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# federal register

Book 1 of 2 Books
Friday, October 3, 1980

## Highlights

**Briefings on How to Use the Federal Register**—For details on the resumption of briefings in Washington, D.C., see announcement in the **Reader Aids** section at the end of this issue.

65848, 65974 **Equal Employment Opportunity** Labor/FCCPO sets goals for minority participation in the construction industry and clarifies requirement that a nonexempt contractor's total workforce is covered by affirmative action requirements even though some employees perform work on nonfederally assisted construction contracts; effective 11–3–80 (Part VIII of this issue) (2 documents)

65581 **Gasoline** EPA denies petition to defer lead phasedown regulations; effective 9–29–80

65502 **Pay/Price Standards** CWPS amends rules to conform to anti-inflationary price standards previously published; effective 10–1–80; comments by 11–3–80

65515 **Aliens** Justice/INS deletes present regulations and revises other regulations regarding control of aliens departing from the United States; effective 10–3–80

65540 **Supplemental Security Income** HHS/SSA is rewriting and reorganizing rules describing what is and what is not income, the difference between earned and unearned income, how each is treated and exclusions applied; effective 10–3–80

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# Highlights

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There are no restrictions on the republication of material appearing in the **Federal Register.**

Questions and requests for specific information may be directed to the telephone numbers listed under INFORMATION AND ASSISTANCE in the READER AIDS section of this issue.

65619 **Medical Devices** HHS/FDA has tentatively determined that certain devices be restricted in their sale, distribution, or use to provide reasonable assurance of their safe and effective use; comments by 12–2–80

65493 **Merit Pay** OPM issues regulations which implement the pay administration features of the Merit Pay System

65932 **Food Stamps** USDA/FNS issues proposed rule regarding Sanction/Incentive Systems; comments by 12–3–80 (Part V of this issue)

65832 **Minimum Wages** Labor/ESA releases minimum wages for Federal and federally assisted construction workers (Part II of this issue)

65942 **Water Treatment and Disposal** EPA promulgates final guidelines regarding ocean discharges; effective 11–3–80 (Part VI of this issue)

65564 **Income Tax** Treasury/IRS issues rules relating to disclosures of returns and return information under certain circumstances

64926 **Labor Management Relations** Labor/Sec'y amends regulations which set forth procedures for enforcing violations of the reporting and disclosure requirements relating to the election of union officers; comments by 12–2–80 (Part IV of this issue)

65560 **Income Tax** Treasury/IRS issues final rules relating to limitation on percentage depletion for independent producers and royalty owners that join in filing consolidated returns

65633 **Pesticides** EPA in a proposed rule sets forth procedures governing the rescission of a State's primary enforcement responsibility for pesticide use violations; comments by 12–2–80

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

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 330

### Recruitment, Selection, and Placement (General)

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** To assist agencies in carrying out the Federal Employees Part-time Career Employment Act of 1978, the Office of Personnel Management (OPM) is amending its regulations to prohibit individuals participating in the special Part-time Direct Hire Program from using their acquired status to move to full-time positions until they have completed at least 1 calendar year of part-time service.

**EFFECTIVE DATE:** November 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Ellen Russell, Office of Policy Analysis and Development, Staffing Services (202) 632–6817.

**SUPPLEMENTARY INFORMATION:** OPM has developed a special Part-time Direct Hire Program to help agencies deal with the reported shortages of qualified part-time candidates in many occupational fields. Agencies which volunteer for the program, and whose proposals meet OPM criteria, will be able to directly offer career-conditional appointments to qualified candidates for part-time positions included in the program. To ensure that the direct hire authority is used as a legitimate way of filling part-time jobs and to screen out candidates interested in rapid transition to full time, a restriction on movement to full-time will be imposed on employees participating in this program. To prevent misunderstandings, agencies will be required to fully explain the restriction on movement before appointment and obtain a written statement of understanding from participating employees.

On June 10, 1980, the Office of Personnel Management published proposed regulations to this effect (45 39277). Two comments on this regulation were received during the 60-day comment period. One individual suggested that agencies be permitted to waive the regulation when the full-time services of the employee were required. Because agencies can increase the work schedules of part-time employees to meet workload demands, we do not think this modification is necessary and would, in fact, have a negative impact on the experimental nature of the Part-time Direct Hire Program. The second suggestion was that agencies be permitted to reinstate in full-time positions individuals originally appointed under the Part-time Direct Hire Program so long as 1 year had elapsed from the date of the appointment in the program. We do not believe this change is necessary since agencies are being given the authority to waive the restriction in hardship cases. OPM has determined that this is a significant regulation for purposes of E.O. 12044.

Office of Personnel Management.

**Beverly M. Jones,**

*Issuance System Manager.*

Accordingly, the Office of Personnel Management is adding 5 CFR 330.504 to read as follows:

**§ 330.504. Special restrictions after appointment under Part-time Direct Hire Program.**

(a) A person hired under the Part-time Direct Hire Program may not be changed to full time through:

(1) Position change;

(2) Work schedule change;

(3) Transfer; or

(4) Reinstatement based on appointment under the Part-time Direct Hire Program until he or she has completed at least 1 calendar year of service in a part-time position under the program.

(b) In the event of a break in service, the service requirement in paragraph (a) of this section is computed on the basis of the employee's total time in a pay status, 365 days equaling 1 calendar year.

(c) Agencies may waive this restriction only in the event of extreme personal hardship to the employee.

(5 U.S.C. 3301, 3302)

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### 5 CFR Parts 530, 531, and 540

### Pay Rates and Systems (General); Pay Under the General Schedule; Merit Pay System

**AGENCY:** Office of Personnel Management.

**ACTION:** Final rule.

**SUMMARY:** These regulations implement the pay administration features of the Merit Pay System established by the Civil Service Reform Act of 1978. The Merit Pay System is intended to recognize and reward quality performance with merit pay increases. This system will be fully implemented in October 1981, although some agencies are implementing the System in October 1980.

**DATE:** These regulations are effective on the first day of the first pay period on or after October 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Eric Carroll, Merit Pay Program Manager (202) 653–5990.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management is publishing further regulations and changes in existing General Schedule pay administration regulations to supplement and implement the Merit Pay System established by Title V of the Civil Service Reform Act of 1978, Pub. L. 95–454. Final regulations for establishing the Merit Pay System were published in the **Federel Register** on September 7, 1979 (44 FR 52161–52168). The pay administration regulations for the General Schedule, however, were not modified at that time to apply clearly to employees covered by the Merit Pay System. Many of the General Schedule regulations need no modification for clear application to merit pay employees, but several sections in three parts of the Code of Federal Regulations need change. Proposed changes in pay administration regulations were published in the **Federal Register** on July 25, 1980 (45 FR 49577–49580) for a 30-day period of public comment. The final changes in the pay administration

regulations for merit pay are summarized as follows:

**Part 530—Pay Rates and Systems (General)**

*Subpart C—Special Rates for Recruitment and Retention*

Sec.
530.305—Method of applying new special rates or for increasing existing special rates for merit pay employees.

**Part 531—Pay Under the General Schedule**

*Subpart B—Determining Rate of Basic pay*

Sec.
531.201—Applicability of rules for determining rate of basic pay to include merit pay employees.
531.203—Determining and computing a merit pay employee's pay according to the maximum payable rate rule.
531.204—Special provisions for conversions into and promotions of employees into, within and from the Merit Pay System.
531.205—Pay schedule conversion rules at the time of annual pay adjustment under 5 U.S.C. 5305.

*Subpart C—Pay Adjustments for Supervisors*

Sec.
531.301—Authority to adjust pay for supervisors of prevailing rate employees, who were previously called wage board employees.
531.305—Method of pay adjustment for merit pay employees supervising prevailing rate employees.

**Part 540—Merit Pay System**

Sec.
540.104—Waiver of requirement for a merit pay determination under certain circumstances.
540.106—Method of pay adjustment for employees when a merit pay determination is waived.

*Analysis of Comments.* The proposed regulations provided a 30-day period for public comment. The Office of Personnel Management received comments from sixteen agencies, two sub-units of two agencies and one individual. In general, agencies recommended these regulations be simplified and clarified. Most of the comments offered recommendations for modifying specific provisions of the proposed regulations. Due to the nature and significance of the comments received, the Office has modified the final regulations as discussed below. The Office will also supplement the regulations with guidance issued through the Federal Personnel Manual System.

*Section 530.305—Method of applying new special rates or for increasing existing special rates*

Under the pay administration regulations for merit pay employees, new special rates or increases in existing special rates will be applied to merit pay employees in the same manner as is currently used for all General Schedule employees. The agency will increase the employee's rate of basic pay by an amount equal to the difference between the minimum rate of the previously existing rate range and the minimum rate of the newly established rate range.

Only one agency commented on the method of determining special rates. This agency believed merit pay employees with special rates may receive a smaller increase than non-merit pay employees, with a consequent effect on the recruitment incentive for merit pay. This agency recommended that employees receiving special rates should be excluded from the Merit Pay System, with no change thus required for 5 CFR Part 530. The Reform Act provides for the exclusion of agencies or units thereof but not for individuals or classes of positions. An agency has the discretion of applying for exclusion and the Office of Personnel Management will consider each application on its own merits. The Office does not believe a blanket exclusion of employees receiving special rates is necessary since these employees have a range of rates within which merit increases can be given based on performance. The increases can and should be larger dollar amounts than those for non-merit pay employees since special rates are higher. Therefore, there should be no consequent adverse impact on the recruitment or retention incentive provided by special rates.

*Section 531.203—Maximum payable rate rules*

The highest previous rate provisions of the current regulations are revised in order to establish a rule that is applicable to merit and non-merit pay employees without regard to the pay system in which the highest previous rate was earned or when it was earned.

In effect, this rule establishes the maximum rate of basic pay that would have been payable if the employee's rate of basic pay had been fixed in the grade of his or her new position at the time the highest previous rate was earned. Then, the new rule requires that this rate be converted to the corresponding rate within the current rate range.

Eleven agencies provided comments on these highest previous rate provisions. All recommended that these provisions be simplified with shorter sentences, and, according to four agencies, with a mechanism specified for determining the relative position in the rate range in a consistent manner. One agency also recommended a provision be made for merit pay systems that use pay schedules with numerical increments. The Office has modified the highest previous rate provisions according to these recommendations and has retitled the section to more accurately reflect the purpose of the regulation.

Two agencies proposed giving merit pay employees the benefit of a partial step increase as if they were non-merit pay employees whose pay rate resulting from application of the maximum payable rate rule fell between two steps of the employee's grade on the General Schedule. The Office does not believe such a linkage of the Merit Pay System with the General Schedule pay system would be appropriate. The Merit Pay System can accommodate a specific dollar rate, while the General Schedule pay system cannot because each grade contains specified steps. A system with steps requires a provision for "slotting" or movement to the higher steps by way of exception because no rate exists between two steps.

While the Office is treating merit and non-merit pay employees in a similar manner under the pay administration rules, some differences exists due to the different features of the pay systems affecting the employees.

One agency commented that these provisions do not address the highest previous rate determinations for those individuals previously employed in single rate positions and do not distinguish between legal and payable rates of pay. With the proposed mechanism for determining the highest previous rate, the single rate positions can be clearly covered since the employee's highest previous rate paid, whether this rate is a single rate or even a rate earned in a pay system other than the General Schedule, is compared with and fitted into the rate range of the General Schedule for the grade the employee in entering. A distinction between legal and payable rates also exists by virtue of the definition of "highest previous rate" in § 531.202, which indicates this rate is the rate actually *paid* rather than the *legal* rate. Of course, the rate identified by this rule as the "maximum payable rate" is subject to the limitation imposed by 5 U.S.C. 5308 and any other restrictions on salary rates imposed by law.

*Section 531.204—Special provisions for promotion and conversion of merit pay employees*

Under the promotion provisions of the regulations, when a General Schedule employee not covered by the Merit Pay System is promoted to a position in which he or she will be covered by merit

pay, the employee's pay will be adjusted as if he or she were a General Schedule employee not covered by the Merit Pay System. When a promotion occurs within the Merit Pay System, the employee's rate of basic pay will be increased by six percent (or to the minimum rate of the grade, if that is higher). When an employee covered by the Merit Pay System is promoted to a General Schedule position in which he or she will not be covered by merit pay, the employee's rate of basic pay will be increased by six percent and then fixed at the rate for the lowest step of the grade that equals or exceeds that rate.

Five commenters indicated that merit pay employees may receive less than non-merit pay employees upon promotion from one merit pay position to another. Two commenters proposed treating merit pay employees the same as non-merit pay employees under the General Schedule; one commenter proposed replacing the provision for a six-percent increase with an eight-percent increase; and one commenter proposed a number of approaches, all of which would result in treating merit pay employees and non-merit pay employees under the General Schedule in a similar manner. These proposals are similar to those made concerning the highest previous rate provisions. However, 5 U.S.C. 5334(b) is explicit in establishing six percent as the amount of increase equivalent to a two-step increase for non-merit pay employees. As a result, the Office had made no change in this rule.

Two commenters recommended language that would provide the "minimum rate of the grade, if that is higher" upon promotion so that the employee would be paid a rate within the rate range. The Office has adopted this suggestion.

One commenter indicated that merit pay plans with numerical increments would require placement of employees at the next higher rate that exceeds six percent of the employee's existing rate of basic pay. The commenter is correct in this interpretation.

One commenter recommended that the rate to be paid upon promotion be rounded to the nearest dollar. Both the maximum payable rate rule and the promotion rule have been revised to address this concern. However, in both cases rounding must be to the *next higher* whole-dollar rate, rather than to the *nearest* whole-dollar rate.

Under the conversion provisions, when an employee is converted to the Merit Pay System, the employee must receive at least the same rate paid to the employee before entry into the Merit Pay System. Additionally, the employee must receive any pay entitlement due on or prior to the date of entry. This means, for example, that within-grade increases, quality step increases and promotions must be processed before entry into merit pay and must be processed under the rules that apply to non-merit pay General Schedule employees. In the case of promotions, the employee is entitled to basic pay at the rate for the lowest step of the higher grade which exceeds his or her existing rate of basic pay by not less than two step-increases of the grade from which he or she is promoted. Once the specific rate is identified, then the employee is converted at that rate into the Merit Pay System.

When conversion occurs on the same date that merit pay increases and comparability are effective, the employee must first receive any pay entitlements due as described above and then, in sequence, be converted and receive the portion of comparability to which the employee is entitled under the Merit Pay System (including any amounts necessary to adjust the employee's pay to the minimum of the rate range of the employee's grade), then any merit pay increase resulting from a merit pay determination.

Three agencies commented that the sequence of actions specified will result in two comparability adjustments being given to employees. This is not the case since comparability can only be given once and this is clear in the sequence of actions spelled out. Some confusion might have resulted from interpreting "any earned or appropriate pay entitlement" as inclusive of the comparability adjustment. In the sequence of actions, these pay entitlements must be given prior to change in the pay plan code (conversion) and prior to the comparability adjustment. The Office has modified the proposed regulation to clearly exclude the comparability adjustment given to a non-merit pay General Schedule employee from the pay entitlements the employee must receive prior to conversion to the Merit Pay System. Once converted, the employee receives the comparability adjustment as specified under the Merit Pay System.

One commenter recommended a provision be drawn up to cover the situation where pay periods begin on different dates. Without such a provision, the commenter indicates an employee who moves between merit pay plans or other pay systems with different pay periods at the time of the annual pay adjustment could receive two comparability increases. However, the employee can receive the comparability adjustment only once since by law the comparability adjustment must be effective at the beginning of the *first* applicable pay period. No change is necessary to prevent a double comparability increase.

*Section 531.305—Method of pay adjustment for merit pay employees supervising prevailing rate employees*

According to this regulation, merit pay employees who regularly supervise any prevailing rate employees may be paid a rate which exceeds the highest rate being paid to the prevailing rate employees he or she supervises. The adjusted rate for the merit pay employee that results from this provision shall not exceed the highest rate paid the prevailing rate employees by more than three percent and shall not exceed the maximum rate of the supervisor's grade.

Five agencies commented on the adjustment of rates of supervisors of prevailing rate employees, each comment being unique. One agency recommended linking the Merit Pay System to the steps of the General Schedule by using the next higher step as the means of providing a higher rate for a supervisor. This suggestion would restrict agencies to a specific dollar amount predicated on clear rates for steps. Although the Office has proposed a rule which would permit agencies to treat merit pay employees in a manner similar to non-merit pay General Schedule employees, it does not believe that a further linkage of the pay systems would be appropriate. The proposed rule provides agencies with a much needed flexibility in determining the amount of the pay adjustment. This flexibility is also provided by means of a rule that is already a discretionary method for pay-setting. The Office believes the flexibility provided in an otherwise discretionary rule should remain and, therefore, has retained the original language of the proposed regulation.

Another agency recommended that agencies be permitted to adjust (where appropriate) the rate of the supervisor above the maximum rate of the supervisor's grade; the rate is to be determined by an extension of steps for the particular grade. The statutory authority permitting higher rates for supervisors of prevailing rate employees limits any adjustment to the maximum rate of the grade, thus precluding any change in the proposed regulation.

Two agencies questioned the meaning of the term, "prevailing rate employee." The term has the meaning given to it in 5 U.S.C. 5333(b). All references to "wage board employee" in Subpart C, 5 CFR

Part 531, are being changed to read "prevailing rate employee." (The Office wishes to direct the attention of these agencies to 5 U.S.C. 5342. Particular attention should be paid to 5 U.S.C. 2105(c).)

One agency recommended a provision to permit agencies to adjust an employee's rate by no more than three percent "or the next higher step or increment of the pay range" to cover those agencies having an incremental merit pay system. This provision is not necessary since agencies having incremental systems could set pay at any of the increments that does not exceed the rate of basic pay of the prevailing rate employee by more than three percent as provided by the current proposed regulation.

One agency questioned whether, for comparison purposes, night differential should be included as part of the highest rate of basic pay paid to a prevailing rate employee. The Office, in revising the current regulations, sought to reduce redundancy and eliminated the phrase "excluding night differential" from § 531.305 (see § 531.304(d)(1)(ii)) of 5 CFR. However, because of the concern expressed by the agency for a need to clarify this issue, the proposed regulation is amended to include the phrase "excluding night and environmental differentials." Additionally, § 531.304(d)(1)(ii) is amended in the same manner.

*Section 540.104—Waiver of merit pay determination*

This regulation identifies certain situations in which the merit pay determination is to be waived, such as when there has been insufficient service during the performance appraisal period upon which the merit pay determination is based or when an employee has been promoted within 120 days prior to the date of a merit pay increase. The employee's pay, however, will be fixed according to the provisions of § 540.106. (The reference to § 531.406 is to the proposed within-grade increase regulations published in the **Federal Register** on July 29, 1980 and in FPM Bulletin 531–96 on August 21, 1980.)

Four agencies indicated some problems will occur with agencies having the authority to define the specific date for waiving a pay determination when a promotion has occurred within 120 days prior to that date and, in two cases, recommended OPM define this date as the effective date for merit pay increases to ensure a common date for all agencies. Along with this recommendation, many agencies commented on the 120-day limit. Five agencies proposed leaving the time limit to agency discretion mainly because of similar provisions affecting performance appraisal or merit pay determination provisions. Four agencies agreed with the 120-day limit but, in two agencies' case, only if the merit pay determination date is defined as the ending date of the performance appraisal period and, in another agency's case, only if the time limit for merit pay determinations in general is extended to 120 days prior to October 1. One agency recommended changing the 120-day limit to one year, similar to General Schedule requirements for promotions and within-grade increases.

OPM's intent in establishing a 120-day limit is to ensure that agencies give only one pay adjustment to base pay due to performance considerations within a given time frame. The Office believes a 120-day limit is reasonable. Much of the agency concern seems to assume the waiver of a pay determination is a waiver of performance appraisal requirements when employees have not been under a performance appraisal for a sufficient period of time. The performance appraisal requirements are not being waived by this rule. In the case of performance periods, OPM believes agency discretion is best, due to the differences in design of performance appraisal systems. However, a pay determination is separate from this appraisal process, even if it occurs simultaneously with an appraisal. The pay determination date can also be separate from the effective date of the merit pay increase.

The problem with the 120-day limit also appears to be one of consistency. In one agency with a pay determination date of July 1, an employee promoted as early as March 1 would have been affected by this rule, whereas in another agency with a pay determination date of November 30, only an employee promoted after August 1 would have been affected. This problem is further compounded by differences in the minimum time limits specified for pay determinations and different time limits for performance appraisals.

In order to accommodate these concerns, OPM has revised the proposed regulations to establish the effective date of a merit pay increase (first pay period in October) as the reference point for waiving merit pay determinations for recently promoted employees. The 120-day limit will remain unless agencies find, after a period of operation, that this limit is too short and should be extended. No change is proposed in the period of time within which a merit pay determination must be made (that is, no sooner than 90 days before and no later than 60 days after October 1) and no change is proposed to agency discretion in determining the minimum period necessary for performance appraisals.

One agency proposed eliminating the reference to "creditable service" and combining two of the waivers—the first one for employees not *covered* by an appraisal system for the minimum period of time specified by the agency for coverage, and the other for employees in a *duty status* for less than the minimum period of time specified by the agency for coverage under a performance appraisal system because of certain circumstances. The distinction between these two situations is necessary because an employee may be *covered* by a performance appraisal system but still be *absent from duty* for such a period of time that it is not appropriate to make a merit pay determination. Another agency recommended clarifying whether or not the merit pay determination is handled differently for an employee whose *absence* is not creditable service time.

Under the General Schedule, the benefit of an increase is only provided to employees who normally have had pay entitlements accorded to them even though they are absent for a period that is considered creditable service. The Merit Pay System provides the same benefit since merit pay employees are General Schedule employees. The Office has not changed this proposed rule since it is only a positive prescription of a benefit where none would normally be given. The proposed rule is necessary as a parallel to the waiver of the acceptable level of competence determination required for within-grade increases. Under the Merit Pay System the merit pay determination, which must be based on a current performance appraisal, is similar to this determination of competence.

*Section 540.106—Special provisions for merit pay increases*

The revision to § 540.106 provides for merit pay increases when the merit pay determination is waived. This revision clarifies entitlement to the "interrupted service benefit" provided for in the current Merit Pay System regulations whereby employees receive the average merit pay increase received by comparably situated employees in the agency during the priod when the employee's duty status was interrupted due to service with the uniformed services.

In addition, this revision extends similar benefits to other categories of employees. These include employees not covered under an approved performance appraisal system for the minimum

period of time necessary for coverage, employees promoted within 120 days prior to a merit pay increase, and employees absent for any of the following reasons: (1) leave of absence while engaged in military service, service with the Peace Corps or VISTA, service with another Federal agency, service on an Intergovernmental Personnel Act mobility assignment, or while in receipt of workers compensation; (2) the exercise of a restoration or reemployment right; (3) reemployment following a period of separation while in receipt of workers compensation; (4) paid leave; or (5) entitlement to back pay.

Six agencies suggested that the terms "average adjustment" and "comparably situated employees" need further clarification. OPM has deliberately not defined them in order to give agencies optimium discretion in defining them.

At the same time OPM is reviewing agency plans to ensure that agencies define these terms in a logical manner. Possible definitions include presumptive ratings such as what the fully satisfactory employee would receive, modal distributions for particular merit pay units, or the amount of money put in the merit pay fund for the employee's grade and position in the rate range. For the "average adjustment," a variety of ways to compute the average is possible but should not include "full comparability" since this in many instances will freeze the employee's position in the pay range rather than ensure an average movement through the pay range.

The average given also can vary within an agency for the different situations covered by the waiver. For example, a presumptive rating could be given for employees under an agency appraisal system less than the specified minimum time, while an average amount given in a sub-unit of the agency could be given to employees promoted within 120 days prior to the effective date of merit pay increases.

For "comparably situated employees," a variety of definitions is possible, including employees in the entire agency, in a merit pay unit, in the same grade level, in the same position on the agency's merit pay matrix, in the same position on the merit pay fund computation table, in the same position in the rate range, in the same or similar occupational positions, or in the same situation which causes the waiver. The proposed regulation has been revised to specify that the average adjustment received by comparably situated employees is to be "determined by the employing agency."

Two agencies commented that the distinctions among the three different formulas for computing salary increases when merit pay determinations are waived are confusing. These agencies also indicated that the second formula provides the full amount of any comparability increase and appears to provide the non-automatic portion of comparability twice to the employee. One agency also indicated the term "current rate range" could be interpreted to be the range in effect before, or the one in effect after, the comparability increase which could have the effect of providing no automatic comparability increase or a double increase. OPM has revised these formulas by consolidating paragraphs (a) and (b) of the proposed section into a new paragraph (a) and by eliminating the reference to "relative position in the rate range." These revisions will prevent the possibility of a double comparability increase. However, two approaches are still necessary to cover the distinction between those employees entitled to a single average merit pay adjustment and those entitled to all the average merit pay adjustments during the entire period of absence. This distinction has also been proposed for determining when non-merit pay General Schedule employees should receive one within-grade increase or successive within-grade increases. (See the proposed within-grade increase regulations for creditable service published in the **Federal Register** on July 29, 1980 (45 FR 50338).)

Regarding these different approaches for computing increases when pay determinations are waived, one commenter also recommended placing the requirement for pay adjustments necessary to bring employees up to the new minimum of the rate range, 5 U.S.C. 5402(c)(3), together with the requirement for the comparability pay adjustment, 5 U.S.C. 5402(c)(1). The Office has adopted this suggestion.

One commenter recommend that the Office clarify what happens to an employee who had creditable service toward a within-grade increase upon entry into merit pay and who returns to a non-merit pay position prior to receiving a merit pay determination. The commenter felt the employee would retroactively receive the within-grade increase. This is not so. The within-grade increase would not be retroactively given. However, the employee's service during the entire period is creditable service for the next within-grade increase so long as the employee has not received an equivalent increase. If the employee has sufficient service, the employee would receive a within-grade increase at the time of return to the non-merit pay General Schedule position.

While not a proposed regulation in this package, revision of the regulations concerning equivalent increase determinations for within-grade increases is necessary to clarify which pay adjustments under the Merit Pay System are to be considered in determining whether or when an employee, who moves from the Merit Pay System to a position in which he or she is entitled to consideration for a within-grade increase, has received an equivalent increase. The necessary revision was proposed for comment in the **Federal Register** on July 29, 1980. (See § 531.407(c)(1) of the proposed within-grade increase regulations.)

*Other Comments*

A number of comments were received concerning matters related to the proposed changes, but which are beyond the scope of the effort to revise the current pay administration regulations to accommodate employees covered by the Merit Pay System. For example, one commenter suggested that the promotion rule should be revised to indicate how the rule applies to merit pay employees who are in receipt of pay retention under 5 U.S.C. 5363. Such a rule is found in 5 U.S.C. 5334(b) and applies to all General Schedule employees. Another commenter suggested that § 531.205(a)(3) should be revised to provide a benefit similar to that provided by the grade and pay retention provisions. These and other suggestions will be considered by the Office in a future review of the general pay administration regulations.

The Director of OPM finds that due to early implementation of the Merit Pay System in some agencies in October, 1980, good cause exists for shortening the time period between the publication of a substantive rule and its effective data required by 5 U.S.C. 553(d). The Office of Personnel Management has determined that these are significant regulations for the purposes of E.O. 12044.

Office of Personnel Management.

**Beverly M. Jones,**

*Issuance System Manager.*

Accordingly, the Office of Personnel Management is amending Title 5 of the Code of Federal Regulations as follows:

1. In Part 530, the Table of Sections for Subpart C, the authority citation for Part 530, and § 530.305 (a)(1) and (a)(3) are revised; and § 530.305(d) is added to read as follows:

## PART 530—PAY RATES AND SYSTEMS (GENERAL)

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### Subpart C—Special Rates for Recruitment and Retention

Sec.
530.301 Entitlement.
530.302 Applicability.
530.303 Definitions.
530.304 Establishing special rates.
530.305 Determining employee rates.
530.306 Discontinuing special rates.
530.307 Effect of statutory pay increases.

**Authority:** 5 U.S.C. 5303; E.O. 11721, as amended.

#### § 530.305 Determining employee rates.

(a)(1) Except as provided in paragraphs (a)(2) and (a)(3) of this section, when an employee is in a position to which a special rate range becomes applicable, the department or agency shall fix the employee's rate at the numerical rank in the special rate range which corresponds to his or her existing numerical rank of the grade or level.

* * * * *

(3) When a special rate of pay becomes initially applicable to, or increased for, an employee covered by the Merit Pay System, the agency shall increase the employee's rate of basic pay by an amount equal to the difference between the minimum rate of the previously existing rate range and the minimum rate of the newly established rate range. If this rate falls between two rates of pay on a numerical increment or rank merit pay schedule, the agency shall pay the employee at the higher rate.

* * * * *

(d) In accordance with § 531.203(d)(2) of this chapter, a special rate may not be considered an employee's highest previous rate except as provided in § 531.203(d)(3) of this chapter. For the purpose of applying § 531.203(d)(3) of this chapter, the rate to which an employee covered by the Merit Pay System would have been entitled had a special rate not applied shall be determined by subtracting from the employee's existing rate of basic pay the difference between the minimum rates of the special and regular rate ranges of the grade of his or her position.

2. In Subpart B of Part 531, the following changes are made: Section 531.203(d)(4) is deleted. The Table of Sections is revised. Section 531.201; § 531.203(c); the heading for § 531.203(d); the authority citation for § 531.203; § 531.204(a); § 531.205 (a)(2) and (a)(3); and the authority citation for § 531.205 are revised. § 531.204(c) and the authority citation for § 531.204 are added. To assist the reader, the revised Subpart B is reprinted as follows:

## PART 531—PAY UNDER THE GENERAL SCHEDULE

* * * * *

### Subpart B—Determining Rate of Basic Pay

Sec.
531.201 Applicability.
531.202 Definitions.
531.203 General provisions.
531.204 Special provisions.
531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5305.

### Subpart B—Determining Rate of Basic Pay

#### § 531.201 Applicability.

This subpart and sections 5333 and 5334 of title 5, United States Code, apply to employees and positions, other than Senior Executive Service positions, to which chapter 51 of title 5 applies.

#### § 531.202 Definitions.

In this subpart:

(a) "Demotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a lower General Schedule grade, with or without reduction in pay; or

(2) A higher rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a lower rate within a General Schedule grade.

(b) "Agency" has the meaning given that word by section 5102 of title 5, United States Code.

(c) "Employee" means an employee of an agency to whom this subpart applies.

(d) "Existing rate of basic pay" means the rate received immediately before the effective date of a transfer, promotion, demotion, or within-grade increase.

(e) "Higher grade" means a General Schedule grade above the last previous General Schedule grade or its equivalent held by the employee.

(f) "Highest previous rate" means the highest rate of basic pay previously paid to an individual while employed in a position in a branch of the Federal Government (executive, legislative, or judicial), a mixed ownership corporation, or the government of the District of Columbia, irrespective of whether or not the position was subject to the General Schedule.

(g) "New appointment" means the first appointment, regardless of tenure, as an employee of the Federal Government or the Government of the District of Columbia.

(h) "Promotion" means a change of an employee, while continuously employed, from:

(1) One General Schedule grade to a higher General Schedule grade; or

(2) A lower rate paid under authority other than subchapter III of chapter 53 of title 5, United States Code, to a higher rate within a General Schedule grade.

(i) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

(j) "Reassignment" means a change of an employee, while serving continuously in the same agency, from one position to another without promotion or demotion.

(k) "Reemployment" means an employment, including reinstatement or another type of appointment, after a break in service of at least 1 full workday.

(l) "Transfer" means a change of an employee, without a break in service of 1 full workday, from one branch of the Federal Government (executive, legislative, or judicial) to another or from one agency to another.

#### § 531.203 General provisions.

(a) *New Appointments.* Except as provided by section 5333(a) of title 5, United States Code, and paragraph (b) of this section, a new appointment is made at the minimum rate of the grade, or when the minimum rate of the grade of a position has been set under Part 530 of this chapter, a new appointment is made at the minimum rate set under Part 530 of this chapter.

(b) *Superior qualifications appointments.* (1) A "superior qualifications appointment" means an appointment to a position in Grade 11 or above of the General Schedule made, with the prior approval of the Office or under an agreement between the agency and the Office (except for positions in the Library of Congress), at a rate above the minimum rate of the appropriate grade under authority of section 5333 of title 5, United States Code because of the superior qualifications of the candidate.

(2) An agency may make a superior qualifications appointment by new appointment or by reemployment except that when made by reemployment, the candidate must have a break in service of at least 90 calendar days from his or her last period of Federal employment or employment with the Government of the District of Columbia (other than (i) employment under an appointment as an expert or consultant under section 3109 of title 5, United States Code, (ii) employment under a temporary appointment effected primarily in

furtherance of a post-doctoral research program, or effected as part of predoctoral or postdoctoral training program during which the employee receives a stipend, or employment under a temporary appointment of a graduate student when the work performed by the student is the basis for completing certain academic requirements for an advanced degree, (iii) employment as a member of the Commissioned Corps of the National Oceanic and Atmospheric Administration or the Commissioned Corps of Public Health Service, or (iv) employment which is neither full-time employment nor the principal employment of the candidate).

(c) *Maximum payable rate rules.* In determining an employee's rate of basic pay upon reemployment, reassignment, promotion, demotion, or change in type of appointment, the following rules apply unless the employee is entitled to a higher rate under the promotion provisions of section 5334(b) of title 5, United States Code, and § 531.204(a) of this subpart or the grade and pay retention provisions of sections 5362 and 5363 of title 5, United States Code, and Part 536 of this chapter:

(1) *For non-merit pay employees.* The maximum rate of basic pay that may be paid an employee *not* covered by the Merit Pay System shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Identify the lowest step of the grade in which pay is currently being fixed, for which the rate of basic pay was equal to or greater than the employee's highest previous rate at the time the highest previous rate was earned.

(iii) Identify the current rate of basic pay for the step identified under paragraph (c)(1)(ii) of this section. This rate is the maximum rate of basic pay that may be paid the employee.

(2) *For merit pay employees.* The maximum rate of basic pay that may be paid an employee covered by the Merit Pay System shall be determined as follows:

(i) Compare the employee's highest previous rate (expressed as an annual rate) with the range of rates of basic pay *in effect at the time the highest previous rate was earned* for the grade in which pay is currently being fixed.

(ii) Divide the difference between the employee's highest previous rate and the minimum rate of the former rate range of the grade in which pay is currently being fixed by the difference between the maximum and minimum rates of that rate range.

(iii) Multiply the result by the difference between the maximum and minimum rates of the current rate range of the grade in which pay is currently being fixed.

(iv) Add the result to the minimum rate of the current rate range of the grade in which pay is currently being fixed and round to the next higher whole-dollar rate. The resulting rate is the maximum rate of basic pay that may be paid the employee unless that rate falls between two rates of pay on a numerical increment or rank merit pay schedule, in which case the employee may be paid at the higher rate.

(d) *Determination of higheest previous rate.*

(1) The highest previous rate is based on a regular tour of duty at that rate under an appointment not limited to 90 days or less, or for the continuous period of not less than 90 days under one or more appointments without a break in service.

(2) The highest previous rate may not be based on (i) a rate received for an appointment as an expert or consultant under section 3109 of title 5, United States Code, or (ii) except as provided in paragraph (d)(3) of this section, a rate of basic pay established under section 5303 of title 5, United States Code.

(3) When an employee's rate of basic pay is one established under section 5303 of title 5, United States Code (referred to in this paragraph as a special rate), the employee's highest previous rate is the rate to which he or she would have been entitled had the special rate not applied to him or her. However, with the prior approval of the Office, an agency may use special rate as the highest previous rate when:

(i) The employee is reassigned to a position for which no special rate, or a lesser special rate, has been established; and

(ii) The agency head, or an employee specifically designated by the agency head for that purpose, determines that the need for the services of the employee, and his or her contribution to the program of the agency, will be greater in the position to which he or she is being reassigned. The reasons for the determinations required by the subparagraph shall be submitted in writing to the Office with the request for prior approval.

(e) *Agency classification action.* When an agency regrades a position to a grade higher than the one to which the position had been classified by Office action, and when subsequent to the regrading, the Office again classifies the position to the grade which it had originally assigned the position, the rate attained by the employee in the higher grade may not be used as his or her highest previous rate.

(f) *Simultaneous actions.* When a position or appointment change and entitlement to a higher rate of pay occur at the same time, the higher rate of pay is deemed an employee's existing rate of basic pay. If an employee is entitled to two pay benefits at the same time, the agency shall process the changes in the order which gives the employee the maximum benefit.

(5 U.S.C. 5333–5334)

**§ 531.204 Special provisions.**

(a) *Promotions and transfers.* (1) The requirements of section 5334(b) of title 5, United States Code, apply only to an employee who is promoted or transferred from a position in one grade of the General Schedule to a position in a higher grade of the General Schedule.

(2) In determining an employee's rate of basic pay in the grade of his or her position upon promotion to or from a position in which he or she is covered by the Merit Pay System established under chapter 54 of title 5, United States Code, the following rules apply unless the employee is receiving a retained rate under section 5363 of title 5, United States Code, or Part 536 of this chapter:

(i) When an employee not covered by the Merit Pay System is promoted from a position in one grade of the General Schedule to a position in a higher grade of the Merit Pay System, the agency shall pay the employee at that rate of basic pay within the rate range of the grade to which promoted that is equal to the rate of basic pay the employee would have been entitled to receive if the promotion had been to a General Schedule position in which he or she was not covered by the Merit Pay System.

(ii) When an employee is promoted from a position in one grade of the Merit Pay System to a position in a higher grade of the Merit Pay System, the agency shall pay the employee at the lowest whole-dollar rate of basic pay within the rate range of the grade to which promoted that exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(iii) When an employee is promoted from a position in one grade of the Merit Pay System to a position in a higher grade of the General Schedule in which he or she is not covered by the Merit Pay System, the agency shall pay the employee at the rate of basic pay for the lowest step of the grade to which

promoted, for which the rate of basic pay exceeds the employee's existing rate of basic pay by an amount equal to six percent of that rate, or at the minimum rate of the higher grade, if that rate is higher.

(3) For the purpose of section 5334(b) of title 5, United States Code, an employee's "existing rate of basic pay" includes a special rate established under section 5303 of title 5, United States Code.

(b) *Classification decisions.* When a classification decision is made effective retroactively under Part 511 of this chapter, the agency shall treat the corrective personnel action affecting the employee concerned as a cancellation or correction, as the case may be, of the original action of demotion, and the employee is entitled to retroactive pay in accordance with the terms of the corrective action.

(c) *Pay determination upon conversion to the Merit Pay System.* (1) When an employee is brought under or converted to the Merit Pay System without change in his or her position, the employee shall be entitled to—

(i) Basic pay at a rate equal to the rate payable to the employee immediately before the effective date of entry into the Merit Pay System, plus,

(ii) Any earned or appropriate pay entitlement due on or prior to the same effective date, including a pay adjustment resulting from the establishment of higher minimum rates under section 5303 of title 5, United States Code, or an increase in such rates but exclusive of any adjustment under 5 U.S.C. 5305.

(2) Except as provided under Parts 530 and 536 of this chapter, when an employee is brought under or converted to the Merit Pay System with a position or appointment change, the employee's rate of basic pay shall be fixed or adjusted in accordance with the provisions of this subpart.

(3) Notwithstanding § 531.205 of this subpart, if the conversion or movement action occurs at the time of a pay adjustment under 5 U.S.C. 5305, the employee shall receive the following in the order specified:

(i) A rate of basic pay as provided under paragraph (c)(1) or (c)(2) of this section;

(ii) An increase in that rate of basic pay by the amount of the pay adjustment made under 5 U.S.C. 5402(c)(1);

(iii) Any additional amount as may be required under 5 U.S.C. 5402(c)(3); and

(iv) Any merit pay increase resulting from a merit pay determination under the provisions of 5 U.S.C. 5402(b)

(5 U.S.C. 5334, 5402)

**§ 531.205 Pay schedule conversion rules at the time of an annual pay adjustment under 5 U.S.C. 5305.**

(a) On the effective date of a pay adjustment under 5 U.S.C. 5305, the rate of basic pay of an employee subject to the General Schedule shall be initially adjusted, except as provided in paragraph (b) of this section, as follows:

(1) If an employee is receiving basic pay immediately before the effective date of his pay adjustment at one of the rates of a grade in the General Schedule, he shall receive the rate of basic pay for the corresponding numerical rate of the grade in effect on and after such date.

(2) If an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate determined under 5 U.S.C. 5402(a), the employee shall receive his or her rate of basic pay increased by the amount of the pay adjustment made under 5 U.S.C. 5402(c)(1), plus any amount that may be required by 5 U.S.C. 5402(c)(3).

(3) Except as provided in 5 U.S.C. 5363 and Part 536 of this chapter, if an employee is receiving basic pay immediately before the effective date of his or her pay adjustment at a rate in excess of the maximum rate of his or her grade, the employee shall receive his or her existing rate of basic pay increased by the amount of increase made by the pay adjustment under 5 U.S.C. 5305 in the maximum rate for the employee's grade.

(4) If an employee, immediately before the effective date of his pay adjustment, is receiving, pursuant to section 2(b)(4) of the Federal Employees Salary Increase Act of 1955, an existing aggregate rate of pay determined under section 208(b) of the Act of September 1, 1954 (68 Stat. 1111), plus subsequent increases authorized by law, he shall receive an aggregate rate of pay equal to the sum of his existing aggregate rate of pay on the day preceding the effective date of his adjustment, plus the amount of increase made by the pay adjustment under 5 U.S.C. 5305 in the maximum rate of his grade, until (i) he leaves his position, or (ii) he is entitled to receive aggregate pay at a higher rate by reason of the operation of any provision of law; but, when this position becomes vacant, the aggregate rate of pay of any subsequent appointee thereto shall be fixed in accordance with applicable provisions of law. Subject to paragraph (a)(4) (i) and (ii) of this section, the amount of the increase authorized by this section shall be held and considered for the purposes of section 208(b) of the Act of September 1, 1954, to constitute a part of the existing rate of pay of the employee.

(b) Rates of basic pay authorized under section 5303 of title 5, United States Code, paid to an employee subject to the General Schedule shall be adjusted in accordance with § 530.307(b)(1) of this chapter.

(5 U.S.C. 5305, 5402, E.O. 11721, as amended)

3. Subpart C of Part 531, is revised to read as follows:

**Subpart C—Pay Adjustments for Supervisors**


531.301 Authority of agency.
531.302 Definitions.
531.303 Use of authority.
531.304 Requirements for entitlement.
531.305 Adjustment of rates.


* * * * *

**§ 531.301 Authority of agency.**

This subpart authorizes an agency to make a special adjustment in the pay of a supervisor in a General Schedule position who regularly has responsibility for supervision over one or more prevailing rate employees. In making this pay adjustment, an agency is governed by 5 U.S.C. 5333(b) and this subpart.

**§ 531.302 Definitions.**

In this subpart:

(a) "Prevailing rate employee" means an employee whose pay is fixed and adjusted from time to time by a wage board or similar administrative authority as nearly as is consistent with the public interest in accordance with prevailing rates or in accordance with prevailing rates and practices in the maritime industry.

(b) "Rate of basic pay" means the rate of pay fixed by law or administrative action for the position held by an employee before any deductions and exclusive of additional pay of any kind.

**§ 531.303 Use of authority.**

In determining whether to use the authority under section 5333(b) of title 5, United States Code, and this subpart, an agency shall consider (a) the relative rate-ranges of the supervisor and the prevailing rate employee supervised by him as well as the specific rate either is receiving at the time, and (b) the equities among supervisors in the same organizational entity as well as the equities between the supervisor and the prevailing rate employee supervised by him/her.

**§ 531.304 Requirements for entitlement.**

(a) *Basic.* Before an agency may adjust the pay of a supervisor under section 5333(b) of title 5, United States Code, and this subpart, it must find that (1) the supervisor regularly has

responsibility for supervision (which must include supervision over the technical aspects of the work concerned) over one or more prevailing rate employees, and (2) the rate of basic pay for the supervisor is less than the rate of basic pay for the prevailing rate employee supervised by him/her.

(b) *Regular responsibility.* A supervisor regularly has responsibility for supervision when this responsibility is a continuing assignment as reflected in his/her official position description.

(c) *Responsibility for supervision.* A supervisor has responsibility for supervision (including supervision over the technical aspects of the work concerned) when he/she has relatively frequent personal contact with the prevailing rate employees in the unit in connection with assigned work and when he/she personally or through an intermediate prevailing rate supervisor.

(1) Determines assignments or duties for individual prevailing rate employees;

(2) Makes reviews of work products of individual prevailing rate employees when the reviews require a substantial subject matter or technical knowledge;

(3) Plans and organizes work with primary emphasis on distribution of assignments, workloads of individual prevailing rate employees, work item priorities, and schedules for timely completion of work items, projects or cases;

(4) Provides advise, assistance, counsel, or instructions to individual prevailing rate employees;

(5) Evaluates the performance of individual prevailing rate employees; and

(6) Serves as the focal point for discussion of problems arising from, or associated with, specific work products of the unit.

(d) *Rate of basic pay.* (1) In comparing the rate of basic pay for a supervisor with the rate of basic pay for a prevailing rate employee supervised by him/her, an agency shall exclude from the prevailing rate employee's rate (i) any irregular prevailing rate, such as a retained rate not related to his/her current position, and (ii) night and environmental differentials.

(2) When an agency excludes an irregular prevailing rate for the prevailing rate employee from comparison, the agency shall consider the highest rate of the regular prevailing rate for the position occupied by the prevailing rate employee.

**§ 531.305 Adjustment of rates.**

(a) *Rate payable to supervisor.* (1) Except as provided in paragraph (a)(2) of this section, when an agency decides to adjust the rate of pay for a supervisor under 5 U.S.C. 5333(b) and this subpart, it shall adjust his or her rate of pay as follows:

(i) A supervisor who occupies a position not covered by the Merit Pay System shall have his or her rate of pay adjusted to the nearest rate, but not above the maximum rate, of his or her grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision.

(ii) A supervisor who occupies a position covered by the Merit Pay System shall have his or her rate of pay adjusted to any dollar amount of the appropriate grade which exceeds the highest rate of basic pay, excluding night and environmental differentials, paid to any prevailing rate employee for whom the supervisor regularly has responsibility for supervision. However, the adjusted rate shall not exceed the rate of basic pay of the prevailing rate employee by more than 3 percent and shall not exceed the maximum rate of basic pay of the supervisor's grade.

(2) When a supervisor is in an area in which he/she receives a cost-of-living allowance or post differential based on hardship, and the prevailing rate employee he/she supervises does not receive a separately stated cost-of-living allowance or post differential, the agency shall add to the supervisor's rate of basic pay his/her cost-of-living allowance or post differential and use the total to adjust his/her rate of pay under paragraph (a)(1) of this section.

(b) *Documentation.* The agency shall record the basis for the determination of the supervisor's adjusted rate in his/her Official Personnel Folder.

(c) *Effective date.* The adjustment of a supervisor's rate of pay under this subpart is effective on the first day of the first pay period following the date on which the agency determines to make the adjustment under section 5333(b) of title 5, United States Code, and this subpart.

(d) *Equivalent increase.* An adjustment in pay under section 5333(b) of title 5, United States Code, and this subpart is an equivalent increase in pay under section 5335 of title 5, United States Code.

(5 U.S.C. 5333; E.O. 11721, as amended)

4. In Part 540, the Table of Sections and § 540.106 are revised; and § 540.104(h) is added, to read as follows:

## PART 540—MERIT PAY SYSTEM

Sec.

540. 101 General.
540. 102 Ranges of basic pay and employee coverage.
540. 103 Determination and allocation of merit pay funds.
540. 104 Merit pay determinations.
540. 105 Merit pay increases.
540. 106 Special provisions for merit pay increases.
540. 107 Cash award program.
540. 108 Agency plans for merit pay system.
540. 109 Reports.
540. 110 Implementation.

**§ 540.104 Merit pay determination.**

* * * * *

(h) The requirement for a merit pay determination shall be waived when:

(1) An employee was promoted within 120 days prior to the effective date of a merit pay increase; or

(2) An employee was not covered under a performance appraisal system in his or her agency for the minimum period of time established by that agency for coverage; or

(3) An employee was in a duty status during a performance appraisal period for less than the minimum period of time established for coverage under a performance appraisal system in his or her agency because of absences that would be creditable service in the computation of a waiting period or periods under § 531.406 of this chapter.

**§ 540.106 Special provisions for merit pay increases.**

(a) Except as provided in paragraph (b) of this section, an employee for whom the requirement for a merit pay determination is waived under § 540.104(h) of this part shall be paid the sum of—

(1) The employee's rate of basic pay immediately before the pertinent merit pay increase *or* that rate of basic pay within the rate range in effect immediately before the pertinent merit pay increase that is in the same relative position in the rate range as was the employee's rate of basic pay immediately before the interruption of his or her duty status, as appropriate;

(2) The adjustment required by 5 U.S.C. 5402(c)(1) and (c)(3) at the time of the pertinent merit pay increase; and

(3) The average adjustment under 5 U.S.C. 5402(b) received by comparably situated employees at the time of the pertinent merit pay increase, as determined by the employing agency.

(b) An employee for whom the requirement for a merit pay determination is waived under § 540.104(h)(3) of this part because of absences that extended for a period during which more than one merit pay increase occurred and that would be creditable service in the computation of waiting periods for successive within-

grade increases under § 531.406(b), (c), or (d) of this chapter, or because more than one merit pay increase occurred during a period for which the employee received credit under the back pay provisions of 5 U.S.C. 5596 and Subpart H of Part 550 of this chapter, shall be paid the sum of—

(1) The employee's rate of basic pay immediately before the interruption of his or her duty status;

(2) The adjustments that would have been required by 5 U.S.C. 5402(c)(1) and (c)(3) if the employee's duty status had not been interrupted; and

(3) The average adjustments under 5 U.S.C. 5402(b) received by comparably situated employees while the employee's duty status was interrupted, as determined by the employing agency.

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## COUNCIL ON WAGE AND PRICE STABILITY

### 6 CFR Parts 706 and 707

### Procedural Rules and Data Requests

**AGENCY:** Council on Wage and Price Stability.

**ACTION:** Interim final procedural rules and data requests.

**SUMMARY:** The Council is amending its Procedural Rules (6 CFR Part 706) and Data Requests (6 CFR Part 707) to conform these parts to the Interim Final Price Standards published in the Federal Register on September 24, 1980 (45 FR 163462) and to incorporate changes of and additions to these parts since October 2, 1979.

**EFFECTIVE DATE:** The effective date of 6 CFR Parts 706 and 707 is October 1, 1980. Comments must be received on or before November 3, 1980.

**ADDRESS:** Written comments should be addressed to the Office of General Counsel, Council on Wage and Price Stability, 600 17th Street, N.W., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** Patrick J. Macfarland, Assistant General Counsel, 202/456-6286.

**SUPPLEMENTARY INFORMATION:** On July 8, 1980, the Council released a report titled *The Pay/Price Standards Program: Evaluation and Third Year Issues* (45 FR 47052)(the *"Issues Paper"*) soliciting public comments on future modifications of the pay and price standards. After considering the public comments and the recommendations of the Pay and Price Advisory Committees, the Council, on September 19, 1980, released Interim Final Price Standards (Subparts A, C, and D of 6 CFR Part 705). We said then that we would shortly revise Parts 706 and 707 to conform to the changes made in Part 705. Parts 706 and 707 are being published as Interim Final Rules effective October 1, 1980. Because the effective date is imminent, we ask for prompt public comment.

In general, the changes that have been made to Parts 706 and 707 are minor revisions in wording to make these sections compatible with the Interim Final Price Standards. Some of the more significant ones are discussed below.

The term "Notice of Probable Noncompliance" has been changed to "Notice of Inquiry" in §§ 706.2(f), 706.5(c), and 706.51. This change adopts a recommendation of the Pay Advisory Committee of April 8, 1980. The term Notice of Inquiry is a more accurate description of the document. As we stress in the accompanying transmittal letter, the Notice is not a determination of noncompliance; rather, it initiates a procedure for determining whether the compliance unit or the employee unit complied with the Council standards.

Section 706.9 has been changed to provide that requests for extensions of time for the filing of periodic data submissions (Forms CO-1-Pay, CO-1-Price, PM-1, and PAY-1) should be made to the appropriate program offices. All other requests for extensions of time should be made to the Office of General Counsel.

Section 706.21(c), "Company Organization for Pay Compliance", formerly provided that companies with 5,000 or more employees during *any* calendar quarter of their last fiscal year before October 2, 1979, should file a report of company organization (Form CO-1). This section has been changed to make the reference period the *last* calendar quarter before the beginning of the program year. The change was made so that companies that have recently experienced declines in employment will not be required to file. Section 706.22(b), "Form PAY-1", has been changed in the same way. The forms are due by December 1, 1980, for both pay and price.

In addition, a new subsection (d), "Failure to File", has been added to § 706.21. This subsection provides that, if a company has not timely furnished the Council the information on company organization specified in § 707.1 (a) or (b), the Council will consider the company's organization for compliance purposes to be the same as that reported in the second program year. If no completed Form CO-1 was submitted for the second program year, the Council will consider the company to be organized for compliance purposes as a consolidated compliance unit, or in any other manner that the Council believes is suitable. This subsection was added to provide advance notice of the Council's policy regarding companies that do not timely file their Forms CO-1.

In the *Issues Paper*, we proposed permitting some or all compliance units to self-administer uncontrollable-cost exceptions. Most commentators wholeheartedly supported this proposal, although some said that only companies that had previously been granted an uncontrollable-cost exception should be permitted to self-administer such an exception in the third year.

The Council has, from the outset of this program, attempted to minimize administrative costs to companies. Having heard no objection to expanding self-administration, we have revised § 706.31 to permit companies with revenues over $100 million but less than $250 million that meet the applicable criteria to self-administer uncontrollable-cost and inability-to-compute exceptions. In addition, companies with $250 million or more in revenues may self-administer uncontrollable-cost or inability-to-compute exceptions if the affected compliance unit meets the applicable criteria *and* if the Council approved such an exception for the same compliance unit during the second program year. The Council will, of course, entertain a request from such a company for advance approval of an exception if the company prefers to have it.

A company in the above categories that chooses to self-administer one of these exceptions should promptly notify the Council that it has done so; however, no notification is required before the due date for filing of the Form CO-1. Companies with revenues of $250 million or more should also submit with the Form CO-1 (or any subsequent notification of self-administration) documentation demonstrating their eligibility for the exceptions (see Tables 14 and 16 of the "Implementation Guide" for the second program year).

Section 706.31(f) remains unchanged; it requires companies above $100 million to request Council approval of all exceptions to the price standards other than those specifically identified for self administration, regardless of whether the Council approved such an exception in the second year.

Section 706.37, "Decision", provided that the Council could condition an exception in any manner that promotes the objectives of the standard. In response to questions about the type of conditions that could be imposed, this

section has been amended to reflect Council policy that a change in company organization for compliance purposes may be required as a condition of an exception.

Section 706.51(e), "Notice and Reply", has been amended to provide a time limit for the scheduling of a conference—that is, 10 business days from the due date of the reply to the Notice, unless the Council determines otherwise. Absent such a provision, several companies have unduly prolonged the decision period by repeatedly postponing the conference. All of the other changes to Part 706 are language changes, most of which merely extend the rules into the third year.

Section 707.36, "Uncontrollable Cost Exceptions", has been amended to reflect the changes made in § 705.2 of the standards. New subsection § 707.36(a)(1) describes the type of data used in demonstrating significant cost increases for compliance units that complied with the basic price limitation during the second program year. New § 707.36(a)(2) specifies the data for compliance units that were subject to the two-part profit limitation in the second year; such compliance units will measure their allowable price increases and cost increases from the fourth quarter of the second program year. Subsections 707.36 (b) and (c) remain unchanged. Section 707.37, "Uncontrollable-Cost Exceptions to a Percentage-Gross-Margin Standard", has been amended to reflect the fact that the measurement of cost and revenue increases must be from the new base year.

Section 707.38, "Uncontrollable-Cost Exceptions to a Gross Margin Standard", has been rewritten to include separate subsections for each of the three gross-margin standards. Subsection 707.38(a), concerning the gross-margin standard for food manufacturing and processing, has been amended to reflect changes in § 705.43. Specifically, cost increases should be measured from the new base year and the allowable growth in gross margin is increased to 7.5 percent. Similarly, § 707.38(b), concerning the gross-margin standard for petroleum refiners, has been changed to conform to changes made in section 705.44. Finally, § 707.38(c), concerning the utilities' gross-margin standard, is essentially unchanged, since the changes in the standard itself were minor.

Section 707.41 has been added to set forth the data required in support of an adjustment for productivity improvements now provided for in §§ 705.6(a)(2) and 705.41(b). Generally, a compliance unit should document the nature of the investment, the date of the investment decision, the nature of the cost savings and related productivity improvements realized, and the specific adjustment sought by the compliance unit.

Sections 707.42 and 43 have been added to describe the data required in support of a request for an adjustment to a price or gross-margin limitation as an alternative to the profit limitation. Generally, compliance units seeking such an adjustment should supply the data required for a demonstration of uncontrollable cost increases, as well as a statement of the precise adjustment requested.

Section 707.44 has been added to describe the data required in support of an adjustment to the profit limitation because of increases in interest expenses under § 705.6(a)(3) of the standards. As we stated in the preamble to the standards, the Council has no preconceived notions about this adjustment. Accordingly, this section is written in a manner to encourage companies seeking such as adjustment to demonstrate fully the effect of rising interest costs on their profit margins and profits under the limitation.

Several new sections have been added to incorporate changes made in the procedural rules and data requests during the second program year. Each such section, and its Federal Register citation, is listed below.

Section 706.26—45 FR 21609, March 18, 1980. Corrected at 45 FR 21609, April 2, 1980

Section 707.31—44 FR 73004, December 17, 1979

Section 707.33—45 FR 17128, March 18, 1980

Section 707.40—45 FR 17128, March 18, 1980; 45 FR 21609, April 2, 1980

Section 707.50—45 FR 17129, March 18, 1980

(Council on Wage and Price Stability Act, Pub. L. 93-387 (August 24, 1974), as amended by Pub. L. 94-78 (August 8, 1975) and Pub. L. 95-121 (October 5, 1977), 12 U.S.C. 1904, note; as last amended by Pub. L. 96-10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979))

Issued in Washington, D.C., September 30, 1980.

R. Robert Russell,

*Director.*

Accordingly, Parts 706 and 707 of Title 6 CFR are amended as set forth below:

## PART 706—PROCEDURAL RULES

### Subpart A—General Provisions

Sec.

706.1 Purpose and scope.
706.2 Definitions.
706.3 Appearances before the Council.
706.4 Actions by the Council.
706.5 Submission of documents.
706.6 Confidential material.
706.7 Service of documents.
706.8 Computation of time.
706.9 Extension of time.
706.10 Consolidations.

### Subpart B—Reports and Notifications

706.20 Purpose and scope.
706.21 Submissions on company organization for purposes of compliance.
706.22 Periodic data submissions.
706.23 Submissions by State and local governments.
706.24 Submission by providers of medical and dental insurance [Reserved].
706.25 Submission by insurance regulators [Reserved].
706.26 Notification of pay-rate increases.

### Subpart C—Requests for Approval of Exceptions

706.30 Purpose and scope.
706.31 Who should request approval.
706.32 Grounds for exceptions.
706.33 Contents of the request.
706.34 Notice to interested persons.
706.35 Additional information.
706.36 Conferences.
706.37 Decision.

### Subpart D—Special Investigations

706.40 Purpose and scope.
706.41 Investigational policy.
706.42 Requests for information.

### Subpart E—Determination of Noncompliance

706.50 Purpose and scope.
706.51 Notice and reply.
706.52 Decision.

### Subpart F—The List of Noncompliers

706.60 Purpose and scope.
706.61 Listing of noncompliers.
706.62 Removal from list of noncompliers.

### Subpart G—Reconsideration

706.70 Purpose and scope.
706.71 General.
706.72 Contents of the request.
706.73 Conference on reconsideration.
706.74 Hearing on reconsideration.
706.75 Decision.
706.76 Stays pending reconsideration.

**Authority:** Council on Wage and Price Stability Act, Pub. L. 93-387 (August 24, 1974), as amended by Pub. L. 94-78 (August 8, 1975), and Pub. L. 95-121 (October 5, 1977), 12 U.S.C. 1904, note; as last amended by Pub. L. 96-10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (September 28, 1979).

### Subpart A—General Provisions

#### § 706.1 Purpose and scope.

This Part establishes procedures to be used in proceedings before the Council relating to the pay and price standards set forth in Part 705 of this Chapter.

(a) Subpart A concerns definitions and general procedural rules.

(b) Subpart B concerns the submission of reports and notifications.

(c) Subpart C concerns requests for approval for exceptions to the standards.

(d) Subpart D concerns special investigations regarding the standards.

(e) Subpart E concerns determinations of noncompliance with the standards.

(f) Subpart F concerns the placement on and removal from the list of noncompliers.

(g) Subpart G concerns requests for reconsideration of Council actions under Subparts C and E.

**§ 706.2 Definitions.**

(a) "Company," "compliance unit," "net sales or revenues", "first program year," "second program year," and "third year" have the same meanings as in Subpart 705D of this Chapter.

(b) "Collective-bargaining unit" means an employee unit that is a party to a collective-bargaining agreement.

(c) "Council" means the Council on Wage and Price Stability.

(d) "Employee unit" has the same meaning as in § 705.11 of this Chapter.

(e) "Hearing Officer" means a person designated by the Council to conduct a hearing.

(f) "Notice of Inquiry" means a written statement by the Council that a compliance unit or employee unit may be out of compliance with the standards.

(g) "Person" means any compliance unit, employee unit, collective-bargaining unit, company, individual, group, or organization.

(h) "Standards" means the voluntary pay and price standards set forth in Part 705 of this Chapter.

(i) "Undue hardship" and "gross inequity" have the same meanings as in § 705.6 of this Chapter.

**§ 706.3 Appearances before the Council.**

A person may take any action permitted by this Part on his or her own behalf, or may be represented by any person whom he or she designates.

**§ 706.4 Actions by the Council.**

The Chairman of the Council, or his designee, is authorized to take actions for the Council under this Part.

**§ 706.5 Submission of documents.**

(a) Submissions should be sent to the Council on Wage and Price Stability, The Winder Building, 600 17th Street, N.W., Washington, D.C. 20506.

(b) Submissions should be signed by the chief executive officer or authorized designee of a company, compliance unit, employee unit, collective-bargaining unit, or other organization.

(c) Each submission should be plainly marked at the top of the document indicating whether it is a "Report," "Request for Extension of Time," "Request for Exception—(Pay) or (Price)," "Response to Notice of Inquiry," "Request for Reconsideration," or "Request for Removal from List of Noncompliers."

**§ 706.6 Confidential material.**

Material for which confidentiality is sought should be submitted in accordance with Part 702 of this Chapter and will be treated as there provided. When submissions (other than forms confidential in their entirety, such as PM–1 and Pay-1) contain confidential information, two copies should be submitted. One copy, containing the confidential information, is for the Council's use and should be clearly marked "Contains Confidential Information." The other copy, from which any confidential information should be deleted, is to meet public disclosure requirements and should be clearly marked "Public Disclosure Copy".

**§ 706.7 Service of documents.**

All documents served under this Part are to be served personally or by U.S. mail on the person specified in these regulations or his or her designated representative.

**§ 706.8 Computation of time.**

Except as otherwise provided, any period of time specified in this Part is counted in business days (all days other than Saturdays, Sundays, and Federal holidays), beginning with the first business day after the Council takes any action. If the document setting forth the Council's action is sent by mail, three additional days may be added.

**§ 706.9 Extension of time.**

If an action is required under this Part to be taken within a prescribed period of time, and extension of time will be granted only upon a showing of good cause.

(a) Requests for extensions of time for the filing of submissions of company organization under § 706.21(b), and periodic data submissions under § 706.22(a), should be made to the Office of Price Monitoring.

(b) Requests for extensions of time for the filing of submissions of company organization under § 706.21(c), and periodic data submissions under § 706.22(b), should be made to the Office of Pay Monitoring.

(c) Requests for extensions of time for any other filing or response should be made in writing to the Office of General Counsel.

**§ 706.10 Consolidations.**

The Council may consolidate separate matters if consolidation will expedite the proceedings or otherwise assist the Council in carrying out its functions.

## Subpart B—Reports and Notifications

**§ 706.20 Purpose and scope.**

(a) This Subpart concerns the submission of reports and notifications requested by the Council.

(b) A person that has furnished the Council with data requested and retained by the Council need not resubmit such data, but should identify for the Council the document (including page references) containing such data and the date on which it was submitted.

**§ 706.21 Submissions on company organization for purposes of compliance.**

(a) *Reorganization.* A company may reorganize its compliance units and employee units for purposes of compliance with the price and pay standards, respectively, at the beginning of its third year but not during the year except at Council direction.

(b) *Company Organization for Price Compliance.* A company that had net sales or revenues of $100 million or more in its last complete fiscal year before October 1, 1980, and any other company designated by the Council, should furnish the Council by December 1, 1980, the information specified in § 707.1(a).

(c) *Company Organization for Pay Compliance.* A company that had 5,000 or more employees in its last calendar quarter before October 1, 1980, and any other company designated by the Council, should furnish the Council by December 1, 1980, the Council with the information specified in § 707.1(b).

(d) *Failure to File.* If a company has not timely furnished the Council the information specified in § 707.1(a) or (b), its third-year company organization for purposes of compliance with the price or pay standard, respectively, shall be the same organization as that reported for the second program year. If a completed second-program-year Form CO–1 (Price) or (Pay) was not submitted, the Council will consider the company to be organized as a single compliance unit for purposes of compliance with the price or pay standard, respectively, unless the Council designates a different company organization.

**§ 706.22 Periodic data submissions.**

(a) *Form PM–1.* A compliance unit that had, or is part of a company that had, net sales or revenues of $100 million or more in its last complete fiscal year before October 1, 1980, and any other compliance unit designated by the

Council, should furnish the Council with the date specified on Form PM–1 not more than 45 calendar days after the end of each of the first three quarters and 60 calendar days after the end of the program year.

(b) *Form PAY–1.* A compliance unit that had 5,000 or more employees during its last calendar quarter before October 1, 1980, and any other compliance unit designated by the Council, should furnish the Council the data specified on Form PAY–1. Data on prospective compliance with the pay standard should be filed on a date to be announced by the Council. Data on actual pay-rate increases for the program year should be filed within 60 calendar days after the end of the program year.

**§ 706.23 Submissions by State and local governments.**

(a) State and local government entities with 5,000 or more employees should submit by a date to be announced by the Council, a statement of assurance by the head of the government entity that the entity intends to comply with the pay standard; and

(b) Compliance units with 5,000 or more employees that are part of a state or local government should submit the data specified in § 707.10(c) for formal pay plans in operation as of October 1, 1980, within 60 calendar days after the end of the pay plan year.

**§ 706.24 Submission by providers of medical dental insurance [Reserved].**

**§ 706.25 Submission by insurance regulators [Reserved]**

**§ 706.26 Notification of pay-rate increases.**

When a compliance unit implements a pay-rate increase under § 705.10(a) that is within the range but exceeds 8.5 percent and the affected employee unit includes 100 or more employees in a compliance unit with (or that is part of a company with) 1,000 or more employees, or the affected collective bargaining agreement covers 1,000 or more employees, regardless of the number of employees in an individual company's employee units, the compliance unit should notify the Council of such action.

## Subpart C—Requests for Approval of Exceptions

**§ 706.30 Purpose and scope.**

This Subpart concerns requests by a compliance unit or employee unit for the Council's determination that an exception to the pay or price standard is warranted under Part 705.

**§ 706.31 Who should request approval.**

(a) Any compliance unit or employee unit that intends to apply one or more of the exceptions to the pay standard specified in § 706.32, other than the tandem exception under § 705.18, should request a determination from the Council that the exception is warranted, if:

(1) The affected employee unit consists of 100 or more employees in a compliance unit with (or that is part of a company with) 1,000 or more employees, or

(2) The affected collective-bargaining agreement covers 1,000 or more employees, regardless of the number of employees in a individual company's employee units.

(b) A compliance unit that self-administers a tandem exception under § 705.18 for an employee unit otherwise covered under § 706.31(a)(2) should notify the Council in writing at the time of self-administration.

(c) Any compliance unit that is a company, or is part of a company, that had net sales or revenues of $100 million or more in its last complete fiscal year before October 1, 1980, that intends to apply one or more of the exceptions to the price standard specified in § 706.32 should request a determination from the Council that the exception is warranted, except that:

(1) A compliance unit that is a company, or is part of a company, that had net sales or revenues of less than $250 million in its last complete fiscal year before October 1, 1980, may self-administer an inability-to-compute or uncontrollable-cost exception if it meets the applicable criteria specified in §§ 705.6(a)(1) and 705.41(a). A compliance unit self-administering an exception under this subsection should so notify the Council with its CO–1 submission or at the time it begins to self-administer, whichever is later;

(2) A compliance unit that is a company, or is part of a company, that had net sales or revenues of $250 million or more in its last complete fiscal year before October 1, 1980, may self-administer an inability-to-compute or uncontrollable-cost exception if it meets the applicable criteria specified in §§ 705.6(a)(1) and 705.41(a) and if the same compliance unit was granted such an exception in the second program year. A compliance unit self-administering an exception under this subsection should so notify the Council in writing and submit the data and documents that constitute the basis for the exception at the time of its CO–1 submission or at the time it begins to self-administer the exception, whichever is later.

(d) Any compliance unit or employee unit not covered by paragraphs (a) or (c) of this section may request a determination that an exception to the pay or price standard is warranted if such unit shows that there is good cause for the Council to entertain such a request.

(e) A compliance unit or employee unit not required to request a determination from the Council in accordance with paragraphs (a) or (c) of this section or not seeking a determination under subparagraph (d), is expected to self-administer the exceptions in a manner consistent with the standards. A compliance unit should retain all data and documents that constitute the basis for the exception in a form suitable for review by the Council.

(f) Subject to § 706.31(c), if a compliance unit or employee unit was granted an exception to a pay or price standard for the second program year and wants to continue that exception for the third year, it should submit a new request for approval of the exception. The new request need not include data previously supplied, but it should demonstrate that the previously granted exception continues to be appropriate.

**§ 706.32 Grounds for exceptions.**

The grounds for an exception to the price standard are contained in §§ 705.6 and 705.41. The grounds for an exception to the pay standard are contained in §§ 705.18 through 705.22.

**§ 706.33 Contents of the request.**

(a) A request for approval of an exception should be written and it should include data sufficient to demonstrate that the grounds for an exception are met.

(b) The request for approval of an exception should not exceed 15 typewritten pages, exclusive of supporting documents.

(c) If a decision by the Council is required by a certain date, that date should be clearly and conspicuously noted in the request. If the specified date for a decision is within 30 calendar days of the submission of a completed request for an exception, the request should explain the basis for requesting an expedited decision.

**§ 706.34 Notice to interested persons.**

(a) The Council may notify any person who could be significantly affected by approval of an exception that his written comments should be submitted within ten days. Submission of comments to the Council does not make the person a party to the proceeding.

(b) Any person submitting written comments to the Council about a request submitted under this Subpart should serve a copy of the comments (or a copy from which confidential information has been deleted, provided that it is adequately summarized) upon the compliance unit or employee unit making the request, and should certify to the Council that this requirement has been met. The Council may notify other interested persons of such comments and provide an opportunity to respond.

**§ 706.35 Additional information.**

(a) The Council may at any time request such additional information as it deems necessary to reach a determination, and may set a reasonable deadline for the submission of such information.

(b) A request for approval of an exception may be dismissed or denied if the information called for under §§ 706.33 or 706.35(a) is not provided.

**§ 706.36 Conferences.**

Any person requesting approval of an exception may request a conference. If the Council determines that a conference is appropriate, it will contact the applicant to arrange a suitable time and location. At its discretion, the Council may invite other interested persons to attend portions of conferences at which confidential material will not be discussed.

**§ 706.37 Decision.**

(a) The Council will issue a written determination granting or denying a request for approval of an exception as promptly as possible, giving consideration to any showing of urgency under Section 706.33(c).

(b) When the Council grants a request for approval of an exception, it may modify the exception to make allowances for documented extraordinary improvements in productivity that are demonstrably attributable to unusual capital expenditure programs, and it may condition the exception in any manner that promotes the objectives of the standards, including requiring changes in company organization for purposes of compliance.

(c) The Council's decision will be based on the facts and arguments before it on the date of the decision. If a person relies on certain facts and arguments to support a request for approval of an exception, he may not later rely on substantially the same set of facts and arguments in a new exception request.

## Subpart D—Special Investigations

**§ 706.40 Purpose and scope.**

This Subpart concerns special investigations by the Council relating to particular companies, compliance units, or employee units. Additional investigatory procedures are set forth in Part 704.

**§ 706.41 Investigational policy.**

The Council may at its discretion conduct special investigations to examine significant pay and price increases and compliance with the standards. A special investigation may be initiated when the Council's examination of publicly available pay or price indices or the receipt of other information indicates the possibility of pay or price increases in excess of the respective standard for a compliance unit or in a sector of the economy.

**§ 706.42 Requests for information.**

The Council may request information relating to a compliance unit's specific price actions, its average price increases, its pay programs, or any other information relating to the standards. Any such request will be accompanied by a statement of the purpose of the request and the Council's need for the information.

## Subpart E—Determination of Noncompliance

**§ 706.50 Purpose and scope.**

This Subpart concerns determination of whether compliance units or employee units are in compliance with the standards.

**§ 706.51 Notice and reply.**

(a) *Notice of Inquiry.* When the Council has reason to believe that a compliance unit or employee unit may not be in compliance with the standards, it will send a Notice of Inquiry to the compliance unit and, if the alleged noncompliance relates to a collective-bargaining situation, to any affected collective-bargaining unit.

(b) *Reply.* (1) Within ten days after a Notice of Inquiry has been issued, the compliance unit and any collective-bargaining unit to which the notice is issued may file a written reply disputing information in that notice, presenting additional information relevant to the allegations in the notice, and raising any available defense.

(2) Available defenses are that any of the exceptions in §§ 705.6, 705.18 through 705.22, and 705.41 are applicable or have been properly self-administered, or that the standards do not properly apply.

(3) The reply may request a conference and, if so, indicate whether any confidential data may be discussed.

(c) If a compliance unit and any collective-bargaining unit to which the Notice is issued does not timely reply, the Council may issue a determination of noncompliance.

(d) The Council may request comments from any person concerning the Notice, but submitting such comments does not make that person a party to the proceeding.

(e) If a conference is requested, the Council will arrange it at a suitable location and time. The conference shall be held within 10 days of the due date of the reply to the notice, unless the Council extends the time upon a showing of good cause.

**§ 706.52 Decision.**

(a) After considering the record, which shall consist of relevant data developed by the Council and material submitted to the Council, the Council will inform the compliance unit and collective-bargaining unit, if applicable, of the Council's conclusions and the reasons therefor.

(b) Whenever the Council has concluded there is noncompliance, it may consider any corrective action offered by the compliance unit or employee unit. If the Council is satisfied that appropriate corrective action will be initiated promptly, the Council will not find the compliance unit or employee unit out of compliance.

(c) After the Council has considered all relevant information, it will set forth in writing the reasons for its decision.

## Subpart F—The List of Noncompliers

**§ 706.60 Purpose and scope.**

This Subpart concerns placement on and removal from the list of noncompliers.

**§ 706.61 Listing of noncompliers.**

(a) If the Council issues a decision finding a compliance unit out of compliance in accordance with § 706.52(c), it will place the compliance unit's name on a list of noncompliers no sooner than eight days after its decision.

(b) If the listing of a compliance unit has been stayed pending reconsideration in accordance with § 706.76, and the compliance unit is found on reconsideration to be out of compliance, it will be listed no sooner than three days after the reconsideration decision.

**§ 706.62 Removal from list of noncompliers.**

(a) Any compliance unit that has been placed on the list of noncompliers may request, in writing, that the Council

remove it from the list on the ground that the compliance unit has come into compliance with the standard. Any such request should be submitted to the Director. It should state the corrective action that the compliance unit has taken, explain how that action brings the compliance unit into compliance, and indicate whether a conference or hearing is requested.

(b) The Council will provide a conference and, if a disputed substantial and material question of fact is presented, a hearing in accordance with § 706.74 (b) through (d).

(c) The Council will advise the compliance unit as promptly as possible after receipt of any request under paragraph (a) of this Section (or after the completion of any conference or hearing) as to whether the request has been granted or denied. If granted, removal from the list will be effective immediately, and a notice to that effect will be published promptly in the same manner as the publication of the list of noncompliers.

### Subpart G—Reconsideration

#### § 706.70 Purpose and scope.

This Subpart concerns reconsideration of Council actions taken under Subparts C or E.

#### § 706.71 General.

(a) Any person who has or could have participated in a matter under Subparts C or E of this Part may request reconsideration of the Council's decision within seven days of the Council's action.

(b) Additional facts that were not before the Council at the time of the initial decision may be presented at the time of reconsideration. If a person relies on certain facts and arguments to support a request for reconsideration, he may not later rely on substantially the same set of facts and arguments in a new request for reconsideration of the same matter.

(c) A person who has participated or could have participated in a matter under Subparts C or E of this Part will not have exhausted his administrative remedies until he has submitted a request for reconsideration under this Subpart and final action on that request has been taken by the Council.

#### § 706.72 Contents of the request.

A request for reconsideration should:

(a) Contain a concise statement of the requested relief and any factual, legal, or policy basis for such relief; and

(b) Specify whether a conference and/or hearing as provided by §§ 706.73 and 706.74 is requested, and, if so, whether confidential data will be discussed; and

(c) If a hearing is requested, identify the substantial and material questions of fact in dispute.

#### § 706.73 Conference on reconsideration.

(a) The Council will, if requested, provide a conference on reconsideration of an action under Subparts C and E.

(b) The Council will notify the requesting party and, in the Council's discretion, other interested persons of the time and place for the conference.

(c) Any subject relevant to the exception or noncompliance decision may be discussed at the conference.

#### § 706.74 Hearing on reconsideration.

(a) If a disputed substantial and material question of fact is presented, the Council will, if requested, provide a hearing on reconsideration of any action under Subpart E.

(b) If the Council determines that a hearing is appropriate, it will notify the person requesting the hearing and, in the Council's discretion, other interested persons. Thereafter, the hearing will be promptly scheduled before a Hearing Officer designated by the Council at such time and place as the Council may direct.

(c) A hearing conducted in accordance with this Section may include the submission of such additional evidence and arguments as the Hearing Officer permits.

(d) Within 20 days after the close of the hearing, the Hearing Officer will submit to the Council findings of fact on each disputed substantial and material question of fact. The Council will promptly send a copy of the report to the person who requested the hearing.

#### § 706.75 Decision.

(a) Within 20 days of receipt of a request for reconsideration, or within 20 days after the conclusion of any conference under § 706.73, or within 20 days after receipt of a Hearing Officer's findings under § 706.74, the Council will issue a decision affirming, modifying, or reversing its earlier action.

(b) The Council's decision will be in writing and will set forth the reasons on which it is based. Copies of the decision will be served on the person requesting reconsideration.

#### § 706.76 Stays pending reconsideration.

A request for reconsideration submitted within seven days of the Council's decision of noncompliance under § 706.52 will stay the placing of a compliance unit's name on a list of noncompliers pending the disposition of the request.

## PART 707—DATA REQUESTS

### Subpart A—Report on Company Organization and Statement of Assurance

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707.1 Company organization.
707.2 Statement of assurance of compliance by state and local government entities.

### Subpart B—Periodic Data Reports

707.10 Pay and price data reports.
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707.39 Inflation trend-factor adjustments. [Reserved]
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707.41 Adjustment of the profit limitation, gross-margin limitation, or percentage-gross-margin limitation for productivity improvements.
707.42 Adjustment of the price limitation or professional fee standard for uncontrollable costs.
707.43 Adjustment of the gross-margin limitation or percentage-gross-margin limitation for uncontrollable costs.
707.44 Adjustment of the profit limitation for interest expense.

### Subpart E—Data Submissions With Respect to Pay-Rate Increases Within the Range, but Above 8.5 Percent

707.50 Pay-rate increases above 8.5 percent.

**Authority:** Council on Wage and Price Stability Act, Pub. L. 93–387 (Aug. 24, 1974), as amended by Pub. L. 94–78 (Aug. 8, 1975) and Pub. L. 95–121 (Oct. 5, 1977), 12 U.S.C. 1904, note; as last amended by Pub. L. 96–10 (May 10, 1979); E.O. 12092 (November 1, 1978); E.O. 12161 (Sept. 28, 1979).

### Subpart A—Report of Company Organization and Statement of Assurance

#### § 707.1 Company organization.

Companies specified in § 706.21 should furnish to the Council:

(a) A completed Form CO–1 (Price); and/or

(b) A completed Form CO–1 (Pay), unless the entity is part of a State or local government entity and elects to file under § 707.2.

**§ 707.2 Statement of assurance of compliance by State and local government entities.**

A State or local government entity as defined in § 706.23 that does not file under § 707.1(b) should furnish to the Council a statement of assurance from the head of the government entity that the entity intends to comply with the pay standard.

## Subpart B—Periodic Data Reports

**§ 707.10 Pay and price data reports.**

Compliance units specified in § 706.22 should furnish to the Council:

(a) A completed Form PM–1, unless the compliance unit is a provider of insurance subject to § 705.48 or § 705.49 and has no non-insurance operations, a financial institution subject to § 705.50, or a utility subject to § 705.45 and has no non-utility operations; and/or

(b) A completed Form PAY–1, unless the compliance unit is part of a State or local government entity; or

(c) A completed Form PAY–2 if the compliance unit is part of a State or local government entity as specified in § 706.23.

**§ 707.11 Price data reports for providers of insurance. [Reserved]**

## Subpart C—Data Submissions Supporting Variances From Intermediate Price and Margin Limitations.

**§ 707.20 Intermediate price limitations.**

A compliance unit that exceeds any of the intermediate price limitations in § 705.3(a) or (b) should prepare and/or furnish to the Council with its form PM–1 the following:

(a) A demonstration that the increase in prices exceeding the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of price change over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions, and

(b) Projected third-year price changes, demonstrating that increases in prices exceeding the intermediate limit(s) are consistent with adherence to the price limitation by the end of the program year.

**§ 707.21 Intermediate profit limitations.**

A compliance unit that exceeds any of the intermediate limits for the profit limitation in § 705.6(a)(1) should prepare and/or furnish to the Council with its Form PM–1 a demonstration that a profit margin in excess of the profit limitation is consistent with an explicit plan, based on reasonable projections of economic conditions, to achieve compliance with the profit limitation by the end of the program year.

**§ 707.22 Intermediate percentage-gross-margin limitations.**

A compliance unit in the wholesale/retail trade industries that exceeds any of the intermediate percentage-gross-margin limitations in § 705.42(d) should prepare and/or furnish to the Council with its Form PM–1 the following:

(a) A demonstration that any increase in percentage gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected percentage gross margin demonstrating that pricing actions are consistent with adherence to the percentage-gross-margin standard by the end of the program year.

**§ 707.23 Intermediate gross-margin limitations.**

A compliance unit subject to the gross-margin standard that exceeds any of the intermediate gross-margin limitations in § 705.43(d) or § 705.44(e) should prepare and/or furnish to the Council with its Form PM–1 the following:

(a) A demonstration that any increase in gross margins in excess of the intermediate limit(s) is justified because of:

(1) Seasonal variations in economic activity (including an empirical demonstration of the quarterly pattern of change in gross margins over the five years before the first program year),

(2) Historical business practices, or

(3) Unusual business conditions; and

(b) Projected gross margins demonstrating that pricing actions are consistent with adherence to the gross-margin standard by the end of the program year.

## Subpart D—Data Submissions Supporting Exception Requests

**§ 707.30 General**

Each request for approval of an exception should include:

(a) The name and address of the compliance unit making the request, including the name(s), title(s), and phone number(s) of person(s) whom the Council may contact concerning the request, and the name and address of the company of which the unit is a part, if different from that of the compliance unit;

(b) The name(s), address(es) and phone number(s) of union representatives, if the request involves a collective-bargaining situation, or the name(s), address(es), and phone number(s) of relevant company officials if the request is made by an employee unit;

(c) A demonstration that the compliance unit or employee unit requesting the exception satisfies the criteria of § 706.31 (a) or (c), or, if the request is submitted under § 706.31(d), a demonstration that there is good cause for the Council to entertain the request; and

(d) The particular provisions of the standards that are the subject of the request, a precise description of the exception request, and the pay and/or price action that the entity making the request proposes to take if the exception is granted.

**§ 707.31 Tandem pay-rate exceptions.**

When self-administering an exception to the pay standard based on tandem pay-rate changes § 705.18), a compliance unit should promptly notify the Council of the following:

(1) The employee unit;

(2) The number of employees in the employee unit;

(3) The total pay-rate percentage change; and

(4) The leader unit (whether another employee unit, a group of employee units, or an identified labor market).

In addition, the compliance unit should prepare and have available for Council review on request documentation of the value and timing of past pay-rate increases of the leader and the follower units.

**§ 707.32 Productivity-improving work-rule-change exceptions.**

For an exception to the pay standard based on pay-rate increases traded for productivity-improving work-rule changes (§ 705.19), a compliance unit should submit:

(a) An explanation of the work-rule change(s);

(b) an analysis of how the cost reduction will be generated by the work-rule change(s);

(c) An estimate of the effect that the exception would have on the compliance unit's pay rates; and

(d) Documentation that the cost reduction generated by the work-rule change(s) will be equal to or greater than the excess of the pay increase over the pay standard.

**§ 707.33 Acute-labor-shortage exceptions.**

For an exception to the pay standard based on pay-rate changes needed because of acute labor shortages (§ 705.20), a compliance unit should submit:

(a) Documentation that, for the particular job categories, the proportion of vacancies relative to the work force and the time or effort required to fill them have increased abnormally during the preceding quarter relative to the two prior years;

(b) Documentation that pay rates for employees in those job categories have increased abnormally over the two prior years and that the requested pay rates for the shortage categories are comparable to pay rates in the relevant labor market;

(c) Documentation of the proportion of the compliance unit's work force that would be affected; and

(d) An estimate of the effect that the exception would have on the compliance unit's pay rates.

**§ 707.34 Undue-hardship and gross-inequity exceptions.**

For an exception to the pay or price standard based on undue hardship or gross inequity (§§ 705.6(b), 705.22, or 705.41(d)), a compliance unit should submit:

(a) A precise description of the hardship or inequity that would be created by application of the standard (including, with respect to hardship, a demonstration of the effect on the company's—as distinguished from the compliance unit's—financial viability);

(b) An explanation of how the requested exception would mitigate the hardship or inequity resulting from application of the standard; and

(c) If the request is for an exception to the pay standard, an estimate of the effect that the exception would have on the compliance unit's pay rates.

**§ 707.35 Inability-to-compute exceptions.**

For an exception to the price standard based on inability to compute a three-year price change (§ 705.6(a)), a compliance unit should demonstrate that sampling is infeasible due to inadequate data or that sampling is unduly onerous or costly.

**§ 707.36 Uncontrollable-cost exceptions.**

For an exception to the price limitation based on uncontrollable cost increases (§ 705.6(a)(1)), a compliance unit should:

(a) (1) Demonstrate, if it had been subject to the two-year price limitation in the second program year, that the rate of increase in costs per unit of output since the base quarter has exceeded the price limitation in § 705.2 of the price standards for the third year and is expected to continue to do so by an amount that would result in a significant erosion of the compliance unit's profit margin from that of the base year if it were held to the price limitation; or

(2) Demonstrate, if it had a Council-approved or properly self-administered exception in the second program year based on uncontrollable cost increases, that the rate of increase in costs per unit of output since the fourth quarter of the second program year has exceeded the price limitation in § 705.2(c) and is expected to continue to do so by an amount that would result in a significant erosion of the compliance unit's profit margin from that of the base year if it were held to that price limitation; and

(b) Demonstrate that the cost increases are substantially uncontrollable (this requires, at a minimum, quantification of the shares of total cost increases accounted for by each significant cost increase that is wholly and demonstrably uncontrollable); and

(c) Account for the degree to which such increases are offset by normal gains in the efficiency of using inputs (productivity).

**§ 707.37 Uncontrollable-cost exceptions to a percentage-gross-margin standard.**

For an exception to the percentage-gross-margin standard (§ 705.42) based on uncontrollable cost increases, a compliance unit should demonstrate that, since the new base year, the ratio of total costs excluding those subtracted from revenues when computing gross margin, as defined in § 705.42(b)(1), to total revenues has risen at a rate in excess of the allowable percentage-gross-margin trend or zero, whichever is greater, and is expected to continue to do so by an amount that would result in a significant erosion of the compliance unit's profit margin from that of the base year if it were held to the gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

**§ 707.38 Uncontrollable-cost exceptions to a gross-margin standard.**

(a) For an exception to a gross-margin standard in § 705.43 based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margins, as defined in § 705.43(b)(1), have risen since the new base year at an annual rate in excess of the sum of 7.5 percent plus the annual rate of growth in physical volume during the third year over the new base year, and are expected to continue to do so by an amount that would result in a significant erosion of the compliance unit's profit margin from that of the base year if it were held to that gross-margin standard. The compliance unit should also satisfy § 707.36 (b) and (c).

(b) For an exception to the gross-margin standard in § 705.44 based on uncontrollable cost increases, a compliance unit should demonstrate that total costs per barrel excluding those costs subtracted from revenues when calculating gross margins and gross margins per barrel, as defined in §§ 705.44(c)(2) and 705.44(d)(1), have risen since the new base year at an annual rate in excess of 7.5 percent and are expected to continue to do so by an amount that would result in a significant erosion of the compliance unit's profit margin from that of the base year if it were held to that gross-margin standard. The compliance unit should also satisfy §§ 707.36 (b) and (c).

(c) For an exception to the gross-margin standard in § 705.45 based on uncontrollable cost increases, a compliance unit should demonstrate that total costs excluding those subtracted from revenues when calculating gross margins, as defined in §§ 705.45(b) (1) and (2), have risen since the base year at a three-year rate in excess of the sum of 22 percent and the three-year rate of growth in physical volume since the base year and are expected to do so by an amount that would result in a significant erosion of the profit margin of the compliance unit if it were held to the gross-margin standard. The compliance unit should also satisfy §§ 707.35 (b) and (c).

**§ 707.39 Inflation trend-factor adjustments. [Reserved]**

**§ 707.40 Pay-rate increases to correct COLA-related inequities.**

For an exception to the pay standard based on pay-rate increases to correct COLA-related inequities (Section 705.21), a compliance unit should submit:

(a) Documentation that the employee unit was not covered by a cost-of-living clause in the first program year;

(b) Documentation that the employee unit was in compliance with the pay standard during the first year; and

(c) Documentation that pay-rate increases provided for in § 705.10(a) would be inadequate to compensate for the fact that either (1) the non-COLA employee unit's wages have been

compressed in comparison with COLA-covered employees within the same company (intra-firm inequities) or

(2) The employer is competing in a labor market in which other employers provide COLA or COLA-related increases to their employees (inter-firm inequities).

**§ 707.41 Adjustment of the profit limitation, gross-margin limitation, or percentage-gross-margin limitation for productivity improvements.**

For an adjustment of a compliance unit's profit limitation, gross-margin limitation, or percentage-gross-margin limitation under §§ 705.6(a)(2) or 705.41(b), a compliance unit should submit, at a minimum:

(a) A description of the plant or equipment involved;

(b) Documentation of the date on which the investment decision was made;

(c) A demonstration of the costs savings attributable to the investment, comparing per-unit costs before and after the productivity improvements went into effect;

(d) A demonstration that the cost savings in (c) result from an improvement in the company's total-factor productivity that, in turn, increases the aggregate (economy-wide) total-factor productivity; and

(e) A statement of the adjusted limitation sought by the compliance unit.

**§ 707.42 Adjustment of the price limitation or professional-fee standard for uncontrollable costs.**

For an adjustment of a compliance unit's price limitation or professional-fee standard under §§ 705.6(a)(4) and 705.41(c), a compliance unit should submit:

(a) The information required by § 707.36.;

(b) A statement of the adjusted limitation sought by the compliance unit; and

(c) Sufficient information, based upon reasonable economic projections, to permit the Council to determine the rate of price change that is likely to occur assuming compliance with the profit limitation.

**§ 707.43 Adjustment of the gross-margin limitation or percentage-gross-margin limitation for uncontrollable costs.**

For an adjustment of a compliance unit's gross-margin limitation or percentage-gross-margin limitation under § 705.41(c), a compliance unit should submit:

(a) The information required by § 707.37 or § 707.38.; and

(b) A statement of the adjusted limitation sought by the compliance unit, including an estimate, based on reasonable economic projections, of the profit margin and dollar profit that would result from the adjustment.

**§ 707.44 Adjustment of the profit limitation for interest expense.**

For an adjustment of a compliance unit's profit limitation under § 705.6(a)(3), a compliance unit should submit, at a minimum:

(a) For each of the last six complete fiscal years before October 1, 1980.

(1) Net sales or revenues, as defined in 705.78,

(2) Profits, as defined in 705.78,

(3) (i) Total interest expense incurred by the compliance unit and (ii) total interest income earned by the compliance unit, and

(4) 12-Month average outstanding balances associated with (3);

(b) An explanation, with supporting data, of the reasons for the increase in interest expense from the base year to each of the program years (specifically including the effect of increases in interest rates); and

(c) A statement of the adjusted limitation sought by the compliance unit.

## Subpart E—Data Submissions With Respect to Pay-Rate Increases Within the Range, but Above 8.5 Percent

**§ 707.50 Pay-rate increases above 8.5 percent.**

Compliance units covered by § 706.24 should promptly notify the Council of the following:

(a) Identification of the affected employee unit;

(b) The number of employees in the employee unit; and

(c) The total pay-rate percentage change for single year pay plans with the cost analysis of the increases in individual elements of pay compared with the base pay rate; or

(d) The average annual percentage pay-rate change and the percentage pay-rate change for each of multi-year pay plans and collective bargaining agreements with the cost analysis of the increases in individual elements of pay compared with the base pay rate.

[FR Doc. 80-30826 Filed 10-2-80; 8:45 am]

BILLING CODE 3175-01-M

## 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:** Affirmation of final rule.

**SUMMARY:** This action confirms the final rule which made amendments to the list of suppressive areas in North Carolina and South Carolina under the Witchweed Quarantine and Regulations (7 CFR 301.80–2a) as published in the **Federal Register** on June 6, 1980. This is necessary in order to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the movement of certain articles.

**EFFECTIVE DATE:** October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, 301–436–8247. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available upon request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

A document published in the **Federal Register** on June 6, 1980 (45 FR 38024) amended the list of suppressive areas under the Witchweed Quarantine and Regulations (7 CFR 301.80–2a) by extending areas listed as suppressive areas in North Carolina and South Carolina and by deleting areas listed as suppressive areas in North Carolina and South Carolina. Also, certain nonsubstantive changes were made to reflect changes in property ownership and to describe more accurately the regulated areas. The amendments became effective on the date of publication. The document provided that the amendments were necessary as emergency measures in order to prevent the artificial spread of the witchweed and to delete unnecessary restrictions on the movement of certain articles.

Comments were solicited for 60 days after publication of the amendments. No

comments were received in response to the amendments. The factual situations which were set forth in the document of June 6, 1980, still provide a basis for the amendments. Accordingly, it has been determined that the final rule should remain effective as published in the **Federal Register** on June 6, 1980.

Done at Washington, D.C., this 30th day of September 1980.

**Bobby R. Acord,**

*Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 80-30904 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-34-M

## 7 CFR Part 301

## Pink Bollworm; Miscellaneous Amendments to Regulated Areas

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Affirmation of final rule.

**SUMMARY:** This action confirms the final rule which made amendments to the list of suppressive areas in Arkansas and Louisiana under the Pink Bollworm Quarantine and Regulations (7 CFR 301.52–2a) as published in the **Federal Register** on June 27, 1980. This is necessary in order to prevent the artificial spread of pink bollworm and to delete unnecessary restrictions on the movement of certain articles.

**EFFECTIVE DATE:** October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** H. V. Autry, Chief Staff Officer, Regulatory Support Staff, Plant Protection and Quarantine, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Federal Building, 6505 Belcrest Road, Room 635, Hyattsville, MD 20782, 301–436–8247. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available upon request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been classified as "not significant."

A document published in the **Federal Register** on June 27, 1980 (45 FR 43368) amended the list of suppressive areas under the Pink Bollworm Quarantine and Regulations (7 CFR 301.52–2a) by extending areas listed as suppressive areas in Arkansas and by deleting areas listed as suppressive areas in Louisiana. The amendments became effective on the date of publication. The document provided that the amendments were necessary as emergency measures in order to prevent the artificial spread of the pink bollworm and to delete unnecessary restrictions on the movement of certain articles.

Comments were solicited for 60 days after publication of the amendments. No comments were received in response to the amendments. The factual situations which were set forth in the document of June 27, 1980, still provide a basis for the amendments. Accordingly, it has been determined that the final rule should remain effective as published in the **Federal Register** on June 27, 1980.

Done at Washington, D.C., this 30th day of September 1980.

**Bobby R. Acord,**

*Acting Deputy Administrator, Plant Protection and Quarantine, Animal and Plant Health Inspection Service.*

[FR Doc. 80-30905 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-34-M

## Agricultural Marketing Service

## 7 CFR Part 910

**[Lemon Regulation 272, Amdt. 1; Lemon Regulation 273]**

## Lemons Grown in California and Arizona; Limitation of Handling

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

**ACTION:** Final rule.

**SUMMARY:** This action establishes the quantity of California-Arizona lemons that may be shipped to the fresh market during the period October 5–11, 1980, and increases the quantity of such lemons that may be so shipped during the period September 28-October 4. Such action is needed to provide for orderly marketing of fresh lemons for the period specified due to the marketing situation confronting the lemon industry.

**DATES:** The regulation becomes effective October 5, 1980, and the amendment is effective for the period September 28-October 4, 1980.

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

**SUPPLEMENTARY INFORMATION:** *Findings.* This regulation and amendment are 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 available information. It is hereby found that this action will tend to effectuate the declared policy of the act.

This action is consistent with the marketing policy for 1980–81 which was designated significant under the procedures of Executive Order 12044. The marketing policy was recommended by the committee following discussion at a public meeting on July 8, 1980. A final impact analysis on the marketing policy is available from Malvin E. McGaha, Chief, Fruit Branch, F&V, AMS, USDA, Washington, D.C. 20250, telephone 202–447–5975.

The committee met again publicly on September 30, 1980, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified weeks. The committee reports the demand for lemons is steady.

It is further found that there is insufficient time between the date when information became available upon which this regulation and amendment are based and when the actions must be taken to warrant a 60 day comment period as recommended in E.O. 12044, and 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), and the amendment relieves restrictions on the handling of lemons. 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 times.

1. Section 910.573 is added as follows:

### § 910.573 Lemon Regulation 273.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period October 5, 1980, through October 11, 1980, is established at 202,194 cartons.

(b) As used in this section, "handled" and "cartons" means the same as defined in the marketing order.

2. Paragraph (a) of § 910.572 Lemon Regulation 272 (45 FR 63832) is amended to read as follows:

### § 910.572 Lemon Regulation 272.

(a) The quantity of lemons grown in California and Arizona which may be handled during the period September 28, 1980, through October 4, 1980 is established at 202,235 cartons.

* * * * *

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

Dated: October 1, 1980

D. S. Kuryloski,

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

[FR Doc. 80-31083 Filed 10-2-80; 12:01 pm]

BILLING CODE 3410-02-M

## 7 CFR Part 982

## Filberts Grown in Oregon and Washington; Expenses of the Filbert Control Board, and Rate of Assessment, for the 1980–81 Fiscal Year

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

**ACTION:** Final rule.

**SUMMARY:** This regulation authorizes expenses and a rate of assessment for the 1980–81 fiscal year, to be collected from handlers to support activities of the Filbert Control Board which locally administers the Federal marketing order covering filberts grown in Oregon and Washington.

**DATES:** Effective August 1, 1980, through July 31, 1981.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, (202) 447–5053.

**SUPPLEMENTARY INFORMATION:** Findings: Pursuant to Marketing Order No. 982, as amended (7 FR Part 982), regulating the handling of filberts grown in Oregon and Washington, effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and upon the basis of the recommendations and information submitted by the Board, established under this marketing order, and upon other information, it is found that the expenses and rate of assessment, as hereinafter provided, will tend to effectuate the declared policy of the act.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice and engage in public rulemaking, and that good cause exists for not postponing the effective time, until 30 days after publication in the **Federal Register** (5 U.S.C. 553), as the order requires that the rate of assessment for a particluar fiscal year shall apply to all assessable filberts handled from the beginning of such year which began August 1, 1980. To enable the Board to meet fiscal obligations, approval of the expenses and assessment rate is necessary without delay. Handlers and other interested persons were given an opportunity to submit information and views on the expenses and assessment rate at an open meeting of the Board. To effectuate the declared purposes of the act, it is necessary to make these provisions effective as specified.

Further, in accordance with procedures in Executive Order 12044, the emergency nature of this regulation warrants publication, without opportunity for further public comments. The regulation has not been classified "significant" under USDA criteria for implementing the Executive Order. An Impact Analysis is available from J. S. Miller (202) 447–5053.

The expenses and assessment rate for the 1980–81 fiscal year follow:

### § 982.325 Expenses and rate of assessment.

(a) Expenses that are reasonable and likely to be incurred by the Filbert Control Board during the 1980–81 fiscal year, will amount to $45,543.

(b) The rate of assessment for said crop year payable by each handler in accordance with § 982.61 is fixed at 0.20 cent per pound of filberts.

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

Dated: September 30, 1980.

D. S. Kuryloski,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 80-30898 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-02-M

## 7 CFR Part 989

## Raisins Produced From Grapes Grown in California—Quality Control; Temporary Change in Minimum Grade Standards for Packed Seedless Raisins

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

**ACTION:** Emergency final rule.

**SUMMARY:** This rule temporarily relaxes maturity requirements for packed seedless raisins under the Federal marketing order for California raisins. Adverse weather conditions this summer delayed proper sugar development. This, coupled with the threat of September rains, prompted producers to make raisins from grapes with lower than desired sugar levels. Although the full effect of the lower sugar content is still unknown, early tests indicate that the 1980 crop will be below current maturity requirements prescribed under the marketing order. The temporary grade change would make more 1980 crop raisins available to consumers and the trade than would otherwise be available, minimize as much as possible producers' and handlers' 1980 crop losses, and lessen the chances of price increases from higher processing costs. The change was unanimously recommended by the Raisin Administrative Committee. The Committee works with USDA in administering the order.

**EFFECTIVE DATES:** September 29, 1980 until January 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053. A Final Impact Statement is being developed.

**SUPPLEMENTARY INFORMATION:** This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant". Jerry Hill, Deputy Assistant Secretary for Marketing and Transportation Services, determined that an emergency situation exists which warrants publication without opportunity for a public comment period on this emergency final action because handlers are in the process of acquiring seedless raisins from the 1980 crop and will begin processing them soon, and the producers and handlers need to know promptly what regulation will be effective with respect to such raisins. Moreover, the temporary relaxation should become effective as soon as possible to minimize any inequities among producers and handlers due to different requirements for different time periods of the same crop year.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.**

The temporary grade change made herein is pursuant to the marketing agreement, and Order No. 989, both as amended, regulating the handling of raisins produced from grapes grown in California (hereinafter referred to collectively as the "order"). The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to collectively as the "act".

Currently, § 989.702 requires, among other things, Natural (sun-dried) Seedless, Dipped and Related Seedless, Golden Seedless and Monukka raisins

to meet the requirements in U.S. Grade C, including that not less than 55 percent, by weight, of the raisins must be well-matured or reasonably well matured. U.S. Grade C is defined in the effective United States Standards for Grades of Processed Raisins (7 CFR 52.1841—52.1858).

A significant portion of the 1980 crop raisins of these varietal types delivered to handlers to date are well below these requirements and will not be available for shipment to domestic or export markets without intensive processing at substantial extra costs to the handlers. No significant improvement in maturity's expected in later deliveries.

The temporary grade change, hereinafter set forth, will end December 31, 1981, and will permit handlers to process the 1980 raisin crop without incurring higher processing costs, make more raisins available to consumers and the trade than would otherwise be available, and lessen the changes of significant price increases.

After consideration of all relevant matter presented, the Committee's information and recommendation, and other available information, it is further found that the temporary changes in the minimum grade standards for packed seedless raisins, as contained in § 989.703 hereinafter set forth, would tend to effectuate the declared policy of the act.

Therefore, § 989.703 in Subpart—Quality Control (7 CFR Part 989.701–989.703) is revised to read as follows:

**§ 989.703 Changes in minimum grade standards for packed seedless raisins for the period ending December 31, 1981.**

Effective pursuant to § 989.59(b), the requirements for Natural (sun-dried) Seedless, Dipped and Related Seedless, Golden Seedless, and Monukka raisins in U.S. Grade C that not less than 55 percent, by weight, of the raisins must be well-matured or reasonably well-matured, shall be suspended until January 1, 1982.

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

Dated: September 26, 1980 to become effective September 29, 1980.

D. S. Kuryloski,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 80-30788 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-02-M

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**7 CFR Part 999**

## Raisin Import; Maturity Requirements

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

**ACTION:** Emergency final rule.

**SUMMARY:** This rule temporarily relaxes maturity requirements for imported raisins. The Agricultural Marketing Agreement Act of 1937, as amended, requires that raisin imports must meet equal or comparable grade requirements as domestic raisins under a Federal marketing order. Under the marketing order for California raisins, temporary relaxations are being made in the maturity requirements for packed seedless raisins and similar relaxations must be made in the requirements for imported Thompson Seedless and Monukka raisins.

**EFFECTIVE DATES:** September 29, 1980, until January 1, 1982.

**FOR FURTHER INFORMATION CONTACT:** J. S. Miller, Chief, Specialty Crops Branch, Fruit and Vegetable Division, AMS, USDA, Washington, D.C. 20250 (202) 447–5053. A Final Impact Statement is being developed.

**SUPPLEMENTARY INFORMATION:** This emergency final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified "significant".

Jerry Hill, Deputy Assistant Secretary for Marketing and Transportation Services, has determined that an emergency situation exists which warrants publication of this emergency final action without an opportunity for a public comment period. Section 8e of the AMA Act of 1937 makes this action mandatory and requires that it conform with a simultaneous relaxation of the grade requirements on certain domestic raisins under the marketing agreement and Order No. 989, both as amended (7 CFR Part 989), regulating the handling of raisins produced from grapes grown in California (hereinafter collectively referred to as the "order"). Moreover, compliance with this emergency final rule will not require any special preparation by importers which cannot be completed by the effective date, and it relaxes restrictions on the importation of raisins.

The domestic action is being implemented without an opportunity for public comment so the relaxed requirements can be made effective sooner than would otherwise be possible. Domestic handlers are in the process of acquiring 1980 crop raisins and will be processing and packing them soon. Hence, prompt action would lessen the chances of any inequity among producers or handlers due to different requirements for different time periods of the same crop year.

Further, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this emergency final action are impracticable and contrary to the public interest; and good cause is found for making this emergency final action effective less than 30 days after publication of this document in the **Federal Register.**

The raisin import regulation is effective pursuant to the requirements of section 8e of the AMA Act of 1937 (7 U.S.C. 601–674), hereinafter referred to as the "act". Section 8e requires the Secretary of Agriculture to issue, after reasonable notice, grade requirements on imported raisins which are the same as, or comparable to, those imposed on domestic raisins under the order.

Adverse weather conditions in California this summer delayed proper sugar development in grapes. This coupled with the threat of September rains, prompted producers to make raisins from grapes with lower than desired sugar levels.

Early tests indicate that the 1980 domestic raisin crop will be below current maturity requirements prescribed under the order. The temporary relaxation in domestic requirements necessitates a similar change in the import requirements for imported Thompson Seedless and Monukka raisins.

Based on the foregoing, and all other relevant information, it is further found that the amendment of the raisin import regulation, hereinafter set forth, will tend to effectuate the declared policy of the act.

Therefore, § 999.300 is amended by revising § 999.300(b)(6) to read as follows:

**§ 999.300 Regulation governing the importation of raisins.**

* * * * *

(b) * * *

(6) Until January 1, 1982, the requirement in U.S. Grade C that not less than 55 percent, by weight, of the raisins must be well-matured or reasonably well-matured shall not apply to Thompson Seedless and Monukka Raisins.

* * * * *

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

Dated September 29, 1980 to become effective September 29, 1980.

D. S. Kuryloski,

*Deputy Director, Fruit and Vegetable Division.*

[FR Doc. 80-30787 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-02-M

**CFR Parts 1062, 1007, 1011, 1030, 1032, 1046, 1049, 1050, 1064, 1065, 1068, 1071, 1073, 1076, 1079, 1094, 1096, 1097, 1098, 1099, 1102, 1104, 1106, 1108, 1120, 1126, 1131, 1132, and 1138**

## Milk in the St. Louis-Ozarks Marketing Area, et al.; Determination of Class II Prices

*7 CFR part and marketing area*

1062—St. Louis-Ozarks.
1007—Georgia.
1011—Tennessee Valley.
1030—Chicago Regional.
1032—Southern Illinois.
1046—Louisville-Lexington-Evansville.
1049—Indiana.
1050—Central Illinois.
1064—Greater Kansas City.
1065—Nebraska-Western Iowa.
1068—Upper Midwest.
1071—Neosho Valley.
1073—Wichita, Kansas.
1076—Eastern South Dakota.
1079—Iowa.
1094—New Orleans-Mississippi.
1096—Greater Louisiana.
1097—Memphis, Tennessee.
1098—Nashville, Tennessee.
1099—Paducah, Kentucky.
1102—Fort Smith, Arkansas.
1104—Red River Valley.
1106—Oklahoma Metropolitan.
1108—Central Arkansas.
1120—Lubbock-Plainview, Texas.
1126—Texas.
1131—Central Arizona.
1132—Texas Panhandle.
1138—Rio Grande Valley.

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

**ACTION:** Determination of class II prices for temporary period; interim rules.

**SUMMARY:** This action relates to the procedure for announcing Class II prices under the 29 Federal milk orders listed above. In a recent decision, the U.S. Court of Appeals for the District of Columbia ruled that the present method of announcing Class II prices under these orders is invalid. The Court ordered the Department to establish on the basis of further rulemaking procedures a method for announcing such prices and, pending the completion of these procedures, to implement on an interim basis the same notice procedure used for announcing Class I prices. To carry out the Court's order, Class II prices must be announced in advance of the month in which they apply rather than after such month, as has been the usual case. In the absence of order provisions for establishing Class II prices that may be announced in this manner, it is necessary during this interim period to determine for each month a Class II price for each of the 29 orders. This document sets forth the procedure that will be followed by the Department in determining and announcing such prices.

**DATE:** The procedures set forth herein become effective October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Martin J. Dunn, Marketing Specialist, Dairy Division, United States Department of Agriculture, Washington, D.C. 20250, 202–447–7311.

**SUPPLEMENTARY INFORMATION:** Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable provisions of the respective orders, as amended, regulating the handling of milk in the aforesaid marketing areas, it is hereby found and determined with respect to these orders that:

(1) The provisions in the orders for announcing Class II prices have been declared legally invalid. In an action against the Department (*American Dairy of Evansville Inc., et al., v. Robert Bergland, Secretary of Agriculture, et al.*), the U.S. Appeals Court for the District of Columbia Circuit recently ruled that the Class II price announcement procedure in the 29 orders is invalid due to inadequate findings when the procedure was established in the orders.

(2) The Court has ordered the Department to establish on the basis of further rulemaking procedures a method for announcing Class II prices and, pending the completion of these procedures, to implement on an interim basis the same notice procedure used for announcing Class I prices.

(3)As a result of the Court's ruling, the Department held a public hearing at Clayton, Missouri, on August 12–14, 1980 (45 FR 47432, July 15, 1980, and 45 FR 49584, July 25, 1980) to consider proposals for establishing an appropriate method for announcing Class II prices under the 29 orders. A decision on the proposals considered is pending.

(4) Pending the completion of the amendator proceeding, it is necessary, in carrying out the Court's order to announce Class II prices in advance of the month in which they apply, to determine for each month during the interim period a Class II price for each of the 29 orders. Accordingly, for each month, the Director of the Dairy Division, Agricultural Marketing Service, will determine the Class II price, which will be his estimate of the average Minnesota-Wisconsin manufacturing milk price (3.5 percent butterfat content) for that month, plus 10 cents. This Class II price will be determined and announced by the Director on the same day of the preceding month that the Class I price is announced and will be announced by the market administrators of the affected orders at that same time. This procedure will continue as closely as possible the present relationship between the Class II and Class III prices of each order, while announcing Class II prices in a manner that carries out the Court's order.

(5) Notice of proposed rulemaking, public procedure thereon and 30 days' prior notice of the effective date hereof are impracticable, unnecessary, and contrary to the public interest in that (a) the present method of announcing Class II prices for the orders has been declared invalid by a Court and a void is thereby created in the orders; (b) the determination of Class II prices is necessary in order to announce such prices in the manner directed by the Court; and (c) the determination does not require substantial or extensive preparation by any person.

Effective date: The procedures set forth herein become effective October 3, 1980.

Signed at Washington, D.C., on: September 26, 1980.

**H. L. Forest,**

*Director, Dairy Division.*

Each of the CFR sections listed below is affected by the Court ruling and will carry a note as follows:

Note.—The announcement of Class II prices are affected by a Court ruling. See document published on October 3, 1980 at 45 FR ——.

*7 CFR part and marketing area*

1062.50(b)—St. Louis-Ozarks.
1007.50(b)—Georgia.
1011.50(b)—Tennessee Valley.
1030.50(b)—Chicago Regional.
1032.50(b)—Southern Illinois.
1046.50(b)—Louisville-Lexington-Evansville.
1049.50(b)—Indiana.
1050.50(b)—Central Illinois.
1064.50(b)—Greater Kansas City.
1065.50(b)—Nebraska-Western Iowa.
1068.50(b)—Upper Midwest.
1071.50(b)—Neosho Valley.
1073.50(b)—Wichita, Kansas.
1076.50(b)—Eastern South Dakota.
1079.50(b)—Iowa.
1094.50(b)—New Orleans-Mississippi.
1096.50(b)—Greater Louisiana.
1097.50(b)—Memphis, Tennessee.
1098.50(b)—Nashville, Tennessee.
1099.50(b)—Paducah, Kentucky.
1102.50(b)—Fort Smith, Arkansas.
1104.50(b)—Red River Valley.
1106.50(b)—Oklahoma Metropolitan.
1108.50(b)—Central Arkansas.
1120.50(b)—Lubbock-Plainview, Texas.
1126.50(b)—Texas.
1131.50(b)—Central Arizona.
1132.50(b)—Texas Panhandle.
1138.50(b)—Rio Grande Valley.

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[FR Doc. 80-30605 Filed 10-2-80; 8:45 am]
BILLING CODE 3410-02-M

## Food Safety and Quality Service

## 7 CFR Part 2853

## Grading, Certification, and Standards; Delay of Implementation of Effective Date

**AGENCY:** Food Safety and Quality Service, USDA.

**ACTION:** Notice of delay of implementation of effective date.

**SUMMARY:** A final rule was published in the August 5, 1980, **Federal Register** (45 FR 51757–51763) to amend certain official United States standards for grades of meat and the related meat grading regulations. One change provided that beef carcasses must be ribbed a minimum of 10 minutes prior to presentation for grading. Due to the necessity of modifying their automatic carcass handling systems, some establishments will be unable to comply with the October 6, 1980, effective date. Therefore, the effective date for the 10 minute ribbing time only is extended to January 12, 1981, to allow sufficient time for these modifications to be made.

**EFFECTIVE DATE:** January 12, 1981.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Huggins, Acting Director, Meat Quality Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–3499.

**SUPPLEMENTARY INFORMATION:** On August 5, 1980, the Food Safety and Quality Service published in the **Federal Register** (45 FR 51757–51763) a final rule to amend certain official United States standards for grades of meat and the related meat grading regulations. One change provided that beef carcasses must be ribbed a minimum of 10 minutes prior to being presented for grading. Some packers have notified the Department that due to the extensive modifications of their automatic carcass handling systems necessary to comply with this regulation, the needed changes cannot be accomplished by the October 6, 1980, effective date. These packers have requested that the effective date be extended to allow completion of these modifications.

The Department recognized that some modifications would be necessary. However, it was anticipated that these changes could be accomplished by October 6, 1980. Because of the inability of some packers to meet this deadline and because an extension to allow completion of modifications does not have an adverse impact, an extension of the effective date to January 12, 1981, is made for the 10 minute ribbing time requirement provided for in § 2853.13(b) (7 CFR 2853.13(b)). This will allow all users of the service to be treated uniformly and will not delay the benefits of the other amended changes, which are effective on October 6, 1980.

Done at Washington, D.C., on: September 30, 1980.

**Carol Tucker Foreman,**

*Assistant Secretary for Food and Consumer Services.*

[FR Doc. 80-30694 Filed 10-2-80; 8:45 am]
BILLING CODE 3410-DM-M

## DEPARTMENT OF JUSTICE

## Immigration and Naturalization Service

## 8 CFR Part 215

## Controls Upon Departure of Persons From and Entry Into the United States: Revised Title: Control of Aliens Departing From the United States

**AGENCY:** Immigration and Naturalization Service, Justice.

**ACTION:** Final rule.

**SUMMARY:** The Immigration and Naturalization Service (INS) is deleting the present regulations contained in 8 CFR Part 215 which cover controls upon departure of persons from and entry into the United States. Part 215 is being revised pursuant to an agreement between the State Department and the Justice Department. That agreement provides that the regulations presently at 22 CFR Part 46, which set forth controls of aliens departing from the United States should be revised, and that the regulations of the INS found at 8 CFR Part 215 should contain the same provisions because the provisions of 22 CFR Part 46 [1] affect the duties of immigration officers.

**EFFECTIVE DATE:** October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:**

For General Information: Stanley J. Kieszkiel, Acting Instructions Officer, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048

For specific information: Joanna London, General Attorney, Immigration and Naturalization Service, 425 Eye Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3201

**SUPPLEMENTARY INFORMATION:** On June 16, 1980, the Department of State and the Immigration and Naturalization Service agreed that 22 CFR Part 46 should be amended and that the regulations of both should contain the provisions of 22 CFR Part 46, as amended, because these provisions affect the duties of Immigration Officers. Pursuant to that agreement, this rule deletes the present provisions of 8 CFR Part 215 and replaces them with the provisions of 22 CFR Part 46, as amended on September 29, 1980 (45 FR 64174).

The present 8 CFR Part 215 is entitled "Controls Upon Departure of Persons From and Entry Into the United States" and contains only § 215.1, which provides that wartime or national emergency travel controls for United States citizens are contained in 22 CFR Part 53, and controls upon aliens departing from the United States are contained in 22 CFR Part 46. The new 8 CFR Part 215 is entitled "Control of Aliens Departing From the United States" and adopts the language and format of the amended 22 CFR Part 46, which provides controls for alien departures from the United States.

The new 8 CFR 215.1 defines terms for the purposes of Part 215. This section adopts the language and format of 22 CFR 46.1.

The new 8 CFR 215.2 provides the authority of departure control officers. This section adopts the language and format of 22 CFR 46.2 as amended.

The new 8 CFR 215.3 lists aliens whose departures from the United States would be prejudicial to the

[1] For revised 22 CFR Part 46, see 45 FR 64174, Sept. 29, 1980.

interests of the United States. This section adopts the language and format of 22 CFR 46.3 as amended.

The new 8 CFR 215.4 provides the procedure applicable when an alien is prevented from departuring from the United States. This section adopts the language and format of 22 CFR 46.4.

The new 8 CFR 215.5 provides for the procedure during a hearing before a special inquiry officer. This section adopts the language and format of 22 CFR 46.5.

The new 8 CFR 215.6 provides controls for alien departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States. This section adopts the language and format of 22 CFR 46.6.

The new 8 CFR 215.7 requires that instructions from the Administrator of Security and Consular Affairs are necessary in certain alien departure cases. This section adopts the language and format of 22 CFR 46.7.

Compliance with 5 U.S.C. 553 as to proposed rulemaking and delayed effective date is unnecessary as the regulations contained herein involve foreign affairs functions of the United States.

Accordingly, the revised 8 CFR Part 215 reads as follows:

## PART 215—CONTROLS OF ALIENS DEPARTING FROM THE UNITED STATES

Sec.

215.1 Definitions.
215.2 Authority of departure-control officer to prevent alien's departure from the United States.
215.3 Alien whose depature is deemed prejudicial to the interests of the United States.
215.4 Procedures in case of alien prevented from departing from the United States.
215.5 Hearing procedure before special inquiry officer.
215.6 Depature from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.
215.7 Instructions from the Administrator required in certain cases.

**Authority:** Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; 8 U.S.C. 1104, 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185).

### § 215.1 Definitions.

For the purpose of this part:

(a) The term "alien" means any person who is not a citizen or national of the United States.

(b) The term "Commissioner" means the Commissioner of Immigration and Naturalization.

(c) The term "regional commissioner" means an officer of the Immigration and Naturalization Service duly appointed or designated as a regional commissioner, or an officer who has been designated to act as a regional commissioner.

(d) The term "district director" means an officer of the Immigration and Naturalization Service duly appointed or designated as a district director, or an officer who has been designated to act as a district director.

(e) The term "United States" means the several States, the District of Columbia, the Canal Zone, Puerto Rico, the Virgin Islands, Guam, American Samoa, Swains Island, the Trust Territory of the Pacific Islands, and all other territory and waters, continental and insular, subject to the jurisdiction of the United States.

(f) The term "continental United States" means the District of Columbia and the several States, except Alaska and Hawaii.

(g) The term "geographical part of the United States" means (1) the continental United States, (2) Alaska, (3) Hawaii, (4) Puerto Rico, (5) the Virgin Islands, (6) Guam, (7) the Canal Zone, (8) American Samoa, (9) Swains Island, or (10) the Trust Teritory of the Pacific Islands.

(h) The term "depart from the United States" means depart by land, water, or air (1) from the United States for any foreign place, or (2) from one geographical part of the United States for a separate geographical part of the United States: *Provided,* That a trip or journey upon a public ferry, passenger vessel sailing coastwise on a fixed schedule, excursion vessel, or aircraft, having both termini in the continental United States or in any one of the other geographical parts of the United States and not touching any territory or waters under the jurisdiction or control of a foreign power, shall not be deemed a departure from the United States.

(i) The term "departure-control officer" means any immigration officer as defined in the regulations of the Immigration and Naturalization Service who is designated to supervise the departure of aliens, or any officer or employee of the United States designated by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of an outlying possession of the United States, to supervise the departure of aliens.

(j) The term "port of departure" means a port in the continental United States, Alaska, Guam, Hawaii, Puerto Rico or the Virgin Islands, designated as a port of entry by the Attorney General or by the Commissioner, or in exceptional circumstances such other place as the departure-control officer may, in his discretion, designate in an individual case, or a port in American Samoa, Swains Island, the Canal Zone, or the Trust Territory of the Pacific Islands, designated as a port of entry by the chief executive officer thereof.

(k) The term "special inquiry officer" shall have the meaning ascribed thereto in section 101(b)(4) of the Immigration and Nationality Act.

### § 215.2 Authority of departure-control officer to prevent alien's departure from the United States.

(a) No alien shall depart, or attempt to depart, from the United States if his departure would be prejudicial to the interests of the United States under the provisions of § 215.3. Any departure-control officer who knows or has reason to believe that the case of an alien in the United States comes within the provisions of § 215.3 shall temporarily prevent the departure of such alien from the United States and shall serve him with a written temporary order directing him not to depart, or attempt to depart, from the United States until notified of the revocation of the order.

(b) The written order temporarily preventing an alien, other than an enemy alien, from departing from the United States shall become final 15 days after the date of service thereof upon the alien, unless prior thereto the alien requests a hearing as hereinafter provided. At such time as the alien is served with an order temporarily preventing his departure from the United States, he shall be notified in writing concerning the provisions of this paragraph, and shall be advised of his right to request a hearing if entitled thereto under § 215.4. In the case of an enemy alien, the written order preventing departure shall become final on the date of its service upon the alien.

(c) Any alien who seeks to depart from the United States may be required, in the discretion of the departure-control officer, to be examined under oath and to submit for official inspection all documents, articles, and other property in his possession which are being removed from the United States upon, or in connection with, the alien's departure. The departure-control officer may permit certain other persons, including officials of the Department of State and interpreters, to participate in such examination or inspection and may exclude from presence at such examination or inspection any person whose presence would not further the objectives of such examination or inspection. The departure-control officer shall temporarily prevent the departure of any alien who refuses to submit to such examination or inspection, and may, if necessary to the enforcement of

this requirement, take possession of the alien's passport or other travel document.

**§ 215.3 Aliens whose departure is deemed prejudicial to the interests of the United States.**

The departure from the United States of any alien within one or more of the following categories shall be deemed prejudicial to the interests of the United States.

(a) Any alien who is in possession of, and who is believed likely to disclose to unauthorized persons, information concerning the plans, preparation, equipment, or establishments for the national defense and security of the United States.

(b) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities of any kind designed to obstruct, impede, retard, delay or counteract the effectiveness of the national defense of the United States or the measures adopted by the United States or the United Nations for the defense of any other country.

(c) Any alien who seeks to depart from the United States to engage in, or who is likely to engage in, activities which would obstruct, impede, retard, delay, or counteract the effectiveness of any plans made or action taken by any country cooperating with the United States in measures adopted to promote the peace, defense, or safety of the United States or such other country.

(d) Any alien who seeks to depart from the United States for the purpose of organizing, directing, or participating in any rebellion, insurrection, or violent uprising in or against the United States or a country allied with the United States, or of waging war against the United States or its allies, or of destroying, or depriving the United States of sources of supplies or materials vital to the national defense of the United States, or to the effectiveness of the measures adopted by the United States for its defense, or for the defense of any other country allied with the United States.

(e) Any alien who is subject to registration for training and service in the Armed Forces of the United States and who fails to present a Registration Certificate (SSS Form No. 2) showing that he has complied with his obligation to register under the Universal Military Training and Service Act, as amended.

(f) Any alien who is a fugitive from justice on account of an offense punishable in the United States.

(g) Any alien who is needed in the United States as a witness in, or as a party to, any criminal case under investigation or pending in a court in the United States: *Provided*, That any alien who is a witness in, or a party to, any criminal case pending in any criminal court proceeding may be permitted to depart from the United States with the consent of the appropriate prosecuting authority, unless such alien is otherwise prohibited from departing under the provisions of this part.

(h) Any alien who is needed in the United States in connection with any investigation or proceeding being, or soon to be, conducted by any official executive, legislative, or judicial agency in the United States or by any governmental committee, board, bureau, commission, or body in the United States, whether national, state, or local.

(i) Any alien whose technical or scientific training and knowledge might be utilized by an enemy or a potential enemy of the United States to undermine and defeat the military and defensive operations of the United States or of any nation cooperating with the United States in the interests of collective security.

(j) Any alien, where doubt exists whether such alien is departing or seeking to depart from the United States voluntarily except an alien who is departing or seeking to depart subject to an order issued in extradition, exclusion, or deportation proceedings.

(k) Any alien whose case does not fall within any of the categories described in paragraphs (a) to (j), inclusive, of this section, but which involves circumstances of a similar character rendering the alien's departure prejudicial to the interests of the United States.

**§ 215.4 Procedure in case of alien prevented from departing from the United States.**

(a) Any alien, other than an enemy alien, whose departure has been temporarily prevented under the provisions of § 215.2, may, within 15 days of the service upon him of the written order temporarily preventing his departure, request a hearing before a special inquiry officer. The alien's request for a hearing shall be made in writing and shall be addressed to the district director having administrative jurisdiction over the alien's place of residence. If the alien's request for a hearing is timely made, the district director shall schedule a hearing before a special inquiry officer, and notice of such hearing shall be given to the alien. The notice of hearing shall, as specifically as security considerations permit, inform the alien of the nature of the case against him, shall fix the time and place of the hearing, and shall inform the alien of his right to be represented, at no expense to the Government, by counsel of his own choosing.

(b) Every alien for whom a hearing has been scheduled under paragraph (a) of this section shall be entitled (1) to appear in person before the special inquiry officer, (2) to be represented by counsel of his own choice, (3) to have the opportunity to be heard and to present evidence, (4) to cross-examine the witnesses who appear at the hearing, except that if, in the course of the examination, it appears that further examination may divulge information of a confidential or security nature, the special inquiry officer may, in his discretion, preclude further examination of the witness with respect to such matters, (5) to examine any evidence in possession of the Government which is to be considered in the disposition of the case, provided that such evidence is not of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, (6) to have the time and opportunity to produce evidence and witnesses on his own behalf, and (7) to reasonable continuances, upon request, for good cause shown.

(c) Any special inquiry officer who is assigned to conduct the hearing provided for in this section shall have the authority to: (1) Administer oaths and affirmations, (2) present and receive evidence, (3) interrogate, examine, and cross examine under oath or affirmation both the alien and witnesses, (4) rule upon all objections to the introduction of evidence or motions made during the course of the hearing, (5) take or cause depositions to be taken, (6) issue subpoenas, and (7) take any further action consistent with applicable provisions of law, Executive orders, proclamations, and regulations.

**§ 215.5 Hearing procedure before special inquiry officer.**

(a) The hearing before the special inquiry officer shall be conducted in accordance with the following procedure:

(1) The special inquiry officer shall advise the alien of the rights and privileges accorded him under the provisions of § 215.4.

(2) The special inquiry officer shall enter of record (i) a copy of the order served upon the alien temporarily preventing his departure from the United States, and (ii) a copy of the notice of hearing furnished the alien.

(3) The alien shall be interrogated by the special inquiry officer as to the matters considered pertinent to the proceeding, with opportunity reserved to

the alien to testify thereafter in his own behalf, if he so chooses.

(4) The special inquiry officer shall present on behalf of the Government such evidence, including the testimony of witnesses and the certificates or written statements of Government officials or other persons, as may be necessary and available. In the event such certificates or statements are received in evidence, the alien may request and, in the discretion of the special inquiry officer, be given an opportunity to interrogate such officials or persons, by deposition or otherwise, at a time and place and in a manner fixed by the special inquiry officer: *Provided,* That when in the judgment of the special inquiry officer any evidence relative to the disposition of the case is of a confidential or security nature the disclosure of which would be prejudicial to the interests of the United States, such evidence shall not be presented at the hearing but shall be taken into consideration in arriving at a decision in the case.

(5) The alien may present such additional evidence, including the testimony of witnesses, as is pertinent and available.

(b) A complete verbatim transcript of the hearing, except statements made off the record shall be recorded. The alien shall be entitled, upon request, to the loan of a copy of the transcript, without cost, subject to reasonable conditions governing its use.

(c) Following the completion of the hearing, the special inquiry officer shall make and render a recommended decision in the case, which shall be governed by and based upon the evidence presented at the hearing and any evidence of a confidential or security nature which the Government may have in its possession. The decision of the special inquiry officer shall recommend (1) that the temporary order preventing the departure of the alien from the United States be made final, or (2) that the temporary order preventing the departure of the alien from the United States be revoked. This recommended decision of the special inquiry officer shall be made in writing and shall set forth the officer's reasons for such decision. The alien concerned shall at his request be furnished a copy of the recommended decision of the special inquiry officer, and shall be allowed a reasonable time, not to exceed 10 days, in which to submit representations with respect thereto in writing.

(d) As soon as practicable after the completion of the hearing and the rendering of a decision by the special inquiry officer, the district director shall forward the entire record of the case, including the recommended decision of the special inquiry officer and any written representations submitted by the alien, to the regional commissioner having jurisdiction over his district. After reviewing the record, the regional commissioner shall render a decision in the case, which shall be based upon the evidence in the record and on any evidence or information of a confidential or security nature which he deems pertinent. Whenever any decision is based in whole or in part on confidential or security information not included in the record, the decision shall state that such information was considered. A copy of the regional commissioner's decision shall be furnished the alien, or his attorney or representative. No administrative appeal shall lie from the regional commissioner's decision.

(e) Notwithstanding any other provision of this part, the Administrator of the Bureau of Security and Consular Affairs referred to in section 104(b) of the Immigration and Nationality Act, or such other officers of the Department of State as he may designate, after consultation with the Commissioner, or such other officers of the Immigration and Naturalization Service as he may designate, may at any time permit the departure of an individual alien or of a group of aliens from the United States if he determines that such action would be in the national interest. If the Administrator specifically requests the Commissioner to prevent the departure of a particular alien or of a group of aliens, the Commissioner shall not permit the departure of such alien or aliens until he has consulted with the Administrator.

(f) In any case arising under §§ 215.1 to 215.7, the Administrator shall, at his request, be kept advised, in as much detail as he may indicate is necessary, of the facts and of any action taken or proposed.

### § 215.6 Departure from the Canal Zone, the Trust Territory of the Pacific Islands, or outlying possessions of the United States.

(a) In addition to the restrictions and prohibitions imposed by the provisions of this part upon the departure of aliens from the United States, any alien who seeks to depart from the Canal Zone, the Trust Territory of the Pacific Islands, or an outlying possession of the United States shall comply with such other restrictions and prohibitions as may be imposed by regulations prescribed, with the concurrence of the Administrator of the Bureau of Security and Consular Affairs and the Commissioner, by the Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or by the governor of an outlying possession of the United States, respectively. No alien shall be prevented from departing from such zone, territory, or possession without first being accorded a hearing as provided in §§ 215.4 and 215.5.

(b) The Governor of the Canal Zone, the High Commissioner of the Trust Territory of the Pacific Islands, or the governor of any outlying possession of the United States shall have the authority to designate any employee or class of employees of the United States as hearing officers for the purpose of conducting the hearing referred to in paragraph (a) of this section. The hearing officer so designated shall exercise the same powers, duties, and functions as are conferred upon special inquiry officers under the provisions of this part. The chief executive officer of such zone, territory, or possession shall, in lieu of the regional commissioner, review the recommended decision of the hearing officer, and shall render a decision in any case referred to him, basing it on evidence in the record and on any evidence or information of a confidential or a security nature which he deems pertinent.

### § 215.7 Instructions from the Administrator required in certain cases.

In the absence of appropriate instructions from the Administrator of the Bureau of Security and Consular Affairs, departure-control officers shall not exercise the authority conferred by § 215.2 in the case of any alien who seeks to depart from the United States in the status of a nonimmigrant under section 101(a)(15) (A) or (G) of the Immigration and Nationality Act, or in the status of a nonimmigrant under section 11(3), 11(4), or 11(5) of the Agreement between the United Nations and the United States of America regarding the Headquarters of the United Nations (61 Stat. 756): *Provided,* That in cases of extreme urgency, where the national security so requires, a departure-control officer may preliminarily exercise the authority conferred by § 215.2 pending the outcome of consultation with the Administrator, which shall be undertaken immediately. In all cases arising under this section, the decision of the Administrator shall be controlling: *Provided,* That any decision to prevent the departure of an alien shall be based upon a hearing and record as prescribed in this part.

(Sec. 104, 66 Stat. 174, Proc. 3004, 18 FR 489; (8 U.S.C. 1104), 3 CFR, 1953 Supp. Interpret or apply sec. 215, 66 Stat. 190; (8 U.S.C. 1185))

Dated: September 26, 1980.

David Crosland,

*Acting Commissioner of Immigration and Naturalization.*

[FR Doc. 80-30917 Filed 10-2-80; 8:45 am]

BILLING CODE 4410-10-M

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

### 9 CFR Part 82

### Exotic Newcastle Disease; and Psittacosis or Ornithosis in Poultry; Areas Quarantined

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The purpose of these amendments is to quarantine a portion of Miami County in Florida, a portion of Fort Bend County in Texas, a portion of Clay County in Missouri, a portion of Saginaw County in Michigan, a portion of Hawaii County in Hawaii, and a portion of Greene County in Arkansas because of the existence of exotic Newcastle disease. Exotic Newcastle disease was confirmed in such portion of Miami County, Florida, on September 24, 1980; Fort Bend County, Texas, on September 23, 1980; Clay County, Missouri, on September 23, 1980; Saginaw County, Michigan, on September 26, 1980; Hawaii County, Hawaii, on September 23, 1980; and Greene County, Arkansas, on September 16, 1980. Therefore, in order to prevent the dissemination of exotic Newcastle disease it is necessary to quarantine the affected areas.

**EFFECTIVE DATE:** September 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** C. G. Mason, Chief, National Emergency Field Operations, Emergency Programs, Veterinary Services, USDA, 6505 Belcrest Road, Federal Building, Room 751, Hyattsville, MD 20782, 301-436-8073.

**SUPPLEMENTARY INFORMATION:** These amendments quarantine a portion of Miami County in Florida, a portion of Fort Bend County in Texas, a portion of Clay County in Missouri, a portion of Saginaw County in Michigan, a portion of Hawaii County in Hawaii, and a portion of Greene County in Arkansas because of the existence of exotic Newcastle disease. Therefore, the restrictions pertaining to the interstate movement of poultry, mynah, and psittacine birds, and birds of all other species under any form of confinement and their carcasses, and parts thereof, and certain other articles, from quarantined areas, as contained in 9 CFR Part 82, as amended, will apply to the quarantined areas.

Accordingly, Part 82, Title 9 Code of Federal Regulations, is hereby amended in the following respects:

1. In § 82.3(a)(1) relating to the State of Florida, a new paragraph (iv) relating to Miami County is added to read:

**§ 82.3 Areas quarantined.**

(a) * * *

(1) *Florida.* * * *

(iv) The premises of Animal Kingdom (Nisard Puig), 11105 N.W., 119th St. North Miami, Miami County.

* * * * *

2. In § 82.3(a)(3) relating to the State of Texas, a new paragraph (iii) relating to Fort Bend County is added to read:

(a) * * *

(3) *Texas.* * * *

(iii) The premises of George A. Gamblin, 2911 Burning Tree Lane, Missouri City, Fort Bend County.

* * * * *

3. In § 82.3(a)(4), relating to the State of Missouri, a new paragraph (ii) relating to Clay County is added to read:

(a) * * *

(4) *Missouri.* * * *

(ii) The premises of Fin and Foliage, 626 and 628 Fin and Foliage, Linden Heights, Gladstone, Clay County.

* * * * *

4. In § 82.3(a)(12), relating to the State of Michigan, a new paragraph (ii) relating to Saginaw County is added to read:

(a) * * *

(12) *Michigan.* * * *

(ii) The premises of The Fish Gallery and Hobby Shop, 247 Meyers Street, Freeland, Tittabawassee Township, Saginaw County.

* * * * *

5. In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Hawaii and a new paragraph (a)(13) relating to the State of Hawaii is added to read:

(a) * * *

(13) *Hawaii.* The premises of Avian Distributors, Inc. (John L. Sobel), Lot 11 of Block 70, Paradise Park Subdivision, Makuu Road, Heaau, Hawaii County.

* * * * *

6. In § 82.3, the introductory portion of paragraph (a) is amended by adding thereto the name of the State of Arkansas and a new paragraph (a)(14) relating to the State of Arkansas is added to read:

(a) * * *

(14) *Arkansas.* The premises of Folkes Exotic Birds, Grove Heights, Lot 8, Thompson Subdivision 12-17-51, Paragould, Greene County.

(Secs. 4-7, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791-792, as amended; secs. 1-4, 33 Stat. 1264, 1265, as amended; secs. 3 and 11, 76 Stat. 130, 132 (21 U.S.C. 111-113, 115, 117, 120, 123-126, 134b, 134f); 37 FR 28464, 28477; 38 FR 19141)

These amendments impose certain restrictions necessary to prevent the interstate spread of exotic Newcastle disease, a communicable disease of poultry, and must be made effective immediately to accomplish their purpose in the public interest. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this final rule are impracticable and contrary to the public interest and good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

Further, this final rule has not been designated as "significant," and is being published in accordance with the emergency procedures in Executive Order 12044 and Secretary's memorandum 1955. It has been determined by J. C. Jefferies, Acting Assistant Deputy Administrator, Animal Health Programs, APHIS, VS, USDA, that the emergency nature of this final rule warrants publication without opportunity for prior public comment or preparation of an impact analysis statement at this time.

This final rule implements the regulations in Part 82. It will be scheduled for review in conjunction with the periodic review of the regulations in that Part required under the provisions of Executive Order 12044 and Secretary's memorandum 1955.

Done at Washington, D.C., this 30th day of September 1980.

R. P. Jones,

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-30896 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-34-M

### 9 CFR Part 94

### Importation of Carcasses, Parts or Products of Poultry, Game Birds, and Other Birds

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** These amendments provide for the importation of carcasses of quail of free-flying origin which have been eviscerated and heads and feet removed. This action will permit the entry of such carcasses from viscerotropic velogenic Newcastle disease (VVND) affected countries in the same manner that game birds are allowed entry. The effect of this action is to facilitate the importation of such quail carcasses without the risk of the introduction and dissemination of VVND into the United States. This amendment will also change the definition of "game birds" to provide for the importation of carcasses of migratory fowl other than those presently listed in the definition of "game birds." The effect of this action is to enlarge the definition of game birds to include migratory birds other than ducks, geese, pigeons and doves.

**EFFECTIVE DATE:** October 1, 1980.

**FOR FURTHER INFORMATION CONTACT:** Dr. W. J. Turner, USDA, APHIS, VS, Room 824, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, Area Code (301) 436–8379. The Final Impact Statement describing the options considered in developing this final rule and the impact of implementing each option is available on request from Program Services Staff, Room 870, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, Area Code (301) 436–8695.

**SUPPLEMENTARY INFORMATION:** This final action has been reviewed under the USDA procedures established in Secretary's Memorandum No. 1955 to implement Executive Order 12044 and has been classified "not significant."

Dr. M. J. Tillery, Director, National Program Planning Staffs, VS, APHIS, USDA, has determined that an emergency situation exists and it is in the public interest that the Department advise prospective importers of the revised procedures as soon as possible in order that those affected may adjust their plans accordingly. Because the quail hunting season begins in Mexico October 1, 1980, the amendments are of an emergency nature and must be placed in effect immediately in order to service the purpose intended. Therefore, pursuant to the administrative procedure provisions in 5 U.S.C. 553, good cause is found for making this final rule effective less than 30 days after publication of this document in the **Federal Register.**

On Friday, August 8, 1980, there was published in the **Federal Register** (45 FR 52818–52819) a proposed amendment to provide for the importation of carcasses of quail of free flying origin which have been eviscerated with the heads and feet removed and also to change the definition of "game birds" to provide for the importation of migratory fowl other than those species presently listed in the definition of game birds. A 30-day comment period, which expired September 8, 1980, was provided to permit public participation in the rulemaking. A total of 88 comments were received.

Eighty-seven comments favored the amendment and agreed with the Department that such importations will not pose a danger of the introduction and dissemination of VVND into the United States.

One comment questioned whether 9 CFR 94.6 is effective in preventing the introduction of VVND into the United States through the bird carcasses. This regulation has been in effect for several years and permits the importation of carcasses of migratory game birds only when the bird carcasses have been eviscerated and heads and feet removed. It has been the Department's experience that a VVND outbreak in the United States has never been attributed to carcasses which have been imported in compliance with 9 CFR 94.6, and the Department has no reason to believe that free flying quail carcasses, if treated in the same manner as other game birds, will be carriers of VVND.

After due consideration of the comments received, this final rule is published as proposed without change.

Accordingly, Part 94, Title 9, CFR, is amended in the following respects:

1. In § 94.6(b)(4) the first sentence is amended to read:

**§ 94.6 Carcasses of poultry, game birds, and other birds, parts or products thereof, and eggs other than hatching eggs; restrictions, exceptions.**

* * * * *

(b) * * *

(4) *Game Birds*—Migratory types of birds such as ducks, geese, pigeons and doves.

* * * * *

2. Section 94.6(d)(1) is amended to read:

* * * * *

(d) * * *

(1) Carcasses of game birds and carcasses of free-flying quail (as opposed to commercial, domestic or pen-raised quail) may be imported if they have been eviscerated and the heads and feet removed.

* * * * *

(Section 2, 32 Stat. 792, as amended; Secs. 4 and 11, 76 Stat. 130, 132; (21 U.S.C. 111, 134c, 134f); 37 FR 28464, 28477; 38 FR 19141)

Done at Washington, D.C., this 30th day of September 1980.

**R. P. Jones,**

*Acting Deputy Administrator, Veterinary Services.*

[FR Doc. 80-30897 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-34-M

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## Food Safety and Quality Service

## 9 CFR Parts 307, 350, 351, 354, 355, 362, and 381

## Rate Increase for Inspection Service

**AGENCY:** Food Safety and Quality Service, USDA.

**ACTION:** Final rule.

**SUMMARY:** The rates for overtime inspection, identification, certification, or laboratory service are changed to reflect increased costs associated with these programs in the upcoming fiscal year.

**EFFECTIVE DATE:** October 5, 1980.

**FOR FURTHER INFORMATION CONTACT:** June P. Blair, Director, Finance Division, Food Safety and Quality Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–6653.

**SUPPLEMENTARY INFORMATION:**

### Exemption From Executive Order 12044

This final action has been reviewed under USDA procedures established in Secretary's Memorandum 1955 to implement Executive Order 12044, and has been determined to be exempt from those requirements. Dr. Donald L. Houston made this determination because the Executive Order does not apply to matters relating to agency management.

### Background

The fees relating to overtime and holiday inspection, identification, certification, or laboratory service rendered to operators of official meat or poultry establishments, importers, or exporters by the Food Safety and Quality Service, are hereby amended effective October 5, 1980, to reflect increased costs associated with these programs in the upcoming fiscal year in conformity with the requirements of the Federal Pay Comparability Act of 1970.

Accordingly, the meat and poultry inspection regulations are amended as set forth below:

## PART 307—FACILITIES FOR INSPECTION

## PART 381—POULTRY PRODUCTS INSPECTION REGULATION

**§§ 307.5, 381.38 [Amended]**

1. The rate for overtime or holiday inspection, identification, or certification service rendered, as the case may be in accordance with the provisions of this chapter, is changed from $15.44 per hour to $16.76 per hour in §§ 307.5(a) and 381.38(a).

## PART 350—SPECIAL SERVICES RELATING TO MEAT AND OTHER PRODUCTS

2. Section 350.7(c) is amended to read as follows:

**§ 350.7 Fees and charges.**

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $13.48 per hour for base time, $16.76 per hour for overtime including Saturdays, Sundays, and holidays, and $26.24 per hour for laboratory service, to cover the costs of the service and shall be charged for the time required to render such service. Where appropriate, this time will include but will not be limited to the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

* * * * *

## PART 351—CERTIFICATION OF TECHNICAL ANIMAL FATS FOR EXPORT

3. Section 351.8 is amended to read as follows:

**§ 351.8 Charges for survey of plants.**

Applicants for the certification service shall pay the Department for salary costs at the rate of $13.48 per hour for base time, $16.76 per hour for overtime, travel and per diem allowances at rates currently allowed by the Government Travel Regulations, and other expenses incidental to the initial survey of the rendering plants or storage facilities for which certification service is requested.

4. Section 351.9(a) is amended to read as follows:

**§ 351.9 Charges for examinations.**

(a) The fees to be charged and collected by the Administrator for examination shall be $13.48 per hour for base time and $16.76 per hour for overtime including Saturdays, Sundays, and holidays, as provided for in § 351.14, and $26.24 per hour for any laboratory service required to determine the eligibility of any technical animal fat for certification under the regulations in this Part. Such fees shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith.

* * * * *

## PART 354—VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

5. Section 354.101(b) and (c) are amended to read as follows:

**§ 354.101 On a fee basis.**

* * * * *

(b) The charges for inspection service will be based on the time required to perform such services. The hourly rate shall be $13.48 for base time and $16.76 for overtime or holiday work.

(c) Charges for any laboratory analysis or laboratory examination of rabbits under this Part related to the inspection service shall be $26.24 per hour.

## PART 355—CERTIFIED PRODUCTS FOR DOGS, CATS, AND OTHER CARNIVORA; INSPECTION, CERTIFICATION, AND IDENTIFICATION AS TO CLASS, QUALITY, QUANTITY, AND CONDITION

6. Section 355.12 is amended to read as follows:

**§ 355.12 Charge for service.**

The fees to be charged and collected by the Administrator shall be $13.48 per hour for base time, $16.76 per hour for overtime, including Saturdays, Sundays, and holidays, and $26.24 per hour for laboratory services to reimburse the Service for the cost of the inspection service furnished.

## PART 362—VOLUNTARY POULTRY INSPECTION REGULATIONS

7. Section 362.5(c) is amended to read as follows:

**§ 362.5 Fees and charges.**

* * * * *

(c) The fees to be charged and collected for service under the regulations in this Part shall be at the rate of $13.48 per hour for base time, $16.76 per hour for overtime including Saturdays, Sundays, and holidays, and $26.24 per hour for laboratory service to cover the costs of the service and shall be charged for the time required to render such service, including, but not limited to, the time required for the travel of the inspector or inspectors in connection therewith during the regularly scheduled administrative workweek.

It has been determined that in order to cover these increased costs of the services, to comply with the requirements of the Federal Pay Comparability Act of 1970, the hourly fees charged in connection with the performance of the services must be increased effective October 5, 1980. The need for the increase and the amount thereof are dependent upon facts within the knowledge of the Food Safety and Quality Service. Therefore, under 5 U.S.C. 553, it is found that notice and other public procedure with respect to these amendments are impracticable and unnecessary and good cause is found for making these amendments effective October 5, 1980.

Done at Washington, D.C., on: September 30, 1980.

**Thomas P. Grumbly,**

*Administrator, Food Safety and Quality Service.*

[FR Doc. 80-30695 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-DM-M

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Parts, 30, 40, 70, and 150

### Uranium Mill Licensing Requirements

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Final rules.

**SUMMARY:** The U.S. Nuclear Regulatory Commission is amending its regulations to specify licensing requirements for uranium and thorium milling activities, including tailings and wastes generated from these activities. The amendments to Parts 40 and 150 take into account the conclusions reached in a final generic environmental impact statement on uranium milling [1] and the requirements mandated in the Uranium Mill Tailings Radiation Control Act of 1978, as amended, public comments received on a draft generic environmental impact statement on uranium milling,[2] and public comments received on proposed

[1] Copies of the final generic environmental impact statement on uranium milling (NUREG-0706) are available for public inspection and copying at the U.S. Nuclear Regulatory Commission's Public Document Room, 1717 H St NW., Washington, D.C. 20555. Copies also available from GPO Sales Program, Division of Technical Information and Document Control, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 and the National Technical Information Service, Springfield, Virginia 22161.

[2] The draft statement (NUREG-0511) was published in April 1979 (44 FR 24963).

rules published in the Federal Register. The amendments to 10 CFR Part 40 specify technical, surety, ownership, and long term care criteria for the management and final disposition of mill tailings. The amendments to 10 CFR Parts 30 and 70 are for consistency to require the completion of an environmental review by the NRC prior to the commencement of construction of certain other types of nuclear plants, such as uranium hexafluoride conversion plants or uranium processing and fuel fabrication plants. The amendments to 10 CFR Part 150 enumerate the authorities reserved to the Commission in Agreement States under the provisions of the Uranium Mill Tailings Radiation Control Act, and specify requirements for Agreement States to implement this Act.

**EFFECTIVE DATE:** November 17, 1980.

Note.—The NRC has submitted this rule to the Comptroller General for such reviews as may be appropriate under the Federal Reports Act, as amended, 44 U.S.C. 3512. The date on which the reporting and recordkeeping requirements of this rule become effective, unless advised to the contrary, accordingly reflects inclusion of the 45 day period which that statute allows for such review (44 U.S.C. 3512(c)(2))

**FOR FURTHER INFORMATION CONTACT:** Mr. Don F. Harmon, Office of Standards Development, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 (phone 301–443–5910).

**SUPPLEMENTARY INFORMATION:**

## I. Introduction

In November 1978, the U.S. Congress enacted the Uranium Mill Tailings Radiation Control Act (UMTRCA). This Act provides a program to regulate mill tailings during uranium or thorium oreprocessing at active mill operations and after termination of operations to stabilize and control tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public. In April 1979, the NRC published (44 FR 24963) for comment a draft generic environmental impact statement (GEIS) on uranium milling that assessed the potential environmental impacts of uranium milling operations, including the management of uranium mill tailings. The NRC wished to provide an opportunity for public participation in decisions concerning any proposed changes in NRC regulations based on that assessment.

On August 24, 1979, the Commission published in the Federal Register effective (44 FR 50012) and proposed (44 FR 50015) amendments to its regulations to implement the requirements of the UMTRCA and the conclusions reached in the draft GEIS on uranium milling. In October, 1979, the NRC staff held public hearings in Denver, Colorado, and Albuquerque, New Mexico, to obtain additional public input on the proposed rule changes and the draft GEIS.

The August 24, Federal Register notice indicated certain of the effective rules were to: (1) govern the Commission's licensing of byproduct material (i.e., uranium mill tailings) in Agreement States; (2) provide for a general license authorizing possession of uranium mill tailings by certain persons in Agreement States to prevent existing milling operations from being in technical violation of the Atomic Energy Act; and (3) specify that individuals in Agreement States were not exempt from Commission licensing requirements governing uranium mill tailings. Legislation was enacted on November 9, 1979 (Pub. L. 96–106) to provide clarification to Sections 204(h) and 204(e) of the UMTRCA. This legislation provided that the Commission has no direct licensing authority over byproduct material licensed by Agreement States at least until November 8, 1981. Accordingly, to conform to the requirements of Pub. L. 96–106, the Commission revoked the foregoing effective rules in a Federal Register notice published February 26, 1980 (45 FR 12377).

## II. Public Response to Draft GEIS and Proposed Rules

The Commission received ninety-nine submittals in response to the request for comments on the draft GEIS and the August 24 Federal Register notice. These documents were from private individuals, uranium milling companies, trade associations, state and Federal agencies, and conservation and public interest groups. In addition, about 50 individuals, representing views of the same spectrum of groups and individuals, presented statements at the Denver and Albuquerque public hearings. The NRC staff has systematically reviewed all comments received and the transcripts of the statements presented at the public hearing and has identified approximately 1500 substantive comments on the draft GEIS and proposed rule changes.

After careful consideration of all comments, the NRC staff has prepared a final generic environmental impact statement on uranium milling and the Commission has adopted the rules supported by this document. These rules are identified and discussed below. In preparing the final GEIS, the NRC has included the latest available nuclear power and uranium milling projections obtained from the U.S. Department of Energy and has completely reviewed treatment of the following: (1) potential individual and population exposures to radioactive materials from milling activities; (2) potential health effects resulting from these exposures; (3) costs for various management and disposal alternatives; and (4) a cost benefit analysis of the effective rule changes. It also contains a new Appendix A which provides a discussion of each of the specific substantive public comments. The summary of the final GEIS provides, among other things, a general discussion of what are believed to be the major public concerns and issues raised in public comments. Appendix A and the summary of the final GEIS also contain a more detailed discussion of the significant changes appearing in the final rule changes set forth below.

Since all substantive public comments are addressed in detail in Appendix A of the final GEIS and since it is impracticable to provide here a complete summary discussion of all the complex issues raised in public comments, only those issues which the NRC staff believes cover major public concerns are discussed below.

The Commission is fully aware that Atomic Safety and Licensing Appeal Boards are now considering, in individual adjudicatory licensing proceedings and pursuant to Commission direction, issues pertaining to the environmental effects of radon releases associated with the mining and milling of uranium. It is also aware that some of the issues being adjudicated in those proceedings overlap some of the subjects which are discussed in the GEIS.

Notwithstanding its issuance at this time of a final rule imposing licensing requirements for uranium mills (including the disposal of the tailings generated in the milling process), the Commission intends that the Appeal Boards proceed to decision on all issues pending before them in the radon release proceedings. In so doing, the Appeal Boards are to base their decision on the adjudicatory record of those proceedings. To the extent, if any, that, in the judgment of the Appeal Boards, the adjudicatory record may call for findings different from those contained in the GEIS and reflected in the final rule, the Appeal Boards will be free both to make and to implement such findings in their decision.

The Appeal Boards' decision will, of course, be subject to review by the Commission either on petition of a party to the proceedings or on its own initiative. In the course of any such review, the Commission will have the

opportunity to examine any findings made by the Appeal Boards which are or might be inconsistent with those GEIS findings underlying the final rule which is now being adopted. Depending upon its resolution of the inconsistency, the Commission may then either (1) reverse or modify the Appeal Boards' decision; or (2) amend the final rule to bring it into conformity with that decision.

In determining to promulgate the final rule at this time despite the possible need for its revision following the conclusion of the adjudicatory proceedings concerned with radon releases, the Commission has heavily influenced by the consideration that prompt issuance of the rule is imperative to ensure that, by November 8, 1981, Agreement States will be able to take that action necessary to bring their byproduct and source material licensing programs into compliance with Section 274o of the Atomic Energy Act of 1954, as amended. In this connection, although not prejudging the outcome of the pending adjudication, the Commission believes that the GEIS provides a sufficient basis for the issuance of a final rule without further delay, subject to later possible amendment.

### III. Major Issues Addressed in Public Comments

*Timing of Regulations*

A number of commenters took the position that there is no great sense of urgency for regulations on uranium mill tailings management and mill operations. However, each year new mills are proposed and many millions of tons of tailings are generated at existing mills. As new mills are constructed and more tailings are generated, the options for dealing with tailings disposal become fewer. It is critically important that the siting and design criteria of the regulations be implemented for new facilities so that mistakes of the past are not repeated. In addition, and perhaps even more important, radioactive releases from existing mills constitute the largest potential routine releases from the nuclear fuel cycle. Therefore, it is absolutely essential that regulations, which assure that action is taken to protect the public health and safety, are promulgated promptly.

The NRC intends to promulgate the regulations recognizing that research, much of its sponsored by NRC, is still being conducted in many areas covered in the rules. The regulations are established on the basis of knowledge obtained from licensing experience and research conducted to date. Research sponsored by NRC, DOE, the industry, and others will continue, and changes can be made to regulations if research indicates that changes are necessary or appropriate. However, the NRC considers it likely that information from this research will provide a basis for supplementing the broad criteria of the regulations with more specific regulatory guidance rather than a change in the overall objective of any criterion. In any case, the NRC considers it urgent to issue the regulations now, but expects to review them from time to time to assess whether any changes are warranted.

A number of commenters indicated that their interpretation of the UMTRCA was that EPA was required to develop standards before NRC promulgated its rules. Section 275 of the Atomic Energy Act, as amended by the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA), requires EPA to issue environmental and health standards for uranium mill tailings. However, an analysis of the Mill Tailings Act and its legislative history indicates that the Commission not only has the authority but also the immediate duty to insure that the management of uranium mill tailings is carried out in a manner that will protect the public health and safety and the environment.

Although NRC could have delayed developing regulations until EPA issued standards, that would have left unfinished the program to develop rules which NRC has been working on for nearly three years. In addition, a delay would have made it difficult, if not impossible, for the Agreement States to issue equivalent standards as required. It is clear from the UMTRCA that NRC's minimum Federal standards must be promulgated as promptly as possible so that the Agreement States will be able to have equivalent regulations in place by November 8, 1981.

NRC is aware that its regulations must be compatible with the generally applicable standards established by EPA; therefore, the NRC staff has been and will continue to coordinate closely with EPA on this matter. NRC regulations will be revised, if required, when EPA standards are issued.

*Application of Regulations at Existing Sites*

A number of commenters stated that tailings disposal criteria should not be applied too strictly at existing sites. Other commenters were concerned that regulations should be more specific about how the criteria will apply to these sites. In the latter case, the concern was that remedial action must be taken at existing sites where criteria are not met.

Regulations were developed recognizing that it may not be practicable to provide the same measures of conservation at existing sites as can be done at new sites where alternatives are not limited. Certain requirements in the regulations represent minimum levels of protection of public health, safety, and the environment. These requirements can and must be met in all cases. For example, requirements for minimum tailings cover, erosion protection, financial surety provisions, and the broad requirement that no ongoing active maintenance be needed to preserve the tailings isolation are mandatory in all cases. It would not be possible, on the other hand, to line the bottom of an existing tailings impoundment. Also, objectives concerning remoteness from people, providing below-grade burial, and transferring ownership of sites, may not be met to the same degree at an existing site as at a new site.

At some point, a determination, based on how a site measures up against all of the criteria, must be made as to whether the tailings should be relocated from an existing to a new site, or that, while it would be acceptable for existing tailings to be stabilized in place, tailings generated in the future should be deposited at a new location. The conditions which would lead to this determination cannot be spelled out in generic fashion in regulations because they are so variable. In any event, a full evaluation of tailings disposal and alternative sites must be completed at each milling operation and final plans formulated through a public decision making process such as is provided for by NEPA and UMTRCA.

*Form of Regulations*

Some commenters stated that the regulations are too specific and inflexible and, thus, restrict operators from finding new and cost effective ways to meet broad goals at any particular site. For example, some felt that regulations should only state that groundwater quality must be protected and not be specific about methods of accomplishing this. On the other hand, others considered regulations should be more specific on certain issues. For example, some wanted regulations to specify, in numerical terms, allowable hydrologic, topographic and drainage conditions.

The NRC has developed regulations mindful of the need to avoid being overly restrictive. The NRC's experiences over the past several years, working with interim tailings management performance objectives

similar in nature to the criteria contained in the following rules, has been that the industry can develop many innovative ways of achieving broad goals. Also, the NRC recognizes, as stated throughout the draft and final generic impact statements, that the problem of tailings management is highly site specific. The precise details of a program can be worked out only when unique conditions of a site are known. For example, the extent of potential groundwater impacts, or the erosion potential of a tailings disposal program depends critically upon topographic, geologic, hydrologic, and meteorologic conditions which can vary significantly from site to site. The rules have been developed with flexibility to reflect this fact.

On the other hand, the NRC has attempted to make the rules as specific as possible within the constraints noted above. This is necessary for the following reasons: (1) for fairness to applicants and mill operations in that it reduces uncertainty about what requirements are and thus allows them to plan their operations reasonably; (2) to assure consistency in application of requirements which would not occur if the rules are too broad; and (3) to ensure that a minimum level of protection is provided where there are known problems or large uncertainties about potential problems. For example, a minimum cover thickness is specified and criteria for surface stabilization are established to account for known problems which potentially threaten long term tailings cover performance.

