154, 159, 162) contain authority to restrict the importation of articles into the United States in order to prevent the entry of injurious plant diseases or insect pests. However, this authority in the Plant Quarantine Act is not broad enough to cover certain other plant pests, such as nematodes and mites. One of the purposes of the Federal Plant Pest Act was to add authority to prohibit or restrict the importation of articles because of such other plant pests, and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) is cited as authority for this purpose.

This document proposes numerous changes from the current "Subpart—Nursery Stock, Plants, and Seeds" including new concepts, much rewording in order to relate more clearly to the language of the Plant Quarantine Act and the Federal Plant Pest Act, and a general reorganization of material in order to provide a more logical arrangement.

The proposed regulations would divide the articles subject to the revised subpart into "prohibited articles" and "restricted articles." A "prohibited article" would be prohibited from being imported or offered for entry into the United States unless imported by the U.S. Department of Agriculture under specified conditions referred to below. The list of prohibited articles would represent those articles for which there does not appear to be a feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of any accompanying tree, plant, or fruit disease, of any injurious insects, or of any other plant pest, new to or not theretofore widely prevalent or distributed within and throughout the United States. A "restricted article" would be any article subject to the revised subpart other than a "prohibited article" and would be eligible for importation into the United States only in accordance with the restrictions contained in the revised subpart. It appears that all articles proposed to be defined as "restricted articles" from any foreign country or locality must necessarily be subject to restrictions for importation into the United States because any such articles could be the means of introducing injurious plant diseases and injurious insect pests. Further, such articles could be the means of introducing other plant pests.

Both the current subpart 319 captioned "Nursery Stock, Plants, and Seeds" and these proposed regulations relate only to articles "for or capable of propagation." Other subparts of 319 and 321 contain requirements with respect to the importation of other articles "for or capable of propagation," e.g., potatoes, sugarcane, rice, wheat, and corn, and Part 319 also contains requirements with respect to the importation of articles not "for or capable of propagation," e.g., cut flowers and fruits and vegetables.

The proposed regulations would prohibit or restrict the importation of articles "from" specified countries and localities. The term "from" as used in this context is defined to provide that an article is deemed to be "from" any country or locality in which it was grown since articles could become

affected with diseases or pests occurring in countries or localities in which grown. However, special provisions concerning the importation of certain articles "from" Canada are explained below in the discussion relating to the proposed section 319.37–14.

The term "spp." (species) as used in the current regulations and in the proposed regulations is intended to refer to "all species, clones, cultivars, strains, varieties, and hybrids" of the genus when listed with the genus name, e.g., *Actinidia* spp. Accordingly, a definition of species would be added to reflect this intent. This appears to be necessary because the risk of introducing diseases or pests would be similar for all of the species, clones, cultivars, strains, varieties, and hybrids of a genus.

One or more common names of articles are given in parentheses after most scientific names for the purpose of helping to identify the articles represented by such scientific names; however, (unless otherwise specified) a scientific name is intended to include all articles within the genus or species represented by the scientific name, regardless of whether the common name or names are as comprehensive in scope as the scientific name. It would be impossible to list common names for all of the articles included by the scientific names because some scientific names are given for which there are no known common names, and some scientific names are given for which there are clones, cultivars, strains, hybrids, or varieties without common names.

The term "disease" as used in the proposed regulations is used interchangeably to mean a "disease" or a "disease agent which incites a disease." In order to be precise, the term "disease" would therefore be defined to reflect this intent.

The current regulations prohibit or restrict the importation of articles into the continental United States, Guam, Hawaii, Puerto Rico, and the Virgin Islands of the United States, because the provisions of the Plant Quarantine Act and the Federal Plant Pest Act have been made applicable by law to Guam, Puerto Rico, and the Virgin Islands of the United States, in addition to the States and the District of Columbia. However, pursuant to Public Law 94–241 (90 Stat. 263 *et seq.*) and Presidential Proclamation 4534, the provision of these Acts are also made applicable to the Northern Mariana Islands. It appears that the proposed regulations should be made applicable to the Northern Mariana Islands for the same reasons they would be applicable to the States, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands of the United States. Accordingly, under the provisions of this proposal the definition of United States would be amended to include the Northern Mariana Islands and consequently the regulations would also apply to the Northern Mariana Islands.

Proposed § 319.37(c) provides that an article refused importation for noncompliance with the requirements of the proposed subpart shall be promptly removed from the United States or abandoned by the importer for destruction, and that pending removal or abandonment, the article shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests, and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. Proposed § 319.37(c) also provides for seizure, destruction, or other disposal of any such article not promptly safeguarded, removed, or abandoned. These provisions are necessary to implement the provisions of section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) which authorize emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

Proposed § 319.37–2 contains a list of articles from designated countries and localities which would be classified as prohibited articles and would be prohibited from being imported or offered for entry into the United States, except as otherwise provided in proposed § 319.37–2(c).

Each article listed in the following chart from the designated countries and localities is proposed to be added to the current list of prohibited articles because there does not appear to be any feasible method for inspection, treatment, or other procedures for preventing the possible introduction into the United States of accompanying tree, plant, or fruit diseases, or injurious insects, or other plant pests (listed in the chart), new to or not theretofore widely prevalent or distributed within and throughout the United States, and thereby preventing consequent injurious effects of such diseases, insects, or other plant pests, i.e., destruction or substantial reduction of the yield or marketability of the kind of listed article or products thereof.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
Actinidia spp. (chinese gooseberry, kiwi)	Japan and Taiwan	*Pucciniastrum actinidiae* Hiratusuke (Rust).
Adonidia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Allagoptera arenaria	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Areca spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arenga spp. (sugarpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arikuryroba spp. (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Borassus spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Caryota spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in proposed § 319.37–5(b).	All	*Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).
Chrysalidocarpus spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chrysanthemum spp. (chrysanthemum)	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	*Puccinia horiana* P. Henn. (White rust of chrysanthemum).
Cocos nucifera (coconut) (including seeds)	All except from Jamaica if meeting the conditions for importation in proposed § 319.37–5(f) (currently listed as prohibited only if destined to Hawaii).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cocos spp. (other than *Cocos nucifera*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Article (except seeds unless specifically mentioned) proposed to be added to the list of prohibited articles	Foreign country(ies) or locality(ies)	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the article
Corypha spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cydonia spp. (quince) not meeting the conditions for importation in proposed § 319.37-5(b).	All	A diversity of diseases including but not limited to items 1, 18, 19, 20, and 21 listed in proposed § 319.37-5(b)(2).
Datura spp	Colombia	Datura Colombian virus.
Dictyosperma spp. (Princess palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Elaeis spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Erianthus spp (plumegrass)	All	*Puccinia melanocephala* H. Syd. & P. Syd. (Sugarcane rust).
Fragaria spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	*Phytophthora fragariae* Hickman (Red stele disease).
Gaussia spp. (llumepalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Gladiolus spp. (gladiolus)	Italy, Malta, and Portugal	*Uromyces transversalis* (Theum.) Wint. (Rust.).
Hibiscus spp. (hibiscus, rosemallow)	Nigeria	Okra mosaic virus.
	Africa (currently listed as prohibited only from Sudan and Nigeria).	Cotton leaf curl virus.
Howeia belmoreana (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Hydrangea spp. (hydrangea)	Japan	*Aecidium hydrangeae-paniculatea* Dietel.
Ipomoea spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to the sweetpotato witches broom (little leaf); sweetpotato viruses of eastern Africa.
Juniperus spp. (juniper)	Austria	*Stigmina deflectans* (Karst) Ellis (Needlecast disease).
	Europe (currently listed as prohibited from Finland and Romania because of *Exosporium deflectans* (Karst).	*Phacidiopycnis pseudotsuga* (M. Wils) Hahn (Douglas fir canker).
Latania spp.	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Livistonia spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Manihot spp. (cassava)	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: *Mononychellus tanajoa* Bondar (Cassava mite); *Phenococcus manihotis* Matile-Ferrero (Cassava mealybug); *Xanthomonas manihotis* (Arthand-Berthet) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
Mascarena spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Morus spp. (mulberry)	India, and Union of Soviet Socialist Republics	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
Oryza spp. (rice) (Seeds are prohibited from importation into the U.S. See 7 CFR 319.55).	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy. *Oospora orzetorum* Sacc.; *Rhynchosporium orzae* Hashioka & Yokogi; *Xanthomonas orzae* (Uyeda & Ishiyama) Dowson.
Philadelphus spp. (mock orange)	Europe	Elm mottle virus.
Phoenix spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Pritchardia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ribes nigrum (black currant)	Australia, Province of British Columbia in Canada, New Zealand, and Europe (currently listed as prohibited from British Isles and Sweden).	Black currant reversion agent.
Salix spp. (willow)	Federal Republic of Germany (West), and German Democratic Republic (East).	*Erwina salicis* (Day) Chester (Watermark disease).
Solanum spp. (potato) (including seeds)	All	Andean potato latent virus; Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (Tobacco veinal necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbar agent; Parastolbar agent; Potato leaflet stunt agent; Potato spindle tuber viroid.
Syringa spp. (lilac)	Europe	Elm mottle virus.
Trachycarpus spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ulmus spp. (elm) (including seeds)	Europe (currently listed as prohibited from Europe, Dominion of Canada and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto if destined to California, Nevada, or Oregon).	Elm mottle virus.
Veitchia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Vitis spp. (grape)	All except Canada (currently listed as prohibited from Europe because of *Mamor viticola* Holmes).	A diversity of disease agents, including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
Zizania spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melannoma glumarum* Miy. *Oospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas orizae* (Uyeda & Ishiyama) Dowson.

Each article listed in the following chart from the designated countries and localities is proposed to be deleted from the list of prohibited articles for the reasons specified in the chart:

Articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest	Reason for deletion from prohibited list
Aleurites spp. (tung)	China and Brazil	*Mycosphaerella aleuritidis* (Miyake) Ou (leaf spot).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Cactaceae (cactus) cuttings (without roots or branches) of 1.22 meters or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
Castanea spp. (chestnut) destined to California, Idaho, Oregon, or Washington.	All	*Endothie parasitica* (Murr.) P. J. Ander. and H. W. Ander. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Castanopsis spp. (chinquapin) destined to California, Idaho, Oregon, or Washington.	All	*Endothia parasitica* (Murr.) P. J. Ander. and H. W. Ander. (Chestnut blight disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Corylus spp. (filbert, hazel, hazel nut, cobnut) destined to California, Oregon, or Washington.	Provinces east of Manitoba in Canada	*Cryptosporella anomala* (Pk.) Sacc. (Filbert blight).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Cocos nucifera (coconut) (including seeds) destined to Hawaii and meeting the conditions for importation in purposed § 319.37–5(f).	Jamaica	Cadang-cadang disease	Disease apparently does not exist in Jamaica.
Daphne spp	New Zealand	Daphne mosaic virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Datura spp	England	Datura virus 1 Smith and d'Oliveira (Datura-virosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Dianthus spp. (carnation, Sweet William)	England	*Verticillium cinerescens* Wr.	*Dianthus* spp. would be reclassified to be within the class of restricted articles because it appears there would not be dignificant risk of introducing *Verticillium cinerescens* Wr. if imported under conditions in proposed § 319.37–5(d) or § 319.37–7.
Fruit and Nut Stocks except vegatively produced understocks.	All except Canada	A diversity of plant pests	It appears that there would be no significant risk of introducing plant pests if imported in accordance with general conditions for restricted articles and in accordance with postentry quarantine conditions in § 319.37–7.
Hydrangea spp. (hydrangea)	Germany	Hydrangea-virescence virus	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Ilex spp. (holly)	England and France	Ilex-variegation virus	Disease does not appear to be in existence.
Nicotiana spp. (tobacco)	Australia and Great Britain	*Marmor lethale* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Nut and fruit stocks	(See Fruit and Nut Stocks)		
Pelargonium spp. (geranium) (except stem cuttings).	All except Canada	*Marmor lethale* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Pinus spp. (pine) Destined to California, Idaho, Montana, Oregon, Utah, or Washington.	Canada	*Rhyacionia buoliana* (Schiff). (European pine shoot moth).	Insect appears to be widely prevalent or distributed within and throughout the U.S.
Pinus spp. (pine) (5-leaved) destined to Massachusetts, Michigan, New York, West Virginia, or Wisconsin.	Canada	White pine blister rust	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Planera (water elm, planer) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) C. Moreau (Dutch elm disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Primula spp. (primrose)	Australia and Great Britain	*Marmor lethale* Holmes (Tobacco-necrosis virus).	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Ribes spp. (currant, gooseberry) destined to Massachusetts, New York, West Virginia, or Wisconsin.	All	(White pine blister rust)	Disease appears to be widely prevalent or distributed within and throughout the U.S.
Seeds of all kinds in pulp	Canada	Fruit flies	It appears that fruit flies do not occur in Canada.
Sorbus spp. (mountain ash)	Southeastern Asia	*Taphrina piri Kusano* (leaf distortion fungus).	Disease does not appear to occur in Southeastern Asia.
Stem cuttings (without leaves, roots, sprouts, or branches) of 4 inches or less in diameter and six feet or less in length.	All except Canada	A diversity of plant diseases	Stem cuttings not exceeding such size apparently can be readily inspected.
Ulmus spp. (elm) destined to California, Nevada, or Oregon.	Europe and the Dominion of Canada, and other foreign areas north of the United States, including Newfoundland, Labrador, St. Pierre, Miquelon and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) C. Moreau (Dutch elm disease).	Disease appears to be widely prevelant or distributed within and throughout the U.S.
Wisteria (wisteria)	Australia	Mosaic disease	Disease does not appear to exist.
Zelkova destined to California, Nevada, or Oregon.	Europe, and the Dominion of Canada, and other foreign areas north of the United States including Newfoundland, Labrador, St. Pierre, Miquelon, and islands adjacent thereto.	*Ceratocystis ulmi* (Buisman) C. Moreau (Dutch elm disease).	Disease appears to be widely prevalent or distributed within and throughout the U.S.

Some additional tree, plant, or fruit diseases have been discovered with respect to articles that are currently prohibited from being imported or offered for entry into the United States because of other diseases, insects, or pests. These additional diseases would destroy or substantially reduce the yield or marketability of the kind of listed articles or products thereof, and therefore, would by themselves require an article to be prohibited from being imported or offered for entry into the United States. Accordingly, it is proposed to continue to prohibit the importation of these articles and also to add such additional diseases to the prohibited list as specified in the following chart:

Prohibited article (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Discovered tree, plant, or fruit disease or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Cocos nucifera (coconut) (including seeds) destined to Hawaii.	All except from Jamaica if meeting the conditions for importation in § 319.37–5(f).	Lethal yellowing disease.
Conifers	All except Canada	A diversity of tree, plant, and fruit diseases including but not limited to: *Guignardia laricina* (Sawada) Yamamoto & K. Ito (shoot blight of larch); *Chrysomyxa deformans* (Diet.) Jacz. (Spruce needle rust); *Cronartium flaccidum* (Alb. & Schw.) Wint. (Scotch pine blister rust); *Chrysomyxa abietis* (Wallr.) Ung. (Rust); *Phacidiopycnis pseudoteuga* (M. Wils.) Hahn (Douglas fir canker); *Stigmina deflectans* (Karst.) Ellis (Needlecast disease); *Chrysomyxa ledi* (Alb. & Schw.) d By var. *Rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Datura spp	Colombia	Datura Colombian virus.
	India	Datura distortion or enation mosaic virus.
Gossypium spp. (cotton)	All	Cotton virsecence agent; small leaf virus.
Hydrangea spp. (hydrangea)	Japan	Aecidium hydrangeae-paniculatea Dietel.
Juniperus spp. (juniper)	Europe	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Malus spp. (apple) Not meeting the conditions for importation in proposed § 319.37–5(b).	All	Apple green crinkle virus; Apple chat fruit virus.
Morus spp. (mulberry)	China, Japan, India, and Union of Soviet Socialist Republics.	Mulberry dwarf; Mulberry curly little leaf.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in proposed § 319.37–5(b).	All	Cherry leaf roll virus; Cherry rusty mottle (European) agent; Apricot chlorotic leaf roll; Plum bark split virus; Arabis mosaic virus and its strains; Raspberry ringspot virus and its strains; Tomato blackring virus and its strains.
Pyrus spp. (pear) not meeting the conditions for importation in proposed § 319.37–5(b).	All	Pear blister canker virus; Pear bud and drop virus.
Ulmus spp. (elm) (including seeds)	Europe	Elm mottle virus.
Vitis spp. (grape)	All except Canada	A diversity of plant disease agents including, but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.

Some tree, plant, or fruit diseases are proposed to be deleted from the prohibited list with respect to some articles from certain countries and localities that would remain on the prohibited list because of other listed diseases, insects, or plant pests. In this connection, it is proposed to delete for each of the articles listed in the following chart from the designated countries and localities, the following diseases for the reasons specified in the chart:

Prohibited articles (excludes seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit diseases, or injurious insect or other plant pest	Reason for deletion from prohibited list
Datura spp		Datura-mosaic virus	Disease apparently does not exist.
	India and England	Datura virus 1 Smith and d'Oliveira (Datura-virosis virus).	Disease appears to be widely prevalent or distributed within and throughout the United States.
		Marmor tabaci var. *deformans* Holmes (Enation-mosaic strain of tobacco-mosaic virus).	Disease appears to be widely prevalent or distributed within and throughout the United States.
Hydrangea spp	Germany	Hydrangea-virescence virus	Disease appears to be widely prevalent or distributed within and throughout the United States.
Malus spp. (apple, crabapple)	All sources in all countries, except nurseries designated in accordance with current § 319.37–28 as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	"Rosette" (Virus)	Disease apparently does not exist.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune).	All sources in all countries, except nurseries designated in accordance with current § 319.37–28 as producing material grown from parent plants that have been tested by the plant protection service of the country of origin and found apparently free of all disease of plant quarantine significance, including those diseases caused by viruses.	Rigi cherry disease virus	Disease apparently does not exist.

The current regulations specify that all forest trees (not including seeds) are prohibited from being imported into the United States except from Canada. It appears that because of the diseases referred to in proposed § 319.37–2, listed with respect to conifers, there is a valid reason for prohibiting the importation of all conifer trees from all countries and localities except Canada. Further, it appears that there is a valid reason for prohibiting the importation of all of the non-conifer trees listed in proposed § 319.37–2 from the specified foreign countries and localities because of the diseases listed with respect to these trees. However, the prohibition for importation of "all" forest trees in the current regulations appears to be overly broad in that there does not appear to be adequate reason for prohibiting the importation of all those non-conifer trees not listed in proposed § 319.37–2.

Further, proposed § 319.37–2(b)(1) and (7) would specify classes of articles which would be on the prohibited list because of specified criteria relating to age. The current regulations prohibit the importation of such articles exceeding the "normal size" of such articles of certain ages. These criteria in the current regulations would be amended to impose restrictions based solely on specified ages because the risk of introduction of diseases or pests relates substantially to age.

Proposed § 319.37–2(b)(4) and (5) would impose limitations with respect to the maximum length and diameter of certain stem cuttings and certain cacti cuttings for importation into the United States. It appears that such articles within these limitations can be readily inspected and treated if necessary. Larger articles of these types would be difficult to inspect and treat because of size and density of growth, and therefore, would be classified as prohibited articles.

The current regulations in § 319.37–18(b) in essence permit herbaceous perennials to be imported in the form of root crown or clumps not more than 1 year old. This requirement was imposed because such articles are difficult to inspect if larger than the usual size of such articles 1 year old. Proposed § 319.37–2(b)(3) would be clarified to specify that such herbaceous perennials would be on the prohibited list if exceeding 102 millimeters (approximately 4 inches) in diameter. It appears that such plants exceeding this diameter would be more likely to harbor plant pests, and would be difficult to inspect and treat because of the density of small roots and stems found in such articles.

Further, proposed § 319.37–2(c) would permit prohibited articles to be imported into the United States if imported by the U.S. Department of Agriculture for experimental or scientific purposes, and imported under conditions specified on the permit and found by the Deputy Administrator to be adequate to prevent the introduction into the United States of any tree, plant, or fruit diseases, of any injurious insects, or of any other plant pests, i.e., conditions of treatment, processing, growing, shipment, or disposal.

The Plant Quarantine Act specifically authorizes such articles to be imported for experimental or scientific purposes by the U.S. Department of Agriculture pursuant to prescribed regulations. This is also consistent with the provisions of the Federal Plant Pest Act. In addition, the conditions for importation would be required to be specified on the permit in order to help assure that they would be understood and followed.

Proposed § 319.37–3 contains requirements with respect to permits for importation of restricted articles. Pursuant to the Plant Quarantine Act, restricted articles may not be imported except under permit.

The following articles other than articles for food, analytical, medicinal or manufacturing purposes, would be required to be imported pursuant to a written permit:

(1) Articles subject to treatment and other requirements of § 319.37–6;

(2) Articles subject to postentry quarantine;

(3) Bulbs of *Allium sativum* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William), from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, and sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (blackberry, boysenberry, cloudberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, or Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine) (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry) (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, or Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

All other articles would be permitted to be imported under an oral permit.

Articles included in categories 1, 2, 3, 4, 5, 6, and 8, in accordance with proposed § 319.37–14, would be permitted to be imported only at ports of entry with special inspection and treatment facilities because these articles present a substantial risk of carrying injurious plant diseases, injurious insect pests, or other plant pests at the time of importation.

It appears that a written permit for these articles would be helpful in order to assure that the importer understands that such articles would be permitted to be imported only at a port of entry with such special inspection and treatment facilities. Consequently, this would also help eliminate an unnecessary risk of introducing such diseases or pests into the United States because of the presence of such articles at a port of entry without such facilities.

Also, articles included in categories 4 and 7, except *Fragaria* spp., would be required to be accompanied at the time of importation by special certification representing special inspection activities

provided by the country of origin. It appears that a written permit for such articles would be helpful in order to help assure that these complex requirements would be understood and met.

Further, it appears that requiring articles included in categories 1 through 8 to be imported pursuant to written permits could help assure that such articles would not have to be unnecessarily destroyed or reshipped. In addition, since it is proposed that a written permit issued by the Plant Protection and Quarantine Programs would indicate the conditions on the permit under which an article would be eligible to be imported, there would be a record that could be checked in order to assure that the requirements of this subpart are understood and followed by the importer and employees of the Plant Protection and Quarantine Programs.

Articles included in categories 9 through 17 are subject to State quarantine requirements. The affected States have requested notification from the Plant Protection and Quarantine Programs of requests to import such articles destined to such States in order to assist with the enforcement of their requirements. It appears that the written permit procedures provide the most feasible means of gathering the necessary information for such States.

It is further proposed that prior to the issuance of a written permit an application must be made to the Plant Protection and Quarantine Programs and shall include the following information which appears to be necessary in order for the Plant Protection and Quarantine Programs to make a determination as to whether an article would be eligible for a written permit under this subpart, to respond to the applicant, and to make any necessary preparation for inspection or treatment:

(1) Name, address, and telephone number of importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

The proposed regulations provide that an application for a written permit should be submitted to the Plant Protection and Quarantine Programs at least 30 days prior to the arrival of the article at the port of entry. This would benefit the importer in that the Plant Protection and Quarantine Programs would have sufficient time to make sure the importer is aware of the requirements of this subpart and to help prevent the arrival at a port of entry of articles which are not eligible to be offered for importation at such a port of entry.

Under the proposed regulations, articles subject to the proposed subpart and not required to be imported under a written permit, would be eligible to be imported under an oral permit issued at a port of entry at the time of importation. These articles would be subject to inspection at the port of entry, and there does not appear to be a need for a written permit for these articles. In essence, requiring a written permit for these articles would appear to result in the generation of numerous additional papers and paperwork for Plant Protection and Quarantine Programs and the importer without any consequent protection with respect to preventing the introduction into the United States of injurious plant diseases, insect pests, or other plant pests.

The proposed regulations also state that restricted articles may not be imported, even if a permit has been issued unless an inspector at the port of entry determines upon inspection that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150dd) are necessary with respect to such article. In this connection section 105 of the Federal Plant Pest Act provides, in relevant part, that:

"(a) Except as provided in paragraph (c), the Secretary may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or otherwise dispose of, in such manner as he deems appropriate, any product or article of any character whatsoever, or means of conveyance, which is moving into or through the United States . . . and which he has reason to believe is infested or infected by or contains any such plant pest . . . Provided, That this paragraph shall not authorize such action with respect to any product, article, means of conveyance, or plant pest subject, at the time of the proposed action, to disposal under the Plant Quarantine Act."

"(b) Except as provided in paragraph (c), the Secretary may order the owner of any product, article, means of conveyance, or plant pest subject to disposal under paragraph (a), or his agent, to treat, apply other remedial measures to, destroy, or make other disposal of such product, article, means of conveyance, or plant pest, without cost to the Federal Government and in such manner as the Secretary deems appropriate. . . ."

"(c) No product, article, means of conveyance, or plant pest shall be destroyed, exported, or returned to shipping point of origin, or ordered to be destroyed, exported, or so returned under this section, unless in the opinion of the Secretary there is no less drastic action which would be adequate to prevent the dissemination of plant pests new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. . . ."

The proposed regulations also state restricted articles may not be imported even if a permit has been issued unless all applicable requirements of the proposed subpart are met. In this connection it should also be noted that section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and section 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff) also authorize emergency measures against prohibited and restricted articles which are not in compliance with the regulations issued pursuant to such Acts.

In addition, the proposed regulations contain provisions for the withdrawal of permits by the Deputy Administrator if he determines that the holder of the permit has not complied with any conditions for the use of the permit. Due process requirements concerning such withdrawals are set forth in the proposed regulations.

Proposed § 319.37–4 contains requirements with respect to inspection and phytosanitary certificates of inspection.

The Plant Quarantine Act provides that at the time of importation all restricted articles from a country maintaining an official system of inspection for such articles must be accompanied by a phytosanitary certificate of inspection from an official of the country from which the importation is made, certifying that the article has been thoroughly inspected and is believed to be free from injurious plant diseases and insect pests. Most of the countries of the world have such a system of inspection, and therefore, most restricted articles would be required to be accompanied by such a certificate at the time of importation.

The Plant Quarantine Act, however, also provides that restricted articles imported from countries where no

official system of inspection is maintained may be imported under conditions and regulations as the Secretary may prescribe. Accordingly, in order to assure that all restricted articles would be inspected, proposed § 319.37–4 would require all restricted articles from countries where not official system of inspection if maintained to be inspected by and inspector of the Plant Protection and Quarantine Programs at the time of importation. Also, any restricted article accompanied by a phytosanitary certificate of inspection would be subject to inspection by Plant Protection and Quarantine Programs inspectors as necessary to assure that such restricted articles are free from injurious plant diseases, injurious insect pests, and other plant pests.

The proposed regulations also would require that a phytosanitary certificate of inspection be issued not more than 15 days prior to shipment of the restricted article from the country in which grown, in order for the certificate to be valid. This would help assure that restricted articles would be promptly shipped after inspection in the country in which grown, and consequently reduce the risk of such articles becoming infected or infested with injurious plant diseases, injurious insect pests, or other plant pests after inspection.

It should also be noted that the use of phytosanitary certificates of inspection was encouraged at the International Plant Protection Convention of 1951 in Rome of which the United States is a party. The proposed requirements relating to phytosanitary certificates of inspection, in addition to being in conformity with the provisions of the Plant Quarantine Act and the Federal Plant Pest Act, are in conformity with the International Plant Protection Convention.

Proposed § 319.37–5 contains special inspection and certification requirements to be performed by the plant protection service of the country in which the article was grown in order to prevent the introduction into the United States of the diseases and pests specified in proposed § 319.37–5 which could destroy or substantially reduce the yield or marketability of the kind of articles specified in proposed § 319.37–5, or products thereof.

Such inspection and certification would be performed by the foreign plant protection service because such pests and diseases which could accompany the specified articles would not be detectable at the port of entry, and there do not appear to be any other feasible methods of treatment or other procedures (except postentry conditions for *Dianthus* spp. (carnation, sweet William), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry)) for preventing the introduction into the United States of such diseases or pests.

The current regulations require all restricted articles (except seeds of herbaceous plants and except articles solely for food, analytical, medicinal, or manufacturing purposes) to be accompanied by a certificate of inspection from the plant protection service of the country of origin certifying that the restricted plant material covered by the certificate was grown on land on which no golden nematode is known to occur. Further, with respect to articles from a country where there golden nematode is known to occur the certificate must also state the date of the most recent inspection of the land for golden nematode.

The proposed regulations have changed the name of golden nematode to potato cyst nematodes (*Globodera rostrochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone) because this is now the commonly accepted name for what was formerly known as golden nematode. The proposed regulations would require certain restricted articles as a condition of entry to be accompanied by a phytosanitary certificate of inspection certifying that such articles were grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown and found free from such pests.

It appears that the only feasible means of detecting and preventing the introduction of potato cyst nematodes in addition to requiring the removal of growing media (see discussion below in connection with proposed § 319.37–8) is to require the plant protection service of the country in which grown to inspect the land on which the article is grown. It would not be feasible to permit such articles to be grown under postentry quarantine in lieu of such requirements because the nematodes could not be detected until well established on the land in which grown and it is extremely difficult to eradicate the pests once they have been introduced into the soil.

Also, the inspection and certification requirements are proposed to apply only restricted articles imported from the foreign countries or localities listed in proposed section 319.37–5 because these are the only foreign countries and localities where potato cyst nematodes are known to occur.

Further, it is proposed that seeds; unrooted cuttings; and articles solely for food, analytical, medicinal, or manufacturing purposes be expected from these requirements. It appears that there is no significant risk of introduction potato cyst nematodes with seeds or unrooted cuttings because potato cyst nematodes are soil inhabiting, and seeds and unrooted cuttings are produced without direct contact with the soil. Also, articles solely for food, analytical, medicinal or manufacturing purposes would not appear to present a risk of introduction of potato cyst nematodes because they would not appear likely to come in contact with the soil after importation.