*Scope of the GEIS*

There were numerous comments criticizing the "model mill" approach taken by the NRC in analyzing potential environmental impacts. More specifically, commenters pointed to various aspects of the mill that were not representative of a certain, real mill, or criticized lack of analysis of certain conditions or impacts which have arisen in specific cases.

However, as repeatedly noted in the GEIS, the factors which determine the extent of impacts from milling operations are extemely site specific. All of the variations which exist with regard to these factors could in no way be taken into account explicitly in the GEIS. The model mill and model site were described, and subsequent analysis of them was carried out, in enough detail to: (1) identify the major issues or impacts of concern with uranium milling and tailings disposal, and (2) characterize their nature and extent. Costs and benefits of alternatives for mitigating these impacts were evaluated. The product of these analyses is as new regulation, cast primarily in the form of performance objectives which recognizes that the precise methods or combination of methods of impact mitigation can only be worked out on a case-by-case basis where all unique, site specific conditions can be accounted for.

The NRC did a comprehensive review of existing conditions in all of the current uranium milling regions in developing the model mill and site, and in performing the analysis of the GEIS in general. This was done to assure that the *major* differences in conditions from those assumed for the GEIS models were known in performing the analysis. Where these differences are important in terms of specific points in regulations, such as radon flux limits, the full range of variability in conditions has been explictly evaluated to assure it is reasonable to apply the regulations at all sites.

Because major decisions concerning siting and design remain to be made for each case once needed site-specific information is available, and because of the significant and longevity of the potential hazards associated with uranium mill tailings, a comprehensive environmental assessment of each mill and tailings waste disposal operation and alternatives must be conducted. It is also essential that this alternative assessment be conducted so there is opportunity for full public scrutiny of the decision being made. NRC regulations, 10 CFR 51, assures that this is done. UMTRCA (Pub. L. 95–604) establishes a requirement that Agreement States do the same. The regulation has been designed to assure these assessments are supported by full environmental assessments and investigation of site conditions by applicants and mill operators.

In no way is the GEIS a substitute for site-specific environmental assessments.

*Siting of Mills*

Many commenters expressed the need to be more specific and stringent concerning siting requirements. For example, some wanted a specific definition of what would be accepted as a "remote" site, a term used in the proposed rules.

However, the matter of tailings disposal is not a one-dimensional problem; that is, several factors must be considered simultaneously. Too much specificity would be imprudent since, for example, establishing a minimum distance to population centers might unduly constrain efforts to deal with other concerns such as protecting groundwater by avoiding aquifers of high quality. The rules have been revised from their proposed form to clarify that the process of site selection involves optimization to the maximum extent practicable of the following general site qualities:

- remoteness from populated areas;
- hydrogeologic and other environmental conditions conducive to continued immobilization and isolation of containments from usable groundwater sources; and
- limited potential for erosion, disruption, and dispersion by natural forces.

Tradeoffs will inevitably be required in this process. In any event, siting is of paramount importance in developing optimum tailings disposal programs. The problem of tailings disposal cannot be approached with the attitude that inadequate siting features can be compensated for by design. For this reason, the rules state, as originally proposed, that in the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long term impacts, as opposed to considerations of short term convenience or benefits, such as minimization of transportation or land acquisition costs.

*Radon Control and Tailings Cover Requirements*

Many commenters stated that the requirements for radon control should be based upon a fully quantified, incremental cost-benefit evaluation. However, the NRC staff reached a conclusion in the draft GEIS that attempting to establish tailings cover requirements on the basis of a quantified, incremental cost-benefit evaluation is unreasonable and, indeed, may be misleading.

In response to these comments, however, the NRC staff reexamined and expanded its evaluation of the strictly monetized, incremental cost-benefit methodology. Conclusions expressed in the draft statement concerning the impracticability and inappropriateness of attempting to set a radon exhalation limit solely by this method were fully reconfirmed. This is discussed more fully in Section 5.2.2 of the Summary of the final GEIS. Given the long term nature of the mill tailings hazards, and the complexity and uncertainty associated with predicting actual levels of radon emissions and impacts over the long term, it is concluded that the problem of determining tailings containment requirements cannot be reduced to the purely mathematical formulations required for the quantitative cost-benefit optimization methodology. The mathematical process

grossly oversimplifies the problem and, thus, while it appears to offer a "rational approach" to decisionmaking, it can be misleading and quite arbitrary.

One of the obvious problems with this methodology is that arguments can easily be made for virtually opposite positions (little or no control, versus absolute control or radon releases) merely by measuring potential health impacts over short or long time periods. In fact, commenters did this. The monetary worth of averting a health effect ("life loss" or "life shortening" due to cancer) is another highly subjective factor which can vary widely and, thus, make more uncertain the level of control which should be required. While arbitrary decisions might be made concerning these factors, there is no practicable way to correlate long term containment performance uniquely with costs.

The NRC staff established the proposed final tailings radon flux limit based upon an evaluation of a wide range of public health and cost factors, and the variability of site specific conditions. More specifically, these factors included evaluation of alternative radon release limits in terms of: costs for applying a final tailings cover under a full range of conditions that will occur with varying ore grades, impoundment sizes and shapes, cover material types and so on; impacts on maximum exposed individuals as they compare with existing radiation protection standards; total population exposures as they compare with population exposures from natural and technologically enhanced radon releases, both short and long term; and, radon fluxes that occur from natural soils.

In consideration of these perspectives and the problems with monetized cost-benefit evaluations, it was determined that the most reasonable residual radon emission limit would be one that would assure that tailings disposal sites are eventually returned to conditions which are reasonably near those of the surrounding environs. The radon flux limit assures that radon exhalation rates will be within the range of flux rates occurring naturally from nearby soils.

*Period of Long Term Concern*

Many commenters stated that tailings disposal should be viewed as a problem spanning eventually an infinite period of time, and the total number of potential health effects resulting from radon releases should be viewed in absolute terms. By integrating health effects over such periods of time, the number of calculated health effects is extremely large and, on the basis of this, commenters urged that advanced modes of tailings disposal are warranted to provide complete or improved isolation of tailings. On the other hand, some stated that, because of the vast uncertainties involved, and the potential for development of a cure for cancer, a much shorter period such as 100 years is appropriate for evaluating the need and cost-effectiveness of controls. On this basis, much less stringent controls are urged.

The NRC has evaluated this problem and developed regulations considering the inescapable fact that the tailings will, in fact, remain hazardous for extremely long periods of time, hundreds of thousands of years. Viewing this matter as one of only short term significance because of the uncertainties involved with the long term or on the speculation that there may be a cure for cancer is unrealistic and not responsible. On the other hand, attempting to provide absolute assurances that the tailings, which are very large volume, low-specific activity wastes, will remain completely isolated for infinite time frames is impracticable and inappropriate when the potential impacts of other naturally occurring and technologically enhanced, persistent radon sources are considered.

The general conclusions about the various tailings disposal modes are summarized in Summary Section 5.2.1 and Section 12.3.3 of the final GEIS. The tailings siting and design features specified in the regulations are intended to provide a degree of isolation which is consistent with the reality that the tailings present long term hazards. These measures are those identified to be needed to account for potential failure mechanisms which can occur in the very long term. The features which are being incorporated into tailings disposal programs under the regulations are similar to those of landforms which have been known to be stable for extremely long periods of time. For example, elimination of embankment slopes by below grade burial or use of rock covering on very gentle slopes will make sites stable landforms. The latter will duplicate conditions such as those existing in alluvial deposits in Death Valley which have been stable for 20,000 years because of the "armoring" provided them by course rock and gravel "desert pavements." Minimum requirements on cover thickness have been specified with the knowledge that covers performance can be degraded in numerous ways.

In general, the condition of tailings disposal sites should be virtually the same as those in surrounding environs and should remain so without active care and maintenance. Advanced tailings disposal modes such as fixation or nitric acid leaching may offer potentially improved isolation, but the improvement over what are considered adequate programs is uncertain while the costs are excessively high and other, new problems are encountered with such technologies.

*Groundwater Protection*

A number of separate issues were raised concerning the matter of tailings impoundment seepage and groundwater protection.

Some commenters stated that in addition to requiring control of seepage, the regulations should clearly specify that groundwater uses must be protected as there will inevitably be some seepage occurring. The NRC's intent in the proposed regulations was to protect current and potential groundwater uses and the final regulations have been drafted to explicitly state this. That is, where an aquifer below a site is initially of drinking water quality, it shall remain so during and after operations.

Others questioned whether continued seepage from impoundment would not be a problem over the very long term. Because uranium milling in the United States is conducted in semi-arid regions and evaporation rates are frequently far in excess of rainfall rates, it is not expected that seepage will be along-term problem. There is concern about providing good seepage control primarily during the operational period when hundreds of tons of waste solutions are generated daily at an average mill. After the impoundments dry, there will be virtually no driving force for seepage. There is good reason to expect that there is, in general, little recharge of aquifers in interfluvial zones in the semi-arid milling regions, if there is any at all. It is for this reason that the NRC has accepted use of synthetic liners, the likely long term stability of which is questionable at best. Many commenters stated that the matter of groundwater protection should only be presented as a broad performance objective, and that specific methods of control should not be identified in the regulations. The concern is that the regulations will be too restrictive. In general, the NRC has identified seepage control as the most effective and positive way of protecting groundwater; methods of seepage control are identified in the regulation, but flexibility is provided to select the most appropriate ones in a case-by-case basis. (See response to the comment on the form of regulations above.)

Some commenters noted that spread of seepage contamination can occur rapidly by fractures, buried channels and other zones of high hydraulic conductivity, and stated that the GEIS and regulations should recognize this. Experience has indeed shown this concern to be valid. This has been a matter which routinely receives scrutiny by the NRC in licensing reviews and uncertainty about the existence of such discontinuous features at a site are in great measure, the reason for the NRC's conclusion that seepage prevention is the most appropriate approach to take in groundwater protection. Furthermore, the regulation has been revised to specify more clearly what site information is needed to provide an adequate understanding of hydrologic and geologic conditions which will control seepage and contaminant transport.

Finally, some stated that any area which overlies an aquifer of potential use must be avoided. As discussed above in discussions of the issue of siting, the NRC has revised the regulations to clearly indicate that one of the few most important matters which determine what is an acceptable site is the matter of groundwater protection (see the response to the siting issue above). However, a universal prohibition on siting near aquifers is inappropriate given constraints imposed in meeting other major objectives and given the seepage control measures which can be taken to effectively assure groundwater use is preserved.

*Cost Estimates*

Several commenters considered the cost estimates of the alternative tailings management programs presented in the draft generic environmental impact statement to be underestimated. In estimating costs in the draft, the NRC considered cost information submitted by the industry in connection with mill licensing cases, obtained quotes from vendors and suppliers, and gathered information from current literature on earthmoving and construction costs. Alternatives were clearly defined as combinations of separate unit operations, the cost of each being stated as a range. Single unit costs were selected from within the range to arrive at total costs. These total costs were consistent with those reported by the industry in actual NRC licensing cases. Where costs were particularly sensitive to assumptions made in defining alternatives, the effects of variations in assumptions on costs were clearly stated.

The NRC has reevaluated costs in the final GEIS. In doing so, the NRC consulted other sources in addition to those consulted in preparing the draft GEIS. In general, the NRC found that costs increased by an amount attributable to inflation since the cost estimates were made for the draft GEIS document in 1978.

*Environmental Impacts of Obtaining Reclamation Cover Material*

Several commenters noted that considerable amounts of cover material would be required to perform final reclamation, that in some cases such material would have to be strip-mined in otherwise undisturbed areas (which would yield significant environmental impacts), and that such impacts were not addressed in the draft statement. It was further stated that this is particularly of concern at existing sites using above-grade disposal and that in some areas the depth of soil available for excavation is very limited. Under such conditions it would be necessary to excavate cover material from very large areas to obtain sufficient quantities of earth to provide reclamation in accordance with tailings cover requirements.

This final GEIS includes an assessment of the potential environmental impacts of obtaining cover material (see Section 9.3.8.4). The assessment includes analysis of what is considered by the NRC to be a potential worst-case situation wherein: (1) cover material must be obtained by strip-mining otherwise undisturbed terrain; (2) cover material must be hauled to the site from a distance of 10 miles (16 km); and (3) the average depth of soil available for excavation in the borrow area is only about 1 meter (not including about 0.5 m of topsoil which must be stripped, stored, and reapplied to revegetate the borrow area). These conditions are considered to be very conservative assumptions. Overburden or mine waste produced during local mining operations may well be available, and if so, would be suitable material provided only that it did not contain excessive radioactivity. To the extent that overburden or mine waste could be used, requirements for undisturbed soil materials would be reduced. Also, the NRC believes that adequate cover materials can be found within distances much less than 10 miles (there are over 300 sq. miles of area within a radius of 10 miles from any point), if not on the mill site itself. Furthermore, the depth of soil which may be excavated and removed will likely be much greater than 1 meter. Even in the rugged and rocky terrain of the Grants, New Mexico area excavation depths of 15 m (60 ft.) or more are feasible.

With respect to environmental impacts, even under the very conservative assumptions described above, environmental impacts are limited; they are, at worst, comparable to those arising from mill construction with respect to air quality, land use, biota, water resources, and on the community. Given that reclamation of the borrow area will include revegetation to a natural condition, all impacts would be temporary except for the permanent alteration of topography and the irretrievable commitment of fuel burned by the trucks used to haul the cover material to the tailings disposal site. The NRC considers such impacts as small and insignificant in comparison to the benefits obtained by assuring long term physical isolation of the buried tailings and reduced residual radon emissions.

*Financial Surety*

Several commenters argued that self-insurance or third-party insurance should be considered as a surety mechanism. The basis for ruling out self-insurance is simply that such an arrangement would provide no additional assurance, other than that which would already exist through license requirements. Other commenters indicated that the required amount of surety coverage should be based on the licensee's costs for decommissioning and reclamation as opposed to contractor costs which include increased overhead and profit. With regard to the required amount of surety coverage, it seems obvious that the purpose of the surety mechanism is to protect the public from the possibility of a licensee's inability to perform the required decommissioning and reclamation and thus the only time when a surety would be collected would be in the event of default. A licensee's cost estimate would certainly be less than costs which an independent contractor would charge; therefore, inadequate protection would result if estimates based on licensee costs were permitted.

Several other commenters questioned the availability of surety bonds under the conditions described as necessary for satisfaction of the surety requirement. Although the NRC's investigation of the situation does indicate that there seems to be resistance on the part of some bonding companies to becoming involved in issuing bonds to companies subject to government regulation, the resistance appears to be the result of a misunderstanding of the requirements of

the regulation. The surety mechanism covers specific decommissioning and reclamation activities committed to by operator in the license and is not a guarantee to satisfy an indefinite set of requirements which may be established 15 or 20 years in the future. Furthermore, the evidence indicates that the surety market is competitive since some bonds have been obtained by uranium recovery operators even recently. In addition, flexibility exists in terms of acceptable types of mechanisms to satisfy the surety requirement.

Another comment which was raised pertaining to the decommissioning and reclamation surety concerned the required term of the surety. As stated in the draft GEIS and the proposed rules, the term of the surety must be open-ended in order to provide the requisite high level of assurance. The NRC considered that unless the surety remained in force until decommissioning and reclamation activities covered by the arrangement were completed, there would be nothing to prevent the surety company from cancelling the arrangement if and when the financial stability of the licensee became questionable or at the end of milling operations when the assurance is most needed. Obviously, this would provide the public with totally inadequate protection. However, through further consideration and investigation, the NRC has learned that other types of arrangements may provide the same high level of assurance as an open-ended arrangement does. Therefore, provision has been made in the decommissioning and reclamation surety criterion to allow flexibility concerning the term of the arrangement, providing the same high level of assurance exists.

*Long Term Funding*

A number of comments were received concerning the requirement that an amount be paid to cover the costs of long term site surveillance. Some commenters indicated that the amount, the equivalent of $250,000 in 1978 dollars, was too high, others stated that it was too low, and some indicated that they considered it should correlate with the size of the disposal site. The basis for the long term fund, as established in the draft GEIS, is that something on the order of an annual site inspection to confirm the integrity of the site will be all that is necessary. However, the requirement is designed so that sufficient flexibility exists to increase the required charge, if appropriate, at certain sites if it is determined that the necessary level of surveillance and site control are significantly greater than assumed in the GEIS. For example, this might occur if fencing is determined to be necessary. However, the NRC considers that as long as some ongoing monitoring is appropriate, the nominal charge established by this requirement could hardly be reduced.

Other commenters indicated that they considered the long term fund charge should be designed like an insurance fund and cover any damage which may result from a catastrophic event. As discussed in Section 14.3 of the final GEIS, the staff considered an insurance fund to cover costs associated with unforeseen events such as catastrophic occurrences, but rejected this option on the basis that the likelihood of such an occurrence would be small and design against it would be impractical beyond that which is already required in terms of siting and design. As mentioned above, where there is significant uncertainty about long term performance, which might occur at an existing site where options for tailings disposal are limited, more than the minimum fee can be charged.

*Government Land Ownership*

A number of commenters inquired about how the land ownership requirements would be implemented, particularly with regard to existing facilities where UMTRCA explicitly allows for NRC discretion. Transfer of an unencumbered fee estate may be difficult to achieve since land ownership can be a complex matter, particularly in western states where it is not uncommon for surface rights, mineral rights (including oil and gas), and water rights to be conveyed as separate interests. The NRC is concerned that if complete and total transfer is required, land ownership considerations (i.e., the difficulty in assembling title to all interests) may significantly impact the selection of sites. If the ability to obtain title to land became a driving force in the site selection process, this would be wholly inconsistent with the fundamental conclusion of the GEIS, i.e., that physical isolation as opposed to institutional arrangements must be the primary means of long term control.

In addition to concluding that physical site characteristics conducive to long term stability are of overriding importance, the NRC considers that in most cases Government control of the surface rights is necessary (1) to control land uses at the disposal site which could lead to disruption of the tailings, and (2) in general, to assure ongoing surveillance is performed. Government control is also considered prudent so that in the unlikely event that remedial action at a disposal site is required, a government agency, because it is probably the only institution which would have sufficient resources, would be available to support proper action. However, transfer of certain subsurface rights may be of less importance in providing the necessary control.

Thus, although Criterion 11 requires applicants/operators to make a serious effort to acquire all interests in the land, sufficient flexibility is maintained to permit the Commission to determine that surface ownership, by itself, of a site with characteristics conducive to long term stability may be sufficient. In addition, the Commission would require appropriate notice in the public land records that the land is being used for tailings disposal and thus, would be subject to an NRC license prohibiting the disturbance of the tailings in the exercise of any other interest in the real property.

In addition, Criterion 11 makes essentially no distinction between land ownership requirements for licenses issued before or after November 8, 1981. As discussed in Sections 12.3.11 and 13.4 of the final GEIS, the NRC has concluded that surface ownership is necessary to assure ongoing surveillance, except possibly in the case of deep mine disposal. Thus, although UMTRCA directs the Commission to specifically consider the status of land ownership at existing facilities, the NRC does not consider it reasonable to expect that any licensee or site owner would be willing to accept the onerous obligation associated with a perpetual NRC license, which would be required if land ownership is not transferred. Given these circumstances, the NRC does not expect there will be a situation where waivers to surface land ownership transfer requirements will be appropriate.

*Agreement State Regulation*

A number of commenters indicated that the draft GEIS failed to assess the Agreement States' programs. Others inquired as to how the new requirements would be implemented in Agreement States. The amendments to the Mill Tailings Act in 1979 clarify when the new requirements become effective in Agreement States. Generally, the States are required to implement the new requirements immediately, to the extent practicable, and to establish standards by November of 1981 which are equivalent to, or more stringent than, the minimum national standards established by the Commission. Also, the UMTRCA requires Agreement States to complete independent, documented environmental assessments in

connection with each licensing case. The need for such documents and public review is a major conclusion of the final GEIS. The Mill Tailings Act also requires the Commission to evaluate the equivalency of the Agreement State program by November 1981. A more comprehensive set of criteria to be used in review of Agreement State programs is being developed by the NRC and will be made publicly available. It is considered that a detailed evaluation of the Agreement State program is not appropriate in the GEIS; however, the general role of Agreement States and their relationship with NRC is discussed.

*Exemption From Licensing Small Quantities of Byproduct Material*

Some commenters suggested that small quantities of byproduct material connected with research and development should be exempted from licensing requirements. The NRC agrees that this would be desirable but is not, at this time, proposing rules to provide for either an exemption or general license (i.e., a license effective without the filing of applications with the Commission or the issuance of licensing documents to particular persons) covering small quantities of byproduct material. In order to exempt materials from licensing requirements or issue general licenses, the Commission must determine that the quantities of materials involved will not be harmful to the health and safety of the public and to the environment. It is the NRC's understanding that the quantities of tailings generally involved in research and development activities may be as large as a few tons. The NRC notes that a quantity such as this may, among other things, result in a buildup of unacceptable radon concentrations in improperly ventilated structures. Thus, the NRC believes that additional evaluations are necessary before it can be determined what quantities of tailings can be exempted from licensing requirements or be covered under a general license. The NRC is therefore further considering this issue and plans to publish its conclusions on this subject at a later date in order not to delay issuance of the rules identified below.

In the meantime, it will be necessary for individuals conducting research and development activities using byproduct material, as defined in 10 CFR Part 40, to obtain a specific NRC license. The NRC does not believe this should be a significant administrative or costly burden on applicants since it is anticipated minimal information will be required in license applications (i.e., provisions for (1) providing proper ventilation; (2) conducting necessary radiation safety surveys; and (3) disposal of materials to properly licensed persons). Furthermore, there are presently no fees in 10 CFR Part 170 applicable to the use of these quantities of byproduct material for research and development activities. The NRC does not plan to require fees for these licenses, at least until formal rules to 10 CFR Part 170 have been adopted. The NRC requests written comments on this matter and any additional information on specific quantities and uses to be considered for exemption or covered by a general license. The technical basis for such comments is also requested.

## IV. Significant Features of Final Rules

The rules promulgated in this notice are derived from the conclusions reached in the final GEIS on uranium milling and the requirements established by the UMTRCA. The major conclusions reached in the final GEIS relative to needed rule changes, stated here in broad terms, are:

1. In selecting among alternative tailings disposal sites or judging the adequacy of existing sites, consideration should be given to specific site characteristics which will assure meeting the broad objective of isolating tailings and associated contaminants from humans and the environment without ongoing active maintenance for thousands of years.

2. The "prime option" for tailings disposal is placement below grade.

3. Where full below grade burial is not practicable and tailings must be located above grade, tailings should be placed as much below grade as is reasonably achievable.

4. Methods, such as liners or dewatering, should be employed to reduce seepage of toxic materials into groundwater to the maximum extent reasonably achievable. Any seepage which might occur must not result in the deterioration of the quality of existing affected groundwater.

5. Sufficient earth cover, but not less than 3 meters, should be placed over tailings to reduce radon exhalation from buried tailings to a calculated value of not more than 2pCi/$m^2$-sec above natural background levels. A full self-sustaining vegetative cover should be established on the earth cover or a rock cover employed to reduce to negligible amounts the potential for significant wind and water erosion of the earth cover. In arid and semi-arid regions where it is unlikely vegetation will be full and self-sustaining, rock cover stabilization is mandatory.

6. Milling operations should be conducted so that all airborne effluent releases are reduced to as low as is reasonably achievable. To accomplish this objective, staged reclamation of tailings systems should be considered to control radon emissions and the blowing of dusts from tailings and frequent determinations of the performance of emission control devices should be made to ensure that these devices are operating at anticipated efficiencies.

7. Financial surety arrangements should be established to ensure that sufficient funds are available to cover the costs of decontamination and decommissioning the mill, mill site, and environs and for the reclamation of tailings areas.

8. Sites on which tailings are finally disposed should be controlled through ownership and custody by a government agency unless, in special cases as might occur in deep mine disposal, this is determined unnecessary.

9. Funds should be provided by each mill operator to cover the costs of long term site surveillance and any probable long term monitoring and maintenance requirements.

10. Construction of a uranium extraction facility or tailings disposal area should not commence until the NRC has completed its final environmental impact assessment required by the National Environmental Policy Act (NEPA), or an Agreement State has completed its written environmental analysis as required by UMTRCA.

The UMTRCA, among other things, specifies:

1. A revised definition of "byproduct material" to include tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content;

2. Ownership and custody requirements for byproduct material;

3. Provisions for requiring bonds, sureties, or other financial arrangements covering the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material; and

4. Provisions governing Agreement State authority under Section 274 of the Atomic Energy Act.

The significant features of the new rules are discussed below. Several changes, as indicated in the above discussion and the Summary and Appendix A of the final GEIS, have been made in these rules to reflect public comments, to better clarify specific requirements, and, where practical, to provide flexibility.

1. Section 40.26 of Part 40 is amended to add a new paragraph (d) which specifies that the general license

covering tailings at active mills expires within nine months from the effective date of this amendment unless an affected licensee has submitted an application for license renewal or amendment which includes a detailed program from meeting the technical and financial criteria contained in the new Appendix A to Part 40. The Commission considers this amendment necessary to ensure that all existing mill operators who have not already done so develop acceptable programs relating to the long term disposition of tailings at active mills in a timely manner.

2. Section 40.31 of Part 40 is amended by adding a new paragraph (g) to require applicants for mill licenses to propose written specifications relating to the operation of mills and disposition of tailings or wastes to achieve requirements and objectives set forth in a new Appendix A to 10 CFR 40. As provided by paragraph (g), applicants for mill licenses must clearly demonstrate how the requirements and objectives set forth in Appendix A have been addressed; failure to clearly demonstrate how the requirements and objectives in Appendix A have been addressed will be grounds for refusing to accept an application for a license. These requirements and objectives are discussed in the following Item #3.

3. A new Appendix A entitled, "Criteria Relating to the Operation of Mills and Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for their Source Material Content," is added to 10 CFR 40. As indicated in the August 24 notice, this appendix consists of four major categories: technical criteria; financial criteria; site and byproduct material ownership criteria; and long term site surveillance criteria. These criteria are, for the most part, essentially the same as those contained in the August 24 notice except that many of the terms and provisions included in the proposed criteria have been more explicitly defined and/or clarified as recommended in public comments. Also, flexibility is provided in many cases as suggested in public comments to allow achieving an optimum tailings disposal program on a site specific basis.

The detailed bases for the criteria in the new Appendix A are contained in the final GEIS. As noted above in preparing the final GEIS, the NRC has completely rechecked cost estimates for meeting the major criteria in Appendix A. Estimated costs were derived from information on costs submitted by applicants for licenses, experienced engineering consultants under NRC contracts, and other information on costs available to the NRC. The Commission believes that under these criteria tailings and wastes can be disposed of at reasonable costs in a manner that the purposes and mandates of the UMTRCA will be achieved and fulfilled, respectively. Thus, the need for ongoing active care and maintenance programs to redress degradation of the tailings isolation by natural weathering and erosion forces can be essentially eliminated. In that the technical criteria relating to the siting of mills and tailings disposal areas preclude location of tailings or milling operations in an area that could be disrupted by natural events such as flooding, these criteria will ensure that the requirements of Executive Order 11988 of May 23, 1977, concerning flood plain management are met. Therefore, as well as assuring tailings isolation, flood plains will be protected.

The new Appendix A requires all mill operators to develop and submit to the NRC definitive programs meeting the technical and financial criteria in the Appendix. These programs must be submitted with license renewals or within nine months from the effective date of the appendix, whichever occurs first.

4. Paragraphs (b) of § 40.14 and (e) of § 40.32 of 10 CFR 40 are amended to require the Director of the NRC's Office of Nuclear Material Safety and Safeguards or his designee to make a positive finding on an applicant's proposed plans as meeting the requirements and objectives in Appendix A prior to commencement of construction of a mill which produces byproduct material. This finding would be that made in the final environmental impact statement (or other environmental assessment) prepared pursuant to 10 CFR Part 51. These amendments delete paragraph (b) of § 40.14 and preclude exemptions from the requirements of §§ 40.31(f) and 40.32(e) of Part 40. They also amend paragraph (e) of § 40.32 to require the denial of applications for licenses where construction is started before the appropriate environmental appraisals are completed and documented. Construction activities are likely to result in significant and long lasting environmental impacts, the propriety of which cannot be ascertained until these environmental appraisals are completed and documented. The Commission also notes in this regard that milling results in the production of large quantities of byproduct material as tailings each year. When construction of a mill begins, including its tailings disposal area, irrevocable commitments are made regarding tailings disposal. Given that each mill tailings pile constitutes a low-level waste burial site containing long lived radioactive materials, the Commission believes that prudence requires that specific methods of tailings disposal, mill decontamination, site reclamation, surety arrangements, and arrangements to allow for transfer of site and tailings ownership be worked out and approved before a license is granted.

The Commission further notes that similar irrevocable and/or irretrievable environmental impact and resource commitments are involved in the commencement of construction of plants and facilities in which source materials are possessed and used for the production of uranium hexafluoride and commercial waste disposal by land burial. Accordingly, the requirements of the revised paragraphs (b) of § 40.14 and (e) of § 40.32 would apply to these plants and facilities.

5. The amendments to 10 CFR 30 and 70 also relate to commencement of construction of other types of plants and facilities in which byproduct and special nuclear materials are used and possessed. The Commission believes commencement of construction of these plants and facilities may also result in irreversible and irretrievable commitments of environmental impacts and resources. Therefore, the Commission believes that it is also desirable and necessary that a final environmental impact statement or assessment be completed and documented before authorizing commencement of construction. Thus, 10 CFR 30.11(b), 10 CFR 30.33(a)(5), 10 CFR 70.14(b) and 10 CFR 70.23(a)(7) are amended to conform to the foregoing amendments to 10 CFR 40.

6. A new § 150.15a is added to 10 CFR Part 150 to enumerate certain authorities reserved to the Commission under UMTRCA. Paragraph (a) is drawn directly from sections 204(f) and 202(a) of UMTRCA. Paragraph (b) is extracted from § 83 of the Atomic Energy Act of 1954, as added by § 202(a) of UMTRCA. The language of UMTRCA and its legislative history indicate that the NRC is to make the determinations under, and establish standards pursuant to, § 83, which minimum Federal standards and determinations must, under § 204(e) of the UMTRCA, be met by the Agreement States. New §§ 150.31 and 150.32 outline requirements in the UMTRCA for Agreement State regulation of tailings or activities that produce such tailings or wastes. These new sections are taken directly from

§ 274o of the Atomic Energy Act, as added by § 204(c) of the UMTRCA.

Under the provisions of the new § 150.31, an Agreement State must, after November 8, 1981, require compliance with standards for the protection of the public health, safety, and the environment from hazards associated with byproduct material which are equivalent, to the extent practicable, or more stringent than, standards in the new Appendix A of 10 CFR Part 40 discussed in Item 3 above. Before November 8, 1981, an Agreement State must require compliance with Appendix A of 10 CFR Part 40 to the maximum extent practicable. As discussed above, the provisions of the new Appendix A will require all mill operators to develop and submit detailed programs (which include appropriate supporting data, analyses, and alternatives) meeting the technical and financial criteria in the Appendix A in connection with license renewals or within nine months, whichever occurs first. The Commission believes that it is practicable for Agreement State licensees to develop and submit similar detailed programs to their respective licensing authorities in view of the length of time active milling operators have known of the basic components of these criteria and the nearly one year period before submittals are required. Therefore, the Commission expects Agreement States to immediately implement this requirement under the provisions of the UMTRCA which require Agreement States to implement equivalent standards "to the maximum extent practicable" during the interim period until November 8, 1981. The Commission notes in this regard that approval of a final acceptable plan (which may include various remedial alternatives for the management of existing tailings systems as well as alternatives for the management of tailings to be generated in the future) may take a long time following submittal of initial plans by licensees given the difficulty of the issues typically involved at existing sites. Thus, it is necessary for present mill operators to begin now to develop programs for meeting the standards in the new Appendix A to 10 CFR Part 40 rather than to delay until November 8, 1981, to develop plans and/or alternative programs for meeting the standards. Furthermore, the Commission considers it practicable now, even before final plans may have been worked out and approved, to immediately implement steps to reduce airborne effluent releases from both plant operations and tailings systems and seepage from tailings systems to levels which are as low as are reasonably achievable as specified in the standards of the new appendix. This is also required in order to meet the EPA standards in 40 CFR 190 which must be enforced by the Commission and Agreement States by December, 1980. Therefore, it is essential that licensing action be taken now to ensure interim tailings management programs which deal with presently occurring impacts such as blowing tailings and uncontrolled seepage are worked out on an immediate basis even before complete disposal programs can be finalized.

## V. Future Actions

The UMTRCA establishes certain responsibilities and authorities whereby the Environmental Protection Agency (EPA) must develop standards of general application for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct materials. These generally applicable standards for nonradiological hazards must provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended. The Commission and any State permitted to exercise authority under § 274b.(2) of the Atomic Energy Act must apply these standards of general application in licensing actions involving byproduct material.

The EPA has not, as yet, proposed the standards described above. It is the Commission's understanding, based on NRC and EPA staff discussions, that these standards will probably not be proposed before 1981. Upon finalization of the EPA standards, it is likely that minor changes will be required in the Commission's regulations. However, to delay issuance of the rules set forth below until the final EPA standards have been issued will, in all probability, preclude sufficient time for applicable Agreement States to adopt standards which are equivalent to or more stringent than those of the Commission's by November 8, 1981, in order to meet the requirements in the UMTRCA.

## VI. Regulatory Changes

Pursuant to the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, the Uranium Mill Tailings Radiation Control Act of 1978, as amended, and sections 552 and 553 of title 5 of the United States Code, the following amendments to Title 10, Code of Federal Regulations, Parts 30, 40, 70, and 150 are published as a document subject to codification.

## PART 30—RULES OF GENERAL APPLICABILITY TO DOMESTIC LICENSING OF BYPRODUCT MATERIAL

### § 30.11 [Amended]

1. Section 30.11 of 10 CFR 30 is amended by deleting paragraph 30.11(b).

2. Section 30.33 of 10 CFR 30 is amended by revising paragraph (a)(5) to read as follows:

### § 30.33 General requirements for issuance of specific licenses.

(a) * * *

(5) In the case of an application for a license to receive and possess byproduct material for commercial waste disposal by land burial or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusion shall be grounds for denial of a license to receive and possess byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

* * * * *

## PART 40—DOMESTIC LICENSING OF SOURCE MATERIAL

3. Section 40.1 of 10 CFR 40 is amended by revising paragraph (a) to read as follows:

### § 40.1 Purpose.

(a) The regulations in this Part establish procedures and criteria for the

issuance of licenses to receive title to, receive, possess, use, transfer, or deliver source and byproduct materials, as defined in this Part, and establish and provide for the terms and conditions upon which the Commission will issue such licenses. The regulations in this Part do not establish procedures and criteria for the issuance of licenses for materials covered under Title I of the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021).

* * * * *

4. Section 40.2a of 10 CFR 40 is added to read as follows:

**§ 40.2a Coverage of inactive tailings sites.**

(a) Prior to the completion of the remedial action, the Commission will not require a license pursuant to this Part for possession of byproduct material as defined in this Part that is located at a site where milling operations are no longer active, if the site is designated a processing site covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The Commission will exert its regulatory role in remedial actions primarily through concurrence and consultation in the execution of the remedial action pursuant to Title I of the Uranium Mill Tailings Radiation Control Act of 1978.

(b) The Commission will regulate byproduct material as defined in this Part that is located at a site where milling operations are no longer active, if such site is not covered by the remedial action program of Title I of the Uranium Mill Tailings Radiation Control Act of 1978. The criteria in Appendix A of this Part will be applied to such sites.

5. Section 40.3 of 10 CFR 40 is revised to read as follows:

**§ 40.3 License requirements.**

No person subject to the regulations in this Part shall receive title to, own, receive, possess, use, transfer, or deliver byproduct material as defined in this Part or any source material after removal from its place of deposit in nature, except as authorized in a specific or general license issued by the Commission pursuant to the regulations in this Part.

**§ 40.11 [Amended]**

6. Section 40.11 of 10 CFR 40 is amended by adding the words "or the Uranium Mill Tailings Radiation Control Act of 1978" following the words "Energy Reorganization Act of 1974" wherever they appear.

**§ 40.13 [Amended]**

7. Section 40.13 of 10 CFR 40 is amended by adding the following sentence at the end of Paragraph (a): "The exemption contained in this paragraph does not include byproduct material as defined in this Part."

**§ 40.14 [Amended]**

8. Section 40.14 of 10 CFR 40 is amended by deleting paragraph 40.14(b) and by inserting in its place the word "Reserved."

9. Section 40.21 of 10 CFR 40 is revised to read as follows:

**§ 40.21 General license to receive title to source or byproduct material.**

A general license is hereby issued authorizing the receipt of title to source or byproduct material, as defined in this Part, without regard to quantity. This general license does not authorize any person to receive, possess, deliver, use, or transfer source or byproduct material.

10. Section 40.26 of 10 CFR 40 is amended by adding a new § 40.26(d) to read as follows:

**§ 40.26 General license for possession and storage of byproduct material as defined in this Part.**

* * * * *

(d) The general license in paragraph (a) of this section shall expire nine months from the effective date of this subparagraph unless an applicable licensee has submitted, pursuant to the provisions of § 40.31 of this Part, an application for license renewal or amendment which includes a detailed program for meeting the technical and financial criteria contained in Appendix A of this Part.

11. Section 40.31 of 10 CFR 40 is amended by adding a new § 40.31(g) to read as follows:

**§ 40.31 Applications for specific licenses**

* * * * *

(g) An appliction for a license to receive, possess, and use source material for uranium or thorium milling or byproduct material, as defined in this Part, at sites formerly associated with such milling shall contain proposed written specifications relating to milling operations and the disposition of the byproduct material to achieve the requirements and objectives set forth in Appendix A of this Part. Each application must clearly demonstrate how the requirements and objectives set forth in Appendix A of this Part have been addressed. Failure to clearly demonstrate how the requirements and objectives in Appendix A have been addressed shall be grounds for refusing to accept an application.

12. Section 40.32 of 10 CFR 40 is amended by revising § 40.32(e) to read as follows:

**§ 40.32 General requirements for issuance of specific licenses.**

* * * * *

(e) In the case of an application for a license to possess and use source and byproduct material for uranium milling, production of uranium hexafluoride, commercial waste disposal by land burial or for the conduct of any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such a conclusion shall be grounds for denial of a license to possess and use source and byproduct material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

13. Section 40.41 of 10 CFR 40 is amended by revising § 40.41 (c) and (e) to read as follows:

**§ 40.41 Terms and conditions of licenses.**

* * * * *

(c) Each person licensed by the Commission pursuant to the regulations in this part shall confine his possession and use of source or byproduct material to the locations and purposes authorized in the license. Except as otherwise provided in the license, a license issued pursuant to the regulations in this part shall carry with it the right to receive, possess, and use source or byproduct material. Preparation for shipment and transport of source or byproduct

material shall be in accordance with the provisions of Part 71 of this chapter.

* * * * *

(e) The Commission may incorporate in any license at the time of issuance, or thereafter, by appropriate rule, regulation or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary in order to:

(1) Promote the common defense and security;

(2) Protect health or to minimize danger of life or property;

(3) Protect restricted data;

(4) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be necessary or appropriate to effectuate the purposes of the act and regulations thereunder.

* * * * *

14. Section 40.51 of 10 CFR 40 is revised to read as follows:

**§ 40.51 Transfer of source or byproduct material.**

(a) No licensee shall transfer source or byproduct material except as authorized pursuant to this section.

(b) Except as otherwise provided in his license and subject to the provisions of paragraphs (c) and (d) of this section, any licensee may transfer source or byproduct material:

(1) To the Department of Energy

(2) To the agency in any Agreement State which regulates radioactive materials pursuant to an agreement with the Commission or the Atomic Energy Commission under section 274 of the Act;

(3) To any person exempt from the licensing requirements of the Act and regulations in this part, to the extent permitted under such exemption;

(4) To any person in an Agreement State subject to the jurisdiction of that State who has been exempted from the licensing requirements and regulations of that State, to the extent permitted under such exemptions;

(5) To any person authorized to receive such source or byproduct material under terms of a specific license or a general license or their equivalents issued by the Commission or an Agreement State;

(6) To any person abroad pursuant to an export license issued under Part 110 of this chapter; or

(7) As otherwise authorized by the commission in writing.

(c) Before transferring source or byproduct material to a specific licensee of the Commission or an Agreement State or to a general licensee who is required to register with the Commission or with an Agreement State prior to receipt of the source or byproduct material, the licensee transferring the material shall verify that the transferee's license authorizes receipt of the type, form, and quantity of source or byproduct material to be transferred.

(d) The following methods for the verification required by paragraph (c) of this section are acceptable:

(1) The transferor may have in his possession, and read, a current copy of the transferee's specific license or registration certificate;

(2) The transferor may have in his possession a written certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certification number, issuing agency and expiration date;

(3) For emergency shipments the transferor my accept oral certification by the transferee that he is authorized by license or registration certificate to receive the type, form, and quantity of source or byproduct material to be transferred, specifying the license or registration certificate number, issuing agency and expiration date: Provided, That the oral certification is confirmed in writing within 10 days;

(4) The transferor may obtain other sources of information compiled by a reporting service from official records of the Commission or the licensing agency of an Agreement State as to the identity of licensees and the scope and expiration dates of licenses and registrations; or

(5) When none of the methods of verification described in paragraphs (d)(1) to (4) of this section are readily available or when a transferor desires to verify that information received by one of such methods is correct or up-to-date, the transferor may obtain and record confirmation from the Commission or the licensing agency of an Agreement State that the transferee is licensed to receive the source or byproduct material.

15. Section 40.61 of 10 CFR 40 is revised to read as follows:

**§ 40.61 Records.**

(a) Each person who receives source or byproduct material pursuant to a license issued pursuant to the regulations in this part shall keep records showing the receipt, transfer, and disposal of such source or byproduct material.

(b) Records which are required by the regulations in this part or by license condition shall be maintained for the period specified by the appropriate regulation or license condition. If a retention period is not otherwise specified by regulation or license condition, such records shall be maintained until the Commission authorizes their disposition.

(c)(1) Records of receipt of source or byproduct material which must be maintained pursuant to paragraph (a) of this section shall be maintained as long as the licensee retains possession of the source or byproduct material and for five years following transfer, or disposition of the source of byproduct material.

(2) [Reserved]

(3) Records of transfer of source or byproduct material shall be maintained by the licensee who transferred the material until the Commission authorizes their disposition.

(4) Records of disposal of source or byproduct material shall be maintained in accordance with § 20.401(c) of this chapter.

(5) If source or byproduct material is combined or mixed with other licensed material and subsequently treated in a manner which makes direct correlation of a receipt record with a transfer, export, or disposition record impossible, evaluative techniques such as first-in-first-out may be used for purposes of the records retention requirements of this paragraph.

(d)(1) Records which must be maintained pursuant to this part may be the original or reproduced copy or microform if such reproduced copy or microform is duly authenticated by authorized personnel and the microform is capable of producing a clear and legible copy after storage for the period specified by Commission regulations.

(2) If there is a conflict between the Commission's regulations in this part, license condition, or other written Commission approval or authorization pertaining to the retention period for the same type of record, the retention period specified in the regulations in this part for such records shall apply unless the Commission, pursuant to § 40.14, has granted a specific exemption from the record retention requirements specified in the regulations in this part.

16. Section 40.62 of 10 CFR 40 is revised to read as follows:

**§ 40.62 Inspections.**

(a) Each licensee shall afford to the Commission at all reasonable times opportunity to inspect source or byproduct material and the premises and facilities wherein source or byproduct material is used or stored.

(b) Each licensee shall make available to the Commission for inspection, upon reasonable notice, records kept by him pursuant to the regulations in this chapter.

17. Section 40.63 of 10 CFR 40 is revised to read as follows:

**§ 40.63 Tests.**

Each licensee shall perform, or permit the Commission to perform, such tests as the Commission deems appropriate or necessary for the administration of the regulations in this part, including tests of:

(a) Source or byproduct material;

(b) Facilities wherein source or byproduct material is utilized or stored;

(c) Radiation detection and monitoring instruments; and

(d) Other equipment and devices used in connection with the utilization and storage of source or byproduct material.

18. Appendix A is added to 10 CFR 40 to read as follows:

**Appendix A to Part 40**

Criteria Relating to the Operation of Uranium Mills and the Disposition of Tailings or Wastes Produced by the Extraction or Concentration of Source Material From Ores Processed Primarily for Their Source Material Content.

Introduction. Every applicant for a license to possess and use source material in conjunction with uranium or thorium milling, or byproduct material at sites formerly associated with such milling, is required by the provisions of § 40.31(g) to include in a license application proposed specifications relating to milling operations and the disposition of tailings or waste resulting from such milling activities. This appendix establishes technical, financial, ownership, and long term site surveillance criteria relating to the siting, operation, decontamination, decommissioning, and reclamation of mills and tailings or waste systems and sites at which such mills and systems are located. As used in this appendix, the term "as low as is reasonably achievable" has the same meaning as in paragraph 20.1(c) of 10 CFR 20 of this Chapter.

In many cases, flexibility is provided in the criteria to allow achieving an optimum tailings disposal program on a site specific basis. However, in such cases the objectives, technical alternatives, and concerns which must be taken into account in developing a tailings program are identified. As provided by the provisions of § 40.31(g), applications for licenses must clearly demonstrate how the criteria have been addressed.

The specifications shall be developed considering the expected full capacity of tailings or waste systems and the lifetime of mill operations. Where later expansions of systems or operations may be likely (for example, where large quantities of ore now marginally uneconomical may be stockpiled), the amendability of the disposal system to accommodate increased capacities without degradation in long term stability and other performance factors shall be evaluated.

Detailed programs meeting the technical and financial criteria in this Appendix, including appropriate supporting data, analyses, and alternatives, shall be developed by existing uranium milling licensees and filed with the Director of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, in connection with license renewal applications or within nine months from the effective date of this Appendix, whichever occurs first.

**I. Technical Criteria**

Criterion 1—In selecting among alternative tailings disposal sites or judging the adequacy of existing tailings sites, the following site features, which will determine the extent to which a program meets the broad objective of isolating the tailings and associated contaminants from man and the environment during operations and for thousands of years thereafter without ongoing active maintenance, shall be considered:

- remoteness from populated areas;
- hydrologic and other natural conditions as they contribute to continued immobilization and isolation of contaminants from usable groundwater sources; and
- potential fo minimizing erosion, disturbance, and dispersion by natural forces over the long term.

The site selection process shall be an optimization to the maximum extent reasonably achievable in terms of these features.

In the selection of disposal sites, primary emphasis shall be given to isolation of tailings or wastes, a matter having long term impacts, as opposed to consideration only of short term convenience or benefits, such as minimization of transportation or land acquisition costs. While isolation of tailings will be a function of both site and engineering design, overriding consideration shall be given to siting features given the long term nature of the tailings hazards.

Tailings shall be disposed of in a manner that no active maintenance is required to preserve conditions of the site.

Criterion 2—To avoid proliferation of small waste disposal sites and thereby reduce perpetual surveillance obligations, byproduct material from in situ extraction operations, such as residues from solution evaporation or contaminated control processes, and wastes from small remote above ground extraction operations shall be disposed of at existing large mill tailings disposal sites; unless, considering the nature of the wastes, such as their volume and specific activity, and the costs and environmental impacts of transporting the wastes to a large disposal site, such offsite disposal is demonstrated to be impracticable or the advantages of onsite burial clearly outweigh the benefits of reducing the perpetual surveillance obligations.

Criterion 3—The "prime option" for disposal of tailings is placement below grade, either in mines or specially excavated pits (that is, where the need for any specially constructed retention structure is eliminated). The evaluation of alternative sites and disposal methods performed by mill operators in support of their proposed tailings disposal program (provided in applicants' environmental reports) shall reflect serious consideration of this disposal mode. In some instances, below grade disposal may not be the most environmentally sound approach, such as might be the case if a high quality groundwater formation is relatively close to the surface or not very well isolated by overlying soils and rock. Also, geologic and topographic conditions might make full below grade burial impracticable; for example, bedrock may be sufficiently near the surface that blasting would be required to excavate a disposal pit at excessive cost, and more suitable alternate sites are not available. Where full below grade burial is not practicable, the size of retention structures, and size and steepness of slopes of associated exposed embankments, shall be minimized by excavation to the maximum extent reasonably achievable or appropriate given the geologic and hydrologic conditions at a site. In these cases, it must be demonstrated that an above grade disposal program will provide reasonably equivalent isolation of the tailings from natural erosional forces.

Criterion 4—The following site and design criteria shall be adhered to whether tailings or wastes are disposed of above or below grade:

(a) Upstream rainfall catchment areas must be minimized to decrease erosion potential and the size of the maximum possible flood which could erode or wash out sections of the tailings disposal area.

(b) Topographic features should provide good wind protection.

(c) Embankment and cover slopes shall be relatively flat after final stabilization to miminize erosion potential and to provide conservative factors of safety assuring long term stability. The broad objective should be to contour final slopes to grades which are as close as possible to those which would be provided if tailings were disposed of below grade; this could, for example, lead to slopes of about 10 horizontal to 1 vertical (10h:1v) or less steep. In general, slopes should not be steeper than about 5h:1v. Where steeper slopes are proposed, reasons why a slope less steep than 5h:1v would be impracticable should be provided, and compensating factors and conditions which make such slopes acceptable should be identified.

(d) A full self-sustaining vegetative cover shall be established or rock cover employed to reduce wind and water erosion to negligible levels.

Where a full vegetative cover is not likely to be self-sustaining due to climatic or other conditions, such as in semi-arid and arid regions, rock cover shall be employed on slopes of the impoundment system. The NRC will consider relaxing this requirement for extremely gentle slopes such as those which may exist on the top of the pile.

The following factors shall be considered in establishing the final rock cover design to avoid displacement of rock particles by human and animal traffic or by natural processes, and to preclude undercutting and piping:

• shape, size, composition, and gradation of rock particles (excepting bedding material average particles size shall be at least cobble size or greater);

• rock cover thickness and zoning of particles by size; and

• steepness of underlying slopes.

Individual rock fragments shall be dense, sound, and resistant to abrasion, and shall be free from cracks, seams, and other defects that would tend to unduly increase their destruction by water and frost actions. Weak, friable, or laminated aggregate shall not be used. Shale, rock laminated with shale, and cherts shall not be used.

Rock covering of slopes may not be required where top covers are very thick (on the order of 10m or greater); impoundment slopes are very gentle (on the order of 10 h:1v or less); bulk cover materials have inherently favorable erosion resistance characteristics; and, there is negligible drainage catchment area upstream of the pile and good wind protection as described in points (a) and (b) of this Criterion.

Furthermore, all impoundment surfaces shall be contoured to avoid areas of concentrated surface runoff or abrupt or sharp changes in slope gradient. In addition to rock cover on slopes, areas toward which surface runoff might be directed shall be well protected with substantial rock cover (rip rap). In addition to providing for stability of the impoundment system itself, overall stability, erosion potential, and geomorphology of surrounding terrain shall be evaluated to assure that there are not ongoing or potential processes, such as gully erosion, which would lead to impoundment instability.

(e) The impoundment shall not be located near a capable fault that could cause a maximum credible earthquake larger than that which the impoundment could reasonably be expected to withstand. As used in this criterion, the term "capable fault" has the same meaning as defined in § III(g) of Appendix A of 10 CFR 100. The term "maximum credible earthquake" means that earthquake which would cause the maximum vibratory ground motion based upon an evaluation of earthquake potential considering the regional and local geology and seismology and specific characteristics of local subsurface material.

(f) The impoundment, where feasible, should be designed to incorporate features which will promote deposition. For example, design features which promote deposition of sediment suspended in any runoff which flows into the impoundment area might be utilized; the object of such a design feature would be to enhance the thickness of cover over time.

Criterion 5—Steps shall be taken to reduce seepage of toxic materials into groundwater to the maximum extent reasonably achievable. Any seepage which does occur shall not result in deterioration of existing groundwater supplies from their current or potential uses. The following shall be considered in order to accomplish this objective:

• installation of low permeability bottom liners (Where synthetic liners are used, a leakage detection system shall be installed immediately below the liner to ensure major failures are detected if they occur. This is in addition to the groundwater monitoring program conducted as provided in Criterion 7. Where clay liners are proposed or relatively thin in-situ clay soils are to be relied upon for seepage control, tests shall be conducted with representative tailings solutions and clay materials to confirm that no significant deterioration of permeability or stability properties will occur with continuous exposure of clay to tailings solutions. Tests shall be run for a sufficient period of time to reveal any effects if they are going to occur (in some cases, deterioration has been observed to occur rather rapidly after about nine months of exposure)).

• mill process designs which provide the maximum practicable recycle of solutions and conservation of water to reduce the net input of liquid to the tailings impoundment.

• dewatering of tailings by process devices and/or in-situ drainage systems (At new sites, tailings shall be dewatered by a drainage system installed at the bottom of the impoundment to lower the phreatic surface and reduce the driving head for seepage, unless tests show tailings are not amenable to such a system. Where in-situ dewatering is to be conducted, the impoundment bottom shall be graded to assure that the drains are at a low point. The drains shall be protected by suitable filter materials to assure that drains remain free running. The drainage system shall also be adequately sized to assure good drainage.).

• neutralization to promote immobilization of toxic substances.

Where groundwater impacts are occurring at an existing site due to seepage, action shall be taken to alleviate conditions that lead to excessive seepage impacts and restore groundwater quality to its potential use before milling operations began to the maximum extent practicable. The specific seepage control and groundwater protection method, or combination of methods, to be used must be worked out on a site-specific basis. Technical specifications shall be prepared to control installation of seepage control systems. A quality assurance, testing, and inspection program, which includes supervision by a qualified engineer or scientist, shall be established to assure the specifications are met.

While the primary method of protecting groundwater shall be isolation of tailings and tailings solutions, disposal involving contact with groundwater will be considered provided supporting tests and analyses are presented demonstrating that the proposed disposal and treatment methods will not degrade groundwater from current or potential uses.

In support of a tailings disposal system proposal, the applicant/operator shall supply information concerning the following:

• The chemical and radioactive characteristics of the waste solutions.

• The characteristics of the underlying soil and geologic formations particularly as they will control transport of contaminants and solutions. This shall include detailed information concerning extent, thickness, uniformity, shape, and orientation of underlying strata. Hydraulic gradients and conductivities of the various formations shall be determined.

This information shall be gathered from borings and field survey methods taken within the proposed impoundment area and in surrounding areas where contaminants might migrate to usable groundwater. The information gathered on boreholes shall include both geologic and geophysical logs in sufficient number and degree of sophistication to allow determining significant discontinuities, fractures, and channeled deposits of high hydraulic conductivity. If field survey methods are used, they should be in addition to and calibrated with borehole logging. Hydrologic parameters such as permeability shall not be determined on the basis of laboratory analysis of samples alone; a sufficient amount of field testing (e.g., pump tests) shall be conducted to assure actual field properties are adequately understood. Testing shall be conducted to allow estimating chemi-sorption attenuation properties of underlying soil and rock.

• Location, extent, quality, capacity and current uses of any groundwater at and near the site.

Furthermore, steps shall be taken during stockpiling of ore to minimize penetration of radionuclides into underlying soils; suitable methods include lining and/or compaction of ore storage areas.

Criterion 6—Sufficient earth cover, but not less than three meters, shall be placed over tailings or wastes at the end of milling operations to result in a calculated reduction in surface exhalation of radon emanating from the tailings or wastes to less than two picocuries per square meter per second. In computing required tailings cover thicknesses, moisture in soils in excess of amounts found normally in similar soils in similar circumstances shall not be considered. Direct gamma exposure from the tailings or wastes should be reduced to background levels. The effects of any thin synthetic layer shall not be taken into account in determining the calculated radon exhalation level. If non-soiled materials are proposed to reduce tailings covers to less than three meters, it must be demonstrated that such materials will not crack or degrade by differential settlement, weathering, or other mechanism, over long term time intervals. Near surface cover materials (i.e., within the top three meters) shall not include mine waste or rock that contains elevated levels of radium; soils used for near surface cover must be essentially the same, as far as radioactivity is concerned, as that of surrounding surface soils. This is to ensure that surface radon exhalation is not significantly above background because of the cover material itself.

Criterion 7—At least one full year prior to any major site construction, a preoperational monitoring program shall be conducted to provide complete baseline data on a milling site and its environs. Throughout the construction and operating phases of the mill, an operational monitoring program shall be conducted to measure or evaluate compliance with applicable standards and regulations; to evaluate performance of control systems and procedures; to evaluate environmental

impacts of operation; and to detect potential long term effects.

Criterion 8—Milling operations shall be conducted so that all airborne effluent releases are reduced to levels as low as is reasonably achievable. The primary means of accomplishing this shall be by means of emission controls. Institutional controls, such as extending the site boundary and exclusion area, may be employed to ensure that offsite exposure limits are met, but only after all practicable measures have been taken to control emissions at the source. Notwithstanding the existence of individual dose standards, strict control of emissions is necessary to assure that population exposures are reduced to the maximum extent reasonably achievable and to avoid site contamination. The greatest potential sources of offsite radiation exposure (aside from radon exposure) are dusting from dry surfaces of the tailings disposal area not covered by tailings solution and emissions from yellowcake drying and packaging operations.

Checks shall be made and logged hourly of all parameters (e.g., differential pressures and scrubber water flow rates) which determine the efficiency of yellowcake stack emission control equipment operation. It shall be determined whether or not conditions are within a range prescribed to ensure that the equipment is operating consistently near peak efficiency; corrective action shall be taken when performance is outside of prescribed ranges. Effluent control devices shall be operative at all times during drying and packaging operations and whenever air is exhausting from the yellowcake stack. Drying and packaging operations shall terminate when controls are inoperative. When checks indicate the equipment is not operating within the range prescribed for peak efficiency, actions shall be taken to restore parameters to the prescribed range. When this cannot be done without shutdown and repairs, drying and packaging operations shall cease as soon as practicable. Operations may not be re-started after cessation due to off-normal performance until needed corrective actions have been identified and implemented. All such cessations, corrective actions, and re-starts shall be reported to the appropriate NRC regional office as indicated in Criterion 8A, in writing, within 10 days of the subsequent restart.

To control dusting from tailings, that portion not covered by standing liquids shall be wetted or chemically stabilized to prevent or minimize blowing and dusting to the maximum extent reasonably achievable. This requirement may be relaxed if tailings are effectively sheltered from wind, such as may be the case where they are disposed of below grade and the tailings surface is not exposed to wind. Consideration shall be given in planning tailings disposal programs to methods which would allow phased covering and reclamation of tailings impoundments since this will help in controlling particulate and radon emissions during operation. To control dusting from diffuse sources, such as tailings and ore pads where automatic controls do not apply, operators shall develop written operating procedures specifying the methods of control which will be utilized.

Criterion 8A—Daily inspections of tailings or waste retention systems shall be conducted by a qualified engineer or scientist and documented. The appropriate NRC regional office as indicated in Appendix D of 10 CFR Part 20, or the Director, Office of Inspection and Enforcement, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, shall be immediately notified of any failure in a tailings or waste retention system which results in a release of tailings or waste into unrestricted areas, and/or of any unusual conditions (conditions not contemplated in the design of the retention system) which if not corrected could indicate the potential or lead to failure of the system and result in a release of tailings or waste into unrestricted areas.

**II. Financial Criteria**

Criterion 9—Financial surety arrangements shall be established by each mill operator prior to the commencement of operations to assure that sufficient funds will be available to carry out the decontamination and decommissioning of the mill and site and for the reclamation of any tailings or waste disposal areas. The amount of funds to be ensured by such surety arrangements shall be based on Commission-approved cost estimates in a Commission-approved plan for (1) decontamination and decommissioning of mill buildings and the milling site to levels which would allow unrestricted use of these areas upon decommissioning, and (2) the reclamation of tailings and/or waste disposal areas in accordance with technical criteria delineated in Section I of this Appendix. The licensee shall submit this plan in conjunction with an environmental report that addresses the expected environmental impacts of the milling operation, decommissioning and tailings reclamation, and evaluates alternatives for mitigating these impacts. The surety shall also cover the payment of the charge for long term surveillance and control required by Criterion 10. In establishing specific surety arrangements, the licensee's cost estimates shall take into account total costs that would be incurred if an independent contractor were hired to perform the decommissioning and reclamation work. In order to avoid unnecessary duplication and expense, the Commission may accept financial sureties that have been consolidated with financial or surety arrangements established to meet requirements of other Federal or state agencies and/or local governing bodies for such decommissioning, decontamination, reclamation, and long term site surveillance and control, provided such arrangements are considered adequate to satisfy these requirements and that the portion of the surety which covers the decommissioning and reclamation of the mill, mill tailings site and associated areas, and the long term funding charge is clearly identified and committed for use in accomplishing these activities. The licensee's surety mechanism will be reviewed annually by the Commission to assure that sufficient funds would be available for completion of the reclamation plan if the work had to be performed by an independent contractor. The amount of surety liability should be adjusted to recognize any increases or decreases resulting from inflation, changes in engineering plans, activities performed, and any other conditions affecting costs. Regardless of whether reclamation is phased through the life of the operation or takes place at the end of operations, an appropriate portion of surety liability shall be retained until final compliance with the reclamation plan is determined. This will yield a surety that is at least sufficient at all times to cover the costs of decommissioning and reclamation of the areas that are expected to be disturbed before the next license renewal. The term of the surety mechanism must be open ended, unless it can be demonstrated that another arrangement would provide an equivalent level of assurance. This assurance could be provided with a surety instrument which is written for a specified period of time (e.g., five years) yet which must be automatically renewed unless the surety notifies the beneficiary (the Commission or the State regulatory agency) and the principal (the licensee) some reasonable time (e.g., 90 days) prior to the renewal date of their intention not to renew. In such a situation the surety requirement still exists and the licensee would be required to submit an acceptable replacement surety within a brief period of time to allow at least 60 days for the regulatory agency to collect.

Proof of forfeiture must not be necssary to collect the surety so that in the event that the licensee could not provide an acceptable replacement surety within the required time, the surety shall be automatically collected prior to its expiration. The conditions described above would have to be clearly stated on any surety instrument which is not open-ended, and must be agreed to by all parties. Financial surety arrangements generally acceptable to the Commission are:

(a) Surety bonds;
(b) Cash deposits;
(c) Certificates of deposit;
(d) Deposits of government securities;
(e) Irrevocable letters or lines of credit; and
(f) Combinations of the above or such other types of arrangements as may be approved by the Commission. However, self insurance, or any arrangement which essentially constitutes self insurance (e.g., a contract with a state or federal agency), will not satisfy the surety requirement since this provides no additional assurance other than that which already exists through license requirements.

Criterion 10—A minimum charge of $250,000 (1978 dollars) to cover the costs of long term surveillance shall be paid by each mill operator to the general treasury of the United States or to an appropriate State agency prior to the termination of a uranium or thorium mill license.

If site surveillance or control requirements at a particular site are determined, on the basis of a site-specific evaluation, to be significantly greater than those specified in Criterion 12, (e.g., if fencing is determined to be necessary) variance in funding requirements may be specified by the Commission. In any case, the total charge to cover the costs of long term surveillance shall be such that, with and assumed 1 percent annual real interest rate, the collected funds

will yield interest in an amount sufficient to cover the annual costs of site surveillance. The total charge will be adjusted annually prior to actual payment to recognize inflation. The inflation rate to be used is that indicated by the change in the Consumer Price Index published by the U.S. Department of Labor, Bureau of Labor Statistics.

**III. Site and Byproduct Material Ownership**

Criterion 11—A. These criteria relating to ownership of tailings and their disposal sites become effective on November 8, 1981, and apply to all licenses terminated, issued, or renewed after that date.

B. Any uranium or thorium milling license or tailings license shall contain such terms and conditions as the Commission determines necessary to assure that prior to termination of the license, the licensee will comply with ownership requirements of this criterion for sites used for tailings disposal.

C. Title to the byproduct material licensed under this Part and land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any such byproduct material, or is essential to ensure the long term stability of such disposal site, shall be transferred to the United States or the State in which such land is located, at the option of such State. In view of the fact that physical isolation must be the primary means of long term control, and Government land ownership is a desirable supplementary measure, ownership of certain severable subsurface interests (for example, mineral rights) may be determined to be unnecessary to protect the public health and safety and the environment. In any case, however, the applicant/operator must demonstrate a serious effort to obtain such subsurface rights, and must, in the event that certain rights cannot be obtained, provide notification in local public land records of the fact that the land is being used for the disposal of radioactive material and is subject to either an NRC general or specific license prohibiting the disruption and disturbance of the tailings. In some rare cases, such as may occur with deep burial where no ongoing site surveillance will be required, surface land ownership transfer requirements may be waived. For licenses issued before November 8, 1981, the Commission may take into account the status of the ownership of such land, and interests therein, and the ability of a licensee to transfer title and custody thereof to the United States or a State.

D. If the Commission subsequent to title transfer determines that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State will not endanger the public health, safety, welfare, or environment, the Commission may permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions provided in these criteria. If the Commission permits such use of such land, it will provide the person who transferred such land with the right of first refusal with respect to such use of such land.

E. Material and land transferred to the United States or a State in accordance with this Criterion shall be transferred without cost to the United States or a State other than administrative and legal costs incurred in carrying out such transfer.

F. The provisions of this Part respecting transfer of title and custody to land and tailings and wastes shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in this Part, the licensee shall enter into arrangements with the Commission as may be appropriate to assure the long term surveillance of such lands by the United States.

**IV. Long-Term Site Surveillance**

Criterion 12—The final disposition of tailings or wastes at milling sites should be such that ongoing active maintenance is not necessary to preserve isolation. As a minimum, annual site inspections shall be conducted by the government agency retaining ultimate custody of the site where tailings, or wastes are stored to confirm the integrity of the stabilized tailings or waste systems and to determine the need, if any, for maintenance and/or monitoring. Results of the inspection shall be reported to the Commission within 60 days following each inspection. The Commission may require more frequent site inspections if, on the basis of a site-specific evaluation, such a need appears necessary due to the features of a particular tailings or waste disposal system.

## PART 70—DOMESTIC LICENSING OF SPECIAL NUCLEAR MATERIAL

**§ 70.14 [Amended]**

19. Section 70.14 of 10 CFR 70 is amended by deleting paragraph 70.14(b) and by inserting in its place the word "Reserved."

20. Section 70.23 of 10 CFR 70 is amended by revising paragraph (a)(7) to read as follows:

**§ 70.23 Requirements for the approval of applications.**

(a) * * *

(7) Where the proposed activity is processing and fuel fabrication, scrap recovery, conversion of uranium hexafluoride, commercial waste disposal by land burial, or any other activity which the Commission determines will significantly affect the quality of the environment, the Director of Nuclear Material Safety and Safeguards or his designee, before commencement of construction of the plant or facility in which the activity will be conducted, on the basis of information filed and evaluations made pursuant to Part 51 of this chapter, has concluded, after weighing the environmental, economic, technical, and other benefits against environmental costs and considering available alternatives, that the action called for is the issuance of the proposed license, with any appropriate conditions to protect environmental values. Commencement of construction prior to such conclusions shall be grounds for denial to possess and use special nuclear material in such plant or facility. As used in this paragraph the term "commencement of construction" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

## PART 150—EXEMPTIONS AND CONTINUED REGULATORY AUTHORITY IN AGREEMENT STATES UNDER SECTION 294

21. Section 150.15a of 10 CFR 150 is added to read as follows.

**§ 150.15a Continued Commission authority pertaining to byproduct material.**

(a) Prior to the termination of any Agreement State license for byproduct material as defined in § 150.3(c)(2) of this Part, or for any activity that results in the production of such material, the Commission shall have made a determination that all applicable standards and requirements pertaining to such material have been met.

(b) After November 8, 1981, the Commission reserves the authority to establish minimum standards regarding reclamation, long term surveillance (i.e., continued site observation, monitoring and, where necessary, maintenance), and ownership of byproduct material as defined in § 150.3(c)(2) of this Part and of land used as a disposal site for such material. Such reserved authority includes:

(1) Authority to establish such terms and conditions as the Commission determines necessary to assure that, prior to termination of any license for byproduct material as defined in § 150.3(c)(2) of this Part, or for any activity that results in the production of such material, the licensee shall comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission; and with ownership requirements for such materials and its disposal site;

(2) The authority to require that prior to termination of any license for byproduct material as defined in

§ 150.3(c)(2) of this Part, or for any activity that results in the production of such material, that title to such byproduct material and its disposal site be transferred to the United States or the State in which such material and land is located, at the option of the State (provided such option is exercised prior to termination of the license);

(3) The authority to permit use of the surface or subsurface estates, or both, of the land transferred to the United States or a State pursuant to paragraph (b)(2) of this section in a manner consistent with the provisions of the Uranium Mill Tailings Radiation Control Act of 1978, provided that the Commission determines that such use would not endanger the public health, safety, welfare, or the environment;

(4) The authority to require, in the case of a license for any activity that produces such byproduct material (which license was in effect on November 8, 1981) transfer of land and material pursuant to paragraph (b)(2), of this section, taking into consideration the status of such material and land and interests therein, and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The authority to require the Secretary of the Department of Energy, other Federal agency, or State, whichever has custody of such property and materials, to undertake such monitoring, maintenance and emergency measures as are necessary to protect the public health and safety and other actions at the Commission deems necessary to comply with the standards promulgated pursuant to the Uranium Mill Tailings Radiation Control Act of 1978; and

(6) The authority to enter into arrangements as may be appropriate to assure Federal long term surveillance (i.e., continued site observation, monitoring, and where necessary, maintenance) of such disposal sites on land held in trust by the United States for any Indian tribe or land owned by an Indian tribe and subject to a restriction against alienation imposed by the United States.

22. Section 150.31 of 10 CFR 150 is added to read as follows:

**§ 150.31 Requirements for Agreement State regulation of byproduct material.**

(a) Prior to November 8, 1981, in the licensing and regulation of byproduct material, as defined in § 150.3(c)(2) of this Part, or of any activity which results in the production of such byproduct material, an Agreement State shall require compliance with the requirements in Appendix A of 10 CFR 40 of this Chapter to the maximum extent practicable.

(b) After November 8, 1981, in the licensing and regulation of byproduct material, as defined in § 150.3(c)(2) of this Part, or of any activity which results in the production of such byproduct material, an Agreement State shall require:

(1) Compliance with requirements in Appendix A of 10 CFR 40 of this Chapter established by the Commission pertaining to ownership of such byproduct material and disposal sites for such material; and

(2) Compliance with standards which shall be adopted by the Agreement State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards in Appendix A of 10 CFR 40 of this Chapter adopted and enforced by the Commission for the same purposes, including requirements and standards subsequently promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to the Uranium Mill Tailing Radiation Control Act of 1978; and

(3) Compliance with procedures which:

(i) In the case of licenses, under State law include:

(A) An opportunity, after public notice, for written comments and a public hearing, with a transcript;

(B) An opportunity for cross examination; and

(C) A written determination by the appropriate State official which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(ii) In the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(iii) Require for each licensing action which has a significant impact on the human environment a written analysis by the appropriate State agency (which shall be available to the public before the commencement of any such proceedings) of the impact of such licensing action, including any activities conducted pursuant thereto, on the environment. Such analysis shall include:

(A) An assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such licenses;

(B) An assessment of any impact on any waterway and groundwater resulting from such activities;

(C) Consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(D) Consideration of the long term impacts, including decommissioning, decontamination, and reclamation impacts associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined in § 150.3(c)(2) of this Part; and

(iv) Prohibit any major construction activity with respect to such material prior to complying with the provisions of paragraph (c)(3) of this section. As used in this paragraph the term "major construction activity" means any clearing of land, excavation, or other substantial action that would adversely affect the environment of a site. The term does not mean site exploration, necessary roads for site exploration, borings to determine foundation conditions, or other preconstruction monitoring or testing to establish background information related to the suitability of the site or the protection of environmental values.

(c) No Agreement State shall be required under paragraph (b) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission.

23. Section 150.32 of 10 CFR 150 is added to read as follows:

**§ 150.32 Funds for reclamation or maintenance of byproduct material.**

(a) The total amount of funds an Agreement State collects, pursuant to a license for byproduct material as defined in § 150.3(c)(2) of this Part or for any activity that results in the production of such material, for reclamation or long term maintenance and monitoring of such material, shall after November 8, 1981, be transferred to the United States if title and custody of such material and its disposal site is transferred to the United States upon termination of such license. Such funds include, but are not limited to, sums collected for long term surveillance (i.e., continued site observation, monitoring and, where necessary, maintenance). Such funds do not however, include monies held as surety where no default has occurred and the reclamation or other bonded activity has been performed.

(b) If an Agreement State requires such payments for reclamation or long

term surveillance (i.e., continued site observation, monitoring and, where necessary, maintenance), the payments must, after November 8, 1981, be sufficient to ensure compliance with those standards established by the Commission pertaining to bonds, sureties, and financial arrangements to ensure adequate reclamation and long term management of such byproduct material and its disposal site.

(Secs. 11.e(2), 81, 83, 84, 161b, 161o, 161x, 274; Pub. L. 83-703 as amended by Title II of Pub. L. 95-604, 68 stat. 919 et seq. 92 Stat 3021 et seq. (42 U.S.C. 2014e(2), 2111, 2113, 2114, 2201b, 2201x, 2021)

Dated at Washington, D.C., this 26th day of September 1980.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 80-30597 Filed 10-2-80; 8:45 am]

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## CONSUMER PRODUCT SAFETY COMMISSION

### 16 CFR Part 1700

### Human Prescription Drugs in Oral Dosage Forms; Exemption of Isosorbide Dinitrate in Sublingual and Chewable Forms Containing Not More Than 10 Milligrams of Isosorbide Dinitrate From Child-Protection Packaging Requirements

**AGENCY:** Consumer Product Safety Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document the Commission issues an exemption from child-protection packaging requirements for isosorbide dinitrate in sublingual and chewable dosage forms containing not more than 10 milligrams of isosorbide dinitrate.* An exemption for sublingual and chewable dosage forms containing not more than 5 milligrams of isosorbide dinitrate is currently in effect. Based upon the absence of past adverse experience resulting from ingestion of isosorbide dinitrate, the Commission believes that child-protection packaging for the larger dosage forms is unnecessary to protect children from serious illness or injury. In addition, the Commission believes that an exemption is justified because of the seriousness of the consequences should administration of this medication be delayed by accessibility problems due to special packaging.

**EFFECTIVE DATE:** This amendment is effective October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Charles Jacobson, Directorate for Compliance and Enforcement, Consumer Product Safety Commission, Washington, D.C. 20207, (301) 492-6400.

**SUPPLEMENTARY INFORMATION:**

#### Background

On September 28, 1979, the Commission proposed an exemption from the child-resistant packaging regulations under the Poison Prevention Packaging Act of 1970 (PPPA) for sublingual and chewable forms of isosorbide dinitrate in dosage strengths of 10 milligrams (mg) or less (44 FR 55892).

Isosorbide dinitrate-containing drugs are generally used to relieve the pain associated with an angina attack (constriction of a blood vessel supplying oxygen to the heart). The principal adverse effect associated with such drugs is that because they dilate the blood vessels, the drugs can produce a drop in blood pressure that can result in a feeling of weakness or fainting and a loss of consciousness. However, as soon as the patient is placed in a reclining position with the feet raised, consciousness usually returns immediately.

Oral human prescription drugs containing over 5 mg of isosorbide dinitrate are currently subject to the Commission's child-protection packaging requirements, set forth at 16 CFR 1700.14(a)(1)). Sublingual and chewable forms of isosorbide dinitrate in dosage units of 5 mg or less are exempted from these requirements at 16 CFR 1700.14(a)(10)(ii).[1] That exemption was granted at a time when only 5 mg dosage strengths for the drug were manufactured. Since that time, a few manufacturers, including Ives Laboratories, the petitioner in this matter, have produced 10 mg tablets in response to the fact that some angina patients require a higher dose of medication to control symptoms. For the reasons stated below, the Commission has decided to issue an exemption for sublingual and chewable forms of isosorbide dinitrate in dosage strengths of 10 mg or less. The Commission, therefore, has revised the existing exemption for isosorbide dinitrate by setting a higher dosage level for exemption.

#### Grounds for Exemption

As was noted in the proposed exemption, Ives Laboratories contends that the same grounds which justified an exemption for isosorbide dinitrate in 5 mg sublingual and chewable forms support the request for a 10 mg exemption level. The 5 mg exemption was based on the following facts: (1) The difficulty and delay that a patient might experience in trying to open a child-resistant closure while under the stress of an angina attach could result in serious consequences; (2) the sublingual form of nitroglycerin previously had been exempted for the same accessibility reasons; (3) the data revealed no reported cases of serious illness or injury to young children accidentally ingesting isosorbide dinitrate.

A search of the most current data sources available to the Commission staff reveals a continued lack of serious illness in young children who have accidentally ingested isosorbide dinitrate. Data from the National Clearinghouse for Poison Control Centers (NCPCC) indicate that of the 322 reported ingestions by children under 5 years of age from 1969 through 1978, 18 children reportedly manifested some symptoms, for which 12 were hospitalized.

Data collected by six poison control centers under contract with the Commission during the years 1976 through 1977 reveal 9 reported ingestions of isosorbide dinitrate by children, with only one case of nausea and vomiting. None of these 9 children was hospitalized. The amounts ingested in these cases ranged from one-half to 23 tablets (the child ingesting 23 tablets (50-55 mg) reportedly did not show any symptoms).

The National Electronic Injury Surveillance System (NEISS) Comment File for 1973 through December, 1979 contains six incidents of children under five years of age ingesting isosorbide dinitrate. All of the children were treated and released from the hospital.

The Commission's consumer complaint files and death certificate files contain no reports associated with isosorbide dinitrate as of February, 1980.

The Commission staff also conducted a toxicological evaluation of isosorbide dinitrate. As was discussed in the proposal document, the Commission staff has assumed that a toxic dose of isosorbide dinitrate would be greater than 1 gram (or greater than 100-10 mg tablets). This assumption is based upon

*A majority of Commissioners—Chairman King and Commissioners Pittle, Statler, and Zagoria—approved issuance of the final exemption. Commissioner Sloan dissented and has issued a separate opinion which is on file in the Office of the Secretary of the Commission.

[1] On November 20, 1974, the Commission published a document in the **Federal Register** (39 FR 40761) issuing an exemption for sublingual and chewable forms of isosorbide dinitrate in dosage strengths of 5 milligrams or less.

the finding that the organic nitrates, such as isosorbide dinitrate and nitroglycerin, are much less active in producing the substance methemoglobin (the increase of which reduces the body's oxygen supply in the blood) than the inorganic nitrites, such as sodium nitrite, which have been studied to a greater extent. (In the literature there is a case in which 130 mg of sodium nitrite caused serious symptoms in a 2-month old child; 450 mg were fatal in a slightly older child. It is estimated that 1 gm of sodium nitrite might be fatal in an adult).

Information available to the Commission indicates that greater than normal levels of methemoglobin have not been detected in patients taking organic nitrates at prescribed dosage strengths. The Commission staff estimates that an extremely high dose of isosorbide dinitrate—considerably higher than any of the reported accidental ingestions by young children—would produce some methemoglobin. However, none of the reported ingestions of this drug indicated symptoms of cyanosis (blueness of the skin). Because this symptom appears at concentrations of 10–15% methemoglobin, and because serious and possibly fatal effects of lack of oxygen do not occur until concentrations of more than 60% methemoglobin are reached, the Commission staff concludes that very low levels of methemoglobin, if any, were formed in the 240 accidental ingestions.

Commission staff investigation further reveals that although the cardiovascular effects of ingesting isosorbide dinitrate can sometimes result in a momentary loss of consciousness until the patient is placed in a reclining position, this symptom also was not observed in any of the cases of accidental ingestion by children.

The Commission solicited the opinion of the Food and Drug Administration (FDA) on the exemption request. Based upon the need for rapid accessibility to the drugs for treatment of angina pectoris and upon the lack of reported substantial hazard to children, FDA concluded that the exemption should be granted.

The Commission also solicited the opinion of its Technical Advisory Committee on Poison Prevention Packaging. Of the 14 members who commented on the petition, 10 members recommended granting the exemption and 4 members recommended denial. The ten members who recommended granting the petition cited the need for rapid access to the medication by angina patients and the lack of evidence of serious illness or injury to young children in cases of accidental ingestion. The four members who recommended denial expressed concern about the cardiovascular effects and toxic potential of isosorbide dinitrate, cited inadequate injury data relating to dosage strengths, and questioned the need for the exemption since alternative dosage forms are available.

### Response to Comment

The Commission received one comment in response to the proposed exemption. The commenter, a physician, argued against granting an exemption for several reasons. First, the commenter stated that the drug has not been proven effective for treating acute angina.

The Commission points out that it is the Food and Drug Administration (FDA), not the Commission, which assesses the efficacy of medications. The Commission is only authorized under the PPPA to consider the packaging of drugs. In this instance, furthermore, the *Physicians' Desk Reference* [1978] states that FDA considers the drug in sublingual and chewable forms to be "probably effective" in treating acute anginal attacks and in oral tablets to be "possibly effective" for relief of acute angina. In addition, the Commission notes that the choice of medication used in therapy is made solely by the physician, based on his or her experience and the medical history of the patient.

The commenter also stated in arguing against an exemption for this drug that patients who require immediate access to the drug can always, under the provisions of the PPPA, obtain it in packaging which is not child resistant. The Commission points out that the fact that a consumer may request conventional packaging when purchasing a prescription drug is not sufficient grounds for denying a petition for exemption. The appropriateness of safety packaging for that product, as well as the toxicity of the product and the risk to young children, should be the primary considerations in determining the merits of an exemption request.

The commenter also asserted that the large quantities of this drug generally dispensed pose a danger to children. The Commission believes that large quantities of the drug, in fact, are not dispensed; physicians generally monitor heart patients frequently, prescribing only enough medication to last between visits. Ives Laboratories conducted a survey of pharmacies in order to examine market patterns for these preparations and determined that the average prescription was 60 tablets. This is below the level of the estimated toxic dose of more than one gram.

Finally, the commenter suggested that the injury data for this particular dosage strength are limited since the preparations have been dispensed only in safety packaging for most of the time period examined. The Commission emphasizes that in its evaluation regarding the risk of injury to young children from these preparations, data for all forms and strengths of isosorbide dinitrate were examined. Information from the National Clearinghouse for Poison Control Centers indicated that the ingestion of 10–10 mg tablets, or 3–40 mg tembids did not produce serious symptoms in the children. The Commission's Contract Data Base contains an ingestion incident of 23 tablets in which no symptoms were observed. Although human oral prescription drugs have been required to be packaged in safety packaging since 1974, the availability of conventional packaging upon request, and the current protocol requirement that up to 20% of the tested children may be able to open a safety package, (and still have it meet the standards) have made it possible for some children to obtain these preparations. However, the data regarding these ingestions do not indicate serious consequences to the children involved.

### Findings

Having considered the petition and the comment on the proposal, human experience data from the National Clearinghouse for Poison Control Centers and the Commission's own resources, as well as medical and scientific literature, and experimental data; and having consulted, pursuant to section 3 of the PPPA, with the Technical Advisory Committee on Poison Prevention Packaging established under section 6 of the act, the Commission finds that isosorbide dinitrate in sublingual and chewable forms in dosage strengths of 10 mg or less does not create such a hazard to children that special packaging is required to protect them from serious personal injury or serious illness resulting from handling, using or ingesting the substance.

### Effective Date

Since this rule grants an exemption, the delayed effective date provisions of the Administrative Procedure Act are inapplicable (5 U.S.C. 553(d)(1)). Accordingly, this exemption becomes effective on October 3, 1980.

### Environmental Considerations

The Commission's interim rules for carrying out its responsibilities under the National Environmental Policy Act (see 16 CFR Part 1021; 42 FR 25494) provide that exemptions to an existing standard which do not alter the principal purpose or effect of the standard normally have no potential for affecting the environment, and environmental review of exemptions from such regulations is, therefore, generally not required. (§ 1021.5(b)(1)). The rules also state that environmental review of rules requiring poison prevention packaging is generally not required. (§ 1021.5(b)(3)).

With respect to this exemption of isosorbide dinitrate from poison prevention packaging, the Commission finds that the rule will have no significant effect on the human environment and that no environmental review is necessary.

### Conclusion and Promulgation

Having considered the petition, the comment on the proposal, and other relevant material, the Commission concludes that the final rule should be adopted as set forth below.

Accordingly, pursuant to the provisions of the Poison Prevention Packaging Act of 1970 (Pub. L. 91–601, sections 2(4), 3, 5, 84 Stat. 1670–72; 15 U.S.C. 1471(4), 1472–1474) and under authority vested in the Commission by the Consumer Product Safety Act (Pub. L. 92–573, section 30(a), 86 Stat. 1231, 12 U.S.C. 2079(a)), the Commission amends 16 CFR 1700.14 by adding a new paragraph (a)(10)(ii) as follows (the introductory portion of paragraph (a)(10), although unchanged, is included for context):

**§ 1700.14 Substances requiring special packaging.**

(a) * * *

(10) *Prescription drugs.* Any drug for human use that is in a dosage form intended for oral administration and that is required by federal law to be dispensed only by or upon an oral or written prescription of a practitioner licensed by law to administer such drug shall be packaged in accordance with the provisions of § 1700.15(a), (b), and (c) except for the following:

* * * * *

(ii) Sublingual and chewable forms of isosorbide dinitrate in dosage strengths of 10 milligrams or less.

Dated: September 30, 1980.

**Sadye E. Dunn,**

*Secretary, Consumer Product Safety Commission.*

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Social Security Administration

### 20 CFR Part 404

### Subpart D—Old-Age, Disability, Dependent's and Survivors' Insurance Benefits; Period of Disability; Correction

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Correction of final rules.

**SUMMARY:** On June 15, 1979, we published in the **Federal Register** (44 FR 34479), final regulations recodifying the rules for entitlement to old-age, disability, dependents', and survivors' insurance benefits and to a period of disability. Since that time we have noted that §§ 404.346(a), 404.355(b), 404.357 and 404.366(b)(1) have caused some confusion and require clarification. Accordingly, we are correcting these four provisions so that they will reflect more completely the prior regulations from which they are derived.

**FOR FURTHER INFORMATION CONTACT:** Mr. Lawrence V. Dudar, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, Maryland 21235, telephone 301–594–6629.

**SUPPLEMENTARY INFORMATION:**

**§ 404.346 [Amended]**

The third sentence of § 404.346(a) formerly read as follows: "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." Since the statutory term "legal impediment" also includes an impediment which results because a previous marriage of the claimant had not ended at the time of the marriage ceremony, we are correcting the definition by revising the third sentence in § 404.346(a) to read as follows:

"A 'legal impediment' includes only an impediment which results because a previous marriage had not ended at the time of the ceremony or because there was a defect in the procedure followed in connection with the intended marriage."

**§ 404.355 [Amended]**

Section 404.355(b) formerly read as follows: "Before your birth, your mother or father entered into a deemed valid marriage with the insured as described in § 404.346." Since this is an overly restrictive statement of the conditions a natural child of the insured must meet to establish his or her relationship to the insured under the deemed married provisions of the Social Security Act, we are correcting § 404.355(b) to read as follows:

"(b) You are the insured's natural child, and the insured and your mother or father went through a ceremony which would have resulted in a valid marriage between them except for a 'legal impediment' described in § 404.346(a)."

**§ 404.357 [Amended]**

The second sentence of § 404.357 formerly read as follows: "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."

Since this is an overly restrictive statement of the conditions a stepchild of the insured must meet to establish his or her relationship to the insured under the deemed married provisions of the Social Security Act, we are correcting the second sentence of § 404.357 to read as follows:

"The marriage between the insured and your parent must be a valid marriage under State law or a marriage which would be valid except for a 'legal impediment' described in § 404.346(a)."

**§ 404.366 [Amended]**

The first two sentences of § 404.366(b)(1) formerly read as follows: "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." Since this does not reflect a provision in the prior regulations which stated that a period of less than 12 months would be considered if during the 12 month period the insured stopped providing at least one-half of the claimant's support, and we did not intend to change this policy in the recodification, we are correcting the first two sentences of § 404.366(b)(1) to read as follows:

"(1) At some point within the 12-month period, the insured either begins or stops providing at least one-half of

your support on a permanent basis and this is a change in the way you had been supported up to then. In these circumstances, the time from the change up to the end of the 12-month period will be considered a reasonable period, unless paragraph (b)(2) of this section applies."

Dated: September 28, 1980.

Robert F. Sermier,
*Acting Deputy Assistant Secretary for Management Analysis and Systems.*

[FR Doc. 80-30901 Filed 10-2-80; 8:45 am]
BILLING CODE 4110-07-M

20 CFR Part 416

[Regulations No. 16]

## Supplemental Security Income for the Aged, Blind, and Disabled

**AGENCY:** Social Security Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** We are rewriting and reorganizing our rules on income under the Supplemental Security Income (SSI) program. These rules describe what is income and what is not income. They explain the difference between earned and unearned income, how we treat each, and the exclusions we apply to each. Our purpose is to make these rules clearer and easier for the public to understand.

**EFFECTIVE DATE:** These regulations are effective October 3, 1980. As applied to redeterminations, the regulations will be effective as of the beginning of the quarter following the redetermination. This will avoid the possibility that beneficiaries could be incorrectly paid because of changes they were not aware of and over which they had no control.

**FOR FURTHER INFORMATION CONTACT:** Rita Hauth, Legal Assistant, Room 4234 West High Rise Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 594-7112.

**SUPPLEMENTARY INFORMATION:** We published the Notice of Proposed Rulemaking (NPRM) covering the recodification of this Subpart K on February 1, 1979. We describe the comments we received and our reactions to them later in this preamble. A number of comments resulted in our making changes in the final regulations.

The NPRM incorporated the provisions of a previous NPRM on the treatment of medical and social services published on September 14, 1978 (43 FR 41054). It also incorporated the provisions of an interim regulation on the one-third reduction rule published on July 7, 1978 (43 FR 29281). Since both rules are included in these final regulations, comments received following their earlier publication are included in this preamble.

A final regulation dealing with major disasters and a final regulation dealing with lost, damaged, or stolen resources were published subsequent to the NPRM on this subpart (44 FR 15663 and 44 FR 15665, published March 15, 1979). Both regulations are incorporated into these final regulations.

We have made this final recodification of Subpart K more descriptive than the NPRM. We have made editorial changes and have rearranged sections to make the rules clearer and easier to follow. In this preamble we discuss the various rules of the subpart under headings similar to those in the regulations. Under each heading we describe significant changes between the NPRM and the final regulations.

### Income—General

In § 416.1100 we give a general introduction to the income subpart. We explain that the amount of an individual's income is an important factor in determining eligibility for and the amount of an SSI benefit.

Section 416.1101 defines terms that are used throughout the subpart. The final regulations change the definition of "institution" from the one given in the NPRM. They state that an "institution" makes treatment or services available to residents. We wish to avoid any possibility that the definition of "institution" will be interpreted to require the furnishing of treatment or services to every resident.

Section 416.1102 explains that, as a general rule, income is anything individuals receive in cash or in kind that can be used to meet their needs for food, clothing, or shelter. Section 416.1103 states what is not income and lists some items that are not income. In the NPRM we added three items to this list—credit life or credit disability insurance payments, money a person borrows or money a person receives in repayment of a loan, and payment of a person's bill by someone else. In these final regulations we have added a fourth item—weatherization of homes. This is consistent with the existing definition of in-kind income since the work and materials furnished are not food, clothing, or shelter and cannot ordinarily be converted into one of these. The growing number of recent Federal and other governmental programs to conserve energy makes it advisable that we specify that weatherization is not income for SSI purposes.

Section 416.1103 also explains when medical care and services and social services are not income. The final regulations change the rules for medical care and services by stating that third party payments for any medical insurance premiums are not income. The NPRM identified only Medicare premiums paid by a third party insurer. The revised definition makes these rules consistent with what we mean by income under SSI.

### Earned Income

The rules dealing with earned income are in §§ 416.1110 through 416.1112. These rules state that earned income is cash wages and net earnings from self-employment. Earned income may be in-kind instead of cash. We explain how we treat these earnings and any net losses which result from self-employment. We describe the types of earned income we do not count (called exclusions) and list them in the order in which they apply.

### Unearned Income

The rules dealing with unearned income are in §§ 416.1120 through 416.1124. All income which is not earned is unearned. Unearned income can be money, it can be food, clothing, or shelter, or it can be something that can be used to get food, clothing, or shelter.

Section 416.1121 lists and explains some types of unearned income and gives a general explanation of in-kind support and maintenance. (In-kind support and maintenance are discussed in greater detail under a later subheading.) In § 416.1123 we explain how we count unearned income. We describe in § 416.1124 the types of unearned income we do not count (exclusions) and list them in the order in which they apply. These final regulations modify one of these listings. The NPRM excluded food raised for home consumption provided that it was not raised as part of a trade or business. The final regulations delete the qualification in the rule about a trade or business. (For more information, see comment No. 14.)

### Countable Income

Countable income affects eligibility for and the amount of a benefit. It is the amount of earned and unearned income left after we subtract all the income that is not counted. Rules for counting income are described under the various sections of this subpart.

**In-Kind Support and Maintenance**

Both earned income and unearned income include items received in kind. We generally value this income at its current market value and the various exclusions for both earned and unearned income apply. However, we use some other rules when we consider unearned income in the form of food, clothing, or shelter (in-kind support and maintenance). Basically, there are two rules for valuing in-kind support and maintenance, the one-third reduction rule and the presumed value rule. These rules are discussed in §§ 416.1130 through 416.1149. The rules have been substantially reorganized since publication of the NPRM in a further effort to make them easier to understand.

We give a general introduction to in-kind support and maintenance in § 416.1130. We define in-kind support and maintenance as any food, clothing, or shelter given to an individual. We further explain that shelter includes a number of things, including room and rent. The final regulations contain a clarifying statement that an individual who pays the amount charged under a business arrangement is not receiving shelter in the form of room and rent.

We describe the one-third reduction rule in §§ 416.1131 and 416.1132. If an individual lives in another person's household and receives both food and shelter from that person, we reduce the individual's Federal benefit rate by one-third as required by law. This is instead of including the actual value of the food and shelter in the individual's unearned income. (An individual does not have to receive clothing for the one-third reduction to apply.)

The presumed value rule is described in § 416.1140. If an individual lives in another person's household but does not receive both food and shelter or receives food, clothing, or shelter in any other living arrangement, we apply the presumed value rule. We presume that these items are worth one-third of his or her Federal benefit rate plus the amount of the general income exclusion, unless the individual can show us that the actual value is less.

We discuss how the presumed value rule applies to persons in certain living arrangements in §§ 416.1141 through 416.1145. Section 416.1142 explains that we do not consider that beneficiaries receive in-kind support and maintenance from other members of a household if all members receive public income-maintenance payments (a public assistance household). The NPRM provided that the rule did not apply whenever there was evidence to the contrary. The final regulations have deleted this limitation in recognition of the fact that other agencies have determined that these individuals need all their income for their own needs.

This same section, for purposes of defining a public assistance household, lists programs that provide public income-maintenance payments. These final regulations make several changes in the list. We have added needs-based payments made by the Veterans Administration. We have broadened the listing covering assistance programs provided by State and local governments. We have added a clarification that tax credits or refunds are not assistance provided by a State or local government. Also, we have updated this list by deleting the Migration and Refugee Assistance Act of 1962 and the Indochina Migration and Refugee Assistance Act of 1975 and adding the Refugee Assistance Act of 1980.

The final regulations add a new § 416.1146 which explains that we do not count as income in-kind support and maintenance received during a month in which an individual is ineligible for a reason other than having too much income. It would be unfair to count in-kind support and maintenance in this situation because it cannot be carried over to another month in the quarter for which the individual receives a payment.

Section 416.1147 describes how we value food, clothing, or shelter for members of a couple. This section incorporates into regulations section 1611(e)(1)(B)(ii) of the Act which deals with how we treat income when one member of a couple is in an institution that receives Medicaid payments on his or her behalf.

Section 416.1149 explains that the one-third reduction rule or the presumed value rule continues to apply during a temporary absence. This section also defines a temporary absence, and gives exceptions to the general rule.

**Disasters**

On April 1, 1977, interim regulations (42 FR 17440) were published to implement Pub. L. 94–331. That law provided for the exclusion of assistance received under the Disaster Relief Act of 1974 or under any other Federal statute on account of a major disaster. It further provided that the value of support and maintenance received by SSI beneficiaries who are forced from their own households as the result of a Presidentially declared major disaster would not be counted as unearned income, and the one-third reduction rule would not apply. However, the law was restricted to disasters which occurred on or after June 1, 1976, and before December 31, 1976.

On November 12, 1977, Pub. L. 95–171 became law. This law extends the above exclusions to major disasters which occur on or after December 31, 1976. In addition, the law provides that interest earned on Federal assistance received on account of a Presidentially declared major disaster is excluded from income for a period of 9 months and that the Secretary can issue regulations to extend the 9-month period for good cause. Final regulations which included the provisions of the interim regulations and implemented Pub. L. 95–171 were published March 15, 1979 (44 FR 15663) and are found in § 416.1150 of this publication.

Final regulations, also published March 15, 1979 (44 FR 15661), provide that cash and in-kind replacement of resources which are lost, damaged, or stolen is not income. Interest earned by funds received to replace or repair the resource is not counted as income for 9 months. An extension of up to an additional 9 months is possible if there is a delay which is beyond the control of the beneficiary. These rules are described in § 416.1151.

**Deeming Income**

When a person applies for or receives SSI, we consider the person's own income, and we also deem (consider to be available to the person) income of the person's ineligible spouse, ineligible parent or the spouse of a parent (if the eligible individual is a child), or an essential person. The rules which explain when we deem income and how we determine the amount of income we deem from an ineligible spouse to an eligible individual are described in § 416.1163. The rules for deeming income from an ineligible parent, or the spouse of a parent, to an eligible child are described in § 416.1165. The rules for deeming income from an essential person to an eligible individual are described in § 416.1168.

We deem income to an eligible individual, or eligible child, because we expect an ineligible spouse, or ineligible parent, in the same household to use part of his or her income to help take care of some of the eligible individual's needs. We deem income of an essential person to an eligible individual because we have increased the benefit of the eligible individual to help provide for the needs of the essential person.

There are certain types of income an ineligible spouse, or ineligible parent, may receive which we do not include when we deem income. These types of income are listed in § 416.1161. These

final regulations expand on the list that was in the NPRM. We have added items so that we now exclude the same types of income for deeming purposes that the statute excludes for SSI beneficiaries. These additions are discussed later in this preamble in our response to comment No. 25.

Before we deem any income from either an ineligible spouse or ineligible parent we set aside (allocate) part of that income to make money available for the needs of each ineligible child. The amount of income we set aside and the way we do it are described in § 416.1163.

In determining the amount of income to be deemed to an eligible child, we also set aside (allocate) some of the parents' income to help meet their own needs. The amount of the parents' income we set aside (allocate) varies depending on the type of income the parents have and is described in § 416.1165.

Sections 416.1163 and 416.1165 include a qualification that was not in the NPRM. The deeming rules now state that there is no allocation for ineligible children or parents who receive public income-maintenance payments. This clarification prevents overlapping of coverage by SSI and other public income-maintenance programs.

Section 416.1167 discusses how a change in a person's living arrangement can affect the deeming of income. This section also explains that we stop deeming income to an eligible child the month after he or she becomes age 18 unless the child is a student. If the child is a student, deeming stops the month after he or she becomes age 21.

The benefit amounts shown in the various examples in these sections have been changed from those shown in the NPRM to show the higher rates that apply because of the July 1, 1980, benefit increase.

### Alternative Income Rules for Certain Blind Individuals

Sections 416.1170 and 416.1171 explain that we count income for certain persons under the rules in this subpart, or under the rules that would have applied under the State plan for October 1972, whichever results in lower countable income.

The alternative income rules apply to persons who receive SSI benefits because they are blind and were transferred to SSI when the program began in January 1974. These persons must have received State assistance payments for the blind for December 1973, under the provisions of the State plan for October 1972, must continue to live in the same State, and must continue to be eligible for SSI benefits. These regulations add a statement that, for purposes of these rules, an "SSI benefit" means a Federal benefit only and does not include any State supplement. This clarification is needed to implement the alternative income rules in a manner consistent with the Act.

In the interests of equity, this definition will have future effect only and will not be applied to any beneficiary who has received the advantage of a broader definition of "SSI benefit" prior to the publication of these regulations.

### Rules for Helping Blind and Disabled Individuals To Achieve Self-Support

Sections 416.1180 through 416.1182 describe the conditions under which we exclude the income and resources that beneficiaries use or set aside to complete an approved plan to become self-supporting. These rules are not new but have been in Subpart Q, Referral for Rehabilitation Services, Other Benefits, Other Services and Assistance. The rules are now being located in this subpart because they concern income.

### Appendix

Some Federal laws other than the Social Security Act exclude certain types of income for SSI purposes. In the NPRM, the various statutes were listed in alphabetical order in the appendix to the regulations. These final regulations list the statutes under headings according to the kind of income they exclude. The final regulations also expand the list to include legislation enacted since publication of the NPRM.

### Comments Received Following Publication of the Notice of Proposed Rulemaking (Published February 1, 1979 (44 FR 6429))

We received comments from various groups including departments of six States, two legal aid groups, an educational center, a developmental disabilities law project, a law reform institute, a center for public interest, and a local government official. All approved the organization and clearer language of the regulations although each raised questions or suggested changes in particular sections. Our responses to the comments follow the order of the sections to which they apply and are under the same headings as in the regulations. Comments that have no specific references are under Miscellaneous.

### Miscellaneous

1. A number of commenters suggested editorial changes to clarify the regulations. We have adopted many and have changed language, rearranged the order of subsections, and added definitions, examples, and cross references. Some commenters believed that the preamble to the NPRM did not identify certain changes of policy. We believe we have identified all policy changes in the preamble. It is possible that the commenters were not aware of revisions that were published in the **Federal Register** subsequent to the April 1978 edition of Volume 20 of the Code of Federal Regulations. Sections 416.1109 and 416.1125 were significantly revised. The new § 416.1109 was published September 14, 1978 (43 FR 41054), and the new § 416.1125 on July 7, 1978 (43 FR 29281).

2. A State commented that these regulations are designed for applicants and beneficiaries and do not give enough direction to States. The regulations are designed for applicants and beneficiaries because they are the ones who are primarily affected by the SSI program. We have, however, tried to use language and give details that make the regulations clear and complete for anyone who uses them.

3. A State has asked that we distinguish between the terms "consider" and "count". We have clarified the discussion of income we count in § 416.1104 and have revised other sections of the regulations to try to eliminate any misunderstanding that arises from use of these terms.

### General

4. The legal aid group questioned § 416.1103(a) and (b) which explain when medical care and services and social services are not income. They believe we have made the revised rules more restrictive. This was not our intent and we have rewritten these provisions to make it clear that the policy has not been changed.

5. The center for public interest raised a question about the rule in § 416.1103(g) which says that a bill paid by a third party is not income, but any food, clothing, or shelter received because of the payment is income. The center asked what happens if a beneficiary purchases an item in one quarter and a third party assumes the debt in a subsequent quarter. We have changed the example in this section to make it clear that the beneficiary receives the in-kind income in the quarter in which the third party pays for the item rather than when the beneficiary purchases it on credit.

6. A State also questioned the rule in § 416.1103(g) that determines how we value donations of in-kind items. The State also believes that our reporting rules, particularly as applied to in-kind

income, discriminate against the beneficiary who is honest and understands the rules. In assigning a value to an in-kind item, we use an amount that represents what the item is worth in the market place. When the value of an item of in-kind support and maintenance is based on an estimate that changes gradually over time, because of inflation for example, we count the new value beginning with the quarter following the quarter in which we revise the estimate. Of course, if we have applied the presumed value to the in-kind support and maintenance, changes in actual values may have no effect.

It is essential in the SSI program that beneficiaries report events which affect their eligibility. This includes the receipt of in-kind income. We explain our reporting rules to the beneficiaries when they apply for benefits and when we make the periodic redeterminations (reviews) required by the Act.

**Earned Income**

7. A State rehabilitation commission suggested that we establish a third type of income, called "Work Incentive Income" or "Rehabilitation Incentive Income", in addition to earned and unearned incomes. Section 1612(a) of the Social Security Act states that income "means both earned and unearned income" and defines each. We have no authority to go beyond the Act and create a new kind of income to which counting rules would not apply.

**Unearned Income**

8. Three commenters suggested that we clarify the section that describes when life insurance is or is not income (§ 416.1121(e)). We have used the language proposed by one of the commenters since it states the rule simply and clearly.

9. The law reform institute and a State suggested that mortgage costs should be deducted from unearned rental income (§ 416.1121(d)) as a necessary expense of obtaining the income. We do not deduct payment on the principal because it increases the owner's equity in the property. However, interest paid on a mortgage is an expense and we do subtract it from rental income. We are treating mortgage payments in SSI the same way that we treat them in the social security insurance programs and the same way Internal Revenue Service treats them for tax purposes.

10. The law reform institute commented that there may be a delay in converting in-kind income into cash and proposed that it should not be counted as income until the cash is received. Counting income in the quarter in which it is received is fair to the majority of beneficiaries. Reporting the disposition of property on a piecemeal basis would be burdensome to both the beneficiary and SSA and invites abuse of the program.

11. A local government official suggested that we should not count as income funds provided by a local government to repair or rehabilitate homes of beneficiaries. This is already possible if the funds meet one of several exclusions, including assistance based on need (§ 416.1124(c)(2)) and income provided to replace or repair resources (§ 416.1151). If the rehabilitation consists of weatherization services and materials it may not be income under § 416.1103(i). Also, we will not count as income assistance provided under any of the Federal statutes listed in Item II(b) of the appendix to this subpart.

12. A legal aid service suggested that a lump sum death benefit (payable under title II of the Act) should not affect an SSI benefit. A lump sum death payment is treated the same as proceeds from a life insurance policy. An individual who receives a lump sum death payment and uses all of it to pay death related expenses does not receive income. The $1,500 limit in the life insurance rule applies if any combination of death benefits exceeds that amount.

13. The service also mentioned that money for fuel received under an emergency fuel program would not qualify as a social service if the money is distributed by a nongovernmental agency and can be used for something other than fuel. Money received under the Emergency Energy Conservation Services Program (listed in the appendix, Item II(a)) is excluded from income for SSI purposes. If assistance for fuel is provided under some other program, another exclusion may apply such as the infrequent or irregular rule described in § 416.1124(c)(6).

14. The educational center commented on the rule that food a beneficiary raises as part of a trade or business and consumes in the home must be counted as income (§ 416.1124(c)(4)). They believe it discriminates against farmers and ranchers. We agree that a farmer who consumes farm produce is in a comparable position to any other individual who consumes produce raised in a home garden. We have, therefore, changed the rule to say that any food raised by a beneficiary or spouse is excluded from income if it is consumed by the household.

15. One State felt that our rule on infrequent or irregular income contradicts other rules that define what is or is not income. We first decide whether something is income. If it is, we look at all the rules which might exclude it from being counted. Thus, shelter or food provided outside of medical confinement by a nongovernmental medical care program is income. However, we do not count it if it fits the infrequent or irregular rule (§ 416.1124(c)(6)).

**In-Kind Support and Maintenance**

16. A State was critical of our treatment of in-kind support and maintenance as income. The comment suggested that by counting in-kind contributions we discourage relatives and others from helping SSI beneficiaries. It is certainly not our intent to discourage in-kind contributions, but the law requires us to count in-kind support and maintenance with certain exceptions.

17. The legal aid group believes that the definition of "shelter" in § 416.1130(b) has been expanded. We have not added to the items that constitute shelter. Previous regulations did not define shelter as such but listed these same shelter items under operating expenses of a household. We believe that spelling out exactly what constitutes shelter is more helpful to beneficiaries than the previous approach.

18. The law reform institute raised three questions about the way we determine whether persons pay pro rata shares of household expenses (§ 416.1133). First, they asked whether persons can be paying pro rata shares if they incur debts that will be repaid after benefits begin. This is possible provided the persons do incur debts to pay their shares (§ 416.1103(f)). Second, the institute believes the law requires us to figure pro rata shares for each calendar quarter rather than monthly amounts averaged over the past 12 months. The law does not specify how we determine average household operating expenses. Using the average of a 12-month period avoids our giving undue weight to temporary or seasonal changes. Third, the institute said this section ignores expenses for clothing. The types of expenses we use to figure whether a person is paying an equal share of household expenses are the basic essentials for operating a household. Clothing is not a household expense.

19. The law reform institute felt that we do not permit application of the $60 per quarter exclusion to in-kind support and maintenance that falls under the presumed value rule in § 416.1140. This is incorrect. The presumed value is subject to the $60 quarterly general exclusion. In addition, the amount of the presumed value can be rebutted if an

individual shows that his or her in-kind support and maintenance actually has a lesser value. The presumed value is simply a dollar amount which we attribute to food, clothing, and shelter. It was established by adding $20 a month (one-third of the $60 quarterly general exclusion) to one-third of the Federal benefit rate because, for an individual with no other income, the resulting SSI benefit is the same he or she would receive under the statutory one-third reduction rule (§ 416.1131).

20. A State and the developmental disabilities law project also commented on § 416.1140. They consider it unfair to apply a presumption that food or clothing or shelter has the same value as all three. We believe the rule is generally fair. First, the presumed value is always subject to rebuttal by a showing that the actual value of the food, clothing, or shelter an individual receives is lower. Second, the rule can work to the advantage of individuals. The presumed value is frequently lower than the market value of the in-kind support and maintenance received. Also, when the presumed value rule applies, the interviewer explains it in money amounts so that individuals understand it and have the opportunity to rebut it.

21. The law reform institute protested that "full support and maintenance" referred to in § 416.1142(a)(1) (now renumbered § 416.1144(a)) should include clothing. The Act permits us to exclude the value of in-kind support and maintenance provided by certain nonprofit institutions to their residents unless the institution has a specific obligation to provide "full support and maintenance." Widespread practice among nonprofit retirement homes indicates that, in nearly every instance, "full support and maintenance" provided by these homes consists of food and shelter, but not clothing. Therefore, to require clothing, in addition to food and shelter, would have the effect of nullifying that part of the statutory requirement.

22. The institute also said that a rehabilitation and educational home should qualify as a nonprofit retirement home or similar institution (§ 416.1142(c), now renumbered § 416.1144). An educational or rehabilitation institution performs very different functions from those of a retirement home and, therefore, does not qualify as one. However, there are rules that help persons who are in rehabilitation and educational homes to learn skills or to overcome a handicap. (Examples: the exclusion covering medical care or services or social services (§ 416.1103 (a) and (b)) and the exclusion for income used to become self-supporting (§§ 416.1112(c)(6) and 416.1124)(11)).)

23. The center also questioned the statement in § 416.1142(a)(2) (now renumbered § 416.1144(a)(3)(ii)) that a prepayment does not constitute a current payment. They consider it unfair to those who pay the costs annually in advance. We have clarified the rule by changing it to read "a prepayment for lifetime care". We believe this makes it clear that the rule applies to the situation where a person turns over all or substantial amounts of assets at admission to a retirement home.

24. The educational center questioned our treatment of handicapped children placed in various kinds of facilities where parents pay some or all of the costs. If a parent or anyone else pays the institution, they are purchasing support and maintenance for the child. We recognize this and apply the presumed value rule explained in § 416.1140. However, if a child is a student attending an educational institution, we usually consider the child to be a member of the parents' household even though temporarily absent. In this situation, we do not apply the presumed value rules but we deem the parents' income to be the child's (§ 416.1167).

**Deeming of Income**

25. In regard to the deeming rule in § 416.1161(a) the institute said they believe the Secretary is required by law to exclude from the income of the ineligible spouse or parent all the kinds of income listed in §§ 416.1103, 416.1112, and 416.1124. Those items listed in § 416.1103 are not income and we do not consider them to be income no matter who receives them. The Social Security Act does not require that all income exclusions for beneficiaries be applied to the income of an ineligible spouse or parent before the income is deemed to a beneficiary. Section 1614(f) of the Act states that we are to deem any income of an ineligible spouse or parent to a beneficiary except to the extent determined by the Secretary to be inequitable.

We have compared the exclusions in §§ 416.1112 and 416.1124 with those in § 416.1161 and find that most of those published in the NPRM were in both parts of the regulations. The $60 general exclusion and the treatment of earned income received as wages or self-employment income are incorporated in the allocation formulas we use. See §§ 416.1163 and 416.1165. The exclusion of support payments from an absent parent can apply only to a child beneficiary not to a spouse or parent. With a few exceptions, the balance of the exclusions in §§ 416.1112 and 416.1124 were listed in § 416.1161 of the NPRM. The exceptions, disaster assistance, irregular or infrequent income, and work expenses of a blind ineligible spouse or parent, have been added in these final regulations.

26. Three commenters proposed changes in the deeming rules as they affect students between ages 18 and 21. Two suggested that all deeming should end at age 18. The third proposed that deeming continue to apply until the student reaches age 22. Section 1614(f) of the Act requires deeming of parental income to "a child under age 21". Thus, the statute gives us no choice other than to apply the deeming rule to students under age 21. We should point out that reaching age 21 stops deeming of parental income but does not stop benefits if the individual continues to meet all eligibility requirements.

27. The center for public interest asked about the rule on deeming that applies to a family that includes both an eligible child and an eligible parent (§ 416.1166). We agree that the deeming rule makes it possible for an ineligible spouse's income to eliminate payment to the eligible individual (parent) yet permit payment to the child. The parent may then lose Medicaid and other benefits. This rule follows our basic principle that members of a couple who live in the same household are generally treated as though both members are eligible for benefits. This rule has been in effect since January 1977 and provides uniformity in the way we treat the income of a couple. It also responds to public concern for greater attention to the needs of blind and disabled children. We are currently reevaluating this and other deeming rules. Any changes will be published with a notice of proposed rulemaking and an opportunity for public comment.

28. The law reform institute questioned our use of the term Federal Benefit Rate in several sections that explain the deeming rules. They believe the term differs from the one formerly used, Standard Payment Amount. The two terms have the same meaning. We no longer use Standard Payment Amount because it did not clearly identify that it meant the Federal benefit only. The Standard Payment Amount did not include any State supplements.

**Comments on Notice of Proposed Rulemaking "Medical and Social Services" (Published September 14, 1978 (43 FR 41054))**

We received comments from State agencies, church groups, legal services

groups, associations that serve the handicapped, and a number of students from a university. Many approved some or all of the provisions of the regulations. Some raised questions or suggested further changes. Our discussion of these comments follows.

1. Several commenters suggested that we expand these regulations (now located in § 416.1103(a) and (b)) to exclude any assistance from nongovernmental medical and social services programs. We believe it is inappropriate to do this by regulations. Governmental programs are designed to meet specific problems or needs and are authorized by legislation. Nongovernmental programs are not subject to the same controls. Moreover, legislation that would have created an income exclusion for all assistance provided by private nonprofit organizations has been introduced in Congress on three separate occasions and failed to be enacted. Only one exclusion along these lines has been enacted, and it is limited to in-kind support and maintenance given to certain residents of private nonprofit institutions.

2. One commenter felt that the proposed amendments will increase the cost of the SSI program because sources of income presently causing reduction of payments will no longer be counted. The commenter believed that the rule covering room and board in a medical facility will prevent us from applying the $25 benefit rate for individuals who are in a facility where Medicaid pays more than 50 percent of the costs. This will not be the effect of the proposed rules. The statutory rule for reduced payment to individuals in Medicaid facilities will continue to apply regardless of other rules for determining what is income.

3. One commenter stated that the proposed amendments are too liberal and that some persons will be content to receive benefits rather than seek employment or other means of support. We do not agree. Governmental programs for medical care and services and social services will not satisfy a person's basic needs for food, clothing, and shelter on a continuing basis.

4. Several commenters felt that providing an exclusion for room and board furnished by governmental social services programs is a duplication of benefits. SSI payments are provided to meet continuing basic needs. The expenditure of public funds under other governmental programs is assumed to be consistent with the purpose and requirements of those other programs and their legislative authorizations. That is, room and board are provided only when necessary to make medical care or social services available to a person, and not to replace the ongoing needs of food, clothing, and shelter covered by the SSI program.

5. Several commenters objected to these rules because they considered that the rules have an adverse effect on social security retirement, survivors, and disability insurance programs and funding. These rules have no effect on the social security insurance programs and, as a consequence, no effect on the funding for those programs.

6. Some commenters were concerned about local administration of these programs. They believe these regulations are not sufficiently detailed to provide guidance to social security office employees and to State employees who are in direct contact with those who receive and furnish services. These regulations provide the basic rules but operating manuals and training programs expand on the basic rules in considerable detail. The manuals are available in local offices for those who wish to review them.

**Comments on Interim Regulations "Unearned Income, One-Third Reduction for Living in Another Person's Household" (Published July 7, 1978 (43 FR 29281))**

We received comments from two legal services groups and a human relations group after publication of these interim regulations. All were concerned with various aspects of the one-third reduction rule. Our responses to the comments follow.

1. One commenter stated that the one-third reduction provision (now located in § 416.1131) was callous and short-sighted and urged that this policy be ended. Elimination of the one-third reduction policy is beyond the scope of these regulations since it is specifically required by the Social Security Act.

2. Two commenters were critical of the pro rata share method of determining whether a person is living in his or her own household. (This provision is now located in § 416.1133.) One was concerned that most households would not be able to furnish evidence of their expenses for the preceding 12 months and that this would be a situation over which the eligible individual would have no control, particularly if he or she recently moved into the household. The other commenter was concerned about a householder's refusing to cooperate with us in providing a statement of total household expenses.

This commenter also stated that the pro rata share concept is not always fair to persons. He cited two examples—one in which an individual's pro rata share fluctuated because others moved in and out of the household. The other example cited was one in which an SSI beneficiary paid $15 less toward household expenses than her sister because she occupied the smaller of the 2 bedrooms in the apartment.

The requirement that household expenses be documented can be met on the basis of the best evidence that the person can provide. We realize that neither the householder nor the person can always produce written evidence of the actual household expenses. In some circumstances, the best evidence available may be an estimate of average weekly expenditures for food or of average monthly utility bills. The time period used for averaging household operating expenses in determining whether a person is paying his or her pro rata share is the 12-month period prior to the determination or redetermination of eligibility or the number of months that the household arrangement has existed, whichever is less.

We recognize that persons who apply for benefits sometimes have problems securing the cooperation of those with whom they share a household to help establish a pro rata share. For that reason, it is our policy to provide all possible assistance to help to establish the facts. Frequently, the other persons think they are helping applicants by withholding information and will cooperate when they understand they are really disadvantaging applicants.

Shifting household compositions can be a problem for beneficiaries. However, we must recognize that when persons are not paying a full pro rata share they are receiving support and maintenance from others.

Finally, the pro rata share concept depends on each member paying an equal share of all household expenses. Otherwise, we would be forced to get into such personal and subjective details as sleeping space, eating habits, and use of other facilities.

3. One commenter felt that the community rate concept should be reinstituted as an alternative to the pro rata share approach for determining whether an individual was living in his or her own household. The community rate was an arbitrary standard that represented the value of room and board in a geographic area. Our experience shows that the amount derived under the community rate policy was frequently greater or less than the actual value of room and board received. We believe the policy was unfair to many and that it would be inequitable to return to it.

4. One commenter was critical of the one-third reduction provision on the basis that many persons cannot understand the rules and rationale for the provision and may be faced with an overpayment problem because of failure to report changes in household composition. We inform all persons who file for benefits that they must report to us their income, resources, household composition, location, or marital status as a change in any of these can affect their eligibility and benefit amounts. Moreover, after determinations or redeterminations we notify the persons in writing and remind them of their continuing responsibility to report any changes in their circumstances which may affect eligibility or benefit amounts.

The proposed regulations with these changes are adopted as shown below.

(Catalog of Federal Domestic Assistance Program No. 13.807, Supplemental Security Income Program)

Dated: June 3, 1980.

William J. Driver,

*Commissioner of Social Security.*

Approved: September 29, 1980.

Patricia Roberts Harris,

*Secretary of Health and Human Services.*

Subpart K of Part 416 of Chapter III of Title 20 of the Code of Federal Regulations is revised to read as follows:

**Subpart K—Income**

General

Sec.
416.1100 Income and SSI eligibility.
416.1101 Definition of terms.
416.1102 What is income.
416.1103 What is not income.
416.1104 Income we count.

Earned Income

416.1110 What is earned income.
416.1111 How we count earned income.
416.1112 Earned income we do not count.

Unearned Income

416.1120 What is unearned income.
416.1121 Types of unearned income.
416.1123 How we count unearned income.
416.1124 Unearned income we do not count.

In-Kind Support and Maintenance

416.1130 Introduction.
416.1131 The one-third reduction rule.
416.1132 What we mean by "living in another person's household."
416.1133 What is a pro rata share of household operating expenses.
416.1140 The presumed value rule.
416.1141 When the presumed value rule applies.
416.1142 If you live in a public assistance household.
416.1143 If you live in a noninstitutional care situation.
416.1144 If you live in a nonprofit retirement home or similar institution.
416.1145 How the presumed value rule applies in a nonmedical for-profit institution.

In-Kind Support and Maintenance in Special Circumstances

416.1146 How we value in-kind support and maintenance when you are ineligible for part of a quarter.
416.1147 How we value in-kind support and maintenance for a couple.
416.1148 If you have both in-kind support and maintenance and income that is deemed to you.

Temporary Absence

416.1149 What is a temporary absence from your living arrangement.

Disasters

416.1150 How we treat income received because of a major disaster.
416.1151 How we treat the repair or replacement of lost, damaged, or stolen resources.

Deeming of Income

416.1160 What is deeming.
416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.
416.1163 How we deem income to you from your ineligible spouse.
416.1165 How we deem income to you from your ineligible parent.
416.1166 How we deem income to you and your eligible child from your ineligible spouse.
416.1167 When a change in status affects the use of deeming rules.
416.1168 How we deem income to you from your essential person.
416.1169 When we stop deeming income from an essential person.

Alternative Income Counting Rules for Certain Blind Individuals

416.1170 General.
416.1171 When the alternative rules apply.

Rules for Helping Blind and Disabled Individuals Achieve Self-Support

416.1180 General.
416.1181 What a plan to achieve self-support is.
416.1182 When we begin to count the income excluded under the plan.

Appendix—List of types of income excluded under the SSI program as provided by Federal laws other than the Social Security Act.

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act as amended; Sec. 211 of Pub. L. 93–66; 49 Stat. 647 as amended, 86 Stat. 1466, 86 Stat. 1468, 86 Stat. 1470, 86 Stat. 1471, 86 Stat. 1475, 87 Stat. 154; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383.

## Subpart K—Income

### General

#### § 416.1100 Income and SSI eligibility.

You are eligible for supplemental security income (SSI) benefits if you are an aged, blind, or disabled person who meets the requirements described in Subpart B and who has limited income and resources. Thus, the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits and the amount of your benefit. Generally, the more income you have the less your benefit will be. If you have too much income you are not eligible for a benefit. However, we do not count all of your income to determine your eligibility and benefit amount. We explain in the following sections how we treat your income for the SSI program. These rules apply to the Federal benefit and to any optional State supplement paid by us on behalf of a State (§ 416.2025). While this subpart explains generally how we count income, Subpart D of these regulations explains how we compute your benefit.

#### § 416.1101 Definition of terms.

As used in this subpart—

"Child" means someone who is not married, is not the head of a household, and is either under age 18 or is under age 22 and a student. (See § 416.1050)

"Couple" means an eligible individual and his or her eligible spouse.

"Current market value" means the price of an item on the open market in your locality.

"Federal benefit rate" means the quarterly payment rate (or the monthly rate if appropriate under Subpart D) for an eligible individual or couple. It is the figure from which we subtract countable income to find out how much your Federal SSI benefit should be. The Federal benefit rate does not include the rate for any State supplement paid by us on behalf of a State.

"Institution" means an establishment which makes available some treatment or services beyond food and shelter to four or more persons who are not related to the proprietor. (See § 416.231(b))

"Spouse" means someone who lives with another person as that person's husband or wife. (See §§ 416.1001–416.1041)

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

"You" or "Your" means a person who is applying for, or already receiving, SSI benefits.

#### § 416.1102 What is income.

Income is anything you receive in cash or in kind that you can use to meet your needs for food, clothing, or shelter. In-kind income is not cash, but is actually food, clothing, or shelter, or something you can use to get one of these.

**§ 416.1103 What is not income.**

Some things you receive are not income because you cannot use them as food, clothing, or shelter, or use them to obtain food, clothing, or shelter. In addition, what you receive from the sale or exchange of your own property is not income; it remains a resource. The following are some items that are not income:

(a) *Medical care and services.* Medical care and services are not income if they are any of the following:

(1) Given to you free of charge or paid for directly to the provider by someone else;

(2) Room and board you receive during a medical confinement;

(3) Assistance provided in cash or in kind (including food, clothing, or shelter) under a Federal, State, or local government program, whose purpose is to provide medical care or services (including vocational rehabilitation);

(4) In-kind assistance (except food, clothing, or shelter) provided under a nongovernmental program whose purpose is to provide medical care or medical services;

(5) Cash provided by any nongovernmental medical care or medical services program or under a health insurance policy (except cash to cover food, clothing, or shelter) if the cash is either:

(i) Repayment for program-approved services you have already paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

*Example:* If you have paid for prescription drugs and get the money back from your health insurance, the money is not income.

(6) Direct payment of your medical insurance premiums by anyone on your behalf.

(b) *Social services.* Social services are not income if they are any of the following:

(1) Assistance provided in cash or in kind (but not received in return for a service you perform) under any Federal, State, or local government program whose purpose is to provide social services including vocational rehabilitation (Example: Cash given you by the Veterans Administration to purchase aid and attendance);

(2) In-kind assistance (except food, clothing, or shelter) provided under a nongovernmental program whose purpose is to provide social services; or

(3) Cash provided by a nongovernmental social services program (except cash to cover food, clothing, or shelter) if the cash is either:

(i) Repayment for program-approved services you already have paid for; or

(ii) A payment restricted to the future purchase of a program-approved service.

*Example:* If you are unable to do your own household chores and a private social services agency provides you with cash to pay a homemaker the cash is not income.

(c) *Receipts from the sale, exchange, or replacement of a resource.* Receipts from the sale, exchange, or replacement of a resource are not include but are resources that have changed their form. This includes any cash or in-kind item that is provided to replace or repair a resource (see Subpart L) that has been lost, damaged, or stolen. Sections 416.1150 and 416.1151 discuss treatment of receipts to replace or repair a resource following a major disaster or following some other event causing damage or loss of a resource.

*Example:* If you sell your automobile, the money you receive is not income; it is another form of a resource.

(d) *Income tax refunds.* Any amount refunded on income taxes you have already paid is not income.

(e) *Payments by credit life or credit disability insurance.* Payments made under a credit life or credit disability insurance policy on your behalf are not income.

*Example:* If a credit disability policy pays off the mortgage on your home after you become disabled in an accident, we do not consider either the payment or your increased equity in the home to be income.

(f) *Proceeds of a loan.* Money you borrow or money you receive as repayment of a loan is not income. However, interest you receive on money you have lent is income. Buying on credit is treated as though you were borrowing money and what you purchase this way is not income.

(g) *Bills paid for you.* Payment of your bills by someone else directly to the supplier is not income. However, we count the value of anything you receive because of the payment if it is in-kind income as defined in § 416.1102.

*Examples:* If your daughter uses her own money to pay the grocer to provide you with food, the payment itself is not your income because you do not receive it. However, because of your daughter's payment, the grocer provides you with food; the food is in-kind income to you. Similarly, if you buy clothing on credit and your son later pays the bill, the payment to the store is not income to you but the clothing is in-kind income to you. In this example, if your son pays for the clothing in a quarter after the quarter of purchase, we will count the in-kind income to you in the quarter in which he pays the bill. On the other hand, if your brother pays a lawn service to mow your grass, the payment is not income to you because the mowing cannot be used to meet your needs for food, clothing, or shelter. Therefore, it is not in-kind income as defined in § 416.1102.

(h) *Replacement of income you have already received.* If income is lost, destroyed, or stolen and you receive a replacement, the replacement is not income.

*Example:* If your paycheck is stolen and you get a replacement check, we count the first check as income. The replacement check is not income.

(i) *Weatherization assistance.* Weatherization assistance (Examples: insulation, storm doors and windows) is not income.

**§ 416.1104 Income we count.**

We have described generally what income is and is not for SSI purposes (§ 416.1103). There are different types of income, earned and unearned, and we have rules for counting each. The earned income rules are described in §§ 416.1110 through 416.1112 and the unearned income rules are described in §§ 416.1120 through 416.1124. One type of unearned income is in-kind support and maintenance (food, clothing, or shelter). The way we value it depends on your living arrangement. These rules are described in §§ 416.1130 through 416.1146. In some situations we must consider the income of certain people with whom you live as available to you and part of your income. These rules are described in §§ 416.1160 through 416.1169. We use all of these rules to determine the amount of your countable income—the amount that is left after we subtract what is not income or is not counted.

**Earned Income**

**§ 416.1110 What is earned income.**

Earned income is what you receive as wages or as net earnings from self-employment. Earned income may be in cash or in-kind.

(a) *Wages.* Wages are what you receive (before any deductions) for working as someone else's employee. Wages are the same for SSI purposes as for the earnings test in the social security retirement program. (See § 404.429(c) of this chapter.) Wages include salaries, commissions, bonuses, severance pay, and any other special payments received because of your employment. They may also include the value of food, clothing, or shelter, or other items provided instead of cash. We refer to this as in-kind earned income. However, if you are a domestic or agricultural worker, the law requires us to treat your in-kind pay as unearned income.

(b) *Net earnings from self-employment.* Net earnings from self-

employment are your gross income from any trade or business that you operate, less allowable deductions for that trade or business. Net earnings also include your share of profit or loss in any partnership to which you belong. These are the same net earnings that we would count under the social security retirement insurance program and that you would report on your Federal income tax return. (See § 404.1050 of this chapter.)

**§ 416.1111 How we count earned income.**

(a) *Wages.* We count wages at the earliest of the following points: when you receive them or when they are credited to your account or set aside for your use. We determine wages for each calendar quarter.

(b) *Net earnings from self-employment.* We count net earnings from self-employment on a taxable year basis. However, we divide the total of these earnings equally among the quarters in the taxable year to get your earnings for each calendar quarter. For example, if your net earnings for a taxable year are $2,000, we consider that you received $500 in each quarter. If you have net losses from self-employment, we divide them over the taxable year in the same way, and we deduct them only from your other earned income.

(c) *In-kind earned income.* We use the current market value of in-kind earned income for SSI purposes. (See § 416.1101 for a definition of current market value.) If you receive an item that is not fully paid for and are responsible for the unpaid balance, only the paid-up value is income to you. (See the example in § 416.1123(c))

**§ 416.1112 Earned income we do not count.**

(a) *General.* While we must know the source and amount of all of your earned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your income in the calendar quarter. We never reduce your earned income below zero or apply any unused earned income exclusion to unearned income.

(b) *Other Federal laws.* Some Federal laws other than the Social Security Act provide that we cannot count some of your earned income for SSI purposes. We list the laws and exclusions in the appendix to this subpart which we update periodically.

(c) *Other earned income we do not count.* We do not count as earned income—

(1) Up to $30 of earned income in a calendar quarter if you receive it infrequently or irregularly, that is, if you receive it only once during the quarter or if you cannot reasonably expect to receive it. If the total amount of infrequent or irregular earned income you receive in a quarter exceeds $30, we cannot use this exclusion;

(2) Up to $1,200 of earned income in a calendar quarter, but no more than $1,620 in a calendar year, if you are a blind or disabled child who is a student regularly attending school as described in § 416.1060;

(3) Any portion of the $60 quarterly exclusion in § 416.1124(c)(10) which has not been excluded from your unearned income in that same quarter;

(4) $195 plus one-half of your remaining earned income in a calendar quarter;

(5) Earned income used to meet any expenses reasonably attributable to the earning of the income, if you are blind and under age 65 or if you receive SSI as a blind person for the month before you reach age 65. (We consider that you "reach" a certain age on the day before that particular birthday.); and

(6) Any earned income you receive and use to fulfill an approved plan to achieve self-support if you are blind or disabled. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this exclusion applies.

## Unearned Income

**§ 416.1120 What is unearned income.**

Unearned income is all income that is not earned income. We describe some of the types of unearned income in § 416.1121. We consider all of these items as unearned income, whether you receive them in cash or in kind.

**§ 416.1121 Types of unearned income.**

Some types of unearned income are—

(a) *Annuities, pensions, and other periodic payments.* This unearned income is usually related to prior work or service. It includes, for example, private pensions, social security benefits, disability benefits, veterans benefits, worker's compensation, railroad retirement annuities and unemployment insurance benefits.

(b) *Alimony and support payments.* For SSI purposes, alimony and support payments are cash or in-kind contributions to meet some of all of a person's needs for food, clothing, or shelter. Support payments may be made voluntarily or because of a court order. Alimony (sometimes called "maintenance") is an allowance made by a court from the funds of one spouse to the other spouse in connection with a suit for separation or divorce.

(c) *Dividends, interest, and royalties.* Dividends and interest are returns on capital investments, such as stocks, bonds, or savings accounts. Royalties are payments to the holder of a copyright or patent. Royalties may also be paid to the owner of a mine, oil well, timber tract, or other resource, for extraction of a product. (See § 416.1110(b) if you receive this type of income as part of your trade or business.)

(d) *Rents.* Rents are payments you receive for the use of real or personal property such as land, housing, or machinery. We deduct from rental payments your ordinary and necessary expenses in the same taxable year. These include only those expenses necessary for the production or collection of the rental income and they must be deducted when paid, not when they are incurred. Some examples of deductible expenses are interest on debts, State and local taxes on real and personal property and on motor fuels, general sales taxes, and expenses of managing or maintaining the property. (Sections 163, 164, and 212 of the Internal Revenue Code of 1954 and related regulations explain this in more detail.) We do not consider depreciation or depletion of property a deductible expense. (See § 416.1110(b) for rules on rental income that is earned from self-employment. For example, you may be in the business of renting properties.)

(e) *Proceeds of life insurance policy.* We count payments you get as a beneficiary of a life insurance policy except for any amount up to $1,500 that you spend on the insured's last illness and burial expenses. Illness and burial expenses include related hospital and medical expenses, funeral, burial plot, and interment expenses, and other related costs.

*Example:* If you receive $2,000 from your uncle's life insurance policy and you spend $900 on his last illness and burial expenses, the balance, $1,100, is unearned income. If you spend the entire $2,000 for the last illness and burial, $500 is unearned income to you because of the $1,500 limit in the rule.

(f) *Prizes and awards.* A prize is generally something you win in a contest, lottery or game of chance. An award is usually something you receive as the result of a decision by a court, board of arbitration, or the like.

(g) *Gifts and inheritances.* A gift is something you receive which is not repayment to you for goods or services you provided and which is not given to you because of a legal obligation on the

giver's part. An inheritance is something that comes to you as the result of someone's death. It can be in cash or in kind, including any right in real or personal property.

(h) *Support and maintenance in kind.* This is food, clothing, or shelter furnished to you. Our rules for valuing this income depend on your living arrangement. We use one rule if you are living in the household of a person who provides you with both food and shelter. We use different rules for other situations where you receive food, clothing, or shelter. We discuss all of the rules in §§ 416.1130 through 416.1147.

**§ 416.1123 How we count unearned income.**

(a) *When we count unearned income.* We count unearned income at the earliest of the following points: when you receive it or when it is credited to your account or set aside for your use. We determine your unearned income for each calendar quarter.

(b) *Amount considered as income.* We determine the amount of your unearned income by subtracting from each item of unearned income the expenses you had in getting the income. For example, if you are paid for damages you receive in an accident, we subtract from the amount of payment, your medical, legal, or other expenses connected with the accident. Also, if you receive a retroactive check from a benefit program other than SSI, legal fees connected with the claim are subtracted. We do not subtract from any taxable unearned income the part you have to use to pay personal income taxes. The payment of taxes is not an expense you have in getting income. In certain situations, we may consider someone else's income to be available to you, whether or not it actually is. (For the rules on this process, called deeming, see §§ 416.1160 through 416.1169).

(c) *In-kind income.* We use the current market value (defined in § 416.1101) of in-kind unearned income to determine its value for SSI purposes. We describe some exceptions to this rule in §§ 416.1131 through 416.1147. If you receive an item that is not fully paid for and are responsible for the balance, only the paid-up value is income to you.

*Example:* You are given a $1500 automobile but must pay the $1000 due on it. You are receiving income of $500.

**§ 416.1124 Unearned income we do not count.**

(a) *General.* While we must know the source and amount of all of you unearned income for SSI, we do not count all of it to determine your eligibility and benefit amount. We first exclude income as authorized by other Federal laws (see paragraph (b) of this section). Then we apply the other exclusions in the order listed in paragraph (c) of this section to the rest of your unearned income in the calendar quarter. We never reduce your unearned income below zero or apply any unused unearned income exclusion to earned income except for the $60 general exclusion described in paragraph (c)(10) of this section.

(b) *Other Federal laws.* Some Federal laws other than the Social Security Act provide that we cannot count some of your unearned income for SSI purposes. We list the laws and the exclusions in the appendix to this subpart which we update periodically.

(c) *Other unearned income we do not count.* We do not count as unearned income—

(1) Any public agency's refund of taxes on real property or food;

(2) Assistance based on need which is wholly funded by a State or one of its political subdivisions. (For purposes of this rule, an Indian tribe is considered a political subdivision of a State.) Assistance is based on need when it is provided under a program which uses the amount of your income as one factor to determine your eligibility. Assistance based on need includes State supplementation of Federal SSI benefits as defined in Subpart T of this part but does not include payments under a Federal/State grant program such as Aid to Families with Dependent Children under title IV–A of the Social Security Act;

(3) Any portion of a grant, scholarship, or fellowship used for paying tuition, fees, or other necessary educational expenses. However, we do count any portion set aside or actually used for food, clothing, or shelter;

(4) Food which you or your spouse raise if it is consumed by you or your household;

(5) Assistance received under the Disaster Relief Act of 1974 and assistance provided under any Federal statute because of a catastrophe which the President of the United States declares to be a major disaster. See § 416.1150 for a more detailed discussion of this assistance, particularly the treatment of in-kind support and maintenance received as the result of a major disaster;

(6) Up to $60 of unearned income in a calendar quarter if you receive it infrequently or irregularly; that is, if you receive it only once during the quarter or if you cannot reasonably expect to receive it. If the total amount of infrequent or irregular unearned income you receive in a quarter exceeds $60, we cannot use this exclusion;

(7) Periodic payments make by a State under a program established before July 1, 1973, and based solely on your length of residence and attainment of age 65;

(8) Payments for providing foster care to an ineligible child who was placed in your home by a public or private nonprofit child placement or child care agency;

(9) One-third of support payments made to or for you by an absent parent if you are a child;

(10) The first $60 (or proportionately less for less than a full quarter) of any unearned income in a calendar quarter other than income based on need. Income based on need is a benefit that uses the amount of your income as a factor to determine your eligibility. The $60 exclusion does not apply to a benefit based on need that is totally or partially funded by the Federal government or by a nongovernmental agency. (However, assistance which is based on need and funded wholly by a State or one of its political subdivisions is excluded totally from income as described in § 416.1124(c)(2).) If you receive less than $60 of unearned income in a quarter and you have earned income in that quarter, we will use the rest of the $60 exclusion to reduce the amount of your countable earned income; and

(11) Any unearned income you receive and use to fulfill an approved plan for achieving self-support, if you are blind or disabled. See §§ 416.1180 through 416.1182 for an explanation of plans to achieve self-support and for the rules on when this income exclusion applies.

**In-Kind Support and Maintenance**

**§ 416.1130 Introduction.**

(a) *General.* Both earned income and unearned income include items received in kind (§ 416.1102). Generally we value in-kind items at their current market value and we apply the various exclusions for both earned and unearned income. However, we have special rules for valuing food, clothing, or shelter that is received as unearned income (in-kind support and maintenance). This section and the ones that follow discuss these rules.

(b) *How we define in-kind support and maintenance.* In-kind support and maintenance means any food, clothing, or shelter that is given to you or that you receive because someone else pays for it. Shelter includes room, rent, mortgage payments, real property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection services. You are not receiving in-kind support and maintenance in the form of room or rent

if you are paying the amount charged under a business arrangement.

(c) *How we value in-kind support and maintenance.* Essentially, we have two rules for valuing the in-kind support and maintenance which we must count. The one-third reduction rule applies if you are living in the household of a person who provides you with both food and shelter (§§ 416.1131 through 416.1133). The presumed value rule applies in all other situations where you are receiving countable in-kind support and maintenance (§§ 416.1140 through 416.1145). In some living arrangements, if certain conditions exist, we do not count in-kind support and maintenance. These are discussed in §§ 416.1141 through 416.1145. Also, we apply special rules when members of a couple have different living arrangements (§ 416.1147).

**§ 416.1131 The one-third reduction rule.**

(a) *What the rule is.* Instead of determining the actual dollar value of in-kind support and maintenance, we reduce the Federal benefit rate by one-third if you (or you and your eligible spouse)—

(1) Live in another person's household (see § 416.1132) for a full calendar month except for temporary absences (see § 416.1149), and

(2) Receive both food and shelter from the person in whose household you are living. (If you do not receive both food and shelter from this person, see § 416.1140.)

(b) *How we apply the one-third reduction rule.* The one-third reduction is a flat reduction of your Federal benefit rate. It applies in full or not at all. When you are living in another person's household, and the one-third reduction rule applies, we do not apply any income exclusions to the reduction amount. However, we do apply appropriate exclusions to any other earned or unearned income you receive. If you have an eligible spouse we apply the rules described in § 416.1147.

(c) *If you receive other support and maintenance.* If the one-third reduction rule applies to you, we do not count any other in-kind support and maintenance you receive.

**§ 416.1132 What we mean by "living in another person's household".**

(a) *Household.* For purposes of this subpart, we consider a household to be a personal place of residence. A commercial establishment such as a hotel or boarding house is not a household but a household can exist within a commercial establishment. If you live in a commercial establishment, we do not automatically consider you to be a member of the household of the proprietor. You may, however, live in the household of a roomer or boarder within the hotel or boarding house. An institution is not a household and a household cannot exist within an institution. (Institution is defined in § 416.1101.)

(b) *Another person's household.* You live in another person's household if paragraph (c) of this section does not apply and if the person who supplies the support and maintenance lives in the same household and is not—

(1) Your spouse (as defined in § 416.1005);

(2) A minor child; or

(3) An ineligible person (your spouse, parent, or essential person) whose income may be deemed to you as described in §§ 416.1160 through 416.1169.

(c) *Your own household—not another person's household.* You are not living in another person's household (you live in your own household) if—

(1) You (or your spouse who lives with you or any person whose income is deemed to you) have an ownership interest or a life estate interest in the home;

(2) You (or your spouse who lives with you or any person whose income is deemed to you) are liable to the landlord for payment of any part of the rental charges;

(3) You live in a noninstitutional care situation as described in § 416.1143;

(4) You pay at least a pro rata share of household operating expenses (see § 416.1133); or

(5) All members of the household receive public income—maintenance payments (§ 416.1142).

**§ 416.1133 What is a pro rata share of household operating expenses.**

(a) *General.* If you pay your pro rata share toward monthly household operating expenses, you are living in your own household are not receiving in-kind support and maintenance from anyone else in the household. The one-third reduction, therefore, does not apply to you. (If you are receiving food, clothing, or shelter from someone outside the household, we value it under the rule in § 416.1140).

(b) *How we determine a pro rata share.* Your pro rata share of household operating expenses is the average monthly household operating expenses (based on a reasonable estimate if exact figures are not available) divided by the number of people in the household, regardless of age.

(c) *Average household operating expenses.* Household operating expenses are the household's total monthly expenditures for food, rent, mortgage, property taxes, heating fuel, gas, electricity, water, sewerage, and garbage collection service. (The term does not include the cost of these items if someone outside the household pays for them.) Generally, we average household operating expenses over the past 12 months to determine a pro rata share.

**§ 416.1140 The presumed value rule.**

(a) *How we apply the presumed value rule.* (1) When you receive in-kind support and maintenance and the one-third reduction rule does not apply, we use the presumed value rule. Instead of determining the actual dollar value of any food, clothing, or shelter you receive, we presume that it is worth a maximum value. This maximum value is one-third of your Federal benefit rate plus the amount of the general income exclusion described in § 416.1124(c)(10). We use this amount because, if you have no other income, it will give you the same Federal benefit you would receive under the one-third reduction rule.

(2) The presumed value rule allows you to show that your in-kind support and maintenance is not equal to the presumed value. We will not use the presumed value if you show us that—

(i) The current market value of any food, clothing, or shelter you receive, minus any payment you make for them, is lower than the presumed value; or

(ii) The actual amount someone else pays for your food, clothing, or shelter is lower than the presumed value.

(b) *How we determine the amount of your unearned income under the presumed value rule.* (1) If you choose not to question the use of the presumed value, or if the presumed value is less than the actual value of the food, clothing, or shelter you receive, we use the presumed value to figure your unearned income.

(2) If you show us, as provided in paragraph (a)(2) of this section, that the presumed value is higher than the actual value of the food, clothing, or shelter you receive, we use the actual amount to figure your unearned income.

**§ 416.1141 When the presumed value rule applies.**

The presumed value rule applies whenever we must count in-kind support and maintenance as unearned income and the one-third reduction rule does not apply. This means that the presumed value rule applies if you are living—.

(a) In another person's household (as described in § 416.1132(b)) but not

receiving both food and shelter from that person;

(b) In your own household (as described in § 416.1132(c)). For exceptions, see § 416.1142 if you are in a public assistance household and § 416.1143 if you are in a noninstitutional care situation;

(c) In a nonmedical institution including any—

(1) Public nonmedical institution if you are there for less than a full calendar month;

(2) Public or private nonprofit educational or vocational training insitution:

(3) Private nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. For exceptions, see § 416.1144; and

(4) For-profit institution where someone else pays for your support and maintenance. If you or the institution pay for it, see § 416.1145.

**§ 416.1142 If you live in a public assistance household.**

(a) *Definition.* A public assistance household is one in which every member receives some kind of public income-maintenance payments. These are payments made under—

(1) Title IV–A of the Social Security Act (Aid to Families with Dependent Children);

(2) Title XVI of the Social Security Act (SSI, including federally administered State supplements and State administered mandatory supplements);

(3) The Refugee Act of 1980 (Those payments based on need);

(4) The Disaster Relief Act of 1974;

(5) General assistance programs of the Bureau of Indian Affairs;

(6) State or local government assistance programs based on need (tax credits or refunds are not assistance based on need), and

(7) U.S. Veterans Administration programs (those payments based on need).

(b) *How the presumed value rule applies.* If you live in a public assistance household, we consider that you are not receiving in-kind support and maintenance from members of the household. In this situation, we use the presumed value rule only if you receive food, clothing, or shelter from someone outside the household.

**§ 416.1143 If you live in a noninstitutional care situation.**

(a) *Definitions.* For purposes of this subpart you live in a noninstitutional care situation if all the following conditions exist:

(1) You are placed by a public or private agency under a specific program such as foster or family care;

(2) The placing agency is responsible for your care;

(3) You are in a private household (not an institution) which is licensed or approved by the placing agency to provide care; and

(4) You, a public agency, or someone else pays for your care.

(b) *How the presumed value rule applies.* You are not receiving in-kind support and maintenance and the presumed value rule does not apply if you pay the rate the placing agency establishes. We consider this established rate to be the current market value for the in-kind support and maintenance you are receiving. The presumed value rule applies if you pay less than the established rate and the difference is paid by someone else other than a public or private agency providing social services described in § 416.1103(b) or assistance based on need described in § 416.1124(c)(2).

**§ 416.1144 If you live in a nonprofit retirement home or similar institution.**

(a) *Definitions.* For purposes of this section the following definitions apply:

(1) "Nonprofit retirement home or similar institution" means a nongovernmental institution which is, or is controlled by, a private nonprofit organization and which does not provide you with—

(i) Services which are (or could be) covered under Medicaid, or

(ii) Education or vocational training.

(2) "Nonprofit organization" means a private organization which is tax exempt under section 501(a) of the Internal Revenue Code of 1954 and is of the kind described in section 501(c) or (d) of that code.

(3) An "express obligation to provide your full support and maintenance" means there is either a legally enforceable written contract or set of membership rules providing that the home, institution, or organization—

(i) Will provide at least all of your food and shelter needs; and

(ii) Does not require any current or future payment for that food and shelter. (For purposes of this paragraph, a lump sum prepayment for lifetime care is not a current payment.)

(b) *How the presumed value rule applies.* The presumed value rule applies if you are living in a nonprofit retirement home or similar institution where there is an express obligation to provide your full support and maintenance or where someone else pays for your support and maintenance. The rule does not apply to the extent that—

(1) The home, institution, or nonprofit organization does not have an express obligation to provide your full support and maintenance; and

(2) The home, institution, or nonprofit organization receives no payment for your food, clothing, or shelter, or receives payment from another nonprofit organization.

**§ 416.1145 How the presumed value rule applies in a nonmedical for-profit institution.**

If you live in a nonmedical for-profit institution, we consider the amount accepted by that institution as payment in full to be the current market value of whatever food, clothing, or shelter the institution provides. If you are paying or are legally indebted for that amount, you are not receiving in-kind support and maintenance. We do not use the presumed value rule unless someone else pays for you.

**In-Kind Support and Maintenance in Special Circumstances**

**§ 416.1146 How we value in-kind support and maintenance when you are ineligible for part of a quarter.**

We do not count in-kind support and maintenance you receive during a month in which you are ineligible for benefits for a reason other than having too much income.

*Example:* Mary D is ineligible for benefits for May 1980, because she is a resident of a public institution throughout the month. (§ 416.231) She is eligible for April and June. When we figure her benefit for the quarter, we do not count the in-kind support and maintenance she received in May. We figure other countable earned and unearned income she received in the quarter and apply it to each month of the quarter (§ 416.426). Her income includes any in-kind support and maintenance other than what she received in May.

**§ 416.1147 How we value in-kind support and maintenance for a couple.**

(a) *General.* The way we value any food, clothing, or shelter you or your eligible spouse receive depends on your living arrangements. We continue to consider you and your spouse as a couple even though you are living in different locations as long as you are not apart for more than 6 months (§ 416.1040 explains the 6-month rule). See paragraphs (c) and (f) if one of you is in an institution that receives payment from Medicaid for your care for a full month. This section contains the rules for various possible living arrangements when you and your spouse are both eligible.

(b) *Both members of a couple live in another person's household and receive food and shelter from that person.* When both of you live in another person's household throughout a month and receive food and shelter from that person, we apply the one-third reduction to the Federal benefit rate for a couple (§ 416.1131). The one-third reduction applies whether you are both in the same household or in different households.

(c) *One member of a couple lives in another person's household and receives food and shelter from that person and the other is in a medical institution.* If one of you is living in the household of another person who provides you with both food and shelter and the other is in a medical institution that receives Medicaid payments for his or her care (§ 416.231(b)(5)), we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month one of you is in the medical institution as described in § 416.231(a)(2). The one living in another person's household is eligible at an eligible individual's Federal benefit rate reduced by one-third. The one in the medical institution is eligible at the reduced Federal benefit rate described in § 416.231(a)(2)(i).

(d) *One member of a couple lives in the household of another and receives food and shelter from that person and the other is subject to the presumed value rule.* When one of you is living in the household of another and receiving both food and shelter from that person and the other is subject to the presumed value rule—

(1) We value the food and shelter received by the one in the household of another at one-sixth of the couple's Federal benefit rate unless you can show that the value is less as described in § 416.1140(a)(2).

(2) We value any food, clothing, or shelter received by the one to whom the presumed value rule applies at one-sixth of the couple's Federal benefit rate plus one-half the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that the value is less as described in § 416.1140(a)(2).

(e) *Both members of a couple are subject to the presumed value rule.* If the presumed value rule applies to both of you, we value any food, clothing, or shelter you and your spouse receive at one-third of the Federal benefit rate for a couple plus the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that their value is less as described in § 416.1140(a)(2).

(f) *One member of a couple is subject to the presumed value rule and the other is in a medical institution.* If one of you is subject to the presumed value rule and the other is in a medical institution that receives Medicaid payments for his or her care (see § 416.231(b)(5)), we compute your benefits as if you were separately eligible individuals. This begins with the first full calendar month that one of you is in the medical institution (§ 416.231(a)(2)). We value any food, clothing, or shelter received by the one outside of the medical institution at one-third of an eligible individual's Federal benefit rate, plus the amount of the general income exclusion (§ 416.1124(c)(10)), unless you can show that their value is less as described in § 416.1140(a)(2). The one in the medical institution is eligible at the reduced Federal benefit rate (§ 416.231(a)(2)(i)).

**§ 416.1148 If you have both in-kind support and maintenance and income that is deemed to you.**

(a) *The one-third reduction and deeming of income.* If you live in the household of someone whose income can be deemed to you as described in §§ 416.1160 through 416.1169, the one-third reduction does not apply to you. However, if you live in another person's household as described in § 416.1131, and someone whose income can be deemed to you lives in the same household, we must apply both the one-third reduction and the deeming rules to you.

(b) *The presumed value rule and deeming of income.* (1) If you live in the same household with someone whose income can be deemed to you (§§ 416.1160 through 416.1169), any food, clothing, or shelter that person provides is not income to you. However, if you receive any food, clothing, or shelter from another source, it is income and we value it under the presumed value rule (§ 416.1140). We also apply the deeming rules.

(2) If you are a child under age 21 who lives in the same household with an ineligible parent, and you are temporarily absent from the household to attend school (§ 416.1167(a)(2)), any food, clothing, or shelter you receive at school is income to you unless your parent purchases it. We value this income under the presumed value rule (§ 416.1140). We also apply the deeming rules to you (§ 416.1165).

**Temporary Absence**

**§ 416.1149 What is a temporary absence from your living arrangement.**

(a) *General.* A temporary absence may be due to employment, hospitalization, vacations, or visits. The length of time and absence can be temporary varies depending on the reason for your absence. For purposes of valuing in-kind support and maintenance under §§ 416.1130 through 416.1148, we apply the rules in this section. In general, we consider that you are temporarily absent from your permanent living arrangement if you (or you and your eligible spouse)—

(1) Were in your permanent living arrangement for at least one full calendar month prior to your absence; and

(2) Intend to, and do, return to your permanent living arrangement in the same calendar month in which you leave, or in the next month.

(b) *Rules we apply during a temporary absence.* During a temporary absence, we continue to value your support and maintenance the same way that we did in your permanent living arrangement. For example, if the one-third reduction applies in your permanent living arrangement, we continue to apply the same rule during a temporary absence. However, if you receive in-kind support and maintenance only during a temporary absence we do not count it since you are still responsible for maintaining your permanent quarters during the absence.

(c) *Rules for temporary absence in certain circumstances.* (1) If you enter a medical care facility that receives Medicaid payments for your care (as described in §§ 416.231(a)(2) and (b)(5)) with the intention of returning to your prior living arrangement, we consider this a temporary absence regardless of the length of your stay in the facility. We use the rules that apply to your permanent living arrangement to value any food, clothing, or shelter you receive during the month you enter or leave the facility. During any full calendar month you are in the medical care facility you are eligible at the reduced Federal benefit rate (§ 416.231(a)(2)(i)). We do not consider food or shelter provided during a medical confinement to be income.

(2)(i) Generally, if you are a child under age 22, you are temporarily absent while you are away at school, regardless of how long you are away, if you come home on some weekends, lengthy holidays, and vacations (or for extended visits as provided in school regulations).

(ii) However, if you are a child under age 21, and your permanent living arrangement is with an ineligible parent or essential person (§ 416.243) we follow the rules in § 416.1148(b)(2).

**Disasters**

**§ 416.1150 How we treat income received because of a major disaster.**

(a) *General.* The Disaster Relief Act of 1974 and other Federal statutes provide assistance to victims of major disasters. In this section we describe when we do not count certain kinds of assistance you receive under these statutes.

(b) *Support and maintenance.* We do not count the value of support and maintenance (in cash or in kind) and the one-third reduction rule does not apply for up to 18 months after you begin to receive it if—

(1) You live in a household which you or you and another person maintain as your home when a catastrophe occurs in the area;

(2) The President declares the catastrophe to be a major disaster for purposes of the Disaster Relief Act of 1974;

(3) You stop living in the home because of the catastrophe and within 30 days after the catastrophe you begin to receive support and maintenance; and

(4) You receive the support and maintenance while living in a residential facility (including a private household) maintained by another person.

(c) *Other assistance you receive.* We do not consider other assistance to be income if you receive it under the Disaster Relief Act of 1974 or under another Federal statute because of a catastrophe which the President declares to be a major disaster. For example, you may receive payments to repair or replace your home or other property.

(d) *Interest payments.* We do not count any interest earned on the assistance payments described in paragraph (c) if the interest is earned within 9 months of the date you receive the assistance. We can extend the 9-month period for up to an additional 9 months if we find you have good cause for not repairing or replacing the property within the initial period. Good cause exists, for example, if you show that circumstances beyond your control prevent the repair or replacement, or contracting for the repair or replacement, of a home or other kinds of property within the first 9-month period.

**§ 416.1151 How we treat the repair or replacement of lost, damaged, or stolen resources.**

(a) *General rule.* If a resource is lost, damaged, or stolen, you may receive cash to repair or replace it or the resource may be repaired or replaced for you. We do not count the cash or the repair or replacement of the resource as your income.

(b) *Interest on cash for repair or replacement of a noncash resource.* We do not count any interest earned on the cash you receive for repair or replacement of a noncash resource if the interest is earned within 9 months of the date you receive the cash. We can extend the 9-month period for up to an additional 9 months if we find you have good cause for not repairing or replacing the resource within the initial period. Good cause exists, for example, if you show that circumstances beyond your control prevent the repair or replacement, or contracting for the repair or replacement, of the resource within the first 9-month period.

(c) *Temporary replacement of a damaged or destroyed home.* In determining the amount of in-kind support and maintenance you receive (§§ 416.1130 through 416.1140), we do not count temporary housing if—

(1) Your excluded home is damaged or destroyed, and

(2) You receive the temporary housing only until your home is repaired or replaced.

**Deeming of Income**

**§ 416.1160 What is deeming.**

(a) *General.* (1) If you live in the same household as your ineligible spouse, or if you are a child living in the same household as your ineligible parent, we look at that person's income to determine whether we must consider (deem) some of it to be your income. If you live in the same household as your essential person (see § 416.1160(c)(4)), we must also look at that person's income to determine whether we must deem some of it to be your income.

(2) We use the term "deeming" to identify the process of considering another person's income to be your own income. When the rules for deeming apply, it does not matter whether the income of the other person is actually available to you; we must apply these rules anyway. We deem income because we expect your ineligible spouse or ineligible parent with whom you live to use part of his or her income to take care of some of your needs. Similarly, we consider your essential person's income to be available to you since we have increased your benefit to help meet that person's needs.

(b) *Steps in deeming.* Although the way we deem income varies depending upon whether you are an eligible individual, eligible child, or an individual with an essential person, we follow several general steps to determine how much income to deem.

(1) We determine how much earned and unearned income your ineligible spouse, ineligible parent, or essential person has and we apply the appropriate exclusions. (See § 416.1161 for exclusions that apply to an ineligible parent or spouse and § 416.1168 for those that apply to an essential person.)

(2) We then allocate an amount for each ineligible child in the household, before we deem income to you from either your ineligible spouse or ineligible parent. (Allocations for ineligible children are explained in § 416.1163(b).)

(3) We then follow the deeming rules which apply to you.

(i) For deeming income from you ineligible spouse, see § 416.1163.

(ii) For deeming income from your ineligible parent, see § 416.1165.

(iii) For deeming income from your ineligible spouse when you also have an eligible child, see § 416.1166.

(iv) For deeming income from your essential person, see § 416.1168.

(v) for provisions on change in status, see §§ 416.1167 and 416.1169.

(c) *Definitions for deeming purposes.* For deeming purposes—

"Essential person" means someone who was identified as essential to your welfare under a State program that preceded the SSI program.

(See § § 416.241 through 416.249 for the rules on essential persons)

"Ineligible child" means your natural child, adopted child, or the child of your spouse (as defined in § 416.1101), who is under age 21, lives in the same household with you, and is not eligible for SSI benefits. This definition applies if you are not a child. If you are a child, "ineligible child" means a natural or adopted child of your parent or of your parent's spouse.

"Ineligible parent" means a natural or adoptive parent, or the spouse (as defined in § 416.1101) of a natural or adoptive parent, who lives with you and is not eligible for SSI benefits. The income of ineligible parents affects your benefit only if you are a child.

"Ineligible spouse" means someone who lives with you as your husband or wife and is not eligible for SSI benefits.

**§ 416.1161 Income of an ineligible spouse, ineligible parent, and essential person for deeming purposes.**

The first step in deeming is determining how much income your ineligible spouse, ineligible parent, or essential person has. We do not always include all of their income when we determine how much income to deem. In this section we explain the rules for determining how much of their income is subject to deeming. As part of the process of deeming income from your ineligible spouse or parent we must

determine the amount of income of any ineligible children in the household.

(a) *For an ineligible spouse or parent.* We do not include any of the following types of income (see § 416.1102) of an ineligible spouse or parent:

(1) Income excluded by Federal laws other than the Social Security Act (See the appendix to this subpart.)

(2) Any public income-maintenance payments (§ 416.1142(a)) your ineligible spouse or parent receives, and any income which was counted or excluded in figuring the amount of that payment;

(3) Any of the income of your ineligible spouse or parent that is used by a public income-maintenance program (§ 416.1142(a)) to determine the amount of that program's benefit to someone else;

(4) Any portion of a grant, scholarship, or fellowship used to pay tuition or fees;

(5) Money received for providing foster care to an ineligible child;

(6) The value of food stamps and the value of Department of Agriculture donated foods;

(7) Food raised by your parent or spouse and consumed by members of the household in which you live;

(8) Tax refunds on income, real property, or food purchased by the family;

(9) Income used to fulfill an approved plan for achieving self-support (see §§ 416.1180 through 416.1182);

(10) Income used to comply with the terms of court-ordered support, or support payments enforced under title IV–D of the Act;

(11) The value of in-kind support and maintenance;

(12) Periodic payments made by a State under a program established before July 1, 1973, and based solely on duration of residence and attainment of age 65;

(13) Disaster assistance as described in § § 416.1150 and 416.1151.

(14) Income received infrequently or irregularly (see § § 416.1112(c)(1) and 416.1124(c)(6)); or

(15) Work expenses if the ineligible spouse or parent is blind.