Also, it is proposed that the foreign land on which such articles are grown must have been sampled and microscopically tested for such nematodes within 12 months preceding issuance of the accompanying phytosanitary certificate of inspection and found free from such nematodes. This would appear to assure ongoing detection programs for such nematodes and provide a reasonable assurance of detecting the presence of any potato cyst nemadotes which might otherwise accompany restricted articles imported into the United States.

It is proposed a condition of importation that any article (except seeds) of *Chaenomeles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple), *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, and prune), and *Pyrus* spp. (pear), (1) be accompanied by a phyosanitary certificate of inspection declaring that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and found by the plant protection service of the country in which grown to be free of diseases specified inproposed § 319.37–5 based on the testing of parent stock by visual examination and indexing and declaring that such article was grown in a nursery free of any specified disease, and (2) be grown under postentry quarantine conditions specified in proposed § 319.37–7, unless grown in Canada.

It is also proposed as a condition of importation that any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain, and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7 unless accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article

was found by the plant protection service of the country in which grown to be free of diseases specified in proposed § 319.37–5, based on visual examinaton and indexing of the parent stock, and, in the case of an article of *Dianthus* spp., that it was grown in a greenhouse nursery free of such specified plant diseases.

Further, it is proposed as a condition of importation that any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain be accompanied by a phytosanitary certicate of inspection containing an accurate additional declaration that such article was found by the plant protection service of Great Britain to be free of the disease specified in proposed § 319.37–5 based on visual examination of the parent stock, and that it was grown in a greenhouse nursery free of such disease.

The diseases specified in proposed § 319.37–5 accompanying such articles usually would not be detectable at a port of entry. These articles are imported without leaves (except for plants of *Chrysanthemum* spp. and *Dianthus* spp.), without fruit, and without flowers; and the diseases, in most cases, are not detectable without an examination of the leaves, fruit or flowers. Further, such articles are shipped in a dormant condition rather than in a condition of active growth, and in many cases the disease would not be detectable in any part of the article (even with the leaves, fruit, and flowers) unless the article were in a period of active growth.

Indexing of the parent stock of any of these articles would indicate the presence of such diseases in the parent stock and the offspring, because the offspring originate from parts of the parent stock which would be infected with such disease if the parent stock were infected. Indexing is accomplished by conducting serological testing, or transmitting the juices from plants of the parent stock to other plants known to be susceptible to a disease, by grafting or otherwise. Indexing of a parent stock would not be required with respect to *Chrysanthemum* spp. because the associated disease would be readily detectable by visual examination if present in the parent stock. With respect to the other articles, the diseases in most cases would not be detectable without indexing. Also, it would not be practical to index the articles for importation because of the large number of articles being imported.

The disease specified in proposed § 319.37–5 in connection with these articles are known to occur in the countries from which these provisions would apply except that the diseases specified for *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp., are not known to occur in Canada, and that the disease specified for *Rubus* spp. is not known to occur in Ontario, Canada.

Articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. are grown out-of-doors because of their size and because they must be grown under natural climatic conditions in order to achieve normal development or to produce typical fruit. Since the articles are grown out-of-doors in countries and localities where such diseases are known to occur, there is a risk that such articles would be infected with such diseases after separation from the parent stock. In order to minimize the risk of becoming infected with such diseases, articles of *Chaenmeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. as a condition of importation would be required to be grown in nurseries free of the specified diseases. This would also help assure that such articles would be grown within designated boundaries, and would be subject to ongoing programs of indexing. But because there would still be a slight risk of such articles becoming infected with such diseases after indexing and because such diseases would be detectable after a period of time, these articles also would be required to be grown under postentry quarantine conditions specified in proposed § 319.37–7.

Articles (except seeds) of *Chrysanthemum* spp. and *Dianthus* spp. would be required to be grown in greenhouse nurseries free of the specified diseases for these articles in order to provide protection against the natural spread of the specified diseases. *Rubus* spp. would not be required to be grown in a greenhouse nursery for such certification because the specified disease of concern with respect to *Rubus* spp., i.e., rubus stunt virus, is not known to occur in Ontario, Canada. However, since this disease occurs in other parts of Canada it appears that the findings and certification of the plant protection service of Canada are necessary as a precautionary measure in that the disease could spread to Ontario, Canada.

The regulations currently require as a condition of importation that trees, shrubs, and plants of *Malus* spp., *Pyrus* spp., and *Prunus* spp. originate from specified foreign nurseries which have been certified by the plant protection service of the country of origin as producing material of such genera from parent plants that have been tested by such plant protection service and found free from diseases caused by viruses. The current regulations contain a list of such nurseries located in Belgium, Great Britain, Canada, Germany, and The Netherlands. The protection afforded against the introduction into the United States of such diseases is provided by the visual examination and indexing of parent stock and certification thereof by the plant protection service of the country of origin, and there does not appear to be a need for certifying nurseries. The certification provisions would be performed only by the listed countries because these are the only countries that provide such service.

The current regulations prohibit the entry of *Cocos nucifera* from all foreign countries into the State of Hawaii because of Cadang-cadang disease. It is proposed to permit an article of *Cocos nucifera* (coconut) to be imported into the United States, including Hawaii, if found and certified by the plant protection service of Jamaica (Coconut Industry Board) to be of Malayan dwarf variety based on visual examination of parent stock. Cadang-cadang disease apparently does not occur in Jamaica and the Malayan dwarf variety appears to be the only variety which is resistant to lethal yellowing disease (other varieties are listed as prohibited articles). Lethal yellowing disease could destroy or substantially reduce the yield or marketability of coconut or other palms if introduced into areas of the United States where it does not occur. The variety of *Cocos nucifera* cannot be determined upon inspection at the time of entry. A determination as to variety can be made based on visual examination of parent stock because of the physical characteristics of the parent stock.

Also, *Cocos nucifera* (coconut) would only be permitted to be imported if found by the plant protection service of the government of Jamaica (Coconut Industry Board) to be a Malayan dwarf variety because this is the only country or locality known to provide such certification.

Proposed § 319.37–6 would require specified restricted articles from specified countries or localities to be treated at the time of importation, or in some cases to be either defoliated before arrival at the port of entry or treated at the time of importation. These articles pose significant risks of introducing diseases or pests specified in proposed § 319.37–6 which could substantially reduce the yield or marketability of such kinds of articles or products thereof. Also, these diseases or

pests are difficult to detect upon inspection or have been consistently found upon inspection to be accompanying such articles. Further, it appears that the introduction into the United States of such diseases or pests can be feasibly prevented by the specified treatment or defoliation.

The current regulations require seeds of alfalfa (*Medicago sativa)* from Europe to be treated with 8 ounces of Arasan 50 (50 percent Thiram) per 100 pounds of seeds to prevent the spread of infection with *Verticillium albo-atrum* (a wilt disease). It is proposed that seeds of alfalfa and related plants (i.e., *Medicago falcata, M. gaetula, M. glutinosa, M. media, M. sativa)* from Europe be required to be treated with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, (same as is currently required for *M. sativa*), or with a slurry of Arasan 50 Red at a rate of 8 ounces per pint of water per 100 pounds of seeds. These treatments are equivalent in strength.

Such treatment for seeds of *Medicago sativa* appears to be necessary and adequate to prevent the spread of infection with *Verticillium albo-atrum.* Such treatment is also proposed to be required for seeds of certain plants related to *Medicago sativa* (i.e., *M. falcata, M. gaetula, M. glutinosa, M. media*) because it appears that these articles are also frequently infected with *Verticillium albo-atrum.*

The current regulations also require plants of specific genera from any country or locality other than Canada, Europe, Asia Minor, and the countries of Africa bordering on the Mediterranean Sea, to be imported through the ports of entry at New York or Seattle or to be defoliated before arrival at any other port of entry.

These requirements were imposed in order to prevent the introduction into the United States of the citrus blackfly (*Aleurocanthus woglumi* Ashby). This pest is found on the leaves of host plants and defoliation of such plants appears to be adequate to prevent such pests from accompanying host plants. Also, the current regulations permit host plants to be imported through the ports of New York or Seattle without defoliation because the citrus blackfly will not survive in northern climates typical of New York and Seattle. However, it is proposed to discontinue permitting such host plants to be imported at these ports without defoliation or other treatment (referred to below) because these infested host plants can be readily move to southern areas of the United States where citrus blackfly can survive.

It is also proposed that such host plants be permitted to be imported without defoliation if treated at the port of entry with methyl bromide in accordance with the Plant Protection and Quarantine Treatment Manual (which has been incorporated by reference) because this appears to be adequate to prevent the introduction of citrus blackfly.

Also, it is proposed to make changes with respect to the scientific names for *Achras, Calocarpum,* and *Lucuma,* which are currently listed as hosts of citrus blackfly. The name *Achras* would be changed to *Manilkara,* and the names *Calocarpum* and *Lucuma* would collectively be changed to one name, *Pouteria.* These changes are proposed in order to conform to nomenclature currently accepted by the scientific community.

The current regulations further specify that any listed articles are subject to special requirements because of the citrus blackfly if from any foreign country or locality (other than Canada, Europe and Asia Minor, and countries in Africa bordering the Mediterranean Sea). Citrus blackfly is known to occur in countries and localities other than those specifically excepted from such requirements. In this connection, the list of areas excepted from such requirements would be clarified to more clearly describe the countries and localities in which citrus blackfly is not know to occur; i.e., Canada, Europe, and any other country or locality bordering on the Mediterranean Sea.

The proposed regulations would also require the following list of restricted seeds from the listed countries and localities to be treated at the time of importation because of the diseases or pests referred to in the proposed § 319.37–6.

Seeds	Country(ies) or locality(ies) from
Hibiscus spp. (hibiscus, rosemallow).	All.
Lathyrus spp. (sweet pea, peavine).	All except North America and Central America.
Lens spp. (lentil)	All except North America and Central America.
Vicia spp. (fava bean, vetch)	All except North America and Central America.
Glycine spp. (soybean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Dolichos spp. (lablab)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Pachyrhizus spp. (yam bean root, jicama).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Phaseolus spp. (bean)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Pueraria spp. (Chinese yam)	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.
Vigna spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, azuki bean).	Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, and the West Indies.

The treatment proposed to be required for each of these types of seeds is specified in proposed § 319.37–6 except for seeds of *Hibiscus* spp., (hibiscus, rosemallow), *Lathyrus* spp., (sweet pea, peavine), *Lens* spp., (lentil) and *Vicia* spp., (fava bean, vetch) which would be required to be treated with methyl bromide in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual which have been incorporated by reference. These treatments appear to be adequate to prevent the introduction into the United States of the diseases or pests referred to in proposed § 319.37–6.

Proposed § 319.37–7 designates articles from specified countries and localities which would be required to be grown under postentry quarantine as a condition of importation. Except as

otherwise provided in proposed § 319.37–5 with respect to *Dianthus* spp., (carnation, sweet William), and *Rubus* spp., (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), this appears to be necessary because there do not appear to be other feasible methods of inspection, treatment, or other procedures that could be performed at the port of entry or otherwise and be sufficient for the purpose of preventing the introduction of injurious plant diseases that could destroy or substantially reduce the yield or marketability of the kinds of listed article or the products thereof. A period of observation under postentry quarantine would be necessary in order to detect such diseases which could possibly accompany such articles.

Many of those articles which are listed in proposed § 319.37–7 would be required to be grown under postentry quarantine as a condition of importation if from certain countries or localities but would be listed in proposed § 319.37–2 as prohibited articles if from other countries or localities. Such articles listed in the prohibited list are from countries or localities where the diseases associated with such articles and listed in proposed § 319.37–2 are known to occur. Other than as explained above in the discussion concerning proposed § 319.37–5, such articles that would be subject to postentry quarantine requirements are from countries or localities where such diseases are not known to occur. However, because of the international movement of such articles and the natural spread of such diseases, the diseases could be carried to countries or localities where the diseases are not known to occur without being detected. Accordingly, it appears to be necessary to require such articles to be grown under postentry quarantine as a condition of importation as a precautionary measure in order to prevent the introduction of such diseases. For these reasons each article listed in the following chart from the listed countries and localities is proposed to be added to the current list of articles required to be grown under postentry quarantine as a condition of importation:

Article	Country(ies) or locality(ies)
Acacia spp. (acacia)	All except Canada, Australia, and Oceania.
Anemone spp. (anemone, windflower)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Datura spp.	Great Britain.
Fragaria spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
Gladiolus spp.	All except Canada, Africa, Italy, Malta, and Portugal.
Hydrangea spp. (hydrangea)	Federal Republic of Germany (West) and German Democratic Republic (East).
Philadelphus spp. (mock-orange)	All except Canada and Europe.
Sorbus spp. (mountain ash)	Southeastern Asia.
Syringa spp. (lilac)	All except Canada and Europe.

Also, for reason, for reasons explained above in the discussion concerning proposed § 319.37–5, it is proposed that articles of *Chaenomeles* spp., *Cydonia* spp., *Malus* Prunus spp., and *Pyrus* spp., grown in Belgium, France, Federal Republic of Germany (West), The Netherlands, or Great Britain and otherwise meeting the conditions of proposed § 319.37–5 be required to be grown under postentry quarantine as a condition of importation.

In addition, for reasons explained above in the discussion concerning proposed § 319.37–5, it is proposed that plants of *Dianthus* spp. from Great Britain, and *Rubus* spp. from Ontario, Canada, be required to be grown under postentry quarantine as a condition of importation because of the diseases specified in proposed § 319.37–5 unless accompanied by an accurate additional declarations on the phytosanitary certificate of inspection as provided for in proposed § 319.37–5.

Seedling understocks of fruit and nut articles listed in proposed § 319.37–7(b) from all countries and localities except Canada are proposed to be added to the list of articles required to be grown under postentry quarantine as a condition of importation. It appears that the types of diseases associated with such articles would not be detectable at a port of entry but would be detectable under the postentry conditions specified in § 319.37–7(c) and that under such conditions these diseases would be prevented from being disseminated into the United States.

"Fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" together with "fruit and nut stocks" comprise "fruit and nut articles." The regulations currently list "fruit and nut plants, buds, cuttings, scions, and vegetatively-produced understocks" on the postentry list. Also, as noted above, it is proposed to add "fruit and nut stocks" to the postentry list. Accordingly, these items are proposed to be collectively listed as "fruit and nut articles." Also, this term would be clarified by listing such articles which are intended to be within this class.

Articles required to be grown under postentry quarantine, as a condition of importation, would be required to be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions:

(1) to grow such article or increase therefrom only on specified premises;

(2) to permit an inspector to have access to the specified premises for inspection of such article at all reasonable hours;

(3) to keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, number of written permit, and date of importation;

(4) to keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;

(5) to allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or other plant pest; and

(6) to notify Plant Protection and Quarantine Programs when any abnormality of the article is noticed or if the article dies.

It appears that these conditions are necessary and adequate for the Plant Protection and Quarantine Programs to keep track of such articles and to take any necessary action to prevent the possible dissemination of injurious plant diseases.

It is further proposed to require articles to be grown under postentry quarantine, as a condition of importation, to be grown under such conditions for 2 years, except for *Chrysanthemum* spp. (chrysanthemum) (6 months) and *Dianthus* spp. (carnation, sweet William) (1 year). Based on experience it appears that the diseases associated with such articles would express their symptoms within these time limits.

It is also proposed to require a completed postentry quarantine agreement to accompany the application for a written permit for articles required to be grown under postentry quarantine conditions since both of these documents would be necessary for a determination as to whether a permit for importation should be issued for such articles.

Further, articles from certain countries and localities are proposed to be deleted from the list of articles required to be grown under postentry quarantine as a condition of importation.

Articles of *Juniperus* spp., (juniper) and *Ulmus* spp., (elm) from Canada would be deleted from the postentry list because diseases associated with such articles (such diseases are specified in the proposed prohibited list) are not known to occur in Canada and because Canada prohibits the importation of such articles from all countries and localities where such diseases are known to occur.

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry quarantine list because such articles are proposed to be added to the prohibited list in proposed § 319.37–2:

Article	Country(ies) or locality(ies)
Actinidia spp. (Chinese gooseberry, kiwi).	Japan and Taiwan.
Cedrus spp. (cedar)	All other than Canada and Europe.
Chrysanthemum spp. (chrysanthemum).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, Peoples Republic of China and Republic of South Africa.
Datura spp.	Colombia.
Hibiscus spp. (hibiscus, rosemallow).	Africa (except Sudan and Nigeria).
Hydrangea spp. (hydrangea)	Japan.
Juniperus spp. (juniper)	All except Finland and Rumania.
Larix spp. (larch)	All other than Canada and Europe.
Morus spp. (mulberry)	India and Union of Soviet Socialist Republics.
Picea spp. (spruce)	All other than Canada, Japan, Siberia, and Europe.
Pinus spp. (pine) (2- or 3-leaved).	All other than Canada, Japan, and Europe.
Pseudotsuga spp. (Douglas fir).	All other than Canada and Europe.
Ribes nigrum (black currant)	Europe (except British Isles and Sweden) and Australia.
Salix spp. (willow)	Federal Republic of Germany (West) and German Democratic Republic (East).
Vitis spp. (grape)	All other than Canada and Europe.

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry list becuase the plant disease or diseases which caused the article to be listed on the postentry list appear to be widely prevalent within and throughout the United States:

Article	Country(ies) or locality(ies) from	Plant disease which caused article to be listed
Aleurites spp. (tung).	All foreign countries except China and Brazil.	*Mycosphaerella* (Miyake) Ou *aleuritidis* (Leaf spot).
Daphne spp.	All foreign countries except Canada and New Zealand.	Daphne-mosaic virus.
Nicotiana spp. (tobacco).	All foreign countries except Australia, Great Britain, and Canada.	*Marmor lethale* Holmes (Tobacco necrosis virus).

The articles in the following chart from the listed countries and localities are proposed to be deleted from the postentry list for the reasons specified in the chart:

Article	Country(ies) or locality(ies)	Reason
Actinidia spp. (Chinese gooseberry, kiwi).	Australia and New Zealand.	On list because of *Pucciniastrum actinidiae* Hiratusuka (Rust) which apparently does not exist in Australia and New Zealand, based on official reports from the governments of Australia and New Zealand.
Anthurium spp	All	On list because of Anthurium mosaic virus which apparently no longer exist.
Boltonia spp	Canada	On list because of Boltonia streak virus which apparently no longer exist.
Chrysanthemum spp. (chrysanthemum).	Great Britain if in compliance with conditions for importation in proposed § 319.37–5(c).	On list because of *Puccinia horiana* P. Henn. which apparently would not be present if conditions in proposed § 319.37–5(c) would be met.
Ilex spp. (holly).	All except Canada, England, and France.	On list because of Ilex-variegation virus which apparently does not exist.
Rubus spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	Ontario, Canada, if in compliance with conditions for importation in proposed § 319.37–5(e).	On list because of Rubus stunt virus which apparently would not be present if conditions in proposed § 319.37–5(e) would be met.
Wisteria spp. (wisteria).	All except Canada and Australia.	On list because of mosaic disease which apparently does not exist.

Proposed § 319.37–8 would provide requirements with respect to the importation of restricted articles in growing media. In general, if restricted articles were to be imported in their growing media, there would be a substantial risk of introducing any of a large number of injurious plant diseases, injurious insect pests, and other plant pests, which could not be detected by inspection and could not be eliminated without destruction of the restricted article. Accordingly, it is proposed to prohibit the importation or offer for entry into the United States of restricted articles unless free of soil, sand, earth or other growing media, except as explained below.

In addition, the terms "soil" and "earth" would be defined in the definition section of the proposed regulations in order to assure that these terms would be interpreted to include all of the "soil" and "earth" that presents such a risk of introducing such diseases and pests.

The current regulations specify that restricted articles may be imported in any gowing media (sand, soil, or earth) only if imported from Canada. It is proposed to permit restricted articles to be imported from Canada in growing media except from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia. Restricted articles in growing media from these specified places in Canada would not be permitted to be imported because it appears that there is a substantial danger that such restricted articles, if in such growing media, would introduce a potato cyst nematode, *Globodera rostochiensis* (Woll.) Mulvey and Stone, which is not discernible by insection at the port of entry and cannot be eliminated without destruction of the restricted article.

It is also proposed to permit any restricted article growing solely in agar to be imported in such agar medium because it appears that the presence of diseases or pests which could be detected if the restricted article were imported with bare roots, would not be less detectable if in agar because agar is transparent or translucent.

It is further proposed to permit a restricted article which is a herbaceous plant or shrub to be imported in peat, sphagnum moss, or vermiculite growing media or in synthetic growing media or synethetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde, of in accordance with the detailed criteria in proposed § 319.37–8(d). These criteria appear to be necessary in order to allow the importation of restricted articles in the above growing media or horticultural foams and still prevent the introduction into the United States of any of a wide variety of injurious plant diseases, injurious insect pests, or other plant pests, generally associated with articles in growing media. These criteria would assure that the restricted articles and their growing media would be free of injurious plant diseases, insect pests, or other plant pests because of being grown, stored, and shipped in isolation from such diseases or pests. Since there would be a great risk of introduction of such diseases or pests if any of the criteria were not strictly adhered to,

proposed § 319.37–8(d) would not only require the country of origin to certify compliance with these criteria, but as an added measure of safety, would require a Plant Protection and Quarantine Programs inspector to determine that such articles were produced in accordance with the specified procedures, and to endorse the phytosanitary certificate relating to such articles.

Proposed § 319.37–9 would specify what packing materials could be used for importation of restricted articles into the United States. Generally, packing materials can be the means of introducing into the United States any of a large number of injurious insect pests or other plant pests. Most such pests would not be detectable by inspection and could not feasibly be eliminated from the packing material. In addition, many such pests in the packing material could be transmitted to an accompanied restricted article. Also, many packing materials would because of their nature render articles difficult or impossible to inspect. Based on experience with respect to the examination of packing materials, it appears that those materials listed in proposed § 319.37–9 would present no significant risk of causing the introduction of injurious insect pests or other pests, provided that such materials are free from sand, soil, or earth, are not intermixed, and have not been used previously as packing material or otherwise. This proposed list of materials is the same as the current list except for three additions, two deletions, and three modifications. Ground rubber, paper, and quarry gravel would be added to the list because they apparently would present no significant risk of introducing such pests. Charcoal would be deleted from the list because it appears that it is difficult to detect the presence of many injurious plant diseases, insect pests, and other plant pests on or with articles packed in such material because charcoal often discolors such articles and there is often little contrast between charcoal and such diseases and pests.

Subsoil from Japan (other than that referred to below with respect to the Ryukyu Islands in Japan) would be deleted from the list. Under the current regulations subsoil from Japan has been permitted to be used as a packing material for lily bulbs only if, among other things, it was treated with DDT. However, under the laws administered by the Environmental Protection Agency, the use of DDT may not continue to be required, and there does not appear to be another insecticide adequate to destroy *Phyllobrotica* spp. and other insect pests, which have been found in such subsoil.

Also, under the current regulations, subsoil from the Ryukyu Islands in Japan may be used as packing material for lily bulbs only if certified by the plant protection service of Japan to have been dug from at least 2 feet below the soil surface, handled under special conditions, and treated with an insecticide. Under the laws of the Environmental Protection Agency there are no insecticides which may be feasibly used in connection with such subsoil. However, it appears, based on experience, that even without the use of an insecticide there is no significant risk of introducing undetectable diseases or pests in connection with the importation of lily bulbs in such subsoil, if such subsoil would come from at least 2 feet below the soil surface, and be sifted, dried, and stored in isolation from contamination with pests and diseases. Accordingly, such subsoil would be permitted to be used as packing material for lily bulbs if found and certified by the plant protection service of Japan to meet such conditions.

Other articles would not be permitted to be packed in such subsoil because there has not been sufficient testing to establish that this could be done without a substantial risk of introducing diseases or pests.

In addition, the current regulations specify that shavings are permitted to be used as packing material. This was inteded to refer to wood shavings and cork shavings and the list would be clarified to reflect this intent.

Further, the current regulations permit coral sand from Bermuda to be used as a packing material if accompanied by a valid certificate from the plant protection service of Bermuda certifying the sand to be free from surface soil. This was intended to prohibit the use of any soil in the packing material because soil can be accompanied by any of a host of injurious plant diseases, injurious insect pests, and other plant pests which would not be detectable at the port of entry. Accordingly, the proposed regulations are clarified to provide that the coral sand for packing material must be free from soil.

Proposed § 319.37–10 would require certain marking and identification information to be plainly and correctly borne at the time of importation on the outer container of a restricted article or directly on such article if not in a container. In order to comply with specified requirements of the Plant Quarantine Act, any restricted article for importation, including any article for importation by mail, would be required to bear at the time of importation the general nature and quantity of the contents; the country and locality where grown; the name and address of the shipper, owner, or person shipping or forwarding the article; and the name and address of the consignee (in the case of mail the consignee would be the Plant Protection and Quarantine Programs). Such restricted articles would also be required to bear the number of the written permit authorizing the importation, if one was issued. This would enable the inspector to check whether a valid permit was actually issued for the article in question. Further, a restricted article for importation other than by mail would be required to bear an identifying shipper's mark and number. This would enable an inspector to locate the restricted article at the port of entry by comparing the shipper's mark and number on available entry documents (e.g., manifest, waybill) with such information on the restricted article or container thereof.

The proposal would also require any restricted article for importation by mail to be mailed to the Plant Protection and Quarantine Programs at a port of entry designated in the list of ports of entry in proposed § 319.37–14. This appears to be necessary in order to prevent direct mailing to the intended recipient, and for the requirements of the proposed subpart to be met, e.g., inspection, treatment. The proposal would further require a package containing a restricted article for importation by mail to contain within each package a sheet of paper bearing the name, address, and telephone number of the intended recipient. This would permit the Plant Protection and quarantine Programs to be able to forward the package to the intended recipient. Also, inclusion of the telephone number of the intended recipient for mailed articles would permit Plant Protection and Quarantine Programs to contact the intended recipient for the purpose of obtaining any necessary clarifications for determining eligibility for importation of such articles. With respect to importation of articles other than by mail, this requirement is not necessary because the representative or agent of the intended recipient would be available at the port of entry to provide any necessary clarifications.

It is also proposed that shipments containing restricted articles be required to be accompanied by an invoice or packing list indicating the contents of the shipments. This appears necessary because such information on the outside of a package or on a restricted article could be rendered illegible, destroyed,

or lost because of handling during shipment. This requirement would not be an additional burden on importers since invoices and packing lists are required by the shipping industry and by the U.S. Customs Service.

Proposed § 319.37–11 would require the importer upon arrival at a port of entry of any shipment of any restricted article to promptly notify the Plant Protection and Quarantine Programs of such shipment's arrival by such means as a manifest, customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose. The current regulations require that the importer submit a completed Form PPQ–368 and an invoice or packing list at the time of arrival. The purpose of the current regulations and the proposed regulations in this regard is to assure that the Plant Protection and Quarantine Programs is advised that any restricted article has arrived at a port of entry. It appears that this can be accomplished by any document which would specify what is contained in a shipment, such as those documents specified in the proposed rule.

Proposed § 319.37–12 would prohibit a restricted article from being imported or offered for entry into the United States if packed in the same container as an article prohibited importation into the United States by Part 319 or 321. This appears necessary in order to prevent prohibited articles from transmitting to restricted articles tree, plant, or fruit diseases, injurious insect pests, or other plant pests which could not be detected by inspection and could not be eliminated without destruction of the restricted article.

Proposed § 319.37–13 relates to costs and charges in connection with the services of an inspector and costs and charges relating to inspection facilities and equpment used in connection with treatment of articles. This reflects the policy of the Plant Protection and Quarantine Programs with respect to costs and charges relating to the importation of articles subject to this subpart.

Proposed § 319.37–13 also contains provisions relating to where treatments shall be performed. Government operated special inspection facilities are located in close proximity to unloading areas for imported articles and, consequently, the use of government-operated facilities would be required in most cases for treatment of articles in order to prevent unnecessary movement. Treatment would be permitted to be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests. Also, it is proposed that treatment performed under this subpart would be required to be performed by or under the direction of an inspector in order to assure that any applicable treatment requirements would be met.

Proposed § 319.37–14 would require any restricted article required to be imported under a written permit pursuant to subsection (1) through (6) or (8) of proposed section 319.37–3, to be imported only at a port of entry designated by an asterisk in paragraph (b) of proposed § 319.37–14, and would permit any other restricted articles to be imported at any port of entry listed in paragraph (b) of proposed § 319.37–14. The ports of entry listed in paragraph (b) are those ports of entry where inspectors are stationed and authorized to take action in connection with the importation or offer for importation of articles which would be subject to the proposed subpart.

Those articles which would be required to be imported only at a port of entry designated by an asterisk appear to present a substantial risk of carrying injurious plant diseases, insect pests, or other plant pests at the time of importation. Accordingly, they would be required to be imported only at a port of entry designated by an asterisk because these ports of entry are the only ports of entry with special inspection and treatment facilities adequate for taking necessary action with respect to such articles in order to prevent the introduction of accompanying injurious plant diseases, injurious insect pests, or other plant pests.

In the current regulations, certain articles for importation from Canada are exempted from certain prohibitions or restrictions which would apply if such articles were imported from certain other foreign countries and localities. It appears that the importation from Canada of most articles subject to the proposed subpart poses little or no risk of introduction of injurious plant diseases, injurious insect pests or other plant pests that are not already widely prevalent or distributed within and throughout the United States. This is because such diseases and pests do not occur in Canada because of climatic conditions adverse to many such diseases and pests, and because of an effective Canadian inspection program for articles imported into Canada. For these reasons, the proposed regulations also contain numerous exemptions from prohibitions or restrictions with regard to articles for importation from Canada.

As noted above, in connection with the discussion concerning proposed § 319.37–4, restricted articles accompanied by a phytosanitary certificate of inspection are merely "subject" to inspection at ports of entry "as necessary" to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests. Because of various risks of introducing such diseases or pests restricted articles are given various degrees of inspection at ports of entry. However, articles for importation from Canada and not requiring a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of proposed § 319.37–3, are given the least amount of inspection which is commensurate with the risk of introducing diseases or pests. Accordingly, such articles from Canada are the only articles proposed to be allowed to be imported at the port of entry on the United States-Canadian border, which provide this minimal inspection.