(b) *For an essential person.* We include all of an essential person's income as defined in § 416.1102, except for income excluded under, Federal laws other than the Social Security Act. (See the appendix to this subpart.)

(c) *For an ineligible child.* Although we do not deem any income to you from an ineligible child, we reduce his or her allocation if the ineligible child has income (see § 416.1163(b)(2)). For this purpose, we do not include any of the child's income listed in paragraph (a) of this section. In addition, if the ineligible child is a student (see § 416.1060), we exclude any of the child's earned income up to $1,200 a calendar quarter, but not more than $1,620 per year.

**§ 416.1163 How we deem income to you from your ineligible spouse.**

If you have an ineligible spouse who lives in the same household, we apply the deeming rules to your ineligible spouse's income in the following order.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We then deduct an allocation for ineligible children in the household to help meet their needs. Exception: We do not allocate for children who are receiving public income-maintenance payments (see § 416.1142(a)).

The allocation for each ineligible child is one-half of the Federal benefit rate for an eligible individual. The amount of the allocation automatically increases whenever the Federal benefit rate increases. If the allocation only applies to one or two months of a calendar quarter, we reduce the allocation by two-thirds or one-third, as appropriate.

(2) Each ineligible child's allocation is reduced by the amount of his or her own income as described in § 416.1161(c).

(3) We first deduct the allocations from your ineligible spouse's unearned income. If your ineligible spouse does not have enough unearned income to cover the allocations we deduct the balance from your ineligible spouse's earned income.

(c) *Your SSI benefit.* (1) If the amount of your ineligible spouse's income that remains after appropriate allocations is not more than one-half of the Federal benefit rate for an eligible individual we do not deem any of the income to you. In this situation, only your own countable income is deducted from the Federal benefit rate for an individual to determine the amount of your benefit.

(2) If the amount of your ineligible spouse's income that remains after appropriate allocations is more than one-half of the Federal benefit rate for an eligible individual, we treat you and your ineligible spouse as an eligible couple. We do this by:

(i) Combining the remainder of your spouse's unearned income with your own unearned income and the remainder of your spouse's earned income with your earned income;

(ii) Applying all appropriate income exclusions in §§ 416.1112 and 416.1124; and

(iii) Subtracting the total countable income from the Federal benefit rate for an eligible couple.

(3) Your SSI benefit under the deeming rules cannot be higher than it would be if deeming did not apply. Therefore, your benefit is the amount computed under the rules in paragraph (c)(2) or the amount remaining after we subtract only your own countable income from an individual's Federal benefit rate, whichever is lower.

(d) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible individual. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts. The Federal benefit rates used are those effective July 1, 1980.

*Example 1.* Ted, an aged individual, lives with his ineligible spouse, Alice, and their ineligible son, Mike. Ted has a Federal benefit rate of $714.00 per quarter. Alice receives $500 unearned income in a quarter. She has no earned income and Mike has no income at all. Before we deem any income we allocate to Mike $357.00 (half of the Federal benefit rate for an eligible individual). We take the allocation ($357.00) from Alice's unearned income ($500) leaving $143.00. Since Alice's remaining income ($143.00) is not more than one-half of the Federal benefit rate for an individual ($357.00) we do not deem any income to Ted. Instead, we subtract only Ted's own countable income from the Federal benefit rate for an eligible individual to determine his benefit.

*Example 2.* George, a disabled individual, lives with his ineligible spouse, Ellen, and ineligible child, Christine. George and Christine have no income. Ellen has earned income of $1,000 a quarter and unearned income of $750 a quarter. Before we deem any income we allocate $357.00 to Christine. We take the allocation ($357.00) from Ellen's unearned income ($750) leaving $393.00 in unearned income. Since Ellen's remaining income is more than one-half the Federal benefit rate for an individual we deem the remaining unearned income ($393.00) and the earned income ($1,000) to be available to George and Ellen and treat them as a couple. We apply the $60 general income exclusion to the unearned income reducing it further to $333.00. We then apply the earned income exclusion ($195 plus one-half the remainder) to Ellen's earned income of $1,000, leaving $402.50. We combine the countable unearned income ($333.00) and the countable earned income ($402.50) and subtract it ($735.50) from the Federal benefit rate for a couple ($1,071.00) leaving a benefit of $335.50 for that quarter. (George would receive a Federal benefit of $111.84 each month.)

*Example 3.* Joe, a disabled individual, lives with his ineligible spouse, Mary. She earns $600 in a quarter. Joe receives a pension (unearned income) of $300 a quarter. Since Mary's income is greater than one-half the Federal benefit rate for an individual ($357.00), we deem all of her income to be available to both Joe and Mary and treat them as a couple. We apply the $60 general income exclusion to Joe's $300 unearned income, leaving $240. Then we apply the earned income exclusion ($195 plus one-half

the remainder) to Mary's $600, leaving $202.50. This gives the couple total countable income of $442.50 for the quarter ($240 plus $202.50). Subtracting $442.50 from the $1,071.00 Federal benefit rate for a couple leaves a benefit of $628.50. However, if Joe were not subject to deeming rules, his benefit would only be $474.00. This is because Joe's own unearned income of $300, minus the $60 general income exclusion, leaves $240 countable income. Subtracting $240 countable income from the $714.00 Federal benefit rate for an individual leaves a benefit of $474.00. Since Joe's benefit cannot exceed the amount he would receive if deeming did not apply, his benefit is $474.00 for the quarter ($158.00 each month).

**§ 416.1165 How we deem income to you from your ineligible parent.**

If you are a child under age 21 living with one or both of your parents, we apply the deeming rules to their income in the following order.

(a) *Determining your ineligible parents' income.* We first determine how much earned and unearned income your ineligible parents have, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Allocations for your ineligible parents.* We next deduct allocations for your parents. These vary depending on the type of income they have. We do not allocate for a parent who is receiving public income-maintenance payments (see § 416.1142(a)).

(1) *All parental income is earned.* If your parents have only earned income, we allocate $255 (the sum of the $60 general income exclusion and the $195 earned income exclusion) plus—

(i) Double the Federal benefit rate for a couple if both parents live with you; or

(ii) Double the Federal benefit rate for an individual if only one parent lives with you.

(2) *All parental income is unearned.* If your parents have only unearned income, we allocate $60 (the amount of the general income exclusion) plus—

(i) The Federal benefit rate for a couple if both parents live with you; or

(ii) The Federal benefit rate for an individual if only one parent lives with you.

(3) *Parental income is both earned and unearned.* If your parents have both earned and unearned income, we allocate for them as follows. We first deduct $60 from their combined unearned income. If they have less than $60 in unearned income we subtract the balance of the $60 from their combined earned income. Next, we subtract $195 plus one-half the remainder of their earned income. We total the remaining earned and unearned income, and subtract—

(i) The Federal benefit rate for a couple if both parents live with you; or

(ii) The Federal benefit rate for an individual if only one parent lives with you.

(d) *Your SSI benefit.* We deem any of your parents' income that remains to be your unearned income. We combine it with your own unearned income and apply the exclusions in § 416.1124 to determine your countable unearned income. We add this to any countable earned income you may have and subtract the total from the Federal benefit rate for an individual to determine your benefit.

(e) *When you are not the only eligible child.* If your parents have more than one eligible child in the household, we divide the parental income to be deemed equally among the eligible children. However, we do not deem more income to an eligible child than the amount which, when combined with the child's own income, reduces his or her SSI benefit to zero. (For purposes of this paragraph, an SSI benefit includes any federally administered State supplement.) If the share of parental income that would be deemed to a child makes that child ineligible because that child has other countable income, we deem any remaining parental income to other eligible children in the household in the manner described in this paragraph.

(f) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible child. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts. The Federal benefit rates used are those effective July 1, 1980.

*Example 1.* Henry, a disabled child, lives with his mother and father and a 12-year-old ineligible brother. His mother receives a pension (unearned income) of $700 quarter, and his father earns $1,900 a quarter. Henry and his brother have no income. First we allocate $357.00 for Henry's brother from the unearned income of $700. This leaves $343.00 in unearned income. Since the remaining parental income is both earned and unearned, we reduce the unearned income further by $60, leaving $283.00. We then reduce the $1,900 of earned income by $195 plus one-half the remainder, leaving $852.50. From the total remaining income of $1,135.50, we subtract $1,071.00 (the Federal benefit rate for a couple), leaving $64.50 to be deemed as Henry's unearned income. We then apply Henry's $60 general income exclusion which reduces his countable income to $4.50. We subtract that amount from the $714.00 Federal benefit rate for an individual, leaving a benefit of $709.50 for the quarter ($236.50 each month).

Example 2. James and Tony are disabled children who live with their mother. The children have no income but their mother receives $1,100.00 a quarter in unearned income. Since all of the mother's income is unearned, the amount we allocate for her needs is $774.00 (the Federal benefit rate for an individual, $714.00 plus the $60 general income exclusion). After subtracting this allocation from her $1,100.00 we divide the remaining $326.00 equally between the two children ($163.00 each) as unearned income. We then apply the $60 general income exclusion leaving each child with $103.00 countable income. Subtracting $103.00 countable income from the $714.00 Federal benefit rate for an individual gives each child a benefit of $611.00 for the quarter ($203.67 each month).

**§ 416.1166 How we deem income to you and your eligible child from your ineligible spouse.**

If you and your eligible child live in the same household with your ineligible spouse, we deem your ineligible spouse's income first to you, and then we deem any remainder to your eligible child.

(a) *Determining your ineligible spouse's income.* We first determine how much earned and unearned income your ineligible spouse has, using the appropriate exclusions in § 416.1161(a).

(b) *Allocations for ineligible children.* We next deduct an allocation for each ineligible child in the household as described in § 416.1163(b).

(c) *Your SSI benefits.* We then follow the rules in § 416.1163 to find out how much of your ineligible spouse's income is deemed to you and the amount of your benefit.

(d) *Your eligible child's benefit.* (1) If you are eligible to receive an SSI benefit after your ineligible spouse's income has been deemed to you, we do not deem any income to your eligible child. We determine your child's benefit by subtracting only his or her own countable income from the Federal benefit rate for an individual.

(2) If you are not eligible for an SSI benefit after your ineligible spouse's income has been deemed to you, we deem to your eligible child any of your spouse's income which was not used to reduce your benefit to zero. (For purposes of this section your SSI benefit includes any federally administered State supplement.) We then follow the rules in § 416.1165(d) and (e) to determine the child's SSI benefit.

(e) *Examples.* These examples describe how we deem income in a calendar quarter to an eligible individual and an eligible child in the same household. Therefore, the income, the income exclusions, and the allocations are all quarterly amounts.

The Federal benefit rates used are those effective July 1, 1980.

*Example 1.* Mary, a blind individual, lives with her husband, John, and their disabled child, Peter. Mary and Peter have no income, but John is employed and earns $1,700 a quarter. We determine Mary's eligibility first. Since John's income is more than one-half the Federal benefit rate for an eligible individual, we treat the entire $1,700 as earned income available to John and Mary as a couple. Because they have no unearned income, we reduce the $1,700 by the $60 general income exclusion and then by the earned income exclusion of $195 plus one-half the remainder. This leaves John and Mary with $722.50 in countable income. Subtracting the $722.50 countable income from the $1,071.00 Federal benefit rate for a couple gives Mary a benefit of $348.50 for a quarter ($116.17 a month). Since Mary is eligible for an SSI benefit, there is no income to be deemed to Peter. His benefit for the quarter is $714.00 or $238.00 each month (the Federal benefit rate for an individual) because he has no countable income.

*Example 2.* Al, a disabled individual, resides with his ineligible spouse, Dora, and their disabled son, Jeff. Al and Jeff have no income, but Dora is employed and earns $2,600 a quarter. Since Dora's income is more than one-half the Federal benefit rate for an eligible individual, we treat the entire $2,600 as earned income available to Al and Dora as a couple. We reduce this income by the $60 general income exclusion and then by $195 plus one-half the remainder (earned income exclusion), leaving $1,172.50 in countable income. Al is ineligible because the countable income ($1,172.50) exceeds the Federal benefit rate for a couple ($1,071.00). Since Al is ineligible, we deem to Jeff $101.50 the amount of income over and above the amount which causes Al to be ineligible (the difference between the countable income and the Federal benefit rate for a couple). We treat the income deemed to Jeff ($101.50) as unearned income and we apply the $60 general income exclusion reducing Jeff's countable income to $41.50. Subtracting the countable income ($41.50) from the Federal benefit rate for an individual ($714.00) gives Jeff a benefit of $672.50 for the quarter ($224.17 each month).

**§ 416.1167 When a change in status affects the use of deeming rules.**

(a) *When you are no longer living in the same household with your spouse or parent.* If you and your ineligible spouse or parent stop living in the same household, we stop applying deeming rules with the first full month that one of you is absent, unless the absence is temporary. For example, if you leave the household in September with no intention of returning, the deeming rules do not apply to you beginning in October.

(1) A temporary absence, for purposes of deeming, occurs when you or your ineligible spouse or parent leave the household but intend to, and do, return in the same month or the month immediately following. If the absence is temporary, we continue to deem.

(2) If you are an eligible child who is away at school but comes home on some weekends or lengthy holidays and if you are subject to the control of your parents, we consider you temporarily absent from your parents' household. However, if you are not subject to parental control, we do not consider your absence temporary and we do not deem parental income to you. Being subject to parental control affects whether income is deemed to you only if you are away at school.

(b) *When you move into the same household with your spouse or parent.* If you have not been subject to deeming rules and then move into a household with your ineligible spouse or parent, or if you become the spouse of an ineligible person, we start applying the deeming rules with the month following the change. For example, if you marry in September, the deeming rules apply to your spouse's income beginning in October.

(c) *When you are no longer a child.* If you are a child living with your parent, we stop deeming with the month following the month you reach age 18. For example, if you reach age 18 in June, the deeming rules do not apply to you beginning in July. However, if you are a student and continue living with a parent (see § 416.1167(a)(2)), we do not stop deeming until the month following the month in which you reach age 21. (You "reach" a certain age on the day before your birthday.)

(d) *When you are age 18 to 21 and become a student.* If you are at least age 18 but are not yet 21 and you are not a student, deeming rules do not apply even if you live with a parent. However, if you become a student during this period and continue to live with a parent, we begin to apply deeming rules in the month after you become a student. For example, if you become a student in September, the deeming rules apply beginning in October.

**§ 416.1168 How we deem income to you from your essential person.**

(a) *Essential person's income.* If you have an essential person, we deem all of that person's income (except any not counted because of other Federal statutes as described in § 416.1161(b)) to be your own unearned income. If your essential person is also your ineligible spouse, or if you a child whose essential person is your ineligible parent, we apply the essential person deeming rules in this section. See § 416.1169 for the rules that apply when an ineligible spouse or parent ceases to be your essential person.

(b) *Your SSI benefit.* We apply the exclusions to which you are entitled under §§ 416.1112 and 416.1124 to your earned income and to your unearned income which includes any deemed from your essential person. After combining the remaining amounts of countable income, we subtract the total from the Federal benefit rate for a qualified individual (see § 416.413) to determine your SSI benefit.

**§ 416.1169 When we stop deeming income from an essential person.**

If your countable income, including the income deemed to you from your essential person, causes you to be ineligible for an SSI payment, you are no longer considered to have the essential person whose income makes you ineligible and only your own countable income is deducted from your Federal benefit rate. However, other deeming rules may then apply as follows:

(a) *Essential person is your spouse.* If the person who was your essential person is your ineligible spouse, we apply the deeming rules in § 416.1163 to determine your benefit.

(b) *Essential person is your parent.* If you are a child, and the person who was your essential person is your ineligible parent, we apply the deeming rules in § 416.1165 to determine your benefit.

**Alternative Income Counting Rules for Certain Blind Individuals**

**§ 416.1170 General.**

(a) *What the alternative is.* If you are blind and meet the requirements in § 416.1171, we use one of two rules to see how much countable income you have. We use whichever of the following rules results in the lower amount of countable income:

(1) The SSI income exclusions in §§ 416.1112 and 416.1124; or

(2) The disregards that would have applied under the State plan for October 1972.

(b) *State plan.* As used in this subpart, "State plan for October 1972" means a State plan for providing assistance to the blind under title X or XVI (AABD) of the Social Security Act. That plan must have been approved under the provisions of 45 CFR Chapter II as in effect for October 1972.

**§ 416.1171 When the alternative rules apply.**

(a) *Eligibility for the alternative.* We use the alternative income counting rules for you if you meet all the following conditions:

(1) You were eligible for, and received, assistance for December 1973 under a State plan for October 1972;

(2) You have continued to live in that same State since December 1973;

(3) You were transferred to the SSI rolls and received a benefit for January 1974; and

(4) You have not been ineligible for an SSI benefit for any period of more than 6 consecutive months. (For purposes of this section, an SSI benefit means a Federal benefit; it does not include any State supplementation.)

(b) *Living in the same State.* For purposes of this section, you have continued to live in the same State since December 1973 unless you have left it at any time with the intention of moving to another State. If there is no evidence to the contrary, we assume that—

(1) If you leave the State for 90 calendar days or less, the absence is temporary and you still live in that State; and

(2) If you leave the State for more than 90 calendar days, you are no longer living there.

**Rules for Helping Blind and Disabled Individuals Achieve Self-Support**

**§ 416.1180 General.**

One of the objectives of the SSI program is to help blind or disabled persons become self-supporting. If you are blind or disabled, we will pay you SSI benefits and will not count the part of your income that you use of set aside to use under a plan to become self-supporting. (See §§ 416.1112(c)(6) and 1124(c)(11).) You may develop a plan for achieving self-support on your own or with our help. As appropriate, we will refer you to a State rehabilitation agency or agency for the blind for additional assistance in developing a plan.

**§ 416.1181 What a plan to achieve self-support is.**

A plan to achieve self-support must—

(a) Be designed especially for you;

(b) Be in writing;

(c) Be approved by us (a change of plan must also be approved);

(d) Be designed for an initial period of not more than 18 months. We may extend the period for up to another 18 months if you cannot complete the plan in the first period. We may allow a total of up to 48 months to fulfill a plan for a lengthy education or training program;

(e) Show your specific occupational goal;

(f) Show what money you have and will receive, how you will spend it, and how you will use it to attain your occupational goal; and

(g) Show how the money you set aside under the plan will be separated from your other funds.

**§ 416.1182 When we begin to count the income excluded under the plan.**

We will begin to count the earned and unearned income that would have been excluded under your plan in the quarter in which any of the following circumstances first exist:

(a) You fail to follow the conditions of your plan;

(b) You abandon your plan;

(c) You complete the time schedule outlined in the plan; or

(d) You reach your goal as outlined in the plan.

**Appendix—List of Types of Income Excluded Under the SSI Program as Provided by Federal Laws Other Than the Social Security Act**

Many Federal statutes in addition to the Social Security Act provide assistance or benefits for individuals and specify that the assistance or benefit will not be considered in deciding eligibility for SSI. We have listed these statutes in this appendix and have placed them in categories according to the kind of income or assistance they provide. The list gives the name of the Federal statute (where possible), the public law number, and the citation. Each item briefly describes what the statute provides that will not reduce or eliminate an SSI payment. More detailed information is available from a social security office or by reference to the statutes.

We update this list periodically. However, when new Federal statutes of this kind are enacted, or existing statutes are changed, we apply the law currently in effect, even before this appendix is updated.

*I. Food*

(a) Value of food coupons under the Food Stamp Act of 1977, section 1301 of Pub. L. No. 95–113 (91 Stat. 968, 7 U.S.C. 2017(b)).

(b) Value of federally donated foods distributed under section 32 of Pub. L. No. 74–320 (49 Stat. 774) or section 416 of the Agriculture Act of 1949 (63 Stat. 1058, 7 CFR 250.6(e)(9)).

(c) Value of free or reduced price food for women and children under the—

(1) Child Nutrition Act of 1966, section 11(b) of Pub. L. No. 89–642 (80 Stat. 889, 42 U.S.C. 1780(b)) and section 17 of that Act as added by Pub. L. No. 92–433 (86 Stat. 729, 42 U.S.C. 1786); and

(2) National School Lunch Act, section 13(h)(3), as amended by section 3 of Pub. L. No. 90–302 (82 Stat. 119, 42 U.S.C. 1761(h)(3)).

*II. Housing and Utilities*

(a) Assistance to prevent fuel cut-offs and to promote energy efficiency under the Emergency Energy Conservation Services Program or the Energy Crisis Assistance Program as authorized by section 222(a)(5) of the Economic Opportunity Act of 1964, as amended by section 5(d)(1) of Pub. L. No. 93–644 and section 5(a)(2) of Pub. L. No. 95–568 (88 Stat. 2294 as amended, 42 U.S.C. 2809(a)(5)).

(b) Fuel assistance payments and allowances under the Home Energy Assistance Act of 1980, section 313(c)(1) of Pub. L. 96–223 (94 Stat. 299, 42 U.S.C. 8612(c)(1)).

(c) Value of any assistance paid with respect to a dwelling unit under—

(1) The United States Housing Act of 1937;

(2) The National Housing Act;

(3) Section 101 of the Housing and Urban Development Act of 1965; or

(4) Title V of the Housing Act of 1949.

(d) Payments for relocating, made to persons displaced by Federal or federally assisted programs which acquire real property, under section 216 of Pub. L. No. 91–646, the Uniform Relocation Assistance and Real Property Acquisition Policies of 1970 (84 Stat. 1902, 42 U.S.C. 4636).

*III. Education and Employment*

(a) Incentive allowances for individuals under section 124(a)(3) of the Comprehensive Employment and Training Act (CETA) (92 Stat. 1943, 29 U.S.C. 826(a)), also earnings and allowances paid to a youth in certain training or employment programs (applies to the youth and the youth's family) under section 446 of CETA (92 Stat. 1992, 29 U.S.C. 921).

(b) Grants or loans to undergraduate students made or insured under programs administered by the Secretary of Education under section 507 of the Higher Education Amendments of 1968, Pub. L. No. 90–575 (82 Stat. 1063).

(c) Any wages, allowances, or reimbursement for transportation and attendant care costs, unless excepted on a case-by-case basis, when received by an eligible handicapped individual employed in a project under title VI of the Rehabilitation Act of 1973 as added by title II of Pub. L. No. 95–602 (92 Stat. 2992, 29 U.S.C. 795(b)(c)).

*IV. Native Americans*

(a) Revenues from the Alaska Native Fund paid under section 21(a) of the Alaska Native Claims Settlement Act, Pub. L. No. 92–203 (85 Stat. 713, 43 U.S.C. 1620(a)).

(b) Indian tribes—distribution of per capita judgment funds to members of—

(1) The Blackfeet and Gros Ventre Tribes under section 4 of Pub. L. 92–254 (86 Stat. 65, 25 U.S.C. 1264);

(2) The Grand River Band of Ottawa Indians in Indian Claims Commission docket numbered 40–K under section 6 of Pub. L. No. 94–540 (90 Stat. 2504);

(3) Tribes or groups under section 7 of Pub. L. No. 93–134 (87 Stat. 468, 25 U.S.C. 1407); and

(4) The Yakima Indian Nation or the Apache Tribe of the Mescalero Reservation as authorized by section 2 of Pub. L. No. 95–433 (92 Stat. 1047, 25 U.S.C. 609c–1).

(c) Receipts from land held in trust by the Federal government and distributed to members of certain Indian tribes under section 6 of Pub. L. No. 94–114 (89 Stat. 579).

*V. Other*

(a) Compensation provided volunteers in the foster grandparents program and other similar programs under sections 404(g) and 418 of the Domestic Volunteer Service Act of 1973 (87 Stat. 409, 413, 42 U.S.C. 5044(g) and 5058).

(b) Any assistance to an individual (other than wages or salaries) under the Older Americans Act of 1965, as amended by

section 102(h)(1) of Pub. L. No. 95–478 (92 Stat. 1515, 42 U.S.C. 3020a).

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## ENVIRONMENTAL PROTECTION AGENCY

### 21 CFR Part 193

[FRL 1625–5; FAP 8H5193/T59]

### Aldicarb; Tolerances for Pesticides in Food Administered by the Environmental Protection Agency

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This rule establishes a food additive regulation related to the experimental use of the insecticide aldicarb. The regulation was requested by Washington State University. This rule will permit the marketing of dried hops while further data are collected on aldicarb.

**EFFECTIVE DATE:** Effective on October 3, 1980.

**ADDRESS:** Written objections may be submitted to: Hearing Clerk, Environmental Protection Agency, Rm. M–3700 (A–110), 401 M St., SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Jay S. Ellenberger, Product Manager (PM) 12, Registration Division (TS–767), Office of Pesticide Programs, Rm. E–303, Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460, (202–426–2635).

**SUPPLEMENTARY INFORMATION:** On September 13, 1978, the EPA announced (43 FR 40914) that the Washington State University Cooperative Extension Service, Pullman, WA 99163, had filed a food additive petition (FAP 8H5193). This petition proposed that 21 CFR 193 be amended by the establishment of a regulation permitting combined residues of the insecticide aldicarb (2-methyl-2-(methylthio)propionaldehyde *O*-(methylcarbamoyl) oxime) and its cholinesterase-inhibiting metabolites 2-methyl-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl) oxime) and 2-methyl-2-(methylsulfonyl) propionaldehyde *O*-(methylcarbamoyl)oxime in or on dried hops resulting from application of the insecticide aldicarb to growing hops in a proposed experimental program with a tolerance limitation of 50 parts per million (ppm).

On April 19, 1979 the EPA published (44 FR 23211) notice that the temporary food additive petition had been established in concurrence with an experimental use permit that expired on June 20, 1979. The EPA has now renewed the temporary food additive petition and extended the experimental use permit until July 11, 1981.

The scientific data reported and other relevant material have been evaluated, and it has been determined that the pesticide may be safely used in accordance with the provisions of the experimental use permit which has been issued under FIFRA.

It has further been determined that since residues of the pesticide may result in or on dried hops from the agricultural use provided for in the experimental use permit, the food additive regulation should be established and should include a tolerance limitation. A related document establishing a temporary tolerance for residues of aldicarb on hops appears elsewhere in this issue of the **Federal Register.**

The toxicological data considered in support of the proposed tolerance included a two-year rat feeding study with a no-observable-effect level (NOEL) of 0.3 milligram (mg)/kilogram (kg) of body weight (bw), an 18-month mouse feeding study with a NOEL of 0.7 mg/kg of bw, a two-year dog feeding study with a NOEL of 3.3 ppm, a three-generation rat reproduction study with a NOEL of 0.7 mg/kg bw, a rat teratology study (negative at 1 mg/kg bw/day), a rat dominant lethal test (negative at 0.7 mg/kg bw), a hen neurotoxicity study (negative at 4.5 mg/kg of bw/day. The acceptable daily intake (ADI) for aldicarb is calculated to be 0.003 mg/kg of bw/day based on the two-year rat feeding study and using a 100-fold safety factor.

It has further been determined that since residues of the pesticide may result in or on dried hops from the agricultural use provided for in the experimental use permit, the food additive regulation should be established and should include a tolerance limitation. A related document establishing a temporary tolerance for residues of aldicarb on hops appears elsewhere in this issue of the **Federal Register.**

The toxicological data considered in support of the proposed tolerance included a two-year rat feeding study with a no-observable-effect level (NOEL) of 0.3 milligram (mg)/kilogram (kg) of body weight (bw), an 18-month mouse feeding study with a NOEL of 0.7 mg/kg of bw, a two-year dog feeding study with a NOEL of 3.3 ppm, a three-generation rat reproduction study with a NOEL of 0.7 mg/kg bw, a rat teratology study (negative at 1 mg/kg bw/day), a rat dominant lethal test (negative at 0.7 mg/kg bw), a hen neurotoxicity study (negative at 4.5 mg/kg of bw/day. The acceptable daily intake (ADI) for aldicarb is calculated to be 0.003 mg/kg of bw/day based on the two-year rat feeding study and using a 100-fold safety factor.

Tolerances have been established for residues of aldicarb and its cholinesterase-inhibiting metabolites on a variety of raw agricultural commodities at levels ranging from 0.02 ppm to 1 ppm. The nature of the residues is adequately understood, and an adequate analytical method (flame photometric gas chromatography) is available for enforcement purposes. No regulatory actions are currently pending against continued registration of aldicarb, nor are any desirable data lacking from the petition, nor are there any other relevant considerations involved in establishing the regulation. There are no poultry feed items involved in the experimental program. The established tolerances for residues of aldicarb in meat and milk are adequate to cover secondary residues resulting from the possible feed use of spent hops in this limited experimental program.

The pesticide is considered useful for the purpose for which a tolerance is sought. Therefore, the regulation is established as set forth below.

Any person adversely affected by this regulation may, on or before November 3, 1980, file written objections with the Hearing Clerk, Environmental Protection Agency, Rm. M–3708 (A–110), 401 M St., SW., Washington, DC 20460. Such objections should be submitted in quintuplicate and specify the provisions of the regulation deemed to be objectionable and the grounds for the objections. If a hearing is requested, the objections must state the issues for the hearing. A hearing will be granted if the objections are supported by grounds legally sufficient to justify the relief sought.

Effective date: October 3, 1980.

(Sec. 409(c)(1) 72 Stat. 1786; (21 U.S.C. 348(c)(1)))

Dated: September 18, 1980.

**Edwin L. Johnson,**

*Deputy Assistant Administrator for Pesticide Programs.*

Therefore, Subpart A of 21 CFR Part 193 is amended by adding § 193.15 to read as follows:

**§ 193.15 Aldicarb.**

(a) A tolerance of 50 parts per million is established for combined residues of the insecticide aldicarb (2-methyl-2-(methylthio) propionaldehyde *O*-(methylcarbamoyl)oxime) and its

cholinesterase-inhibiting metabolites 2-(methyl)-2-(methylsulfinyl) propionaldehyde *O*-(methylcarbamoyl)oxime and 2-methyl-2-(methylsulfonyl)propionaldehyde *O*-(methylcarbamoyl) oxime in or on dried hops resulting from application of the insecticide in accordance with the provisions of the experimental use permit that expires July 11, 1981.

(b) Residues in or on dried hops not in excess of 50 parts per million resulting from the use described in paragraph (a) of this section remaining after expiration of the experimental use program will not be considered actionable if the insecticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and food additive tolerance.

(c) Washington State University will immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The university will also keep records of 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.

(d) To assure safe use of the additive, its label and labeling shall conform to that approval by the EPA in conjunction with the issuance of the experminental use permit.

[FR Doc. 80-30809 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

## DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

### Office of Fair Housing and Equal Opportunity

### 24 CFR Part 115

**[Docket No. R-80-818]**

### Fair Housing; Recognition of Substantially Equivalent Laws; Correction

**AGENCY:** Office of Fair Housing and Equal Opportunity, (HUD).

**ACTION:** Final rule; correction.

**SUMMARY:** On September 9, 1980 (45 FR 59305), HUD published a final rule amending 24 CFR 115.11 to add three states and 10 localities to the list of jurisdictions that have enacted laws which are substantially equivalent to Title VIII of the Civil Rights Act of 1968. The effective date of the rule was indicated to be October 9, 1980; however, that date erroneously fails to recognize the status of the affected jurisdictions in time for grant applications before the end of the 1980 Fiscal Year. Accordingly, the effective date of the rule published in 24 CFR Part 115 at 45 FR 59305 is corrected to read September 29, 1980.

**EFFECTIVE DATE:** September 29, 1980.

**FOR FURTHER INFORMATION CONTACT:** Steven J. Sacks, Director, Federal, State and Local Programs Division, Fair Housing Enforcement and Section 3 Compliance, Office of Fair Housing and Equal Opportunity.

Issued at Washington, DC, September 12, 1980.

**Harwood G. Martin,**

*Deputy Director, Office of Regulations*

[FR Doc. 80-30867 Filed 10-2-80; 8:45 am]

BILLING CODE 4210-01-M

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 1

**[T.D. 7725]**

### Limitation on Percentage Depletion for Independent Producers and Royalty Owners That Join in Filing Consolidated Returns

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to consolidated returns for percentage depletion for independent producers and royalty owners. Changes to the applicable tax law were made by the Tax Reduction Act of 1975. The regulations would provide the public with guidance needed to comply with that Act and would affect certain corporations that file consolidated returns.

**DATES:** The regulations are effective for taxable years for which the due date (without extensions) for filing returns is after September 30, 1980.

**FOR FURTHER INFORMATION CONTACT:** Lawrence M. Axelrod of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, DC 20224, Attention: CC:LR:T (202-566-3458, not a toll-free call).

**SUPPLEMENTARY INFORMATION:**

#### Background

On April 9, 1980, the **Federal Register** published proposed amendments to the Income Tax Regulations (26 CFR Part 1) under section 1502 of the Internal Revenue Code of 1954 (45 FR 24203). The amendments were proposed to conform the consolidated return regulations to section 501(a) of the Tax Reduction Act of 1975 (89 Stat. 47). No comments were received with respect to the proposed amendments, and no public hearing was requested or held. The proposed amendments are adopted by this Treasury decision without change.

#### Percentage Depletion for Independent Producers and Royalty Owners

Section 613 provides general rules permitting a taxpayer that extracts minerals to deduct a reasonable allowance for depletion, computed as a percentage of the gross income from the property. The allowance may not exceed 50 percent of the taxpayer's taxable income from the property (computed without allowance for depletion). In the case of oil and gas wells, however, section 613A, as added by section 501(a) of the Tax Reduction Act of 1975, restricts the percentage depletion allowance to certain domestic gas wells and independent producers and royalty owners. Section 613A(d) further limits the allowance in the case of independent producers and royalty owners to "65 percent of the taxpayer's taxable income" for the taxable year.

These regulations provide rules for computing the limitation under section 613A(d) on percentage depletion with respect to oil and gas wells if the corporation operating the wells is a member of an affiliated group that files a consolidated return. The regulations adopt the group's consolidated taxable income as the base for computing the 65-percent limitation. For a discussion of the reasons that alternative approaches were rejected, see the preamble to the notice of proposed rulemaking (45 FR 24203).

#### Drafting Information

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

#### *Adoption of Amendments to the Regulations*

Accordingly, the amendments to 26 CFR Part 1 published as a notice of proposed rulemaking in the **Federal Register** for April 9, 1980 (45 FR 24203), are hereby adopted as proposed.

This Treasury decision is issued under the authority contained in sections 1502 and 7805 of the Internal Revenue Code

of 1954 (68A Stat. 367 and 917; 26 U.S.C. 1502 and 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: September 26, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

**Paragraph 1.** Section 1.1502–12 is amended as follows:

1. The material preceding paragraph (a) is revised.
2. The word "and" at the end of paragraph (n) is deleted.
3. Paragraph (o) is revised.
4. A new paragraph (p) is added.

The new and revised provisions read as follows:

**§ 1.1502–12 Separate taxable income.**

The separate taxable income of a member (including a case in which deductions exceed gross income) is computed in accordance with the provisions of the Code covering the determination of taxable income of separate corporations, subject to the following modifications:

* * * * *

(o) Basis shall be determined under §§ 1.1502–31 and 1.1502–32, and earnings and profits shall be determined under § 1.1502–33; and

(p) The limitation on deductions provided in section 613A shall be taken into account for each member's oil and gas properties as provided in § 1.1502–44.

**Par. 2.** A new § 1.1502–44 is added to read as follows:

**§ 1.1502–44 Percentage depletion for independent producers and royalty owners.**

(a) *In general.* The sum of the percentage depletion deductions for the taxable year for all oil or gas property owned by all members, plus any carryovers under section 613A(d)(1) or paragraph (d) of this section from a prior taxable year, may not exceed 65 percent of the group's adjusted consolidated taxable income (under paragraph (b) of this section) for the consolidated return year.

(b) *Adjusted consolidated taxable income.* For purposes of this section, adjusted consolidated taxable income is an amount (not less than zero) equal to the group's consolidated taxable income determined without—

(1) Any depletion with respect to an oil or gas property (other than a gas property with respect to which the depletion allowance for all production is determined pursuant to section 613A(b)) for which percentage depletion would exceed cost depletion in the absence of the depletable quantity limitations contained in section 613A(c) (1) and (6) and the consolidated taxable income limitation contained in paragraph (a) of this section.

(2) Any consolidated net operating loss carryback to the consolidated return year under § 1.1502–21, and

(3) Any consolidated net capital loss carryback to the consolidated return year under § 1.1502–22.

(c) *Allocation to oil and gas properties.* The maximum amount allowable as a deduction under section 613A(c), after the application of paragraph (a) of this section, is allocated to properties held by members in accordance with the regulations under section 613A(d). Those regulations provide for an initial allocation and possible reallocation of the maximum allowable percentage depletion deduction among oil and gas properties. Thus, if, after the initial allocation, cost depletion exceeds the percentage depletion that would be allowable for a particular oil or gas property, cost depletion must be used for that property and the maximum amount of percentage depletion allowable as a deduction for the group is reallocated among only the remaining properties held by all members.

(d) *Carryover for disallowed amounts.* (1) If any amount is disallowed as a deduction for the taxable year by reason of section 613A(d)(1) or paragraph (a) of this section, the disallowed amount for each oil or gas property is treated as an amount allowed as a deduction under section 613A(c), for the following taxable year for the member that owned the property, in accordance with the regulations under section 613A and paragraphs (a) and (d)(2) of this section.

(2) Any amount that was disallowed as a deduction in a separate return limitation year of a member may be carried to a consolidated return year only to the extent that 65 percent of the excess determined under paragraph (d)(3) of this section exceeds the sum of the otherwise allowable percentage depletion deductions for the member's oil and gas properties for the year.

(3) The excess determined in this subparagraph (3) for a member is the excess, if any, of adjusted consolidated taxable income for the year under paragraph (b) of this section over that income recomputed by excluding the items of income and deductions of the member.

(e) *Effective date.* This section applies to taxable years for which the due date (without extensions) for filing returns is after September 30, 1980.

[FR Doc. 80–30881 Filed 9–30–80; 4:15 pm]

BILLING CODE 4830–01–M

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**26 CFR Parts 301 and 404**

**[T.D. 7724]**

## Disclosure of Return Information to and by Officers and Employees of the Department of Commerce for Certain Statistical Purposes and Related Activities

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to the disclosure of certain return information to and by officers and employees of the Department of Commerce for certain statistical purposes and related activities. They affect all disclosures to and by the Bureaus of the Census and Economic Analysis.

**DATE:** The regulations apply to disclosures of return information after December 31, 1976.

**FOR FURTHER INFORMATION CONTACT:** David E. Dickinson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, Attention: CC:LR:T, 202–566–3218.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 24, 1980, the **Federal Register** published proposed regulations relating to disclosure of return information to and by the Bureaus of the Census and Economic Analysis of the Department of Commerce for certain statistical purposes under section 6103(j)(1) of the Internal Revenue Code of 1954. A public hearing was requested, but the request was withdrawn. After considering the two comments received, those proposed regulations are adopted as revised by this Treasury decision.

These regulations provide rules governing disclosures of return information to certain officers and employees of the Department of Commerce for statistical purposes and related activities authorized by section 6103(j)(1) of the Code.

The regulations describe in detail the particular return information which the Service will disclose to officers and employees of the Bureaus of the Census and Economic Analysis for use in statistical programs and related activities authorized by law. The

regulations also prescribe the procedures to be followed with respect to requested disclosures of return information and the limited extent to which such return information can be redisclosed and provide that the confidentiality of return information disclosed as provided by the regulations must be protected to the satisfaction of the Service.

Two comments were received with respect to the proposed regulations. One objected on principle to the disclosure of any return information to the Bureaus of the Census and Economic Analysis. This objection fails to recognize that section 6103(j)(1) of the Code specifically authorizes such disclosures.

The second comment came from the Bureau of the Census and relates to a technical flaw in the proposed regulations. Prior to February 21, 1980, the temporary disclosure regulations authorized the disclosure of return information to the Bureau for purposes of conducting statistical programs "authorized by law." This authority permitted Bureau access to return information for both mandated statistical programs described in chapter 5 of Title 13, United States Code, and discretionary statistical programs conducted by the Bureau at the request of other agencies and persons under the authority of chapter 1 of Title 13. On February 21, 1980, however, the temporary regulations were amended to restrict Bureau use of return information to mandated statistical programs under chapter 5. At the time of this amendment, the fact was overlooked that the Bureau was in the process of conducting an important chapter 1 study requested by another Federal agency and was using employment tax data for this purpose. The effect of the amendment was to deny the Bureau futher access to employment tax data to complete the study.

Because the Bureau undertook this chapter 1 study in reliance on regulatory authority in existence at the time, these final regulations effectively permit the Bureau to continue using employment tax data in order to complete its chapter 1 study. See § 301.6103(j)(1)–1(b)(5).

Finally, these final regulations make minor technical amendments to § 301.6103(j)(1)–1(b)(3) (ii) and (iii), as proposed, to authorize disclosure of a consolidated return indicator and to conform the description of return information to be disclosed to business related information readily available from Form 1040, Schedule F.

**Drafting Information**

The principal author of these regulations was David E. Dickinson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

*Adoption of the Regulations*

Accordingly, the regulations regarding disclosures of return information to and by the Bureaus of the Census and Economic Analysis are adopted as proposed in the **Federal Register** on March 24, 1980, with the following changes:

(1) New § 301.6103(j)(1)–1 is added immediately after § 301.6103(i)–1, and

(2) Paragraph (b)(3)(ii) and (iii) and (5) of § 301.6103(j)(1)–1, as proposed, are revised to read as follows:

*§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.*

* * * * *

(b) *Disclosure of return information to officers and employees of the Bureau of the Census.* * * *

(3) * * *

(ii) From Form 1120F, Section II, and Forms 1065, 1120, 1120S, 990C, and 990T, the taxpayer identifying number (as described in section 6109), the principal industrial activity code, the consolidated return indicator (if any), and reported gross receipts less returns and allowances;

(iii) From Form 1040, Schedule F, taxpayer identity information, reported gross profits, and labor hired;

* * * * *

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information has been disclosed as provided by section 6103(*l*)(1)(A) or (5) may disclose such return information to officers and employees of the Bureau of the Census for necessary purposes described in subparagraph (2) or (3) of this paragraph (or for purposes of conducting, as authorized by chapter 1 of Title 13, United States Code, a demographic or economic statistics program or census and related program evaluation in progress as of February 21, 1980)—

(i) From Form SS–4, all return information reflected on such return;

(ii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer and any employee identified on such return,

(B) Total number of employees reflected on the return,

(C) Total number of individuals employed in the taxable period covered by the return,

(D) Total compensation reported,

(E) Taxable wages paid for purposes of chapter 21 to each such employee,

(F) Taxable tip income for purposes of chapter 21 reported on the return with respect to each such employee,

(G) Total taxable wages paid for purposes of chapter 21, and

(H) Total taxable tip income reported for purposes of chapter 21,

(I) Employment code; and

(iii) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

* * * * *

This Treasury decision is issued under the authority contained in sections 6103 (j)(1) and (q) and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1678 and 1685, 68A Stat. 7805; 26 U.S.C. 6103 (j)(1) and (q), 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: September 19, 1980.

**Donald C. Lubick,**

*Assistant Secretary of the Treasury.*

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The following new section is added immediately after § 301.6103(i)–1.

**§ 301.6103(j)(1)–1 Disclosures of return information to officers and employees of the Department of Commerce for certain statistical purposes and related activities.**

(a) *General rule.* Pursuant to the provisions of section 6103(j)(1) of the Internal Revenue Code and subject to the requirements of paragraph (d) of this section, officers or employees of the Internal Revenue Service will disclose return information (as defined by section 6103(b)(2) but not including return information described in section 6103(o)(2)) to officers and employees of the Department of Commerce to the extent, and for such purposes as may be, provided by paragraphs (b) and (c) of this section. Further, in the case of any disclosure of return information so provided by paragraphs (b) and (c), the tax period or accounting period to which such return information relates will also be disclosed.

(b) *Disclosure of Return Information to Officers and Employees of the Bureau of the Census.* (1) Officers or employees of the Service will disclose the following return information reflected on returns of an individual taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of Title 13, United States Code, intercensal

estimates of population and per capita income for all geographic areas included in the general revenue sharing program and demographic statistics programs, censuses and related program evaluation—

(i) Taxpayer identity information (as defined in section 6103(b)(6) of the Code), validity code with respect to the taxpayer identifying number (as described in section 6109), and taxpayer identifying number of spouse, if reported;

(ii) District office and service center codes;

(iii) Marital status;

(iv) Numbers and classifications of reported exemptions;

(v) Adjusted gross income;

(vi) Wage and salary income;

(vii) Dividend income;

(viii) Interest income;

(ix) Gross rent and royalty income;

(x) Entity code;

(xi) Residence information from the revenue sharing question;

(xii) Code indicators for Form 1040; Schedules C, D, E, F, and SE;

(xiii) Julian date relative to filing; and

(xiv) (A) Earned income credit, and (B) Advance earned income credit payment received.

(2) Officers or employees of the Service will disclose to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting, as authorized by chapter 5 of Title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses and related program evaluation—

(i) From the business master files of the Service, the taxpayer name directory and entity records consisting of taxpayer identity information (as defined in section 6103(b)(6)) with respect to taxpayers engaged in a trade or business, the principal industrial activity code, and monthly corrections of, and additions to, such entity records.

(ii) From Form SS–4, all return information reflected on such return;

(iii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer and any employee identified on such return,

(B) Total compensation reported,

(C) Total number of employees reflected on such return,

(D) Master file tax account number,

(E) Taxable period covered by such return,

(F) Employment code,

(G) Final return indicator,

(H) Document locator number,

(I) Record code.

(J) Total number of individuals employed in the taxable period covered by the return,

(K) Taxable wages paid for purposes of chapter 21 to each such employee,

(L) Taxable tip income for purposes of chapter 21 reported on the return with respect to each such employee,

(M) Total taxable wages paid for purposes of chapter 21, and

(N) Total taxable tip income reported for purposes of chapter 21; and

(iv) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(3) Officers or employees of the Service will disclose the following business related return information reflected on the return of a taxpayer to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of Title 13, United States Code, demographic, economic, and agricultural statistics programs and censuses—

(i) From Form 1040, Schedule C, taxpayer identity information (as defined in section 6103(b)(6)), the principal industrial activity code, reported gross receipts, returns and allowances, cost of labor, and salaries and wages;

(ii) From Form 1120F, Section II, and Forms 1065, 1120, 1120S, 990C, and 990T, the taxpayer identifying number (as described in section 6109), the principal industrial activity code, the consolidated return indicator (if any), and reported gross receipts less returns and allowances;

(iii) From Form 1040, Schedule F, taxpayer identity information, reported gross profits, and labor hired;

(iv) From Form 1040, Schedule C, and Forms 1065, 1120, and 1120S, answers to the business activity questions;

(v) From Form 1040, Schedule C, business address and answer to the question relating to Form 941;

(vi) From Form 990PF, the taxpayer identifying number, the principal industrial activity code, and reported total receipts;

(vii) From Form 1065, the names and taxpayer identifying numbers of no more than 10 members of the partnership; and

(viii) From Form 1120S, the names and taxpayer identifying numbers of, and the number of shares of stock owned by, no more than 10 shareholders of the corporation.

(4) Officers or employees of the Service will disclose return information relating to a taxpayer contained in the exempt organization master files of the Service to officers and employees of the Bureau of the Census for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by chapter 5 of Title 13, United States Code, economic censuses. This return information consists of taxpayer identity information (as defined in section 6103(b)(6)), activity codes, and filing requirement code, and monthly corrections of, and additions to, such return information.

(5) Subject to the requirements of paragraph (d) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information has been disclosed as provided by section 6103(l)(1)(A) or (5) may disclose such return information to officers and employees of the Bureau of the Census for necessary purposes described in subparagraph (2) or (3) of this paragraph (or for purposes of conducting, as authorized by chapter 1 of Title 13, United States Code, a demographic or economic statistics program or census and related program evaluation in progress as of February 21, 1980)

(i) From Form SS–4, all return information reflected on such return;

(ii) From an employment tax return—

(A) Taxpayer identifying number (as described in section 6109) of the employer and any employee identified on such return,

(B) Total number of employees reflected on the return,

(C) Total number of individuals employed in the taxable period covered by the return,

(D) Total compensation reported,

(E) Taxable wages paid for purposes of chapter 21 to each such employee,

(F) Taxable tip income for purposes of chapter 21 reported on the return with respect to each such employee,

(G) Total taxable wages paid for purposes of chapter 21, and

(H) Total taxable tip income reported for purposes of chapter 21,

(I) Employment code; and

(iii) From Form 1040, Schedule SE—

(A) Taxpayer identifying number of self-employed individual,

(B) Business activities subject to the tax imposed by chapter 21,

(C) Net earnings from farming,

(D) Net earnings from nonfarming activities,

(E) Total net earnings from self-employment, and

(F) Taxable self-employment income for purposes of chapter 2.

(c) *Disclosure of return information to officers and employees of the Bureau of Economic Analysis.* Officers or employees of the Service will disclose to officers and employees of the Bureau of Economic Analysis for purposes of, but only to the extent necessary in, conducting and preparing, as authorized by law, statistical analyses return information consisting of Statistics of Income transcript—edit sheets containing return information reflected on returns of designated classes or categories of corporations with respect to the tax imposed by chapter 1 and microfilmed records of return information reflected on such returns where needed for further use in connection with such conduct or preparation.

(d) *Procedures and restrictions.* Disclosure of return information by officers or employees of the Service or the Social Security Administration as provided by paragraphs (b) and (c) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Secretary of Commerce describing—

(1) The particular return information to be disclosed,

(2) The taxable period or date to which such return information relates, and

(3) The particular purpose for which the return information is to be used, and designating by name and title the officers and employees of the Bureau of the Census or the Bureau of Economic Analysis to whom such disclosure is authorized. No such officer or employee to whom return information is disclosed pursuant to the provisions of paragraph (b) or (c) shall disclose such return information to any person, other than the taxpayer to whom such return information relates or other officers or employees of such bureau whose duties or responsibilities requires such disclosure for a purpose described in paragraph (b) or (c), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Service determines that the Bureau of the Census or the Bureau of Economic Analysis, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations or published procedures thereunder, the Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information otherwise authorized by section 6103 (j)(1) and paragraph (b) or (c) of this section, until the Service determines that such requirements have been or will be satisfied.

## PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

### § 404.6103(j)(1)–1 [Deleted]

Par. 2. Section 404.6103(j)(1)–1 is deleted.

[FR Doc. 80-30902 Filed 10-2-80; 8:45 am]
BILLING CODE 4830-01-M

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## 26 CFR Parts 301, 404, and 420

[T.D. 7723]

## Disclosures of Returns and Return Information

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

**ACTION:** Final regulations.

**SUMMARY:** This document contains final regulations relating to disclosures of returns and return information under certain circumstances. These regulations affect disclosures of such returns and return information for such purposes as are described herein.

**DATES:** The regulations apply to disclosures of returns and return information made after October 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** David E. Dickinson of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224. Attention: CC:LR:T, 202–566–3218, not a toll-free call.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 24, 1980, the Federal Register published proposed regulations on section 6103 of the Internal Revenue Code of 1954, relating to disclosures of returns and return information (45 FR 18986). Three comments on these proposed regulations were received, but no public hearing was requested or held.

This Treasury decision adopts the regulations as proposed with changes to §§ 301.6103(l)(2)–3 and 301.6103(n)–1 described below.

### Provisions of the Regulations

*Sections 301.6103(a)–1 and 301.6103(a)–2*

Prior to its amendment by section 1202 of the Tax Reform Act of 1976, effective as of January 1, 1977, section 6103(a) of the Code authorized the disclosure of Federal tax data by the Internal Revenue Service to other Federal agencies for nontax related purposes as provided by orders of the President and implementing rules and regulations approved by the President. Section 301.6103(a)–1 provides that returns and return information so disclosed by the Service to another Federal agency before January 1, 1977 pursuant to the authority of prior law (and orders of the President and implementing rules and regulations) may, with one restriction, be disclosed after December 31, 1976 by such agency for any purpose authorized by such prior law (and orders, rules, and regulations). The restriction on such further disclosure is use of such returns or return information after December 31, 1976, by, or on behalf of, the Federal agency in an administrative or judicial proceeding. Such use is restricted to an administrative or judicial proceeding described in section 6103(i)(4) and then only if the requirements of section 6103(i)(4) are first met.

Prior to amendment by the Tax Reform Act of 1976, the Code authorized disclosures of tax returns and tax return information to Justice Department attorneys and Internal Revenue Service Chief Counsel personnel for Federal tax administration purposes as provided by Presidentially approved regulations. A substantial volume of tax returns and tax return information furnished to these attorneys and personnel for tax administration purposes under prior law and regulations was in their possession on January 1, 1977, the effective date of the new statutory disclosure rules of the Act.

Section 301.6103(a)–2 provides that, as a general rule, tax returns and tax return information furnished to these persons under prior law for Federal tax administration purposes may be used by them after December 31, 1976 for tax administration purposes authorized by prior law. However, if any such tax returns or tax return information is to be introduced into evidence in tax litigation after that date, the statutory relevancy tests prescribed by the new law must first be met.

*Section 301.6103(c)–1*

The Tax Reform Act of 1976 amended section 6103(c) of the Code to permit disclosures of tax returns and tax return information to a person designated by the taxpayer in a written request or consent. Paragraph (a) of § 301.6103(c)–1 prescribes rules governing the necessary form and content of these written requests or consents. Paragraph (b) of § 301.6103 (c)–1 prescribes rules for disclosures to a person who has been requested by the taxpayer to obtain information or provide assistance

concerning a contact between the taxpayer and the Service.

*Section 301.6103(h)(2)–1*

This Treasury decision amends § 301.6103(h)(2)–1 of existing regulations to conform them to certain amendments made to section 6103(h)(2) of the Code by section 503 of the Revenue Act of 1978. First, the section is amended to make the requirements of section 6103(h)(2), rather than those of section 6103(h)(4), applicable to the use of returns and return information in Federal grand jury proceedings involving tax administration. Second, the section is amended to authorize Service disclosures of returns and return information to "officers and employees" of the Department of Justice as opposed to the more limited category of "attorneys" as provided by prior law.

*Section 301.6103(i)–1*

This section of the regulations describes the circumstances and conditions under which returns and return information may be disclosed to and by officers and employees of the Department of Justice and other Federal agencies in connection with preparation for, or investigations which may result in, proceedings pertaining to the enforcement of specifically designated Federal criminal statutes (not involving tax administration) to which the United States or a Federal agency is or may be a party. This section also makes it clear that use of returns and return information by the Department of Justice in Federal grand jury proceedings is governed by the requirements of section 6103(i) (1) or (2) of the Code rather than those of section 6103(i)(4).

*Section 301.6103(j)(2)–1*

This section of the regulations provides rules governing disclosures of return information to certain officers and employees of the Federal Trade Commission for statistical purposes and related activities authorized by section 6103(j)(2) of the Code.

The regulations describe in detail the particular return information which the Service will disclose to officers and employees of the Division of Financial Statistics of the Bureau of Economics of the Federal Trade Commission for use in statistical programs and related activities authorized by law. The regulations also prescribe the procedures to be followed with respect to requested disclosures of return information and the limited extent to which such return can be redisclosed and provide that the confidentiality of return information disclosed as provided by the regulations must be protected to the satisfaction of the Service.

*Section 301.6103(k)(6)–1*

This section of the regulations provides rules governing disclosures of return information by officers and employees of the Service and Office of the Chief Counsel thereof for investigative purposes authorized by section 6103(k)(6) of the Code.

The regulations describe the circumstances and conditions under which such officers or employees are authorized to disclose return information to a person other than the taxpayer to whom such return information relates (or such taxpayer's representative) in connection with official duties relating to an examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws or relating to certain personnel or claimant representative matters under such laws or 31 U.S.C. 1026.

*Sections 301.6103(l)(2)–1, 301.6103(l)(2)–2, 301.6103(l)(2)–3*

These sections of the regulations under section 6103(*l*)(2) of the Code provide rules regarding disclosures of returns and return information to and by officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice for purposes of administering titles I and IV of the Employee Retirement Income Security Act of 1974. The section also makes it clear that returns and return information may be used by the Department of Justice in Federal grand jury proceeding where necessary to enforce the Act.

In response to a comment received, § 301.6103(*l*)(2)–3(a) (9), (21), and (22), as proposed, is revised, three additional categories of return information subject to automatic disclosure by the Service are added to § 301.6103(*l*)(2)–3(a), and § 301.6103(*l*)(2)–3(b)(3) is revised to require that requests for disclosures of additional returns and return information to officers and employees of the Department of Labor and Pension Benefit Guaranty Corporation identify such officers and employees only by title rather than by name and title. These changes are designed to further enhance compliance programs under titles I and IV of the Act.

*Section 301.6103(n)–1*

These regulations describe the circumstances and conditions under which an officer or employee of the Treasury Department (including the Internal Revenue Service), a State tax agency described in section 6103(d), or the Social Security Administration is authorized under section 6103(n) of the Code to disclose returns and return information to a person for the purpose of procuring property and services necessary to Federal or State tax administration. The regulations provide general rules regarding the requirement of necessity for the disclosure and limiting the extent to which such disclosures are authorized. The regulations also provide that the person to whom disclosures are made for these purposes may in turn disclose the tax data only for purposes specified by section 6103(n) and must maintain, to the satisfaction of the Service, safeguards to protect the confidentiality of the returns and return information and ensure against unauthorized disclosures.

As proposed, § 301.6103(n)–1(d) failed to specify that the terms of a contract between the Social Security Administration and its contractor provide, or be amended to provide, that the contractor is to comply with the safeguard requirements described in that paragraph. As adopted, § 301.6103(n)–1(d) makes this clear.

*Section 301.6103(p)(2)(B)–1*

Under section 6103 of the Code, a substantial volume of tax returns and tax return information is disclosable by the Service to other Federal agencies for purposes authorized or required by section 6103. It is likely that much of this tax information otherwise disclosable directly by the Service to yet other agencies as authorized or required by section 6103 may be more readily available from the intermediate Federal agency than the Service. For this reason, § 301.6103(p)(2)(B)–1 permits the Service to authorize disclosures of tax returns and tax return information by the intermediate Federal agency to other agencies to whom section 6103 otherwise authorizes or requires disclosures directly by the Service. Under this regulation, however, the Service retains the authority to impose, by regulation or otherwise, such restrictions on these disclosures as the Service may deem appropriate to properly protect the confidentiality of the information to be disclosed consistent with the requirements of section 6103. Further, this regulation imposes upon the head of the disclosing Federal agency the duty to maintain records of disclosures made under this regulation in order to meet the reporting requirements of section 6103(p)(3) (B) and (C).

**Drafting Information**

The principal author of these regulations was David E. Dickinson of the Legislation and Regulations Division of the Office of the Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

*Adoption of Amendments to the Regulations*

Accordingly, the amendments to 26 CFR Parts 301, 404, and 420 are adopted as proposed in the **Federal Register** on March 24, 1980 (45 FR 18986) with the following changes:

(1) Subparagraphs (9), (21), and (22) of § 301.6103(*l*)(2)–3(a) are revised; "; and" at the end of subparagraph (22) of § 301.6103 (*l*)(2)–3(a) is deleted and ";" substituted in lieu thereof; the period at the end of subparagraph (23) of § 301.6103(*l*)–2–3(a) is deleted and "; and" substituted in lieu thereof; new subparagraphs (24), (25), (26) and (27) are added to § 301.6103(*l*)(2)–3(a); and subparagraph (3) of § 301.6103(*l*)(2)–3(b) is revised. These revised and added subparagraphs read as follows:

*§ 301.6103(l)(2)–3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.*

(a) *Disclosures following general requests.* * * *

* * * * *

(9) Notification of receipt by the Service of, and action taken with respect to, an application by or on behalf of a particular taxpayer for a waiver of the tax imposed by section 4971(b);

* * * * *

(21) Notification of receipt by the Service of, and action taken with respect to, an application by or on behalf of a praticular taxpayer for a waiver or variance of the minimum funding standard under section 303 of the Act or section 412(d);

(22) Notification that the Service intends to under take, is undertaking, or has completed an examination to determine whether—

(i) A particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan meets the applicable requirements of part 1 of subchapter D of chapter 1 of the Code;

(ii) Any particular person is or may be liable for any tax imposed by section 4971 or 4975; or

(iii) A particular employee welfare benefit plan, as defined in section(3)(l) of the Act, meets the applicable requirements of section 501(c) or 120,

together with any completed Department of Labor or Pension Benefit Guaranty Corporation form (and supplemental schedules) relating to such examination;

* * * * *

(24) Notification of receipt by the Service of a request for technical advice as to whether a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan should be disqualified because of fiduciary actions subject to part 4 of subtitle B of title I of the Act which may violate the exclusive benefit rule of section 401(a);

(25) Notification of receipt by the National Office of the Service of a request by or on behalf of a particular taxpayer for a ruling, opinion, variance, or waiver under any provision of title I of the Act and a copy of any such ruling, opinion, variance, or waiver;

(26) Notification that the Service proposes to take substantive action which would significantly impact on or substantially affect collectively bargained plans and a description of such proposed substantive action; and

(27) Notification of receipt by the Service of, and action taken with respect to, a request by a particular taxpayer for a ruling under section 412(c)(8), 412(e), or 412(f).

* * * * *

(b) *Additional returns and return information subject to disclosure—* * *

(3) *Procedures.* Disclosure of returns or return information by officers or employees of the Service as provided by this paragraph will be made only upon written request to the Commissioner of Internal Revenue or his delegate by the Secretary of Labor or his delegate or the Executive Director of the Pension Benefit Guaranty Corporation or his delegate identifying the particular taxpayer by whom such return was made or to whom such return information relates, describing the particular returns or return information to be disclosed, stating the purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of such department or corporation to whom such disclosure is authorized.

* * * * *

(2) The second sentence of § 301.6103 (n)–1 (d) is revised to read as follows:

*§ 301.6103 (n)–1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.*

* * * * *

(d) *Safeguards.* * * * The terms of any contract between the Treasury Department, a State tax agency, or the Social Security Administration and a person pursuant to which a return or return information is or may be disclosed for a purpose described in paragraph (a) shall provide, or shall be amended to provide, that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service by regulation, published rules or procedures, or written communication to such person. * * *

* * * * *

This Treasury decision is issued under the authority contained in sections 6103 and 7805 of the Internal Revenue Code of 1954 (90 Stat. 1667, 68A Stat. 917; 26 U.S.C. 6103 and 7805).

**Jerome Kurtz,**

*Commissioner of Internal Revenue.*

Approved: September 10, 1980.

**Donald C, Lubick,**

*Assistant Secretary of the Treasury.*

## PART 301—PROCEDURE AND ADMINISTRATION

**Paragraph 1.** The following new sections are added immediately after § 301.6102–1:

**§ 301.6103(a)–1 Disclosures after December 31, 1976, by officers and employees of Federal agencies of returns and return information (including taxpayer return information) disclosed to such officers and employees by the Internal Revenue Service before January 1, 1977, for a purpose not involving tax administration.**

(a) *General rule.* Except as provided by paragraph (b) of this section, a return or return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, disclosed by the Internal Revenue Service before January 1, 1977, to an officer or employee of a Federal agency (as defined in section 6103(b)(9)) for a purpose not involving tax administration (as defined in section 6103(b)(4)) pursuant to the authority of section 6103 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary or his delegate and approved by the President) before amendment of such section by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1667) may be disclosed by, or on behalf of, such officer, employee, or agency after December 31, 1976, for any purpose authorized by such section (or such order or rules and regulations) before such amendment.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, a return or return information (including taxpayer return information) disclosed before January 1, 1977, by the Service to an officer or employee of a Federal agency for a purpose unrelated to tax administration as described in paragraph (a) may, after December 31, 1976, be disclosed by, or on behalf of, such agency, officer, or employee in an administrative or judicial proceeding only if such proceeding is one described in section 6103(i)(4) of the Code and if the requirements of section 6103(i)(4) have first been met.

**§ 301.6103(a)–2 Disclosures after December 31, 1976, by attorneys of the Department of Justice and officers and employees of the Office of the Chief Counsel for the Internal Revenue Service of returns and return information (including taxpayer return information) disclosed to such attorneys, officers, and employees by the Service before January 1, 1977, for a purpose involving tax administration.**

(a) *General rule.* Except as provided by paragraph (b) of this section and subject to the requirements of this paragraph, a return or return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3), of the Internal Revenue Code disclosed by the Internal Revenue Service before January 1, 1977, to an attorney of the Department of Justice (including a United States attorney) or to an officer or employee of the Office of the Chief Counsel for the Service for a purpose involving tax administration (as defined in section 6103(b)(4)) pursuant to the authority of section 6103 (or any order of the President under section 6103 or rules and regulations thereunder prescribed by the Secretary or his delegate and approved by the President) before amendment of such section by section 1202 of the Tax Reform Act of 1976 (Pub. L. 94–455, 90 Stat. 1667) may be disclosed by, or on behalf of, such attorney, officer, or employee after December 31, 1976, for any purpose authorized by such section (or such order or rules and regulations) before such amendment.

(b) *Exception.* Notwithstanding the provisions of paragraph (a) of this section, a return or return information (including taxpayer return information) disclosed before January 1, 1977, by the Service to an attorney of the Department of Justice or to an officer or employee of the Office of the Chief Counsel for the Service for a purpose related to tax administration as described in paragraph (a) may, after December 31, 1976, be disclosed by, or on behalf of, such attorney, officer, or employee in an administrative or judicial proceeding only if such proceeding is one described in section 6103 (h) (4) of the Code and if the requirements of section 6103 (h)(4) have first been met.

**§ 301.6103(c)–1 Disclosure of returns and return information (including taxpayer return information) to designee of taxpayer.**

(a) *Disclosure of returns and return information (including taxpayer return information) to person or persons designated in a written request or consent.* Section 6103 (c) of the Internal Revenue Code applies to disclosures of a return or return information (including taxpayer return information) to a person designated in a written request for or consent to disclosure. A request for or consent to disclosure must be in the form of a written document pertaining solely to the authorized disclosure. The written document must be signed and dated by the taxpayer who filed the return or to whom the return information relates. The taxpayer must also indicate in the written document—

(1) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(2) The indentity of the person to whom disclosure is to be made;

(3) The type of return (or specified portion of the return) or return information (and the particular data) that is to be disclosed; and

(4) The taxable year covered by the return or return information.

Thus, for example, a provision included in a taxpayer's application for a loan or other benefit authorizing the Internal Revenue Service to disclose to the grantor of the loan or other benefit such returns or return information as the grantor may request for purposes of verifying information supplied on the application does not meet the requirements of this paragraph. The disclosure of a return or return information authorized by a request for or consent to the disclosure shall not be made unless the request or consent is received by the Service within 60 days following the date upon which the request or consent was signed and dated by the taxpayer.

(b) *Disclosure of returns and return information (including taxpayer return information) to designee of taxpayer to comply with request for information or assistance.* Section 6103(c) of the Code applies to requests made by the taxpayer to other persons (for example, members of Congress, friends or relatives of the taxpayer, and, when not acting as a taxpayer's representative, income tax return preparers) for information or assistance relating to the taxpayer's return or a transaction or other contact between the taxpayer and the Service.

The taxpayer's request for information or assistance must be in the form of a letter or other written document signed and dated by the taxpayer. The taxpayer must also indicate in the written request—

(1) The taxpayer's taxpayer identity information described in section 6103(b)(6);

(2) The identity of the person to whom disclosure is to be made; and

(3) Sufficient facts underlying the request for information or assistance to enable the Service to determine the nature and extent of the information or assistance requested and the returns or return information to be disclosed in order to comply with the taxpayer's request.

A return or return information will be disclosed to the taxpayer's designee as provided by this paragraph only to the extent considered necessary by the Service to comply with the taxpayer's request for information or assistance. This paragraph does not apply to disclosures to a taxpayer's representative in connection with practice before the Service (as defined in Treasury Department Circular No. 230). For disclosures in these cases, see § 601.502(c) of this chapter.

(c) *Exceptions.* A disclosure of return information shall not be made under this section if the Service determines that the disclosure would seriously impair Federal tax administration (as defined in section 6103(b)(4) of the Code).

**Par. 2.** Section 301.6103(h)(2)–1 is amended to read as follows:

**§ 301.6103(h)(2)–1 Disclosure of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice for use in Federal grand jury proceeding, or in preparation for proceeding or investigation, involving tax administration.**

(a) *Disclosure of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by section 6103(h)(2) (A), (B), and (C) and subject to the requirements of section 6103(h)(3), be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and for their necessary use in, any Federal grand jury proceeding, or preparation for any proceeding (or for their necessary use in an investigation which may result in such a proceeding) before a Federal grand jury or any Federal or State court, in a matter involving tax administration (as defined in section 6103(b)(4)), including any such proceeding (or any such investigation) also involving the enforcement of a related Federal criminal statute which has been referred by the Secretary to the Department of Justice.

(2) Returns and return information (including taxpayer return information) inspected by or disclosed to officers and employees of the Department of Justice as provided in paragraph (a)(1) of this

section may also be used by such officers and employees or disclosed by them to other officers and employees (including United States attorneys and supervisory personnel, such as Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, and the Attorney General), of the Department of Justice where necessary—

(i) In connection with any Federal grand jury proceeding, or preparation for any proceeding (or with an investigation which may result in such a proceeding), described in paragraph (a)(1), or

(ii) In connection with any Federal grand jury proceeding, or preparation for any proceeding (or with an investigation which may result in such a proceeding), described in paragraph (a)(1) which also involves enforcement of a specific Federal criminal statute other than one described in paragraph (a)(1) to which the United States is or may be a party, provided such matter involves or arises out of the particular facts and circumstances giving rise to the proceeding (or investigation) described in paragraph (a)(1) and further provided the tax portion of such proceeding (or investigation) has been duly authorized by or on behalf of the Assistant Attorney General for the Tax Division of the Department of Justice, pursuant to the request of the Secretary, as a proceeding (or investigation) described in paragraph (a)(1). If, in the course of a Federal grand jury proceeding, or preparation for a proceeding (or the conduct of an investigation which may result in such a proceeding), described in subdivision (ii) of this subparagraph, the tax administration portion thereof is terminated for any reason, any further use or disclosure of such returns or taxpayer return information in such Federal grand jury proceeding, or preparation or investigation, with respect to the remaining portion may be made only pursuant to, and upon the grant of, a court order as provided by section 6103(i)(1)(A), provided, however, that the returns and taxpayer return information may in any event be used for purposes of obtaining the necessary court order.

(b) *Disclosure of returns and return information (including taxpayer return information) by officers and employees of the Department of Justice.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, inspected by or disclosed to officers and employees of the Department of Justice as provided by paragraph (a) of this section may be disclosed by such officers and employees to other persons, including, but not limited to, persons described in paragraph (b)(2), but only to the extent necessary in connection with a Federal grand jury proceeding, or the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding), described in paragraph (a). Such disclosures may include, but are not limited to, disclosures—

(i) To properly accomplish any purpose or activity of the nature described in section 6103(k)(6) and the regulations thereunder which is essential to such Federal grand jury proceeding, or to such proper preparation (or to such investigation);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or from any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this paragraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(2) Among those persons to whom returns and return information may be disclosed by officers and employees of the Department of Justice as provided by paragraph (a)(1) of this section are—

(i) Other officers and employees of the Department of Justice, such as personnel of an office, board, division, or bureau of such department (for example, the Federal Bureau of Investigation or the Drug Enforcement Administration), clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (such as supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of any such officers and employees of the Department of Justice; and

(iii) Court reporters.

**Par. 3.** The following new sections are added immediately after § 301.6103(h)(2)–1:

**§ 301.6103(i)–1 Disclosure of returns and return information (including taxpayer return information) to and by officers and employees of the Department of Justice or another Federal agency for use in Federal grand jury proceeding, or preparation for proceeding or investigation, involving enforcement of Federal criminal statute not involving tax administration.**

(a) *Disclosure of returns and return information (including taxpayer return information) to officers and employees of the Department of Justice or another Federal agency.* Returns and return information (including taxpayer return information), as defined in section 6103(b)(1), (2), and (3) of the Internal Revenue Code, shall, to the extent provided by section 6103(i) (1), (2), and (3) and subject to the requirements of section 6103(i) (1) and (2), be open to inspection by or disclosure to officers and employees of the Department of Justice (including United States attorneys) or of another Federal agency (as defined in section 6103(b)(9)) personally and directly engaged in, and for their necessary use in, any Federal grand jury proceeding, or preparation for any administration or judicial proceeding (or their necessary use in an investigation which may result in such a proceeding), pertaining to enforcement of a specifically designated Federal criminal statute not involving or related to tax administration to which the United States or such agency is or may be a party.

(b) *Disclosure of returns and return information (including taxpayer return information) by officers and employees of the Department of Justice or another Federal agency.* (1) Returns and return information (including taxpayer return information), as defined in section 6103(b) (1), (2), and (3) of the Code, disclosed to officers and employees of the Department of Justice or other Federal agency (as defined in section 6103(b)(9)) as provided by paragraph (a) of this section may be disclosed by such officers and employees to other persons, including, but not limited to, persons described in subparagraph (2) of this paragraph, but only to the extent necessary in connection with a Federal grand jury proceeding, or the proper preparation for a proceeding (or in connection with an investigation which may result in such a proceeding), described in paragraph (a). Such disclosures may include, but are not limited to, disclosures where necessary—

(i) To properly obtain the services of persons having special knowledge or technical skills (such as, but not limited to, handwriting analysis, photographic development, sound recording enhancement, or voice identification);

(ii) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from, the taxpayer to whom such return or return information relates (or such taxpayer's legal representative) or any witness who may be called to give evidence in the proceeding; or

(iii) To properly conduct negotiations concerning, or obtain authorization for, disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates or such taxpayer's legal representative to properly accomplish any purpose or activity described in this subparagraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosures.

(2) Among those persons to whom returns and return information may be disclosed by officers and employees of the Department of Justice or other Federal agency as provided by subparagraph (1) of this paragraph are—

(i) Other officers and employees of the Department of Justice (including an office, board, division, or bureau of such department, such as the Federal Bureau of Investigation or the Drug Enforcement Administration) or other Federal agency described in subparagraph (1), such as clerical personnel (for example, secretaries, stenographers, docket and file room clerks, and mail room employees) and supervisory personnel (for example, in the case of the Department of Justice, Section Chiefs, Deputy Assistant Attorneys General, Assistant Attorneys General, the Deputy Attorney General, the Attorney General, and supervisory personnel of the Federal Bureau of Investigation or the Drug Enforcement Administration);

(ii) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such officers and employees of the Department of Justice or other Federal agency described in subparagraph (1); and

(iii) Court reporters.

**§ 301.6103(j)(2)–1 Disclosure of return information to officers and employees of the Federal Trade Commission for certain statistical purposes and related activities.**

(a) *General rule.* (1) Pursuant to the provisions of section 6103(j)(2) of the Internal Revenue Code and subject to the requirements of paragraph (b) of this section, officers or employees of the Internal Revenue Service will disclose the following return information (as defined by section 6103(b)(2) but not including return information described in section 6103(o)(2)) reflected on the return of a corporation with respect to the tax imposed by chapter 1 to officers and employees of the Division of Financial Statistics of the Bureau of Economics of the Federal Trade Commission for purposes of, but only to the extent necessary in, developing and preparing, as authorized by law, the Quarterly Financial Report—

(i) From the business master files of the Service—

(A) Taxpayer identity information (as defined in section 6103(b)(6)),

(B) Consolidated return and final return indicators,

(C) Principal industrial activity code,

(D) Partial year indicator,

(E) Annual accounting period,

(F) Gross receipts less returns and allowances,

(G) Net income or loss,

(H) Total assets; and

(ii) From Form SS–4—

(A) Month and year in which such form was executed,

(B) Taxpayer identity information; and

(C) Principal industrial activity, geographic, firm size, and reason for application codes.

(2) Subject to the requirements of paragraph (b) of this section and § 301.6103(p)(2)(B)–1, officers or employees of the Social Security Administration to whom the following return information reflected on Form SS–4 with respect to a corporation has been disclosed as provided by section 6103(l)(1)(A) may disclose such return information to officers and employees of the Division of Financial Statistics of the Bureau of Economics of the Federal Trade Commission for a purpose described in subparagraph (1) of this paragraph—

(i) Month and year in which such form was executed;

(ii) Taxpayer identity information; and

(iii) Principal industrial activity, geographic, firm size, and reason for application codes.

(b) *Procedures and restrictions.* Disclosure of return information by officers or employees of the Service or the Social Security Administration as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Chairman of the Federal Trade Commission describing the particular return information to be disclosed and the taxable period or date to which such return information relates and designating by name and title the officers and employees of the Division of Financial Statistics of the Bureau of Economics to whom such disclosure is authorized. No such officer or employee to whom return information is disclosed pursuant to the provisions of paragraph (a) shall disclose such return information to any person, other than the taxpayer to whom such return information relates or other officers or employees of such division whose duties or responsibilities require such disclosure for a purpose described in paragraph (a), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer. If the Service determines that the division, or any officer or employee thereof, has failed to, or does not, satisfy the requirements of section 6103(p)(4) of the Code or regulations or published procedures thereunder, the Service may take such actions as are deemed necessary to ensure that such requirements are or will be satisfied, including suspension of disclosures of return information otherwise authorized by section 6103(j)(2) and paragraph (a) of this section until the Service determines that such requirements have been or will be satisfied.

**§ 301.6103(k)(6)–1 Disclosure of return information by internal revenue officers and employees for investigative purposes.**

(a) *Disclosure of taxpayer identity information and fact of investigation in connection with official duties relating to examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws.* In connection with the performance of official duties relating to any examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws, or in connection with preparation for any proceeding (or investigation which may result in such a proceeding) described in section 6103(h)(2) of the Internal Revenue Code, an officer or employee of the Internal Revenue Service or Office of the Chief Counsel therefor is authorized to disclose taxpayer identity information (as defined in section 6103(b)(6)), the fact that the inquiry pertains to the performance of official duties, and the nature of the official duties in order to obtain necessary

information relating to performance of such official duties or where necessary in order to properly accomplish any activity described in subparagraph (6) of paragraph (b) of this section. Disclosure of taxpayer identity information to a person other than the taxpayer to whom such taxpayer identity information relates or such taxpayer's legal representative for the purpose of obtaining such necessary information or otherwise properly accomplishing such activities as authorized by this paragraph should be made, however, only if the necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of the official duties, or if such activities cannot otherwise properly be accomplished without making such disclosure.

(b) *Disclosure of return information in connection with official duties relating to examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws.* In connection with the performance of official duties relating to any examination, collection activity, civil or criminal investigation, enforcement activity, or other offense under the internal revenue laws, an officer or employee of the Service or Office of the Chief Counsel therefor is authorized to disclose return information (as defined in section 6103(b)(2)) in order to obtain necessary information relating to the following—

(1) To establish or verify the correctness or completeness of any return (as defined in section 6103(b)(1) of the Code) or return information;

(2) To determine the responsibility for filing a return, for making a return where none has been made, or for performing such acts as may be required by law concerning such matters;

(3) To establish or verify the liability (or possible liability) of any person, or the liability (or possible liability) at law or in equity of any transferee or fiduciary of any person, for any tax, penalty, interest, fine, forfeiture, or other imposition or offense under the internal revenue laws or the amount thereof to be collected;

(4) To establish or verify misconduct (or possible misconduct) or other activity proscribed by the internal revenue laws;

(5) To obtain the services of persons having special knowledge or technical skills (such as, but not limited to, knowledge of particular facts and circumstances relevant to a correct determination of a liability described in subparagraph (3) of this paragraph or skills relating to handwriting analysis, photographic development, sound recording enhancement, or voice identification) or having recognized expertise in matters involving the valuation of property where relevant to proper performance of a duty or responsibility described in this paragraph;

(6) To establish or verify the financial status or condition and location of the taxpayer against whom collection activity is or may be directed, to locate assets in which the taxpayer has an interest, to ascertain the amount of any liability described in subparagraph (3) of this paragraph to be collected, or otherwise to apply the provisions of the Code relating to establishment of liens against such assets, or levy on, or seizure, or sale of, the assets to satisfy any such liability; or

(7) To prepare for any proceeding described in section 6103(h)(2) or conduct an investigation which may result in such a proceeding, or where necessary in order to accomplish any activity described in subparagraph (6) of this paragraph.

Disclosure of return information to a person other than the taxpayer to whom such return information relates or such taxpayer's legal representative for the purpose of obtaining information necessary to properly carry out the foregoing duties and responsibilities as authorized by this paragraph or for the purpose of otherwise properly accomplishing any activity described in subparagraph (6) of this paragraph should be made, however, only if such necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of such duties and responsibilities, or if the activities described in subparagraph (6) of this paragraph cannot otherwise properly be accomplished without making such disclosure.

(c) *Disclosure of return information in connection with certain personnel or claimant representative matters.* In connection with the performance of official duties relating to any investigation concerned with the enforcement of any provision of the Code, including enforcement of any rules, directives, or manual issuances prescribed by the Secretary or his delegate under section 7803 or any other provision of the Code, which affect or may affect the personnel or employment rights or status, or civil or criminal liability, of any employee or former or prospective employee of the Treasury Department or the rights of any person who is or may be a party to an administrative action or proceeding pursuant to 31 U.S.C. 1026, an officer or employee of the Service or Office of the Chief Counsel therefor is authorized to disclose return information (as defined in section 6103(b)(2)) for the purpose of obtaining, verifying, or establishing other information which is or may be relevant and material to such investigation. Disclosure of return information to a person other than the taxpayer to whom such return information relates or such taxpayer's legal representative for the purpose of obtaining information necessary to properly carry out the foregoing duties and responsibilities as authorized by this paragraph should be made, however, only if such necessary information cannot, under the facts and circumstances of the particular case, otherwise reasonably be obtained in accurate and sufficiently probative form, or in a timely manner, and without impairing the proper performance of such duties and responsibilities.

**§ 301.6103(l)(2)–1 Disclosure of returns and return information to Pension Benefit Guaranty Corporation for purposes of research and studies.**

(a) *General rule.* Pursuant to the provisions of section 6103(l)(2) of the Internal Revenue Code and subject to the requirements of paragraph (b) of this section, officers and employees of the Internal Revenue Service may disclose returns and return information (as defined by section 6103(b)) to officers and employees of the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, conducting research and studies authorized by title IV of the Employee Retirement Income Security Act of 1974.

(b) *Procedures and restrictions.* Disclosure of returns or return information by officers or employees of the Service as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Executive Director of the Pension Benefit Guaranty Corporation describing the returns or return information to be disclosed, the taxable period or date to which such returns or return information relates, and the purpose for which the returns or return information is needed in the administration of title IV of the Employee Retirement Income Security Act of 1974, and designating by title the officers and employees of such corporation to whom such disclosure is authorized. No such officer or employee

to whom returns or return information is disclosed pursuant to the provisions of paragraph (a) shall disclose such returns or return information to any person, other than the taxpayer by whom the return was made or to whom the return information relates or other officers or employees of such corporation whose duties or responsibilities require such disclosure for a purpose described in paragraph (a), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

**§ 301.6103(l)(2)-2 Disclosure of returns and return information to Department of Labor for purposes of research and studies.**

(a) *General rule.* Pursuant to the provisions of section 6103(l)(2) of the Internal Revenue Code and subject to the requirements of paragraph (b) of this section, officers or employees of the Internal Revenue Service may disclose returns and return information (as defined by section 6103(b)) to officers and employees of the Department of Labor for purposes of, but only to the extent necessary in, conducting research and studies authorized by section 513 of the Employee Retirement Income Security Act of 1974.

(b) *Procedures and restrictions.* Disclosure of returns or return information by officers or employees of the Service as provided by paragraph (a) of this section will be made only upon written request to the Commissioner of Internal Revenue by the Administrator of the Pension and Welfare Benefit Programs of the Department of Labor describing the returns or return information to be disclosed, the taxable period or date to which such returns or return information relates, and the purpose for which the returns or return information is needed in the administration of title I of the Employee Retirement Income Security Act of 1974, and designating by title the officers and employees of such department to whom such disclosure is authorized. No such officer or employee to whom returns or return information is disclosed pursuant to the provisions of paragraph (a) shall disclose such returns or return information to any person, other than the taxpayer by whom the return was made or to whom the return information relates or other officers or employees of such department whose duties or responsibilities require such disclosure for a purpose described in paragraph (a), except in a form which cannot be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

**§ 301.6103(l)(2)-3 Disclosure to Department of Labor and Pension Benefit Guaranty Corporation of certain returns and return information.**

(a) *Disclosures following general requests.* Pursuant to the provisions of section 6103(l)(2) of the Internal Revenue Code and subject to the requirements of this paragraph, officers or employees of the Internal Revenue Service may disclose the following returns and return information (as defined by section 6103(b)) to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of title I or IV of the Employee Retirement Income Security Act of 1974 (hereinafter referred to in this section as the Act)—

(1) Notification of receipt by the Service of an application by a particular taxpayer for a determination of whether a pension, profit-sharing, or stock bonus plan, a trust which is a part of such a plan, or an annuity or bond purchase plan meets the applicable requirements of part I of subchapter D of chapter 1 of the Code;

(2) Notification that a particular application described in subparagraph (1) of this paragraph alleges that certain employees may be excluded from participation by reason of section 410(b)(2) (A) and (B) for the purpose of obtaining the finding necessary for the application of such section;

(3) An application by a particular taxpayer for a determination of whether a pension, profit-sharing, or stock bonus plan, or an annuity or bond purchase plan, meets the applicable requirements of part I of subchapter D of chapter 1 of the Code with respect to a termination or proposed termination of the plan or to a partial termination or proposed partial termination of the plan, and any statement filed as provided by section 6058(b);

(4) Notification that the Service has determined that a plan or trust described in subparagraph (1) or (3) of this paragraph meets or does not meet the applicable requirements of part I of subchapter D of chapter 1 of the Code and has issued a determination letter to such effect to a particular taxpayer or that an application for such a determination has been withdrawn by the taxpayer;

(5) If the Department of Labor or the Pension Benefit Guaranty Corporation has commented on an application upon which a determination letter described in subparagraph (4) of this paragraph has been issued, a copy of the letter or document issued to the applicant;

(6) Notification to a particular taxpayer that the Service intends to disqualify a pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan because such plan or trust does not meet the requirements of section 410(a) or 411 as of the date that such notification is issued;

(7) Notification required by section 3002(a) of the Act of the commencement of any proceeding to determine whether a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan meets the requirements of section 410(a) or 411;

(8) Prior to issuance of a notice of deficiency to a particular taxpayer under section 6212, notification that the Service has determined that a deficiency exists under section 6211 with respect to the tax imposed by section 4971 (a) or (b) on such taxpayer, except that if the Service determines that the collection of such tax is in jeopardy within the meaning of section 6861(a), such notification may be disclosed after issuance of the notice of deficiency or jeopardy assessment;

(9) Notification of receipt by the Service of, and action taken with respect to, an application by or on behalf of a particular taxpayer for a waiver of the tax imposed by section 4971 (b);

(10) Prior to issuance of a notice of deficiency to a particular taxpayer under section 6212, notification that a deficiency exists under section 6211 with respect to the tax imposed by section 4975 (a) or (b) on such taxpayer, except that if the Service determines that the collection of such tax is in jeopardy within the meaning of section 6861(a), such notification may be disclosed after issuance of the notice of deficiency or jeopardy assessment;

(11) Notification that the Service has waived the tax imposed by section 4975(b) on a particular taxpayer;

(12) Notification of applicability of section 4975 to a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan engaged in prohibited transactions within the meaning of section 4975(c);

(13) Notification to a plan administrator that the Service has determined that a pension, profit-sharing, stock bonus, annuity, or stock purchase plan no longer meets the requirements of section 401(a) or 404(a)(2);

(14) Notification that the Service has determined that there has been a termination or partial termination of a particular pension, profit-sharing, stock

bonus, annuity, or stock purchase plan within the meaning of section 411(d)(3);

(15) Notification of the occurrence of an event (other than an event described in subparagraph (13), (14), or (18) of this paragraph) which the Service has determined to indicate that a particular pension, profit-sharing, stock bonus, annuity, or stock purchase plan may not be sound under section 4043(c)(2) of the Act;

(16) Notification that the Service has received and responded to a request on behalf of a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan for an extension of time for filing an annual return by such plan or trust;

(17) Notification that the Service has received and responded to a request on behalf of a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan to change the annual accounting period of such plan or trust;

(18) Notification that the Service has determined that a particular plan does not meet the requirements of section 412 without regard to whether such plan is one described in section 4021(a)(2) of the Act;

(19) Notification of the results of an investigation by the Service requested by the Department of Labor or the Pension Benefit Guaranty Corporation, or both, with respect to whether the tax described in section 4971 should be imposed on any employer named in such request or whether the tax imposed by section 4975 should be paid by any person named in the request;

(20) Notification of receipt by the Service of an application by a particular taxpayer for exemption under section 4975(c)(2) or of initiation by the Service of an administrative proceeding for such exemption;

(21) Notification of receipt by the Service of, and action taken with respect to, an application by or on behalf of a particular taxpayer for a waiver or variance of the minimum funding standard under section 303 of the Act or section 412(d);

(22) Notification that the Service intends to undertake, in undertaking, or has completed, an examination to determine whether—

(i) A particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or stock purchase plan meets the applicable requirements of part I of subchapter D of chapter 1 of the Code,

(ii) Any particular person is, or may be, liable for any tax imposed by section 4971 or 4975, or

(iii) A particular employee welfare benefit plan, as defined in section 3(1) of the Act, meets the applicable requirements of section 501(c) or 120,

Together with any completed Department of Labor or Pension Benefit Guaranty Corporation form (and supplemental schedules) relating to such examination;

(23) Copies of initial pleadings indicating that the Service intends to intervene in a civil action under section 502(h) of the Act. Return information disclosed under this paragraph includes the taxpayer identity information (as defined in section 6103(b)(6)) of the plan or trust, the name and address of the sponsor and administrator of the plan or trustee of the trust, and the name and address of the person authorized to represent the plan or trust before the Service;

(24) Notification of receipt by the Service of a request for technical advice as to whether a particular pension, profit-sharing, or stock bonus plan, a trust which is a part of such plan, or an annuity or bond purchase plan should be disqualified because of fiduciary actions subject to part 4 of subtitle B of title I of the Act which may violate the exclusive benefit rule of section 401(a);

(25) Notification of receipt by the National Office of the Service of a request by or on behalf of a particular taxpayer for a ruling, opinion, variance, or waiver under any provision of title I of the Act and a copy of any such ruling, opinion, variance or waiver;

(26) Notification that the Service proposes to take substantive action which would significantly impact on or substantially affect collectively bargained plans and a description of such proposed substantive action; and

(27) Notification of receipt by the Service of, and action taken with respect to, a request by a particular taxpayer for a ruling under section 412(c)(8), 412(e), or 412(f).

Disclosure of returns or return information as provided by this paragraph will be made only following receipt by the Commissioner of Internal Revenue of an annual written request for such disclosure by the Administrator of Pension and Benefit Welfare Programs of the Department of Labor or the Executive Director of the Pension Benefit Guaranty Corporation describing the categories of returns or return information to be disclosed by the Service and the particular purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of the Department of Labor or such corporation to whom such disclosure is authorized.

(b) *Additional returns and return information subject to disclosure*—(1) *Returns and return information relating to automatic notification.* Subject to the requirements of subparagraph (3) of this paragraph, officers or employees of the Service may disclose to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation for purposes of, but only to the extent necessary in, the administration of title I or IV of the Act additional returns and return information relating to any item described in paragraph (a) of this section.

(2) *Other returns and return information.* Subject to the requirements of subparagraph (3) of this paragraph, officers or employees of the Service may disclose to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation returns and return information (other than returns and return information disclosed as provided by paragraph (a) of this section or § 301.6103 (*l*) (2)–1 or § 301.6103(*l*) (2)–2) for purposes of, but only to the extent necessary in, administration of title I or IV of the Act.

(3) *Procedures.* Disclosure of returns or return information by officers or employees of the Service as provided by this paragraph will be made only upon written request to the Commissioner of Internal Revenue or his delegate by the Secretary of Labor or his delegate or the Executive Director of the Pension Benefit Guaranty Corporation or his delegate identifying the particular taxpayer by whom such return was made or to whom such return information relates, describing the particular returns or return information to be disclosed, stating the purpose for which the returns or return information is needed in the administration of title I or IV of the Act, and designating by title the officers and employees of such department or corporation to whom such disclosure is authorized.

(c) *Disclosure and use of returns and return information by officers and employees of Department of Labor, Pension Benefit Guaranty Corporation, and Department of Justice*—(1) *Use by officers and employees of Department of Labor and Pension Benefit Guaranty Corporation.* Returns and return information disclosed to officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation as provided by this section may be used by such officers and employees for purposes of, but only to the extent necessary in, administration of any provision of title I or IV of the

Act, including any preparation for any administrative or judicial proceeding (or investigation which may result in such a proceeding) authorized by, or described in, title I or IV of the Act.

(2) *Disclosure by officers and employees of Department of Labor and Pension Benefit Guaranty Corporation to, and use by, other persons, including officers and employees of the Department of Justice.* (i) Returns and return information disclosed to officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation as provided by this section may be disclosed by such officers and employees to officers and employees of the Department of Justice (including United States attorneys) personally and directly engaged in, and for their necessary use in, any Federal grand jury proceeding, or preparation for any civil or criminal judicial proceeding (or for their necessary use in an investigation which may result in such a proceeding), authorized by, or described in, title I or IV of the Act.

(ii) Returns and return information disclosed to officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice as provided by this section may be disclosed by such officers and employees to other persons, including, but not limited to, persons described in subparagraph (2)(iii) of this paragraph, but only to the extent necessary in connection with administration of the provisions of title I or IV of the Act, including a Federal grand jury proceeding, and proper preparation for a proceeding (or investigation), described in subparagraph (1) or (2)(i). Such disclosures may include, but are not limited to, disclosures where necessary—

(A) To properly obtain the services of persons having special knowledge or technical skills;

(B) To properly interview, consult, depose, or interrogate or otherwise obtain relevant information from the taxpayer to whom such return or return information relates (or the legal representative of such taxpayer) or any witness who may be called to give evidence in the proceeding; or

(C) To properly conduct negotiations concerning, or obtain authorization for, settlement or disposition of the proceeding, in whole or in part, or stipulations of fact in connection with the proceeding.

Disclosure of a return or return information to a person other than the taxpayer to whom such return or return information relates (or the legal representative of such taxpayer) to properly accomplish any purpose or activity described in this subparagraph should be made, however, only if such purpose or activity cannot otherwise properly be accomplished without making such disclosure.

(iii) Among those persons to whom returns and return information may be disclosed by officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice as provided by subparagraph (2)(ii) of this paragraph are:

(A) Other officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, and the Department of Justice;

(B) Officers and employees of another Federal agency (as defined in section 6103(b)(9)) working under the direction and control of such officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, or the Department of Justice; and

(C) Court reporters.

Disclosure of returns or return information to other persons by officers and employees of the Department of Labor or the Pension Benefit Guaranty Corporation as provided by subparagraph (2)(ii) of this paragraph for purposes of conducting research, surveys, studies, and publications referred to in section 513(a), or authorized by title IV, of the Act shall be restricted, however, to disclosure to other officers and employees of such department or corporation to whom such disclosure is necessary in connection with such conduct or to the taxpayer by whom such return was made or to whom such return information relates if the return or return information can be associated with, or otherwise identify, directly or indirectly, a particular taxpayer.

(3) *Disclosure in judicial proceedings.* A return or return information disclosed to officers and employees of the Department of Labor, the Pension Benefit Guaranty Corporation, or the Department of Justice as provided by this section may be entered into evidence by such officers or employees in a civil or criminal judicial proceeding authorized by, or described in, title I or IV of the Act, provided that, in the case of a judicial proceeding described in section 6103(i)(4), the requirements of section 6103(i)(4) have first been met.

(d) *Disclosure of returns and return information in connection with certain consultations between Departments of the Treasury and Labor.* Upon general written request to the Commissioner of Internal Revenue by the Secretary of Labor, officers and employees of the Service may disclose to officers and employees of the Department of Labor such returns and return information as may be necessary to properly carry out any consultation required by section 3002, 3003, or 3004 of the Act.

(e) *Return information open to public inspection under section 6104.* Nothing in these regulations shall be construed to deny officers and employees of the Department of Labor and the Pension Benefit Guaranty Corporation the right to inspect return information available to the public under section 6104 of the Code.

**§ 301.6103(n)-1 Disclosure of returns and return information in connection with procurement of property and services for tax administration purposes.**

(a) *General rule.* Pursuant to the provisions of section 6103(n) of the Internal Revenue Code and subject to the requirements of paragraphs (b), (c), and (d) of this section, officers or employees of the Treasury Department, a State tax agency, or the Social Security Administration are authorized to disclose returns and return information (as defined in section 6103(b)) to any person (including, in the case of the Treasury Department, any person described in section 7513(a)), or to an officer or employee of such person, to the extent necessary in connection with contractual procurement of—

(1) Equipment or other property, or

(2) Services relating to the processing, storage, transmission, or reproduction of such returns or return information, or to the programming, maintenance, repair, or testing of equipment or other property, for purposes of tax administration (as defined in section 6103(b)(4)).

No person, or officer or employee of such person, to whom a return or return information is disclosed by an officer or employee of the Treasury Department, the State tax agency, or the Social Security Administration under the authority of this paragraph shall in turn disclose such return or return information for any purpose other than as described in this paragraph, and no such further disclosure for any such described purpose shall be made by such person, officer, or employee to anyone, other than another officer or employee of such person whose duties or responsibilities require such disclosure for a purpose described in this paragraph, without written approval by the Internal Revenue Service.

(b) *Limitations.* For purposes of paragraph (a) of this section, disclosure of returns or return information in

connection with contractual procurement of property or services described in such paragraph will be treated as necessary only if such procurement or the performance of such services cannot otherwise be reasonably, properly, or economically carried out or performed without such disclosure. Thus, for example, disclosures of returns or return information to employees of a contractor for purposes of programming, maintaining, repairing, or testing computer equipment used by the Internal Revenue Service or a State tax agency should be made only if such services cannot be reasonably, properly, or economically performed by use of information or other data in a form which does not identify a particular taxpayer. If, however, disclosure of returns or return information is in fact necessary in order for such employees to reasonably, properly, or economically perform the computer related services, such disclosures should be restricted to returns or return information selected or appearing at random. Further, for purposes of paragraph (a), disclosure of returns or return information in connection with the contractual procurement of property or services described in such paragraph should be made only to the extent necessary to reasonably, properly, or economically conduct such procurement activity. Thus, for example, if an activity described in paragraph (a) can be reasonably, properly, and economically conducted by disclosure of only parts or portions of a return or if deletion of taxpayer identity information (as defined in section 6103(b)(6) of the Code) reflected on a return would not seriously impair the ability of the contractor or his officers or employees to conduct the activity, then only such parts or portions of the return, or only the return with taxpayer identity information deleted, should be disclosed.

(c) *Notification requirements.* Each officer or employee of any person to whom returns or return information is or may be disclosed as authorized by paragraph (a) of this section shall be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized by paragraph (a) of this section and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized by such paragraph constitutes a felony, punishable upon conviction by a fine of as much as $5,000, or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also so notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than $1,000 with respect to each instance of unauthorized disclosure.

(d) *Safeguards.* Any person to whom a return or return information is disclosed as authorized by paragraph (a) of this section shall comply with all applicable conditions and requirements which may be prescribed by the Internal Revenue Service for the purposes of protecting the confidentiality of returns and return information and preventing disclosures of returns or return information in a manner unauthorized by paragraph (a). The terms of any contract between the Treasury Department, a State tax agency, or the Social Security Administration and a person pursuant to which a return or return information is or may be disclosed for a purpose described in paragraph (a) shall provide, or shall be amended to provide, that such person, and officers and employees of the person, shall comply with all such applicable conditions and restrictions as may be prescribed by the Service by regulation, published rules or procedures, or written communication to such person. If the Service determines that any person, or an officer or employee of any such person, to whom returns or return information has been disclosed as provided in paragraph (a) has failed to, or does not, satisfy such prescribed conditions or requirements, the Service may take such actions as are deemed necessary to ensure that such conditions or requirements are or will be satisfied, including—

(1) Suspension or termination of any duty or obligation arising under a contract with the Treasury Department referred to in this paragraph or suspension of disclosures by the Treasury Department otherwise authorized by paragraph (a) of this section, or

(2) Suspension of further disclosures of returns or return information by the Service to the State tax agency, until the Service determines that such conditions and requirements have been or will be satisfied.

(e) *Definitions.* For purposes of this section—

(1) The term "Treasury Department" includes the Internal Revenue Service and the Office of the Chief Counsel for the Internal Revenue Service, and

(2) The term "State tax agency" means an agency, body, or commission described in section 6103(d) of the Code.

**§ 301.6103(p)(2)(B)-1 Disclosure of certain returns and return information by other Federal agencies.**

(a) *General rule.* Subject to the requirements of this section, returns and return information disclosed by the Internal Revenue Service to officers and employees of another Federal agency (as defined in section 6103(b)(9) of the Internal Revenue Code) as provided by section 6103 may, if the Commissioner of Internal Revenue determines that such returns or return information is more readily available from such Federal agency, be disclosed by such officers and employees to officers and employees of another Federal agency, the General Accounting Office, an agency, body, or commission described in section 6103(d) or (l)(6), or a person described in section 6103(e) for a purpose or use authorized or required by, but subject to any requirements imposed by, any other provision of section 6103 and the regulations thereunder. Any such disclosure may be made only as, to the extent, and to such persons as may be authorized in writing by the Commissioner pursuant to a written request for such disclosure by such person, and containing such information, as may be designated or provided by the applicable provisions of section 6103 and the regulations thereunder pursuant to which the disclosure is sought. Such disclosure authorization by the Commissioner shall be directed to the head of the Federal agency from which disclosure is sought and may contain such conditions or restrictions as the Commissioner may prescribe.

(b) *Records and reports of disclosure.* The Federal agency making a disclosure authorized by paragraph (a) of this section shall maintain to the satisfaction of the Service a permanent system of standardized records with respect to any disclosure authorization by the Commissioner described in paragraph (a) and any disclosure of returns or return information made pursuant to such authorization. In order to enable the Service to make a timely submission of the public report on disclosures to the Joint Committee on Taxation as required by section 6103(p)(3)(C) of the Code, the Federal agency shall, within 30 days after the close of each calendar year, furnish to the Commissioner a report with respect to such records which provides the number of—

(1) Disclosure authorizations by the Commissioner,

(2) Instances in which returns or return information was disclosed pursuant to such disclosure authorizations and to disclosure

authorizations executed in prior calendar years, and

(3) Taxpayers whose returns or return information with respect to whom was disclosed pursuant to the disclosure authorization described in subparagraph (2).

In addition, in order to enable the Service to make a timely submission of the report to the Joint Committee on Taxation required by section 6103(p)(3)(B), the Federal agency shall furnish to the Commissioner a report with respect to, or summary of, the records at such time or times, in such form, and containing such information as the Commissioner may prescribe in a written request directed to the head of such Federal agency. The requirements of this paragraph do not apply to disclosures of taxpayer identity information described in section 6103(m) or to disclosures of returns and return information as provided by paragraph (a) which, had such disclosures been made directly by the Service, would not have been subject to the recordkeeping requirements imposed by section 6103(p)(3)(A).

## PART 404—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE TAX REFORM ACT OF 1976

**§§ 404.6103(a)–1, 404.6103(a)–2, 404.6103(c)–1, 404.6103(i)–1, 404.6103(j)(2)–1, 404.6103(k)(6)–1, and 404.6103(n)–1 [Deleted]**

Par. 4. Sections 404.6103(a)–1, 404.6103(a)–2, 404.6103(c)–1, 404.6103(i)–1, 404.6103(j)(2)–1, 404.6103(k)(6)–1, and 404.6103(n)–1 are deleted.

## PART 420—TEMPORARY REGULATIONS ON PROCEDURE AND ADMINISTRATION UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

**§§ 420.6103(l)(2)–1, 420.6103(l)(2)–2, and 420.6103(l)(2)–3 [Deleted]**

Par. 5. Sections 420.6103(*l*)(2)–1, 420.6103(*l*)(2)–2, and 420.6103(*l*)(2)–3 are deleted.

[FR Doc. 80-30892 Filed 9-30-80; 5:01 pm]
BILLING CODE 4830-01-M

## DEPARTMENT OF THE INTERIOR

### National Park Service

### 36 CFR Part 28

### Fire Island National Seashore; Zoning Standards; Correction

**AGENCY:** National Park Service, Interior.

**ACTION:** Correction to final rule.

**SUMMARY:** On September 10, 1980 (45 FR 59569) the National Park Service published final zoning standards for Fire Island National Seashore, New York. This is a correction to that final rule.

**FOR FURTHER INFORMATION CONTACT:** Joel Pickelner, Superintendent, Fire Island National Seashore, Patchogue, New York 11772. Telephone: (516) 289–4810.

In the **Federal Register** document of September 10, 1980, the following correction should be made on page 59572.

1. The Part title should read:

## PART 28—FIRE ISLAND NATIONAL SEASHORE; ZONING STANDARDS

**F. R. Holland, Jr.,**

*Acting, Associate Director, Management and Operations.*

[FR Doc. 80-30891 Filed 10-2-80; 8:45 am]
BILLING CODE 4310-70-M

## POSTAL RATE COMMISSION

### 39 CFR Parts 3000 and 3001

**[Docket No. RM80–1; Order No. 354]**

### Rules of Practice and Related Standards of Conduct (Annual Review of Regulations)

September 10, 1980.

**AGENCY:** Postal Rate Commission.

**ACTION:** Final rules.

**SUMMARY:** The amendments to our rules that we adopt here are the culmination of our second annual review of our rules conducted under our plan for implementing Executive Order No. 12044 (43 FR 12661, March 24, 1978). They establish procedures governing the rejection of defective Postal Service rate and classification requests, modify our rules concerning *ex parte* communications with the Officer of the Commission, and modify our rules concerning discovery, witnesses' workpapers, and library references.

**EFFECTIVE DATE:** September 10, 1980.

**FOR FURTHER INFORMATION CONTACT:** David F. Stover, General Counsel, Postal Rate Commission, Suite 500, 2000 L Street, N.W., Washington, D.C. 20268; (202) 254–3824.

**SUPPLEMENTARY INFORMATION:** Consistent with our plan for implementing Executive Order No. 12044 (43 FR 12661, March 24, 1978), we began the second annual review of our rules of practice by publishing an Advance Notice of Proposed Rulemaking in the **Federal Register** on February 20, 1980 (45 FR 11139–40). The Advance notice solicited suggestions from the public for improving our rules of practice and solicited public comment on a Commission proposal to amend those rules to provide for rejection by the Commission of defective Postal Service rate or classification requests submitted under 39 U.S.C. 3622 and 3623.

We undertook the second step in the annual review process by publishing a Notice of Proposed Rulemaking in the **Federal Register** on May 22, 1980 (45 FR 34309–15). In it we made limited modifications to our proposed amendments concerning rejection of defective Postal Service requests, in response to comments submitted by the Postal Service. We also proposed certain amendments to our rules concerning discovery, witnesses' workpapers, and library references, in response to comments received from the Officer of the Commission. Finally, we proposed amendments to our rules governing *ex parte* communications.

Our Notice of Proposed Rulemaking solicited public comment on these proposed amendments. The Postal Service, the Officer of the Commission and the American Bankers Association submitted responsive comments. We hereby adopt the amendments proposed in our Notice of Proposed Rulemaking, published May 22, 1980, with limited modifications as discussed herein.

### Rejection of Defective Requests

## PART 3001—RULES OF PRACTICE AND PROCEDURE

We hereby add the following new paragraph (t) to § 3001.54 of Subpart B, of Part 3001, 39 CFR:

**§ 3001.54 [Amended]**

* * * * *

(t) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with any requirements of this subpart.

Similarly, we hereby add the following new paragraph (i) to § 3001.64 of Subpart C, of Part 3001, 39 CFR:

**§ 3001.64 [Amended]**

* * * * *

(i) *Rejection of requests.* The Commission may reject any request under this subpart that patently fails to substantially comply with the requirements of this subpart.

New §§ 3001.54(t) and 3001.64(i) are adopted as they appeared in our Notice of Proposed Rulemaking published May 22, 1980, except that new § 3001.54(t) appeared there as § 3001.54(f) as a result of a typographical error.

As our Notice of Proposed Rulemaking explained, these new paragraphs parallel procedural rules which have been adopted by other federal administrative agencies with responsibilities to review rates or classifications in a public hearing context. They are designed as interim procedural devices for "calling on the filing party to put its papers in proper form and order," not as procedures for disposing of a filing on its merits *Municipal Light Boards v. FPC*, 450 F.2d 1341, 1346 (D.C. Cir. 1971), *cert. denied* 405 U.S. 989 (1972). They are to be used only when a rate or classification proposal so fails to satisfy threshold requirements as to form or content that a hearing to evaluate its lawfulness would be futile. The purpose of these "rejection" rules is to avoid the administrative inefficiency and injustice that hearings on such proposals would entail. (*Id.*)

Commenting on our proposed new §§ 3001.54(t) and 3001.64(i), the Postal Service repeats the major contentions that it expressed in response to our Advance Notice of Proposed Rulemaking. It contends that our affirmative duty under 39 U.S.C. 3622–24 to hold a formal evidentiary hearing and to issue an opinion and recommended decision in response to formal Postal Service rate or classification requests precludes any other Commission response, such as rejection.

As our Notice indicates, however, the procedural device of rejecting a patently defective request prior to hearing is an interim procedure, analogous to a dismissal of a complaint without prejudice in civil practice. It is not a disposition on the merits. Because it presents at most a temporary obstacle, one that is entirely within the filing party's power to remove simply by putting "its papers in proper form and order," it is not, in our view, in conflict with our affirmative duty under the Act to hold a formal hearing on and reach the merits of a formal Postal Service request. As our Notice observed, by necessary implication this view is shared by other Federal agencies that, like the Commission, are subject to affirmative statutory requirements to hold hearings on the propriety of tariffs or certificates of public convenience and necessity but have adopted comparable rejection rules.

In its response to our Notice, the Postal Service reiterates its largely semantic argument that the Commission's authority to reject defective Postal Service requests may not be analogized to that of other Federal agencies since, unlike the Commission, they are "true" regulatory agencies, *i.e.*, agencies that have broad supervisory authority over particular private industries.

It is true that the Commission does not have final decision authority. Our decisions are "Recommended Decisions," and it is the Governors of the Postal Service who make the final determination on rate and classification matters. They have the authority to reject our decisions, and under very limited circumstances, they may even make modifications. 39 U.S.C. 3625. But that feature of the statutory framework does not detract from the rationale for promulgating a procedure for rejection of Postal Service filings. The rationale, as we noted above, is to further the goals of administrative efficiency—while preserving parties' rights to procedural fairness—by dispensing with a hearing when a filing is, in form or substance, "so deficient on its face" that opening a docket to evaluate it would be futile.

*Municipal Light Boards, Supra*

Formal evidentiary hearing procedures such as discovery and cross-examination are inappropriately slow, tedious, and expensive methods of confirming the defectiveness of a patently defective filing. In the same way, they are inappropriate techniques for raising a patently defective request to the level of threshold viability. The need to avoid the unwarranted delay and expense that curing patently defective requests through formal evidentiary procedures would entail, is as acute in Postal Rate Commission proceedings as it is in proceedings before agencies which regulate gas, electric or common carrier rates and classes. The economic impact, number of participants, length of evidentiary record, and range of issues that are fully litigated rather than settled in our proceedings lead us to conclude that summary rejection of patently defective requests is, if anything, especially appropriate in our proceedings.

Further, because we do not enjoy the same breadth of discretion that most other federal regulatory agencies have to streamline hearing procedures, our need for a formally and substantively viable request at the outset of a proceeding is likely to be greater than in the typical rate proceeding before other regulatory agencies.

Our rules regarding rejection of defective rate and classification proposals apply only to formal Postal Service requests. The Postal Service regards this as indicating a Commission disposition not to treat it with an even hand, contending that there should be a comparable provision for rejecting the proposals of other parties.

The Postal Service is doubtless aware that its rate and classification requests are not comparable to the requests of other parties. Only the Postal Service has specific statutory authority to file formal rate and classification proposals with the Commission. When it does, a Commission hearing and recommended decision on its requests are mandatory, assuming its requests meet the threshold requirements discussed above. The rate and classification proposals of other parties may only be considered in the context of rate or classification requests already initiated by the Postal Service, in the context of classification proceedings initiated by us under the authority of 39 U.S.C. 3623, or section 3624 proceedings instituted under the complaint procedure of 39 U.S.C. 3662.

We, therefore, have much greater latitude in determining whether it is in the public interest to institute proceedings at the request of members of the public than we enjoy with respect to Postal Service requests. In addition, there is a greater need for flexible treatment of rate and classification proposals made by the public because much of the data necessary to support such proposals is in the control of the Postal Service. Under these circumstances the form in which parties should be required to cast their proposals and the supplementary information that they should be required to provide at the threshold of a proceeding are best determined on a case-by-case basis.

These considerations are reflected in our rules of practice. Subparts B and C of our rules contain detailed requirements as to the form and informational content of the Postal Service's formal rate and classification requests. Rules 54(t) and 64(i) (39 CFR 3001.54(t) and 3001.64(i)), which we adopt here, logically supplement Subparts B and C by addressing noncompliance with those subparts.

There are, however, no Commission rules of practice comparable to Subparts B and C that prescribe the form and informational content of the rate or classification proposals of other parties, for the reasons stated above. Rule 92 (39 CFR 3001.92) is not such a rule, since it merely suggests that other parties consider voluntarily including in their testimony certain categories of information, most of which address the effect that Postal Service rate or classification proposals would have on their interests. It would, of course, be pointless for us to promulgate sanctions for noncompliance with nonexistent rules.

Both the Postal Service and the Officer of the Commission criticize the standard formulated in rules 54(t) and 64(i), which provides for rejection of a Postal Service request that "patently fails to substantially comply" with the requirements of the relevant subpart. The OOC contends the term "patently" adds unnecessary subjectivity to the standard, making it more difficult to apply, and maintains it should be deleted. Similarly, the Postal Service argues that the terms "patently" and "substantially" are "conclusory, equivocal criteria" that should be replaced by "precise" criteria governing rejection of its requests.

We have employed the terms "patently" and "substantially" because they reflect the standard with which rejection of filings must comply in order to withstand judicial review. In *Municipal Light Boards, supra,* a leading case on the question, the court stated (450 F.2d, at 1345) that rejection

> * * * is appropriate where the filing is so deficient on its face that the agency may properly return it to the filing party without even awaiting a responsive filing by any other party in interest.
>
> * * * * *
>
> Its use is not limited to defects of form. It may be used by an agency where the filing is so patently a nullity as a matter of substantive law, that administrative efficiency and justice are furthered by obviating any docket at the threshold rather than opening a futile docket.

The Court in *Municipal Light Boards* upheld the Federal Power Commission's refusal to reject a tariff filing in part by approving that agency's use of the doctrine of "substantial" compliance with respect to its filing rules. 450 F.2d at 1348. Our review of the case law leads us to the conclusion that the use of the terms "patently" and "substantially" accurately reflects the prevailing standard for judicial review of agency use of rejection authority, and we have not been cited to contravening authority.

Another reason for our including the terms "patently" and "substantially" is that they parallel one of the most restrictive rejection standards that we have found among federal agency regulations, that is, 18 CFR 35.5 (governing the Federal Energy Regulatory Commission), which authorizes rejection of

> * * * any material submitted for filing with the Commission which patently fails to substantially comply with the applicable requirements set forth in this Part, or the Commission's rules of practice and procedure.

Like most judicial standards, the standard we have established in Rules 54(t) and 64(i), is of necessity, general and subjective. In our view, including the terms "patently" and "substantially" improves the standard because it advises the parties that technical noncompliance with our rules will not, in the abstract, warrant rejection. For purposes of rejection, defects in Postal Service requests will be judged in the context of their effect on our proceedings, that is, their effect on the ability of both the parties and the Commission to understand in general terms what is being proposed and the basis of the proposal, so that they will have a meaningful opportunity to prepare for the proceeding.

Both the OOC and the American Bankers Association request that we adopt elaborate procedures to be used in rejecting a request, including specific provisions for tentative acceptance of a request, notice to parties of our intent to reject, and procedures for parties to file motions and comments regarding rejection. In our view, however, such procedural mechanisms are neither necessary nor useful where the rejection procedure is properly employed.

As the court noted in *Municipal Light Boards, supra,* rejection is a "peremptory" form of response to a filing, appropriate where the filing "is so deficient on its face that the agency may properly return it to the filing party without even awaiting a responsive filing." 450 F.2d at 1346. When the use of the rejection procedure is so restricted, the procedural mechanisms urged by the OOC and the ABA are unnecessary and perhaps even dilatory. Normally we would expect a decision to reject to be made shortly after the submission of the request, most likely within the time it would ordinarily take to serve public notice of the receipt of a formal Postal Service request. If the procedure is invoked, public notice of our decision to reject, and the reasons therefore, will be given in conjunction with public notice of the submission of the request by the Postal Service or as soon thereafter as possible. In most instances we would expect that any defect in a request will be quickly remedied by the Postal Service and the request resubmitted. A round of notice and comment prior to a decision to reject, therefore, would not normally be fruitful, nor would the resulting delay be warranted. Accordingly, we will not, by rule, provide for these suggested procedures. We will, however, consider the need for input from the parties should a case arise in which it is necessary to invoke our rejection authority.

### Discovery

All three parties filing comments were supportive of our revisions to Rules 25–27 (39 CFR 3001.25—3001.27). The Officer of the Commission (OOC) suggested two technical changes which we have adopted: a party objecting to part of a discovery request is required to specify the part; and the 10-day period for objecting to discovery requests is being included in Rule 27, as well as Rules 25 and 26. These changes will increase clarity and facilitate expedition in motion practice in our proceedings.

The Postal Service takes issue with the wording of proposed Rule 25(d) on the grounds that an answer could be compelled even if no party moved therefor, and that a motion to compel could be made by a party other than the one which submitted a discovery request. The Postal Service's interpretation of the proposed amendments is correct. A problem sometimes arises in discovery before the Commission when one party submits a discovery request and other parties, or the Commission, rely upon it to obtain needed information. The Commission strives to avoid duplication of discovery requests in the formulations of its information requests, and parties are also encouraged to avoid duplication of other parties' requests. But a party which has refrained from serving a discovery request should not be prevented from filing a motion to compel if it views an objection as invalid or an answer as inadequate and the party seeking discovery has decided not to pursue the matter further. Otherwise, parties would be forced to duplicate discovery requests submitted by other parties in order to preserve their procedural rights. The result would be a waste of the resources of intervenors, the Postal Service and the Commission. For this reason the Postal Service's suggested changes are not being accepted.

The Postal Service also maintains that the revision to Rule 25(d) permitting an answer to be compelled if the initial answer is found to be "inadequate" is too imprecise. Postal Service argues the party seeking to compel a response should be required to identify the precise information not provided and the part of the interrogatory in which it is requested. The Postal Service also suggests that answers should be compelled only when information "specifically and unmistakeably requested" is available but was not provided.

The Commission believes that the subjective criterion "inadequacy" is appropriate for Rule 25(d). The nature of discovery practice is such that formalistic, objective criteria are not likely to further the purposes of the

process. The Postal Service's proposed language, "specifically and unmistakeably requested" is no more precise than that proposed by the Commission; the principal difference between the two phrasings of the rule is that the Postal Service's version would place a higher burden on the party seeking discovery. We believe the language "unmistakeably" would make it too difficult for a party to compel a response when an answer to a discovery request is not complete. Because of the basic policy promoting liberal discovery as a means of expedition in assembling relevant information and narrowing issues, we have decided not to accept the Postal Service's proposals on this matter.

Finally, the Postal Service argues that the 10 days allotted for a response to an interrogatory after a motion to compel has been granted would be anomalous in comparison to the 20-day period normally allotted. We cannot agree. When an objection is raised to a discovery request and a motion to compel is subsequently filed, an order resolving the controversy can rarely be issued less than 30 days after the discovery request was originally filed. Thus, even with the 10-day period permitted by the amendments to our rules there would typically be a minimum delay of 20 days in the provision of responses. We apreciate the difficulties a party may encounter in attempting to provide a compelled response within 10 days, but allowing the normal 20-day period after a delay of a month or more has already been encountered has served to delay proceedings in the past, and effectively penalizes the party which made the discovery request. We believe it reasonable to require an expedited response from a party which has raised an invalid objection to a discovery request or failed to respond adequately.

**Library References**

There having been no comments on our proposed addition of a new paragraph to Rule 31 (39 CFR 3001.31), the amended rule is being promulgated as proposed.

**Workpapers**

The only comment on our proposed revisions to the workpaper requirements of Rules 54, 64 and 92 (39 CFR 3001.54, 3001.64, and 3001.92) was made by the OOC, regarding our omission of a procedure it had suggested for addressing deficiencies in workpapers. We have considered the OOC's comments, but do not believe the special procedure it proposes is warranted. Such deficiencies can be remedied through Rule 21 motion practice. Under that rule expedited consideration can be requested and granted upon a showing of need by the moving party.

**Ex Parte Communications**

The OOC and ABA have supported the proposed changes to our rules governing *ex parte* communications, and the Postal Service has raised no objection thereto. The OOC, however, has raised two definitional matters relating to the application of Rule 7 (39 CFR 3001.7). First, it suggests that the term "employee," as used in that rule, is not sufficiently clear; second, it proposes a technical change to the wording of Rule 7(c). We believe these proposals may have merit, and they will be taken under advisement. But they do not affect the value of the amendments which the Commission is hereby promulgating. Because other parties have not had an opportunity to comment on the OOC's proposed changes, no revisions are being made at this time. The term "employee" in Rule 7 will continue to be defined as it has been in the past.

**OOC Proposals**

The Officer of the Commission also proposed a new rule outlining procedures to govern informal discovery. In recent years the Commission has encouraged the parties to its proceedings to engage in informal discovery as a means of expeditiously and efficiently exchanging information and narrowing issues. We agree with the Postal Service that the past success of this process stems largely from its informality and our reluctance to become involved in it. We do not believe that formal rules would further the purposes of informal discovery and have, therefore, decided not to accept the OOC's proposal.

Rules 25–27 (§§ 3001.25 through 3001.27) are hereby revised as set forth below.

**§ 3001.25 Interrogatories for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve upon any other participant in a proceeding written interrogatories requesting nonprivileged information relevant to the subject matter in such proceeding, to be answered by the participant served, who shall furnish such information as is available to the participant. A participant through interrogatories may require any other participant to identify each person whom the other participant expects to call as a witness at the hearing and to state the subject matter on which the witness is expected to testify. The participant serving the interrogatories shall file a copy thereof with the Secretary pursuant to § 3001.9 and shall serve copies upon other participants who request them.

(b) *Answers.* Each interrogatory shall be answered separately and fully in writing under oath, unless it is objected to, in which event the reasons for objection shall be stated in the manner prescribed by paragraph (c) of this section. The answers are to be signed by the person making them. The party responding to the interrogatories shall serve the answers on the party who served the interrogatories within 20 days of the service of the interrogatories or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an interrogatory, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the interrogatory, providing estimates of cost and man-hours required, to the extent possible. An interrogatory otherwise proper is not necessarily objectionable because an answer would involve an opinion or contention that relates to fact or the application of law to fact, but the Commission or presiding officer may order that such an interrogatory need not be answered until a prehearing conference or other later time. Objections are to be signed by the attorney making them. The party objecting to interrogatories shall serve the objections on the party who served the interrogatories within 10 days of the service of the interrogatories. Copies of objections to interrogatories shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(d) *Compelled answers.* The Commission, or the presiding officer, upon motion of any participant to the proceeding, may compel an answer to an interrogatory to which an objection has been raised if the objection is found not to be valid, or may compel an

additional answer if the initial answer is found to be inadequate. Such compelled answers shall be served on the party who moved to compel the answer within 10 days of the date of the order compelling an answer or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed with the Secretary pursuant to § 3001.9 and shall be served upon other participants who request them.

(e) *Supplemental answers.* A participant who has answered interrogatories is under the duty to seasonably amend a prior answer if he obtains information upon the basis of which he knows that the answer was incorrect when made or is no longer true. [A participant filing a supplemental answer shall indicate whether the answer merely supplements the previous answer to make it current, or whether it is intended as a complete replacement for the answer previously given.]

(f) *Orders.* The Commission or the presiding officer may order that any participant or person shall answer on such terms and conditions as are just and may for good cause make any protective order, including an order limiting or conditioning interrogatories, as justice requires to protect a party or person from undue annoyance, embarrassment, oppression, or expense.

**§ 3001.26 Requests for production of documents or things for purpose of discovery.**

(a) *Service and contents.* In the interest of expedition and limited to information which appears reasonably calculated to lead to the discovery of admissible evidence, any participant may serve on any other participant to the proceeding a request to produce and permit the participant making the request, or someone acting in his behalf, to inspect and copy any designated documents or things which constitute or contain matters, not privileged, which are relevant to the subject matter involved in the proceeding and which are in the custody or control of the participant upon which the request is served. The request shall set forth the items to be inspected either by individual item or category, and describe each item and category with reasonable particularity, and shall specify a reasonable time, place and manner of making inspection. The participant requesting the production of documents or things shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who ask for them.

(b) *Answers.* The participant upon whom the request is served shall serve a written answer on the participant who filed the request within 20 days after the service of the request, or within such other period as may be fixed by the presiding officer. The answer shall state, with respect to each item or category, that inspection will be permitted as requested unless the request is objected to pursuant to paragraph (c) of this section. The participant answering the request shall sign and file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item or category, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and man-hours required, to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests shall serve the objections on the party requesting production of documents or things, upon the Secretary pursuant to § 3001.9 and upon other participants who request them, within 10 days of the request for production.

(d) *Orders.* The Commission or the presiding officer may, on such terms and conditions as are just and reasonable, order that any participant in a proceeding shall respond to a request for inspection, and may make any protective order of the nature provided in paragraph (f) of § 3001.25 as may be appropriate. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel production of documents or things to which an objection has been raised if the objection is found not to be valid. Such compelled documents or things shall be made available to the party making the motion within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Documents or things ordered to be produced shall also be made available to the Secretary pursuant to § 3001.9 and to the other participants who request them.

**§ 3001.27 Requests for admissions for purpose of discovery.**

(a) *Service and content.* In the interest of expedition any participant may serve upon any other participant a written request for the admission, for purposes of the pending proceeding only, of any relevant, unprivileged facts, including the genuineness of any documents or exhibits to be presented in the hearing. The participant requesting the admission shall file a copy of the request with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(b) Answers. Each matter of which an admission is requested shall be separately set forth and is admitted unless within 20 days after service of the request, or within such other period as may be fixed by the presiding officer, the participant to whom the request is directed serves upon the participant requesting the admission a written answer or files an objection pursuant to paragraph (c) of this section. A participant who answers a request for admission shall file a copy of the answer with the Secretary pursuant to § 3001.9 and shall serve copies thereof upon other participants who request them.

(c) *Objections.* In the interest of expedition, the bases for objection shall be clearly and fully stated. If objection is made to part of an item, the part shall be specified. A participant claiming privilege shall identify the specific evidentiary privilege asserted and state the reasons for its applicability. A participant claiming undue burden shall state with particularity the effort which would be required to answer the request, providing estimates of cost and man-hours required to the extent possible. Objections are to be signed by the attorney making them. The party objecting to requests for admissions shall serve the objections on the party requesting admissions, upon the Secretary pursuant to § 3001.9 and upon other participants who request them, within 10 days of the request.

(d) *Orders.* If the Commission or presiding officer determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served, or may determine that final disposition of the request be made at a pretrial conference or at a designated time prior to the hearing. Upon motion of any participant to the proceeding, the Commission or the presiding officer may compel answers to a request for admissions to which an objection has been raised if the objection is found not to be valid.

Such compelled answers shall be served on the party who moved to compel the answers within 10 days of the date of the order compelling production or within such other period as may be fixed by the presiding officer, but before the conclusion of the hearing. Copies of the answers shall be filed upon the Secretary pursuant to § 3001.9 and served upon other participants who request them.

Rule 31 (39 CFR 3001.31) is amended by adding the following paragraph after existing subsection (k):

**§ 3001.31 [Amended]**

(l) Designation of a document as a library reference is a procedure for facilitating reference to such document in Commission proceedings and does not, by itself, confer any particular evidentiary status upon such document. The evidentiary status of such document is governed by the preceding paragraphs of this section.

Rules 54, 64, and 92 (39 CFR 3001.54, 3001.64, and 3001.92) are amended as set forth below.

39 CFR 3001.54 is amended by revising (p)(4) as follows:

**§ 3001.54 [Amended]**

* * * * *

(p) * * *

(4) Workpapers shall be sufficient to enable a reviewer to trace the derivation of numbers in the testimony back to published documents or, if necessary, primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc.

* * * * *

39 CFR 3001.64(g)(4) is revised as follows:

**§ 3001.64 [Amended]**

* * * * *

(g) * * *

(4) Workpapers shall be sufficient to enable a reviewer to trace the derivation of numbers in the testimony back to published documents, or, if necessary, primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc.

* * * * *

39 CFR 3001.92(l)(4) is revised as follows:

**§ 3001.92 [Amended]**

* * * * *

(l) * * *

(4) Workpapers shall be sufficient to enable a reviewer to trace the derivation of numbers in the testimony back to published documents, or, if necessary, primary data sources. Citations shall be sufficiently detailed to enable a reviewer to identify and locate the specific data used, *e.g.*, by reference to document, page, line, column, etc.

Rule 7 (39 CFR 3001.7) is revised as set forth below.

**§ 3001.7 Ex parte communications.**

(a) *Definitions.* (1) *Decision-making Commission personnel.* Subject to the exception stated in paragraph (a)(2)(ii) of this section, the following categories of persons are designated "decision-making Commission personnel":

(i) The Commission and their personal office staffs;

(ii) The General Counsel and his staff;

(iii) The Director of the Office of Technical Analysis and Planning and his staff.

(iv) Any other employee who may reasonably be expected to be involved in the decisional process.

(2) *Non-decision-making Commission personnel.* The following categories of persons are designated "non-decision-making Commission personnel":

(i) All Commission personnel other than decision-making Commission personnel;

(ii) Decision-making Commission personnel not participating in the decisional process owing to the prohibitions of § 3001.8 or 39 CFR 3000.735, Subpart C.

(b) *Prohibition.* In any agency proceeding that is required to be conducted in accordance with section 556 of title 5 or a proceeding conducted pursuant to Subpart H of this Part, except to the extent required for the disposition of ex parte matters as authorized by law—

(1) Interested persons outside the Commission and non-decision-making Commission personnel shall not make or knowingly cause to be made to any Commission decision-making personnel ex parte communications relevant to the merits of the proceeding;

(2) Commission decision-making personnel shall not make or knowingly cause to be made to any interested person outside the Commission or to non-decision-making Commission personnel ex parte communications relevant to the merits of the proceeding.

(3) Commission decision-making personnel who receive ex parte communications relevant to the merits of the proceeding shall decline to listen to such communications and explain that the matter is pending for determination. Any recipient thereof shall advise the communicator that he will not consider the communication and shall promptly and fully inform the Commission in writing of the substance of and the circumstances attending the communication, so that the Commission will be able to take appropriate action.

(4) Commission decision-making personnel who receive, or who make or knowingly cause to be made, communications prohibited by this paragraph shall place on the public record of the proceeding:

(i) All such written communications;

(ii) Memoranda stating the substance of all such oral communications; and

(iii) All written responses, and memoranda stating the substance of all oral responses, to the materials described in paragraph (b)(4)(i) and (b)(4)(ii) of this section.

(5) Requests for an opportunity to rebut, on the record, any facts or contentions contained in an ex parte communication which have been placed on the public record of the proceeding pursuant to paragraph (b)(4) of this section may be filed in writing with the Commission. The Commission will grant such requests only where it determines that the dictates of fairness so require. Generally, in lieu of actually receiving rebuttal material, the Commission will direct that the alleged factual assertion and the proposed rebuttal be disregarded in arriving at a decision.

(c) *Applicability.* (1) The prohibitions of paragraph (b) of this section shall apply beginning at the time at which a proceeding is noticed for hearing or appeal unless the person responsible for the communication has knowledge that it will be noticed, in which case the prohibitions shall apply beginning at the time of his acquisition of such knowledge.

(2) Paragraph (b) of this section does not constitute authority to withhold information from Congress.

(d) *Violations of ex parte rules.* (1) Upon notice of a communication knowingly made or knowingly caused to be made by a party in violation of paragraph (b) of this section, the Commission, administrative law judge, or other employee presiding at the hearing may, to the extent consistent with the interests of justice and the policy of the underlying statutes, require the party to show cause why his claim or interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected on account of such violation.

(2) The Commission may, to the extent consistent with the interests of justice and the policy of the underlying statutes administered by the Commission, consider a violation of paragraph (b) of this section sufficient grounds for a decision adverse to a party who has knowingly committed such violation or

knowingly caused such violation to occur.

## PART 3000—STANDARDS OF CONDUCT

39 CFR 3000.735-501 is revised as set forth below.

### Subpart E—Ex Parte Communications

**§ 3000.735-501 Ex parte communications prohibited.**

Decision-making Commission personnel, as defined in § 3001.7(a), shall not, either in an official or unofficial capacity, participate in any ex parte communication—either oral or written—with any person regarding (1) a particular matter (substantive or procedural) at issue in contested proceedings before the Commission or (2) the substantive merits of a matter that is likely to become a particular matter at issue in contested proceedings before the Commission. A particular matter is at issue in contested proceedings before the Commission when it is a subject of controversy in a hearing held under 39 U.S.C. 3624 or 3661(c). However, this section does not prohibit participation in off-the-record proceedings conducted under regulations adopted by the Commission for hearings held under 39 U.S.C. 3624 or 3661(c).

By the Commission, Commissioner O'Doherty dissenting.

**David F. Harris,**

*Secretary.*

[FR Doc. 80-30853 Filed 10-2-80; 8:45 am]

BILLING CODE 7715-01-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 80

[FRL 1618-3]

### Fuels and Fuel Additives; Petition To Defer Lead Phasedown Regulations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Denial of petition to defer regulations controlling lead content in gasoline.

**SUMMARY:** On August 25, 1980, Du Pont Corporation (Du Pont) submitted a petition seeking to defer certain EPA regulations controlling the lead content in gasoline (the "lead phasedown regulations"). EPA has examined Du Pont's petition and finds that it does not contain new information warranting a new rulemaking proceeding to consider revision of the regulations. For this reason EPA denies Du Pont's petition.

**DATES:** September 29, 1980.

**ADDRESS:** Information concerning this action may be found in Docket EN 79-14, Central Docket Section, Environmental Protection Agency, Gallery I-West Tower, 401 M St., S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Susan A. Finder, Attorney-Advisor, Fuels Section, Field Operations and Support Division, U.S. Environmental Protection Agency, at (202) 472-9367.

**SUPPLEMENTARY INFORMATION:**

#### Background

The original lead phasedown regulations were promulgated on December 6, 1973 (38 FR 33734), under section 211(c) of the Clean Air Act, 42 U.S.C. 7545(c). They established a 0.5 gram per gallon (gpg) final standard effective January 1, 1979. In promulgating the 0.5 gpg standard the Agency took into consideration the known health effects of lead exposure and the difficulty of establishing a safe exposure level, and concluded that "it would be prudent to reduce preventable lead exposure from automobiles emitting airborne lead to the fullest extent possible." (38 FR 1259, January 10, 1973). After considering economic factors, the Agency set a lead reduction schedule which it determined to be economically feasible.

Refiners and lead manufacturers sought judicial review of the regulations. The U.S. Court of Appeals for the District of Columbia Circuit set aside the regulations by a 2-1 vote on December 20, 1974. On March 17, 1975, the Court granted the Agency's petition for rehearing *en banc* and vacated the prior decision, and on March 19, 1976 upheld the regulations. *Ethyl Corp.* v. *EPA*, 541 F.2d 1 (D.C. Cir.) (*en banc*), cert. denied 426 U.S. 941 (1976). The Court concluded that the Agency had not been arbitrary and capricious in promulgating the regulations but had in fact "handled an extraordinarily complicated problem with great care and candor" (541 F.2d at 47).

EPA amended the regulations on September 28, 1976, to provide for a standard of 0.8 gpg effective January 1, 1978, and a 0.5 gpg standard effective October 1, 1979 (41 FR 42675).

These amendments were designed to give refiners sufficient time to install the equipment necessary to meet the reduced lead level without causing a gasoline shortage. 41 FR 42676 (1976).

The interruption of crude oil supplies from Iran in 1979 led the Agency to believe that a further temporary relaxation might be warranted. Therefore, on June 8, 1979, EPA proposed to amend the lead phasedown regulations to permit refiners to meet a 0.8 gpg standard until October 1, 1980, provided these refiners would produce increased percentages of unleaded gasoline (44 FR 33116). On June 20, 1979 a public hearing was held in Washington, D.C., on the proposed amendments. Du Pont participated in the rulemaking. On September 12, 1979, the regulations were amended substantially as proposed ("the 1979 rulemaking") (44 FR 53144). At that time, EPA made clear that "we continue to believe that a 0.5 gpg lead standard should be achieved as rapidly as possible for purposes of public health but that this *short-term* relaxation should not have a substantial health effect." *Id.* (emphasis added). The Agency was concerned that shortages of unleaded gasoline would cause motorists to fuel switch, poisoning billions of dollars worth of catalytic convertors, and threatening public health and the environment. 44 FR 53144 (1979). The one year postponement was designed to avert the long-term significant pollution that otherwise might have resulted. Under 307(b)(1) of the Act, 42 U.S.C. 7607(b)(1), the time for seeking judicial review of the 1979 rulemaking expired on November 11, 1979. Du Pont did not seek judicial review.

On January 17, 1980, the Du Pont Corporation submitted a document to the Environmental Protection Agency entitled "Petition to Repeal Regulations Controlling Lead Content in Gasoline." On May 19, 1980, Du Pont submitted an addendum to the petition. The petition sought to show that because of decreased demand for gasoline and an increasing proportion of vehicles using unleaded gasoline, revocation of the lead phasedown regulations would make little difference in terms of compliance with air quality standards, and that it would offer certain energy benefits. The Agency published a denial of that petition on August 14, 1980 (45 FR 54090). I decided that the information submitted by Du Pont did not contain new information warranting a new rulemaking to consider revision or revocation of the regulations.

On August 25, 1980, Du Pont submitted a second petition entitled "Petition to Defer for One Year the Controls Applicable to Gasoline Refiners Set Forth in 40 CFR 80(a)(1)(ii)." This current petition sought to demonstrate that the absence of adverse health effects, the modest effect on air quality, and the impact on energy supplies support a one year delay in the implementation of the 0.5 gpg

standard—essentially the same points that Du Pont made in its first petition.

**Criteria for Review of Du Pont's Petition**

Du Pont asserts that is submitting its petition in accordance with certain procedures set forth in *Oljato Chapter of the Navajo Tribe v. EPA*, 515 F. 2d 654, 666 (D.C. Cir. 1975), which govern petitions for revision of rules promulgated under the Clean Air Act. The procedures described in *Oljato* are essentially that: (1) a petition for revision of such a rule, along with any supporting material, should first be submitted to the Agency; (2) the Agency should respond to the petition and, if it denies the petition, set forth its reasons; and (3) if the petition is denied, the petitioner may seek judicial review pursuant to Section 307(b) of the Act. *Oljato, supra*, 515 F. 2d at 666. By this notice the Agency is responding to Du Pont's petition and is setting forth the reasons for its decision.[1]

As I discussed in my denial of Du Pont's first petition, the scheme devised in *Oljato* was designed to address the situation where purportedly new information becomes available after promulgation of a rule. The Court concluded that such "new information" should be presented to the Agency first so that it may determine what administrative action, if any, should be taken before the matter is reviewed by a court. Under this scheme, the threshold determination to be made is whether a petitioner has submitted "new information." 45 FR 54090–91 (August 14, 1980).

If the information supporting a petition was raised or could have been raised in the original rulemaking or petition, I do not consider it new information of the sort contemplated by the *Oljato* scheme and, accordingly, would not view it as warranting my reopening the previous rulemaking. This view is consistent with Section 307(d)(7)(B) of the Act, which governs certain petitions for reconsideration.[2] Moreover, to hold otherwise would permit a petitioner to circumvent the limitation on judicial review specified in Section 307(b)(1) of the Act: That section reads in part:

> Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the **Federal Register**, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.

Section 307(b)(1) is designed to bring about a measure of finality to Agency rulemaking by limiting the period in which challenges can be made. If a party could cure its failure to seek judicial review during the period specified by petitioning the Agency for revision or revocation of the original rulemaking, based on information that was available at the time of the original rulemaking, and then seeking judicial review of the Agency's action on the petition, one of the main purposes of Section 307(b)(1) would be defeated. This principle of finality applies to petitions for reconsideration as well. Petitioners who have information available to them before or during the submission of a petition should be barred from submitting the withheld information in a second petition.[3]

Assuming the information presented in the petition is "new" in the sense that it was not and could not have been presented in the original rulemaking, I must then determine whether it warrants my convening a supplemental rulemaking to consider revision of the regulations in question.

Although the Act does not provide specific criteria for making such a determination in the context of petitions for revision or revocation of regulations, it does not leave me completely without guidance. Section 307(d)(9)(A) suggests that the ultimate test of my threshold decision on such a position (i.e., my determination whether the petition and supporting materials warrant further rulemaking proceedings) is whether, in light of the information presented, it is arbitrary, capricious, or an abuse of discretion.[4] In addition, Section 307(d)(7)(B) provides some guidance in determining whether new information warrants the commencement of supplementary proceedings.[5] That section requires me to convene a proceeding if the new grounds presented are of "central relevance to the outcome of the rule." In another situation, I have interpreted this phrase as meaning that the petitioner must demonstrate that its objections, if assumed to be true, would cause me to seriously consider changing the rule previously promulgated. Denial of Petition for Reconsideration or Revision of the Lead Ambient Air Quality Standards, 45 FR 41211 (June 18, 1980).

As a general matter, I conclude that the proper test in assessing new information in the context of a petition for revision or revocation of a rule is roughly the same as that for petitions for reconsideration under Section 307 (d)(7)(b); that is, whether the petitioner has demonstrated that its objections, if assumed to be true, would cause me to seriously consider revising or revoking the rule previously promulgated.[6]

In summary, the criteria I am applying in deciding whether to initiate a new rulemaking proceeding in response to Du Pont's second petition are: (1) The petition must be based on information that was not and could not reasonably have been presented during the original rulemaking; and (2) Du Pont's objections, if assumed true, must be of such significance that they would cause me to seriously consider revising the regulations.[7]

**Discussion**

Du Pont's petition and the supporting material fail to meet the criteria specified above. For the most part, Du Pont has relied on information that was presented or could have been presented during the 1979 rulemaking; some of this information was presented in its earlier petition, and much of it could have been.

[1] Du Pont also cites Section 553(e) of the Administrative Procedure Act, as a basis for its petition. Section 307(d)(1)(N) provides that "the provisions of section 553 through 557 and section 706 of Title 5 shall not apply . . . to actions to which this subsection applies." Revisions of regulations pertaining to fuels and fuel additives under section 211 are subject to the provisions of section 307(d). 45 U.S.C. 7607(d)(1)(D). However, the Agency does not view section 307(d) as precluding the right of parties to petition the Agency for revision or revocation of regulations under circumstances other than those specifically mentioned in 307(d)(7)(B). *See* 45 FR 54091, note 5 and *infra*, note 2. Rather, the Agency believes that Congress intended that such a right should exist but in action on such requests the Agency should be guided by the relevant provisions of section 307(d) concerning petitions for reconsideration.

[2] Section 307(d)(7)(B) requires me to convene a proceeding to reconsider a rule if the person raising an objection can demonstrate, among other things, that it was impractical to raise such objection during the comment period or that the grounds for such objection arose after the comment period but within the time specified for judicial review. I believe now, as I stated in my August 14, 1980 response to Du Pont's first petition, that it is appropriate to view Section 307(d)(7)(B) as offering some guidance in assessing petitions for revision that purport to be based on new information and are subject to the procedures set forth in *Oljato*.

[3] *See*, e.g., *Lead Industries Association v. EPA*, No. 78–2201, slip op. at 87–88 (D.C. Cir. June 27, 1980); *American Iron and Steel Institute v. EPA*, 526 F. 2d 1027, 1050 (3rd Cir. 1975). *See also*, note 6, response to first Du Pont petition, 45 FR 54090 (August 14, 1980).

[4] *Cf. Union Electric* v. *EPA*, 427 U. S. 246, 256 (1975).

[5] *See* notes 1 and 2, *supra*.

[6] For the purposes of the decision on this, as was the case with the earlier Du Pont petition, I have found it unnecessary to decide whether a greater or lesser showing is required to meet this test under section 307(d)(7)(B) than in the present context. Nor have I found it necessary to decide whether or how circumstantial factors (for example, the imminence of scheduled reviews of regulations) may affect decisions on other petitions for revision or revocation of regulations.

[7] These criteria were used in the response to Du Pont's first petition, 45 FR 54090 (August 14, 1980).

Furthermore, none of the information submitted by Du Pont is of such significance that it would cause me to seriously consider revising or revoking the rule.

Therefore, I am not required to review once again the regulations as promulgated. As I stated in my denial of Du Pont's earlier petition, I continue to believe that the lead phasedown regulations are a reasonable exercise of my authority under Section 211 of the Clean Air Act to protect public health and welfare. 45 FR 54091 (1980).

*I. A Major Portion of the Information Submitted by Du Pont Is Not "New Information"*

Du Pont refers in its petition to "new information" presented for review. Much of the information was, or could, have been presented in earlier rulemakings. Exhibits 4 and 5, letters by Du Pont commenting on EPA's unleaded gasoline production requirement, were both submitted to the Agency in earlier rulemakings. Exhibit 1, a copy of "Fact Sheet on the President's Energy Program" April 4, 1979, and Exhibit 2, a copy of the Presidents Second National Energy Plan, May 7, 1979, could have been submitted to the 1979 docket. As I noted in my denial of Du Pont's earlier petition, the agency was aware of the projected energy impact of the regulations during the 1979 rulemaking. 45 FR 54092 (1980).

Other information was, or could have been presented during consideration of Du Pont's earlier petition. I specifically addressed, in the response to that petition, Du Pont's arguments on health effects, air quality, and energy impacts. 45 FR 54092–94 (1980). Further, Exhibit 3, an EPA summary of lead additive reports, and Exhibit 6, "Review of Industry Consultants' Reports on Impact of Lead Phasedown Rules on Gasoline Manufacturing Capacity and on Crude Oil Requirements," prepared for the Department of Energy by a contractor, could have been submitted for consideration with the first petition. Although these specific exhibits were not submitted, the arguments Du Pont has raised using these exhibits as support were precisely the arguments I addressed in my denial of the first petition.

Exhibit 7, a letter from Shell Oil Company to EPA, July 28, 1980, likewise does not present information substantially different from that considered in the first petition. In denying that petition, I reiterated my belief that for purposes of contribution to ambient air and non-air sources of lead, the regulations continue to be necessary.

Although the information submitted by Du Pont was, or could have been presented either in earlier rulemaking or in the first petition, I will discuss why the information is not of such significance that I would seriously consider revising the phasedown regulations.

*II. The Information Supplied by Du Pont is Not of Such Significance That It Would Cause Me to Seriously Consider Revising the Regulations*

Du Pont raised issues with respect to the regulations in three areas: health effects, air quality standards, and energy considerations. As discussed below, the submitted information is not of such significance to cause me to grant the petition.

*A. Submissions Regarding Health Effects.* Du Pont's submissions concerning the health effects of lead emissions misconstrue the basis for and goals of the phasedown regulations. Moreover, Du Pont omitted crucial factors concerning lead emissions in the documents that it submitted to EPA.

In its discussion of the absence of health effects as a basis for a delay of the 0.5 gpg standard, Du Pont mistakes the basis for and goals of the phasedown regulations. The phasedown regulations were promulgated under section 211 of the Clean Air Act, which authorizes the Administrator to regulate fuels or fuel additives if in his judgment they cause, or contribute "to air pollution which may reasonably be anticipated to endanger the public health or welfare." [8]

Most importantly, Du Pont misconstrued the basis for the Administrator's decision to delay imposition of the 0.5 gpg standard in 1979. Du Pont maintains that EPA deferred the imposition of the 0.5 gpg standard because the delay would not affect public health. EPA decided to defer the 0.5 gpg standard because of the extraordinary circumstances present in the spring and summer of 1979. The Agency feared that a shortage in unleaded gasoline, caused by tightness in gasoline supplies, could lead to widespread fuel switching. The Administrator was concerned that widespread fuel switching, causing the poisoning of billions of dollars worth of catalytic convertors, could cause health effects more adverse than those that would occur if the 0.8 gpg standard were extended an additional year. The Administrator balanced the possible harm from each course of action and decided that the health and environmental impacts of a one year delay would be less substantial than the impacts resulting from the imposition of the 0.5 gpg standard under the extraordinary circumstances present in 1979. The Administrator spelled out these factors in the preamble to the notice deferring the 0.5 gpg standard. He gave his reasons for the delay, emphasizing both the extraordinary nature of the circumstances, and the need for the 0.5 gpg standard to protect public health.

> The interruption of crude oil supplies from Iran and the tightness in gasoline supplies led us to believe that a futher [sic] temporary relaxation of the lead phasedown standard was warranted * * * This proposed action to encourage the increased production of unleaded gasoline was based on EPA's belief that if shortages of unleaded gasoline should occur, motorists might use leaded gasoline in vehicles requiring unleaded fuel. Use of leaded fuel in a vehicle requiring unleaded fuel will deactivate emission control systems, causing an increase in automobile emissions. We continue to believe that a 0.5 gpg lead standard should be achieved as rapidly as possible for purposes of public health but that this short-term relaxation should not have a substantial health effect. A delay in imposing the 0.5 gpg standard will help offset the irreversible loss of billions of dollars' worth of investment in emission control systems that would likely result from widespread fuel switching if shortages of unleaded gasoline were to occur. 44 FR 53144 (1979).

The Shell letter, Exhibit 7, which Du Pont submitted in the context of energy and economic impacts, miscontrues the goals of the phasedown regulation. The letter quotes the preamble to the phasedown regulations (38 FR 33734 (1973)) as saying that EPA's lead phasedown schedule was designed to reduce lead consumption by 60–65% from base year 1971 usage. According to Shell's calculations, lead usage for the industry has dropped by 65% relative to 1971 lead use, and therefore imposition of the 0.5 gpg standard is unnecessary. Even assuming that the information submitted by Shell is true, it is not of such significance that I would seriously consider revising the phasedown regulations.

The history of the lead phasedown regulations indicates that the intent of the Agency in promulgating the lead phasedown regulations was to reduce lead emissions *to the fullest extent possible,* and that the 60–65% figure represented an approximation of what the Agency believed was a reasonable reduction. The 60–65% figure as used in the final rule was not intended to

[8] Du Pont cites incorrectly the language authorizing the phasedown language. The company quotes the "will endanger" language, which Congress changed in 1977. While the Administrator originally promulgated the phasedown regulations under the former language, later amendments should be viewed in light of the statutory change.

represent the maximum level of reduction needed to protect public health.

This is shown by the genesis of the 60–65% figure, which was derived from superseded assumptions about lead emissions and public health. The phasedown regulations as initially proposed (37 FR 3882 (1972)), suggested the desirability of a 60–65% reduction in lead emissions from motor vehicles. The basis for that figure was that available evidence indicated that airborne lead levels in urban areas ranged over 5 micrograms per cubic meter, and that a 60–65% reduction was necessary to achieve the acceptable level of 2 micrograms. In the reproposal (38 FR 1258 (1973)), and promulgation of the regulations (38 FR 53144 (1973)), the Agency reassessed the health risks and altered the assumptions from which the 60–65% figure was derived. In the reproposal, the Agency recognized that gasoline lead contributed to both airborne and non-air sources of lead,[9] and that is was difficult, if not impossible, to establish a precise level of airborne lead as an acceptable basis for a control strategy. 38 FR 1258 (1973). Consequently, the EPA abandoned the effort to identify a safe level of lead exposure, and announced its intention to reduce the lead content in gasoline as much as possible, leaving open the possibility for further regulation, if it were later needed. 38 FR 53144 (1973).

As can be seen by this history of the lead phasedown regulations, the 60–65% figure, as referred to in the preambles to the reproposed and final rules, served merely as an approximation of the reduction in emissions that the Agency then believed was possible, and was not designed to serve as the level of the reduction necessary to protect public health.

In addition to misconstruing the basis for and goals of the lead phasedown regulations, Du Pont omitted crucial factors concerning lead emissions in the information that it submitted to EPA. First, in its discussion, Du Pont suggested that because of an increase in unleaded gasoline consumption, and a decrease in overall gasoline consumption, lead dosage has declined over the past year and will continue to do so over the next year. Du Pont concludes from this that the one-year deferal would be without health effects.

This argument which Du Pont raised in its earlier petition in the context of compliance with the NAAQS for lead is without merit. In discussing lead dosage, Du Pont neglects to point out that even its own forecasts predict that through 1982, leaded gasoline will constitute more than half of all gasoline sold.[10] Du Pont's forecasts also show that motorists are switching from leaded to unleaded gasoline more slowly than was earlier predicted.[11] Even by Du Pont's own calculations, the contribution of leaded gasoline to environmental lead will continue to be significant until well after 1981. As I indicated in my response to Du Pont's earlier petition, an increase in the level of lead emissions, resulting from a change in the phasedown regulations, along with a slower shift from leaded to unleaded gasoline, would raise the number of persons whose health potentially would be threatened by excess lead exposure. 45 FR 54093 (1980). Therefore, health concerns lead me to reject Du Pont's argument.

Second, as in its earlier petition, Du Pont neglects to mention the contribution of dustfall lead to overall lead exposure, and thus its possible threat to human health. In reviewing the phasedown regulations, the *Ethyl* court upheld EPA's reliance on evidence concerning lead exposure from dustfall. *Ethyl, supra*, 541 F.2d at 46.

> Lead is present in children, and in elevated amounts. Children do ingest dust, and dust is heavily laden with lead. Animal studies prove that ingested lead dust is absorbed into the bloodstream. And epidemiological studies associate high lead concentrations in children with high lead concentrations in dirt and dust, and with proximity to automobiles. Since the automobile is the predominant source of lead in dust, the Administrator's hypothesis stands firm as reasonable * * *. *Id.*

As mentioned earlier, the NAAQS for lead was not designed to protect against exposure from non-air sources of lead, including those non-air sources resulting from automobile emissions.

Finally, Du Pont neglected to submit any new studies on the health effects of lead. The D.C. Circuit, when reviewing the NAAQS for lead, suggested some of the adverse health effects of lead.

> Today lead is ubiquitous. It is found in almost every medium with which we come into contact—food, water, air, soil, dust, and paint [references deleted], each of which represents a potential pathway for human lead exposure through ingestion or inhalation. The widespread presence of this toxic metal in the environment poses a significant health risk. Lead is a poison which has no known beneficial function in the body, [references omitted], but when present in the body in sufficient concentrations lead attacks the blood, kidneys, and central nervous and other systems and can cause anemia, kidney damage, severe brain damage, and death. *Lead Industries Association*, at 4.

*B. Submissions Concerning Air Quality.* Du Pont argues that air quality will be modestly affected by deferring the lead phasedown standard for a second year. Du Pont submitted estimates of the number of air quality control regions (AQCRs) that would comply with the NAAQS for lead in 1980 which it submitted with its earlier petition. Du Pont suggests that the effect of a one-year suspension of the 0.5 gpg standard on air quality would be less than under a total abolishment of the program. The company did not submit documentation to support its argument. As support, Du Pont only presented its earlier petition in its entirety, as well as two letters commenting on two lead phasedown dockets.

Because Du Pont did not submit either in its previous or current petition estimates to support the continuation of the 0.8 gpg standard, but only repeated its earlier estimates, I cannot respond to the argument that a significant difference exists between continuation of the 0.8 gpg standard, and complete revocation, especially in light of Du Pont's reliance on Exhibit 3 which would appear to show any difference to be minimal. In response to Du Pont's earlier petition, I discussed the estimates submitted by Du Pont during the 1979 rulemaking, and then the estimates submitted in January:

> the Agency concluded [in 1979] that compliance with the NAAQS for lead of two additional AQCRs in 1980, along with other factors, was sufficient reason for maintaining the phasedown program with 0.5 gpg becoming effective October 1, 1980. The information now indicating that attainment of the NAAQS in 1980 depends on the phasedown regulations (assuming the information is correct) is an even more compelling reason for preserving the phasedown requirements than the information in the earlier record. 45 FR 54092 (1980).

As discussed more fully above, Du Pont did not address the problem of lead from dustfall. As mentioned above, the NAAQS for lead was not designed to protect against exposure from non-air sources, including those resulting from automobile emissions.

C. *Submissions Regarding Energy Considerations.* As in its preivous petition, Du Pont argues that substantial energy savings are possible if its position is adopted. Du Pont suggest that

[9] Although an ambient air standard of 1.5 micrograms per cubic meter was set in 1978, based on my judgment that the level was the maximum allowable to protect public health from airborne lead as I discussed in the response to Du Pont's earlier petition, the national ambient air quality standard (NAAQS) for lead was not designed to protect against exposure from non-air sources including those non-air sources resulting from automobile emissions. 45 FR 54093 (1980).

[10] *See* "Forecast of Gasoline Demand Through 1990," Du Pont Tech Brief No. 7609, December, 1979.

[11] *Id.*

delaying the phasedown standard one year made possible the savings of 20,000–60,000 barrels of crude oil per day in the period between October 1, 1979 and October 1, 1980. Du Pont suggests that similar savings would be possible if the 0.5 gpg standard were deferred for one year. This argument is virtually identical to arguments made during the 1979 rulemaking and in its earlier petition. For the reasons discussed below, I would not seriously consider revising the phasedown regulations even if Du Pont's information were shown to be correct.

As I mentioned in my response to the first Du Pont petition, "I believe Congress intended me to base regulation of fuels and fuel additives under Section 211(c)—the statutory basis for the phasedown regulations—primarily on protection of health, assuming that I may consider economic or social costs at all." (45 FR 54094, August 14, 1980). To the extent that I have been legally able to consider economic costs of the phasedown regulations, I have been cognizant of them. See my discussion at 45 FR 54094. I acknowledge now, as I did in my response to the first Du Pont petition, that there has always existed some energy penalty associated with the lead phasedown regulations. Current EPA estimates suggest that the crude oil penalty is very small, only two-tenths of one percent of daily usage.[12] Furthermore, gasoline stocks are at a high level, and gasoline demand has decreased.

I believe that the health benefits of the lead phasedown regulations far outweigh the small energy penalty. Considering the nature of the health effects against which the phasedown regulations are intended to protect—particularly for Black and Hispanic urban children, who are exposed to large quantities of lead from automobile sources and may be especially sensitive to the harmful effects of lead—I would not consider it appropriate to revise the lead phasedown regulations.

### Conclusion

For the reasons stated above, Du Pont's petition is denied.

Note.—This is a nationally applicable, final Agency action. Under Section 307(b)(1) of the Clean Air Act, 42 U.S.C. 7607(b)(1), judicial review of this action is available *only* by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of [date of publication]. Under Section 307(b)(2), today's action may not be challenged later in a separate judicial proceeding brought by EPA to enforce the lead phasedown requirements.

[12] "Environmental Protection Agency Motor Gasoline Letter," July 24, 1980, at 5.

Dated: September 29, 1980.

**Douglas M. Costle,**

*Administrator.*

[FR Doc. 80-30842 Filed 10-2-80; 8:45 am]

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**40 CFR Part 81**

**[FRL 1619-3]**

## Mandatory Class I Federal Areas Where Visibility Is an Important Value; Breton Wilderness Area; Response To Petition for Reconsideration

**AGENCY:** United States Environmental Protection Agency (EPA).

**ACTION:** Denial of petition for reconsideration.

**SUMMARY:** Chevron, U.S.A., Inc. (Chevron) submitted a petition for reconsideration of final action EPA announced November 30, 1979 (44 FR 69122), identifying Breton Wilderness Area as a mandatory class I Federal area in which visibility is an important value. After evaluating the petition, the Administrator has found that Chevron failed to satisfy the statutory requirements of section 307(d)(7)(B) of the Clean Air Act (Act). Specifically, Chevron failed to demonstrate that 1) it was impracticable to raise its objections during the period for public comment, or that the grounds for its objections arose after the period for public comment, but within 60 days after November 30, 1979, and 2) that the basis of its objection was of central relevance to the outcome of the action. This notice announces the Administrator's decision and reasoning.

**DATES:** Effective October 3, 1980.

**ADDRESSES:** Docket Number OAQPS–79–09 contains all supporting materials used by EPA in evaluating the petition. The docket is available for public inspection and copying between 9 a.m. and 4 p.m., Monday through Friday at EPA's Central Docket Section, West Tower Main Lobby, Waterside Mall, 401 M Street, S.W., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Johnnie L. Pearson, Office of Air Quality Planning and Standards (MD–15), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone: 919–541–5497.

**SUPPLEMENTARY INFORMATION:** The supplementary information follows this outline:

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II. Background
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  (c) The administrative record supports Congress findings that visibility is an important value in Breton Wilderness.
  (d) The legislative and administrative records answer completely Chevron's assertions that visibility is not an important value in Breton Wilderness.
  3. The Administrator Complied With All Applicable Procedural Requirements.
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### I. Introduction

This notice denies Chevron's petition for reconsideration of the Administrator's November 30, 1979 (44 FR 69116) determination that Breton Wilderness is a mandatory class I Federal area in which visibility is an important value. The following statement is in three parts. The first is a factual background statement of the statutory and administrative framework; the second is a discussion of the Administrator's reasons for denying the petition; and the third is his conclusion.

### II. Background

#### *A. Visibility Protection Under the Act*

Before its amendment in 1977, the Act did not elaborate on the protection of visibility as an air-quality related value.[1] In 1977, however, Congress became aware that visibility was deteriorating rapidly in many places it had set aside for special protection in their natural states, such as national parks and wilderness areas, and that other clean air programs were inadequate to remedy or prevent this deterioration. Such visibility impairment, Congress determined, diminished the areas' grandeur and appeal for visitors. As a

[1] Section 302(h) of the Clean Air Act of 1970 recited simply that "visibility" was an "effect on welfare."

result, Congress amended the Act to require aggressive steps to remedy existing and prevent future impairment in these national areas.

Specifically, the House Subcommittee on Health and Environment wrote a new section into the 1977 House Committtee bill, requiring EPA and the States to develop a new affirmative program to protect visibility from impairment due to emissions from existing and new sources.[2] The full House adopted this visibility protection section.[3] Its purpose was, in part, to remedy and prevent visibility impairment in areas of special national interest and preserve them from such impairment for current and future generations of visitors to enjoy.[4]

These requirements for protection of visibility which came from the House bill are in section 169A of the Clean Air Act, 42 U.S.C. 7491.[5] Under this section EPA must promulgate regulations to assure reasonable progress toward the national visibility goal of remedying existing and preventing future impairment in "mandatory class I Federal areas" in which EPA, after consultation with the Secretary of the Interior, determines that visibility is an important value. Section 162(a) of the Act defines mandatory class I Federal areas as the following areas which were in existence on August 7, 1977, the date of enactment of the Clean Air Act Amendments of 1977: all international parks, national parks which exceed 6,000 acres, and national wilderness areas and national memorial parks which exceed 5,000 acres.

The limitation of section 169A to the mandatory class I Federal areas "in which [EPA] determines visibility is an important value" was added in conference, most probably to exclude the few areas, if any, with peculiarities either in the reason for which they were established, or with natural conditions which eliminated visibility as an important value. The Chairman of the Subcommittee on Health and Environment from which Section 169A came, in a statement intended to clarify the conferees' action, said that "visibility protection in *most* mandatory class I Federal areas remains a national commitment, which is nationally enforceable" (emphasis added).[6]

*B. Administrative Action Under the Visibility Provisions of the Act*

In executing their responsibilities under section 169A(a)(2) to determine which mandatory class I Federal areas have visibility as an important value, the Administrator of the EPA ("Administrator") and the Secretary of the Department of the Interior ("Secretary") worked together to achieve an informed and coordinated result. This coordination led to agreement on the criteria to be applied to the mandatory class I Federal areas to assess whether visibility was an important value. 44 FR 8910 (February 19, 1979). The final criteria were 1) whether the legislation creating an area emphasized visibility values, 2) whether scenic values were present in an area and important to public enjoyment of the area, 3) whether an area possessed a sweeping view of background or middleground features, and 4) whether natural (as opposed to man-made) sources impaired visibility in an area. 44 FR 69122. In order that the criteria be applied and evaluated consistently, use of a logic network supported by a narrative statement was required.[7]

On October 14, 1977, the Secretary published a notice of these criteria and the preliminary results of his application of the criteria to the mandatory class I Federal areas (42 FR 55280). The notice also solicited public comment and announced six public meetings for the oral presentation of comments. With regard to Breton Wilderness, which is comprised of barrier islands off the Louisiana coast, the Secretary indicated his preliminary determination that it was over 5,000 acres in size ("5,000+") and possessed visibility as an important value. 42 FR 55284.

On February 24, 1978, the Secretary published his final determination of mandatory class I Federal areas in which visibility is an important value and responded to the comments received on his preliminary determination (43 FR 7721). Although he changed his determination regarding several areas, the Secretary indicated his continuing judgment that Breton Wilderness possessed visibility as an important value and was over 5,000 acres in size. 43 FR 7725.

On February 12, 1979, EPA proposed to accept the Secretary's recommendation that Breton Wilderness and certain other areas possessed visibility as an important value (44 FR 8909). Although he was under no obligation to do so, the Administrator decided to treat his action under section 307(b)(1)(N) of the Act, 42 U.S.C. 7607(d)(1)(N), and accordingly this notice of proposed determinations established a public comment period and a public docket. Before this proposal appeared in the **Federal Register**, EPA placed in this docket the preliminary and final analyses and the supporting narrative for Breton Wilderness. These supporting materials, which were prepared by an Interior Department official familiar with Breton Wilderness and reviewed and approved by personnel at Department of Interior headquarters, noted that legislation creating Breton Wilderness stressed that it should remain in a natural state. In addition, these materials noted the presence of scenic values at Breton Wilderness, and described it in part as "miles of wild shore with white sand and natural changing dunes [which] offer the public a sharp contrast with man-made beaches and have abundant colonies of nesting shorebirds and wintering waterfowl." Also mentioned was the panoramic view of barrier islands in the Gulf of Mexico, the importance of preserving the scenic values of Breton Wilderness because of the millions of visitors expected in the area, and that while fog, a natural condition, occurred in the winter, it did not affect visibility in the summer when the public most frequently used Breton Wilderness.

On November 30, 1979, EPA published its final determination of mandatory class I Federal areas in which visibility is an important value of the area and responded to the comments received on the proposed determination (44 FR 69116). The only comments received by EPA regarding Breton Wilderness were from Chevron. EPA acknowledged Chevron's comments and stated that EPA's review showed that the criteria were properly applied to Breton Wilderness and that it possessed visibility as an important value. 44 FR 69124. In addition, EPA noted specifically that it accepted the Secretary's determination that Breton Wilderness met the requisite acreage requirements and that Chevron's

[2] H.R. 6161, 95th Cong., 1st Sess. § 116 (1977).

[3] 123 Cong. Rec. H5057–58, 60–61 (daily ed. May 25, 1977).

[4] 123 Cong. Rec. H8661, H8669 (daily ed. August 4, 1977).

[5] In addition, the conferees agreed to accept the visibility section in the Senate bill that would protect air quality-related values in areas of the country with "clean" air. The conferees, in the Senate language adopted, explicitly included visibility as one of the protected air quality related values. (Compare the air quality-related values test as proposed in section 6 of the Senate bill (see S. Rep. No. 95–127, 95th Cong., 1st Sess., 152 (1977)), with the companion provision in the Conference bill (see H. Rep. No. 95–564, 95th Cong., 1st Sess., at 56–57 (1977).) This requirement in the Senate bill for protection of visibility was enacted as section 165(d)(2) of the Act, 42 U.S.C. 7475(d)(2).

[6] 123 Cong. Rec. H8663 (daily ed. August 4, 1977) (Rep. Rogers). In addition, Senator Muskie, commenting on the size limitations of areas the air quality related values of which are to be protected, stated that those areas meeting the 5,000 acre requirement have "scenic values," "ought not to be challenged," and "deserve to be protected." 123 Cong. Rec. S9241, 9242 (daily ed. June 9, 1977).

[7] An example of the logic network appears at 43 FR 7727 (February 28, 1978).

comment that the area was poorly maintained was not relevant to whether it possessed visibility as an important value. *Id.*

Although EPA determined that 156 mandatory class I Federal areas possessed visibility as an important value, only the determination of Breton Wilderness was challenged either administratively or judicially. On January 25, 1980, Chevron filed in the United States Court of Appeals for the Fifth Circuit a petition for review of the determination regarding Breton Wilderness (Chevron v. EPA, et al., No. 80–3081). Chevron also filed an administrative petition for reconsideration (petition) dated March 12, 1980, and a supplement to that petition dated March 25, 1980. This notice is EPA's response to the petition and the supplement.

*C. Congress' Establishment of Breton Wilderness*

Under the Wilderness Act, 16 U.S.C. 1131 et seq., the Secretary must review each roadless island within the national refuge system under his jurisdiction on September 3, 1964, and report to the President on each such area's suitablility for preservation as a wilderness. The President's recommendation of an area for designation as wilderness is effective only if so provided by an Act of Congress. 16 U.S.C. 1132(c).

In 1971, the President transmitted to Congress a proposal to designate Breton National Wildlife Refuge as a national wilderness area,[8] which Congress accepted on January 3, 1975.[9] An understanding of why the public, the Secretary, the President, and Congress all believed Breton Wilderness should be created is critical in determining whether the Administrator acted reasonably in finding that Breton Wilderness possessed visibility as an important value.

Breton National Wildlife Refuge (now Breton Wilderness) was a crescent-shaped chain of barrier islands 12 miles offshore from the Mississippi Delta. It was established as the second national wildlife refuge in 1904 and was later enlarged by an executive order. Before 1969, Breton National Wildlife Refuge consisted of the long chain of the Chandeleur Islands, and the two parts of Breton Island, for a total acreage of more than 9,000 acres.[10] In 1969, however, Hurricane Camille destroyed a sizeable area of the Chandeleurs and small portions of the Breton Islands, leaving a total slightly in excess of 4,500 acres.[11]

On September 3, 1969, consistent with the Wilderness Act, 16 U.S.C. 1131, the Fish and Wildlife Service, Department of Interior, published notice that scheduled a public hearing and established an 85-day period for submitting written comments on a proposal to recommend to the President that he seek designation of Breton National Wildlife Refuge as a wilderness area (34 FR 14002).

All 270 citizens and 29 organizations which commented favored the creation of Breton Wilderness for essentially one or more of the following reasons: (1) it would assure the retention of the beaches, marsh and mangrove for the recreation, research and inspiration of present and future generations; (2) it would act as a buffer against further pollution of the refuge and estuary from oil-drilling and other man-made encroachments; and (3) it would recognize and preserve the extreme importance of the refuge as a nesting area for shore birds and sea turtles.[12] The comments opposing wilderness status were few. The main one was that the alleged rights of the Kerr-McGee Corporation to explore and drill for oil and gas would be diminished.[13]

On March 4, 1971, the Secretary recommended to the President that the refuge be designated a national wilderness area. In making this recommendation, the Secretary stated his agreement with the reasons advanced by the public.[14]

The President accepted the Secretary's recommendation and, on April 28, 1971, transmitted to Congress a proposal that Breton National Wildlife Refuge be designated a wilderness area. In doing so, the President stressed the opportunities for human enrichment the creation of Breton Wilderness would engender.[15] A report accompanying the transmittal noted that continued public use of the islands would be permitted for, among other things, bird watching and photography.[16]

On May 6, 1974, the House passed a bill to designate the refuge as a national wilderness area.[17] The House Committee wrote in its report that Breton National Wildlife Refuge retained its natural character and influence and presented "outstanding opportunities for recreation and solitude, as well as having significant values for scientific study."[18] The primary objective of designation as wilderness will be, the House Committee wrote, to preserve the area in a condition unspoiled by traces of man's work for the enjoyment of present and future generations.[19] Regarding the refuge's total acreage, the House Committee stated that it was now about 4,500 acres, down from more than 9,000 acres before Hurricane Camille, but that it was accepting the Department of the Interior's recommendation of approximately 5,000 acres in recognition of inaccuracies in existing surveys and to allow for future accretion of land.[20] The House bill, therefore, stated the acreage of the area to be designated as "about five thousand acres."

On November 22, 1974, the Senate also passed a bill to designate Breton National Wildlife Refuge as a national wilderness area. The accompanying Senate Report noted, like the House Report, that the primary purpose of the designation was to preserve the area in a natural, unspoiled condition for the recreation, solitude, and scientific study of present and future generations.[21] The Committee wrote of the island's distinctive importance for a great quantity and variety of waterfowl, and waxed eloquent in describing the island's visual appeal: "The crystal clear waters of the Gulf of Mexico bathe the endless miles of wild shores of sugar-white sand, contrasting sharply with the man-made beaches and often times muddy waters near the mainland."[22] The Senate committee also recognized the dynamic process of accretion which affects the islands, and also accepted the Secretary's recommendation that the acreage to be designated as Breton

[8] H. Doc. No. 92–102, Part 6, 92d Cong. 1st Sess. (1971) [Hereinafter "Transmittal"]

[9] The Act, Pub. L. 93–632, was not codified. See 88 Stat. 2153.

[10] Transmittal at 1, H. Rep. No. 93–989, 93rd Cong., 1st Sess. at 6 (1974) (hereinafter "House Report"); S. Rep. No. 93–1287, 93rd Cong. 2d Sess. at 17 (1974) (hereinafter "Senate Report").

[11] *Id.*

[12] Transmittal at 3–6.

[13] *Id.*

[14] *Id.* at v.

[15] *Id.* at ii.

[16] *Id.* at 2.

[17] House Report at 2–3.

[18] *Id.*

[19] *Id.*

[20] With regard to the refuge's size, the House Committee wrote:

> Total acreage in the refuge now is about 4,500 acres above high tide. Prior to 1969, it was more than 9,000 acres. However, the Department [of the Interior] is recommending approximately 5,000 acres for wilderness designation. This difference in acreage is due, in part, to storm action and in part to inaccurate surveys.
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> * * * * *
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> There is no disagreement as to the acreage to be included except for inaccuracies of present surveys and allowance for future accretion. The Department of the Interior recommended 5,000 rather than a smaller acreage in previous proposals. The Committee approves and recommends acceptance of the larger 5,000 acre area for wilderness designation. House Report at 6.

[21] Senate Report at 3–4.

[22] *Id.* at 17–18.

Wilderness be increased from 4,420 acres, the acreage listed in the 1971 proposal, to approximately 5,000 acres because of accretion since Hurricane Camille.[23] The Senate bill listed total acreage to be designated as "approximately five thousand acres."

The Act of Congress accepting the public's, the Secretary's, and the President's recommendation that Breton Wilderness be created listed the acreage designated as "approximately five thousand acres."[24] Section 4 this Act required that "a map and legal description" of Breton Wilderness be filed with the relevant Senate and House Committees, and stated that "such description shall have the same force and effect as if included in this Act." The Secretary made this description on June 3, 1975, describing Breton Wilderness as "[c]ontaining in the aggregate 5,000 acres, more or less."[25] Consequently, even though the islands comprising Breton Wilderness may fluctuate in area as a result of the action of the sea, the size of the area was established by Congress as about 5,000 acres as a matter of law.

*D. Chevron's Petition for Reconsideration*

In a petition dated March 13, 1980, Chevron asked the Administrator to reconsider under section 307(d)(7)(B) of the Act, 42 U.S.C. 7607(d)(7)(B), the designation of Breton Wilderness as a mandatory class I Federal area in which visibility is an important value.[26] Chevron supplemented this petition with a letter to the Administrator dated March 25, 1980. The contentions in these documents fall into three general areas.

Chevron contended, first, that EPA failed to accompany its final determination with a statement of basis and purpose, including an economic impact statement; failed to respond to Chevron's comments; and failed to provide an opportunity for the oral presentation of views, which Chevron asserts was required by section 307(d). Chevron maintains that it did not become aware of these alleged omissions until EPA published its final action on November 30, 1979, after the period for public comment had closed.

Next, Chevron contended that its comments submitted during the public comment period, and resubmitted as an exhibit to its petition, were of central relevance to the outcome of the "rule." The petition lists those comments: that the criteria used for deciding whether visibility is an important value were vague; that scenic values are not present or important to public enjoyment in Breton Wilderness; that Breton Wilderness is not properly maintained; that the established evaluation process was abused with respect to Breton Wilderness; that there was no documentation of natural sources of visibility impairment in Breton Wilderness; that Breton Wilderness gets very little public use; and that Breton Wilderness is not a mandatory class I Federal area because it does not exceed 5,000 acres.

In its petition, Chevron argued the merits of only one of the comments it listed, maintaining that EPA failed to explain its assumption that Breton Wilderness exceeded 5,000 acres on August 7, 1977, as required by section 162(a) of the Act. In this regard, Chevron referred to two "new" pieces of information.[27] One is the affidavit of a legal assistant employed by Chevron's counsel declaring that the legal assistant talked by telephone to the government employee allegedly responsible for developing the list of mandatory class I areas used by the Secretary in determining which areas have visibility as an important value. The affiant states that the federal employee reportedly said he took the acreage lists from the various Acts of Congress establishing the areas. The other piece of information is an internal memorandum from the Fish and Wildlife Service dated April 19, 1979, which concludes that although a 1971 and 1972 source places the acreage of Breton Wilderness at 4,764 acres, because of the likelihood of error "the 5,000 acre figure for Breton Wilderness is still valid, and we see no need to revise it at this time."

Finally, Chevron argued that the failure to hold an oral hearing, which it asserts should have included the right to cross-examination, was centrally relevant to the outcome of the "rule" because it would have been desirable and even required as a matter of due process of law to determine whether or not Breton Wilderness exceeded 5,000 acres on August 7, 1977.

In conclusion, Chevron requested that the Administrator reconsider his determination that Breton Wilderness is a mandatory class I Federal area in which visibility is an important value, and that he provide an oral hearing (with cross-examination) and an economic impact assessment as part of that reconsideration.

*E. Criteria for Review of Chevron's Petition for Reconsideration*

As noted, Chevron petitioned EPA for reconsideration under section 308(d)(7)(B) of the Act. This section is limited both in time and scope. It provides that any new material must first be submitted to EPA to determine whether further proceedings are warranted before any judicial review is available.

Specifically, Section 307(d)(7)(B) provides that the Administrator shall convene a proceeding to reconsider the rule in question if a person raising an objection can demonstrate that (1) it was impracticable to raise such objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (which EPA concludes means within the 60-day time period provided for judicial review under Section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) such objection is of central relevance to the outcome of the rule. If the Administrator refuses to initiate such a proceeding the moving party may seek judicial review of that decision under section 307(b) of the Act, 42 U.S.C. 7607(b).

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[23] With regard to the refuge's size, the Senate Committee wrote:

Prior to Hurricane Camille in August 1969, the total land area was 9,047 acres. The hurricane destroyed a sizeable area of the Chandeleurs and small portions of Breton Island, leaving a total of 4,507 acres. Modest acreage has since been added by accretion.

* * * * *

Breton and Chandeleur Islands are barrier landforms representative of the dynamic processes of continental accretions which have been in progress along the Atlantic and Gulf Coasts since the Cretaceous Period. The chain of islands are generally low lying and subject to constant change from wave action, winds, and frequent storms.

* * * * *

The sea is constantly changing the shape and profile of these islands, producing new cuts and filling old ones.

* * * * *

[T]he [1971] proposal [to create Breton Wilderness] called for a 4,420 acre wildereness. The Interior Department subsequently corrected this figure to 5,000 acres. The additional acreage was the result of accretion. Therefore, the wilderness to be designated by [the Senate bill] is identical to that proposed and later amended by the Administration. It is also identical to that proposed in [the House bill]. S. Rep. at 17–19.

[24] See footnote 9.

[25] Breton Wilderness, Pub. L. 93–632, Description, June 3, 1975.

[26] In a footnote, Chevron stated it also sought reconsideration "independently of the provisions of 42 U.S.C. § 7607(d)(7)(B)."

[27] Chevron did not assert that these two pieces of information were new information that would satisfy section 307(d)(7)(B) which requires a demonstration that new objections were "impracticable to raise . . . within [the time for judicial review] or . . . the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) . . .". As discussed in part III, below, EPA has assumed that Chevron did not intend to waive this argument.

## III. Discussion

*A. Whether Chevron's Petition Presents Objections Which Were Impracticable To Raise During the Public Comment Period*

All of the main arguments Chevron raised are inappropriate grounds under section 307(d)(7)(B) for reconsideration [28] since they do not involve objections which were impracticable to raise during the public comment period. The comments Chevron submitted during the public comment period and incorporated in its petition for reconsideration were not impracticable to raise during the public comment period; it was practicable because it was done. Similarly, Chevron could have requested an oral hearing during the comment period, but it did not, despite the fact that the proposed determination in no way precluded such a request, and in fact explicitly stated that the action would be treated under section 307(d)(1)(N).[29] Chevron also complained that no economic impact assessment was prepared. Again, this issue could have been raised by Chevron during the public comment period, but was not, despite the fact that in the proposal the Administrator stated that he would not prepare an economic impact assessment at this time because it was not legally required or practicable.[30] The only arguably new information Chevron raised in its petition is (1) EPA's alleged failure to respond to comments, (2) the affidavit of its Counsel's legal assistant, and (3) a Fish and Wildlife Service memorandum. EPA has treated these three points as raising new information, but, as discussed below, has concluded that none of the three is centrally relevant to the outcome of the determination at issue. Since the balance of Chevron's arguments, including all of its main arguments, could have been (and in fact were, in most cases) raised during the public comment period, EPA must deny the petition under section 307(d)(7)(B). In addition, as discussed below, none of Chevron's comments are centrally relevant to the determination at issue.

[28] EPA views this statutory provision as the exclusive basis for petitions for reconsideration on grounds alleged to arise no later than 60 days after promulgation of a rule. Consequently, the Agency's response to Chevron's petition is based solely on section 307(d)(7)(B).

[29] 44 FR 8910 (February 12, 1980). Section 307(d)(5) does not require a public hearing, but only the opportunity for one.

[30] *Id.*

*B. Whether Chevron's Petition Presents Objections of Central Relevance to the Outcome of the Final Determination*

Section 307(d)(7)(B) requires that a petition for reconsideration raise objections that are of "central relevance to the outcome of the rule." EPA interprets this to mean that the petitioner must demonstrate that its objection, if assumed to be true, would cause EPA seriously to consider changing the rule previously promulgated. This is clear from the statutory language itself that speaks specifically of objections centrally relevant to the "outcome of the rule." This is stricter than section 307(d)(4)(B) which speaks of documents of "central relevance to the rulemaking," for purposes of including documents in the administrative record. It is more akin, in both wording and purpose, to Section 307(d)(8), which provides that a judicial remand on procedural grounds should be based only on an error so serious and related to matters of such "central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed" if such an error had been made. *See Lead Industries v. EPA*, — F.2d — (D.C. Cir., June 27, 1980).

1. *The Administrator Acted Reasonably in Following the Congressional Determination That as a Matter of Law Breton Wilderness Exceeded 5,000 Acres on August 7, 1977.* Chevron argued that Breton Wilderness did not exceed 5,000 acres in size on August 7, 1977, the date of enactment of the 1977 amendments to the Act and, therefore, cannot be a mandatory class I Federal area. To support this argument, Chevron, in its comments, merely cited the Secretary's *1970* Breton Wilderness Proposal which stated that Hurricane Camille reduced the total land area of the refuge islands from over 9,000 acres to approximately 4,420. This information is the best available, Chevron asserted, and therefore should be dispositive of the acreage issue. In its petition for reconsideration, Chevron acknowledged that the land area of Breton Wilderness did fluctuate and that Congress explicitly accepted the Secretary's recommendation (in 1974) that the acreage of Breton Wilderness be increased from the 4,420 acres originally proposed to approximately 5,000 acres, in order to reflect land accretion. But since there allegedly was no further "documentation" in the record as to why the Secretary felt Breton Wilderness exceeded 5,000 acres on August 7, 1977, Chevron argued that EPA's reliance on the Secretary's determination was unwarranted. Finally, in a supplement to its petition, Chevron asserted that a Fish and Wildlife Service (FWS) memorandum dated April 19, 1979 that estimated the acreage at 4,764 acres using *1971* and *1972* data, and which concluded that because of inaccuracies "the 5,000 acre figure for Breton Wilderness was still valid," supported its argument.

As noted, these points were not impracticable to raise during the comment period and, therefore, do not meet the threshold criterion of section 307(d)(7)(B).[31] In addition, they are not of central relevance to the final determination. The reasonableness of concluding that Breton Wilderness exceeded 5,000 acres on August 7, 1977 is clear as a matter of law and as a matter of fact.

Chevron's comment on the proposed list, that the best acreage figure available was the 4,420 acres the Secretary originally proposed for Breton in 1970, does not reflect the Secretary's later amendment of that figure (acknowledged by Chevron in its petition). Of decisive importance, Chevron ignores Congress' acceptance of that larger figure (approximately 5,000 acres), because of accretion, to fix the size of Breton Wilderness as a matter of law. Since that law on which the Administrator relied, does define the official size of Breton Wilderness as a matter of law, Chevron's comment presents no information centrally relevant to the outcome of the final determination.

The April 19, 1979, FWS memorandum Chevron cites is irrelevant. It only repeats what is apparent from the legislative history: the acreage of the islands comprising Breton Wilderness cannot be pinpointed with any certainty, and it constantly changes due to storm action and accretion.[32] Congress, faced with that uncertainty chose to allow for accretion and inaccuracies of surveys by fixing the official area of Breton Wilderness at about 5,000 acres as a matter of law.[33]

[31] If Chevron had wanted to obtain information that was not in the public docket on this issue from the EPA or the Secretary's files, Chevron should have filed a request under the Freedom of Information Act, 5 U.S.C. 552, during the interval between publication of the proposed and final list. *See Lead Industries Association, Inc. v. EPA*, — F.2d — (D.C. Cir. 1980) (Slip op at 109). This interval was over 9 months.

[32] The memorandum itself concludes that because of inaccuracies of measurement, nothing more can be concluded about Breton Wilderness' size and that, therefore, "the 5,000 acre figure for Breton Wilderness is still valid."

[33] That Congress correctly believed that no exact acreage figure for Breton was possible due to the natural processes which constantly change its shape is confirmed by a FWS analysis, prepared in response to the petition, to try to learn if the islands'

Footnotes continued on next page

In enacting the 1977 Amendments, moreover, Congress itself viewed Breton Wilderness as exceeding 5,000 acres for purposes of the Clean Air Act. In determining that Breton Wilderness was in excess of 5,000 acres, the Secretary and the Administrator followed that view and Congress' 1975 determination. The unmistakable intent of Congress in enacting the 1977 Amendments to the Clean Air Act was expressed in the statement of Senator Muskie, the acknowledged Senate leader during the 1977 amendments, on a bill that would have removed the 5,000 acre cutoff for class I areas. The Senator listed the two national parks and eight wilderness areas that would be added to the list of class I areas by the bill. He did *not* include Breton Wilderness among the wilderness areas that would be added (123 Cong. Rec. S. 9240 (daily ed. June 9, 1977)). Thus, Senator Muskie believed that, even with the 5,000 acre cutoff, Breton Wilderness would be a class I area. A clearer indication that Congress intended Breton to satisfy the acreage requirements for class I status would be difficult to imagine. Thus, whether or not the islands comprising Breton Wilderness in fact exceeded 5,000 acres on August 7, 1977, as a matter of law the legal entity called Breton Wilderness did.[34]

The decision of the Secretary and the Administrator to treat the islands comprising Breton Wilderness as being in excess of 5,000 acres as a matter of fact was also reasonable, even apart from the explicit Congressional action fixing Breton Wilderness in excess of 5,000 acres as a matter of law, and the intent of Congress in the 1977 amendments to the Clean Air Act. Obviously, despite the admitted uncertainty of the islands' total acreage, the Secretary and the Administrator had to make a decision under section 169A(a)(2). Under the circumstances, it was reasonable to estimate the actual size of the islands making up Breton Wilderness as about 5,000 acres on January 3, 1975. As noted, both Houses of Congress explicitly recognized the continuous, dynamic process that alters the size of the islands, the inaccuracies in present surveys, and the impossibility of accurately estimating the area's acreage.[35] Faced with this uncertainty, Congress in 1975 chose to accept the Secretary's recommendation that the 1971 estimate of the islands' size be increased from 4,420 acres to about 5,000 acres, in order to allow for accretion since Hurricane Camille. The best estimates of the islands' actual size on January 3, 1975, then, was that it was approximately 5,000 acres. It was reasonable, therefore, for the Secretary and the Administrator to treat the islands as being in fact in excess of 5,000 acres on August 7, 1977, since no major storms occurred between January 3, 1975, and August 7, 1977.

In the absence of such storms, the land area of the islands would grow through accretion, as Congress recognized.[36]

2. *The Administrator Reasonably Determined that Visibility is an Important Value in Breton Wilderness.* Chevron contended that visibility is not an important value in Breton Wilderness because scenic values are not present and the area gets very little public use. Chevron asserted that Breton Wilderness is flat and unvegetated, and the only views are of oil drilling rigs in adjacent waters. Moreover, Chevron argued, there is litter on Breton Wilderness which indicates the Fish and Wildlife Service is not concerned with preventing visible intrusions on Breton Wilderness.

Chevron's contentions are without merit. The importance of visibility as a value in Breton Wilderness is patently obvious from the legislative history of the area, as well as from the administrative record established under section 169A(a)(2) of the Act. Chevron's allegations that Breton Wilderness has no important visibility values are, therefore, not of central relevance to the outcome of the determination at issue, and its petition for reconsideration must be denied.

(a) *Congress intended the Administrator to find most national wilderness areas in excess of 5,000 acres possessed visibility as an important value.* Section 169(a)(2) required the Administrator to determine only whether visibility was "an" important value in Breton Wilderness, not whether it was "the most" important value of the area. The requirement for this determination was added in conference, most probably to exclude those few areas, if any, with peculiarities either in the reason for which they were established or in natural conditions which eliminated visibility as an important value. The Chairman of the Subcommittee on Health and Environment from which the visibility provisions came said, in a statement intended to clarify the conferees' action, that "visibility protection in *most* mandatory class I Federal areas remains a rational commitment, which is nationally enforceable."[37] (emphasis added). Thus Chevron's request is that EPA treat Breton Wilderness as an exception to Congress' belief that mandatory class I Federal areas generally do possess visibility as an important value. In fact, the Administrator found that most of the mandatory class I Federal areas did possess visibility as an important value, and only the determination regarding Breton Wilderness was challenged.

(b) *Congress itself recognized that Breton Wilderness possessed precisely those characteristics that would make visibility an important value there.* The reports[38] and conferees[39] from both houses of Congress agreed that the purpose for which Congress established an areas and the necessity of good visibility to the public's enjoyment of the area are the two most important criteria for determining whether the area possessed visibility as an important value. In addition, these authorities noted that Congress had already determined in certain organic acts like the Wilderness Act, 16 U.S.C. 1131 et seq., that wilderness areas, among others, possessed natural values that most be preserved for future, as well as present, generations.

The Legislative history of Congress' creation of Breton Wilderness—from the public's comment on the Secretary's

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Footnotes continued from last page
acreage could be measured precisely. See docket item number V–B–7. That new analysis details the vast uncertainties involved in any attempt, such as that described in the April 19, 1979, FWS memorandum, to estimate Breton Wilderness' size. Traditional techniques, such as planimetry, are virtually useless because of Breton Wilderness' high perimeter to area ratio, and even exotic attempts to estimate the acreage from blow-ups of satellite photographs were unsuccessful. In short, this new analysis confirms that we know now no more than Congress did in 1975: Breton's acreage fluctuates above and below 5,000 acres, but cannot accurately be pinpointed at any given time. The April 19, 1979, memorandum, therefore, adds no new information at all.

[34] Moreover, Breton Wilderness satisfies the purposes for which Congress classified wilderness areas over 5,000 as "class I." The reason for the cutoff, which was to some extent "arbitrary," was Congress' belief that smaller national areas, such as a park in a city, would present land management difficulties and simply would not possess the quality of air-related values a larger area would. 123 Cong. Rec. S. 9240–S. 9244 (daily ed., June 9, 1977). Congress' explicit recognition of Breton Wilderness' great air-related values, discussed elsewhere in this notice, shows why Congress' manifest belief that Breton Wilderness was in a class I area.

[35] *See* footnotes 20 and 23.

[36] Docket item V–B–7, discussed above, confirms that no estimate more exact than that Congress used in 1975 is available, and that no major storms occurred between then and August 7, 1977, and that, therefore, it is "virtually certain" that Breton's acreage was greater on August 7, 1977, than on January 3, 1975, when Congress said it was about 5,000 acres.

[37] See also footnote 6.

[38] H Rep. No. 95–294, *supra*, at 137–8, 203–4; S. Rep. No. 95–127, *supra*, at 36.

[39] 123 Cong. Rec. S9241–2 (daily ed. June 9, 1977) (Sen. Muskie); 123 Cong. Rec. H 8661 (daily ed. August 4, 1977) (Rep. Maguire).

proposal, to the President's recommendation to Congress, to Congress' own deliberations—evinces a unanimous and ardent judgment that it is in the national interest to give special protection to this area because of its unique scenic values and the importance of preserving them for present and future generations. Since, as explained above, these are precisely the characteristics Congress would attribute to an area found under section 169A(a)(2) to have visibility as an important value, the Administrator's decision regarding Breton Wilderness was largely pre-ordained by Congress itself. Chevron's requested determination that visibility is not an important value would contradict the public's, the Secretary's, the President's, and Congress' earlier judgments regarding Breton Wilderness.[40]

Congress created Breton Wilderness under the Wilderness Act, 16 U.S.C. 1131, which required Congress to find that Breton Wilderness is "an area where the earth and its community of life are untrammeled by man, where man himself is a visitor who does not remain" and retains "its primeval character and influence . . . [with] outstanding opportunities for solitude or a primitive and unconfirmed type of recreation." As Chevron conceded in its comments to EPA, the Wilderness Act requires prevention of visible, man-made intrusions in the wilderness area.[41]

As noted in the background statement on Breton Wilderness, above, the public the Secretary, and the President recommended that Congress designate the Breton National Wildlife Refuge as a wilderness area because (1) it would assure the retention of the beaches, marsh and mangrove for the recreation, research, and inspiration of present and future generations, (2) it would act as a buffer against further pollution of the refuge and estuary from oil drilling and other man-made encroachments, (3) it would recognize and preserve the extreme importance of the refuge as a nesting area for shore birds and sea turtles, and (4) it would, generally, engender opportunities for human enrichment.[42]

Congress also recognized the scenic values the area possessed and their importance for human enjoyment and enrichment. The relevant committee reports extolled the area's visual appeal: "The crystal clear waters of the Gulf of Mexico bathe the endless miles of wild shores of sugar white sand, contrasting sharply with the man-made beaches and oftentimes muddy waters near the mainland." [43] In addition, the committees stated the primary purpose of Breton Wilderness was to preserve the area in a natural, unspoiled condition for the recreation, solitude, and scientific study of present and future generations.[44]

In short, the long process of establishing Breton Wilderness resulted in Congress informed judgment that Breton Wilderness had precisely those scenic characteristics that Congress was later to say were to govern the Administrator's determination that an area has visibility as an important value for purposes of section 169A(a)(2) of the act. Acccordingly, any administrative determination that Breton Wilderness did not have visibility as an important value, as Chevron requested, would have to overcome a huge burden of Congressional findings to the contrary.

(c) *The administrative record supports Congress findings that visibility is an important value in Breton Wilderness.* As described in the background statement above, the administrative record of the Administrator's determination that visibility is an important value in Breton Wilderness contains an analysis by the Fish and Wildlife Service (FWS) area manager which concludes that scenic values are present and important to the public's enjoyment of the area. This analysis, which was reviewed and approved by FWS headquarters personnel, noted that legislation creating Breton Wilderness stressed that it should remain in a natural state. It described Breton Wilderness in part as "miles of wild shore with white sand and natural changing dunes [which] offer the public a sharp contrast with man-made beaches and have abundant colonies of nesting shorebirds and wintering waterfowl." The analysis also details the panoramic view of barrier islands in the Gulf of Mexico (which includes "commonly 12 mile visibility during clear weather in all directions"), the importance of preserving the scenic values of Breton Wilderness because of the millions of visitors expected in the area, and that while fog, a natural condition, occurred in the winter, it did not affect visibility in the summer when the public primarily used Breton Wilderness.

Congress, in requiring the Secretary to identify and consult with the Administrator in his determination under section 169A(a)(2) of the Act, obviously intended that the Administrator carefully consider the Secretary's recommendation. This makes sense, since it is not the Administrator, but the area manager that is the Federal official most familiar with a given mandatory class I Federal area and its air quality related values. Here, the Breton Wilderness manager recommended unwaveringly and after reflective analysis that the Administrator find the area has visibility as an important value. Accordingly, any determination to the contrary, as Chevron requested, would have to overcome the considerable burden of the area manager's findings to the contrary.

(d) *The legislative and administrative records answer completely Chevron's assertions that visibility is not an important value in Breton Wilderness.* Chevron commented that although panoramic views do exist at Breton Wilderness, scenic values do not because views from the islands are apt to be of oil drilling rigs in adjacent waters or of the flat, largely unvegetated islands themselves.[45]

Both the House [46] and Senate [47] committee reports accompanying the legislation establishing Breton Wilderness explicitly recognized, however, that numerous oil and gas wells existed in waters adjoining the islands. Nevertheless, Congress found that the area possessed those kinds of unique and important natural values, described above, that warranted special protection. Indeed, it is likely that the presence of nearby oil rigs was for Congress a compelling reason in *favor* of wilderness status since one of the reasons cited most often in the public comments giving overwhelming support for creation of Breton Wilderness was that the existing refuge status was not sufficient to protect the islands from certain future oil drilling activities.[48] In addition, that Chevron considers "unscenic" the panoramas about which Congress waxed poetic [49] may say something about the commenter's aesthetic sense, but it does nothing to undermine the Administrator's determination because the points on which Chevron relies—the island's vegetation and proximity to oil rigs—

[40] In each case, however, including his determination regarding Breton Wilderness, the Administrator analyzed the areas involved, as explained elsewhere in this notice. Not all the mandatory class I areas have a legislative background as compelling on the Section 169A(a)(2) determination as Breton Wilderness does.

[41] Petition for Reconsideration, Exhibit A, at 8.

[42] See footnotes 8–16 and accompanying text.

[43] Senate Report at 3–4.

[44] See footnotes 17–22 and accompanying text.

[45] Chevron concedes that black mangrove and black rush exist on the island chain.

[46] House Report at 6.

[47] Senate Report at 18–19.

[48] Transmittal at v, 2, 14.

[49] See footnotes 18–19 and accompanying text.

were explicitly acknowledged in the record on which the administrator based his determination.[50]

Chevron also argued that the criteria used to evaluate Breton Wilderness were subjective, but it suggested no alternatives. In fact, as discussed above, the criteria chosen were the product of a joint effort between EPA and the Department of Interior (DOI) to maximize consistency among the evaluations.[51] Toward this end EPA and DOI also devised a "logic network" for applying the criteria. EPA explicitly addressed the issue of the criteria's alleged subjectivity in the Federal Register notice of its final action:

> While EPA acknowledges that in some respects the established criteria are subjective, it believes that the subjectiveness of these evaluations is to some extent inherent in the task of assigning "value" to the visibility of an area. Congress required DOI and EPA to accomplish this task in a very short time and did not anticipate that technical problems involved in objective measurements of visibility impairment would be solved before the task could be completed. Since a technical base broad enough to more quantitatively assess the class I area evaluations was not available in the time frame specified by Congress, criteria agreed on by EPA and DOI were developed which established certain priorities and were readily available for use by Federal Land Managers. Sections 165(d) and 169A which, among other things, charge Federal Land Managers with an "affirmative responsibility" to protect visibility values, together show the great weight Congress intended the judgment of Federal Land Managers to have. A technical base for use in future regulations in reponse to Section 169A is now being established which will quantify and define many of the concerns mentioned above. 44 FR 69123 (November 30, 1979).

Chevron also asserted that the Administrator's determination was invalid because the Breton Wilderness manager who analyzed the area was a "biologist with no training in * * * any * * * visually related discipline." As noted, the analyses were conducted by the Breton Wilderness manager, a person very familiar with the area. Since visibility is a new area in both a technical and regulatory sense,[52] that the manager was not a certified expert in the field is not surprising since few such experts exist. Moreover, Congress clearly contemplated, as is evident from the statutory language itself, that the Administrator would not base his decision under section 169A(a)(2) on the use of any scientific or technical tools for analyzing visibility. Congress set out a timeframe for quick identification of the § 169A(a)(2) areas, and clearly did not contemplate that the initial DOI evaluator of an area have qualifications on "visual values" beyond familiarity with the area. Not until fully 12 months after the statutory time for DOI to recommend an area was EPA to have identified "methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in mandatory class I areas." [53] Thus Chevron's attempt to discredit the evaluator's qualifications fails and does not impugn the Administrator's decision.[54]

Chevron also contended that natural conditions such as fog may exist which would make any visibility value in the area unimportant. That Congress concern was with man-made, not natural, forms of visibility impairment is clear, and that is why EPA required each analysis of an area to discuss the natural sources and its effect on the public's enjoyment of an area. The record shows that the Breton Wilderness manager did such an analysis and indicated in the logic network that natural sources do not seriously affect visibility during the season of highest public use. This was supported in the accompanying narrative statement: "[while f]og occurs over the area during the winter months * * * the primary use of the area occurs in the summer, so visibility is not affected by natural sources during use season." Chevron's contention that other area managers provided more documentation on this issue than did the Breton Wilderness manager, and its unsupported assertion that it is "possible" that the extent of natural impairment was underestimated, do not contribute anything to the Administrator's analysis. The Breton Wilderness manager was thoroughly familiar with the area, and Chevron did not suggest why it was "possible" he underestimated the extent of natural impairment.[55]

Chevron also asserted that because travel to Breton Wilderness must be by boat, the area gets much less public use than "the national parks Congress had in mind for visibility protection." The assertion ignores Congress explicit inclusion of national wilderness areas in addition to national parks in the definition of mandatory class I Federal areas.[56] National wilderness areas are by their nature less apt to receive the quantity of visitors that a national park would, but quantity is not the sole measure of public enjoyment. If it were, Congress would have established all such areas near major population centers. the lack of easy access does not negate, and may enhance, the enjoyment of the public who do reach the area.[57] In any event the record here shows that the public does visit the area, mainly in the summer. The high number of citizens (270) and organizations (29) who commented on the proposal to create Breton Wilderness—all of whom urged its establishment—attests to the public's great concern for the area. Among the most important reasons urged by the public was that wildeness status would assure the retention of the beaches, marsh, and mangrove for primitive recreational pursuits for present and

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[50] See footnote 7 and accompanying text.

[51] Chevron also alleged that its on-site investigation of the islands revealed certain man-made intrusions such as a wrecked airplane fuselage on one island, and litter on others. Although these allegations, if true, may well present a situation to be remedied, they nevertheless are not relevant, as EPA said in the preamble to the final section 169A(a)(2) determination, to whether visibility is an important value in Breton Wilderness. 44 FR 69124. Indeed, as Chevron conceded in its comments to EPA, the Wilderness Act requires prevention of visible, man-made intrusions in the wilderness area.

[52] See the preamble to EPA's proposed visibility regulations 45 FR 34762 (May 22, 1980).

[53] See Section 169A(a)(3).

[54] Chevron also alleged that the analysis of Breton Wilderness was not conducted by the area manager and reviewed by headquarters staff as required by DOI procedures. This allegation is simply wrong, as is confirmed by a memorandum, from one of the FWS employees involved, which EPA has placed in the public docket in response to this allegation. See docket item V–B–3.

Chevron also asserted that the evaluation of Breton Wilderness is incomplete because it did not include a table of the location and direction of scenic views. EPA does not understand how this is even arguably relevant to the determination at issue, but notes that in fact the analysis of Breton Wilderness does contain a narrative of the location and direction of scenic views: "[There exists a p]anoramic view of barrier islands in [the] Gulf of Mexico. The view is available both to people on boats and to people on the area's islands. There is commonly 12 mile visibility during clear weather in all directions from islands to oceans."

[55] EPA notes that Chevron's comments were submitted by a consulting company in the environmental research and technology field which made an onsite investigation of Breton Wilderness and which presumably could have suggested reasons, if any existed, as to why the area's manager "possibly" underestimated the extent of natural conditions.

In addition, in response to the petition EPA has placed in the record the best available information on the frequency of natural conditions at Breton Wilderness. Fog is the only significant such condition. Fog data for the most recent two and one-half years confirms the area manager's analysis that some fog occurs in winter, but virtually none occurs in the summer when the public primarily uses the area. *See* docket item V–B–6.

[56] See sections 169A(g)(5) and 162(a)(2) of the Act.

[57] EPA has proposed to consider the correlation between visibility impairment and visitor use in its visibility regulations proposed May 22, 1980 (45 FR 34762). For example, under the proposal visibility impairment may not be considered "adverse" or "significant" if it occurs only at times with no public use, and as a consequence the regulatory burden on a source contributing to such impairment would be minimized.

future generations.[58] The stated management policy is to permit continued public use of the area (except on parts of the area that must be seasonally closed to prevent disturbance to nesting birds) for such activities as shell collecting, beachcombing, birdwatching, photography and fishing.[59] Indeed, both the administrative and legislative record state that Breton Wilderness will become increasingly important to scenic wild shore values because plans for a Gulf Islands National Seashore in the vicinity may bring an estimated 3.5 million visitors a year to islands as close as 10 miles from Breton Wilderness.[60] Thus, Chevron ignores not only the quality of public enjoyment, but the public enjoyment that will occur in the future.[61]

3. *The Administrator Complied With All Applicable Procedural Requirements.* Chevron argued in its petition for reconsideration that the Administrator failed to provide an adequate statement of basis and purpose, an opportunity for the oral presentation of views (including cross-examination), a response to significant comments, and an economic impact analysis. These arguments are meritless, and are not of central relevance to the outcome of the determination at issue. Far from improperly curtailing the public's opportunity to influence his decision, the Administrator provided even more opportunity for public comment than the law required.

Since the determination at issue was not regulatory in nature, EPA had no obligation under the Clean Air Act or Administrative Procedures Act to open the Administrator's deliberative process to public participation. Nevertheless, he did so, treating the action under section 307(d)(1)(N). Consequently, he provided notice in the **Federal Register** and the opportunity to comment.[62]

Chevron complained that there was no oral hearing on the proposed determination. The reason is that none was requested. Only one commenter, not Chevron, even obliquely referred to an oral hearing, suggesting that while one should not be held now, it might be held later. EPA explicitly addressed this comment in the preamble to the final action:

> One commenter, noting that the effect of the listing will not be precisely known until the Section 169A regulations are proposed, suggested that promulgation of the final list be postponed until after the hearing on the proposed regulations and that the public record be left open during the interim. EPA believes such an approach would be contrary to the Congressional scheme—clearly set out in Section 169A—of promulgating the list of areas in advance even of the report to Congress containing the technical outline for the eventual visibility regulations.
>
> This does not mean, however, that future public comment and its consideration by EPA as to the specific visibility objectives, values, and important vistas of each area is precluded. EPA recognizes that the future rulemaking under Section 169A will require such additional area-specific analysis. At EPA's request, DOI and the Forest Service have conducted a preliminary analysis of the range of scenic vistas, the nature of the visual values and a preliminary estimate of the degree of existing natural and man-made visibility impairment found in each area. EPA expects that the future proposal of visibility regulations will require States and Federal Land Managers to develop such additional area-specific assessments. Both this process, and the proposal itself, will be subject to public comment. To the extent that further comment and additional analysis (or anything else) affects the basis for the list, EPA will propose appropriate revisions.[63]

EPA's proposal twice stated that the action would be treated under section 307(d), which provides for an opportunity for the oral presentation of views.[64] The notice contained several other references to the public docket and addresses and telephone numbers for obtaining further information.[65] As required by section 307(d)(3), EPA "specif[ied] the period available for public comment."[66] Nevertheless, Chevron's comments, which were submitted by its contractor's Environmental Counsel and showed a great familiarity with the statute, nowhere requested an oral hearing. This omission is fatal under the Act to Chevron's allegations of error.[67]

Moreover, any oral hearing would certainly not include an opportunity for cross-examination. Section 307(d)(5) states the Act's requirements for public hearings as follows, and provides no right of cross-examination:

> In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit *written* comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the *oral presentation* of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an *opportunity for submission of rebuttal and supplementary information.* (Emphasis added.)

The legislative history of the 1977 Amendments, which added the section, shows that Congress believed that the adequate representation of interests of affected parties, fairness, and full discussion of the issues in section 307(d) proceedings do not require cross-examination. The Conference Committee considered the addition of the opportunity for cross-examination but deliberately rejected it, substituting instead the section 307(d)(5)(iv) requirement that the hearing record remain open for thirty days to permit the submission of rebuttal and supplementary information.[68]

This result works no hardship here. It is clear the determinations made under section 169A(a)(2) are for the future; they have absolutely no present regulatory effect. Whether the determination regarding Breton Wilderness will ever affect Chevron's interests is unknown. The determinations are clearly not a judgment of legal culpability based on past actions; they are nonaccusatory. Nor is the action highly individualized, as Chevron claimed. On the contrary, the action involved 158 areas throughout the country. The comments received indicated the national interest generated. This was not, therefore, an exceptional, quasi-judicial proceeding in which "a very small number of persons" are, on individual grounds, exceptionally affected.[69]

Whether the statement of basis and purpose required by section 307(d) or the Administrative Procedure Act, 5 U.S.C. 553, is sufficient depends on whether it enables a reviewing court to see the major issues of policy that were ventilated by the proceedings and why the agency reacted to them as it did. *Citizens to Save Spencer County v. EPA*, 600 F.2d 844 (D.C. Cir. 1979). Here the statement was clearly sufficient since both the notice of proposal and final action set out the statutory authority for the Administrator's determination, the criteria and process for that determination, and, in the notice of final action, the reason for the actual

[58] See footnote 12 and accompanying text.

[59] Transmittal at 2.

[60] See, e.g., Transmittal at 14.

[61] In addition, EPA has in response to the petition placed in the docket the best available information on the public's use of Breton Wilderness during the most recent three and one-half years. This information confirms the area manager's analysis that there is a good amount of public use of the area, and that such use occurs primarily in the summer. *See* docket item V–B–6.

[62] 44 FR 8909.

[63] 44 FR 69123.

[64] 44 FR 8910, 8911.

[65] 44 FR 8909, 8911.

[66] *Id.*

[67] See section 308(d)(7)(B).

[68] Conference Report at 177.

[69] *Vermont Yankee, Nuclear Power Corp. v. Natural Resources Defense Council,* 435 U.S. 519, 542 (1978).

determination reached and response to significant comments.

EPA adequately responded to the significant comments received. The exhaustive response provided in the preamble to the final action belies Chevron's assertions to the contrary. In particular, EPA responded to Chevron's assertion that Breton Wilderness did not exceed 5,000 acres (EPA said it relied on the Secretary's judgment), and that Breton Wilderness had no scenic value because it was littered (EPA said that was irrelevant). As shown above, Chevron's additional comments were insignificant and not of central relevance to the determinations made.[70]

Finally, as many commenters recognized, the economic impact of action under section 169A(a)(2) cannot be assessed until regulations are promulgated. Congress clearly intended that the designations could not be accompanied by a section 317 analysis.[71] EPA addressed this issue explicitly in the proposal:

> [c]ompliance at this stage with Section 317 would be impracticable. Section 317 requires an economic assessment of the regulation's compliance costs and potential inflationary or recessionary effects, its impact on energy use, and its effects on competition with respect to small business. Obviously, only speculation on these effects is possible at this stage of the Section 169A regulations since no requirement yet exists to assess.[72]

EPA also explicitly addressed the issue in its notice of final action:

> As many commenters recognized, to assess at the present time, the impact of a future regulatory program under section 169A is neither possible nor required by law. In section 169A Congress explicitly called for the listing of areas subject to regulation far in advance of the time when EPA must develop specific regulations for the States which contain guidelines and techniques for making reasonable progress towards the national goal. Congress revealed its sensitivity to the economic impact of any section 169A regulations by making a cost and energy analysis part of the control technology standard and providing the possibility for exemption to that standard. However, there is no indication that economic impacts be somehow considered—in advance of the regulations themselves—in compiling the Section 169A(a)(2) list. A regulatory analysis is being prepared and these issues * * * will be dealt with there. This analysis will also address the elements of economic impact set out in section 317.[73]

[70] Chevron also asserted that EPA was somehow obligated to respond to comments on the Secretary's proposed list of areas, as well. Assuming arguendo EPA had this obligation, the only such comments Chevron referred to—that the criteria were too broad and subjective—were also raised and responded to in connection with EPA's proposed list of areas.

[71] Section 317 of the Act requires the Administrator to analyze the economic impacts of certain regulatory actions.

[72] 44 FR 891.

[73] 44 FR 69123.

## IV. Conclusion

Chevron's petition for reconsideration is denied because it fails to demonstrate either (1) that it was impracticable to raise its objections during the period for public comment or (2) that the basis of its objections arose after the close of the period for public comment and the objections were of central relevance to the outcome of the rule.

Under section 307(b)(1) of the Act judicial review of this action is available by filing a petition for review in the United States Court of Appeals for the Fifth Circuit on or before December 2, 1980.

Dated: September 26, 1980.

**Douglas M. Costle,**

*Administrator.*

[FR Doc. 80-30854 Filed 10-2-80; 8:45 am]

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**40 CFR Part 205**

**[FRL 1624-2]**

## Truck-Mounted Solid Waste Compactors: Noise Emission Standards, Technical Amendments

**AGENCY:** U.S. Environmental Protection Agency (EPA).

**ACTION:** Technical amendments.

**SUMMARY:** This notice amends the regulation on Truck-Mounted Solid Waste Compactors: Noise Emission Standards, 40 CFR Part 205, Subpart F (44 FR 56524, October 1, 1979). The compliance labeling section is changed to reflect the decision of the U.S. Court of Appeals for the District of Columbia Circuit which invalidated the warranty provision in a similar noise emission regulation. The test procedures section is changed to reflect more accurately the Agency's intent and to correct a typographical error. Appendix I is changed to correct an editing error.

**EFFECTIVE DATE:** November 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Fred Mintz, Program Manager, Office of Noise Abatement and Control (ANR-490), U.S. Environmental Protection Agency, Washington, D.C. 20460, (703) 557-2710.

**SUPPLEMENTARY INFORMATION:** On August 26, 1977 EPA proposed 40 CFR Part 205, Subpart F, Truck-Mounted Solid Waste Compactors: Noise Emission Standards (42 FR 43226 *et seq.*). Section 205.108-1 of the proposed regulation contained a provision setting out the warranty obligations for manufacturers of regulated products.

After proposal of the regulation, the United States Court of Appeals for the District of Columbia Circuit invalidated a similar warranty provision appearing in the Noise Emission Regulation for Medium and Heavy Trucks (*Chrysler Corp.* v. *EPA*, 195 U.S. App. D.C. 90, 600 F.2d 904 (D.C. Cir. 1979)).

The final regulation for truck-mounted solid waste compactors accordingly reserved the warranty provision pending reproposal of a provision consistent with the decision in *Chrysler* (See 44 FR 56526, October 1, 1979).

The final regulation, however, included a provision requiring that notice of the manufacturer's warranty responsibility appear on a label affixed to the regulated product (40 CFR 205.205-11(a)(4)(v)). This provision is inconsistent with the Court's decision in *Chrysler*, but was inadvertently included in the final regulation. This notice amends the regulation to correct this inconsistency.

This amendment changes the labeling section in the regulation to conform to the decision in *Chrysler*. The amendment does not change the manufacturers' responsibilities and compliance activities under the regulation.

The Agency has received several inquiries on the interpretation of the test site requirements in the regulation. The specific questions were related to § 205.204(b), Test Site Description, of the final regulation, in which the last sentence reads:

"The test site may be graded to permit drainage, provided the elevation difference does not exceed one-half (½) of the microphone elevation tolerance of 0.15 meter."

This provision was interpreted by some to mean that the deviation of the reflecting plane from horizontal must not exceed the stated tolerance. This was not the Agency's intent. Our intent was, and is, to require that the amount by which the test pad surface deviates from being a true plane, not exceed the stated tolerance. The first sentence of the section states, "The test site shall consist of an open area above a hard reflecting *plane*" (italic added here for emphasis). In allowing grading for drainage, the intent is that the test pad remain a plane, with a constant slope for drainage. The "elevation difference" tolerance of 0.075 meter is the maximum amount that the test pad surface itself may deviate from a true plane. Thus, the drainage must be provided, not by using a crowned surface as on a roadway, but rather by tilting the entire pad as a plane, at the appropriate angle to

achieve the desired drainage properties. If crowning is provided, it is limited to the extent of the stated elevation difference.

This amendment modifies the provision for grading in Section 205.204(b) to more accurately reflect the Agency's intent.

The measurement equipment requirements of the regulation necessitate use of a Type 1 Sound Level Meter. The requirement for a Type 1 Sound Level Meter was spelled out in § 205.204(c)(1) of the proposed regulation, in accordance with the Agency's intent. In § 205.204(c)(1) of the final regulation, the words "Type 1" were inadvertently omitted.

This amendment corrects that omission by inserting the words "Type 1" into the description of the sound level meter and microphone system required by the regulation.

In the final regulation the title to Appendix I was inadvertently omitted. This amendment corrects that omission. In addition, in order to make it clear that "Appendix I" pertains to Subpart F and not to Part 205, it is also necessary to identify it as being an appendix to Subpart F.

Most of these amendments are critical to the compliance activities of manufacturers of truck-mounted solid waste compactors, including activities which must be completed prior to the October 1, 1980 effective date of the regulation. Moreover, the amendments are technical in nature, serve only to correct or clarify the final regulation, and do not change the intent of the regulation in any substantive aspect. Accordingly, the Agency finds that notice and opportunity to comment on the amendments prior to final rulemaking would be impractical and are unnecessary.

EPA has determined that these amendments do not constitute a "significant" regulatory action under the criteria of Executive Order 12044 and therefore do not require a Regulatory Analysis. The Regulatory Analysis (EPA 550/9-79-257) prepared in conjunction with the final regulation adequately addressed the technical issues discussed in these amendments.

This amendment is promulgated under the authority of 42 U.S.C. 4905 and 4912.

Dated: September 26, 1980.

**David G. Hawkins,**

*Assistant Administrator for Air, Noise, and Radiation.*

40 CFR Part 205, Subpart F is amended as follows:

1. Section 205.205-11 is amended by revising paragraph (a)(4)(v) to read as follows:

**§ 205.205-11 Labeling-compliance.**

(a) * * *

(4) * * *

(v) The statement:

This compactor is subject to the Federal noise emission regulation effective on October 1, 1980. Tampering with any product noise control device or element of design (see owner's manual), or use of this product after such tampering, is prohibited by Federal Law.

* * * * *

2. Section 205.204 is amended by revising paragraphs (b) and (c)(1) to read as follows:

**§ 205.204 Test procedures.**

* * * * *

(b) *Test site description.* The test site shall consist of an open area above a hard reflecting plane. The reflecting plane shall consist of a surface of sealed Portland cement or bituminous concrete flat to within ±0.05 meter, and shall extend 1.0 meter beyond each microphone location. The test site reflecting plane may be graded with a constant slope to permit drainage. The microphone shall be located at least 15 meters from any reflecting surface, such as a building, signboard, hillside, etc.

(c) * * *

(1) A sound level meter and microphone system conforming to the Type 1 requirements of American National Standards Institute (ANSI) S1.4-1971, "American National Specification for Sound Level Meters".

* * * * *

**Appendix [Amended]**

3. The Appendix to Part 205 is amended by inserting "Appendix I of Subpart F—Sample Tables", above the title, "Table I".

(Secs. 6 and 13, Pub. L. 92-574, 86 Stat. 1237, 1244 (42 U.S.C. 4905, 4912))

[FR Doc. 80-30841 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Part 1

**[FCC 80-497]**

### Amendments To Allow Licensee Response to Certain Investigatory Reports

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** A petition for rule making filed on October 31, 1978 requested opportunity for a broadcast licensee to respond to the staff's investigatory report and recommendations prior to consideration by the Commission. The Commission feels that it is inappropriate for a licensee under investigation to gain access to the Bureau's investigatory report. However, a predesignation procedure is established by which the licensee may submit a pleading to be associated with the staff recommendation. The revised procedure will allow licensee's under investigation to present mitigating circumstances.

**EFFECTIVE DATE:** November 10, 1980.

**FOR FURTHER INFORMATION CONTACT:** Norman B. Blumenthal, Office of General Counsel (202) 632-6990.

**SUPPLEMENTARY INFORMATION:** This new rules does not supersede the application of *ex parte* rules to situations where they are normally operative.

**Memorandum Opinion and Order**

Adopted: August 27, 1980.

Released: September 10, 1980.

In the matter of petition for amendment of Part 1, rules and regulations, to provide opportunity for licensee response to staff investigatory reports prior to designation for hearing, RM-3237.

1. We have before us for our consideration a petition for rulemaking filed on October 31, 1978, by Benito Gaguine on behalf of the law firm of Fly, Shuebruk, Blume, Gaguine, Boros and Schulkind. Petitioner requests that we provide an opportunity for a broadcast licensee to respond to the staff's investigatory report and recommendations prior to consideration by the Commission in renewal and revocation of license cases. Petitioner also requests that copies of witness statements, the investigatory report and the staff's recommendations to the Commission be made available for a licensee's use in preparing this response. Statements filed by the National Association of Broadcasters (NAB), the Federal Communications Bar Association (FCBA), and the Communications Center, New York Law School (Center) generally support a predesignation procedure, but do not deal expressly with disclosure of witness statements, investigatory reports, and staff recommendations to the Commission.[1] Reply statements were not filed. We do not believe that a licensee under investigation should gain access to the Bureau's investigatory report, recommendation to the Commission or witness statements prior to designation for hearing. We do

[1] These statements were filed late. We have considered them because their lateness did not delay consideration of this matter by the Commission.

believe, however, that a pre-designation pleading procedure by which the licensee may submit a pleading to be associated with the staff recommendation would be helpful to the Commission. We explain our reasons below.

2. Our usual investigative procedures involve the sending of a Commission investigator to speak with the licensee or station manager, review relevant files and interview station employees, if appropriate. The licensee and/or station manager are afforded an opportunity to comment and explain the evidence obtained. The licensee's attorney may participate in this process if the licensee so desires. Following the investigation, the licensee is given the opportunity to comment on any additional matters which the staff may have discovered. The staff investigator prepares an investigatory report, which includes copies of all statements obtained from witnesses. The report is reviewed by the Chief of the Compliance Branch of the Complaints and Compliance Division and the Chief of that Division. If a hearing is recommended, an agenda item summarizing the investigatory report is prepared and reviewed by the Chief of the Hearing Division, the Deputy Bureau Chief, and the Bureau Chief, as appropriate, and a Bureau judgment is made whether the circumstances warrant designation for hearing.[2]

3. Under our current rules, the licensee and counsel are free to make their views known to the Commission or the staff in any form until the time of designation. In the past, many licensees under investigation have submitted a memorandum to the staff articulating the licensee's views as to the facts uncovered in the investigation and as to the applicable law. If a licensee has requested the staff to forward that memorandum to the Commission, staff has done so. Other licensees have delivered copies of such a memorandum directly to the Commissioners' offices, once it becomes clear through a public announcement that the staff investigation and recommendation will be considered at a particular Commission meeting. We have decided to formalize these practices by rule. *See Appendix.* The rule provides that the staff may, in its discretion, notify a licensee of the general nature of the investigation. If the licensee so desires, it may submit a pleading to the staff that would be forwarded to the Commission in conjunction with any staff memorandum recommending that the Commission take action as a result of the investigation. Of course, this new rule would not supersede the application of our *ex parte* rules to situations where they are normally operative, i.e., after the filing of a petition to deny. In situations where the *ex parte* rules do not apply, each Commissioner will make his or her own judgment as to whether oral or written presentations from a party should be shared with the bureau.

4. *Pre-designation Procedure.* Petitioner believes that a predesignation procedure will provide an opportunity for the licensee to present "mitigating factors" to "offset" a staff recommendation of designation for hearing. NAB, FCBA and Center analogize the designation process to criminal procedures in which the prosecutor (staff) seeks an indictment from the grand jury (Commission). They note that the Commission allows pleadings responsive to a notice of apparent liability for forfeiture and a petition to deny. Thus, they assert that licensees should be allowed a right to respond in an investigatory pre-designation setting.

5. We find petitioner's reasoning unpersuasive. Civil administrative actions under the Administrative Procedure Act (APA) are not to be likened to criminal proceedings. The APA and the Communications Act establish the due process requirements requisite to actions on licenses. Nothing in these statutes indicates a requirement for the sort of predesignation procedure suggested by petitioner. The reference to grand jury proceeding does not support petitioner's arguments either. The prosecutor is not required to disclose his case prior to seeking the indictment. In fact, however, we provide more access than is possible in a criminal proceeding. Thus, it would be illegal for defense counsel to contact members of the grand jury before the indictment is issued, unlike current Commission procedures which already give a licensee opportunity to contact members of the Commission and its staff prior to designation.

6. The notice of apparent liability and petition to deny procedures are inapposite. Section 1.80(f) of the Rules provide for pleadings responsive to a notice of apparent liability; however, there is no evidentiary hearing—the pleading process is respondent's only "hearing" at the Commission level. Under § 1.80(g), the Commission order an evidentiary hearing, but there is no pre-designation pleading process. These procedures follow recently enacted legislation (Pub. L. 95–234, February 21, 1978). Under petition to deny procedures, the applicant may respond to the petition filed by a private party—not an investigatory report or agenda item prepared by the Commission's own staff.

7. *Pre-designation Disclosure.* Under present procedures, a bill of particulars listing the charges and specifying in detail the information and allegations issued within 30 days after release of the designation order. A list of the witnesses interviewed, and information concerning the general nature of the information such persons may be able to furnish, is available from the Commission under the discovery rules. However, this does not include information concerning what the witness related to the Commission's investigator.[3] Such information is protected by the work product privilege.[4] A list of witnesses to be called by the Bureau is made available prior to hearing, at a time set by the administrative law judge. Under our existing practice, the statements of witnesses who will testify are normally made available a week or so prior to commencement of the hearing (if disclosure is requested), although the rules (§ 1.362) require disclosure only after the witness has testified.[5]

8. We are not aware of any agency of the federal government which discloses witness statements, investigatory reports or staff recommendations prior to designation.[6] We doubt that any agency would disclose, at any stage, the statement of witnesses not called to testify. See, *e.g., NLRB* v. *Sears, Roebuck & Co.,* 421 U.S. 132 (1975); *NLRB* v. *Robbins Tire and Rubber Co.,* 437 U.S. 214 (1978); *Frankel* v. *SEC,* 460 F.2d 813 (2nd Cir.), *cert. denied,* 409 U.S. 889 (1972). In the *Frankel* case, the court

[2] Very few cases make their way to hearing through this process. In fiscal year 1979 there were 73,523 complaints, resulting in 55 field investigations involving broadcast stations. Of these 55, nine licenses were set for renewal or revocation hearings.

[3] See amendment of Part 1 of the Rules of Practice and Procedure to Provide for Discovery Procedures, 11 FCC 2d 185 (1968).

[4] *Hickman* v. *Taylor,* 329 U.S. 495 (1947).

[5] The practice of disclosing witnesses' statements before the hearing begins is intended to permit the licensee's counsel sufficient time to prepare for cross-examination so that a recess will not be needed after each direct examination to study the witness' prior statement. Section 1.362, however, provides authority for protecting the confidentiality of such a statement where there is a special risk of intimidation prior to testimony.

[6] We note that until April of 1975 the Federal Trade Commission (FTC) had employed a procedure by which a proposed complaint was served upon a respondent with a notice that he had 30 days to settle the matter by consent decree. The FTC abolished the procedure because it had proven to be a source of unnecessary delay and because negotiation of such agreements could still be undertaken during the investigative process or even after the complaint was issued. 40 FR 15235 (1975).

commented on the availability of SEC investigatory files:

> If an agency's investigatory files were obtainable without limitation after the investigation was concluded, future law enforcement efforts by the agency could be seriously hindered. The agency's investigatory techniques and procedures would be revealed. The names of people who volunteered the information that had prompted the investigation initially or who contributed information during the course of the investigation would be disclosed. The possibility of such disclosure would tend severely to limit the agencies' possibilities for investigation and enforcement of the law since these agencies rely, to a large extent, on voluntary cooperation and on information from informants.[7]

Commission precedent is consistent with these decisions. See *Chesapeake-Portsmouth Broadcasting Corp.*, 52 FCC 2d 854 (1975) (complaint letters); *Walton Broadcasting, Inc.*, 56 FCC 2d 814 (1975) (witness statements); *Gilmore Broadcasting Corp.*, 69 FCC 2d 2105 (1978) (witness sttements). In *Gilmore*, the Commission stated (at para. 6):

> [T]he FCC has a long-standing policy of disclosing witness statements only after a witness has testified. 47 CFR 1.362. Premature release under FOIA would disrupt the agency's discovery process with respect to witness statements. Moreover, while the risk of witness intimidation in the present case may be slight, advance access to witnesses' statements could nonetheless have a chilling effect on potential investigatory sources and allow avoidance of the Bureau's case * * *.

9. It would be difficult to obtain the cooperation of witnesses if we were unable to promise that their statements would be kept confidential until they have testified or are about to testify. In many cases, witnesses cooperate and give testimony, even though they are concerned about the personal consequences such as current job security and ability to obtain jobs with other employers. In these cases, they would not wish their cooperation exposed if the case is not designated for hearing or if the Bureau does not plan to call them to testify. Once they are called to testify, they are sworn and cannot as readily be blamed by the licensee for truthfully answering the questions posed. Absent that protection, testimony would be unobtainable, crippling our investigative process.

10. Aside from the chilling effect on prospective investigations, the two most important reasons for not disclosing witness statements until the witness has testified, or at least until shortly before he is called to testify, are that the licensee may intimidate the witness, and/or construct a false defense. *See, e.g., Chronicle Broadcasting Co.*, 19 FCC 2d 240 (Rev. Bd. 1969).

11. Petitioner maintains that non-disclosure of statements reflects the Broadcast Bureau's desire to maintain the element of surprise, which "has no place in modern American jurisprudence;" that disclosure would afford the licensee a meaningful opportunity to comment on the veracity of the statements; and that the availability of the statements would afford counsel a meaningful opportunity for investigation of the allegations and to prepare for cross-examination. Petitioner further contends that statements could ultimately be obtained from the witnesses by use of the subpoena and deposition procedures. Petitioner states that a witness who can be intimidated prior to designation can as easily be intimidated after designation or during the hearing. Finally, petitioner notes that a witness who insists on anonymity cannot be called to testify. According to petitioner, if the Bureau cannot develop the case independently without disclosure of the witness' identity, then a provable case against the licensee can never be made and designation should not take place.

12. We disagree with petitioner. We believe that the Commission's procedures strike a balance between full disclosure and protection of the interests of parties and witnesses found in judicial and other agency proceedings. Licensees are not inherently more believable than witnesses. Determining the truth is the function of the hearing. Licensee's counsel is fully informed concerning allegations against his client well in advance of designation and is given a list of witnesses interviewed by staff investigators. Thus, counsel, is already afforded an opportunity for meaningful investigation of the allegations and preparation for cross-examination. Moreover, as a matter of practice the Broadcast Bureau makes witness' statements available prior to hearing. Therefore, the use of discovery procedures to obtain witness' statements is needless.

13. We also believe the possibility of intimidation of the witness by the licensee is real. Prior to designation, the witness is susceptible to the argument by his employer (the licensee) that he or she will lose his or her job and the case may not even be designated for hearing. As we stated before, most investigations do not lead to designation. After designation, the witness has acquired an ally, the Bureau. He or she is more likely to resist intimidation and report such an attempt to Bureau counsel. The licensee is aware of the witness' position and the possibility that a serious abuse of process issue will be added if intimidation is employed, thus deterring such conduct.

14. Authority for the amendments is set forth in Sections 4(i) and 303(r) of the Communciations Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

15. In view of the foregoing, the Petition for Rule Making is denied, the proposed rule 1.88 is adopted, and this proceeding is terminated. Accordingly, it is ordered, effective November 10, 1980, that Part I of the Rules and Regulations is amended as set forth in the attached Appendix below.

(Secs. 4, 303, 307, 48 Stat., as amended, 1066, 1082, 1083; (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

William J. Tricarico,

*Secretary.*

### Appendix

In Part One of Chapter I of Title 47 of the Code of Federal Regulations, new § 1.88 is added to read as follows:

**§ 1.88 Predesignation pleading procedure.**

In cases where an investigation is being conducted by the Commission in connection with the operation of a broadcast station or a pending application for renewal of a broadcast license, the licensee may file a written statement to the Commission setting forth its views regarding the matters under investigation; the staff, in its discretion, may in writing, advise such licensee of the general nature of the investigation, and advise the licensee of its opportunity to submit such a statement to the staff. Any filing by the licensee will be forwarded to the Commission in conjunction with any staff memorandum recommending that the Commission take action as a result of the invesigation. Nothing in this rule shall supersede the application of our ex parte rules to situations described in § 1.1203 of these rules.

[FR Doc. 80-30568 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Parts 21, 22**

**[FCC 80-516]**

## Domestic Public Radio Services (Other Than Maritime Mobile) and Public Mobile Radio Services; Ownership Amendments

**AGENCY:** Federal Communications Commission.

**ACTION:** Editorial amendment of rules.

**SUMMARY:** Federal Communications Commission editorially amends 47 CFR

[7] 460 F.2d at 817, 818.

21.31 and 22.31 to clarify exemption from common carrier cutoff rules for ownership amendments found to be in the public interest, in accord with existing policy. Exemption from cutoff rules will be granted when ownership change is in the public interest and for an independent legitimate business purpose, and not primarily for acquiring applications.

**EFFECTIVE DATE:** November 10, 1980.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Michael D. Sullivan, Common Carrier Bureau, (202) 632-6450.

**Memorandum Opinion and Order**

Adopted: September 10, 1980.

Released: October 8, 1980.

In re applications of Airsignal International, Inc., and its subsidiaries [1], for construction permits in the Domestic Public Land Mobile Radio Service; in the matter of editorial amendment of §§ 21.31(e)(3) and 22.31(e)(3) of the Commission's rules.

1. Presently before the Commission for consideration is the question of how the common carrier cut-off rule, 47 CFR 22.31, should affect the status of pending applications amended to reflect an ownership change resulting from a transfer of control or assignment of license consummated pursuant to Commission approval. This question is raised by the filing of amendments by Airsignal International, Inc., to its pending applications to reflect the change in ownership caused by the merger of WUI, Inc., Airsignal's parent, into Xerox Corporation. This merger was approved by the Commission on November 20, 1979. *Xerox Corp.*, 74 FCC 2d 471. Airsignal notified the Commission of the completion of the transfer of control on December 10, 1979, and filed amendments to its pending applications on January 2, 1980, to reflect the change in ownership.

2. Substantial ownership amendments to pending applications are generally considered "major" amendments, subject to a 30-day public notice period.[2] We must determine whether these amendments should cause the amended applications to be treated as "newly filed" applications under the common carrier cut-off rule. (If the applications are deemed newly filed they could, in some circumstances, be cut off from comparative consideration and be returned as defective.) Airsignal has requested an exemption from the cut-off rule, pursuant to 47 CFR 22.31(e)(3).[3] We have been requested by competing applicants to dismiss three of Airsignal's amended applications as newly filed after the applicable cut-off date.[4]

**Discussion**

3. Under 47 CFR 22.23(c)(6),[5] an amendment that specifies a substantial change in control of an applicant is classified as a major amendment except (under a proviso) if it amends a pending application for "modification" of an existing station, so as to reflect a previously approved change in ownership. The section defines a "substantial" change in control as one that would require prior Commission approval under 47 U.S.C. 310(d) if it involved an existing station. Since the Xerox-WUI merger giving rise to the Airsignal amendments was clearly subject to section 310(d) (and was approved), the change in control involved in the amendments is "substantial". Accordingly, the Airsignal amendments are major unless they qualify under the proviso as amendments to "modification" applications.

4. The proviso to § 22.23(c)(6) makes an exception to the general rule requiring major amendment treatment, in cases where the application amended is "for modification of an authorized station". This proviso by its terms does not apply to Airsignal's pending applications for *new* stations, but it is not immediately clear how to properly classify Airsignal's amendments to its applications to modify the facilities of its existing stations. In other words, the question is raised whether all applications for "modification," no matter how substantial (such as modifying an existing station to add new frequencies or locations), fall within the scope of the proviso.

5. In adopting the rules involved here, the Commission stated that the § 22.23(c)(6) proviso was intended to apply only to "*minor* changes to (or modifications of) facilities". *Report and Order* in Docket 19905, *Domestic Public Land Mobile Radio Service*, 60 FCC 2d 549, 557 (1976) (emphasis added). "Minor change" was defined by reference to 47 U.S.C. 309(c)(2)(A). 60 FCC 2d at 557. On the other hand, the Commission said it was not persuaded by arguments "that applications * * * which appeared initially on public notice should be transferable without public announcement." *Id.* Accordingly, only those applications of Airsignal that were initially exempt from public notice, *see* 47 CFR 22.27(c), qualify for the proviso;[6] the amendments to all the other applications shall be classified as major amendments.

*Application of the Cutoff Rule*

6. Having determined that all but a few of Airsignal's applications have been amended by major amendments, we must decide whether the applications should be considered newly filed for purposes of the cut-off rule,[7] 47 CFR 22.31, or be exempted from it. In Docket 19905 the Commission determined the extent to which the cut-off policy should apply to ownership amendments.

7. In the *Report and Order* in that proceeding, 60 FCC 2d 549, we decided to adopt a compromise approach to ownership amendments. On the one hand we had been urged to treat all ownership amendments as minor (i.e., exempt from both public notice and the cut-off rule) because they were not relevant to the question of mutual exclusivity, and because major amendment treatment would restrict business flexibility and discourage new entrants. 60 FCC 2d at 556. On the other hand, some participants argued that ownership amendments to new station applications should be subject to both public notice and the cut-off rule. Instead of adopting either of these approaches, we balanced "our statutory duty to inform the public and to protect our administrative process, against an obvious public interest in permitting applicants reasonable business

[1] A list of the applications amended by Airsignal is appended to this *Order*.

[2] 47 U.S.C. 309(b). "Minor" amendments are not subject to a public notice period. 47 U.S.C. 309(c)(1)(A).

[3] 47 CFR 22.31(e)(3) provides that a major amendment shall result in the application being considered as newly filed except when:

The amendment reflects only a change in ownership or control pursuant to an agreement (or understanding) which is found by the Commission to be in the public interest under § 22.29 and from which a requested exemption from the "cut-off" requirements of this section is granted.

[4] These petitions are addressed in paragraphs 12-13, *infra*.

[5] 47 CFR 22.23 provides, in relevant part:

(c) * * * An amendment will be deemed to be a major amendment subject to §§ 22.27 and 22.31 under any of the following circumstances: * * * (6) If the amendment specifies a substantial change in beneficial ownership or control (*de jure* or *de facto*) of an applicant such that the change would require, in the case of an authorized station, the filing of a prior assignment or transfer of control application under section 310(d) of the Communications Act of 1934 (47 U.S.C. 310(d)). *Provided however*, Such a change would not be considered major where it merely amends an application for modification of an authorized station to reflect a change in ownership or control of such station as previously approved by the Commission.

[6] In the appendix these applications are designated "minor".

[7] *See* 47 CFR 22.31(e). In the broadcast services, the same result is reached by assignment of a new file number to the amended application. *Cf.* 47 CFR 73.3571(j) (AM stations), 73.3572(b) (FM stations), 73.3573(b) (TV stations).

flexibility to offer the rendition of the best public service." 60 FCC 2d at 557. The result of this compromise was that a substantial ownership amendment would be classified as a major amendment subject to public notice under section 309(b) of the Act (unless the application that was amended had not itself been subject to public notice), but instead of mechanistically applying the cut-off rule to ownership amendments we stated that "an administrative exception would be justified for appropriate ownership or control changes which tend to effect changes in business or financial factors overlaying the technical proposal." [8]

8. Section 22.31(e)(3) of our rules [9] provides that an administrative exception from the cut-off rule will be granted for an amendment that "reflects only a change in ownership or control pursuant to an agreement * * * found by the Commission to be in the public interest under § 22.29 and from which a requested exemption from the 'cut-off' requirements of this section is granted." 47 CFR 22.31(e)(3). Section 22.29 of the rules [10] provides for Commission review of agreements and understandings that result in either major changes in the ownership or control of an applicant or the settlement of a contested proceeding. Yet it was not the Commission's intention in adopting these rules to exempt only changes in ownership resulting from settlement agreements. The stated purpose of § 22.31(e)(3) was to provide an exemption from the cut-off rule "for substantial ownership amendments found to be in the public interest." 60 FCC 2d at 560.

9. The WUI-Xerox merger did not involve an agreement to which § 22.29 applies, as it did not involve an agreement or understanding among the parties to a contested application proceeding. Accordingly, § 22.31(e)(3) does not literally apply to the amended Airsignal applications. It would be contrary to our reasoning in Docket 19905, however, to limit the exemption from the cut-off rule to situations involving settlements. We stated at that time, "a broad prohibition against settlement or ownership changes to pending applications would not be in the public interest since it could prevent a common carrier applicant from resolving unnecessary disputes, from strengthening his financial position, or from acquiring facility improvement applications incidental to the purchase of an existing station." 60 FCC 2d at 556–557. We therefore decided to adopt new policies for "settlement agreements (*and for*) *the applicability of the 'cut-off' rule to ownership amendments to applications for new stations.*" 60 FCC 2d at 557 (emphasis added). More specifically, we announced our intention to allow "ownership or control changes which tend to reflect changes in business or financial factors * * *" *Id.* This exception to the "cut-off" rule seemed especially appropriate "[s]ince an applicant's reaction to these (economic) changes may substantially enhance his ability to render public utility service * * *" *Id.* at 558. Our concern, essentially, was that ownership amendments be for an independent legitimate business purpose, and not primarily for acquiring pending applications. Accordingly, our focus was to be on whether the change in ownership was in the public interest and on whether it was made to effect a legitimate business purpose, thereby justifying an exemption. We subsequently stated that * * * 21.31(e)(3) (later recodified as * * * 22.31(e)(3)) of the new rules would be amended to exempt from the "cut-off" rule "substantial ownership amendments found to be in the public interest." *Id.* at 560. Unfortunately, however, that section was inadvertently drafted to include a reference to § 21.29, which concerns settlements, and thus the exemption could be ready to apply only to ownership changes arising from settlement agreements. *See* 47 CFR 21.31(e)(4), 22.31(e)(4). Since we expressly intended a broader exemption than that, we are taking this opportunity to clarify §§ 21.31(e)(3) and 22.31(e)(3) by deleting the references to §§ 21.29 and 22.29.

10. In the present case, the Airsignal ownership change has already been approved by the Commission. We already have had an opportunity to examine all "pertinent contracts, agreements, instruments, * * * Court Orders, etc.," because these must be submitted by the transferor in response to item 6 of FCC Form 704 (Application for Consent to Transfer of Control). With the agreement and all other relevant information before it, the Commission found that the public interest, convenience, and necessity would be served by consenting to the transfer. *Xerox Corp.*, 74 FCC 2d 471, 495–496 (1979) (transfer of control of WUI and its subsidiaries (including Airsignal) to Xerox, approved subject to certain conditions not relevant here). Thus, the Airsignal ownership change is in the public interest. Now we must determine whether Airsignal qualifies for an exemption from the cut-off rule. It is clear from the *Xerox* order that the WUI-Xerox merger was for legitimate business purposes (e.g., providing WUI with improved research and technical capabilities). 74 FCC 2d at 473. Furthermore, there is no indication that a major purpose of the WUI-Xerox merger was to obtain Airsignal's pending applications. We will therefore grant the requested exemption.

*Disposition of Petitions*

11. We have received requests to dismiss three amended Airsignal applications as newly filed after the cut-off date. These requests were filed by Edward C. Smith d/b/a Answerite Professional Telephone Answering Service, against Airsignal's application for a new station at Tampa, Florida (File No. 21670–CD–P–(3)–78); and jointly by four California carriers (Intrastate Radio Telephone, Inc. of San Francisco, Tel-Page, Inc., Central Radio Telephone, and United Business Service, Inc. d/b/a United Radiophone System) against Airsignal's amended applications for new stations at Vallejo and Oakland Hills, California (File Nos. 20225–CD–P–(4)–76 and 20226–CD–P–(2)–76). We agree with the contentions of Answerite and the California carriers that the amendments to these particular applications should be classified as major. For the reasons discussed above, however, we decline to deem these applications "newly filed". We do not here address the issues raised by the California carriers other than the effect of the ownership amendment; the other issues will be considered in disposing of the applications involved.

12. One contention of Answerite, however, was not discussed above: that a decision to exempt Airsignal from the cut-off rule would "have a devastating impact" on broadcast, as well as common carrier, cut-off procedures. We disagree. Common carriers are subject to regulatory policies and procedures significantly different from those affecting broadcasters. For example, the broadcast and common carrier rules contain entirely different cut-off procedures for competing applications, and the broadcast cut-off rules do not provide for exemption of any ownership

[8] 60 FCC 2d at 557; *see* 47 CFR 21.23(c)(6) proviso, 22.23(c)(6) proviso. To the extent that the change in ownership raises issues as to the qualifications of the new owner to be a licensee, interested parties would be entitled to raise qualification issues in a petition to deny, following public notice of the amendment. A change in ownership or control is generally made in response to "changing service demands and economic conditions," and the Commission decided in Docket 19905 to make an exception to the cut-off rule for "appropriate ownership or control amendments which reflect such changes." 60 FCC 2d at 558.

[9] Section 22.31(e)(3) was adopted as § 21.31(e)(3) in Docket 19905 and subsequently recodified.

[10] Section 22.29 was adopted as § 21.29 in Docket 19905 and subsequently recodified.

or control changes, while the common carrier rules do. *Compare* 47 CFR 73.3571(j), 73.3572(b), 73.3573(b), *with* §§ 21.31(e), 22.31(e). Broadcasters and common carriers are not regulated under the same policies and statutory provisions in all instances because the two industries are very different, and the two groups of licensees perform different functions. A broadcaster's primary purpose is to determine program content while a common carrier provides a conduit for the transmission of information by the public. *See Notice of Inquiry and Notice of Proposed Rulemaking*, CC Docket No. 80–116, FCC 80–141 at para. 45 (May 2, 1980). A change in the ownership of a broadcast applicant, accordingly, may affect the essence of the proposal, while a common carrier's application to provide a channel of communication is generally affected in a far less substantial way by a change in ownership. Thus, while an ownership change does not generally so substantially affect a common carrier's basic proposal as to deem it newly filed (and subject it to the cut-off rules), it affects the qualifications of the applicant to be a licensee; the new owner's qualifications will be scrutinized by the Commission and may be the subject of petitions to deny after an amendment reflecting the ownership change is placed on public notice. Because of the difference between our broadcast and common carrier policies—which is rooted in the differing nature of the services to be rendered by the two types of licensee—our decision herein will not affect broadcast procedures.

**Conclusion**

13. For the reasons discussed in this *Memorandum Opinion and Order*, It is ordered:

(a) That the request of Airsignal International Inc., for an exemption from the cut-off rule pursuant to 47 CFR 22.31(e) is granted to the extent that its applications shall not be considered newly filed by virtue of the amendments reflecting a transfer of control of Airsignal from WUI, Inc., to Xerox Corp.;

(b) That the Chief, Common Carrier Bureau, shall issue a public notice listing those Airsignal applications considered subject to major amendments;

(c) That the motion to dismiss Airsignal's application for Tampa, Florida, File No. 21670–CD–P–(3)–78, filed by Edward C. Smith d/b/a Answerite Professional Telephone Service, is denied.

(d) That the petition to dismiss Airsignal of California, Inc.'s amended applications for Vallejo and Oakland Hills, California, File Nos. 20225–CD(4)–76 and 20226–CD–P–(2)–76, File Nos. 20225–CD–P–(4)–76 and 20226–CD–P–(2)–76, filed by Intrastate Radio Telephone, Inc. of San Francisco, Tel-Page, Inc., Central Radio Telephone, and United Business Services, Inc. d/b/a United Radiophone System, is denied to the extent indicated herein.

14. It is further ordered, That effective November 10, 1980, 47 CFR 21.31(e)(3) and 22.31(e)(3) are amended as set forth in Appendix B. Authority for these revisions is set forth in 47 U.S.C. 154(i) and 303(r). In view of the fact that the rule change is editorial in nature, merely conforming a rule to existing policy, and is procedural in nature, prior publication of a Notice of Proposed Rulemaking under Section 4 of the Administrative Procedure Act, 5 U.S.C. 553, is unnecessary.

(Secs. 4, 303, 307, 48 Stat., as amended, 1080, 1082, 1083; (47 U.S.C. 154, 303, 307))

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

**Appendix A**

The following applications were amended by Airsignal International, Inc. (or its subsidiaries, as indicated). "Minor" applications—those not subject to the public notice requirement of 47 U.S.C. 309(b)—are so designated, and applications that are no longer pending are marked with an asterisk (*).

*1. Airsignal International, Inc.*

20269–CD–P–79 (New), Portland, OR*
20103–CD–P–79, KAF245, Kansas City, MO*
20036–CD–P–79 (New), Dallas, TX*
20188–CD–P–79 (New), Ft. Worth, TX*
20413–CD–P–79 (New), Houston, TX*
20546–CD–P–79 (New), Atlanta, GA*
21707–CD–P–(3)–78, KFL895, Tampa, St. Petersburg and Clearwater, FL
21668–CD–P–(3)–78, KWT861, Tampa, FL
21670–CD–P–(3)–78 (New), Tampa, St. Petersburg and Clearwater, FL
21300–CD–P–79, KIF650, Birmingham, AL
21206–CD–P–79 (New), Memphis, TN*
20870–CD–P–79, KAF245, Kansas City, MO*
20076–C2–P–(4)–74 (New), W. Memphis, AR*
21733–CD–P–2–79, KFL895, Sarasota and Venice, FL*
22230–CD–P–79, KMA261, Coral Springs, FL (Minor)*
21605–CD–P–24–79 (New), Dallas, TX
21604–CD–P–24–79 (New), New York, NY
21491–CD–P–12–79 (New), Houston, TX
22316–CD–P–12–79 (New), Miami, FL
22323–CD–P–2–79 (New), Venice and Sarasota, FL
20166–CD–P–80, KQB688, Hinckey, OH
20238–CD–P–80, KIF653, Arlington, TN*
20615–CD–P–4–80 (New), Atlanta, GA*
20616–CD–P–2–80, KIE953, Atlanta, GA*
20521–CD–P–80, KWU331, Memphis, TN

*2. Airsignal of California, Inc.*

982–C2–71, KJU808, Vallejo, CA
20225–CD–P–(4)–76 (New), Vallejo, CA
20226–CD–P–(2)–76 (New), Vallejo, CA
20224–CD–P–(3)–78, KMA267, Fresno, CA
20782–CD–P–79, KMA267, Fresno, CA (Minor)*
21111–CD–P–2–79, KWU255, Sacramento, CA (Minor)*
22228–CD–P–2–79, KMA261, Visalia, CA
21913–CD–P–24–79 (New), Vallejo, CA
22595–CD–P–79, KMW257, Modesto, CA (Minor)*
20085–CD–P–80, KMM703, S. Lake Tahoe, CA (Minor)*
20086–CD–P–80, KWU278, S. Lake Tahoe, CA (Minor)*
20102–CD–P–80, KWU278, S. Lake Tahoe, CA (Minor)*
20103–CD–P–80, KMM703, S. Lake Tahoe, CA (Minor)*
20507–CD–P–80, KMA742, Porterville, CA (Minor)*

*3. Airsignal of Nevada, Inc.*

21183–CD–P–2–79, KWT989, Las Vegas, NV

*4. Airsignal International of Pittsburgh, Pennsylvania, Inc.*

22231–CD–P–79 (New), Pittsburgh, PA

*5. Airsignal International of Philadelphia, Pennsylvania, Inc.*

21305–CD–P–96–79 (New), Philadelphia, PA
20560–CD–P–80, KGC223, Pine Hill, NJ*

**Appendix B**

## PART 21—DOMESTIC PUBLIC RADIO SERVICES (OTHER THAN MARITIME MOBILE)

**§ 21.31 [Amended]**

47 CFR 21.31(c)(3) is considered to read:

* * * * *

(e) * * *

(3) * * *

The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted;

## PART 22—PUBLIC MOBILE RADIO SERVICES

**§ 22.31 [Amended]**

47 CFR 22.31(e)(3) is amended to read:

* * * * *

(e) * * *

(3) * * *

The amendment reflects only a change in ownership or control found by the Commission to be in the public interest, and for which a requested exemption from the "cut-off" requirements of this section is granted.

[FR Doc. 80–30829 Filed 10–2–80; 8:45 am]

BILLING CODE 6712–01–M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1033

[S.O. No. 1477; Amdt. No. 1]

### Indian Creek Railroad Co. Authorized To Operate Over Tracks Leased From the Penn Central Corp.

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Amendment No. 1 to Service Order No. 1477.

**SUMMARY:** Service Order No. 1477, authorized the Indian Creek Railroad Company to operate over tracks leased from Penn Central Corporation between Anderson, Indiana, and Frankton, Indiana. This amendment extends the expiration date until 11:59 p.m., November 30, 1980, in order to provide for uninterrupted rail service.

**EFFECTIVE DATE:** 11:59 p.m., September 30, 1980, and remaining in effect until 11:59 p.m., November 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

**FOR FURTHER INFORMATION CONTACT:** M. F. Clemens, Jr., (202) 275–7840.

Upon further consideration of Service Order No. 1477 (45 FR 48635), and good cause appearing therefor:

§ 1033.1477 [Amended]

*It is ordered,* That § 1033.1477 *Indian Creek Railroad Company authorized to operate over tracks leased from Penn Central Corporation,* Service Order No. 1477 is amended by substituting the following paragraph (e) for paragraph (e) thereof:

* * * * *

(e) *Expiration date.* The provisions of this order shall remain in effect until 11:59 p.m., November 30, 1980, unless otherwise modified, amended or vacated by order of this Commission.

*Effective date.* This amendment shall become effective at 11:59 p.m., September 30, 1980.

This action is taken under the authority of 49 U.S.C. 10304–10305 and 11121–11126.

This amendment shall be served upon the Association of American Railroads, Car Service Division, as agent of the railroads subscribing to the car service and car hire agreement under the terms of that agreement and upon the American Short Line Railroad Association. Notice of this amendment shall be given to the general public by depositing a copy in the Office of the Secretary of the Commission at Washington, D.C., and by filing a copy with the Director, Office of the Federal Register.

By the Commission, Railroad Service Board, members Joel E. Burns, Robert S. Turkington and John H. O'Brien. Joel E. Burns not participating.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-30890 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

### 49 CFR Part 1038

[Ex Parte No. 284]

### Investigation Into the Need for Defining Reasonable Dispatch Perishable Commodities

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Rescission of final rules.

**SUMMARY:** The Commission reopened this proceeding to develop whether the performance standards adopted for railroad shipments of perishable commodities are still necessary in light of, among other things, the fresh fruit and vegetable exemption. It is the Commission's conclusion that they are not and the rules are being rescinded.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 275–7693.

**SUPPLEMENTARY INFORMATION:** This proceeding was reopened in a decision dated June 8, 1979, to determine whether performance standards for the rail shipment of edible perishable commodities between key producing and consuming centers are still necessary. The regulations, contained in 49 CFR 1038, were stayed pending a further decision in this proceeding.

Ex Parte No. 346 (Sub-No. 1), (44 FR 18227, March 27, 1979) *Rail General Exemption Authority—Fresh Fruits and Vegetables, 361 I.C.C. 211, 374* (1979), exempted the rail transportation of fresh fruits and vegetables from substantially all of the regulatory requirements of Subtitle IV of Title 49, including the reasonable dispatch requirements. In that decision, we found that mandatory requirements were not necessary as the railroads have a pecuniary interest in adhering to expedited schedules in order to compete effectively with motor carriers for the fresh fruit and vegetable traffic. We noted that the reasonable dispatch rules are but one approach to achieving the timely transportation of perishable commodities and that the railroads are free to negotiate others. More recently, in Ex Parte No. 346 (Sub-No. 2), *Rail General Exemption Authority—Miscellaneous Commodities,* —— *I.C.C.* ——, (1980), we exempted a number of other commodities, some of which fit into the perishable foodstuffs category.[1]

The proposed rules were designed to remedy delays in the transportation of fresh fruits and vegetables. Given the fact that these commodities are no longer included within the scope of the rules, we question whether they are necessary at all. It is our impression, based on the discussion in the prior decision and the exemptions, that the only commodities that would be subject to the rules are meats, dairy products, and frozen foods. In our 1977 decision in this case (355 I.C.C. 162), we found that publication of schedules and adoption of specific time limits for performing certain functions were necessary to ensure a degree of reliability in rail service. However, we did not impose specific rules. Instead, we asked the railroads to develop tariffs on their own, giving the carriers greater flexibility in the hope that we would be able to avoid further intervention. Generally, the approach taken reflected the belief that, regardless of the rail share of these movements, users should be guaranteed more reliable service.

Today, we look at the issue somewhat differently. Service is a basic part of competition. The rail share of the markets to which these rules, if adopted, would apply continues to be low. These shippers are not captive to the railroads; there is effective competition from motor carriers. To the extent that the railroads are interested in this traffic, it is up to them to provide the level of service demanded by shippers. Contract rates may also be used to define obligations of all parties. We do not believe it would be productive for us to intervene when the marketplace should act as an adequate regulator.

We appreciate that in *Atchison, Topeka and Santa Fe Railway Company et al.* v. *Interstate Commerce Commission and United States of America,* 607 F.2d 1199 (7th Cir. 1979), the court specifically recognized that the Commission has the requisite authority in this proceeding to determine performance standards for the rail shipment of perishable commodities. We believe, notwithstanding our authority to do so, that establishing such standards would be inconsistent with our current policy of encouraging (especially in the absence of market dominance) service competition regulated by the marketplace.

We are also concerned that the rules discussed in the prior decision are unnecessarily detailed. We find

[1] E.g., peanuts, bananas, mushrooms, fish and marine products.

especially compelling earlier carrier arguments questioning the propriety of penalizing them for missing a particular time limit if the lost time is made up later in the movement. It would tremendously difficult to frame rules that are appropriate in all instances. Where possible, we believe the carriers should maintain control over their day-to-day operations. It has been our experience that complicated rules often create more problems than they solve. See *Detention Rules of Motor Vehicles—Nationwide,* 126 M.C.C. 803 (1977).

Accordingly, 49 CFR Part 1038 is rescinded.

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

(49 U.S.C. 10321 and 10501; and 5 U.S.C. 553)

Decided: September 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Fiantun, Alexis and Gilliam. Commissioner Stafford not participating.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-30906 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

# Proposed Rules

Federal Register
Vol. 45, No. 194
Friday, October 3, 1980

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.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 733

### Political Participation by U.S. Government Employees in Local Elections in the City of New Carrollton, Md.

**AGENCY:** Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** At the request of the Mayor of the City of New Carrollton, Maryland, the Office of Personnel Management (OPM) proposes to amend its regulations to grant Federal Government employees residing in the City of New Carrollton, a partial exemption from the political activity restrictions of the Hatch Act.

**DATE:** Written comments will be considered if received by December 2, 1980.

**ADDRESS:** Submit written comments to the Office of the General Counsel, United States Office of Personnel Management, Room 5H30, 1900 E Street, N.W., Washington, D.C. 20415. All comments received on this proposed rule will be available for public inspection at the above address on business days between 8 a.m. and 4:30 p.m.

**FOR FURTHER INFORMATION CONTACT:** Robert H. Moll, (202) 632–7600.

**SUPPLEMENTARY INFORMATION:** The Hatch Act at 5 U.S.C. 7324 *et seq.*, controls the political activity of Federal employees and individuals employed by the District of Columbia. 5 U.S.C. 7324 generally prohibits Government employees from taking an active part in political campaigns. 5 U.S.C. 7327, however, authorizes OPM to prescribe regulations permitting certain Government employees to be politically active to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7327, OPM can allow Government employees to participate in political campaigns involving the municipality where they reside when two conditions relevant to the current request for exemption exist. One condition is met if the municipality is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia. The second condition is met if OPM determines that because of special or unusual circumstances the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.124(b) OPM has designated municipalities and political subdivisions in which Government employees may participate in local elections. At 5 CFR 733.124(c) OPM has established the following limitations on political participation by employees residing in these designated municipalities and subdivisions:

(1) Participation in politics shall be as an independent candidate or on behalf of, or in opposition to, an independent candidate.

(2) Candidacy for, and service in an elective office shall not result in neglect of or interference with the performance of the duties of the employee or create a conflict, or apparent conflict, of interests.

In response to a request from the Mayor of the City of New Carrollton, OPM proposes to designate that municipality as one where Government employees may participate in local elections subject to the limitations established by OPM. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Government employees residing in the City of New Carrollton to permit their local political participation in connection with independent candidacies. This determination is based on evidence developed during an OPM investigation of the eligibility of the City of New Carrollton for a partial exemption from political activity restrictions.

The OPM investigation included interviews of City officials and a review of documentary material provided by the City. Principal factors leading to OPM's determination are the proximity of the City of New Carrollton to the District of Columbia, the substantial proportion of City residents who are Federal Government employees, the City's belief that an exemption will encourage active participation in the City's political processes, and the probability that granting the exemption will eliminate confusion which has arisen in the minds of Federal employees concerning their political activity rights.

A copy of this notice will be published in a local newspaper serving the City of New Carrollton.

If this proposed rule is adopted, OPM will amend 5 CFR 733.124(b) by adding the City of New Carrollton to the list of designated Maryland municipalities and political subdivisions in which Federal Government employees may participate in local elections, to be listed after Mount Rainier and before North Beach.

Office of Personnel Management.

**Beverly M. Jones,**

*Issuance System Manager.*

[FR Doc. 80-30757 Filed 10-2-80; 8:45 am]

BILLING CODE 6325-01-M

## DEPARTMENT OF AGRICULTURE

### Soil Conservation Service

### 7 CFR Part 622

### Small Watershed Protection and Flood Prevention Act, Public Law 83–566; Intent To Review Regulations, Policies, and Procedures

**AGENCY:** Soil Conservation Service, Department of Agriculture.

**ACTION:** Prenotice of intent to review regulations, policies, and procedures under Executive Order 12044.

**SUMMARY:** Executive Order 12044 requires that each major purpose authority be reviewed.

This prenotice of intent is for the purpose of requesting interested persons to comment or provide suggestions for carrying out the review.

**DATE:** Comments should be received by December 1, 1980.

**ADDRESS:** Interested persons are invited to submit written comments or suggestions to Joseph W. Haas, Deputy Chief for Natural Resource Projects, SCS, P.O. Box 2890, Washington, D.C. 20013 (202–447–4527). All comments received will be considered during preparation of final procedures.

**FOR FURTHER INFORMATION CONTACT:** James W. Mitchell, Associate Deputy Chief for Natural Resource Projects, SCS, P.O. Box 2890, Washington, D.C. 20013 (202–447–3587).

**SUPPLEMENTARY INFORMATION:** Public Law 83–566, 68 Stat. 666, was passed in 1954. The Act authorizes the Secretary of Agriculture to cooperate with States and local agencies in planning and carrying out works of improvement for soil conservation and for other purposes. The Act states "That erosion, floodwater, and sediment damages in the watersheds of the rivers and streams of the United States, causing loss of life and damage to property, constitute a meanace to the national welfare; and it is the sense of Congress that the Federal Government should cooperate with States and their political subdivisions, soil and water conservation districts, flood prevention or control districts, and other local public agencies for the purpose of preventing such damages, of furthering the conservation, development, utilization, and disposal of water, and the conservation and utilization of land and thereby of preserving, protecting and improving the Nation's land and water resources and the quality of the environment."

Technical and financial assistance can be provided in a watershed or subwatershed not exceeding two hundred and fifty thousand acres for the purposes of sediment and erosion control, flood prevention, agricultural water management, recreation, water conservation, water quality, fish and wildlife developments, and municipal and industrial water supply.

The review of rules, regulations, policies, and procedures is intended to be an in-depth examination and will be undertaken by three major sections:

(1) *Policy:* Present policy memorandums, guidelines, manuals, etc., will be reviewed for compliance with existing Executive orders and recently issued policy revisions on the Principles and Standards for Water Resources.

(2) *Procedures:* Methods and procedures for evaluating the feasibility of providing technical and financial assistance under the Act will be examined for compliance with current laws, rules, regulations, and guidelines.

(3) *Effectiveness and benefit accrual:* Project benefits will be examined to determine the effectiveness of the projections and expectations. Agriculture flood damages, changes in land use, more intensive land use, and flood damage reduction benefits claimed on projects that have been installed for several years will be checked against actual field conditions that exist as a result of the project. Other benefits such as agricultural water management, urban uses, recreation, improvement of fish and wildlife habitat, and municipal and industrial water supply will also be evaluated.

**Verne M. Bathurst,**

*Deputy Chief for Administration.*

September 25, 1980.

(Catalog of Federal Domestic Assistance Program No. 10.904, Watershed Protection and Flood Prevention Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is not applicable)

[FR Doc. 80–30834 Filed 10–2–80; 8:45 am]

BILLING CODE 3410–16–M

## DEPARTMENT OF ENERGY

### Office of Conservation and Solar Energy

### 10 CFR Part 430

### Energy Conservation Program for Consumer Products; Availability of the Document Entitled "Public Meeting Clarification Questions and Answers"

**AGENCY:** Department of Energy.

**ACTION:** Notice of availability.

**ADDRESSES:** Copies of the document may be obtained by writing to Ms. Carol A. Snipes, U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

A copy of this document has been filed with the Department of Energy's Freedom of Information Office and is available for review in the Freedom of Information Reading Room, Department of Energy, Room 5B–180, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** James A. Smith, U.S. Department of Energy, Office of Conservation and Solar Energy, Division of Buildings and Community Systems, Consumer Products Efficiency Branch, Room GH–065, Mail Station GH–068, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585 (202) 252–9127.

**SUMMARY:** On June 30, 1980 (45 FR 43976) DOE issued a notice of Proposed Rulemaking and Hearing on energy efficiency standards. Interested parties submitted questions for clarification of issues presented in the notice and additional questions were asked orally at the July 16th public meeting. DOE has compiled a document entitled "Public Meeting Clarification Questions and Answers," which individually answers all the questions received. By this notice DOE announces that all interested parties may obtain copies of this document.

Title III, Part B of the Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163) established an energy conservation program for consumer products. As part of this program, section 325 (42 U.S.C. 6295) of the EPCA, as amended by the National Energy conservation Policy Act (NECPA) (Pub. L. 95–619), authorizes DOE to prescribe energy efficiency standards for consumer products. Subsequently, DOE issued a notice of proposed rulemaking for energy efficiency standards for nine types of consumer products on June 19, 1980 (45 FR 43976, June 30, 1980). Included in this notice, it is announced that pursuant to the requirements of section 336(a)(2) of EPCA, as amended by NECPA, a public meeting would be held in Washington, D.C., at which interested parties could present questions for clarification of issues presented in the notice. It was also announced that questions for clarification should be submitted in writing.

A large number of questions were received. Additional questions were asked orally at the public meeting held on July 16, 1980. DOE has compiled a document entitled, "Public Meeting Clarification Questions and Answers," which individually answers all of the questions received. By this notice, DOE announces that interested parties may obtain copies of this document by writing to Ms. Carol A. Snipes, U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

DOE also announces that a copy of this document is available for public review at the Freedom of Information Reading Room, Department of Energy, Room 5B–180, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

Issued in Washington, D.C., September 24, 1980.

**T. E. Stelson,**

*Assistant Secretary, Conservation and Solar Energy.*

[FR Doc. 80–30762 Filed 10–2–80; 8:45 am]

BILLING CODE 6450–01–M

10 CFR PART 430

## Energy Conservation program for Consumer Products; Public Meeting Regarding the Proposed Certification/ Enforcement Provisions of the Department of Energy's Energy Efficiency Standards Program for Consumer Products

**AGENCY:** Department of Energy.

**ACTION:** Notice of public meetng.

**SUMMARY:** The Department of Energy (DOE) is inviting the public to submit comments on a revised version of the certification/enforcement approach for energy efficiency standards for consumer products proposed by notice issued June 19, 1980 (45 F.R. 43976, June 30, 1980). DOE will accept written comments on this new proposal until October 20, 1980. A public meeting will be held beginning at 9:00 a.m., October 10, 1980, in Washington, D.C.

**DATES:** Written comments must be received by October 20, 1980. A public meeting will be held in Washington, D.C. on October 10, 1980 beginning 9:00 a.m., local time.

**ADDRESSES:** The public meeting is to be held at: Room 3000A, Federal Building, 12th and Pennsylvania Ave., N.W., Washington, D.C. Written comments should be addressed to MS. Carol A. Snipes (Hearing Procedures), U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Energy Efficiency Standards for Consumer Products, Docket No. CAS–RM–78–110, Mail Station 6B–025, Forrestal Building, 1000 Independence Avenue, S.W., Washington, D.C. 20585.

Copies of the DOE handout for the public meeting may be obtained after October 10, 1980 by contacting Ms. Carol A. Snipes, U.S. Department of Energy, Office of Conservation and Solar Energy, Office of Hearings and Dockets, Mail Station 6B–025, Forrestal Building, 1000 Independence Avenue, SW., Washington, D.C. 20585.

**FOR FURTHER INFORMATION CONTACT:** James A. Smith, U.S. Department of Energy, Consumer Products Efficiency Branch, Mail Stop GH–068, 1000 Independence Avenue, SW., Washington, D.C. 20585, (202) 252–9127.

**SUPPLEMENTARY INFORMATION:** The Energy Policy and Conservation Act (EPCA) (Pub. L. 94–163) as amended by the National Energy Conservation Policy Act (NECPA) (Pub. L. 95–619), requires that the Department of Energy (DOE) prescribe energy efficiency standards for the types of consumer products listed in EPCA as amended by NECPA.

Standards for nine of these products were proposed by notice issued June 19, 1980 (45 FR 43976, June 30, 1980). The proposed rule included DOE's proposed certification/enforcement provisions for ensuring compliance with the efficiency standards. In response to the large number of comments received advocating that existing industry sponsored trade association consumer product certification programs serve to monitor compliance with DOE energy efficiency standards, DOE convened a public meeting on September 9, 1980, by notice issued August 28, 1980 (45 FR 58132, September 2, 1980), to afford interested parties an opportunity to present views on how existing industry-sponsored trade association certification programs might play a role in the DOE certification/enforcement program. At this meeting, the Air-Conditioning and Refrigeration Institute (ARI), the Gas Appliance Manufacturers Association (GAMA), the Association of Home Applicance Manufacturers (AHAM), and the Hydronics Institute (HI) made a joint presentation recommending an alternative certification/enforcement approach.

DOE has considered the certification/ enforcemet approach recommended by the industry trade associations and other comments made at the public meeting and has developed a revised version of the certification/enforcement approach. In developing this revised approach, DOE has attempted to mitigate the concerns expressed at the public meeting regarding DOE's proposed certification/enforcement approach. Time has not permitted DOE to perform a complete anslysis of all aspects of the revised approach or to evaluate all comments regarding the proposed certification/enforcement approach. Despite this, DOE wishes to provide an opportunity for interested parties to comment on the revised approach since it reflects substantive changes which DOE is considering making to the approach proposed. Such comments would be considered by DOE as it completes its analysis of the revised approach and the evaluation of comments received on the proposed approach. Therefore, DOE will convene a public meeting on October 10, 1980 at 9:00 a.m., in Washington, D.C. to present this preliminary revised certification/ enforcement approach to the public for comment. A written description of the key features of the preliminary revised certification/enforcement approach will be made available at the public meeting. Copies of this document may also be obtained by contacting Ms. Carol A. Snipes, at the address found at the beginning of this notice. Requests for copies of this document may be submitted immediately; however, copies of the document will not be available prior to the day of the public meeting.

In order to acommodate written comments on this revised approach, DOE will re-open for this limited purpose the official comment period on the proposed rule for energy efficiency standards for nine types of consumer products beginning October 10, 1980. Comments pertaining to DOE's revises certification/enforcement approach that are submitted during this extension of the comment period will be considered in developing the final rule.

**WRITTEN COMMENT PROCEDURES:** Interested persons are invited to submit comments in writing on the revised version of the certification/enforcement approach. Such written comments must be received by DOE by October 20, 1980. Comments should be labeled both on the envelope and the document, "Energy Efficiency Standards for Consumer Products (Docket No. CAS–RM–78–110)." Fifteen copies are requested to be submitted, but this is not a requirement for submitting comments.

Any person, submitting information or data which is believed to be confidential and exempt by law from public disclosure, should submit it in accordance with the procedures established at 10 CFR 1004.11.

**PUBLIC MEETING PROCEDURE:** Because of the importance of the Energy Conservation Program for Consumer Products, DOE wishes to receive the maximum level of public participation possible. DOE encourages attendance and participation by individuals and representatives of organizations, consumer groups, manufacturers and industry, and other government agencies at the meeting.

DOE will make a presentation at the outset of the reasons for convening the public meeting and then present its revised version for the proposed certification/enforcement approach. Participants will be permitted to ask questions to clarify the presentation. Following this presentation there will be an extended break period to allow attendees times to formulate their comments and/or questions concerning the revised approach. When the public meeting is reconvened, DOE will accept oral comments and/or questions limited to a time which will be set in light of the number of persons who request to speak. Persons wishing to speak are asked to so indicate upon registration or immediately after the DOE presentation. The official conducting the meeting will

call for comments or questions from those attending.

Proposed agenda for the October 10, 1980 public meeting:

9:00–11:00 Opening remarks and presentation of revised certification/enforcement approach.
11:00–2:00 Break.
2:00–5:00 Comment and question period.

Issued in Washington, D.C., October 1, 1980.

**Kelly C. Sandy III,**

*Executive Director, Office of Conservation & Solar Energy.*

[FR Doc. 80-31044 Filed 10-2-80; 8:45 am]

BILLING CODE 6450-01-M

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## Federal Energy Regulatory Commission

## 18 CFR Part 271

**[Docket No. RM79-76 (Colorado-3)]**

## High-Cost Gas Produced From Tight Formations

**AGENCY:** Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Colorado Oil and Gas Conservation Commission that the Mancos "B" formation be designated as a tight formation pursuant to § 271.703(d).

**DATES:** Comments on the proposed rule are due prior to October 23, 1980. Requests for hearing should be filed on or before October 8, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie J. Lawner (202) 357–8027 or Victor H. Zabel (202) 357–8559.

September 23, 1980.

### I. Background

On August 28, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Niobrara formation underlying specified lands in Cheyenne, Kit Carson, Lincoln, Logan, Phillips, Sedgwick, Washington, and Yuma Counties, Colorado, be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Niobrara formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is located north and east of Denver, Colorado, on the eastern flank of the Denver-Julesberg Basin, and underlies all land in Cheyenne, Kit Carson, Lincoln, Logan, Phillips, Sedgwick, Washington, and Yuma Counties, Colorado. Gas production is from the chalk zone in the Smoky Hill member of the Upper Niobrara. The depth of the formation ranges from 1,300 feet and 3,000 feet.

### II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the Smoky Hill in the Upper Niobrara formation at depths of 1300 feet to 3000 feet, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 277.703(c)(2)(i)(B); and

(3) Hydrocarbons usually do not exist as a liquid in the recommended formation. No well is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that typical casing design of wells drilled in the recommended formation, as required by Colorado's rules and regulations, will protect fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80-68, (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Niobrara formation,as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

### III. Public Comment Procedures

Interested persons may comment on this proposed rulemaking by submitting written data, views or arguments to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C., 20426, on or before October 23, 1980. Each person submitting a comment should indicate that the comments are being submitted in Docket No. RM79-76 (Colorado—3), and should give reasons including any supporting data for any recommendations. Comments should also indicate the name, title, mailing address, and telephone number of one person to whom communications concerning the proposal may be addressed. An original and 14 conformed copies should be filed with the secretary of 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., during business hours.

Any person wishing to present testimony, views, data or otherwise particpate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefore request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 8, 1980.

(Natural Gas Policy Act of 1978, (15 U.S.C. 3301—3342.))

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

**Kenneth A. Williams,**

*Director, Office of Pipeline and Producer Regulation.*

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

**§ 271.703 Tight formations**

* * * * *

(d) *Designated tight formations.* (1) The following formations are designated as tight formations:

(i) [Reserved]
(ii) [Reserved]
(iii) [Reserved]
(iv) [Reserved]
(v) *Niobrara formation in Colorado.*—(A) *Delineation of formation.* The Niobrara formation is located north and east of Denver, Colorado, on the eastern flank of the Denver-Julesberg Basin, underlying all lands in Cheyenne, Kit Carson, Lincoln, Logan, Phillips, Sedgwick, Washington, and Yuma Counties, Colorado.

(B) *Depth.* The depth of the Niobrara formation ranges from 1300 feet to approximately 3000 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–30029 Filed 10–2–80; 8:45 am]
BILLING CODE 6450–85–M

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## 18 CFR Part 271

[Docket No. RM79–76 (Colorado–2)]

## High-Cost Gas Produced From Tight Formations

**AGENCY:** Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the National Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Colorado Oil and Gas Conservation Commission that the Mancos "B" formation be designated as a tight formation pursuant to § 271.703(d).

**DATES:** Comments on the proposed rule are due prior to October 23, 1980. Requests for hearing should be filed on or before October 8, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with Office of the Secretary, 825 North Capitol Street, NE., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie J. Lawner (202) 357–8027 or Victor H. Zabel (202) 357–8559.

September 23, 1980.

### I. Background

On August 29, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), that the Mancos "B" formation underlying specified lands in Garfield and Rio Blanco Counties, Colorado, be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the Mancos "B" formation be designated a tight formation should be adopted. Colorado's recommendation and supporting data are on file with the Commission and are available for public inspection.

The recommended formation is located approximately midway between Grand Junction and Rangely, Colorado, and straddles the Rio Blanco-Garfield County line from the Utah-Colorado state line east to the Douglas Pass and Baxter Pass Unit Areas. The proposed formation contains approximately 195,200 contiguous acres. The average depth to the top of the Mancos "B" formation is approximately 3475 feet.

### II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Colorado on this matter demonstrates that:

(1) The average *in-situ* gas permeability throughout the pay section of the proposed area is not expected to exceed 0.1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production from the Mancos "B" formation at an average depth of 3475 feet, without stimulation, is not expected to exceed the maximum allowable production rate set out in § 277.703(c)(2)(i)(B)); and

(3) Hydrocarbons usually do not exist as a liquid in the recommended formation. No well is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that typical casing design of wells drilled in the recommended formation, as reguired by Colorado's rules and regulations, will protect fresh water aquifers.

Accordingly, prusuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80–68, (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the Mancos "B" formation, as described and delineated in Colorado's recommendation as filed with the Commission, be designated as a tight formation pursuant to § 271.703.

### III. Public Comment Procedures

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. Comments should reference Docket No. RM79–76 (Colorado–2). All comments and information received by the Commission prior to October 23, 1980 will be considered by the Commission prior to the issuance of the regulation.

Dates and locations of any hearings which may be held on this rulemaking will be announced in the near future. Any person wishing to present testimmony, views, data or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and therefor request a public hearing. Such request shall specify the amount of time requested at the hearing. Requests should be filed with the Commission no later than October 8, 1980.

(Natural Gas Policy Act of 1978 (15 U.S.C. 3301–3342))

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

**Kenneth A. Williams,**
*Director, Office of Pipeline and Producer Regulation.*

1. Section 271.703(d)(1) is amended by adding new subparagraphs (1) and (2) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.* (1) The following formations are designated as tight formations:

(i) [Reserved]
(ii) [Reserved]
(iii) [Reserved]
(iv) [Reserved]
(v) *Mancos "B" formation in Colorado.*—(A) *Delineation of formation.* The Mancos "B" formation is

located approximately midway between Grand Junction and Rangely, Colorado, and straddles the Rio Blanco-Garfield County line from the Utah-Colorado state line east to the Douglas Pass and Baxter Pass Unit Areas, underlying approximately 195,000 contiguous acres of land in Rio Blanco and Garfield Counties.

(B) *Depth.* The average depth to the top of the Mancos "B" formation is approximately 3475 feet.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79–76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80–30712 Filed 10–2–80; 8:45 am]
BILLING CODE 6450–85–M

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**18 CFR Part 271**

**[Docket No. RM79–76; Colorado–1]**

## High-Cost Gas Produced From Tight Formations

**AGENCY:** Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, DOE.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Energy Regulatory Commission is authorized by section 107(c)(5) of the Natural Gas Policy Act of 1978 to designate certain types of natural gas as high-cost gas where the Commission determines that the gas is produced under conditions that present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a final regulation designating natural gas produced from tight formations as high-cost gas subject to an incentive price (18 CFR 271.703). The rule establishes procedures for jurisdictional agencies to submit to the Commission recommendations of areas for designation as tight formations. This notice of proposed rulemaking contains the recommendations of the Colorado Oil and Gas Conservation Commission that the Mancos "B" formation be designated as a tight formation pursuant to § 271.703(d).

**DATES:** Comments on the proposed rule are due prior to October 23, 1980. Requests for hearing should be filed on or before October 8, 1980.

**ADDRESS:** Comments and requests for hearing must be filed with Office of the Secretary, 825 North Capitol Street, N.E., Washington, D.C. 20426.

**FOR FURTHER INFORMATION CONTACT:** Leslie J. Lawner (202) 357–8027 or Victor H. Zabel (202) 357–8559.

September 23, 1980.

### I. Background

On July 9, 1980, the State of Colorado Oil and Gas Conservation Commission (Colorado) submitted to the Commission a recommendation in accordance with § 271.703 of the Commission's final regulations (45 FR 56034, August 22, 1980), a recommendation that the "Wattenberg J Sand" formation underlying specified lands in Weld, Adams, and Boulder Counties, Colorado, be designated as a tight formation in the Commission's regulations. Pursuant to § 271.703(c)(4) of the regulations, this Notice of Proposed Rulemaking is hereby issued to determine whether Colorado's recommendation that the "Wattenberg J Sand" formation be designated a tight formation should be adopted. Colorado's recommendations and supporting data are on file with the Commission and are available to the public for inspection.

The recommended formation is located north and east of Denver, Colorado, on the western flank of the Denver-Julesberg Basin. The formation underlies approximately 883,200 contiguous acres of land in Boulder, Adams, and Weld Counties, Colorado. The average depth of the formation is 8,000 feet.

### II. Discussion of the Recommendation

Colorado claims in its submission that evidence gathered through information and testimony presented at a public hearing convened by Colorado on this matter demonstrates that:

(1) The average *in situ* gas permeability throughout the pay section of the proposed area averages .0059 millidarcies and is not expected to exceed .1 millidarcy;

(2) The stabilized production rate, against atmospheric pressure, of wells completed for production in the proposed formation at an average of 8,000 feet, without stimulation, is not expected to exceed a maximum allowable production rate of 388 Mcf of gas per day; and

(3) Hydrocarbons usually do not exist as a liquid in the proposed area, therefore, no well is expected to produce more than five (5) barrels of crude oil per day.

Colorado further asserts that typical casing design of wells drilled in the recommended formation, as required by Colorado's rules and regulations, will protect fresh water aquifers.

Accordingly, pursuant to the authority delegated to the Director of the Office of Pipeline and Producer Regulation by Commission Order No. 97, issued August 1, 1980, in Docket No. RM80–68 (45 FR 53456, August 12, 1980), notice is hereby given of the proposal submitted by Colorado that the "Wattenberg J Sand" formation, as described and delineated in Colorado's recommendation filed with the Commission, be designated as a tight formation pursuant to § 271.703.

### III. Public Comment Procedures

Interested persons are invited to submit written comments on the proposed regulation to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. Comments should reference Docket No. RM79–76 (Colorado–1). All comments and information received by the Commission prior to October 23, 1980, will be considered prior to the issuance of the regulation.

Dates and locations of any hearings which may be held on this rulemaking will be announced in the near future. Any person wishing to present testimony, views, data, or otherwise participate at a public hearing should notify the Commission in writing that they wish to make an oral presentation and, therefore request a public hearing. Such request shall specify the amount of time requested for the presentation at the hearing. Requests for a hearing should be filed with the Commission no later than October 8, 1980.

(Natural Gas Policy Act (15 U.S.C. 3301–3342))

Accordingly, the Commission proposes to amend the regulations in Part 271, Chapter I, Title 18, Code of Federal Regulations, as set forth below, in the event Colorado's recommendation is adopted.

**Kenneth A. Williams,**
*Director, Office of Pipeline and Producer Regulation.*

1. Section 271.703(d) is amended by adding new subparagraphs (1) and (2) to read as follows:

**§ 271.703 Tight formations.**

* * * * *

(d) *Designated tight formations.* (1) The following formations are designated as tight formations:

(i) [Reserved]

(ii) *Wattenberg J Sand formation in Colorado*—(A) *Delineation of Formation.* The Wattenberg J Sand formation is located north and east of Denver, Colorado on the western flank of the Denver-Julesberg Basin, underlying approximately 883,200 contiguous acres of land in Boulder, Adams and Weld Counties, Colorado.

(B) *Depth.* The "Wattenberg J Sand" formation ranges from a depth of 7,600' to 8,400'. The average depth is approximately 8,000'.

(2) A more detailed description of the geographical extent and geological parameters of the designated tight formations is located in the Commission's official file for Docket No. RM79-76, and is also located in the official files of the jurisdictional agency which submitted the recommendation.

[FR Doc. 80-30726 Filed 10-2-80; 8:45 am]
BILLING CODE 6450-85-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 357

[Docket No. 79N-0378]

### Anthelmintic Drug Products for Over-the-Counter Human Use; Establishment of a Monograph

*Correction*

In FR Doc. 80-27587 appearing on page 59540 in the issue of Tuesday, September 9, 1980, make the following corrections:

(1) On page 59548, the word "not" should be inserted in the first line of paragraph (c)(1)(iii) of § 357.150 so that the paragraph reads as follows:

"(iii) 'Do not give to infants under 2 years of age or children who weigh less than 25 pounds, without first consulting a physician.' "

(2) In the first line of paragraph (c)(2) of the same section, ". . . gentain . . ." should have read ". . . gentian . . .".

BILLING CODE 1505-01-M

### 21 CFR Part 358

[Docket No. 80N-0238]

### Wart Remover Drug Products for Over-the-Counter Human use; Establishment of a Monograph

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule would establish conditions under which over-the-counter (OTC) wart remover drug products are generally recognized as safe and effective and not misbranded. The proposed rule, based on the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products, is part of the ongoing review of OTC drug products conducted by the Food and Drug Administration (FDA).

**DATES:** Comments by January 2, 1981, and reply comments by February 2, 1981.

**ADDRESS:** Written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** William E. Gilbertson, Bureau of Drugs (HFD-510), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4860.

**SUPPLEMENTARY INFORMATION:** In accordance with Part 330 (21 CFR Part 330), FDA received on December 10, 1979 a report on wart remover drug products from the Advisory Review Panel on OTC Miscellaneous External Drug Products.

Under § 330.10(a)(6) (21 CFR 330.10(a)(6)), the agency issues (1) a proposed regulation containing the monograph recommended by the Panel, which establishes conditions under which OTC wart remover drugs are generally recognized as safe and effective and not misbranded; (2) a statement of the conditions excluded from the monograph because the Panel determined that they would result in the drugs' not being generally recognized as safe and effective or would result in misbranding; (3) a statement of the conditions excluded from the monograph because the Panel determined that the available data are insufficient to classify these conditions under either (1) or (2) above; and (4) the conclusions and recommendations of the Panel.

The unaltered conclusions and recommendations of the Panel are issued to stimulate discussion, evaluation, and comment on the full sweep of the Panel's deliberations. The report has been prepared independently of FDA, and the agency has not yet fully evaluated the report. The Panel's findings appear in this document as a formal proposal to obtain public comment before the agency reaches any decision on the Panel's recommendations. This document represents the best scientific judgment of the Panel members, but does not necessarily reflect the agency's position on any particular matter contained in it. After reviewing all comments submitted in response to this proposal, FDA will issue a tentative final regulation in the **Federal Register** to establish a monograph for OTC wart remover drug products.

In accordance with § 330.10(a)92), the Panel and FDA have held as confidential all information concerning OTC wart remover drug products submitted for consideration by the Panel. All the submitted information will be put on public display in the Hearing Clerk's Office, Food and Drug Administration, after November 3, 1980, except to the extent that the person submitting it demonstrates that it still falls within the confidentiality provisions of 18 U.S.C. 1905 or section 301(j) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 331(j)). Requests for confidentiality should be submitted to William E. Gilbertson, Bureau of Drugs (HFD-510) (address above).

Based upon the conclusions and recommendations of the Panel, FDA proposes the following:

1. That the conditions included in the monograph, under which the drug products would be generally recognized as safe and effective and not misbranded (monograph conditions), be effective 30 days after the date of publication of the final monograph in the **Federal Register.**

2. That the conditions excluded from the monograph, either because they would cause the drug to be not generally recognized as safe and effective or to be misbranded or because the available data are insufficient to support the inclusion of such conditions in the monograph (nonmonograph conditions), be eliminated from OTC drug products effective 6 months after the date of publication of the final monograph in the **Federal Register,** regardless of whether further testing is undertaken to justify their future use.

FDA published in the **Federal Register,** of May 13, 1980 (45 FR 31422) its proposal to revise the OTC procedural regulations to conform to the decision in *Cutler* v. *Kennedy,* 475 F. Supp. 838 (D.D.C. 1979). The Court in *Cutler* held that the OTC drug regulations (21 CFR 330.10) are unlawful to the extent that they authorize the marketing of Category III drugs after a final monograph. Accordingly, the proposed regulations delete this provision and provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process, before the establishment of a final monograph (45 FR 31422).

Although it was not required to do so under *Cutler,* FDA has also decided to stop using the terms "Category I," "Category II," and "Category III" at the final monograph stage in favor of the terms "monograph conditions" (old Category I) and "nonmonograph conditions" (old Categories II and III).

Any OTC drug product containing a "nonmonograph condition" will be subject to regulatory action after the establishment of a final monograph. This document, however, retains the concepts of Categories I, II, and III because that was the framework in which the Panel conducted its evaluation of the data.

A proposed review of the safety, effectiveness, and labeling of all OTC drugs by independent advisory review panels was announced in the **Federal Register**, of January 5, 1972 (37 FR 85). The final regulations providing for this OTC drug review under § 330.10 were published and made effective in the **Federal Register**, of May 11, 1972 (37 FR 9464). In accordance with these regulations, requests for data and information on all active ingredients used in OTC miscellaneous external drug products were issued in the **Federal Register**, of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179).

The Commissioner of Food and Drugs appointed the following Panel to review the information submitted and to prepare a report under § 330.10(a) (1) and (5) on the safety, effectiveness, and labeling of those products:

William E. Lotterhos, M.D., Chairman
Rose Dagirmanjian, Ph. D.
Vincent J. Derbes, M.D. (resigned July 1976)
George C. Cypress, M.D. (resigned November 1978)
Yelva L. Lynfield, M.D. (appointed October 1977)
Harry E. Morton, Sc. D.
Marianne N. O'Donoghue, M.D.
Chester L. Rossi, D.P.M.
J. Robert Hewson, M.D. (appointed September 1978)

Representatives of consumer and industry interests served as nonvoting members of the Panel. Marvin M. Lipman, M.D., of Consumers Union served as the consumer liaison. Gavin Hildick-Smith, M.D., served as industry liaison from January until August 1975, followed by Bruce Semple, M.D., until February 1978. Both were nominated by thr Proprietary Association. Saul A. Bell, Pharm. D., nominated by the Cosmetic, Toiletry, and Fragrance Association, also served as an industry liaison since June 1975.

Two nonvoting consultants, Albert A. Belmonte, Ph. D., and Jon J. Tanja, R.Ph., M.S., have provided assistance to the Panel since February 1977.

The following FDA employees assisted the Panel: John M. Davitt served as Executive Secretary until August 1977, followed by Arthur Auer until September 1978, followed by John T. McElroy, J.D. Thomas D. DeCillis, R.Ph., served as Panel Administrator until April 1976, followed by Michael D. Kennedy until January 1978, followed by John T. McElroy, J.D. Joseph Hussion, R.Ph., served as Drug Information Analyst until April 1976, followed by Victor H. Lindmark, Pharm. D., until March 1978, followed by Thomas J. McGinnis, R.Ph.

The Advisory Review Panel on OTC Miscellaneous External Drug Products was charged with the review of many categories of drugs. Due to the large number of ingredients and varied labeling claims, the Panel decided to review and publish its findings separately for several drug categories and individual drug products. The Panel presents its conclusions and recommendations for wart remover drug products in this document. The review of other categories of miscellaneous external drug products will be continued by the Panel, and its findings will be published periodically in future issues of the **Federal Register**.

The Panel was first convened on January 13, 1975 in an organizational meeting. Working meetings which dealt with the topic in this document were held on: August 5 and 6, September 30, October 1, December 11 and 12, 1977; April 16 and 17, June 11 and 12, August 11 and 12, September 17 and 18, 1978; January 14 and 15, March 11 and 12, May 18 and 19, August 3 and 4, September 28 and 29, October 29 and 30, and December 9 and 10, 1979.

The minutes of the Panel meetings are on public display in the Hearing Clerk's Office (HFA–305), Food and Drug Administration (address above).

The following individuals were given an opportunity to appear before the Panel, either at their own request or at the request of the Panel, to express their views on wart remover drug products:

Robert G. Blank, Ph. D.
Phillip R. Brachman, D.P.M.
Barry M. Brooks, J.D.
Frank E. Dunlap, M.D.
Donald E. Hartung
Adam Kara, D.P.M.
Robert Scheuplein, Ph. D.

No person who so requested was denied an opportunity to appear before the Panel.

The Panel has thoroughly reviewed the literature and data submissions, has listened to additional testimony from interested persons, and has considered all pertinent information submitted through December 10, 1979 in arriving at its conclusions and recommendations.

In accordance with the OTC drug review regulations set forth § 330.10, the Panel reviewed OTC wart remover drug products with respect to the following three categories:

Category I. Conditions under which OTC wart remover drug products are generally recognized as safe and effective and are not misbranded.

Category II. Conditions under which OTC wart remover drug products are not generally recognized as safe and effective or are misbranded.

Category III. Conditions for which the available data are insufficient to permit final classification at this time.

**I. Submission of Data and Information**

In an attempt to make this review as extensive as possible and to aid manufacturers and other interested persons, the agency compiled a list of ingredients recognized, either through historical use or use in marketed products, as wart remover active ingredients. Eleven ingredients were identified as follows: acetic acid, alcohol, benzocaine, camphor, castor oil, collodion, ether, glacial acetic acid, iodine sublimed, menthol, and salicylic acid. Notices were published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179) requesting the submission of data and information on these ingredients or any other ingredients used in OTC wart remover drug products.

*A. Submissions*

Pursuant to the above notices, the following submissions were received:

*Firms and Marketed Products.*

Commerce Drug Co., Inc., Farmingdale, NY 11735.—B/D/B/ Wart Remover.
Daywell Laboratories Corp., Fairfield, CT 06430.—Vergo.
Stiefel Laboratories, Inc., Oakhill, NY 12460—Duofilm, Duofilm-C.
Whitehall Laboratories, Inc., New York, NY 10017.—Compound-W.

*B. Ingredients Reviewed by the Panel*

1. *Labeled ingredients contained in marketed products submitted to the Panel.*

Acetone
Alcohol
Ascorbic acid
Calcium pantothenate
Camphor
Castor oil
Ether
Flexible collodion
Glacial acetic acid
Lactic acid
Menthol
Salicylic acid
Starch

2. *Other ingredients reviewed by the Panel.*

Acetic acid
Benzocaine
Collodion
Iodine (iodine, sublimed)

*C. Classification of Ingredients*

1. *Active ingredients.*

Acetic acid
Acetic acid, glacial

Ascorbic acid
Benzocaine
Calcium pantothenate
Camphor
Castor oil
Iodine (iodine, sublimed)
Lactic acid
Salicylic acid

2. *Inactive ingredients.*

Acetone
Alcohol
Collodion
Ether
Flexible collodion
Starch

3. *Other ingredients.* The Panel was not able to locate nor is it aware of data demonstrating the safety and effectiveness of the following ingredients when used as OTC wart remover active ingredients. The Panel, therfore, classifies these ingredients as Category II for this use, and they will not be discussed further in this document.

Benzocaine
Camphor
Castor oil
Iodine (iodine, sublimed)
Menthol

*D. Referenced OTC Volumes*

The "OTC Volumes" cited throughout this document include submissions made by interested persons in response to the call-for-data notices published in the **Federal Register** of November 16, 1973 (38 FR 31697) and August 27, 1975 (40 FR 38179). All the information included in these volumes, except for those deletions which are made in accordance with confidentiality provisions as set forth in § 330.10(a)(2), will be put on public display after November 3, 1980, in the Hearing Clerk's Office (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

## II. General Discussion

All warts are caused by specific deoxyribonucleic acid (DNA) viruses of the papova group. These viruses infect the nucleus of epidermal cells and may be treated by destroying epeidermal cell together with the virus it contains (Ref. 1). There are several different virus types within this group (Ref. 2). Many tales are told about the cure of warts through the use of folk remedies, rituals, and placebos. One controlled study demonstrated that warts responded to hypnotic suggestion (Ref. 3). How the mind affects the virus is unknown, but the ability of many "wart cures" to cure warts must be ascribed either to the power of suggestion or to the spontaneous disappearance of the warts.

A patient may have one or hundreds of warts, which vary in appearance. The common wart, *Verruca vulgaris*, is a hard, grayish, sharply mariginated papule (solid elevation of the skin) with a rough, cauliflower-like surface. the filiform wart, *Verruca filiformis*, is a thread-like growth, while the digitate wart, *Verruca digitata*, is a cluster of filiform warts. The juvenile wart, *Veruca plana*, is a flat, tan-colored papule which occurs mainly on the face and back of hands of adolescents.

The plantar wart (and mosaic wart), *Verruca pantaris*, occurs only on the bottom of the foot. The Plantar wart is commonly tender because of its location on a weight-bearing area. Its surface is flat and may be hard and callused or soft and spongy. The normal plantar skin ridges encircle but do not cross it (as opposed to calluses). The mosaic wart is an irregularly shaped lesion with a granular surface formed by aggregation of nearby plantar warts. The genital wart, *Condyloma acuminata*, may resemble either a junvenile wart, a common wart, or even grow into a large mass having the appearance of a cauliflower-like surface. The genital wart is soft and occurs on the surface of the perineum. It also occurs in the vagina and anus.

All warts are histologically benign papillomas (noncancerous elevations) of the epidermis, and they never invade deeper tissues. If there is the slightest doubt about the clinical diagnosis, the wart must be examined histologically. Wart remover drug products should not be used on moles, birthmarks, or unusual warts with hair growing from them because premalignant and malignant lesions may be mistaken as warts. Use of these products will aggravate these conditions.

Several viruses of the papova group have been identified, but the number of these wart viruses is increasing (Ref. 2). Wart viruses look alike under the electron microscope, but can be distinguished by sophisticated biochemical and immunological tests. The viral etiology of warts was demonstrated 60 years ago by Wile and Kingery (Ref. 4). They excised warts, ground them, filtered the suspension through Berkefeld filters, and inoculated the filtrate into their own skin. Warts grew at the sites inoculated. Wile and Kingery's experiment was developed further by Mendelson and Kligman (Ref. 5) who grew material from plantar warts in monkey kindney tissue culture, and then inoculated the cell-free culture fluid into human volunteers; common warts resulted.

The experiments demonstrated the contagiousness of warts. The incubation period of experimental and naturally acquired warts can be as long as a year.

Warts frequently disappear spontaneously. In a 2-year study of children with warts, Massing and Epstein (Ref. 6) found that two-thirds of the warts initially seen disappeared completely without treatment. However, one-third of the patients developed new warts while their old ones were disappearing; the new warts developed three times as often in infected children as in uninfected children. Because of this tendency for auto-inoculation of the virus, i.e., producing warts in other sites, treatment of a wart is preferable to waiting for spontaneous disappearance. However, persons with poor circulation or diabetes should not use OTC preparations for removing warts except on the advice and under the supervision of a doctor. The Panel feels that such individuals are more prone to infections which may result from injury to surrounding skin by the OTC preparation or by mechanical attempts to remove the wart.

The Panel recommends that OTC wart remover drug products be used for the treatment of common and plantar warts only. The Panel concludes that because of the difficulty in recognizing and treating other types of warts they should not be subjected to self diagnosis and treatment except under the supervision of a doctor.

### References

(1) Moschella, S. L., D. M. Pillsbury, and H. J. Hurley, "Dermatology," Volume I, W. B. Saunders Co., Philadelphia, pp. 574–582, 1975.

(2) Pass, F., "Progress Toward a New Wart Biology," *The Journal of Investigative Dermatology*, 70:109, 1979.

(3) Sinclair-Geiben, A. H. C., and D. Chalmers, "Evaluation of Treatment of Warts by Hypnosis," *The Lancet*, 2:480–482, 1959.

(4) Wile, U. J., and L. B. Kingery, "The Etiology of Common Warts," *Journal of the American Medical Association*, 73:970–973, 1919.

(5) Mendelson, C. G., and A. Kligman, "Isolation of Wart Virus in Tissue Culture," *Archives of Dermatology*, 83:559, 1961.

(6) Massing, A. M., and W. L. Epstein, "Natural History of Warts," *Archives of Dermatology*, 87:306–310, 1963.

## III. Categorization of Data

*A. Category I Conditions*

These are conditions under which active ingredients used as wart removers are generally recognized as safe and effective and are not misbranded. The Panel recommends that the Category I conditions be effective 30 days after the date of

publication of the final monograph in the Federal Register.

1. Category I ingredient

*Salicylic acid.* The Panel concludes that salicylic acid is safe and effective for OTC use as a wart remover active ingredient in OTC topical drug products when used within the dosage limits specified in the dosage section stated below.

Salicylic acid, also known as 2-hydroxybenzoic acid and *o*-hydroxybenzoic acid, is found in nature in wintergreen leaves and in the bark of the sweet birch. It is synthesized by heating sodium phenolate with carbon dioxide under pressure. Salicylic acid is a lipid-soluble drug. One gram (g) dissolves in approximately 460 milliliters (mL) water or 15 mL boiling water, 2.7 mL alcohol, 3 mL acetone, 42 mL chloroform, 3 mL ether, 135 mL benzene, 52 mL oil turpentine, about 60 mL glycerol, or about 80 mL of fats or oils, which makes salicylic acid compatible with a variety of pharmaceutical vehicles (Ref. 1). The melting point is between 157° and 159° C.

The mechanical removal of epidermal cells infected with wart viruses is dependent on the keratolytic (peeling) effect of salicylic acid. The induction of a mild inflammatory reaction promotes the disappearance of a wart possibly by the immune mechanisms (Ref. 2).

a. *Safety.* Salicylic acid and its derivatives are a widely used group of compounds. They are used as analgesics (relieving pain), antipyretics (relieving fever), fungistatics (inhibiting fungi growth), keratolytics (peeling), rubefacients (reddening the skin), and have anti-inflammatory effects. Systemic absorption occurs whether the solicylates are administered orally, rectally, intravenously, or cutaneously. Whatever the mode of administration, the potential side effects of a doxic dose are essentially the same, i.e., nausea, decreased ability to hear, tinnitus (ringing in the ears), confusion, metabolic disturbances, hallucinations, and, in some extreme cases, death. These possible toxic reactions are collectively known as salicylism. The Panel is unaware of any report of salicylism occurring from the cutaneous use of salicylic acid as a wart remover.

Long-term use of salicylic acid in concentrations as low as 1 percent in petrolatum may cause damage on normal skin (Ref. 3). Salicylic acid softens and destroys the stratum corneum (outer layer of skin) by increasing endogenous hydration (water concentration), probably as a result of lowering the pH which causes the cornified epithelium (horny skin) to swell, soften, and then desquamate (shed). Damage and necrosis (cell death) of the normal skin have been associated with overuse.

A primary dermal (skin) irritation study using a 14-percent salicylic acid concentration in acetone collodion was performed using the standard Draize Irritation Test on white rabbits. The solution (0.5 mL) was applied to intact skin and abraded skin of six shaved albino rabbits. The test areas were covered by occlusive patches. The rabbits were observed at 24 and 72 hours. A 14-percent salicylic acid concentration in acetone collodion was found to be minimally irritating with a primary irritation factor of 0.25 on a scale ranging from 0 (no irritation) to 5.0 (corrosive). a 14-percent concentration of salicylic acid in collodion yielded a primary irritation factor of 1.0 (slightly irritating) (Ref. 4).

Rate of removal of warts is not as important as the safety in their removal. The use of concentrations as low as 1 percent salicylic acid for a long period of treatment is safer than the use of higher concentrations greater than 17 percent for a short period of time. The Panel concludes that due to the extreme keratolytic effect of salicylic acid, use of a concentration of salicylic acid higher than 17 percent to treat common or planter warts should be under the supervision of a doctor.

b. *Effectiveness.* Textbooks cite the longstanding use of salicylic acid preparations in the treatment of warts (Refs. 5 through 10). The therapeutic effectiveness of salicylic acid in wart therapy depends upon the presence of moisture; therefore, salicylic acid is usually incorporated into vehicles (plasters, flexible collodions, occlusive ointments) that occlude the area and promote hydration (taking up of water), causing maceration of the skin.

Salicyclic acid used in the treatment of warts is usually formulated in flexible collodion. This vehicle contains pyroxylin, volatile solvents (ether, acetone, or alcohol), and plasticizers (camphor and castor oil). Pyroxylin is a nitrocellulose derivative, which after evaporation of the volatile solvents remains on the skin as an insoluble, water-repellent film that is less likely to spread beyond the area applied than an aqueous system (Ref. 11). Ether is highly flammable and therefore must be stored at controlled room temperature away from heat. Because exposure of ether to air causes rapid evaporation, the bottle should be tightly capped. Inhalation of ether vapors should be avoided due to undesirable hypnotic effects. Collodion vehicles are advantageous because they form an adherent, flexible, or rigid film which keeps the active ingredient at the site of action and prevents migration to surrounding tissue (Ref. 12). They also prevent moisture evaporation from the skin, thereby facilitating penetration of the active ingredient into the affected area resulting in sustained local action of the drug.

In a study by Strakosch (Ref. 3) on normal skin, the activity of salicyclic acid in several ointment base vehicles was compared. A direct relationship between the concentration of salicyclic acid and the time required to produce the same keratolytic action was observed. A salicyclic acid concentration of 1 percent produced keratolysis in 10 days, while a 3-percent concentration caused a keratolytic action equal to the 1-percent results in about 8 days. When the concentration was increased to 5 percent, keratolysis equal to the results obtained with both 1 and 3 percent occurred in 7 days. When the concentration was increased from 5 to 10 percent, the time to produce keratolysis was reduced to approximately 3 days. Test results indicated that increasing the concentration above 10 percent produced little difference in keratolytic effect. Both 10 and 15 percent concentrations gave very similar results. None of the studies, however, were done to correlate the concentration of salicyclic acid with its keratolytic activity on warts.

In a study by Bunney, Nolan, and Williams (Ref. 2) involving 95 patients, a wart paint consisting of 16.7 percent salicyclic acid and 16.7 percent lactic acid in flexible collodion gave a cure rate of 67 percent for common warts and 84 percent for plantar warts. The study noted that the paint was applied nightly by the patient at home, and results were assessed at the end of 12 weeks. Other wart paints tested in these trials that did not contain salicyclic acid were significantly less effective. The cure rates cited for the wart paint combination are comparable to those achieved under the supervision of a doctor with the use of liquid nitrogen which is considered by many dermatologists to be the treatment of choice in removing warts (Ref. 13).

A double-blind study by Arndt and Clark (Ref. 14) evaluated a combination of 16.7 percent salicyclic acid and 16.7 percent lactic acid in flexible collodion against a placebo over a 4-week study period, after application to multiple lesions on anatomically matched sites. There were 34 patients with multiple lesions included in the study, 25 with common warts, 5 with juvenile warts, 3

with plantar warts and 1 with a genital wart. The test subjects were instructed to apply the lotions supplied to each set of preidentified lesions every 24 hours. Results demonstrated that 21 of 34 (72 percent) patients experienced improvement, the warts finally disappearing in 14 of the 21 (66 percent) test subjects and diminishing in size in the other 7 persons. Of the remaining 13 of 34 test subjects, the lesions were not improved in 8 (28 percent), and the 5 other patients dropped out of the study (Ref. 14).

A 4-week double-blind controlled study involving 50 patients, 25 using a combination of 5 percent salicyclic acid and 5 percent lactic acid in flexible collodion and 25 using a placebo, showed that 74 percent of the study warts were cleared or improved when using the active compound. Twenty-nine percent of the study warts were cleared or improved when using the placebo (Ref. 15).

Based on the current literature and wide clinical usage, the Panel concludes that salicyclic acid in a collodion vehicle is safe and effective as a keratolytic agent for the treatment of warts at concentrations of 5 to 17 percent. The Panel further concludes that where it is apparent that treatment is effective and that the wart is diminishing in size, treatment should continue until the wart disappears, but in no case should treatment continue for more than 12 weeks without the supervision of a doctor.

c. *Dosage.* Topical dosage is a preparation of 5 to 17 percent in a collodion vehicle.

d. *Labeling.* The Panel Recommends Category I labeling for wart remover active ingredients. (See Part III. paragraph A.2. below—Category I labeling.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 1080, 1976.

(2) Bunney, M. H., M. W. Nolan, and D. A. Williams, "An Assessment of Methods of Treating Viral Warts by Comparative Treatment Trials Based on a Standard Design," *British Journal of Dermatology*, 94:667–679, 1976.

(3) Strakosch, E. A., "Studies on Ointments. II. Ointments Containing Salicylic Acid," *Archives of Dermatology and Syphilology*, 47:16–26, 1943.

(4) OTC Volume 160283.

(5) Popovich, N. G., "Foot Care Products," *in* "Handbook of Nonprescription Drugs," 5th Ed., American Pharmaceutical Association, Washington, p. 364, 1977.

(6) Lerner, M. R., and A. B. Lerner, "Dermatologic Medications," The Year Book Publishers, Inc., Chicago, p. 35, 1960.

(7) DiPalma, J. R., "Drill's Pharmacology in Medicine," 4th Ed., McGraw-Hill, New York, p. 401, 1971.

(8) Swinyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by L. S. Goodman, and A. Gilman, Macmillan Publishing Co., Inc., New York, P. 953, 1975.

(9) Osol, A., and R. Pratt, "The United States Dispensatory," 27th Ed., J. B. Lippincott Co., Philadelphia, p. 1034–1035, 1973.

(10) "The United States Pharmacopeia," 19th Ed., United States Pharmacopeial Convention, Inc., Rockville, MD, p. 446, 1975.

(11) Dittert, L. W., "Sprowls' American Pharmacy," 7th Ed., J. B. Lippincott Co., Philadelphia, p. 167, 1974.

(12) Ansel, H. C., "Introduction to Pharmaceutical Dosage Forms," Lea and Febiger, Philadelphia, pp. 327–328, 1976.

(13) Arndt, K. A., "Manual of Dermatologic Therapeutics, 2d Ed., Little, Brown, and Co., Boston, pp. 211–219, 1978.

(14) Arndt, K. A., and J. E. Clark, "Double-Blind Study of Salicylic and Lactic Acid Lotion in Treating Warts," *Dermatology Digest*, 16:28, 1977.

(15) OTC Volume 160359.

2. *Category I labeling.* The Panel recommends the following labeling for Category I wart remover drug products:

a. *Indications.* (1) "For the removal of common warts. The common wart is easily recognized by the rough 'cauliflower-like' appearance of the surface."

(2) "For the removal of plantar warts on the bottom of the foot. The plantar wart is recognized by its location only on the bottom of the foot, its tenderness, and the interruption of the footprint pattern."

b. *Warnings.* (1) "Do not use if you are a diabetic or have poor blood circulation because serious complications may result."

(2) "Do not use on moles, birthmarks, unusual warts with hair growing from them, genital warts, or warts on the face or mucous membranes."

(3) "If wart shows no improvement after 12 weeks of treatment, see your doctor."

(4) "Discontinue use if excessive irritation occurs."

(5) "Do not use near eyes."

(6) *For products containing collodion as a vehicle.*

(i) "Highly flammable, keep away from fire or flame."

(ii) "Store at room temperature away from heat."

(iii) "Keep bottle tightly capped."

(iv) "Avoid inhaling vapors."

(v) "If spilled on eyes, flush with water to remove film and flush with water an additional 15 minutes."

c. *Directions.* "Wash affected area and soak wart for 5 minutes. Gently remove softened area of the wart by rubbing with a wash cloth or emergy board. Do not rub hard enough to cause bleeding. Apply product once daily to the wart only. Continue treatment until wart disappears, not to exceed 12 weeks."

*For products containing salicylic acid.* "Keep product away from surrounding skin preferably by encircling the wart with a ring of petrolatum."

*B. Category II Conditions.*

These are conditions under which active ingredients used as wart removers are not generally recognized as safe and effective or are misbranded. The Panel recommends that the Category II Conditions be eliminated from OTC wart remover drug products effective 6 months after the date of publication of the final monograph in the **Federal Register.**

1. *Category II ingredients.* These ingredients are discussed elsewhere. (See Part I. paragraph C. above—Classification of Ingredients.)

2. *Category II labeling.* the Panel has examined the submitted labeling claims for wart remover drug products and has classified the following claims as Category II:

a. Claims implying a "quick," "painless," or "effective" removal of warts. Because wart remover drug products irritate surface tissue and treatment may require more than 1 week of use, the process may not be quick and can be painful depending on the individual wart. Because some warts may resist treatment of wart remover drug products, the Panel concludes that all OTC wart remover drug products are not "effective" for all warts and therefore disapproves of the word "effective" since most consumers will interpret this word to mean "100 percent effective" which it may not be.

b. Claims for use as a "keratolytic agent for the removal of benign epithelial tumors such as common warts" is unlikely to be understood by the majority of consumers because the terminology is scientific and implies that this product can be used to treat all benign epithelial tumors, and that the consumer will recognize the difference between benign and malignant tumors. The Panel concluded that OTC wart remover products should be labeled for treating common and plantar warts only.

*C. Category III Conditions*

These are conditions for which the available data are insufficient to permit final classification at this time.

1. Category III ingredients

Acetic acid, glacial
Ascorbic acid

Calcium pantothenate
Lactic acid

a. *Acetic acid, glacial.* The Panel concludes that glacial acetic acid is safe in concentrations up to 11 percent, but there are insufficient data available to determine its effectiveness as a wart remover active ingredient.

Glacial acetic acid is also known as concentrated acetic acid, crystallizable acetic acid, ethanolic acid, and vinegar acid. It contains 99.5 to 100.5 percent acetic acid ($C_2H_4O_6$) by weight. This acid is termed "glacial" because of its glassy appearance when solid. The freezing point is 15.6° C, and its boiling point is 118° C. the specific gravity is about 1.05 at 25° C. it has a molecular weight of 60.05 (Ref. 1).

It is a clear, colorless liquid with a pungent, characteristic odor. When diluted with water, it has an acid taste and is weakly ionized. It is miscible in water, alcohol, acetone, ether, and glycerin. It is immiscible in carbon tetrachloride and chloroform (Refs. 2 and 3). Glacial acetic acid is produced synthetically from acetylene.

Medicinally, glacial acetic acid is categorized as a vesicant (causing blistering) and as a caustic (corrosive) (Refs. 2 and 4).

(1) *Safety.* Caustics are used as topical agents to destroy warts.

According to DiPalma (Ref. 5), "local irritants (for example, glacial acetic acid) are applied in concentrations which destroy [wart] tissue." Care must be taken to apply the irritant only to the wart tissue. Necrosis (cell death) of the wart proceeds with some surrounding inflammation, and in a few days the wart may be removed (Ref. 5).

If the acid spreads onto healthy tissue, the burn should be treated immediately by flooding with water, followed by the application of sodium bicarbonate or chalk in powder form or by sodium bicarbonate in saline packs (Ref. 3).

A manufacturer (Ref. 6) submitted safety data in which the standard Draize Irritation Test was used to test an 11 percent glacial acetic acid in acetone collodion solution. The solution was applied to intact skin and abraded skin of six shaved albino rabbits. The results showed that, when describing irritation on a scale of 0 to 5.0, glacial acetic acid in acetone collodion is within the slightly irritating scale with a primary irritation factor of 1.10.

(2) *Effectiveness.* As a wart remover, glacial acetic acid may be applied with a cotton applicator. When applied to the wart, glacial acetic acid produces a mild-to-severe inflammation, often associated with hemorrhage beneath the wart. The inflammation may occur within several hours after the application of the acid. Exfoliation of the dessicated tissue takes place in 7 to 10 days (Ref. 7). However, there are insufficient data available on the effectiveness of the topical use of glacial acetic acid as a wart remover active ingredient. The only data available concern the combination of salicylic acid and glacial acetic acid. (See Part III. paragraph E. below—Combination Policy.)

(3) *Evaluation.* The Panel concludes that glacial acetic acid in concentrations up to 11 percent is safe, but there are insufficient data at this time to establish its effectiveness as a wart remover active ingredient, and therefore has placed this ingredient in Category III. Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC wart remover ingredients. (See Part III. paragraph D. below—Data Required for Evaluation.)

**References**

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 7, 1976.

(2) Swinyard, E. A., and W. Lowenthal, "Pharmaceutical Necessities," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol, et. al., Mack Publishing Co., Easton, PA, pp. 1256–1257, 1975.

(3) Todd, R. G., "Extra Pharmacopeia, Martindale," 25th Ed., The Pharmaceutical Press, London, p. 4, 1967.

(4) Swinyard, E. A., "Surface-Acting Drugs," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by L. S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., New York, p. 953, 1975.

(5) DiPalma, J. R., "Drill's Pharmacology in Medicine," 4th Ed., McGraw-Hill, New York, pp. 1036–37, 1971.

(6) OTC Volume 160283.

(7) Sulzberger, M. B., et al., "Common Tumors of the Skin," *in* "Dermatology. Diagnosis and Treatment," The Year Book Publishers, Inc., Chicago, pp. 392–393, 1961.

b. *Ascorbic acid.* The Panel concludes that ascorbic acid is safe, but there are insufficient data available to determine its effectiveness as a wart remover active ingredient.

Ascorbic acid, or vitamin C, has the molecular formula $C_6H_8O_6$ and a molecular weight of 176.13. It is stable when dry, but is easily oxidized in aqueous solution in the presence of air. Oxidation is accelerated by heat, light, alkalies, oxidative enzymes, and traces of copper and iron. In solution it has a pleasant, sharp, acidic taste and a pH of 2. One gram of ascorbic acid dissolves in about 3 mL water; it is insoluble in ether, chloroform, benzene, petroleum ether, oils, fats, and fat solvents (Refs. 1, 2, and 3).

Ascorbic acid is an essential coenzyme for collagen formation, tissue repair, and synthesis of lipids and proteins. It acts as a reducing agent, as an antioxidant, and is necessary for many physiological functions (e.g., metabolism of iron and folic acid, resistance to infection, preservation of blood vessel tonicity). Ascorbic acid is readily absorbed from the small intestine. After tissue saturation occurs, the excess is excreted by the kidneys (Ref. 4).

(1) *Safety.* Clinical toxicity is low. No harmful effects have been noted with single doses of 1 to 6 g in adults, even when given intravenously, or when plasma concentrations each 5 to 22 mg/100 mL, or with oral administration of 1 g daily (Ref. 5).

A daily intake of 20 to 20 mg ascorbic acid is sufficient to protect an adult from classical scurvy. Forty-five mg is the Recommended Dietary Allowance (RDA) for both males and females over 11 years of age.

The prolonged ingestion of supplements of ascorbic acid in excess of about 3 g daily is not with potential danger. Gastrointestinal disturbances (nausea followed by some diarrhea), kidney or bladder stone formation (resulting from an increased excretion of oxalate, urate, and calcium), prenatal conditioning of the fetus to deficiency symptoms, interferences with simple tests for glycosuria, and interference with the anticoagulant effect of heparin are clinical problems which may occur (Ref. 1).

(2) *Effectiveness.* There are insufficient data available on the effectiveness of the topical use of ascorbic acid as a wart remover active ingredient. The only data available concern the combination of ascorbic acid with calcium pantothenate. (See Part III. paragraph E. below—Combination Policy.)

(3) *Evaluation.* The Panel concludes that ascorbic acid is safe, but there are insufficient data available at this time to establish its effectiveness, and therefore has placed this ingredient in Category III. Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC wart remover ingredients. (See Part III. paragraph D. below—Data Required for Evaluation.)

**References**

(1) Boehne, J. W., and M. R. Fox, "Vitamins and Other Nutrients," *in* "Remington's Pharmaceutical Sciences," 15th Ed., Edited by A. Osol, et. al., Mack Publishing Co., Easton, PA, pp. 946–948, 1975.

(2) "The United States Pharmacopeia," 19th Ed., United States Pharmacopeial

Convention, Inc., Rockville, MD, pp. 36–37, 1975.
(3) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, pp. 110–111, 1976.
(4) "AMA Drug Evaluations," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 188–190, 1977.
(5) Sollman, T., "Nutritional Vitamins," *in* "A Manual of Pharmacology," 8th Ed., W. B. Saunders Co., Philadelphia, pp. 89–94, 1957.

c. *Calcium pantothenate.* The Panel concludes that calcium pantothenate is safe, but there are insufficient data available to determine its effectiveness as a wart remover active ingredient.

Calcium pantothenate is the calcium salt of pantothenic acid. It has the molecular formula $C_{18}8H_{32}CaN_2O_{10}$ and a molecular weight of 476.53. It decomposes between 195° to 196° C, is moderately hygroscopic, and reasonably stable to air and light. One gram dissolves in 2.8 mL water. It is soluble in glycerin, but it is only slightly soluble in alcohol and acetone. The pH of an aqueous solution (1 in 20) is between 7.2 and 8.0. Solutions are most stable between pH 5 and 7 (Ref. 1).

Pantothenic acid (cyanocobalamine) is a component of coenzyme A which is necessary for various metabolic reactions within the body. Pantothenic acid is essential for the intermediary metabolism of carbohydrates, fats, and protein. No proven cases of spontaneously occurring clinical deficiency have been observed.

Pantothenic acid is present in almost all plant and animal tissue, and a balanced 2,500 calorie diet contains about 10 mg. A Recommended Daily Allowance (RDA) has not been established, but an intake of 5 to 10 mg is believed to be adequate (Refs. 2 and 3).

(1) *Safety.* Pantothenic acid is included in multiple vitamin prepartions as the calcium or sodium salt. It is essentially nontoxic (Ref. 3). It has been stated that 0.8 to 10g/kg body weight can cause death by respiratory failure. Prolonged feedings with subtoxic doses do not cause any symptoms (Ref. 4).

Experimentally, pantothenic acid deficiency has been produced by administering a metabolic antagonist, *omega*-methylpantothenic acid, together with a semisynthetic diet low in the vitamin. The deficiency is characterized by weakness, fatigue, headache, nausea, muscle cramps, and poor muscle coordination (Ref. 3).

The Panel believes that calcium pantothenate is safe as a topical agent because of its safe usage internally.

(2) *Effectiveness.* There are insufficient data available on the effectiveness of the topical use of calcium pantothenate as a wart remover active ingredient. The only data available are on the combination of calcium pantothenate and ascorbic acid. (See Part III. paragraph E. below—Combination Policy.)

(3) *Evaluation.* The Panel concludes that calcium pantothenate is safe, but thee are insufficient data available at this time to establish its effectiveness and therefore has placed this ingredient in Category III. Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC wart remover ingredients. (See Part III. paragraph D. below—Data Required for Evaluation.)