It appears that the risk of introduction of diseases or pests would be the same for an article grown in a foreign country or locality other than Canada if it meets each of the following conditions:

1. It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

2. It has never been grown in a country from which it would be a prohibited article, or grown in a country other than Canada from which it would be subject to conditions of § 319.37–5 or § 319.37–6,

3. It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7, and

4. It was not imported into Canada in growing media.

Articles specified in items 2 through 4 appear to present a substantial risk of introducing diseases or pests and are either prohibited articles or would be required to be imported at a port of entry with special inspection and treatment facilities. Also, these articles would be required to be grown for at least 1 year in Canada in order to be considered as being solely from Canada. The added growing time would provide an opportunity for any accompanying diseases or pests to become readily detectable at the time of inspection relating to the issuance of the phytosanitary certificate of inspection. This would be an added precautionary

measure in order to allow the articles to be imported under conditions of minimal inspection at ports of entry on the United States-Canada border.

The proposed regulations would also make numerous other miscellaneous changes from the current regulations.

The proposed regulations would reflect certain changes which have occurred with respect to names or boundaries of countries. "Ceylon" is changed to "Sri Lanka," "Germany" is changed to "Federal Republic of Germany (West)" or "German Democratic Republic (East)," as appropriate, "North Ireland" is changed to "Northern Ireland," and "Trinidad" is changed to "Trinidad and Tobago."

The term "England" as used in the current regulations is proposed to be changed to "Great Britain," which includes England, Scotland, and Wales. This is because the term "England" as used in the current regulations was intended to include England, Scotland, and Wales, and because it appears that the reasons for imposing requirements with respect to England are also valid reasons for imposing requirements with respect to Scotland and Wales.

The term "Europe" is defined in the current regulations as "the continent of Europe, the British Isles, and the other islands on the European continental shelf." The term "other islands on the continental shelf" is proposed to be changed to "Iceland, the Azores, and the islands in the Mediterranean Sea", to clarify the intent in the current regulations. Also, the reasons for imposing requirements appear to be valid reasons for imposing requirements with respect to all of these places.

The term "Oceania," although used in the current regulations, is not defined. This term is commonly understood to include the islands of Micronesia, Melanesia, and Polynesia in the central and southern Pacific Ocean. However, this term is also sometimes construed to include Australia and New Zealand which are not part of these islands. In order to avoid confusion, the term "Oceania" is defined in the proposed regulations and does not include Australia or New Zealand. Further, Hawaii, which is part of Polynesia, is specifically excepted from the definition of "Oceania" since the term "Oceania" as used in the proposed subpart, relates only to foreign countries and localities.

Some articles which are proposed to be deleted from the prohibited list are prohibited from entering certain States because of State laws. Also, some articles which are proposed to be deleted from the postentry list are required to be grown under postentry quarantine as a condition of entry into such States. Since this information would be helpful to potential importers of these articles, it is proposed to include such information in notes at the end of the respective list of prohibited articles and postentry articles.

Some of the scientific names in the current regulations with respect to certain diseases, insects, or other pests, are proposed to be changed in order to conform to nomenclature currently accepted by the scientific community. Accordingly, the following chart explains the proposed changes and lists the article associated with the diseases or pests.

Article	Name in current regulations	Name in proposed regulations
Abies spp. (fir)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopyncis pseudotuga* (M. Wils.) Hahn (Douglas fir canker).
Althaea spp. (althaea, hollyhock)	*Ruga gossypi* Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus.
Anemone spp. (anemone, windflower)	*Galla anemones* Holmes (Anemone-alloiophylly virus)	Anemone-alloiophylly virus.
Cedrus spp. (cedar)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Datura spp	*Marmor tabaci* var. *deformans* Holmes (Enation-mosaic strain of mosaic virus).	Datura distortion or enation mosaic virus.
Dianthus spp. (carnation, sweet William)	*Verticillium cinerescens* Wr	*Phialophora cinerescens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.)
Euonymus spp. (euonymus)	*Marmor euonymi* Holmes (Euonymus mosaic virus)	Euonymus mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	Yellow-mosaic virus of okra	Okra yellow mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	Mosaic-disease virus of okra	Okra mosaic virus.
Hibiscus spp. (hibiscus, rosemallow)	*Ruga gosspii* Holmes (Cotton leaf-curl virus)	Cotton leaf-curl virus.
Juniperus spp. (juniper)	*Exosporium deflectans* Karst	*Stigmina deflectans* (Karst.) Ellis (Needlecast disease).
Larix spp. (larch)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Lens spp. (lentil) seeds	A rust fungus (a form of *Uromyces fabae* (Pers.) d By).	*Uromyces viciae-fabae* (Pers.) Schroet. (rust).
Ligustrum spp. (*privet*)	*Marmor ligustri* Holmes (Ligstrum-mosaic virus)	Ligustrum mosaic virus.
Malus spp. (apple, crabapple)	*Physalospora piricola* Nose (Leaf, branch and fruit fungus).	*Guignardia piricola* (Nose) Yamomoto (Leaf, branch and fruit disease).
Malus spp. (apple, crabapple)	"Proliferation" (virus)	Apple proliferation agent.
Mangifera spp. (mango) seed	*Sternochetus mangiferae* F	*Cryptorhynchus mangiferae* F. (mango weevil).
Morus spp. (mulberry)	Mulberry mosaic virus	Mulberry mosaic agent.
Picea spp. (spruce)	*Chrysomyxa rhododendri* (DC) D By. (Rust causing a serious needel disease).	*Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Picea spp. (spruce)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Populus spp. (aspen, cottonwood, poplar)	*Pseudomonas rimaefaciens* Koning (Canker)	*Aplanobacter populi* Ride (Canker).
Prunus spp. (almond, apricot, cherry, peach, plum and prune	Pox-disease virus of sweet cherry	Plum pox (=Sharka).
Pseudotsuga spp. (Douglas fir)	*Phomopsis pseudotsugae* Wilson (Douglas fir canker).	*Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker).
Pyrus spp. (pear)	*Physalospora piricola* Nose (Leaf, branch and fruit disease).	*Guignardia piricola* (Nose) Yamomoto (Leaf, branch and fruit disease).
Pyrus spp. (pear)	"Proliferation" (Virus)	Apple proliferation agent.
Ribes nigrum spp. (black currant)	*Acrogenus ribis* Burk. (Black currant reversion disease virus).	Black currant reversion virus.
Rosa spp. (rose)	*Marmor flaccumfaciens* Holmes (Rose wilt virus)	Rose wilt virus.
Salix spp. (willow)	*Bacterium salicis* Day (Watermark disease)	*Erwinia salicis* (Day) Chester (Watermark disease).
Sorbus spp. (mountain ash)	Pyrus disease virus No. 1	Mountain ash variegation virus.
Vitis spp. (grape)	*Marmor viticola* Holmes (Vine Mosaic virus)	Grapevine fanleaf virus and its strains.
Articles designated in § 319.37-5(a)	Golden nematode *Heterodera rostochiensis* Wr	*Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone.

Accordingly, it is proposed to revise "Subpart—Nursery Stock, Plants, and Seeds" in 7 CFR Part 319 § 319.37—§ 319.37–28a) to read as follows:

PART 319—FOREIGN QUARANTINE NOTICES

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds and Other Plant Products

Sec.

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation
§ 319.37–1 Definitions
§ 319.37–2 Prohibited Articles
§ 319.37–3 Permits
§ 319.37–4 Inspection and phytosanitary certificates of inspection
§ 319.37–5 Special foreign inspection and certification requirements
§ 319.37–6 Specific treatment and other requirements
§ 319.37–7 Postentry quarantine
§ 319.37–8 Growing media
§ 319.37–9 Approved packing material
§ 319.37–10 Marking and identity
§ 319.37–11 Arrival notification
§ 319.37–12 Prohibited articles accompanying restricted articles
§ 319.37–13 Treatment and costs and charges for inspection and treatment
§ 319.37–14 Ports of entry

Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products [1]

§ 319.37 Prohibitions and restrictions on importation; disposal of articles refused importation.

(a) Pursuant to section 7 of the Plant Quarantine Act (7 U.S.C. 160) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the introduction into the United States from any foreign country or locality of certain tree, plant, and fruit diseases, or injurious insects, new to or not widely prevalent or distributed within and throughout the United States it is necessary to prohibit the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for entry into the United States any article designated in § 319.37–2(a) or (b) of this subpart from the designated foreign countries and localities, except as otherwise provided in § 319.37–2(c) of this subpart.

(b) Pursuant to sections 1 and 5 of the Plant Quarantine Act (7 U.S.C. 154, 159) and section 106 of the Federal Plant Pest Act (7 U.S.C. 150ee) the Secretary of Agriculture has determined that, in order to prevent the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests it is necessary to restrict the importation into the United States of certain articles from foreign countries and localities. Accordingly, no person shall import or offer for importation into the United States, or grow in the United States, any restricted article from any foreign country or locality unless in conformity with all of the applicable restrictions in this subpart.

(c) Any article refused importation for noncompliance with the requirements of this subpart shall be properly removed from the United States or abandoned by the importer for destruction, and pending such action shall be subject to the immediate application of such safeguards against escape of injurious plant diseases, injurious insect pests and other plant pests as the inspector determines necessary to prevent the introduction into the United States of such diseases or pests. If such article is not promptly safeguarded by the importer, removed from the United States, or abandoned for destruction, it may be seized, destroyed, or otherwise disposed of in accordance with section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Pest Act (7 U.S.C. 150dd, 150ff).

§ 319.37–1 Definitions.

Terms used in the singular form in this subpart shall be construed as the plural, and vice versa, as the case may demand. The following terms, when used in this subpart, shall be construed, respectively, to mean:

Deputy Administrator. the Deputy administrator of the Plant Protection and Quarantine Programs, animal and Plant Health Inspection Service, U.S. Department of Agriculture, or any other officer or employee of said Service to whom authority to act in his/her stead has been or may hereafter be delegated.

Disease. The term in addition to its common meaning, includes a disease, disease agent which incites a disease.

Earth. The softer matter composing part of the surface of the globe, in distinction from the firm rock, and including the soil and subsoil, as well as finely divided rock and other soil formation materials down to the rock layer.

Europe. The continent of Europe, the British Isles, Iceland, the Azores, and the islands in the Mediterranean Sea.

From. An article is considered to be "from" any country or locality in which it was grown. *Provided,* that an article imported into Canada from another country or locality shall be considered as being solely from Canada if it meets the following conditions:

(a) It is imported into the United States directly from Canada after having been grown for at least 1 year in Canada,

(b) It has never been grown in a country from which it would be a prohibited article or grown in a country other than Canada from which it would be subject to conditons of § 319.37–5 or 319.37–6,

(c) It was not grown in a country or locality from which it would be subject to conditions of § 319.37–7 unless it was grown in Canada under postentry growing conditions equivalent to those specified in § 319.37–7 [2], and

(d) It was not imported into Canada in growing media.

Indexing. (a) Serological testing, or (b) transmitting the juices from an article suspected of being infected with a particular disease to another article known to be susceptible to such disease, by grafting or otherwise, in order to determine the presence or absence of the disease in the article suspected of being infected with such disease.

Inspector. Any employee of the Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, or other person, authorized by the Deputy Administrator to enforce the provisions of the regulations in this subpart.

Nursery Stock. All field-grown florist's stock, trees, shrubs, vines, cuttings, grafts, scions, buds, fruit pits, and other seeds of fruit and ornamental trees or shrubs, and other plants and plant products for propagation, except field, vegetable, and flower seeds, bedding plants, and other herbaceous plants, bulbs, and roots.

Oceania. The islands of Micronesia, Melanesia, and Polynesia (except Hawaii) in the central and southern Pacific Ocean.

Person. An individual, corporation, company, society, or association.

Phytosanitary certificate of inspection. A document relating to a restricted article, which is issued by a

[1] One or more common names of articles are given in parentheses after most scientific names (when common names are known) for the purpose of helping to identify the articles represented by such scientific names; however, unless otherwise specified, a reference to a scientific name includes all articles within the class represented by the scientific name regardless of whether the common name or names are as comprehensive in scope as the scientific name.

[2] Currently only *Chaenomoles* spp. (flowering quince), *Cydonia* spp. (quince), *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarines, peach, plum, prune) and *Pyrus* spp. (pear) are required to be grown in Canada under such equivalent conditions after importaton.

plant protection official of the country in which the restricted article was grown, which is issued not more than 15 days prior to shipment of the restricted article from the country in which grown, which is addressed to the plant protection service of the United States (Plant Protection and Quarantine Programs), which contains a description of the restricted article intended to be imported into the United States, which certifies that the article has been thoroughly inspected, is believed to be free from injurious plant diseases, injurious insect pests, and other plant pests, and is otherwise believed to be eligible for importation pursuant to the current phytosanitary laws and regulations of the United States, and which contains any specific additional declarations required under this subpart.

Plant Pest. The egg, pupal, and larval stages as well as any other living stage of: Any insects, mites, nematodes, slugs, snails, protozoa, or other invertebrate animals, bacteria, fungi, other parasitic plants or reproductive parts thereof, viruses, or any organisms similar to or allied with any of the foregoing, or any infectious substances, which can directly or indirectly injure or cause disease or damage in any plants or parts thereof, or any processed, manufactured, or other products of plants.

Plant Protection and Quarantine Programs. The organizational unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture delegated responsibility for enforcing provisions of the Plant Quarantine Act and the Federal Plant Pest Act, and regulations promulgated thereunder.

Prohibited article. Any class of nursery stock or other class of plant, root, bulb, seed, or other plant product designated in § 319.37–2(a) or (b).

Restricted article. Any class of nursery stock or other class of plant, root, bulb, seed or other plant product, for or capable of propagation, excluding any articles subject to any restricted entry orders in Part 321 (i.e. potatoes) or to any foreign quarantine notice in other subparts of Part 319, e.g., fruits and vegetables, cut flowers, sugarcane, rice, and excluding any prohibited articles listed in § 319.37–2(a) or (b).

Secretary. The Secretary of Agriculture, or any other officer or employee of the Department of Agriculture to whom authority to act in his/her stead has been or may hereafter be delegated.

Soil. The loose surface material of the earth in which plants, trees, and shrubs grow, in most cases consisting of disintegrated rock with an admixture of organic material and soluble salts.

Spp. (species). All species, clones, cultivars, strains, varieties, and hybrids, of a genus.

United States. The States, District of Columbia, Guam, Northern Mariana Islands, Puerto Rico, and the Virgin Islands of the United States.

§ 319.37–2 Prohibited articles.

(a) The following listed articles from the designated countries and localities are prohibited articles and are prohibited from being imported or offered for entry into the United States except as provided in § 319.37–2(c) of this subpart.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Acacia spp. (acacia)	Australia and Oceania	*Uromycladium tepperianum* (Sacc.) McAlp. (Rust).
Acer spp. (maple)	Japan	*Xanthomonas acernea* (Ogawa) Burk. (leaf dosease).
	Bulgaria, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.	Maple-variegation virus.
Actinidia spp. (Chinese gooseberry, kiwi)	Japan and Taiwan	*Pucciniastrum actinidiae* Hiratusuka (Rust).
Adonidia spp	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Aesculus spp (horsechestnut)	Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Horsechestnut-variegation virus.
Allagoptera arenaria	All	A diversity of diseases including, but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Althaea spp. (althaea, hollyhock)	India	Hollyhock yellow-vein mosaic virus.
	Africa	Cotton leaf-curl virus
Anemone spp. (anemone, windflower)	Federal Republic of Germany (West) and German Democratic Republic (East).	Anemone alloiophylly virus.
Areca spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arenga spp. (sugar palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Arikuryroba spp. (arikury palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Articles listed in § 319.37–2(b)	All except Canada	A diversity of diseases, insects, and other pests, including but not limited to: *Cactoblastis cactorum* (Berg); *Metamasius* spp.; *Opogona sacchari* (Bojer); *Chrysomyxa himalensis* Barclay (Spruce needle rust); *Aecidium mori* Barclay (Mulberry rust); *Pseudomonas lignicola* Westherd, & Buis. (Bacterial stain); *Pucciniastrum areolatum* (Fr.) Otth. (Cherry-spruce rust).
Berberis spp. (barberry) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) destined to an eradication State listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter.	All	*Puccinia graminis* Pers. (Black stem rust).
Berberis spp. (barberry) seed	All	*Puccinia graminis* Pers. (Black stem rust).
Borassus spp. (palmyra palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Caryota spp. (fishtail palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chaenomeles spp. (flowering quince) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of plant diseases including but not limited to items 1, 21, and 23 listed in § 319.37–5(b)(2).
Chrysalidocarpus spp. (butterfly palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Chrysanthemum spp. (chrysanthemum) not meeting the conditions for importation in § 319.37—5(c).	Europe, Argentina, Brazil, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China, and Republic of South Africa.	*Puccinia horiana* P. Henn. (White rust of chrysanthemum).

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Cocos nucifera (coconut) (including seeds) (Coconut seed without husks or without milk may be imported into the United States in accordance with § 319.56 of this Part).	All except from Jamaica if meeting the conditions for importation in § 319.37–5(f).	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cocos supp. (other than *Cocos nucifera*)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Conifers	All except Canada	A diversity of diseases including but not limited to: *Guignardia laricina* (Sawada) Yamamoto & K. Ito (Shoot blight of larch); *Chrysomyxa deformans* (Diet.) Jacz. (Spruce needle rust); *Cronartium flaccidum* (Alb. & Schw.) (Scotch pine blister rust); *Chrysomyxa abietis* (Wallr.) Ung. (Rust); *Phacidiopycnis pseudotsuga* (M. Wils.) Hahn (Douglas fir canker); *Stigmina deflectans* (Karst.) Ellis (Needlecast disease); *Chrysomyxa ledi* (Alb. & Schw.) d By var. *rhododendri* (DC) Savile. (Rhododendron-spruce needle rust).
Corypha spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Cydonia spp. (quince) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1, 2, 18, 19, 20, 21, and 23 listed in § 319.37–5(b)(2).
Datura spp	Colombia	Datura Colombian virus.
Dictyosperma spp. (Princesspalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Elaeis spp. (oil palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Erianthus spp. (plumegrass)	All	*Puccinia melanocephala* H. Syd. & P. Syd. (Sugarcane rust).
Eucalyptus spp	Argentina	Leaf chlorosis virus.
Euonymus spp. (euonymus)	Federal Republic of Germany (West) and German Democratic Republic (East).	Euonymnus mosaic virus.
Fragaria spp. (strawberry)	Australia, Austria, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.	*Phytophthora fragariae* Hickman (Red stele disease).
Fraxinus spp. (ash)	Europe	*Pseudomonas savastanoi* var. *fraxini* (Brown) Dowson (Canker and dwarfing disease of ash).
Gaussia spp. (Ilumepalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Gladiolus spp. (gladiolus)	Africa	*Puccinia mccleanii* Doidge (Rust); *Uredo gladioli-buettneri* Bub. (Rust); *Uromyces gladioli* P. Henn. (Rust); *U. nyikensis* Syd. (Rust).
	Africa, Italy, Malta, and Portugal	*U. transversalis* (Thuem.) Wint. (Rust).
Gossypium spp	All	A diversity of diseases including but not limited to: cotton leaf curl virus; cotton virescence agent; small leaf virus.
Hibiscus spp. (hibiscus, rose mallow)	Trinidad and Tobago, and Nigeria	Okra mosaic virus.
	India	Okra yellow mosaic virus.
	Africa	Cotton leaf curl virus.
Howeia belmoreana (Sentry palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Hydrangea spp. (hydrangea)	Japan	*Aecidium hydrangeae-paniculatae* Dietel
Ipomoea spp. (sweetpotato)	All except Canada	A diversity of diseases including but not limited to: sweetpotato witches broom (little leaf); and sweetpotato viruses of eastern Africa.
Jasminum spp. (jasmine)	Belgium, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).	Jasmine-variegation virus.
Latania spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Lens spp. seed (lentil)	South America	*Uromyces viciae-fabae* (Pers.) Schroet. (Rust).
Ligustrum spp. (privet)	Federal Republic of Germany (West) and German Democratic Republic (East).	Ligustrum mosaic virus.
Livistona spp. (fan palm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Mahoberberis spp. (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. destined to an eradication state listed in § 301.38–2(a) of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with §301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahoberberis spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) (plants of all species and horticultural varieties not designated as resistant to black stem rust in accordance with §301.38–1 of this chapter.	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. (mahonia) destined to an eradication state listed in § 301.38–2(a) in this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All	*Puccinia graminis* Pers. (Black stem rust).
Mahonia spp. seed	All	*Puccinia graminis* Pers. (Black stem rust).
Malus spp. (apple, crabapple) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1, 2, 3, 6, 7, 8, and 23 listed in § 319.37–5(b)(2).
	Japan	*Valsa mali* Miyabe and Yamada ex. M. Miura (Branch canker fungus).
Mangifera spp. (mango) seed	All except North and South America	*Cryptorhynchus mangiferae* F. (Mango weevil).
Manihot spp. (cassava)	All except Canada	A diversity of diseases, insects, and other pests including but not limited to: *Mononychellus tanajoa* (Bondar) (cassava mite); *Phenococcus manihotis* Matile-Ferrero (cassava mealybug); *Xanthomonas manihotis* (Arthand-Berthet) Starr (Bacterial blight); Cassava brown streak virus; Cassava latent virus; Cassava African mosaic virus; Cassava common mosaic virus.
Mascarena spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Morus spp. (mulberry)	People's Republic of China, Japan, India, and Union of Soviet Socialist Republics.	A diversity of diseases including but not limited to: Mulberry dwarf; Mulberry curly little leaf agent; Mulberry mosaic agent.
Nannorrhops spp. (mazaripalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.

Prohibited article (except seeds unless specifically mentioned)	Foreign country(ies) or locality(ies) from which prohibited	Tree, plant, or fruit disease, or injurious insect, or other plant pest determined as existing in the places named and capable of being transported with the prohibited article
Oryza spp. (rice) (seeds are prohibited by § 319.55)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melanomma glumarum* Miy.; *Cospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.
Persea spp. (avocado) seed	Mexico, Central and South America	*Heilipus lauri* Boh. (Avocado weevil); *Stenoma catenifer* Wals. (Avocado seed moth); *Conotrachelus* spp.
Philadelphus spp. (mock orange)	Europe	Elm mottle virus.
Phoenix spp. (date)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Populus spp. (aspen, cottonwood, poplar)	Europe	*Aplanobacter populi* Ride (Canker).
Pritchardia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1 and 9 through 17 listed in § 319.37–5(b)(2).
Pyrus spp. (pear) not meeting the conditions for importation in § 319.37–5(b).	All	A diversity of diseases including but not limited to items 1 through 5, 21, and 23 listed in § 319.37–5(b)(2).
Quercus spp. (oak)	Japan	*Stereum hiugense* Imazeki (White rot); a gall-forming rust.
Ribes nigrum (black currant)	Australia, Province of British Columbia in Canada, Europe, and New Zealand.	Black currant reversion agent.
Rosa spp. (rose)	Australia, Italy, New Zealand, and Republic of South Africa.	Rose wilt virus.
Salix spp. (willow)	Great Britain, The Netherlands, Federal Republic of Germany (West), and German Democratic Republic (East).	*Erwinia salicis* (Day) Chester (Watermark disease).
Seeds of all kinds when in pulp	All except Canada	Fruit flies, or other injurious insects.
Solanum spp. (potato) (including seeds)	All	Andean potato latent virus, Andean potato mottle virus; Potato mop top virus; Dulcamara mottle virus; Tomato blackring virus; Tobacco rattle virus; Potato virus Y (tobacco veinal necrosis strain); Potato purple top wilt agent; Potato marginal flavescence agent; Potato purple top roll agent; Potato witches broom agent; Stolbar agent; Parastolbar agent; Potato leaflet stunt agent; Potato spindle tuber viroid.
Sorbus spp. (mountain ash)	Federal Republic of Germany (West) and German Democratic Republic (East).	Mountain ash variegation virus.
	People's Republic of China, Japan, Philippine Islands, Oceania, Australia, and New Zealand.	*Taphrina piri* Kusano (Leaf distortion fungus).
Syringa spp. (lilac)	Europe	Elm mottle virus.
Trachycarpus spp. (windmillpalm)	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Ulmus spp. (elm) (including seeds)	Europe	Elm mottle virus.
Veitchia spp	All	A diversity of diseases including but not limited to: Lethal yellowing disease; Cadang-cadang disease.
Vitis spp. (grape)	All except Canada	A diversity of diseases including but not limited to: Arabis mosaic virus; Flavescence-doree agent; Raspberry ringspot virus; Hungarian chrome mosaic virus; Strawberry latent ringspot virus; *Xanthomonas ampelina* Panagopoulos (Bacterial blight); Grapevine fanleaf virus and its strains; Grapevine leaf roll virus and its strains; Tomato black ring virus; Artichoke Italian latent virus; Grapevine vein necrosis virus.
Zizania spp. (wild rice)	All	A diversity of diseases including but not limited to: Rice dwarf virus; Rice stripe virus; Rice yellow dwarf agent; Rice Black-streaked dwarf virus; Rice tungro virus; Rice transitory yellowing virus; Rice orange leaf agent; Rice grassy stunt agent; Rice ragged stunt virus; Rice yellow mottle virus; *Melannoma glumarum* Miy.; *Cospora oryzetorum* Sacc.; *Rhynchosporium oryzae* Hashioka & Yokogi; *Xanthomonas oryzae* (Uyeda & Ishiyama) Dowson.

Note.—The States listed below prohit the entry into such States of articles (except seeds, unless specifically mentioned) of the genera listed for each State:

California: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.; *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Pinus* spp. (pine).
Idaho: *Pinus* spp. (pine).
Massachusetts: *Ribes* spp. (currant, gooseberry) (including seeds).
Montana: *Pinus* spp. (pine).
Nevada: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp.
New York: *Ribes* spp. (currant, gooseberry) (including seeds).
Oregon: *Planera* spp. (water elm, planer); *Ulmus* spp. (elm); *Zelkova* spp. *Castanea* spp. (chestnut); *Castanopsis* spp. (chinquapin); *Corylus* spp. (filbert, hazel, hazelnut, cobnut); *Pinus* spp. (pine).
Utah: *Pinus* spp. (pine).
Washington: *Corylus* spp. (filbert, hazel, hazelnut, cobnut).
West Virginia: *Ribes* spp. (currant, gooseberry) (including seeds).
Wisconsin: *Pinus* spp. (pine) (5-leaved); *Ribes* spp. (currant, gooseberry) (including seeds).

(b) The following listed "articles" are prohibited from all foreign countries and localities except Canada:

(1) *Rhododendron* spp. (rhododendron and azalea) or other genera or species of similar slow growth habit, other than artificially dwarfed trees or shrubs—

(i) Exceeding 3 years of age if grown from seeds or cuttings; or

(ii) Exceeding 2 years of age after severance from the parent plant if produced by layers; or

(iii) Having more than 3 years' growth from the bud or graft if produced by budding or grafting.

(2) Any naturally dwarf or miniature form of tree or shrub exceeding 12 inches (approximately 305 millimeters) in height from the soil line.

(3) Herbaceous perennials imported in the form of root crowns or clumps exceeding 102 millimeters (approximately 4 inches) in diameter.

(4) Stem cuttings (without leaves, roots, sprouts, or branches) exceeding 102 millimeters (approximately 4 inches) in diameter or exceeding 1.83 meters (approximately 6 feet) in length.

(5) Cacti cuttings (without roots or branches) exceeding 153 millimeters

(approximately 6 inches) in diameter or exceeding 1.22 meters (approximately 4 feet) in length.

(6) Plants (other than stem cuttings, cacti cuttings, and artificially dwarfed plants) exceeding 305 millimeters (approximately 12 inches) in height from soil line to terminal growing point and whose growth habits simulate the woody character of trees and shrubs, including but not limited to cacti, cycads, yuccas, and dracaenas.

(7) Any tree or shrub or a type not listed above, other than an artificially dwarf tree or shrub, and—

(i) Exceeding 2 years of age if grown from seeds or cuttings; or

(ii) Exceeding 1 year of age after severance from the parent plant if produced by layers; or

(iii) Having more than 2 years' growth from the bud or graft if produced by budding or grafting.

(c) Any article listed as a prohibited article in paragraphs (a) or (b) of this section may be imported or offered for entry into the United States if:

(1) Imported by the United States Department of Agriculture for experimental or scientific purposes; and

(2) Imported under conditions found by the Deputy Administrator and specified on the permit to be adequate to prevent the introduction into the United States of tree, plant, or fruit diseases, or injurious insects, or other plant pests, i.e., conditions of treatment, processing, growing, shipment, disposal.

§ 319.37-3 Permits.

(a) The restricted articles (other than articles for food, analytical, medicinal, or manufacturing purposes) in any of the following categories may be imported or offered for importation into the United States only after issuance of a written permit by the Plant Protection and Quarantine Programs:

(1) Articles subject to treatment and other requirements of § 319.37-6;

(2) Articles subject to the postentry quarantine conditions of § 319.37-7;

(3) Bulbs of *Allium sativum L.* (garlic);

(4) Articles of *Cocos nucifera* (coconut); and articles (except seeds) of *Chrysanthemum* spp. (chrysanthemum) and *Dianthus* spp. (carnation, sweet William) from any country or locality except Canada;

(5) Lots of 13 or more articles (other than seeds, bulbs, sterile cultures of orchid plants) from any country or locality except Canada;

(6) Seeds of trees or shrubs from any country or locality except Canada;

(7) Articles (except seeds) of *Fragaria* spp. (strawberry), *Malus* spp. (apple, crabapple), *Pyrus* spp. (pear), *Prunus* spp.(almond, apricot, cherry, nectarine, peach, plum, prune), *Cydonia* spp. (quince), *Chaenomeles* spp. (flowering quince), and *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry), from Canada;

(8) Woody plants, shrubs, and trees (except seeds) grown out-of-doors in Prince Edward Island, Nova Scotia, the counties of Albert and Westmoreland in New Brunswick, the city of Richmond on Lulu Island in British Columbia, and Vancouver Island in British Columbia;

(9) Articles (except seeds) of *Castanea* spp. (chestnut) or *Castanopsis* spp. (chinquapin) destined to California or Oregon;

(10) Articles (except seeds) of *Pinus* spp. (pine), (5-leaved) destined to Wisconsin;

(11) Articles of *Ribes* spp. (currant, gooseberry), (including seeds) destined to Massachusetts, New York, West Virginia, or Wisconsin;

(12) Articles (except seeds) of *Planera* spp. (water elm, planer) or *Zelkova* spp. from Europe, Canada, St. Pierre, or Miquelon and destined to California, Nevada, or Oregon;

(13) Seeds of *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune) from Canada and destined to Colorado, Michigan, New York, Washington, or West Virginia;

(14) Articles (except seeds) of *Vitis* spp. (grape) from Canada and destined to California, New York, Ohio, Oregon, and Washington;

(15) Articles (except seeds) of *Corylus* spp. (filbert, hazel, hazelnut, cobnut) from provinces east of Manitoba in Canada and destined to Oregon or Washington;

(16) Articles (except seeds) of *Pinus* spp. (pine) from Canada and destined to California, Idaho, Montana, Oregon, or Utah; and

(17) Articles (except seeds) of *Ulmus* spp. (elm) from Canada and destined to California, Nevada, or Oregon.