**References**

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Inc., Rahway, NJ, p. 214, 1976.
(2) Greengard, P., "Water-Soluble Vitamins," *in* "The Pharmacological Basis of Therapeutics," 5th Ed., Edited by L. S. Goodman, and A. Gilman, MacMillan Publishing Co., Inc., pp. 1558–1559, 1975.
(3) "AMA Drug Evaluation," 3d Ed., Publishing Sciences Group, Inc., Littleton, MA, pp. 191–192, 1977.
(4) Sollman, T., "Nutritional Vitamins," *in* "A Manual of Pharmacology," 8th Ed., W. B. Saunders Co., Philadelphia, p. 117, 1957.

d. *Lactic acid.* The Panel concludes that lactic acid is safe, but there are insufficient data available to determine the effectiveness of lactic acid as an OTC wart remover active ingredient when used within the dosage limits specified in the proposed dosage section stated below.

Lactic acid is a weak acid, syrupy in consistency, colorless or yellowish, and nearly odorless. Lactic acid absorbes water on exposure to moist air. When a solution is concentrated to above 50 percent by boiling, lactic acid lactate begins to form. Concentrated lactic acid is mixture of lactic acid ($C_3H_6O_3$) and lactic acid lactate ($C_6H_{10}O_5$). Lactic acid is also known as 2-hydroxypropanoic acid. It has the equivalent of 85 to 90 percent by weight of lactic acid with the anhydride, lactic acid lactate, amounting to 10 to 15 percent. Lactic acid has a specific gravity of about 1.20. It decomposes when distilled under normal pressure, but may be distilled without decomposition under reduced pressure. It is soluble in water, alcohol, and ether, and it is insoluble in chloroform. The melting point is 16.8° C, and the boiling point is 82° to 85° C (Ref. 1).

(1) *Safety.* The process of glycolysis in tissues consists of the breakdown of glycogen, glucose, or other sugars to pyruvic and lactic acids (Ref. 2). This is a process of carbohydrate metabolism generally characteristic of animal cells. Thus, lactic acid is normally present in all cells of the body in small amounts. Lactic acid accumulates in tissues only when oxidation cannot keep up with glycolytic reaction, and pyruvic acid is reduced to lactic acid (Ref. 3). Lactic acidosis, as well as an organ hypoperfusion (reduced blood volume in organs) may result in poor tissue oxygenation.

According to Driesbach (Ref. 4) lactic acid has a corrosive effect when used topically in high concentration.

Van Scott and Yu (Ref. 5) found that concentrations of lactic acid in topically applied products generally range from 5 to 10 percent. While 5 to 10 percent lactic acid has been used in most instances on test sites, it was found that a 2- to 5-percent lactic acid was better for treatment of ichthyosis (dryness, roughness, and scaliness) on large areas or on the whole body because it was less irritating.

Irritancy resulting from the usage of 10 percent concentration of lactic acid was readily reversed by temporary discontinuance or by reducing frequency of applications (Ref. 5).

(2) *Effectiveness.* Lactic acid has been used for many years in the treatment of warts and is still included in the formula of wart paints appearing in some pharmacopeias (Ref. 6). Van Scott and Yu (Ref. 5) have extensively evaluated the control of keratinization with α-hydroxy acids and support the use of lactic acid as a keratolytic. Twelve α-hydroxy acids plus 48 other materials were studied. Lactic acid, in a 5 percent concentration, gave the most improvement (return to normal skin) in patients with ichthyosiform dermatoses (a scaly skin disease). These were all severe congenital hyperkeratotic problems such as: lamellar ichthyosis (a skin disorder characterized by roughness, redness, or scaliness), x-linked ichthyosis, ichthyosis vulgartis, epidermolytic hyperkeratosis, and undiagnosed types. Test sites, 3 to 6 centimeters (cm) in diameter, were circumscribed on the skin; biopsies were performed; and clinical observations were made either daily or weekly. The substances tested were fatty acids, lower molecular weight organic mono- and di-acids, aromatic acids including salicylic acid and analogues thereof, amino acids, urea, and structurally related compounds. The α-hydroxy acids gave the most improvement while the other substances tested gave little or no improvement. It was noted that in most instances, although 5 to 10 percent concentrations were used on test sites, a 2 to 5 percent concentration was found to be better for use on larger areas due to a lower potential to cause irritation.

The degree of irritancy caused by 10 percent concentrations was mild and quickly detected by patients. Preparations used in the testing were water-in-oil and oil-in-water emulsion base ointments and creams. Except for personal patient preference, the type of vehicle used has not been a major factor to determine final effectiveness (Ref. 5). Many of the preparations tested were in hydrophilic ointment. Although none of the tests were done on warts, this reference is cited because of the similarity between the treatment of hyperkeratosis of ichthyosis and the treatment of hyperkeratosis of warts.

According to Van Scott and Yu (Ref. 5), lactic acid appears to influence the process of keratinization, but does not seem to be a keratolytic agent by itself.

Van Scott and Yu found that lactic acid is one of a group of compounds which modify keratinization in ichthyosis. Histologically [microscopically], preparations of biopsy specimens taken from treated and untreated skin reveal distinct changes that suggest that these compounds may cause an immediate effect on epidermis keratinization. One change that occurs is abrupt loss of the entire stratum corneum. This is seen clinically by sudden separation of thick scales to reveal a normal skin surface. Another change is a significant shedding to reduce the thickness of the epidermis.

In a study by Bunney, Nolan, and Williams (Ref. 6) lactic acid in combination with salicylic acid was cited as having been used for many years in the treatment of warts and is still included in the formula of wart paints appearing in some pharmacopeiae. A paint consisting of 1 part salicylic acid (16.7 percent), 1 part lactic acid (16.7 percent), and 4 parts collodion was used in this study. This preparation proved to be very effective (70 percent cure rate) in the treatment of common warts.

A double-blind controlled study (Ref. 7), involving 50 patients, comparing a combination of 5 percent salicylic acid and 5 percent lactic acid in flexible collodion with a placebo during a week study period, showed that 74 percent of the study warts were cleared or improved for 25 patients using the active compound, and that only 20 percent of the study warts were cleared or improved for 25 patients using the placebo.

The Panel could find no data on the use of lactic acid alone in treatment of warts. The only data available to the Panel concerning lactic acid in the treatment of warts was lactic acid in combination with salicylic acid. (See Part III, paragraph E. below—Combination Policy.)

(3) *Proposed dosage.* Topical dosage is 5 to 17 percent lactic acid in a collodion vehicle.

(4) *Labeling.* The Panel recommends the Category I labeling for wart remover active ingredients. (See Part III, paragraph A.2. above—Category I labeling.)

(5) *Evaluation.* The Panel concludes that lactic acid is safe, but there are insufficient data available at this time to establish its effectiveness, and, therefore, the Panel has placed this ingredient in Category III. Data to demonstrate effectiveness will be required in accordance with the guidelines set forth below for OTC wart remover ingredients. (See Part III, paragraph D. below—Data Required for Evaluation.)

References

(1) Windholz, M., editor, "The Merck Index," 9th Ed., Merck and Co., Rahway, NJ, pp. 700–701, 1976.

(2) West, E. S., et al., "Carbohydrate Metabolism," *in* "Textbook of Biochemistry," 4th Ed., Macmillan Publishing Co., Inc., New York, p. 1075, 1965.

(3) Levinsky, N. G., "Acidosis and Alkalosis," *in* "Harrison's Principles of Internal Medicine," 8th Ed., Edited by G. W. Thorn, et al., McGraw-Hill Book Co., New York, p. 379, 1977.

(4) Dreisbach, R. H., "Handbook of Poisoning: Diagnosis and Treatment," 9th Ed., Lange Medical Publications, Los Altos, CA, pp. 188–193, 1977.

(5) Van Scott, E. J., and R. J. Yu, "Control of Keratinization with α-Hydroxy Acids and Related Compounds. I. Topical Treatment of Ichthyotic Disorders," *Archives of Dermatology*, 110:586–590, 1974.

(6) Bunney, M. H., M. W. Nolan, and D. A. Williams, "An Assessment of Methods of Treating Viral Warts by Comparative Treatment Trials Based on a Standard Design," *British Journal of Dermatology*, 94:667–679, 1976.

(7) OTC Volume 160359.

2. *Category III labeling.* The Panel was unable to identify any Category III labeling.

### *D. Data Required for Evaluation*

The Panel considers the protocols recommended in this document for the studies required to bring a Category III ingredient into Category I to be in agreement with the present state of the art and does not intend to preclude the use of any advances or improved methodology in the future.

1. *Methods of study.* The Panel recognizes that there are few if any appropriate methods or protocols for determining the safety and effectiveness of wart remover active ingredients. Additionally, little is known regarding the growth pattern, immunology, or metabolism of the human papilloma (wart) virus. However, in recent years some success has been achieved in growing this virus in tissue culture (Refs. 1 and 2). The Panel encourages the further development of an invitro tissue culture method which may possibly be utilized in assaying drug effectiveness against the wart virus.

2. *Effectiveness.* It is necessary to determine the effectiveness of wart remover ingredients through human testing. A properly designed double-blind study should be performed in which the ingredient is shown to provide a significantly higher rate of wart removal as compared to the placebo. A 12-week testing period with observation every 7 to 14 days should be used for both common and plantar warts. A 95-percent probability level can be obtained by specifying that at least a 20-percent difference be found in a double-blind test between the control and treatment groups. This test would take into account the high rate of spontaneous remissions (estimated to be as high as 30 percent).

The following guidelines are given as examples:

The clinical trial must show at least a 20-percent difference in cure rate between the treatment and the control group; the high rate of spontaneous remissions necessitates the use of a very large patient population to show that the difference is not a chance one, i.e., a 20-percent difference requires 315 patients. A 1-percent difference requires 130,000 patients; persons with common or plantar warts may be used; the method of application should be demonstrated, and the study carried out by a doctor.

References

(1) Eisinger, M., et al., "Propagation of Human Wart Virus in Tissue Culture," *Nature*, 256:432–434, 1975.

(2) Lancaster, W. D., and W. Meinke, "Persistence of Viral DNA in Human Cell Cultures Infected with Human Papilloma Virus," *Nature*, 256:434–436, 1975.

### *E. Combination Policy*

In reviewing OTC wart remover drug combinations the Panel applied the regulation in § 330.10(a)(4)(iv) which states:

An OTC drug may combine two or more safe and effective active ingredients and may be generally recognized as safe and effective when each active ingredient makes a contribution to the claimed effect(s); when combining of the active ingredients does not decrease the safety or effectiveness of any of the individual active ingredients; and when the combination, when used under adequate directions for use and warnings against unsafe use, provides rational concurrent

therapy for a significant proportion of the target population.

The Panel concurs with this regulation.

In addition, the Panel believes that active ingredients from the same therapeutic category that have the same mechanism of action should not ordinarily be combined unless there is some advantage on a benefit-to-risk basis over the single ingredients in terms of enhanced effectiveness, safety, patient acceptance, or quality of formulation.

However, in some cases an ingredient may contribute to safety and effectiveness only when used in a specific combination. In such cases the ingredient will be permissable in the specific combinations and not as a single ingredient.

The Panel does not recommend any Category I or Category II combinations.

The Panel places the following combinations in Category III: salicylic acid (5 to 17 percent) with lactic acid (5 to 17 percent) in a collodion vehicle; salicylic acid (5 to 17 percent) with glacial acetic acid (11 percent) in a collodion vehicle; ascorbic acid (0.16 percent) with calcium pantothenate (0.20 percent).

1. *Salicylic acid (5 to 17 percent) with lactic acid (5 to 17 percent) in a collodion vehicle.* In the study, by Bunney, Nolan, and Williams (Ref. 1), involving 95 patients, a wart paint consisting of 16.7 percent salicylic acid and 16.7 percent lactic acid in flexible collodion gave a cure rate of 67 percent for common warts and 84 percent for simple plantar warts. The study noted that the paint was applied nightly by the patient at home. The cure rates cited for the wart paint combination are comparable to those achieved under the supervision of a doctor with the use of liquid nitrogen, which is considered by many dermatologists to be the treatment of choice in removing warts.

A double-blind study by Arndt and Clark (Ref. 2) evaluated, during a 4-week period, a combination of 16.7 percent salicylic acid and 16.7 percent lactic acid in flexible collodion against a placebo, applied to multiple lesions on anatomically matched sites. Thirty-four patients with multiple lesions were studied. Of the 34 patients, 25 had common warts, 5 had juvenile warts, 3 had plantar warts, and 1 had a genital wart. The test subjects were instructed to apply the lotions supplied to each set of preidentified lesions every 24 hours. Results demonstrated that 21 of 34 patients (72 percent) experienced improvement, the warts disappearing in 14 of the 21 'improved' test subjects (66 percent) and diminishing in size in the other 7 subjects. Of the remaining 13 test subjects, the lesions were not improved in 8 (28 percent), and the 5 other patients dropped out of the study (Ref. 2).

A 4-week double-blind controlled study involving 50 patients, 25 using a combination of 5 percent salicylic acid and 5 percent lactic acid in flexible collodion and 25 using a placebo, showed that 74 percent of the study warts were cleared or improved when using the active compound. Twenty-nine percent of the placebo group warts were cleared or improved (Ref. 3).

The Panel has placed salicylic acid alone in Category I, but could find no data on the use of lactic acid alone in the treatment of warts. The Panel feels that the lactic acid does not contribute greatly to the effectiveness of the combination and that salciylic acid is the active ingredient which acts as a keratolytic agent reducing the pool of virus present in the keratin layer as well as lower in the epidermis and which stimulates an immune response by provoking a mild inflammatory reaction.

The Panel concludes that data which shows that lactic acid contributes to the increased effectiveness of the combination over that of salicylic acid alone is needed to established Category I conditions.

2. *Salicylic acid (5 to 17 percent) with glacial acetic acid (11 percent) in a collodion vehicle.* In an uncontrolled study (Ref. 4) on the effectiveness of a wart paint containing 14.2 percent salicylic acid and 11 percent glacial acetic acid in collodion on 36 patients, 27 had common warts, 6 had plantar warts, and 3 had soft corns. It was found that 13 of the patients with common warts were cured after 1 week, and 7 more were cured after 2 weeks. After 3 weeks, four warts were removed by cutting away. The remaining three warts were electro-desiccated (burned off). None of the patients with plantar warts was cured after 1 week. Two patients with plantar warts were cured after 2 weeks therapy and deep curettage. (Ref. 4). The Panel concludes that there is insufficient evidence to show that the addition of glacial acetic acid to salicylic acid increases its effectiveness as a wart remover.

3. *Ascorbic acid (0.16 percent) and calcium pantothenate (0.20 percent).* A preparation containing 0.16 percent ascorbic acid and 0.20 percent calcium pantothenate in a starch base has been used for the past 23 years to treat warts. According to the manufacturer (Ref. 5) it is painless and safe.

Linn (Ref. 6) treated 109 patients with this preparation of 0.16 percent ascorbic acid and 0.20 percent calcium pantothenate twice daily for 2 or more weeks (some for over 6 weeks). Seventy-one of this study group had common warts and 38 had plantar warts. Of those with common warts, 27 percent were cured and 46 percent were improved. Of those with plantar warts, 29 percent were cured and 29 percent were improved. A strikingly higher rate of response was seen at 2 weeks and at 4 weeks than at later periods. Warts which had been present for less than 6 months were more likely to respond than warts of longer duration. Linn's study was not controlled, and her results along with others such as Brezaks (Ref. 7) can be ascribed to suggestion or to the spontaneous disappearance of warts.

One controlled study was performed by Reiss (Ref. 7) on 10 patients with multiple-bilateral warts. On the right side of the body, the ascorbic acid-calcium pantothenate paste was applied; on the left side of the body, a "control" ointment was applied. Six patients with bilateral (on both sides) warts on hands and arms gave the following results: 3 were cured on the right side but not on the left; 2 improved faster on the right side than on the left; 1 was refractory (no improvement) bilaterally. Four patients with plantar warts showed the following results: none of the lesions treated with the control showed improvement; two patients, one with two lesions and one with three lesions showed a complete cure in 5 and 6 weeks respectively when treated with the active medication. Two other patients showed no response after 8 weeks of treatment with the active medication. Reiss concluded that the medication was effective, but "biostatistical data compiled from a larger number of patients would be more desirable for a final evaluation."

The Panel concludes that data showing contribution of the individual active ingredients to the effectiveness of the combination is needed to establish Category I conditions.

**References**

(1) Bunney, M. H., M. W. Nolan, and D. A. Williams, "An Assessment of Methods of Treating Viral Warts by Comparative Treatment Trials Based on a Standard Design," *British Journal of Dermatology*, 94:667–679, 1976.

(2) Arndt, K. A., and J. E. Clark, "Double-Blind Study of Salicylic and Lactic Acid Lotion in Treating Warts," *Dermatology Digest*, 16:28, 1977.

(3) OTC Volume 160359.

(4) OTC Volume 160004.

(5) OTC Volume 160287.

(6) Linn, E., "Conservative Management of Warts," *Clinical Medicine*, 74:39–42, 1967.

(7) Letter solicited by Daywell Laboratories Corporation in OTC Volume 160287.

The agency has determined that in accordance with 21 CFR 25.24(d)(9) (proposed in the Federal Register of December 11, 1979; 44 FR 71742) this proposal is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)) and the Administrative Procedure Act (secs. 4, 5, and 10, 60 Stat. 238 and 243 as amended (5 U.S.C. 553, 554, 702, 703, 704)) and under authority delegated to the Commissioner (21 CFR 5.1), it is proposed that Subchapter D of Chapter I of Title 21 of the Code of Federal Regulations be amended by adding to Part 358, new Subpart B, to read as follows:

## PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

* * * * *

### Subpart B—Wart Remover Drug Products

Sec.

358.101 Scope.
358.103 Definitions.
358.110 Wart remover active ingredients.
358.150 Labeling of wart remover drug products.

**Authority:** Secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371); (5 U.S.C. 553, 554, 702, 703, 704).

### Subpart B—Wart Remover Drug Products

#### § 358.101 Scope.

(a) An over-the-counter wart remover drug product in a form suitable for topical application is generally recognized as safe and effective and is not misbranded if it meets each condition in this subpart and each general condition established in § 330.1 of this chapter.

(b) References in this subpart to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

#### § 358.103 Definitions.

*Wart remover drug product.* A drug product applied to common or plantar warts to aid in their removal.

#### § 358.110 Wart remover active ingredient.

Salicylic acid 5 to 17 percent in a collodion vehicle.

#### § 358.150 Labeling of wart remover drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "wart remover."

(b) *Indications.* The labeling of the product contains a statement of the indications under the heading "Indications" that is limited to one or both of the following phrases:

(1) "For the removal of common warts. The common wart is easily recognized by the rough 'cauliflower-like' appearance of the surface."

(2) "For the removal of plantar warts on the bottom of the foot. The plantar wart is recognized by its location only on the bottom of the foot, its tenderness, and the interruption of the footprint pattern."

(c) *Warnings.* The labeling of the product contains the following warnings under the heading, "Warnings":

(1) *For products containing any ingredient identified in § 358.110.* (i) "Do not use if you are a diabetic or have poor blood circulation because serious complications may result."

(ii) "Do not use on moles, birthmarks, unusual warts with hair growing from them, genital warts, or warts on the face or mucous membranes."

(iii) "If wart shows no improvement after 12 weeks of treatment, see your doctor."

(iv) "Discontinue use if excessive irritation occurs."

(v) "Do not use near eyes."

(2) *For products containing collodion as a vehicle.* (i) "Highly flammable, keep away from fire or flame."

(ii) "Store at room temperature away from heat."

(iii) "Keep bottle tightly capped."

(iv) "Avoid inhaling vapors."

(v) "If spilled on eyes, flush with water to remove film and flush with water an additional 15 minutes."

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions," followed by "or as directed by a doctor":

(1) *For products containing any ingredient identified in § 358.110.* "Wash affected area and soak wart for 5 minutes. Gently remove softened area of the wart by rubbing with a wash cloth or emery board. Do not rub hard enough to cause bleeding. Apply product once daily to the wart only. Continue treatment until wart disappears, not to exceed 12 weeks."

(2) *For products containing salicylic acid identified in § 358.110.* "Keep product away from surrounding skin preferably by encircling the wart with a ring of petrolatum."

Interested persons are invited to submit their comments in writing (preferably in four copies and identified with the Hearing Clerk docket number found in brackets in the heading of this document) regarding this proposal on or before January 2, 1981. Comments should be addressed to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm 4–62, 5600 Fishers Lane, Rockville, MD 20857, and may be accompanied by a supporting memorandum or brief. Comments replying to comments may also be submitted on or before February 2, 1981. Comments may be seen in the above office between 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.

Dated: September 25, 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-30789 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-03-M

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### 21 CFR Part 444

**[Docket No. 79 N-0341; DESI Nos. 8615, 9152, 9188, and 50188]**

### Oligosaccharide, Peptide, and Certain Other Antibiotic Drugs

*Correction*

In FR Doc. 80–26520 appearing on page 57735 in the issue of Friday, August 29, 1980, make the following correction:

(1) On page 57736, third column, the word "drug" was misspelled in the following three places: the fourteenth line of the second complete paragraph, the third line of the third complete paragraph, and the seventh line of the fourth complete paragraph.

(2) On page 57737, column one, the bold face heading for § 444.342a should have appeared as follows:

**§ 444.342a Neomycin sulfate-ophthalmic suspension; neomycin sulfate-ophthalmic solution (the blanks being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragraph (a)(1) of this section).**

And in the second column, the heading for § 444.342d should have appeared as follows:

**§ 444.342d Neomycin sulfate-polymyxin B sulfate- ophthalmic suspension (the blank being filled in with the established name(s) of the other active ingredient(s) present in accordance with paragrah (a)(1) of this section).**

(3) In the second column of page 57737, in the fourth line of paragraph (a)(1) of § 444.342b, ". . . 1.7 milligrams of neomycin . . ." should have read ". . . 1.75 milligrams of neomycin . . ."

(4) On page 57738, § 444.342k (a)(2), should have read, "(2) *Labeling.* It shall be labeled in accordance with the requirements of § 432.5 of this chapter."

(5) In the same column, in § 444.342k, paragraph (b), starting in the fifth line, ". . . accurately weighed portion . . ." should have read ". . . accurately weighed representative portion . . .". Also, in line sixteen, ". . . 25 milliter . . ." should have read ". . . 25 milliliters . . .".

BILLING CODE 1505-01-M

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## 21 CFR Parts 801 and 899

**[Docket No. 80N-0071]**

## Restricted Devices

**AGENCY:** Food and Drug Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Food and Drug Administration (FDA) has tentatively determined that certain medical devices must be restricted in their sale, distribution, or use to provide reasonable assurance of their safe and effective use. FDA made this tentative determination on the basis of the potential for harmful effect or on the need for collateral measures to ensure the proper use of restricted devices. The proposed regulation would designate types of devices to be restricted and would restrict use of these devices to health professionals, including licensed practitioners. The regulation would also establish uniform labeling requirements for restricted devices to ensure that health professionals have sufficient information to use them safely and effectively.

**DATES:** Comments by December 2, 1980; the proposed effective date of a final rule based on this proposal is 180 days after its date of publication in the Federal Register.

**ADDRESS:** Written comments should be addressed to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Michael A. Lidsky, Bureau of Medical Devices (HFK-70), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7114.

**SUPPLEMENTARY INFORMATION:** Pub. L. 94-295, the "Medical Device Amendments of 1976" (the amendments), amending the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321 et seq.) became law on May 28, 1976. Among other things, the amendments added to the act several provisions concerning "restricted devices." New section 520(e) of the act (21 U.S.C. 360j(e)) authorizes FDA to issue regulations imposing restrictions on the sale, distribution, or use of devices if, because of their potentiality for harmful effect or the collateral measures necessary to their use, FDA determines that, absent such restrictions, there cannot be reasonable assurance of the devices' safety and effectiveness. New section 502(r) of the act (21 U.S.C. 352(r)) authorizes FDA to regulate the advertising of restricted devices. Section 704(a) of the act (21 U.S.C. 374(a)), as amended by Pub. L. 94-295, authorizes FDA to inspect certain records relating to restricted devices.

Section 510(j) of the act (21 U.S.C. 360(j)), as also amended, establishes additional listing requirements for manufacturers of restricted devices (see Part 807, 21 CFR Part 807). Also, new section 502(q) of the act (21 U.S.C. 352(q)) provides that a device shall be deemed to be misbranded if it is sold, distributed, or used in violation of regulations prescribed under section 520(e).

### Background

Prior to enactment of the amendments, FDA restricted the sale and distribution of devices by means of the "prescription" device regulation in § 801.109 (21 CFR 801.109). That regulation, which still remains in effect, provides that the sale and distribution of certain devices may be done only by or on the order of licensed practitioners and specifies the conditions under which the devices may be exempt from the "adequate directions for use" labeling requirements of section 502(f)(1) of the act (21 U.S.C. 352(f)(1)).

Upon enactment of the amendments, FDA published a notice in the Federal Register (41 FR 22620; June 4, 1976), announcing the agency's plans to implement the new law. The notice stated that FDA considered the term "restricted device" to include all "prescription" devices as defined in § 801.109.

Subsequently, FDA attempted to inspect several manufacturers' records relating to such devices. However, some manufacturers resisted FDA's inspection efforts, and challenged in court FDA's interpretation of the term "restricted device." These manufacturers claimed that before FDA may use its new authority to inspect related records, section 520(e) requires that FDA, by regulation, designate such devices as "restricted." During the ensuing litigation, two United States District Courts sustained FDA's position that devices that previously were "prescription" devices became "restricted" devices by operation of law on the date of enactment of the amendments. *In re Establishment Inspection of American Technology, Inc.*, No. CV 78-1727-LEW (C.D. Cal., June 14, 1978); *In re Establishment Inspection of Portex, Inc.*, No. MED-78-272 (D. Mass., July 28, 1978).

However, in three related cases, *Becton, Dickinson and Company* v. *Food and Drug Administration; United States* v. *Becton, Dickinson and Company;* and, *In the Matter of the Establishment Inspection of Bard-Parker, Division of Becton, Dickinson and Company*, the United States District Court for the Northern District of New York ruled that FDA is required to issue regulations classifying devices as "restricted" before FDA may lawfully exercise its new authority to inspect related records. 448 F. Supp. 776 (N.D. N.Y. 1978). Upon appeal by the government, the United States Court of Appeals for the Second Circuit affirmed the district court's decision. 589 F.2d 1175 (2d Cir. 1978). In a second case involving Portex, Inc., the United States District Court for the District of Massachusetts and the United States Court of Appeals for the First Circuit, following the Second Circuit decision in the *Becton, Dickinson* case, also held that FDA is required to issue regulations before a device may be "restricted" within the meaning of section 520(e) of the act. *In the Matter of the Establishment Inspection of Portex, Inc., Food and Drug Administration, Appellant*, 595 F.2d 84 (1st Cir. 1979). The issue is also pending in two related cases before the United States District Court for the Western District of Missouri, *United States* v. *Sherwood Medical Industries, Inc. et al.* (No. 77-0890-CV-W-Z) and *In the Matter of the Establishment Inspection of Sherwood*

*Medical Industries, Inc.* (No. 77-0265-CV-W-Z).

Significantly, in deciding the *Becton, Dickinson* case, the Court of Appeals for the Second Circuit explicitly rejected the finding of the District Court that FDA is required to issue "restricted" device regulations on a device-by-device basis. Rather, the Second Circuit sanctioned the use of general regulations.

Moreover, unlike the district judge, 448 F. Supp. at 779 and n. 4, we do not read section 520(e)(1) as forbidding the Secretary from using language approaching the generality of the statute if, after appropriate rulemaking procedures, he should find it impracticable to be more specific.[5] Certainly, Congress did not mean to require the Secretary to wade a tiresome way through the whole area of "devices" and make specific determinations with respect to each—with the consequence, among others, that a new device would not be restricted until a specific rule had been developed for it.* * *

As noted above, this opinion was followed by the decision of the Court of Appeals for the First Circuit in the *Portex* case. In view of the holdings of the two courts of appeals, FDA has decided to issue this regulation rather than attempt to establish through further litigation its authority to regulate restricted devices.

### Discussion of Proposed Regulation

The term "device," as defined in the act, covers a variety of products, from relatively simple devices, such as adhesive bandages, thermometers, and canes, to complicated devices such as kidney dialysis machines and heart pacers. Some devices can be used safely and effectively by a lay person. Other devices, because of their potential for harmful effects or collateral measures necessary to their use, require the special skills, training, and education of a qualified health professional to be used safely and effectively for the devices' intended purposes. This regulation deals with the latter group of devices, those that can be used safely and effectively only by, on the order of, or under the supervision of, a qualified health professional.

### Scope

Proposed § 899.1 is a general provision that defines the scope of the regulation. It states that the regulation establishes the types of devices that are restricted as to sale, distribution, or use; that such restricted devices are subject to labeling and advertising requirements; and that there is a procedure by which exemptions or variances from these requirements may be requested.

Proposed § 899.1(a) states that the regulation applies to any device that is manufactured, sold, held for sale, imported, or offered for import in any State or territory of the United States, the District of Columbia, or Puerto Rico. Proposed § 899.1(b) sets out the procedure for requesting an exemption or a variance from the requirements of the regulation.

Proposed § 899.1(c) provides that FDA may impose restrictions that are different from, or in addition to, the restrictions imposed by this regulation. FDA may impose these restrictions in one of two ways, by regulation or by order. For example, FDA may issue further restricted device regulations either under section 520(e) of the act or when issuing a regulation establishing a performance standard under section 514(a)(2)(B)(v) of the act (21 U.S.C. 360d(a)(2)(B)(v)). FDA may also impose restrictions by order when approving an application for premarket approval or when declaring a product development protocol completed, as provided in sections 515(d)(1)(B)(ii) and (f) of the act (21 U.S.C. 360e(d)(1)(B)(ii) and (f)).

Section 899.1(d) lists other regulatory controls that apply to devices which FDA has restricted by regulation. These additional controls include the following: inspection of records under section 704(a) of the act; device listing under section 510(j) of the act and Part 807 (21 CFR Part 807); and advertising under section 502(q) and (r) of the act and Subpart D of this proposed regulation. Also, under section 502(q) a device will be deemed misbranded and subject to enforcement action by FDA if distributed in violation of regulations prescribed under section 520(e) of the act.

It should be noted that even though FDA may designate a device as restricted either by regulation or by order, the regulatory controls listed in § 899.1(d) apply only to the devices that FDA has restricted by regulation. Thus, the controls apply only to devices designated as restricted under this regulation or by a separate regulation issued either under the general restricted device provisions of section 520(e) or a performance standard established under section 514. These additional regulatory controls do not apply to devices that are restricted by FDA solely by an order approving an application for premarket approval or a product development protocol declared completed under section 515 of the act. A device that is distributed by a manufacturer in violation of restrictions imposed by an order issued under section 515 may, however, be subject to proceedings to revoke an approval granted under section 515.

### Definitions

Proposed § 899.3(b) adopts the definition of "device" in section 201(h) of the act (21 U.S.C. 321(h)). The definition includes in vitro reagents. And, as provided in § 899.20, some in vitro reagents—those intended for use by, on the order of, or under the supervision of health professionals—would be restricted.

Proposed § 899.3(d) defines the term "health professional." A health professional is a person licensed, registered, authorized, or otherwise permitted by the United States or the jurisdiction in which the person practices or works, to administer, sell, use, dispense, or order the use of restricted devices. This definition includes, for example, medical and dental practitioners, pharmacists, members of the allied health professions, clinical laboratory personnel, and clinical laboratories. FDA intends to rely on applicable Federal or State requirements to determine whether a person is a health professional who may use restricted devices.

### Types of Restricted Devices

Proposed § 899.20 establishes criteria for designating a device as "restricted." The agency has determined that restricted devices, because of their potential for harmful effect, or the collateral measures necessary for their use, can be used safely and effectively only by, on their order of, or under the supervision of a health professional. In developing the criteria for designating a device as restricted, FDA reviewed the types of devices that currently are subject to "prescription" dispensing under 21 CFR 801.109. These current "prescription" devices require the special training, knowledge, and experience of a health professional to be used safely and effectively. By their nature, these devices require surgery, or are used in the diagnosis and treatment of diseases that can be properly recognized and treated only by persons who have special training and education. However, the current determination that a device is a "prescription" device is quite subjective. Often, the determination is made by the manufacturer. To make the restricted device criteria more objective, and to reflect more accurately the intent of Congress that restrictions be imposed on devices that require such treatment for their safe and effective use, FDA

[5 Alternatively, he might use the statutory language as a catch-all.] 589 F.2d 1175, 1181 (1978).

proposes that the following types of devices be restricted.

1. An invasive device that is intended to penetrate or pierce the skin or mucous membranes of the body, the ocular cavity, the urethra, the ear beyond the external auditory canal, the nose beyond the nares, the mouth beyond the pharynx, the anal canal beyond the rectum, or the vagina beyond the cervical os;

2. A device intended to be implanted into the body or one that replaces or corrects a body part or function;

3. A device intended to introduce energy on or into the body;

4. A device intended to deliver medicinal gas to the body;

5. A device, other than an in vitro diagnostic product, intended for use in the diagnosis of diseases or other conditions, or for monitoring physiological functions; or

6. An in vitro diagnostic product, as defined in § 809.3(a) (21 CFR 809.3(a)), that is intended to be used, or to provide information that will be used, interpreted, or analyzed, by a health professional.

**Exclusions**

Proposed § 899.21 excludes from the requirements of Part 899 those devices that meet the specific criteria of § 899.20(a)–(f), but do not otherwise present a potential for harmful effect, do not require collateral measures for their safe and effective use, and for which adequate directions for safe and effective lay use can be written. It is FDA's intent that devices appropriate for self care to available to consumers without a prescription.

Proposed § 899.21(a) exempts insulin hypodermic needles, emergency oxygen, heating pads, vaporizers, stethoscopes, sphygmomanometers, thermometers, and otoscopes from the restricted device labeling requirements.

Proposed § 899.21(b) specifies the labeling requirements for unrestricted devices. Such devices must be labeled in accordance with section 502 of the act and subparts A and C of 21 CFR Part 801 and 21 CFR 809.10 (a) and (b), if applicable.

Proposed § 899.21(c) states that FDA will, upon request, provide an opinion as to whether a specific device is subject to the labeling requirements of Part 899 or other labeling requirements. FDA will respond to requests for such opinions after publication of the final regulation.

**Labeling**

Proposed § 899.40(a) describes the general requirements for labeling of restricted devices. Restricted devices that meet the labeling requirements of this regulation will be exempt from both section 502(f)(1) of the act and § 801.5 (21 CFR 801.5) relating to adequate directions for lay use.

Proposed § 899.40(b) requires that all labeling for restricted devices shall be informative and accurate and shall not be false or misleading in any particular. Proposed § 899.40(b) also reinforces the intent of section 201(n) of the act (21 U.S.C. 321(n)), which describes the circumstances under which a device may be deemed misbranded because the labeling or advertising fails to reveal material facts with respect to consequences that may result from use of the device.

Proposed § 899.40(c) requires all labeling that contains directions for use to bear the date it was approved or, in the event labeling has been revised, the date of the latest revision. The date must be printed prominently and placed immediately following the last section of the labeling.

Proposed § 899.40(d) provides that the label and all other labeling for a restricted device must bear a specific legend identifying the device as restricted. The regulation would require the following legend: "Restricted Device: Federal law restricts the sale, distribution, or use of this device to, by, or on the lawful order of, a health professional." The manufacturer would be permitted to substitute the specific type of health professional applicable to the device, e.g., "physician" or "dentist," for the words "health professional." A manufacturer would also be permitted to impose additional restrictions provided they are reasonable, do not conflict with restrictions imposed by FDA, and are otherwise lawful. Thus, the manufacturer could indicate that the device should be used only in special circumstances or by specially qualified persons, for example, by health professionals with specialized training in the use of the device.

Proposed § 899.40(e) provides that a restricted in vitro diagnostic device must also meet the labeling requirements for in vitro diagnostic products in present § 809.10(a) and (b) (21 CFR 809.10 (a) and (b)).

Proposed § 899.40(f) establishes special requirements relating to labeling format and content for devices other than in vitro diagnostics.

Proposed § 899.40(f)(1) requires that each restricted device have labeling, either on or within a package from which the device is to be dispensed, that furnishes information to enable the health professional to use the device safely and for the purposes for which it is intended.

Proposed § 899.40(f)(2) establishes specific format, order, and section headings for labeling as follows: Description, Indications and Usage, Information for use, Contraindications, Warnings, Precautions, Adverse Effects, and, where necessary, References. If there are no known contraindications, warnings, precautions, or adverse effects, the labeling shall under each of the heaings indicate "none" or "none known." The specific information that must appear under each of these headings is set forth in § 899.40(f)(3).

Proposed § 899.40(g) provides that a restricted device (other than an in vitro diagnostic product) whose use is commonly known to health professionals who are sufficiently trained and knowledgeable in the use of such devices, need not contain the complete labeling format required by § 899.40. Such devices, if labeled with the information required under § 899.40(a)–(d) and § 899.40(f)(3)(i), may exclude some or all of the other labeling required under § 899.40. Examples of devices that may be labeled with a limited labeling format are surgical tools and dental instruments such as scalpels, scissors, forceps, clamps, retractors, dental burs, scalers, and dental explorers.

Proposed § 899.40(h) requires a manufacturer to provide patient labeling if FDA requests. Such patient labeling shall contain information dealing with use of the device, its effects, maintenance, calibration, warning, potential risks, and any other relevant information, written in language that a lay person can understand.

**Advertising**

Proposed § 899.60 sets forth general requirements for restricted device advertising. This section states that advertisements for a restricted device may not recommend or imply any use that is not in the labeling for the restricted device.

**Amendments to 21 CFR Part 801, Subpart D**

Subpart D of current Part 801 (21 CFR 801.109–801.127) explains when a device may be exempt from bearing a label that contains adequate directions for use by lay persons. Existing § 801.109 describes the specific conditions under which a prescription device may be exempt from adequate directions for use and specifies the labeling requirements manufacturers must follow to avoid having their product become misbranded. To make Subpart D of Part 801 conform to the restricted device regulation, it is necessary also to propose amendments to those sections

of Subpart D that currently reference the prescription device regulation. Accordingly, FDA proposes to make conforming amendments to §§ 801.109, 801.110, 801.125, and 801.127(b).

**Proposed Effective Date**

The agency intends that this proposed regulation will become effective 180 days after the final regulation is published in the **Federal Register.**

**Environmental Impact**

The Commissioner of Food and Drugs has carefully considered the potential environmental effects of this proposed action and has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement therefore will not be prepared. The Commissioner's findings of no significant impact and the evidence supporting this finding contained in an environmental assessment (pursuant to 21 CFR 25.31, proposed December 11, 1979; 44 FR 71742) may be seen in the office of the Hearing Clerk, Food and Drug Administration.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 510, 514, 515, 520(e), 521, 701(a), and 704(a), 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055, 67 Stat. 477 as amended, 76 Stat. 794–795 as amended, 90 Stat. 546–559, 567, 574 (21 U.S.C. 321, 352, 360, 360d, 360e, 360j(e), 360k, 371(a), and 374(a)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1) it is proposed that Chapter I of Title 21 of the Code of Federal Regulations be amended as follows:

## PART 801—LABELING

1. Part 801 is amended:

a. By revising § 801.109 to read as follows:

**§ 801.109 Restricted devices.**

A restricted device labeled in accordance with § 899.40 of this chapter shall be exempt from section 502(f)(1) of the act and § 801.5 relating to adequate directions for use if all of the following conditions are met:

(a) The device is in the possession of a person, or the person's agent or employees, regularly and lawfully engaged in the manufacture, transportation, storage, or wholesale or retail distribution of such a device; or,

(b) The device is in the possession of a health professional, as defined in § 899.3(c) of this chapter, in the course of his or her professional practice or occupation.

b. By revising § 801.110, to read as follows:

**§ 801.110 Patient use of restricted devices.**

A restricted device shall be exempt from section 502(f)(1) of the act and § 801.5 relating to adequate directions for use and § 899.40 of this chapter relating to labeling of restricted devices if the device is in the possession of the patient or the patient's lawful representative after having been provided by a health professional in the course of his or her professional practice, or upon a prescription or other order lawfully issued by a health professional in the course of his or her professional practice, who has provided to the patient directions for use, and cautionary statements, if any, and any other information pertinent to the use of the device.

c. By revising § 801.125 to read as follows:

**§ 801.125 Medical devices for use in teaching, law enforcement, research, and analysis.**

A restricted device labeled in accordance with § 899.40 of this chapter shall be exempt from section 502(f)(1) of the act and § 801.5 relating to adequate directions for use if shipped or sold to, or in the possession of, a person regularly and lawfully engaged in instruction in pharmacy, chemistry, medicine, or other health sciences, not involving clinical use, or engaged in law enforcement, or in research not involving clinical use, or in chemical analysis, or physical testing, and is to be used only for such instruction, law enforcement, research, analysis, or testing.

d. In § 801.127 by revising paragraph (b), to read as follows:

**§ 801.127 Medical devices; expiration of exemptions.**

* * * * *

(b) The exemptions conferred by §§ 801.119 and 801.122 shall continue while the exempted device is used for the purpose(s) for which it is exempted, or until it is relabeled to comply with section 502(f)(1) of the act. If, however, the device is converted, or manufactured into a form where it becomes a restricted device within the meaning of section 520(e) of the act, no exemption shall thereafter apply to the article unless the device meets the labeling requirements of Part 899.

2. By adding new Part 899 to read as follows:

## PART 899—RESTRICTED DEVICES

**Subpart A—General Provisions**

Sec.
899.1 Scope.
899.3 Definitions.

**Subpart B—Restricted Devices**

899.20 Types of restricted devices.
899.21 Exclusions.

**Subpart C—Labeling**

899.40 Labeling requirements for restricted devices.

**Subpart D—Advertising**

899.60 Restricted device advertising—general.

**Authority:** Secs. 201, 502, 510, 514, 515, 520(e), 701(a), and 704(a), 52 Stat. 1040–1042 as amended, 1050–1051 as amended, 1055, 67 Stat. 477 as amended, 76 Stat. 794–795 as amended, 90 Stat. 546–559, 567, 574 (21 U.S.C. 321, 352, 360, 360d, 360e, 360j(e), 371(a), and 374(a)).

### Subpart A—General Provisions

**§ 899.1 Scope.**

This part establishes the types of devices that are restricted in their sale, distribution, or use as provided in section 520(e) of the act. This part also establishes labeling and advertising requirements for restricted devices and establishes procedures under which the Food and Drug Administration may grant an exemption or variance from these requirements. References in this part to regulatory sections of the Code of Federal Regulations are to Chapter I of Title 21 unless otherwise noted.

(a) *Applicability.* This part shall be applicable to any device that is manufactured, sold, held for sale, imported, or offered for import in any State or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(b) *Exemptions or variances.* Any person may petition for an exemption or variance from any of the requirements of this part. Such a request shall be prominently marked with the words "Request for Exemption (or Variance) for a Restricted Device" (original plus three copies) and shall be sent to the Food and Drug Administration, office of the Hearing Clerk (HFA–305), 5600 Fishers Lane, Rockville, MD 20857. The request shall present complete facts in support of the view that compliance with the provision for which an exemption or variance is sought is impractical or is not necessary for the protection of the public health. FDA will review the request in light of the facts submitted and other available information. The request and supporting documentation will be available to the

public in accordance with the FDA Public Information regulations in Part 20.

(c) *Other restrictions.* FDA may, by regulation, also impose restrictions on the distribution of a particular device or on a class of devices under the general authority to restrict devices in section 520(e) of the act; FDA may, by regulation, impose additional restrictions in a performance standard established under section 514(a) of the act; or FDA may, by order, impose restrictions under sections 515 (d) or (f) of the act when approving an application for premarket approval or when declaring a product development protocol completed. These restrictions on a particular device or on a class of devices are in addition to the restrictions imposed by this part.

(d) *Other regulatory controls.* A device that is restricted by regulation under this part, or by regulation under the general authority of section 520(e) of the act, or in a performance standard established by regulation under section 514(a) of the act, becomes subject to other regulatory controls under the act and FDA regulations, as follows: manufacturers' records pertaining to restricted devices shall be subject to inspection under section 704(a) of the act; manufacturers shall comply with the special device listing requirements of section 510(j) of the act and Part 807; and advertising for a restricted device shall be regulated under section 502 (q) and (r) of the act and Subpart D of this Part 899. Also, a device will be deemed misbranded under section 502(q) of the act if it is sold, distributed, or used in violation of a regulation prescribed under section 520(e) of the act.

**§ 899.3 Definitions.**

(a) "Act" means the Federal Food, Drug, and Cosmetic Act, as amended.

(b) "Device" means a device as defined in section 201(h) of the act.

(c) "FDA" means the Food and Drug Administration.

(d) "Health professional" means a person who is licensed, registered, authorized, or otherwise permitted by the United States, the State or territory of the United States, the District of Columbia or the Commonwealth of Puerto Rico in which the person practices to administer, sell, use, dispense, or order the use of a restricted device in the course of his or her professional practive or occupation.

## Subpart B—Restricted Devices

**§ 899.20 Types of restricted devices.**

FDA has determined that certain types of devices, because of their potential for harmful effect, or the collateral measures necessary for their proper or safe use, can only be used safely and effectively for the purposes for which they are intended, by, on the order of, or under the supervision of, a health professional. The following types of devices are designated as restricted devices subject to the controls described in this part:

(a) A device that is intended to penetrate or pierce the skin or mucous membranes of the body, the ocular cavity, the urethra, the ear beyond the external auditory canal, the nose beyond the nares, the mouth beyond the pharynx, the anal canal beyond the rectum, or the vagina beyond the cervical os;

(b) A device intended to be implanted in the body or for correcting or replacing a body part or function;

(c) A device intended to introduce energy on or into the body;

(d) A device intended to deliver medicinal gas to the body;

(e) A device, other than an in vitro diagnostic product, intended for use in the diagnosis of diseases or other conditions, or for monitoring physiological functions;

(f) An in vitro diagnostic product as defined in § 809.3(a) that is intended to be used, or interpreted, or analyzed, by a health professional.

**§ 899.21 Exclusions.**

(a) *General.* A device that meets the specific criteria of § 899.20(a) through (f), but does not otherwise present a potential for harmful effect, does not require collateral measures for its use, and for which adequate directions for safe and effective lay use can be written is not a restricted device and shall not be subject to the requirements of this part. Such device are customarily sold without a prescription for patient self care and include: insulin hypodermic needles, emergency oxygen, heating pads, vaporizers, stethoscopes, sphygmomanometers, thermometers, and otoscopes.

(b) *Labeling requirements.* A device which is not subject to the requirements of this part shall be labeled in accordance with section 502 of the act and subparts A and C of Part 801, the general labeling provisions, the labeling requirements for over-the-counter devices, and the labeling provisions of § 809.10(a) and (b), if applicable.

(c) *Determination of exclusion.* FDA will, upon request, provide an opinion as to whether a specific device is subject to this part or the labeling provisions of Parts 801 and 809.

## Subpart C—Labeling

**§ 899.40 Labeling requirements for restricted devices.**

(a) A restricted device shall be labeled in accordance with this part and the general device labeling requirements of Subpart A of Part 801, other than § 801.5 relating to adequate directions for lay use. To the extent any applicable requirement of Subpart A of Part 801 is inconsistent with a requirement of this part, the requirement of this part shall apply.

(b) Labeling for a restricted device shall be informative and accurate, shall not be false or misleading in any particular, and shall include all material facts relating to consequences that may result from use of the device. Labeling that physically accompanies a sterile device shall not require the user of the device to compromise the sterility of the device in order to read the labeling, e.g., the labeling shall not be folded within the wrap of a sterile package.

(c) Labeling for a restricted device bearing information on the use of the device shall also bear the date of its approval or, if the labeling has been revised, the date of the latest revision of such labeling. The date must be printed prominently and placed immediately following the last section of the labeling.

(d) The label and labeling for a restricted device shall bear the statement: "Restricted Device: Federal law restricts the sale, distribution, or use of this device to, by, or on the lawful order of, a health professional." In lieu of the term "health professional," the label may list the specific type or types of health professional applicable to the device, e.g., "physician," "dentist," etc. The label and labeling also may bear statements that the device should be used only in special circumstances or by specially qualified persons, e.g., health professionals with specialized training in the use of the device.

(e) An in vitro diagnostic device that is a restricted device shall also conform to labeling requirements for in vitro diagnostic products as provided in § 809.10(a) and (b).

(f) A restricted device, other than an in vitro diagnostic device, shall meet the following specific labeling requirements:

(1) The device shall have labeling, as defined in section 201(m) of the act, either on or within a package from which the device is to be dispensed, that furnishes adequate information whereby the health professional can use the device safely and for the purposes for which it is intended, including all purposes for which it is advertised or represented.

(2) Any labeling purporting to furnish such adequate information for the safe and effective use of a restricted device shall use the following format, order, and section headings: Description, Indications and Usage, Information for use, Contraindications, Warnings, Precautions, Adverse Effects, and where necessary, References. If there are no known contraindications, warnings, precautions, or adverse effects, the labeling shall, under each of the headings, indicate "none" or "none known."

(3) Specific information appearing under each section heading as listed in paragraph (f)(2) shall be as follows:

(i) Description: This section of the labeling shall contain:

(*a*) The proprietary name and the established name, if any, as defined in section 502(e) of the act;

(*b*) If the product is sterile, a statement of that fact; and

(*c*) If appropriate, the mode of action.

(ii) Indications and usage: This section of the labeling shall state explicitly:

(*a*) That the device is indicated in the diagnosis of a specific recognized disease(s) or condition(s) or in the cure, mitigation, treatment, or prevention of a specific recognized disease(s) or condition(s), and where applicable, that the device is indicated for the relief of symptoms associated with a disease or condition;

(*b*) And also where applicable, that the device is used to perform a specific function or provide a specific capability in conjunction with another device function, mode of therapy, operation, or other procedure.

This section of the labeling shall contain only intended indications and uses for the device that are supported by substantial evidence of safety and effectiveness based on adequate and well-controlled studies, including clinical investigations, where appropriate, conducted by qualified experts or supported by other valid scientific evidence from which it can fairly and responsibly be concluded by qualified experts that the device will have the safety and effectiveness that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the labeling.

(iii) Information for use: This section of the labeling shall state the recommended, suggested, or preferred method, technique, or procedure for the use, or the administration, of the device. Where appropriate, it shall also include adequate information regarding calibration, maintenance, preventive maintenance, or inspection procedures.

(iv) Contraindications: This section of the labeling shall contain information pertaining to any situation or condition in which the device should not be used because the risk of use clearly outweighs any possible benefit.

(v) Warnings: This section of the labeling shall contain adequate warning of any indication of a serious hazard, consequence, or condition associated with the use of a device. The warning shall be placed on both the label and the labeling. If possible, the warning shall be placed on the label of the immediate container, or, for large or reusable devices, or when otherwise appropriate, on the device itself and in a conspicuous manner.

(vi) Precautions: This section of the labeling shall list all other conditions or situations in which the use of the device requires that special care be exercised so as to reasonably ensure the safe and effective use of the device. It shall also state:

(*a*) The limitation of usefulness of the device;

(*b*) Information on all known methods, techniques, or procedures that should be avoided when applying or using the device;

(*c*) Information needed for patient counseling; and,

(*d*) Any tests or indicators which may be helpful in following the patient's response or identifying possible adverse reactions.

(vii) Adverse Effects: This section of the labeling shall list all known undesirable effects reasonably associated with the use of a device. Such adverse effects may occur as part of the intended action of the device or may be unpredictable in their occurrence.

(viii) References: This section of the labeling shall contain a reference to specific and important published clinical studies when such studies are necessary to understand the information provided in the labeling. The clinical study or reference may be cited in the labeling if it is based upon or constitutes an acceptable clinical investigation. Specific textbook references also may be cited if they provide essential information with regard to the specific device or to a procedure that is correlated with the device.

(g) A restricted device (other than an in vitro diagnostic product) whose use is commonly known to health professionals who are sufficiently trained and knowledgeable in the use of such devices may, if labeled with the information required under paragraphs (a) through (d) and the product "Description" required under paragraph (f)(3)(i), be labeled without some or all of the other labeling required under this section. Examples of devices that are candidates for limited labeling are surgical tools and dental instruments such as scalpels, scissors, forceps, clamps, retractors, dental burs, scalers, and dental explorers.

(h) A restricted device shall, if FDA requests, bear patient labeling that contains information dealing with the use of the device, its effects, maintenance, calibration, warnings, potential risks, and any other relevant information in language that a lay person can understand.

## Subpart D—Advertising

### § 899.60 Restricted device advertising—general.

Any advertisement for a restricted device may not recommend or imply any use that is not in the labeling for the restricted device.

Interested persons may, on or before December 2, 1980 submit to the Hearing Clerk (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, written comments regarding this proposal. Four copies of any comments are to be submitted, except that individuals may submit one copy. 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 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.

Dated September 24, 1980.

**Jere E. Goyan,**

*Commissioner of Food and Drugs.*

[FR Doc. 80–30594 Filed 10–2–80; 8:45 am]

BILLING CODE 4110–03–M

## DEPARTMENT OF THE TREASURY
## Internal Revenue Service

### 26 CFR Part 1

[LR-165-77]

### Investment Credit for Energy Property; Public Hearing on Proposed Regulations

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

**ACTION:** Notice of hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to business investment credit for energy property.

**DATES:** The public hearing will be held on December 4, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by November 20, 1980.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR-165-77), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

**SUPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under section 48 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Friday, September 19, 1980 (45 FR 62496).

The rules of § 601.601(a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on proposed regulations should submit an outline of the comments to be presented at the hearing and the time they wish to devote to each subject by November 20, 1980. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

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

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

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving Government Regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue.

**David E. Dickinson,**

*Assistant Director, Legislation and Regulations Division.*

[FR Doc. 80-30899 Filed 10-2-80; 8:45 am]

BILLING CODE 4830-01-M

### 26 CFR Part 301

[EE-27-78]

### Periodic Report of Actuary; Public Hearing on Proposed Regulations

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

**ACTION:** Public hearing on proposed regulations.

**SUMMARY:** This document provides notice of a public hearing on proposed regulations relating to the requirement that the plan administrator of a defined benefit plan periodically file an actuarial report for the plan.

**DATES:** The public hearing will be held on November 12, 1980, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by October 29, 1980.

**ADDRESS:** The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, D.C. The outlines should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (EE-27-78), Washington, D.C. 20224.

**FOR FURTHER INFORMATION CONTACT:** Charles Hayden of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224, 202-566-3935, not a toll-free call.

**SUPPPLEMENTARY INFORMATION:** The subject of the public hearing is proposed regulations under sections 6059 and 6692 of the Internal Revenue Code of 1954. The proposed regulations appeared in the **Federal Register** for Tuesday, July 8, 1980 (45 FR 45926).

The rules of § 601.601 (a)(3) of the "Statement of Procedural rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and also desire to present oral comments at the hearing on the proposed regulations should submit an outline of oral comments to be presented at the hearing and the time they wish to devote to each subject by October 29, 1980. Each speaker will be limited to 10 minutes for an oral presentation exclusive of time consumed by questions from the panel for the Government and answers to these questions.

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

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

This document does not meet the criteria for significant regulations set forth in paragraph 8 of the Treasury Directive for improving Government Regulations appearing in the **Federal Register** for Wednesday, November 8, 1978.

By direction of the Commissioner of Internal Revenue:

**George H. Jelly,**

*Director, Employee Plans and Exempt Organizations Division.*

[FR Doc. 80-30900 Filed 10-2-80; 8:45 am]

BILLING CODE 4830-01-M

## DEPARTMENT OF LABOR
## Occupational Safety and Health Administration

### 29 CFR Part 1955

### Petitions for Withdrawal of Approval of the Virginia Occupational Safety and Health Plan; Request for Comments

**AGENCY:** Occupational Safety and Health Administration, U.S. Department of Labor.

**ACTION:** Request for public comment.

**SUMMARY:** This notice requests public comment on whether the Assistant Secretary of Labor for Occupational Safety and Health should accept or deny, in whole or in part, petitions for withdrawal of approval of the Virginia Occupational Safety and Health Plan.

**DATES:** Comments and requests for hearing should be submitted by November 17, 1980.

**ADDRESS:** Written comments concerning the petitions for withdrawal and

requests for an informal hearing should be sent to the Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N–3619, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:**
Peter Schultze, Project Officer, Office of Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N–3613, 200 Constitution Avenue, NW., Washington, D.C. 20210, 202 523–8085.

**SUPPLEMENTARY INFORMATION:**

As provided in Section 18 of the Occupational Safety and Health Act of 1970, 29 U.S.C. § 667, a State desiring to assume responsibility for the development and enforcement of safety and health standards may submit to the Secretary of Labor a "State Plan" for such enforcement. If the Secretary, applying criteria set forth in section 18(c), 29 U.S.C. 667(c), finds that the Plan will provide for effective protection of employees, initial Federal approval may be granted. The Virginia State Plan was initially approved on September 28, 1976 (41 FR 42655). The plan is described at 29 CFR Part 1952, Subpart EE.

Under the provision of 29 CFR 1955.5, the Oil, Chemical, and Atomic Workers International Union (O.C.A.W.); Fairfax County, Virginia, Board of Supervisors; the Virginia State American Federation of Labor—Congress of Industrial Organizations (herein called the Virginia State AFL–CIO); and the Building and Construction Trades Department of the AFL–CIO petitioned the Department of Labor on February 21, 1978, November 8, 1979, December 11, 1979, and December 14, 1979, respectively, to withdraw approval of the Virginia Occupational Safety and Health Plan. The O.C.A.W. petition was previously published for public comment on June 13, 1978 (43 FR 25491). The petitions generally allege that the Virginia Plan provides inadequate protection for the safety and health of employees in the State. In order to obtain more information regarding these allegations and the overall effectiveness of the Plan, written comments are solicited.

**Allegations in Petitions**

*Background*

While Federal OSHA provides for an administrative review of contested violations, abatement periods, and proposed penalties, Virginia elected to utilize a review process which relies upon the State's existing system of District and Circuit Courts for the trial of contested cases. Section 18 of the Occupational Safety and Health Act of 1970 (29 U.S.C. § 667 hereinafter, "the Act") requires that in order to obtain Plan approval a State enforcement program must be "at least as effective as" the Federal enforcement program. While the Virginia system was given initial approval, the **Federal Register** notice approving the Virginia Plan discussed several possible difficulties involved in a judicial system of enforcement, and was especially concerned with the need for the orderly development of occupational safety and health law (41 FR 42655). The notice stressed that the ultimate effectiveness of Virginia's system could only be determined by observing it in actual operation.

*Petitions*

Four separate petitions for withdrawal of approval of the Virginia Plan have been received. The Oil, Chemical and Atomic Workers International Union petition alleges that Virginia's enforcement of safety and health standards is not as effective as Federal OSHA in that a State court denied the petitioner party status as the authorized employee representative for affected employees at a hearing of a contested case involving the Amoco Oil Co. Petroleum Products Marketing Terminal in Fairfax, Virginia.

Deficiencies associated with Virginia's judicial system form part of the basis for the petition by Virginia State AFL–CIO. This petition also alleges that Virginia has failed to provide for enforcement of safety and health standards which is "as effective as" Federal enforcement and that the State does not adequately prosecute violations, particularly willful ones, of occupational safety and health standards.

Additional allegations of deficiencies in the Virginia Plan concern the protection provided construction workers in the State, particularly in Fairfax County and Northern Virginia. The Fairfax County Board of Supervisors petition alleges that recent construction accidents resulting in death or serious injury possibly could have been avoided had the State's inspection program been effective. Specifically, the petition maintains that the three inspectors the State employs to inspect for construction safety and health violations in Northern Virginia are an insufficient number. The petition by the Building and Construction Trades Department of the AFL–CIO likewise alleges ineffective and insufficient enforcement in the construction industry generally.

Comments are requested on any or all of the above allegations, both as to their validity and whether, if true, they are cause for withdrawal of the Virginia Plan under Section 18 of the Act as set forth in 29 CFR 1955.3(a)(3).

*Availability of the Petitions and Public Submissions for Inspection and Copying*

A copy of the petitions and all public comments and request for a hearing may be inspected and copied during normal business hours at the following addresses:

Office of the Director, Federal Compliance and State Programs, Occupational Safety and Health Administration, Room N–3619, 200 Constitution Ave. NW., Washington, D.C. 20210.

Office of the Regional Administrator, U.S. Department of Labor, OSHA, Gateway Building, Suite 2100, 3535 Market Street, Philadelphia, Pa. 19104.

Office of the Area Director, U.S. Department of Labor, OSHA, Federal Office Building, (P.O. Box 10186), Room 6226, 400 North 8th Street, Richmond, Va. 23240.

If it is determined that substantial objections which warrant public discussion have been filed, an informal hearing on one or more of the petitions may be held. All relevant comments, arguments, and requests submitted in accordance with this notice will be considered, and a decision to grant or deny the petitions will be issued.

(Sec. 18, Pub. L. 91–596, 84 Stat. 1608 (29 U.S.C. 667))

Signed at Washington, D.C. this 26th day of September 1980.

**Eula Bingham,**

*Assistant Secretary of Labor.*

[FR Doc. 80–30863 Filed 10–2–80; 8:45 am]

**BILLING CODE 4510–26–M**

## DEPARTMENT OF THE INTERIOR

### Office of Surface Mining Reclamation and Enforcement

### 30 CFR Parts 884 and 931

### Abandoned Mine Lands Reclamation Program

**AGENCY:** Office of Surface Mining Reclamation and Enforcement (OSM), U.S. Department of the Interior, Washington, D.C. 20240.

**ACTION:** Notice of intent and proposed rule: receipt of the abandoned mine lands reclamation plan submission from the State of New Mexico.

**SUMMARY:** On September 29, 1980, the State of New Mexico submitted to OSM its proposed abandoned mine land reclamation plan under the Surface

Mining Control and Reclamation Act of 1977 (SMCRA). OSM is seeking public comment on the adequacy of the State plan.

**DATES:** Written comments on the plan must be received on or before 4:30 p.m., November 3, 1980. Written comments on whether OSM should hold a public hearing on the plan must be received by 4:30 p.m., October 20, 1980. A public hearing will be held on November 3, 1980 from 1:00 p.m. to 4:00 p.m. and 7:00 p.m. to 9:00 p.m. or until all discussions have been completed. The hearing may be cancelled, as discused under Supplementary Information, below.

**ADDRESS:** The public hearing, if held, will be at the New Mexico Department of Energy and Minerals, Menual Street, NE, Albuquerque, New Mexico. the hearing may be cancelled, as discussed under Supplementary Information, below. Copies of the full text of the proposed New Mexico plan are available for review during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Region V, 1020 15th Street, Denver, Colorado 80202

New Mexico Department of Energy and Minerals, Mining and Minerals Division, Menual Street, N.E., New Mexico 87101

Written comments should be sent to: Donald A. Crane, Regional Director, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202.

The Administrative Record will be available for public review at the OSM Region V office above, on Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding holidays.

**FOR FURTHER INFORMATION CONTACT:** Hugh B. Montgomery, Assistant Regional Director, AML, Office of Surface Mining, Brooks Tower, 1020 15th Street, Denver, Colorado 80202, Telephone (303) 837-5918.

**SUPPLEMENTARY INFORMATION:** Title IV of the Surface Mining Control and Reclamation Act of 1977 (SMCRA), Public Law 95-87, 30 U.S.C. 1201 et seq., establishes an abandoned mine land program for the purposes of reclaiming and restoring land and water resources adversely affected by past mining. This program is funded by a reclamation fee imposed upon the production of coal. Lands and water elibible for reclamation are those that were mined or affected by mining and abandoned or left in an inadequate reclamation status prior to August 3, 1977 and for which there is no continuing reclamation responsibility under State or Federal law.

Title IV provides that if the Secretary determines that a State has developed and submitted a program for reclamation of abandoned mines and has the ability and necessary State leigslation to implement the provisions of Title IV, the Secretary may approve the State program and grant to the State exclusive responsibility and authority to implement the provisions of the approved program.

On September 29, 1980, OSM received a proposed abandoned mine reclamation plan from the State of New Mexico. The purpose of this submission is to demonstrate both the intent and capability to assume responsibility for administering and conducting the provisions of SMCRA and OSM's Abandoned Mine Lands (AML) Reclamation Program (30 CFR Chapter 7, Subchapter R) as published in the **Federal Register** (FR) on October 25, 1978, 44 FR 49932-49952.

This notice describes the nature of the proposed program and sets forth information concerning public participation in the Director's determination of whether or not the submitted plan may be approved. The public participation requirements for the consideration of a State AML Reclamation Plan are found in 30 CFR.

Sections 884.13 and 884.14 (44 FR 49948). Additional information may be found under corresponding sections of the preamble to OSM's AML Reclamation Program Final Rules (44 FR 49932-49940).

The receipt of the New Mexico Reclamation plan submission is the first step in the process which will result in the establishment of a comprehensive program for the reclamation of abandoned mine lands in New Mexico.

By submitting a proposed plan, New Mexico has indicated that it wishes to be primarily responsible for this program. If the submission as hereafter modified, is approved by the Director of OSM, the State will have primary responsbility for the reclamation of abandoned mine lands in New Mexico. If the program is disapproved and the State does not choose to revise the plan, a Federal AML program will be implemented and OSM will have primary responsibility for these activities.

All written comments must be mailed or hand carried to the Regional Director's Office above or may be hand carried to the public hearing, if a public hearing is found to be necesssary and submitted as exhibits to the proceedings.

If the Regional Director finds that the State has given the public adequate notice and opportunity to comment in public hearings, and that the record of such hearing does not reflect major unresolved controversies and there are not a significant number of requests during the 15-day period to comment on the need for a hearing, the hearing will be cancelled by a notice published in the **Federal Register** cancelling the scheduled hearing.

The comment period will close at the conclusion of the public hearing, if any, or at 9:00 p.m. on November 3, 1980, whichever is later. Comments received after that time will not be considered. Representatives of the Regional Director's Office will be available to meet between 1:00 p.m. and 4:00 p.m. at the request of members of the public to receive their advice and recommendations concerning the proposed State AML reclamation program.

Persons wishing to meet with representatives of the Regional Director's Office during this time period may place such request with Sylvia M. Sullivan, Public Information Officer, telephone 303/837-4731 at the Regional Director's Office above.

Meetings may be scheduled between 9 a.m. and noon and 1 p.m. and 4 p.m. Monday through Friday excluding holidays at the Regional Director's Office.

The Department intends to continue to discuss the State's plan with representatives of the State throughout the review process. All contacts between Departmental personnel and representatives of the State will be conducted in accordance with OSM's guidelines on contacts with States published September 19, 1979 at 44 FR 54444.

No Environmental Impact Statement is being prepared in connection with the process leading to the approval or disapproval of the proposed program. The approval of State AML reclamation plans does not have significant environmental impact, but is only a procedural change in terms of the governmental entity that will be performing the work.

The Director has determined that this is not a significant rule within the meaning of 43 CFR Part 14 and no regulatory analysis is being prepared on the Director's decision relating to the New Mexico Reclamation Plan for Abandoned Mine Lands.

The New Mexico Reclamation Plan for Abandoned Mine Lands can be approved if:

1. The Director finds that the public has been given adequate notice and opportunity to comment, and the record does not reflect major unresolved controversies.

2. Views of other Federal agencies have been solicited and considered.

3. The State has the legal authority, policies and administrative structure to carry out the plan.

4. The plan meets all the requirements of the OSM, AML Reclamation Program Provisions.

5. The State has an approved Regulatory Program, and

6. It is determined that the plan is in compliance with all applicable State and Federal laws and regulations.

The following constitutes a summary of the contents of the New Mexico State Reclamation Plan submission:

The New Mexico Energy and Minerals Department, Mining and Minerals Department had been designated by the Governor of the State of New Mexico to implement and enforce the Abandoned Mine Lands Program in accordance with SMCRA (Pub. L. 95–87). The Energy and Minerals Department has developed State regulations to carry out State mandate. Contents of the State Plan submission include:

(a) Designation of authorized State Agency to administer the program.

(b) State's Chief Legal Officer opinion of designated Agency to operate the program.

(c) Description of the policies and procedures to be followed in conducting the program including:

(1) Goals and objectives

(2) Project ranking and selection procedures

(3) Coordination with other reclamation programs

(4) Land acquisition, management and disposal

(5) Reclamation on private land

(6) Rights of Entry

(7) Public participation in the program

(d) Description of the Administrative and Management structure to be used in the program including:

(1) Description of the organization of the designated agency and its relationship to other organizations that will participate in the program.

(2) Personnel staffing policies.

(3) Purchasing and procurement systems and policies.

(4) Description of the accounting system including specific procedures for operation of the reclamation fund.

(e) Description of the public's participation in preparation of the plan.

(f) A general description of activities to be conducted under the reclamation plan including:

(1) Known or suspected eligible lands and water requiring reclamation, including a map.

(2) General description of the problems identified and how the plan proposes to deal with them.

(3) General description of how the lands to be reclaimed and proposed reclamation relate to the surrounding lands and land uses.

(4) A table summarizing the quantities of land and water affected and an estimate of the quantities to be reclaimed during each year covered by the plan.

(5) General description of the social, economic, and environmental conditions in the different geographic areas where reclamation is planned, including:

(i) The economic base.

(ii) Sociologic and demographic characteristics.

(iii) Significant aesthetic, historic or cultural, and recreational values.

(iv) Hydrology including water quality and quantity problems associated with past mining.

(v) Flora and fauna including endangered or threatened species and their habitat.

(vi) Underlying or adjacent coal beds and other minerals and projected methods of extraction.

(vii) Anticipated benefits from reclamation.

Dated: September 30, 1980.

**Paul L. Reeves,**

*Acting Director.*

[FR Doc. 80-30821 Filed 10-2-80; 8:45 am]

BILLING CODE 4310-05-M

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[FRL 1624-6]

### Illinois State Implementation Plan; Extension of Comment Period

**AGENCY:** U.S. Environmental Protection Agency.

**ACTION:** Proposed rulemaking, notice of extension of comment period.

**SUMMARY:** The U.S. EPA is giving notice that the comment period for the notice of proposed rulemaking on the Illinois State Implementation Plan (SIP) revision to control particulate emissions from iron and steel process sources in the State of Indiana published July 31, 1981, (45 FR 50825) has been extended from September 2, 1980 to October 31, 1980.

**DATE:** Comments are now due on or before October 31, 1980.

**FOR FURTHER INFORMATION CONTACT:** Docket Clerk, Air Enforcement Branch, Enforcement Division, U.S. Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353–2082.

**SUPPLEMENTARY INFORMATION:** This notice extends the period for submitting comments on the notice published July 31, 1980 (45 FR 50825) proposing rulemaking on revisions to Illinois' SIP. These revisions pertain to the control of particulate emissions from iron and steel process sources in the State of Illinois.

United States Steel Corporation and National Steel Corporation, by their attorneys, on August 21, 1980, requested a 60-day extension of time for filing their comments regarding U.S. EPA's proposed action on the revisions. In addition, Citizens for a Better Environment, on August 25, 1980, requested a 45-day extension of time for filing their comments.

U.S. EPA has decided that the extension of the public comment period is appropriate and the comment period is hereby extended to October 31, 1980.

Dated: September 19, 1980.

**John McGuire,**

*Regional Administrator.*

[FR Doc. 80-30825 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

### 40 CFR Part 52

[FRL 1624-1]

### Revision of the State of Maryland State Implementation Plan

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** The State of Maryland has submitted a proposed state implementation plan revision which is intended to amend the visible emission requirements during startup, cleaning or modification to operations; delete definitions pertaining to plans for compliance; delete extraneous references and standards for dustfall; and amend the permit section of Maryland's regulations. The Regional Administrator, Region III, proposes to approve these revisions.

**DATE:** Comments must be received on or before November 3, 1980.

**ADDRESSES:** Copies of the proposed SIP revision and support documents are available for public inspection during normal working hours at the following offices:

U.S. Environmental Protection Agency, Air Programs Branch, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106. Attn: Patricia Sheridan.

Maryland Department of Health, and Mental Hygiene, Environmental Health Administration, 201 West Preston Street, Baltimore, MD 21201.

Public Information Reference Unit, Room 2922—EPA Library, U.S. Environmental Protection Agency, 401 "M" Street, S.W., Washington, D.C. 20460.

All comments on the proposed revision submitted within 30 days of publication of this notice will be considered and should be directed to: Mr. James E. Sydnor, Air Programs Branch (3AH10), Air, Toxics & Hazardous Materials Division, U.S. EPA, Region III, Curtis Building, 6th & Walnut Streets, Philadelphia, PA 19106. Attn: AH020MD.

**FOR FURTHER INFORMATION CONTACT:** Mr. Joseph Paparella, U.S. EPA, Region III, 6th & Walnut Streets, Curtis Building, Philadelphia, PA 19106, Phone: (215) 597–8184.

**SUPPLEMENTARY INFORMATION:** On September 26, 1979, the State of Maryland submitted to the Regional Administrator of EPA Region III, a revision to the Maryland State Implementation Plan (SIP). EPA has evaluated the proposed changes in the Maryland SIP and summarizes the results of the evaluation below.

The proposed change in regulation 10.18.04.02B(1) and 10.18.05.02B(1) has been reviewed by EPA. The method used in making visible emission observations was changed from 4 minutes in any 60 minute period to 6 minutes in any 60 minute period. Since the amendment results in a regulation which is consistent with EPA method 9 (40 CFR Part 60, APP–A), it represents an enforceable standard and EPA proposes to approve the change in the Maryland SIP.

The amendment to 10.18.01.01 and 10.18.01.04 removes terms no longer referred to or used in the State of Maryland regulation. The definition of particulate matter was changed to read suspended particulate matter and dustfall has been eliminated as a standard measurement since there are no Federal Ambient Air Quality Standards associated with dustfall. EPA proposes to remove the extraneous portions of the Maryland SIP.

Numerous amendments to regulation 10.18.01.11 (Permits) were submitted by the State of Maryland as revisions to the SIP. The specific changes are:

*.11G. Installations Not Required To Obtain Permits To Construct*

(9)[c) Kilns used for firing ceramic ware, heated exclusively by natural gas, liquified petroleum gas, electricity, or any combination of these.

(9)(g) Photographic process equipment used to reproduce an image upon sensitized material through the use of radiant energy.

*.11H. Installations Required To Obtain a Permit To Operate*

(1) General and by-product waste incinerators of 2,000 lbs/hr (907 kilograms/hour) or more rated capacity, crematoriums, and pathological and medical waste incinerators.

(8) Metal reclamation furnaces;

(14) Wood digesters;

(15) Sulfuric acid plants;

(26) Chemical reclamation process equipment;

(27) Inorganic pigment chemical process equipment greater than 1 ton (907 kilograms) per hour rated capacity;

(28) Automatic organic material metal coating and decorating lines with integral drying ovens;

(29) Web printing press lines with integral drying ovens;

(30) Grain elevators and terminals of 10,000 bushels/hour or more grain leg capacity;

(31) Frit smelters;

(32) Portland cement clinker coolers;

(33) Benzene storage tanks greater than 500 gallons (1.9 cubic meters) capacity;

(34) Benzene truck loading racks;

(35) Galvanizing operations using fluxes and prefluxes;

(36) Coal tar or petroleum pitch impregnating operations;

(37) Gypsum calcining kettles;

(38) Pulverized material separators 1 ton (907 kilograms)/hour or greater capacity;

(39) Any other installation or source which the Department determines has the potential to have significant impact on air quality.

The State of Maryland revised section .11J. from:

.11J. *Action on Application for Permits.* The Department shall acknowledge the receipt of an application for a permit to construct or operate within one week. Within 60 days following the receipt of this application, the Department shall either issue or deny a permit, or notify the applicant that additional information is required. Issuance of a permit does not imply approval by any other governmental agency.

To:

*.11J. Action on an Application for a Permit*

(1) For the purposes of J, "100-ton source" means a source which, after complying with all other applicable provisions of these regulations, is predicted to discharge to the atmosphere 100 tons/year (91,000 kg) or more of any pollutant except for these installations subject to the provisions of Article 78, 54(A) and (B), Annotated Code of Maryland.

(2) *Exemptions.* For the purposes of J, 100-ton sources and NSPS sources do not include those installations subject to the provisions of Article 78, 54 (A) and (B), Annotated Code of Maryland.

(3) *Permit to Construct New Source Performance Standard Sources and 100-ton (91,000 kg) Sources.*

(a) Within 10 working days, the Department will acknowledge the receipt of an application for a permit to construct.

(b) Within 60 days after the receipt of a completed application, the Department will:

(i) Make a determination to proceed with the application, deny the issuance of the permit, or notify the applicant that additional information is required;

(ii) Upon a determination to proceed with the application, make available for public inspection in at least one location in the region in which the proposed installation is to be constructed a copy of all materials submitted by the applicant and a copy or summary of other materials considered by the Department.

(c) *Advertisement After Determination to Proceed.*

(i) Within 10 days after notification by the Department of a determination to proceed with the application, the applicant shall notify the public, by prominent advertisement in at least one newspaper of general circulation in the region affected, of the opportunity to comment on the application.

(ii) The advertisement shall be made at the applicant's expense and in a format approved by the Department and shall include a brief summary of the nature of the proposed facility; the location or a brief description of the materials required by J(3)(b)(ii) above, to be available for public inspection; the location where copies of the comments received by the Department will also be available for public inspection; a statement that the public has 30 days to comment after the advertisement publication data; and the address to which the comments may be sent.

(d) The applicant shall file a copy of the public notice and a certification of publication with the Department.

(e) The applicant shall have 5 working days to respond to any comments received by the Department. Within 10 working days after the end of the public comment period, the Department will make a final decision on the application.

(4) *Permit to Construct Applications for Installations Not Listed Above and All Permits to Operate Applications.* The Department will acknowledge the

receipt of an application for a permit to construct or operate within 10 working days. Within 60 days following the receipt of the application, the Department either will issue or deny the permit, or notify the applicant that additional information is required.

(5) *Request for Additional Information.* If additional information is required, the date of receipt of the application for the purpose of J is the date on which all required information is received by the Department. Upon receipt of the information, the Department will proceed as provided in J(3) or J(4), above.

(6) *Request for Action.* If the applicant makes a written request for final action on any application, the Department will issue or deny the permit within 10 working days. The issuance or denial will be based on the information received by the Department as of the date of the request.

*.11K. Denial of Application*

Whenever it appears to the Department that the operation or construction of an installation for which a permit is sought will result in emissions in violation of any of these regulations or contravention of applicable ambient air quality standards or, in the case of a permit to construct, the installation does not incorporate all reasonably available advances in the technology of air pollution control for the kind and amount of emissions by the applicant's installation, an order shall be entered denying the permit and setting forth the reasons. The Department may not accept a further application unless the applicant has complied with the objections specified by the Department as its reasons for denial of the permit.

These changes, which clarify and expand the permit regulations to be consistent with the New Source Permit requirements (40 CFR Part 51), are approved as revisions.

The State of Maryland has certified that public hearings were held on September 21, 1977 and July 11, 1978 in accordance with the requirements of 40 CFR Part 51.

The public is invited to submit to the addresses stated above comments on whether the above listed modifications should be approved as revisions to the State of Maryland SIP.

The Administrator's decision to approve or disapprove this proposed SIP revision will be further based on a final determination as to whether it meets the requirements of Section 110(a)(2) of the Clean Air Act and 40 CFR 51, Requirements for Preparation, Adoption, and Submittal of Implementation Plans.

Under Executive Order 12044, EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized."

I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

(42 U.S.C. 7401–642)

Dated: September 22, 1980.

**Jack S. Schramm,**

*Regional Administrator.*

[FR Doc. 80-30843 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Parts 52 and 81**

**[FRL 1625-1]**

## Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes: State of Missouri

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** Section 107 (d) of the Clean Air Act, as amended, requires the states and EPA to determine the status of all areas in regard to the national ambient air quality standards. Designation of areas as either attainment, nonattainment or unclassified is shown at 40 CFR 81.326 for the State of Missouri. On May 28, 1980, the Missouri Air Conservation Commission adopted recommendations for redesignating certain areas of the state from nonattainment to attainment. EPA is proposing to approve these recommendations.

**DATES:** Comments must be received by December 2, 1980.

**ADDRESS:** Comments should be sent to Mr. Wayne G. Leidwanger, Environmental Protection Agency, Air Support Branch, 324 East 11th Street, Kansas City, Missouri 64106. Copies of the state submission and the EPA prepared plan evaluation document are available at the above address and at the following locations:

Public Information Reference Unit, Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460.

Missouri Department of Natural Resources, 2010 Missouri Boulevard, Jefferson City, Missouri 65102.

St. Louis County Department of Health and Medical Care, Division of Environmental Health Care Service, Air Pollution Control Branch, 801 South Brentwood Boulevard, Clayton, Missouri 63105.

**FOR FURTHER INFORMATION CONTACT:** Wayne G. Leidwanger at 816–374–3791 (FTS 758–3791).

**SUPPLEMENTARY INFORMATION:**

### A. General Discussion

In response to section 107(d) of the Clean Air Act, as amended, the State of Missouri and EPA have designated all areas of the state as attaining the national ambient air quality standards (NAAQS), not attaining the standards, or having insufficient date to make a determination. An attainment area is one in which measured air quality does not exceed the NAAQS. A nonattainment area is one in which the air quality is worse than the standards. An unclassified area is one for which there is insufficient data to determine whether the area is attainment or nonattainment. At 40 CFR Part 81, Subpart C, the areas of the state which are nonattainment for one or more pollutants are identified.

On May 28, 1980, the Missouri Air Conservation Commission (MACC) adopted recommendations for redesignating certain areas of the state from nonattainment to attainment. In order for EPA to redesignate an area from nonattainment to attainment, there must be at least eight consecutive quarters of valid air quality data showing that the air quality does not exceed the standard. (If there is an applicable emissions control strategy which demonstrates that legally enforceable emission reductions have contributed to improved air quality, less eight consecutive quarters of air quality data may be used for redesignating an area from nonattainment to attainment).

The recommendations submitted by the MACC include the redesignation of certain areas in the St. Louis region from nonattainment to attainment for the secondary standards for total suspended particulate (TSP) matter and sulfur dioxide ($SO_2$). On April 9, 1980, EPA conditionally approved the Missouri revisions to the State Implementation Plan (SIP) submitted to comply with Part D of the Clean Air Act Amendments of 1977 (45 FR 24140). In that action EPA approved the state's request for an extension until July 1, 1980, to submit plans to attain the secondary standards for the TSP and $SO_2$. Approval of the extension was based upon the state's determination at that time that reasonably available control measures applied to stationary sources would not be sufficient to attain the secondary standards. Nevertheless, recent

monitored air quality data show that the standards have been attained.

B. Redesignation Requests

The recommendations adopted by the MACC were submitted to EPA on July 21, 1980. These recommendations and the proposed actions by EPA are as follows:

1. *Chambers and St. Ann areas (St. Louis County).* Both the Chambers and St. Ann areas are located in north St. Louis County. Both are designated nonattainment for the secondary TSP standard and an extension until July 1, 1980 for submittal of a SIP revision has been approved. The MACC now has recommended that these areas be redesignated attainment. The last eight quarters of ambient air quality data do not contain any violations of the standard.

*Proposed Action:* EPA proposes to approve the MACC recommendations that the Chambers and St. Ann areas be redesignated attainment for TSP.

2. *St. Louis "Hotspot."* The St. Louis "Hotspot" is designated nonattainment for the primary and secondary standards for $SO_2$. The State has submitted and EPA has approved a plan for attainment of the primary standards and an extension until July 1, 1980 for submittal of a plan to attain the secondary standard. The MACC has found that there have been no violations within the past eight consecutive quarters and recommends an attainment designation.

*Proposed Action:* EPA proposes to approve the MACC recommendations that the St. Louis "Hotspot" be redesignated attainment for $SO_2$.

The public is invited to submit comments on whether the proposed redesignation of areas should be approved.

Under Executive Order 12044, EPA is required to judge whether a regulations is "significant" and, therefore, subject to the procedural requirements of the Order, or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized."

I have reviewed this regulation and determined that it is a specialized regulation not subject to the procedural requirements of Executive Order 12044.

This notice of proposed rulemaking is issued under authority of Section 107 of the Clean Air Act as amended.

Dated: September 22, 1980.

Kathleen Q. Camin,

*Regional Administrator.*

[FR Doc. 80-30828 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

40 CFR Part 81

[FRL 1625-2]

## Designation of Areas for Air Quality Planning Purposes; Attainment Status Designations—California and Nevada

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rulemaking.

**SUMMARY:** This notice proposes to revise the attainment status designation of the Lake Tahoe Basin, in California and Nevada, for ozone ($O_3$). The Lake Tahoe Basin is now designated nonattainment for $O_3$. The EPA now proposes to redesignate the Lake Tahoe Basin to attainment for $O_3$.

The EPA invites public comments on the proposed redesignation. If the Lake Tahoe Basin is redesignated attainment, the requirements of Title I, Part D, of the Clean Air Act (CAA), as amended, would no longer apply to the Lake Tahoe Basin for $O_3$.

**DATE:** Comments will be considered if received on or before November 3, 1980.

**ADDRESSES:** Comments should be directed to: David Howekamp, Acting Chief, Air Technical Branch (A-4), Air & Hazardous Materials Division, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105.

Information pertinent to the proposed redesignation is available for public inspection during normal business hours at the EPA Region IX Office at the address above, and at the following locations:

Public Information Reference Unit, Room 2404 (EPA Library), 401 "M" Street, S.W., Washington, D.C. 20460.
California Air Resources Board, 1102 "Q" Street, Sacramento, CA 95812.
Nevada Department of Conservation & Natural Resources, 201 South Fall Street, Carson City, NV 89710.

**FOR FURTHER INFORMATION CONTACT:** Wallace Woo, Acting Chief, Technical Analysis Section (A-4-3), Air Technical Branch, Air & Hazardous Materials Division, EPA Region IX, 215 Fremont Street, San Francisco, CA 94105. Attn: Morris Goldberg, (415) 556-8065.

**SUPPLEMENTARY INFORMATION:**

### Background

On March 3, 1978, under section 107(d)(2) of the CAA, as amended, the EPA promulgated attainment status designations for all states. The California and Nevada portions of the Lake Tahoe Basin were designated nonattainment for photochemical oxidants (Ox) at 43 FR 8973 and 9012.

On February 8, 1979 (44 FR 8202), the EPA revised the Ox standard of 0.08 parts per million (ppm) to an $O_3$ standard of 0.12 ppm. In addition, the EPA established a statistical method of determining whether the standard has been exceeded. The national standards for $O_3$ are published as a revision to 40 CFR 50.9 and the statistical method as the new Appendix H, 40 CFR Part 50.

### Proposed Redesignation

On February 26, 1980, the Administrator of the Nevada State Department of Conservation and Natural Resources, Division of Environmental Protection, notified the EPA that the Nevada portion of the Lake Tahoe Basin was currently attaining the revised Federal $O_3$ standard. The State requested that the area be redesignated to attainment for $O_3$.

On July 23, 1980, the Executive Officer of the California Air Resources Board notified the EPA that the California portion of the Lake Tahoe Basin was currently attaining the revised Federal $O_3$ standard. The State requested that the area be redesignated to attainment for $O_3$. The State submitted data from both the California and Nevada portions of the Basin to show that the standard had not been exceeded. The data submitted showed that all $O_3$ concentrations monitored in the Basin (1975 through 1979) were less than 0.12 ppm.

Under section 107(d)(5) of the CAA, as amended, a state may revise its designations of attainment status and submit them to the EPA for promulgation.

### EPA Policy Regarding Ozone

The demonstration of attainment/nonattainment for the ozone standard, as revised on February 8, 1979, must be based upon the calculated number of expected exceedances of the National Ambient Air Quality Standard (NAAQS) at each monitoring station. A minimum of the ozone season's data may be used only if more data are not available. The average number of expected exceedances per year at each monitoring station must not exceed 1.0 if the area is to be designated as attainment. Specific provisions are also included at 40 CFR Part 50, Appendix H, for determining whether compliance with the NAAQS can be assumed for days with insufficient data.

### Proposed Action by the EPA

Because of redesignation of the Lake Tahoe Basin requested by California and Nevada is consistent with EPA policies, as stated above, the EPA proposes to approve the redesignation.

If the Lake Tahoe Basin is redesignated attainment for $O_3$ as

proposed, the States would no longer be subject to the requirements of Part D of the CAA, as amended, for $O_3$ in the Basin. However, the Lake Tahoe Basin remains subject to the requirements of Part D for $O_3$ until the EPA approves in a final rulemaking action the redesignation of the Basin as attainment for $O_3$.

The Environmental Protection Agency has determined that this document is a "specialized" action and does not require preparation of a regulatory analysis under Executive Order 12044.

(Secs. 107(d) and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7407(d) and 7601(a)))

Dated: September 24, 1980.

**Sheila M. Prindiville,**

*Acting Regional Administrator.*

[FR Doc. 80-30827 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Part 81**

**[FRL 1624-3]**

## Air Quality; Section 107—Proposed Designation of Attainment Status—Areas East of the Mississippi River—Ozone

**AGENCY:** Environmental Protection Agency.

**ACTION:** Extension of public comment period.

**SUMMARY:** On August 22, at 45 FR 56104, EPA published a notice of proposed rulemaking to establish attainment/unclassifiable designations for all areas east of the Mississippi River which EPA originally designated as attainment/unclassifiable on March 3, 1978, and which EPA had not designated as nonattainment in any subsequent rulemaking. The public comment period for this proposal was to end on September 22, 1980. This action extends the comment period for thirty days, or until October 22, 1980, in response to a request from the public for additional time to ensure development of complete comments.

**DATE:** Comments must be received or postmarked no later than October 22, 1980.

**ADDRESSES:** Comments of a general nature should be addressed to: Lanny M. Deal, Control Programs Division, USEPA (MD-15), Research Triangle Park, North Carolina 27711, (919) 541-5305 or FTS 629-5365.

Comments relative to a specific state or to specific designations should be submitted directly to appropriate EPA Regional Office contacts as listed below:

Region I: Harley Laing, (Acting) Chief, Air Branch, EPA Region I, JFK Federal Building, Boston, Massachusetts 02203, (617) 223-5186 (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont).

Region II: William Baker, Chief, Air Branch, EPA Region II, 26 Federal Plaza, New York, N.Y. 10007, (212) 264-2517 (New Jersey, New York, Puerto Rico, Virgin Islands).

Region III: Robert Blanco, (Acting) Chief, Air Branch, EPA Region III, Curtis Building, 6th and Walnut Streets, Philadelphia, Pennsylvania 19106, (215) 597-8131 (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia).

Region IV: Winston Smith, Chief, Air Branch, EPA Region IV, 345 Courtland Street, N.E., Atlanta, Georgia 30308, (404) 881-3454 (Alabama, Georgia, Florida, Kentucky, Mississippi, North Carolina, Tennessee, South Carolina).

Region V: Steven Rothblatt, Chief, Air Branch, EPA Region V, 230 So. Dearborn Street, Chicago, Illinois 60604 (312) 353-2212 (Indiana, Illinois, Michigan, Minnesota, Ohio, Wisconsin).

**FOR FURTHER INFORMATION CONTACT:** Requests for information described above on the notice of proposed rulemaking should be directed to Lanny M. Deal at the address given above, (919) 541-5365 or FTS 629-5365.

Dated: September 26, 1980.

**Edward J. Twerk,**

*Acting Assistant Administrator for Air, Noise and Radiation.*

[FR Doc. 80-30855 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

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**40 CFR Part 123**

**[SW-4-FRL 1626-8]**

## Mississippi's Application for Interim Authorization, Phase I, Hazardous Waste Management Program

**AGENCY:** Environmental Protection Agency, Region IV.

**ACTION:** Notice of public hearing and public comment period.

**SUMMARY:** Regulations to protect human health and the environment from the improper management of hazardous waste were published in the Federal Register on May 19, 1980 (45 FR 33063). The hazardous waste management program regulations include provisions for authorization of State programs to operate in lieu of the Federal program and for a transitional stage in which States can be granted interim program authorization. This document announces the availability for public review of the Mississippi application for Phase I interim authorization, invites public comment, and gives notice of a public hearing to be held on the application.

**DATE:** Comments on the Mississippi interim authorization application must be received by November 11, 1980.

**Public Hearing:** EPA will conduct a public hearing on the Mississippi interim authorization application at 7:00 p.m. on Wednesday November 5, 1980. The State of Mississippi will participate in the public hearing held by EPA on this subject.

**ADDRESSES:** Copies of the Mississippi interim authorization application are available at the following addresses for inspection and copying by the public:

Division of Solid Waste Management and Vector Control, P.O. Box 1700, 880 Lakeland, Jackson, Mississippi 39025, Telephone: 601/982-6317.

Environmental Protection Agency, Regional Office Library, Room 121, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone: 404/881-4216.

Written comments should be sent to: James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone: 404/881-3016.

The public hearing will be held at: State Board of Health Auditorium, Underwood Building, 2423 North State Street, Jackson, Mississippi.

**FOR FURTHER INFORMATION CONTACT:** James H. Scarbrough, Chief, Residuals Management Branch, Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365, Telephone: 404/881-3016.

**SUPPLEMENTARY INFORMATION:** In the May 19, 1980 **Federal Register** (45 FR 33063) the Environmental Protection Agency promulgated regulations, pursuant to The Solid Waste Disposal Act as amended by the Resource Conservation and Recovery Act of 1976, as amended, to protect human health and the environment from the improper managment of hazardous waste. These regulations included provisions under which EPA can authorize qualified State hazardous waste management programs to operate in lieu of the Federal program. The regulations provide for a transitional stage in which qualified State programs can be granted interim authorization. The interim authorization program is being implemented in two phases corresponding to the two stages in which the underlying Federal program will take effect. In order to qualify for issuance of interim authorization, the State hazardous waste program must:

1. Have been in existence prior to August 17, 1980, and

2. Be substantially equivalent to the Federal program.

A full description of the requirements and procedures for State interim authorization is included in 40 CFR Part 123 Subpart F (45 FR 33479).

As noted in the May 19, 1980, Federal Register copies of complete State submittals for Phase I interim authorization are to be made available for public inspection and comment. In addition, a public hearing is to be held on the submittal.

Dated: September 30, 1980.

**Rebecca W. Hanmer,**

*Regional Administrator.*

[FR Doc. 80-30994 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-30-M

## 40 CFR Part 163

**[FRL 1624-4; OPP-00130]**

## FIFRA Scientific Advisory Panel Open Meeting

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule related notice.

**SUMMARY:** There will be a two-day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Scientific Advisory Panel to discuss Subpart N: Chemistry Requirements: Environmental Fate of the Guidelines for Registering Pesticides in the United States. The meeting will be open to the public.

**DATE:** Wednesday and Thursday, October 22–23, 1980, from 9:00 a.m. to 5:00 p.m. daily.

**ADDRESS:** The meeting will be held at the: Twin Bridges Marriott Hotel, 333 Jefferson Davis Highway, Arlington, VA 22202

**FOR FURTHER INFORMATION CONTACT:** H. Wade Fowler, Jr., Executive Secretary, FIFRA Scientific Advisory Panel (TS–766), Office of Pesticide Programs, Rm. 803, Crystal Mall, Building No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, 703–557–7560.

**SUPPLEMENTARY INFORMATION:** The agenda for this meeting is:

1. Formal review by the Panel on proposed rulemaking concerning Subpart N: Chemistry Requirements: Environmental Fate of the Guidelines for Registering Pesticides in the United States;

2. Completion of any unfinished business from previous Panel meetings; and

3. In addition, the agency may present status reports on other ongoing programs of the Office of Pesticide Programs.

Copies of draft documents concerning item 1 may be obtained by contacting: Dr. William Preston, Hazard Evaluation Division (TS–769), Rm. 800, Crystal Mall, Building No. 2, at the address given above, telephone: 703–557–1405.

Any member of the public wishing to attend or submit a paper should contact Dr. H. Wade Fowler, Jr., at the address or phone listed above to be sure that the meeting is still scheduled and to confirm the Panel's agenda. Interested persons are permitted to file written statements before or after the meeting, and may, upon advance notice to the Executive Secretary, present oral statements to the extent that time permits. All statements will be made part of the record and will be taken into consideration by the Panel in formulating comments or in deciding to waive comments. Persons desirous of making oral statements must notify the Executive Secretary and submit the required number of copies of a summary no later than October 15, 1980.

Individuals who wish to file written statements are advised to contact the Executive Secretary in a timely manner to be instructed on the format and the number of copies to submit to ensure appropriate consideration by the Panel.

The tentative date for the next Scientific Advisory Panel meeting is November 12, 13, and 14, 1980.

(Sec. 25(d), as amended, (92 Stat. 819; 7 U.S.C. 136); Sec. 10(a)(2), 86 Stat. 770 (5 U.S.C. App.))

Dated: September 26, 1980.

**Douglas D. Campt,**

*Acting Deputy Assistant Administrator for Pesticide Programs.*

[FR Doc. 80-30856 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

## 40 CFR Part 173

**[FRL 1536-2]**

## Procedures Governing the Rescission of State Primary Enforcement Responsibility for Pesticide Use Violations

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rule sets forth procedures governing proceedings to rescind a State's primary enforcement responsibility for pesticide use violations. This authority may be rescinded pursuant to section 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), if the Administrator determines that the State is not adequately discharging its use enforcement responsibilities.

**DATE:** Comments on the rule should be received on or before December 2, 1980.

**ADDRESS:** Comments should be directed to: Laura Campbell (EN–342), Pesticides and Toxic Substances, Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Laura Campbell, (202)–755–0970.

**SUPPLEMENTARY INFORMATION:** The 1978 amendments to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) require States to be accorded the primary responsibility for the enforcement of pesticide use violations within the State in certain situations. States can obtain primacy if they enter into a cooperative agreement with the Environmental Protection Agency (EPA) under section 23 of FIFRA or if their use enforcement programs are found by the Administrator of EPA to be adequate under section 26(a).

Section 27(b) of FIFRA authorizes EPA to rescind a State's primacy if the Administrator determines that the State is not adequately discharging its use enforcement responsibilities. Under section 27(b), whenever the Administrator makes such a determination he must send a notice to the State specifying the deficiencies in the State's use enforcement program. If after ninety days from receipt of a notice by a State the Administrator finds that the State has not corrected the deficiencies set forth in the notice, the Administrator may rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

The rule proposed today provides the procedures by which EPA intends to effectuate rescission where appropriate. A rescission proceeding is initiated by the issuance of a notice of intent to rescind. Before such a formal step is taken, however, the Administrator, as a matter of policy, will confer with the State and attempt to resolve the matter through informal negotiations.

The Administrator will issue a notice of intent to rescind if he determines, on the basis of information gathered by the Agency or submitted to EPA by other reliable sources, and after consultation with the appropriate Regional Administrator, that the State is not carrying out, or cannot carry out due to the lack of adequate legal authority, its use enforcement responsibility. (Further discussion of the criteria for making this determination will be contained in a policy statement which will soon be proposed for comment.) The notice of intent to rescind will list the deficiencies that the Administrator has found in the

State program. The notice will also detail the basis for each of the findings.

States can respond to the receipt of a notice of intent to rescind in one of serveral ways. First, a State can correct the deficiencies specified in the notice. Second, the State can present evidence to the Administrator at an informal conference which shows that the determinations made in the notice are unfounded. Third, the State and EPA can agree that the State will take the steps necessary to remedy the deficiencies in the State program according to an agreed-upon time schedule. This agreement would then be embodied in a written and signed document. Finally, the State, within 60 days of the issuance of the notice, could request a public hearing on the Administrator's determination to rescind its primary enforcement responsibility for pesticide use violations.

If the State corrects the dficiencies in its program, agrees to do so in a written settlement agreement, or convinces the Administrator that the findings made in the notice are not supported by the facts, the Administrator will issue an order withdrawing the notice of intent to rescind and terminating the proceeding. If sixty days elapse from the date the notice of intent was served upon the State without the Administrator issuing such an order, the notice of intent to rescind will be published in the **Federal Register.** The public may submit comments on the matters discussed in the notice of intent to rescind.

Upon request of the State within sixty (60) days of the issuance of the notice of intent to rescind, a hearing will be scheduled and the date for the hearing will be published along with the notice of intent to rescind. Parties, for purposes of the proceedings have been defined in the definitions sections as the State and the Agency's Office of Enforcement. However, at the hearing, representatives from the State, EPA, and the public will be able to present evidence relating to the adequacy of the State's pesticide use enforcement program. A presiding officer will preside over the hearing and upon its termination will make a recommended decision on the adequacy of the State's pesticide use enforcement program. The Presiding Officer has the option to recommend that the Administrator (1) find that the State has corrected, or agreed to correct, the deficiencies in its program, (2) find that the State has shown that the determinations made in the notice of intent to rescind were unfounded, or (3) rescind the State's primary enforcement responsibility for pesticide use violations in whole or in part.

The recommended decision of the Presiding Officer will become final 45 days after it is issued unless either of the parties appeal the initial decision to the Administrator or unless the Administrator elects to review the decision on his own initiative (*sua sponte*). After an appeal or *sua sponte* review, the Administrator will issue a final order which adopts, modifies, or sets aside the recommendations made in the Presiding Officer's decision.

The Agency believes that the procedures proposed today will encourage States and EPA to cooperate in resolving any problems in a State's use enforcement program.

**Note.**—Under Executive Order 12044 EPA is required to judge whether a regulation is "significant" and therefore subject to the procedural requirements of the Order or whether it may follow other specialized development procedures. EPA labels these other regulations "specialized". This regulation has been reviewed and determined to be a specialized regulation not subject to the procedural requirements of Executive Order 12044.

Accordingly, it is hereby proposed, under the authority of sections 25(a) and 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act to add to 40 CFR the new Part 173 set forth below.

Dated: September 25, 1980.

**Douglas M. Costle,**

*Administrator.*

## PART 173—PROCEDURES GOVERNING THE RESCISSION OF STATE PRIMARY ENFORCEMENT RESPONSIBILITY FOR PESTICIDE USE VIOLATIONS

Sec.

173.1 Applicability.
173.2 Definitions.
173.3 Initiation of rescission proceedings.
173.4 Informal conference and settlement.
173.5 Request for hearing.
173.6 Publication of the notice; scheduling the hearing.
173.7 Hearing and recommended decision.
173.8 Final order.
173.9 Judicial review.

**Authority:** Secs. 25(a) and 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136w and 136w–2).

### § 173.1 Applicability.

These procedures govern any proceeding to rescind a State's primary enforcement responsibility for pesticide use violations conducted under section 27(b) of the Federal Insecticide, Fungicide, and Rodenticide Act, as amended (FIFRA), 7 U.S.C. 136 *et seq.*

### § 173.2 Definitions.

For purposes of this Part: (a) "Administrator" means the Administrator of the United States Environmental Protection Agency or his delegate.

(b) "Notice of intent to rescind" means a notice to a State issued under § 173.3 which initiates a proceeding to rescind the State's primary enforcement responsibility for pesticide use violations.

(c) "State" means the agency or agencies primarily responsible for enforcing pesticide use laws or regulations within the State or jurisdiction undergoing rescission proceedings.

(d) "Party to the proceeding", shall mean the State or the Agency's Office of Enforcement.

(e) "Presiding Officer" means an attorney apointed by the Administrator to conduct the rescission proceeding. The Presiding Officer shall be an employee or respresentative of the Agency and shall not have had prior direct connection with the specific proceeding except in circumstances where subsequent hearings are in order.

### § 173.3 Initiation of rescission proceedings.

(a) Whenever the Administrator determines that a State having primary enforcement responsibility for pesticide use violations is not carrying out such responsibility, or cannot carry out such responsibility due to the lack of adequate legal authority, the Administrator shall notify the State in writing of his intent to rescind its primary enforcement responsibility, in whole or in part, by serving upon the State a notice of intent to rescind.

(b) The notice of intent to rescind shall:

(1) Specify those aspects of the State's pesticide use enforcement program determined to be inadequate;

(2) Specify the facts which underlie the findings contained in the rescission notice;

(3) Have attached thereto copies of any documents discoverable under the Federal Rules of Civil Procedure and the Freedom of Information Act which contain data relied upon by the Administrator in making his decision to issue the notice;

(4) Have attached thereto a copy of this Part; and

(5) Be sent to the State by certified mail, return receipt requested.

(c) The State may respond in writing to the findings specified in the notice of intent to rescind.

**§ 173.4 Informal conference and settlement.**

(a) After receipt of a notice of intent to rescind, the State may request that an informal conference be held between appropriate State and EPA officials to discuss the findings made in the notice of intent to rescind. The informal conference shall then be held in the State. If the Administrator finds, on the basis of information submitted by the State at the conference, that the deficiencies specified in the notice did not exist or were corrected by the State, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding.

(b) At any time after receipt of a notice of intent to rescind and before the issuance of a final order, the State and EPA may resolve the issues raised in the notice by agreement. Any settlement agreement shall be in writing and signed by the parties and shall:

(1) Detail the deficiencies found in the State program;

(2) Specify the steps the State has taken or will take to remedy the deficiencies; and

(3) Set forth a precise schedule for each remedial action yet to be initiated.

(c) If a written agreement is signed by the parties, the Administrator shall issue an order withdrawing the notice of intent to rescind and terminating the rescission proceeding. If the State does not comply with the terms of the settlement agreement, the Administrator may reissue the notice of intent to rescind.

**§ 173.5 Request for hearing.**

A State may request a hearing before a Presiding Officer not later than sixty (60) days after receipt of a notice of intent to rescind.

**§ 173.6 Publication of the notice; scheduling the hearing.**

(a) If the Administrator has not issued an order terminating the rescission proceeding within sixty (60) days after service of the notice of intent to rescind upon the State, the Administrator shall publish the notice of intent to rescind in the **Federal Register**. The Administrator may modify the original notice of intent to rescind before its publication by deleting those deficiencies listed in the original notice which have been corrected or which were shown not to have existed. The public may submit comments upon the matters specified in the published notice of intent to rescind within the time specified therein.

(b) Concurrently with the publication of the notice of intent to rescind, the Administrator shall schedule a hearing in the State if one has been requested by the State. The date, time, and location of the hearing shall be published in the **Federal Register** along with the notice of intent to rescind.

(c) If a hearing is requested and the Administrator has not issued an order terminating the rescission proceeding, the Administrator shall provide for a hearing as scheduled. Representatives of the State, EPA, and the public may present evidence at the hearing. The Administrator shall appoint a Presiding Officer who shall preside over the hearing and make a recommended decision regarding the adequacy of the State's pesticide use enforcement program. The Administrator, after consultation with the State, may prescribe additionl procedures governing the conduct of the hearing.

(d) If a termination order is issued or the hearing is rescheduled after the notice of intent to rescind is published in the **Federal Register**, such order or notice rescheduling the hearing shall also be published in the **Federal Register**.

**§ 173.7 Hearing and recommended decision.**

(a) The Presiding Officer shall:

(1) Conduct a fair and impartial hearing, without unnecessary delay;

(2) Ensure that the facts are fully elicited; and

(3) Consider all evidence, comment, and argument which is submitted by persons who will be affected by the outcome of the proceeding and which is not irrelevant, immaterial, unduly repetitious, or otherwise unreliable or of little probative value. The Presiding Officer may require any prospective witness to make available, in advance of the hearing, a brief summary of his or her testimony.

(b) If, following the close of the hearing, the Presiding Officer finds that the State has corrected, or has agreed in writing to correct, the deficiencies specified in the notice of intent to rescind or has shown that such deficiencies do not exist, the Presiding Officer shall issue a decision recommending that the notice of intent to rescind be withdrawn and that the rescission proceeding be terminated.

(c) If, following the close of the hearing, the Presiding Officer finds that the State has not corrected the deficiencies in its program, the Presiding Officer shall issue a decision recommending that the State's primary enforcement responsibility for pesticide use violations be rescinded in whole or in part.

(d) The recommended decision of the Presiding Officer shall become final Agency action forty-five (45) days after its service upon the parties and without further proceedings unless (1) an appeal to the Administrator is taken from it by a party to the proceeding, or (2) the Administrator elects, *sua sponte*, to review the recommended decision.

**§ 173.8 Final order.**

(a) If the State does not request a hearing within the sixty-day time period and the Administrator has not issued an order withdrawing the notice of intent to rescind, the Administrator shall issue a final order as soon as practicable after the time for public comment on the notice of intent to rescind has elapsed. The final order shall either withdraw the notice of intent to rescind and terminate the proceeding or rescind, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(b) If a hearing has been held and the Presiding Officer has made a recommended decision, then either Office of Enforcement or the State may appeal the recommended decision to the Administrator or the Administrator may elect to review the recommended decision on his own initiative.

(c) After an appeal or *sua sponte* review the Administrator shall issue a final order terminating the rescission proceeding or rescinding, in whole or in part, the State's primary enforcement responsibility for pesticide use violations.

(d) In no event may the Administrator issue his final decision sooner than ninety (90) days after service of the notice of intent to rescind on a State.

(e) Any final order, or a recommended decision which becomes a final order under § 173.7(c), shall be published in the **Federal Register**.

**§ 173.9 Judicial review.**

The State may appeal an order rescinding, in whole or in part, its primary enforcement responsibility for pesticide use violations to the appropriate Federal court pursuant to section 16 of FIFRA.

[FR Doc. 80-30918 Filed 10-2-80; 8:45 am]
BILLING CODE 6560-01-M

## NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

### 45 CFR 1176

### Employees Part-Time Career Employment

**AGENCY:** National Endowment for the Humanities.

**ACTION:** Proposed rule.

**SUMMARY:** The Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437) provides for the expansion of part-time employment opportunities in the Federal Service. The following proposed regulation of the National Endowment for the Humanities (NEH) sets forth the provisions of the law and the criteria and procedures for administering the program in the Endowment. This gives notice of the proposed regulation and asks the public for comment.

**DATES:** Comments will be considered if received on or before November 30, 1980.

**ADDRESS:** Send written comments to David C. Johnstone, Personnel Office, National Endowment for the Humanities, Room 410, 806 15th Street, NW., Washington, D.C. 20506.

**FOR FURTHER INFORMATION CONTACT:** David C. Johnstone, 202–724–0356.

**SUPPLEMENTARY INFORMATION:** The Federal Employees Part-Time Career Employment Act of 1978 (Pub. L. 95–437) provides for and encourages part-time employment of Federal employees. The Congress, in its deliberations, found that many individuals with great productive potential cannot meet the requirements of a standard workweek, but would consider employment if it became available on a part-time permanent basis. Singled out for such employment are handicapped individuals or others who require a reduced work-week, parents who would like to balance family responsibilities with the need for additional income, students who must finance their own education, and those desiring a gradual transition to retirement. Those desiring a gradual transition to retirement are cautioned to consider the impact of part-time employment on their high-three year average income.

Before the enactment of Pub. L. 95–437, part-time career employment applied to scheduled work of less than 40 hours per week. Effective April 8, 1979, Congress revised the requirements to permit part-time career employment for 16 to 32 hours per week and to allow an agency, in order to carry out its mission, to make exceptions from its part-time employment program and employ part-time workers less than 16 hours per week if necessary.

Employment in the program entitles employees to coverage under the Civil Service Retirement System, the Federal Employees Group Life Insurance and Federal Employees Health Benefits Programs.

Excepted from the law are positions at GS–16 (or equivalent) and above. This regulation is proposed under the authority of the Federal Employees Part-Time Career Employment Act of 1978, Public Law 95–437, 92 Stat. 1055, 5 U.S.C. 3401–3408.

**Joseph D. Duffey,**

*Chairman, National Endowment for the Humanities.*

Chapter XI, Title 45 of the Code of Federal Regulations is amended by adding Part 1176, Subchapter D, to read as follows:

Sec.

1176.1 General.
1176.2 Definitions.
1176.3 Criteria.
1176.4 Establishing and converting part-time positions.
1176.5 Annual plan.
1176.6 Review and evaluation.
1176.7 Publicizing vacancies.
1176.8 Exceptions.
1176.9–1176.99 [Reserved]

**Authority:** Federal Employees Part-Time Career Employment Act of 1978, Pub. L. 95–437, 92 Stat. 1055, 5 U.S.C. 3401–3408.

## Part-Time Career Employment

### § 1176.1 General.

(a) Purpose. Many individuals in society possess great productive potential which goes unrealized because they cannot meet the requirements of a standard workweek. Permanent part-time employment also provides benefits to other individuals in a variety of ways, such as providing older individuals with a gradual transition into retirement, providing employment opportunities to handicapped individuals or others who require a reduced workweek, providing parents with opportunities to balance family responsibilities with the need for added income, and assisting students who must finance their own education or vocational training. In view of this, the National Endowment for the Humanities will operate a part-time career employment program, consistent with its responsibilities and in accordance with Public Law 95–437, the Federal Employees' Part-Time Career Employment Act of 1978.

(b) Program Coordinator. The Personnel Officer is responsible for program operation and coordination.

### § 1176.2 Definitions.

(a) "Part-time employment" means employment of 16 to 32 hours a week under a schedule consisting of an equal or varied number of hours per day, whether in a position which would be part-time without regard to the Act or one established to allow job-sharing or comparable arrangements, but does not include employment on a temporary or intermittent basis.

(b) "Career employment" includes competitive and excepted service employees in tenure groups I and II.

### § 1176.3 Criteria.

Positions becoming vacant, unless excepted as provided by section 1176.8, will be reviewed to determine the feasibility of converting them to part-time. Among the criteria which may be used when conducting this review are:

(a) Mission requirements.

(b) Workload.

(c) Employment ceilings and budgetary considerations.

(d) Availability of qualified applicants willing to work part-time.

### § 1176.4 Establishing and converting part-time positions.

Position management and other internal reviews may indicate that positions may be either converted from full-time or initially established as part-time positions. Criteria listed in section 1176.3 may be used during these reviews. If a decision is made to convert to or to establish a part-time position, regular position management and classification procedures will be followed.

### § 1176.5 Annual plan.

(a) An agencywide plan for promoting part-time employment opportunities will be developed annually. This plan will establish annual goals and set interim and final deadlines for achieving these goals. This plan will be applicable throughout the agency, and will be transmitted to the Office of Personnel Management with the required report to OPM on the status of the program as of September 30 of each year.

(b) Beginning in FY 1981 in administering personnel ceilings, part-time career employees shall be counted against ceiling authorizations as a fraction. This will be determined by dividing 40 hours into the average number of hours of such employee's regularly scheduled workweek.

### § 1176.6 Review and evaluation.

Regular employment reports will be used to determine levels of part-time employment. This program will also be designated an item of special interest to be reviewed during personnel management reviews.

### § 1176.7 Publicizing vacancies.

When applicants from outside the Federal service are desired, part-time vacancies may be publicized through various recruiting means, such as:

(a) Federal Job Information Centers.

(b) State Employment Offices.

(c) Veterans' Administration Recruiting Bulletins.

**§ 1176.8 Exceptions.**

(a) The Personnel Officer may except positions from inclusion in this program to provide fewer than 16 hours per week. This will normally be done in furtherance of special hiring programs such as the Stay-in-School or Handicapped Employment Program.

(b) On occasions when it becomes necessary to allow supervisors and managers to temporarily increase the hours of duty of employees above 32 hours per week for limited and specific periods of time to meet heavy workloads, perform special assignments, permit employee training, etc., the Endowment policy is as follows:

(1) Requests to work NEH employees on a 32 hour/week appointment more than 32 hours must be submitted in advance to the Personnel Office;

(2) Justification should be concise but specific and must state the exact time frame for the increase in hours above 32 hours per week; and

(3) The Program Coordinator will decide if the request meets the intent of the law and this agency's policy.

**§ 1176.9–1176.99 [Reserved]**

[FR Doc. 80-30803 Filed 10-2-80; 8:45 am]
BILLING CODE 7536-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR PART 73

**[Docket No. 80-253; RM-2889]**

### Revision of Applications for Renewal of License of Commercial and Noncommerical AM, FM and Television Licensees; Order Extending Time for Filing Comments and Reply Comments

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rule; extension of time for filing comments and reply comments.

**SUMMARY:** On September 18, 1980, the Committee for Community Access requested an extension of time to file comments in BC Docket No. 80–253, In the Matter of Revision of Applications for Renewal of License of Commerical and Noncommercial AM, FM and Television Licensees. Acting pursuant to delegated authority, the Chief of the Broadcast Bureau extends the time for filing comments and reply comments because the petitioner demonstrated good cause for its request.

**DATES:** The time for comments and reply comments are extended from October 1, 1980 and November 3, 1980, to November 3, 1980, and December 1, 1980, respectively.

**ADDRESSES:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Rosa I. Ovaitt, Broadcasting Bureau, (202) 632–6302.

**SUPPLEMENTARY INFORMATION:**

Order

Adopted: September 25, 1980.

Released: September 26, 1980.

By the Chief, Broadcast Bureau:

1. On September 18, 1980, the Commission received a request from the Committee for Community Access (CCA) for an extension of time to file comments in this proceeding. Comments are now due on October 1, and reply comments on November 3, 1980. (45 FR 47444, July 15, 1980)

2. CCA requests that it be given an additional 60 days to file comments. The Commission's original timetable was established with due consideration given to the intervening summer vacation period. That period has passed and we do not believe that sixty days are necessary to prepare comments.

3. Therefore, for good cause shown, it is ordered, pursuant to delegated authority, that the times for filing comments and reply comments are extended to November 3, 1980, and December 1, 1980, respectively.

Federal Communications Commission.

**Richard J. Shiben,**

*Chief, Broadcast Bureau.*

[FR Doc. 80-30879 Filed 10-2-80; 8:45 am]
BILLING CODE 6712-01-M

### 47 CFR Part 73

**[BC Docket No. 80-495; RM-3593]**

### FM Broadcast Station in International Falls, Minn.; Proposed Changes in Table of Assignments

**AGENCY:** Federal Communications Commission.

**ACTION:** Notice of proposed rulemaking and order to show cause.

**SUMMARY:** Action taken herein proposes the assignment of a Class C FM channel to International Falls, Minnesota, and the substitution of a Class C channel for an existing Class A channel, in response to a petition filed by Minnesota Christian Broadcasters, Inc. It is also proposed to modify the Class A station to specify the Class C channel. The proposed channel could provide first aural service to a large area and a second FM station to International Falls.

**DATES:** Comments must be filed on or before November 17, 1980, and reply comments must be filed on or before December 8, 1980.

**ADDRESS:** Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** Montrose H. Tyree, Broadcast Bureau (202) 632–9660.

**SUPPLEMENTARY INFORMATION:**

Adopted: September 16, 1980.

Released: September 30, 1980.

By the Chief, Policy and Rules Division:

1. The Commission herein considers a petition for a rule making [1] filed by Minnesota Christian Broadcasters, Inc., which seeks the assignment of Class C Channel 258 to International Falls, as that community's second FM assignment, and the substitution of Channel 281 for Channel 232A at International Falls.

2. International Falls (population 6,439),[2] seat of Koochiching County (population 17,131), is located on the U.S.-Canadian border approximately 400 kilometers (250 miles) north of Minneapolis, Minnesota. International Falls is served locally by full-time AM Station KGHS and FM Station KSDM.

3. Petitioner states that the main industries in International Falls is a paper mill (which produces up to 475 tons of paper a day), and the Insulite Mill which is the largest single fiberboard plant in the world. The area has also become an important tourist center. Petitioner has submitted economic and demographic information with respect to International Falls, which demonstrates the need for an additional FM assignment.

4. *Preclusion Study:* Preclusion study was done for Channel 258 in International Falls, Minnesota, with the assumption that the transmitter was located in the center of the city. Preclusion will occur on Channels 257A, 258, 259 and 261A in all or parts of the following seven counties: *Minnesota:* Lake of the Woods, Beltrami, Koochiching, Itasca, St. Louis, Lake and Cass.

5. *Comments:* (a) Petitioner states that the assignment of Channel 258 to International Falls, will provide a first FM service to 4047 square kilometers (1,581 square miles) assuming operating parameters of 75 kW at 500 feet. Population figures were not given. Petitioner notes that all communities with a population of 1,000 or more in the precluded area either already have an FM assignment or have an alternative channel available for assignment.

(b) International Falls is presently allocated a Class A channel. The

[1] Public Notice of the petition was given on February 27, 1980, Report No. 1218.

[2] Population figures are taken from the 1970 U.S. Census.

proposed assignment would create an intermixture of classes of channels in the community. To avoid intermixture, it has been our policy to propose a substitute assignment for the existing Class A station. A study of additional Class C channels available for assignment to International Falls, revealed that Channels 281, 283, 289, and 299 could be assigned. Therefore to provide the licensee of Channel 232A an opportunity to switch to a Class C channel, we shall propose to assign a second Class C channel for International Falls. The second Class C channel would provide a second service to aproximately the same area as that proposed for a first service by the petitoner.

6. Since KSDM could be affected if we were to follow this policy, it must be given an opportunity to indicate whether it consents to or is opposed to the proposed change of its channel assignment and this *Order to Show Cause* is adopted for that purpose. Its general comments on the appropriateness of the proposal are invited.

7. As for reimbursement, it has been Commission policy to require the party benefitting from a new assignment, *i.e.*, the ultimate licensee of the new station, to reimburse the existing Class A licensee for the change in frequency only. The costs of upgrading to the Class C facilities would not be reimbursable. See *Mitchell, S.D.*, 63 FCC 2d 70 (1976) *Gillette, Wyoming*, Docket 21119, 42 FR 47557 (1977). In view of this discussion, petitioner or another interested party should comment on its willingness to provide reimbursement to Station KSDM. Finally, if another interest in a Class C channel is stated, there are other possible alternatives including an assignment of other available channels. Thus, no interested party would be foreclosed by this proceeding.

8. Accordingly, the Commission proposes to amend the FM Table of Assignments, § 73.202(b) of the Commission's Rules, with regard to the community below, as follows:

| City | Channel No. | |
|---|---|---|
| | Present | Proposed |
| International Falls, Minn. | 232A | 258, 281 |

9. Since International Falls is within 402 kilometers (250 miles) of the Canadian border, the proposed assignments to International Falls, Minnesota, are subject to concurrence by the Canadian government.

10. It is ordered, That pursuant to § 316(a) of the Communications Act of 1934, as amended, KGHS, Inc., the licensee of Station KSDM, at International Falls, Minnesota, SHALL SHOW CAUSE why its license should not be modified to specify operation on Channel 281, if the Commission determines that the public interest would best be served by adopting the proposed assignment.

11. Pursuant to § 1.87 of the Commission's Rules and Regulations, Station KSDM may, not later than Novemer 17, 1980, request that a hearing be held on the proposed modification. Pursuant to § 1.87(f), if the right to request a hearing is waived, Station KSDM may, not later than November 17, 1980, file a written statement showing with particularity why its permit should not be modified as proposed in this *Order to Show Cause*. In this case, the Commission may call on Station KSDM to furnish additional information, designate the matter for hearing, or issue, without further proceedings, an *Order* modifying the license as provided in the *Order to Show Cause*. If the right to request a hearing is waived and no written statement is filed by the date referred to above, Station KSDM will be deemed to consent to modification as proposed in the *Order to Show Cause* and a final *Order* will be issued by the Commission, if the channel changes mentioned above are found to be in the public interest.

12. The Commission's authority to institute rule making proceedings, showing required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. *NOTE:* A showing of continuing interest is required by para. 2 of the Appendix before a channel will be assigned.

13. It is further ordered, That the Secretary of the Commission SHALL SEND a copy of this *Order* by Certified Mail Return Receipt Requested, to KGHS, Inc., P.O. Box 591, International Falls, Minnesota 56649, the party to whom the *Order to Show Cause* is directed.

14. For further information concerning this proceeding, contact Montrose H. Tyree, Broadcast Bureau, (202) 632–9660. However, members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel assignments. An *ex parte* contact is a message (spoken or written) concerning the merits of a pending rule making other than comments officially filed at the Commission or oral presentation required by the Commission.

15. Comments must be filed on or before November 17, 1980, and reply comments on or before December 8, 1980.

Federal Communications Commission.

**Henry L. Baumann,**

*Chief, Policy and Rules Division Broadcast Bureau.*

**Appendix**

1. Pursuant to authority found in Sections 4(i), 5(d)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Section 0.281(b)(6) of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Assignments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings required.* Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed assignment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is assigned, and, if authorized, to build the station promptly. Failure to file may lead to denial of the request.

3. *Cut-off procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See § 1.420(d) of Commission Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

4. *Comments and reply comments; service.* Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions by parties to this proceeding or persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See § 1.420(a), (b) and (c) of the Commission Rules.)

5. *Number of copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. *Public inspection of filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.

[FR Doc. 80-30404 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**47 CFR Part 81**

**[PR Docket No. 80-583; FCC 80-548]**

## Amendment of the Commission's Rules To Delete Section 81.303(c) Which Limits the Establishment of New Public Coast Stations Operating on Frequencies Below 27,500 kHz

**AGENCY:** Federal Communications Commission.

**ACTION:** Proposed rulemaking.

**SUMMARY:** This document proposes to delete from the Commission's rules Section 81.303(c) which limits the establishment of new Class I–B and II–B public coast stations. This rule was adopted in recognition of certain administrative practices of the Commission which have been terminated. The Commission believes that these provisions now serve no useful purpose public correspondence service. Consequently the Commission believes Section 81.303(c) should be deleted.

**DATE:** Comments must be received on or before December 10, 1980, and Comments must be received on or before January 9,1981. Federal Communications Commission, Washington, D.C. 20554.

**FOR FURTHER INFORMATION CONTACT:** John C. K. Hays, Private Radio Bureau, (202) 632–7175.

**SUPPLEMENTARY INFORMATION:**

Adopted: September 25, 1980.

Released: October 6, 1980.

By the Commission:

1. The Commission is proposing to delete from its rules Section 81.303(c) which limits the establishment of new public coast stations operating on frequencies below 27,500 kHz.

### Background

2. Public coast radiotelephone stations are land stations in the maritime mobile service that are open to public correspondence. In general these stations are interconnected to the public wireline telephone system. By utilizing the services of these stations, ships may make and receive telephone calls to and from any telephone which has access to the nationwide telephone network, including calls overseas and to other ships. Public coast stations are classified under the Commission's rules as Class I, II or III depending upon the frequency bands from which their channel assignments are drawn. For radio operators aboard ship, the important difference between these classes of stations is the distances over which each can communicate and this, in turn, is a function of the frequencies available to each class of station.

3. Class I–B and II–B public coast stations, which are the subject of this proposal, provide marine radiotelephone service on frequencies below 27,500 kHz. Class I–B public coast station provide a telecommunications service which is world-wide in coverage and is known as the "high seas" service. Class I–B public coast stations operate on frequencies in the 4 through 23 MHz band. This service is primarily used by ocean-going vessels for both commercial and personal traffic.

4. Class II–B public coast stations provide regional service. The coverage of these stations varies widely with time of day and other factors which affect propagation such as season, atmospheric conditions, sun spots, etc. Distances in excess of 1000 miles are possible at certain times, but may be limited to less than 100 miles at other times. Class II–B stations primarily operate on 2 and 4 MHz frequencies along the sea coasts and the Gulf of Mexico; on 2,4, and 8 MHz frequencies on the Great Lakes; and on 2,4,6,8,12 and 16 MHz on the Mississippi River System. This service was the first radiocommunications service introduced for general maritime use in the coastal and inland waterway areas of the United States.

### Origin of section 81.303(c)

5. Under § 81.303(c) of the Commission rules, only one public coast station operating on frequencies below 27,500 kHz may be authorized by the Commission to serve any one area. Originally, this restriction applied only to stations in Alaska. It was adopted by the Commission in the mid-1950's to recognize in the rules a long established practice of the Commission and of the Office of the Chief Signal Officer, U.S. Army, which had jurisdiction over the Alaska Communication System (ACS) before Alaska became a state. This public communications system in Alaska consisted of an extensive network of radio stations, wire line and submarine cable connecting principally the larger towns in alaska, and those towns to terminals in or near Seattle, Washington. Among the ACS radio stations were 18 public coast stations for communication with ship stations of any class in Alaskan waters.

6. This communication system operated by the U.S. Army was supplemented for many years by non-Government stations in Alaska licensed by the Commission, mainly those in the aviation, marine mobile, and public fixed services. Under the arrangements developed between the Commission and the U.S. Army, the Commission granted applications for fixed public stations and public coast stations in Alaska only where it appeared that the ACS facilities were inadequate or unavailable or where an existing licensed service, whether Government or non-Government, would not be unnecessarily duplicated. This restriction was incorporated into the Commission rules first for stations in Alaska and later for all public coast stations, including those in the 48 contiguous United States. The result of the rule is the protection of existing stations by restricting entry into the public coast station market.

### The Proposal

7. The Commission is proposing to delete Section 81.303(c) from its rules because this section no longer serves its original purpose and may be detrimental to further development of the maritime public correspondence service on frequencies below 27,500 kHz. Under the Alaska Communications Disposal Act,[1] the facilities of the ACS were offered for sale subject to the appropriate authorizations from the Commission and the State of Alaska. In the Memorandum Opinion and Order [2] approving sale of these facilities to RCA Alaska Communications, Inc., (RCAA), the Commission indicated that the exclusive status of the ACS facilities would not be continued under private ownership and that new facilities in Alaska would be considered on their own merits pursuant to the requirements of the Communications Act of 1934, as amended.[3] With the termination of the exclusive status of the ACS, the original purpose for the rule ceased to exist and, as a result, its only present function is to provide economic protection to public coast stations operating on frequencies below 27,500 kHz.

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[1] Alaska Communications Disposal Act, 40 U.S.C.771–792 (1976).

[2] Memorandum Opinion and Order Docket No. 18823, 22 FCC 2d 200 (1970).

[3] Id. at 204.

8. More importantly, the Commission has reviewed Section 81.303(c) and believes it may be detrimental to further development of the maritime public correspondence service on frequences below 27,500 kHz. As stated in its report to Congress, the Commission feels that Section 81.303(c) "may restrict new entry into the market, restrict competition, and generally inhibit the marketplace forces from working to keep users' costs down and improving the quality of service".[4] Consequently, the Commission is proposing to delete this section from its rules.

9. The proposed amendments to the rules as set forth in the Appendix are issued pursuant to authority contained in Sections 4(1) and 303(b), (c), (d) and (r) of the Communications Act of 1934, as amended.

10. Interested persons who desire to submit comments on these, or related matters may do so on or before December 10, 1980. Replies to any suggestions or comments may be submitted not later than January 9, 1981. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that such information or a writing indicating the nature and source of such information is placed in the public file, and provided that the fact of the Commission's reliance on such information is noted in the Report and Order. An original and 5 copies will be furnished of all statements, briefs or comments filed in response to this Notice.

11. For further information on this proceeding, contact John Hays at (202) 632-7175.

Federal Communication Commission.

William J. Tricarico,

Appendix

Part 81 of Chapter I of Title 47 of the Code of Federal Regulations is amended as follows:

## PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA-PUBLIC FIXED STATIONS

### § 81.303 [Amended]

In 81.303 paragraph (c) is deleted and designated as [Reserved].

[FR Doc. 80-30869 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

[4] Report to the Congress of the United States: A Study of Maritime Public Coast Station Operations, Services and Industry, 3rd Part, p.42 (1979).

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

### 48 CFR Parts 4 and 9

### Safeguarding Classified Information Within Industry, Contractor Team Arrangements, and Defense Production Pools and Research and Development Pools

**AGENCY:** Office of Federal Procurement Policy, Office of Management and Budget.

**ACTION:** Notice of availability and request for comment on draft Federal acquisition regulation.

**SUMMARY:** The Office of Federal Procurement Policy is making available for public and Government agency review and comment, a segment of the draft Federal Acquisition Regulation regarding Safeguarding Classified Information within Industry, Contractor Team Arrangements, and Defense Production Pools and Research and Development Pools.[1] Availability of additional segments for comment will be announced on later dates. The FAR is being developed to replace the current system of procurement regulations.

**DATE:** Comments must be received on or before December 3, 1980.

**ADDRESS:** Obtain copies of the draft regulation from and submit comments to William J. Maraist, Assistant Administrator for Regulations, Office of Federal Procurement Policy, 726 Jackson Place NW, Room 9025, Washington, D.C. 20503.

**FOR FURTHER INFORMATION CONTACT:** William Maraist, (202) 395-3300.

**SUPPLEMENTARY INFORMATION:** The fundamental purpose of the FAR is to reduce proliferation of regulations; to eliminate conflicts and redundancies; and to provide an acquisition regulation that is simple, clear and understandable. The intent is not to create new policy. However, because new policies may arise concurrently with the FAR project, the notice of availability of draft regulations will summarize the section or part available for review and describe any new policies therein.

The following subparts of the draft Federal Acquisition Regulation are available upon request for public and Government agency review and comment.

[1] Filed as part of the original document with the Office of the Federal Register.

### PART 4—ADMINISTRATIVE MATTERS

#### Subpart 4.4—Safeguarding Classified Information Within Industry

This subpart requires each agency to prescribe procedures that it and its contractors must follow for safeguarding classified information relating to classified acquisitions and to provide its contractors with specific guidance for this purpose. A new policy in this regard is that, whenever practicable, agencies shall enter into agreements with the Department of Defense (DOD) to be covered by the Defense Industrial Security Program (DISP) and follow the instructions in DOD's Industrial Security Regulation. Contracting officers are responsible for determining whether access to classified information by offerors or contractors will be necessary, and for complying with the DISP or agency procedures during all stages of the acquisition process.

### PART 9—CONTRACTOR QUALIFICATIONS

#### Subpart 9.6—Contractor Team Arrangements

This subpart defines contractor team arrangements, and describes situations in which they can be appropriate. Government policy is to recognize team arrangements, provided they are identified and company relationships are fully disclosed either in an offer or prior to the arrangement becoming effective. This policy is essentially a restatement of that in Defense Acquisition Regulation 4-117.

#### Subpart 9.7—Defense Production Pools and Research and Development Pools

This subpart sets forth policy and procedures for contracting with pools and individual pool members. Generally, pools are to be treated the same as any other prospective or actual contractor.

Dated: September 19, 1980.

LeRoy J. Haugh,

*Associate Administrator for Regulatory Policies and Practices.*

[FR Doc. 80-30805 Filed 10-2-80; 8:45 am]

BILLING CODE 3110-01-M

## INTERSTATE COMMERCE COMMISSION

### 49 CFR Part 1039

[Ex Parte No. 344]

### Terminal Performance Standards Governing the Transportation of Non-Perishable Commodities

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Notice of withdrawal of proposed rules.

**SUMMARY:** On June 19, 1978, the Commission issued for public comment [43 FR 33774] nine proposed standards for railroad terminal operations when moving non-perishable commodities. The proposed rules provided that, except in special cases, each terminal operation (e.g., pickup of loaded car, placement of car after arrival at destination, etc.) will be performed within 24 hours.

The Commission has completed its assessment of the proposed rules and has concluded that they will not provide the significant public benefits originally contemplated. Accordingly, the rules will not be adopted and this proceeding is terminated.

**FOR FURTHER INFORMATION CONTACT:** Richard Felder, (202) 275–7693.

**SUPPLEMENTARY INFORMATION:** Comments on the proposed rules have been received and reviewed. The proposed rules which were processed as a new Part 1039 were designed to improve rail freight service quality and reliability. However, it appears that, if put into effect, they will discourage blocking and the making up of tranload and unit-train movements, and hamper efficient system operations. Also, they fail to recognize wide variations in operating conditions and traffic volumes among different terminals. Their imposition would, thus, result in inefficient use of the more modern terminals and deprive railroad operating personnel of the necessary flexibility to meet changing conditions. The proposed standards would also be extremely costly to implement, and, by diverting funds and personnel, would impede individual carrier initiatives to improve their terminal service.

The carriers already have ample incentive to provide expeditious and reliable service as they strive to meet their competition. They obviously are aware that inefficiency results in lost opportunity, customer dissatisfaction, decreased equipment utilization and increased car hire costs.

It is apparent from the comments received that the proposed rules would not serve the public purpose for which they were intended. Rather, application of the contemplated stringent standards would probably do more harm than good.

It should also be noted that under the Commission's contract rate policy, Ex Parte No. 358F, *Change of Policy, Railroad Contract Rates* (361 ICC 205) carriers are permitted to negotiate contract rates which provide for a particular level of terminal service. Such rates, set at competitive market levels, should result in more efficient use of terminal facilities.

This is not a significant action affecting adversely the quality of the human environment or the conservation of energy resources.

(49 U.S.C. 10321, 5 U.S.C. 553)

Decided: September 8, 1980.

By the Commission, Chairman Gaskins, Vice Chairman Gresham, Commissioners Stafford, Clapp, Trantian, Alexis and Gilliam. Commissioner Stafford not participating.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-30908 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

### 49 CFR Parts 1201 and 1241

[No. 37080]

### Accounting and Reporting of Railroads' Freight Train Car Repair Costs

**AGENCY:** Interstate Commerce Commission.

**ACTION:** Indefinite deferral of proposed rulemaking proceeding.

**SUMMARY:** This proceeding involves proposed criteria for accumulating, recording, and reporting the costs of repairing freight train cars. By a Notice of Proposed Rulemaking served on August 22, 1980 (45 FR 57153–57159), we requested comments on the proposed rule by October 5, 1980. However, because of pending relevant legislation and because the Association of American Railroads requested postponement of the due date for filing comments, we intend to defer this proceeding indefinitely.

**DATES:** The comment period is deferred indefinitely until further notice.

**ADDRESS:** Comments to this Notice should be sent to: Office of the Secretary, Interstate Commerce Commission, Washington, D.C. 20423.

**FOR FURTHER INFORMATION CONTACT:** Bryan Brown, Jr., Telephone No. (202) 275–7448.

Decided: September 29, 1980.

By the Commission, Darius W. Gaskins, Jr., Chairman.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-30907 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### 50 CFR Part 611

### Foreign Fishing in the North Pacific Ocean and Bering Sea; Proposed Regulations

**AGENCY:** National Oceanic and Atmospheric Administration (NOAA)/ Commerce.

**ACTION:** Proposed regulations.

**SUMMARY:** It is proposed to prohibit foreign fishing vessels that have on board fish caught outside the fishery conservation zone from fishing in the fishery conservation zone (FCZ) seaward of Alaska unless that vessel is inspected by an authorized enforcement officer, or unless the vessel is notified that an inspection is not necessary.

**DATE:** Comments will be accepted until December 2, 1980.

**ADDRESS:** Send comments to: Mr. Robert McVey, Director, Alaska Region, National Marine Fisheries Service, Juneau, Alaska 99802, Telephone (907) 586–7221.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert McVey (907) 586–7221.

**SUPPLEMENTARY INFORMATION:** Foreign fishing vessels fishing in the FCZ are required by 50 CFR 611.9(d) to maintain Daily Cumulative Catch Logs (DCCL) so that enforcement officers can compare the transfer logs and the catch on board to determine the actual catch of the vessel from the FCZ. Existing regulations allow foreign vessels to begin fishing within the FCZ with fish on board that were caught outside the FCZ.

Catch logs or other records were not required for such fish although some vessels voluntarily report their catch.

The presence of undocumented fish on board a foreign vessel fishing in the FCZ precludes enforcement officers from determining what proportion of the fish on board were taken from the FCZ. In the case of the small number of vessels that might fish within the extended fisheries jurisdiction of another nation or on the high seas and then wish to begin fishing within the FCZ off Alaska, the proposed amendment establishes catch documentation and reporting procedures that ensure accountability

for all catch on board. This amendment is necessary to facilitate enforcement of the catch reporting rules required by 50 CFR 611.9.

Compliance with this regulation will require foreign fishing vessels to either enter the FCZ off Alaska with an empty hold or be able to document fish in the hold caught outside the FCZ.

The Assistant Administrator has determined that this regulation is not significant under either the National Environmental Policy Act of 1969, as amended, or Executive Order 12044, and does not require an environmental impact statement or a regulatory analysis.

(16 U.S.C. 1801 *et seq.*)

**Robert K. Crowell,**

*Deputy Executive Director, National Marine Fisheries Service.*

It is proposed to amend 50 CFR 611.90 by adding a new paragraph (f):

**§ 611.90 General Provisions.**

* * * * **

(f) *Additional Report.* When each foreign fishing vessel entering the fishery conservation zone seaward of the State of Alaska notifies the Coast Guard, in the notice of time and position at which the vessel will begin fishing (§ 611.4(a)(1)), it shall also declare the species and amounts of fish products on board which were harvested or received outside the fishery conservation zone. Such notices shall be submitted in accordance with section 611.4 and the illustrated report below. Each vessel reporting that it has fish products on board shall begin fishing only after inspection by an authorized officer unless notified that an inspection is not required. Any fish products on board not reported as described herein will be presumed to have been harvested or received in the fishery conservation zone unless the vessel has on board records in English of the fish and fish products caught or received in waters over which another nation exercises exclusive fishery management authority, and the records provide the same information required by § 611.9(b), 611.9(d)(1) and 611.9(d)(2) of these regulations.

An illustration of a sample report is as follows: The stern trawler NAVIS, LTUX, will begin fishing on June 15, 1980, at 1500 G.m.t. at position 56–00 N. latitude, 168–00 W. longitude in Bering Sea Area I. The NAVIS has aboard 105.5 metric tons of frozen Pacific cod, and 35 metric tons of fish meal that was produced from fish caught outside the fishery conservation zone of the U.S.

The required message would be transmitted as follows:

FROM: M/V NAVIS, LTUX
TO: 17TH COAST GUARD DISTRICT, JUNEAU, ALASKA REGION, NMFS, JUNEAU, ALASKA
VESREP
NAVIS/LTUX/0615/1500/5600N/16800W/51/BEGIN/ PRODUCT ABOARD/701/105.5/702/53/MEAL/35.

[FR Doc. 80-30883 Filed 10-2-80; 8:45 am]

BILLING CODE 3510-22-M

## 50 CFR Part 611

## Trawl Fishery and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific Ocean; Advance Notice of Proposed Rulemaking

**AGENCY:** National Oceanic and Atmospheric Administration/ Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** On August 21, 1980, the Assistant Administrator for Fisheries, NMFS, received a petition to amend regulations implementing the Preliminary Fishery Management Plan (PMP) for the Trawl Fisheries and Herring Gillnet fishery of the Eastern Bering Sea and the Northeast Pacific Ocean. This notice requests comments on the petition and on alternatives to the course of action suggested in the petition.

**DATES:** Comments are due before October 31, 1980.

**ADDRESS:** Comments should be submitted to: Robert W. McVey, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 1668 Juneau, Alaska 99802.

**FOR FURTHER INFORMATION CONTACT:** Robert W. McVey, telephone (907) 586–7221 or Mark Zilberburg, telephone (202) 634–7432.

**SUPPLEMENTARY INFORMATION:** On August 21, 1980, NOAA received a petition to amend the PMP for the Trawl Fisheries and Herring Gillnet Fishery of the Eastern Bering Sea and Northeast Pacific Ocean. Notice of receipt of the petition was published in the **Federal Register** (see 45 FR 59187). The petitioners request that the PMP be amended to provide for an annual closure of Bering Sea Groundfish Areas I and II from October 1 to March 31 in order to reduce the incidental catch of salmon taken by foreign groundfish trawlers. NOAA requests comments on the action proposed in the petition and on the following alternatives:

a. Time/area closures other than those advocated by petitioners;

b. Gear restrictions or modifications that might accomplish the purpose of the petitioners; and

c. Maintenance of the status quo.

An FMP to replace the PMP for groundfish in the Bering Sea/Aleutian Islands is nearing completion. NOAA requests additional comments on the advisability of amending the FMP rather than the PMP.

Dated: September 30, 1980.

**Robert K. Crowell,**

*Deputy Executive Director National Marine Fisheries Services.*

[FR Doc. 80-30909 Filed 10-2-80; 8:45 am]

BILLING CODE 3510-22-M

# Notices

Federal Register
Vol. 45, No. 194
Friday, October 3, 1980

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

### Agricultural Stabilization and Conservation Service

### Proposed Determinations Regarding 1981 Upland Cotton Program Provisions

**AGENCY:** Agricultural Stabilization and Conservation Service, USDA.

**ACTION:** Proposed determinations.

**SUMMARY:** The Secretary of Agriculture proposes to make the following determinations with respect to the 1981-crop of upland cotton:

a. National program acreage.
b. Program allocation factor.
c. Voluntary reduction percentage.
d. Whether there should be a set-aside requirement and, if so, the extent of such requirement.
e. If a set-aside is required, whether there should be a limitation on planted acreage and, if so, the extent of such limitation.
f. Whether there should be a voluntary diversion program and, if so, the extent of such diversion and the payment therefor.
g. Whether to require compliance with the Normal Crop Acreage (NCA) as a condition of eligibility for program benefits.
h. Established (target) price.

The above determinations are required to be made by the Secretary in accordance with provisions of the Agricultural Act of 1949, as amended, and section 1001 of the Food and Agriculture Act of 1977, as amended. This notice invites written comments on these proposed determinations.

**DATE:** Comments must be received on or before December 2, 1980.

**ADDRESS:** Mr. Jeffress A. Wells, Director, Production Adjustment Division, ASCS, U.S. Department of Agriculture, Room 3630, South Building, P.O. Box 2415, Washington, D.C. 20013.

**FOR FURTHER INFORMATION CONTACT:** Charles V. Cunningham, Chief, Program Analysis Branch, Production Adjustment Division, USDA–ASCS, P.O. Box 2415, Washington, D.C. 20013, 202–447–7873. The Draft Impact Analysis describing the options considered in developing this proposed determination and the impact of implementing each option is available from the above named individual.

**SUPPLEMENTARY INFORMATION:** This proposed determination has been reviewed under USDA procedures established in Secretary's Memorandum No. 1955 to implement Exective Order 12044, and has been classified "significant". In compliance with Secretary's Memorandum No. 1955 and the final request issued by the Secretary with respect to Executive Order 12044 and entitled "Improving USDA Regulation" (43 FR 50988), it is hereby determined after review of these and related regulations contained in 7 CFR 713 and 719 for need, currency, clarity, and effectiveness, that no additional changes be proposed at this time.

Any comments which are offered during the public comment period on these regulations, however, will be evaluated in development of the final determination.

The title and number of the federal assistance program that this notice applies to are: Title: Cotton Production Stabilization; Number 10.052, as found in the Catalog of Federal Domestic Assistance.

These actions will not have a significant impact specifically on area and community development. Therefore, review as established by OMB circular A–95, was not used to assure that units of local government are informed of these actions.

The following proposed determinations with respect to the 1981 crop of upland cotton are to be made pursuant to section 103(f) of the Agricultural Act of 1949 (91 Stat. 934, 7 U.S.C. 1444(f)), as amended (hereinafter referred to as the "1949 Act") and section 1001 of the Food and Agriculture Act of 1977 (91 Stat. 913, 7 U.S.C. 1309), as amended (hereinafter referred to as the "1977 Act"):

### Proposed Determinations

a. *National Program Acreage.* Section 103(f)(7) of the 1949 Act requires the Secretary to announce national program acreage for the 1981 crop by December 15, 1980. Such national program acreage may, however, be subsequently revised for purposes of determining the allocation factor if the Secretary determines it necessary based on the latest information. Any revision shall be announced as soon as it has been made. The national program acreage shall be the number of harvested acres the Secretary determines, based on the estimated weighted national average of the farm program payment yields for the 1981 crop, will produce the estimated quantity (less imports) that will be utilized domestically and for export during the 1981–82 marketing year (which begins August 1, 1981). The Secretary may make such adjustment in the national program acreage as he determines necessary, taking into consideration the estimated carryover supply, to provide for an adequate but not excessive total supply of cotton for the 1981–82 marketing year. In no event, however, shall the national program acreage be less than 10 million acres.

Currently, domestic mill use is estimated at 5.8 million bales and exports at 6.3 million bales during the 1981–82 marketing year. The 1981 national weighted average of the farm program payment yields is tentatively estimated at 520 pounds. Stocks on August 1, 1981 could range from about 2.2 to 3.7 million bales depending on production, mill use and exports during the 1980–81 marketing year. About 5.0 million bales is generally considered a desirable carryover level. Based on these tentative figures, the 1981 national program acreage could range from 13.5 to about 14.5 million acres with 14.1 million the most likely level based on current estimates.

Comments and appropriate supporting data are requested on the national program acreage and the desirable carryover level.

b. *Program Allocation Factor.* Section 103(f)(8) of the 1949 Act requires the Secretary to determine a program allocation factor for the 1981 crop. The allocation factor (not to exceed 100 percent) shall be determined by dividing the national program acreage for the 1981 crop by the estimated harvested acreage for such crop.

Comments on the allocation factor are solicited.

c. *Voluntary Reduction Percentage.* Section 103(f)(9) of the 1949 Act

provides that the 1981 cotton acreage eligible for payment on a farm shall not be reduced by application of the allocation factor if producers reduce the acreage of cotton planted for harvest on the farm from that planted in 1980 by at least the percentage recommended by the Secretary in his proclamation of the national program acreage.

The 1980 acreage will include the acreage actually harvested plus acreage considered harvested which includes prevented planted acreage. Based on current estimates, the likely reduction percentage for 1981 is:

| | |
|---|---|
| a. 1980 Estimated National Harvested Acreage (mil.) | 13.20 |
| b. Plus Acreage Credited as Harvested (mil.) | .05 |
| c. Equals 1980 Considered Harv. Ac. | 13.25 |
| d. Minus National Program Acreage (mil.) | 14.10 |
| e. Equals Ac. Reduction Needed from 1980 Harvested Acreage (mil.) | 0 |
| f. Divided by 1980 Considered Harv. Ac. (mil.) | 13.25 |
| g. Equals 1981 Recommended Reduction (%) | 0 |

With a 0 percent recommended reduction, a producer whose 1981 planted acreage of upland cotton does not exceed the producer's 1980 planted acreage of upland cotton would be eligible for deficiency payments on the producer's total 1981 planted acreage of upland cotton, if in compliance with other program provisions.

Comments from interested persons with respect to the reduction percentage, if any, are requested.

d. *Whether there should be a set-aside requirement and, if so, the extent of such requirement.* Section 103(f)(11)(A) of the 1949 Act requires the Secretary to provide for a set-aside of cropland if the Secretary determines that the total supply of upland cotton will, in the absence of such a set-aside, likely be excessive, taking into account the need for an adequate carryover to maintain reasonable and stable supplies and prices and to meet a national emergency.

If a set-aside of cropland is in effect, then as a condition of eligibility for loans, purchases, and payments on upland cotton, producers must set aside and devote to conservation uses an acreage of cropland equal to such percentage of the acreage of upland cotton planted for harvest during the 1981 crop year as the Secretary determines (not to exceed 28 percent).

Production conditions throughout the world during the current 1980 crop year will have a significant impact on the actions which may need to be taken for the 1981 cotton crop. If favorable crop conditions exist for the 1980 foreign cotton crop, ending U.S. cotton stocks as of August 1, 1981 could be around 3.7 million bales. On the other hand, if production conditions during the balance of the current crop year are unfavorable, stocks at the end of the 1980-81 marketing year could be about 2.2 million bales.

The above outlook would suggest that a set-aside program would not be needed for the 1981 upland cotton crop. However, later crop developments throughtout the world could change this outlook. Options under consideration at this time include: (a) No set-side and (b) a 10 percent set-aside.

Interested persons are encouraged to comment on the need for a set-aside and the appropriate percentage of acreage to be set-aside, if deemed necessary.

e. *Whether the acreage planted to upland cotton should be limited and, if so, the extent of such limitation.* Section 103 (f)(11)(A) of the 1949 Act also provides that the Secretary may limit the acreage planted to upland cotton if a set-aside is in effect. Any such limitation must be applied on a uniform basis to all cotton producing farms. If an acreage limitation on upland cotton is in effect, producers on a farm who knowingly plant cotton in excess of the permitted cotton acreage for the farm would be ineligible for cotton loans or payments on that farm.

Interested persons are invited to comment on the pros and cons of limiting planted acreage if a set-aside program is deemed necessary.

f. *Whether there should be a provision for voluntary diversion, and, if so, the extent of such diversion and the payment therefor.* Section 103 (f)(11)(B) of the 1949 Act provides that the Secretary may make land diversion payments to producers of upland cotton, whether or not a set-aside for upland cotton is in effect, if the Secretary determines that such payments are necessary in adjusting the total national acreage of upland cotton to desirable goals. Such land diversion payments shall be made to producers on a farm who, to the extent prescribed by the Secreatary, devote to approved conservation use an acreage of cropland on the farm in accordance with land diversion contracts entered into by the Secretary with such producers. The amounts payable to producers under such contracts may be determined through the submission of bids for such contracts by producers or through such other means as the Secretary determines appropriate.

In determining the acceptability of contract offers, the Secretary shall take into consideration the extent of the diverson to be undertaken by the producers and the productivity of the acreage diverted. The Secretary is required to limit the total acreage to be diverted under agreements in any county or local community so as not to adversely affect the economy of the county or local community.

If it is deemed necessary to make land diversion payments in 1981, such payment will likely be established at an offer rate. Presently under consideration is a 10 percent diversion with a payment in the range of 20 cents to 35 cents per pound times the farm program payment yield times the acreage diverted.

Interested persons are encouraged to address the need for a land diversion program and, if deemed necessary, the extent of such diversion and the level of payment therefor.

g. *Whether to require compliance with the NCA as a condition of eligibility for program benefits.* Section 1001(a) of the 1977 Act, provides that for the 1981 crop of upland cotton the Secretary may require, as a condition of eligibility for loans and payments, that producers not exceed the acreage on the farm normally planted to crops designated by the Secretary (the established farm Normal Crop Acreage (NCA)).

It is proposed that an NCA requirement be established for the 1981 upland cotton program whether or not set-aside or land diversion provisions are implemented.

Interested persons are invited to comment on the pros and cons of requiring compliance with the NCA with respect to the 1981 crop of upland cotton as a condition of eligibility for program benefits.

h. *Established (Target Price).* Section 103(f)(4) of the 1949 Act provides that the Secretary shall make available to producers payments for the 1981 crop of upland cotton based on an established (target) price. The 1980 established price computed according to the procedure specified in the 1949 Act was 58.4 cents per pound. The 1981 established price for upland cotton shall be the established price for the 1980 crop of upland cotton adjusted to reflect any change in the average adjusted cost of production for the two crop years 1979 and 1980 from the average adjusted cost of production for the two crop years 1978 and 1979. The adjusted costs of production for each of such years shall be determined by the Secretary on the basis of such information as he finds necessary and appropriate and shall be limited to (1) variable costs, (2) machinery ownership costs, and (3) general farm overhead costs, allocated to the crops involved on the basis of the proportion of the value of the total production derived from each crop. In no event, however, shall the established

price for the 1981 crop be less than 51 cents per pound.

Based on the 1980-crop yield estimate contained in the *Crop Production* Report of September 11, 1980, and the preliminary cost of production projections prepared by the Economics, Statistics, and Cooperatives Service of USDA, published July 1980 in a Committee Print of the Committee on Agriculture, Nutrition, and Forestry of the United States Senate, the 1981 established price calculates to about 70 cents per pound. The final established price for the 1981 crop will depend upon the final yield and the final cost of production for the 1980 crop.

Section 1001(b) of the 1977 Act provides that if the Secretary requires compliance with the NCA as a condition of eligibility for upland cotton loans and payments, the Secretary may increase the established price for upland cotton to compensate producers for not exceeding the NCA and for their participation in any required set-aside. If the established price is increased for any other commodity under this provision, the established price may also be increased for upland cotton in such amount as is determined necessary for effective operation of the program. Any increase in the established price must be adjusted to reflect, in whole or in part, any land diversion payments that may be made. The amount of any increase must be determined after consideration of changes in the cost of production that may result from not exceeding the NCA and from participation in any set-aside program.

Interested persons are encouraged to comment on whether the established price level for the 1981 crop should be increased if NCA and set-aside requirements are imposed, and the amount of any increase.

Prior to determining the provisions for the 1981 upland cotton program, consideration will be given to all views and recommendations received relative to the above items. Comments will be made available for public inspection in room 3623 of USDA's South Building during business hours (8:15 a.m. to 4:45 p.m.).

Signed at Washington, D.C., on September 30, 1980.

**Ray Fitzgerald,**

*Administrator, Agricultural Stabilization and Conservation Service.*

[FR Doc. 80-30728 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-05-M

## Animal and Plant Health Inspection Service

### Imported Fire Ant Control Treatments With Amdro

*Correction*

In the document dealing with *Imported Fire Ant Control Treatments with Amdro* appearing on page 63537 in the issue of Thursday, September 25, 1980, make the following corrections:

(1) In the third column of page 63537, in the fourth paragraph under **Supplementary Information**, complete the sixth line to read as follows: ". . . control, or to prevent or retard the spread of plant pests, including the imported fire ant. However, no control activities have been undertaken since [1978 due to the lack . . .]"

(2) In eleventh line of the same paragraph, change ". . . parts to the nine . . ." to read "parts of the nine . . .".

(3) In the middle column of page 63538 where the document ends, the assigned Federal Register Document number was incorrectly printed. Instead of "FR Doc. 80–29695", it should have read "FR Doc. 80–29645".

BILLING CODE 1505-01-M

## Forest Service

### Recommendations to the Secretary of the Interior for the Withdrawal of National Forest Lands Currently Segregated From Mineral Entry and State Selection (Subject to Existing Valid Rights); Extension of Comment Period

The Department of Agriculture, Forest Service, filed with EPA on August 26, 1980, a draft EIS for the Alaska Lands Withdrawal Recommendation.

The notice of availability of the EIS that appeared in FR Vol. 45, No. 174, p. 58958, September 5, 1980, established a review period that would expire on October 6, 1980.

This notice hereby extends the review period to October 14, 1980.

Dated: September 29, 1980.

**R. Max Peterson,**

*Chief.*

[FR Doc. 80-30680 Filed 10-7-80; 8:45 am]

BILLING CODE 3410-11-M

### Pacific Southwest Region Land and Resource Management Plan; Environmental Impact Statement

In the Matter of Revised Notice of Intent, Land and Resource Management plan, California, Guam, Hawaii, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Island-All, Nevada-Mineral, Esmeralda, Carson City, Douglas and Washoe Counties, Oregon-Jackson County; Pacific Southwest Region Land and Resource Management PLan.

A notice of Intent to Prepare an Environmetal Impact Statement for the Pacific Southwest Region Land and Resource Management Plan was published in the **Federal Register**, Volume 44, No. 182, p. 54079, September 18, 1979.

The estimated dates for filing the Draft and Final Environmental Impact Statements with the Environmental Protection Agency and release to the public have been postponed. The Draft Environmental Impact Statement is now expected in February 1981, and the Final Environmental Impact Statement is proposed for release in September 1981.

All other conditions of the original notice of intent remain the same.

Dated: September 26, 1980.

**Einan L. Roget,**

*Acting Chief, Forest Service.*

[FR Doc. 80-30759 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-11-M

## Science and Education Administration

### National Plant Genetic Resources Board; Meeting

According to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776), the Science and Education Administration announces the following meeting:

Name: National Plant Genetic Resources Board.

Date: October 22–23, 1980.

Time and place: 9:00 a.m. October 22–12:00 noon October 23, Room 3109, South Building, U.S. Department of Agriculture, Washington, D.C.

Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.

Comments: The public may file written comments before or after the meeting with the contact person below.

Purpose: To review matters that pertain to plant germplasm in the United States and possible impacts on related National and international programs; and discuss other initiatives of the Board.

Contact person: C. O. Grogan, Executive Secretary, National Plant Genetic Resources Board, Science and Education Administration, U.S. Department of Agriculture, Room 6435–S, USDA South Building, Washington, D.C. 20250, telephone (202)447–6195.

Done at Washington, D.C. this 26th of September, 1980.

**Anson R. Bertrand,**

*Chairman, National Plant Genetic Resources Board.*

[FR Doc. 80-30864 Filed 10-2-80; 8:45 am]

BILLING CODE 3410-03-M

## CIVIL AERONAUTICS BOARD

**[Order 80-9-176, 80-9-177; Dockets 38686, 36687]**

### Application of New York Air for Certificate Authority Under Subpart Q and Application of New York Air for Approval or Disclaimer of Jurisdiction Pursuant to Sections 408 and 409 of the Act

**AGENCY:** Civil Aeronautics Board.

**ACTION:** Notice of Orders 80-9-176 and 80-9-177, Application of New York Air (Docket 38686) under Subpart Q for a certificate of public convenience and necessity for authority between and among New York/Newark, Boston, Buffalo, Cincinnati, Cleveland, Columbus, Dayton, Detroit, Indianapolis, Pittsburgh, Rochester, Albany, Syracuse and Washington, D.C. and application of New York Air et al. (Docket 38687) for approval or disclaimer of jurisdiction pursuant to sections 408 and 409 of the Act. (Docket 38687).

**SUMMARY:** The Board is instituting an investigation to determine (a) whether New York Air is fit to operate the authority it requests and (b) whether certain relationships should be approved or exempted under §§ 408 and 409. The Board is also proposing to grant a certificate of public convenience and necessity to New York Air for the authority it has requested, subject to favorable findings in the Investigation. The complete texts of these orders are available as noted below.

**DATES:** Objections: All interested persons having objections to the Board issuing the proposed authority subject to favorable findings in the Investigation shall file, and serve upon all persons listed below no later than October 31, 1980, a statement of objections, together with a summary of testimony, statistical data, and other material expected to be relied upon to support the stated objections.

**ADDRESS:** Objections should be filed in Docket 38686, Docket Section, Civil Aeronautics Board, Washington, D.C. 20428.

**FOR FURTHER INFORMATION CONTACT:** Peter M. Bloch, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, NW., Washington, D.C. 20428, (202) 673-5345.

**SUPPLEMENTARY INFORMATION:** Objections should be served upon the persons listed in ordering paragraph 6 of Order 80-9-177.

The complete texts of Orders 80-9-176 and 80-9-177 are available from our Distribution Section, Room 516, 1825 Connecticut Avenue NW., Washington, D.C. Persons outside the metropolitan area may send a postcard request for these orders to the Distribution Section, Civil Aeronautics Board, Washington, D.C. 20428.

By the Civil Aeronautics Board: September 30, 1980

**Phyllis T. Kaylor,**

*Secretary.*

[FR Doc. 80-30883 Filed 10-2-80; 8:45 am]

BILLING CODE 6320-01-M

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### Western Pacific Fishery Management Council; Public Meeting With Partially Closed Session

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The Western Pacific Fishery Management Council established by Section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265

**DATES:** November 12-13, 1980.

**ADDRESS:** The meeting will take place at the Senate Conference Room Six, Second Floor, State Capitol, Honolulu, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Western Pacific Fishery Management Council, 1164 Bishop Street, Suite 1680, Honolulu, Hawaii 96813, Telephone: (808) 523-1368.