(b) Any restricted article not designated in paragraph (a) of this section may be imported or offered for importation into the United States only after issuance of an oral permit for importation issued by an inspector at the port of entry.

(c) An application for a written permit should be submitted to the Plant Protection and Quarantine Programs (Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782) at least 30 days prior to arrival of the article at the port of entry. The completed application shall include the following information:[3]

(1) Name, address, and telephone number of the importer;

(2) Approximate quantity and kinds (botanical designations) of articles intended to be imported;

(3) Country(ies) or locality(ies) where grown;

(4) Intended United States port of entry;

(5) Means of transportation, e.g., mail, airmail, express, air express, freight, airfreight, or baggage; and

(6) Expected date of arrival.

(d) After receipt and review of the application by Plant Protection and Quarantine Programs, a written permit indicating the applicable conditions for importation under this subpart shall be issued for the importation of articles described in the application if such articles under the conditions specified in the application appear to be eligible to be imported into the United States. Even though a written permit has been issued for the importation of an article, such article may be imported only if all applicable requirements of this Subpart are met and only if an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[4]

(e) An oral permit for importation of an article shall be issued at a port of entry by an inspector only if all applicable requirements of this Subpart are met, such article is eligible to be imported under an oral permit, and an inspector at the port of entry determines that no emergency measures pursuant to section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) are necessary with respect to such article.[4]

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[3] Application forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, Hyattsville, MD 20782, or local offices which are listed in telephone directories.

[4] Section 105 of the Federal Plant Pest Act (7 U.S.C. 150ee) provides, among other things, that the Secretary of Agriculture may, whenever he deems it necessary as an emergency measure in order to prevent the dissemination of any plant pest new to or not theretofore known to be widely prevalent or distributed within and throughout the United States, seize, quarantine, treat, apply other remedial measures to, destroy, or dispose of, in such manner as he deems appropriate, subject to provisions in section 105(b) and (c) of the Act (7 U.S.C. 150ee) (b) and (c), any product or article, including any articles subject to this Subpart, which is moving into or through the United States, and which he has reason to believe was infested or infected by or contains any plant pest at the time of such movement. Section 10 of the Plant Quarantine Act (7 U.S.C. 164a) and sections 105 and 107 of the Federal Plant Act (7 U.S.C. 150dd, 150ff) also authorizes emergency measures against prohibited and restricted articles which are not in compliance with the provisions of this subpart.

(f) Any permit which has been issued may be withdrawn by an inspector or the Deputy Administrator if he determines that the holder thereof has not complied with any condition for the use of the document. The reasons for the withdrawal shall be confirmed in writing as promptly as circumstances permit. Any person whose permit has been withdrawn may appeal the decision in writing to the Deputy Administrator within ten (10) days after receiving the written notification of the withdrawal. The appeal shall state all of the facts and reasons upon which the person relies to show that the permit was wrongfully withdrawn. The Deputy Administrator shall grant or deny the appeal, in writing, stating the reasons for his decision as promptly as circumstances permit. If there is a conflict as to any material fact, a hearing shall be held to resolve such conflict.

§ 319.37-4 Inspection and phytosanitary certificates of inspection.

(a) Any restricted article grown in a country maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be accompanied by a phytosanitary certificate of inspection from the plant protection service of such country at the time of importation or offer for importation into the United States.

(b) Any restricted article accompanied by a valid phytosanitary certificate of inspection is subject to inspection by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of injurious plant diseases, injurious insect pests, and other plant pests, and whether such article is otherwise eligible to be imported into the United States.

(c) Any restricted article grown in a country not maintaining an official system of inspection for the purpose of determining whether such article is free from injurious plant diseases, injurious insect pests, and other plant pests shall be inspected by an inspector at the time of importation into the United States for the purpose of determining whether such article is free of such diseases and pests and whether such article is otherwise eligible to be imported into the United States.

§ 319.37-5 Special foreign inspection and certification requirements.

(a) Any restricted article (except seeds; unrooted cuttings; and articles solely for food, analytical, or manufacturing purposes) from a country listed below, at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown on land which has been sampled and microscopically inspected by the plant protection service of the country in which grown within 12 months preceding issuance of the certificate and found free from potato cyst nematodes, *Globodera rostochiensis* (Woll.) Mulvey and Stone and *G. pallida* (Stone) Mulvey and Stone: Algeria, Argentina, Austria, Azores, Belgium, Bolivia, Canada (only that portion comprising Newfoundland, and the Land District of South Saanich on Vancouver Island in British Colombia), Channel Islands, Chile, Columbia, Czechoslovakia, Denmark (including Faeroe Islands), Ecuador, Federal Republic of Germany (West), Finland, France, German Democratic Republic (East), Great Britain, Greece, Guernsey, Iceland, India, Ireland, Israel, Italy, Japan, Jersey, Lebanon, Luxembourg, Mexico, The Netherlands, New Zealand, Northern Ireland, Norway, Panama, Peru, Poland, Portugal, South Africa, Spain (including Canary Islands), Sweden, Switzerland, Union of Soviet Socialist Republics, Venezuela, and Yugoslavia.

(b)(1) Any article (except seeds) of *Chaenomeles* spp. (flowering quince); *Cydonia* spp. (quince); *Malus* spp. (apple, crabapple); *Prunus* spp. (almond, apricot, cherry, nectarine, peach, plum, prune); and *Pyrus* spp. (pear), at the time of importation or offer for importation into the United States, shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was grown in a nursery in Belgium, Canada, France, Federal Republic of Germany (West), The Netherlands, or Great Britain, and found by the plant protection service of the country in which grown to be free of injurious plant diseases (i.e., for *Chaenomeles* items 1 and 21 listed in paragraph (b)(2) of this section, for *Cydonia* items 1, 18, 19, 20, and 21 listed in paragraph (b)(2) of this section; for *Malus* items 1, 3, 6, 7, 8, and 23 listed in paragraph (b)(2) of this section; for *Prunus* items 1 and 9 through 17 listed in paragraph (b)(2) of this section; for *Pyrus* items 1, 3, 4, 5, 21, and 23 listed in paragraph (b)(2) of this section) based on the testing of parent stock by visual examination and indexing, and that such article was grown in a nursery free of any such specified plant diseases.[5]

(2) List of diseases.

(i) *Monilinia fructigena* (Aderh. & Ruhl.) Honey (Brown rot of fruit).

(ii) *Guignardia piricola* (Nose) Yamomoto (Leaf, branch & fruit disease).

(iii) Apple proliferation agent.

(iv) Pear blister canker virus.

(v) Pear bud drop virus.

(vi) *Diaporthe mali* Bres. (Leaf, branch & fruit fungus).

(vii) Apple green crinkle virus.

(viii) Apple chat fruit virus.

(ix) Plum pox (=Sharka) virus.

(x) Cherry leaf roll virus.

(xi) Cherry rusty mottle (European) agent.

(xii) Apricot chlorotic leaf roll.

(xiii) Plum bark split virus.

(xiv) Arabis mosaic virus and its strains.

(xv) Raspberry ringspot virus and its strains.

(xvi) Tomato blackring virus and its strains.

(xvii) Strawberry latent ringspot virus and its strains.

(xviii) Quince sooty ringspot agent.

(xix) Quince yellow blotch agent.

(xx) Quince stunt agent.

(xxi) *Gymnosporangium asiaticum* Miyabe ex. Yamada (Rust).

(xxii) *Valsa mali* Miyabe and Yamada ex. Miura (Branch canker fungus).

(xxiii) Apple ringspot virus.

(c) Any article (except seeds) of *Chrysanthemum* spp. (chrysanthemum) from Great Britain shall at the time of importation or offer for importation into the United States be accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of white rust disease (caused by the rust fungus, *Puccinia horiana* P. Henn.)

[5] In all of the listed countries, indexing of parent stock for species of *Prunus* not immune to plum pox (i.e., other than *Prunus avium, P. cerasus, P. mahaleb, P. padus, P. serotina, P. serrula, P. serrulata, P. subhirtella, P. laurocerasus, P. virginiana, P. effusa, P. sargentii, P. yedoensis)* is currently done only at government operated nurseries (research stations). In France all indexing of parent stock for all *Chaenomeles* spp., *Cydonia* spp., *Malus* spp., *Prunus* spp., and *Pyrus* spp. is currently done only at government operated nurseries (research stations).

based on visual examination of parent stock and that such article was grown in a greenhouse nursery free of such plant disease.

(d) Any article (except seeds) of *Dianthus* spp. (carnation, sweet William) from Great Britain shall be grown under postentry quarantine conditions specified in § 319.37–7(c) unless at the time of importation or offer for entry into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was grown in a greenhouse nursery in Great Britain and found by the plant protection service of Great Britain to be free of injurious plant diseases caused by *Phialophora cinerescens* (Wr.) U. Beyma (*Verticillium cinerescens* Wr.) and carnation etched ring, "streak" and "fleck" viruses, based on visual examination and indexing of the parent stock and that such article was grown in a greenhouse nursery free of such plant diseases.

(e) Any article (except seeds) of *Rubus* spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry) from Ontario, Canada, shall be grown under postentry quarantine conditions specified in § 319.37–7(b) unless at the time of importation or offer for importation into the United States the phytosanitary certificate of inspection accompanying such article contains an accurate additional declaration that such article was found by the plant protection service of Canada to be free of rubus stunt virus based on visual examination and indexing of the parent stock.[6]

(f) Any article of *Cocos nucifera* (coconut) at the time of importation or offer for importation into the United States shall be accompanied by a phytosanitary certificate of inspection which shall contain an accurate additional declaration that such article was found by the plant protection service of Jamaica to be of Malayan dwarf variety (which is resistant to lethal yellowing disease) based on the visual examination of the parent stock.

§ 319.37–6 Specific treatment and other requirements.

(a) Seeds of *Hibiscus* spp. (hibiscus, rosemallow) and seeds of *Abelmoschus* spp. (okra), from any foreign country or locality, at the time of importation into the United States, shall be treated for possible infestation with *Pectinophora gossypiella* (pink bollworm) in accordance with the applicable provisions of the Plant Protection and Quarantine Treatment Manual.[7]

(b) Seeds of *Lathyrus* spp. (sweet pea, peavine); *Lens* spp. (lentil); and *Vicia* spp. (fava bean, vetch) from countries and localities other than those in North America and Central America, at the time of importation into the United States, shall be treated for possible infestation with insects of the family Bruchidae in accordance with the applicable provisions of the PPQ Treatment Manual.[7]

(c) Because of possible infestation with *Aleurocanthus woglumi* Ashby (citrus blackfly), any restricted article (other than seeds) of genera and species listed below from any country or locality (other than Canada, Europe, or any other country or locality bordering on the Mediterranean Sea) shall be (1) defoliated before arrival at a port of entry in the United States; or (2) treated in accordance with the applicable provisions of the PPQ Treatment Manual, at the time of importation into the United States.

Achras (see Manilkara)
Anacardium (cashew, maranon)
Annona (cherimoya, soursop, custard apple, sweetsop)
Ardisia
Bouvardia
Bumelia
Bursera
Buxus (boxwood)
Capsicum (pepper)
Cardiospermum (heartseed)
Cedrela
Cestrum
Cnidoscolus (tread-softly)
Coffea (coffee)
Crataegus (hawthorne)
Cydonia (quince)
Diospyros (persimmon)
Duranta (skyflower)
Eugenia (malay apple, Surinam Cherry)
Fraxinus (ash)
Hibiscus (hibiscus, rosemallow)
Hura (sandbox tree)
Ixora (ixora)
Jatropha (nettlespurge)
Lagerstroemia (crepe myrtle)
Magnolia (magnolia)
Mammea (mamey apple)
Mangifera (mango)
manilkara (Achras)(sapodilla)
Melia (chinaberry)
Myroxylon (balm tree)
Myrtus (myrtle)
Persea (avocado)
Plumeria (plumeria)
Populus (poplar, cottonwood, aspen)
Pouteria (Calocarpum)(sapote, mamey sapote)
Psidium (guava)
Punica (pomegranate)
Pyrus (pear)
Sapindus (soapberry)
Solandra (chalicevine)
Spondias (mombin, jobo plum, hog plum)
Strelitzia (bird of paradise)
Tabebuia (trumpet tree)
Vitis (grape)
Zingiber (ginger)

(d) Seeds of alfalfa and related plants (i.e., *Medicago falcata, M. gaetula, M. glutinosa, M. media, M. sativa)* from Europe, at the time of importation into the United States shall be treated for possible infection with *Verticillium alboatrum* by dusting with Arasan 50 (50 percent Thiram) at a rate of 8 ounces (approximately 226.8 grams) per 100 pounds (approximately 45.36 kilograms) of seeds, or by treating with a slurry of Arasan 50 Red at a rate of 8 ounces (approximately 226.8 grams) per pint (approximately 473.12 cubic centimeters) of water per 100 pounds (approximately 45.36 kilograms) of seeds.

(e) Seeds of *Glycine* spp. (soybean); *Dolichos* spp. (lablab); *Pachyrhizus* spp. (yam bean root, jicama); *Phaseolus* spp. (bean), *Pueraria* spp. (Chinese yam, kudzu bean, kudzu vine); and *Vigna* spp. (cowpea, catjang, asparagus bean, black-eyed pea, moth bean, azuki bean) from Africa, Australia, Burma, Cambodia, China, Costa Rica, India, Indonesia, Japan, Korea, Laos, Malaysia, Nepal, New Caledonia, Papua New Guinea, Philippines, Sri Lanka (Ceylon), Taiwan, Thailand, Union of Soviet Socialist Republics, Venezuela, Vietnam, or the West Indies, at the time of importation into the United States shall be treated for possible infection with *Phakopsora pachyrhizi* Syd. (soybean rust) by dusting with Patterson's Multipurpose Fungicide (a Zineb-Captan formulation) at the rate of 1.05 ounces (approximately 29.77 grams) actual Zineb per bushel (approximately 35.24 liters) or by treating with a slurry of Patterson's Multipurpose Fungicide at the rate of 0.74 ounces (approximately 20.98 grams) actual Zineb per bushel (approximately 35.24 liters) of seeds.

§ 319.37–7 Postentry quarantine.

(a) The following restricted articles from the designated countries and localities (1) may be imported or offered for importation into the United States only after a completed postentry quarantine agreement, as provided in paragraph (c) of this section, has been submitted to the Plant Protection and Quarantine Programs and (2) shall be grown under postentry quarantine conditions specified in paragraph (c) of this section:

[6] Such testing is done under the Raspberry Plant Certification Program of Ontario, Canada.

[7] The PPQ Treatment Manual was incorporated by reference on June 15, 1978, and is available upon request to the Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, and is on file at the Federal Register.

Restricted article (excluding seeds)	Foreign country(ies) or locality(ies) from which imported
Acacia spp. (acacia)	All except Canada, Australia, and Oceania.
Acer spp. (maple)	All except Bulgaria, Canada, Great Britain, France, Federal Republic of Germany (West), German Democratic Republic (East), and Japan.
Actinidia spp. (chinese gooseberry, kiwi)	All except Canada, Australia, Japan, New Zealand, and Taiwan.
Aesculus spp. (horse chestnut)	All except Canada, Czechoslovakia, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
Althaea spp. (althaea, hollyhock)	All except Canada, India, and Africa.
Anemone spp. (anemone, windflower)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Berberis spp. (barberry) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Bromeliads spp. (bromeliads) destined to Hawaii	All.
Chaenomeles spp. (flowering quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Chrysanthemum spp. (chrysanthemum)	All except Argentina, Brazil, Canada, Europe, Hong Kong, Japan, Korea, Malaysia, New Zealand, People's Republic of China and Republic of South Africa.
Crataegus monogyna Jacq. (hawthorne, thorneapple, red haw)	Europe.
Cydonia spp. (quince) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Datura	All except Canada, Colombia and India.
Dianthus spp. (carnation, sweet William)	Great Britain, unless exempted from postentry quarantine conditions pursuant to § 319.37–5(d), and all other countries and localities except Canada.
Eucalyptus spp. (eucalyptus)	All except Canada, Argentina, Sri Lanka (Ceylon), Uruguay, and Europe.
Euonymus spp. (euonymus)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Fragaria spp. (strawberry)	All except Australia, Austria, Canada, Czechoslovakia, France, Great Britain, Italy, Japan, Lebanon, The Netherlands, New Zealand, Northern Ireland, Republic of Ireland, Switzerland, and Union of Soviet Socialist Republics.
Fraxinus spp. (ash)	All except Canada and Europe.
Fruit and nut articles listed by common name in paragraph (b) of this section.	All except Canada.
Gladiolus spp. (gladiolus)	All except Canada, Africa, Italy, Malta, and Portugal.
Hibiscus spp. (hibiscus, rosemallow)	All except Canada, Trinidad and Tobago, India, and Africa.
Humulus spp. (hops)	All.
Hydrangea spp. (hydrangea)	All except Canada and Japan.
Jasminum spp. (jasmine)	All except Belgium, Canada, Great Britain, Federal Republic of Germany (West), and German Democratic Republic (East).
Ligustrum spp. (privet)	All except Canada, Federal Republic of Germany (West), and German Democratic Republic (East).
Mahoberberis spp. destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Mahonia spp. (mahonia) destined to any State except the eradication States listed in § 301.38–2a of this chapter (plants of all species and horticultural varieties designated as resistant to black stem rust in accordance with § 301.38–1 of this chapter).	All.
Malus spp. (apple, crabapple) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Mespilus germanica L.	Countries listed in § 319.37–5(b) except Canada.
Morus spp. (mulberry)	All except Canada, People's Republic of China, Japan, India, and Union of Soviet Socialist Republic.
Nut and fruit articles (see fruit and nut articles)	
Passiflora spp. (passion fruit)	All except Canada.
Philadelphus spp. (mock orange)	All except Canada and Europe.
Populus spp. (aspen, cottonwood, poplar)	All except Canada and Europe.
Prunus spp. (almond, apricot, cherry, nectarine, peach, plum, prune) meeting the conditions for importation in § 319.37–5(b).	Countries listed in § 319.37–5(b) except Canada.
Pyrus spp. (pear) meeting the conditions for importation in § 319.37–5(b)	Countries listed in § 319.37–5(b) except Canada.
Quercus spp. (oak)	All except Canada and Japan.
Ribes nigrum spp. (black currant)	All except Australia, Canada, Europe, and New Zealand.
Rosa spp. (rose)	All except Australia, Canada, Italy, New Zealand, and Republic of South Africa.
Rubus spp. (cloudberry, blackberry, boysenberry, dewberry, loganberry, raspberry).	All unless exempted from postentry quarantine conditions pursuant to § 319.37–5(e).
Salix spp. (willow)	Europe except Great Britain, The Netherlands, the Federal Republic of Germany (West), and German Democratic Republic (East).
Sorbus spp. (mountain ash)	All except Australia, Canada, Federal Republic of Germany (West), German Democratic Republic (East), Japan, New Zealand, People's Republic of China, Philippine Islands, and Oceania.
Syringa spp. (lilac)	All except Canada and Europe.
Ulmus spp. (elm)	All except Canada and Europe.

NOTE.—California requires trees, plants, and shrubs of *Prunus* spp (almond, apricot, cherry, nectarine, peach, plum, prune) and plants of *Fragaria* spp. (strawberry) to be grown under postentry quarantine as a condition of entry into such State.

(b) *Fruit and Nut Articles* (common names are listed after scientific names).

Achras—(Synonym for *Manilkara*)
Annona—custard apple, cherimoya, sweetsop, sugarapple, soursop, bullock's heart, alligator apple, suncoya, ilama, guanabana, pond apple
Anacardium—cashew
Artocarpus—breadfruit, jackfruit
Averrhoa—carambola
Blighia—akee
Bouea—kundangan
Calocarpum—sapote
Carica—papaya, pawpaw
Carissa—natal plum
Carya—hickory, pecan
Castanea—chestnut
Ceratonia—St. Johnsbread
Chrysobalanus—coco plum
Chrysophyllum—starapple
Coccoloba—sea-grape, pigeon plum
Corylus—filbert, hazel, hazelnut, cobnut
Crataegus—hawthorne
Diospyros—persimmon, kaki, mabola
Durio—durian
Eriobotrya—loquat, Japanese medlar, Japanese plum
Euphoria—longan
Eugenia—roseapple, Malayapple, Curacaoapple
Feijoa—feijoa, pineapple guava
Ficus—fig
Garcinia—mangosteen, gourka
Juglans—walnut, butternut, heartnut, regranut, buartnut
Lansium—langsat
Litchi—lychee, leechee
Macadamia—macadamia nut, queensland nut
Malpighia—Barbados cherry
Mammea—mammeapple, mamey
Mangifera—mango
Manilkara—sapodilla

Melicoccus—honeyberry, mamoncilla, spanish lime, genip
Nephelium—rambutan, pulasan
Olea—olive
Persea—avocado, alligator pear
Phoenix—date
Phyllanthus—otaheite-gooseberry
Pistacia—pistachio
Pouteria—Lucuma
Psidium—guava, guayala
Punica—pomegranate, granada
Pyronia—quinpear
Rhodomyrtus—hill gooseberry, rose myrtle
Ribes (other than *Ribes nigrum*)—red currant, white currant, gooseberry
Spondias—yellow mombin, red mombin, hog plum
Syzygium—Malayapple, rose apple, java plum
Theobroma—cacao
Vaccinium—blueberry, cranberry
Ziziphus—jujube

(c) Any restricted article required to be grown under postentry quarantine conditions shall be grown under the supervision and control of a person who has signed a postentry quarantine agreement to comply with the following conditions for the period of time specified below:

(1) To grow such article or increase therefrom only on specified premises;

(2) To permit an inspector to have access to the specified premises for inspection of such article during regular business hours;

(3) To keep the article and any increase therefrom identified with a label showing the name of the article, port accession number, and date of importation;

(4) To keep the article separated from any domestic plant or plant product of the same genus by no less than 3 meters (approximately 10 feet); and from other imported plant or plant products by the same distance;

(5) To allow or apply remedial measures (including destruction) determined by an inspector to be necessary to prevent the spread of an injurious plant disease, injurious insect pest, or othr plant pest; and

(6) To notify Plant Protection and Quarantine Programs if any abnormality of the article is found or if the article dies. The above conditions apply to any such article for a period of 2 years after importation, except that they apply to an article of *Dianthus* spp. (carnation, sweet William) for 1 year after importation and to an article of *Chrysanthemum* spp. (chrysanthemum) for 6 months after importation.

(d) A completed postentry quarantine agreement shall accompany the application for a written permit for an article required to be grown under postentry quarantine conditions.[8]

§ 319.37-8 Growing media.

(a) Any restricted article at the time of importation or offer for importation into the United States shall be free of sand, soil, earth, and other growing media, except as provided in paragraphs (b), (c), or (d) of this section.

(b) A restricted article from Canada other than from Newfoundland or from the Land District of South Saanich on Vancouver Island in British Columbia may be imported in any growing medium.

(c) A restricted article growing solely in agar may be imported in such growing medium.

(d) A restricted article which is a herbaceous plant or shrub may be imported in peat, sphagnum moss, or vermiculite growing media, or in synthetic growing media or synthetic horticultural foams, i.e., plastic particles, glass wool, organic and inorganic fibers, polyurethane, polystyrene, polyethylene, phenol formaldehyde, ureaformaldehyde.

(1) If accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of the country in which grown that the article was:

(i) Grown throughout its growing period only in a greenhouse with insect-proof screening on all vents and with automatic closing doors;

(ii) Grown in a greenhouse unit solely used for articles grown under all the criteria specified in this paragraph (d);

(iii) Grown in a greenhouse free of sand, soil, or earth;

(iv) Grown in a greenhouse where strict sanitary procedures are always practices, i.e., cleaning and disinfection of floors, benches and tools, the application of measures to protect against any injurious plant diseases, injurious insect pests, and other plant pests;

(v) Stored only in areas found by an official of the plant protection service of the country where grown to be free of injurious plant diseases, injurious insect pests, and other plant pests;

(vi) Shipped in containers found by such an official to be free of injurious plant diseases, injurious insect pests, and other plant pests; and

(vii) Inspected and found by such an official to have been grown, stored, packaged and shipped solely under conditions necessary to assure the absence of injurious plant diseases, injurious insect pests, and other plant pests; and

(2) If the accompanying phytosanitary certificate of inspection is endorsed by a PPQ inspector representing a finding that the conditions listed above are being met.

§ 319.37-9 Approved packing material.

Any restricted article at the time of importation or offer for importation into the United States shall not be packed in a packing material unless such packing material is free from sand, soil, or earth (except for sand, soil, or earth designated below); has not been used previously as packing material or otherwise; is not intermixed with other approved packing material; and is listed below:

Buckwheat hulls.
Coral sand from Bermuda, if the article packed in such sand is accompanied by a valid phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Bermuda that such sand was free from soil.
Excelsior.
Exfoliated vermiculite.
Ground cork.
Ground peat.
Ground rubber.
Paper.
Polymer stabilized cellulose.
Quarry gravel.
Sawdust.
Shavings—wood or cork.
Sphagnum moss.
Subsoil from Ryukyu Islands, Japan (only for lily bulbs accompanied by a phytosanitary certificate of inspection containing an accurate additional declaration from the plant protection service of Japan that such subsoil was dug from at least 2 feet below the soil surface, was sifted and dried, and was stored in isolation from injurious plant diseases, injurious insect pests, and other plant pests).
Vegetable fiber when free of pulp, including coconut fiber and Osmunda fiber, but excluding sugarcane fiber and cotton fiber.

§ 319.37-10 Marking and identity.

(a) Any restricted article for importation other than by mail, at the time of importation or offer for importation into the United States shall plainly and correctly bear on the outer container (if in a container) or the restricted article (if not in a container) the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article,

[8] Postentry quarantine agreement forms are available without charge from the Permit Unit, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service, Federal Building, Hyattsville, MD 20782, or local offices of the Plant Protection and Quarantine Programs which are listed in the telephone directories.

(4) Name and address of consignee,

(5) Identifying shipper's mark and number, and

(6) Number of written permit authorizing the importation if one was issued.

(b) Any restricted article for importation by mail shall be plainly and correctly addressed and mailed to the Plant Protection and Quarantine Programs at a port of entry listed in § 319.37–14, shall be accompanied by a separate sheet of paper within the package plainly and correctly bearing the name, address, and telephone number of the intended recipient, and shall plainly and correctly bear on the outer container the following information:

(1) General nature and quantity of the contents,

(2) Country and locality where grown,

(3) Name and address of shipper, owner, or person shipping or forwarding the article, and

(4) Number of written permit authorizing the importation, if one was issued.

(c) Any restricted article for importation (by mail or otherwise), at the time of importation or offer for importation into the United States shall be accompanied by an invoice or packing list indicating the contents of the shipment.

§ 319.37–11 Arrival notification.

Promptly upon arrival of any restricted article at a port of entry, the importer shall notify the Plant Protection and Quarantine Programs of the arrival by such means as a manifest, Customs entry document, commercial invoice, waybill, a broker's document, or a notice form provided for that purpose.

§ 319.37–12 Prohibited articles accompanying restricted articles.

A restricted article for importation into the United States shall not be packed in the same container as an article prohibited importation into the United States by this part or Part 321.

§ 319.37–13 Treatment and costs and charges for inspection and treatment.

The services of the inspector during regularly assigned hours of duty and at the usual places of duty shall be furnished without cost to the importer.[9] No charge will be made to the importer for Government owned or controlled special inspection facilities and equipment used in treatment, but the inspector may require the importer to furnish any special labor, chemicals, packing materials, or other supplies required in handling an importation under the regulations in this subpart. The Plant Protection and Quarantine Programs will not be responsible for any costs or charges, other than those indicated in this section. Any treatment performed in the United States on a restricted article shall be performed by an inspector or under an inspector's supervision at a government-operated special inspection facility, except that an importer may have such treatment performed at a nongovernmental facility if the treatment is performed at non-government expense under the supervision of an inspector and in accordance with any applicable treatment requirements of this subpart and in accordance with any treatment required by an inspector as an emergency measure in order to prevent the dissemination of any injurious plant disease, injurious insect pest, or other plant pest, new to or not theretofore known to be widely prevalent or distributed within and throughout the United States. However, treatment may be performed at a nongovernmental facility only in cases of unavailability of government facilities and only if, in the judgment of an inspector, such articles can be transported to such nongovernmental facility without the risk of introduction into the United States of injurious plant diseases, injurious insect pests, or other plant pests.

§ 319.37–14 Ports of entry.

(a) Any restricted article required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37–3 of this subpart, shall be imported or offered for importation only at a port of entry designated by an asterisk in paragraph (b) of this section; any other restricted article shall be imported or offered for importation at any port of entry listed in paragraph (b) of this section. Any restricted article from Canada and not required to be imported under a written permit pursuant to paragraphs (a)(1), (2), (3), (4), (5), (6), or (8) of § 319.37–3 of this subpart may be imported at any port of entry listed in paragraph (b) of this section, or at any Customs designated port of entry on the United States-Canada border (Customs designated ports of entry are listed in 19 CFR Part 101).

(b) List of ports of entry

Ports with special inspection and treatment facilities (plant inspection stations) are indicated by an asterisk (*).

Alabama

Mobile—Federal Building, Room 147, Corner St. Louis and St. Joseph Streets, P.O. Box 1413, Mobile, AL 36601.

Alaska

Anchorage—Annex P.O. Box 6191, International Airport, Anchorage, AK 99502.

Arizona

*Nogales—202 Border Inspection Station, 100 Terrace Avenue, Nogales, AZ 85621.

Phoenix—Sky Harbor Airport, 3300 Sky Harbor Boulevard, Phoenix, AZ 85034.

San Luis—U.S. Border Station, P.O. Box 37, San Luis, AZ 85349.

Tucson—Tucson International Airport, Tucson, AZ 85706.

California

Calexico—Federal Inspection Building, Room 223, 200 First Street, P.O. Box 686, Calexico, CA 92231.

*Los Angeles—9650 LaCienega Boulevard, Building D North, Inglewood, CA 90301.

(Airport)—World Way Center Post Office, International Arrivals Area, Satellite 2, P.O. Box 90429, Los Angeles International Airport, Los Angeles, CA 90009.

*San Diego—U.S. Border Station, P.O. Box 43L, San Ysidro, CA 92073.

(Airport)—San Diego International Airport, San Diego, CA 92103.

*San Francisco—San Francisco International Airport, P.O. Box 8026, Airport Station, San Francisco, CA 94128.

101 Agriculture Building, Embarcadero at Mission Street, P.O. Box 7673, San Francisco, CA 94119.

*San Pedro—(See Los Angeles).

Travis AFB—P.O. Box 1448, Travis Air Force Base, Fairfield, CA 94535.

Colorado

Denver—Suite 102, 7100 West 44th Avenue, Wheat Ridge, CO 80033.

Connecticut

Wallingford—Federal Building, Room 205, P.O. Box 631, Wallingford, CT 06492.

Delaware

Dover AFB—Building 500 (USDA), Dover Air Force Base, DE 19901.

Wilmington—Federal Building, Room 1218A, 844 King Street, Box 03, Wilmington, DE 19801

District of Columbia

Dulles—International Airport (See Virginia).

Florida

Jacksonville—Federal Office Building, Room 521, 400 West Bay Street, P.O. Box 35003, Jacksonville, FL 32206.

Key West—Federal Building, Room 226, 301 Simonton Street, P.O. Box 1486, Key West, FL 33040.

*Miami—Miami Inspection Station, 3500 NW. 62nd Avenue, P.O. Box 592136, Miami, FL 33159.

Room 100F, FAA Building, 20th and Perimiter Road, Miami International Airport, Box 592647 AMF, Miami, FL 33159.

[9] Provisions relating to costs for other services of an inspector are contained in Part 354.

Pensacola—Federal Building, Room 312B, P.O. Box 12561, Pensacola, FL 32573.
Mail: 100 North Palafax Street, Pensacola, FL 32502.
Cape Canaveral—Canaveral Port Authority Building, SE Room, Intersection Avenue B and Second Street, P.O. Box 158, Cape Canaveral, FL 32920.
Port Everglades—Amman Building, Room 305, 611 Eisenhower Boulevard, P.O. Box 13033, Fort Lauderdale, FL 33316.
Tampa—Barnett Bank Office Building, Suite 414, 1000 N. Ashley Drive, P.O. Box 266, Tampa, FL 33601.
West Palm Beach—149 East Port Road, P.O. Box 10611, Riviera Beach, FL 33404.
(Airport)—Palm Beach International Airport, Port of Entry Building, West Palm Beach, FL 33406.

Georgia

Atlanta—Hapeville Branch Post Office, Basement, 650 Central Avenue, P.O. Box 82369, Hapeville, GA 30354.
Savannah—U.S. Court House & Federal Building, 125–129 Bull Street, Room 223, P.O. Box 9268, Savannah, GA 31402.

Hawaii

Hilo—General Lyman Field, Hilo, HI 96720.
*Honolulu—3179 Koapaka Street, P.O. Box 29757, Honolulu, HI 96820.
(Airport)—Honolulu International Airport, International Arrivals Building, Honolulu, HI 96819.
Wailuku, Maui—Federal Post Office Building, Room 221, Wailuku, HI 96793.

Illinois

Chicago—U.S. Custom House, Room 800, 610 South Canal Street, Chicago, IL 60607.
(Airport)— O'Hare International Arrivals Building, P.O. Box 66192, Chicago, IL 60666.

Louisiana

*New Orleans—New Orleans International Airport, P.O. Box 20037, Airport Mailing Facility, New Orleans, LA 70141.
F. Edward Hebert Building, P.O. Box 2220, New Orleans, LA 70176.

Maine

Bangor (Airport)—International Arrivals Building, Bangor International Airport, P.O. Box 1053, Bangor, ME 04401.
Portland—U.S. Courthouse, 156 Federal Street, Room 301, Portland, ME 04101.

Maryland

Baltimore—Appraisers Stores Building, Room 506, 103 South Gay Street, Baltimore, MD 21202.
(Airport)—Foreign Arrivals Building, Baltimore Washington International Airport, Baltimore, MD 21240.
Beltsville—Plant Germplasm Quarantine Center (for USDA shipments only), Building 320, Beltsville Agricultural Research Center, East, Beltsville, MD 20705.

Massachusetts

Boston—408 Atlantic Avenue, Room 710, Boston, MA 02210.
(Airport)—Logan International Airport, East Boston, MA 02128.

Michigan

Detroit—Federal Building, Room 924, 231 West Lafayette Street, Detroit, MI 48226.
(Airport)—Michael Berry, International Arrivals Terminal, Detroit Metropolitan Wayne County Airport, Detroit, MI 48242.

Minnesota

Duluth—Board of Trade Building, Room 420, 301 West First Street, Duluth, MN 55802.
St. Paul—Minneapolis-St. Paul International Airport, P.O. Box 1690, St. Paul, MN 55111.

Missouri

Kansas City (Airport)—Kansas City International Airport, P.O. Box 20085, Kansas City, MO 64195.
St. Louis International Airport—P.O. Box 858, St. Charles, MO 63301.

New Jersey

*Hoboken—209 River Street, Hoboken, NJ 07030.
McGuire AFB—Building 1706, Passenger Terminal, Customs Area, P.O. Box 16073, McGuire Air Force Base, NJ 08641.

New York

Albany—80 Wolf Road, Suite 503, Albany, NY 12205.
Buffalo—Federal Building, Room 1113, 111 West Huron Street, Buffalo, NY 14202.
New York—26 Federal Plaza, Room 1747, New York, NY 10007.
*Jamaica—John F. Kennedy International Airport, Plant Inspection Station, Cargo Building 80, Jamaica, NY 11430.
International Arrivals Building, Room 2315, John F. Kennedy International Airport, Jamaica, NY 11430.
Rouses Point—St. John's Highway Border Station, Room 118, Route 9B, P.O. Box 278, Rouses Point, NY 12979.

North Carolina

Morehead City—North Carolina Maritime Building, Room 216, 113 Arendell, Port Authority Terminal, P.O. Box 272, Morehead City, NC 28557.
Wilmington—Rural Route 6, Box 53D, Wilmington, NC 28401.

Ohio

Cleveland—Federal Building, Room 1749, 1240 East 9th Street, Cleveland, OH 44199.

Oregon

Astoria—Port Docks, P.O. Box 354, Astoria, OR 97103.
Coos Bay—U.S. Postal Services Building, 235 West Anderson Street, P.O. Box 454, Coos Bay, OR 97420.
Portland—Federal Building, Room 657, 511 NW. Broadway, Portland, OR 97209.

Pennsylvania

Philadelphia—Custom House, Room 1004, 2nd and Chestnut Streets, Philadelphia, PA 19106.

Puerto Rico

Mayaguez—P.O. Box 3269, Marina Station, Mayaguez, PR 00708.
Ponce—P.O. Box 68, Ponce Playa Station, Ponce, PR 00731.
Hato Rey—Federal Office Building and U.S. Court House, Room 206, Hato Rey, PR 00918.
*San Juan—Isla Verde International Airport, Foreign arrivals Wing, San Juan, PR 00913.

Rhode Island

Warwick—48 Quaker Lane, West Warwick, RI 02893.

South Carolina

Charleston—Room 513 Federal Building, P.O. Box 941, Charleston, SC 29402.

Tennessee

Memphis—Room 801 Mid Memphis Tower, 1407 Union Avenue, Memphis, TN 38104.

Texas

*Brownsville—Border Services Building, Room 224 (Gateway Bridge), East Elizabeth and International Boulevard, P.O. Box 306, Brownsville, TX 78520.
Corpus Christi—Suite 218 SAB Building, 804 Mesquite, P.O. Box 245, Corpus Christi, TX 78403.
Dallas-Fort Worth (Airport)—Dallas-Fort Worth Airport, P.O. Box 61063, Dallas-Fort Worth Airport, TX 75261.
Del Rio—U.S. Border Inspection Station, Room 135, International Bridge, P.O. Box 1227, Del Rio, TX 78840.
Eagle Pass—U.S. Border Station, 160 Garrison Street, P.O. Box P, Eagle Pass, TX 78852.
*El Paso—Cordova Border Station, Room 172–A, 3600 East Paisano, El Paso, TX 79905.
Galveston—U.S. Custom House Building, Room 217A, 18th and Strand Streets, P.O. Box 266, Galveston, TX 77553.
Hidalgo—U.S. Border Station, Bridge Street, P.O. Drawer R, Hidalgo, TX 78557.
Houston—U.S. Appraisers Stores Building, Room 210, 7300 Wingate Street, Houston, TX 77011.
*Laredo—La Posada Motel, Rooms L8–13, 1000 Zaragoza Street, P.O. Box 277, Laredo, TX 78040.
U.S. Border Station, 100 Convent Avenue, Laredo, TX 78040.
Port Arthur—Federal Building, Room 201, Fifth Street and Austin Avenue, P.O. Box 1227, Port Arthur, TX 77640.
Presidio—U.S. Border Station, International Bridge, P.O. Box 1001, Presidio, TX 79845.
Progreso—Custom House Building, Progreso International Bridge, Progreso, TX 78579.
Roma—International Bridge, P.O. Box 185, Roma, TX 78584.
San Antonio—International Satellite, Room 15–S, 9700 Airport Boulevard, San Antonio, TX 78216.

Virgin Islands of the United States

St. Thomas—U.S. Post Office Building, Room 202, P.O. Box 8119, Charlotte Amalie, Virgin Islands of the U.S. 00801.

(Airport)—Harry S. Truman Airport, Main Terminal Building, St. Thomas, Virgin Islands of the U.S. 00801.
St. Croix—P.O. Box 1548, Kingshill, St. Croix, Virgins Islands of the U.S. 00850.

Virginia

(Airport) (Chantilly)—Dulles International Airport, International Arrivals Area, P.O. Box 17134, Washington, DC 20041.
Newport News—P.O. Box 942, Newport News, VA 23607.
Norfolk—Room 211 Bank of Virginia Building, 870 North Military Highway, Norfolk, VA 23502.

Washington

Blaine—Custom House, Room 216, P.O. Drawer C, Blaine, WA 98230.
McChord AFB—MAC Terminal, P.O. Box 4116, McChord Air Force Base, Tacoma, WA 98458.
*Seattle—Federal Office Building, Room 9014, Seattle, WA 98104.
(Airport)—Seattle-Tacoma International Airport, Seattle, WA 98158.

Wisconsin

Milwaukee—International Arrivals Terminal, 5300 South Howell Avenue, Milwaukee, WI 53207.

Note.—This proposal has been reviewed under the USDA criteria established to implement Executive Order 12044, "Improving Government Regulations," and has been designated "significant." An approved Draft Impact Analysis is available from Plant Protection and Quarantine Programs, APHIS, Room 635, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8247. The alternatives considered during the analysis are listed in the Draft Impact Analysis Statement.

Done at Washington, D.C., on 11th day of June 1979.

Thomas G. Darling,

Acting Deputy Administrator, Plant Protection and Quarantine Programs, Animal and Plant Health Inspection Service.

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Part VIII

Securities and Exchange Commission

Uniform Net Capital Rule; Financial Requirements For Brokers and Dealers (Futures Commission Merchants)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-15898]

17 CFR Part 240

Uniform Net Capital Rule

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission today has adopted previously proposed amendments to its uniform net capital rule and Appendices B and D thereto. The amendments primarily affect the financial requirements for brokers and dealers that are also futures commission merchants ("fcm") registered with the Commodity Futures Trading Commission. They are designed to conform the net capital rule with the minimum financial requirements of the Commodity Futures Trading Commission for fcm's, to avoid duplication, reduce regulatory burden, and coordinate regulation through uniform requirements as much as possible.

EFFECTIVE DATE: July 23, 1979.[1]

FOR FURTHER INFORMATION CONTACT: James G. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549 (202) 376-8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Rule 15c3-1 (17 CFR 240.15c3-1) under the Securities Exchange Act of 1934, the uniform net capital rule, and Appendices B and D thereto. The amendments, which become effective on July 23, 1979, are substantially the same as those proposed in Securities Exchange Act Release No. 15426, December 21, 1978; 44 FR 1754, January 8, 1979.

Discussion

Rule 15c3-1, the uniform net capital rule (17 CFR 240.15c3-1), in general requires a broker or dealer to maintain a certain specified minimum "net capital" depending on the nature of its securities business and its circumstances.[2] The amount of net capital required unless the broker or dealer computes its net capital under subsection (f) of the rule depends upon its "aggregate indebtedness."[3] Paragraph (c)(2) of the rule defines "net capital" as the net worth of a broker or dealer adjusted by certain described items. Paragraph (c)(1) of the Rule defines "aggregate indebtedness" as the total money liabilities of a broker or dealer in connection with any transaction, with limited exclusions. The rule requires brokers or dealers to have sufficient cash or liquid assets to protect the cash or securities positions carried in their customers' accounts. The thrust of the rule is to ensure that a broker or dealer has sufficient liquid assets to cover current indebtedness.

Recently, the Commodity Futures Trading Commission (the "CFTC") made substantial revisions in its minimum financial and related reporting requirements imposed upon fcm's. The CFTC stated that it was amending its rules first to eliminate duplicative financial requirements imposed upon fcm's. The CFTC gave as another purpose for the revised regulations to "correct substantial deficiencies" which had existed in the CFTC's minimum capital rules.[4]

Although the CFTC amendments apply only to fcm's, about half of all commodity customer business in the futures industry is done by fcm's that are also registered with the Commission as brokers or dealers and are, therefore, subject to the uniform net capital rule.

As the CFTC noted in its release announcing the adoption of its new minimum financial requirements, it has incorporated by reference the Commission's haircuts on securities. The CFTC believed that its rule, before being amended, required unnecessary "safety factors" for open commodities transactions and created new standards which were first proposed in 1977 and 1978.[5] These, as well as other commodity related amendments to its rule, have been the subject of extensive study by that agency and by those who will be subject to it. After careful consideration, in the interests of minimizing duplicative regulation, the Commission is deferring to the expertise of the CFTC in the area of financial responsibility regulation and is amending its rule to conform in the main to those provisions of the CFTC's rule which deals with the commodities futures business.[6]

The amendments adopted herein are designed insofar as possible to provide uniformity and avoid duplicative requirements as well as additional reporting for fcm's which are also brokers or dealers. The Commission believes it is important to achieve uniformity in this area in the interest of fair and equitable regulation consistent with its regulatory responsibility.

Most of the amendments to the net capital rule will be found in Appendix B as amended (17 CFR 240. 15.c3-1b). The most significant of the adopted amendments is the substitution of the CFTC's so-called safety factors on futures for the haircut deductions currently required by Appendix B to the net capital rule.

The majority of the remaining changes to the net capital rule affect the treatment of receivables relating to commodities. For example, under the amendments the length of time margin calls are allowed to remain outstanding for under-margined customer futures accounts will be 3 business days by December 31, 1982. Margin can remain uncollected for up to 5 business days until December 31, 1980, 4 business days until December 31, 1982 and 3 business days thereafter before a charge is made to net capital. The net capital rule now allows 5 business days, a period which will remain unchanged for transactions in securities.

Another significant time differential from the way commodities are now treated involves deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts related to commodities transactions which are the subject of calls for margin or other required deposits. Under the amendments, the amount of funds required may be included in net capital for one day. In addition, the length of time margin calls pertaining to commodity transactions are allowed to

[1] A broker or dealer may conform to the amendments herein before July 23, 1979 if it so wishes.

[2] Rule 15c3-1(a).

[3] Brokers or dealers operating under paragraph (f) of Rule 15c3-1 determine their net capital requirement upon the "aggregate debit" items computed pursuant to the "Formula for Determination Reserve Requirement of Brokers and Dealers" as set forth at Rule 15c3-3a. 17 CFR 240.15c3-3a.

[4] 43 FR 39956, 39957, 39958 (September 8, 1978).

[5] Id. at 39957-39958.

[6] In general, the differences in the two rules will not affect broker-dealers who are fcm's. The CFTC believed that the "few differences" which might remain between the CFTC rule and the Commission rule would affect only fcm's which engage in a cash commodity, manufacturing or cooperative business/businesses "in which few, if any, FCM/broker-dealers engage." The CFTC has said that, in the case of each such difference of which it was aware, the Commission minimum financial requirements would be higher than the CFTC requirements. The CFTC said that, therefore, an fcm may be assured of compliance with the regulations of both agencies if it is in compliance with the Commission's. Some of the differences between the two rules include the treatment of certain unsecured receivables such as those in paragraph (c)(2)(ii)(A) of CFTC Rule 1.17 and certain inventories such as those in paragraphs (c)(2)(iv) (C) through (E). The CFTC will regard these as "current assets" for purposes of its rule. Appendix B requires their deduction from net worth.

remain outstanding for under-margined non-customer and omnibus commodity futures accounts has been reduced from 5 business days to 2 business days.

The amendments specify that receivables from a foreign clearing organization resulting from commodities transactions as well as stock held in a commodity clearing organization may be treated as net capital. Under the current Commission rule such items would generally be treated as assets not readily convertible into cash and would be deducted from net worth.

Next, for those brokers or dealers which have elected to operate under the alternative net capital provisions, the amendments will require securities brokers or dealers which are also fcm's to maintain net capital equal to 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the rules thereunder if such amount is greater than the alternative provisions would require it to maintain.

Finally, Appendix D which governs subordination agreements has been altered in several respects to conform its provisions to reflect the CFTC's requirements that an fcm on the alternative maintain net capital of 4% of the funds required to be segregated by the Commodity Exchange Act.

Because the subordinated loan provisions of Appendix D are being changed, it will be necessary to "grandfather" existing subordination loan agreements. Otherwise, existing loans would no longer met the requirements of Appendix D. The Commission has selected 5 years as the period after which the loan must conform to the new Appendix D, the same amount of time the Commission gave in 1975 when it adopted the present Appendix D.

As adopted the amendments define the terms "customer" and "non-customer" in Appendix B by incorporating the definitions of these terms which are in the General Regulations of the CFTC.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly Sections 15(c)(93) and 23(a) thereof, 15 U.S.C. 78*o*(c)(3) and 78w(a), the Commission amends § 240.15c3–1 in Part 240 of Chapter II of Title 17 of the code of Federal Regulations in the manner set forth below, effective July 23, 1979. The Commission finds that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78*o*(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

Text of Amendments to §240.15c3–1

1. The introductory text of paragraph (a) and paragraphs (e) and (f) of § 240.15c3–1 are revised to read as follows:

§ 240.15c3–1 Net capital requirements for brokers or dealers.

(a) No broker or dealer shall permit his aggregate indebtedness to all other persons to exceed 1500 percentum of his net capital, except as othewise limited by the provisions of paragraph (a)(1), or, in the case of a broker or dealer electing to operate pursuant to paragraph (f) of this section, no broker or dealer shall permit his net capital to be less than 4 percent of aggregate debit items as computed in accordance with § 240.15c3–3a of this chapter, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, except as otherwise limited by paragraph (f) of this section, and every broker or dealer shall have the net capital necessary to comply with the following conditions, except as otherwise provided for in paragraph (f) of this section.

* * * * *

(e) *Limitation on withdrawal of equity Capital.* No equity capital of the broker or dealer or a subsidiary or affiliate consolidated pursuant to Appendix (C) (17 CFR 240.15c3–1c) whether in the form of capital contributions by partners excluding securities in the securities accounts of partners and balances in limited partners' capital accounts in excess of their stated capital contributions), par or stated value of capital stock, paid-in capital in excess of par, retained earnings or other capital accounts, may be withdrawn by action of a stockholder or partner, or by redemption or repurchase of shares of stock by any of the consolidated entities or through the payment of dividends or any similar distribution, nor may any unsecured advance or loan be made to a stockholder, partner, sole proprietor or employee if, after giving effect thereto and to any other such withdrawals, advances or loans and any Payments of Payment Obligations (as defined in Appendix (D) (17 CFR 240.15c3–1d) under satisfactory subordination agreements which are scheduled to occur within six months following such withdrawal, advance or loan, either aggregate indebtedness of any of the consoldiated entities exceeds 1000 percentum of its net capital or its net capital would fail to equal 120 per centum of the minimum dollar amount required thereby or would be less than 7 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater or in the case of any broker or dealer included within such consolidation if the total outstanding principal amounts satisfactory subordination agreements of the broker or dealer (other than such agreements which qualify as equity under paragraph (d) of this section) would exceed 70% of the debt-equity total as defined in paragraph (d). *Provided,* That this provision shall not preclude a broker or dealer from making required tax payments or preclude the payment to partners of reasonable compensation.

(f) *Alternative net capital requirement.* (1)(i) A broker or dealer who is not exempt from the provisions of 17 CFR 240.15c3–3 under the Securities Exchange Act of 1934 pursuant to paragraph (k)(1) or (k)(2)(i) may elect not to be subject to the limitations of paragraph (a) of this section respecting aggregate indebtedness as defined in paragraph (c)(1) of this section and certain deductions provided for in paragraph (c)(2) of this section. *Provided,* That in order to qualify to operate under this paragraph (f), such broker or dealer shall at all times maintain net capital equal to the greater of $100,000 ($25,000 in the case of a broker or dealer effecting transactions solely in municipal securities) or 4 percent of aggregate debit items computed in accordance with the Formula for Determination of Reserve Requirements for Brokers and Dealers (Exhibit A to Rule 15c3–3, 17 CFR 240.15c3–3a), or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater, and shall notify the Examining Authority for such broker or dealer and the Regional Office of the Commission in which the broker or dealer has its principal place of business, in writing, of its election to operate under this provision. Once a broker or dealer has determined to operate pursuant to the provisions of this paragraph (f), he shall continue to

do so unless a change is approved upon application to the Commission.

(2) In the case of a broker or dealer who has consolidated a subsidiary pursuant to Appendix C (17 CFR 240.15c3–1c), such broker's or dealer's minimum net capital requirements shall be the sum of the greater of $100,000 or 4 percent of the parent broker's or dealer's aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if the parent is registered as a futures commission merchant, 4 percent of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, and the total of each consolidated broker or dealer subsidiary's minimum net capital requirements. The minimum net capital requirements of a subsidiary electing to operate pursuant to paragraph (f) of this section shall be the greater of $100,000 or 4 percent of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a, or, if registered as a futures commission merchant, 4 percent of the funds required to be segregated by the subsidiary pursuant to the Commodity Exchange Act and the regulations thereunder, if greater. Where the subsidiary which has been consolidated has not elected to operate pursuant to paragraph (f) of this section, its minimum net capital requirement is the greater of its requirements under paragraph (a) of this section or 6⅔ percent of its aggregate indebtedness.

* * * * *

2. Section 240.15c3–1b is revised to read as follows:

§ 240.15c3–1b Adjustments to net worth and aggregate indebtedness for certain commodities transactions (Appendix B to 17 CFR 240.15c3–1).

(a) Every broker or dealer in computing net capital pursuant to 17 CFR 240.15c3–1 shall comply with the following:

(1) Where a broker or dealer has an asset or liability which is treated or defined in paragraph (c) of 17 CFR 240.15c3–1, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with paragraph (c) of 17 CFR 240.15c3–1, except as specifically provided otherwise in this Appendix B. Where a commodity related asset or liability is specifically treated or defined in 17 CFR 1.17 and is not generally or specifically treated or defined in 17 CFR 240.15c3–1 or this Appendix B, the inclusion or exclusion of all or part of such asset or liability for the computation of aggregate indebtedness and net capital shall be in accordance with 17 CFR 1.17.

Aggregate Indebtedness

(2) The term "aggregate indebtedness" as defined in paragraph (c)(1) of this section shall exclude with respect to commodity-related transactions:

(i) Indebtedness arising in connection with an advance to a non-proprietary account when such indebtedness is adequately collateralized by spot commodities eligible for delivery on a contract market and when such spot commodities are covered.

(ii) Advances received by the broker or dealer against bills of lading issued in connection with the shipment of commodities sold by the broker or dealer; and

(iii) Equity balances in the accounts of general partners.

Net Capital

(3) In computing net capital as defined in paragraph (c)(2) of this section, the net worth of a broker or dealer shall be adjusted as follows with respect to commodity-related transactions:

(i) *Unrealized profit or loss for certain commodities transactions.* (A) Unrealized profits shall be added and unrealized losses shall be deducted in the commodities accounts of the broker or dealer, including unrealized profits and losses on fixed price commitments and forward contracts; and

(B) The value attributed to any non-transferable commodity option shall be the difference between the option's striking price and the market value for the actual commodity or futures contract which is the subject of the option. In the case of a long call commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is less than the striking price of the option, it shall be given no value. In the case of a long put commodity option, if the market value for the actual commodity or futures contract which is the subject of the option is more than the striking price of the option, it shall be given no value.

(ii) Deduct any unsecured commodity futures or option account containing a ledger balance and open trades the combination of which liquidates to a deficit or containing a debit ledger balance only: *Provided, however,* Deficits or debit ledger balances in unsecured customers', non-customers' and proprietary accounts, which are the subject of calls for margin or other required deposits which are outstanding one business day or less need not be deducted from net worth;

(iii) Deduct all unsecured receivables, advances and loans except for:

(A) Management fees receivable from commodity pools outstanding no longer than thirty (30) days from the date they are due;

(B) Receivables from foreign clearing organizations;

(C) Receivables from registered futures commission merchants or brokers, resulting from commodity futures or option transactions, except those specifically excluded under paragraph (3)(ii) of this Appendix B.

(iv) Deduct all inventories (including work in process, finished goods, raw materials and inventories held for resale) except for readily marketable spot commodities; or spot commodities which adequately collateralize indebtedness under paragraph (c)(7) of 17 CFR 1.17;

(v) Guarantee deposits with commodities clearing organizations are not required to be deducted from net worth;

(vi) Stock in commodities clearing organizations to the extent of its margin value is not required to be deducted from net worth;

(vii) Deduct from net worth the amount by which any advances paid by the broker or dealer on cash commodity contracts and used in computing net capital exceeds 95 percent of the market value of the commodities covered by such contracts.

(viii) Do not include equity in the commodity accounts of partners in net worth.

(ix) In the case of all inventory, fixed price commitments and forward contracts, except for inventory and forward contracts in the inter-bank market in those foreign currencies which are purchased or sold for further delivery on or subject to the rules of a contract market and covered by an open futures contract for which there will be no charge, deduct the applicable percentage of the net position specified below:

(A) Inventory which is currently registered as deliverable on a contract market and covered by an open futures contract—No charge.

(B) Inventory which is covered by an open futures contract or commodity option—5% of the market value.

(C) Inventory which is not covered—20% of the market value.

(D) Fixed price commitments (open purchases and sales) and forward contracts which are covered by an open futures contract or commodity option—10% of the market value.

(E) Fixed price commitments (open purchases and sales) and forward

contracts which are not covered by an open futures contract or commodity option—20% of the market value.

(x) [Reserved]

(xi) [Reserved]

(xii) Deduct for undermargined customer commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions, after application of calls for margin, or other required deposits which are outstanding five business days or less until December 31, 1980, four business days or less until December 31, 1982, and three business days or less thereafter. If there are no such maintenance margin requirements or clearing organization margin requirements on such accounts, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding five days or less until December 31, 1980, four days or less until December 31, 1982, and three days or less thereafter to restore original margin when the original margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xii).

(xiii) Deduct for undermargined non-customer and omnibus commodity futures accounts the amount of funds required in each such account to meet maintenance margin requirements of the applicable board of trade or, if there are no such maintenance margin requirements, clearing organization margin requirements applicable to such positions after application of calls for margin, or other required deposits which are outstanding two business days or less. If there are no such maintenance margin requirements or clearing organization margin requirements, then deduct the amount of funds required to provide margin equal to the amount necessary after application of calls for margin, or other required deposits outstanding two days or less to restore original margin when the initial margin has been depleted by 50 percent or more. *Provided,* To the extent a deficit is deducted from net worth in accordance with paragraph (3)(ii) of this Appendix B, such amount shall not also be deducted under this paragraph (3)(xiii).

(xiv) In the case of open futures contracts held in proprietary accounts carried by the broker or dealer which are not covered by a position held by the broker or dealer or which are not the result of a "changer trade" made in accordance with the rule of a contract market deduct:

(A) For a broker or dealer which is a clearing member of a contract market for the positions on such contract market cleared by such member, the applicable margin requirement of the applicable clearing organization;

(B) For a broker or dealer which is a member of a contract market, 150% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater;

(C) For all other brokers or dealers, 200% of the applicable maintenance margin requirement of the applicable board of trade or clearing organization, whichever is greater; or

(D) For open contracts for which there are no applicable maintenance margin requirement, 200% of the applicable initial margin requirement.

Provided, The equity in any such proprietary account shall reduce the deduction required by this paragraph (3)(xiv) if such equity is not otherwise includable in net capital.

(xv) *Options.* In the case of a broker or dealer which is a taker of a commodity option, the deduction shall be the amount of any commodity option premium which has been used to increase net capital (however, in the case of a broker or dealer which is a grantor of a commodity option, the deduction may be reduced by the amount of any commodity option premium which has not been previously recognized as income).