**Meeting Agendas Follow**

*Council*—(Open meeting) November 12, 1980 (10 a.m. to 5 p.m.) November 13, 1980, (9 a.m. to 3 p.m.)

*Agenda:* Review draft of Billfish Fishery Mangememt Plan; review of other fishery management plans; fill vacancy on Scientific and Statistical Committee, and conduct other fishery management business.

*Council*—(Closed session) November 12, 1980 (8:30 a.m. to 9:30 a.m.)

*Agenda:* Discuss personnel matters regarding vacancies on the Scientific Statistical Committee, Advisory Panel and Planning Teams.

The Assistant Secretary for Administration of the Department of Commerce with the concurrence of its General Counsel, formally determined on July 8, 1980, pursuant to section 10(d) of the Federal Advisory Committee Act, that the agenda items covered in the closed session may be exempt from the provisions of the Act relating to open meetings and public participation therein, because items will be concerned with matters that are within the purview of 5 U.S.C. 552b(c)(6), and this portion of the closed meeting is likely to disclose information of personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy. (A copy of the determination is available for public inspection and copying in the Public Reading Room, Central Reference and Records Inspection Facility, Room 5317, Department of Commerce.) All other portions of the meeting are open to the public.

Dated: September 30, 1980.

**Robert K. Crowell,**

*Deputy Executive Director, National Marine Fisheries Service.*

[FR Doc. 80-30884 Filed 10-2-80; 8:45 am]

BILLING CODE 3510-22-M

### Western Pacific Fishery Management Council's Advisory Panel and Scientific and Statistical Committee; Public Meetings

**AGENCY:** National Marine Fisheries Service, NOAA.

**SUMMARY:** The Western Pacific Fishery Management Council, established by section 302 of the Fishery Conservation and Management Act of 1976 (Pub. L. 94-265), has established an Advisory Panel (AP) and a Scientific and Statistical Committee (SSC) which will meet separately. Both the AP and the SSC will review draft source documents for the Billfish Fishery Management Plan and discuss other business.

**DATES:** The AP meeting will convene on Wednesday, November 5, 1980, at approximately 9 a.m., and will adjourn at approximately 12 noon on Thursday, November 6, 1980. The SSC meeting will convene on Thursday, November 6, 1980, at approximately 1:30 p.m., and will adjourn at approximately 5 p.m., on Friday, November 7, 1980. The meetings are open to the public.

**ADDRESS:** Both AP and SSC meetings will take place at the National Marine Fisheries Service, Southwest Fisheries Center, Honolulu Laboratory, 2570 Dole Street, Honolulu, Hawaii.

**FOR FURTHER INFORMATION CONTACT:** Western Pacific Fishery Management Council, Room 1608, 1164 Bishop Street, Honolulu, Hawaii 96813, Telephone: (808) 523-1368.

Dated: September 30, 1980.

**Robert K. Crowell,**

*Deputy Executive Director, National Marine Fisheries Service.*

[FR Doc. 80-30885 Filed 10-2-80; 8:45 am]

BILLING CODE 3510-22-M

## National Technical Information Service

### U.S. Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by the U.S. Government and are available for domestic and, possibly, foreign licensing in accordance with the licensing policies of the agency-sponsors.

Copies of patents cited are available from the Commissioner of Patents & Trademarks, Washington, DC 20231, for $.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $5.00 each ($10.00 outside North American Continent). Requests for copies of patent applications must include the PAT-APPL number. Claims are deleted from patent application copies sold to avoid premature disclosure. Claims and other technical data will usually be made available to serious prospective licensees upon execution of a non-disclosure agreement.

Requests for information on the licensing of particular inventions should be directed to the addresses cited for the agency-sponsors.

**Douglas J. Campion,**

*Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.*

**U.S. Department of Agriculture, Program Agreements and Patent Branch, Administrative Service Division Federal Building, Science and Education Administration, Hyattsville, Md. 20782.**

Patent application 6,034,877: Tris(N-carbalkoxylaminomethyl)Phosphine Oxides and Sulfides; filed April 30, 1979.

Patent application 6,098,459: Quaternary Ureidomethyl Phosphonium Salts; filed November 29, 1979.

Patent application 6,118,948: Improved Abrasion Resistance and Strength of Cotton-Containing Fabric Made Resilient with N-methylolacrylamide-Type Reagent; filed February 6, 1980.

Patent application 6,118,949: Process for Producing Durable-Press Cotton Fabrics with Improved Balances of Textile Properties; filed February 5, 1980.

Patent application 6,132,589: Method of Decontaminating Waste Liquors; filed March 21, 1980.

Patent 4,200,639: Sesbanine and the Use Thereof in Treating Leukemic Tumors; filed March 29, 1979; patented April 29, 1980; not available NTIS.

Patent 4,203,996: Synthetic Cephalotaxine Esters Having Antileukemic P388 Activity; filed January 3, 1979; patented May 20, 1980.

Patent 4,204,072: Tris(N-carbalkoxyl aminomethyl)-phosphines; filed November 29, 1978; patented May 20, 1980; not available NTIS.

Patent 4,206,221: Cephalomannine and Its Use in Treating Leukemic Tumors; filed January 3, 1979; patented June 3, 1980; not available NTIS.

**U.S. Department of Transportation, Patent Counsel, 400 7th Street, S.W., Washington, D.C. 20590.**

Patent 4,205,553: Automated Gain Control in Rail Flaw Detection; filed February 21, 1979; patented June 3, 1980; not available NTIS.

[FR Doc. 80-30736 Filed 10-2-80; 8:45 am]

BILLING CODE 3510-04-M

## COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

### Procurement List 1980; 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 1980 services to be provided by workshops for the blind and other severely handicapped.

**COMMENTS MUST BE RECEIVED ON OR BEFORE:** November 5, 1980.

**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. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services lsted below from workshops for the blind and other severely handicapped.

It is proposed to add the following services to Procurement List 1980, November 27, 1979 (44 FR 67925):

**SIC 7331**

Mailing Service, Department of Commerce, National Technical Information Services, 5285 Port Royal Road, Springfield, Virginia.

**SIC 7349**

Janitorial Service, Federal Building, 45 Bay Street, Staten Island, New York.

**SIC 7349**

Janitorial/Grounds Maintenance including Snow Removal, U.S. Customs, 160-19 Rockway Boulevard, Jamaica, New York.

**SIC 7699**

Repair, Maintenance and Overhaul of Buildings and Grounds Maintenance and Related Equipment to cover the following: New York City, Nassau County, Suffolk County, New York, and Newark, New Jersey, plus a five mile radius.

**C. W. Fletcher,**

*Executive Director.*

[FR Doc. 80-30764 Filed 10-2-80; 8:45 am]

BILLING CODE 6820-33-M

### Procurement List 1980 Additions

**AGENCY:** Committee for Purchase from the Blind and Other Severely Handicapped.

**ACTION:** Additions to procurement list.

**SUMMARY:** This action adds to Procurement List 1980 a commodity to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

**EFFECTIVE DATE:** October 3, 1980.

**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 July 11, 1980, April 25, 1980, and May 2, 1980, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (45 FR 46841, 45 FR 27972, and 45 FR 29384) of proposed additions to Procurement List 1980, November 27, 1979 (44 FR 67925).

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c, 85 Stat 77.

Accordingly, the following commodity and services are hereby added to Procurement List 1980:

**Class 7920**

Towel, Paper, 7920-00-823-9773.

**SIC 7331**

Mailing Service for the following: DOT, National Highway Traffic Safety Administration, 400 7th Street, S.W., Washington, D.C.

Smithsonian Institute, Supply Division, Washington, D.C.
National Credit Union Administration, Printing Service, 1375 K Street, N.W., Washington, D.C.
U.S. Geological Survey, Publications Division Branch of Technical Editing, Eastern Region, 12201 Sunrise Valley Drive, Reston, Virginia
Department of the Interior, 18th & C Streets, N.W., Washington, D.C.
Defense Supply Service, National Committee for Employer Support for Guard and Reserve, 1117 North 19th Street, Arlington, Virginia.
Office of Personnel Management, 1900 E. Street, N.W., Washington, D.C.
U.S. Geological Survey, Topo Division, 1220 Sunrise Valley Drive, Reston, Virginia.
U.S. Metric Board, 1815 North Lynn Street, Arlington, Virginia.
Merit System Protection Board and the Office of Special Counsel, 1717 H Street, N.W., Washington, D.C.
Department of Energy, Distribution, 12th & Pennsylvania Avenue, N.W., Washington, D.C.
Federal Trade Commission, Pennsylvania Avenue & Sixth Street, N.W., Washington, D.C.

**C. W. Fletcher,**

*Executive Director.*

[FR Doc. 80-30765 Filed 10-2-80; 8:45 am]

BILLING CODE 6820-33-M

## DEPARTMENT OF DEFENSE

### National Security Agency/Central Security Service

### Privacy Act of 1974; Amended Systems of Records

**AGENCY:** National Security Agency/Central Security Service.

**ACTION:** Notification of amendments to systems of records.

**SUMMARY:** The National Security Agency (NSA) proposes to amend three system of records subject to the Privacy Act of 1974. The specific changes to systems being amended are set forth below followed by the systems published in their entirety as amended.

**DATES:** These systems shall be amended as proposed without further notice on November 3, 1980, unless comments are received on or before November 3, 1980, which would result in a contrary determination and require republication for further comment.

**ADDRESS:** Any public comment, including written data, views, or arguments concerning the proposed action should be addressed to the Systems Manager for the particular system concerned.

**FOR FURTHER INFORMATION CONTACT:** Daniel C. Schwartz, General Counsel, National Security Agency, Room 9A178, Ft. George C. Meade, MD 20755.

**SUPPLEMENTARY INFORMATION:** The NSA record system notices as prescribed by the Privacy Act of 1974, Pub. L. 93-579 (5 U.S.C. 522a) have been published in the **Federal Register** as follows:

FR Doc 79-37052 (44 FR 74422) December 17, 1979.
FR Doc 80-25325 (45 FR 55508) August 20, 1980.

The proposed amendments are within the purview of the provisions of 5 U.S.C. 552a(o) of the Act which requires the submission of an altered systems report which was submitted on August 19, 1980.

**M. S. Healy,**

*OSD Federal Register Liaison Officer, Washington Headquarters Service, Department of Defense.*

September 29, 1980.

**GNSA-09**

*System name:*

NSA/CSS Personnel Files

**Changes**

*Safeguards:*

Delete the entire last sentence beginning "Terminals are not available. . . ."

*Systems exempted from certain provisions of the act:*

Delete entire entry and insert "individual records in this file may be exempt under subsections 5 U.S.C. 552a (k)(1), (k)(4), (k)(5) and (k)(6). For additional information see agency rules contained in 32 CFR Part 299a (NSA/CSS Regulation 10-35).

**GNSA-10**

*System name:*

NSA/CSS Personnel Security File

**Changes**

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Delete "the Civil Service Commission" and add "the Office of Personnel Management." Also at end of caption add "In addition, other government agencies or private contractors may be informed of information developed by NSA which bears on an assignee's or affiliate's status at NSA with respect to security considerations."

*Systems exempted from certain provisions of the act:*

Delete entire entry and insert "Individual records in this file may be exempt pursuant to 5 U.S.C. 552a (k)(1), (k)(2) and (k)(5). for additional information, see agency rules contained in 32 CFR Part 299a (NSA/CSS 10-35).

**GNSA-12**

*System name:*

NSA/CSS Training

**Changes**

*Routine uses of records maintained in the system, including categories of users and the purposes of such uses:*

Delete first sentence and insert "The purpose of this file is to provide documentation concerning military crypto linguist resources and individual training, develop training requirements, refine training methods and techniques, provide individual career and training counseling."

*Systems exempted from certain provisions of the act:*

Delete entire entry and insert "Individual records in this file may be exempted pursuant to 5 U.S.C. 552a (k)(1), (k)(5) and (k)(6). For additional information see agency rules contained in 32 CFR Part 299a (NSA/CSS Regulation 10-35).

**GNSA-09**

*System name:*

NSA/CSS Personnel File

*System location:*

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755. Decentralized Segments—Each staff, line, contract, and field element and supervisor as authorized and appropriate.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Civilian employees, personnel under contract, military assignees, dependents of NSA/CSS personnel assigned to field elements, individuals integrated into the cryptologic career development program, custodial, and commercial services personnel.

*Categories of records in the system:*

File contains personnel papers and forms including but not limited to applications, transcripts, correspondence, notices of personnel action, performance appraisals, personnel summaries, professionalization documentation and correspondence, training forms, temporary duty, letters of reprimand, employee record card, special assignment documentation, letters of commendation, promotion

documentation, field assignment preference, requests for transfers, permanent change of station, passport, transportation, official orders, awards, suggestions, pictures, complaints, separation, retirement, time utilization, scholarship/fellowship or other school appointments, military service, reserve status, military check in/out sheets, military orders, security appraisal, career battery and other test results, language capability, military personnel utilization survey, work experience, notes and memoranda on individual aspects of performance, productivity and suitability, information on individual eligibility to serve on various boards and committees, emergency loan records, other information relevant to personnel management, housing information where required.

*Authority for maintenance of the system:*

Pub. L. 86–36; Title 5 U.S.C. and certain implementing Office of Personnel Management regulations in the Federal personnel Manual; 10 U.S.C. 1124; 44 U.S.C. 3101; 34 CFR 232, Appendix B; 41 CFR 101–20.111; and Executive Order 11222.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

The purpose of this file is to support the personnel management program; personnel training and career development; personnel planning, staffing, and counseling; administration and personnel supervision; workforce study and analysis; manpower requirements studies; emergency loan program; and training curricula planning and research. The uses of the file are to implement the purposes cited and provide management at all levels with the documentation and tools necessary for effective personnel management and supervision. Information may also be used to verify present or former NSA/CSS employment to gaining employers or to financial institutions when individual has applied for credit. The users are those staff, line, contract, and field officers, employees, and assignees authorized to maintain or have access to personnel data or some decentralized segment thereof. In addition, officers and employees of elements engaged in security and training, Freedom of Information or Privacy Act actions, Inspector General, General Counsel, Equal Employment Opportunity, audit or review, medical and psychological, or other appropriate functions may be authorized access as required in the performance of their ditues. Individual files or portions thereof may be made available to hearing examiners, the judicial branch, the Office of Personnel Management, the Department of Defense, or other gaining government organization as required and appropriate.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE:**

Paper records in file folders, file cards, machine readable cards, computer printouts, computer magnetic tapes, disks and other computer storage media, and microfilm.

**RETRIEVABILITY:**

By name, social security number, and other items of relevant information.

**SAFEGUARDS:**

For paper, computer printouts and microfilm—Secure limited access facilities, within those facilities secure limited access rooms and within those rooms lockable containers. Access to information is limited to those individuals authorized and responsible for personnel management or supervision. For records stored on magnetic tape, disk, or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records, and delivery granted to authorized persons only. Where data elements are derived from the Personnel File, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required.

**RETENTION AND DISPOSAL:**

Primary System—Those forms, notices, reports, and memoranda considered to be of permanent value or required by law or regulations to be preserved are retained for the period of employment or assignment and then forwarded to the gaining organization or retained indefinitely. If the action is separation or retirement, these items are forwarded to the Office of Personnel Management or retired to the Federal Records Center at St. Louis as appropriate. Those items considered to be relevant for a temporary period only are retained for that period and either transferred with the employee or assignee or destroyed either when they are no longer relevant or at time of separation or retirement. Computerized protion is pruged and updated as appropriate. Personnel summary, training, testing and past activity segments retained permanently. All other portions deleted at end of tenure. Decentralized System—Files are transferred to gaining organization or destroyed upon separation as appropriate. Computer listings of personnel assigned to an organization are destroyed upon receipt of updated listings.

**SYSTEM MANAGER(S) AND ADDRESS:**

Director, NSA.

**NOTIFICATION PROCEDURE:**

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD ACCESS PROCEDURES:**

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**CONTESTING RECORD PROCEDURES:**

The NSA/CSS rules for contesting contents and appealing initial determinations may be obtained by written request addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD SOURCE CATEGORIES:**

Forms used to collect and process individual for employment, access or assignment, forms and memoranda used to request personnel actions, training awards, professionalization transfers, promotion, organization and supervisor reports and requests, educational institutions, references, Office of Personnel Management and other governmental entities as appropriate, and other sources as appropriate and required.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Individual records in this file may be exempt to 5 U.S.C. section 552a(k)(1), (4), (5) and (6). For additional information, see agency rules contained in 32 CFR Part 299a.

**GNSA–10**

**SYSTEM NAME:**

NSA/CSS Personnel Security File

**SYSTEM LOCATION:** Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755. Decentralized Segments—Each staff, line, contract, and field element as appropriate.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Applicants for employment with NSA/CSS; civilian employees; personnel under contract; military assignees; members of advisory groups, consultants, experts; other military personnel; federal employees; employees of contractors; and employees of services and other individuals who require access to NSA/CSS facilities or information.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

File Folder—Photograph, fingerprint data, statement of personal history, agreements with respect to specific security processing procedures, security processing forms and records, investigative reports, incident and complaint reports, unsolicited information when relevant, reports by domestic law enforcement agencies when relevant, clearance data, access authorization, foreign travel data, security secrecy agreements, separation and retirement data, and other information as required and relevant. Computer File—contains data elements representing a summary and index of the file folder data to include personal identifying data, relevant security processing data, clearance and access data, separation and retirement data.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Pub. L. 88–290; Pub. L. 86–36; 18 U.S.C. § 798; 50 U.S.C. § 403(d)(3); Executive Orders 10450, 10865, and 12065.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USES AND THE PURPOSES OF SUCH USES:**

Purpose of this file is to insure compliance with cited authorities. Users of this file and its segments are limited to properly authorized staff, line, contract and field element officers, employees or assignees. The file is used to carry out the purpose cited and in determinations with respect to employment, access, assignment and reassignment, assignment to a board of appraisal or management promotion, foreign official and unofficial travel, and other personnel actions where security represents a relevant and valid element of the determination. In addition, files or portions thereof may be made available to the Defense Investigative Service, military investigative services, other appropriate entities, Department of Justice, governmental elements involved in National Agency checks, members and staff of the Defense Investigative Review Council as appropriate with their inspection authorities, Department of Defense General Counsel and Director Central Intelligence and his General Counsel in the event of litigation or anticipated litigation with respect to unauthorized disclosures of classified intelligence or intelligence sources and methods and related court actions, other government agencies and private contractors requiring clearance status information and authorized to receive same, judicial branch elements pursuant to specific court orders or with respect to litigation, elements of the Department of Defense involved in administration of the Industrial Security program, the Office of Personnel Management as required, and public law enforcement authorities when a specific breach of criminal statutes is involved. In addition, other government agencies or private contractors may be informed of information developed by NSA which bears on an assignee's or affiliate's status at the NSA with respect to security considerations.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE:**

Magnetic tape, disk or other computer storage media, computer paper printouts, paper in folders, microfilm.

**RETRIEVABILITY:**

By name of unique number assigned individual.

**SAFEGUARDS:**

For paper, computer printouts and microfilm—secure limited access facilities, within these facilities secure limited access rooms, and within those rooms lockable containers. Access to information is limited to authorized individuals. For machine records stored on magnetic tape, disk, or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records and delivery granted to authorized persons only. Remote terminals are secured, are available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of specific security offices at headquarters area locations.

**RETENTION AND DISPOSAL:**

Files on individuals assigned, employed, or granted access to NSA/CSS information or facilities—retained for a minimim of 30 years after last security action reflected in the file, then destroyed. Files initiated on individuals requesting employment, assignment or access but never completed due to non-employment, non-assignment or withdrawal or denial of grant of access are destroyed within one year. Computer records are purged and updated consistent with these retention policies.

**SYSTEM MANAGER(S) ADDRESS:**

Director, NSA.

**NOTIFICATION PROCEDURE:**

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

**RECORD ACCESS PROCEDURES: REQUESTS FROM INDIVIDUALS FOR ACCESS SHALL BE IN WRITING ADDRESSED TO CHIEF, OFFICE OF POLICY, NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE, FT. GEORGE G. MEADE, MD. 20755.**

**CONTESTING RECORD PROCEDURES: THE NSA/CSS RULES FOR CONTESTING CONTENTS AND APPEALING INITIAL DETERMINATIONS MAY BE OBTAINED BY WRITTEN REQUEST ADDRESSED TO CHIEF, OFFICE OF POLICY, NATIONAL SECURITY AGENCY/CENTRAL SECURITY SERVICE, FT. GEORGE G. MEADE, MD. 20755.**

**RECORD SOURCE CATEGORIES:**

Data provided by individual during employment and security processing; data provided by investigative service processing individual's background; data provided by references, educational institutions, and other sources named by individual or developed during background investigation; unsolicited data from any source where relevant; data provided by the Office of Personnel Management and other agencies, departments, and governmental elements involved in the conduct of National Agency checks; the Federal Bureau of Investigation; data developed by appropriate governmental elements in the course of a national security investigation or investigation into alleged violations of criminal statutes related to unauthorized disclosures of intelligence or protection of intelligence sources and methods; documents furnished by agency element sponsoring individual for access to specific classified information.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

Individual records in this file may be exempt pursuant to 5 U.S.C. 552a(k) (1), (2) and (5). For additional information,

see agency rules contained in 32 CFR Part 299a.

GNSA-12

SYSTEM NAME:

NSA/CSS Training

SYSTEM LOCATION:

Primary System—National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755. Decentralized Segments—Each staff, line, contract and field element as authorized and appropriate.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

NSA/CSS employees, personnel under contract, military assignees and other government employees, designees and military personnel as required and appropriate who attend courses or receive training by or under NSA/CSS sponsorship.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains forms, correspondence, momoranda, student and instructor surveys, requests and other information related to testing and training; tests and test results; test grades, course grades and other student and instructor evaluations; course and class rosters; rosters of individuals by specialty; attendance and time utilization reports for students and instructors; biographical sketches where required and appropriate; course and training histories; other course research and evaluation data; student disciplinary actions and complaints; waiver requests and responses; selected personal data including education level and scholastic achievements; course and training cost data where appropriate; reimbursement and service agreements where appropriate; and other records related to civilian and military training as required and appropriate.

AUTHORITY FOR MAINTANANCE OF THE SYSTEM:

5 U.S.C. Chapter 41, Executive Order 11348, Office of Personnel Management implementing directives as contained in the Federal Personnel Manual, Public Law 86-36.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The purpose of this file is to provide documentation concerning military cryptolinquist resources and individual training, develop training requirements, refine training methods and techniques, provide individual career and training counseling. The users of this file are those staff; line; contract and field officers, employees, and assignees as authorized and appropriate. In addition, portions of these files are incorporated in the personnel File, are made available to management and supervisory personnel and to other governmental entities as required and appropriate. the file is used to carry out the purposes cited above; perform certain statistical analyses related to training and reports concerning training; and may be used to assist in the evaluation of an individual's performance, readiness for promotion, potential for career development, assignments requiring special qualifications, and other actions as appropriate.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.

STORAGE:

Paper records in file folders, card files, binders, computer punch cards, computer listings, computer magnetic tapes, disks and other computer storage media, microfilm.

RETRIEVABILITY:

By name or social security number.

SAFEGUARDS:

For paper, computer printouts, and microfilm—secure limited access facilities, within those facilities secure limited access rooms, and within those rooms lockable containers as appropriate. Access to information is limited to authorized individuals only. For machine records stored on magnetic tape, disk or other computer storage media within the computer processing area—additional secure limited access facilities, specific processing requests accepted from authorized persons only, specific authority to access stored records, and delivery granted to authorized persons only. Where data elements are derived from the Personnel System, remote terminal inhibitions are in force with respect to access to complete file or data relating to persons not assigned to requesting organization using a remote terminal. Remote terminals are secured, available to authorized persons only, and certain password and other identifying information available to authorized users only is required. Terminals are not available outside of headquarters area locations.

RETENTION AND DISPOSAL:

Primary System—Records are reviewed annually and retained or destroyed as appropriate. Copies of items of significance with respect to the individual are included in the Personnel File and retention is in accordance with the retention policies for that system. Items used as the basis of statistical sutdies or other research efforts may be retained indefinitely. Computer lisitngs and records are purged and updated as required and appropriate. Decentralized System—Records are reviewed annually and retained or destroyed as appropriate. Individual's file may be transferred to gaining organization if appropriate. Computer listings and records are purged and updated as required and appropriate.

SYSTEM MANAGER(S) AND ADDRESS:

Director, NSA.

NOTIFICATION PROCEDURE:

Requests from individuals for notification shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD ACCESS PROCEDURES:

Requests from individuals for access shall be in writing addressed to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

CONTESTING RECORD PROCEDURES:

The NSA/CSS for contesting contents and appealing initial determinations may be obtained by written request to Chief, Office of Policy, National Security Agency/Central Security Service, Ft. George G. Meade, Md. 20755.

RECORD SOURCE CATEGORIES:

Individual, supervisors, training counselors, instructors, and other training personnel; other governmental entities nominating individuals for training; other training and educational institutions; Personnel File; and other sources as required and appropriate.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Individual records in this file may be exempt pursuant to 5 U.S.C. section 552a(k)(1), (5) and (6). For additional information, see agency rules contained in 32 CFR Part 299a.

[FR Doc. 80-30761 Filed 10-2-80; 8:45 am]

BILLING CODE 3810-70-M

## DEPARTMENT OF ENERGY

### Economic Regulatory Administration

[ERA Docket No. 80-CERT-031]

### Federal Paper Board Co., Inc.; Application for Recertification of the Use of Natural Gas To Displace Fuel Oil

On October 3, 1979, Federal Paper Board Company, Inc. (Federal Paper), 75 Chestnut Ridge Road, Montvale, New Jersey 07645, was granted a certificate of eligible use of natural gas to displace fuel oil by the Administrator of the Economic Regulatory Administration (ERA) (Docket No. 79-CERT-086). The certification involved the purchase of natural gas from East Tennessee Natural Gas Company and U.G.C. Energy Company for use by Federal Paper at its Riegelwood Mill in Riegelwood, North Carolina. This recertification will be effective on the date of issuance which may be after the expiration date of October 2, 1980. The applicant has informed ERA that it did not expect to use this gas during the interim period and, thus, this lack of continuity with the original certificate will not result in any reduction in the amount of fuel oil displaced.

On September 18, 1980, Federal Paper filed an application for recertification of an eligible use of natural gas to displace fuel oil at its Riegelwood Mill pursuant to 10 CFR 595 (44 FR 47920, August 16, 1979). More detailed information is contained in the application on file with the ERA and available for public inspection at the ERA, Docket Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, from 8:30 a.m. to 4:30 p.m. Monday through Friday, except Federal holidays.

In its application, Federal Paper states that the volume of natural gas for which it requests recertification is up to 18,000 Mcf per day. It is estimated that approximately 2,850 barrels of No. 6 fuel oil (2.1 percent maximum sulfur) will be displaced at the Riegelwood Mill each day that natural gas covered by this application is used.

The eligible sellers of the natural gas are the East Tennessee Natural Gas Company, P.O. Box 10245, Knoxville, Tennessee 37919 and the U.G.C. Energy Company, 1200 Parkway Towers, Nashville, Tennessee 37219. The gas will be transported by the Tennessee Gas Pipe Line Company, P.O. Box 2511, Houston, Texas 77001; the North Carolina Natural Gas Corporation, P.O. Drawer 909, Fayettevile, North Carolina 28302; and the Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77001.

In order to provide the public with as much opportunity to participate in this proceeding as is practicable under the circumstances, we are inviting any person wishing to comment concerning this application to submit comments in writing to the Economic Regulatory Administration, Room 7108, RG-55, 2000 M Street, NW., Washington, D.C. 20461, Attention: Albert F. Bass, on or before October 13, 1980.

An opportunity to make an oral presentation of data, views, and arguments either against or in support of this application may be requested by any interested person in writing on or before October 13, 1980. The request should state the person's interest, and if appropriate, why the person is a proper representative of a group or class of persons that has such an interest. The request should include a summary of the proposed oral presentation and a statement as to why an oral presentation is necessary. If ERA determines that an oral presentation is necessary, further notice will be given to Federal Paper and any persons filing comments and will be published in the **Federal Register.**

Issued in Washington, D.C., on September 29, 1980.

**F. Scott Bush,**

*Assistant Administrator, Office of Regulatory Policy, Economic Regulatory Administration.*

[FR Doc. 80-30874 Filed 10-2-80; 8:45 am]

BILLING CODE 6450-01-M

## Office of Hearings and Appeals

### Cases Filed, Week of August 1 Through August 8, 1980

During the week of August 1 through August 8, 1980, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20461.

**George B. Breznay,**

*Acting Director, Office of Hearings and Appeals.*

September 26, 1980.

**List of Cases Received by the Office of Hearings and Appeals**

[Week Aug. 1 through Aug. 8, 1980]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Aug. 1, 1980 | Kern County Refining Company, Bakersfield, California. | BEX-0083 | Supplemental Order. If granted: The DOE would review the entitlements exception relief granted to Kern County Refining Company during its fiscal year ended March 31, 1980, to determine whether the level of relief accorded the firm was appropriate. |
| Aug. 4, 1980 | Atlantic Richfield Company, Los Angeles, California | BRD-1243, BRH-1243. | Motion for Discovery, Request for Evidentiary Hearing. If granted: Discovery would be granted to Atlantic Richfield Company and an Evidentiary Hearing would be convened in connection with the Statement of Objections submitted by the firm in response to the May 14, 1980 Proposed Order of Disallowance issued to Atlantic Richfield by the Office of Special Counsel. |
| Aug. 4, 1980 | William J. Mutryn, Washington, D.C. | BFA-0439 | Appeal of Information Request Denial. If granted: The July 2, 1980 Information Request Denial issued by the Assistant Administrator for Enforcement of the Economic Regulatory Administration would be rescinded, and Mr. Mutryn would receive access to information regarding the crude oil reseller price regulations. |
| Aug. 4, 1980 | Coastal Corporation, Washington, D.C. | BRM-0054 | Request for Modification. If Granted: The June 17, 1980 Decision and Order (Case No. DEE-1479) issued to Coastal States Gas Corporation would be modified with respect to the transfer price of propane sold by Valero Energy Corporation to Coastal. |
| Aug. 4, 1980 | DeMenno/Kerdoon, Los Angeles, California | BST-0009 | Request for Temporary Stay. If granted: Demenno/Kerdoon would receive a Stay of the provisions of the August 1, 1980 Decision and Order (Case No. BST-0085) issued to Little America Refining Company. |
| Aug. 4, 1980 | Getty Refining and Marketing Company, Tulsa, Oklahoma. | BEE-1320 | Price Exception. If granted: Getty Refining and marketing Company would be granted an exemption from the provisions of 10 CFR Part 212, Subpart E which would permit the firm to pass through in the prices it charges for regulated products sold in the State of Connecticut the full amount of the increased costs resulting from the recently enacted Connecticut gross receipts tax. |

**List of Cases Received by the Office of Hearings and Appeals**—Continued

[Week Aug. 1 through Aug. 8, 1980]

| Date | Name and location of applicant | Case No. | Type of submission |
|---|---|---|---|
| Aug. 4, 1980 | Louisiana Land & Exploration Company, Washington, D.C. | BRJ-0119 | Motion for Protective Order. If granted: Louisiana Land & Exploration Company would enter into a Protective Order with Texaco, Inc., regarding the exchange of proprietary information between the two firms in connection with Texaco's Statement of Objections to a Proposed Remedial Order (Case No. DRO-0199). |
| Aug. 4, 1980 | Mobil Oil Corporation/Little America Refining Company, Washington, D.C. | BED-0117, BEJ-0117. | Motions for Discovery and Protective Order. If granted: Discovery would be granted to Mobil Oil Corporation in connection with Litle America Refining Company's (LARCO) Applications for Exception and Temporary Exception (Case Nos. BEE-1064 and BEL-0085). Mobil would also enter into a Protective Order with LARCO regarding the exchange of proprietary information between the two firms. |
| Aug. 4, 1980 | Mustang Fuel Corporation, Washington, D.C | BFA-0438 | Appeal of Information Request Denial. If granted: The June 30, 1980, Information Request Denial issued by the Economic Regulatory Administration would be rescinded, and Mustang Fuel Corporation would receive access to a memorandum dated February 15, 1980, from Wayne Tucker, Manager of the Southwest Enforcement District, to the National Office of Enforcement. |
| Aug. 5, 1980 | Chevron U.S.A. Inc., Washington, D.C | BEJ-0121 | Motion for Protective Order. If granted: Chevron U.S.A. Inc. would enter into a Protective Order with Energy Cooperative Inc. (ECI) regarding the exchange of proprietary information between the two in firms in connection with ECI's Application for Exception (Case No. BEE-1298). |
| Aug. 5, 1980 | Copano Refining Company, San Antonio, Texas | BEE-1325 | Exception from the Entitlements Program. If granted: Copano Refining Company would receive an exception from the provisions of 10 CFR § 212.67 which would modify its entitlements purchase obligations. |
| Aug. 5, 1980 | Energy Cooperation Inc., Central Point, Oregon | BEN-0952 | Motion for Interim Order. If granted: Energy Cooperation, Inc. would receive exception relief on an interim basis pending a final determination on its Application for Exception (Case No. BEE-0952). |
| Aug. 5, 1980 | Mapco, Inc. (Carman and Dennie Ralphs), Tulsa, Oklahoma. | BEE-1321, BEE-1322. | Price Exception (Section 212.73). If granted: Mapco, Inc. would be permitted to sell at market prices the crude oil produced from the Carman 1-7 lease and Dennie Ralphs 1-5 lease located in Altamont Field, Utah. |
| Aug. 5, 1980 | Milder Oil Company, Omaha, Nebraska | BEE-1326 | Price Exception. If granted: Milder Oil Company would receive an exception from the requirements of the December 12, 1977 Consent Order entered into with the Office of Enforcement. |
| Aug. 5, 1980 | Shelton, D. W., Denton, Texas | BEE-1327 | Price Exception (Section 212.73). If granted: D. W. Shelton would be permitted to sell at upper tier ceiling prices the crude oil produced from the Dean Ward Well located in Red River County, Texas. |
| Aug. 5, 1980 | Texaco, Inc., White Plains, New York | BEE-1323 | Price Exception. If granted: Texaco, Inc. would receive an exception from the provisions of 10 CFR Part 212 which would permit the firm to treat all of its imported crude costs as incurred on a loaded instead of a landed basis. |
| Aug. 5, 1980 | Texaco, Inc., White Plains, New York | BEJ-0120, BED-0120. | Motions for Protective Order and Discovery. If granted: Discovery would be granted to Texaco, Inc. in connection with Little America Refinery Company's (LARCO) Applications for Stay and Temporary Exception (Case Nos. BES-0085 and BEL-0085). Texaco would also enter into a Protective Order with LARCO regarding the exchange of proprietary information between the two firms. |
| Aug. 6, 1980 | Getty Refining and Marketing Company, Tulsa, Oklahoma. | BXE-1330, BXE-1335. | Allocation Exception. If granted: Getty Refining and Marketing Company would receive an extension of the exception relief granted in the May 22, 1980 Proposed Decision and Order (Case Nos. BEE-0621 through BEE-0626) regarding increased allocations of unleaded motor gasoline for six retail outlets involved in the firm's gasohol test marketing program. |
| Aug. 6, 1980 | Golden Valley Electric, Washington, D.C | BEE-1328, BEL-1328. | Exception and Temporary Exception from the Entitlements Program. If granted: Golden Valley Electric would receive an exception and temporary exception from the provisions of 10 CFR § 211.67 which would modify its entitlements obligations. |
| Aug. 6, 1980 | Flacon Oil Company, Malco Petroleum Corporation, and Malco Industries, Inc., Cleveland, Ohio. | BSG-0032 | Request for Special Redress. If granted: The Office of Enforcement would be enjoined from auditing Falcon Oil Company, Malco Petroleum Corporation, and Malco Industries, Inc. |
| Aug. 6, 1980 | Mobil Oil Corporation, Washington, D.C | BEA-0440 | Appeal of Allocation Notice. If granted: The July 11, 1980 Canadian Crude Oil Allocation Notice issued by the Economic Regulatory Administration would be modified with respect to the reclassification of Koch Refining Company and Ashland Oil Company as second priority refiners. |
| Aug. 6, 1980 | Delta Petroleum Corporation, Washington, D.C | BMR-0055 | Request for Modification/Rescission. If granted: The July 31, 1980 Decisions and Orders (Case Nos. BMR-0042 and BEA-0347) issued to Marathon Oil Company would be modified with respect to the supplier/purchaser relationship between Delta Petroleum Corporation and Marathon Oil Company. |
| Aug. 7, 1980 | Chevron U.S.A. Inc., Copano Refining Company, Washington, D.C. | BED-0122, BEJ-0122. | Motions for Discovery and Protective Order. If granted: Discovery would be granted to Chevron U.S.A. Inc. in connection with Copano Refining Company's Applications for Exception, Temporary Exception, and Stay (Case Nos. BEE-1249, BEL-1249, BES-1249). Chevron would enter into a Protective Order with Copano regarding the exchange of proprietary information between the two firms. |
| Aug. 7, 1980 | Valero Energy Corporation, Washington, D.C | BMR-0056, BES-0089, BEL-0062. | Request for Modification/Rescission. If granted: The June 17, 1980 Decision and Order (Case No. DEE-1479) issued to Coastal States Gas Corporation would be modified. The June 17 Order would be stayed pending a decision on the Request for Modification. A temporary exception would be granted to implement certain provisions of the February 16, 1979 Proposed Decision and Order issued to Coastal. |
| Aug. 8, 1980 | Dobrovir, Oakes & Gebhardt, Washington, D.C | BFA-0441 | Appeal of Information Request Denial. If granted: The July 8, 1980 Information Request Denial issued by the Office of Special Counsel would be rescinded, and Dobrovir, Oakes & Gebhardt would receive access to certain documents relating to a December 4, 1978 Congressional staff memorandum concerning unlawful crude oil resale practices. |

**List of Cases Involving the Standby Petroleum Product Allocation Regulations for Motor Gasoline**

[Week of August 1 through August 8, 1980]

If granted: The following firms would be granted relief which would increase their base period allocation of motor gasoline.

| | Case No. | Date | State |
|---|---|---|---|
| Wright and Co. (Ridgecrest, CA) | BEE-1324 | 8/4/80 | CA |

**Notices of Objection Received**

[Week of August 1 through August 8, 1980]

| Date | Name and Location of Applicant | Case No. |
|---|---|---|
| Aug. 4, 1980 | McWhirter Distributing Company, et al., Stamford, CT | DEE-6506 to DEE-6508 |
| Aug. 4, 1980 | Mallard Resources, Inc., Washington, DC | BEE-0537 |
| Aug. 4, 1980 | Pennzoil Producing Company, Houston, TX | BXE-1148 |
| Aug. 4, 1980 | Stubbs Oil Company, Statesboro, GA | BEE-0385 |
| Aug. 5, 1980 | Independent Oil and Tire Company, Elyria, OH | BEE-0947 |
| Aug. 5, 1980 | Vantage Petroleum Corp., Bohemia, NY | DEE-6605, DEE-7123 |
| Aug. 7, 1980 | City of Naples, Florida, Naples, FL | DEE-7744 |
| Aug. 7, 1980 | Indiana Farm Bureau Cooperative Assoc., Inc., Indianapolis, IN | BEE-0239 |
| Aug. 8, 1980 | Martinoil Co., Fresno, CA | BEE-0778 |
| Aug. 8, 1980 | Southern Oil Co., Emelle, AL | DEE-3876 |

[FR Doc. 80-30875 Filed 10-2-80; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; Week of August 18 Through August 22, 1980

During the week of August 18 through August 22, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be agrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B-120, 2000 M Street, N.W., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Acting Director, Office of Hearings and Appeals.*

September 26, 1980.

*Gulf Oil Corp./Houston, Tex., DEE-2538, Crude oil*

Gulf Oil Corporation filed an Application for Exception from the provisions of 10 C.F.R. § 212.85. The exception request, if granted, would permit Gulf to calculate its costs of transporting crude oil in two very large cargo carriers (VLCCs) under the net cost method specified in 10 C.F.R. § 212.85 (c). On August 20, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Little America Refining Company, Inc., Casper, Wyo., BEE-1064, crude oil*

On April 10, 1980, the Little America Refining Company, Inc. (Larco) filed a Application for Exception from the provisions of 10 C.F.R. § 211.67 (The Entitlements Program). The exception request, if granted, would relieve Larco of a substantial portion of its entitlements purchase obligations. On August 22, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted in part.

*Chestertown Shorgas Company, Chestertown, Md., DEE-2080, Propane*

Chestertown Shorgas Company filed an Application for Exception from the provisions of 10 CFR Part 212. The exception request, if granted, would permit Chestertown to increase the maximum lawful prices which it may charge by $.30 per hundred cubic feet of Propane and by $.10 per hundred cubic feet of propane-air mixture. On August 19, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Texaco, Inc., White Plains, N.Y. BEE-1246, motor gasoline*

Texaco, Inc. filed an Application for Exception from the provisions of 10 CFR § 212.83. The exception request, if granted, would permit Texaco to reflect in its selling prices for motor gasoline sold in Connecticut the increased cost attributable to gasoline sales of a gross receipts tax enacted by the State of Connecticut on sales of all petroleum products by integrated refiners in that state. On August 22, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

**Petitions Involving the Motor Gasoline Allocation Regulations**

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

*Company Name, Case No., Location*

Bob's Chevron, DEE-2232, Inglewood, CA

Pennsylvania Turnpike, BEE-0394, Harrisburg, PA

[FR Doc. 80-30876 Filed 10-2-80; 8:45 am]

BILLING CODE 6450-01-M

## Issuance of Proposed Decisions and Orders; Week of August 11 Through August 15, 1980

During the week of August 11 through August 15, 1980, the proposed decisions and orders summarized below were issued by the Office of Hearings and Appeals of the Department of Energy with regard to applications for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice (October 3, 1980), or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also

file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of these proposed decisions and orders are available in the Public Docket Room of the Office of Hearings and Appeals, Room B–120, 2000 M Street, NW., Washington, D.C. 20461, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays.

**George B. Breznay,**

*Acting Director, Office of Hearings and Appeals.*

September 26, 1980.

*Bray Terminals, Inc., Marcy, N.Y., BEE–0746, gasohol.*

Bray Terminals, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit the firm to receive an increased allocation of unleaded gasoline for the express purpose of blending and marketing gasohol. On August 11, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Buckeye Petrofuels Co., Coraopolis, Pa., DEE–8015, gasohol.*

Buckeye Petrofuels Co. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit the firm to receive an allocation of unleaded gasoline to enable it to blend and market gasohol. On August 15, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Charles Hasting Oil Co., Inc., Waynesboro, Tenn., BEE–0688, gasohol.*

Charles Hasting Oil Co., Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Hasting to receive an increased allocation of unleaded gasoline in order to begin the production and marketing of gasohol. On August 12, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

*Corn Belt F.S., Inc., Decatur, Ill., BEE–0915, gasohol*

Corn Belt F.S., Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Corn Belt to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On August 14, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

*Fairco, Inc., Spokane, Wash., BEE–0744, gasohol.*

Fairco, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Fairco to receive an increased allocation of unleaded motor gasoline for the purpose of producing gasohol. On August 12, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

*Farmers Union Oil Co., Grand Forks, N. Dak., Bee–0765, gasohol.*

Farmers Union Oil Co. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Farmers Union to receive an increased allocation of unleaded motor gasoline for the purpose of producing gasohol. On August 11, 1980, the Department to Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Hupp Oil Co., Norfolk, Neb., BEE–0905, gasohol.*

Hupp Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Hupp to receive an increased allocation of unleaded motor gasoline for the purpose of producing gasohol. On August 13, 1980, the Department to Energy issued a Proposed Decision and Order which determined that the exception request be denied.

*J & M Machine Shop, Inc., Glencoe, Okla., BEE–0793, gasohol.*

J & M Machine Shop, Inc. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit J & M to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On August 13, 1980, the Department to Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Leihser Oil Co., Decatur, Ill., BEE–0742, gasohol.*

Leihser Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Leihser to receive an increased allocation of unleaded motor gasoline for the purpose of blending gasohol. On August 14, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*R. D. Smith Oil Co., Highland, Ill., BEE–0910, gasohol.*

R. D. Smith Oil Co. filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Smith to receive an increased allocation of unleaded gasoline for the purpose of producing gasohol. On August 11, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

*Sun Production Co., Houston, Tex., DEE–2100, crude oil.*

Sun Production Company filed an Application for Exception from the provisions of 10 CFR Part 212, Subpart D. The exception request, if granted, would permit Sun Production Company to reduce the base production control level of the Delhi Unit by 1,125 barrels per day for the period beginning June 1, 1978. On August 11, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be denied.

*Thomsen Oil Co., Hastings, Nbr., BEE–0664, gasohol.*

The Thomsen Oil Company filed an Application for Exception from the provisions of 10 CFR Part 211. The exception request, if granted, would permit Thomsen to receive an increased allocation of unleaded gasoline for the express purpose of blending and marketing gasohol. On August 15, 1980, the Department of Energy issued a Proposed Decision and Order which determined that the exception request be granted.

### Petitions Involving the Motor Gasoline Allocation Regulations

The following firms filed Applications for Exception from the provisions of the Motor Gasoline Allocation Regulations. The exception requests, if granted, would result in an increase in the firms' base period allocation of motor gasoline. The DOE issued Proposed Decisions and Orders which determined that the exception requests be denied.

*Company name, case No., and location*

Cities Oil Co., BEE–0324, Dallas, Tex.

Flash Car Wash, Inc., DEE–6034, North Las Vegas, Nev.

[FR Doc. 80–30871 Filed 10–2–80; 8:45 am]

BILLING CODE 6450–01–M

## ENVIRONMENTAL PROTECTION AGENCY

**[FRL 1623–6]**

### Applicability Determination, Prevention of Significant Deterioration Requirements; Guardian Industries Corp., Corsicana, Tex.

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of applicability determination.

**SUMMARY:** The Environmental Protection Agency has determined that the regulations for prevention of significant deterioration of air quality (PSD), 40 CFR 52.21 and 40 CFR 52.2303, are applicable to the Guardian Industries Corp. float glass plant at Corsicana, Texas. The Plant will be a major stationary source because the emissions to the atmosphere of both nitrogen

oxides and sulfur dioxide will exceed 250 tons per year. Construction on this plant commenced on September 13, 1979, upon the issuance of a purchase order for on-site construction. Since construction commenced after March 19, 1979, 40 CFR 52.21(i)(4)(iv) does not grant an exemption, and Guardian Industries Corp. is required to obtain a permit before commencing construction.

**DATES:** Under Section 307(b)(1) of the Clean Air Act, judicial review of this determination is available only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days of today. Under Section 307(b)(2) of the Clean Air Act, the requirements which are the subject of today's notice may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

**ADDRESSES:** Copies of the background material and determination are available for public inspection during normal business hours at the following location: Environmental Protection Agency, Region 6, Air Programs Branch, First International Building, 1201 Elm Street, Dallas, Texas 75270.

**FOR FURTHER INFORMATION CONTACT:** Tom Diggs, Air Programs Branch, Environmental Protection Agency, 1201 Elm Street, Dallas, Texas 75270, (214) 767–1594.

Dated: September 23, 1980.

**Frances E. Phillips,**

*Acting Regional Administrator.*

[FR Doc. 80-30818 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1623-8]

## Approval of South Carolina's NPDES Program To Regulate Federal Facilities

**AGENCY:** Environmental Protection Agency.

**ACTION:** Notice of approval of the State of South Carolina's request for authority to administer the National Pollutant Discharge Elimination System (NPDES) program with respect to Federal facilities.

**SUMMARY:** On September 26, 1980, the Environmental Protection Agency (EPA) approved the State of South Carolina's request to include regulation of Federal facilities under their State water pollution permit program. Previously the State had been approved to participate in the NPDES program.

**FOR FURTHER INFORMATION CONTACT:** Joel Blumstein, Permits Division (EN–336), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, 202–426–4793.

**SUPPLEMENTARY INFORMATION:** In 1977 Congress amended section 313 of the Clean Water Act (33 U.S.C. 1251, et seq.) to authorize States to regulate Federally owned or operated facilities under their water pollution control programs. Prior to the amendment, States, including those authorized pursuant to section 402(b) of the Clean Water Act to participate in the NPDES program, were precluded from regulating Federal facilities. Therefore, EPA in approving State programs under section 402(b) reserved the authority to issue NPDES permits to Federal facilities.

With the passage of the 1977 amendments, EPA has been transferring NPDES authority over Federal facilities to approved States. Today's **Federal Register** notice is to announce the approval of the State of South Carolina's request to assume NPDES authority over Federal facilities.

Also included in this notice is a list of approved NPDES States indicating which have been granted Federal facilities and pretreatment authority.

| | Approved State NPDES permit program | Approved to regulate Federal facilities | Approved State pretreatment program |
|---|---|---|---|
| Alabama | 10/19/79 | 10/19/79 | 10/19/79 |
| California | 05/14/73 | 05/05/78 | |
| Colorado | 03/27/75 | | |
| Connecticut | 09/26/73 | | |
| Delaware | 04/01/74 | | |
| Georgia | 06/28/74 | | |
| Hawaii | 11/28/74 | 06/01/79 | |
| Illinois | 10/23/77 | 09/20/79 | |
| Indiana | 01/01/75 | 12/09/78 | |
| Iowa | 08/10/78 | 08/10/78 | |
| Kansas | 06/28/74 | | |
| Maryland | 09/05/74 | | |
| Michigan | 10/17/73 | 12/09/78 | |
| Minnesota | 06/30/74 | 12/09/78 | 07/16/79 |
| Mississippi | 05/01/74 | | |
| Missouri | 10/30/74 | 06/26/79 | |
| Montana | 06/10/74 | | |
| Nebraska | 06/12/74 | 11/02/79 | |
| Nevada | 09/19/75 | 08/31/78 | |
| New York | 10/28/75 | 06/13/80 | |
| North Carolina | 10/19/75 | | |
| North Dakota | 06/13/75 | | |
| Ohio | 03/11/74 | | |
| Oregon | 09/26/73 | 03/02/79 | |
| Pennsylvania | 06/30/78 | 06/30/78 | |
| South Carolina | 06/10/75 | 09/26/80 | |
| Tennessee | 12/28/77 | | |
| Vermont | 03/11/74 | | |
| Virgin Islands | 06/30/76 | | |
| Virginia | 03/31/75 | | |
| Washington | 11/14/73 | | |
| Wisconsin | 02/04/74 | 11/26/79 | |
| Wyoming | 01/30/75 | | |

Dated: September 26, 1980.

**Jeffrey G. Miller,**

*Acting Assistant Administrator for Enforcement.*

[FR Doc. 80-30817 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1624-8]

## R. R. Donnelley & Sons Co., Mattoon, Illinois; Final Determination

In the matter of the applicability of Title I, Part C of the Clean Air Act (the Act), as amended, 42 U.S.C. 7401 *et seq.*, and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for Prevention of Significant Deterioriation of Air Quality (PSD) to R. R. Donnelley & Sons Company, Coles County, Mattoon, Illinois.

On June 26, 1979, R. R. Donnelley & Sons Company submitted an application to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for an approval to construct two rotogravure printing presses. The application was submitted pursuant to the regulations for PSD.

On August 7, 1979, R. R. Donnelley & Sons Company was notified that its application was complete and preliminary approval was granted.

On September 10, 1979, U.S. EPA published notice of its decision to grant a preliminary approval to R. R. Donnelley & Sons Company. No comments or request for a public hearing were received.

After review and analysis of all materials submitted by Donnelley, the Company was notified on March 18, 1980 that U.S. EPA had determined that the proposed new construction in Mattoon, Illinois would be utilizing the best available control technology and that emissions from the facility will not adversely impact air quality, as required by Section 165 of the Act.

This approval to construct does not relieve R. R. Donnelley & Sons Company of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under Section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with Section 307(b)(1), petitions for review must be filed sixty days from the date of this notice.

For further information contact Kathy Kline, Acting Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn

Street, Chicago, Illinois 60604, (312) 353–2090.

**John McGuire,**

*Regional Administrator, Region V.*

**U.S. Environment Protection Agency—Region V**

In the Matter of R. R. Donnelley & Sons Company; Proceeding Pursuant to the Clean Air Act, as amended.

Approval to Construct, EPA–5–A–80–17.

*Authority*

The approval to construct is issued pursuant to the Clean Air Act, as amended, 42 U.S.C. 7401 *et. seq.*, (the Act), and the Federal regulations promulgated thereunder at 40 CFR 52.21 for the Prevention of Significant Deterioration of Air Quality (PSD).

*Findings*

1. R. R. Donnelley & Sons Company (Donnelley) proposes to expand their Mattoon Manufacturing Division, located at Route 45 North, Mattoon, Illinois, in Coles County. The expansion includes two rotogravure printing presses (MR 728 and MR 729), a carbon absorber and a package boiler.

2. Coles County is a Class II area as determined pursuant to the Act and has been designated unclassifiable for ozone ($O_3$) pursuant to Section 107 of the Act.

3. The proposed presses are subject to the requirements of 40 CFR 52.21 and the applicable sections of the Act.

4. Emissions from the presses are volatile organic compounds (VOC) which are precursors to the formation of $O_3$. The proposed expansion was determined to be subject to a full PSD review for VOC.

5. Donnelley submitted a PSD application to U.S. Environmental Protection Agency (U.S. EPA) on June 26, 1979. On August 7, 1979, the application was determined to be complete and preliminary approval was granted.

6. On September 10, 1979, notice was published in the *Journal-Gazette*. The notice sought written comments from the public on Donnelley's application and U.S. EPA's preliminary approval of the proposed construction. There were no public comments and no requests for a public hearing.

7. On October 16, 1979, Donnelley notified U.S. EPA that they would be commenting on the preliminary approval.

8. On October 16, 1979, Donnelley submitted additional data and requested U.S. EPA to delay final approval until this data could be evaluated and the Illinois construction permit of April 9, 1979, could be amended to reflect these changes.

9. The proposed control equipment is a carbon adsorber designed to collect VOC emissions from the four dryer stacks of MR 728 and MR 729 and will operate at an efficiency of 96.5 percent as stipulated in the Illinois permit as special condition 2a issued on January 7, 1980.

10. The new estimated emissions in tons per year are tabulated as follows:

| | MR 728 | MR 729 | Total |
|---|---|---|---|
| Potential | 3,368 | 3,368 | 6,736 |
| Adsorber—in | 3,040 | 3,040 | 6,080 |
| Adsorber—out | 106 | 106 | 212 |

Allowable emissions = 212.
Emissions committed to offsets = 212 × 1.1 = 233
Emissions available for banning = 7,065 − 233 = 6,832.

11. After review and analysis of all materials submitted by Donnelley, U.S. EPA has determined that the source will be using best available control technology (BACT) for the control of VOC and the emission offset provided offers a net benefit to ambient air quality at the expansion site. Since the proposed expansion impacts a net benefit to ambient air quality through the emission offsets, the PSD requirement for air quality impact analysis (modeling and monitoring) was waived.

*Conditions for Approval*

12. In order to realize the approved emission offset, the applicant shall also reduce VOC emissions from existing presses by a quantity equivalent to at least 110 percent of the allowable emissions of the new presses.

13. The following conditions are the basis of the above emission estimates:

a. operating time of 7,280 hours annually; (20 hrs./day × 7 days/wk. × 52 wks./yr.)

b. adsorption efficiency of 96.5 percent.

c. dryer hood collection efficiency of 95 percent.

d. product retention of input solvent, 5 percent.

14. Upon completion of the proposed expansion, performance tests shall be conducted on the carbon adsorption system to establish control efficiency at normal maximum operating conditions. Prior to the tests, notification shall be made within 30 days to the U.S. EPA, who may choose to witness such tests at its option.

15. Donnelley must construct and operate the printing press expansion in accordance with the descriptions presented in their final application for approval to construct. Any change in the design or operation might alter U.S. EPA's conclusion and therefore, any changes must receive the prior written authorization of U.S. EPA.

*Approval*

16. Approval to construct the printing presses, the carbon adsorber, and package boiler is hereby granted to R. R. Donnelley & Sons Company, subject to the conditions expressed herein and consistent with the materials and data included in the application filed by Donnelley. Any departure from the conditions of this approval or the terms expressed in the application, must receive the prior written authorization of U.S. EPA.

17. the United States Court of Appeals for the D.C. Circuit has issued a ruling in the case of *Alabama Power Co.* vs. *Douglas M. Costle* (78–1006 and consolidated cases) which has significant impact on the U.S. EPA prevention of siginificant deterioration (PSD) program and approvals issued thereunder. It is possible that the final decision will require modification of the PSD regulations and could affect approvals issued under the existing program. The applicant is hereby advised that this approval may be subject to reevaluation as a result of the final court decision and its ultimate effect.

18. This approval to construct does not relieve Donnelley of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State Implementation Plan, as well as all other Federal, State and local requirements.

19. This approval is effective immediately. This approval to construct shall become invalid, if construction or expansion is not commenced within 18 months after receipt of this approval or if expansion is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified. Notification shall be made to U.S. EPA 5 days after construction is commenced.

20. A copy of this approval has been forwarded to the Mattoon Public Library, 1600 Charleston, Mattoon, Illinois, for public inspection.

Dated: March 18, 1980.

**John McGuire,**

*Regional Administrator.*

[FR Doc. 80-30813 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

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**[FRL 1626-1]**

## Availability of Environmental Impact Statements

**AGENCY:** Office of Environmental Review (A–104), U.S. Environmental Protection Agency.

**PURPOSE:** This notice lists the Environmental Impact Statements (EIS's) 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 September 22, 1980 to September 26, 1980.

**REVIEW PERIODS:** The 45-day review period for draft EIS's listed in this notice is calculated from October 3, 1980 and will end on November 17, 1980. The 30-day review period for final EIS's as calculated from October 3, 1980 will end on November 3, 1980.

**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 with charge from the following sources:

For public availability and/or hard copy reproduction of EIS's' filed prior to March 1980: Environmental Law Institute, 1346 Connecticut Avenue, NW., Washington, DC 20036.

For hard copy reproduction or microfiche: Information Resources Press, 1700 North Moore Street, Arlington, Virginia 22209 (703) 558–8270.

**FOR FURTHER INFORMATION CONTACT:** Kathi L. Wilson, Office of Environmental Review (A–104), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 (202) 245–3006.

**SUMMARY OF NOTICE:** On July 30, 1979, the CEQ regulations became effective. Pursuant to section 1506.10(A), the 30-day review period for final EIS's received during a given week will now be calculated from Friday of the following week. Therefore, for all final EIS's received during the week of September 22, 1980 to September 26, 1980. The 30-day review period will be calculated from October 3, 1980. The review period will end on November 3, 1980.

Appendix I sets forth a list of EIS's filed with EPA during the week of September 22, 1980 to September 26, 1980. 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, is listed in this notice. 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 EPA has approved 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 newly established 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 agency.

Appendix V sets forth a list of reports or additional supplemental information relating to previously filed EIS's which have been made available to EPA by Federal agencies.

Appendix VI sets forth official corrections which haved been called to EPA's attention.

Dated: September 30, 1980.

**William N. Hedeman, Jr.,**

*Director, Office of Environmental Review (A–104).*

**Appendix I—EIS's Filed With EPA During the Week of September 22 Through 26, 1980**

**Department of Agriculture**

Contact: Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412–A, Administration Building, Washington, D.C. 20250, (202) 447–3965.

**Forest Service**

*Final*

Renewable resources, assessment/program directions, programmatic, September 26: Proposed are five alternatives for program directions of the Forest and Rangeland Renewable Resources Planning Act of 1974, in conjunction with the assessment of national renewable resources on forest system lands. The alternatives consider a range of programs for cooperative and assistance programs with state and private landowners, and for research. The alternatives also consider: Combinations of high, low, moderate and non-market levels of output on combinations of national forest system, state, private forest, and range lands. (USDA–FS–347). Comments made by: DOI, DOC, COE, USDA, state, and local agencies, groups, individuals, and businesses. (EIS Order No. 800744.)

*Final Supplement*

Alpine Lakes area acquisition (FS–1), several counties, Wash., September 23: Proposed is the acquisition by purchase and exchange of 41,150 acres of non-federal lands and the purchase of approximately 22,500 acres of mineral interests within the wilderness and intended wilderness lands of the Alpine Lakes area in Chelan, King, Kittitas, Pierce, Skagit, Snohmish and Yakima Counties, Washington. The land-for-land exchanges will include lands within the Mt. Baker-Snoqualmie and Wenatchee National Forests. Ten alternatives are considered (USDA–FS–FES–(ADM)–78–06–SUPP.) (EIS Order No. 800741.)

**Soil Conservation Service**

*Draft*

Baiting Brook Watershed Protection, Middlesex County, Mass., September 26: Proposed is a watershed protection and flood prevention plan for the Baiting Brook Watershed in Middlesex County, Massachusetts. The planned works of improvement include conservation land treatment, modification of existing culverts at seven locations, channel work, and a floodwater retarding structure. The channel work involves enlargement of about 4,270 feet of stream channel, of which 1,795 feet is with ephemeral flow and 2,475 feet is perennially flowing with about one-half being previously modified. (USDA–SCS–EIS–WS–(ADM)–80–02–(D)–MA). (EIS Order No. 800737.)

*Final*

Pepper Creek Flood Prevention and Drainage, Sussex County, Del., September 22: Proposed is the modification of about 30 miles of channel in the 43 mile Pepper Creek tax drainage measure for the purposes of reducing flooding and providing drainage for a total of 4,340 acres located in Sussex County, Delaware. The plan will include seeding for vegetation growth along the channel bank after construction. Under certain conditions, one side of the channel bank would be left undisturbed. Additionally a small concrete bridge at the Pepper Creek crossing on route 26 would be replaced. The cooperating agency is the State of Delaware. (USDA–SCS–EIS–RC&D–(ADM)–79–1–F–DE). Comments made by: USA, DOC, DOE, HEW, DOI, DOT, EPA, USDA, state and local agencies. (EIS Order No. 800724.)

**U.S. Army Corps of Engineers**

Contact: Mr. Richard Makinen, Office of the Chief of Engineers, Attn: DAEN–CWR–P, Office of the Chief of Engineers, U.S. Army Corps of Engineers, 20 Massachusetts Avenue, Washington, D.C. 20314. (202) 272–0121.

*Draft*

Olomana-Maunawili sewer discharge permit, Oahu, Honolulu County, Hawaii, September 22: Proposed is the issuance of a discharge permit in conjunction with the Olomana-Maunawili sewer project to be located in the Kawainui March, City and County of Honolulu, Oahu Island, Hawaii. The project would involve: (1) placement of rock bedding and concrete material in an excavated trench, (2) laying of sewer pipe, and (3) subsequent back filling of the trench with excavated materials. Four alternative alignments are considered for the sewer line. All alternatives include intercepting raw sewage presently entering 3 treatment plants and conveying it to the Kaneohe-Kailua plant for treatment and eventual ocean disposal through the Mokapu outfall (Honolulu District.). (EIS Order No. 800725.)

*Final Supplement*

Mankato-North Mankato-Le-Hillier, flood control (FS–1) Minnesota, September 25: This statement supplements an (amended) final EIS filed in April 1974 concerning a multi-contract flood control project for the Minnesota River, Minnesota. This document addresses recreational development along the northern edge of the city of Mankato, Minnesota. The site consists of a 45–acre tract presently used for interior drainage. Development will include: (1) A picnic area, (2) A beach area 50 feet wide and 200 feet long, (3) An access road from US 169 leading to a parking lot, (4) Waterborne restrooms and change house, and (5) Shrub buffers (St. Paul district). Comments made by: EPA, DOI, State agencies. (EIS Order No. 800734.)

*Final Supplement*

Dickey-Lincoln School Lakes, Dickey (FS–1); Aroostook County, Maine, September 24: This statement supplements a draft EIS, No. 781339, filed December 18, 1979 concerning the Dickey-Lincoln School Lakes project. This statement proposes the acquisition and management of 112,370 acres of lands in the Allagash River Watershed, and an additional 500 acres along the St. John River in Aroostook County, Maine. This land would be managed for endangered species mitigation. The brook trout fishery that would remain in the project area after implementation would be managed for maximum native potential (New England Division). Comments made by: DOI, EPA, USDA, State and local agencies, groups and individuals. (EIS Order No. 800729.)

**Department of Commerce**

Contact: Dr. Robert T. Miki, Acting Deputy Assistant Secretary for Regulatory Policy, room 7614, Department of Commerce, Washington, D.C. 20230, (202) 377–2482.

**National Oceanic and Atmospheric Administration**

*Final*

Point Reyes-Farallon Islands Marine Sanctuary, Regulatory Pacific, California, September 26: Proposed is the designation of the waters around Point Reyes and the Farallon Islands as a marine sanctuary. The sanctuary would extend shoreward to the seaward boundary of the Point Reyes National Seashore and seaward 3 nautical miles beyond territorial waters. Specific regulations are proposed which would apply only within the sanctuary boundaries. In addition to requiring sanctuary review and certification for the laying of pipelines, the following would be prohibited: Hydrocarbon exploration, discharges, construction on or alteration of the seabed, unnecessary operation of vessels, disturbing marine mammals, and removing or disturbing historical resources. Comments made by: AHP, COE, DOE, DOI, EPA, FERC, USN, DOT, State and local agencies, groups, individuals and businesses. (EIS Order No. 800745.)

*Final*

Gray's Reef Marine Sanctuary, Regulatory Atlantic, Georgia, September 26: Proposed is the designation of the waters at Gray's Reef, a submerged live bottom area on the South Atlantic Continental Shelf located 17.5 nautical miles due east of Sapelo Island, Georgia, as a marine sanctuary. The designation of a marine sanctuary would provide a program of integrated management and regulations to govern recreational activities, certain activities under permit for scientific and educational pruposes, seabed alteration and construction, bottom trawling and specimen dredging, wire trap fishing, marine specimen collecting, and tampering with or removal of submerged historic and cultural resources. Comments made by: USAF, EPA, DOI, HUD, DOT, FERC, State and local agencies, groups, individuals and businesses. (EIS Order No. 800746.)

**Department of HUD**

Contact: Mr. Richard H. Broun, Director, Office of Envronmental Quality, room 7274, Department of Housing and Urban Development, 451 7th Street, S.W., Washington, D.C. 20410, (202) 755–6300.

*Draft*

Grogan's Crossing subdivision mortgage insurance, Montgomery County, Tex., September 24: Proposed is the issuance of HUD home mortgage insurance for the Grogan's Crossing subdivision in the city of Conroe, Montgomery County, Texas. When completed the development would encompass approximately 2,615 acres and contain 8,500 single and multi-family residences. The development will also contain a regional service center, retail space, an office park, and light industry areas (HUD–R06–EIS–80–4D). (EIS Order No. 800732.)

Gem Heights development mortgage insurance Pierce County, Wash., September 26: Proposed is the issuance of HUD Home Mortgage Insurance for the GEM Heights planned development in Pierce County, Washington. The multi-phased planned residential development is 474.55 acres in size and is intended to contain a maximum of 1,727 dwelling units of a variety of housing types. In addition, accessory neighborhood commercial and school areas will be provided (HUD–R10–EIS–ID). (EIS Order No. 800738.)

*Final*

Olympic Park/Harvest Housing Developments, Yellowstone County, Mont., September 24: Proposed is the issuance of HUD home mortgage insurance for the Olympic Park and Harvest Planned Developments in Billings, Yellowstone County, Montana. The developments will encompass 160 acres each and will consist of 735 single and multifamily units. Other features of the developments will include office and commercial uses, parks and open space (HUD–R08–EIS–80–VIIIF). Comments made by: DOT, HHS, COE, DOI, AHP, EPA. (EIS Order No. 800731.)

Hickory Creek Subdivision, Mortgage Insurance, Fort Bend County, Tex., September 22: Proposed it the issuance of mortgage insurance for the Hickory Creek Subdivision located in Fort Bend County, Texas. When completed the subdivision will contain approximately 1,293 acres. There will also be some commercial reserves and recreational areas within the proposed development (HUD R06–EIS–80–8F). Comments made by: EPA, USA, DOT, DOI, USDA, HEW, VA, State and local agencies. (EIS Order No. 800723.)

The following are Community Development Block Grant Statements prepared and circulated directly by applicant 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.

*Final*

Copley Place Development, Boston (UDAG), Suffolk County, Mass., September 23: Proposed is the awarding of a UDAG for the development of Copley Place in the city of Boston, Suffolk County, Massachusetts. Key components of the development would include: (1) A 370,510 sq. ft. retail center, (2) 699,940 sq. ft. of low-rise office space, (3) a 781 room hotel, (4) a 1,008 room convention hotel, (5) 100 units of housing, (6) 1,432 enclosed parking spaces. In addition to no action the alternatives consider substituting additional office space for a specialty department store (HUD–(CDBG)–ROI–EIS–80–F). Comments made by: EPA, AHP, DOI, FHWA, UMTA, State agencies, groups and businesses. (EIS Order No. 800728.)

*Draft Supplement*

Gallery II of Market Street East, CDBG, (DS–1), Philadelphia County, Pa., September 26: Proposed is the awarding of a UDAG to the city and county of Philadelphia, Pennsylvania. This statement addresses the following changes to the project: (1) Approximately 37,500 square feet of retail area would be added, (2) an office tower approximately 400,000 square feet would be added west of 11th Street, and (3) elimination of the open court at 11th Street and inclusion of the Reading Terminal Headhouse as the major entrance. This statement supplements final EIS, No. 791298, filed 12–7–79. (EIS Order No. 800747.)

A waiver has been granted for the above EIS. See Appendix II.

**DEPARTMENT OF INTERIOR**

Contact: Mr. Bruce Blanchard, Director, Environmental Project Review, room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343–3891.

*Draft*

Rojo Caballos Mine Reclamation Plan, Campbell County, Wyo., September 25: Proposed is the approval of a mining and reclamation plan for the Rojo Caballos Mine in Campbell County, Wyo. The mine plan area encompasses 5,815 acres. Approximately 317.5 million short tons of low-sulfur subbituminous coal would be extracted during a 24 year period. The alternatives include: (1) No action, (2) approve plan but begin mining at a later date, (3) disapproval of plans, and (4) approve plan with included stipulations. The cooperating agency is the USGS (OSM–EIS–3) (DES–80–62). (EIS Order No. 800735.)

**Water and Power Resources Services**

*Final Supplement*

Auburn Dam Seismicity and Safety (FS–2), El Dorado and Placer Counties, Calif., September 23: Proposed is a design change for Auburn Dam, a part of the Central Valley Project/Auburn/Folsom South Unit in El Dorado and Placer Counties, California. The preferred design alternatives for the dam are: (1) A curved concrete gravity dam, and (2) a Rockfill Dam with an impervious core. Both designs would impound 2.3 million acre-feet of water. The facilities associated with the dam would essentially be the same as those

studied under the previous design except that the optimum size of the powerplants and the number and arrangement of the multilevel outlets would be reformulated. This statement supplements final EIS, No. 725616, filed 11–13–72. Cooperating agency is FWS. (FES–80–38). Comments made by: AHP, USDA, EPA, DOI, HHS, COE, State and local agencies groups and individuals. (EIS Order No. 800727.)

**Bureau of Land Management**

*Draft*

Camp Swift Reservation, lignite leasing, Bastrop County, Tex., September 26: Proposed is the leasing of approximately 6,600 acres Containing 80 to 100 million tons of federally-owned lignite reserves at Camp Swift Military Reservation, Bastrop County, Tex. The lignite would be used for the generation of Electricity for sale to the public. The alternatives consider: (1) No action, (2) Leasing of 6,600 acres, and (3) Leasing of 6,700 acres. (DES–80–63) (EIS Order No. 800739).

Kanab/Escalante Grazing Management Kane and Garfield County, Utah; Coconino County, Ariz., September 25: Proposed is a grazing management plan for the Kanab/Escalante Area in Washington, Kane and Garfield Counties in Utah and Coconino County, Ariz. The preferred alternative includes: (1) Specific management applied on 129 allotments, (2) Continuous seasonal management applied on 60 allotments, and (3) Elimination of grazing on 21 allotments. The alternatives consider: (1) Continuation of management, (2) Elimination of grazing, (3) Multiple resource enhancement, (4) Adjustment to grazing capacity, (5) Rangeland management recommendation, and (6) Livestock optimization. (FES–80–39) Comments made by: DOI, USDA, EPA, COE, State and local agencies. (EIS Order No. 800733.)

**Fish and Wildlife Service**

*Draft*

Kofa Wildlife Refuge, cattle and burro elimination, Yuma County, Ariz., September 22: Proposed is an elimination program in relation to cattle grazing and the wild burro population within the Kofa National Wildlife Refuge in Yuma County, Ariz. Cattle grazing would be eliminated by a gradual phase-out period with all cattle removed from the refuge by July 31, 1982. The wild burro population would be eliminated by September 30, 1981. The preferred method of burro removal would be live capture with the possibility that a few burros might have to be removed by shooting. (DES–80–64) (EIS Order No. 800722).

**Department of Transportation**

Contact: Mr. Martin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, S.W., Washington, D.C. 20590, 202–426–4357.

**Federal Highway Administration**

*Draft*

Palo Verde Corridor Improvements, Tucson, Pima County, Ariz., September 23: Proposed is improvement of the Palo Verde Corridor Highway from Broadway and Valencia Road in the city of Tucson, Pima County, Ariz. To connect the highway to the remainder of the arterial street network, an East-West connector would be constructed along Golf Links Road from Alvernon to Kolb Road. Five location alternatives are considered, all utilizing both existing and new rights-of-way, in addition to no action. Certain options within the framework of six alternatives do exist including reduced facility and postponement. The Cooperating agency is the State of Arizona. (FHWA–AZ–EIS–80–02–D) (EIS Order No. 800726).

*Final*

I–49, Shreveport Section (F–2), Caddo Parish, La., September 26: Proposed is the reconstruction of a portion of I–49 from Forney-Lucas Road to I–20 in Caddo Parish, La. The alternatives consider: (1) The Kansas City Southern alignment, (2) The Southern Pacific alignment, and (3) Improvement to existing streets combined with transportation system management. This EIS finalizes a portion of the project addressed in FEIS, No.780603, Filed 6–5–78. (FHWA–LA–EIS–76–1–F–Addendum) (EIS Order No. 800748).

OR–42, Coos Bay to Roseburg Highway, Douglas County, Oreg., September 26: Proposed is the realignment and reconstruction of 11 miles of OR–42 in Douglas County, Oreg. The project would begin at Mystic Creek and terminate at Muns Creek. The project would be divided into three segments. Improvements would include: (1) Reducing curvature, (2) Widening travel lanes and shoulders, and (3) Providing safe passing opportunities. Two to three alternatives are considered for each segment. The cooperating agency is the State of Oregon. (FHWA–OR–EIS–78–2F) Comments made by: EPA, DOE, DOC, State and local agencies. (EIS Order No. 800742.)

*Final Supplement*

I–86 (Formerly I–15) American Falls Dam (FS–1) Power County, Idaho, September 26: This Statement supplements a final EIS, No. 770118, filed 1–27–77 concerning the I–86 (Formerly I–15) West Interchange American Falls Dam in Power County, Idaho. This supplement considers a modification of the arterial system alternative which would begin at the I–36 interchange, extend to Oregon Trail Avenue, proceed West across the railroad tracks and then parallel them until connecting the new highway coming from the DAM. Idaho Street would be extended over the railroad tracks and connect with the west alternative. (FHWA–IS–EIS–76–05–S) Comments made by: DOI, EPA, USDA, State and local agencies (EIS Order No. 800736).

**Federal Aviation Administration**

*Draft*

Tweed-New Haven Airport approach lighting system (DR) New Haven County, Conn., September 24: Proposed is the construction and installation of a medium intensity approach light system with sequenced flashing lights on Runway 2 of the Tweed-New Haven Airport in the city and county of New Haven, Conn. The system extends 1,400 feet southerly from the Landing threshold of Runway 2, along the extended centerline of the Runway. The alternatives considered are: (1) No action, and (2) Delete the stroboscopic flashers. (ANE–436–80–ID) (EIS Order No. 800730).

**Environmental Protection Agency**—Continued

[Statement title index—by State and county]

| State | County | Status | Statement title | Accession No. | Date filed | Originating agency No. |
|---|---|---|---|---|---|---|
| Atlantic | | Final | Gray's Reef Marine Sanctuary | 800746 | Sept. 26, 1980 | DOC |
| Arizona | Conconino | Final | Kanab/Escalante Grazing Management | 800733 | Sept. 25, 1980 | DOI |
| | Pima | Draft | Palo Verde Corridor Improvements, Tuscon | 800726 | Sept. 23, 1980 | DOI |
| | Yuma | Draft | Kofa Wildlife Refuge, Cattle and Burro Elimination | 800722 | Sept. 22, 1980 | DOI |
| California | El Dorado and Placer | F Supp | Auburn Dam Seismicity and Safety | 800727 | Sept. 23, 1980 | DOI |
| California | | Final | Point Reyes-Farallon Islands Marine Sanctuary | 800745 | Sept. 26, 1980 | DOC |
| | Several | Final | California Desert Conservation Area | 800743 | Sept. 26, 1980 | DOI |
| Connecticut | New Haven | Draft | Tweed-New Haven Ariport Approach Lighting System. | 800730 | Sept. 24, 1980 | DOT |
| Delaware | Sussex | Final | Pepper Creek Flood Prevention and Drainage | 800724 | Sept. 22, 1980 | USDA |
| Georgia | | Final | Gray's Reef Marine Sanctuary | 800746 | Sept. 26, 1980 | DOC |
| Hawaii | Honolulu | Draft | Olomana-Maunawili Sewer Discharge Permit, Oahu. | 800725 | Sept. 22, 1980 | COE |
| Idaho | Power | F Supp | I–86 (Formerly I–15) American Falls Dam (FS–1) | 800735 | Sept. 25, 1980 | DOT |
| Louisiana | Caddo | Final | I–49, Shreveport Section (F–2) | 800748 | Sept. 26, 1980 | DOT |
| Massachusetts | Middlesex | Draft | Baiting Brook Watershed Protection | 800737 | Sept. 26, 1980 | USDA |
| | Suffolk | Final | Copley Place Development, Boston, UDAG | 800728 | Sept. 23, 1980 | HUD |
| Maine | Aroostook | F Supp | Dickey-Lincoln School Lakes Project, Dicky (FS–1) | 800729 | Sept. 24, 1980 | COE |
| Montana | Yellowstone | Final | Olympic Park/Harvest Housing Developments | 800731 | Sept. 24, 1980 | HUD |

**Environmental Protection Agency**—Continued

[Statement title index—by State and county]

| State | County | Status | Statement title | Accession No. | Date filed | Originating agency No. |
|---|---|---|---|---|---|---|
| Minnesota | | F Supp | Mankato-N. Mankato-Le Hiller Flood Control (FS-1) | 800734 | Sept. 25, 1980 | COE |
| Oregon | Douglas | Final | OR-42, Coos Bay to Roseburg Highway | 800742 | Sept. 26, 1980 | DOT |
| Pennsylvania | Philadelphia | Supp | Gallery II of Market Street East, CDBG, (DS-1) | 800747 | Sept. 26, 1980 | HUD |
| Pacific | | Final | Point Reyes-Farallon Islands Marine Sanctuary | 800745 | Sept. 26, 1980 | DOC |
| Programmatic | | Final | Renewable Resources, Assessment/Program Directions. | 800744 | Sept. 26, 1980 | USDA |
| Regulatory | | Final | Point Reyes-Farallon Islands Marine Sanctuary | 800745 | Sept. 26, 1980 | DOC |
| Regulatory | | Final | Gray's Reef Marine Sanctuary | 800746 | Sept. 26, 1980 | DOC |
| Texas | Bastrop | Draft | Camp Swift Reservation Lignite Leasing | 800739 | Sept. 26, 1980 | DOI |
| | Fort Bend | Final | Hickory Creek Subdivision, Mortgage Insurance | 800723 | Sept. 22, 1980 | HUD |
| | Montgomery | Draft | Grogan's Crossing Subdivision Mortgage Insurance. | 800732 | Sept. 24, 1980 | HUD |
| Utah | Kane | Final | Kanab/Escalante Grazing Management | 800733 | Sept. 25, 1980 | DOI |
| | Garfield | | | | 1980 | |
| Washington | Several | Supp | Alpine Lakes Area Acquisition (FS-1) | 800741 | Sept. 23, 1980 | USDA |
| | Pierce | Draft | Gem Heights Development Mortgage Insurance | 800738 | Sept. 26, 1980 | HUD |
| Wyoming | Campbell | Draft | Rojo Caballos Mine Reclamation Plan | 800735 | Sept. 25, 1980 | DOI |

## 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 |
|---|---|---|---|---|---|
| **Department of the Interior** | | | | | |
| Mr. Bruce Blanchard, Director, Environmental Project Review, Room 4256 Interior Bldg., Department of the Interior, Washington, D.C. 20240, (202) 343-3891 | Kofa National Wildlife Refuge, Yuma County, Arizona. | Draft 800722 | Oct. 3, 1980 (See Appendix I). | Extension | Nov. 30, 1980. |
| | Rojo Caballos Mining and Reclamation Plan, Campbell County, Colorado. | Draft 800735 | Oct. 3, 1980 (See Appendix I). | Extension | Nov. 19, 1980. |
| | Camp Swift Military Reservation, Lignite Reserves, Leasing, Bastrop County, Texas. | Draft 800739 | Oct. 3, 1980 (See Appendix I). | Extension | Dec. 1, 1980. |
| **Department of Transportation** | | | | | |
| Mr. Maratin Convisser, Director, Office of Environment and Safety, U.S. Department of Transportation, 400 7th Street, SW., Washington, D.C. 20590, (202) 426-4357 | U.S. 7, VT-125 To Happy Valley, Rd./Exchange Street, Addison County, Vermont. | Draft 800703 | Sept. 26, 1980 | Extension | Nov. 3, 1980. |
| | A-C Couplet, Anchorage, Alaska | Draft 800718 | Sept. 26, 1980 | Extension | Nov. 14, 1980. |
| **Department of HUD** | | | | | |
| Mr. Richard Brown, Director, Office of Environmental Quality, Department of HUD, 451 7th Street, SW., Washington, D.C. 20410 | Gilbert Lindsay Village Green, Los Angeles, California. | Draft 800719 | Sept. 26, 1980 | Extension | Nov. 17, 1980. |
| | Gallery II of Market Street East, CBDG, Philadelphia, Pennsylvania. | D Suppl. 800747 | Oct. 3, 1980 | Waiver | Nov. 5, 1980. |
| **Nuclear Regulatory Commission** | | | | | |
| Mr. Voss A. Moore, Assistant Director for Environmental Projects, Nuclear Regulatory Commission, P-518, Washington, D.C. 20555, (301) 492-8446 | Three Mile Island Nuclear Station Unit 2, Pennsylvania. | Draft 800563 | Aug. 22, 1980 | Extension | Nov. 20, 1980. |
| **Department of Agriculture** | | | | | |
| Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Departmeant of Agriculture, Room 412-A, Admin. Bldg., Washington, D.C. 20250, (202) 447-3965 | Alaska National Lands, Withdrawal Request. | Draft 800642 | Sept. 28, 1980 | Extension | Oct. 14, 1980. |

## 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/No. | 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. |
|---|---|---|---|
| None. | | | |

**Appendix VI.**—*Official Correction*

| Federal agency contact | Title of EIS | Filing status/accession No. | Date notice of availability published in FEDERAL REGISTER | Correction |
|---|---|---|---|---|
| **Department of Agriculture** | | | | |
| Mr. Barry Flamm, Director, Office of Environmental Quality, Office of the Secretary, U.S. Department of Agriculture, Room 412-A Admin. Bldg., Washington, D.C. 20250, (202) 447-3965 | Alpine Lakes Area Acquisition, Washington. | Draft Supp. 800740 | | EIS was not filed at the time of distribution. The official FEDERAL REGISTER date has been established as May 9, 1980. The comment period was therefore terminated on June 23, 1980. |
| **Interstate Commerce Commission** | | | | |
| Mr. Carl Bausch, Chief, Section of Energy and Environment, Interstate Commerce Commission, Room 3371, 12th and Constitution Ave., NW., Washington, D.C. 20423, (202) 275-7658 | Somerset Railroad, Construction and Operation, Niagara County, New York. | Draft, 800644 | Sept. 5, 1980 | As noted in the EIS, the EPA published an extension to this EIS. The ICC has notified the EPA that the extension was in error and that the normal 45 day review period should be observed. Therefore, the review period for the EIS will terminate on October 20, 1980. The comments received after this date may not be considered in the final EIS. |

[FR Doc. 80-30886 Filed 10-2-80; 8:45 am]
BILLING CODE 6560-01-M

**[OPTS-51140; FRL 1625-4]**

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

**DATES:** Written comments by: PMN 80-233, October 27, 1980. PMN 80-238, November 2, 1980.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-755-8050.

**FOR FURTHER INFORMATION CONTACT:** Bob Jones, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M. St., SW., Washington, D.C. 20460, 202-426-8816.

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing substances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558—Initial), and July 29, 1980 (45 FR 50544—Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use(s) of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the

potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, D.C. 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51140]" and the specified PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604))

Dated: September 26, 1980.

**Warren R. Muir,**

*Deputy Assistant Administrator for Toxic Substances.*

*PMN 80-233.*

*Close of Review Period.* November 26, 1980.

*Manufacturer's Identity.* Claimed confidential business information. Generic information provided:

Annual sales—Between $100 million and $499,999,999.
Manufacturing site—Northeast region, U.S.
Standard Industrial Classification Code—285 "Paints, Varnishes, Lacquers, Enamels, and Allied Products".

*Specific Chemical Identity.* Polymer of adipic acid, benzoic acid, neopentyl glycol, phthalic anhydride, propylene glycol, trimethylol ethane, tall oil fatty acids.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (ppm) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation dermal, eye. | 11 | 8 | 20 | 0-1 | 0-1 |
| Processing | Inhalation dermal, eye. | 10 | 8 | 15 | 0-1 | 0-1 |
| Use | Inhalation | 30 | 8 | 250 | 1-10 | 1-10 |

Environmental Release/Disposal

Media—Amount/Duration of Chemical Release (ky/yr).
Air—10-100. 8-24/da; 20-250 da/yr.
Water—10-10,000.
Land—10-100.

The reactor is a closed system with water of reaction going through a scrubber. The water from the scrubber is neutralized in a settling tank to pH 6-8. Water is discharged to sewer; solid waste is drummed and shipped to approved chemical landfill.

*PMN 80-238.*

*Close of Review Period.* December 2, 1980. *Manufacturer's Identity.* Claimed confidential business information. Generic information provided: Manufacturing site—Mid-Atlantic, U.S. Standard Industrial Classification Code -285, e.

*Specific Chemical Identity.* Glycerine, 1-alkanoate, 3-substituted alkanoate.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Claimed confidential business information. Generic information provided: The manufacturer states that the substance will be used in an open use that will release less than 50 kilograms (kg) per year of the substance into the environment; that the use will involve exposure to chemical industry employees more than once per week; to non-chemical workers five times per week; and to consumers once per month or less as part of an article.

*Production Estimates.*

| | Kilograms per year | |
|---|---|---|
| | Minimum | Maximum |
| 1st year | 25,000 | 40,000 |
| 2d year | 50,000 | 80,000 |
| 3d year | 150,000 | 160,000 |

*Physical/Chemical Properties.*

Acid value—<7.0.
Hydroxyl value—428-450.
Percent total solids—98.0 maximum.
Viscosity—$Z^6$-$Z^7$.
Color—7 maximum.
Flash point—<150° F.

*Toxicity Data.* No data were submitted.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Resin and low volatile organic content coatings (80%) and resin for conventional coatings (20%).

*Production Estimates*

| | Kilograms per year | |
|---|---|---|
| | Minimum | Maximum |
| 1st year | 20,000 | 40,000 |
| 2d year | 40,000 | 80,000 |
| 3d year | 80,000 | 160,000 |

*Physical/Chemical Properties.*

Viscosity—$Z_3Z_5$ Gardner Holt Tubes.
Weight/gallon—9.50 lb.
Acid number (solids basis)—15.0.
Non-volatile (Theoretical)—90% by weight.
Solvent—Ethylene glycol monoethyl ether acetate.
Non-volatile by volume—88.3%.

*Toxicity Data.* No data were submitted.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (ppm) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Skin, eye, inhalation. | 16-24 | 3 | 10-20 | 0-1 | 1-10 |
| Processing | Skin, eye, inhalation. | 8-12 | 3 | 20 | 0-1 | 0-1 |
| Use | Skin, inhalation. | 12-24 | 8 | 40 | 0-1 | 0-1 |

*Environmental Release/Disposal.* The manufacturer states that there will be a very low potential for environmental release of the PMN substance since there will be essentially 100 percent conversion of the substance to an article. There is potential air release of the substance during conversion to the article.

Disposal of waste (sludge) is by landfill or incineration.

[FR Doc. 80-30810 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

[OPTS-51148; FRL 1625-3]

## Certain Chemicals; Premanufacture Notices

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Section 5(d)(2) requires EPA to publish in the **Federal Register** certain information about each PMN within 5 working days after receipt. This Notice announces receipt of two PMN's and provides a summary of each.

**DATES:** Written comments by: PMN 80-232, October 27, 1980. PMN 80-250, November 11, 1980.

**ADDRESS:** Written comments to: Document Control Officer (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-755-8050.

**FOR FURTHER INFORMATION CONTACT:** Rick Green, Chemical Control Division (TS-794), Office of Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460, 202-426-3980.

**SUPPLEMENTARY INFORMATION:** Section 5(a)(1) of TSCA [90 Stat. 2012 (15 U.S.C. 2604)], requires any person who intends to manufacture or import a new chemical substance to submit a PMN to EPA at least 90 days before manufacture or import commences. A "new" chemical substance is any substance that is not on the Inventory of existing susbstances compiled by EPA under section 8(b) of TSCA. EPA first published the Initial Inventory on June 1, 1979. Notices of availability of the Inventory were published in the **Federal Register** of May 15, 1979 (44 FR 28558-Initial), and July 29, 1980 (45 FR 50544-Revised). The requirement to submit a PMN for new chemical substances manufactured or imported for commercial purposes became effective on July 1, 1979.

EPA has proposed premanufacture notification rules and forms in the **Federal Register** issues of January 10, 1979 (44 FR 2242) and October 16, 1979 (44 FR 59764). These regulations, however, are not yet in effect. Interested persons should consult the Agency's Interim Policy published in the **Federal Register** of May 15, 1979 (44 FR 28564) for guidance concerning premanufacture notification requirements prior to the effective date of these rules and forms. In particular, see page 28567 of the Interim Policy.

A PMN must include the information listed in section 5(d)(1) of TSCA. Under section 5(d)(2) EPA must publish in the **Federal Register** nonconfidential information on the identity and use(s) of the substance, as well as a description of any test data submitted under section 5(b). In addition, EPA has decided to publish a description of any test data submitted with the PMN and EPA will publish the identity of the submitter unless this information is claimed confidential.

Publication of the section 5(d)(2) notice is subject to section 14 concerning disclosure of confidential information. A company can claim confidentiality for any information submitted as part of a PMN. If the company claims confidentiality for the specific chemical identity or use[s] of the chemical, EPA encourages the submitter to provide a generic use description, a nonconfidential description of the potential exposures from use, and a generic name for the chemical. EPA will publish the generic name, the generic use(s), and the potential exposure descriptions in the **Federal Register.**

If no generic use description or generic name is provided, EPA will develop one and after providing due notice to the submitter, will publish an amended **Federal Register** notice. EPA immediately will review confidentiality claims for chemical identity, chemical use, the identity of the submitter, and for health and safety studies. If EPA determines that portions of this information are not entitled to confidential treatment, the Agency will publish an amended notice and will place the information in the public file, after notifying the submitter and complying with other applicable procedures.

After receipt, EPA has 90 days to review a PMN under section 5(a)(1). The section 5(d)(2) **Federal Register** notice indicates the date when the review period ends for each PMN. Under section 5(c), EPA may, for good cause, extend the review period for up to an additional 90 days. If EPA determines that an extension is necessary, it will publish a notice in the **Federal Register.**

Once the review period ends, the submitter may manufacture the substance unless EPA has imposed restrictions. When the submitter begins to manufacture the substance, he must report to EPA, and the Agency will add the substance to the Inventory. After the substance is added to the Inventory, any company may manufacture it without providing EPA notice under section 5(a)(1)(A).

Therefore, under the Toxic Substances Control Act, summaries of the data taken from the PMN's are published herein.

Interested persons may, on or before the dates shown under "Dates", submit to the Document Control Officer (TS-793), Rm. E-447, Office of Pesticides and Toxic Substances, 401 M St., SW., Washington, D.C. 20460, written comments regarding these notices. Three copies of all comments shall be submitted, except that individuals may submit single copies of comments. The comments are to be identified with the document control number "[OPTS-51148]" and the specific PMN number. Comments received may be seen in the above office between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding holidays.

(Sec. 5, 90 Stat. 2012 (15 U.S.C. 2604)

Dated: September 26, 1980.

**Warren R. Muir,**

*Deputy Assistant Administrator for Toxic Substances.*

*PMN 80-232.*

*Close of Review Period.* November 26, 1980.

*Manufacturer's Identity.* Claimed confidential business information. Generic information provided:

Annual sales—Between $100 million and $499,999,999.
Manufacturing site—Mid-Atlantic, U.S.
Standard Industrial Classification Code—284.

*Specific Chemical Identity.* 2-Naphthalene ethanol,5,6,7,8-tetrahydro-beta,5,5,8,8,-pentamethyl.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Claimed confidential business information. Generic use provided: The manufacturer states that the substance will be used in a destructive use that will release less than 50 kilograms (kg) of the substance into the environment per year.

*Production Estimates.*

| | Kilograms per year | |
|---|---|---|
| | Minimum | Maximum |
| 1980 | 4,000 | 6,000 |
| 1981 | 18,000 | 25,000 |
| 1982 | 22,000 | 30,000 |

*Physical/Chemical Properties.* No data were submitted.

*Toxicity Data.* The manufacturer states that there are no test data available on the product. The following data are on related materials.

*1,2,3,4-Tetrahydronaphthalene.*

Skin irritation (rabbit)—Severe irritant. (Open patch 500 mg applied.)
Oral $LD_{50}$ (rat)—2,860 mg-kg.
Skin $LD_{50}$ (rabbit)—17,000 mg/kg.
Lowest reported toxic dose in humans (oral)—500 mg/kg.
Suggested threshold limit value (TLV)—25 parts per million (ppm).

*6 Ethyl 1,1,4,4, tetramethyl 1,2,3,4, Tetrahydronaphthalene. $LD_{50}$ (mice, intravenously)—56 mg/kg.*

*1H-Naptho (2,3-C) pyran,3,4,6,7,8,9-hexahydro-4,6,6,9,9-pentamethyl.*

Skin sensitization (guinea pig)—Non-sensitizer.
Repeated Insult Patch Test (RIPT) (human) in ethanol at 5.0%—Non-sensitizer.
Eye irritation (rabbit) in ethanol 5.0%—Non-irritant.
Oral $LD_{50}$ (male/female rats, corn oil)—1,200 (1,025–1,375) mg/kg.
Male/female rats, ethanol)—>10,000 mg/kg.

*1H-Indene-5-ethanol,2,3,-dihydro-beta,1,1,2,3,3,-hexamethyl.*

RIPT (humans) at 2.5% as a mixture—Non-sensitizer.
Oral $LD_{50}$ (rats)—2,300 mg/kg.
Dermal $LD_{50}$ (rats)—>10,000 mg/kg.
Eye and dermal irritation (rabbit) at 2.5%—Non-irritating.

*Exposure.*

| Activity | Exposure route | Maximum number exposed (appropriate) | Maximum duration | | Concentration (ppm) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Dermal inhalation. | 10 | Accident | | 0–1 | 1–10 |
| Use | Dermal inhalation. | 10 | Contact | | 0–1 | 1–10 |
| Disposal | Dermal inhalation. | 10 | Only | | 0–1 | 1–10 |

*Environmental Release/Disposal.* The manufacturer states that less than 30 kg of the substance will be released into the environment per year. Waste disposal will be through sewer and/or incineration in an approved incineration facility.

*PMN 80–250.*

*Close of Review Period.* December 11, 1980.

*Manufacturer's Identity.* Claimed confidential business information. Generic information provided:

Annual sales—Between $10 million and $99,999,999.
Manufacturing site—West-north central, U.S.
Standard Industrial Classification Code –285.

*Specific Chemical Identity.* Propylene glycol, ethylene glycol terephthalic acid polymer, phthalic anhydride, and maleic anhydride.

The following summary is taken from data submitted by the manufacturer in the PMN.

*Use.* Laminating polyester.

*Production Estimates*

| | Pounds per year | |
|---|---|---|
| | Minimum | Maximum |
| 1st year | 150,000 | 250,000 |
| 2d year | 250,000 | 450,000 |
| 3d year | 300,000 | 450,000 |

*Physical/Chemical Properties.*
Non-volatile—67±1.
Viscosity—X–Y.
Color—Blue-green.
Acid number—30–40.
Weight/gal—9.52 lb.
Styrene—100%.

*Toxicity Data.* No data were submitted.

*Exposure.*

| Activity | Exposure route | Maximum number exposed | Maximum duration | | Concentration (ppm) | |
|---|---|---|---|---|---|---|
| | | | Hours/day | Days/year | Average | Peak |
| Manufacture | Inhalation | 2 | 1 | 251 | 1–10 | |
| Processing | Inhalation | 4 | 4 | 251 | 1–10 | |
| Use | Inhalation | | 8 | 251 | 1–10 | |
| Disposal | Inhalation | 3 | 8 | 251 | 1–10 | |

*Environmental Release/Disposal.* The manufacturer states that: Closed equipment is used in the manufacture of the resin; less than 10 pounds of the new substance will be released into the environment per year; water of esterfication will be disposed through a sanitary sewer from a settling tank; and neither the polyester nor its components will be released with the water.

[FR Doc. 80-30811 Filed 10-2-80; 8:45 am]

BILLING CODE 6560-01-M

[FRL 1624-7]

## Region V; Shell Oil Co.

In the matter of the applicability of Title I, Part C of the Clean Air Act (the Act), as amended, 42 U.S.C. 7401 et seq., and the Federal regulations promulgated thereunder at 40 CFR 52.21 (43 FR 26388, June 19, 1978) for the Prevention of Significant Deterioration of Air Quality (PSD), to Shell Oil Company, Elkhart, Illinois.

On March 11, 1980, Shell Oil Company submitted a request to the U.S. Environmental Protection Agency (U.S. EPA), Region V office, for a determination of applicability of the regulations for PSD.

On July 11, 1980, Shell Oil Company was notified that it is not subject to a PSD review.

This determination does not relieve Shell Oil Company of the responsibility to comply with the control strategy and all local, State and Federal regulations

which are part of the applicable State Implementation Plan, as well as all other applicable Federal, State and local requirements.

This determination may now be considered final agency action which is locally applicable under section 307(b)(1) of the Act and therefore a petition for review may be filed in the U.S. Court of Appeals for the Seventh Circuit by any appropriate party. In accordance with section 307(b)(1), petitions for review must be filed sixty days from the date of this notice (December 2, 1980).

For further information contact Kathy Kline, Acting Chief, Compliance Section, Region V, U.S. EPA, 230 South Dearborn Street, Chicago, Illinois 60604. (312) 353-2090.

**John McGuire,**

*Regional Administrator, Region V.*

July 11, 1980.

Mr. N. J. Isto,

*Manager Mining Ventures, Shell Oil Company, Two Shell Plaza, P.O. Box 2099, Houston, Texas 77001.*

Dear Mr. Isto: This is in response to your May 16, 1980, letter requesting exemption from new source review under regulations for the Prevention of Significant Deterioration (PSD) at 43 FR 26403, June 19, 1978 (40 CFR 52.21). Your letter states your intial submittal of data for Shell Oil Company's proposed underground mine and coal cleaning plant in Elkhart, Illinois contained a computational error on the determination of emissions from the coal haul road.

Upon review of the corrected data the calculated emissions from the coal haul road were determined to be 114.1 tons per year (TPY) instead of the previously calculated 151 TPY of total suspended particulate (TSP). The total annual TSP emissions are now calculated to be 218.75 TPY. This is not a major source since the annual TSP emission are less than 250 TPY and is not subject to PSD review.

This exemption in no way relieves Shell Oil Company from its responsibility to comply with all other necessary Federal, State and local approvals.

Very truly yours,

Sandra S. Gardebring,

*Director, Enforcement Division.*

[FR Doc. 80-30812 Filed 10-2-80; 8:45 am]

BILLING CODE 6550-01-M

## FEDERAL COMMUNICATIONS COMMISSION

### Canadian Standard Broadcast Stations; Notification List

List of new stations, proposed changes in existing stations, deletions, and corrections in assignments of Canadian standard broadcast stations modifying the assignments of Canadian broadcast stations contained in the Appendix to the Recommendations of the North American Regional Broadcasting Agreement Engineering Meeting, January 30, 1941.

August 29, 1980.

**Canadian List No. 398**

| Call letters | Location | Power kW | Antenna | Schedule | Class | Antenna height (feet) | Ground system | | Proposed date of commencement of operation |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | Number of radials | Length (feet) | |
| | | | | *540 kHz* | | | | | |
| New | Ottawa, Ontario, N. 45°11'21", W. 75°46'46". | 50D/10N | DA-2 | U | II | ..... | ..... | ..... | Aug. 29, 1981. |
| | | | | *680 kHz* | | | | | |
| CFTR | Toronto, Ontario, N. 43°12'52", W. 79°38'30" (P.O. 25 kw, N. 43°34'48", W. 79°38'30") (Change of proposed night-time directional antenna radiation pattern) (Reduced Q Day 3.79 mV/m, Night *31.7* mV/m). | 50 | DA-2 | U | II | ..... | ..... | ..... | Aug. 26, 1981. |
| | | | | *1140 kHz* | | | | | |
| CKXL | Calgary, Alberta, N. 50°55'25", W. 113°49'58" (Now in operation with increased power). | 50 | DA-2 | U | II | ..... | ..... | ..... | |
| | | | | *1380 kHz* | | | | | |
| New | Calgary, Alberta, N. 50°54'04", W. 114°12'40". | 50D/25N | DA-2 | U | III | ..... | ..... | ..... | Aug. 29, 1981. |
| | | | | *1390 kHz* | | | | | |
| CHOO | Ajax, Ontario, N. 43°50'09", W. 78°58'30" (P.O. DA-1) (Change of day-time directional antenna radiation pattern). | 10 | *DA-2* | U | III | ..... | ..... | ..... | Aug. 29, 1981. |
| | | | | *1450 kHz* | | | | | |
| CHET | Chetwynd, British Columbia, N. 55°40'06", W. 121°34'54" (Assignment of call letters). | 1D/0.25N | ND-180 | U | IV | 115 | 120 | 171 | Dec. 7, 1980. |

**Richard J. Shiben,**

*Chief, Broadcast Bureau, Federal Communications Commission.*

[FR Doc. 80-30750 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

**[CC Docket Nos. 80-553 and 80-554; File Nos. 148-CM-P-79 and 1038-CM-P-79]**

### Microband Corp. of America and Business & Industrial Music Service, Inc.; Hearing Designation Order

Adopted: September 12, 1980.

Released: September 25, 1980.

By the Chief, Common Carrier Bureau:

In the matter of applications of Microband Corporation of America (CC Docket No. 80-553, File No. 148-CM-P-79) and Business & Industrial Music Service, Incorporated (CC Docket No. 80-554, File No. 1038-CM-P-79) for construction permits in the multipoint distribution service for a new station at San Angelo, Texas.

1. The Commission has before it the above-referenced application of Microband Corporation of America, filed on October 20, 1978 (Accepted on Public Notice November 6, 1978) and the application of Business & Industrial Music Service, Incorporated, filed on January 3, 1979 (Accepted on Public Notice January 15, 1979). Both applications are for a construction permit in the Multipoint Distribution Service and both propose to operate on Channel 1 in San Angelo, Texas. The

applications are therefore mutually exclusive and require comparative consideration. Both applications have been amended as a result of informal requests by the Commission staff for additional information, and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, 47 U.S.C. 309(e) and § 0.291 of the Commission's Rules, 47 CFR 0.291 the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered:[1]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Business & Industrial Music Service, Incorporated and the Chief, Common Carrier Bureau, ARE MADE PARTIES to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules.

Philip L. Verveer,

*Chief, Common Carrier Bureau.*

[FR Doc. 80-30747 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

[1] Consideration of these factors shall be made in light of the Commission's discussion in *Applications of Frank K. Spain*, 77 FCC 2d 20 (1980).

**[CC Docket Nos. 80-544 and 80-545; File Nos. 628-CM-P-79 and 1213-CM-P-79]**

## Microband Corp. of America and Multipoint Network Corp.; Hearing Designation Order

Adopted: September 2, 1980.

Released: September 25, 1980.

By the Chief, Common Carrier Bureau:

In the matter of applications of Microband Corporation of America (CC Docket No. 80-544, File No. 628-CM-P-79) and Multipoint Network Corporation (CC Docket No. 80-545, File No. 1213-CM-P-79) for construction permits in the multipoint distribution service for a new station at Greenville, North Carolina.

1. The Commission has before it the above-referenced applications of Microband Corporation of America, filed on November 27, 1978, and Multipoint Network Corporation, filed on January 24, 1979. Both applications propose Channel 1 operation in the Multipoint Distribution Service (MDS) in the Greenville, North Carolina area, and thus are mutually exclusive and under current Commission rules require comparative consideration. Both applications have been amended as a result of requests by the Commission staff for additional information and no petitions to deny or other objections to either of the applications have been filed.

2. Upon review of the captioned applications, we find that both applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, and Section 0.291 of the Commission's Rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Microband Corporation of America, Multipoint Network Corporation and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules.

Philip L. Verveer,

*Chief, Common Carrier Bureau.*

[FR Doc. 80-30748 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

[2] Consideration of these factors shall be made in light of the Commission's discussion in *Re Applications of Frank Spain*, et al. 77 FCC 2d 20 (1980).

**[CC Dockets Nos. 80-496, 80-497 and 80-498, File Nos. 1520-CM-P-76, 1903-CM-P-76 and 3323-CM-P-76]**

## Palmer Broadcasting Co., et al.; Hearing Designation Order

Adopted: September 2, 1980.

Released: September 24, 1980.

By the Chief, Common Carrier Bureau:

In the matter of application of Palmer Broadcasting Company (CC Docket No. 80-496, File No. 1520-CM-P-76), Frank K. Spain d.b.a. Microwave Service Company (CC Docket No. 80-497, File No. 1903-CM-P-76) and Warner Amex Cable Communications, Inc. (CC Docket No. 80-498, File No. 3323-CM-P-76), for construction permits in the multipoint distribution service for a new station at Palm Springs, California.

1. The Commission has before it the above applications of Palmer Broadcasting Company (File No. 1520-CM-P-76) filed on December 24, 1975; Frank K. Spain d.b.a. Microwave Service Company (File No. 1903-CM-P-76) filed on February 12, 1976 and Warner Amex Cable Communications, Inc. (File No. 3323-CM-P-76) filed on March 19, 1976.[1]

[1] Application (File No. 3323-CM-P-76) was submitted by Warner CCC Inc. and through intra-corporate changes and a name change, the control was transferred to Warner Cable Corporation (WCC). At that time 100% of WCC's stock was held by Warner Communications, Inc. On December 27, 1979, American Express Company purchased 50% of Warner Cable Corporation's stock and the company's name was changed to Warner Amex Cable Communications, Inc. (WACC). (See Warner Cable Corporation's application (File No. 217-CF-TC-(3)-80) granted December 11, 1979 for consent to transfer control.) A "Petition for Special Relief" pursuant to Section 21.29(d)(2) of the Commission's

Footnotes continued on next page

All three applications are for a construction permit in the Multipoint Distribution Service (MDS) and propose to operate on Channel 1 in Palm Springs, California. All three applications have been amended as a result of informal requests of the Commission staff for additional information, and no petitions to deny or other objections to any of the applications have been received.

2. Upon review of the captioned applications, we find that the three applicants are legally, technically, financially, and otherwise qualified to provide the services which they propose, and that a hearing will be required to determine, on a comparative basis, which of these applications should be granted.

3. Accordingly, it is hereby ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, and Section 0.291 of the Commission's Rules, the above-captioned applications are designated for hearing, in a consolidated proceeding, at a time and place to be specified in a subsequent order, to determine, on a comparative basis, which of the above-captioned applications should be granted in order to best serve the public interest, convenience and necessity. In making such a determination, the following factors shall be considered: [2]

(a) The relative merits of each proposal with respect to efficient frequency use, particularly with regard to compatibility with co-channel use in nearby cities and adjacent channel use in the same city;

(b) The anticipated quality and reliability of the service proposed, including installation and maintenance programs; and

(c) The comparative cost of each proposal considered in context with the benefits of efficient spectrum utilization and the quality and reliability of service as set forth in issues (a) and (b).

4. It is further ordered, that Palmer Broadcasting Company, Frank K. Spain d.b.a. Microwave Service Company, Warner Amex Cable Communications, Inc. and the Chief, Common Carrier Bureau, are made parties to this proceeding.

5. It is further ordered, that parties desiring to participate herein shall file their notices of appearance in accordance with the provisions of § 1.221 of the Commission's Rules.

**Philip L. Verveer,**

*Chief, Common Carrier Bureau.*

[FR Doc. 80-30751 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**[BC Dockets Nos. 80-555 and 80-556; File Nos. BPH-791105AK and BPH-800612AA]**

## R&R Broadcasting, Inc. and Stephens County Broadcasting Co.; Hearing Designation Order

Adopted: September 16, 1980.

Released: October 1, 1980.

In the Matter of applications of R&R Broadcasting, Inc., Duncan, Oklahoma, Req: 96.7 MHz, Channel 244 3 KW (H&V) 300 feet (BC Docket No. 80-555, File No. BPH-79110AK) and Harry L. Ellis, Freddy Sue Ellis, Larry D. Ellis & Joel C. Humke d/b/a Stephens County Broadcasting Company Comanche, Oklahoma Req: 96.7 MHz, Channel 244 3 KW (H&V) 300 feet (BC Docket No. 80-556. File No BPH-800612AA) for construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications.

2. *R&R.* The applicant proposes to locate its studio 2.5 miles outside the city limits of Duncan. R&R has demonstrated that the proposed studio location would be easily accessible and to do otherwise would cause them economic hardship. Accordingly, we find that good cause exists for location of the main studio 2.5 miles outside the city limits.

3. The respective proposals, although for different communities, would serve substantial areas in common. Consequently, in addition to determining, pursuant to Section 307(b) of the Communications Act of 1934, as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service, a contingent comparative issue will also be specified.

4. The applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applicants are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine the areas and populations which would receive primary aural service (1 mV/m or greater in the case of FM) from the proposed operation of the applicants and the availability of other primary service to such areas and populations.

(2) To determine, in the light of Section 307(b) of the Communications Act of 1934 as amended, which of the proposals would better provide a fair, efficient and equitable distribution of radio service.

(3) To determine, in the event it is concluded that a choice between the applicants should not be based solely on considerations relating to Section 307(b), which of the proposals would, on a comparative basis, better serve the public interest.

(4) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications, if either, should be granted.

6. It is further ordered, that, to avail itself of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

7. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's Rules, give notice of the hearing, within the time and manner prescribed in that Rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Jerold L. Jacobs**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30749 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**[BC Docket No. 80-574, File No. BPH-780714AC; Docket No. 80-575, File No. BPH-790117AM]**

## Bowman & Loveland Broadcasting Co., Inc., and Harrison Radio Station, Inc.; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 19, 1980.

Released: October 2, 1980.

In re applications of Bowman and Loveland Broadcasting Company, Inc.,

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Footnotes continued from last page

Rules, was filed on behalf of WACC on January 25, 1980. Therein WACC sought to preserve its mutually exclusive status with the construction permits filed by Palmer Broadcasting Company and Frank K. Spain d.b.a. Microwave Service Company for a Channel 1 MDS station in Palm Springs, California. The request for special relief and exemption was granted by letter of March 21, 1980.

[2] Consideration of these factors shall be made in light of the Commission's discussion in *Re Applications of Frank Spain*, et al., 77 FCC 2d 20 (1980).

Harrison, Arkansas. Req: 96.7 MHz, Channel 244, 3 KW (H&V), 300 feet and Harrison Radio Station, Inc., Harrison, Arkansas. Req: 96.7 MHz, Channel 244, 3 KW (H&V), 285, feet for a construction permit for a new FM station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Bowman and Loveland Broadcasting Company, Inc. (Bowman and Loveland) and Harrison Radio Station, Inc. (Harrison Radio).

2. *Bowman and Loveland.* The Bowman and Loveland application indicates that it will employ five full-time employees. In its *Report and Order* in Docket No. 20550, concerning non-discrimination in the employment policies and practices of broadcast licensees, 60 FCC 2d 226, 37 RR 2d 1641 (1976), the Commission required broadcast applicants with five or more full-time employees to develop a plan to afford equal opportunity and to refrain from discrimination in employment and related benefits for all qualified persons. See Section 73.2080 of the Commission's Rules. In that *Report and Order,* the Commission adopted a ten-point Equal Employment Opportunity program, included in Part VI of Form 301, to serve as a model to assist non-exempt broadcast applicants. Because Bowman and Loveland is a non-exempt applicant and has failed to file an EEO program, an issue will accordingly be specified.

3. Except as indicated by the issues specified below the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

4. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine whether Bowman and Loveland has complied with the requirements of Section VI of FCC Form 301.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

5. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to Section 1.221(c) of the Commission's Rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

6. It is further ordered, That the applications herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and Section 73.3594 of the Commission's Rules, give notice of the hearing (either individually or, if feasible and consistent with the Rule, jointly) within the time and in the manner prescribed in such Rule, and shall advise the Commission of the publication of such notice as required by Section 73.3594(g) of the Rules.

Federal Communications Commission.

**Jerold L. Jacobs,**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30844 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**[BC Dockets Nos. 80-557—80-558; File Nos. BPCT-781030KF, BPCT-790507KL]**

## Channel 44, Inc., and Family TV, Inc.; Hearing Designation Order; Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 16, 1980.

Released: October 1, 1980.

In re applications of Channel 44, Inc., Evansville, Indiana, BC Docket No. 80-557, File No. BPCT-781030KF; Family TV, Inc., Evansville, Indiana, BC Docket No. 80-558, File No. BPCT-790507KL; for construction permit for a new TV station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television broadcast station on Channel 44, Evansville, Indiana.

2. The predicted Grade A contour of Channel 44, Inc.'s proposed television station completely encompasses the community of license of WIKY and WIKY(FM), licensed to South Central Broadcasting Corporation. Channel 44, Inc. is a wholly-owned subsidiary of South Central Broadcasting Corporation. § 73.636(a)(1) of the rules, 47 CFR 73.636(a)(1) (the "one-to-a-market" rule), sets forth a policy against granting television construction permits to applicants who directly or indirectly own, operate, or control a radio station licensed to a community which is completely encompassed by the predicted Grade A contour of their proposed television station. Note 8 to this rule provides, *inter alia,* that applications for UHF television facilities "* * * will be handled on a case-by-case basis in order to determine whether common ownership, operation, or control of the stations in question would be in the public interest." Accordingly, an appropriate issue will be specified to determine whether common ownership of WIKY, WIKY(FM) and Channel 44, Inc.'s proposed television station would be consistent with the public interest.

3. The tower specified by Channel 44, Inc. may constitute a threat to the antenna pattern of AM Station WIKY. Accordingly, any grant to Channel 44, Inc. will be appropriately conditioned.

4. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

5. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, to be held before an Administrative Law Judge at a time and place to be specified in a subsequent Order, upon the following issues:

(1) To determine whether common ownership, operation, or control of Stations WIKY, WIKY(FM) and Channel 44, Inc.'s proposed television station would be in the public interest.

(2) To determine which of the proposals would, on a comparative basis, better serve the public interest.

(3) To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

6. It is further ordered, That any construction permit granted to Channel 44, Inc. will contain the following condition:

During installation of the TV antenna, permittee shall notify AM Station WIKY so that station may determine operating power by the indirect method and, if necessary, request temporary authority from the Commission in Washington to operate with parameters at variance in order to maintain monitoring point values within authorized limits. Upon completion of the installation, common point impedance measurements of the AM array shall be made and a partial proof of performance as defined by § 73.154(a) of the Commission's rules shall be conducted to establish that the AM array has not been adversely affected and, BEFORE TV

PROGRAM TESTS ARE AUTHORIZED, the results submitted to the commission along with a tower sketch of the installation in an application for Station WIKY to return to the direct method of power determination.

7. It is further ordered, That, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, That the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

**Jerold L. Jacobs,**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30845 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**[BC Dockets Nos. 80-576, 80-577; Files Nos. BPH-791001AD, BPH-800214AJ]**

## Feliciana Broadcasting Co., Inc., et al.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 22, 1980.

Released: October 2, 1980.

In re applications of Feliciana Broadcasting Company, Inc., Clinton, Louisiana, Req: 92.7 MHz, Channel 224 3.0 kW (H&V), 300 feet, BC Docket No. 80-576, File No. BPH-791001AD; James D. Miller and Sharon A. Miller, Clinton, Louisiana, Req: 92.7 MHz, Channel 224 3.0 kW (H&V), 300 feet, BC Docket No. 80-577, File No. BPH-800214AJ; for a construction permit for a New FM Station.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration the above-captioned mutually exclusive applications of Feliciana Broadcasting Company, Inc. (Feliciana), and James D. Miller and Sharon A. Miller (Miller) for a construction permit for a new FM station at Clinton, Louisiana.

2. *Feliciana.* Section 73.358 (c) of the rules requires the applicant to publish local notice of the filing of its application once a week for three weeks in the weekly newspaper published in Feliciana's community. Feliciana indicated that it published the required notice on only one date. In addition, Feliciana's local notice does not specifically describe the location of its proposed transmitter site as required by § 73.3580(f). To remedy these deficiencies, Feliciana will be required to publish local notice of its application in accordance with §§ 73.3580 (c) and (f) and to file a statement of publication with the presiding Administrative Law Judge.

3. Feliciana has not provided us with a copy of its by-laws as required by FCC Form 301, Section II, paragraph 3. The applicant will therefore be required to file this material with the presiding Administrative Law Judge.

4. *Miller.* Miller has also failed to satisfy the local notice requirements of §§ 73.3580 (c) and (f). The applicant has indicated that it published notice on only one date instead of the required three dates and has similarly failed to specifically describe the location of its proposed transmitter site. Therefore, Miller will also be required to publish local notice of its application in accordance with §§ 73.3580 (c) and (f) and to file a statement of publication with the presiding Administrative Law Judge.

5. Question and Answer 9 of the *Primer on Ascertainment of Community Problems by Broadcast Applicants,* 27 FCC 2d 650 (1971), requires an applicant to submit a description of the composition of the community, including data to indicate the ethnic breakdown of the community, its economic activities, governmental activities and public service organizations. Miller's compositional study is cursory and fails to specifically indicate Clinton's ethnic makeup. In its interviews with community leaders, Miller has identified only nine leaders of community groups in Clinton and has, moreover, omitted interviewing any leaders of ethnic, elderly, cultural, environmental, consumer and professional groups. In addition, the applicant has not provided us with any information concerning the methodology of its general public survey and the dates during which it conducted its ascertainment of community problems. Accordingly, a general ascertainment issue will be specified.

6. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

7. Accordingly, it is ordered, That, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine the efforts made by James D. and Sharon A. Miller to ascertain the community needs and problems of the area to be served and the means by which the applicant proposes to meet those needs and problems.

2. To determine which of the proposals would, on a comparative basis, better serve the public interest.

3. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

8. It is further ordered, that Feliciana file a sufficient statement of local notice of its application with the presiding Administrative Law Judge, in accordance with §§ 73.3580 (c) and (f) of the Commission's rules.

9. It is further ordered, that Feliciana file a copy of its by-laws with the presiding Administrative Law Judge.

10. It is further ordered, that Miller file a sufficient statement of local notice of its application with the presiding Administrative Law Judge, in accordance with §§ 73.3580 (c) and (f) of the Commission's rules.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rules, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

**Jerold L. Jacobs,**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30846 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

[BC Dockets Nos. 80-571—80-573; File Nos. BPH-790720AE, etc.]

## Metro Broadcasting Corp., Inc.; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 16, 1980.

Released: October 6, 1980.

In re applications of Metro Broadcasting Corporation, Inc., Stonington, Connecticut, Req: 102.3 MHz, Channel 272 3.0 kW (H&V), 300 feet, BC Docket No. 80-571, File No. BPH-790720AE; J. Russell Patterson, Robert O. King and Paul Sidney Weinstein DBA Stonington-Mystic Broadcasting Company, Stonington, Connecticut, Req: 102.3 MHz, Channel 272 3.0 kW (H&V), 260 feet, BC Docket No. 80-572, File No. BPH-800118AH; Georgia Blackmore and Carol Perry, DBA Shore Broadcasting, Stonington, Connecticut, Req: 102.3 MHz, Channel 272 3.0 kW (H&V), 279 feet, BC Docket No. 80-573, File No. BPH-800118AI; for a construction permit for a new FM Station.

The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has under consideration: (1) The above-captioned mutually exclusive applications of Metro Broadcasting Corporation, Inc. (Metro), J. Russell Patterson, Robert O. King and Paul Sidney Weinstein d.b.a. Stonington-Mystic Broadcasting Company (Mystic), and Georgia Blackmore and Carol Perry d.b.a. Shore Broadcasting (Shore) for a construction permit for a new FM station at Stonington, Connecticut; (2) a petition by Sound Communications Inc. (Sound) for leave to file a competing application beyond the cutoff date established by the Commission for accepting such applications; and (3) Sound's petition to deny the applications of Metro, Mystic and Shore.

2. *Metro.* Analysis of the financial data submitted by Metro reveals that $68,595 will be required to construct the proposed station and operate for three months, itemized as follows:

| | |
|---|---|
| Equipment down payment | $6,400 |
| Equipment payments with interest (5 months) | 8,195 |
| Buildings | 8,000 |
| Miscellaneous | 26,000 |
| Operating costs (3 month) | 20,000 |
| Total | $68,595 |

To meet this requirement, Metro intends to rely upon existing capital of $8,000 and deferred credit from its equipment supplier. The applicant, however, has failed to explain the source or nature of this claimed existing capital and has not included documentation regarding the existence of any deferred credit agreement with its equipment supplier. Since Metro has not adequately documented the existence or any or its claimed sources of funding, a general financial issue will be specified.

3. *Mystic.* Analysis of the financial data submitted by Mystic reveals that $104,532 will be required to construct the proposed station and operate for three months, itemized as follows:

| | |
|---|---|
| Equipment down payment | $1,588 |
| Equipment payments with interest (5 months) | 7,944 |
| Buildings | 17,500 |
| Miscellaneous | 37,500 |
| Operating costs (3 months) | 40,000 |
| Total | $104,532 |

Mystic's miscellaneous expenses include $5,000 for an auxiliary power supply. To meet its $104,532 requirement, the applicant will rely totally upon its partners' contributions of $100,000 in new capital. Since Mystic's apparent funding deficit is $4,532, a limited financial issue will be specified.

4. *Shore.* Analysis of the financial data submitted by Shore reveals that $126,295 will be required to construct the proposed station and operate for three months, itemized as follows:

| | |
|---|---|
| Equipment down payment | $6,600 |
| Equipment principal payments (5 months) | 7,722 |
| Land | 50,000 |
| Buildings | 10,000 |
| Loan payments with interest (5 months) | 973 |
| Miscellaneous | 21,000 |
| Operating costs (3 months) | 30,000 |
| Total | $126,295 |

To meet this requirement, Shore intends to rely upon new capital of $100,000, a loan of $40,000 and deferred credit from its equipment supplier. The applicant has not, however, documented any of the aforementioned sources of funding. The $100,000 will presumably come from Shore's two principals, but the balance sheets submitted are that of the two principals and their respective spouses. The applicant has not indicated that the principals' spouses will enter into this business venture. In addition, Shore neither explains what entity will loan it $40,000 or includes a copy of the loan agreement and only states that more information concerning the deferred credit arrangement will be forthcoming. Since Shore has also not adequately documented the existence of any of its claimed sources of funding, a general financial issue will be specified.

5. *Sound.* Sound filed (1) a petition for leave to file a competing application for channel 272 in Stonington, Connecticut beyond the date established by the Commission for filing such applications; and (2) a petition to deny the applications of Metro, Mystic and Shore. Regarding its first petition, Sound offers no explanation for its failure to file a timely competing application beyond the contention that it learned of the proceeding only after the initial cutoff date for accepting applications had expired. This explanation is insufficient to constitute good cause for reopening the competitive process. Therefore, in the interest of adminstrative finality and orderly processing, Sound's petition for leave to file its application will be denied. Secondly, Sound has not established standing to file a petition to deny as it is neither a party to the proceeding, nor has it adequately demonstrated that its interests would be adversely affected by the grant of any of the applications. Moreover, as a mere potential applicant, Sound's petition to deny concerns only comparative qualifications of the three applicants. It would be inappropriate for us to address this issue at this stage of the proceeding. Therefore, Sound's petition to deny will be dismissed as procedurally defective.

6. *Other issues.* Data submitted by the applicants indicate that there would be a significant difference in the size of the areas and populations which would receive service from the proposals. Consequently, for the purpose of comparison, the areas and populations which would receive FM service of 1 mV/m or greater intensity, together with the availability of other primary aural services in such areas, will be considered under the standard comparative issue for the purpose of determining whether a comparative preference should accrue to any of the applicants.

7. Except as indicated by the issues specificed below, the applicants are qualified to construct and operate as proposed. However, since the proposals are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

8. Accordingly, it is ordered, that pursuant to Section 309(e) of the Communications Act of 1934, as amended, the applications are designated for hearing in a consolidated proceeding, at a time and place to be specified in a subsequent Order, upon the following issues:

1. To determine with respect to Metro Broadcasting Corporation Inc.:

(a) the source and availability of funds to meet its expected costs; and

(b) in light of the evidence adduced pursuant to (a) above, whether the applicant is financially qualified to

construct and operate the proposed station

2. To determine with respect to J. Russell Patterson, Robert O. King and Paul Sidney Weinstein dba Stonington-Mystic Broadcasting Company:

(a) the source and availability of additional funds over and above the $100,000 indicated; and

(b) in light of the evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

3. To determine with respect to Georgia Blackmore and Carol Perry dba Shore Broadcasting:

(a) the source and availability of funds to meet its expected costs; and

(b) in light of the evidence adduced pursuant to (a) above, whether the applicant is financially qualified to construct and operate the proposed station.

4. To determine which of the proposals would, on a comparative basis, best serve the public interest.

5. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

9. It is further ordered, that Sound Communications, Inc.'s petition for leave to file a competing construction permit application is denied.

10. It is further ordered, that Sound's petition to deny the applications of Metro, Mystic and Shore is dismissed.

11. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

12. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594(g) of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the Rules.

Federal Communications Commission.

**Jerold L. Jacobs,**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30847 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

**[BC Docket Nos. 80-578—80-582; File Nos. BPCT-790716KG]**

## Texas Television, Inc., et al; Hearing Designation Order Designating Applications for Consolidated Hearing on Stated Issues

Adopted: September 22, 1980.

Released: October 3, 1980.

In re applications of Texas Television, Inc., Austin, Texas, BC Docket No. 80-578, File No. BPCT-790716KG; Austin Telecasting Company, Austin, Texas, BC Docket No. 80-579, File No. BPCT-791025KE; Mountain Laurel Broadcasting, Inc., Austin, Texas, BC Docket No. 80-580, File No. BPCT-791026KF; Television Corporation of Central Texas, Austin, Texas, BC Docket No. 80-581, File No. BPCT-791026KG; Pappas Telecasting Incorporated, Austin, Texas, BC Docket No. 80-582, File No. BPCT-791026KH; for construction permit.

1. The Commission, by the Chief, Broadcast Bureau, acting pursuant to delegated authority, has before it the above-captioned mutually exclusive applications for authority to construct a new commercial television station to operate on Channel 42, Austin, Texas.

### Television Corporation of Central Texas

2. Television Corporation of Central Texas (Television Corporation) relies upon approximately $2,715,815 to meet its proposed expenditures, itemized as follows: [1]

| | |
|---|---|
| Net deferred credit from equipment loan | $1,794,790 |
| Net bank loan | 845,625 |
| Loan commitment from William E. Allaun, Jr | 50,000 |
| New capital, stock subscriptions | 20,000 |
| Paid-in capital | 5,400 |

Analysis of this data leads to the following determinations:

(a) An examination of Mr. Allaun's balance sheet does not show that he possesses sufficient liquid assets to meet this commitment.

(b) In relation to the stock subscriptions, applicant failed to submit the signed subscription agreements and the subscribers' balance sheets evidencing their ability to meet these commitments.

(c) Concerning the paid-in capital, applicant submitted no balance sheet evidencing the availability of this capital.

Therefore, it cannot be determined that these three financial sources will be available. Nonetheless, Television Corporation has shown the availability of $2,640,415 to meet its proposed costs and, for the reasons discussed below, an issue inquiring into the availability of these three sources will not be specified.

3. The financial data submitted by Television Corporation reveals that at least $597,351 will be required to construct and operate the proposed station for three months, estimated as follows:

| | |
|---|---|
| Equipment, except antenna tower to be leased, interest payments for 5 months | $119,673 |
| Buildings | 50,000 |
| Legal and engineering fees | 52,000 |
| Installation | 25,000 |
| Miscellaneous | 5,000 |
| Operations (3 months) | 291,303 |
| Bank loan, interest payments for 5 months | 54,375 |
| Land and tower lease | |

Applicant states that it will lease a tower to be constructed by a third party, as well as the land on which the tower will be built. However, applicant has neither established the cost of leasing these facilities nor included this expense in its operational costs. Thus, the total cost figure cannot be determined. However, since applicant's financial data shows the availability of $2,043,064 above the ascertainable costs, we can conclude that this surplus is sufficient to cover the lease cost. Therefore, it appears that the financial resources available to the applicant are sufficient to meet its proposed expenditures. Accordingly, no financial issue will be specified against Television Corporation.

### Pappas Telecasting Inc.

4. Pappas Telecasting Incorporated (Pappas) estimates that it will require approximately $2,425,725 to construct and operate the proposed station for three months. To meet these costs, applicant intends to rely entirely upon a $5,000,000 loan from the Bank of America. However, applicant has not submitted a commitment letter from the Bank, evidencing the availability of these resources. Accordingly, a limited financial issue will be specified against Pappas.

5. Except as indicated by the issues specified below, the applicants are qualified to construct and operate as proposed. However, since these applications are mutually exclusive, they must be designated for hearing in a consolidated proceeding on the issues specified below.

6. Accordingly, it is ordered, that, pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above-captioned applications are designated for hearing in a consolidated proceeding, to be held

[1] Although applicant failed to submit page 2, Section III, FCC Form 301, the information requested therein was provided in narrative form (Exhibit 4, FCC Form 301).

before an Administrative Law Judge at a time and place to be specified in a subsequent order, upon the following issues:

1. To determine, with respect to Pappas:

(a) Whether it has $2,425,725 available to meet its estimated construction and operational expenses; and

(b) Whether, in light of the evidence adduced pursuant to the foregoing issue, applicant is financially qualified to construct and operate as proposed.

2. To determine which of the proposals would, on a comparative basis, best serve the public interest.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, which of the applications should be granted.

7. It is further ordered, that, to avail themselves of the opportunity to be heard, the applicants herein shall, pursuant to § 1.221(c) of the Commission's rules, in person or by attorney, within 20 days of the mailing of this Order, file with the Commission in triplicate a written appearance stating an intention to appear on the date fixed for the hearing and to present evidence on the issues specified in this Order.

8. It is further ordered, that the applicants herein shall, pursuant to Section 311(a)(2) of the Communications Act of 1934, as amended, and § 73.3594 of the Commission's rules, give notice of the hearing (either individually or, if feasible and consistent with the rules, jointly) within the time and in the manner prescribed in such rule, and shall advise the Commission of the publication of such notice as required by § 73.3594(g) of the rules.

Federal Communications Commission.

**Jerold L. Jacobs,**

*Chief, Broadcast Facilities Division.*

[FR Doc. 80-30848 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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**[Report No. B-13]**

## TV Broadcast Applications Accepted for Filing and Notification of Cutoff Date

Cut-Off Date: November 14, 1980.

Released: October 3, 1980.

Notice is hereby given that the applications listed in the attached appendix below are accepted for filing. Because the applications listed in the attached appendix below are in conflict with applications which were accepted for filing and listed previously as subject to a cut-off date for conflicting applications, no application which would be in conflict with any application listed in the attached appendix below will be accepted for filing.

Petitions to deny the applications listed in the attached appendix and minor amendments thereto must be on file with the Commission not later than the close of business on November 14, 1980. Any application previously accepted for filing and in conflict with any application listed in the attached appendix below may also be amended as a matter of right not later than the close of business on November 14, 1980. Amendments filed pursuant to this notice are subject to the provisions of § 73.3572(b) of the Commission's rules.

Federal Communications Commission.

**William J. Tricarico,**

*Secretary.*

BPCT-800814KF (new), Colorado Springs, Colorado, Colorado Springs Family Broadcasting, Inc., Channel 21, ERP: Vis. 1130 kW; HAAT: 2114 feet.

BPCT-800708KF (new), Daytona Beach, Florida, Metrovision, Inc., Channel 26, ERP: Vis. 2675 kW; HAAT: 1039 feet.

BPCT-800808KF (new), New Smyrna Beach, Florida (Daytona Beach allocation), WTWV Incorporated, Channel 26, ERP: Vis. 5000 kW; HAAT: 990 feet.

BPCT-800811KF (new), Daytona Beach, Florida, Life Style Broadcasting, Inc., Channel 26, ERP: Vis. 5000 kW; HAAT: 1983 feet.

BPCT-800811KE (new), Daytona Beach, Florida, Daytona Broadcasting Company, Inc., Channel 26, ERP: Vis. 2477 kW; HAAT: 951 feet.

BPCT-800811KG (new), Daytona Beach, Florida, Daytona Beach Family Television, Inc., Channel 26, ERP: Vis. 1569 kW; HAAT: 319 feet.

BPCT-800811KH (new), Daytona Beach, Florida, Daytona Beach Television Corporation, Channel 26, ERP: Vis. 1820 kW; HAAT: 1669 feet.

BPCT-800718KE (new), Dayton, Ohio, Sinder Broadcasting of Ohio, Inc., Channel 45, ERP: Vis. 5000 kW; HAAT: 1166 feet.

BPCT-800721KE (new), Dayton, Ohio, Freedom Broadcasting Corporation, Channel 45, ERP: Vis. 1505 kW; HAAT: 1059 feet.

BPCT-800516KO (new Major Amendment), Kannapolis, North Carolina, Community Action Communications, Inc., Channel 64, ERP: Vis. 1400 kW; HAAT: 552 feet.

BPCT-800718KJ (new Major Amendment), Albany, New York, G & M Broadcasting Corporation, Channel 45, ERP: Vis. 1321 kW; HAAT: 1010 feet.

BPCT-800721KJ (new), Schenectady, New York, Union Street Video, Inc., Channel 45, ERP: Vis. 5000 kW; HAAT: 875 feet.

BPCT-800806KG (new), Wichita, Kansas, Greater Wichita Telecasting, Inc., Channel 24, ERP: Vis. 2944 kW; HAAT: 1023 feet.

BPCT-800806KH (new), Akron, Ohio, Ebony Blackstar Broadcasting Corporation, Channel 55, ERP: Vis. 1808 kW; HAAT: 334 feet.

BPCT-800806KI (new), Akron, Ohio, Rhema Television Corporation, Channel 55, ERP: Vis. 2298 kW; HAAT: 582 feet.

BPCT-800806KJ (new), Akron, Ohio, Akron Telecasting, Inc., Channel 55, ERP: Vis. 1247 kW; HAAT: 957 feet.

BPCT-800814KE (new), Richardson, Texas, Richardson Family Television, Inc., Channel 23, ERP: Vis. 776 kW; HAAT: 305 feet.

BPCT-800814KG (new), Richardson, Texas, Metroplex Television, Inc., Channel 23, ERP: Vis. 2600 kW; HAAT: 674 feet.

[FR Doc. 80-30849 Filed 10-2-80; 8:45 am]

BILLING CODE 6712-01-M

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## FEDERAL MARITIME COMMISSION

**[Docket No. 80-67]**

## Los Angeles Steamship Association v. City of Los Angeles; Filing of Complaint and Assignment

Notice is given that a complaint filed by Los Angeles Steamship Association against The City of Los Angeles was served September 26, 1980. Complainant alleges that Item 205(e) of respondent's tariff relating to pilotage is violative of the Shipping Act, 1916.

This proceeding has been assigned to Administrative Law Judge Norman D. Kline. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61 The hearing shall include oral testimony and cross-examination in the discretion of the presiding officer only upon a proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record.

**Joseph C. Polking,**

*Assistant Secretary.*

[FR Doc. 80-30752 Filed 10-2-80; 8:45 am]

BILLING CODE 6730-01-M

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## GENERAL ACCOUNTING OFFICE

## Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were received by the Regulatory Reports Review Staff, GAO, on September 26, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the **Federal Register** is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with

which the information is proposed to be collected.

Written comments on the proposed ICC requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before October 21, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW, Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

**Interstate Commerce Commission**

The ICC requests an extension-without-change clearance of Form ACC–42, Field Report of Highway Form A. Information relating to the distribution of wage expenses to various types of carrier service is reported on this form by 600 intercity motor common carriers of general freight. All carriers are surveyed once every four years. Data collected on Form ACC–42 are compiled and published to provide information to carriers for ratemaking processes. The ICC estimates respondent burden to average 16 hours per response.

The ICC requests an extension-without-change clearance of Form RE&I, Quarterly Report of Revenues, Expenses and Income-Railroads, required to be filed by some 41 Class I line-haul railroads pursuant to Section 1145 of the Interstate Commerce Act. Data collected by this form are used for economic regulatory purposes. The ICC estimates reporting burden to average 6 hours per report.

The ICC requests an extension-without-change clearance of Form TCS, Annual Report of Freight Commodity Statistics, required to be filed by some 634 Class I Motor Carriers of Property prescribed in 49 CFR 1248. Data collected by this form are used for economic regulatory purposes. Approval is sought for continued use of this form for one data collection for the reporting year 1980. Reports are mandatory and available for public use, except that traffic of less than three shippers of a single commodity may be excluded and filed in a supplemental report not open to public inspection. The ICC estimates that reporting burden will average 470 hours per report.

**Norman F. Heyl,**

*Regulatory Reports Review Officer.*

[FR Doc. 80-30807 Filed 10-2-80; 8:45 am]

BILLING CODE 1610-01-M

## Regulatory Reports Review; Receipt of Report Proposals

The following requests for clearance of reports intended for use in collecting information from the public were accepted by the Regulatory Reports Review Staff, GAO, on September 29, 1980. See 44 U.S.C. 3512 (c) and (d). The purpose of publishing this notice in the Federal Register is to inform the public of such receipts.

The notice includes the title of each request received; the name of the agency sponsoring the proposed collection of information; the agency form number, if applicable; and the frequency with which the information is proposed to be collected.

Written comments on the proposed OSM requests are invited from all interested persons, organizations, public interest groups, and affected businesses. Because of the limited amount of time GAO has to review the proposed requests, comments (in triplicate) must be received on or before October 21, 1980, and should be addressed to Mr. John M. Lovelady, Senior Group Director, Regulatory Reports Review, United States General Accounting Office, Room 5106, 441 G Street, NW., Washington, DC 20548.

Further information may be obtained from Patsy J. Stuart of the Regulatory Reports Review Staff, 202–275–3532.

**Office of Surface Mining**

The Office of Surface Mining (OSM), Department of the Interior, requests clearance of a new form, OSM–47, OSM Budget Information Report. The purpose of this form is to provide a format for obtaining from the applicant functional budget reporting data to be submitted by 31 Mining and Mineral Resources and Research Institutes (MMRRI). Form OSM–47 is to be part of the grant application of a research grant. OSM Regulations 30 CFR 890.10, 890.12 and 890.13 require applications for grants to be submitted according to the requirement of OMB Circular A–110. OSM developed this new form because the OMB Circular A–110 does not contain a standard form for submitting a financial plan with a grant application. OSM estimates that respondent burden will average 6 hours per report.

The OSM requests clearance of a new form, TS–7, Program Narrative Statement or Technical Report. The purpose of Form TS–7 is to provide a format for grant recipients to submit a statement regarding monitoring and reporting program performance. This reporting requirement is set forth in Attachment H of Circular A–110. The information to be submitted on Form TS–7 is: (a) With each application, a statement establishing goals for the period, that explains the establishment of time schedules, projects work units by time periods, lists other performance goals and benefits expected to be obtained from the OSM grant; and (b) With each quarterly Financial Status Report, SF–269, a performance statement (Technical Report) from a grantee that ensures that time schedules are being met, projected work units by time periods are being accomplished, and other performance goals are being achieved. OSM proposes that Form TS–7 shall be submitted with each application and submitted quarterly for each allotment grant, scholarship/fellowship grant and each research grant. OSM estimates respondents will be 31 Mining and Mineral Resources and Research Institutes and that reporting burden will average 10 hours per report.

The OSM requests clearance of a new form, TS–9, Report of Funded Scholarship and Fellowships. The purpose of Form TS–9 is to provide a format for submitting a brief accounting of individuals receiving assistance, including field of study, degree sought, and the amount of assistance awarded for a scholarship/fellowship grant. This information is required according to 30 CFR 890.13(d)(3). It proposes that Form TS–9 be submitted semi-annually. The OSM estimates that repondents will be the 31 Mining and Mineral Resources and Research Institutes and that reporting burden will average 8 hours per report.

**Norman F. Heyl,**

*Regulatory Reports Review Officer.*

[FR Doc. 80-30808 Filed 10-2-80; 8:45 am]

BILLING CODE 1610-01-M

## GENERAL SERVICES ADMINISTRATION

### National Capital Region; GSA's 10-Year Space Acquistion Program in the National Capital Region; Intent To Prepare an Environmental Impact Statement (EIS)

The General Services Administration (GSA) National Capital Region (NCR) intends to prepare an Environmental Impact Statement on GSA's Ten-Year Space Acquistion Program in the NCR.

**Description**

GSA now controls 64 million square feet of space, providing work stations for over 265,000 employees in the NCR. GSA is preparing an EIS covering the proposed Ten-Year Space Acquistion Program. As part of this effort, GSA will develop procedures to evaluate site specific projects against the programmatic statement to determine if additional environmental review is required. In this manner the most environmentally sound development patterns may be chosen and site specific problems minimized, by recognizing issues early in the comprehensive planning process.

**The Scoping Process**

The scoping for this EIS consists of a request for Federal, regional, and local agencies to assist GSA in identifying the appropriate scope of this project. The agencies contacted will be those normally consulted under the Intergovernmental Cooperation Act and OMB Circular A-95 procedures. Other organizations concerned with area-wide development and environmental issues will also be invited to submit comments on the appropriate scope of the EIS. A meeting will not be held. Comments should be forwarded to: Mr. Thurlow E. Tibbs, Jr., General Services Administration (WPJF), Planning Division, National Capital Region, 7th and D Streets, SW.—Room 7901, Washington, DC 20407.

Dated: September 25, 1980.

**Walter V. Kallaur,**

*Regional Administrator.*

[FR Doc. 80-30734 Filed 10-2-80; 8:45 am]

BILLING CODE 6820-23-M

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. 79N-0275; DESI Nos. 8615, 9152, 9188, 10210, and 50168]**

### Certain Ophthalmic Combination Drugs for Human Use; Drug Efficacy Study Implementation; Revocation of Exemption

*Correction*

In FR Doc. 80-26518 appearing on page 57779 in the issue of Friday, August 29, 1980, make the following change:

In column three of page 57779, in item number 13, change "NDA 60-778; Di-Hydrin Ophtalmic . . ." to read "NDA 60-788; Di-Hydrin Ophthalmic . . .".

BILLING CODE: 1505-01-M

**[Docket No. 78G-0310]**

### General Bioscience, Inc.; Amended Notice of Filing of a Petition for Affirmation of GRAS Status

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The notice of filing of the petition (GRASP 8G0212) proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses is generallly recognized as safe (GRAS) is amended in the following respects: First, General Bioscience, Inc., replaces Krey Packing Co and Shared Technology, Inc., by assuming the responsibility of the peitition. Secondly, the concentration range of chlorine dioxide in water for such use is changed form 0.1 to 50 parts per million (ppm) to 0.05 to 5 ppm.

**DATE:** Comments by December 2, 1980.

**FOR FURTHER INFORMATION CONTACT:** Lawrence J. Lin, Bureau of Foods (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-8950.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of November 7, 1978 (43 FR 51845), a notice was published that a petition (GRASP 8G0212) had been filed jointly on behalf of Krey Packing Co. and Shared Technology, Inc., proposing affirmation that chlorine dioxide used in water to disinfect freshly slaughtered red meat carcasses in GRAS. This document gives public notice that these two companies have no further interest in pursuing this petition and a new company, General Bioscience, Inc., 214 N. Sarah St., St. Louis, MO 63108, has assumed responsibility for the petition.

Additionally, General Bioscience, Inc., requests that the concentration range of chlorine dioxide in water used to disinfect freshly slaughtered red meat carcasses be changed from the original treatment range of 0.1 to 50 ppm, to a new treatment range of 0.05 to 5 ppm.

Interested persons may, on or before December 2, 1980, review the petition and/or file comments (four copies, identified with the Hearing Clerk docket number found in brackets in the heading of this document) with the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857. Comments shall include any available information that would be helpful in determining whether such use of chlorine dioxide is or is not GRAS. A copy of the peitition and received comments may be seen in the office of the Hearing Clerk, between 9 a.m. and 4 p.m., Monday through Friday.

Dated: September 19, 1980.

**Sanford A. Miller,**

*Director, Bureau of Foods.*

[FR Doc. 80-30522 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-03-M

**[Docket No. 78N-0100]**

### Viral Vaccines and Immune Globulins; Opportunity for Hearing on Intent To Revoke Certain U.S. Licenses

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA) is providing a notice of opportunity for a hearing and is inviting comments on a proposal to revoke licenses for certain viral vaccines and therapeutically related immune globulins. This action implements FDA's conclusions based on the recommendations of an advisory review panel.

**DATES:** The licensees may submit a written request for a hearing by November 3, 1980, and any data justifying a hearing must be submitted by December 2, 1980; other interested persons may submit comments on the proposed revocation to the Hearing Clerk by December 2, 1980.

**ADDRESS:** Written requests for hearing and written comments to the Hearing Clerk (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Steven F. Falter, Bureau of Biologics (HFB-620), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20205, 301-443-1306.

**SUPPLEMENTARY INFORMATION:** In the Federal Register of April 15, 1980 (45 FR 25652), FDA announced its intention to revoke the licenses for certain viral vaccines and therapeutically related immune globulins. This decision was based on the recommendation of the Panel on Review of Viral Vaccines and Rickettsial Vaccines (the Panel) that the products are unsafe, ineffective, or misbranded (Category II, 21 CFR 601.25(f)(2)) or that the data are insufficient to classify the products as safe and effective (Category III B, 21 CFR 601.25(f)(3)). The basis of the Panel's recommendation, which FDA adopts as grounds for revocation, is contained in the April 15, 1980 Federal Register document.

It is unnecessary for FDA to employ these revocation procedures for the licenses covering the following products

because, at the request of the licensees, these licenses have already been revoked: Mumps Immune Globulin (Human), manufactured by Travenol Laboratories, Inc., Hyland Division, License No. 140 (product license revoked on June 18, 1980); Adenovirus Vaccine, Adenovirus and Influenza Virus Vaccines Combined Aluminum Phosphate Adsorbed, Poliomyelitis Vaccine, and Poliomyelitis Vaccine Adsorbed, manufactured by Parke-Davis, Division of Warner-Lambert Co. (formerly named Parke, Davis & Co.), License No. 1 (product licenses revoked on July 29, 1980); and Poliomyelitis Vaccine and Smallpox Vaccine, manufactured by Merck Sharp & Dohme, Division of Merck & Co., Inc., License No. 2 (product licenses revoked on July 29, 1980).

FDA is proposing to revoke the U.S. License(s) for certain viral vaccines and therapeutically related immune globulins grouped by the Panel into the following regulatory categories:

1. Category II. *Biological Products determined to be unsafe or ineffective or to be misbranded and should not continue in interstate commerce:* Mumps Immune Globulin (Human) (Hyparotin), Cutter Laboratories, Inc., 4th and Parker Sts., Berkley, CA 94710, License No. 8.

2. Category IIIB. *Biological Products for which available data are insufficient to classify their safety and effectiveness and should not continue in interstate commerce:* Measles Immune Globulin (human), Lederle Laboratories, Division American Cyanamid Co., Middletown Rd., Pearl River, NY 10965, License No. 17. As stated in the April 15, 1980 **Federal Register**, revocation of this product license is also based on § 601.5(b)(2) (21 CFR 601.5(b)(2)) because manufacture has been discontinued to such an extent that a meaningful inspection cannot be made.

Pursuant to § 12.21(b) (21 CFR 12.21(b)), FDA is offering an opportunity for a hearing on the proposed revocation of existing licenses for products in these categories. A written request for a hearing by a licensee may be submitted to the Hearing Clerk, Food and Drug Administration, by November 3, 1980, and any data justifying a hearing must be submitted by December 2, 1980; other interested persons may submit comments on the proposed revocation to the Hearing Clerk, Food and Drug Administration by December 2, 1980.

The procedures and requirements governing this Notice of Opportunity for Hearing, other comments, a grant or denial of hearing, a notice of appearance and request for hearing, the submission of data, and information and analyses to justify a hearing are contained in 21 CFR Part 12 and 21 CFR 314.200. See 21 CFR 601.7(A).

The failure of a licensee to file timely written appearance and request for a hearing constitutes an election of the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation and a waiver of any contentions governing the legal status of the product at issue. Any such product may not thereafter lawfully be marketed, and FDA will initiate appropriate regulatory action to remove such product from the market. Any biological product marketed without an approved license is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must set forth specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. If it conclusively appears from the face of the data, information, and factual analyses in the request for a hearing that there is no genuine and substantial issue of fact that precludes the revocation of the license, or when a request for hearing is not made in the required format or with the required analyses, the Commissioner of Food and Drugs will enter summary judgment against the licensee requesting the hearing, making findings and conclusions that justify denying a hearing.

All submissions pursuant to this notice shall be filed in four copies, except that individuals may submit one copy. Submissions are to be identified with the Hearing Clerk docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure pursuant to 21 U.S.C. 331(j) or 18 U.S.C. 1905, may be seen in the office of the Hearing Clerk, Food and Drug Administration, between 9 a.m. and 4 p.m., Monday through Friday.

(Public Health Service Act (sec. 351, 58 Stat. 702 as amended (42 U.S.C. 262)) and the Federal Food, Drug, and Cosmetic Act (secs. 201, 502, 505, 701, 52 Stat. 1040–1042 as amended, 1050–1053 as amended, 1055–1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 321, 352, 355, 371)))

Dated: September 25, 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-30523 Filed 10-2-80; 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:

### Dental Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel

*Date, time and place.*—October 20 and 21, 9 a.m., Rm. 1813, 200 C St. SW., Washington, DC.

*Type of meeting and contact person.*—Open public hearing, October 20, 9 a.m., to 10 a.m.; open committee discussion, October 20, 10 a.m. to 4 p.m., October 21, 9 a.m. to 12 m.; D. Gregory Singleton, Bureau of Medical Devices (HFK–460), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7536.

*General function of the Committee.*—The Committee reviews and evaluates available data on the safety and effectiveness of devices currently in use and makes appropriate recommendations for their regulation.

*Agenda—Open public hearing.*—Interested persons may present data, information, or views, orally or in writing, on issues pending before the Committee. Those desiring to make formal presentations should notify the contact person by October 8, 1980, and submit a brief statement of the general nature of the evidence or arguments they wish to persent, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

*Open Committee discussion.*—Combe, Inc., will present data in the form of a petition for reclassification of their device called "Sea Bond", intended to increase retention of denture prosthetic devices. Dr. Gerhard Brauer from the National Bureau of Standards will review studies which have been done to find a suitable substance to make denture based resins radiopaque. The Section will review a premarket approval application for a device used to repair periodontal defects and will discuss the content of protocols for the clinical study of endosseous implants.

*Applications for reimbursement.*—Must be received by October 10, 1980.

**Technical Electronic Product Radiation Safety Standards Committee (TEPRSSC)**

*Date, time, and place.*—December 3, 1 p.m., and December 4, 9 a.m., Conference Rm. 416, Bureau of Radiological Health, 12720 Twinbrook Parkway, Rockville, MD.

*Type of meeting and contact person.*—Open committee discussion, December 3, 1 p.m. to 4:30 p.m.; open public comment, December 4, 9 a.m. to 10 a.m.; open committee discussion, December 4, 10 a.m. to 4:30 p.m.; Zorach R. Glaser (HFX–460), Bureau of Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3429.

*General function of the Committee.*—The Committee advises on technical feasibility, reasonableness, and practicability of performance standards for electronic products to control the emission of radiation, under 42 U.S.C. 263(f)(1)(A).

*Agency—Open public comment.*—Any interested person 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 in writing before November 12, 1980, 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. This will permit distribution and advance review by Committee members and Agency staff.

*Open committee discussion.*—The Committee will discuss draft amendments to the laser standard, and possibly the public response to the Notice of Intent on the same issue. It is anticipated that brief informational presentations and a standards update will be presented by Agency staff to the Committee.

*Applications for reimbursement.*—Must be filed by October 14, 1980.

Parking is available adjacent to the Parklawn Bldg. (approximately one block distant), 5600 Fishers Lane, Rockville, MD, at a cost of $4.00 per day.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open pulic hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an 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 requrest 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 itmes 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 requested from the Administrative Proceedings Staff (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meetings listed above should be sent to the Office of Consumer Affairs (HFE–90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301–443–5006.

FDA has established expedited procedures for review of any application for reimbrusement for participation in the meetings announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meetings announced in this notice in the docket for this notice.

Dated: September 29. 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80–30739 Filed 10–2–80; 8:45 am]

BILLING CODE 4110–03–M

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## Advisory Committee; Meeting

**AGENCY:** Food and Drug Administration.

**ACTION:** Notice.

**SUMMARY:** This notice announces a forthcoming meeting of a public advisory committee 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 meeting is announced:

**Fertility and Maternal Health Drugs Advisory Committee**

*Date, time, and place.*—October 23, 1980, Conference Rm. F, Parklawn Bldg., Food and Drug Administration, 5600 Fishers Lane, Rockville, MD.

*Type of meeting and contact person.*—Open public hearing, October 23, 9 a.m. to 10 a.m.; open committee discussion, October 23, 10 a.m. to 5 p.m.; A. T. Gregoire, Bureau of Drugs (HFD–130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3520.

*General function of the Committee.*—The Committee reviews and evaluates available data concerning the safety and effectiveness of presently marketed and new prescription drug products proposed for marketing for use in the practice of obstetrics and gynecology.

*Agenda—Open public hearing.*—Any interested person may present data, information, or views, orally or in writing, on issues pending before the Committee.

*Open Committee discussion.*—The Committee will discuss the safety of marketed high-dose estrogen oral contraceptives and estradiol pellets for treatment of the menopause.

*Applications for reimbursement.*—Must be received by October 14, 1980.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public

hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an 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 requested from the Administrative Proceedings Staff (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between the hours of 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Applications for reimbursement for participation in the meeting listed above should be sent to the Office of Consumer Affairs (HFE-90), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, rather than to the Hearing Clerk as prescribed in § 10.210 of the regulations (21 CFR 10.210). If you wish to submit an application or wish more information regarding the reimbursement program, please call 301-443-5006.

FDA has established expedited procedures for review of any application for reimbursement for participation in the meeting announced in this notice. The Office of Consumer Affairs, FDA, will file any application for reimbursement for participation in the meeting announced in this notice in the docket for this notice.

Dated: September 26, 1980.

**William F. Randolph,**

*Acting Associate Commissioner for Regulatory Affairs.*

[FR Doc. 80-30738 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-03-M

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**Public Health Service**

**Assistant Secretary for Health**

## Community Health Centers Under Section 330 of the Public Health Service Act; Delegations of Authority to the Administrator, Health Services Administration, et al.

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on August 11, 1980 (45 FR 62905) the following delegation and redelegations have been made regarding the authorities for a Community Health Centers Program under section 330 of the Public Health Service Act (42 U.S.C. 254c), as amended.

1. Delegation from the Acting Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all the authorities delegated to the Assistant Secretary for Health under section 330 of the Public Health Service Act, as amended.

2. Redelgation from the Acting Administrator, Health Services Administration, to the Regional Health Administrators, with authority to redelegate, of the authority under section 330 of the Public Health Service Act, as amended, to administer grants for the Community Health Centers within their respective regions, other than grants which are national or multiregional in scope.

3. Redelegation from the Acting Administrator, Health Services Administration, to the Director, Bureau of Community Health Services, Health Services Administration, with authority to redelegate, of all the authorities delegated to the Administrator, Health Services Administration, for the Community Health Centers under section 330 of the Public Health Service Act, as amended, except those authorities specifically delegated by the Administrator, Health Services Administration, to the Regional Health Administrators. This delegation includes authority for administration of grants that are national or multiregional in scope.

The June 23, 1978 delegation (43 FR 29034) by the Assistant Secretary for Health to the Administrator, Health Services Administration, has been superseded insofar as it pertains to section 330 of the Public Health Service Act relating to community health centers. The November 25, 1975 delegation (40 FR 58166) by the Assistant Secretary for Health to the Regional Health Administrators of authority under section 330 of the Public Health Service Act has also been superseded. Provision has been made for previous delegations and redelegations to other officials within the Health Services Administration and the Public Health Service Regional Offices of authorities under section 330 of the Public Health Service Act to continue in effect for no more than 90 days from the effective date of the above delegations but only to the extent that they are consistent with the above delegations.

The above delegation and redelegations were effective on August 27, 1980.

Dated: August 27, 1980.

**Charles Miller,**

*Acting Assistant Secretary for Health.*

[FR Doc. 80-30740 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-84-M

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**Public Health Service**

## Primary Care Research and Demonstration Projects; Delegations of Authority to the Administrator, Health Services Administration, et al.

Notice is hereby given that the following delegation and redelegations have been made regarding the Primary Care Research and Demonstration Projects under section 340 of the Public Health Service Act (42 U.S.C. 256), as amended.

1. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of all the authorities delegated to the Assistant Secretary for Health (45 FR 62909) under section 340 of the Public Health Service Act (42 U.S.C. 256), as amended. The delegation to the Assistant Secretary for Health excluded the authorities to issue regulations and submit reports to Congress and was made subject to the

limitations set forth in section 340(c)(1) and section 340(g)(4) of the Public Health Service Act.

2. Redelegation from the Administrator, Health Services Administration, to the Regional Health Administrators, with authority to redelegate, of the authority under section 340 of the Public Health Service Act (42 U.S.C. 256), as amended, to administer grants for the Primary Care Research and Demonstration Projects within their respective regions. The delegation to the Regional Health Administrators was made subject to the limitations set forth in section 340(c)(1) and section 340(g)(4) of the Public Health Service Act.

3. Redelegation from the Administrator, Health Services Administration, to the Director, Bureau of Community Health Services, Health Services Administration, with authority to redelegate, of all the authorities delegated to the Administrator, Health Services Administration, for Primary Care Research and Demonstration Projects under section 340 of the Public Health Service Act (42 U.S.C. 2560, as amended, except those specifically delegated to the Regional Health Administrators. The delegation to the Director, Bureau of Community Health Services was made subject to the limitations set forth in section 340(c)(1) and section 340(g)(4).

The above delegation and redelegations were effective on August 22, 1980.

Dated: August 22, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-30746 Filed 10-2-80; 4:15 pm]

BILLING CODE 4110-84-M

## Program to Deter Smoking and Use of Alcoholic Beverages Among Children and Adolescents; Delegation of Authority to the Director, Center for Disease Control

Notice is hereby given that in furtherance of the delegation made by the Secretary of Health and Human Services to the Assistant Secretary for Health on August 11, 1980 (45 FR 62905), the Assistant Secretary for Health has delegated to the Director, Center for Disease Control, with authority to redelegate, the authority under section 402(a)(2) of the Health Services and Centers Amendments of 1978, Pub. L. 95-626 (42 U.S.C. 247b-2(a)(2)) concerning grants in meeting the costs of demonstrations and evaluations of programs designed to deter smoking and the use of alcoholic beverages among children and adolescents.

The above delegation became effective August 11, 1980.

Dated: August 11, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-30741 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-86-M

## Sharing of Medical Care Facilities and Resources; Delegations of Authority to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, et al.

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on August 20, 1980 (45 FR 63360) the following delegation and redelegations have been made regarding the sharing of medical care facilities and resources under section 327A of the Public Health Service Act (42 U.S.C. 254a), as amended.

1. Delegation from the Assistant Secretary for Health to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, with authority to redelegate, of all the authority delegated to the Assistant Secretary for Health under section 327A of the Public Health Service Act, as amended, insofar as they pertain to the sharing of medical care facilities and resources under the jurisdiction of the Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

2. Redelegation from the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, to the Director, National Institute on Drug Abuse, with authority to redelegate, of all the authority delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, under section 327A of the Public Health Service Act, as it relates to programs of the National Institute on Drug Abuse.

3. Redelegation from the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, to the Director, National Institute of Mental Health, with authority to redelegate, of all the authority delegated to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, under section 327A of the Public Health Service Act as it relates to programs of the National Institute of Mental Health.

Previous delegations to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, of the authority to share medical care facilities and resources have been superseded. Provision has been made for previous delegations and redelegations made to other officials within the Alcohol, Drug Abuse, and Mental Health Administration of the authority to share medical care facilities and resources to continue in effect for no longer than 90 days from the effective date of the delegation to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

The above delegation and redelegations became effective on September 24, 1980.

Dated: September 24, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-30744 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-88-M

## Sharing of Medical Care Facilities and Resources; Delegation of Authority to the Administrator, Health Services Administration, et al.

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on August 20, 1980 (45 F.R. 63360) the following delegation and redelegation has been made regarding the sharing of medical care facilities and resources under section 327A of the Public Health Service Act (42 U.S.C. 254a), as amended.