(xvi) In the case of a commodity option which is carried long by the broker or dealer as a taker of a commodity option which has value and such value is used to increase net capital, the deduction should be ten percent of the market value of the commodity which is the subject of such option, but in no event shall the deduction be greater than the value attributed to such option.

(xvii) Deduction 5% of all unsecured receivables includable under paragraph (3)(iii)(C) of this Appendix B used by the broker or dealer in computing "net capital" and which are not receivable from (A) a futures commission merchant registered as such with the Commodity Futures Trading Commission, or (B) a broker or dealer which is registered as such with the Securities and Exchange Commission.

(xviii) A loan or advance or any other form of receivable shall not be considered "secured" for the purposes of paragraph (3) of this Appendix B unless the following conditions exist:

(A) The receivable is secured by readily marketable collateral which is otherwise unencumbered and which can be readily converted into cash equal to or in excess of that part of the receivable which is shown in the broker's or dealer's records as secured; and

(B)(*1*) The readily marketable collateral is in the possession or control of the broker or dealer; or

(*2*) The broker or dealer has a legally enforceable, written security agreement, signed by the debtor, and has a perfected security interest in the readily marketable collateral within the meaning of the laws of the State in which the readily marketable collateral is located.

(xix) The term "cover" for purposes of this Appendix B shall mean cover as defined in 17 CFR 1.17(j).

(xx) The term "customer" for purposes of this Appendix B shall mean customer as defined in 17 CFR 1.17(b) (2). The term "non-customer" for purposes of this Appendix B shall mean non-customer as defined in 17 CFR 1.17(b) (4).

3. Paragraphs (b) (6) (iii), (7), (8), (10) (ii) (B) and (c) (2), (5), and (7) of § 240.15c3–1d are revised to read as follows:

§ 240.15c3–1d Satisfactory subordination agreements (Appendix D to 17 CFR 240.15c3–1).

* * * * *

(b)* * *

(6)* * *

(iii) The secured demand note agreement may also provide that, in lieu of the procedures specified in the provisions required by paragraph (b) (6) (ii) of this section, the lender with the prior written consent of the broker or dealer and the Examining Authority for the broker or dealer may reduce the unpaid principal amount of the secured demand note. *Provided,* That after giving effect to such reduction the aggregate indebtedness of the broker or dealer would not exceed 1000 per centum of its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, net capital would not be less than 7% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act, and the regulations thereunder, if greater. *Provided, further,*

That no single secured demand note shall be permitted to be reduced by more than 15% of its original principal amount and after such reduction no excess collateral may be withdrawn. No Examining Authority shall consent to a reduction of the principal amount of a secured demand note if, after giving effect to such reduction, net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1.

(7) *Permissive Prepayments.* A broker or dealer at its option but not at the option of the lender, may, if the subordination agreement so provides, make a Payment of all or any portion of the Payment Obligation thereunder prior to the scheduled maturity date of such Payment Obligation (hereinafter referred to as a "Prepayment"), but in no event may any Prepayment be made before the expiration of one year from the date such subordination agreement became effective: *Provided, however,* That the foregoing restriction shall not apply to temporary subordination agreements which comply with the provisions of paragraph (c) (5) of this Appendix D. No Prepayment shall be made, if, after giving effect thereto (and to all Payments of Payment Obligations under any other subordinated agreements than outstanding the maturity or accelerated maturities of which are scheduled to fall due within six months after the date such Prepayment is to occur pursuant to this provision or on or prior to the date on which the Payment Obligation in respect of such Prepayment is scheduled to mature disregarding this provision, whichever date is earlier) without reference to any projected profit or loss of the broker or dealer, either aggregate indebtedness of the broker or dealer would exceed 1000 per centum of its net capital or its net capital would be less than 120 per centum of the minimum dollar amount required by 17 CFR 240.15c3–1 or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 7% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or its net capital would be less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1. Notwithstanding the above, no Prepayment shall occur without the prior written approval of the Examining Authority for such broker or dealer.

(8) *Suspended Repayment.* (i) The Payment Obligation of the broker or dealer in respect of any subordination agreement shall be suspended and shall not mature if, after giving effect to Payment of such Payment Obligation (and to all Payments of Payment Obligations of such broker or dealer under any other subordination agreement(s) then outstanding which are scheduled to mature on or before such Payment Obligation) either (A) the aggregate indebtedness of the broker or dealer would exceed 1200% its net capital or, in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6 percent of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or (B) its net capital would be less than 120 percent of the minimum dollar amount required by 17 CFR 240.15c3–1 including paragraph (f), if applicable. *Provided,* That the subordination agreement may provide that if the Payment Obligation of the broker or dealer thereunder does not mature and is suspended as a result of the requirement of this paragraph (b)(8) for a period of not less than six months, the broker or dealer shall thereupon commence the rapid and orderly liquidation of its business but the right of the lender to receive Payment, together with accrued interest or compensation, shall remain subordinate as required by the provisions of 17 CFR 240.15c3–1 and 240.15c3–1d.

* * * * *

(10)* * *

(ii)* * *

(B) The aggregate indebtedness of the broker or dealer exceeding 1500% of its net capital or, in the case of a broker or dealer which has elected to operate under paragraph (f) of 17 CFR 240.15c3–1, its net capital computed in accordance therewith is less than 4% of its aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 4% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, throughout a period of 15 consecutive business days, commencing on the day the broker or dealer first determines and notifies the Examining Authority for the broker or dealer, of the Examining Authority or the Commission first determines and notifies the broker or dealer of such fact;

* * * * * *

(c) * * *

(2) *Notice of maturity or accelerated maturity.* Every broker or dealer shall immediately notify the Examining Authority for such broker or dealer if, after giving effect to all Payments of Payment Obligations under subordination agreements then outstanding which are then due or mature within the following six months without reference to any projected profit or loss of the broker or dealer, either the aggregate indebtedness of the broker or dealer, either the aggregate indebtedness of the broker or dealer would exceed 1200% of its net capital or its net capital would be less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or, in the case of a broker or dealer who is operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital would be less than 6% of aggregate debit items computed in accordance with 17 CFR 240.15c3–3a or, if registered as a futures commission merchant, 6% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of 17 CFR 240.15c3–1.

* * * * *

(5) *Temporary Subordinations.* For the purpose of enabling a broker or dealer to participate as an underwriter of securities or other extraordinary activities in compliance with the net capital requirements of 17 CFR 240.15c3–1, a broker or dealer shall be permitted, on no more than three occasions in any 12 month period, to enter into a subordination agreement on a temporary basis which has a stated term of no more than 45 days from the date such subordination agreement became effective. *Provided,* That this temporary relief shall not apply to a broker or dealer if, at such time, it is subject to any of the reporting provisions of 17 CFR 240.17a–11 under the Securities Exchange Act of 1934, irrespective of its compliance with such provisions or if immediately prior to entering into such subordination agreement either (i) the aggregate indebtedness of the broker or dealer exceeds 1000 per centum of its net capital or its net capital is less than 120% of the minimum dollar amount required by 17 CFR 240.15c3–1, or (ii) in the case of a broker or dealer operating pursuant to paragraph (f) of 17 CFR 240.15c3–1, its net capital is less than 7 percent of aggregate debits computed in accordance with 17 CFR 240.15c3–3a or,

if registered as a futures commission merchant, 7% of the funds required to be segregated pursuant to the Commodity Exchange Act and the regulations thereunder, if greater, or less than 120% of the minimum dollar amount required by paragraph (f) of this section, or (iii) the amount of its then outstanding subordination agreements exceeds the limits specified in paragraph (d) of 17 CFR 240.15c3–1. Such temporary subordination agreement shall be subject to all the other provisions of this Appendix.

* * * * *

Subordination Agreements in Effect Prior to Adoption

(7) Any subordination agreement which has been entered into prior to December 20, 1978 and which has been deemed to be satisfactorily subordinated pursuant to 17 CFR 240.15c3–1 as in effect prior to December 20, 1978, shall continue to be deemed a satisfactory subordination agreement until the maturity of such agreement. *Provided,* That no renewal of an agreement which provides for automatic or optional renewal by the broker or dealer or lender shall be deemed to be a satisfactory subordination agreement unless such renewed agreement meets the requirements of this Appendix within 6 months from December 20, 1978. *Provided, further,* That all subordination agreements must meet the requirements of this Appendix within 5 years of December 20, 1978.

By the Commission.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

[FR Doc. 79–18641 Filed 6–14–79; 8:45 am]

BILLING CODE 8010–01–M

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17 CFR Part 249

[Release No. 34–15899]

Forms, Securities Exchange Act of 1934

Focus Reporting System; Requirements for Financial Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Rule amendment.

SUMMARY: The Commission today announced amendments to the financial and operational reporting requirements collectively known as the FOCUS reporting system by adopting the previously proposed Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the Commodity Futures Trading Commission for its registered futures commission merchants. This schedule will apply only to those brokers or dealers that are also futures commission merchants.

EFFECTIVE DATE: July 23, 1979.

FOR FURTHER INFORMATION CONTACT: James G. Moody, Attorney Advisor, Division of Market Regulation, Securities and Exchange Commission, Washington, D.C. 20549, (202) 376–8135.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today announced the adoption of certain amendments to Part II of Form X–17A–5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934. The amendments will revise the form so as to incorporate the Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the Commodity Futures Trading Commission.

Discussion

On December 17, 1975 the Commission adopted Form X–17A–5 (§ 249.617), the Financial and Operational Combined Uniform Single ("FOCUS") Report, to become effective on January 1, 1976.[1] Part II of Form X–17A–5 is a general purpose financial and operational report designed to obtain essential regulatory information on a quarterly basis and to develop financial statements in a format consistent with generally accepted accounting principles.

On September 1, 1978, the Commodity Futures Trading Commission (the "CFTC") amended its rules pertaining to the minimum financial and related reporting requirements imposed upon futures commission merchants.[2] Although the CFTC amendments apply only to futures commission merchants, about half of all commodity customer business in the futures industry is done by futures commission merchants that are also registered with the Commission as securities broker-dealers and are therefore subject to the FOCUS reporting requirements. Accordingly, the amendments adopted herein are designed to incorporate the Schedule of Segregation Requirements and Funds on Deposit in Segregation currently being used by the CFTC. This will enable brokers and dealers that are also futures commission merchants to satisfy the CFTC's reporting requirements by filing the amended Part II [3] of the FOCUS Report on a quarterly basis, thereby eliminating the need to make burdensome duplicate reports.

Statutory Basis and Competitive Considerations

Pursuant to the Securities Exchange Act of 1934 and particularly sections 15(c)(3), 17 and 23 thereof, 15 U.S.C. 78*o*(c)(3), 78q and 78w, the Commission hereby amends 17 CFR 249.617 of Chapter II of Title 17 of the Code of Federal Regulations in the manner set forth below. The Commission believes that any burden imposed upon competition by the amendments is necessary and appropriate in furtherance of the purposes of the Act, and particularly to implement the Commission's continuing mandate under section 15(c)(3) thereof, 15 U.S.C. 78*o*(c)(3), to provide minimum safeguards with respect to the financial responsibility of brokers and dealers.

§ 249.617 [Amended]

Text of Schedule

The Commission amends Part II of Form X–17A–5, a financial and operational combined uniform single report under the Securities Exchange Act of 1934, by adding the following schedule.

Financial and Operational Combined Uniform Single Report

Broker or Dealer—as of ————.

Schedule of Segregation Requirements and Funds in Segregation

Customers' regulated commodity futures accounts[**]

Segregation requirements

1. Net ledger balance:
   a. Cash.....$————
   b. Securities (at market).....————
2. Net unrealized profit (loss) in open futures contracts.....————
3. Net equity (deficit) [Total of 1—plus or minus 2.....————
4. Add: accounts liquidating to a deficit and accounts with debit balances with no open trades .....————
5. Amount required to be segregated [Total of 3 & 4) .....$————

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[1] Securities Exchange Act Release No. 11935, December 17, 1975; 40 FR 59706, December 30, 1975. Part IIA is an abbreviated version of Part II which is filed on a quarterly basis by brokers and dealers which neither clear transactions nor carry customer accounts. As these amendments were originally proposed, Part IIA would also have been amended to incorporate the CFTC's Schedule. However, since Part IIA is filed only by brokers and dealers which neither clear nor carry customer accounts, this additional information is unnecessary.

[2] 43 FR 39956 (September 8, 1978).

[3] The new Schedule will become page 10 of Part II. The current page 10 will become page 11 of Part II.

[**] The term "customer" shall mean "customer" as defined in 17 CFR 1.17(b)(2).

Funds on Deposit in Segregation

	bank
6. Deposited in segregated funds accounts:	
a. Cash	———
b. Securities representing investments of customers' funds (at market)	———
c. Securities held for customers in lieu of cash margins (at market)	———
7. Margins on deposit with clearing organizations of contract markets:	
a. Cash	———
b. Securities representing investments of customers' funds (at market)	———
c. Securities held for customers in lieu of cash margins (at market)	———
8. Settlement due from (to) contract market clearing organization	———
9. Net equities with other FCMs	———
10. Segregated funds on hand:	
a. Cash	———
b. Securities representing investments of customers' funds (at market)	———
c. Securities held for customers in lieu of cash margins (at market)	———
11. Total amount in segregation (Total of 6 through 10)	$———
12. Excess funds (insufficiency) in segregation (11 minus 5)	$———

By the Commission.

George A. Fitzsimmons,

Secretary.

June 5, 1979.

[FR Doc. 79-18642 Filed 6-14-79; 8:45 am]

BILLING CODE 8010-01-M

federal register

Friday
June 15, 1979

Part IX

Consumer Product Safety Commission

Method For Identifying Toys And Other Articles Intended For Use By Children Under 3 Years Of Age Which Present Choking, Aspiration, Or Ingestion Hazards Because Of Small Parts

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1500 and 1501

Method for Identifying Toys and Other Articles Intended for Use by Children Under 3 Years of Age Which Present Choking, Aspiration, or Ingestion Hazards Because of Small Parts

AGENCY: Consumer Product Safety Commission.

ACTION: Final regulation.

SUMMARY: The Commission is issuing a regulation that classifies as banned hazardous substances certain toys and other articles intended for use by children under 3 years of age. It covers products that the Commission believes present a choking, aspiration or ingestion hazard, based on their failure to comply with specified size criteria. By banning these products, the regulation is expected to reduce the risks to children under 3 from choking, aspirating, or ingesting small parts.

DATES: Products introduced into interstate commerce after January 1, 1980 are subject to the regulation.

FOR FURTHER INFORMATION CONTACT: Elaine Besson, Office of Program Management, Consumer Product Safety Commission, Washington, D.C. 20207, telephone: 301–492–6453.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Consumer Product Safety Commission believes that toys and other articles intended for use by children under 3 that contain parts small enough to be aspirated or ingested present an unreasonable risk of injury. The Commission is issuing a regulation that would classify such articles as banned hazardous substances.

The regulation requires that toys and other articles intended for very young children be tested in a specially designed device. The design of this device is based both on anthropometric measurements and on actual injury data. The device is intended to screen out items which are small enough to be ingested or aspirated by very young children. The test method in the regulation incorporates the Commission's "use and abuse" test methods; use and abuse testing will permit identification of small parts that may separate from a covered product during its lifetime.

The scope of the regulation is limited to toys and other articles intended for use by children under 3. The Commission believes that these very young children are particularly susceptible to small parts-related injuries because they are relatively unaware of risks and because they tend to place objects indiscriminately in their mouths. Frequently, too, adults believe that items intended for use by this age group are designed for unsupervised play.

The Commission is taking this action under its Federal Hazardous Substances Act authority to ban children's products which present an unreasonable risk of injury. The Commission's belief that an unreasonable risk of injury exists is supported by injury information which indicates that a substantial number of injuries related to small parts involves children in this age group and items intended for their use. The Commission recognizes that by limiting the scope of the regulation to only those items intended for very young children, it will not eliminate all small parts incidents. However, the regulation will eliminate some of these frequently unanticipated and potentially life-threatening injuries.

Certain items have been exempted from the regulation. These include articles which have functional, educational, or other value which outweighs the risk they present, and articles already covered under other Commission regulations. In addition to these specific exemptions, the Commission notes that articles intended only for use by older children are not within the scope of the regulation; examples of such products are discussed below.

The regulation includes a list of articles which the Commission believes are intended for children under 3 and thus within the scope of the regulation. In addition, the regulation contains a list of factors which the staff will consider before determining whether products not specifically listed are covered. The Commission recognizes, however, that in some cases questions may arise. Therefore, the regulation references a procedure which firms may use to provide information on the intended use of the product before the Commission staff takes enforcement action.

II. Background

The Commission regulates the safety of toys and other children's articles under the Federal Hazardous Substances Act (FHSA, 15 U.S.C. 1261 *et seq.*). Before the Commission began operating in May 1973, the Food and Drug Administration (FDA) regulated toy safety under FHSA authority.

In 1970 the FDA issued two toy safety regulations which addressed the aspiration, ingestion, and choking hazards presented by particular small parts in toys, such as noisemaking components in rattles (these regulations are now codified with the Commission's regulations at 16 CFR 1500.18(a)(1) and (2)). Under the authority of these regulations, the FDA and later the Commission took many actions against particular toys which contained loose, small objects that could injure children.

In January 1973 the FDA proposed for public comment a comprehensive regulation designed to (1) identify toys and other articles intended for use by children under 3 years of age which present a mechanical hazard from small parts, (2) identify mouth-actuated toys intended for use by children under 8 years of age which present a mechanical hazard from small parts, and (3) classify all such products as "banned hazardous substances" under the FHSA (38 FR 2179–80, Jan. 22, 1973).

The January 1973 proposed regulation used a truncated, hollow cylinder of specified dimensions to determine which products were too small (or had components that were too small). In addition, the proposal referenced "use and abuse" test procedures to simulate the "normal use" and "reasonably foreseeable damage or abuse" which are part of the statutory definition of a mechanical hazard (section 2(s) of FHSA, 15 U.S.C. 1261(s)).

Some products which are normally intended by the manufacturer for children over 3 years of age may not be readily recognized by the purchaser as potentially unsuitable for younger children due to the presence of small parts. The FDA proposal therefore provided an exemption for those products only if they had the "negative" label "Caution: Not Recommended for Children Under 3 Years Old." A similar exemption based on cautionary negative labeling was proposed for mouth-actuated toys "not generally recognized as being suitable for use only by children 8 years of age or older." The proposal contained additional exemptions for chalk, crayons, and books made entirely from paper because the FDA believed the developmental benefits that children derive from the use of these products outweigh the potential danger of their being aspirated or ingested.

In response to its proposal, the FDA received over 90 comments from manufacturers, distributors, trade associations, the American Academy of Pediatrics, and individual consumers. Many of these comments were extensive and extremely critical. They addressed: the very broad and undefined scope of

the regulation; the lack of documentation for establishing the size and configuration of the test device; the vagueness of the labeling provisions and the exaggerated size requirements of lettering; the adverse effect of negative labeling; and the adequacy of lead time for compliance. In addition, the comments included requests for 20 different product class exemptions.

On October 16, 1978 the Commission proposed for public comment a revised small parts banning regulation (43 FR 47684–88). In this revised proposal, the Commission took into account the comments received in response to the FDA's January 1973 proposal.

III. Proposed Regulation

The October 1978 revised proposed small parts regulation was based on current injury data. It used the same cylindrical test device that the January 1973 proposal used, but it defined the scope of the regulation more clearly. The following is a discussion of the October 1978 proposal:

A. Injury Data

The government and industry toy safety efforts directed at small parts have been effective in reducing the risk of injury presented by small parts on toys and other articles intended for use by children under 3 years of age.[1] Nevertheless, the Commission published the October 1978 proposal because of its preliminary finding that an unreasonable risk still exists which should be addressed by a mandatory and comprehensive regulation. In particular, the fact that many of the injuries are fatal to children supported the Commission's belief about the unreasonableness of the risk from small parts.

During calendar year 1976, more than 7,000 children under 10 years of age were treated in U.S. hospital emergency rooms for injuries related to small parts in toys. This is a Commission estimate which is based on data from a statistical sample of 119 hospitals comprising the National Electronic Injury Surveillance System (NEISS). A number of Commission efforts have led to additional injury information that focuses on the hazard which small parts present to children under 3:

(1) *Special study.* Between December 24, 1976 and February 9, 1977 the Commission's epidemiological staff conducted a special study of small parts injuries reported through NEISS. The staff investigated and analyzed the injuries and found 153, representing an estimated 3,800 nationwide injuries for that period. These were verified to be ingestions, throat lodgments, or foreign body lodgments in ears or noses. Forty-six percent of these injuries were to children under 3 years of age, and 79 percent of all choking incidents were to children under three. (The complete study, "Injuries Associated with Small Objects," is available from the Office of the Secretary.)

(2) *Bendix study.* In 1976 the Commission contracted with the Bendix Company to conduct an investigation into the size of toys/small parts which have caused choking deaths or incidents in children under the age of 6 years. Bendix solicited information from the membership of the National Association of Medical Examiners.

Death certificates and injury reports obtained by Bendix indicated that toys, toy parts, and other objects ranging in size from 9/16 inch to 1¾ inches in greatest diameter can produce fatal obstruction of the air passage. (Copies of this Bendix report are available from the Office of the Secretary.)

(3) *Data on deaths associated with small parts.* The staff has compiled data, from its own files and from those of the Bendix Company, on deaths associated with small parts. Between March 1973 and March 1977 the Commission received 113 death certificates in which the cause of death was related to small parts. Forty-five deaths were associated with 14 different types of children's toys and nursery products.

The following causes of death were among those revealed by the certificates: (1) lodgment of an object in the pharynx or larynx area of the throat which blocked the air passage and resulted in suffocation; (2) asphyxiation due to partial or total blockage of air to the lungs, resulting from either direct obstruction of the trachea (windpipe) by a foreign object or indirect obstruction by vomitus; (3) swallowed sharp or pointed objects which cut or pierced internal organs; (4) aspiration of an object into a bronchus or lung.

Approximately half of the victims in the Commission's death certificate file on small parts were under 3 years of age. In the Bendix Company data on deaths associated with choking, more than two-thirds of those who died were children under 3 years of age.

(4) *Other data bases.* The Commission also reviewed over 200 indepth investigations and consumer complaints in its files which involved injuries from small parts. These involved foreign body throat lodgments, ingestions, and aspirations, as well as foreign body ear and nose lodgments. The throat lodgments cut off the breathing of many of the victims, and some children survived only because an adult was present to remove the object. Other victims died of suffocation. All of the victims who aspirated objects required hospital in-patient treatment.

B. Statutory Framework

Under section 2(f)(1)(D) of the FHSA, the definition of "hazardous substance" includes "[a]ny toy or other article intended for use by children which the [Commission] by regulation determines * * * presents an electrical, mechanical, or thermal hazard." Under section 2(s) of the FHSA, "[a]n article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness * * * because the article (or any part or accessory thereof) may be aspirated or ingested * * * or * * * because of any other aspect of the article's design or manufacture."

The Commission proposed to define as hazardous substances certain toys and other articles intended for use by children under 3 years of age, based on the small parts hazard they present. Following issuance of a final regulation defining them as "hazardous substances," toys that contain small parts, as defined in the regulation are automatically "banned hazardous substances" under section 2(q)(1)(A) of the FHSA, because they would be "toy[s] or other article[s] intended for use by children which [are] hazardous substance[s]."

Under section 3(e) of the FHSA, the Commission must follow the informal notice and comment rulemaking procedures of 5 U.S.C. 553 to determine that a toy presents a mechanical hazard, unless it elects alternative procedures. In this small parts proceeding the Commission has followed the 5 U.S.C. 553 procedures.

C. Scope

As proposed, the small parts regulation applied to nearly all toys and other articles intended for children under 3 years of age. All children and adults are potential victims of the hazard presented by small parts, but children under 3 are particularly susceptible.

Children under 3 indiscriminately put things into their mouths and do not have the knowledge of cause and effect relating to protecting themselves from potential hazards as does an older child

[1] In an effort to simplify the preamble discussion, the term toy(s) will be used inclusively for both toys and other articles intended for use by children.

or adult. (This is discussed fully in an April 17, 1978 staff report, entitled "Normal Developmental Behavior in Young Children and Their Relationship to Potential Hazards," which is available from the Office of the Secretary.) In addition, very small parts on toys that are intended for use by children under 3 usually serve a limited or no functional purpose.

Finally, it is easier to control the products to which children under 3 have access than to control the products to which older children have access. Children under 3 could, of course, encounter and choke on a coin, hairpin, or other adult item or on toys intended for use by their older brothers and sisters. However, the Commission's proposal was based on its belief that a regulation directed at toys intended to be used by children under 3 will have a positive impact in reducing injuries.

In determining which toys and other articles are intended for children under 3, the Commission proposed to consider such factors as the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the toy; and whether the toy is commonly recognized as being intended for children under 3. As proposed, none of these factors would necessarily be determinative. (It should be noted that products which are intended both for children under 3 and for older children would fall within the scope of the regulation.)

The proposed regulation covered all toys and other articles intended for use by children under 3 that were included in a long list of product categories. The list was developed from a number of sources including the Toy Manufacturers of America classification system, published commercial promotional materials, and a retail store survey conducted by the Commission staff. While this list was not intended to be exhaustive, the Commission believed that the vast majority of toys covered by the regulation would fall within at least one of these categories. Because of the very broad scope of the proposed regulation, the Commission expected the list of product categories to help industry representatives and consumers focus on the products being regulated. The Commission emphasized that, even if a toy did not fall within a category on the list, it would be covered by the regulation as long as it is intended for use by children under 3 and is not specifically excluded from coverage.

The Commission proposed exemptions for a number of products whose functional, educational, or other value outweigh any possible hazard from small parts. In some cases, compliance with the small parts regulation would mean drastic redesign of useful everyday products at substantial cost to the consumer. In other cases, compliance would be physically impossible because the product could not perform its function if redesigned.

As examples, books made of paper and writing materials are educational. Children's clothing and accessories, such as shoe lace holders and buttons, are functional. Modeling clay and fingerpaints cannot practicably be manufactured so that small bits of these substances will never break off. (Under the FHSA, any such products which are harmful to children because of their toxicity, as an example, are automatically banned.)

The Commission also proposed to exempt marbles and balloons from the small parts regulation. If the regulation covered marbles and balloons, these entire product types would be effectively banned. The Commission believed that the negative effect of removing traditional toys such as these from the selections available to consumers would outweigh the net safety gain. In any case, the Commission expressed its belief that marbles, when used in the game of "marbles," are generally intended for children over 3. However, the proposed regulation did cover any marbles which are part of a toy that is intended for children under 3.

Finally, the Commission proposed to exempt pacifiers and rattles from the small parts regulation. The Commission's existing regulations for these products both contain requirements which specifically address the risk of injury presented by small parts (see 16 CFR Part 1510 for the rattle regulation and 16 CFR Part 1511 for the pacifier regulation).

A comment to the January 1973 proposal had requested an exemption for vending machine products. This was based on the claim that these products are not intended for children under 3 because such children cannot activate the machines. The Commission expressed its belief that some vending machine products are nevertheless intended for children under 3, and the proposed regulation did not exempt vending machine products as a broad category. Instead, the Commission proposed to evaluate them individually as to whether they are intended for use by children under 3.

D. Regulatory Criteria

The Commission's October 1978 proposed regulation centered on a measuring device—a truncated, hollow cylinder—which separates toys and their components into two classes, according to their size and shape. The Commission proposed that a toy or component which fits entirely within the cylinder is to small for children under 3 and should be banned.

The same cylinder has been used as the basis of voluntary toy safety efforts by the FDA and by Commission staff members. In addition, the Toy Manufacturers of America (TMA) incorporated the cylinder into its Toy Safety Voluntary Product Standard PS 72–76 (1976).

The dimensions of the cylinder, as proposed, were identical to those proposed by FDA in January 1973. Data obtained by the Commission and analyses performed since 1973 confirmed that a cylinder with those dimensions is the most meaningful, effective, and practical way to identify toys and components that present unreasonable risks of choking, aspiration, or ingestion to children under 3 years of age.

The Commission staff first evaluated the relevant medical data found in the existing literature. These data on the actual dimensions of air and food passages in humans are sparse and alone are probably insufficient to support the determination that objects of a particular size are hazardous. However, the data proved useful in establishing certain approximate size boundaries.

The staff then evaluated the sizes and shapes of the objects known to be involved in choking, aspiration, or ingestion incidents in children under 3. Many of these objects were identified in the Bendix contract report. The staff found that the cylinder would "screen out" the vast majority of such objects.

The staff also evaluated a test device with dimensions used by the Commission (43 FR 22002, May 23, 1978) and the Canadian government to define hazardous rattles. This device also screened out many objects which were involved in actual choking, aspiration, or ingestion incidents. However, the rattle test device additionally screened out a large number of products not so involved and not otherwise believed by the staff to be hazardous. Based on this analysis, the Commission decided to incorporate the test cylinder into its proposed regulation.

A June 5, 1978 Commission staff report, entitled "Human Factors

Analysis of Ingestion, Aspiration, and Choking Injuries," discusses in some detail the link between the cylinder and the risks of injury it addresses. In particular, the report (which is available from the Office of the Secretary) traces the evolution of the cylinder and its dimensions.

Briefly, the design of the cylinder is derived from two screening devices originally proposed by the Toy Manufacturers of America. These devices consisted of a hollow sphere with an inside diameter of 1¼ inches and a long narrow cylinder having an inside diameter of ⅛ inch and a length of 2¼ inches. The purpose of the sphere and the cylinder was to eliminate objects which had been involved in ingestions, aspirations, and airway obstructions, such as small balls and slender pins. However, use of the two devices incorrectly implied that two separate and distinct problems existed. therefore, FDA combined the concepts of the two TMA devices into a single measuring tool, a truncated cylinder, which incorporated the dimensions of each.

The diameter of the cylinder is based upon a set of recommendations made by the Accident Prevention Committee of the American Academy of Pediatrics. As stated in this committee's correspondence, "an item having a 1¼ inch minimum width is not likely to . . . suddenly and completely obstruct the airway." The depth of the cylinder is based upon data and medical literature available to the Commission which indicate that the vast majority of objects involved in injuries to children under 3 years of age were less than 2¼ inches in length.