1. Delegation from the Assistant Secretary for Health to the Administrator, Health Services Administration, with authority to redelegate, of the authority delegated to the Assistant Secretary for Health under Section 327A of the Public Health Service Act, as amended, insofar as they pertain to the sharing of medical care facilities and resources under the jurisdiction of the Administrator, Health Services Administration.

2. Redelegation from the Acting Administrator, Health Services Administration, to the Bureau Directors, Health Services Administration, with authority to redelegate, of all the authority delegated to the Administrator, Health Services Administration, under Section 327A of the Public Health Service Act, as amended, as they pertain to carrying out the mission of their respective bureaus.

Previous delegations to the Administrator, Health Services Administration, of the authority to share medical care facilities and resources have been superseded. Provision has been made for previous delegations and redelegations made to other officials within the Health Services Administration of the authority to share medical care facilities and resources to continue in effect for no longer than 90 days from the effective date of the

delegation to the Administrator, Health Services Administration.

The above delegation and redelegation became effective on September 24, 1980.

Dated: September 24, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-30745 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-85-M

## Sharing of Medical Care Facilities and Resources; Delegations of Authority to the Director, National Institutes of Health

Notice is hereby given that in furtherance of the delegation by the Secretary of Health and Human Services to the Assistant Secretary for Health on August 20, 1980 (45 FR 63360) the Assistant Secretary for Health has delegated to the Director, National Institutes of Health, with authority to redelegate, all the authority delegated to the Assistant Secretary for Health under section 327A of the Public Health Service Act (42 U.S.C. 254a), as amended, as they pertain to the sharing of medical care facilities and resources under the jurisdiction of the Director, National Institutes of Health.

Previous delegations to the Director, National Institutes of Health, of the authority to share medical care facilities and resources have been superseded. Provision has been made for previous delegations and redelegations made to other officials within the National Institutes of Health of the authority to share medical care facilities and resources to continue in effect for no longer than 90 days from the effective date of the delegation to the Director, National Institutes of Health.

The delegation to the Director, National Institutes of Health, became effective on September 24, 1980.

Dated: September 24, 1980.

**Julius B. Richmond,**

*Assistant Secretary for Health.*

[FR Doc. 80-30743 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-08-M

## Privacy Act of 1974; New System of Records

**AGENCY:** Department of Health and Human Services Public Health Services.

**ACTION:** Notification of a new system of records: Three Mile Island mental health survey, respondent records, HHS/ADAMHA/NIMH, 09-30-0035.

**SUMMARY:** In accordance with the requirements of the Privacy Act, the Public Health Service (PHS) is publishing notice of a proposal to establish a new system of records entitled "Three Mile Island Mental Health Survey, Respondent Records, HHS/ADAMHA/NIMH." The Disaster Assistance and Emergency Mental Health Section, Division of Special Mental Health Programs, National Institute of Mental Health, is responsible for the system.

The purpose of the system is to enable the Government to arrange followup study to the currently-funded research project entitled "The Mental Health of Residents Near the Three Mile Island Reactor: A Comparative Study of Selected Groups." PHS invites interested persons to submit comments on the proposed routine uses on or before November 3, 1980.

**DATE:** PHS has sent a Report of New System to the Congress and to the Office of Management and Budget on September 25, 1980. The system of records will be effective 60 days from the date submitted to OMB unless PHS receives comments on the routine uses which would result in a contrary determination.

**ADDRESS:** Comments should be addressed to: Privacy Act Officer, National Institute of Mental Health, 5600 Fishers Lane, Room 7-93, Rockville, Maryland 20857.

Comments received will be available for inspection at the above address during the hours of 8:30 a.m. to 4:30 p.m. on working days.

**FOR FURTHER INFORMATION CONTACT:** Privacy Act Officer, National Institute of Mental Health, 5600 Fishers Lane, Room 7-93, Rockville, Maryland 20857, (301) 443-3769.

**SUPPLEMENTARY INFORMATION:** The proposed new system of records is an integral part of a research project which is funded under contract with the University of Pittsburgh. The Department of Health and Human Services is currently reexamining the applicability of the Privacy Act to records maintained by organizations under contract with the Department. It is recognized that the proposal to apply the provisions of the Privacy Act to these records may later be found to provide broader coverage than is required by the Act.

The system is created in order to enable the Government to arrange for followup study at a later date. The purpose of the study presently underway is to assess the mental health of residents of the Three Mile Island vicinity who are thought to have been particularly affected by the stress of the nuclear reactor accident which occurred on March 28, 1979, by virtue of their occupation (workers in the nuclear power plant), their psychological status (mental health system clients), or their familial status (mothers of young children). If the current study indicates that mental health problems have occurred in the Three Mile Island area in the wake of the nuclear power accident, a followup study would demonstrate whether such effects proved to be relatively transient or of a long-term nature. Such knowledge would be extremely useful, since few followup studies have been conducted with persons who have experienced an unusually stressful event and fewer still on the long-term mental health consequences of disasters.

The records have been converted to microfiche, and the original questionnaires destroyed. The microfiche are being stored in a vault and safe. Access is allowed only at the written authorization of a high-level University official, consistent with the purposes for which the system is established (i.e., authorized research or individual access to own records).

No names appear on the questionnaires or on the microfiche copies. Identification numbers appear on the questionnaires; these numbers, together with the names and addresses of the respondents, are kept separately. Given such high-level security, it is extremely unlikely that individuals could be adversely affected.

Routine uses provide for disclosure only for research purposes and to a Congressional office at the written request of the individual. Since the purpose of the system is to enable the Government to arrange for followup study, these uses are compatible with the purpose of the system.

Dated: September 26, 1980.

**Jack N. Markowitz,**

*Acting Director, Office of Management.*

**09-30-0035**

**SYSTEM NAME:**

Three Mile Island Mental Health Survey, Respondent Records HHS/ADAMHA/NIMH

**SECURITY CLASSIFICATION:**

None.

**SYSTEM LOCATION:**

Western Psychiatric Institute and Clinic, University of Pittsburgh, Pittsburgh, Pennsylvania 15260.

**CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:**

Persons participating in the Three Mile Island study of mental health sponsored by the National Institute of Mental Health following the nuclear reactor accident of March 28, 1979.

Control group participants from Beaver County, Pennsylvania, are also included. The research and control groups both consist of workers in nuclear plants, mothers of young children, and mental health system clients.

**CATEGORIES OF RECORDS IN THE SYSTEM:**

Name, address, and responses to the following interview instruments, as appropriate: Sociodemographic Information; Physical Illness Overview; Life Events; Symptom Check List-90; Social Network Interview; Current Mental Health; Job Related Issues; Langner Screening Inventory; and Schedule for Affective Disorders and Schizophrenia, Lifetime Version (SADS-L). The Current Mental Health and the SADS-L instruments include interviewers' interpretations and diagnoses.

**AUTHORITY FOR MAINTENANCE OF THE SYSTEM:**

Section 301, Public Health Service Act, 42 USC 241, Part A, Research and Investigations.

**PURPOSE(S):**

The system is created to enable the Government to arrange for followup study at a later date. Such a followup would demonstrate whether any mental health effects detected in this study are of a transient or long-term nature. Without such knowledge, it is impossible to develop realistic plans for adequately meeting people's needs in time of disaster. Currently, for example, in the absence of knowledge about the duration of disaster-precipitated mental health problems, Federal grants for providing mental health services to disaster victims are limited to a 6-month period. Followup studies, such as the one proposed here, would help to ascertain the soundness of such a policy.

**ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:**

1. A record may be disclosed for a research purpose, when the Department:

(a) has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

(b) has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually indentifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

(c) has required the recipient to—(1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except—(A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

(d) has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

2. Disclosure of relevant records may be made to a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system. The contractor will require to maintain Privacy Act safeguards with respect to such records.

3. Disclosure may be made to a congressional office from the record of an individual in response to an inquire from the congressional office made at the written request of that individual.

**POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM.**

**STORAGE:**

Original questionnaires have been converted to microfiche, and the questionnaires distroyed by shredding. Two sets of microfiche, including the cross indexes, are being maintained in separate locations.

**RETRIEVABILITY:**

Records are being maintained in numerical order by the assigned identification number. An index is also maintained by name and identification number for cross reference.

**SAFEGUARDS:**

The microfiche, are boxed and sealed and are being stored in a secured safe and/or vault, access to which is permitted only if authorized in writing by the Director of Sponsored Research or an authorized University official. Two sets of microfiche were made to ensure continuation of the system in the event of an unexpected catastrophe which could result in the destruction of the original set. These safeguards are in accordance with General Administration Manual, (GAM), Chapter 45–13 and Chapter PHS.hf 45–13.

**RETENTION AND DISPOSAL:**

Retention of microfiche will not exceed twenty-two (22) years from date of recording. Destruction will be by burning, certified by an authorized University official.

**SYSTEM MANAGER(S) AND ADDRESS:**

Chief, Disaster Assistance and Emergency Mental Health, Division of Special Mental Health Programs, National Institute of Mental Health, 5600 Fishers Lane, Room 18–97, Rockville, Maryland 20857.

**NOTIFICATION PROCEDURE:**

To determine if a reocrd exists, contact the System Manager at the address above. Written requests must contain full name and notarized signature, and address at time of interview. Requests made in person require identification, such as driver's license, union card, passport, or notarized statement that the person is who he/she claims to be.

**RECORD ACCESS PROCEDURES:**

Same as notification procedures. Requestors should also reasonably specify the record contents being sought, including the name of the interview instrument(s), if known. Because the Current Mental Health instrument and the Schedule for Affective Disorders and Schizophrenia include interviewer diagnoses, these portions of the record constitute medical records. An individual who requests notification of, or access to, a medical record shall, at the time the request is made, designate in writing a responsible representative who will be willing to review the record and inform the subject individual of its contents at the representative's discretion.

**CONTESTING RECORD PROCEDURES:**

Contact the official at the address specified under Notification Procedures above and reasonably identify the record, specify the information being contested, and state the corrective action sought.

**RECORD SOURCE CATEGORIES:**

Individuals in the system.

**SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:**

None.

[FR Doc. 80-30816 Filed 10-2-80; 8:45 am]

BILLING CODE 4110-88-M

## DEPARTMENT OF INTERIOR

### Bureau of Land Management

### Idaho Falls District; Advisory Council Meeting

Notice is hereby given, in accordance wih Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Idaho Falls District Advisory Council will be held on Friday, November 7, 1980, at 9:00 a.m. at the Bureau of Land Management office, 940 Lincoln Road, Idaho Falls, Idaho 83401.

Agenda for the meeting will include:

1. Overview of the Heise Geothermal Study Area and the Chevron Geothermal Lease Applications to be analyzed under an Environmental Assessment.

2. Tour of the Heise Geothermal Study Area to include the proposed drill sites.

3. Arrangements for next meeting.

The meeting is open to the public. Interested persons may make oral statements to the Council between 10:00 and 10:30 a.m., or file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager at the above address by November 3, 1980. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established.

Interested persons may also participate on the tour of the Geothermal Study Area but must furnish their own transportation. Departure for the tour will be at 10:00 a.m. if no requests to make oral statements are received. If requests for oral statements are received, departure will be at the conclusion of the oral statements.

Summary minutes of the meeting will be maintained in the District Office and be available for inspection and reproduction during regular business hours within 30 days following the meeting.

**O'dell A. Frandsen,**

*District Manager.*

September 25, 1980.

[FR Doc. 80-30735 Filed 10-2-80; 8:45 am]

BILLING CODE 4310-84-M

### Intent To Prepare With the Federal Energy Regulatory Commission an Environmental Impact Statement on the Proposed Rocky Mountain Pipeline Project and To Conduct Public Participation Scoping Meetings

**AGENCY:** Bureau of Land Management, Interior.

**ACTION:** In joint lead with the Federal Energy Regulatory Commission, the Bureau of Land Management Special Projects Environmental Impact Team, Denver, Colorado, will prepare an Environmental Impact Statement on the proposed Rocky Mountain Pipeline Project. Public participation scoping meetings were conducted in the States of Utah, Neveda and California, September 15-18, 1980. Additional scoping meetings will be held in Lone Pine, California, Tonapah, Neveda, and Ely, Nevada, October 14-16, 1980.

**SUMMARY:** A joint venture, consisting of Pacific Gas Transmission Company, El Paso Natural Gas Company, Pacific Interstate Transmission Company and Northwest Pipeline Company, has filed an application with the Department of the Interior to construct and operate an interstate natural gas pipeline transmission system from 27 miles west of Kemmerer, Wyoming to 12 miles south of Needles, California, crossing portions of Utah and Neveda, and transporting an initial volume of 413 million cubic feet per day of natural gas with provisions for an optimum volume of 800 million cubic feet per day through the addition of compressor stations. The proposed project would provide potential customers in Utah, Neveda and California with natural gas supplies from the Overthrust Belt and Hingeline Resource Areas of the central Rocky Mountain region. The Bureau of Land Management in joint lead with the Federal Energy Regulatory Commission, will prepare an Environmental Impact Statement (EIS) covering the proposed Rocky Mountain Pipeline Project and all reasonable alternatives, in accordance with the National Environmental Policy Act of 1969 and appropriate regulations and guidelines pertaining thereto. As part of the EIS process, the Bureau of Land Management conducted public participation scoping meetings in Salt Lake City and Cedar City, Utah; Las Vegas, Neveda; and Needles, California, September 15-18, 1980, respectively. Additional public participation scoping meetings will be conducted in Lone Pine, California, Tonapah and Ely, Neveda, October 14-16, 1980, respectively. Verbal and written comments on the scope of the EIS will be accepted and should be received no later than Monday, October 20, 1980.

**EFFECTIVE DATE:** October 14, 1980.

**ADDRESS:** Bureau of Land Management, Office of Special Projects, 522 Zang Street, Third Floor East, Denver, Colorado 80228.

**FOR FURTHER INFORMATION CONTACT:** Janis Bowles, EIS Project Leader, Bureau of Land Management, 555 Zang Street, Third Floor East, Denver, Colorado 80228, 303-234-6737.

A summary and map is available upon request.

**SUPPLEMENTARY INFORMATION:** The Rocky Mountain Pipeline system would include 610 miles of 36-inch diameter steel pipeline constructed in a temporary right-of-way, approximately 100 feet wide. Within California, the system would include a 36-inch diameter section of intrastate pipeline constructed by the Southern California Gas Company and Pacific Gas and Electric Company to tie their existing systems to the proposed incoming pipeline from the Nevada border. Construction mileage within each of the four States would be as follows: Wyoming, 0.6 miles; Utah, 417.4 miles; Nevada, 165 miles; and California, 27 miles. The system would include compressor stations, maintenance bases, communication facilities, metering stations, mainline block valves, pipe cleaning facilities and other normal components of a natural gas pipeline transmission system.

The joint EIS will analyze construction, operation and maintenance of the proposed project. Alternatives to be considered will include, but will not be limited to, routes, facilities, other transportation modes and no action.

Public participation scoping meetings will be conducted at the following locations, dates and times: LONE PINE, California, Tuesday, October 14, 7:00 p.m., Lone Pine Town Hall; TONAPAH, Nevada, Wednesday, October 15, 7:00 p.m., Tonapah Convention Center, 301 Brougher; ELY, Nevada, Thursday, October 16, 7:00 p.m., Ely Grade School, 616 High Street.

Purposes of a public participation scoping meeting are: (1) to inform the public of the nature of the proposed project, and those aspects to be analyzed in the EIS, including the tentative alternatives based on existing data and knowledge of the affected area; (2) to gather resource information from the public; and (3) to gather public concerns as to the major issues to be considered in the EIS and to identify those issues and concerns of lesser

interest that can be de-emphasized in the EIS.

Ed Hastey,

*Associate Director.*

September 30, 1980.

[FR Doc. 80-30718 Filed 10-2-80; 8:45am]

BILLING CODE 4310-84-M

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### Outer Continental Shelf, Eastern Gulf of Alaska Oil and Gas Lease Sale No. 55; Regarding Sale Notice

Clarification of Stipulation No. 6, OCS Lease Sale No. 55, as published at 45 FR 59750, on September 10, 1980. Stipulation No. 6 is intended to protect marine life and the marine environment by precluding the use of conventional, uncontained high velocity explosives, such as dynamite, for seismic exploration. The stipulation is not intended to preclude U.S. Geological Survey approval of geophysical energy sources such as air guns, sparkers, sleeve exploders and similiar devices.

For further information, contact Hans Larsen (202) 343-5121.

Dated September 30, 1980.

Ed Hastey,

*Associate Director, Bureau of Land Management.*

Approved:

Heather L. Ross,

*Deputy Assistant Secretary of the Interior.*

[FR Doc. 80-30766 Filed 10-2-80; 8:45 am]

BILLING CODE 4310-84-M

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[INT FEIS 80-44]

### Proposed Grazing Management Program for the San Juan Planning Unit—San Juan, Rio Arriba, and Sandoval Counties, N. Mex.; Availability of Final Environmental Impact Statement

Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM) has prepared a Final environmental Impact Statement for the proposed Grazing Management Program in the San Juan Planning Unit in San Juan, Rio Arriba, and Sandoval Counties, New Mexico.

At present, livestock grazing is authorized on 926,909 acres of public lands within the San Juan Planning Unit. Under the proposed grazing program, all allotments (excluding existing AMP allotments) would be managed under a more intensive grazing management program. A minimum rest period from livestock grazing (April 1 to May 31 and July 15 to September 15) would be required on a pasture-by-pasture basis one year out of every three. Existing season-of-use would be altered to some degree on approximately 84 percent of the allotments in the area. No combination of allotments or change in class of livestock is proposed. Range improvements necessary to implement the proposed grazing program would include: dirt tanks, wells, pipelines, drinking troughs, storage tanks, spring developments, fences, cattleguards, and vegetation treatment on approximately 54,000 acres (chaining, spraying, plowing, and seeding). The initial allocation of AUMs would be: livestock—69,335 AUMs; wildlife—5,799 AUMs; and wild horses—276 AUMs. The anticipated allocation of AUMs by the year 2000 (long term) would be: livestock—90,311 AUMs; wildlife—16,630 AUMs; and wild horses—276 AUMs.

The final statement includes comments from the public on the draft statement, responses from the BLM to these comments, and changes or modifications to the draft statement. The short final and the earlier released draft constitute the Final Environmental Impact Statement.

A limited number of copies of the Final Environmental Impact Statement are available at the Albuquerque District Office, 3550 Pan American Freeway, P.O. Box 6770, Albuquerque, New Mexico 87107; and at the Farmington Resource Area Office, 900 La Plata Highway, P.O. Box 568, Farmington, New Mexico 87401. Public reading copies are available for review at the BLM State Office (Office of Public Affairs, U.S. Federal Building, Santa Fe, New Mexico) and public and university libraries around the state of New Mexico.

Albuquerque City Library, 501 Copper Avenue, NW, Albuquerque, NM 87107.
University of New Mexico, General Library, Albuquerque, NM 87131.
Farmington City Library, 302 North Orchard Avenue, Farmington, NM 87401.
Santa Fe Public Library, 121 Washington Avenue, Santa Fe, NM 87501.
Gallup Public Library, 115 West Hill Avenue, Gallup, NM 87301.
Grants Public Library, 525 West High, Grants, NM 87020.
Aztec Public Library, 201 W. Chaco, Aztec, NM 87401.
Durango Public Library, 1188 2nd Avenue, Durango, CO 81301.
Cortez Public Library, 700 E. Montezuma Avenue, Cortez, CO 81321.
Bureau of Land Management, Cuba Field Office, P.O. Box 668, Cuba, NM 87013.
New Mexico State University, Library, Attn: Lila Foss, Box 3475, Las Cruces, NM 88001.
Library, NMSU—San Juan Campus, 4601 College Blvd., Farmington, NM 87401.

Dated: September 15, 1980.

Van W. Manning,

*Acting Associate State Director, New Mexico.*

[FR Doc. 80-30837 Filed 10-2-80; 8:45 am]

BILLING CODE 4310-84-M

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## National Park Service

### Chesapeake & Ohio Canal National Historical Park Commission; Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a meeting of the Chesapeake and Ohio Canal National Historical Park Commission will be held Saturday, October 18, 1980, at 1:00 p.m. at the Chevy Chase Chapter House of the Isaac Walton League on Willard Road near Poolesville, Maryland (Montgomery County).

The Commission was established by Pub. L. 91-664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mr. Donald R. Frush, Chairman, Hagerstown, Maryland.
Mrs. Bonnie Troxell, Cumberland, Maryland.
Miss Nancy Long, Glen Echo, Maryland.
Mrs. Constance Morella, Bethesda, Maryland.
Mr. Kenneth S. Rollins, Brookmont, Maryland.
Mrs. Constance Lieder, Baltimore, Maryland.
Mr. Edwin F. Wesely, Jr., Brookmont, Maryland.
Mr. John D. Millar, Cumberland, Maryland.
Mr. James B. Coulter, Annapolis, Maryland.
Mrs. Dorothy Grotos, Arlington, Virginia.
Mrs. Minny Pohlmann, Dickerson, Maryland.
Mrs. Margaret Dietz, Lovettsville, Virginia.
Mr. William H. Ansel, Jr., Romney, West Virginia.
Dr. James H. Gilford, Frederick, Maryland.
Mr. Donald H. Shannon, Washington, D.C.
Mr. Silas F. Starry, Shepherdstown, West Virginia.
Mr. Rockwood H. Foster, Washington, D.C.
Mr. R. Lee Downey, Williamsport, Maryland.
Mr. John C. Frye, Gapland, Maryland.

Matters to be discussed at this meeting include:

Development Concept Plan, Great Falls.
Development Conept Plan, Williamsport.
Development Concept Plan, North Branch/Cumberland.
Abandoned Western Maryland Railroad Right-of-Way.
Justice Douglas Memorial Fund.
Horse Access and Use of the Towpath.
Temporary Towpath Bridge at Cactin Creek.

Towpath Surfacing.
Commercial Instrusions on the C&O Canal Park.
C&O Canal Advisory Commission Extension Status.
Winter Closing of Campgrounds and Comfort Stations.

The meeting will be open to the public. Any member of the public may file with the Commission, a written statement concerning the matters to be discussed.

Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact William R. Failor, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782, telephone 301/739-4200.

Minutes of the meeting will be available for public inspection four (4) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: September 25, 1980.

**Robert Stanton,**

*Deputy Regional Director, National Capital Region.*

[FR Doc. 80-30866 Filed 10-2-80; 8:45 am]

BILLING CODE 4310-70-M

## INTERNATIONAL COMMUNICATION AGENCY

### Culturally Significant Objects Imported for Exhibition; "A Clockwork Universe"; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "A Clockwork Universe" (included in the list [1] filed as a part of this determination), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to agreements among the National Museum of History and Technology, Smithsonian Institution, the Bavarian National Museum (Munich, Germany), and the foreign lenders set forth in the list filed as a part of this determination. I also determine that the temporary exhibition or display of the listed exhibit objects at the National Museum of History and Technology, Smithsonian Institution, Washington, D.C., beginning on or about November 6, 1980, to on or about February 15, 1981, is in the national interest.

Public Notice of this determination is ordered to be published in the Federal Register.

**John E. Reinhardt,**

*Director, International Communication Agency.*

Date: September 29, 1980.

[FR Doc. 80-30833 Filed 10-2-80; 8:45 am]

BILLING CODE 8230-01-M

### Culturally Significant Objects Imported for Exhibition; "Romanian Folkart"; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459) and Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), I hereby determine that the objects in the exhibit, "Romanian Folkart" (included in the list [1] filed as a part of this determination), imported from abroad for the temporary exhibition without profit within the United States are of cultural significance. These objects are imported pursuant to agreements between the Government of the United States of America and the Government of the Socialist Republic of Romania. I also determine that the temporary exhibition or display of the listed exhibit objects at the following museums is in the national interest: Philadelphia Civic Center Museum, Philadelphia, Pennsylvania, from on or about December 4, 1980 to on or about January 11, 1981; Lane Hall, University of Michigan, Ann Arbor, Michigan, from on or about February 20, 1981 to on or about March 16, 1981; Mengay International Museum of World Folk Art, LaJolla, California, from on or about July 11 to on or about September 26, 1981; Fry Museum, Seattle, Washington, from on or about November 17, 1981 to on or about January 31, 1982.

Public Notice of this determination is ordered to be published in the Federal Register.

Dated: September 29, 1980.

**John E. Reinhardt,**

*Director, International Communication Agency.*

[FR Doc. 80-30831 Filed 10-2-80; 8:45 am]

BILLING CODE 8230-01-M

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

[1] An itemized list of objects included in the exhibit is filed as part of the original document.

## INTERSTATE COMMERCE COMMISSION

**[Ex Parte No. 311]**

### Expedited Procedures for Recovery of Fuel Costs

Decided: September 23, 1980.

In our weekly decisions since May 13, 1980, a 13-percent surcharge was authorized on all owner-operator traffic, and on all truckload traffic whether or not owner-operators were employed. We ordered that all owner-operators were to receive compensation this level.

The weekly figures set forth in the appendix for transportation performed by owner-operators and for truckload traffic is 13.3 pecent. We are authorizing that the 13-percent surcharge for this traffic remain in effect, and that all owner-operators are to receive compenstaion at this level.

No change is authorized in the 2.3-perent surcharge on less than truckload (LTL) traffic performed by carriers not utilizing owner operators, nor the 1.3-percent surcharge for United Parcel Service. However, the bus carrier surcharge is ordered lowered to 4.9-percent.

Notice shall be given to the general public by mailing a copy of this decision to the Governor of each State and to the Public Utilities Commissions or Boards of each State having jurisdiction over transportation, by depositing a copy in the Office of the Secretary, Interstate Commerce Commission, Washington, D.C., for public inspection and by delivering a copy to the Director, Office of the Federal Register for publication therein.

*It is ordered:*

This decision shall become effective Friday 12:01 a.m. September 26, 1980.

By the Commission. Chairman Gaskins, Vice Chairman Gresham, Commissioners Clapp, Trantum, Alexis and Gilliam. Chairman Gaskins absent and not participating.

**Agatha L. Mergenovich,**

*Secretary.*

#### Appendix—Fuel Surcharge

| | |
|---|---|
| *Base date and price per gallon (including tax)* | |
| January 1, 1979 | 63.5¢ |
| *Date of current price measurement and price per gallon (including tax)* | |
| September 22, 1980 | 113.4¢ |

| | Transporation performed by— | | | |
|---|---|---|---|---|
| | Owner operator[1] | Other[2] | Bus carrier | UPS |
| | (1) | (2) | (3) | (4) |
| Average percent: Fuel expenses (including taxes) of total revenue | 16.9 | 2.9 | 6.3 | 3.3 |
| Percent surcharge developed | 13.3 | 2.3 | 4.9 | 2.1 |
| Percent surcharge allowed | 13.0 | 2.3 | 4.9 | 1.3 |

[1] Apply to all truckload rated traffic.
[2] Including less-than-truckload traffic.
[3] The percentage surcharge developed for UPS is calculated by applying 81 percent of the percentage increase in the current price per gallon over the base price per gallon to the UPS average percent of fuel expense to revenue figure as of January 1, 1979 (3.3 percent).
[4] The developed surcharge figure is reduced 0.8 percent to reflect fuel related increases already included, in UPS rates.

[FR Doc. 80-30342 Filed 10-2-80; 8:45 am]
BILLING CODE 7035-01-M

## Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or to use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and Principal Office: Ames Department Stores, Inc., Executive Offices, 2418 Main Street, Rocky Hill, Conn. 06067 (203) 563–8234.

2. Our 100% Owned Subsidiaries and Principal Offices Are:

Joseph Leavitt Corporation, 1062 Millbury Street, USS Industrial Park, P.O. Box 1637, Station C, Worcester, Mass. 01607 (617) 757–6341.
Mathews & Boucher, Inc., 1950 Brighton-Henrietta Townline Road, Rochester, N.Y. 14623 (716) 424–2190.
Davis Wholesale Company, North Canton Industrial Park, 7774 Whipple Avenue, N.W., North Canton, Ohio 44720 (216) 494–3300.
Younkin Sports Supply, P.O. Box 13487, 4318A South Manhattan Avenue, Tampa, Fla. 33611 (813) 837–1565.
Neisner Brothers, Inc., 313 Winton Road, South, Rochester, New York 14623 (716) 442–1930.

1. Parent corporation and address of principal office. Borden, Inc., 180 E. Broad Street, Columbus, Ohio 43215.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Alex Colman, Inc., 2100 So. Figueroa, Los Angeles, Calif. 90007.
(b) Borden Industrial Food Products, Inc., 39485 Dillon Road, P.O. Box 65, Indio, Calif. 92202.
(c) Cirette, Inc., 910 So. Los Angeles St., Los Angeles, Calif. 90015.
(d) Saicol, Inc., 206 W. Grant Street, Calexico, Calif. 92231.
(e) Pepsi-Cola Bottling Co., Inc. of Indianapolis, Indiana, 1030 E. New York Street, Indianapolis, Ind. 46202.
(f) Superior Dairies, Inc., 600 E. First Street, Austin, Tex. 78701.
(g) Buckeye Potato Chip Co., Inc., 3750 E. Fifth Avenue, Columbus, Ohio 43219.
(h) The Creamette Company, 428 No. First Street, Minneapolis, Minn. 55407.
(i) Arkansas Beverage Co., 6200 Patterson Avenue, Little Rock, Ark. 72209.
(j) Cheese-Tek Corporation, U.S. Highway 45–52, Route No. 1, Chebanse, Illinois 60922.
(k) Orange Products, Inc., 1000 E. Snively Avenue, Winter Haven, Fla. 33880.
(l) Guy's Foods, Inc., 405 So. Leonard Street, Liberty, Mo. 64068.
(m) Pepsi-Cola Bottling Co., Inc., 1301 Aggie Road, Jonesboro, Ark. 72401.
(n) Jean Patou, Inc., 680 Fifth Avenue, New York, N.Y. 10019.

1. Parent corporation and address of principal office: Capitol Coal and Coke Company, 8820 Ladue Road, Ladue, Mo. 63124.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) Volkswagen Mid-America, Inc., 8825 Page Boulevard, St. Louis, Mo. 63114.
(b) Capitol Equipment Company, 8820 Ladue Road, St. Louis, Mo. 63124.
(c) Capitol Export Corporation, 8825 Page Boulevard, St. Louis, Mo. 63114.

1. Parent corporation: Central Soya Company, Inc., 1300 Fort Wayne Bank Bldg., Fort Wayne, Ind. 46802.

2. All subsidiaries have the same principal office: 1300 Fort Wayne Bank Bldg., Fort Wayne, Ind. 46802. 100% Wholly-Owned Subsidiaries:

Central Soya of Alabama, Inc.
Central Soya of Athens, Inc.
Central Soya of Chattanooga, Inc.
Central Soya of Clinton, Inc.
Central Soya of Georgia, Inc.
Central Soya of Illinois, Inc.
Central Soya of Kansas City, Inc.
Central Soya of Kentucky, Inc.
Central Soya of Mississippi, Inc.
Central Soya of Missouri, Inc.
Central Soya of Monroe, Inc.
Central Soya of Newberry, Inc.
Central Soya of Ohio, Inc.
Central Soya of Springfield, Inc.
Central Soya of Wilson, Inc.
Butcher Boy Food Products, Inc.
CSY Finance, Inc.
J. H. Filbert, Inc.
Food Processing, Inc.
Fred's Frozen Foods, Inc.
Pico Primo Foods, Inc.
South Omaha Feed & Supply, Inc.
3–R Foods, Inc.

1. Parent corporation: Dead River Company, 55 Broadway, Bangor, Maine 04401.

2. Wholly-owned subsidiaries which will participate in the operations:

(a) Scott Motor Transport, 33 High Street, P.O. Box 130, Belfast, Maine 04915.
(b) Dead River Company (N.H.) Inc., 159 Elm Street, Manchester, N.H. 03101.

(1) Parent corporation and address of principal office:

General Battery Corporation, P.O. Box 1262, Reading, Pa. 19603.

(2) Wholly-owned subsidiaries which will participate in the operations and addresses of their principal offices:

(a) Dixie Metals Corporation, 3030 McGowan Road, Dallas, Texas 75216.
(b) GBW of Arizona, Inc., P.O. Box 6789, Phoenix, Ariz. 85005.
(c) Banning Battery Company, 1934 Newport Blvd., Costa Mesa, Calif. 92627.
(d) GBW of Oregon, Inc., 1732 N.W. Johnson, Portland, Oreg. 97209.
(e) GBW Corporation, P.O. Box 659, Kent, Wash. 98031.

1. Parent corporation and address of principal office:

HON Industries Inc., 414 East Third Street, Muscatine, Iowa 52761.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

(a) The HON Company, 414 East Third Street, Muscatine, Iowa 52761.
(b) Murphy-Miller Co., 931 Wing Avenue, Owensboro, Kentucky 42301.
(c) Corry Jamestown Corporation, 844 East Columbus Avenue, Corry, Pa. 16407.
(d) Norman Bates Inc., 2200 S. Dupont Drive, Anaheim, Calif. 92806.
(e) Holga Metal Products Corporation, P.O. Box 432, 7901 Woodley Avenue, Van Nuys, Calif. 91408.
(f) Oakes Manufacturing, Inc., Oakes, N. Dak. 58474.
(g) The Prime-Mover Co., Highway 61 East, Muscatine, Iowa 52761.

1. Parent corporation:

Illinois Cereal Mills, Inc., 616 South Jefferson Street, Paris, Ill. 61944.

2. Wholly-owned subsidiary:

Evans Milling Company, Inc., 1730 West Michigan Street, Indianapolis, Ind. 46222.

1. Parent corporation and address of principal office:

Kane-Miller Corp., 555 White Plains Road, P.O. Box 7, Tarrytown, NY 10591.

2. Wholly-owned subsidiaries which will participate in the operations, and address of their respective principal offices:

*Subsidiaries and Principal Addresses*

(a) Carolina By-Products Company, Inc.; (b) Asheville By-Products Corporation, (c) C & H Processing Corporation, (d) Cape Fear Feed Products, Inc., (e) Carolina & Southern Processing Corporation, (f) Chemol Incorporated, (g) Knoxville By-Products Company, Inc., 2410 Randolph Avenue, P.O. Box 20687, Greensboro, NC 27420.

(h) Delsaco Foods Corp.; 164 Madison Street, P.O. Box 303, East Rutherford, NJ 07073.

(i) Firch Baking Company, 1220 West 20th Street, Erie, PA 16501.

(j) HRR Enterprises, Inc., 2129 West Pershing Road, Chicago, IL 60609.

(k) International Bakerage, Inc.; (l) Bakery Products, Inc., (m) International Bakerage of Kansas, Inc., (n) International Transportation Service, Inc., (o) International Bakerage of California, Inc., 3300 Northeast Expressway, Suite 1–M, Atlanta, GA 30341.

(p) Keystone Bakery, Inc., 500 Market Street, West Bridgewater, Beaver, PA 15009.

(q) KMC Foods Inc., Alternate 404, P.O. Box 298, Queen Anne, MD 21657.

(r) K & S Wholesalers, Inc., 150 South Main Street, Liberty, NY 12754.

(s) Monarch Wine Company of Georgia, 451 Sawtell Avenue, P.O. Box 6847, Lakewood Station, Atlanta, GA 30315.

(t) Northfield Cheese Company; (u) Norcheese Specialties, Inc., (v) Starfield Cheese Company, Inc., 227 Union Street, Northvale, NJ 07647.

(w) Orval Kent Food Co., Inc.; (x) Time Saver Salads, Inc., 120 West Palatine Road, Wheeling, IL 60090.

(y) Peterson Manufacturing Co., Inc.; (z) G & G Freezer Co., Inc., 2626 East 25th Street, Los Angeles, CA 90058.

(aa) Star Meat Company, 23660 Sherwood, Warren, MI 48091.

(bb) Sunnyland Refining Company, Incorporated, 3330 10th Avenue, P.O. Box 457, Birmingham, AL 35201.

(cc) Tama Meat Packing Corporation, Highway #30 East and County Black Top Road, P.O. Box 209, Tama, IA 52339.

(dd) The American Meat Packing Corporation, 3946 South Normal Avenue, Chicago, IL 60609.

(ee) Yavner Bros. Co., Inc., 211 W. 24th Street, P.O. Box 939, Norfolk, VA 23501.

1. The parent corporation and address of principal office:

Monarch Industries Limited, a Canadian corportion, P.O. Box 429, 889 Erin Street, Winnipeg, Manitoba, Canada.

2. Wholly owned subsidary which will participate in the operations:

Monarch Industries Inc., a Minnesota corportion, P.O. Box 429, 889 Erin Street, Winnipeg, Manitoba, Canada.

1. Parent corporation and address of principal office:

Pacific Gamble Robinson Company, 4103 Second Avenue South, Seattle, Washington 98124.

2. Wholly-owned sudsidiaries which will participate in the operations, and address of their respective principal offices:

a. Tradewell Stores, Inc., 7890 South 188th Street, Kent, Washington, 98031.

b. Pacific Fruit Company, 5002 Tieton Drive, Yakima, Washington 98907.

c. Management Services International, Inc., Seattle Tower Building, Suite 2000, Seattle, Washington 98101.

The name of the parent corporation and the address of its principal office are:

The W. W. Sly Manufacturing Company, P.O. Box 5939, Cleveland, Ohio 44101.

The wholly owned subsidiary of the W. W. Sly Manufacturing Company which will participate in the operations and its address are:

Moody Manufacturing, Inc., P.O. Box 309, Maben, Mississippi 39750.

Parent Company: Collins & Aikman Corporation, 210 Madison Avenue, New York, N.Y. 10016.

2. Subsidiaries are as follows:

Ackerman Associates, Inc., 432 Park Avenue South, New York, N.Y. 10016.

Ack-Ti-Vated Fabrics, Inc., 210 Madison Avenue, New York, N.Y. 10016.

Ack-Ti-Lining, Inc., 432 Park Avenue South, New York, N.Y. 10016.

C & A Textile Corporation, d.b.a. Bartex Mills of Allentown, 210 Madison Avenue, New York, N.Y. 10016.

Yarnfab, Inc., 210 Madison Avenue, New York, N.Y. 10016.

Imperial Wallpaper Mill, Inc., Underwood Avenue, Plattsburgh,N.Y. 12901.

Commercial Wallpaper Mill, Inc., 724 Hoffman Street, Hammond, Ind. 46320.

Imperial Wallcoverings Distributors, Inc., of Central New York, 4600 Crossroads Park Drive, Liverpool, N.Y. 13088.

G. L. Fisher & Co., Inc., 374 Congress Street, Boston, Mass. 02210.

Imperial Wallpaper Co. of Philadelphia, Inc., Bridgewater Industrial Park, 1324 Adams Road, Cornwells Heights, Pennsylvania 19020.

Imperial Wallcoverings, Inc. of New Jersey, P.O. Box 365, Wharton, New Jersey 07885.

Kinney Brothers of California, 414 Lesser Street, Oakland, California 94601.

Imperial Paper Company, 23645 Mercantile Road, Beachwood, Ohio 44122.

Tennessee Tufting Corporation, Cockrill Bend Industrial Road, P.O. Box 516, Nashville, Tenn. 37202.

The D.P.W. Company, 23645 Mercantile Road, Beachwood, Ohio 44122.

Mastercraft Corporation, P.O. Box 125, Spindale, N.C. 28160.

Supreme Mills Sales Co., Inc., 20841 Prairie Street, Chatsworth, California 91311.

C & A Limited (Canada), 150 Collins Street, Farnham, Quebec, Canada J2N2R6.

Artway Limited, 6401 West 65th Street, Chicago, Illinois 60638.

Artway Manufacturing Company, 6401 West 65th Street, Chicago, Illinois 60638.

F. H. Jaffe Manufacturing Co., 6401 West 65th Street, Chicago, Illinois 60638.

Seven Seas Bath Fashions, Ltd., 6401 West 65th Street, Chicago, Illinois 60638.

1. Parent Corporation:

Southeastern Steel Container Company.

2. Wholly-owned subsidiaries which will participate in the operations:

(a) Southeastern Plastic Container Co., P.O. Box 309, 6055 Airline Road, Arlington, Tenn. 38002, 901–867–2256.

(b) Southeastern Steel Container Co., Box 10646, 3055 35th Ave. North, Birmingham, Ala. 35202, 205–841–1701.

(c) Self Mfg. Co., Inc., Box 117, Mary Taylor Road, Trussville, Ala. 35173, 205–655–3284.

(d) Kresge & Assoc., Box 334, Trussville, Ala. 35173, 205–655–3296.

(e) Thompson Can Company, Box 34259, 13401 Denton Drive, Dallas, Texas 75234, 620–1530.

(f) Southwestern Steel Co., Box 15687, 3301 S. Lamar Street, Dallas, Texas 75215.

(1) Parent corporation and address of principal office:

The Toro Company, One Appletree Square, 8009 34th Avenue South, Minneapolis, MN 55420.

(2) Wholly owned subsidiaries which will participate in the operations, and address of their respective principal

offices: The Toro Credit Company, One Appletree Square, 8009 34th Avenue South, Minneapolis, MN 55420.

Barefoot Grass, 1018 Proprietors Road, Worthington, OH 43085.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-30852 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

## Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the Federal Register of July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

*Findings*

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 17, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

### Volume No. OP3-028

Decided: Sept. 26, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 13134 (Sub-97F), filed September 12, 1980. Applicant: GRANT TRUCKING, INC., P.O. Box 256, Oak Hill, OH 45656. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting (1) *refractory materials, foundry facings, sand, sand additives, common clay, ground bituminous coal,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities in (1), between points in Greenup County, KY, on the one hand, and, on the other, points in AL, GA, IL, IN, MI, MO, OH, NC, PA, TN, VA, WI and WV.

MC 14125 (Sub-12F), filed September 12, 1980. Applicant: PIQUA TRANSFER & STORAGE COMPANY, a corporation, 524 Young St., Piqua, OH 45356. Representative: Boyd B. Ferris, 50 W. Broad St., Columbus, OH 43215. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in Miami County, OH, on the one hand, and, on the other, points in the U.S.

MC 119274(Sub-5F), filed September 16, 1980. Applicant: LEWIS & THOMPSON TRUCKING, INC., Montgomery City, MO 63361. Representative: Thomas P. Rose, P.O. Box 205, Jefferson City, MO 65102. Transporting (1) *animal and poultry feed and animal and poultry feed ingredients,* and *animal health aids and animal sanitation products,* from Montgomery City, MO, to points in Adams, Calhoun, Green, Jersey, Madison, Monroe, and Pike Counties, IL. (2) *animal and poultry feed ingredients,* from points in IL, to Montgomery City, MO, and (3) *animal and poultry feed,* from East St. Louis, IL, to Montgomery City, MO.

MC 135924 (Sub-24F), filed September 15, 1980. Applicant: SIMONS TRUCKING CO., INC., 3851 River Rd., Grand Rapids, MN 55744. Representative: Samuel Rubenstein, P.O. Box 5, Minneapolis, MN 55440. Transporting *lumber, lumber mill products,* and *wood products,* from points in AL, AR, FL, GA, KY, LA, MS, NC, OK, SC, TN, TX, and WV, to points in MN, ND, SD, IA, IL, and WI.

MC 143085 (Sub-6F), filed September 12, 1980. Applicant: THE DANIEL COMPANY OF SPRINGFIELD, 3725 W. Division, Springfield, MO 65803. Representative: Bruce McCurry, 910 Plaza Towers, Springfield, MO 65804. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in the U.S. (except AK and HI).

**Note.**—Issuance of a certificater in this prodeeding is subject to coincidental cancellation of carrier's existing certificates and permits in Nos. MC-143085 and 139274, respectively.

MC 143394 (Sub-8F), filed September 12, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Road, P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop (same address as applicant). Transporting *meats, meat products, and meat byproducts,* and *articles distributed by meat packing houses,* as described in sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61M.C.C. 209 and 766 (except commodities in bulk and hides), from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in AL, FL, GA, MS, NC, SC, TN, AR, LA, OK and TX.

MC 145054 (Sub-39F), filed September 16, 1980. Applicant: COORS TRANSPORTATION COMPANY, a corporation, 5101 York St., Denver, CO 80216. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *non-exempt food or kindred products,* as described in Item 20 of the Standard Transportation Commodity Code (STCC), between points in CA, on the one hand, and, on the other, points in CO.

MC 148665(Sub-2F), filed September 12, 1980. Applicant: CFS CONTINENTAL TRANSPORTATION COMPANY, a corporation, 2550 North Clybourn Ave., Chicago, IL 60614. Representative: Leonard R. Kofkin, 39 South La Salle St, Chicago, IL 60603. Transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between points in the U.S., under continuing contract(s) with Texas Shippers Association, Inc., of Chicago, IL.

MC 151774F, filed September 8, 1980 Applicant: WILLARD ORRICK, LARRY FISCHER, AND GAINES POINTER, a partnership, dba. DORRICK TRANSPORTATION, 986 Ruth Layne, niles, MI 49120. Representative: Paul D. Borghesani, 300 Communicana Bldg., 421 South Second St., Elkhart, IN 46516. Transporting (1) *agricultural insecticides, agricultural fungicides, weed killing compounds, medicinal feeding componds, chemicals, and medicines,* and (2) *Materials, equipment, and supplies* used or useful in the manufacture, processing, and distribution of the commodities in (1), between points in Kalamazoo County, MI, on the one hand, and, on the other, points in DeKalb County, GA.

**Volume No. OP3–029**

Decided: Sept. 29, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 2934(Sub-76F), filed September 9, 1980. Applicant: AERO MAYFLOWER TRANSIT COMPANY, INC, 9998 North Michigan Rd., Carmel, IN 46032. Representative: W.G. Lowry, 9998 North Michigan Rd., Carmel, IN 46032. Transporting *fiberglass bathroom fixtures,* from Brook Park, OH, to points in AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OK, PA, RI, SC, TN, TX, VT, VA, WV, WI, and DC.

MC 15975(Sub-35F), filed September 9, 1980. Applicant: BUSKE LINES, INC., 123 W. Tyler Ave., Litchfield, IL 62056. Representative: Howard H. Buske (same address as applicant). Transporting (1) *aluminum containers, container ends, and container closures,* and (2) *Materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Reynolds Metal Company.

MC 3114(Sub-40F), filed September 9, 1980. Applicant: T. H. COMPTON, INC., R.F.D. #1, Berkeley Springs, WV 25411. Representative: Herbert Alan Dubin, 818 Connecticut Ave., N.W., Washington, DC 20006. Transporting *scrap glass,* between points in CT, DE, IL, IN, ME, MD, MA, MI, NJ, NH, NY, NC, OH, PA, RI, SC, VT, VA, WV, and DC.

MC 24784 (Sub-40F), filed September 16, 1980. Applicant: BARRY, INC., 463 South Water, Olathe, KS 66061. Representative: Arthur J. Cerra, P.O. Box 19251, 2100 TenMain Center, Kansas City, MO 64141. Transporting (1) *building and construction materials, supplies and equipment* and (2) *materials, supplies and equipment used in the manufacture, distribution, installation and application of the commodities in (1) above,* between points in AR, AZ, CO, GA, IA, IL, IN, KS, KY, LA, MI, MN, MO, MS, MT, NC, ND, NE, NJ, NM, OH, OK, SD, TN, TX, WI, and WY.

MC 26825 (Sub-49F), filed September 10, 1980. Applicant: ANDREWS VAN LINES, INC., P.O. Box 1609, Norfolk, NE 68701. Representative: J. Max Harding, P.O. Box 82028, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of juvenile products, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Welsh Company and its affiliates.

MC 52704 (Sub-286F), filed September 18, 1980. Applicant: GLENN McCLENDON TRUCKING COMPANY, INC., P.O. Drawer "H", LaFayette, AL 36862. Representative: Archie B. Culbreth, Suite 202, 2200 Century Parkway, Atlanta, GA 30345. Transporting (1) *carbonated beverages,* (a) between points in AL, FL, GA, NC, and SC, and (b) between Kansas City, KS and St. Louis, MO, on the one hand, and, on the other, points in AL, GA, FL, NC and SC; and (2) *materials, equipment and supplies* used in the manufacture and distribution of carbonated beverages, from points in the U.S. (except AK and HI) to points in AL, FL, GA, NC, and SC.

MC 58035 (Sub-34F), filed September 9, 1980. Applicant: TRANS–WESTERN EXPRESS, LTD., 5231 Monroe St., Denver, CO 80216. Representative: David E. Driggers, Suite 1600 Lincoln Center, 1600 Lincoln St., Denver, CO 80264. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), in containers, between points in CO and WY, on the one hand, and, on the other, points in the U.S.

MC 61825 (Sub-134F), filed September 8, 1980. Applicant: ROY STONE TRANSFER CORPORATION, V.C. Dr., P.O. Box 385, Collinsville, VA 24078. Representative: John D. Stone (same address as applicant). Transporting (1) *paper, paper products, plastics, plastic articles, and wood pulp,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, (except commodities in bulk), between points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 106674 (Sub–503F), filed September 8, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *aluminum products,* (2) *stainless steel handrails,* and *accessories* for stainless steel handrails, and (3) *materials, equipment and supplies* used in the manufacture and distribution of the commodities in (1) and (2) above, between Gallaway, TN, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 106674 (Sub–504F), filed September 10, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Jerry L. Johnson (same address as applicant). Transporting (1) *printed matter,* and (2) *materials and supplies* used in the manufacture and distribution of printed matter (except commodities in bulk), between the facilities of R. R. Donnelley and Sons in the U.S., on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and LA, restricted to traffic originating at or destined to the facilities of R. R. Donnelley and Sons Company.

MC 106674 (Sub–505F), filed September 9, 1980. Applicant: SCHILLI MOTOR LINES, INC., P.O. Box 123, Remington, IN 47977. Representative: Allan C. Zuckerman, 39 South LaSalle St., Chicago, IL 60603. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of glass containers and closures, between those points in the U.S. on and east of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, thence northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 107295 (Sub–994F), filed September 16, 1980. Applicant: PRE–FAB TRANSIT CO., a corporation, P.O. Box 146, Framer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting (1) *aluminum and aluminum articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of commodities in (1) above (except commodities in bulk), between the facilities of Kaiser Aluminum & Chemical Corporation in (a) Elkhart County, IN, and (b) Lucas County, OH, on the one hand, and, on the other, points in the U.S.

MC 107295 (Sub–995F), filed September 16, 1980. Applicant: PRE-FAB TRANSIT CO., a corporation, P.O. Box 146, Farmer City, IL 61842. Representative: Duane Zehr (same address as applicant). Transporting (1)

*pulp, paper, and paper products,* and (2) *materials, equipment, and supplies* used in the manufacturer and distribution of commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities of Manville Forest Products Corporation.

MC 111045 (Sub-187F), filed September 18, 1980. Applicant: REDWING CARRIERS, INC., P.O. Box 426, Tampa, FL 33601. Representative: L. W. Fincher (address same as applicant). Transporting *lime,* between points in Duval County, FL and points in GA.

MC 112304 (Sub-248F), filed September 9, 1980. Applicant: ACE DORAN HAULING & RIGGING CO., a Corporation, 1601 Blue Rock St., Cincinnati, OH 45223. Representative: James M. Burtch, 100 E. Broad St., Columbus, OH 43215. Transporting *lumber and lumber products,* between points in Dallas County, TX, on the one hand, and, on the other, points in TX, NM, CO, and OK.

MC 114725 (Sub-114F), filed September 8, 1980. Applicant: WYNNE TRANSPORT SERVICE, INC., 2222 North 11th St., Omaha, NE 68110. Representative: Donald L. Stern, Suite 610, 7171 Mercy Rd., Omaha, NE 68106. Transporting *liquid fertilizer,* in bulk, in tank vehicles, between points in Crawford County, IA, on the one hand, and, on the other, points in NE and MO.

MC 116014 (Sub-89F), filed September 9, 1980. Applicant: OLIVER TRUCKING COMPANY, INC., P.O. Box 53, Winchester, KY 40391. Representative: Harry Ross, 58 South Main St., Winchester, KY 40391. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of furniture, between those points in the U.S., in and east of TX, OK, KS, NE, IA, and MN.

MC 116535 (Sub-85F), filed September 8, 1980. Applicant: JENNINGS BOND, d.b.a. BOND ENTERPRISES, P.O. Box 8, Lutesville, MO 63762. Representative: (same as applicant). Transporting *general commodities* (except classes A and B explosives, and household goods as defined by the Commission), between points in the U.S., restricted to the traffic originating at or destined to the facilities of Mobil Chemical Co., Plastics Div.

MC 117765 (Sub-298F), filed September 8, 1980. Applicant: HAHN TRUCK LINE, INC., 1100 S. MacArthur, P.O. Box 75218, Oklahoma City, OK 73147. Representative: R. E. Hagan (same address as applicant). Transporting *non-alcoholic beverages,* in containers, from Byhalia, MS to those points in the U.S. in and east of ND, SD, NE, KS, OK, and TX.

MC 118535 (Sub-159F), filed September 15, 1980. Applicant: TIONA TRUCK LINE, INC., Inn Building, P.O. Drawer 312, Butler, MO 64730. Representative: Arthur J. Cerra, 2100 TenMain Center, P.O. Box 19251, Kansas City, MO 64141. Transporting (1) *ammonium phosphate,* from the facilities of John Deere Chemical Company, at Tulsa, OK, to points in IL; (2) *dry fertilizer,* from East St. Louis, IL, to points in IA, KS and MO; (3) *ammonium nitrate, urea, and fertilizer,* from the facilities of American Cyanamid Company, at South River (Marion County), MO, to points in AR, IL, IN, IA, KS, MI, MN, MO, NE, ND, OK, SD, TX, and WI; (4)(a) *dry animal and poultry feeds, and* (b) *ingredients for (4)(a),* from Kansas City, MO, to points in KY, VA, and WV; (5) *dry ammonium nitrate and dry urea,* from Atlas, MO, to points in MI and WI; (6) *dry urea,* from Atlas, MO, to points in CO, LA, and NM; (7) *feed grade urea,* from Atlas, MO, to points in IA, MN, NE, ND, and SD; (8)(a) *anhydrous ammonia, acids, ammonium nitrate, urea,* and (b) *fertilizer* (except as described in (a)), from the facilities of Allied Chemical Corp., in Phillips County, AR, to points in AL, IL, KS, KY, LA, MS, MO, OK, TN, and TX; (9) *dry ammonium nitrate, and dry urea,* from the facilities of Atlas Powder Company, at Atlas, MO, to points in AL, AR, CO, IL, IN, IA, KS, KY, LA, MS, MN, NE, NM, ND, OK, SD, TN, and TX (except points in Harris, Galveston, Fort Bend, Brazoria, Chambers, Liberty, Waller, Austin, Montgomery, and San Jacinto Counties); (10) *dry animal and poultry feeds* and *feed ingredients,* from the facilities of Pay Way Feed Mills, Inc., American Cyanamid Company and Charles Pfizer and Co., Inc., at or near Kansas City, MO, to points in IL, IA (except Sioux City), MN, NE, ND, SD, and WI; (11) *dry animal and poultry feed ingredients,* from points in MN, ND, SD, and WI to Kansas City, MO; (12) *anhydrous ammonia, and fertilizer (except anhydrous ammonia),* from the facilities of First Miss, Inc., at or near Ft. Madison, IA, to points in AR, IL (except points in the Chicago, IL and East St. Louis, IL Commercial Zones, as defined by the Commission), IN (except points in the Chicago, IL Commercial Zone, as defined by the Commission), KS, KY, MI, MN, MO (except points in the St. Louis, MO Commercial Zone, as defined by the Commission), NE, ND, OH, SD, TN, and WI; (13) *lubricating oil and grease,* from Topeka, KS, to Grand Island, NE; (14) *salt,* from Kanapolis, KS, to North Platte, NE; (15) *dry chemicals,* from Military, KS, to points in IA, NE, and points in that part of MO north of U.S. Hwy. 50; (16) *dry fertilizer and insecticides, fungicides and herbicides,* from the Port of Catoosa, OK, to points in AR, CO, IL, IA, KS, MN, MO, NE, OK, SD, TX, and WI; (17) *dry fertilizer,* from Port of Catoosa, OK, to points in IA, NE and those points in that part of MO north of U.S. Hwy. 50; (18) *dry fertilizer,* from Port of Catoosa, OK, to points in the St. Louis, MO–East St. Louis, IL commercial zone as defined by the Commission; (19) *fly ash,* (a) from Kansas City, MO, and the facilities of Kansas City Power and Light Company at or near Clinton, MO, to points in AR, IL, IA, KS, NE, and OK; and (b) from the facilities of Kansas City Power and Light Company at or near La Cygne, KS, to points in AR, IL, IA, MO, NE, and OK; (20) *dry fertilizer,* from the facilities of W. R. Grace & Co., at Atlas, MO, to points in AR, IL, IA, KS, NE, OK, and TX; (21) *dry urea, and dry fertilizer,* from the facilities of Nipak, Inc., near Kernes, TX, to points in OK, KS, MO, NE, CO, NM, and AR; (22) *(a) animal feed, and animal feed ingredients and (b) livestock feeders and livestock feeder parts,*

(i) From Rogers, MN, to points in AR, CO, IL, IN, KS, KY, LA, MS, MO, NM, NE, ND, OL, SD, TN, TX and WI, and (ii) from Minneapolis, MN, to points in AR, CO, IL, IN, KS, KY, LA, MS, MO, NM, NE, ND, OK, SD, TN, TX and WI; (23) *Dry feed and feed ingredients,* between the facilities of Cargill, Inc., at Springdale, AR, and the facilities of Ralston Purina Company at Bloomington, IL, Iowa Falls, IA, Kansas City, MO, and Memphis, TN, on the one hand, and, on the other, points in AR, CO, IL, IA, KS, LA, MN, MO, NE, NM, ND, OK, SD, TX and WI; (24) *Dry corn products,* from Kansas City, MO, to points in AR, CO, IL, IN, IA, KS, KY, LA, MI MN, NE, MN, ND, OH, OK, SD, TN, TX and WI; (25) *Lead Oxide,* from Terrell, TX, to Kansas City and St. Joseph, MO; (26) *Pet food,* from the facilities of Strongheart Products, Inc., at or near Kansas City, KS, to points in IA, MN, ND, SD and WI; (27) *Potash, potash products and potash byproducts,* from Lea and Eddy Counties, NM, to points in IN, KY, MI, MS, NC, OH and TN; (28) *Animal feed, animal feed ingredients, animal health products, and insecticides,* from Minneapolis, MN, to points in AZ; (29) *Salt,* from the facilities of Morton Salt Company at or near Hutchinson, KS, to the facilities of E. I. DuPont de Nemours and Company at or near Woodstock, TN; (30) *Dry beet pulp pellets,* from Fremont and Ottawa, OH, and East Grand Forks, and Crookston, MN, to East St. Louis, IL; (31) *Lead and lead alloys,* (a) from Herculaneum, MO, to points in AZ, AR, CO, IL, IA, KS, KY,

LA, MS, MN, NE, NM, OK, TN, TX and WI, and (b) from Omaha, NE, to points in AR, CO, IL, IN, IA, KS, MI, MN, MO, TN and TX; (32) *Junk Batteries,* from points in AR, CO, IL, IN, IA, KS, MI, MS, MO, TN and TX, to Omaha, NE, and Fricso, TX; (33) *Dry soybean products, dry soybean byproducts, dry mixtures of corn and soybean products, and dry corn products,* from Kansas City, MO, to points in AL, AZ, AR, CO, IL, IN, IA, KS, KY, LA, MI, MN, MS, NE, NM, ND, OH, OK, SD, TN, TX and WI; (34) *Canned goods,* (a) from Ft. Collins, CO, to points in AZ, AR, IL, IA, KS, MN, MO, NE, NM, ND, OK, SD, TX and WI, (b) from La Junta, CO, to points in AR, IL, KS, MO, OK and WI, and (c) from Hutchinson, KS, to points in AZ, AR, CO, NM, OK and TX; (35) *Materials and supplies used in food processing and packaging,* from points in AZ, AR, CO, IL, IA, KS, MN, MO, NE, NM, ND, OK, SD, TX and WI, to Ft. Collins, and La Junta, CO; Hutchinson, KS; (36) *Alfalfa meal and alfalfa pellets,* from the facilities of Protein Processors, Inc., Division of Ralston Purina Company, at or near Dundee, KS, to points in AR, MO AND LA; (37) *Animal and poultry medicinal health products and pesticides, animal and poultry feed and animal and poultry feed components,* from Kansas City, MO, to points in AZ, AR, CO, IA, IL, KS, LA,MS, MN, NE, NM, ND, OK, SD, TX and WI; (38) *Dry animal and poultry feed ingredients,* (a) Between points in AR, LA, MO, OK and TX, (b) from points in AR, LA, MO, OK, and TX, to Memphis, TN, and points in IL, IN, IA, KS, MN, MS, NE, and WI, (c) from points in CO, IL, IN, IA, MN, MS, NE, and WI, to points in AR, KS, LA, MO,NM, OK, and TX, (d) from points in KS, to points in AR, LA, NO, NM, OK, and TX, and (e) from points in NM, to points in AR, LA, MO, and TX; (39) *lead, lead alloys, and lead by-products,* from the facilities used by Schuylkill Metals, Corp., near Forest City, MO, to points in AZ, AR, CO, IL, IN, IA, KS, KY, LA, MN, MS, ND, OK, SD, TN, TX, and WI; (40) *junk batteries* and *battery plates,* in the reverse direction of (39) above, (41) *Fertilizer,* (a) from Gainesville, Littlefield, Pittsburg, Terrell and Vernon, TX, to points in AR, CO, KS, LA, MS, NO, NE, NM and OK, and (b) from Kernes, TX, to points in LA and MS; (42) *Fertilizer,* from Kernes, TX, to points in AR, CO, KS, MO, NE, NM, and OK; (43) *Dry urea and dry ammonium nitrate,* from the facilities of Atlas Powder Company, at or near Atlas and Carthage, MO, to points in AL, AR, AZ, CO, IA, IL, IN, KS, KY, LA, MN, MS, NE, ND, NM, OK, SD, TN, TX and WI; (44) *Lead oxide,* from Hammond, IN to Kansas City, MO; (45) *Lead and lead alloys,* from Frisco, TX to points in AR, CO, IA, IL, IN, KS, LA, MO, NE, OK and TN; (46) *Chemicals* (a) from Ringwood, IL, to points in LA and TX; and (b) from Weeks Island, LA, to Ringwood and Elk Grove, IL; (47) *Containers,* from Weeks Island, LA, to Ringwood, IL, and (48) *Salt and salt products and materials and supplies* used in the agricultural, water treatment, food processing, grocery and institutional supply industries in mixed loads with salt products, from Weeks Island, LA, to points in AR, MS, OK, TN, and TX; and (49) *Dry Alumina,* from the facilities of Aluminum Company of America at or near Bauxite, AR, to points in KS and MO.

**Note.—Issuance of a certificate in this proceeding is subject to coincidental cancellation of carrier's existing Certificate MC–118535 Sub 49, 58, 67, 70, 73, 81, 82, 83, 93, 97, 98, 100, 101, 103, 109, 110, 115, 118, 121, 127, 131, 140 and 142.**

MC 118535 (Sub-157F), filed September 9, 1980. Applicant: TIONA TRUCK LINE, INC., 102 West Ohio, Butler, MO 64730. Representative: Jim Tiona, Jr. (same address as applicant). Transporting *proppant,* from points in Iberia Parish, LA, to points in AR, CO, KS, MS, MT, NE NM, OK, TX, UT, and WY.

MC 136384 (Sub-24F), filed September 8, 1980. Applicant: PALMER MOTOR EXPRESS, INC., P. O. Box 103, Savannah, GA 31402. Representative: Virgil H. Smith, Suite 12, 1587 Phoenix Blvd, Atlanta, GA 30349. Transporting (1) *clay, concrete, glass or stone products,* as described in Item 32 of the Standard Transportation Commodity Code, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between Shelby, TN, and points in Clarke and DeKalb Counties, GA, on the one hand, and, on the other, points in AR, LA, KY, TN, MS, AL, FL, NC, SC, VA, and GA.

MC 138635 (Sub-116F), filed September 15, 1980. Applicant: Carolina Western Express, Inc., P.O. Box 3995, Gastonia, NC 28052. Representative: W.C. Sutton (same address as applicant). Transporting *chemicals, liquid plastic, ink, plastic sheeting, machinery, and machinery parts,* between points in the U.S.

MC 141084 (Sub-19F), filed September 3, 1980. Applicant: NATIONAL FREIGHT LINES, INC., P. O. Box 1031, San Fernando, CA 91341. Representative: Bill D. Gardner (same address as applicant). Transporting (1) *chemicals,* and (2) *plastic articles,* between points in the U.S., under continuing contract(s) with The Dow Chemical Corporation, of Midland, MI.

MC 141914 (Sub-89F), filed September 8, 1980. Applicant: FRANKS AND SON, INC., Route 1, Box 108A, Big Cabin, OK 74332. Representative: Kathrena J. Franks (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of marine engines (except commodities in bulk), between points in Fond du Lac County, WI, on the one hand, and, on the other, points in the U.S.

MC 141945 (Sub-3F), filed September 8, 1980. Applicant: LOWER FULTONVILLE TRUCKING COMPANY, INC., 750 Everett St., Norwood, MA 02062. Representative: Robert Rothberg, 60 State St., Boston, MA 02109. Transporting *malt beverages,* in containers, between points in the U.S., under continuing contract(s) with Merrimack Valley Distributing Company, of Denvers, MA.

MC 143394 (Sub-9F), filed September 18, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd., P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop (same address as applicant). Transporting *general commodities* (except commodities in bulk, in tank vehicles, used household furniture, commodities the transportation of which because of size or weight requires the use of special equipment, automobiles, trucks and buses as described in the Report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, and explosives), between points in the U.S., under continuing contract(s) with International Paper Company, of New York, NY.

MC 143394 (Sub-10F), filed September 18, 1980. Applicant: GENIE TRUCKING LINE, INC., 70 Carlisle Springs Rd., P.O. Box 840, Carlisle, PA 17013. Representative: G. Kenneth Bishop (same address as applicant). Transporting (1) *unwoven carpets, unwoven carpeting, carpet and rug cushioning,* and (2) *materials and supplies* used in the installation of (1), between points in the U.S., under continuing contract(s) with General Felt Industries, Inc., of Saddle Brook, NJ.

MC 144884 (Sub-7F), filed September 16, 1980. Applicant: ARTHUR E. JOHNSTON & MICHAEL A. JOHNSTON, d.b.a. JOHNSTON TRUCKING, P.O. Box 325, Spearfish, SD 57783. Representative: J. Maurice Andren, 1734 Sheridan Lake Rd., Rapid City, SD 57701. Transporting (1) *primary metal products,* including galvanized, except coating or other allied processing, (2) *fabricated metal*

*products*, except ordnance, machinery, or transportation equipment, and (3) *lumber or wood products*, except furniture, as described in Items 33, 34, and 24, respectively, of the Standard Transportation Commodity Code Tariff, from Louisville, KY, and points in OH and PA, to those points in the U.S. in and west of MN, IA, NE, KS, OK, and TX (except AK and HI).

MC 145054 (Sub-40F), filed September 9, 1980. Applicant: COORS TRANSPORTATION COMPANY, a Corporation, 5101 York St., Denver, CO 80216. Representative: David E. Driggers, Suite 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *automobile tires*, between points in Los Angeles County, CA, on the one hand, and, on the other, points in Denver County, CO.

MC 145955 (Sub-15F), filed September 15, 1980. Applicant: CENTRAL TRUCK SERVICE, INC., 4440 Buckingham Ave., Omaha, NE 68107. Representative: Arlyn L. Westergren, Suite 106, 7101 Mercy Road, Omaha, NE 68106. Transporting (1) *adhesives* and (2) *materials* used in the manufacture of adhesives, between Chicago, IL, Omaha, NE; and Kansas City, MO.

MC 145914 (Sub-10F), filed September 16, 1980. Applicant: COASTAL TRUCK LINE, INC., P.O. Box 2015, New Brunswick, NJ 08903. Representative: Lawrence S. Burstein, One World Trade Center, Suite 2373, New York, NY 10048. Transporting *containers and raw materials and supplies* used in the manufacture of containers, between points in the U.S., under continuing contract(s) with Ball Corporation, of Muncie, IN.

MC 146894 (Sub-3F), filed September 16, 1980. Applicant: GLEN DYER, dba GLEN DYERS TRUCKING SERVICE, 1000 South Lawrence St., Mobile, AL 36603. Representative: R. S. Richard, P.O. Box 2069, Montgomery, AL 36197. Transporting *silico manganese*, from points in Mobile County, AL, to Houston and Dangerfield, TX.

MC 148075 (Sub-2F), filed September 10, 1980. Applicant: CECIL E. KING, JR., d.b.a. CECIL E. KING, TRUCKING, Route 2, Seagrove, NC 27341. Representative: Francis J. Ortman, 7101 Wisconsin Avenue, Suite 605, Washington, DC 20014. Transporting (1) *meat*, between points in the U.S., under continuing contract(s) with Yates County Ham Inc., of Ashboro, NC; and (2) *tread rubber and accessories* used in recapping automotive tires, between points in the U.S., under continuing contract(s) with Harrelson Rubber Company, of Ashboro, N.C.

MC 150584 (Sub-1F), filed September 9, 1980. Applicant: PAPER MERCHANT'S TRANSPORT & SUPPLY, INC., 175 Second St., Oakland, CA 94607. Representative: Myron F. Tower, 2257 Bancroft Ave., San Leandro, CA 94577. Transporting *paper bags*, and *wrapping paper*, between points in the U.S., under continuing contract(s) with Cupples Paper Bag Company, of Palo Alto, CA.

MC 151544 (Sub-1F), filed September 9, 1980. Applicant: HILL TRANSPORT, INC., P.O. Box 9813, Rudder Rd., Knoxville, TN 37920. Representative: Blaine Buchanan, 1024 James Bldg., Chattanooga, TN 37402. Transporting (1) *hair care products, cosmetics, and toilet preparations*, and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in Los Angeles County, CA, and Dallas County, TX, on the one hand, and, on the other, points in the U.S.

**Volume No. OP4-063**

Decided: Sept. 22, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating

MC 1977 (Sub-48F), filed September 17, 1980. Applicant: NORTHWEST TRANSPORT SERVICE, INC., 5601 Holly St., Commerce City, CO 80022. Representative: Leslie R. Kehl, 1600 Lincoln Center, 1660 Lincoln St., Denver, CO 80264. Transporting *general commodities* (except those of unusual value, household goods as defined by the Commission, commodities in bulk, classes A and B explosives, and those requiring special equipment), serving points in San Juan County, NM, as off-route points in connection with carrier's otherwise authorized regular-route operations.

MC 11207 (Sub-568F), filed September 16, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *primary metal products including galvanized* except coating or other allied processing, and *fabricated metal products* (except ordnance) as described in Items 33 and 34 of the Standard Transportation Commodity Code Tariff, respectively, and *metal scrap*, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of (a) Commercial Metals Company, (b) its subsidiaries, Structural Metals, Inc., Cometals, Inc., Commonwealth Metals Corporation, Enterprise Metal Corporation, and (c) its customers or suppliers.

MC 11207 (Sub-569F), filed September 16, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *primary metal products including galvanized* except coating or other allied processing, and *fabricated metal products* (except ordnance) as described in Items 33 and 34 of the Standard Transportation Commodity Code Tariff, between points in Lauderdale County, MS, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 11207 (Sub-570F), filed September 17, 1980. Applicant: DEATON, INC., 317 Ave. W, P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014. Transporting *paper and paper products*, between points in Escambia County, FL, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, OK, and TX.

MC 26396 (Sub-378F), filed September 16, 1980. Applicant: THE WAGGONERS TRUCKING, P.O. Box 31357, Billings, MT 59107. Representative: Bradford E. Kistler, P.O. Box 82028, Lincoln, NE 68501. Transporting *such commodities* as are dealt in or used by manufacturers and distributors of metal buildings, grain storage and handling systems, and agricultural equipment, between points in IA and NE, on the one hand, and, on the other, points in the U.S.

MC 54567 (Sub-15F), filed September 16, 1980. Applicant: RELIANCE TRUCK CO., a corporation, 2500 N. 24th Ave., Phoenix, AZ 85009. Representative: A. Michael Bernstein, 1441 E. Thomas Rd., Phoenix, AZ 85104. Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in CA, AZ, NV, UT, CO, and NM.

MC 55896 (Sub-143F), filed September 16, 1980. Applicant: R-W SERVICE SYSTEM, INC., 20225 Goddard Rd., Taylor, MI 48180. Representative: George E. Batty (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between points in St. Charles County, MO, on the one hand, and, on the other, points in the U.S.

MC 61396 (Sub-384F), filed September 17, 1980. Applicant: HERMAN BROS., INC., P.O. Box 189, 2565 St. Mary's Ave., Omaha, NE 68101. Representative: Scott E. Daniel, 800 Nebraska Savings Bldg.,

1623 Farnam, Omaha, NE 68102. Transporting *vegetable oils,* in bulk, from Des Moines, IA, to points in the U.S. (except AK and HI).

MC 95876 (Sub-364F), filed September 17, 1980. Applicant: ANDERSON TRUCKING SERVICE, INC., 203 Cooper Ave. No., St. Cloud, MN 56301. Representative: William L. Libby (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers and distributors of cast iron products (except commodities in bulk, in tank vehicles), between points in the U.S. (except AK and HI).

MC 109397 (Sub-522F), filed September 16, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant).Transporting (1) *pollution control and liquid treatment machinery,* (2)(a) *primary metal products including galvanized* except coating or other allied processing, and (b) *fabricated metal products* (except ordnance) as described in Items 33 and 34 of the Standard Transportation Commodity Code Tariff respectively, and (3) *materials, equipment, and supplies* used in the manufacture of the commodities named in (1) and (2) above, between points in CA, on the one hand, and, on the other, points in the U.S.

MC 120436 (Sub-3F), filed September 16, 1980. Applicant: NUSSBAUM TRUCKING, INC., Rt. 51, No., Normal, IL 61761. Representative: Edward D. McNamara, Jr., 907 So. 4th St., Springfield, IL 62703. Transporting *canned goods* (except frozen), from the facilities of Joan of Arc, at or near Hoopeston and Princeville, IL to Wright City, MO.

MC 123407 (Sub-648F), filed September 16, 1980. Applicant: SAWYER TRANSPORT, INC., Sawyer Center, Rt. 1, Chesterton, IN 46304. Representative: H. E. Miller, Jr. (same address as applicant). Transporting *such commodities* as are dealt in or used by manufacturers or distributors of containers (except commodities in bulk), between points in the U.S. (except AK and HI).

MC 123476 (Sub-59F), filed September 17, 1980. Applicant: CURTIS TRANSPORT, INC., P.O. Box 388, Arnold, MO 63010. Representative: David G. Dimit (same address as applicant). Transporting (1) *refractories, and insulation,* and (2) *materials, equipment, and supplies* used in the manufacture, distribution and installation of the commodities in (1) above, between those facilities of A. P. Green Refractories Co., in the U.S. on and east of U.S. Hwy 85, on the one hand, and, on the other, those points in the U.S. in and east of ND, SD, NE, CO, and NM.

MC 125777 (Sub-276F), filed September 16, 1980. Applicant: JACK GRAY TRANSPORT, INC., 4600 East 15th Ave., Gary, IN 46403. Representative: Carl L. Steiner, 39 So. LaSalle St., Chicago, IL 60603. Transporting *granulated slag,* from La Cygne, KS, to points in AR, CO, IL, IN, IA, KY, MN, MO, NE, NM, OK, TN, TX, SD, and WY.

MC 128527 (Sub-139F), filed September 17, 1980. Applicant: MAY TRUCKING COMPANY, a corporation, P.O. Box 400, Payette, ID 83661. Representative: Timothy W. Wilson, P.O. Box 9039, Salem, OR 97305. Transporting *general commodities* (except classes A and B explosives), between points in CA, ID, MT, NV, OR, UT, and WA.

MC 131026F, filed September 15, 1980. Applicant: CRAWFORD TOURS, INC., 3489 Abbey St., Uniontown, OH 44685. Representative: Jerry Purcell, 16 Hooper St., Pittsburgh, PA 15219. To engage in operations in interstate or foreign commerce, as a *broker,* at Uniontown, OH, in arranging for the transportation by motor vehicle, of *passengers and their baggage,* in the same vehicle with passengers, in round-trip special and charter operations, beginning and ending at points in OH and WV, and extending to points in the U.S. (except AK and HI).

MC 133816 (Sub-14F), filed September 15, 1980. Applicant: K & K WHOLESALE CO., a corporation, P.O. Box 328, Lowell, OR 97452. Representative: Howard E. Speer, 825 East Park St., Eugene, OR 97401. Transporting (1) *sand,* from points in Clark County, NV, to those points in OR in and west of Multnomah, Clackamas, Marion, Linn, Lane, Douglas, and Jackson Counties, (2) *cedar shakes,* from the destination points named in (1) above to points in Mohave, Coconino, Yuma, Yavapai, Maricopa, Gila, and Pinal Counties, AZ, and (3) *lumber, lumber mill products, and forest products,* from points in OR to points in Mohave, Coconino, Yuma, Yavapai, Maricopa, Gila, and Pinal Counties, AZ.

MC 138157 (Sub-251F), filed September 17, 1980. Applicant: SOUTHWEST EQUIPMENT RENTAL, INC., d.b.a. SOUTHWEST MOTOR FREIGHT, 2931 So. Market St., Chattanooga, TN 37410. Representative: Patrick E. Quinn, P.O. Box 9596, Chattanooga, TN 37412. Transporting (1) *electrical audio and visual equipment, kitchen and household equipment,* and (2) *materials and supplies* used in the manufacture and distribution of the commodities named in (1) above, between points in San Diego and Los Angeles Counties, CA, St. Francis County, AR, Cook County, IL, and Bergen County, NJ, on the one hand, and, on the other, points in the U.S. (except AK and HI).

MC 139906 (Sub-126F), filed September 15, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORP., P.O. Box 30303, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting *medical supplies,* between points in Volusia County, FL, on the one hand, and, on the other, points in the U.S.

MC 144616 (Sub-13F), filed September 16, 1980. Applicant: TRUCKS, INC., P.O. Box 79113, Saginaw, TX 76179. Representative: Harry F. Horak, Suite 115, 5001 Brentwood Stair Rd., Fort Worth, TX 76112. Transporting *meats, meat products, meat byproducts, and articles distributed by meat-packing houses* as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from Hereford, TX, to points in CT, DE, ME, MD, MA, NH, NJ, NY, PA, RI, VT, VA, WV, AZ, CA, and DC.

MC 145416 (Sub-3F), filed September 17, 1980. Applicant: HEINEMAN DISTRIBUTING, INC., 301 West Second St., Port Clinton, OH 43452. Representative: Author R. Cline, 420 Security Bldg., Toledo, OH 43604. Transporting *malt beverages,* between points in the U.S., under continuing contract(s) with Portage Distributing Co., of Ravenna, OH, Pyramid Distributing, Co., of Mansfield, OH, Bailey Distributing Company, of Mansfield, OH, and Metropolitan Distributing Co., of Toledo, OH.

MC 145997 (Sub-31F), filed September 16, 1980. Applicant: JEM EQUIPMENT, INC., P.O. Box 396, Alma, AR 72921. Representative: Don Garrison, P.O. Box 1065, Fayetteville, AR 72701. Transporting *liquor and malt beverages,* between the facilities of Stroh Brewing Company, at or near (a) Detroit, MI, and (b) Perrysburg, OH, on the one hand, and, on the other, Atlanta, Athens, Augusta, Albany, Columbus, Dublin, La Grange, Macon, Rome, and Savannah, GA, and Aiken, SC.

MC 147007 (Sub-5F), filed September 16, 1980. Applicant: EVERFRESH TRANSPORTATION CO., a corporation, 6431 East Palmer, Detroit, MI 48211. Representative: John S. Barbour, 2711 East Jefferson, Suite 202, Detroit, MI

48207. Transporting *motor vehicle parts* and *materials, equipment, and supplies* used in the manufacture of motor vehicle parts, between points in the U.S., under continuing contract(s) with Chrysler Corporation Service and Parts Division, of Center Line, MI.

MC 149026 (Sub-15F), filed September 15, 1980. Applicant: TRANS-STATES LINES, INC., P.O. Box 1486, Van Buren, AR 72956. Representative: Larry C. Price (address same as applicant). Transporting (1) *paint and paint products* and (2) *materials, equipment and supplies* used in the manufacture, distribution, and packaging of commodities in (1) above, between Fort Smith, AR, on the one hand, and, on the other, points in the U.S. (except AK and HI).

**Volume No. OP4–065.**

Decided: September 24, 1980

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 59806 (Sub-20F), filed September 17, 1980. Applicant: GROSS & HECHT TRUCKING, INC., 35 Brunswick Ave., Edison, NJ 08817. Representative: Michael R. Werner, 167 Fairfield Rd., P.O. Box 1409, Fairfield, NJ 07006. Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in the U.S., under continuing contract(s) with Twin County Grocers Co., Inc., of Edison, NJ.

MC 61977 (Sub-35F), filed September 15, 1980. Applicant: ZERKLE TRUCKING CO., a corporation, 2400 Eighth Ave., Huntington, WV 25703. Representative: N. W. Bowen, Jr., P.O. Box 5628, Huntington, WV 25703. Transporting (1) *paper and paper products*, (2) *building products*, (3) *plastic and plastic products*, (4) *chemicals* (except in bulk), and (5) *materials, equipment, and supplies* used in their manufacture (except commodities in bulk), between points in the U.S., restricted to traffic originating at or destined to the facilities of Union Camp Corporation.

MC 69116 (Sub-277F), filed September 17, 1980. Applicant: SPECTOR INDUSTRIES, INC. d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy., Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle, Suite 600, Chicago, IL 60603. Transporting (1) *such commodities* as are dealt in or used by manufacturers of floor coverings, and (2) *materials, equipment, and supplies* used in the manufacture, installation and distribution of the commodities in (1) above, between points in Kankakee County, IL, and those points in the U.S. in and east of MT, WY, CO, and NM.

MC 69116 (Sub-278F), filed September 17, 1980. Applicant: SPECTOR INDUSTRIES, INC. d.b.a. SPECTOR FREIGHT SYSTEM, 1050 Kingery Hwy., Bensenville, IL 60106. Representative: Edward G. Bazelon, 39 South LaSalle St., Suite 600, Chicago, IL 60603. Transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between points in Waupaca County, WI, on the one hand, and, on the other, points in U.S. (except AK and HI).

MC 78786 (Sub-280F), filed September 19, 1980. Applicant: PACIFIC MOTOR TRUCKING COMPANY, a Corporation, 1766 El Camono Real, P.O. Box 990, Burlingame, CA 94010. Representative: Lloyd M. Roach, 7600 So. Central Expressway, P.O. Box 226187, Dallas, TX 75266. Over regular routes, transporting *general commodities* (except household goods as defined by the Commission and classes A and B explosives), between Portland, OR and Longview, WA over Interstate Hwy 5, serving no intermediate points.

MC 108937 (Sub-68F), filed September 19, 1980. Applicant: MURPHY MOTOR FREIGHT LINES, INC., 2323 Terminal Rd., St. Paul, MN 55113. Representative: Jerry E. Hess, P.O. Box 43640, St. Paul, MN 55164. Over regular routes, transporting *general commodities* (except those of unusual value, classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment), between Buffalo and Albany, NY, over Interstate Hwy 90, serving all intermediate points, and the off-route points of Medina, Rochester, Rome, and Troy, NY.

MC 109397 (Sub-521F), filed September 16, 1980. Applicant: TRI-STATE MOTOR TRANSIT CO., a Corporation, P.O. Box 113, Joplin, MO 64801. Representative: A. N. Jacobs (same address as applicant). Transporting (1) *electrical equipment*, and *electrical control panels*, and (2) *materials and supplies* used in the manufacture of the commodities named in (1) above, between points in Seminole County, FL, on the one hand, and, on the other, points in the U.S.

MC 111936 (Sub-19F), filed September 15, 1980. Applicant: MURROW'S TRANSFER, INC., P.O. Box 4095, High Point, NC 27263. Representative: J. Darrell Peace (same address as applicant). Transporting *foodstuffs*, between points in MI, on the one hand, and, on the other, points in KY, NC, and VA.

MC 118537 (Sub-13F), filed September 17, 1980. Applicant: MARX TRUCK LINE, INC., 220 Lewis Blvd., Sioux City, IA 51108. Representative: Robert L. Marx (same address as applicant). Transporting *food or kindred products* as described in Item 20 of the Standard Transportation Commodity Code Tariff, between points in Marshall, Plymouth, Sioux, and Woodbury Counties, IA, Dakota County, NE, and Union County, SD, on the one hand, and, on the other, points in Adams, Arapahoe, Boulder, Denver, and Jefferson Counties, CO, and points in IL, IA, IN, KS, MI, MN, MO, NE, OK, SD, and WI.

MC 119726 (Sub-173F), filed September 19, 1980. Applicant: N.A.B. TRUCKING CO., INC., 1644 W. Edgewood Ave., Indianapolis, IN 46217. Representative: James L. Beattey, 300 E. Fall Creek Pkwy., Suite 403, Indianapolis, IN 46205. Transporting *such commodities* as are dealt in, or used by manufacturers and distributors of electrical and industrial equipment, from Elk Grove Village, IL, to Atlanta, GA, Grand Prairie, TX, and Secaucus, NJ.

MC 119777 (Sub-501F), filed September 19, 1980. Applicant: LIGON SPECIALIZED HAULER, INC., Hwy 85-East, Madisonville, KY 42431. Representative: Carl U. Hurst, P.O. Box Drawer "L", Madisonville, KY 42431. Transporting (1) *printed matter and* (2) *materials, equipment and supplies* used in the manufacture, sale and distribution of printed matter, between points in Cook and DuPage Counties, IL, Muscatine County, IA, Lake and Marion Counties, IN, Fayette and Woodford Counties, KY, Bristol County, MA, Westchester County, NY, and Davidson County, TN, on the one hand, and, on the other, points in the U.S.

MC 125996 (Sub-94F), filed September 18, 1980. Applicant: GOLDEN TRANSPORTATION, INC., P.O. Box 26908, Salt Lake City, UT 84125. Representative: Franklin L. Slaugh, 8238 So. 700 East, Suite 103, Sandy, UT 84070. Transporting *meat, meat products, meat byproducts, and articles* distributed by meat-packing houses as described in Sections A and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates*, 61 M.C.C. 209 and 766 (except hides and commodities in bulk), from the facilities of Iowa Beef Processors, Inc., at or near Holcomb, KS, to points in AZ, CA, CO, ID, MT, NV, NM, OR, UT, WA, WY, IL, IN, IA, KS, KY, MI, MN, MO, ND, NE, OH, SD, and WI.

MC 127306 (Sub-14F), filed September 16, 1980. Applicant: M. W. McCURDY & CO., INC., 401 Nora's Lane, Houston, TX 77022. Representative: Daniel O. Hands, Suite 200, 205 W. Touhy Ave., Park Ridge, IL 60068. Transporting *malt beverages* between the facilities of Pearl Brewing Company, at San Antonio, TX, on the one hand, and, on the other, points in CA and NV.

MC 131016F, filed September 12, 1980. Applicant: REBECCA MAE BROGDEN, 5 Warfield Ct., Greensboro, NC 27406. Representative: Rebecca Mae Brogden (same address as applicant). To engage in operation, in interstate or foreign commerce as a broker, to arrange for the transportation, by motor vehicles, of *passengers and their baggage* beginning and ending at points in Guilford, Randolph, Rockingham, Alamance, Buncombe, Iredell, Franklin, Forsyth, and Macon Counties, NC, and extending to points in the U.S.

MC 139906 (Sub-127F), filed September 10, 1980. Applicant: INTERSTATE CONTRACT CARRIER CORPORATION, P.O. Box 30803, Salt Lake City, UT 84127. Representative: Richard A. Peterson, P.O. Box 81849, Lincoln, NE 68501. Transporting (1) *electrical equipment and household appliances,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of the commodities in (1) above, between points in the U.S.

MC 140187 (Sub-4F), filed September 18, 1980. Applicant: YELLOWSTONE TRUCKING, INC., 1212 Appleway, Coeur d'Alene, ID 83814. Representative: William J. Monheim, P.O. Box 1756, Whittier, CA 90609. Transporting *chemicals or allied products,* as described in Item 28 of the revised Standard Transportation Commodity Code, between points in the U.S., under continuing contrast(s) with Utah Salt Co., Inc., of Salt Lake City, UT.

MC 142487 (Sub-6F), filed September 19, 1980. Applicant: JOHN H. KOOY TRUCKING, INC., 2936 Shelby Road, Lynnwood, WA 98036. Representative: James T. Johnson, 1610 IBM Bldg., Seattle, WA 98101. Transporting *malt beverages* from points in CA to points in WA.

MC 144826 (Sub-1F), filed September 19, 1980. Applicant: COMET TRUCKING, INC., 6 Stuart Rd., Chelmsford, MA 01824. Representative: David Gordon (same address as applicant). Transporting (1) *rubber or miscellaneous plastics products* as described in Item 30 of the Standard Transportation Commodity Code and (2) *equipment and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., under continuing contract(s) with Spir-It, Inc., of Wakefield, MA, Comet Products, Inc., of Chelmsford, MA, and Nature Food Centers, of Wilmington, MA.

MC 146807 (Sub-17F), filed September 17, 1980. Applicant: S'n W ENTERPRISES, INC., P.O. Box 1131, Wilkes Barre, PA 18702. Representative: Joseph A. Keating, Jr., 121 S. Main St., Taylor, PA 18517. Transporting (1) *chains and gearing,* and (2) *materials, equipment, and supplies* used in the manufacture or distribution of the commodities in (1) above, between the facilities of Atlas Chain & Precision Products, Inc., at West Pittston, PA, on the one hand, and, on the other, points in the U.S. (except PA, AK, and HI).

MC 147007 (Sub-6F), filed September 16, 1980. Applicant: EVERFRESH TRANSPORTATION COMPANY, a Corporation, 6431 East Palmer, Detroit, MI 48211. Representative: John S. Barbour, 2711 East Jefferson, Suite 202, Detroit, MI 48207. Transporting *frozen citrus juice concentrates,* in containers, between points in the U.S., under continuing contract(s) with Libby, McNeill & Libby, of Chicago, IL.

MC 148087 (Sub-2F), filed September 22, 1980. Applicant: BIG K CORPORATION, d.b.a. DIAMOND TRANSPORT, P.O. Box 35, Kanosh, UT 84637. Representative: Irene Warr, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *petroleum and petroleum products,* between points in UT, WY, CO, and ID.

MC 148127 (Sub-27F), filed September 12, 1980. Applicant: LINEHAUL EXPRESS CORPORATION, P.O. Box 5078, Manchester, NH. Representative: Neal R. Michaud (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, commodities in bulk, and classes A and B explosives), between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Ralston Purina Company.

MC 150576 (Sub-2F), filed September 22, 1980. Applicant: COASTAL TRANSPORT, INC., P.O. Box 1277, Goldsboro, NC 27530. Representative: Ralph McDonald, P.O. Box 2246, Raleigh, NC 27602. Transporting *petroleum and petroleum products* from Chesapeake, VA to points in NC.

MC 151056 (Sub-3F), filed September 17, 1980. Applicant: SUPER SERVICE, INC., 319 Auburn Ave., Somerset, KY 42501. Representative: George M. Catlett, Suite 708, McClure Bldg., Frankfort, KY 40601. Transporting (1) *charcoal, charcoal briquettes, wood chips, vermiculite, hickory chips, lighter fluid, fireplace logs, paper bags, and spices and sauces* used in outdoor cooking, and (2) *materials, equipment, and supplies* used in the manufacture of the commodities in (1) above, between points in the U.S., restricted to traffic originating at or destined to the facilities of The Kingsford Company.

MC 151097 (Sub-1F), filed September 16, 1980. Applicant: DAVID GRICE, d.b.a. GRICE WRECKER SERVICE, 910 N. East, Box 435, Guymon, OK 73942. Representative: C. L. Phillips, Room 248, Classen Terr., Bldg., 1411 N. Classen, Oklahoma City, OK 73106. Transporting *wrecked, disabled, repossessed and replacement vehicles,* between points in AZ, AR, CO, KS, NE, NM, OK, and TX.

MC 151216 (Sub-1F), filed September 15, 1980. Applicant: SHAWNEE CARRIERS, INC., 82–86 Narrows Rd., Plymouth, PA 18651. Representative: S. Michael Richards, P.O. Box 225, Webster, NY 14580. Transporting (1) foodstuffs (except in bulk), and (2) *materials and supplies* used in the manufacture of foodstuffs, between points in the U.S., under continuing contract(s) with Seneca Foods Corp., of Marion, NY, Globe Products Co., of Clifton, NJ, Fruitcrest Corp., of Garden City Park, NY, and CantiSANO Foods, Inc., of Rochester, NY.

MC 151407 (Sub-1F), filed September 16, 1980. Applicant: T & T TRUCKING, INC., 274 N. W. 37th St., Miami, FL 33127. Representative: D. Paul Stafford, P.O. Box 45538, Dallas, TX 75245. Transporting *recreational equipment,* from points in Dade County, FL, to points in AZ, AR, CA, CO, ID, IA, KS, MN, MT, NV, NM, OK, LA, ND, NE, MO, SD, OR, TX, UT, WA, and WY.

MC 151826F, filed September 11, 1980. Applicant: J&S TRUCK SERVICE, INC., Route 16, Box 7, Lexington, NC 27292. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave. NW., Washington, DC 20036. Transporting (1) *bakery products* (except frozen) and (2) *materials, equipment, and supplies* used in the manufacture of bakery products, between points in the U.S. (except AK and HI), restricted to traffic originating at or destined to the facilities of Nabisco, Inc.

**Volume No. OP4–066**

Decided: September 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 141917 (Sub-1F), filed September 10, 1980. Applicant: LEO J. UMERLEY, INC., 9813 Philadelphia Rd., Baltimore, MD 21237. Representative: Dean N. Wolfe, Suite 145, 4 Professional Dr.,

Gaithersburg, MD 20760. Transporting *salt* and *calcium chloride* between Baltimore, MD, and points in Baltimore County, MD, on the one hand, and, on the other, points in PA, MD, VA, WV, DE, NJ, and DC.

MC 151826 (Sub-2F), filed September 11, 1980. Applicant: J&S TRUCK SERVICE, INC., Rt. 16, Box 7, Lexington, NC 27292. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave., Washington, DC 20036. Transporting (1) *chemicals and drugs,* and (2) *such equipment and supplies* as are used by hospitals, between points in Pittsylvania County, VA, and Nash County, NC, on the one hand, and, on the other, those points in the U.S. on and west of a line beginning at the mouth of the Mississippi River, and extending along the Mississippi River to its junction with the western boundary of Itasca County, MN, then northward along the western boundaries of Itasca and Koochiching Counties, MN, to the international boundary line between the U.S. and Canada.

MC 151867F, filed September 9, 1980. Applicant: GORDON. O. TOMTENE, d.b.a. VALLEY SOIL SERVICES, Box 280, Birch Hills, Saskatchewan, Canada SOJ OGO. Representative: Gordon O. Tomtene (same address as applicant). In foreign commerce only, transporting *farm machinery,* between points in the U.S., under continuing contract(s) with Greenland Equipment Ltd., of Prince Albert, Saskatchewan, Canada, and Melgreen Equipment Ltd., of Melfort, Saskatchewan, Canada.

MC 151876F, filed September 15, 1980. Applicant: BILL WHITLOW, INC., P.O. Box 1191, Selma, AL 36701. Representative: J. Douglas Harris, 200 So. Lawrence St., Montgomery, AL 36104. Transporting (1) *hardware,* and (2) *building materials,* between points in AL, MS, GA, and LA, on the one hand, and, on the other, points in AL, MS, GA, LA, SC, and NC.

MC 151877F, filed September 12, 1980. Applicant: SUPREME HAULERS, INC., 10736 Beaconsfield, Detroit, MI 48048. Representative: Robert E. McFarland, 2855 Coolidge, Suite 201A, Troy, MI 48084. Transporting (1) *iron and steel articles,* and (2) *materials, equipment, and supplies* used in the manufacture and distribution of iron and steel articles, between points in the Lower Peninsula of MI, on the one hand, and, on the other, those points in the U.S. in and east of MN, IA, MO, AR, and TX.

MC 151887F, filed September 15, 1980. Applicant: BODONA, INC., 1011 North Colony Rd., Meriden, CT 06450. Representative: Gerald A. Joseloff, P.O. Box 3258, Hartford, CT 06103. Transporting *metal articles,* (1) between Woodstock, IL, on the one hand, and, on the other, Worcester, MA, Bridgeport, CT, and Portland, ME, and (2) between points in New Haven County, CT, on the one hand, and, on the other, points in ME, MA, NY, NJ, PA, OH, IN, IL, WI, and MI.

**Agatha L. Mergenovich,**

*Secretary.*

[FR Doc. 80-30887 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

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**[Permanent Authority Decisions Volume No. OP3-030]**

## Motor Carriers; Permanent Authority Decision-Notice

Decided: September 29, 1980.

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

### Findings

With the exception of those applications involving duly noted problems (e.g.s., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 17, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones, participating.

**Agatha L. Mergenovich,**

*Secretary.*

**Note.**—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

MC 146725 (Sub-11F), filed September 16, 1980. Applicant: FREEPORT TRANSPORT, INC., P.O. Box 27327, Salt Lake City, UT 84125. Representative: Bruce W. Shand, 430 Judge Bldg., Salt Lake City, UT 84111. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the U.S. Government, between points in the United States.

MC 149535F, filed September 2, 1980. Applicant: ALL FREIGHT, INC., 238 Sheldon Rd, Berea, OH 44017. Representative: Michael A. Wargula, 2550 Main Place Tower, Buffalo, NY 14202. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the U.S. Government, between points in the United Sfates.

[FR Doc. 80-30850 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

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## Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after March 1, 1979, are governed by Special Rule 247 of the Commission's *Rules of Practice* (49 CFR 1100.247). These rules provide, among other things, that a petition for intervention, either in support of or in opposition to the

granting of an application, must be filed with the Commission within 30 days after the date notice of the application is published in the Federal Register. Protests (such as were allowed to filings prior to March 1, 1979) will be rejected. A petition for intervention without leave must comply with Rule 247(k) which requires petitioner to demonstrate that it (1) holds operating authority permitting performance of any of the service which the applicant seeks authority to perform, (2) has the necessary equipment and facilities for performing that service, and (3) has performed service within the scope of the application either (a) for those supporting the application, or, (b) where the service is not limited to the facilities of particular shippers, from and to, or between, any of the involved points.

Persons unable to intervene under Rule 247(k) may file a petition for leave to intervene under Rule 247(l) setting forth the specific grounds upon which it is made, including a detailed statement of petitioner's interest, the particular facts, matters, and things relied upon, including the extent, if any, to which petitioner (a) has solicited the traffic or business of those supporting the application, or, (b) where the identity of those supporting the application is not included in the published application notice, has solicited traffic or business identical to any part of that sought by applicant within the affected marketplace. The Commission will also consider (a) the nature and extent of the property, financial, or other interest of the petitioner, (b) the effect of the decision which may be rendered upon petitioner's interest, (c) the availability of other means by which the petitioner's interest might be protected, (d) the extent to which petitioner's interest will be represented by other parties, (e) the extent to which petitioner's participation may reasonably be expected to assist in the development of a sound record, and (f) the extent to which participation by the petitioner would broaden the issues or delay the proceeding.

Petitions not in reasonable compliance with the requirements of the rule may be rejected. An original and one copy of the petition to intervene shall be filed with the Commission indicating the specific rule under which the petition to intervene is being filed, and a copy shall be served concurrently upon applicant's representative, or upon applicant if no representative is named.

Section 247(f) provides, in part, that an applicant which does not intend to timely prosecute its application shall promptly request that it be dismissed, and that failure to prosecute an application under the procedures of the Commission will result in its dismissal.

If an applicant has introduced rates as an issue it is noted. Upon request, an applicant must provide a copy of the tentative rate schedule to any protestant.

Further processing steps will be by Commission notice, decision, or letter which will be served on each party of record. *Broadening amendments will not be accepted after October 3, 1980.*

Any authority granted may reflect administrative acceptable restrictive amendments to the service proposed below. Some of the applications may have been modified to conform to the Commission's policy of simplifying grants of operating authority.

**Findings**

With the exception of those applications involving duly noted problems (e.gs., unresolved common control, unresolved fitness questions, and jurisdictional problems) we find, preliminarily, that each common carrier applicant has demonstrated that its proposed service is required by the present and future public convenience and necessity, and that each contract carrier applicant qualifies as a contract carrier and its proposed contract carrier service will be consistent with the public interest and the transportation policy of 49 U.S.C. 10101. Each applicant is fit, willing, and able properly to perform the service proposed and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulation. Except where specifically noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In those proceedings containing a statement or note that dual operations are or may be involved we find, preliminarily and in the absence of the issue being raised by a petititioner, that the proposed duel operations are consistent with the public interest and the transportation policy of 49 U.S.C. 10101 subject to the right of the Commission, which is expressly reserved, to impose such terms, conditions or limitations as it finds necessary to insure that applicant's operations shall conform to the provisions of 49 U.S.C. 10930(a) (formerly section 210 of the Interstate Commerce Act.)

In the absence of legally sufficient petitions for intervention, filed on or before November 3, 1980 (or, if the application later becomes unopposed), appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notification of effectiveness of the decision-notice. To the extent that the authority sought below may duplicate an applicant's other authority, such duplication shall be construed as conferring only a single operating right.

Applicants must comply with all specific conditions set forth in the following decision-notices within 30 days after publication, or the application shall stand denied.

Note.—All applications are for authority to operate as a common carrier, by motor vehicle, in interstate or foreign commerce, over irregular routes, except as otherwise noted.

**Volume No. OP4–024**

Decided: June 10, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 11207 (Sub-553F), filed April 22, 1980. Applicant: DEATON, INC., 317 Avenue W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014.Transporting *fire clay*, from points in Jefferson County, AL to points in MD and PA. (Hearing site: Birmingham, AL and Washington, DC.)

MC 11207 (Sub-554F), filed April 22, 1980. Applicant: DEATON, INC., 317 Avenue W., P.O. Box 938, Birmingham, AL 35201. Representative: Kim D. Mann, Suite 1010, 7101 Wisconsin Ave., Washington, DC 20014.Transporting *paper, paper products, and woodpulp*, from the facilities of Weyerhaeuser Company at or near Trinity, MS to points in the U.S. (except AK and HI). (Hearing site: Jackson, MS, or Washington, DC.)

**Volume No. OP4–025**

Decided: August 26, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 151047 (Sub-1F), filed June 16, 1980, previously noticed in the FR issue of August 5, 1980, and republished this issue. Applicant: DICK WELLER, INC., Shoham Rd., P.O. Box 313, Warehouse Point, CT 06088. Representative: James M. Burns, 1383 Main St., Suite 413, Springfield, MA 01103. Transporting (1) *builders' hardware, drapery hardware, hand tools, steel strapping, and band and strap steel*, and (2) *materials, equipment, and supplies* used in the manufacturer and distribution of the commodities in (1) above, between points in the U.S. (except AK, HI, MA, NH, RI and VT), under continuing

contract(s) with The Stanley Works of New Britain, CT.

Note.—The purpose of this republication is to correct the territorial description.

**Volume No. OP4–068**

Decided: September 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 149477F, filed June 4, 1980. Applicant: BECKSTROM ENTERPRISES, INC., P.O. Box 56, Gwinner, ND 58040. Representative: William J. Gambucci, Suite M–20, 400 Marquette Ave., Minneapolis, MN 55401. Transporting *metal building system components,* and *materials, equipment, and supplies* used in the erection and distribution of metal building system components, from Kansas City, MO, Galesburg, IL, Omaha, NE, and Story City, IA, to points in MN, ND, and SD.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80–30889 Filed 10–2–80; 8:45 am]

BILLING CODE 7035–01–M

## Motor Carriers; Permanent Authority Decisions; Decision-Notice

The following applications, filed on or after July 3, 1980, are governed by Special Rule 247 of the Commission's Rules of Practice, see 49 CFR 1100.247. Special Rule 247 was published in the **Federal Register** on July 3, 1980, at 45 FR 45539.

Persons wishing to oppose an application must follow the rules under 49 CFR 1100.247(B). Applications may be protested only on the grounds that applicant is not fit, willing, and able to provide the transportation service and to comply with the appropriate statutes and Commission regulations. A copy of any application, together with applicant's supporting evidence, can be obtained from any applicant upon request and payment to applicant of $10.00.

Amendments to the request for authority are not allowed. Some of the applications may have been modified prior to publication to conform to the Commission's policy of simplifying grants of operating authority.

Findings

With the exception of those applications involving duly noted problems (e.g., unresolved common control, fitness, water carrier dual operations, or jurisdictional questions) we find, preliminarily, that each applicant has demonstrated its proposed service warrants a grant of the application under the governing section of the Interstate Commerce Act. Each applicant is fit, willing, and able to perform the service proposed, and to conform to the requirements of Title 49, Subtitle IV, United States Code, and the Commission's regulations. Except where noted, this decision is neither a major Federal action significantly affecting the quality of the human environment nor a major regulatory action under the Energy Policy and Conservation Act of 1975.

In the absence of legally sufficient protests in the form of verified statements filed on or before November 17, 1980 (or, if the application later becomes unopposed) appropriate authority will be issued to each applicant (except those with duly noted problems) upon compliance with certain requirements which will be set forth in a notice that the decision-notice is effective. Within 60 days after publication an applicant may file a verified statement in rebuttal to any statement in opposition.

To the extent that any of the authority granted may duplicate an applicant's other authority, the duplication shall be construed as conferring only a single operating right.

Note.—All applications are for authority to operate as a motor common carrier in interstate or foreign commerce over irregular routes, unless noted otherwise. Applications for motor contract carrier authority are those where service is for a named shipper "under contract".

**Volume No. OP2–058**

Decided: September 29, 1980.

By the Commission, Review Board Number 3, Members Parker, Fortier, and Hill.

MC 131032F, filed September 17, 1980. Applicant: RICHARD LIGHT, d.b.a., PRONTO PARCEL, 145 Palisades St., Dobbs Ferry, NY 10522. Representative: Michael R. Werner, P.O. Box 1409, 167 Fairfield Rd., Fairfield, NJ 07006. As a *broker* to arrange for the transportation of *general commodities* (except household goods), between points in the United States.

MC 150802 (Sub-1F), filed September 19, 1980. Applicant: NORTHWEST IOWA EXPRESS, INC., 4311 Tyler Street, Sioux City, IA 51108. Representative: George L. Hirschbach, 920 West 21st Street, South Sioux City, NE 68776. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the United States.

**Volume No. OP4–064**

Decided: September 22, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones. Member Carleton not participating.

MC 151816F, filed September 10, 1980. Applicant: RAM LEASING CO., a corporation, 4000 W. Warren Ave., Freemont, CA 94538. Representative: E. Larry Wells, P.O. Box 45538, Dallas, TX 75245. Transporting *general commodities,* between Kemp, Crandall, Kaufman, Cherokee, and Anderson, TX, on the one hand, and, on the other, points in the U.S. Condition: Any certificate issued herein, to the extent it authorizes the transportation of dangerous commodities, shall be limited to a period of five years from its date of issue.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail service.

**Volume No. OP4–067**

Decided: September 24, 1980.

By the Commission, Review Board Number 1, Members Carleton, Joyce, and Jones.

MC 131101F, filed September 10, 1980. Applicant: ALL FREIGHT, INC., 32705 John R. Road, Madison Heights, MI 48071. Representative: Robert L. Cope, Suite 501, 1730 M St., N.W., Washington, DC 20036. To engage in operations, in interstate or foreign commerce as a broker, to arrange for the transportation of *general commodities* (except household goods), between points in the U.S.

MC 151826 (Sub-1F), filed September 11, 1980. Applicant: J&S TRUCK SERVICE, INC., Route 16, Box 7, Lexington, NC 27292. Representative: C. Jack Pearce, Suite 1200, 1000 Connecticut Ave., Washington, DC 20036. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions) for the United States Government, between points in the U.S.

MC 151827F, filed September 9, 1980. Applicant: B. W. REDDEN, 5641 Military Parkway, P.O. Box 270699, Dallas, TX 75227. Representative: B. W. Redden (same address as applicant). Transporting *general commodities* (except household goods as defined by the Commission, and classes A and B explosives), between Kemp and Crandall, TX, on the one hand, and, on the other, points in the U.S.

Note.—The purpose of this application is to substitute motor carrier for abandoned rail carrier service.

MC 151866F, filed September 15, 1980. Applicant: R. L. JONES & SONS DELIVERY SERVICE, a corporation, 4900 East 12th St., Kansas City, MO 64127. Representative: Tom B.

Kretsinger, 20 East Franklin, Liberty, MO 64068. Transporting *general commodities* (except used household goods, hazardous or secret materials, and sensitive weapons and munitions), for the United States Government, between points in the U.S.

Agatha L. Mergenovich,
*Secretary.*

[FR Doc. 80-30888 Filed 10-2-80; 8:45 am]
BILLING CODE 7035-01-M

## Republications of Grants of Operating Rights; Authority Prior to Certification

The following grants of operating rights authorities are republished by order of the Commission to indicate a broadened grant of authority over that previously noticed in the **Federal Register.**

An original and one copy of a petition for leave to intervene in the proceeding must be filed with the Commission on or before November 3, 1980. Such pleading shall comply with Special Rule 247(e) of the Commission's *General Rules of Practice* (49 CFR 1100.247) addressing specifically the issue(s) indicated as the purpose for republication, and including copies of intervenor's conflicting authorities and a concise statement of intervenor's interest in the proceeding setting forth in detail the precise manner in which it has been prejudiced by lack of notice of the authority granted. A copy of the pleading shall be served concurrently upon the carrier's representative, or carrier if no representative is named.

MC 106644 (Sub-266F) (Republication) filed August 16, 1978, published in **Federal Register** issue of November 14, 1978, and republished this issue. Applicant: SUPERIOR TRUCKING COMPANY, INC., P.O. Box 916, Atlanta, GA 30301. Representative: Frank Hall, Suite 713, 3384 Peachtree Rd., N.E., Atlanta, GA 30326. A Decision of the Commission, Division 2, decided April 8, 1980, served April 17, 1980, finds that operations as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, by applicant, transporting (1) *commodities which because of size or weight require the use of special equipment,* (2) *self-propelled articles, each weighing 15,000 pounds or more,* restricted to the transportation of commodities which are transported on trailers, (3) general commodities (except articles of unusual value, Classes A and B explosives, household goods as defined by the Commission, commodities in bulk, and those which require the use of special equipment), when moving in mixed shipments with the commodities in (1) or (2) above, and (4) *machinery and parts thereof,* between points in Michigan, on the one hand, and, on the other, points in AL, AR, FL, GA, KS, KY, LA, MS, MO, NC, OK, SC, TN, VA, WV, and TX; that applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code and the Commission's regulations. The purpose of this republication is to reflect applicant's actual grant of authority.

MC 140024 (Sub-98F) (Republication) filed April 14, 1978, published in the **Federal Register** issue of July 27, 1978, and republished this issue. Applicant: J. B. MONTGOMERY, INC., 5565 East 52nd Ave., Commerce City, CO 80022. Representative: John F. DeCock (same address as applicant). A Decision of the Commission, Division 2, decided April 28, 1980, served May 8, 1980, orders that the proceedings be reopened for further processing, that applicant seeks authority, as amended, as a *common carrier* by motor vehicle, over irregular routes, transporting *foodstuffs* (except in bulk) from New York, NY, and Philadelphia, Pa, to points in AR, AZ, CA, IA, IL, IN, KS, KY, MI, MN, MO, ND, NE, NY, OH, SD, TX, and WI. We conclude that all petitioners and exceptants should remain, or become, parties of record with the right to participate in all further proceedings. The authority set forth in the appendix should be published in the **Federal Register.** Within 30 days after publication, anyone prejudiced by the deletion of the proposed limitations may file a petition to intervene setting forth the exact extent to which they have been so prejudiced. All exceptants and petitioners in this proceeding should advise the Commission of their continuing interest, if any, within the same 30-day period. This notice of a continuing interest should include copies of the carrier's conflicting authority (most of the original protests in this matter have been lost or misplaced). There will then be (1) a disposition of any additional petitions to intervene and (2) entry of an appropriate decision setting the matter for further hearing or processing under the modified procedure and providing for submission of additional evidence by all parties. Applicant and Atalanta Corporation should clarify the exact nature of the transportation services required—i.e., whether imposition of an appropriate "originating at" restriction ("restricted to the transportation of traffic originating at the named origins [New York, NY, and Philadelphia, PA, not the sought facilities at these points]") would permit applicant to provide all needed services.

MC 142204 (Sub-8F) (Republication) filed January 2, 1979, published in the **Federal Register** issue of April 6, 1979, and republished this issue. Applicant: ROBERT R. GUNVILLE, JR., Star Route 2, Lot 27 Bob's Mobile, Iron Mountain, MI 49801. Representative: Michael S. Varda, 121 South Pinckney Street, Madison, WI 52703. A Decision of the Commission, Review Board Number 1, decided March 13, 1980, and served March 20, 1980, finds that the present and future public convenience and necessity require operation by applicant, as a *common carrier,* by motor vehicle, interstate or foreign commerce, over irregular routes, transporting (1) *crushed stone,* in bulk, from the facilities of GAF Corporation, at or near Pembine, WI, to Chicago, Waukegan and Wilmington, IL and (2) *resincoated sand,* in bulk, from Aurora, Chicago, Oregon, and Troy Grove, IL, Mishawaka, IN, Bridgman, MI, and Fairwater and Menomonee Falls, WI, to Kingsford, MI; that applicant is fit, willing, and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this republication is to broaden the territorial description.

MC 145904 (Sub-7F) (Republication) filed May 3, 1979, published in the **Federal Register** issue of September 20, 1979, and republished this issue. Applicant: Applicant: SOUTH WEST LEASING, INC., P.O. Box 152, Waterloo, IA 50704. Representative: Jack H. Blanshan, Suite 200, 205 West Touhy Avenue, Park Ridge, IL 60068. A Decision of the Commission, Review Board Number 1, decided June 17, 1980, finds that the present and future public convenience and necessity require operation by applicant, as a *common carrier,* by motor vehicle, in interstate or foreign commerce, over irregular routes, transporting *meats, meat products, meat byproducts, dairy products, and articles distributed by meat-packing houses,* as described in Sections A, B, and C of Appendix I to the report in *Descriptions in Motor Carrier Certificates,* 61 M.C.C. 209 and 766, (except hides and commodities in bulk), from the facilities of John Morrell & Co., at or near (a) Sioux Falls, SD, and (b) Estherville and Sioux City, IA, to points in IN, MI, and OH, restricted to traffic originating at the named origins; that applicant is fit, willing and able properly to perform the granted service and to conform to the requirements of Title 49, Subtitle IV, U.S. Code, and the Commission's regulations. The purpose of this

republication is add diary products to the commodity description.

By the Commission.

Agatha L. Mergenovich,

*Secretary.*

[FR Doc. 80-30651 Filed 10-2-80; 8:45 am]

BILLING CODE 7035-01-M

## JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

### Use of Electronic Calculators on the November 1980 Pension Examination

Candidates for enrollment to perform actuarial services under the Employee Retirement Income Security Act of 1974 will be permitted to use electronic calculators when writing the four-hour Pension Enrollment Examination (EA-2) on November 6, 1980 (Part 7-E U.S. Section A, in the syllabus of the Society of Actuaries; and Part 7 in the syllabus of the American Society of Pension Actuaries). The following are specific details concerning the use of these calculators.

1. All calculators brought into the EA-2 examination room must be models which are battery-operated and *non-programmable.* They must also be those which perform only the four arithmetic functions of additions, subtraction, multiplication and division, plus (at most) the square root and per cent operations, and which have a maximum capacity of one memory.

2. Models which have the capability to perform operations, other than those specified in Item 1 above, will not be permitted. The use of any of these models by a candidate constitutes an irregularity, and may be sufficient cause, at the discretion of any or all of the joint administering organizations, for nullification of a passing grade on the Pension Enrollment Examination.

3. Any candidate who uses a calculator will be solely responsible for its proper functioning and operation during the examination. In addition, candidates must indicate, on their examination answer sheets, both the make and the model number of any calculator used.

4. The use of electronic calculators by candidates on the November 1980 Pension Enrollment Examination (EA-2) is strictly experimental at this time. Continuation of this procedure for any examination given in 1981 or later is subject to the review and approval of the involved administering organizations.

5. No electronic calculators of any kind will be permitted for the November 1980 Basic Enrollment Examination (Part 4, EA-1), or for Parts 4A or 4B, or for any other specialties or sections of the new Part 7 given in November 1980 by the Society of Actuaries.

For further information, contact the Executive Director, Joint Board for the Enrollment of Actuaries, c/o Department of the Treasury, Washington, D.C. 20220.

Dated: September 30, 1980.

Leslie S. Shapiro,

*Executive Director.*

[FR Doc. 80-30878 Filed 10-2-80; 8:45 am]

BILLING CODE 4810-25-M

## DEPARTMENT OF LABOR

### Employment and Training Administration

### Employment Transfer and Business Competition Determinations Under the Rural Development Act; Applications

The organizations listed in the attachment have applied to the Secretary of Agriculture for financial assistance in the form of grants, loans, or loan guarantees in order to establish or improve facilities at the locations listed for the purposes given in the attached list. The financial assistance would be authorized by the Consolidated Farm and Rural Development Act, as amended, 7 U.S.C. 1924(b), 1932, or 1942(b).

The Act requires the Secretary of Labor to determine whether such Federal assistance is calculated to or is likely to result in the transfer from one area to another of any employment or business activity provided by operations of the applicant. It is permissible to assist the establishment of a new branch, affiliate or subsidiary, only if this will not result in increased unemployment in the place of present operations and there is no reason to believe the new facility is being established with the intention of closing down an operating facility.

The Act also prohibits such assistance if the Secretary of Labor determines that it is calculated to or is likely to result in an increase in the production of goods, materials, or commodities, or the availability of services or facilities in the area, when there is not sufficient demand for such goods, materials, commodities, services, or facilities to employ the efficient capacity of existing competitive commercial or industrial enterprises, unless such financial or other assistance will not have an adverse effect upon existing competitive enterprises in the area.

The Secretary of Labor's review and certification procedures are set forth at 29 CFR Part 75. In determining whether the applications should be approved or denied, the Secretary will take into consideration the following factors:

1. The overall employment and unemployment situation in the local area in which the proposed facility will be located.

2. Employment trends in the same industry in the local area.

3. The potential effect of the new facility upon the local labor market, with particular emphasis upon its potential impact upon competitive enterprises in the same area.

4. The competitive effect upon other facilities in the same industry located in other areas (where such competition is factor).

5. In the case of applications involving the establishment of branch plants or facilities, the potential effect of such new facilities on other existing plants or facilities operated by the applicant.

All persons wishing to bring to the attention of the Secretary of Labor any information pertinent to the determinations which must be made regarding these applications are invited to submit such information in writing within two weeks of publication of this notice. Comments received after the two-week period may not be considered. Send comments to: Administrator, Employment and Training Administration, 601 D Street, N.W., Washington, D.C. 20013.

Signed at Washington, D.C. this 29th day of September 1980.

Joseph T. Paslawski,

*Acting Director, Office of Program Services.*

**Applications Received During the Week Ending October 4, 1980**

| Name of applicant and location of enterprise | Principal product or activity |
|---|---|
| Bradford Industries, Inc., Bradford, Ill. | Manufacture farm gravity flow wagons and related wagon attachments. |
| Tom Lazio Fish Co. Inc., Eureka, Calif. | Processing marketing and distribution of fish products. |
| St. Paul Business Development Corp., St. Paul, Neb. | Grain alcohol facility. |
| Continential Alcohol Fuels Corp., Selma, N.C. | Manufacture ethanol. |
| Sarpy Alcohol Co., Springfield, Neb. | Processing of alcohol for gasohol. |
| Jim Walter Corp., Mt. Holly, S.C. | Aluminum rolling mill. |
| Eastern Marine, Inc., Panama City, Fla. | Shipbuilding. |
| Clemson Hospitality Enterprises, Inc., Clemson, S.C. | Motor hotel. |

[FR Doc. 80-30832 Filed 10-2-80; 8:45 am]

BILLING CODE 4510-30-M

## Office of the Secretary

[TA-W-8910]

### Accurate Die & Manufacturing Corp.; Affirmative Determination Regarding Application for Reconsideration

On September 8, 1980, a company offical requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers and former workers of the Accurate Die & Manufacturing Corp., Detroit, Michigan. The determination was published in the Federal Register on August 11, 1980, (45 FR 56953).

The application for reconsideration claimed that the Department's denial based on a service operation is in error because the Accurate Die & Manufacturing Corporation also fabricates and assembles component automotive parts.

### Conclusion

After review of the application, I conclude that the owner's claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 26th day of September 1980.

**James F. Taylor,**

*Director, Office of Management Administration and Planning.*

[FR Doc. 80-30857 Filed 10-2-80; 8:45 am]

BILLING CODE 4510-28-M

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[TA-W-7855]

### The Budd Co.; Determinations 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.

(1) that a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) that sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) that increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on April 28, 1980 in response to a petition which was filed by the United Automobile, Aerospace and Agricultural Implement Workers of America on behalf of workers at the Detroit, Michigan plant of The Budd Company. Workers at the Detroit plant primarily produce automotive body stampings for cars and trucks, steel disc wheels for light trucks, wheel hubs for light-duty and heavy-duty trucks, and brake drums for heavy-duty trucks.

With respect to the production of automotive body stampings, brake drums and wheel hubs, 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.

U.S imports of automotive body stampings were negligible in 1978 and 1979.

U.S imports of brake drums for medium and heavy-duty trucks were negligible in 1978 and 1979.

A survey conducted by the Department revealed that major surveyed customers of The Budd Company did not purchase imported wheel hubs in model year (MY) 1979 and MY 1980.

Petitioners in this case allege that increased imports of automobiles have caused the decline in production and employment at the Detroit, Michigan plant of The Budd Company. Although imported automobiles incorporate body stampings, wheels, wheel hubs and brake drums of the same origin, imports of the whole product are not "like or directly competitive" with their component parts.

Imports of automotive body stampings, wheels, wheel hubs and brake drums must be considered in determining import injury to workers producing such products at the Detroit, Michigan plant of The Budd Company.

With respect to the production of steel disc wheels, all of the requirements have been met.

Preliminary data indicate that U.S. imports of wheels for cars and light trucks increased in value in model year (MY) 1980 compared to MY 1979.

A survey conducted by the Department revealed that major customers which reduced purchases of wheels from The Budd Company in fiscal year 1979 and the first six months of fiscal year 1980 increased purchases of imported wheels for cars and light trucks during the same period.

### Conclusion

After careful review of the facts obtained in the investigation, I conclude that increases of imports of articles like or directly competitive with steel disc wheels produced at the Detroit, Michigan plant of The Budd Company contributed importantly to the decline in sales or production and to the total or partial separation of workers of that plant. In accordance with the provisions of the Act, I make the following certification:

All workers of the Detroit, Michigan plant of The Budd Company engaged in employment related to the production of steel disc wheels who became totally or partially separated from employment on or after April 7, 1979 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

I further determine that all workers of the Detroit, Michigan plant of The Budd Company engaged in employment related to the production of automotive body stampings, brake drums and wheel hubs are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of September 1980.

**Harry J. Gilman,**

*Supervisory International Economist, Office of Foreign Economic Research.*

[FR Doc. 80-30859 Filed 10-2-80; 8:45 am]

BILLING CODE 4510-28-M

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### Determinations 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 summaries of determinations regarding eligibility to apply for worker adjustment assistance issued during the period.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with

articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

**Negative Determinations**

*TA-W-7577; New Process Gear Corp., East Syracuse, NY*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-7789; PBI Industries, Inc., Rochester, PA*

The investigation revealed that criterion (3) has not been met. A survey of a major contract lost to a foreign manufacturer revealed that the subject firm was not the lowest domestic bidder.

*TA-W-7812; Saginaw Bay Plastics, Inc., Bay City, MI*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-7864; Seward Luggage Co., Los Angeles, CA*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-7915; Goodyear Tire and Rubber Co., Scottsboro, AL*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-7988; Howard Martin Knitting Mills, Inc., Ridgefield, NJ*

The investigation revealed that criterion (3) has not been met. Separations from the subject firm were seasonal in nature.

*TA-W-8875; Ziebart Rustproofing of Waterford, Pontiac, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-8303; Jervis B. Webb, Detroit, MI*

The investigation revealed that criterion (3) has not been met. Sales declines at the subject firm resulted primarily from declines in activity in the domestic automobile industry and were not the result of increased import competition.

*TA-W-8981; Heckett Co., Butler, PA*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of scrap metal are negligible.

*TA-W-9224; NL Industries Inc., Metal Div., Pedricktown, NJ*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of lead did not increase as required for certification.

*TA-W-9301; Juliet Mills, Inc., Dexter Mills Div., Dexter, ME*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of finished fabric did not increase as required for certification.

*TA-W-9422; Louis Cantor and Son, Inc., Egg Harbor, NJ*

The investigation revealed that criterion (3) has not been met. Separations from the subject firm were seasonal in nature.

*TA-W-9752, 9753, 9754, 9755; Duquesne Slag Products Co., Pittsburgh, PA; West Miffin, PA; Monessen, PA, Monaca, PA*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of iron and steel scrap are negligible.

*TA-W-10,241; Holiday Chrysler-Plymouth, Inc., Elyria, OH*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-10,286; Hawley Coal Corp., No. 1 and 2 Mines, Landgraff, McDowell County, WV*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

*TA-W-10,352; Craig Contractors, Inc., Bolair, WV*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

*TA-W-8729, 8730; American Motors Corp., American Center, Southfield, MI; Amtek, Detroit, MI*

The investigation revealed that criterion (1) has not been met.

*TA-W-8957; Super Steel Treating Co., Warren, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9010; Foreman Manufacturing Co., Inc., Collings Lake, NJ*

The investigation revealed that sales by manufacturers for which the subject firm produced under contract did not decline.

*TA-W-9030; Baublits Sawmill, Port Angeles, WA*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-9269; Kalstein Silk Mills, Inc., Paterson, NJ*

The investigation revealed that criterion (1) has not been met.

*TA-W-9276; J.W. Phillips Distributing Co., Inc., Seattle, WA*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9323; Moco, Inc., Alexandria, IN*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9335; Feblo, Inc., Livonia, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9336; Jones Motor Co., Inc., Spring City, PA*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9345; General Motors Corp., Frigidaire Div., Dayton, OH*

The investigation revealed that criterion (3) has not been met. Production of home appliances and auto air conditioners at the Dayton plant ceased in March 1979, more than one year prior to the date of the petition. The plant has been producing only replacement parts since that time. No certification may apply to any workers separated from employment more than one year prior to the date of the petition.

*TA-W-9652; American Metaseal Company, Detroit, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–9966; Midwest Plating and Chemical Corp., Kokomo, IN*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–9967; Modern Metal Processing, Inc., Williamstown, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,002; Steel Slitting Co., Inc., Elwood, IN*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,009; Palmer Supplies Co. of Cincinnati, Cincinnati, OH*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,184; Monarch Steel, Inc., Detroit, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,339; W.C. DuComb Company, Detroit, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,497; Continental Mills, Inc., Gloversville, NY*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of finished fabric did not increase as required for certification.

*TA–W–9293; C.J. Langenfelder, Morrisville, PA*

The investigation revealed that the workers' firm does not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,501; Seco Knit Fabrics, Jersey City, NJ*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of greige woven and knit did not increase as required for certification.

*TA–W–10,486; Burgess Mining and Construction Co., Birmingham, AL*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coal and coke did not increase as required for certification.

*TA–W–8383; Gulf and Western Mfg. Co., Bohn Heat Transfer Division, Los Angeles, CA*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of refrigerated and air conditioning equipment are negligible.

*TA–W–10,300; Wisne Automation and Engineering Co., Novi, MI*

The investigation revealed that criterion (3) has not been met. Declines in sales by the subject firm resulted from declines in the domestic automobile industry and were not as a result of increased imports of tools and fixtures.

*TA–W–9479; L. Surath and Sons, Inc., Bay City, MI*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA–W–10,586; George I. Landry, Inc., Ferndale, MI*

The investigation revealed that criterion (3) has not been met. Imports of automobiles may not be considered like or directly competitive with activities such as those performed by workers of the subject firm, which are related to the construction of new homes. There are no imports of new homes.

*TA–W–8909; Sackett Cedar Products, Beaver, WA*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–8700; Pontiac Steel Corp., Clarkston, MI*

The investigation revealed that the workers' firm does not produce an article as required for certification under Section 223 of the Act.

*TA–W–8789; Penn-Dixie Industries, Inc., New York, NY*

The investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act. Further, none of the production facilities for which the subject facility provides corporate services are covered by activie certifications.

*TA–W–8840–41; Hancock Steel Co., Lanwndale Steel Co., Detroit, MI*

The investigation revealed that the workers' firm does not produce an article as required for certification under Section 223 of the Act.

*TA–W–7527; Telefex, Inc., Automotive Div., Van Wert, OH*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–8250; Apollo Clothes, Inc., Philadelphia, PA*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA–W–8154; General Electric Co., Precision Parts Plant, Springfield, NJ*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of stampings for receiving tubes are negligible. Further, the plant which the subject facility supplies stampings to is not covered by an active certification.

*TA–W–10,026 and 10,275; General Motors Corp., Parts Div.; Pontiac, MI; Baltimore, MD*

The investigation revealed that criterion (3) has not been met. Parts produced by the subject facilities are not substantially integrated into the production of import impacted automobiles.

*TA–W–7959; Harte and Company, Inc., Mountain Top, PA*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

**Affirmative Determinations**

*TA–W–7427; Lear Siegler, Inc., General Seating Div., Ferguson, KY*

A certification was issued covering all workers of the firm separated on or after February 20, 1979.

*TA–W–7851; United States Luggage Corporation, Fall River, MA*

A certification was issued covering all workers of the firm separated on or after April 16, 1979 and before May 30, 1980.

*TA–W–9068; Ski Land Woolen Mill, Clinton, ME*

A certification was issued covering all workers of the plant separated on or after June 17, 1979.

*TA-W-9149; Striar Textile Mill, Orono, ME*

A certification was issued covering all workers of the plant separated on or after June 6, 1979.

*TA-W-8349; Plycraft, Inc., Lawrence, MA*

A certification was issued covering all workers of the firm engaged in employment related to the production of molded plywood show bottoms and heels who were separated on or after July 1, 1979; and all workers of the firm engaged in employment related to the production of molded plywood furniture who were separated from employment on or after May 14, 1979.

*TA-W-9751 and 9751A; Black Mfg. Co., Inc.; Seattle, WA; Springfield, MO*

A certification was issued covering all workers of the firm separated on or after August 1, 1979.

*TA-W-10,019; Suburban Ford Sales, Inc., Arnold, MO*

A certification was issued covering all workers of the firm separated on or after July 9, 1979.

I hereby certify that the aforementioned determinations were issued during the period of September 22-26, 1980. Copies of these determinations are available for inspection in Room S-5314, U.S. Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 80-30861 Filed 10-2-80; 8:45 am]

BILLING CODE 4510-28-M

## Determinations 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 summaries of of determinations regarding eligibility to apply for worker adjustment assistance issued during the period September 15-19, 1980.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

That sales or production, or both, of the firm or subdivision have decreased absolutely, and

That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

### Negative Determinations

In each of the following cases it has been concluded that at least one of the above criteria has not been met.

*TA-W-8042, 8043; Barry-Wehmiller Co., St. Louis, Missouri*

Investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-8292; Sheffield Southern Steel Products, Inc., Lenoir City, TN*

Investigation revealed that the workers do not produce an article as required for certification under Section 223 of the Act.

*TA-W-9648; P.O.B. Inc., Cincinnati, OH*

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of sealing compounds are negligible.

*TA-W-8598; BASF Wyandotte Corp., Wyandotte, Michigan*

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of Urethane polyols and sodium bicarbarte did not increase as required for certification.

*TA-W-8342; Trew Craft Corp., Troy, Michigan*

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of models, patterns and fixtures are negligible.

*TA-W-10,368; Allied chemical Corp., Ashland, Kentucky*

Investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of coke are negligible.

*TA-W-8629; Continental Forest Industries, Corrugated Div., Melvindale, MI*

The investigation revealed that criterion (3) has not been met. Aggregate U.S. imports of corrugated boxes are negligible.

*TA-W-8984; Suits Galore, Inc., Hialeah Gardens, FL*

The investigation revealed that criterion (2) has not been met.

*TA-W-8193; Borg-Warner Corp., Warner Gear Div., Muncie, IN*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-8040; Allen Shoe Co., Inc., Haverhill, MA*

The investigation revealed that criterion (3) has not been met. Separations form the subject firm resulted from a transfer of production to another domestic facility.

*TA-W-8620; New Castle Foundry, New Castle, IN*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

*TA-W-8695; Western Cold Drawn Steel, Elyria, OH*

The investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

### Affirmative Determinations

In each of the following cases, it has been concluded that all of the criteria have been met, and certifications have been issued covering workers totally or partially separated from employment on or after the designated dates.

*TA-W-9139; Walworth Company Columbus, OH*

A certification was issued covering all workers of the firm separated on or after November 1, 1979.

*TA-W-9139A; Walworth Company, Greensburg, PA*

A certification was issued covering all workers of the firm separated on or after December 1, 1979 and before March 11, 1980.

*TA-W-8759; Woodings Verona Tool Works, Verona, PA*

A certification was issued covering all workers of the firm separated on or after January 1, 1980.

*TA-W-9316; American Motors Corp., Kenosha, WI*

A certification was issued covering all workers of the firm separated on or after June 27, 1980.

*TA–W–9315; American Motors Corp., Milwaukee, WI*

A certification was issued covering all workers of the firm separated on or after June 23, 1979.

*TA–W–7713; Cresco Pollack Sportwear, Inc., Ashland, OH*

A certification was issued covering all workers of the firm separated on or after September 1, 1979

*TA–W–9252; General Motors Corp., Delco-Remy Div., Ana Hein, CA*

A certification was issued covering all workers of the firm separated on or after October 1, 1979.

*TA–W–9249; General Motors Corp., Warren, MI*

A certification was issued covering all workers of the plant separated on or after December 1, 1979.

I herby certify that the aforementioned determinations were issued during the perod September 15–19, 1980. Copies of these determinations are available for inspection in Room S–5314, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210 during normal working hours or will be mailed to persons who write to the above address.

**Marvin M. Fooks,**

*Director, Office of Trade Adjustment Assistance.*

[FR Doc. 80–30862 Filed 10–2–80; 8:45 am]

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[TA–W–7936]

## General Motors Corp., Delco-Remy Division, New Brunswick, 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.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated, or are threatened to become totally or partially separated.

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely.

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

The investigation was initiated on May 12, 1980 in response to a petition which was filed by the International Union of Electrical, Radio and Machine Workers on behalf of workers at the New Brunswick, New Jersey plant of the Delco-Remy Division of General Motors Corporation. Workers at the New Brunswick plant produce batteries.

The investigation revealed that criterion (3) has not been met.

Production of automobile batteries at the New Brunswick plant increased in model year (MY) 1979 compared with MY 1978, and in the first six months of MY 1980 compared with the same MY 1979 period. Sales and production are equal. Production declines which occurred were the result of normal seasonal declines.

### Conclusion

After careful review, I determine that all workers of the New Brunswick, New Jersey plant of the Delco-Remy Division of General Motors Corporation are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 11th day of July 1980.

**James F. Taylor,**

*Director, Office of Management Administration and Planning.*

[FR Doc. 80–30860 Filed 10–2–80; 8:45 am]

BILLING CODE 4510–28–M

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## 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

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, 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 29th day of September 1980.

**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 |
|---|---|---|---|---|---|
| A-OK Machining & Tool Co., (workers) | Fraser, MI | 9/18/80 | 9/15/80 | TA–W–11,043 | Special machinery for industry. |
| Blue Ridge Shirt Manufacturing Co. | Fayetteville, TN | 9/22/80 | 9/19/80 | TA–W–11,044 | Woven men's and boys Shirts. |
| Dee Cee Apparel Inc. | Hohenwald, TN | 9/22/80 | 9/19/80 | TA–W–11,045 | Men's and boys pants. |
| Dixie Manufacturing Co. | Columbia, TN | 9/22/80 | 9/19/80 | TA–W–11,046 | Men's and boys jeans. |
| Elkton Apparel Co., Inc. | Elkton, KY | 9/22/80 | 9/19/80 | TA–W–11,047 | Woven men's and boys shirts. |

**Appendix**—Continued

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| Heavy Duty Mfg. Co. | Gainesboro, TN | 9/22/80 | 9/09/80 | TA-W-11,048 | Woven men's and boys shirts. |
| Inter-Lake Steel Products Inc. (workers) | Potiac, MI | 9/22/80 | 9/08/80 | TA-W-11,049 | Welding tools. |
| Kentucky Pants Co. Plant No. 2 | Glasgow, KY | 9/22/80 | 9/19/80 | TA-W-11,050 | Men's and boys work pants. |
| Milan Shirt Mfg. Co. | Milan, TN | 9/22/80 | 9/19/80 | TA-W-11,051 | Woven men's and boys shirts. |
| Cambron Tool Co. | Bay City, MI | 9/18/80 | 9/16/80 | TA-W-11,052 | Manufacture tools, die, fixtures. |
| Chestnut Operating, Co. Division of Tanning Co.. | Reading, PA | 9/18/80 | 5/30/80 | TA-W-11,053 | Auto upholstery. |
| Detroit Trailer Co. (IAM) | Detroit, MI | 9/18/80 | 9/17/80 | TA-W-11,054 | Manufacturing supports, brackets for diesel engines. |
| Federal—Hewitt Corp. (UAW) | Hamtramck, MI | 9/18/80 | 9/17/80 | TA-W-11,055 | Manufacturing and recycle solder. |
| Hunter-Stevens (AFL-CIO) | S. Norwalk, CT | 9/18/80 | 9/15/80 | TA-W-11,056 | Socket cap screws. |
| KLH Research Development Corp. | Westwood, MA | 9/18/80 | 9/15/80 | TA-W-11,057 | Manufacturing home loud speakers acoustic signal processors. |
| Lomac Moters (workers) | Portland, OR | 9/18/80 | 9/15/80 | TA-W-11,058 | Automotive engines warehouse, no manufacturing. |
| Rima Manufacturing Co. | Hudson, MI | 9/18/80 | 9/16/80 | TA-W-11,059 | Automatic screw machine products. |
| Roselon Yarn Division | Danville, PA | 9/22/80 | 9/17/80 | TA-W-11,060 | Manufacturing and sale of textured synthetic filament yarns. |
| Bay Valley Chrysler Plymouth Inc. (workers) | Bay City, MI | 8/20/80 | 8/13/80 | TA-W-11,061 | Auto Dealership. |
| Dykstra Ford Tractor (workers) | Vassar MI | 9/22/80 | 9/16/80 | TA-W-11,062 | Sales and service of tractors. |
| Essex Group Inc. (workers) | Kenton, OH | 9/22/80 | 9/17/80 | TA-W-11,063 | Automotive coils and solenoids. |
| Goodyear Tire & Rubber Co. (URW) | Jackson, MI | 9/22/80 | 9/16/80 | TA-W-11,064 | Tires. |
| Modern Tool & Die (workers) | Cleveland, OH | 9/15/80 | 8/28/80 | TA-W-11,065 | Automotive parts lawn mowers garden equipment. |
| North American Tractor Plant Massey Ferguson Inc. (UAW). | Detroit, MI | 9/22/80 | 9/16/80 | TA-W-11,066 | Tractors. |
| Star Lincoln Mercury Inc. (workers) | Southfield, MI | 7/29/80 | 7/25/80 | TA-W-11,067 | Auto dealership. |
| Sun Ship, Inc. (workers) | Chester, PA | 9/22/80 | 9/17/80 | TA-W-11,068 | Shipbuilding and repair. |
| True Temper Corp. Rail Division (workers) | Lake City, PA | 9/22/80 | 9/17/80 | TA-W-11,069 | Rail anchors. |
| Allied Technology Inc. (workers) | Troy, OH | 9/22/80 | 9/17/80 | TA-W-11,070 | Manufacturing electronic parts. |
| Drummond Dolomite Inc. (USWA) | Drummond Island, MI | 9/22/80 | 9/18/80 | TA-W-11,071 | Crushed dolomite stone. |
| Front Royal Garment Co. (workers) | Front Royal, VA | 9/17/80 | 9/16/80 | TA-W-11,072 | Children's garments. |
| Henry Levy and Son Baking Co. (workers) | Brooklyn, NY | 9/10/80 | 7/6/80 | TA-W-11,073 | Bakery. |
| Louisiana-Pacific Corp. Seaway Division (workers). | Ridgeway, PA | 9/22/80 | 9/17/80 | TA-W-11,074 | Rotary cut hardwood veneer. |
| Reid Board Bros. Co. (workers) | Pittsburgh, Pa | 9/22/80 | 9/17/80 | TA-W-11,075 | Men's dress slacks. |
| Reiss Sportswear (ILGWU) | Brooklyn, NY | 9/18/80 | 9/15/80 | TA-W-11,076 | Children's snowsuits. |
| Tennessee Castings Co. (workers) | Dickson, TN | 9/22/80 | 9/16/80 | TA-W-11,077 | Malleable foundry. |
| Tyco Crystal Products | Phoenix, AZ | 9/22/80 | 9/17/80 | TA-W-11,078 | Build quartz crystals. |
| Viewlex Audio Visual (workers) | Holbrook, NY | 9/18/80 | 9/22/80 | TA-W-11,079 | Manufacturing audio and visual equipment. |
| White Moters Co. (workers) | Cleveland OH | 9/22/80 | 9/19/80 | TA-W-11,080 | Fabricate parts for trucks. |
| Curlee Clothing Co. (workers) | Lexington, KY | 9/22/80 | 9/23/80 | TA-W-11,081 | Mens suits and sportcoats. |
| Curlee Clothing Co. (workers) | Winchester, KY | 9/22/80 | 9/23/80 | TA-W-11,082 | Mens suits and sportcoats. |
| Merrill & Ring Inc. (workers) | Port Angeles, WA | 9/22/80 | 9/23/80 | TA-W-11,083 | Metric side lumber. |
| Carborundum Co. EMD (workers) | Niagara Falls, NY | 9/22/80 | 9/15/80 | TA-W-11,084 | Sicica carbon, abrasives, nonabrasives, matallurgical. |
| Gulf Oil Chemical Co. (workers) | Virginia, MN | 9/22/80 | 9/15/80 | TA-W-11,085 | Explosives used in extraction of iron ore. |
| Grocery Store Products Co. (workers) | Weschester, PA | 9/8/80 | 9/23/80 | TA-W-11,086 | Grow mushrooms. |
| Irvine Industries Inc. Metal Stamping Division (workers). | Richmond, KY | 9/18/80 | 9/23/80 | TA-W-11,087 | Seatbelt parts. |
| Prestolite Co. (UAW) | Syracuse, NY | 9/22/80 | 9/19/80 | TA-W-11,088 | Traction motors. |
| Peninusla Timber Co. (workers) | Port Angeles WA | 9/22/80 | 9/19/80 | TA-W-11,089 | Purchase, sale of handbags. |
| City Car Terminal (workers) | Melvindale, MI | 9/22/80 | 9/17/80 | TA-W-11,090 | Ships chrysler products. |
| M & A Manufacturing (ILGWU) | Newark, NJ | 9/22/80 | 9/18/80 | 11,091 | Rainwear. |
| Mercury Lea. (Holiner) (workers) | Elizabeth, NJ | 9/22/80 | 9/24/80 | 11,092 | Handbags. |
| National Gypsum (OCAW) | Clarence Center, NY | 9/22/80 | 9/17/80 | 11,093 | Plaster Board, dry wall. |
| Paul Murphy Plastics | Roseville, MI | 9/22/80 | 9/17/80 | 11,094 | Automotive parts made from plastic materials. |
| Paw-s Ind. Inc. (workers) | Sterling Heights, MI | 9/22/80 | 9/19/80 | 11,095 | Patterns, Models prototype aids. |
| Richard Gear Wallace Murray Corp. (workers) | Richmond, IN | 9/22/80 | 9/17/80 | 11,096 | Spiral beuel and helieal gear. |
| Rochester Gear Inc. (workers) | Rochester, MI | 9/22/80 | 9/16/80 | 11,097 | Rings for Buick automobiles. |
| Rock River Woolen Mills (workers) | Brownwood, TX | 9/22/80 | 9/18/80 | 11,098 | Material for men, suits, coats. |
| Sandstone Manufacturing Co. INc. | Dunlap, TN | 9/22/80 | 9/19/80 | 11,099 | Ladies, girls, infants, slacks. |
| Sun Ship, INC. (IBB) | Chester, PA | 9/23/80 | 9/19/80 | 11,100 | Shipbuilding. |
| Bell & Howell Co. (workers) | Chicago, IL | 9/18/80 | 8/5/80 | TA-W-11,101 | Photo equipment. |
| Clayton Shoe Co. | Corning, AR | 9/24/80 | 9/23/80 | TA-W-11,102 | Women's shoes. |
| Mr. Fine, Graham Plant (workers) | Graham TX | 9/23/80 | 9/19/80 | TA-W-11,103 | Ladies ready to wear. |
| Mr. Fine (workers) | Jackson Road, Graham, TX | 9/22/80 | 9/19/80 | TA-W-11,104 | Women's sportswear. |
| King Powellton Mining Co. (UMWA) | Hansford, W. VA | 9/16/80 | 8/9/80 | TA-W-11,105 | Coal. |
| Xcello Corp. (UMWA) | Hansford, W. VA | 9/16/80 | 8/9/80 | TA-W-11,106 | Coal. |
| National Steel Pellet Co. Hanna Mining Co. (USWA). | Hibbing, TX | 9/22/80 | 9/15/80 | TA-W-11,107 | Taconite. |
| Scott Paper Lumber Dept. (LSW) | Everett, WA | 9/22/80 | 9/15/80 | TA-W-11,108 | Dimension lumber, wood chips, hog fuel. |
| United States Steel Corp. Minnesota Ore Operator (USWA). | Mt. Iron, MN | 9/17/80 | 9/15/80 | TA-W-11,109 | Iron ore. |
| Kolk Industries, Inc. (workers) | Eden, NY | 9/24/80 | 9/22/80 | TA-W-11,110 | Automotive component parts. |
| FX Systems Corp. (workers) | Kingston, NY | 9/24/80 | 9/16/80 | TA-W-11,111 | Core memories and memory systems. |
| Opdyke Tool, Inc. (workers) | Pontiac, MI | 9/24/80 | 9/22/80 | TA-W-11,112 | Dies for automotive stamping. |
| U.S. Shoe Co. (workers) | Cassville, MS | 9/24/80 | 9/20/80 | TA-W-11,113 | Shoes. |
| U.S. Steel Corp. Minnesota Ore Operations (UNION). | Hibbling, MN | 9/15/80 | 9/8/80 | TA-W-11,114 | Iron ore. |
| U.S. Steel Corp. Limestone Operations (union). | Port Dolomite, MN | 9/17/80 | 9/15/80 | TA-W-11,115 | Limestone. |
| United States Steel Corp. (UMWA) | Pittsburgh, PA | 9/15/80 | 9/8/80 | TA-W-11,116 | Metalerfical coal. |
| Bird & Son Inc. (workers) | East Walpole, MA | 9/23/80 | 9/9/80 | TA-W-11,117 | Shoe cartons. |
| Shelton Industries workers | Cutler, CA | 9/18/80 | 9/16/80 | TA-W-11,118 | Recreation vehicles. |
| LCI Electronics Division | Winona, MN | 6/30/80 | 6/24/80 | TA-W-11,119 | Automobile componentry. |
| LCI Gale Division | Galesville, MN | 6/30/80 | 6/24/80 | TA-W-11,120 | Automotive molding. |
| LCI Lake Center Switch Division | Winona, MN | 6/30/80 | 6/24/80 | TA-W-11,121 | Assembly, metal stamping |
| LCI Management and Staff Service | Winona, MN | 6/30/80 | 6/24/80 | TA-W-11,122 | Design engineering. |
| LCI Transportation Inc. | Winona, MN | 6/30/80 | 6/24/80 | TA-W-11,123 | Shipping. |
| LCI Stewartville, Division | Stewartville, MN | 6/30/80 | 6/24/80 | TA-W-11,124 | Automotive components. |
| Ontario Corp. (USWA) | Muncie, IN | 9/24/80 | 9/22/80 | TA-W-11,125 | Steel and titanium forgings. |
| Pullman Standard Hammond Works (USWA) | Hammond, IN | 6/3/80 | 5/20/80 | TA-W-11,126 | Freight cars. |
| Teleweld, Inc. (workers) | Streator, IL | 9/24/80 | 9/22/80 | TA-W-11,127 | Rebuild frogs, switch points. |
| Utica Cutlery (workers) | Utica, NY | 9/24/80 | 9/22/80 | TA-W-11,128 | Flatware, jackknives, kitchen knives. |
| Weatherbee Coats (workers) | Youngstown, OH | 9/24/80 | 9/17/80 | TA-W-11,129 | Manufacturing coats. |

Appendix—Continued

| Petitioner: Union/workers or former workers of— | Location | Date received | Date of petition | Petition No. | Articles produced |
|---|---|---|---|---|---|
| LCI Rush Division | Rushford, MN | 6/30/80 | 6/24/80 | TA-W-11,130 | Automotive parts. |
| Bird & Son Inc. Division of Shoe Carton (workers). | E. Walpole, MA | 9/26/80 | 9/24/80 | TA-W-11,131 | Shoe cartons. |
| Herley Shoe (workers) | Haverhill, MA | 9/26/80 | 9/26/80 | TA-W-11,132 | Men's slippers. |
| Ashland Crafts Inc. (workers) | Ashland, KY | 9/26/80 | 9/24/80 | TA-W-11,133 | Children's ready to wear. |
| IMC Foundry Prop (workers) | Detroit, MI | 9/25/80 | 9/16/80 | TA-W-11,134 | Foundry products. |
| Nahman Family (workers) | Hewlett Harbor, NY | 9/15/80 | 9/4/80 | TA-W-11,135 | Pants and skirts. |
| Parker Seal Co. Division of Parker Hannifin Corp. (workers). | Berea, KY | 9/26/80 | 9/23/80 | TA-W-11,136 | O-Rings. |
| P & A Knitting Mill (workers) | Ridgewood, NY | 9/24/80 | 9/20/80 | TA-W-11,137 | Sweaters. |
| This 'N That Sportswear, Ltd. (ILGWU) | New York, NY | 7/7/80 | 6/30/80 | TA-W-11,138 | Ladies sportswear. |
| United Togs Inc. (ILGWU) | Long Island, NY | 9/22/80 | 9/18/80 | TA-W-11,139 | Ladies sportswear. |
| J. H. Wood (workers) | Lebam, WA | 9/26/80 | 9/22/80 | TA-W-11,140 | Shakes and shingles. |
| Hathaway Tool Works (workers) | Eaton Rapids, MI | 9/26/80 | 9/22/80 | TA-W-11,141 | Build dies. |
| Sunshine Togs (ILGWU) | New York, NY | 9/18/80 | 9/15/80 | TA-W-11,142 | Ladies' dresses. |
| Town Country Shoes (Teamsters) | Sedalia, MO | 9/26/80 | 9/23/80 | TA-W-11,143 | Shoes. |
| Towmotor Corp. (UAW) | Mentor, OH | 9/26/80 | 9/22/80 | TA-W-11,144 | Fork lift trucks. |

[FR Doc. 80-30858 Filed 10-2-80; 8:45 am]

BILLING CODE 4510-28-M

## NATIONAL SCIENCE FOUNDATION

### Advisory Committee for Physics; Meeting

Note.—This document was originally scheduled to appear in the Federal Register for Tuesday, September 30, 1980. However, on that day, a document announcing a DOE/NSF Nuclear Science Advisory Committee meeting (bearing FR Doc. Numbers 80-30165 and 80-30166) was incorrectly printed twice and this document (the true FR Doc. 80-30166) was inadvertently omitted. On page 64772, in the issue for Tuesday, September 30, 1980, in the first column, please disregard the first document (incorrectly carried as FR Doc. 80-30166) and substitute the following:

In accordance with the Federal Advisory Committee Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Physics.

Date and Time: 9:00 a.m.-5:00 p.m. each day, October 23-25, 1980.

Place: National Science Foundation, 1800 G Street, N.W., Washington, D.C. 20550. Room 540 each day.

Type of Meeting: Open.

Contact Person: Dr. Laura P. Bautz, Deputy Director, Division of Physics, National Science Foundation, Washington, D.C. 20550. Telephone: (202) 357-7611.

Summary of Minutes: May be obtained from Dr. Laura P. Bautz, Division of Physics, National Science Foundation, Washington, D.C. 20550.

Purpose of Committee: To provide advice and recommendations concerning support for research in physics.

Agenda:

*October 23, 1980,* 9:00 a.m.-5:00 p.m. Long Range Planning for Physics.

*October 24, 1980,* 9:00 a.m.-5:00 p.m. Continuation of Discussions on Long Range Planning.

*October 25, 1980,* 9:00 a.m.-5:00 p.m. Continuation of Discussions on Long Range Planning.

M. Rebecca Winkler,

*Committee Management Coordinator.*

September 25, 1980.

[FR Doc. 80-30166 Filed 9-29-80; 8:45 am]

BILLING CODE 1505-01-M

### Policy Research and Analysis and Science Resources Studies, Advisory Committee, Subcommittee on Environment, Energy, and Resources; Meeting

In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Science Foundation announces the following meeting:

Name: Advisory Committee for Policy Research and Analysis, and Science Resources Studies, Subcommittee on Environment, Energy, and Resources (EER).

Date and Time: October 22, 1980, 9:00 a.m. to 4:30 p.m.

Place: Room 338, National Science Foundation, 1800 G Street, NW, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Ms. Sharon Dyer, Division of Science Resources Studies, Directorate for Scientific, Technological, and International Affairs, Room L-611, National Science Foundation, Washington, DC 20550.

Telephone 202-634-4666. Anyone who plans to attend should contact Ms. Dyer by October 18, 1980.

Summary Minutes: May be obtained from the contact person, Ms. Dyer, at the above address.

Purpose of Committee: To provide advice, recommendations, and oversight concerning program emphases and directions of the EER Group in the Division of Policy Research and Analysis (PRA).

Agenda: Wednesday, October 22, 1980.

9:00 a.m.—Plenary Session.

10:00 a.m.—Discussion of the relationship between PRA/EER intramural client analytic support and extramural research activities.

1:15 p.m.—Goals and directions of PRA/EER extramural program. Consideration of ways to broaden the base of EER/S&T activities in the performer/reviewer community.

4:30 p.m.—Adjournment.

M. Rebecca Winkler,

*Committee Management Coordinator.*

[FR Doc. 80-30840 Filed 10-2-80; 8:45 am]

BILLING CODE 7555-01-M

### Social Sciences Advisory Committee, Subcommittee on Economics; Meeting

In accordance with the Federal Advisory Committee Act, as amended, Pub. L. 92-463, the National Science Foundation announces the following meeting:

Name: Subcommittee on Economics of the Advisory Committee for Social Sciences.

Date and Time: November 7-8, 1980, 9:00 a.m. to 5:00 p.m. each day.

Place: Room 523, National Science Foundation, 1800 G Street, NW, Washington, D.C. 20550.

Type of Meeting: Closed.

Contact Person: Dr. Daniel H. Newlon, Program Director for Economics, Room 312, National Science Foundation, Washington, D.C. 20550, Telephone (202) 357-9674.

Agency: To review and evaluate research proposals as part of the selection process for awards.

Purpose of subcommitee: To provide advice and recommendations concerning support for research in Economics.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions (4) and (6) of 5 U.S.C. 552b(c), Government in the Sushine Act.

Authority to close meeting: This determination was made to the Committee Management Officer pursuant to provisions of Section 10(d) of Pub. L. 92-462. The Committee Management Officer was delegated the authority to make such

determinations by the Director, NSF, on July 6, 1979.

M. Rebecca Winkler,

*Committee Management Coordinator.*

September 30, 1980.

[FR Doc. 80-30839 Filed 10-2-80; 8:45 am]

BILLING CODE 7555-01-M

## NUCLEAR REGULATORY COMMISSION

[Docket No. 50-348]

## Alabama Power Light Co. (Joseph M. Farley Nuclear Plant, Unit No. 1); Revised Order for Modification of License

I

Alabama Power and Light Company (the licensee) is the holder of Facility Operating License No. NPF-2, which authorizes the operation of the Joseph M. Farley Nuclear Power Plant, Unit No. 1 at steady state reactor power levels not in excess of 2652 megawatts thermal (rated power). The facility consits of a pressurized water reactor located at the licensee's site near the City of Dothan, Alabama.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, an environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licenses and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants; "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commisison also directed the staff to complete its review of the information sought from licenses by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, keep tthe Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines of NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF-2 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79-01B, shall be submitted to the Director, Region II, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of

[1] Bulletin 79-01B was not sent to licenses for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980, (45 FR 60064).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,** *Director*

*Division of Licensing.*

[FR Doc. 80-30768 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-368]**

## Arkansas Power & Light Co. (Arkansas Nuclear One—Unit 2); Revised Order for Modification of License

I

Arkansas Power and Light Company (licensee) is the holder of License No. NPF-6, which authorizes the operation of the Arkansas Nuclear One—Unit 2 nuclear power plant at steady state reactor power levels not in excess of 2815 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in Pope County, Arkansas.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR

Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–6 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I&E Bulletin 79–01B, shall be submitted to the Director, Region IV, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to faciliate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980.

Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Nick Reynolds, Esq., DeBevoise & Liberman, 1200 Seventh Street, NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60078).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30769 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket Nos. 50-317 and 50-318]

## Baltimore Gas Electric Co. (Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2); Revised Order for Modification of License

I

Baltimore Gas and Electric Company (licensee) is the holder of License Nos. DPR–53 and DPR–69 which authorizes the operation of the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 2700 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site in Calvert County, Maryland.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I & E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualfication of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable

assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–53 and DPR–69 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980.

Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street NW., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980 (45 FR 60079).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30770 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-293]**

## Boston Edison Co. (Pilgrim Nuclear Power Station, Unit 1); Revised Order for Modification of License

I

The Boston Edison Company (licensee) is the holder of Facility Operating License No. DPR–35 which authorizes the operation of the Pilgrim Nuclear Power Station, Unit 1, at steady state reactor power levels not in excess of 1998 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Plymouth, Massachusetts.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

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[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS ORDERED THAT EFFECTIVELY IMMEDIATELY Facility Operating License No. DPR–35 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Ropes and Gray, 225 Franklin Street, Boston, Massachusetts, 01581, attorneys for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980.

Effective Date: Sept. 12, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30771 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50–261]**

## Carolina Power & Light Co. (H. B. Robinson Steam Electric Plant, Unit No. 2); Revised Order for Modification of License

I

Carolina Power and Light Company (the licensee) is the holder of Facility Operating License No. DPR–23, which authorizes the operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 at steady state reactor power levels not in excess of 2300 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Darlington County, South Carolina.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commisison further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS ORDERED THAT EFFECTIVE IMMEDIATELY Facility Operating License No. DPR–23 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region II, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980, (45 FR 60057).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30772 Filed 10–2–80; 8:45 am]
BILLING CODE 7590–01–M

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[Docket No. 50–325 and 50–324]

## Carolina Power & Light Co. (Brunswick Steam Electric Plant, Units 1 and 2); Revised Order for Modification of Licenses

I

The Carolina Power & Light Company (licensee) is the holder of Facility Operating License Nos. DPR–71 and DPR–62 which authorize the operation of the Brunswick Steam Electric Plant, Units 1 and 2 at steady state reactor power levels each not in excess of 2436 megawatts thermal (rated power). The facilities consist of boiling water reactors located at the licensee's site in Brunswick County, North Carolina.

II

On November 4, 1977, the Union of Concerned Scientists (USC) filed with the Commission a "petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

The Commisison further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environment qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and high Energy Line Breaks inside and outside containment.

In this connection to the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. The review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be establish by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS ORDERED THAT EFFECTIVE IMMEDIATELY Facility Operating License Nos. DPR–71 and DPR–62 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region II, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to George F. Trowbridge, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 12, 1980, (45 FR 60507).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30773 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

**[Docket Nos. 50–254 and 50–265]**

## Commonwealth Edison Co. and Iowa-Illinois Gas & Electric Co. (Quad Cities Nuclear Power Station, Units 1 and 2); Revised Order for Modification of Licenses

I

The Commonwealth Edison Company, et al (licensee) is the holder of Facility Operating License Nos. DPR–29 and DPR–30 which authorize the operation of the Quad Cities Nuclear Power Station, Units 1 and 2, at steady state reactor power levels each not in excess of 2511 megawatts thermal (rated power). The facilities consist of boiling water reactors located at the licensee's site near Cordova, Illinois.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Peitition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualifications of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the

information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the Public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–29 and DPR–30 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Isham, Lincoln & Beale, Counselors at Law, One First National Plaza, 42nd Floor, Chicago, Illinois 60603, attorneys for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 12, 1980, (45 FR 60509).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30776 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

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**[Docket No. 50–245]**

## Connecticut Light and Power, et al. (Millstone Nuclear Power Station Unit No. 1); Revised Order for Modification of License

I

Connecticut Light and Power, the Hartford Electric Light Company, Western Massachusetts Electric Company and Northeast Nuclear Energy Company (the licensees) are the holders of Provisional Operating License No. DPR–21, which authorizes operation of the Millstone Nuclear Power Station Unit No. 1 at steady-state reactor power levels not in excess of 2011 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Waterford, Connecticut.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical

equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Colant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's request for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the time by submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, IT IS ORDERED THAT EFFECTIVE IMMEDIATELY Provisional Operating License No. DPR-21 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in NRC's letters dated March 6, 1980, and March 28, 1980, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980 (45 FR 60070, September 11, 1980).