The regulation, as proposed, also referenced certain "use and abuse" test procedures which the Commission published in final form in the **Federal Register** on January 7, 1975 (40 FR 1484–85) and which appear at 16 CFR 1500.51 and 1500.52 (excluding the bite test procedure—section (c) of both provisions). These procedures are intended to simulate the normal use and reasonably foreseeable damage or abuse to which a toy for children under 3 would be subjected. As mentioned in the Background section above, this concept is contained in the statutory definition of a mechanical hazard.

Under the proposed regulation, toys (and detachable components) would be tested as potential small parts by being placed in the cylinder. They must be large enough so that they do not fit entirely within the cylinder. If a toy does not fit entirely within the cylinder, it would then be subjected to the referenced "use and abuse" procedures. The toy is again tested by being placed in the cylinder. In addition, any components or pieces that have become detached from the toy during the "use and abuse" procedures are separately tested in the cylinder. If any toy or any component or piece of a toy fails the test criteria (by being small enough to fit entirely within the cylinder), the toy is a banned hazardous substance.

E. Labeling

The regulation, as proposed in October 1978, did not contain any labeling requirements. The Commission considered and rejected the "negative" labeling approach that FDA used in its 1973 proposal. Because there was no attempt in the FDA proposal to define specific categories of toys to be covered, any toy not intended for children under 3, which contained small parts, had to be labeled with the warning "Caution: Not Recommended for Children Under 3 Years Old."

The 1973 labeling proposal, although never issued by the FDA or the Commission, prompted many manufacturers and importers to apply this label to many of their products. Such labeling was apparently designed to exempt products automatically from coverage of any final small parts regulation that might be applied to toys intended for children under 3.

As part of its October 1978 proposal, the Commission expressed its belief that the label has been used indiscriminately and without regard for the intentions of the original proposal. For example, certain items, such as squeeze toys and stuffed animals which are clearly intended for infants, have been distributed in commerce bearing the label.

In its proposal, the Commission strongly discouraged improper use of age labeling on children's products. The Commission proposed to disregard any label on a toy clearly intended for children under 3 that states otherwise. However, the Commission encouraged the use of proper age labeling, and proposed that such labeling be one factor it would consider before determining whether a particular toy is intended for use by children under 3 years of age (as discussed in the Scope section above). The Commission decided that a negative labeling requirement was not needed because the proposal clearly stated the intended scope of the regulation.

F. Effective Date

The Commission proposed that the final small parts regulation become effective six months after its issuance. This was based on the Commission's desire to make the regulation effective sooner than one year after its final issuance. The proposal was supported by the fact that the test cylinder has been available since 1973 to toy companies, most of which already produce complying products. The Commission sought comment especially on this proposal that the small parts regulation become effective six months after its publication in final form.

G. Economic Considerations

In its discussion of the October 1978 proposal, the Commission stated its expectation that the industry-wide economic impact of the small parts regulation would be small. The results of a standardized retail store survey suggested that the vast majority of toys and children's articles already meet the requirements of the proposed regulation. In part because of the existing voluntary standard and the specific exemptions of certain toys, only a small fraction of toys would be affected by the small parts regulation, as proposed.

Of those firms whose products did not then meet the requirements, the majority were expected to need only minor changes to bring their products into compliance. Frequently, the necessary adjustments would simply involve removal from the products of a small part which does not change the basic nature or function of the product. Alternatively, the manufacturer could redesign the product so that the small part is larger and thus complies with the regulation.

In some cases the regulation was expected to pose problems for manufacturers of products which contain small parts that a child can easily detach from a toy. The Commission expressed its belief that existing technology could solve such problems because nearly identical products exists which do not have such easily-detached small parts. More glue, rivets, or other similar solutions may be sufficient to bring a product into compliance, with only minor cost increases.

The Commission did not expect small businesses to face undue hardship in meeting the requirements of the regulation, as proposed. The economic considerations concerning the small parts proposal were fully discussed in the May 1978 staff report, entitled "Economic Assessment of the Proposed Small Parts Regulation," which is available from the Office of the Secretary.

H. Environmental Considerations

The Commission assessed the potential environmental impact of the small parts regulation, as proposed, and concluded that no potentially significant environmental impacts are associated with it. Therefore, the Commission decided that no environmental impact statement was necessary. (Copies of the environmental assessment are available from the Office of the Secretary.)

IV. Discussion of Public Comments

The Commission received 46 comments from the public on its October 1978 small parts proposed regulation. Eighteen of these came from industry and 17 came from individuals unaffiliated with any groups or organizations. Included among the 11 other comments were submissions from representatives of the medical profession and of state and local governments. All comments received are available for inspection in the Office of the Secretary.

The following discussion of the comments is categorized by subject. It does not correspond exactly with the discussion of the proposed regulation in section III, but it covers most of the same subjects.

A. Risk of Injury

1. *Injury data.* A number of commenters have asserted that the injury data cited by the Commission do not justify issuance of the small parts regulation. The most common comment was that many of the small products and components causing the deaths and injuries that were cited by the Commission would not be addressed by the regulation.

Based on the injury data which supported the proposed regulation, the Commission continues to believe that small parts present a serious hazard to children under 3 years of age. All of the available injury data, taken together, support the finding that the risk which small parts present to children under 3 is an unreasonable one.

For example, the NEISS data show the scope of the problem. Of the estimated 3,800 incidents uncovered during the 6-week special study of NEISS data on small parts injuries, 46 percent were to children under 3 and 79 percent of all life-threatening choking incidents were to children under 3. In addition, 68 percent of the NEISS injuries in the special study involving children's products involved products for children under 3 (if products exempted from the regulation are not counted, it is 64 percent).

The Commission's regulation will not eliminate all aspiration, choking and ingestion incidents. Some reported injuries were caused by household articles that are not intended for use by children under 3, including toys intended for use by older children. Other injuries may have resulted from misuse of the products that was not reasonably foreseeable.

By the same token, the NEISS data are not intended to pinpoint every injury which a proposed regulation might address. NEISS merely provides injury statistics which identify the broad categories of products and victims that are associated with injuries treated in hospital emergency rooms. The NEISS data relevant to the small parts regulation indicate that children under 3 bear a disproportionate share of the choking and other injuries caused by small parts. In conjunction with other injury data, the NEISS data support the finding that the risk which small parts present to children is an unreasonable one.

An example of other injury data which support the unreasonable risk finding is the significant number of deaths that small parts have caused to children under 3. The Commission's files contain 113 certificates on deaths caused by small parts. Of these, 45 were associated with various children's toys and nursery products, and approximately half of the victims in the 113 cases were under 3 years of age. A recent check of the Commission's death certificate data base reveals that at least 25 deaths from small parts involved products that are not exempt from the regulation.

Again, the Commission's regulation would not have prevented all of the deaths of children under 3 that were caused by small parts. Because products not intended for children caused some of the deaths, even a ban of all children's products involved in fatal incidents could not eliminate all risk. Nevertheless, the death certificate data support the existence of a serious risk from small parts. The Commission's regulation addresses a substantial portion of this risk in a fair, practical and effective way.

Injury statistics understate the risk of injury addressed by the small parts regulation. Even if every injury and death could be recorded and analyzed, incidents in which children under 3 barely escaped death and serious injury are unlikely to appear in statistical studies.

A parent who finds an infant choking on a teething ring and not breathing will immediately dislodge the ring. The infant may be fine in a few moments. Although death was nearly the tragic result, this incident would probably not show up in hospital emergency room records and would not be reported on a death certificate.

Such "close calls" are important indicators that a risk of injury from small parts exists. Although "close calls" are not routinely reported to the Commission, two mothers did describe such incidents in their official comments on the proposed small parts regulation. Both reports involved babies under six months and both involved crib toys. Although neither baby was injured, one or both could have choked to death on the small parts that came off the toys involved.

The Commission believes that it should not wait for deaths, injuries, or even "close calls" to occur before determining that a children's product presents an unreasonable risk of injury under the FHSA. As the Chairman of the National Commission on Product Safety said at a Senate subcommittee hearing in 1969, in testimony concerning toy safety amendments to the FHSA, "[w]hen your intelligence tells you that something will create an injury and it seems conceptually clear that an injury will occur, it is primitive to wait until a number of people have lost their lives or sacrificed their limbs before we attempt to prevent those accidents" (Hearing before the Consumer Subcommittee of the Committee on Commerce, April 16, 1969, pp. 31–32).

The Commission does know that small parts have caused the deaths of children under 3. By size and intended use, the Commission has categorized the products which present the greatest risk and which can be effectively regulated. Especially because deaths are involved, the Commission will not delay acting against the risk until every item in the category has been involved in a specific incident.

A trade association of firms associated with bulk vending products, the National Bulk Vendors Association (NBVA), has questioned whether such products present an unreasonable risk of injury to children under 3. NBVA has claimed that bulk vending products are not associated with particular small parts injury incidents.

The Commission believes that potential future incidents should be prevented, for the reasons discussed in this section. In addition, NBVA has stated that only two injury incidents in the Commission's data base might have involved bulk vending products. However, these two incidents were found in a 6-week special survey of

incidents in a sample of hospital emergency rooms. Therefore, each statistically represents many more emergency room incidents and many other incidents which would never show up in emergency room statistics. More importantly, products are generally categorized by type, not by method of distribution, for injury reporting purposes. The injuries associated with "bulk vending products" cannot therefore be accurately quantified using existing data.

2. *Legislative history of FHSA.* NBVA has made an additional argument, based on the legislative history of the FHSA, that vending machine products do not present an unreasonable risk of injury. As discussed under Statutory Framework (section III, B, above), the Commission is regulating small parts by classifying as "mechanical hazards" toys which are or which contain small parts. This classification must be based on a Commission finding that such toys present "an unreasonable risk of personal injury or illness."

NBVA's argument, based on its interpretation of the FHSA, is that "in contrast to electrical or thermal risks, mechanical risks are to be judged quantitatively before being classified as unreasonable risks." More specifically, NBVA has asserted that the Commission cannot classify a toy as a mechanical hazard merely because it is small. Rather, the Commission must also consider factors other than size.

The Commission agrees with all but a minor portion of MBVA's analysis of the legislative history. It is true that the definition of "electrical hazard" in the FHSA does not contain the "unreasonable risk" phrase. (Presumbly, any electrical risk is a serious one and a separate "unreasonable risk" finding is unnecessary.) However, the definition of "thermal hazard" does contain the same language about "unreasonable risk" that the definition of "mechanical hazard" contains.

The crucial point is that the Commission has not proposed to classify any toy as a mechanical hazard merely because of its size. As explained under Proposed Regulation (section III, above), the Commission has considered a number of factors. First, the Commission has identified the most vulnerable population at risk, children under 3. Because of the relative helplessness of these children and because of their propensity to place things in their mouths (as discussed in section III, C, above), the Commission's regulation is limited to toys and other articles intended for children under 3. If size were the only factor, the Commission would have banned all small toys intended for use by children of any age.

Another factor which the Commission has considered is the educational and functional value of the products potentially covered by the regulation. Some educational and functional products cannot be redesigned to comply with the regulation. Modeling clay is not modeling clay unless bits can break off. Buttons must be relatively small and are extremely useful on children's clothing. Therefore, the Commission granted exemptions for these and other products. If size were the Commission's only consideration, the regulation would have the practical effect of banning clay, paints, diaper pins, hair barrettes, and a host of other products.

Finally, the Commission has considered the severity of the injuries caused by the small toys. If a risk less severe than possible death were involved, the Commission may not have found it necessary to issue any small parts banning regulation at all.

NBVA's argument based on the FHSA legislative history might be convincing if the Commission had limited its consideration of factors to the size of the toys involved. However, the Commission has not done this. Instead, as required by the provisions of the FHSA, the Commission evaluated whether the toys it has regulated present an unreasonable risk of injury. The determination that they do is based on a careful consideration of such factors as the age of the children involved, the educational and functional value of the toys, the severity of the injuries involved, and the size of the toys.

B. Scope

1. *Products covered by regulation.* Many commenters have expressed views about the scope of the small parts regulation. A recurring comment from the toy industry was that the regulation does not clarify which toys and other articles are "intended for use by children under 3 years of age."

When proposing the small parts regulation in October 1978 the Commission provided a specific list of the toys which are covered. The Commission also listed the factors it would consider before determining which other toys might be intended for children under 3. As summarized above in the Scope section under Proposed Regulation (section III, C), these factors include the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the toy; and whether the toy is commonly recognized as being intended for children under 3.

Since none of the factors is determinative, many toy manufacturers expressed the concern that they will not know for certain whether their toys are covered by the regulation. Therefore, many suggested that the manufacturer's labeling should be conclusive on the question of whether a toy is intended for children under 3.

The Commission made a special effort to define clearly the scope of the small parts proposed regulation. The scope section (1501.2) included a lengthy list of the types of products that are definitely covered. This list was based on the Commission staff's retail survey of toys and children's articles. The Commission believes that this list covered most products which might reasonably be intended for children under 3.

The nature of any broad, generic regulation is that a few products will not be conclusively included in or excluded from the defined class. Therefore, the Commission has indicated factors to help determine fairly which "borderline" products might be covered by the regulation.

No single factor can determine conclusively whether a borderline toy is intended for children under 3. The manufacturer's labeling is undoubtedly one factor. If a toy's carton recommends "For children ages 2–5," it is likely that purchasers of that toy will give it to children of those ages. However, it is also likely that some purchasers will buy the toy for precocious children who are only one-and-one-half years old. Thus, despite the labeling, such a toy will actually be used by children for whom the manufacturer apparently does not intend it.

Similarly, the ways in which toys are packaged, promoted, and otherwise marketed will be factors in determining the age group for which they are intended. As an example, an exclusive import shop might be selling an expensive collector's item for adults or older children. A toy store might be selling inexpensive imitations of this item as toys for young children. In this example, place of sale and price would be important factors. The type and manner of advertising might also be factors.

Most marketing factors cannot be conclusive in determining whether a toy is intended for children under 3. Using the collector's item example, what would be the price cut-off and what would be the definitive description of what is an import shop and what is a toy store? In order to write a rule in which specific marketing factors clearly

separated toys intended for children under 3 from all other products, the Commission would have to disregard many subtle but relevant factors.

If the manufacturer's intent as stated on a label were solely determinative, hazardous toys that are genuinely intended for children under 3 could be intentionally or unintentionally mislabeled to fall outside of the Commission's small parts regulation.

Another deficieny with making labeling the sole and conclusive factor is that there are no industry-wide guidelines on age labeling. Consumers must contend with the differing practices of individual manufacturers. The Commission has observed at least one extreme example of how much these practices differ. On one page of a newspaper advertising supplement, a major toy retailer pictured and described a number of "baby dolls". In essence, these were the same dolls but were made by different companies. The manufacturers' age recommendations, which were also noted, were 3–8, 3–9, 2–up, 3–10, 3–up, 2–7, 1–7, and 2–9. Nevertheless, the Commission has every reason to believe that these baby dolls are all appropriate for use by children in the same age group.

The Commission believes that many factors are relevant to the determination of whether particular toys are intended for children under 3 and that none of these factors can be conclusive in isolation. In addition, manufacturers are not powerless to affect the marketing of their toys and are not ignorant of the way their toys are actually marketed.

Because of the importance of the factors, the Commission has decided to incorporate them into the small parts regulation. (They were discussed in the preamble to the small parts proposal.) Section 1501.2(b) of the final regulation below reflects this change.

The factors are most meaningful when they are carefully applied to the particular toys involved. Under a recently-amended procedure, the Commission's compliance and enforcement staff will be required to do this in every case, before initiating any enforcement action under the small parts regulation. The Commission believes that the scope of its small parts regulation is sufficiently clear. However, many commenters from the industry disagree. The procedure, along with the Commission's willingness to entertain requests for advice about the coverage of specific toys, addresses the strongly-stated industry comments that some toys are not clearly included in or excluded from the regulation.

Specifically, people and firms will have an opportunity to present written and/or oral evidence and arguments that enforcement action against their products would be unjustified. The longstanding practice of the Commission staff, which the Commission believes is a reasonable and important practice, has been to provide such an opportunity. Therefore, this procedure is now contained in staff enforcement guidelines.[2] The procedure (as contained in the guidelines, which are available from the Office of the Secretary), is summarized in the small parts regulation at § 1501.5 below.

Under the procedure, affected persons and firms will have the opportunity to present their arguments and evidence that a particular toy does not violate the regulation or that enforcement action is unwarranted. This opportunity is available anytime within 10 days of the time the staff sends them a "Letter of Advice" that their toys are noncomplying and that enforcement action might be necessary. The contentions will be addressed to the Area Office which sent the Letter of Advice. If the Area Office staff remains convinced that the toy is in violation of the regulation, its recommendation to initiate enforcement action (seizure, prosecution, or injunction), along with the firm's response to the Letter of Advice, must be made to the Commission or to a delegated staff member. The Commission has delegated this function to the Associate Executive Director for Compliance and Enforcement.[3]

This timely opportunity for submissions addresses the industry's concern that the regulation will be enforced against toys that are not intended for children under 3. At the same time, the ten-day period will not unduly delay necessary enforcement actions. (When required to protect the public safety in an emergency situation, the Commission may utilize more expeditious alternatives.) Especially because of the need for prompt consideration of the submissions, those that discuss the § 1501.2(b) factors will be particularly helpful.

2. *Expansion of scope.* One commenter—Edward M. Swartz, a Boston attorney who has been active in toy safety matters—has suggested that the Commission expand the scope of the small parts regulation to include toys foreseeably used by children up to age 5. Although this suggested change would almost surely result in some additional protection from hazardous toys, the Commission must reject it for the present time.

If the small parts regulation were broadened at this time, the scope of products covered would become uncertain. While most products intended for use by children under 3 are easily categorized as such, this may not be true for products intended for children between 3 and 5 years of age. In addition, although children 3 and older have been injured and endangered by small parts, a broadening of the regulation would require follow-up economic and injury data analyses to support an unreasonable risk of injury finding. Rather than delaying the present regulation, the Commission may consider as a separate regulatory possibility the protection of children 3 and older from the small parts hazard.

Other commenters suggested that polyurethane pellets, nut shells, and other toy stuffing materials be added to the scope of the small parts regulation. Since the integrity of covering materials will be tested under the use and abuse procedures, any stuffing materials that could pose a risk to children under 3 are already covered by the regulation. Neither the pellets nor shells nor any other stuffings need to be specifically or separately mentioned.

3. *Exemptions.* The Commission received numerous comments stating that particular products should or should not be exempted from the small parts regulation. As proposed, the following products were exempted: balloons; most marbles; books and other articles made of paper; writing materials; children's clothing and accessories; grooming, feeding, and hygiene products; records; modeling clay and similar products; paints; rattles; and pacifiers.

A few commenters suggested that marbles and balloons should be covered by the small parts regulation. As discussed in the Scope section under Proposed Regulation (section III, C), the Commission believes that marbles are not intended for use by children under 3 unless they are incorporated in a toy that is intended for such children. Therefore, the listing of marbles under exemptions was merely for clarification. They are not covered by the regulation (when sold on their own) and technically need not be exempted. In the final regulation they have been deleted from the list of exemptions.

Balloons represent a special situation. They cannot be regulated by the criteria in this regulation to address the small parts risk without being completely

[2] Enforcement guidelines were filed as a part of the original document.

[3] Copies of the authority delegation were filed as a part of the original document.

banned. The Commission has therefore decided not to include balloons in the final banning regulation below, and may consider a separate regulatory action for them. If so, the Commission will consider the possibility of requiring cautionary labeling, as two commenters suggested. (One of these commenters singled out balloons shorter than six inches, but the Commission knows of no safety-related basis for this distinction.)

Aside from the specific exemptions, the Commission's proposed regulation excluded from coverage certain substances that could become exposed as a result of the use and abuse testing. These were bits of fabric, yarn, paper, and fuzz. The reason for these exclusions was that these fibrous-type materials cannot be meaningfully tested with the truncated cylinder when they are pulled off or out of a toy. For example, the bits of fuzz that can be "picked-off" a teddy bear and the clumps of yarn hair that can be plucked from a doll's head cannot be tested in the cylinder with any precision. The Commission does not expect these minor exclusions to affect the overall effectiveness of the regulation.

A number of commenters have named other substances that they believe should be similarly excluded from coverage if exposed during use and abuse testing. The Commission agrees that some of the additional fibrous-type substances named in the comments should be added because they present the same testing limitations as fabric, yarn, paper, and fuzz. Therefore, the parenthetical exclusion in the final regulation (§ 1501.4(b)(2)) has been modified to include elastic and string. Because cotton and wool are fabrics, and therefore already covered by the parenthetical exclusion, the requests to add them to the list are denied as unnecessary.

There are a number of other substances and products which commenters specifically discussed:

(a) *Foam and other porous materials, such as sponge.* These products break off in distinct "chunks" and can be tested. In addition, the Commission believes that they are particularly hazardous because they can lodge in a child's throat and then expand to make it difficult to dislodge them. The Commission has numerous reports of choking incidents associated with foam from playpen rails and playpen pads. In fact, one of the comments to the small parts regulation discusses just such a "close call" involving foam from a playpen. The Commission has not added to the regulation any exemption for foam or similar products.

(b) *Doll clothing and other accessories.* While accessories on children's clothing are functional, the same accessories on doll's clothing are not. A child may play with the button on his or her sweater, but this is different from playing with a button on a doll's sweater which is specifically and solely designed for play purposes. Therefore, doll's accessories are not exempt from the small parts regulation. Toy dishes are similarly not exempt.

(c) *Teddy bears.* One commenter seems to imply that a teddy bear should be exempt from the regulation because its psychological value is as great as the educational value of balloons or crayons. Since it would be virtually impossible to design crayons (which break into pieces) or balloons that comply with the regulation, they have been exempted. However, it is possible to design teddy bears that comply with the regulation. Therefore, the Commission has not banned teddy bears by issuing this regulation, and no exemption for them is needed.

(d) *Ohajikes.* A Japanese trade association has asked whether Ohajikes are covered by the regulation. The Commission has learned that these are the Japanese equivalent of marbles and are not intended for use by children under 3. Therefore, they are not included within the scope of the regulation, unless they are incorporated in a toy intended for this age group.

(e) *Craft items.* Because craft items are not intended for use by children under 3, no exemption from the regulations is necessary.

(f) *Bulk vending products.* At the time it proposed the small parts regulation, the Commission specifically solicited comments on the question of whether these products should be exempt. The American Academy of Pediatrics has commented that they should not be. The National Bulk Vendors Association (NBVA) has submitted an extensive set of comments arguing that they should be.

NBVA has asserted that many bulk vending products are not intended for children under 3. To the extent that this is true, the small parts regulation does not apply and the issue of an exemption does not arise. However, NVBA's comments have assumed that some bulk vending products do fall within the scope of the regulation. The comments include a request for an exemption for the category of bulk vending products, a category which is defined by methods of distribution rather than by nature of the product.

The regulation contains exemptions for certain specific products, such as balloons. After considering the products in the category and balancing numerous factors, the Commission has determined that an exemption for balloons is appropriate. Similarly, the Commission has exempted some broader categories of products, such as those made of paper. Because all such products have a common characteristic, the Commission can determine whether an exemption based on that characteristic is appropriate.

However, NBVA seeks an entirely different kind of exemption. The category of bulk vending products includes many different types of products and products made of many different substances. The only link is that they are sold in vending machines. Only if this link were a factor which related significantly to the risk presented would an exemption be appropriate. NBVA has submitted no data establishing such a link. The Commission does not see any such link and has therefore declined to grant the exemption.

The NBVA has asserted that children under 3 cannot operate vending machines, but his is not a relevant consideration. Even if children under 3 could not obtain bulk vending toys directly from the machines without assistance from an adult or older child, it is still possible that the toys are intended for use by children under 3. The crucial point is that children under 3 are unlikely to go into stores and buy any toys at all. Adults generally buy toys and give them to children in this age group. This is true whether the toy is bought from a salesperson at a toy store or from a machine. This factor does not in any way undermine the obvious fact that many toys are intended for children under 3.

The Commission is not convinced that an exemption based on the method of distribution of certain toys is justified or appropriate for the small parts regulation. This generic regulation covers the products in a particular category which present a particular unreasonable risk of injury. Unless there is a reason to exempt products from the category, based on some common characteristic of those products or on compelling economic considerations, an exemption would contradict the rationale of the regulation.

The NBVA has not provided any such reason or any such characteristic. NBVA's comments do contain assertions, but no data, concerning the economic impact the small parts regulation would have on bulk vending products. However, the Commission does not share the view that its

regulation will put members of the NBVA out of business. In its evaluation of a representative sample of bulk vended products, the Commission has found none that will be covered by the regulation. Even if some bulk vending products were banned by the small parts regulation in the future (because of new designs or changed marketing patterns), the Commission is not persuaded that the industry could not avoid serious harm by shifting away from those products.

(g) *Articles made of fabric, yarn, fuzz, and paper.* The proposed regulation excluded from the test procedure any piece or "bit" of paper, fabric, yarn, or fuzz that became detached from a toy as a result of use and abuse testing. As already discussed in this section, these exclusions (as well as exclusions for elastic and string) are contained in the final regulation (§ 1501.4 (b) (2)). They are based on the testing limitations posed by these bits of materials.

A number of commenters have suggested that products made of the same materials be added to the list of exempted products in § 1501.3. The Commission declines to do so because products made entirely of these materials present the same potential small parts risk as products made of all other materials. It is only bits of the materials which cannot be tested meaningfully and which have therefore been excluded in § 1501.4(b)(2). (For a different reason, products made of paper are already exempted. In addition, fuzz is, by definition, a bit of material and an entire product would not be made of fuzz.)

(h) *Other.* A number of other commenters supported exemptions that the Commission proposed. These included pencils and felt tip pens. The Commission has left these exemptions unchanged.

C. Regulatory Criteria

1. *Size and nature of test cylinder.* To comply with the Commission's small parts regulation, toys must be too large to fit totally within the test cylinder. Therefore, the larger the cylinder, the more stringent the test would be. One commenter has suggested that the Commission make the cylinder larger and another has suggested that it be made smaller. However, neither of these commenters provided any technical data concerning a more appropriate size. More specifically, the commenter who suggested a smaller device noted that he personally could not swallow an object 1¼ inches in diameter. However, objects this size enter the mouth and block the throat precisely because they cannot be swallowed. In fact, 19 percent of the throat lodgment incidents the Commission knows of involved objects between ¾ and 1¼ inches in maximum dimension.

Another commenter suggested that the test template the Commission has used for rattles be used in the small parts regulation. On the basis of data on choking deaths of children 0–6 years of age, a team of experts who wrote the Bendix report recommended use of the rattle template. However, the Commission believes that the truncated cylinder is more appropriate for screening out products that are too small for children under 3. The rattle template, if substituted into the regulation below, would ban many products that the Commission does not believe present an unreasonable risk of injury to such children.

In addition, Canada's Consumer Standards Directorate has informed the Commission about the size of its small parts test cylinder. The shape of Canada's cylinder is the same as the Commission's and the dimensions, recently changed to the metric system, are nearly the same. After considering the comments on the size of the proposed test cylinder, the Commission has decided not to change the dimensions for the final regulation.

Unlike the Commission's regulation, Canada's regulation specifies that a force of 1 pound be exerted on objects when they are inserted into the cylinder for testing. The Commission does not believe that such a requirement would result in any significant increase in protection for children under 3.

A human factors engineer for Arthur D. Little, Inc. has suggested that the proposed cylinder be used temporarily "with the assurance that in-depth research and analysis would follow to develop the necessary scientific information to reduce the risk of small parts and form the basis of a permanent standard." The Commission must agree that any test device can be continually refined and improved, based on continuing scientific study. However, the Commission believes that its existing regulation fairly and effectively addresses a significant portion of the small parts risk to children under 3. The regulation incorporates a test cylinder which is based on epidemiological data indicating the population at prime risk, medical data, death certificates in which the size of the offending object is reported, and injury reports in which the size of the offending object is reported (see discussion of regulatory criteria in section III, D, above). If newly-available data indicate that the regulation could be improved, there are adequate procedures for amending it.

The Arthur D. Little engineer has also suggested that the Commission replace the proposed cylinder with cylinders of graduated sizes that reflect the range of differences in size and function of a child's aerodigestive system during the first three years of life. The Commission has adopted this type of approach, as one example, in certain provisions of its use and abuse regulations. Based on the fact that a child's strength increases with age, these provisions are divided into three parts (0–18, 19–36, and 37–96 months) which have differing test criteria. However, a child's gaining of strength occurs gradually and continually, rather than in an abrupt or discrete process. Therefore, these test criteria represent a compromise between the existing data and practicality. The compromise is justified only because the relevant data indicated an increasing trend and several benchmarks on which the Commission could base the different levels of test criteria.

In contrast, substantially less is known about the sizes of children's mouths, throats, windpipes and other critical passages. No data currently indicate even that the passages increase in size with age. Without such data and without the necessary benchmarks, a series of cylinders, as suggested by the Arthur D. Little engineer, is impractical. Although the Commission believes it would take years to develop a method for measuring these passages, it will periodically consider whether any available data would permit adoption of the suggested approach.

Finally, the same engineer has raised a potential problem concerning "implied safety." If a toy meets the Commission's standard and nevertheless presents a risk to children, there may be a false sense of security by purchasers of the toy. The Commission does not believe that all toys meeting the regulation are safe. However, the fact that some people may believe this is not a sufficient reason to withhold issuance of a regulation which will increase the safety of many toys.

Commenting on a different aspect of the test device, a toy manufacturer has suggested that the absence of dimensional tolerances and material or hardness requirements for the cylinder could contribute to inaccurate results. The Commission's test cylinders are manufactured from acrylic plastic. However, the Commission believes that any test cylinder made of a material sufficiently rigid to maintain the stated dimensions will yield equivalent results.

Neither hardness nor material requirements are necessary.

On the issue of tolerances, the Commission's cylinders will be designed and constructed to ensure that they will be no larger than the specified dimensions. In contrast, the Commission advises manufacturers to ensure that their test cylinders are nó smaller than the specified dimensions. Manufacturers can provide themselves with a margin of safety, and increase the likelihood that their toys will comply with the regulation when tested by the Commission, by using a test cylinder that is slightly larger than the specified dimensions.

2. *Use and abuse test procedures.* Incorporated as part of the small parts test procedure are the "use and abuse" test methods at 16 CFR 1500.51 and 52. A number of commenters have raised a question about how the tension test method should be applied to toys and toy components made of porous materials such as polyurethane foam. The commenters are concerned that a failure will occur at the site of the clamps used for testing, and that such a failure would lead to a ban of their toys. Such a ban would be unfair if the failure were caused by the nature of the clamps rather than by the weakness of the material being tested. To assure that this result does not occur, the Commission will not ban any toys based on failures occurring at clamp sites during performance of the tension test.

D. Statutory Approach

As proposed, the Commission's small parts regulation would classify all non-complying toys as "banned hazardous substances" under the FHSA. Many industry commenters have urged the Commission to substitute a two-stage banning procedure for the proposed procedure. The main basis for this comment seemed to be the concern that insufficient due process procedures would be available to permit manufacturers to contest questionable Commission judgments that their non-complying toys are intended for children under 3 and thus banned. (This comment is also discussed in section B(1), above.)

The Commission uses a two-stage procedure to ban certain toys, intended for children under 8 years of age, that present unreasonable risks due to sharp points or sharp edges. In the first stage, the Commission uses its regulations to define what edges and points are both sharp and accessible (16 CFR 1500.48 and .49). After evaluating the risk presented by these points and edges, the Commission must then decide whether they present an unreasonable risk of injury to children under 8. If so, the Commission must complete a second stage, an informal notice and comment rulemaking procedure, before determining that the toys are banned under the FHSA.

The Commission decided to regulate sharp points and sharp edges on toys intended for children under 8 years of age using this two-stage procedure because the sharp point and sharp edge test devices classified as sharp some points and edges that might not under all circumstances present an unreasonable risk of injury to children under 8. Because of the extremely broad scope of products covered, the Commission wanted to evaluate the edges and points classified as sharp on an individual basis before deciding that the toys containing them should be banned. In addition, the nature of the risks of injury involved—less than life-threatening lacerations, avulsions, and punctures—did not require that the more expeditious one-stage approach be used.

Before deciding on a statutory approach for small parts, the Commission considered many of the same factors it had considered before deciding in favor of a two-stage approach for sharp points and sharp edges. Despite some articulate comments from the industry favoring the same approach for small parts, the Commission believes that it should be basically a one-stage banning regulation, with a modification to address this industry concern. Specifically, the ten-day opportunity for submissions, discussed above, does provide affected persons and firms with an opportunity to present to the Commission staff any contentions that their noncomplying toys are not intended for children under 3, before they or their toys are subjected to any enforcement action. This effectively addresses industry's concern without imposing the delay that is inherent in a two-stage procedure.

There are a number of reasons why different procedures are justified for the small parts and sharp points/sharp edges regulations:

1. The severity of the risk from small parts is extreme, especially when compared to the risk from sharp points and sharp edges. Some avulsions, lacerations, and punctures are serious, but the Commission knows of no incidents in which children injured by a sharp point or edge did not recover. In contrast, a small part can totally cut off a child's air supply within a few moments, causing death or irreversible brain damage. The industry comments did not discuss the severity of the risk as a factor to consider.

2. If a small part exists, it presents a direct danger to children. This contrasts with the sharp points and edges regulations in which the location of the point or edge on the toy needs to be carefully evaluated before the Commission can be sure that an unreasonable risk is present. The added uncertainty of this factor is an additional reason for adopting the two-stage approach in those regulations.

3. The small parts regulation covers only toys intended for children under 3. This is a much smaller range than the 0–8 years age range covered by the sharp point and sharp edge regulations. As discussed above, the Commission believes that the regulation is sufficiently clear so that toys in this category are readily identifiable.

If an industry member needs advise on the applicability of the regulation to a particular toy, the Commission staff will be happy to provide it, either before or after the regulation becomes effective. (A particular example of this, one that concerns bulk vending products, is discussed under Economic Considerations (see item 1 under section F, below).) In addition, the Commission has a policy on the granting of emergency exemptions from regulations (16 CFR 1009.9; 43 FR 19215–16, May 4, 1978). In a qualifying situation, an industry member could escape liability for marketing what the Commission considers to be a noncomplying product.

E. Effective Date

Many commenters discussed the issue of the effective date of the small parts regulation. Manufacturers uniformly have expressed a preference that it coincide with the established marketing cycle of the toy industry, and should not impact the industry in mid-season, between June and October, when toys are being shipped. The manufacturers have objected to the proposed 6-month effective date, and have recommended instead that the small parts regulation become effective during the first part of calendar year 1980, or one year from the date of final publication in the **Federal Register**, whichever is later.

Non-industry commenters on the effective date, including local consumer protection offices, have urged the Commission to make the final regulation effective immediately. They have pointed out that this would keep dangerous toys off the market during the 1979 Christmas season.

The Commission believes that some lead time is necessary, even though evidence suggests that many toys

already meet the small parts regulation. If six months of lead time were provided, as the Commission proposed, the regulation would become final just before Christmas this year. Some of the many toys sold for Christmas might be covered, but the vast majority of such toys would have already been introduced into interstate commerce and would not be covered.

The potential added safety stemming from a pre-Christmas effective date must be balanced against the disruption to the marketplace which it could cause. In addition to the impact on the industry, consumers would not know which toys on the shelves were covered by the regulation and which were not. In fact, if the regulation became effective just before or during the Christmas buying season, toy purchasers might relax their vigilance against small parts hazards. They would likely assume, wrongly, that all the toys on the shelves were covered by the newly-effective small parts regulation.

After balancing all of the relevant considerations, the Commission has decided to make the small parts regulation effective on January 1, 1980 so that toys introduced into interstate commerce after that date will be covered.

F. Economic Considerations

Aside from comments on the effective date, the major comment on economic considerations came from the National Bulk Vendors Association. As representatives of the distributors, manufacturers, and operators of bulk vending equipment and products, NBVA has claimed that the small parts regulation could destroy their industry by banning up to 33 percent of the products currently sold; by forcing many of their members out of business; by causing loss of jobs among the 10,000 to 15,000 employees in the industry; and by making millions of dollars of equipment obsolete. NBVA has commented that "[t]he drastic economic impact of the regulation * * * outweighs any possible benefit which might accrue from banning small toy items."

It is of course possible that the small parts regulation will have some future adverse economic impact on a segment of the bulk vending industry. This was discussed in the May 1978 staff economic report referenced in the October 1978 proposal (see section III, G, above). However, NBVA's assertions seem clearly to be based on "worst case" economic projections and speculation. NBVA has not provided the Commission with specific data showing the likelihood that severe economic consequences will result.

As examples, the following points undercut NBVA's points on economic impact:

1. The Commission staff has obtained (in most cases from NBVA) and evaluated a large number of products which are dispensed by random selection bulk vending machines and which it believes are representative of the products dispensed by the machines. As discussed above, the Commission believes that none of these products is "intended for use by children under 3," according to the criteria which define the scope of the small parts regulation (§ 1501.2).

2. NBVA has claimed that adverse safety-related publicity might hurt the sales of vending machine toys which are not banned. However, this would be no more true for vending machine toys for children over 3 than for any other toys.

3. Bulk vended toys and novelties for all ages represent only 33 percent of the industry's total revenue from bulk vending operations, although for some individual firms the percentage is much higher (figures provided by NBVA). Based on the anticipated banning of some portion of these items, NBVA has claimed that the entire industry could be destroyed. This claim remains unsupported by the submission by NBVA of any data or convincing arguments. Therefore, it is just as possible that the bulk vending products unaffected by the Commission's regulation—gum balls, other food, complying items, and items for children over 3—would pick up the slack caused by any items banned in the future. It may even be that the shift to products not banned would stimulate machine manufacturing and employment, as obsolete machines are retrofitted or replaced.

4. The manufacture of toys and novelties sold in bulk vending machines apparently occurs largely in foreign countries. Even if employment in these industries were temporarily affected, non-U.S. markets could probably be developed.

G. Miscellaneous

1. A number of commenters expressed disagreement with the entire small parts regulation because it represents government interference in an area where parents have the responsibility to protect their children. Especially because deaths are occurring, the Commission believes that parental discretion alone is not sufficient to provide children under 3 with the protection they need and deserve.

2. A commenter has asked what percentage of defective products will be considered acceptable by the Commission. This raises the issue of whether a sampling plan is necessary. The Commission acknowledges that it is impossible to be 100 percent certain that every product will comply with the regulation. A test of every toy, especially with the use and abuse procedures, is impossible.

Nevertheless, the Commission will not use a specific sampling plan. If Commission testing indicates a violation, the Commission will perform additional testing and will examine a manufacturer's testing records. Before taking any enforcement action, the Commission will decide whether there is a violation which could affect significant numbers of the product. In addition, the Commission expects manufacturers to design their toys to exceed the minimum performance levels required by the regulation. Such design would likely eliminate the need for any sampling plan that sanctions the manufacture and distribution of non-complying toys.

3. NBVA has proposed that the Commission address the small parts risk by requiring cautionary labeling on bulk vending machines instead of by banning noncomplying bulk vended toys intended for children under 3. Bulk vending machine labeling is generally equivalent to package labeling for other toys and signs in stores where other toys are sold. The Commission believes that none of these alternatives would provide the same degree of protection as a ban of noncomplying toys. In addition, while the Commission encourages voluntary cautionary labeling, it would demand unrealistic staff resources to enforce any such mandatory requirements.

V. Final Regulation

In October 1971, the FDA proposed for public comment a regulation which addressed the aspiration, ingestion, and other risks of injury presented by certain dolls, stuffed animals, and similar toys (36 FR 19980, October 14, 1971). Based in part on its publication of the small parts regulation below, the Commission withdraws that FDA proposal.

The Commission finds that certain toys and other articles intended for use by children under 3 years of age present an unreasonable risk of injury to children in this age group. Before making this finding, the Commission balanced the relevant economic, epidemiological, and other considerations associated with the small parts regulation issued below.

The regulation, applicable to the very broad category of "toys and other articles intended for use by children under 3," covers many products. However, the only aspect of the toy which is regulated is the size (this should not be confused with the discussion of the scope of the regulation, section IV, A(2) above, where it is explained that size and other factors led to the Commission's determination that only certain products would be regulated). In addition, the size is regulated by a performance requirement so that toy design is affected as little as possible.

Also balanced against the broad scope of the small parts regulation is the severe risk that it addresses. Children under 3 die every year from small parts. This occurs, in part, because they indiscriminately put things in their mouths and lack the protective reactions and knowledge of older children and adults. Children over 3 and even adults choke to death on small parts, but the regulation below does not address the risk to them. Similarly, the regulation recognizes that children under 3 cannot be protected from every small part and the regulation does not include every product with which they may come into contact.

The Commission has exempted from the regulation certain products which do serve a functional, educational, or other positive need. There is widespread compliance with the regulation among toys currently on the market which are not exempted. Therefore, most toys for children under 3 will not have to be redesigned or modified in any way to comply with the size requirement. For those that do, it is reasonable to require that they be constructed large enough and sturdy enough so that they will not fracture, disassemble or otherwise expose children under 3 to hazardous small parts.

Available injury data show that chokings, aspirations, and ingestions are caused by the small size of certain toys intended for children under 3 that are on the market. The Commission expects the small parts regulation to address this risk. It is an unreasonable risk because the relatively small economic impact that would result from regulation of these products is far outweighed by the reduction of the risk that will also result from the regulation.

Accordingly, pursuant to provisions of the Federal Hazardous Substances Act (secs. 2(f)(1)(D), 2(q)(1)(A), 2(s), 3(e)(1) and 10, 74 Stat. 372, 374, 375 as amended 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262, 1269)), in accordance with the provisions of 5 U.S.C. 553, and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, sec. 30(a), 86 Stat. 1231 (15 U.S.C. 2079(a)), the Commission amends title 16, chapter II, subchapter C by adding a new paragraph (a)(9) to § 1500.18 and by adding a new part 1501, as follows:

PART 1500—HAZARDOUS SUBSTANCES AND ARTICLES; ADMINISTRATION AND ENFORCEMENT REGULATIONS

§ 1500.18 Banned toys and other banned articles intended for use by children.

(a) *Toys and other children's articles presenting mechanical hazards.* Under the authority of section 2(f)(1)(D) of the act and pursuant to provisions of section 3(e) of the act, the Commission has determined that the following types of toys or other articles intended for use by children present a mechanical hazard within the meaning of section 2(s) of the act because in normal use, or when subjected to reasonably foreseeable damage or abuse, the design or manufacture presents an unreasonable risk of personal injury or illness:

* * * * *

(9) Any toy or other article intended for use by children under 3 years of age which presents a choking, aspiration, or ingestion hazard because of small parts as determined by Part 1501 of this chapter and which is introduced into interstate commerce after January 1, 1980. For purposes of this regulation, introduction into interstate commerce is defined as follows: A toy or children's article manufactured outside the United States is introduced into interstate commerce when it is first brought within a U.S. port of entry. A toy or children's article manufactured in the United States is introduced into interstate commerce (1) at the time of its first interstate sale, or (2) at the time of its first intrastate sale if one or more of its components and/or raw materials were received interstate, whichever occurs earlier. Part 1501 defines the term "toy or other article intended for use by children under 3," as used in this regulation, and exempts certain products from banning under this regulation.

PART 1501—METHOD FOR IDENTIFYING TOYS AND OTHER ARTICLES INTENDED FOR USE BY CHILDREN UNDER 3 YEARS OF AGE WHICH PRESENT CHOKING, ASPIRATION, OR INGESTION HAZARDS BECAUSE OF SMALL PARTS

Sec.

1501.1 Purpose.
1501.2 Scope.
1501.3 Exemptions.
1501.4 Size requirements and test procedure.
1501.5 Enforcement procedure.

Authority—Sec. 2(f)(1)(D), (q)(1)(A), (s), 3(e)(1), and 10; 74 Stat. 372, 374, 375 as amended 80 Stat. 1304–05, 83 Stat. 187–89 (15 U.S.C. 1261, 1262, 1269).

§ 1501.1 Purpose.

Section 1500.18(a)(9) of this chapter classifies as a banned hazardous substance any toy or other article intended for use by children under 3 years of age that presents a choking, aspiration, or ingestion hazard because of small parts. This Part 1501 describes certain articles that are subject to § 1500.18(a)(9); lists certain articles that are specifically exempted; and provides a test method for determining whether an article is hazardous to children under 3 because it, or one of its components that can be detached or broken off during normal or reasonable foreseeable use, is too small.

§ 1501.2 Scope.

(a) This regulation (§ 1500.18(a)(9) and the criteria described in § 1501.4 below) applies to all toys and other articles intended for use by children under 3 years (36 months) of age that are introduced into interstate commerce after the effective date. Such articles include, but are not to limited to: squeeze toys; teethers; crib exercisers; crib gyms; crib mobiles; other toys or articles intended to be affixed to a crib, stroller, playpen, or baby carriage; pull and push toys; pounding toys; blocks and stacking sets; bathtub, wading pool and sand toys; rocking, spring, and stick horses and other figures; chime and musical balls and carousels; jacks-in-the-box; stuffed, plush, and flocked animals and other figures; preschool toys, games and puzzles intended for use by children under 3; riding toys intended for use by children under 3; infant and juvenile furniture articles which are intended for use by children under 3 such as cribs, playpens, baby bouncers and walkers, strollers and carriages; dolls which are intended for use by children under 3 such as baby dolls, rag dolls, and bean bag dolls; toy

cars, trucks, and other vehicles intended for use by children under 3. In addition, such articles include any other toys or articles which are intended, marketed or labeled to be entrusted to or used by children under 3 years of age.

(b) In determining which toys and other articles are intended for use by children under 3 years (36 months) of age, for purposes of this regulation, the following factors are relevent: the manufacturer's stated intent (such as on a label) if it is a reasonable one; the advertising, promotion, and marketing of the article; and whether the article is commonly recognized as being intended for children under 3.

(c) This regulation does not apply to toys or articles which are solely intended for use by children 3 years of age or older. In addition, it does not apply to all articles to which children under 3 years of age might have access simply because of presence in a household. Certain articles which are specifically exempted from this regulation are listed in § 1501.3 below.

§ 1501.3 Exemptions.

The following articles are exempt from this regulation (§§ 1500.18(a)(9) and 1501.4 below):

(a) Balloons;

(b) Books and other articles made of paper;

(c) Writing materials such as crayons, chalk, pencils, and pens;

(d) Children's clothing and accessories, such as shoe lace holders and buttons;

(e) Grooming, feeding, and hygiene products, such as diaper pins and clips, barrettes, toothbrushes, drinking glasses, dishes and eating utensils;

(f) Phonograph records;

(g) Modeling clay and similar products;

(h) Fingerpaints, watercolors, and other paint sets;

(i) Rattles (as defined at 16 CFR 1510.2); and

(j) Pacifiers (as defined at 16 CFR 1511.2(a)).

§ 1501.4 Size requirements and test procedure.

(a) No toy or other children's article subject to § 1500.18(a)(9) and to this Part 1501 shall be small enough to fit entirely within a cylinder with the dimensions shown in Figure 1, when tested in accordance with the procedure in paragraph (b) of this section. In testing to ensure compliance with this regulation, the dimensions of the Commission's test cylinder will be no greater than those shown in Figure 1. (In addition, for compliance purposes, the English dimensions shall be used. The metric approximations are included only for convenience.)

(b)(1) Place the article, without compressing it, into the cylinder. If the article fits entirely within the cylinder, in any orientation, it fails to comply with the test procedure. (Test any detached components of the article the same way.)

(2) If the article does not fit entirely within the cylinder, subject it to the appropriate "use and abuse" tests of 16 CFR 1500.51 and 1500.52 (excluding the bite tests of §§ 1500.51(c) and 1500.52(c)). Any components or pieces (excluding paper, fabric, yarn, fuzz, elastic, and string) which have become detached from the article as a result of the use and abuse testing shall be placed into the cylinder, one at a time. If any such components or pieces fit entirely within the cylinder, in any orientation and without being compressed, the article fails to comply with the test procedure.

§ 1501.5 Enforcement procedure.

The Commission will enforce this regulation, unless it determines that an emergency situation exists, only in accordance with Chaper 2C—Letters of Advice/Notices of Noncompliance of the CPSC Enforcement Policy and Procedural Guides, issued in May 1979 and available from the CPSC's Office of the Secretary, 1111 18th Street, NW., Washington, D.C. 20207. Under the procedure described in this chapter, firms must be informed by letter that they or their products may be the subject of enforcement action and must be provided ten days within which to submit evidence and arguments that the products are not violative or are not covered by the regulation, prior to the initiation of enforcement action by the Commission or by its delegated staff member. The function of approving such enforcement actions is currently delegated by the Commission to the Associate Executive Director for Compliance and Enforcement (copies of the existing delegation documents are also available from the CPSC's Office of the Secretary).

Effective date: January 1, 1980.

Dated: June 12, 1979.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

BILLINC CODE 6355-01-M

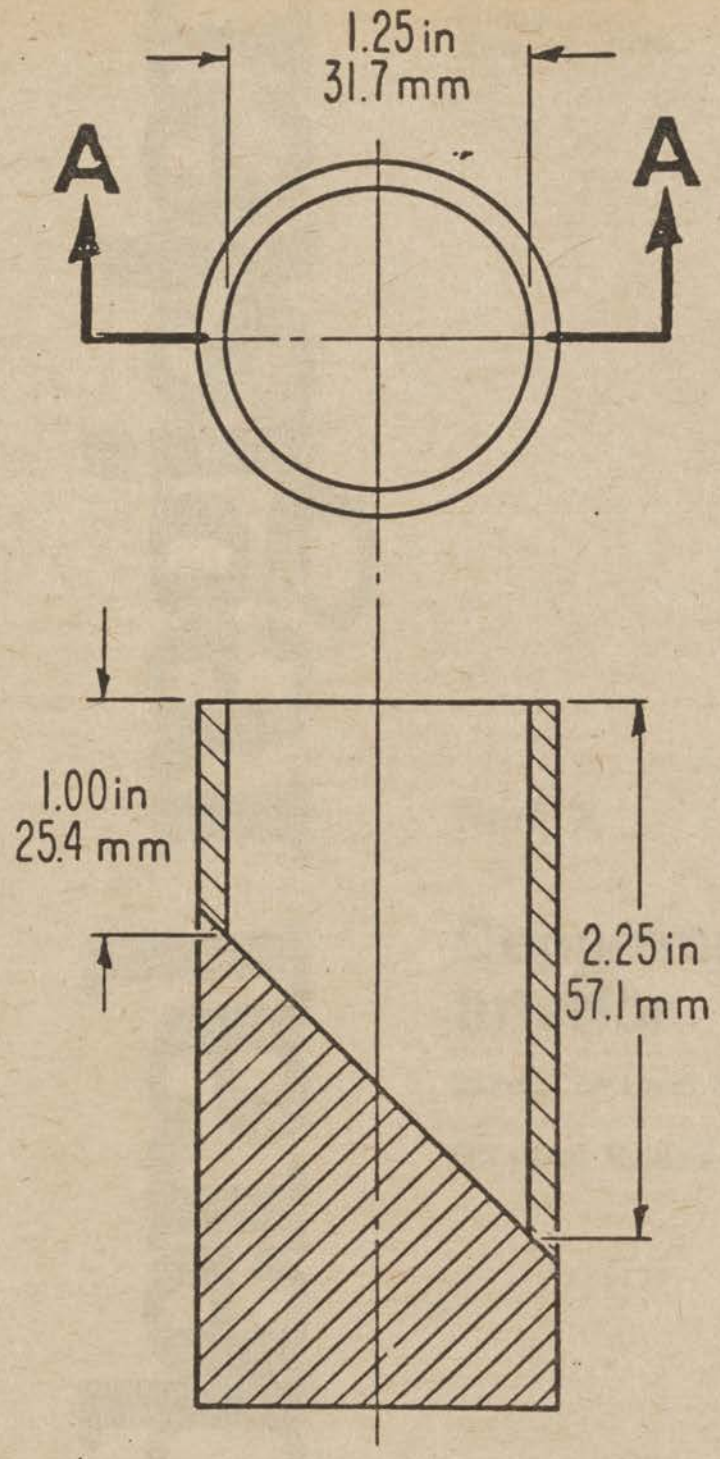

FIG 1-SMALL PARTS CYLINDER

[FR Doc. 79-18676 Filed 6-14-79; 8:45 am]

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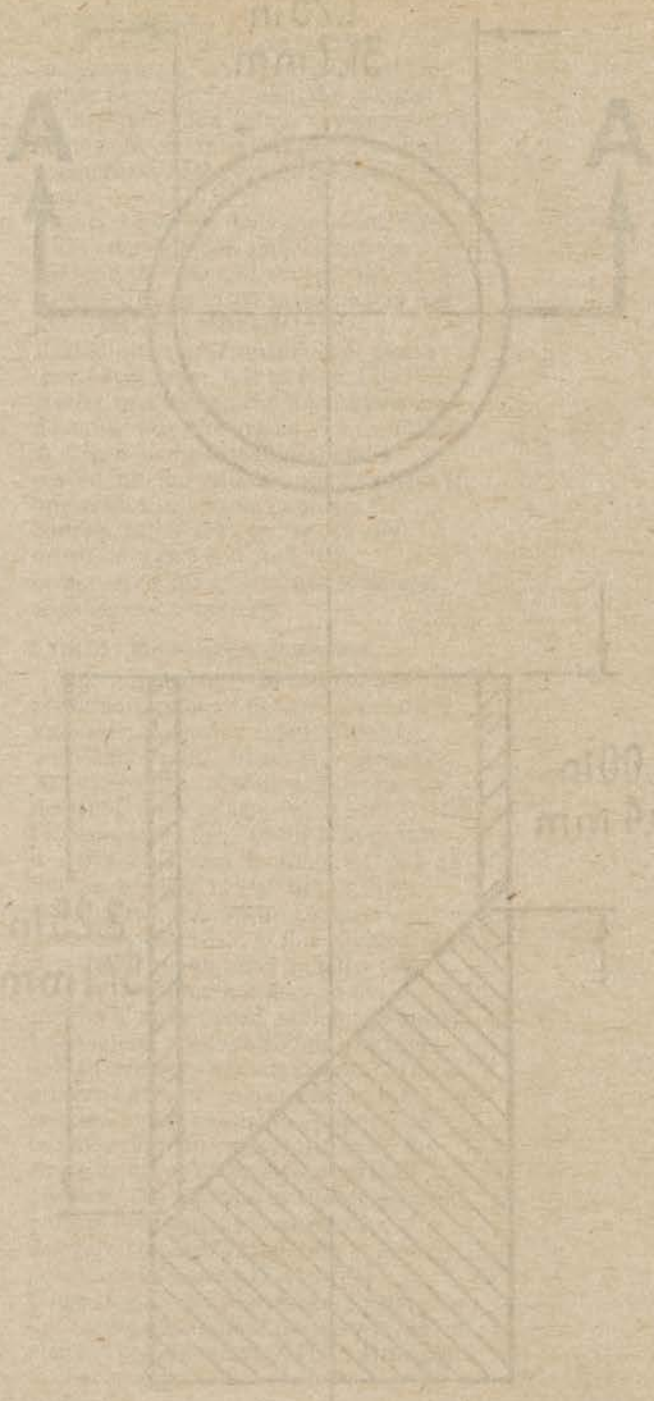
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federal register

Friday
June 15, 1979

Part X

Department of the Interior

Bureau of Land Management

Off-Road Vehicle Use

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 420

Off-Road Vehicle Use

AGENCY: Bureau of Reclamation, Interior.

ACTION: Adoption of Amendments to final rules.

SUMMARY: On August 23, 1974, final regulations of the Bureau of Reclamation concerning off-road vehicles on Bureau of Reclamation lands became effective. These regulations have been reviewed in accordance with Executive Order 11989, May 24, 1977 (relating to off-road vehicles on public lands), which amends Executive Order 11644. These amendments fulfill requirements set forth in Executive Order 11989, and require all Bureau lands to be closed to off-road vehicle use unless designated "open" under the regulation.

DATE: These amendments become effective June 15, 1979.

FOR FURTHER INFORMATION CONTACT: Mr. L. David Williamson, Senior Staff Assistant for Land Resources Management, Operation and Maintenance Policy Staff, Bureau of Reclamation, Washington, D.C. 20240 (202) 343–5204.

SUPPLEMENTARY INFORMATION: On August 22, 1978, proposed amendments to Title 43 CFR Part 420 were published in the **Federal Register.** These amendments were designed to bring the Bureau of Reclamation's regulations into agreement with provisions of Executive Orders 11644 and 11989. The three changes made by these amendments are: (1) add to the exclusions from Off-Road Vehicles (ORV) "combat vehicles used in support of national defense;" (2) add a restatement of Section 420.2 into Section 420.21 by inserting the phrase "All Bureau lands shall be closed to off-road vehicle use unless designated open;" and (3) make provisions for Bureau Regional Directors to order the closure of off-road vehicle lands under their jurisdiction when, in their opinion, considerable adverse effects are being caused by the vehicles.

Comments received generally supported these amendments except for the general closing of the lands, which was merely a restatement of rules already in effect (43 CFR 420.2). Since Reclamation's lands have been acquired or withdrawn from the public domain for the construction of water impoundment and distribution and for agricultural development, the unrestricted use of ORV's on these lands would be unwise. In fact, the nature of these lands and their intended use dictates that the majority of these lands be closed to such ORV use. For the above reasons, the amendment to the rules proposed in the **Federal Register,** page 37206, Vol. 43, No. 163, of Tuesday, August 22, 1978, are adopted, unchanged, as follows.

The impacts of the implemention of Executive Order 11644, as amended by Executive Order 11989 (42 FR 26959), are evaluated under final Environmental impact statement (FES 78–5) entitled "Departmental Implementation of Executive Order 11644, as amended by Executive Order 11989, pertaining to use of Off-Road Vehicles on the Public Lands." Bureau of Reclamation existing regulations for off-road vehicle use, as modified by these amendments, implement the Department of the Interior's policy which was evaluated in the final environmental impact statement, and require all Bureau lands to be closed to off-road vehicle use unless designated open under procedures of Section 420.21. Notice of the availability of this final environmental impact statement was published in the **Federal Register** on April 21, 1978, (FR Vol. 43 page 17063).

Primary author of this document is Mr. Terence G. Cooper, Staff Assistant for Land Resources Management, Operations and Maintenance Policy Staff, Bureau of Reclamation.

DETERMINATION OF SIGNIFICANCE: The Department of the Interior has determined that this document is not a significant rule and does not require a regulatory analysis under Executive Order 12044 and 43 CFR Part 14.

Dated: June 4, 1979.

Guy R. Martin,

Assistant Secretary of the Interior.

Pursuant to the authority of the Secretary of the Interior contained in Executive Order No. 11989 of May 24, 1977, Part 420 of Title 43 is amended as follows:

PART 420—OFF-ROAD VEHICLE USE

1. Paragraph (a) is amended by redesignating (5) "official use" vehicles as number (6) and adding a new paragraph (5) to read as follows:

§ 420.5 Definitions.

(a) * * *

(5) any combat or combat support vehicle when used in times of national defense emergencies; and (6) "official use" vehicles

* * * * *

2. Immediately following the section heading and preceding the words "The Regional Director shall . . . ," insert the following sentence: "All Bureau lands shall be closed to off-road vehicle use under Section 420.2 unless designated as open under the following procedures." Paragraph (c) is amended to read as follows:

§ 420.21 Procedure for designating areas of off-road vehicle use.

* * * * *

(c) The Regional Director will inspect designated areas and trails periodically to determine conditions resulting from off-road vehicle use. If he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat, or cultural or historic resources of particular areas or trails of the public lands, he shall immediately close such areas or trails to the type of off-road vehicle causing such effects. No area or trail shall be reopened until the Regional Director determines that adverse effects have been eliminated and that measures have been implemented to prevent future recurrence. The public shall be notified of restrictions or closure in accordance with § 420.23.

[FR Doc. 79–18670 Filed 6–14–79; 8:45 am]

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