Effective Date: September 19, 1980.
Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30775 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

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**[Docket No. 50–213]**

## Connecticut Yankee Atomic Power Co. (Haddam Neck Plant); Revised Order for Modification of License

I

Connecticut Yankee Atomic Power Company (the licensee) is the holder of Facility Operating License No. DPR–61, which authorizes the operation of the Haddam Neck Plant at steady state reactor power levels not in excess of 1825 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Middlesex County, Connecticut.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400),

the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commmission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later then June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the liensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Facilty Operating License No. DPR–61 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in NRC's letters dated March 6, 1980, and March 28, 1980, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Day, Berry & Howard, Counselors at Law, One Constitution Plaza, Hartford, Connecticut 06103, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV, of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980 (45 FR 60068, September 11, 1980).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30776 Filed 10–2–80; 8:45 am]

BILLING CODE 7590–01–M

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[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

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[Docket No. 50–247]

## Consolidated Edison Co. of New York, Inc. (Indian Point, Unit No. 2); Revised Order for Modification of License

I

Consolidated Edison Company of New York, Inc. (the licensee) is the holder of Facility Operating License No. DPR–23, which authorizes the operation of Indian Point, Unit No. 2 at steady state reactor power levels not in excess

of 2758 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Westchester County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Report, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualifications of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment properly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 5, 1980, as modified by our letter of March 20, 1980 to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's request for information. However, the licensee's response, to date, is incomplete.

Therfore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Facility Operating License No. DPR–26 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in our letter of March 5, 1980, as modified by our letter of March 20, 1980, shall be submitted to the Director, Division of Licensing, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Brent L. Brandenburg, Consolidated Edison Company of New York, Inc., 4 Irving Place, new York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60072).

Effective Date: September 19, 1980, Bethesda, Maryland.

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

For the Nuclear Regulatory Commission.
Darrell G. Eisenhut,
*Director, Division of Licensing.*
[FR Doc. 80-30777 Filed 10-2-80; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-155]

## Consumers Power Co. (Big Rock Point Plant); Revised Order for Modification of License

I

Consumers Power Company (the licensee) is the holder of Facility Operating License No. DPR-6, which authorizes the operation of the Big Rock Point Plant at steady-state reactor power levels not in excess of 240 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Charlevoix, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (USC) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. USC filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of saftey-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licenses by a series of letters and meetings during the months of February and March, 1980.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Facility Operating License No. DPR-6 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in NRC's letters dated March 6, 1980, and March 28, 1980 shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and Judd L. Bacon, Esquire, Consumers Power Company, 212 West

Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceeding on the Order. This Order revises, in its entirety, the Order issued August 29, 1980 (45 FR 60071, September 11, 1980).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30778 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-255]

## Consumers Power (Palisades Plant); Revised Order for Modification of License

I

Consumers Power Company (the licensee) is the holder of Provisional Operating License No. DPR-20, which authorizes the operation of the Palisades Plant at steady-state rector power levels not in excess of 2530 megawatts thermal (rated power). The facility consists of a pressurized water rector located at the licensee's site in Covert Township, Van Buren County, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by Feburary 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 6, 1980, as modified by our letter of March 28, 1980, to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Provisional Operating License No. DPR-20 is hereby amended to add the following provisions:

Information which fully and completely responds to staff's request as specified in NRC's letters dated March 6, 1980, and March 28, 1980, shall be submitted to the Director, Division of Licensing by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The Information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980 (45 FR 60058, September 11, 1980).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30779 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-334]**

## Duquesne Light Co. (Beaver Valley Station, Unit No. 1); Revised Order for Modification of License

I

The Duquesne Light Company (the licensee) is the holder of Facility Operating License No. DPR-66, which authorizes the operation of the Beaver Valley Power Station, Unit No. 1 at steady state reactor power levels not in excess of 2652 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Beaver County, Pennsylvania.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered That effective immediately* Facility Operating Licenses No. DPR–66 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order. Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60073).

Effective Date: September 19, 1980
Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30780 Filed 10–2–80; 8:45 am]

BILLING CODE 7590–01–M

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**[Dockets Nos. 50–250 and 50–251]**

## Florida Power & Light Co. (Turkey Point Plant, Unit Nos. 3 and 4); Revised Order for Modification of License

I

The Florida Power and Light Company (the licensee) is the holder of Facility Operating License Nos. DPR–31 and DPR–41, which authorize the operation of the Turkey Point Plant, Unit Nos. 3 and 4 at steady state reactor power levels not in excess of 2200 megawatts thermal (rated power). Each facility consists of a pressurized water reactor located at the licensee's site in Dade County near Miami, Florida.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualifications of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualifications of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment properly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's request for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–31 and DPR–41 are hereby ammended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region II, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation. U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Robert Lowenstein, Esquire, Lowenstein, Newman, Reis and Axelrad, 1025 Connecticut Avenue, N.W., Suite 1214, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980, (45 FR 60057).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Ensenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30781 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Dockets Nos. 50-315 and 50-316]**

## Indiana & Michigan Electric Co. (Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2); Revised Order for Modification of License

I

Indiana and Michigan Electric Company, (the licensee) is the holder of Facility Operating License Nos. DPR–58 and DPR–74, which authorize the operation of the Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 3250 and 3391 megawatts thermal (rated power) respectively. Each facility consists of a pressurized water reactor located at the licensee's site in Berrien County, Michigan.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licenses and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of saftey-related electrical

[1] Bulletin 79–01B was not set to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licenses by a series of letters and meetings during the months of February and March, 1980.

equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR-58 and DPR-74 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79-01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980, (45 FR 60060).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30782 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-331]**

## Iowa Electric Light & Power Co. et al. (Duane Arnold Energy Center); Revised Order for Modification of License

I

Iowa Electric Light & Power Company, Central Iowa Power Cooperative, and Corn Belt Power Cooperative (licensee) is the holder of Facility Operating License No. DPR-49 which authorizes the operation of the Duane Arnold Energy Center at steady state reactor power levels not in excess of 1658 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site near Palo in Linn County, Iowa.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class IE Electrical Equipment in Operating Reactors"(DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which related to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qulaified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or repace inadequate equipment promptly."

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A signficant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Facility Operating License No. DPR–49 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Robert Lowenstein, Esquire, Harold F. Reis, Esquire, Lowenstein, Newman, Reis, and Axelrad, 1025 Connecticut Avenue, N.W., Washington, D.C. 20036, attorneys for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 12, 1980, (45 FR 60513).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30783 Filed 10–2–80; 8:45 am]

BILLING CODE 7590–01–M

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**[Docket No. 50–220]**

## Niagara Mohawk Power Corp. (Nine Mile Point Nuclear Station, Unit 1); Revised Order for Modification of License

I

The Niagara Mohawk Power Corporation (licensee) is the holder of Facility Operating License No. DPR–63 which authorizes the operation of the Nine Mile Point Nuclear Station, Unit 1 at power levels up to 1850 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim staff Position on Environmental qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I & E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered that effective immediately* Facility Operating License No. DPR–63 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Eugene B. Thomas, Jr., Esquire, LeBoeuf, Lamb, Leiby & MacRae, 1333 New Hampshire Avenue, N.W., Suite 1100, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60085).

Effective date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

*Division of Licensing.*

[FR Doc. 80-30784 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50–272]

## Public Service Electric and Gas Co. (Salem Nuclear Generating Station, Unit No. 1); Revised Order for Modification of License

I

Public Service Electric and Gas Company (the licensee) is the holder of Facility Operating License No. DPR–70, which authorizes the operation of the Salem Nuclear Generating Station, Unit No. 1 at steady state reactor power level not in excess of 3338 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Salem County, New Jersey.

II

On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The

Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III

The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of saftey-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980, to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effecive immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, *It is ordered That effective immediately* Facility Operating License No. DPR–70 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mark J. Wetterhahn, Esquire, Conner, Moore and Corber, Suite 1050, 1747 Pennsylvania Avenue, N.W., Washington, D.C. 20006, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60076).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30824 Filed 10–2–80; 8:45 am]

BILLING CODE 7590–01–M

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

## Evaluation of Agreement State Radiation Control Programs: Proposed General Statement of Policy

**AGENCY:** U.S. Nuclear Regulatory Commission.

**ACTION:** Proposed general statement of policy.

**SUMMARY:** The Nuclear Regulatory Commission proposes to adopt as a general statement of policy the recently revised "Guide for Evaluation of State Radiation Control Programs Under Agreement With the U.S. Nuclear Regulatory Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended", February 1, 1980. The revised Guide which was prepared by the NRC staff incorporates new criteria and guidelines for acceptable practice by Agreement States. This proposed statement of policy is being issued to inform the public of the criteria and guidelines which the Commission intends to use in evaluating Agreement State radiation control programs. The Commission expects that further revisions may be needed and is, accordingly, requesting comments on the proposed statement of policy including the criteria and guidelines for acceptable practice by Agreement States.

**DATES:** Comments are due on or before November 17, 1980.

**ADDRESSES:** All interested persons who desire to submit written comments or suggestions for consideration in connection with this proposed statement

of policy should send them to Director, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Copies of public comments on this proposed policy statement may be examined at the Commission's Public Document Room at 1717 H Street, N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** John R. McGrath, Office of State Programs, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555—Telephone: 301–492–7767.

**SUPPLEMENTARY INFORMATION:** Section 274 of the Atomic Energy Act of 1954, as amended, was enacted in 1959 to provide a statutory means by which the NRC (then the AEC) could relinquish to the States part of its regulatory authority. The mechanism for the transfer of the Commission's regulatory authority is by an agreement between the Governor of a State and the Commission. Thus far, 26 States have entered into such agreements.[1]

Before entering into an agreement, the NRC is required to make a finding that the State's radiation control program is compatible with the Commission's and that the State program is adequate to protect the public health and safety. Section 274j of the Atomic Energy Act provides that the NRC may terminate its agreement with a State if the Commission finds that such termination is necessary to protect the public health and safety or the State has not complied with one or more of the requirements of Section 274. In May 1965, the Commission adopted a policy of making an annual redetermination of the Agreement States' adequacy and continued compatibility with the NRC program. These determinations are primarily based on review meetings during which the individual State regulatory programs are evaluated on the basis of the "Guide for Evaluation of Agreement State Radiation Control Programs." Other factors such as information obtained through the NRC-State exchange-of-information program are also considered. Under the exchange-of-information program States provide to the NRC copies of all licensing actions taken by the State. In addition, the program involves exchanging information between the NRC and the States on the development of new regulations, and revisions to licensing and compliance policy, practices, and procedures. The States also provide information on incidents and other abnormal occurrences. As a result of the review of a State program, the NRC determines that the Agreement State's program is either:

(1) Adequate to protect the public health and safety; or

(2) Inadequate to protect the public health and safety.

A program may be adequate to protect the public health and safety although in need of improvement in specified areas or NRC may be unable to make a finding at the time of the review because of unresolved items or inadequate information necessitating a follow-up review. In such cases NRC follows up on these matters by correspondence, follow-up reviews or at the time of the next review.

A determination is also made that the program is either:

(1) Compatible wtih the NRC Regulatory program in areas related to the public health and safety; or

(2) Incompatible with the NRC Regulatory program;

or NRC is unable to make a finding at the time of the review because of unresolved items or inadequate information. A dispositive finding is made at the time the staff submits a consolidated assessment to the Commission in an annual report on all Agreement States.

In making a finding of adequacy, the NRC condsiders areas of the State program which are critical to its primary function, i.e., protection of the public health and safety. For example, a State that does not have qualified personnel, fails to take adequate licensing actions or has no inspection program, would not be considered to have a program adequate to protect the public health and safety. Basic radiation protection standards, such as exposure limits, directly affect the States' ability to protect public health and safety. The NRC feels that it is important to strive for a high degree of uniformity in technical definitions and terminology, particularly as related to units of measurement and radiation dose. Maximum permissible doses and levels of radiation and concentrations of radioactivity in unrestricted areas as specified in 10 CFR Part 20 are considered to be important enough to require States to be essentially equivalent in this area in order to protect public health and safety. Basic radiation standards are also considered to be matters of compatibility. Certain administrative procedures, such as those involving the licensing of products containing radioactive material intended for interstate commerce, are considered to be matters of compatibility.

If an Agreement State has adequate standards, compatible program procedures, and has acceptable performance NRC makes a finding of adequacy and compatibility. It is possible that a State program could have up-to-date regulations, all proper procedures, and adequate staff, but still fail to perform the necessary work. In this case a program could be found to be inadequate to protect the public health and safety, yet compatible with the Commission's program. In the worst case, a program can be found to be both inadequate and incompatible with the NRC program.

Section 274g of the Act directs the Commission "* * * to cooperate with the States in the formulation of standards for protection aginst hazards of radiation to assure that State and Commission programs for protection against hazards of radiation will be coordinated and compatible." Section 274j gives the Commission the authority to teminate or suspend an agreement with a State. Before the Commission can take such action, it must find that "(1) such termination or suspension is required to protect the public health and safety or (2) the State has not complied with one or more of the requirements of this section." The formal agreement, which the Governor signs, pledges the State to "use its best efforts * * * to assure that the State's program will continue to be compatible."

The results of Agreement State program reviews are reported to the radiation control program director and upper level State management. In addition to the findings on adequacy and compatbility, comments and recommendations for improvement of the program may also be provided.

The Commission proposes to adopt as its general statement of policy a revised "Guide for Evaluation of Agreement Statement Radiation Control Programs Under Agreement With The U.S. Nuclear Regulatory Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, As Amended", February 1, 1980, which identifies six essential elements of a radiation control program. These elements are: Organization, Administration, Personnel, Regulations, Licensing, and Compliance. The Guide divides each element into component parts or indicators, and establishes guidelines for acceptable practice under each indicator. The Guide includes 35 indicators and 102 guidelines for acceptablee practice. Obivously, the indicators and guidelines in the Guide are not all of equal important.

[1] Alabama, Arizona, Arkansas, California, Colorado, Florida, Georgia, Idaho, Kansas, Kentucky, Louisiana, Maryland, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, Rhode Island, South Carolina, Tennessee, Texas and Washington.

indicators reflect the *potential* seriousness of deficiencies in various program areas. NRC obviously uses discretion in reviewing deficiencies within the various categories.

It is the NRC's intention to use these categories in the following manner. In reporting findings to State management, the NRC will indicate the category of each comment made. If no significant Category I comments are provided, this will indicate that the program is adequate to protect the public health and safety. If at least one significant Category I comment is provided, the State will be notified that the program deficiency may seriously affect the State's ability to protect the public health and safety and should be addressed on a priority basis. When more than one significant Category I comment is provided, the State will be notified that the need of improvement in the particular program areas is critical. The NRC would request an immediate response, and perform a follow-up review of the program within six months. If the State program has not improved or if additional deficiencies have developed, the NRC may institute proceedings to suspend or revoke all or part of the Agreement. Category II comments would concern functions and activities which support the State program and therefore would not be critical to the State's ability to protect the public. The State will be asked to respond to these comments and the State's actions will be evaluated during the next regular program review. Category III deficiencies likewise will be brought to the State's attention and the State's actions evaluated during the next regular review.

On November 13, 1979, a draft of the revised Guide was sent to the Agreement States for comment. The draft revised Guide was also reviewed by NRC staff offices. Comments were received from fifteen Agreement States. The States were generally supportive of the current NRC review program but were opposed to codification of the criteria. One State commented that the primary indicators of a State's ability to protect the public health and safety are the exposure experience of radiation workers, patients in nuclear medicine and the public in the vicinity of licensed facilities and suggested that the Commission develop standard methods for the assessment of such exposures.

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Other State comments and concerns were as follows:

1. What constitutes compatibility?

2. The criteria for the administrative aspects of the Agreement State program are too detailed.

3. The criteria should also address the political environment of the program such as the effect of public opinion on the operation of the program.

4. During the review process contact with the Governor and/or the State Legislature should normally be made.

5. Much of the periodic review is repetitive and could be streamlined.

6. One State questioned the NRC's ability to meet the criteria it uses to evaluate the States.

Some general comments generated by the Commission staff were as follows:

1. The technical qualifications of the Agreement State staff to handle a broad range of safety matters which could arise in Agreement State programs should be improved.

2. The NRC should use performance data, such as incident reports, to assess the effectiveness of State programs.

With regard to the development of specific indicators related to exposure experience of radiation workers, patients in nuclear medicine and the public in the vicinity of licensed facilities and use of performance data such as incident reports the Commission is seeking comments on the following:

1. What should be the proper reference indicator(s)—average dose, total person-rems, number of overexposures? Should the indicator(s) be related to numbers of licensees, number of licensee employees, number of radioactive material manipulations, size (curie quantity) of material manipulations, etc.

2. Are data currently available to regulatory officials upon which such indicators could be fairly based?

3. If such data are not available, what legal and regulatory constraints, if any, exist in collecting the necessary information?

4. What are the estimated levels of effort necessary by each State to collect the necessary reference data assuming there are no legal or regulatory constraints?

5. What other factors might affect the development of such indicators?

The Commission considered an NRC staff recommendation to conduct a public hearing on the promulgation of the Policy Statement. The Commission noted the potential advantages of such a hearing but decided to defer a decision on the matter pending receipt of public comments.

Although the Commission proposes to adopt the revised "Guide for Evaluation of Agreement State Radiation Control Programs" as a general statement of policy, it recognizes that there may be aspects of the policy statement which are susceptible of further improvement and that new elements may need to be added to the review process as times and situations change. Accordingly, the Commission is inviting comments from the general public on the following issues:

1. What additional criteria, if any, should be considered in the evaluation of Agreement State programs? Some States have suggested, for example, that NRC should use population and occupational exposure data to evaluate the effectiveness of State regulatory programs.

2. What, if any, of the existing guidelines are not appropriate criteria by which to evaluate the Agreement States? How should they be modified? The guidelines for acceptable practice cover a wide range of topics. Some guidelines are of an administrative nature and it has been suggested that these guidelines may not have a bearing on the effectiveness of a State program.

3. In what additional ways can the NRC oversight of Agreement States be strengthened? The Uranium Mill Tailings Act of 1978 requires States to follow specific procedures in the licensing of mill tailings. This was a significant extention of requirements on Agreement States and it has been suggested that other Agreement State program areas should be under closer scrutiny by NRC.

4. Should Agreement State reviews be conducted by a third party (another Federal agency, consultant, or other organization) and would such a review result in improved State regulatory programs?

5. How should the results of the reviews be reported? At present, results of review meetings are reported to State health officers or an equivalent official in State government. After reviewing the NRC Agreement State program, the General Accounting Office suggested that meeting results be routinely reported to State governors. Individual States have also suggested such contacts as well as contacts with State legislatures. To date NRC has involved the office of the Governor in selected cases and does not hesitate to do so when deemed necessary.

6. Are there other comments and concerns relating to Agreement State-NRC relations which should be considered?

Dated at Washington, D.C., this 29th day of September 1980.

For the U.S. Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

## Proposed General Statement of Policy

## Guide for Evaluation of State Radiation Control Programs Under Agreement With the U.S. Nuclear Regulatory Commission Pursuant to Section 274 of the Atomic Energy Act of 1954, as Amended

February 1, 1980.

### Introduction

Section 274 of the Atomic Energy Act of 1954, as amended, requires that

Agreement States' radiation control programs must remain adequate to protect the public from radiation hazards. In addition, the U.S. Nuclear Regulatory Commission (NRC) and the States pledge to use their best efforts to maintain compatible programs under the terms of each Agreement. The NRC has for many years periodically reviewed Agreement State programs to determine their adequacy to protect the public health and safety and compatibility with the NRC Program. Section 274j of the Atomic Energy Act of 1954, as amended, was amended on November 8, 1978 to require the periodic review of Agreement State programs by NRC. Although the Act specified no frequency for such reviews the NRC believes the interval between reviews should not exceed 18 months.

Information on the performance of Agreement State programs is obtained in several ways, the principal method being periodic review meetings with the States during which the essential elements of an RCP are reviewed and discussed with various levels of State RCP personnel. During the review process, each State program is evaluated on an individual basis against the criteria and guidance provided, taking into consideration individual State program differences such as size, scope, complexity of licensed activities, needs, and requirements of the program.

The Guide for Evaluation of State Radiation Control Programs has been prepared to assist the NRC in determining the adequacy and compatibility of State Radiation Control Programs (RCP) and to provide basic guidance to the States as to what is considered acceptable practice in connection with the administration of an RCP. The Guide contains six Sections, each dealing with one of the essential elements of an RCP which are: Organization, Management and Administration, Personnel, Regulations, Licensing, and Compliance. Each Section contains (a) a summary of the general significance of the program element, (b) indicators which must be considered to determine adequacy, and (c) guidance for acceptable practice. This Guide provides for a categorization of the relative importance of each indicator and is further discussed below.

Upon determining the status of the indicators, the reviewer must make a judgment as to the adequacy of the State's practice by comparison with the guidance provided. The relative importance of each indicator must be judged in arriving at a final determination of the overall adequacy of a State's program to protect the public health and safety and its compatibility with the Commission's program for the regulation of similar materials and using the guidance discussed below.

As a result of the review of a State program, the NRC determines that the Agreement State's program is either:

(1) Adequate to protect the public health and safety;

or

(2) Inadequate to protect the public health and safety;

or NRC may be unable to make a finding at the time of the review because of unresolved items or inadequate information necessitating a follow-up review. A program may be adequate to protect the public health and safety although in need of improvement in specified areas. In such cases NRC follows-up on these matters by correspondence, follow-up reviews or at the time of the next review.

A determination is also made that the program is either:

(1) Compatible with the NRC Regulatory program in areas related to the public health and safety; or

(2) Incompatible with the NRC Regulatory program;

or NRC is unable to make a finding at the time of the review because of unresolved items or inadequate information.

The Guide is not intended to be a standard and its use will be limited to that intended in the use of the term "Guide." As times and situations change and as new elements are added to the review process as a result of the continuing review of State programs, changes will be made in the Guide. Some new indicators and guides are included in this revision as relates to uranium mill States. However, additional post agreement review guidance will be developed for these States prior to November 8, 1981, the date when Agreement State programs for regulating uranium mills must conform to the requirements set forth in the Uranium Mill Tailings Radiation Control Act of 1978 (UMTRCA).

*Categories of Indictors Used To Determine Adequacy of Agreement State Programs*

During the review process, each State program is evaluated on an individual basis against the indicators and guidance, taking into consideration individual State program differences such as size, scope, complexity of licensed activities, needs, and requirements of the program. The indicators are recognized as not having equal importance when making a judgment as to adequacy of the State's program, but formal guidance has not previously been provided on the relative importance of each indicator. Formal guidance would be desirable from the points of view of (1) the Agreement States, (2) NRC staff involved in evaluations, (3) the Commission which, as an agency, makes formal determinations of adequacy and compatibility, and (4) the public. Three categories of indicators have been established.

*Category I*

Category I indicators reflect a State program's ability to adequately protect the public health and safety. Significant problems in meeting the guides for acceptable practice for these indicators probably mean the State program has a serious need for improvement. If significant problems exist in more than one of these areas, then the need for improvements may be critical.

Category I Indicators are:

- Legal Authority
- Emergency Plans
- Compatibility of Regulations (Basic Radiation Protection Standards-dose standards and effluent limits, Part 19, and UMTRCA Only)
- Personnel Qualifications
- Technical Quality of Licensing Actions
- Adequacy of Product Evaluations
- Status of Inspection Program
- Inspectors' Performance and Capability
- Response to Incidents and Alleged Incidents
- Enforcement Procedures
- Equipment Failure

*Category II*

Category II Indicators address functions and activities which support the program. Good performance in meeting the guidelines for these indicators is considered essential if the State is to avoid significant problems in implementing an effective program to protect the public health and safety.

Category II Indicators are:

- Location of RCP Within State Organization
- Internal Organization of RCP
- Legal Assistance
- Budget
- Administrative Procedures
- Planning
- Laboratory Support
- Number of Personnel
- Personnel Duties
- Training
- Salaries
- Staff Turnover

- Compatibility of Regulations (Other Than Basic Radiation Protection Standards, Part 19 and UMTRCA)
- Updating Regulations
- Licensing Procedures
- Quality Assurance (Licensing)
- Inspection Procedures
- Inspection Frequency
- Inspection Reports
- Independent Measurements

*Category III*

Category III Indicators address those areas of a State program which are considered highly desirable features of a soundly based, comprehensive program for controlling agreement materials.

Category III Indicators are:

- Technical Advisory Committees and Consultants
- Office Facilities, Equipment and Support Services
- Public Information
- Recruiting
- Medical Advisory Committee

*Guidance for Using and Interpreting Categories of Indicators and Their Guides for Acceptable Practice*

Reviews of Agreement State programs usually result in comments and recommendations being made to the State which are always intended to improve the State's program. Most comments are developed using the Guides for Acceptable Practice as criteria.* Many Indicators have multiple guides. Comments on the need for improvements with reference to a specific guide will not necessarily mean a major problem exists within the Indicator area.

As an example, a Category I Indicator is Status of Inspection Program: A State having a large backlog of overdue inspections may have a serious problem.** In a State having no backlog, however, a reviewer may nonetheless comment on the need for improving the statistical information to permit better assessment of the status of the inspection program (a Guide for Acceptable Practice). As another example, minor comments may be made by a reviewer on technical aspects of State licensing actions without having to conclude that a serious problem exists in this Indicator area.

The purpose of categorizing the Indicators is to make the reviewer and the State, both aware of the *potential significance* of comments in specific Indicator areas. The reviewer must exercise judgment in concluding whether or not serious problems exist, taking into consideration the nature of the comments, past history, size of the problem, needs and requirements of the State's programs, and the response of the State to the specific comments and recommendations offered by the reviewer.

A large number of comments in a specific Indicator area should alert the reviewer and the State that potentially serious problems exist in that Indicator area. Comments directed at significant problems identified in several Category I Indicator areas would strongly suggest the State program may be in critical need of improvement. Category II Indicators frequently can be used to identify underlying problems that are causing, or contributing to, difficulties in Category I Indicators.

In cases where a review results in comments and recommendations for improvements in more than one Category I Indicator area, the reviewer should state whether the comments are major or minor and whether or not the comments as a whole indicate the program is in need of critical improvements. This should be conveyed to the State at the review meeting and in the subsequent letters to the State.

*Examples of other criteria that may be used are: NRC Branch Positions; Inspection and Licensing Guides; Regulatory Guides; NCRP Reports; etc.

**If the State's inspection priorities call for inspections more frequently than NRC's, a backlog is indicative of a serious problem only if the overdue inspections exceed those required by NRC's priorities.

## Organization

The effectiveness of any State RCP may be dependent upon the underlying legal authority, assignment of responsibilities and its location within the overall State organization structure. The RCP should be in a position to compete effectively with other health and safety programs for budget and staff. Program management must have access to individuals or groups which establish health and safety program priorities. The RCP should be organized to achieve a high degree of efficiency in supervision, work functions, and communications.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Legal Authority | I | Clear statutory authority designating State radiation control agency and providing for promulgation of regulations, licensing, inspection and enforcement.<br>Where regulatory responsibilities are divided between State agencies, clear understandings should exist as to division of responsibilities and requirements for coordination. |
| Location of Radiation Control Program Within State Organization. | II | RCP—located in a State organization parallel with comparable health and safety programs. Program Director has access to appropriate levels of State management. |
| Internal Organization of Radiation Control Program. | II | RCP—organized with the view toward achieving an acceptable degree of staff efficiency, place appropriate emphasis on major program functions, and provide specific lines of supervision from program management for the execution of program policy.<br>Where regional offices are utilized, the lines of communication and administrative control between the regions and the central office (Program Director) are clearly drawn to provide uniformity in inspection policy, procedures, and supervision. |
| Legal Assistance | II | Legal staff assigned to assist the RCP or procedures exist to obtain legal assistance expeditiously. Legal staff should be knowledgeable regarding RCP program, statutes, regulations and possible needs. |
| Technical Advisory Committees, and Consultants. | III | Medical—to provide broad guidance and policy on the uses of radioactive drugs in or on humans. Committee normally represents a wide spectrum of medical disciplines.<br>Consultants, Technical Committees, Federal Agencies used to extend staff capabilities for unique and technically complex problems.<br>Procedures exist to avoid conflict of interest even though Committees are advisory. This does not mean that representatives of the regulated community should not serve on advisory committees or not be used as consultants.. |

## Management and Administration

State RCP management must be able to meet program goals through strong, direct leadership at all levels of supervision. To meet program goals, it may be necessary to successfully compete against other State health programs for budget and

manpower. The program budget must reflect annual changes in the number and complexity of applications and licenses, and the increase in costs due to normal inflation. Administrative procedures are necessary to assure uniform and appropriate treatment of all regulated parties. Procedures for receiving information on radiological incidents, emergency response, and providing information to the public are necessary. Procedures to provide feedback to supervision on status and activities of the RCP are necessary. Adequate facilities, equipment and support services are needed for optimum utilization of personnel resources. Laboratory support services should be administered by the RCP or be readily available through established administrative procedures. The cost of expensive portable and laboratory equipment, printing services, travel funds, etc., must be included in the consideration of RCP budgets.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Plans for Response to Local Emergencies Involving Agreement Materials, e.g., Spills, Transportation Accidents, Thefts, Overexposures, etc.. | I | Emergency communication procedures are adequately established with appropriate local, county and state agencies. |
| | | Responsibilities and actions to be taken by State Agencies are well defined. The Plan should be specific as to persons responsible for initiating response actions, conducting operations, and cleanup. Plan is dated and revisions shown. |
| | | Plans distributed to appropriate persons and agencies. NRC should be provided the opportunity to comment on the Plan while in draft form. |
| | | Plan annually reviewed by Program staff for adequacy and that content is current. |
| Budget | II | Source of funds—principal operating funds are from sources which provide continuity and reliability, i.e., general tax, license fees, etc. Supplemental funds may be obtained through contracts, cash grants, etc. |
| | | Level of funding—approximately $200–$350 per license, excluding uranium mill and low level waste burial licenses. These values are subject to variation based on the complexity of programs, geographical area, regionalization, and may need to be higher for specialized regulatory programs. (No level of funding is given here for uranium mill States but is addressed in the Personnel section.). |
| | | Changes in level of funding—normally, funding of RCP is increased from year to year because of increased number of licenses and inflationary pressures. A decrease in total program funds or $ per license figure greater than 10% may be significant.. |
| | | Adequate funding is available to cover authorized positions, official travel, handling of emergencies and obtaining contract services. |
| Administrative Procedures | II | Availability of current internal guides, policy memoranda; and performance reviews—adequate to assure that staff performs its duties as required and to provide a high degree of uniformity and continuity in regulatory practices. |
| | | Adequate to assure RCP manager receives periodic reports on status of regulatory actions (backlogs, problem cases, inquiries, regulations revisions). Statistical data provided on timely basis to NRC. |
| | | Adequate to assure communication and liaison between licensing and compliance staffs. |
| | | Policies established for handling public relations and enforcement actions. |
| | | For States collecting fees, procedures exist for assignment of duties to non-technical staff. |
| | | Policy on press releases—procedures are available to assure timely release of factual information by qualified persons, and timely notification to the NRC and other agreement states. |
| Planning | II | RCP management periodically assesses workload trends, resources and changes in legislative and regulatory responsibilities to forecast needs for increased staff, equipment, services and funding. |
| Laboratory Support | II | Laboratory services—RCP has capability in-house or readily available through established procedures for laboratory support to conduct bioassays, analyze environmental samples, analyze samples collected inspectors, etc. on a priority established by the RCP. |
| Office Facilities, Equipment, and Support Services. | III | Adequate secretarial and clerical support. Automatic typing and Automatic Data Processing and retrieval capability available to larger (>300–400 licenses) programs. Similar services available to regional offices if utilized. |
| Public Information | III | Inspection and licensing files are available to the public consistent with State administrative procedures. |
| | | Proprietary information—protected from public disclosure by agency procedures or by State laws. |

## Personnel

RCP must be staffed with a sufficient number of trained personnel. The evaluation of license applications and the conduct of inspections require staff with in-depth training and experience in radiation protection and related subjects. The staff must be adequate in number to assure timely licensing, inspection, and enforcement actions of appropriate quality to assure protection of the public health and safety. Periodic training of existing staff is necessary to maintain capabilities in a rapidly changing technological environment. Program management personnel must be qualified to exercise adequate supervision in all aspects of a state radiation control program.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Qualifications | I | Professional staff—bachelor's degree or equivalent training in the physical and/or life sciences. Additional training and experience in radiation protection for senior personnel is commensurate with the type of licenses issued and inspected by the State. |
| Number of Personnel | II | Staffing level—approximately 1-1.5 person-year per 100 licenses in effect. Not less than two professionals available per program with training and experience to operate RCP in a way which provides continuous coverage and continuity. This level needs to be higher for States administering major and/or complex licensed activities, i.e., low level commercial waste burial sites and uranium mills. Current indications are that 2-2.5 professional person years' effort and $16,000 contract costs is needed to process a new mill license or major renewal to meet requirements of Uranium Mill Tailings Radiation Control Act of 1978 for a conventional mill.* This effort must include expertise in radiological matters, hydrology, geology, and structural aspects. |
| Duties | II | Supervisory personnel—to provide guidance and review the work of senior and junior personnel. Senior personnel—review applications and inspect licenses independently. Also monitor work of junior personnel and participate in the establishment of policy. Junior personnel—initially limited to reviewing license applications and inspecting small programs under close supervision. |
| Training | II | Senior personnel should have received NRC core courses in licensing orientation, inspection procedures, medical practices and industrial radiography practices. (For mill States should also include mill training.). On-the-job training—specific program established for on-the-job training of new employees by supervisory and senior personnel. Utilization of specified short courses and workshops—RCP has a program to utilize courses to maintain appropriate level of staff technical competence in areas of changing technology. Level of training effort—normally 5-10% total RCP manpower effort is spent in training. Appropriate training courses taken when available. |
| Salaries | II | Salary levels—adequate to recruit and retain persons of appropriate professional qualifications. Salaries are comparable to similar employment in the geographical area. |
| | | Promotions—organization structure is such that staff turnover is minimized and program continuity maintained through opportunities for promotion. Promotion opportunities should exist from junior level to senior level or supervisory positions. There also should be opportunity for periodic salary inrease compatible with experience and responsibility. |
| Staff Turnover | II | Staff turnover should be minimized by combinations of opportunities for training, promotions, and competitive salaries. |
| Recruiting | III | Job descriptions—written job descriptions are prepared so that professional qualifications needed to fill vacancies can be readily identified. Notification of vacancies—vacancies are published in state recruitment lists, professional society journals, and local newspapers. |

## Regulations

Regulations provide the foundation upon which licensing, inspection, and enforcement decisions are made. Regulations also provide the standards and rules within which the regulated must operate. Periodic revisions are necessary to reflect changing technology, improved knowledge, current recommendations by technical advisory groups, and consistency with NRC regulations. Procedures for providing input to the NRC on proposed changes to NRC regulations are necessary to protect the State's interests and requirements. The public and, in particular, affected classes of licensees should be granted the opportunity and time to comment on rule changes.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Compatibility | I [1] | The RCP has established procedures for effecting appropriate amendments to State regulations to maintain a high degree of uniformity with NRC regulations. |
| | II [2] | NRC comment—opportunity is provided for the NRC to comment on draft changes in State regulations. State responds appropriately to such comments prior to formal adoption (conforms regulations to maintain compatibility). Administrative recognition of NRC regulations—State administratively recognizes compatible regulatory changes prior to formal adoption if consistent with State law. State licensees are notified of such changes as appropriate. |
| Updating of Regulations | II | Regulations—scheduled for revision at least every 2 years and those necessary to maintain compatibility made effective within 3 years of adoption by NRC. Public participation—opportunity is provided for the public to comment on proposed regulation changes. (Required for uranium mill regulation after 11/8/81.). |

[1] Only Part 19, Radiation Standards (dose standards and effluent limits) and those required by UMTRCA.
[2] Other regulations.

## Licensing

It is necessary in licensing byproduct, source, and special nuclear materials that the State regulatory agency obtain information about the proposed use of nuclear materials, facilities and equipment, training and experience of personnel, and operating procedures appropriate for determining that the applicant can operate safely and in compliance with the regulations and license conditions. An acceptable licensing program includes: preparation and use of internal licensing guides and policy memoranda to assure technical quality in the licensing program (when appropriate, such as in small programs, NRC Guides may be used); supervisory review of complex license applications; a quality assurance program; use of advisory committee or consultant having special expertise; pre-licensing inspection of complex facilities; timely action on applications; and the implementation of administrative procedures to assure documentation and maintenance of adequate files and records.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Technical Quality of Licensing Actions. | I | Essential elements of applications—Information has been submitted to the agency, which meets current regulatory guidance for describing the isotopes and quantities to be used, qualifications of persons who will use material facilities and equipment, and operating and emergency procedures sufficient to establish the basis for licensing actions.<br>Prelicensing visits made for complex and major licensing actions.<br>Issuance of license—license is clear, complete, and accurate as to isotopes, forms, quantities, authorized uses, and permissive or restrictive conditions.<br>Procedures for reviewing licenses prior to renewal to assure that supporting information in the file reflects the current scope of the licensed program. |
| Adequacy of Product Evaluations. | I | Staff evaluates manufacturer's or distributor's data on sealed sources and devices to assure integrity and safety for users—data submitted as outlined in NRC, State, or appropriate Organization Guides.<br>Manufacturer's information in labels and brochures relating to radiation health and safety, assay, and calibration procedures is adequate. |
| Licensing Procedures | II | Internal licensing guides, checklists, and policy memoranda consistent with current NRC practice are used in licensing actions.<br>License applicants (including renewals) furnished copies of applicable guides and regulatory positions.<br>Licensing actions are coordinated when appropriate with compliance staff.<br>Application review—preliminary review and screening is normally taken within 30 days of receipt of application.<br>License expiration notices—sent to licensees 30–60 days prior to expiration.<br>Notice of timely renewal procedures in use.<br>Files—maintained in an orderly fashion to allow fast, accurate retrieval of information and documentation of discussions and visits. |
| | II | Exchange of information—evaluation sheets, service licenses, and licenses authorizing distribution to general licensees and persons exempt from licensing are submitted to NRC on a timely basis.<br>Standard license conditions comparable with current NRC standard license conditions used to expedite and provide uniformity in the licensing process.<br>For States with separate licensing and inspection staffs, opportunities should be provided for license reviewers to accompany inspectors to observe application of regulatory and radiation safety practices. |
| Quality Assurance | II | Periodic supervisory review of selected license cases handled by each reviewer and results documented. Complex licenses (major manufacturers, large scope—Type A Broad, potential for significant releases to environment) receive second party review (supervisory, committee, consultant). |
| Medical Advisory Committee | III | Advises RCP on policy matters related to use of radioisotopes in or on humans. |

## Compliance

Periodic inspections of licensed operations are essential to assure that activities are being conduced in complinace with regulatory requirements and consistent with good safety practices. The frequency of inspections depends on the amount and the kind of material, the type of operation licensed, and the result of previous inspections. The capability of maintaining and retrieving statistical data on the status of the compliance program is necessary. The regulatory agency must have the necessary legal authority for prompt enforcement of its regulations. This may include, as appropriate, administrative remedies, orders requiring corrective action, suspension or revocation of licenses, the impounding of materials, and the imposing of civil or criminal penalties.

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| Status of Inspection Program | I | Statistics—Adequate to permit Program Management to assess the status of the inspection program on a periodic basis. Information showing the number of inspections conducted, the number overdue, the length of time overdue and the priority categories should be readily available..<br>At least semiannual inspection planning for number to be performed, assignments to Sr. vs. Jr. staff, assignments to regions, identification of special needs and periodic status reports. |
| Inspector's Performance and Capability. | I | Inspector capability—competent to evaluate health and safety problems and apply State regulations. Must demonstrate to supervisor and understanding of regulations, inspection guides, and policies prior to independently conducting inspections.<br>Compliance supervisor (may be RCP manager) conducts annual field evaluation of each inspector to assess performance and assure application of appropriate and consistent policies and guides. |
| Response to Incidents and Alleged Incidents. | I | Inquiries promptly made to evaluate the need for onsite investigations. |

| Indicators | Category | Guide for acceptable practice |
|---|---|---|
| | | Onsite investigations promptly made of incidents requiring reporting to Agency in less than 30 days. (10 CFR 20.403 types.). |
| | | Investigations made of incidents not requiring reporting to the Agency in less than 30 days made during the next scheduled inspection. |
| | | Onsite investigations promptly made of technically non-reportable incidents but which may be of significant pubic interest and concern, i.e., transportation accidents. |
| | | Use of medical consultants when needed to diagnose or treat radiation injuries and use of other technical consultants for specialized problems. |
| | | Conduct of investigations—indepth review of circumstances completed on a high priority basis. When appropriated, investigations include reenactments and time-study measurements (normally within a few days). Investigation (or inspection) results documented and enforcement action taken when appropriate. |
| | | Notification—State licensees and the NRC are notified of pertinent information about an incident which could be relevant to other licensed operations (e.g., equipment failure, improper operating procedures). |
| Enforcement Procedures | I | Enforcement letters—notices issued within 30 days following inspection. |
| | | Employ appropriate regulatory language. |
| | | Clearly specify all items of non-compliance and health and safety matters identified during the inspection and referencing the appropriate regulations or license condition being violated. |
| | | Separation of enforcement actions subject to State Radiation Control Act and State OSHA regulations. |
| | | Time period specified for licensee to respond as to corrective actions and actions taken to prevent reoccurence (normally 20–30 days). Inspector and Supervisory review is made of licensee responses. |
| | | Licensee responses to enforcement letters promptly acknowledged as to adequacy and resolution of unresolved items. |
| | | Written procedures exist for handing escalated enforcement cases of varyng degrees. |
| | | Impounding of material—in accordance with State administrative procedures. |
| | | Impartial administration—opportunity for hearings is provided. |
| Reporting of Equipment Failure | I | Information on incidents involving failure of equipment is provided to the Agency responsible for evaluation of the device for an assessment of possible generic design deficiency. |
| Inspection Procedures | II | Inspection guides—Consistent with current NRC guidance are used by inspectors to assure uniform and complete inspection practices and provide technical guidance in the inspection of licensed programs. The NRC-Agreement States Guides may be used if properly supplemented by policy memoranda, agency interpretations, etc. |
| | | Written inspection policies—issued to establish system for conducting announced and unannounced inspections, obtaining corrective action, following up and closing out previous violations, assuring exit interviews with management and issuing appropriate notification of violations or health and safety problems. |
| | | Procedures established for maintaining licensees' compliance histories. |
| | | Oral briefing of supervision or senior inspector upon return from non-routine inspections. |
| | | For States with separate licensing and inspection staffs, procedures established for feedback of information to license reviewers. |
| Inspection Frequency | II | Inspection priority system—specific frequency of inspections is based upon the potential hazards of licensed operations, e.g., major processors, broad licensees, and industrial radiographers inspected approximately annually—smaller or less hazardous operations inspected less frequently. The minimum inspection frequency should be consistent with the NRC system. |
| Adequacy of Inspection Reports | II | Findings of inspections—report describes scope of inspection, contains substantiation of all items of non-compliance and health and safety matter, describes scope of licensee's program, and substance of discussion with licensee management and licensee's response. |
| | | Reports uniformly and adequately document the results of inspection and identifies areas of the licensee's program which should recieve special attention at the next inspection. Reports should show the status of previous noncompliance and the independent physical measurements made by the inspector. |
| | | Supersvisory review of reports and enforcement actions. |
| Independent Measurements | II | Number and type—sufficient to ensure licensee's control of materials and to validate licensee's measurements. |
| | II | Instrumentation—adequate for surveying licensed operations (e.g., survey meters, air samplers, lab counting equipment for smears, identification of isotopes, etc.). |
| | | GM Survey Meter: 0–20 mr/hr. Ion Chamber Survey Meter: several r/hr. Neutron Survey Meter: Fast & Thermal. Alpha Survey Meter: 0–100,000 c/m. Air Samplers: Hi and Lo Volume. Lab Counters: Detect 0.001 μc/wipe. Velometers. Smoke tubes. Lapel air samplers. |
| | | Instrument calibration services or facilities—readily available and appropriate for instrumentation used. Licensee equipment and facilities should not be used unless under a service contract. Exceptions for other State Agencies, e.g. a State University may be made. |
| | | Agency instruments should be calibrated at intervals not greater than that required of licensees being inspected. |

Dated at Washington, D.C., this 29th day of September 1980.

For the Nuclear Regulatory Commission.

**Samuel J. Chilk,**

*Secretary of the Commission.*

[FR Doc. 80-30822 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

[Dockets Nos. 50-295 and 50-304]

## Commonwealth Edison Co. (Zion Station, Unit Nos. 1 and 2); Revised Order for Modification of License

I. Commonwealth Edison Company (the licensee) is the holder of Facility Operating License Nos. DPR-39 and DPR-48, which authorize the operation of the Zion Station, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 3,250 magawatts thermal (rated power). Each facility consists of a pressurized water reactor located at the licensee's site in Zion, Illinois.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 5, 1980, as modified by our letter of March 20, 1980 to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile

[1] Bulleting 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by

Footnotes continued on next page

Footnotes continued from last page

Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–39 and DPR–48 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in our letter of March 5, 1980, as modified by our letter of March 20, 1980, shall be submitted to the Director, Division of Licensing, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Phillip P. Steptoe, Esquire, Isham, Lincoln and Beale, Suite 4200, First National Plaza, Chicago, Illinois 60603, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60067).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30804 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50–336]**

## Northeast Nuclear Energy Co., Connecticut Light & Power Co., Hartford Electric Light Co., and Western Massachusetts Electric Co. (Millstone Nuclear Power Station Unit No. 2); Revised Order for Modification of License

I. Northeast Nuclear Energy Company, et al. (licensee) is the holder of License No. DPR–65, which authorizes the operation of the Millstone Nuclear Power Station, Unit No. 2 at steady state reactor power levels not in excess of 2700 megawatts thermal (rated power). The facility consists of a Pressurized Water Reactor located at the licensee's site in the Town of Waterford, Connecticut.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and

NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Lines Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–65 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in I&E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regualtory Commisison, Washington, D. C. 20555. A copy of the request should also be sent to the Executive Legal Director, U. S. Nuclear Regulatory Commission, Washington, D. C. 20555, and to William H. Cuddy, Esq., Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60086).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30786 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-263]**

## Northern States Power Co. (Monticello Nuclear Generating Plant); Revised Order for Modification of License

I. The Northern States Power Company (licensee) is the holder of Provisional Operating License No. DPR-22 which authorizes the operation of the Monticello Nuclear Generating Plant at steady state reactor power levels not in excess of 1670 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Wright County, Minnesota.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A signficant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR parts 2 and 50, it is ordered that effective immediately Provisional Operating License No. DPR–22 is herby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW, Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60087).

Effective Date: September 19, 1980.
Bethesda, Maryland.

For The Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80–30793 Filed 10–2–80; 8:45 am]
BILLING CODE 7590–01–M

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**[Docket Nos. 50–282, 50–306]**

## Northern States Power Co., (Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2); Revised Order for Modification of Licenses

I. Northern States Power Company (licensee) is the holder of License Nos. DPR–42 and DPR–60 which authorize the operation of the Prairie Island Nuclear Generating Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 1650 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site in Goodhue County, Minnesota.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with

the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environmental that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–42 and DPR–60 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I&E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60088).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Direction, Division of Licensing.*

[FR Doc. 80-30794 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

[1] Bulletin 79–01B not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

[Docket No. 50-286]

## Power Authority of the State of New York (Indian Point Station, Unit No. 3); Revised Order for Modification of License

I. The Power Authority of the State of New York (the licensee) is the holder of Facility Operating License No. DPR-64, which authorizes the operation of the Indian Point Plant Unit No. 3 at steady state reactor power levels not in excess of 3025 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Westchester County, New York.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by our letter of March 5, 1980, as modified by our letter of March 20, 1980 to provide information on emergency procedures and safety related systems. The licensee was requested to define and provide the basis for the hostile environment, inside and outside containment. This hostile environment would then be used, by the licensee, in the determination of unqualified equipment. A complete package, including justification for methods used, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-64 is hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in our letter of March 5, 1980, as modified by our letter of March 20, 1980, shall be submitted to the Director, Division of Licensing, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles M. Pratt, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register**, September 12, 1980, (45 FR 60515).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30795 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-333]**

## Power Authority of the State of New York (James A. FitzPatrick Nuclear Power Plant); Revised Order for Modification of License

I. The Power Authority of the State of New York (licensee) is the holder of Facility Operating License No. DPR-59 which authorizes the operation of the James A. FitzPatrick Nuclear Power Plant at power levels up to 2436 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Oswego County, New York.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "from the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commision also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification informtion by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of satety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR-59 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79-01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Charles M. Pratt, Assistant General Counsel, Power Authority of the State of New York, 10 Columbus Circle, New York, New York 10019, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 12, 1980, (45 FR 60516).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30796 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket Nos. 50-259, 50-260, and 50-296]**

## Tennessee Valley Authority (Browns Ferry Nuclear Plant, Units 1, 2 and 3); Revised Order for Modification of Licenses

I. The Tennessee Valley Authority (licensee) is the holder of Facility Operating License Nos. DPR-33, DPR-52, and DPR-68 which authorize the operation of the Browns Ferry Nuclear Plant, Units 1, 2 and 3 at steady state reactor power levels each not in excess of 3293 megawatts thermal (rated power). The facilities consist of boiling water reactors located at the licensee's site in Limestone County, Alabama.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applications must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG-0588." The Commission requested the staff to "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containments.

In this connection the licensee was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrial equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR-33, DPR-52, and DPR-68 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79-01B, shall be submitted to the Director, Region II, Office of Inspection

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to H.S. Sanger, Jr., Esquire, General Counsel, Tennessee Valley Authority, 400 Commerce Avenue, E11B, 33C Knoxville, Tennessee 37902, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistant with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 12, 1980, (45 FR 60519).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30797 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Docket No. 50-346]**

## Toledo Edison Co. and Cleveland Electric Illuminating Co. (Davis-Besse Nuclear Power Station, Unit No. 1), Revised Order for Modification of License

(I) The Toledo Edison Company (TECo) and The Cleveland Electric Illuminating Company, (licensees) are the holders of Facility Operating License No. NPF-3, which authorizes the operation of the Davis-Besse Nuclear Power Station, Unit No. 1, at steady state reactor power levels not in excess of 2772 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensees' site in Ottawa County, Ohio.

(II) On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG-0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC-4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG-0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79-01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guideline or NUREG-0588." The Commission requested the staff to, "Keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

(III) The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG-0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment expose to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection TECo was requested by I&E Bulletin 79-01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with licensees. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by TECo is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by TECo to the staff's requests for information. However, TECo's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest

[1] Bulletin 79-01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79-01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV

Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. NPF–3 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by TECo not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensees or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing should be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Gerald Charnoff, Esquire, Shaw, Pittman, Potts and Trowbridge, 1800 M Street, NW., Washington, D.C. 20036, attorney for the licensees.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 12, 1980, (45 FR 60524).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

Darrell G. Eisenhut,

*Director, Division of Licensing.*

[FR Doc. 80–30798 Filed 10–2–80; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

## Vermont Yankee Nuclear Power Corp. (Vermont Yankee Nuclear Power Plant); Revised Order for Modification of License

(I) The Vermont Yankee Nuclear Power Corporation (licensee) is the holder of Facility Operating License No. DPR–28 which authorizes the operation of the Vermont Yankee Nuclear Power Plant at steady state reactor power levels not in excess of 1593 megawatts thermal (rated power). The facility consists of a boiling water reactor located at the licensee's site in Windham County, Vermont.

(II) On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0558, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

(III) The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG-0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

(IV) Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–28 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region I, Office of Inspection and Enforcement, by licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to John A. Ritsher, Esquire, Ropes & Gray, 225 Franklin Street, Boston, Massachusetts 01581, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60094).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30799 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**[Dockets Nos. 50–280 and 50–281]**

## Virginia Electric & Power Co. Surry Power Station, Units Nos. 1 and 2; Revised Order for Modification of License

(I) Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. DPR–32 and DPR–37, which authorize the operation of the Surry Power Station, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 2441 megawatts thermal (rated power). Each facility consists of a pressurized water reactor located at the licensee's site in Surry County, Virginia.

(II) On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideraton on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982, all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

(III) The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–32 and DPR–37 are hereby amended to add the following provisions:

"Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region II, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980."

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request shall also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Mr. Michael W. Maupin, Hunton and Williams, Post Office Box 1535, Richmond, Virginia 23213, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facilities on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980, (45 FR 60077).

Effective date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30800 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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**Docket Nos. 50–266 and 50–301**

## Wisconsin Electric Power Co. (Point Beach Nuclear Plant Unit Nos. 1 and 2); Revised Order for Modification of Licenses

1. Wisconsin Electric Power Company (licensee) is the holder of License Nos. DPR–24 and DPR–27 which authorize the operation of the Point Beach Nuclear Plant, Unit Nos. 1 and 2 at steady state reactor power levels not in excess of 1158 megawatts thermal (rated power). The facilities consist of two Pressurized Water Reactors located at the licensee's site at Two Creeks, Wisconsin.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: Fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, order the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons to the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B [1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B dated January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License Nos. DPR–24 and DPR–27 are hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I&E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Bruce Churchill, Esq., Shaw, Pittman, Potts and Trowbridge, 1800 M Street, N.W., Washington, D.C. 20036, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the Hearing shall be whether the licenses should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the Federal Register September 11, 1980 (45 FR 60097).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30801 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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[Docket No. 50-305]

## Wisconsin Public Service Corp., et al. (Kewaunee Nuclear Power Plant); Revised Order for Modification of License

I. Wisconsin Public Service Corporation, *et al.* (the licensee) is the holder of Facility Operating License No. DPR–43, which authorizes the operation of the Kewaunee Nuclear Plant at steady state reactor power levels not in excess of 1650 megawatts thermal (rated power). The facility consists of a pressurized water reactor located at the licensee's site in Kewaunee County, Wisconsin.

II. On November 4, 1977, the Union of Concerned Scientists (UCS) filed with the Commission a "Petition for Emergency and Remedial Relief." The petition sought action in two areas: fire protection for electrical cables, and environmental qualification of electrical components. By Memorandum and Order dated April 13, 1978 (7 NRC 400), the Commission denied certain aspects of the petition and, with respect to other aspects, ordered the NRC staff to take several related actions. UCS filed a Petition for Reconsideration on May 2, 1978. By Memorandum and Order, dated May 23, 1980, the Commission reaffirmed its April 13, 1978 decision regarding the possible shutdown of operating reactors. However, the Commission's May 23, 1980 decision directed licensees and the NRC staff to undertake certain actions.

With respect to environmental qualification of safety-related electrical equipment, the Commission determined that the provisions of the two staff documents—the Division of Operating Reactors "Guidelines for Evaluating Environmental Qualification of Class 1E Electrical Equipment in Operating Reactors" (DOR Guidelines) and NUREG–0588, "Interim Staff Position on Environmental Qualification of Safety-Related Electrical Equipment," December 1979 "form the requirements which licensees and applicants must meet in order to satisfy those aspects of 10 CFR Part 50, Appendix A General Design Criterion (GDC–4), which relate to environmental qualification of safety-related electrical equipment." The Commission directed, for replacement parts in operating plants, "unless there are sound reasons toa the contrary, the 1974 standard in NUREG–0588 will apply." The Commission also directed the staff to complete its review of the information sought from licensees by Bulletin 79–01B[1] and to complete its review of environmental qualification of safety-related electrical equipment in all operating plants, including the publication of Safety Evaluation Reports, by February 1, 1981. The Commission imposed a deadline that, "by no later than June 30, 1982 all safety-related electrical equipment in all operating plants shall be qualified to the DOR Guidelines or NUREG–0588." The Commission requested the staff to, "Keep the Commission and the public apprised of any further findings of incomplete environmental qualification of safety-related electrical equipment, along with corrective actions taken or planned," and requested the staff to provide bi-monthly progress reports to the Commission.

The Commission further directed the staff to add certain documentation requirements to each license after the

[1] Bulletin 79–01B was not sent to licensees for plants under review as part of the staff's Systematic Evaluation Program. The information sought by Bulletin 79–01B was requested from these licensees by a series of letters and meetings during the months of February and March, 1980.

specific requirements were approved by the Commission. The Commission also pointed out that the various deadlines imposed in its Order, "do not excuse a licensee from the obligation to modify or replace inadequate equipment promptly."

III. The information developed during this proceeding emphasizes the importance of adequate documentation, the prompt completion of the review of environmental qualification of safety-related electrical equipment, and the prompt completion of any plant modification needed to assure conformance with the DOR Guidelines or NUREG–0588. A significant aspect of this review is the timely submittal of environmental qualification information by the operating plant licensees to enable the staff to complete its review in accordance with the Commission's Order. The staff has a program presently underway to reevaluate, using the DOR Guidelines and NUREG–0588, the qualifications of safety-related electrical equipment exposed to environments that may exist following postulated accidents. These accidents are Loss of Coolant Accident and Main Steam Line Break inside containment, and High Energy Line Breaks inside and outside containment.

In this connection the licensee was requested by I&E Bulletin 79–01B of January 14, 1980 to provide a detailed review of the environmental qualification of Class 1E electrical equipment. This review was to include all equipment required to function under postulated accident conditions, both inside and outside the primary containment, and recognize all conditions specified in the bulletin. Evidence of qualification together with methods and justification, was requested.

Clarification was provided by supplemental information, briefings, and in some cases, meetings with the licensee. Timely completion of the staff's review of environmental qualification of electrical equipment and timely completion of needed modifications by the licensee is required to provide continuing reasonable assurance of public health and safety. Such completion is dependent on the prompt receipt of a complete response by the licensee to the staff's requests for information. However, the licensee's response, to date, is incomplete.

Therefore, I have concluded that the public health, safety, and interest require that a firm schedule for the timely submission of all the information previously requested by the staff should be established by Order effective immediately.

IV. Accordingly, pursuant to the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is ordered that effective immediately Facility Operating License No. DPR–43 is hereby amended to add the following provisions:

Information which fully and completely responds to the staff's request as specified in I & E Bulletin 79–01B, shall be submitted to the Director, Region III, Office of Inspection and Enforcement, by the licensee not later than November 1, 1980.

An earlier response is encouraged to facilitate staff review and issuance of the safety evaluation report. The licensee or any person whose interest may be affected by this Order may request a hearing on or before October 23, 1980. Any request for a hearing will not stay the effective date of this Order. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy of the request should also be sent to the Executive Legal Director, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, and to Foley and Lardner, First Wisconsin Center, 777 East Wisconsin Avenue, Milwaukee, Wisconsin 53202, attorney for the licensee.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether the license should be modified to require submission of information as set forth in Section IV. of the Order.

Operating of the facility on terms consistent with this Order is not stayed by the pendency of any proceedings on the Order. This Order revises, in its entirety, the Order issued August 29, 1980, and published in the **Federal Register** September 11, 1980, (45 FR 60098).

Effective Date: September 19, 1980, Bethesda, Maryland.

For the Nuclear Regulatory Commission.

**Darrell G. Eisenhut,**

*Director, Division of Licensing.*

[FR Doc. 80-30802 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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## Advisory Committee on Reactor Safeguards Subcommittee on Safety Philosophy, Technology, and Criteria; Correction

The correct date of the ACRS Subcommittee meeting on Safety Philosophy, Technology and Criteria published in the **Federal Register** on September 23 (45 FR 63196) is Wednesday, October 8, 1980.

The purpose of the meeting is to review the Diablo Canyon Systems Interaction Analysis and NRC Commissioner Gilinsky's questions concerning the North Anna ECCS Design.

All other details regarding this meeting remain the same as published in the above cited notice.

Dated: September 29, 1980.

**John C. Hoyle,**

*Advisory Committee Management Officer.*

[FR Doc. 80-30767 Filed 10-2-80; 8:45 am]

BILLING CODE 7590-01-M

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## OFFICE OF MANAGEMENT AND BUDGET

### President's Commission for a National Agenda for the Eighties; Availability of Minutes of Past Meeting

September 23, 1980.

**AGENCY:** Office of Management and Budget.

**ACTION:** Notice of Past Meeting.

**SUMMARY:** Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of Panel VIII (The Quality of American Life) of the President's Commission for a National Agenda for the Eighties took place on September 29, 1980 from 9:00 a.m. to 5:00 p.m. The meeting was held at the O'Hara Hilton Hotel in Chicago, Illinois.

The purpose of the meeting was to discuss the finalization of the panel's draft report.

Minutes of the meeting are available upon request.

**FOR FURTHER INFORMATION CONTACT:** President's Commission for a National Agenda for the Eighties, Office of Administration, 744 Jackson Place, Northwest, Washington, D.C. 20006 (202) 275–0616.

**Brenda Mayberry,**

*Acting Budget and Management Officer.*

[FR Doc. 80-30737 Filed 10-2-80; 8:45 am]

BILLING CODE 3110-01-M

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## OFFICE OF PERSONNEL MANAGEMENT

### Commission on Executive, Legislative, and Judicial Salaries; Meeting Change

**AGENCY:** Commission on Executive, Legislative, and Judical Salaries.

**ACTION:** Notice of change of meeting time.

**SUMMARY:** Notice is hereby given of a change in the time of the first meeting of the Commission on Executive, Legislative, and Judicial Salaries, as

announced on Tuesday, September 30. (45 FR 64774).

**TIME AND DATE:** 9 a.m., Wednesday, October 15, 1980.

**ADDRESS:** Room 3104, New Executive Office Building, 726 Jackson Place, N.W., Washington, D.C.

**FOR FURTHER INFORMATION:** After October 6, contact Loraine Halsey, Suite 440, 1815 N. Lynn Street, Arlington, Virginia 22209. Telephone (703) 235–2782.

**SUPPLEMENTARY INFORMATION:** The Office of Personnel Management is publishing this notice in order to assist the Commission in beginning its work in a timely fashion.

**Beverly M. Jones,**

*Issuance System Manager, Office of Personnel Management.*

[FR Doc. 80-30758 Filed 10-2-80; 8:45 am]

**BILLING CODE 6325-01-M**

## POSTAL SERVICE

### International Postal Rates and Fees; Proposed Changes

**AGENCY:** Postal Service.

**ACTION:** Proposed International Postal Rates and Fees.

**SUMMARY:** Pursuant to its authority under 39 U.S.C. 407, the Postal Service announces proposed increases in international postal rates and in fees for special mail services as indicated below. The proposed increases, other than those marked with an asterisk, are to become effective at 12:01 a.m., January 1, 1981.

**DATE:** Comments must be received on or before November 3, 1980.

**ADDRESS:** Written comments should be directed to the Director, Office of Rates, Rates and Classification Department, U.S. Postal Service, Washington, D.C. 20260. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday in Room 8136.

**FOR FURTHER INFORMATION CONTACT:** Don S. Allen, (202) 245–4418.

**SUPPLEMENTARY INFORMATION:** These proposed increases are necessary to cover increases in the costs incurred by the Postal Service in providing international services. The proposed increases in postage rates primarily reflect the significant increase in the amount the Postal Service will be required to pay foreign postal administrations under recent amendments to the Acts of the Universal Postal Union. The substantial cost increases arising from the Postal Service's obligations under these Acts will apply to mail sent to other countries beginning January 1, 1981.

Where indicated by an asterisk, the international rates and fees are related to domestic rates and fees and will become effective concurrently with the effective date of those domestic rates and fees.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirement of the Administrative Procedure Act regarding proposed rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the following proposed changes in rates of postage and fees for international mail.

(39 U.S.C. 401, 403, 404(2), 407, 410(a))

**W. Allen Sanders,**

*Associate General Counsel, Office of General Law and Administration.*

**BILLING CODE 7710-12-M**

I. International Postal Rates and Fees

A. New Rates

1. Letters and letter packages (Surface)

| Weight Steps Over Lbs. | Over Ozs. | Through Lbs. | Through Ozs. | Canada | Mexico | All other Countries |
|---|---|---|---|---|---|---|
| | | 0 | 1 | 0.20* | $0.20* | $ .30 |
| 0 | 1 | 0 | 2 | .37* | .37* | .47 |
| 0 | 2 | 0 | 3 | .54* | .54* | .64 |
| 0 | 3 | 0 | 4 | .71* | .71* | .81 |
| 0 | 4 | 0 | 5 | .88* | .88* | .98 |
| 0 | 5 | 0 | 6 | 1.05* | 1.05* | 1.15 |
| 0 | 6 | 0 | 7 | 1.22* | 1.22* | 1.32 |
| 0 | 7 | 0 | 8 | 1.39* | 1.39* | 1.49 |
| 0 | 8 | 0 | 9 | 1.56* | 1.56* | 2.76 |
| 0 | 9 | 0 | 10 | 1.73* | 1.73* | 2.76 |
| 0 | 10 | 0 | 11 | 1.90* | 1.90* | 2.76 |
| 0 | 11 | 0 | 12 | 2.07* | 2.07* | 2.76 |
| 0 | 12 | 1 | 0 | 2.58* | 2.58* | 2.76 |
| 1 | 0 | 1 | 8 | 3.07* | 3.07* | 3.78 |
| 1 | 8 | 2 | 0 | 3.57* | 3.57* | 4.80 |
| 2 | 0 | 2 | 8 | 4.06* | 4.06* | 5.55 |
| 2 | 8 | 3 | 0 | 4.56* | 4.56* | 6.30 |
| 3 | 0 | 3 | 8 | 5.05* | 5.05* | 7.05 |
| 3 | 8 | 4 | 0 | 5.55* | 5.55* | 7.80 |
| 4 | 0 | 4 | 8 | 6.05* | -- | -- |
| 4 | 8 | 5 | 0 | 6.54* | -- | -- |
| Each additional pound | | | | .991 | -- | -- |

Maximum limit 60 pounds to Canada, 4 pounds to Mexico and all other countries.

2. Letters and Letter Packages (Air)

a. Canada and Mexico; Refer to rates listed under A.1. (Surface Rates). Mail paid at this rate receives First-Class service in the United States and air service in Canada and Mexico.

b. Colombia, Venezuela, Central America, The Caribbean Islands, Bahamas, Bermuda, St. Pierre & Miquelon: 35 cents per half ounce up to and including 2 ounces; 30 cents each additional half ounce up to and including 32 ounces; 30 cents per additional ounce over 32 ounces.

c. All Other Countries: 40 cents per half ounce up to and including 2 ounces; 35 cents each additional half ounce up to and including 32 ounces; 35 cents per additional ounce over 32 ounces.

3. Post and Postal Cards

a. Surface

(1) Canada and Mexico: 13* cents each.

(2) All other countries: 19 cents each.

b. Air

(1) All countries (except Canada and Mexico): 28 cents each.

(2) Canada and Mexico: 13* cents each.

4. Aerogrammes: 30 cents each.

5. Other Articles (AO)

a. Surface

(1). Regular Printed Matter

| Weight Steps Over | Through | Canada and Mexico | All Other Countries |
|---|---|---|---|
| 0 oz. | 1 oz. | $0.20* | $0.23 |
| 1 | 2 | .37* | .37* |
| 2 | 3 | .54* | .54* |
| 3 | 4 | .71* | .71* |
| 4 | 6 | .85* | .85* |
| 6 | 8 | .95* | .95* |
| 8 | 10 | 1.05* | 1.11 |
| 10 | 12 | 1.15* | 1.29 |
| 12 | 14 | 1.25* | 1.48 |
| 14 | 16 | 1.35* | 1.66 |
| 16 | 18 | 1.80 | 1.80 |
| 18 | 20 | 1.94 | 1.94 |
| 20 | 22 | 2.07 | 2.07 |
| 22 | 24 | 2.21 | 2.21 |
| 24 | 26 | 2.35 | 2.35 |
| 26 | 28 | 2.49 | 2.49 |
| 28 | 30 | 2.62 | 2.62 |
| 30 | 32 | 2.76 | 2.76 |
| 2 lbs. | 3 lbs. | 3.31 | 3.31 |
| 3 lbs. | 4 lbs. | 3.86 | 3.86 |
| Each additional 1 lb. | | .96 | .96 |
| Direct sacks Minimum 15 lbs. Maximum 66 lbs. Per Pound or Fraction | | .86 | .86 |

(2). Publishers Periodicals

| Weight Steps Over | Through | All Countries |
|---|---|---|
| 0 oz. | 1 oz. | $0.12 |
| 1 | 2 | .17 |
| 2 | 3 | .22 |
| 3 | 4 | .27 |
| 4 | 6 | .36 |
| 6 | 8 | .46 |
| 8 | 10 | .55 |
| 10 | 12 | .65 |
| 12 | 14 | .74 |
| 14 | 16 | .83 |
| 16 | 18 | .90 |
| 18 | 20 | .97 |
| 20 | 22 | 1.04 |
| 22 | 24 | 1.11 |
| 24 | 26 | 1.17 |
| 26 | 28 | 1.24 |
| 28 | 30 | 1.31 |
| 30 | 32 | 1.38 |
| 2 lbs. | 3 lbs. | 1.66 |
| 3 lbs. | 4 lbs. | 1.93 |
| Each additional 1 lb. | | .48 |
| Direct sacks Minimum 15 lbs. Maximum 66 lbs. Per Pound or Fraction | | .43 |

(3). Books and Sheet Music

| Weight Steps Over | Through | All Countries |
|---|---|---|
| 0 oz. | 1 oz. | $0.83 |
| 1 | 2 | .83 |
| 2 | 3 | .83 |
| 3 | 4 | .83 |
| 4 | 6 | .83 |
| 6 | 8 | .83 |
| 8 | 10 | .83 |
| 10 | 12 | .83 |
| 12 | 14 | .83 |
| 14 | 16 | .83 |
| 16 | 18 | 1.38 |
| 18 | 20 | 1.38 |
| 20 | 22 | 1.38 |
| 22 | 24 | 1.38 |
| 24 | 26 | 1.38 |
| 26 | 28 | 1.38 |
| 28 | 30 | 1.38 |
| 30 | 32 | 1.38 |
| 2 lbs. | 3 lbs. | 1.66 |
| 3 lbs. | 4 lbs. | 1.93 |
| Each additional 1 lb. | | .48 |
| Direct sacks Minimum 15 lbs. Maximum 66 lbs. Per Pound or Fraction | | .43 |

(4) Small Packets

| Weight Steps Over | Up to | Canada | Mexico | All Other Countries |
|---|---|---|---|---|
| 0 | 1 oz. | $0.20* | $0.20* | $0.23 |
| 1 oz. | 2 | .37* | .37* | .37* |
| 2 | 3 | .54* | .54* | .54* |
| 3 | 4 | .71* | .71* | .71* |
| 4 | 6 | .85* | .85* | .85* |
| 6 | 8 | .95* | .95* | .95* |
| 8 | 10 | 1.05* | 1.05* | 1.11 |
| 10 | 12 | 1.15* | 1.15* | 1.29 |
| 12 | 14 | 1.25* | 1.25* | 1.48 |
| 14 | 16 | 1.35* | 1.35* | 1.66 |
| 16 | 18 | -- | 1.80 | 1.80 |
| 18 | 20 | -- | 1.94 | 1.94 |
| 20 | 22 | -- | 2.07 | 2.07 |
| 22 | 24 | -- | 2.21 | 2.21 |
| 24 | 26 | -- | 2.35 | 2.35 |
| 26 | 28 | -- | 2.49 | 2.49 |
| 28 | 30 | -- | 2.62 | 2.62 |
| 30 | 32 | -- | 2.76 | 2.76 |

b. Air (Encompasses all Printed Matter, Matter for the Blind and Small Packets)

| WEIGHT STEPS Over Ounces | Through Ounces | Canada Note: AO articles sent by air must be prepared as Letter mail. Refer to rates table for Letters and Letter Packages (Surface). | Mexico Colombia, Venezuela, Central America, the Caribbean Islands, Bahamas, Bermuda, & St. Pierre & Miquelon (Also, from American Samoa to Western Samoa, & from Guam to the Phillipines) | South America (except Colombia & Venezuela), Europe (except Estonia, Latvia, Lithuania, & U.S.S.R.), & North Africa | Estonia, Latvia, Lithuania, U.S.S.R., Asia, Pacific Ocean Islands, Africa (other than North Africa) the Indian Ocean Islands & the Middle East |
|---|---|---|---|---|---|
| 0 | 1 | | $0.50 | $0.60 | $0.70 |
| 1 | 2 | | .76 | .96 | 1.16 |
| 2 | 3 | | 1.02 | 1.32 | 1.62 |
| 3 | 4 | | 1.28 | 1.68 | 2.08 |
| 4 | 6 | | 1.54 | 2.14 | 2.74 |
| 6 | 8 | | 1.80 | 2.60 | 3.40 |
| 8 | 10 | | 2.06 | 3.06 | 4.06 |
| 10 | 12 | | 2.32 | 3.52 | 4.72 |
| 12 | 14 | | 2.58 | 3.98 | 5.38 |
| 14 | 16 | | 2.84 | 4.44 | 6.04 |
| 16 | 18 | | 3.10 | 4.90 | 6.70 |
| 18 | 20 | | 3.36 | 5.36 | 7.36 |
| 20 | 22 | | 3.62 | 5.82 | 8.02 |
| 22 | 24 | | 3.88 | 6.28 | 8.68 |
| 24 | 26 | | 4.14 | 6.74 | 9.34 |
| 26 | 28 | | 4.40 | 7.20 | 10.00 |
| 28 | 30 | | 4.66 | 7.66 | 10.66 |
| 30 | 32 | | 4.92 | 8.12 | 11.32 |
| 2 pounds | 2.5 pounds | | 5.96 | 9.96 | 13.96 |
| 2.5 pounds | 3.0 pounds | | 7.00 | 11.80 | 16.60 |
| 3.0 pounds | 3.5 pounds | | 8.04 | 13.64 | 19.24 |
| 3.5 pounds | 4.0 pounds | | 9.08 | 15.48 | 21.88 |
| Each additional 1/2 pound over 4 pounds | | | 1.04 | 1.84 | 2.64 |
| Direct Sacks: Minimum 15 pounds Maximum 66 pounds Per Pound or fraction | | | 1.87 | 3.31 | 4.75 |

6. Parcel Post

a. Surface

1. Canada, Mexico, Central America, The Caribbean Islands, Bahamas, Bermuda, St. Pierre and Miquelon: $3.10 for the first 2 pounds and $1.00 for each additional pound or fraction.

2. All other countries: $3.25 for the first 2 pounds and $1.05 for each additional pound or fraction.

b. Air

Air Parcel Post Rates

| WEIGHT STEPS | Country Groups | | | | |
|---|---|---|---|---|---|
| | A | B | C | D | E |
| First 4 ounces | $3.00 | $3.80 | $4.60 | $5.40 | $6.20 |
| Each additional 4 ounces or fraction up to 5 pounds | .50 | .70 | .90 | 1.10 | 1.30 |
| Each additional 8 ounces or fraction over 5 pounds | .80 | 1.20 | 1.60 | 2.00 | 2.40 |

AIR PARCEL POST RATE GROUPS: See List

AIR PARCEL POST RATE GROUPS

| A | B | C |
|---|---|---|
| Anguilla | Andorra | Albania |
| Antigua | Austria | Azores |
| Aruba | Barbados | Cameroon |
| Bahamas | Bolivia | Czechoslovakia |
| Barbuda | Colombia | Egypt |
| Belize | Denmark | Faeroe Islands |
| Bermuda | Ecuador | French Guiana |
| Bonaire | Fiji | German Democratic Republic (East) |
| British Virgin Islands | Gambia | Germany, Federal Republic of (West) |
| Cayman | Grenada | Great Britain and Northern Ireland |
| Costa Rica | Guinea | Greece |
| Curacao | Guinea-Bissau | Hong Kong |
| Dominica | Guyana | Hungary |
| Dominican Republic | Honduras | Ireland |
| El Salvador | Kiribati | Israel |
| Guadeloupe | Liberia | Italy |
| Guatemala | Liechtenstein | Jordan |
| Haiti | Luxembourg | Kuwait |
| Jamaica | Madiera | Lebanon |
| Martinique | Nicaragua | Libya |
| Mexico | Peru | Macao |
| Montserrat | Pitcairn Islands | Madagascar |
| Netherlands Antilles | Portugal | Mali |
| Nevis | St. Helena | Malta |
| Panama | Santa Cruz Islands | Morocco |
| Redonda | Suriname | Nauru |
| Saba | Switzerland | Netherlands |
| St. Christopher | Tonga | Nigeria |
| St. Eustatius | Tristan da Cunha | Paraguay |
| St. Lucia | Trinidad & Tobago | Poland |
| St. Pierre & Miquelon | Tuvalu | Qatar |
| St. Vincent & the Grenadines | Uruguay | Romania |
| Turks & Caicos Islands | Vanuatu | San Marino |
| | Venezuela | Saudi Arabia |
| | Western Samoa | Sierra Leone |
| | | Solomon Islands |
| | | Spain |
| | | Syria |
| | | Taiwan |
| | | Tunisia |
| | | Turkey |
| | | Upper Volta |
| | | Vatican City State |
| | | Yugoslavia |

AIR PARCEL POST RATE GROUPS

| D | D | E |
|---|---|---|
| Afghanistan | Korea, Republic of (South) | Angola |
| Algeria | Malawi | Bangladesh |
| Argentina | Malaysia | Belgium |
| Australia | Maldives | Botswana |
| Bahrain | Mauritania | Brazil |
| Benin | Nepal | Burundi |
| Brunei | New Caledonia | Central African Republic |
| Bulgaria | New Zealand | China, People's Republic of |
| Burma | Niger | Comoros |
| Cape Verde | Norway | Corsica |
| Chad | Oman | Djibouti |
| Chile | Pakistan | Estonia |
| Congo | Papua - New Guinea | France |
| Cyprus | Philippines | Indonesia |
| East Timor | Rwanda | Japan |
| Equatorial Guinea | St. Thomas and Principe | Lao |
| Ethiopia | Senegal | Latvia |
| Falkland Islands | Seychelles | Lesotho |
| Finland | Singapore | Lithuania |
| French Polynesia | Somalia (Southern) | Mauritius |
| Gabon | Sri Lanka | Mozambique |
| Ghana | Sudan | Namibia |
| Gibraltar | Swaziland | Reunion |
| Greenland | Sweden | South Africa |
| Iceland | Thailand | Tanzania |
| India | Togo | U. S. S. R. |
| Iran | Uganda | Zambia |
| Iraq | United Arab Emirates | Zimbabwe |
| Ivory Coast | Yemen Arab Republic | |
| Kenya | Yemen, People's Democratic Republic of | |
| | Zaire | |

B. New Special Mail Services Fees

1. Nonstandard Surcharge

a. Letters (weighing one ounce or less): 9* cents

b. Regular Printed Matter (weighing one ounce or less: 9* cents

2. Customs Clearance and Delivery Fee: $1.75

3. Inquiry Fee: $3.75*

4. Return receipt requested at time of mailing: 60* Cents

5. Registered Mail

| Limit of indemnity | Fee |
|---|---|
| 1. Canada | |
| $00.00 to $200 | $3.40* |
| 2. All other countries | |
| $15.76 | $3.40* |

6. Insured Mail

| Limit of Indemnity** | | Fees | |
|---|---|---|---|
| Over | Up to | Canada | All Other Countries |
| 0 | $ 15 | $0.45* | $0.85 |
| 15 | 50 | .75* | 1.10 |
| 50 | 100 | 1.25* | 1.65 |
| 100 | 150 | 1.65* | 2.35 |
| 150 | 200 | 2.00* | 2.35 |
| 200 | 300 | 3.40* | 3.85 |
| 300 | 400 | 4.55* | 5.10 |
| 400 | 500 | -- | 5.40 |
| 500 | 600 | -- | 5.70 |
| 600 | 700 | -- | 6.00 |
| 700 | 800 | -- | 6.30 |
| 800 | 900 | -- | 6.60 |
| 900 | 1,000 | -- | 6.90 |
| 1,000 | 1,100 | -- | 7.20 |
| 1,100 | 1,200 | -- | 7.50 |

**Limits vary by country.

7. Money Orders

a. Orders Issued on Domestic Form

| Amount of Money Order | Fee |
|---|---|
| $0.01 to $10 | $0.80* |
| $10.01 to $50 | $1.15* |
| $50.01 to $500 | $1.60* |

b. Orders Issued on International Form

| Amount of Money Order | Fee |
|---|---|
| $0.01 to $10 | $1.30 |
| $10.01 to $50 | $1.50 |
| $50.01 to $500 | $1.80 |

8. Special Handling

| WEIGHT | Fee |
|---|---|
| Not more than 10 pounds | $0.75* |
| More than 10 pounds | $1.30* |

9. Special Delivery

| Class of Mail | Not more than 2 pounds | Over 2 pounds but not more than 10 pounds | Over 10 pounds |
|---|---|---|---|
| Letters, letter packages, post and postal cards, and other articles (air only) | $2.10* | $2.35* | $3.00* |
| Other articles (surface only) | $2.35* | $3.00* | $3.40* |

10. Restricted Delivery: $1.00*

11. Certificates of Mailing

| | Fee |
|---|---|
| Individual listed pieces: Original | $0.40* |
| Copy of original certificate of mailing or receipt for registered or insured mail | 0.40* |
| Identical pieces: Up to 1,000 pieces | 1.35* |
| For each additional 1,000 pieces, or fraction | 0.15* |
| Duplicate copy | 0.40* |

[FR Doc. 80-30671 Filed 10-2-80; 8:45 am]
BILLING CODE 7710-12-C

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 11378; 811-255]**

### Chase National Income Fund, Inc.; Proposal To Terminate Registration Pursuant to Section 8(f) of the Investment Company Act of 1940

September 29, 1980.

Notice is hereby given that the Commission proposes, pursuant to Section 8(f) of the Investment Company Act of 1940 ("Act"), to declare by order on its own motion, that Chase National Income Fund, Inc. ("Fund"), 1000 N. Central Expressway, Dallas, Texas 75231, registered under the Act as an open-end, diversified management investment company, has ceased to be an investment company as defined in the Act.

Information contained in the files of the Commission indicates that the Fund filed its Notification of Registration (Form N-8A) on January 17, 1975, pursuant to Section 8 of the Act but has never filed a registration statement pursuant to that section or pursuant to the Securities Act of 1933 to make a public offering of shares of its capital stock. The Fund has never filed the annual and periodic reports required by Section 30 of the Act. Moreover, a letter sent to the address of the last known counsel for the Fund by the staff of the Division has been returned as undeliverable. Thus, it appears that the fund is not currently engaged in the business of an investment company.

Section 8(f) of the Act provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company it shall so declare by order, which may be made upon appropriate conditions if necessary for the protection of investors, and upon the taking effect of such order, the registration of such company shall cease to be in effect.

Notice is Further Given that any interested person may, not later than October 24, 1980, 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 reasons 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 the Fund 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, an 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 recceive 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. 80-30707 Filed 10-2-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 34-17171; File No. SR-CSE-80-5]**

### The Cincinnati Stock Exchange; Self-Regulatory Organizations, 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 September 11, 1980, the above-mentioned self-regulatory organization filed with the Securities and Exchange Commission a proposed rule change as follows:

The Cincinnati Stock Exchange's Statement of the Terms of Substance of the Proposed Rule Change.

Effective October 1, 1980, the Board of Trustees of The Cincinnati Stock Exchange ("CSE") is revising the National Securities Trading System ("NSTS") fee schedule as follows (italics indicate portions added):

*NATIONAL SECURITIES TRADING SYSTEM FEES*

* * * * *

*(g) Discounts will be applied to both members' and non-members' total gross fees charged in any given month as follows:*

[*In percent*]

| *Gross fees* | *Discount* |
|---|---|
| *Up to $10,000* | *0* |
| *$10,000 to $20,000* | *10* |
| *$20,000 to $40,000* | *20* |
| *$40,000 and above* | *30* |

The Cincinnati Stock Exchange's Statement of Basis and Purpose.

By action of the Board of Trustees on September 8, 1980, the schedule of fees charged for trading through the NSTS was amended.

Section 6(b)(4) of the Act is the basis for these fees since specified charges are reasonable and equitably allocated to those who avail themselves of such Exchange services.

No comments were solicited from Members nor were any received.

Fees as set forth impose no burden on competition.

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 purpose 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, Washington, D.C. 20549. Copies of the filing with respect to the foregoing and 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 number references in the caption above and should be submitted on or before October 14, 1980.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80-30708 Filed 10-2-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Release No. 21728; 70-6500]**

### New England Power Co. and New England Electric System; Proposed Capital Contribution by Holding Company to Subsidiary

September 26, 1980.

Notice is hereby given that New England Electric System ("NEES"), a registered holding company, and its electric utility subsidiary company, New England Power Company ("NEPCO"); 20

Turnpike Road, Westborough, Massachusetts 05181 have filed with this Commission an application-declaration pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 9(a), 10 and 12 of the Act and Rules 42(a) and 45 promulgated thereunder as applicable to the proposed transaction. All interested persons are referred to the application-declaration, which is summarized below, for a complete statement of the proposed transaction.

NEES proposes to make a capital contribution to NEPCO of $20,000,000. NEPCO will use such contribution to repay a like amount of its short-term promissory notes issued to pay for capitalizable expenditures or to reimburse the treasury therefor. It is expected that such short-term promissory notes will aggregate approximately $90,000,000 at the time of the proposed capital contribution.

The fees and expenses to be incurred in connection with the proposed transaction are estimated at $2,500, including $500 of incidental services to be performed, at cost, by New England Power Service Company, an affiliate of NEES. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than October 24, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as filed or as it may be amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. 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 Corporate Regulation, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 80-30910 Filed 10-2-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 11376; 812-4710]**

## Voyager Variable Annuity Account C, Voyager Variable Annuity Account D, and Voyager Life Insurance Co.; Application

September 26, 1980.

Notice is hereby given that Voyager Variable Annuity Account C ("Account C"), and Voyager Variable Annuity Account D ("Account D"), diversified, open-end management investment companies registered under the Investment Company Act of 1940 (the "Act"), and Voyager Life Insurance Company ("Voyager Life"), 2255 Phyllis Street, Jacksonville, FL 32204, a stock life insurance company incorporated under the laws of the State of Florida (hereinafter collectively called "Applicants"), filed an application on August 12, 1980 for an order pursuant to Section 6(c) of the Act exempting Applicants from the provisions of Sections 14(a) and 27(c)(2) of the Act. All interested persons are referred to the application on file with the Commission for the facts and representations contained therein, which are summarized below.

Voyager Life established Account C and Account D as investment media for group variable annuity retirement contracts (the "Contracts") to be issued by Voyager Life in connection with deferred compensation plans adopted by governmental entities under Section 457 of the Internal Revenue Code of 1954, as amended ("Code"). The Contract owner will be the public employer.

The Contracts offered for sale by Voyager Securities, Inc., a wholly-owned subsidiary of the parent of Voyager Life, Voyager Group, Inc., as principal underwriter of Accounts C and D, are periodic payment contracts.

In connection with its issue and sale of the Contracts, Voyager Life makes no front-end deductions from purchase payments (except for any premium taxes which may be then due; otherwise any premium tax due will be deducted from purchase payments or from individual account values at the annuity commencement date or at such other time as the tax becomes due).

In the event of a partial or full surrender of the Contract or individual account thereunder during the accumulation period, a contingent deferred sales charge may be made from the amount surrendered to determine the amount to be paid if purchase payments have been made for fewer than fifteen years for an individual account. No contingent deferred sales charge is made from annuity payments under an option involving lifetime payments or from amount paid due upon the death of a participant.

The contingent deferred sales charge is a percentage of the amount surrendered, as below; however, the charge will not exceed 9% of the purchase payments made.

[In percent]

| Completed years of purchase payment for the individual account | Contingent deferred sales charge |
|---|---|
| Less than 5 | 5 |
| 5 or more but less than 10 | 3 |
| 10 or more but less than 15 | 2 |
| 15 or more | (1) |

[1] None.

Voyager Life makes daily deductions from the variable portion of the Contract at an effective annual rate of 1.44%, consisting of .44% for investment advisory services and 1.00% for the annuity rate and expense risks assumed by Voyager Life.

During the accumulation period, an annual administrative fee of $15 is deducted on each July 2 from the individual account value. If an individual account is fully surrendered prior to the commencement of annuity payments, the annual administrative fee will be deducted from proceeds paid.

The assets of Account C and Account D will include the purchase payments paid to Voyager Life under the Contracts and the securities and other investments in which such purchase payments are invested. These securities will remain in the custody of Voyager Life as provided by Rule 17f-2 of the Act by deposit through safekeeping agreements with a bank whose functions and physical facilities are supervised by authorities of the State of New York.

### Section 14(a)

Section 14(a) of the Act provides, in pertinent part, that no registered investment company and no principal underwriter for such a company shall make a public offering of securities of which such company is the issuer unless the investment company has a net worth of at least $100,000. An exemption from

this requirement for a separate account funding only "tax-benefited variable annuity contracts" is set forth in Rule 14a–2. The Rule, promulgated in 1969, does not include within the definition of "tax benefited variable annuity contracts" contracts used in connection with plans satisfying the requirements of Sections 408 or 457 of the Code.

Applicants seek an exemption from the provisions of Section 14(a) of the Act, subject to the same conditions as are currently set forth in Rule 14a–2, to permit the allocation to the Accounts of purchase payments under Contracts issued in accordance with the provisions of Sections 408 or 457 of the Code.

Applicants assert that a separate account funding contracts issued in connection with Section 408 or Section 457 plans, in addition to "tax-benefited variable annuity contracts" as defined in Rule 14a–2, is entitled to precisely the same relief from Section 14(a) of the Act as a separate account funding only "tax-benefited variable annuity contracts." Applicants believe that the narrower definition found in Rule 14a–2 is due solely to the fact that Sections 408 and 457 of the Code did not exist at the time Rule 14a–2 was adopted and that the purpose of the Rule (as well as Rules 15a–3, 16a–1 and 32a–2), that of allowing the Accounts to avoid mingling monies received under "tax-benefited variable annuity contracts" with other funds, is equally served by allowing contracts issued in connection with Section 408 and 457 plans to be treated as "tax-benefited variable annuity contract."

**Section 27(c)(2)**

Section 27(c)(2) of the Act prohibits a registered investment company or a depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales load, are deposited with a bank as trustee or custodian and held under an indenture or agreement containing, in substance, the provisions required by Section 26(a)(2) and (3) for trust indentures of a unit investment trust.

Applicants assert that all purchase payments received under the Contracts are to be applied or held for later application to the purchase of investments for the Account, of which Voyager Life will have custody as owner and not as trustee. Exemption is requested from Section 27(c)(2) to permit all purchase payments received under the Contracts to be held and applied by Voyager Life in the manner set forth in its Investment Advisory Services Agreement which requires, in part, that monies received for each Account be deposited in one or more cash accounts identified as assets of the Account maintained in one or more banks which will have the qualifications prescribed in paragraph (1) of Section 26(a) of the Act for trustees of unit investment trusts, but which banks will not act as trustee or custodian, or under an indenture or agreement meeting the requirements in Sections 26(a)(2) and (3).

In support of their requested exemptions from Section 27(c)(2), Applicants state that Voyager Life is subject to extensive supervision and regulation by the Commissioner of Insurance of Florida, and to the applicable insurance laws in the other jurisdictions in which Voyager Life does an insurance business. In addition, under Florida Law, Voyager Life cannot abandon its obligations to owners or annuitants until they have been fully discharged, and the assets of the Account, equal to the reserves and other liabilities under the Contracts, are not chargeable with liabilities arising out of any other business that Voyager Life may conduct.

The regulatory and supervisory functions of the Florida Commissioner of Insurance include periodic inspections of Voyager Life's operations. Applicants further state the Accounts' investment will be physically segregated at all times, that its investments will at all times be subject to inspection by the Commission, that each person depositing or withdrawing investments will sign a notation in respect thereof, and that only certain designated persons will have access to the securities and other investments in the accounts as follows: (1) two or more jointly of the not more than three officers or responsible employees of the Accounts or of Voyager Life designated pursuant to a resolution of the Board of Managers of the Account; (2) properly authorized officers and employees of Voyager Life; (3) for the purposes of verification, audit and examination, independent public accountants jointly with any of the persons designated above; and (4) authorized employees or agents of the state insurance regulatory authorities.

Section 6(c) authorizes the Commission upon application to conditionally or unconditionally exempt any person, securities, or transaction, or any class or classes of persons, securities, or transactions, from the provisions of the Act or the Rules and Regulations promulgated 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.

Applicants have consented that any order granting the requested exemption from Section 27(c)(2) may be made subject to the conditions (1) that the charges under the Contracts for administrative services shall not exceed such reasonable amounts as the Commission shall prescribe, Jurisdiction being reserved to the Commission for such purpose, and (2) that the payment of sums and charges out of the assets of the Account shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that the Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services, and Applicants reserve the right in any proceeding before the Commission or in any suit or action in court to assert that the Commission has no authority to regulate the payment of such other sums or charges.

Notice is further given that any interested person may not later than October 22, 1980 at 5:30 p.m., submit to the Commission in writing a request for a hearing on the application accompanied by a statement as to the nature of his/her interest, the reason for such request, and the issues, if any, of fact or law proposed to be controverted; or he/she may request that he/she 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 Applicants at the address stated above. Proof of such service (by affidavit, or in 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, an order disposing of the Application herein may be issued as of course following October 22, 1980 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. 80-30709 Filed 10-2-80; 8:45 am]

BILLING CODE 8010-01-M

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**[Rel. No. 11377; 812-4709]**

## Voyager Variable Annuity Fund, Voyager Variable Annuity Account C, Voyager Variable Annunity Account D, and Voyager Life Insurance Co.; Application

September 26, 1980.

Notice is hereby given that Voyager Variable Annuity Fund ("Fund"), Voyager Variable Annuity Account C ("Account C"), and Voyager Variable Annuity Account D ("Account D") of Voyager Life Insurance Company ("Voyager Life") 2255 Phyllis Street Jacksonville, FL 32204 (hereinafter collectively referred to as "Applicants"), filed an application on August 12, 1980 pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act") for an order of the Commission granting exemptions from Sections 2(a)(32), 2(a)(25), 22(c) (and Rule 22c-1 thereunder), 26(a)(2)(C),(27)(c)(2),27(c)(2) and 27(d) of the Act. The Fund is registered under the Act as an open-end diversified management investment company. Account C and Account D each filed registration statements under the Act on August 4, 1980 as open-end diversified management investment companies. All interested persons are referred to the application on file with the Commission for a statement of the facts and representations contained therein, which are summarized below.

Voyager Life, a Florida-domiciled stock life insurance company, is a wholly-owned subsidiary of Voyager Group, Inc., also a Flroida corporation. The Accounts are separate accounts of Voyager Life established pursuant to the insurance laws of Florida for the purpose of holding reserves attributable to certain of Voyager Life's variable annuity contracts. Voyager Life is registered as an investment adviser under the Investment Advisers Act of 1940 and, as such, acts as investment adviser to the Accounts.

Under the variable annuity contracts currently offered by the Fund, sales charges are deducted from purchase payments as they are made. Applicants seek this exemption to permit the offering by the Accounts of new periodic payment group variable annuity retirement contracts (the "Contracts") to governmental entities which have adopted deferred compensation plans ("Plan") under Section 457 of the Internal Revenue Code of 1954, as amended (the "Code") which will have a contingent deferred sales charge. These Contracts are designed primarily for Plans involving 25 or more participants, having annual purchase payments of at least $50,000, and permitting group meetings of employees for solicitation. A single master group Contract is issued to cover all present and future participants. The Contract owner will be the public employer and the Contracts will be a part of the Contract owner's general assets. Benefits available to Participants are governed exclusively by the provisions of the Plan and are backed only by the general assets of the Contract owner.

Values of Individual Accounts under a Contract and the Contract value itself will vary with the investment performance in the Accounts of the full purchase payments (less periodic deductions from those values). At the selected annuity commencement date, annuity payments will begin as designated by the Contract owner (or Participant, as appropriate). In the event of partial or full surrender of the Contract or an Individual Account during the purchase payment accumulation period prior to the completion of fifteen purchase payment years, a Contingent Deferred Sales Charge is made from the amount to be paid. The Contingent Defered Sales Charge is a percentage of the amount surrendered to determine the amount surrendered, as below; however, the deduction will not exceed 9% of the purchase payments made.

[In percent]

| Completed years of purchase payment for the individual account | Contingent deferred sales charge |
|---|---|
| Less than 5 | 5 |
| 5 or more but less than 10 | 3 |
| 10 or more but less than 15 | 2 |
| 15 or more | [1] |

[1] None.

The Contingent Deferred Sales Charge will not be imposed on withdrawals due to the death of a Participant nor will it be imposed upon election of a life contingency annuity option.

### Sections 26(a)(2)(C) and 27(c)(2)

Section 27(c)(2) prohibits a registered investment company, depositor or underwriter for such company from selling periodic payment plan certificates unless the proceeds of all payments, other than sales loads, on such certificates are deposited with a trustee or custodian having the qualifications prescribed in Section 26(a)(1), and are held by such trustee or custodian under an agreement containing substantially the provisions required by Sections 26(a)(2) and 26(a)(3) of the Act. Section 26(a)(2)(C) provides that no payment to the depositor of, or principal underwriter for, a registered unit investment trust shall be allowed the trustee or custodian as an expense except a fee, not exceeding such reasonable amount as the Commission may prescribe, as compensation for performing bookkeeping or other administrative duties normally performed by the trustee or custodian. For purposes of the Act, Voyager Life is the depositor, and its wholly-owned subsidiary, Voyager Securitys, Inc. is the principal underwriter with respect to the Accounts. Voyager Life acts as its own custodian as provided by Rule 17f-2 under the Act, through safekeeping arrangements with a bank whose functions and physical facilities are regulated by authorities of the State of New York.

Section 26(a)(2)(C) provides that no payment to the depositor of or principal underwriter for a registered unit investment trust shall be allowed the trustee or custodian as an "expense." Applicants submit that the proposed Contingent Deferred Sales Charge is not the kind of expense contemplated by Section 26(a)(2). Applicants submit that Section 26 of the Act was enacted to deal with certain abuses by requiring the trust instrument of a unit investment trust to (1) designate as trustee or custodian a bank of a specified minimum size; (2) require that all funds and property of the trust be held by a trustee; (3) provide that the trustee is entitled to reimburse itself out of the trust property for its expenses incurred and fees actually earned. Applicants submit that these requirements were not intended to prevent the depositor of a unit investment trust from imposing a sales load. They assert that the Contingent Deferred Sales Charge to be imposed upon the withdrawal of Contract values is designed to recover costs related solely to the sale of the Contracts. Section 27(c)(2) expressly provides for the deduction of sales loads from purchase payments before the proceeds are deposited with a custodian under the requirements of section 26. Applicants submit that the Contingent Deferred Sales Charge is a sales load to which Section 27(c)(2) applies, and that the deferral of the imposition of the sales charge until withdrawal of Contract value, an event which may never occur, should not be construed in any way as in violation of Section

27(c)(2). Applicants have requested an exemption from the provisions of Section 26(a)(2)(C) and Section 27(c)(2), to the extent necessary, to offer the Contracts.

Applicants have consented to the exemptions requested herein from Sections 26(a) and 27(c)(2) being made subject to the following conditions: (1) that the charges to variable annuity Contract owners for administrative services shall not exceed such reasonable amount as the Commission shall prescribe, jurisdiction being reserved for such purpose; and (2) that the payments of sums and charges out of the assets of the Accounts shall not be deemed to be exempted from regulation by the Commission by reason of the requested order, provided that Applicants' consent to this condition shall not be deemed to be a concession to the Commission of authority to regulate the payments of sums and charges out of such assets other than charges for administrative services; and Applicants reserve the right in any proceeding before the Commission, or in any suit or action in any court, to assert that the Commission has no authority to regulate the payments of such other sums or charges.

**Sections 2(a)(32) and 27(d)**

Section 2(a)(32) of the Act defines a redeemable security as any security under the terms of which the holder is entitled to receive approximately his proportionate share of the issuer's current net assets, or the case equivalent thereof. Section 27(d) of the Act, in pertinent part, requires that the holder of a periodic payment plan certificate be able to surrender the certificate under certain circumstances with the recovery of certain front-end sales charges. Applicants assert that Sections 2(a)(32) and 27(d) contemplate the deduction of sales charges from purchase payments at the time they are made. Applicants assert that under a Contract, the net amount invested would be the gross purchase payments, and therefore, the holder's "proportionate share" would be the gross purchase payment(s) plus or minus any increase or decrease in value, less the Contingent Deferred Sales Load, if any. Applicants maintain that the deferral or elimination of the sales charge does not restrict in any way the Contract owner or participant from receiving his proportionate share or the value of his individual account on redemption. If applicable, the Contingent Deferred Sales Load would be deducted upon redemption in determining the proportionate share or account value, as opposed to being deducted from initial purchase payments. Applicants submit that the deferral or elimination of sales charges permits the Contract owner's net amount invested to be increased, to its and its participating employees' benefit. Applicants have requested an exemption from the provisions of Sections 2(a) and 27(d), to the extent necessary to permit the imposition of the Contingent Deferred Sales Load.

**Section 27(c)(1)**

Section 27(c)(1) of the Act, in pertinent part, makes it unlawful for any registered investment company issuing periodic payment plan certificates, or for any depositor or underwriter of such company to sell any such certificate unless it is a redeemable security. Applicants submit that the Contingent Deferred Sales Load which may be imposed on redemption of the Contracts is not a restriction on redemption under Section 27(c)(1). Applicants assert that this is particularly true where the deferral or elimination of sales charges until the Contract is redeemed has the effect of increasing the Contract value available for redemption. However, Applicants have requested an exemption from the operation of the provisions of Section 27(c)(1), to the extent necessary, to permit sales charges to be imposed only upon withdrawal of Contract values.

**Section 22(c) and Rule 22c–1**

Rule 22c–1, promulgated under Section 22(c) of the Act, in pertinent part, prohibits a registered investment company issuing redeemable securities from selling, redeeming, or repurchasing any such security except at a price based on the current net asset value of such security. When a Contract owner surrenders all or part of the value of the Contract, the price on redemption will be based on the current net asset value. The Contingent Deferred Sales Load, if any, will merely be deducted at the time of redemption in arriving at the Contract owner's proportionate share or account value. While Applicants do not believe that the imposition of the Contingent Deferred Sales load is violative of Section 22(c) or Rule 22c–1, Applicants have requested an exemption from the provisions of Section 22(c) and Rule 22c–1 thereunder, to the extent necessary, to offer the Contracts.

**Section 6(c)**

Section 6(c) of the Act provides that the Commission, by order upon application, may conditionally or unconditionally exempt any persons, securities or transactions from any provision of the Act 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.

Notice is further given that any interested person may, not later than October 22, 1980 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 issues of fact or law proposed to be controverted, or he/she may request that he/she 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 Applicants at the address stated above. Proof of 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, an order disposing of the application will be issued as of course following October 22, 1980 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 postponement thereof.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

**George A. Fitzsimmons,**

*Secretary.*

[FR Doc. 30706 Filed 10–2–80; 8:45 am]

BILLING CODE 8010–01–M

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**[Rel. No. 21731; 70–6260]**

## New England Electric System and New England Energy, Inc.; Proposed Increase in Bank Loans To Finance Fuel Subsidiary

September 29, 1980.

Notice is hereby given that New England Electric System ("NEES"), 25 Research Drive, Westborough, Massachusetts 01581, a registered holding company, and New England Energy Incorporated ("NEEI"), a fuel subsidiary of NEES, have filed with this Commission a post-effective amendment to their application-declaration previously filed and amended pursuant to the Public Utility Holding Company Act of 1935 ("Act"), designating Sections 6(a), 7, 9(a), 10, 12(b) and 12(d) of the Act and Rules 43, 50(a)(2) and 50(a)(3) promulgated thereunder as applicable to

the proposed transaction. All interested persons are referred to the application-declaration, as amended by said post-effective amendment, which is summarized below, for a complete statement of the proposed transaction.

In a series of prior orders in other proceedings dated October 30, 1974, June 18, 1976, July 19, 1978, December 28, 1979, and August 7, 1980 (HCAR Nos. 18635, 19580, 20632, 21365 and 21673), applicants-declarants were authorized, among other things, to do the following: (1) NEES was authorized to organize NEEI and acquire its capital stock; (2) NEEI was authorized to enter into a partnership agreement with Samedan Oil Corporation ("Samedan"), to explore for oil and gas, and an amendment thereto, said partnership currently extending through December 31, 1984; (3) NEES was authorized to invest in NEEI in the form of common stock and subordinated debt up to $45,000,000 through December 31, 1979 (which date was subsequently extended through December 31, 1988); and (4) NEEI was authorized to make sales of fuel oil to New England Power Company ("NEP"), an affiliate, pursuant to a fuel purchase contract, on certain terms and conditions, including a full cost pool concerning its oil and gas properties. In the order of August 7, 1980 (HCAR No. 21673), NEEI was authorized to invest up to $60,000,000 in the Samedan partnership during the 1980 calendar year.

By prior order issued in this proceeding dated July 25, 1979 (HCAR No. 21558), NEEI was authorized to enter into an agreement ("Loan Agreement") with the Bank of Montreal and the National Bank of North America (the "Banks") for an $80,000,000 revolving credit loan, up to $40,000,000 of such amount to be made available in 1979, $60,000,000 in 1980, and $80,000,000 in 1981. Upon termination the revolving credit loan will become a term loan. Under the Loan Agreement the revolving credit period runs from January 1, 1979, through December 31, 1981, and may, at NEEI's option, be extended for two additional years. The Banks will make a term loan to NEEI upon termination of the revolving credit period in the amount of the revolving credit balance outstanding on the termination date, such loan to be for a maximum of five years and to require equal quarterly payments amortizing the principal. The loan bears interest during the revolving credit period at a rate per annum of ¾ of 1% over the Bank of Montreal's United States prime rate, or ⅞ of 1% over the London Interbank Offered Rate ("LIBOR") for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. The loan bears interest during its term loan period at a rate per annum of ⅞ of 1% over the Bank of Montreal's United States prime rate, or 1% over LIBOR for 30, 60, 90 or 180-day United States dollar deposits, at NEEI's option. There is a commitment fee on the unused available portion of the loan commitment of ¼ of 1% per year (on that year's committed amount) during the revolving credit period and ⅜ of 1% per year during any extension of that period. Interest and the commitment fee are payable quarterly. The loan is prepayable without penalty, and the commitment amount may be reduced in whole or in part without penalty.

Under the Loan Agreement NEEI is required to maintain a ratio of not more than 70 to 30 with respect to (i) debt outstanding under the Loan Agreement and (ii) subordinated debt payable to NEES and stockholder's equity (excluding any deferred taxes). The latter amount is presently limited to $45,000,000 (HCAR No. 21158, July 25, 1979), so debt outstanding under the Loan Agreement, without regard to the present maximum committed amounts, is limited to $105,000,000. The Loan Agreement also (1) requires NEEI to prepay the loan to the extent it receives proceeds from any long-term financing secured by any of its oil and gas properties included in the full cost pool, (2) limits modifications which may be made to the fuel purchase contract between NEEI and NEP, (3) required NEEI to assign to the Bank of Montreal its rights under the fuel purchase contract.

By post-effective amendment in this proceeding NEEI requests authorization to enter into an amendment ("Amendment") to the Loan Agreement, which amendment would (1) accelerate the $80,000,000 commitment of the Banks from 1981 to the effective date of a Commission order authorizing NEEI's entering into the Amendment, and (2) increase the Banks' commitment for 1981 to $105,000,000. It is stated that NEEI's borrowings under the Loan Agreement were $52,000,000 as of August 31, 1980, and that NEEI estimates it will require an additional $24,000,000 of borrowings during 1980 to finance its expenditures in the Samedan partnership. Only $8,000,000 of additional borrowings are available from the present committed amount under the Agreement for 1980, leaving a shortfall of $16,000,000. In addition, NEEI is seeking, in another filing, to enter into a separate partnership agreement with Dorchester Exploration Incorporated to explore for oil and gas, which could require investment by NEEI in 1980 of up to $15,000,000. It is NEEI's belief that entering into the Amendment would provide for bank borrowings adequate to finance NEEI's needs for the remainder of 1980, including investment in the Dorchester partnership if it should be authorized. It is further stated that an increase in the Banks' commitment to $105,000,000 for 1981 is needed in order to meet, in part, NEEI's capital requirements for 1981, presently estimated at $100,000,000. Authorization concerning the remainder of NEEI's 1981 financing requirements will be the subject of a further filing with this Commission.

NEEI claims exemption from the competitive bidding requirements of Rule 50 for the issuance of its notes to the Banks pursuant to Rule 50(a)(2).

The fees and expenses to be incurred in connection with the proposed transaction will be supplied by amendment. It is stated that no state commission and no federal commission, other than this Commission, has jurisdiction over the proposed transaction.

Notice is further given that any interested person may, not later than October 27, 1980, request in writing that a hearing be held on such matter, stating the nature of his interest, the reasons for such request, and the issues of fact or law raised by said application-declaration, as amended by said post-effective amendment, which he desires to controvert; or he may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of such request should be served personally or by mail upon the applicants-declarants at the above-stated address, and proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. At any time after said date, the application-declaration, as amended by said post-effective amendment or as it may be further amended, may be granted and permitted to become effective as provided in Rule 23 of the General Rules and Regulations promulgated under the Act, or the Commission may grant exemption from such rules as provided in Rules 20(a) and 100 thereof or take such other action as it may deem appropriate. 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 Corporate Regulation, pursuant to delegated authority.

George A. Fitzsimmons,

*Secretary.*

[FR Doc. 80-30882 Filed 10-2-80; 8:45 am]

BILLING CODE 8010-01-M

## DEPARTMENT OF THE TREASURY

### Fiscal Service

**[Dept. Circ. 570, 1980 Rev., Supp. No. 8]**

### American General Insurance Company; Surety Companies Acceptable on Federal Bonds; Termination of Authority

Notice is hereby given that the certificate of authority issued by the Treasury to American General Insurance Company, Houston, Texas, under Sections 6 to 13 of Title 6 of the United States Code, as an acceptable surety on Federal bonds is hereby terminated, effective July 1, 1980.

The company was last listed as an acceptable surety on Federal bonds at 45 FR 44501 dated July 1, 1980.

With respect to any bonds currently in force with American General Insurance Company, bond-approving officers of the Government may let such bonds run to expiration and need not secure new bonds, but no new bonds should be accepted from the company. All bonds in force at July 1, 1980 have been reinsured with Maryland Casualty Company, a Treasury certificated company, last listed at 45 FR 44507, July 1, 1980 (1980 Revision, Treasury Circular 570). A copy of the reinsurance agreement is on file with the Treasury.

Questions concerning this notice may be directed to the Audit Staff, Bureau of Government Financial Operations, Department of the Treasury, Washington, D.C. 20226, Telephone 202-634-5010.

September 25, 1980.

W. E. Douglas,

*Commissioner, Bureau of Government Financial Operations.*

[FR Doc. 80-30760 Filed 10-2-80; 8:45 am]

BILLING CODE 4810-35-190

### Internal Revenue Service

**[Delegation Order No. 51 (Rev. 5)]**

### Delegation of Authority to Sign Proofs of Claim and Other Documents

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

**ACTION:** Delegation of authority.

**SUMMARY:** The Authority of the Commissioner of Internal Revenue to sign proofs of claim and other documents in order to claim taxes in any insolvency or decedent estate proceeding is redelegated as set forth in the text of the delegation order which appears below.

**EFFECTIVE DATE:** September 29, 1980.

**FOR FURTHER INFORMATION CONTACT:** Mr. Frank P. Nixon, 1111 Constitution Avenue, NW., Room 7527, CP:C:O, Washington, D.C. 20224, (202) 566-4471 (Not Toll Free).

J. R. Starkey,

*Director, Collection Division.*

**[Order No. 51 (Rev. 5)]**

Date of issue: September 29, 1980.

Effective Date: September 29, 1980.

### Authority To Sign Proofs of Claim and Other Documents

1. Pursuant to the authority vested in the Commissioner of Internal Revenue by 26 CFR 301.7701-9 and 26 CFR 301.6871, the authority to sign proofs of claim and other documents asserting the obligations incurred under the Internal Revenue laws (including taxes, penalties and interest), in order to claim and collect such obligations in any proceeding under the Bankruptcy Act, Bankruptcy Code and any receivership, decedent's estate, corporate dissolution, or other insolvency proceeding is hereby redelegated to the following officers:

Chief, Special Procedures Staff.
Chief, Technical and Office Compliance Branch.
Chief, Technical and Office Compliance Group in streamlined districts.

2. The authority in Section 1 may be redelegated but no lower than the following:

Special Procedures Officers.
Advisors no lower than grade 12.
Advisor/Reviewers no lower than grade 12.

This Order supersedes Delegation Order No. 51 (Rev. 4), issued March 21, 1979.

Jerome Kurtz,

*Commissioner.*

[FR Doc. 80-30865 Filed 10-2-80; 8:45 am]

BILLING CODE 4830-01-M

# Sunshine Act Meetings

Federal Register
Vol. 45, No. 194
Friday, October 3, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

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1

**EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.**

**TIME AND DATE:** 9:30 a.m. (eastern time), Tuesday, October 7, 1980.

**PLACE:** Commission conference room 5240, fifth floor, Columbia Plaza Office Building, 2401 E Street NW., Washington, D.C. 20506.

**STATUS:** Part will be open to the public and part will be closed to the public.

**MATTERS TO BE CONSIDERED:** Open to the public:

1. Freedom of Information Act Appeal No. 80-7-FOIA-399, concerning a request for materials in an open agenda file.
2. Freedom of Information Act Appeal No. 80-8-FOIA-401, concerning a request for affidavits and agency memoranda contained in charge files.
3. Freedom of Information Act Appeal No. 80-8-FOIA-412, concerning a request by a respondent company for an intra-agency memorandum regarding the company.
4. Proposed Final of the Coordination Regulations Under Executive Order 12067.
5. Recommendation and Selection of Five (5) Litigation Support Centers (ABAR) Contracts.
6. Proposed Interim Privacy Act System of Records Pertaining to EEOC complaints.
7. Report on Commission Operations by the Executive Director.

Closed to the public:

Litigation Authorization; General Counsel Recommendations.

Note.—Any matter not discussed or concluded may be carried over to a later meeting.

**CONTACT PERSON FOR MORE INFORMATION:** Treva I. McCall, Acting Executive Officer, Executive Secretariat, at (202) 634-6748.

This Notice Issued September 30, 1980.

[S-1828-80 Filed 10-1-80; 10:18 am]

BILLING CODE 6570-06-M

2

**FEDERAL ENERGY REGULATORY COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 64340, September 29, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m., October 1, 1980.

**CHANGE IN MEETING:** The following items have been added:

*Item Number, Docket Number, and Company*

ER-8: RM79-29, *et al.*, Amendments to Part 35 of the Regulations Under the Federal Power Act; Proposed Limitation on Adders for all Electric Rates, *et al.*

Substitution for M-4(B): RM80- , Amendment to the Standards of Conduct.

**Lois D. Cashell,**

*Acting Secretary.*

[S-1826-80 Filed 10-1-80; 8:45 am]

BILLING CODE 6450-85-M

3

**FEDERAL ENERGY REGULATORY COMMISSION.**

**"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT:** 45 FR 64340, September 29, 1980.

**PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING:** 10 a.m., October 1, 1980.

**CHANGE IN MEETING:** The following items have been added:

*Item Number, Docket Number, and Company*

CAP-12: Project No. 3031, Shoshone Irrigation District.

ER-9: ER80-363, Delmarva Power & Light Co.

**Lois D. Cashell,**

*Acting Secretary.*

[S-1829-80 Filed 10-1-80; 10:45 am]

BILLING CODE 6450-85-M

4

**FEDERAL HOME LOAN BANK BOARD.**

**TIME AND DATE:** 2 p.m., October 8, 1980.

**PLACE:** 1700 G Street NW., sixth floor, Washington, D.C.

**STATUS:** Open.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Marshall (202-377-6677).

**MATTERS TO BE CONSIDERED:**

Increase in Accounts of an Insurable type (Merger) Cancellation of membership and Insurance and Transfer of Stock—Willamette Savings and Loan Association Milwaukee, Oregon INTO American Savings and Loan Association Salt Lake City, Utah.

Branch Office Application—First Federal Savings and Loan Association of Big Spring, Big Spring, Texas.

Proposed Amendment Section 5 of Charter S—Metropolitan Federal Savings and Loan Association, Bethesda, Maryland.

Branch Office Application—First Federal Savings and Loan Association of Fort Wayne, Fort Wayne, Indiana.

Voluntary Termination of Insurance of Accounts and Withdrawal from Bank Membership—Mutual Savings and Loan Association, Kinston, North Carolina.

Branch Office Application—First Federal Savings and Loan Association, Las Vegas, New Mexico.

Application for Bank Membership—Lafayette Co-operative Bank, Fall River, Massachusetts.

Branch Office Application—Shelby Federal Savings and Loan Association, Indianapolis, Indiana.

Concurrently Submitted—Satellite Office Application—Naples Federal Savings and Loan Association Naples, Florida AND Branch Office Application—Biscayne Federal Savings and Loan Association, Miami, Florida.

Branch Office Application—Biscayne Federal Savings and Loan Association, Miami, Florida.

Application For Commitment to Insure Account of—Fort Brooke Savings and Loan Association, Tampa, Florida.

Request For Modification of Insurance Condition—Marine Savings and Loan Association, Naples, Florida.

No. 399, October 1, 1980.

[S-1834-80 Filed 10-1-80; 2:20 pm]

BILLING CODE 6720-01-M

5

**FEDERAL MARITIME COMMISSION.**

**TIME AND DATE:** 9 a.m., October 7, 1980.

**PLACE:** Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

**STATUS:** Parts of the meeting will be open to the public. The rest of the meeting will be closed to the public.

**MATTERS TO BE CONSIDERED:** Portions open to the public:

1. Japanese Pooling and Space Charter Agreements—Agreement Nos. 9718–7, 9731–8, 9835–5, 9975–7, 10116–4, and 10274–1.
2. Classification of Controlled Carriers Pursuant to the Ocean Shipping Act of 1978.
3. Totem Ocean Trailer Express, Inc.—Petition for Declaratory Order.
4. Informal Docket No. 621(I)—E.S.B. Incorporated v. South African Marine Corporation—Review of Settlement Officer's Decision.
5. Docket No. 78–35, et al.—Allied Chemical S.A. and Allied Chemical International Corp. v. Farrell Lines, Inc. and Pacific America Container Express a/k/a/ Pace Line— Consideration of the Record.

Portion closed to the public:

1. Docket No. 79–104—Specific Commodity Rates of Far Eastern Shipping Company in the Philippines/U.S. Pacific Coast Trade—Petition for Reconsideration.

**CONTACT PERSON FOR MORE INFORMATION:** Joseph C. Polking, Assistant Secretary (202) 523–5725.

[S–1827–80 Filed 10–1–80; 8:45 am]

BILLING CODE 6730–01–M

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6

**BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM.**

**TIME AND DATE:** 10 a.m., Wednesday, October 8, 1980.

**PLACE:** Board Building, C Street entrance between 20th and 21st Streets NW., Washington, D.C. 20551.

**STATUS:** Open.

**MATTERS TO BE CONSIDERED:** Summary Agenda: Because of their routine nature, no substantive discussion of the following items 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. General pay increase for Federal Reserve employees.
2. Proposed amendment to Regulation F (Securities of Member State Banks) to conform to recent amendments to rules of the Securities and Exchange Commission.

Discussion Agenda:

1. Board's regulatory improvement program: consideration of Subparts A and B of Regulation J (Collection of Checks and Other Items and Transfers of Funds) dealing with check collection and wire transfers. (Proposed earlier for public comment; Docket No. R–0266).
2. Review of standards for the level and quality of Federal Reserve System services.
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: September 30, 1980.

**Theodore E. Allison,**

*Secretary of the Board.*

[S–1825–80 Filed 9–30–80; 4:57 pm]

BILLING CODE 6210–01–M

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7

**[FCSC Meeting Notice No. 9–80]**

**FOREIGN CLAIMS SETTLEMENT COMMISSION.**

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified as follows:

**DATES AND TIME:**

Wednesday, October 1, 1980 at 10:30 a.m.—Canceled.
Wednesday, October 8, 1980 at 10:30 a.m.—Petition to Reopen, Claim Number IT–2–209, George Radin; Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoner of War compensation.
Wednesday, October 15, 1980 at 10:30 a.m.—Canceled. (Oral hearings on objections to decisions issued under the German Democratic Republic Claims Program.)
Monday, October 20, 1980 at 10:30 a.m.—G–3729—General Motors Corporation.
Monday, October 20, 1980 at 2:00 p.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoner of War Compensation.
Wednesday, October 22, 1980 at 10:30 a.m.—Canceled.
Wednesday, October 29, 1980 at 10:30 p.m.—Consideration of decisions involving claims of American Citizens against the German Democratic Republic and the People's Republic of China; Claims for Vietnam Prisoners of War Compensation.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111 20th Street, N.W., Washington, D.C. Requests for information, or advance notice of intention to observe a meeting, may be directed to Executive Director, Foreign Claims Settlement Commission, 1111 20th Street, N.W., Washington, D.C. 20579. Telephone (202) 653–6155.

Dated at Washington, D.C. on September 25, 1980.

**Francis T. Masterson,**

*Executive Director.*

[S–1835–80 Filed 10–1–80; 3:56 pm]

BILLING CODE 6770–01–M

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8

**MISSISSIPPI RIVER COMMISSION.**

**TIME AND DATE:** 9 a.m., October 21, 1980.

**PLACE:** On board *MV Mississippi* at City Front, Vicinity of Beale Street, Memphis, Tennessee.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Status report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1830–80 Filed 10–1–80; 11:14 am]

BILLING CODE 3710–GX–M

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9

**MISSISSIPPI RIVER COMMISSION.**

**TIME AND DATE:** 8:30 a.m., October 20, 1980.

**PLACE:** On board *MV Mississippi* at Cape Girardeau, Missouri.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Status report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Memphis District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1831–80 Filed 10–1–80; 11:15 am]

BILLING CODE 3710–GX–M

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10

**MISSISSIPPI RIVER COMMISSION.**

**TIME AND DATE:** 2:30 p.m., October 24, 1980.

**PLACE:** On board *MV Mississippi* at City Front, Coast Guard Wharf, Morgan City, Louisiana.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Status report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in New Orleans District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1832–80 Filed 10–1–80; 11:15 am]

BILLING CODE 3710–GX–M

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11

**MISSISSIPPI RIVER COMMISSION.**

**TIME AND DATE:** 9 a.m., October 22, 1980.

**PLACE:** On board *MV Mississippi* at City Front, Greenville, Mississippi.

**STATUS:** Open to the public.

**MATTERS TO BE CONSIDERED:** (1) Status report on general conditions of the Mississippi River and Tributaries Project and major accomplishments since the last meeting; (2) Views and suggestions from members of the public on any matters pertaining to the Flood Control, Mississippi River and Tributaries Project; (3) District Engineer's report on the Mississippi River and Tributaries Program in Vicksburg District.

**CONTACT PERSON FOR MORE INFORMATION:** Mr. Rodger D. Harris, telephone 601–634–5766.

[S–1833–80 Filed 10–1–80; 11:16 am]

BILLING CODE 3710–GX–M

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12

**NATIONAL LABOR RELATIONS BOARD.**

**TIME AND DATE:** 10 a.m., Tuesday, October 14, 1980.

**PLACE:** Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue NW., Washington, D.C. 20570.

**STATUS:** Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices) and (c)(6) (personal information where disclosure would constitute a clearly unwarranted invasion of personal privacy).

**MATTERS TO BE CONSIDERED:** Consideration of applicants qualified for appointment to Administrative Law Judge.

**CONTACT PERSON FOR MORE INFORMATION:** Robert Volger, Acting Executive Secretary, Washington, D.C. 20570; Telephone: (202) 254–9430.

By direction of the Board.

Dated: Washington, D.C., October 1, 1980.

**Robert Volger,**

*Acting Executive Secretary, National Labor Relations Board.*

[S–1836–80 Filed 10–1–80; 3:57 pm]

BILLING CODE 7545–01–M

# Reader Aids

Federal Register

Vol. 45, No. 194

Friday, October 3, 1980

## 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:

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## 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/SECRETARY | USDA/ASCS | | DOT/SECRETARY | USDA/ASCS |
| DOT/COAST GUARD | USDA/FNS | | DOT/COAST GUARD | USDA/FNS |
| DOT/FAA | USDA/FSQS | | DOT/FAA | USDA/FSQS |
| DOT/FHWA | USDA/REA | | DOT/FHWA | USDA/REA |
| DOT/FRA | MSPB/OPM | | DOT/FRA | MSPB/OPM |
| DOT/NHTSA | LABOR | | DOT/NHTSA | LABOR |
| DOT/RSPA | HHS/FDA | | DOT/RSPA | HHS/FDA |
| DOT/SLSDC | | | DOT/SLSDC | |
| DOT/UMTA | | | DOT/UMTA | |
| CSA | | | CSA | |

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 September 2, 1980, documents from the Animal and Plant Health Inspection Service, Department of Agriculture, will no longer be assigned to the Tuesday/Friday publication schedule.**

## REMINDERS

The "reminders" below identify documents that appeared in issues of the **Federal Register** 15 days or more ago. Inclusion or exclusion from this list has no legal significance.

### Rules Going Into Effect Today

**AGRICULTURE DEPARTMENT**

Office of the Secretary—

58333 9–3–80 / Sec. 22 import quotas; certain dairy products

**FEDERAL COMMUNICATIONS COMMISSION**

58540 9–4–80 / FM Broadcast Station in Ravenswood, W. Va.; changes made in table of assignments

**GENERAL SERVICES ADMINISTRATION**

56805 8–26–80 / Special types and methods of procurement consulting services

### Rules Going Into Effect Sunday, October 5

**JUSTICE DEPARTMENT**

Parole Commissioner—

59870 9–11–80 / Paroling, recommitting and supervising Federal prisoner; sanctions to be applied when parole date is rescinded

### List of Public Laws

**Last Listing October 2, 1980**

This is a continuing listing 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 202–275–3030).

**H.R. 7590 / Pub. L. 96–367** Energy and Water Development Appropriation Act, 1981. (Oct. 1, 1980; 94 Stat. 1331) Price $1.25.

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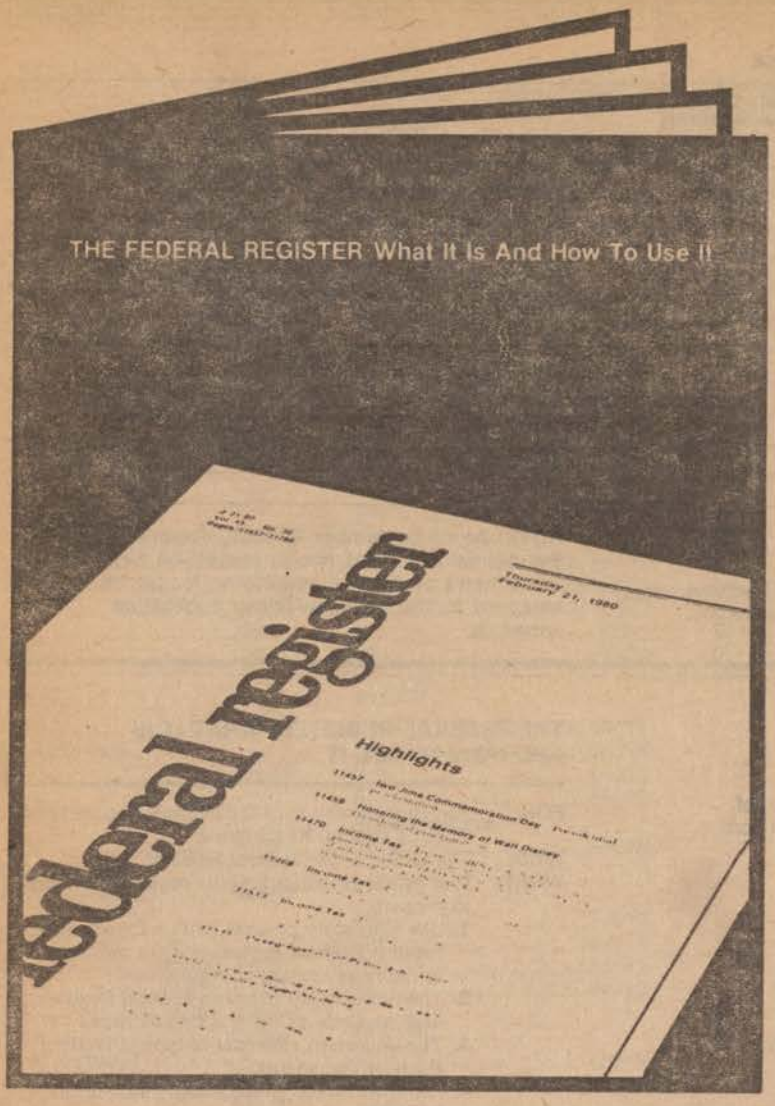
**WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them, as part of the General Services Administration's efforts to encourage public participation in Government actions. There will be no discussion of specific agency regulations.

**WHEN:** October 17 and 31; November 14 and 21; at 9 a.m. (identical sessions)

**WHERE:** Office of the Federal Register, Room 9409, 1100 L Street NW., Washington, D.C.

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65829-65992

# federal register

**Book 2 of 2 Books**
**Friday, October 3, 1980**

65832 Part II—
Labor/ESA: Minimum Wages for Federal and Federally Assisted Construction.

65916 Part III—Labor/OSHA: Inspections and Investigations; Obtaining Warrants on an Ex Parte Basis and Prior to Attempting Entry.

65926 Part IV—Labor/Sec'y:
Labor Organizations; Election Enforcement Provisions.

65932 Part V—USDA/FNS:
Food Stamp Program; Sanction/Incentive Systems.

65942 Part VI—EPA:
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65956 Part VII—EPA:
Standards of Performance for New Stationary Sources; Addition of Reference Methods 24 and 25 to Appendix A.

65976 Part VIII—Labor/FCCPO:
Affirmative Action Requirements; Construction Industry, Goals for Minority Participation.

# Integral

federal register

Friday
October 3, 1980

Part II

# Department of Labor

## Employment Standards Administration

## Minimum Wages for Federal and Federally Assisted Construction

## 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 publications 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 purusant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

#### New General Wage Determination Decisions

None.

#### Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Alabama—AL79–1066, April 13, 1979.

Arizona—AZ80–5116, June 13, 1980; AZ80–5123, August 1, 1980; AZ80–5124, August 1, 1980.

Colorado—CO79–5118, June 15, 1979; CO79–5119, June 15, 1979; CO79–5120, June 15, 1979.

Florida—FL79–1109, July 20, 1979; FL79–1110, July 20, 1979; FL79–1019, February 2, 1979; FL80–1088, August 1, 1980; FL80–1064, April 25, 1980.

Idaho—ID79–5112, May 25, 1979.

Indiana—IN80–2059, August 1, 1980.

Kentucky—KY80–1098, August 22, 1980.

Maine—ME80–2009, March 14, 1980; ME80–2069, August 15, 1980.

Maryland—MD80–3021, April 11, 1980.

Michigan—MI80–2063, August 15, 1980.

Montana—MT80–5120, June 27, 1980; MT80–5121, June 27, 1980; MT80–5122, June 27, 1980.

New Jersey—NJ79–3029, January 4, 1980.

New York—NY79–3032, October 12, 1979; NY80–3008, February 15, 1980.

Tennessee—KY80–1098, August 22, 1980.

Virginia—VA78–3074, November 3, 1978; VA80–3052, August 15, 1980.

Oregon—OR80–5106, February 9, 1980.

Washington—WA80–5125, August 22, 1980.

Washington, D.C—DC80–3139, May 9, 1980.

Wisconsin—WI80–2013, April 2, 1980; WI80–2027, April 18, 1980; WI80–2079, September 5, 1980.

**Supersedeas Decisions to General Wage Determinations Decisions**

The numbers of the decisions being superseded and their dates of publication the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California—CA80–5131 (CA80–5135), September 19, 1980.

Hawaii—HI78–5130 (HI80–5134), November 24, 1980.

Kentucky—KY79–1138 (KY80–1109), October 19, 1979; KY79–1073 (KY80–1111), April 20, 1979.

Louisiana—LA80–4027 (LA80–4072), June 13, 1980.

Mississippi—MS78–1063 (MS80–1110), August 4, 1978.

Pennsylvania—PA79–3043 (PA80–3033), May 12, 1978; PA78–3071 (PA80–3059), October 6, 1978; PA79–3003 (PA80–3058), March 9, 1979; PA79–3009 (PA80–3055), May 4, 1979.

**Cancellation of General Wage Determination Decisions**

The general wage decisions listed below are cancelled. Agencies with construction projects pending to which one of the cancelled decisions would have been applicable should utilize the project determination procedure by submitting Form SF–308. See Regulations Part 1 (29 CFR), Section 1.5. Contracts for which bids have been opened shall not be affected by this notice. Also consistent with 29 CFR, 1.7(b)(2), the incorporation of one of the cancelled decisions in contract specifications, the opening of bids is within ten (10) days of this notice, need not be affected.

IN77–2097—Madison County, Indiana, dated May 27, 1977 in 42 FR 27553—Residential Construction.

MN77–2065—Crow Wing County, Minnesota dated April 22, 1977 in 42 FR 21026—Heavy and Highway Construction.

Signed at Washington, D.C. this 26th day of September 1980.

**Dorothy P. Come,**

*Assistant Administrator, Wage and Hour Division.*

**BILLING CODE 4510-27-M**

Modification Page 1

| DECISION NO. AL79-1066 - MOD. #7 (44 FR 22307 - April 13, 1979) Madison County, Alabama | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Bricklayers | $11.50 | | | | |
| Cement Masons | 10.75 | | | | |

Modification Page 2

| DECISION #AZ80-5116-Mod. #1 (45 FR 40424-June 13, 1980) Statewide, Arizona | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Boilermakers | $15.11 | $1.275 | $1.25 | $1.00 | .04 |
| Bricklayers; Stonemasons | | | | | |
| Northern Area: | | | | | |
| Zone A | 13.25 | .90 | 1.10 | | .18 |
| Zone B | 14.31 | .90 | 1.10 | | .18 |
| Zone C | 14.98 | .90 | 1.10 | | .18 |
| Zone D | 15.64 | .90 | 1.10 | | .18 |
| Zone E | 16.17 | .90 | 1.10 | | .18 |
| Zone F | 17.23 | .90 | 1.10 | | .18 |
| Southern Area: | | | | | |
| Zone A: | | | | | |
| Bricklayers; Stonemasons | 12.80 | 1.00 | .95 | | .06 |
| Manhole Builders | 13.05 | 1.00 | .95 | | .06 |
| Zone B: | | | | | |
| Bricklayers; Stonemasons | 13.17 | 1.00 | .95 | | .06 |
| Manhole Builders | 13.42 | 1.00 | .95 | | .06 |
| Zone C: | | | | | |
| Bricklayers; Stonemasons | 13.55 | 1.00 | .95 | | .06 |
| Manhole Builders | 13.80 | 1.00 | .95 | | .06 |
| Zone D: | | | | | |
| Bricklayers; Stonemasons | 14.30 | 1.00 | .95 | | .06 |
| Manhole Builders | 14.55 | 1.00 | .95 | | .06 |
| Carpenters: | | | | | |
| Northern Area: | | | | | |
| Carpenters; Drywall Applicator; Saw Filer; Shingler | 14.36 | 1.195 | 1.115 | | .08 |
| Floorlayers (finish); Piledrivermen | 14.685 | 1.195 | 1.115 | | .08 |
| Millwrights | 14.835 | 1.195 | 1.115 | | .08 |

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Central and Southern Area: | | | | | |
| Carpenters; Saw Filers; Shinglers | $12.235 | $1.195 | $1.115 | | .08 |
| Floorlayers (finish); Piledrivermen | 12.56 | 1.195 | 1.115 | | .08 |
| Millwrights | 12.71 | 1.195 | 1.115 | | .08 |
| Cement Masons: | | | | | |
| Zone 2: | | | | | |
| Cement Masons | 12.18 | 1.02 | 1.20 | | .05 |
| Concrete Troweling Machine; Sawing and Scoring Machine; Curb and Gutter Machine; Clary and similar type of power screed Operator | 12.36 | 1.02 | 1.20 | | .05 |
| Drywall Tapers: | | | | | |
| Zone A | 12.31 | .59 | .50 | | .07 |
| Zone B | 13.31 | .59 | .50 | | .07 |
| Zone C | 14.81 | .59 | .50 | | .07 |
| Electricians: | | | | | |
| Area 1: | | | | | |
| Electricians | 16.81 | .60 | 3%+.70 | | 3/4% |
| Cable Splicers | 18.16 | .60 | 3%+.70 | | 3/4% |
| Area 3: | | | | | |
| Zone A: | | | | | |
| Electricians; Technicians | 15.67 | .60 | 11% | | 1% |
| Cable Splicers | 15.92 | .60 | 11% | | 1% |
| Zone B: | | | | | |
| Electricians; Technicians | 16.41 | .60 | 11% | | 1% |
| Cable Splicers | 16.66 | .60 | 11% | | 1% |
| Zone C: | | | | | |
| Electricians; Technicians | 17.04 | .60 | 11% | | 1% |
| Cable Splicers | 17.29 | .60 | 11% | | 1% |
| Zone D: | | | | | |
| Electricians; Technicians | 17.79 | .60 | 11% | | 1% |
| Cable Splicers | 18.04 | .60 | 11% | | 1% |



DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Area 4: | | | | | |
| Electricians | $15.85 | .96 | 3%+.93 | | .10 |
| Area 5: | | | | | |
| Zone A: | | | | | |
| Electricians | 15.94 | .60 | 11% | | 1/2% |
| Cable Splicers | 16.19 | .60 | 11% | | 1/2% |
| Zone B: | | | | | |
| Electricians | 16.68 | .60 | 11% | | 1/2% |
| Cable Splicers | 16.93 | .60 | 11% | | 1/2% |
| Zone C: | | | | | |
| Electricians | 17.31 | .60 | 11% | | 1/2% |
| Cable Splicers | 17.56 | .60 | 11% | | 1/2% |
| Zone D: | | | | | |
| Electricians | 18.06 | .60 | 11% | | 1/2% |
| Cable Splicers | 18.31 | .60 | 11% | | 1/2% |
| Glaziers: | | | | | |
| Bullhead City | 17.02 | .75 | .40 | | .08 |
| Laborers: | | | | | |
| Northern Area: | | | | | |
| Group 1 | 11.64 | .92 | 1.10 | | .10 |
| Group 2 | 11.79 | .92 | 1.10 | | .10 |
| Group 3 | 11.95 | .92 | 1.10 | | .10 |
| Group 4 | 12.07 | .92 | 1.10 | | .10 |
| Group 5 | 12.27 | .92 | 1.10 | | .10 |
| Group 6 | 12.705 | .92 | 1.10 | | .10 |
| Group 7 | 13.435 | .92 | 1.10 | | .10 |
| Tunnel and Shaft Work: | | | | | |
| Group 1 | 11.915 | .92 | 1.10 | | .10 |
| Group 2 | 12.11 | .92 | 1.10 | | .10 |
| Group 3 | 12.26 | .92 | 1.10 | | .10 |
| Group 4 | 12.67 | .92 | 1.10 | | .10 |
| Group 5 | 12.885 | .92 | 1.10 | | .10 |
| Group 5-A | 13.175 | .92 | 1.10 | | .10 |
| Central and Southern Areas: | | | | | |
| Group 1 | 9.64 | .92 | 1.10 | | .10 |
| Group 2 | 9.79 | .92 | 1.10 | | .10 |
| Group 3 | 9.95 | .92 | 1.10 | | .10 |
| Group 4 | 10.07 | .92 | 1.10 | | .10 |
| Group 5 | 10.27 | .92 | 1.10 | | .10 |
| Group 6 | 10.705 | .92 | 1.10 | | .10 |
| Group 7 | 11.435 | .92 | 1.10 | | .10 |

Modification Page 5

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Tunnel and Shaft Work: | | | | | |
| Group 1 | $ 9.915 | .92 | $1.10 | | .10 |
| Group 2 | 10.11 | .92 | 1.10 | | .10 |
| Group 3 | 10.26 | .92 | 1.10 | | .10 |
| Group 4 | 10.67 | .92 | 1.10 | | .10 |
| Group 5 | 10.885 | .92 | 1.10 | | .10 |
| Group 5-A | 11.175 | .92 | 1.10 | | .10 |
| Lathers: | | | | | |
| Area 1 | 13.455 | 1.00 | | | .06 |
| Area 2: | | | | | |
| Zone A | 13.78 | 1.00 | | | .06 |
| Zone B | 14.28 | 1.00 | | | .06 |
| Zone C | 14.53 | 1.00 | | | .06 |
| Zone D | 15.28 | 1.00 | | | .06 |
| Marble Workers: | | | | | |
| Area 1 | 11.91 | .90 | 1.10 | | .19 |
| Painters: | | | | | |
| Area 2: | | | | | |
| Zone A: | | | | | |
| Brush and Roller; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 12.33 | .60 | .50 | | .10 |
| Spray | 12.58 | .60 | .50 | | .10 |
| Creosote Applier | 12.66 | .60 | .50 | | .10 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 12.73 | .60 | .50 | | .10 |
| Spray | 12.98 | .60 | .50 | | .10 |
| Steeplejack | 13.19 | .60 | .50 | | .10 |
| Steel and bridge, Brush; Steel Sandblaster | 13.26 | .60 | .50 | | .10 |
| Steel and bridge, Spray | 13.46 | .60 | .50 | | .10 |
| Zone B: | | | | | |
| Brush and Roller; Sandblaster (nozzleman); Sandblaster (Pot Tender) | 13.33 | .60 | .50 | | .10 |
| Spray | 13.58 | .60 | .50 | | .10 |
| Creosote Applier | 13.66 | .60 | .50 | | .10 |

Modification Page 6

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Swing Stage: | | | | | |
| Brush; Sandblaster | $13.73 | .60 | .50 | | .10 |
| Spray | 13.98 | .60 | .50 | | .10 |
| Steeplejack | 14.19 | .60 | .50 | | .10 |
| Steel and bridge, Brush; Steel Sandblaster | 14.26 | .60 | .50 | | .10 |
| Steel and bridge, Spray | 14.46 | .60 | .50 | | .10 |
| Zone C: | | | | | |
| Brush and Roller; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 14.83 | .60 | .50 | | .10 |
| Spray | 15.08 | .60 | .50 | | .10 |
| Creosote Applier | 15.16 | .60 | .50 | | .10 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 15.23 | .60 | .50 | | .10 |
| Spray | 15.48 | .60 | .50 | | .10 |
| Steeplejack | 15.69 | .60 | .50 | | .10 |
| Steel and bridge, Brush; Steel Sandblaster | 15.76 | .60 | .50 | | .10 |
| Steel and bridge, Spray | 15.96 | .60 | .50 | | .10 |
| Area 3: | | | | | |
| Zone A: | | | | | |
| Brush | 10.49 | .87 | .50 | | .08 |
| Spray; Sandblasters | 10.99 | .87 | .50 | | .08 |
| Paperhangers | 10.62 | .87 | .50 | | .08 |
| Swing Stage, under 40 ft.: | | | | | |
| Brush | 10.79 | .87 | .50 | | .08 |
| Spray | 11.29 | .87 | .50 | | .08 |
| Swing Stage, over 40 ft.: | | | | | |
| Brush | 11.24 | .87 | .50 | | .08 |
| Spray | 11.74 | .87 | .50 | | .08 |
| Structural Steel and Tanks: | | | | | |
| Brush | 11.49 | .87 | .50 | | .08 |
| Spray and Sandblasters | 11.99 | .87 | .50 | | .08 |

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Zone B: | | | | | |
| Brush | $11.24 | .87 | .50 | | .08 |
| Spray and Sandblasters | 11.74 | .87 | .50 | | .08 |
| Paperhangers | 11.37 | .87 | .50 | | .08 |
| Swing Stage, under 40 ft.: | | | | | |
| Brush | 11.54 | .87 | .50 | | .08 |
| Spray | 12.04 | .87 | .50 | | .08 |
| Swing Stage, over 40 ft.: | | | | | |
| Brush | 11.99 | .87 | .50 | | .08 |
| Spray | 12.49 | .87 | .50 | | .08 |
| Structural Steel and Tanks: | | | | | |
| Brush | 12.24 | .87 | .50 | | .08 |
| Spray and Sand-blasters | 12.74 | .87 | .50 | | .08 |
| Zone C: | | | | | |
| Brush | 11.99 | .87 | .50 | | .08 |
| Spray | 12.49 | .87 | .50 | | .08 |
| Paperhangers | 12.12 | .87 | .50 | | .08 |
| Swing Stage, under 40 ft.: | | | | | |
| Brush | 12.29 | .87 | .50 | | .08 |
| Spray | 12.79 | .87 | .50 | | .08 |
| Swing Stage, over 40 ft.: | | | | | |
| Brush | 12.74 | .87 | .50 | | .08 |
| Spray | 13.24 | .87 | .50 | | .08 |
| Structural Steel and Tanks: | | | | | |
| Brush | 12.99 | .87 | .50 | | .08 |
| Spray and Sand-blasters | 13.49 | .87 | .50 | | .08 |
| Zone D: | | | | | |
| Brush | 12.49 | .87 | .50 | | .08 |
| Spray | 12.99 | .87 | .50 | | .08 |
| Paperhangers | 12.62 | .87 | .50 | | .08 |
| Swing Stage, under 40 ft.: | | | | | |
| Brush | 12.79 | .87 | .50 | | .08 |
| Spray | 13.29 | .87 | .50 | | .08 |



DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Swing Stage, over 40 ft.: | | | | | |
| Brush | $13.24 | .87 | .50 | | .08 |
| Spray | 13.74 | .87 | .50 | | .08 |
| Structural Steel and Tanks: | | | | | |
| Brush | 13.49 | .87 | .50 | | .08 |
| Spray and Sand-blasters | 13.99 | .87 | .50 | | .08 |
| Plasterer Tenders | 10.96 | 1.02 | 1.20 | | .10 |
| Plumbers: | | | | | |
| Zone 1 | 15.49 | 1.00 | 1.35 | | .13 |
| Zone 2 | 15.89 | 1.00 | 1.35 | | .13 |
| Zone 3 | 16.34 | 1.00 | 1.35 | | .13 |
| Zone 4 | 17.84 | 1.00 | 1.35 | | .13 |
| Roofers: Area 1 | 12.41 | 1.095 | .70 | | .05 |
| Soft Floor Layers | 11.70 | .69 | .12 | | .12 |
| Sprinkler Fitters | 15.54 | .85 | 1.20 | | .08 |
| Terrazzo Workers; Tile Setters | 11.91 | .90 | 1.10 | | .19 |
| Truck Drivers: | | | | | |
| Northern Area: | | | | | |
| Group 1 | 11.80 | 1.02 | 1.20 | | .10 |
| Group 2 | 11.95 | 1.02 | 1.20 | | .10 |
| Group 3 | 12.20 | 1.02 | 1.20 | | .10 |
| Group 4 | 12.61 | 1.02 | 1.20 | | .10 |
| Group 5 | 12.79 | 1.02 | 1.20 | | .10 |
| Group 5-A | 13.01 | 1.02 | 1.20 | | .10 |
| Group 6 | 13.17 | 1.02 | 1.20 | | .10 |
| Group 7 | 13.64 | 1.02 | 1.20 | | .10 |
| Group 8 | 14.235 | 1.02 | 1.20 | | .10 |
| Group 8-A | 14.99 | 1.02 | 1.20 | | .10 |
| Group 8-B | 12.45 | 1.02 | 1.20 | | .10 |
| Group 8-C | 14.63 | 1.02 | 1.20 | | .10 |

Modification Page 9

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Central and Southern Areas: | | | | | |
| Group 1 | $ 9.80 | $1.02 | $1.20 | | .10 |
| Group 2 | 9.95 | 1.02 | 1.20 | | .10 |
| Group 3 | 10.20 | 1.02 | 1.20 | | .10 |
| Group 4 | 10.61 | 1.02 | 1.20 | | .10 |
| Group 5 | 10.79 | 1.02 | 1.20 | | .10 |
| Group 5-A | 11.01 | 1.02 | 1.20 | | .10 |
| Group 6 | 11.17 | 1.02 | 1.20 | | .10 |
| Group 7 | 11.64 | 1.02 | 1.20 | | .10 |
| Group 8 | 12.235 | 1.02 | 1.20 | | .10 |
| Group 8-A | 12.99 | 1.02 | 1.20 | | .10 |
| Group 8-B | 10.45 | 1.02 | 1.20 | | .10 |
| Group 8-C | 12.63 | 1.02 | 1.20 | | .10 |
| Omit: | | | | | |
| Line Construction: Zone Descriptions (ONLY) | | | | | |
| Plasterers: Zones A thru D (Rates and Zone Descriptions) | | | | | |
| Sheet Metal Workers: Zone A thru C (Rates and Zone Descriptions) | | | | | |
| Add: | | | | | |
| Line Construction: | | | | | |

Zone 1: Area within a 30 mile radius from the City Hall in Phoenix or Tucson; Also, area within a 10 mile radius from the City Hall in Yuma

Zone 1-A: Area within a 10 mile radius from the City Hall in Kingman, Flagstaff or Globe

Zone 2: Area outside Zones 1 and 2

Modification Page 10

DECISION NO. AZ80-5116 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Plasterers: | | | | | |
| Zone A | $12.67 | $1.02 | $1.20 | | |
| Zone B | 13.92 | 1.02 | 1.20 | | |
| Zone C | 14.67 | 1.02 | 1.20 | | |
| Sheet Metal Workers: | | | | | |
| Zone A | 13.44 | 1.20 | 1.92 | | .02 |
| Zone B | 14.66 | 1.20 | 1.92 | | .02 |
| Zone C | 17.33 | 1.20 | 1.92 | | .02 |
| Welders: Receive the rate prescribed for craft performing operation to which welding is incidental. | | | | | |

Zone Descriptions:

Plasterers:

Zone A: 0-30 miles radius from the Union Hall in Tucson

Zone B: 30-50 miles radius from the Union Hall in Tucson

Zone C: 50 miles radius and over from the Union Hall in Tucson

Sheet Metal Workers:

Zone A: 0-25 miles radius from Tucson City Hall or Douglas City Hall

Zone B: 25-50 miles radius from Tucson City Hall or Douglas City Hall

Zone C: Over 40 miles radius from Tucson City Hall or Douglas City Hall; also San Manuel and vicinity

DECISION #AZ80-5123 - Mod. #1
(45 FR 51393 - August 1, 1980)
Maricopa County, Arizona

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Boilermakers | $15.11 | $1.275 | $1.25 | $1.00 | .04 |
| Bricklayers; Stonemasons: | | | | | |
| Zone A | 12.52 | .90 | 1.10 | | .18 |
| Zone B | 13.52 | .90 | 1.10 | | .18 |
| Zone C | 14.15 | .90 | 1.10 | | .18 |
| Zone D | 14.77 | .90 | 1.10 | | .18 |
| Zone E | 15.27 | .90 | 1.10 | | .18 |
| Zone F | 16.28 | .90 | 1.10 | | .18 |
| Carpenters: | | | | | |
| Carpenters; Saw Filers; Shingler | 12.235 | 1.195 | 1.115 | | .08 |
| Floorlayers (finish); Pile-drivermen | 12.56 | 1.195 | 1.115 | | .08 |
| Millwrights | 12.71 | 1.195 | 1.115 | | .08 |
| Cement Masons: | | | | | |
| Area 2 | 12.18 | 1.02 | 1.20 | | .05 |
| Electricians | 15.85 | .96 | 3% + .88 | | .10 |
| Laborers: | | | | | |
| Group 1 | 9.64 | 1.02 | 1.20 | | .10 |
| Group 2 | 9.79 | 1.02 | 1.20 | | .10 |
| Group 3 | 9.95 | 1.02 | 1.20 | | .10 |
| Group 4 | 10.07 | 1.02 | 1.20 | | .10 |
| Group 5 | 10.27 | 1.02 | 1.20 | | .10 |
| Group 6 | 10.705 | 1.02 | 1.20 | | .10 |
| Group 7 | 11.435 | 1.02 | 1.20 | | .10 |
| Lathers: | | | | | |
| Area 1 | 13.455 | 1.00 | | | .06 |
| Area 2 | 15.28 | 1.00 | | | .06 |
| Marble Workers | 11.91 | .90 | 1.10 | | .19 |
| Painters: | | | | | |
| Area 1: | | | | | |
| Zone A: | | | | | |
| Brush and Roller; Sandblaster (Nozzleman); Sandblaster (Pot Tender) | 12.02 | .60 | .50 | | .10 |
| Spray; Paperhangers | 12.27 | .60 | .50 | | .10 |
| Creosote Applier | 12.35 | .60 | .50 | | .10 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 12.42 | .60 | .50 | | .10 |
| Spray | 12.67 | .60 | .50 | | .10 |



DECISION #AZ80-5123 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Zone B: | | | | | |
| Brush and Roller; Sandblaster (Nozzleman): Sandblaster (Pot Tender) | $13.02 | .60 | .50 | | .10 |
| Spray; Paperhangers | 13.27 | .60 | .50 | | .10 |
| Creosote Applier | 13.35 | .60 | .50 | | .10 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 13.42 | .60 | .50 | | .10 |
| Spray | 13.67 | .60 | .50 | | .10 |
| Zone C: | | | | | |
| Brush and Roller; Sandblaster (Nozzleman): Sandblaster (Pot Tender) | 14.52 | .60 | .50 | | .10 |
| Spray; Paperhangers | 14.77 | .60 | .50 | | .10 |
| Creosote Applier | 14.85 | .60 | .50 | | .10 |
| Swing Stage: | | | | | |
| Brush; Sandblaster | 14.92 | .60 | .50 | | .10 |
| Spray | 15.17 | .60 | .50 | | .10 |
| Area 2: | | | | | |
| Brush | 12.49 | .87 | .50 | | .08 |
| Spray; Sandblasters | 12.99 | .87 | .50 | | .08 |
| Paperhangers | 12.62 | .87 | .50 | | .08 |
| Swing Stage (under 40 ft.): | | | | | |
| Brush | 12.79 | .87 | .50 | | .08 |
| Spray | 13.29 | .87 | .50 | | .08 |
| Swing Stage (over 40 ft.): | | | | | |
| Brush | 13.24 | .87 | .50 | | .08 |
| Spray | 13.74 | .87 | .50 | | .08 |
| Plasterers' Tenders | 10.96 | 1.02 | 1.20 | | .10 |
| Plumbers; Steamfitters: | | | | | |
| Zone 1 | 15.49 | 1.00 | 1.25 | | .13 |
| Zone 2 | 15.89 | 1.00 | 1.35 | | .13 |
| Zone 3 | 16.34 | 1.00 | 1.35 | | .13 |
| Zone 4 | 17.84 | 1.00 | 1.35 | | .13 |
| Roofers | 12.41 | 1.095 | .70 | | .05 |
| Soft Floor Layers | 11.70 | .69 | .12 | | .12 |
| Sprinkler Fitters | 15.54 | .85 | 1.20 | | .08 |
| Terrazzo Workers; Tile Setters | 11.91 | .90 | 1.10 | | .19 |

Modification Page 13

DECISION #AZ80-5123 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck Drivers: | | | | | |
| Group 1 | $9.80 | $1.02 | $1.20 | | .10 |
| Group 2 | 9.95 | 1.02 | 1.20 | | .10 |
| Group 3 | 10.20 | 1.02 | 1.20 | | .10 |
| Group 4 | 10.61 | 1.02 | 1.20 | | .10 |
| Group 5 | 10.79 | 1.02 | 1.20 | | .10 |
| Group 5-A | 11.01 | 1.02 | 1.20 | | .10 |
| Group 6 | 11.17 | 1.02 | 1.20 | | .10 |
| Group 7 | 11.64 | 1.02 | 1.20 | | .10 |
| Group 8 | 12.235 | 1.02 | 1.20 | | .10 |
| Group 8-A | 12.99 | 1.02 | 1.20 | | .10 |
| Group 8-B | 10.45 | 1.02 | 1.20 | | .10 |
| Group 8-C | 12.63 | 1.02 | 1.20 | | .10 |

Add:

Welders: Receive the rate prescribed for craft performing operation to which welding is incidental.

Modification Page 14

DECISION #AZ80-5124 - Mod. #1
(45 FR 51388 - August 1, 1980)
Pima County, Arizona

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Boilermakers | $15.11 | $1.275 | $1.25 | $1.00 | .04 |
| Bricklayers; Stonemasons: | | | | | |
| Zone A | 12.80 | 1.00 | .95 | | .06 |
| Zone B | 13.17 | 1.00 | .95 | | .06 |
| Zone C | 13.55 | 1.00 | .95 | | .06 |
| Zone D | 14.30 | 1.00 | .95 | | .06 |
| Carpenters: | | | | | |
| Carpenters | 12.235 | 1.195 | 1.115 | | .08 |
| Floorlayers (finish); Pile-drivermen | 12.56 | 1.195 | 1.115 | | .08 |
| Millwrights | 12.71 | 1.195 | 1.115 | | .08 |
| Cement Masons | 12.18 | 1.02 | 1.20 | | .05 |
| Laborers: | | | | | |
| Group 1 | 9.64 | 1.02 | 1.20 | | .10 |
| Group 2 | 9.79 | 1.02 | 1.20 | | .10 |
| Group 3 | 9.95 | 1.02 | 1.20 | | .10 |
| Group 4 | 10.07 | 1.02 | 1.20 | | .10 |
| Group 5 | 10.27 | 1.02 | 1.20 | | .10 |
| Group 6 | 10.705 | 1.02 | 1.20 | | .10 |
| Group 7 | 11.435 | 1.02 | 1.20 | | .10 |
| Lathers: | | | | | |
| Area 1 | 13.455 | 1.00 | | | .06 |
| Area 2: | | | | | |
| Zone A | 13.78 | 1.00 | | | .06 |
| Zone B | 14.28 | 1.00 | | | .06 |
| Zone C | 14.53 | 1.00 | | | .06 |
| Zone D | 15.28 | 1.00 | | | .06 |
| Painters: | | | | | |
| Zone A: | | | | | |
| Brush | 10.49 | .87 | .50 | | .08 |
| Paperhangers | 10.62 | .87 | .50 | | .08 |
| Structural Steel, brush | 11.49 | .87 | .50 | | .08 |
| Zone B: | | | | | |
| Brush | 11.24 | .87 | .50 | | .08 |
| Paperhangers | 11.37 | .87 | .50 | | .08 |
| Structural Steel, brush | 12.24 | .87 | .50 | | .08 |
| Zone C: | | | | | |
| Brush | 11.99 | .87 | .50 | | .08 |
| Paperhangers | 12.12 | .87 | .50 | | .08 |
| Structural Steel, brush | 12.99 | .87 | .50 | | .08 |

DECISION #AZ80-1124 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Zone D: | | | | | |
| Brush | $12.49 | .87 | .50 | | .08 |
| Paperhangers | 12.62 | .87 | .50 | | .08 |
| Stuuctural Steel, brush | 13.49 | .87 | .50 | | .08 |
| Plasterers' Tenders | 10.96 | 1.02 | 1.20 | | .10 |
| Plumbers: | | | | | |
| Zone 1 | 15.49 | 1.00 | 1.35 | | .13 |
| Zone 2 | 15.89 | 1.00 | 1.35 | | .13 |
| Zone 3 | 16.34 | 1.00 | 1.35 | | .13 |
| Zone 4 | 17.84 | 1.00 | 1.35 | | .13 |
| Soft Floor Layers | 11.70 | .69 | .12 | | .12 |
| Sprinkler Fitters | 15.54 | .85 | 1.20 | | .08 |
| Truck Drivers: | | | | | |
| Group 1 | 9.80 | 1.02 | 1.20 | | .10 |
| Group 2 | 9.95 | 1.02 | 1.20 | | .10 |
| Group 3 | 10.20 | 1.02 | 1.20 | | .10 |
| Group 4 | 10.61 | 1.02 | 1.20 | | .10 |
| Group 5 | 10.79 | 1.02 | 1.20 | | .10 |
| Group 5-A | 11.01 | 1.02 | 1.20 | | .10 |
| Group 6 | 11.17 | 1.02 | 1.20 | | .10 |
| Group 7 | 11.64 | 1.02 | 1.20 | | .10 |
| Group 8 | 12.235 | 1.22 | 1.20 | | .10 |
| Group 8-A | 12.99 | 1.02 | 1.20 | | .10 |
| Group 8-B | 10.45 | 1.02 | 1.20 | | .10 |
| Group 8-C | 12.63 | 1.02 | 1.20 | | .10 |



DECISION #AZ80-5124 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Omit: | | | | | |
| Plasterers: | | | | | |
| Zone A | $8.57 | .35 | .60 | | |
| Zone B | 9.07 | .35 | .60 | | |
| Zone C | 9.32 | .35 | .60 | | |
| Zone D | 10.07 | .35 | .60 | | |
| Zone Definitions: | | | | | |
| Zone A: 0-30 miles from Tucson | | | | | |
| Zone B: 30-40 miles from Tucson | | | | | |
| Zone C: 40-50 miles from Tucson | | | | | |
| Zone D: 50 miles and over from Tucson | | | | | |
| Sheet Metal Workers: | | | | | |
| Zone A | 11.42 | 3% +1.14 | 1.92 | | .02 |
| Zone B | 12.37 | 3% +1.14 | 1.92 | | .02 |
| Zone C | 13.02 | 3% +1.14 | 1.92 | | .02 |
| Zone Definitions: | | | | | |
| Zone A: 0-22 miles radius from Tucson City Hall | | | | | |
| Zone B: 22-45 miles radius from Tucson City Hall | | | | | |
| Zone C: Beyond 45 miles radius from Tucson City Hall | | | | | |
| Add: | | | | | |
| Plasterers: | | | | | |
| Zone A | 12.67 | 1.02 | 1.20 | | |
| Zone B | 13.92 | 1.02 | 1.20 | | |
| Zone C | 14.67 | 1.02 | 1.20 | | |
| Zone Definit ons: | | | | | |
| Zone A: 0-30 miles radius from the Union Hall in Tucson | | | | | |
| Zone B: 30-50 miles radius from the Union Hall in Tucson | | | | | |
| Zone C: 50 miles radius and over from the Union Hall in Tucson | | | | | |
| Sheet Metal Workers: | | | | | |
| Zone A | 13.44 | 1.20 | 1.92 | | .02 |
| Zone B | 14.66 | 1.20 | 1.95 | | .02 |
| Zone C | 17.33 | 1.20 | 1.92 | | .02 |
| Zone Definitions: | | | | | |
| Zone A: 0-25 miles radius from Tucson City Hall | | | | | |
| Zone B: 25-50 miles radius from Tucson City Hall | | | | | |
| Zone C: Over 50 miles radius from Tucson City HaLl | | | | | |
| Welders: Receive the rate prescribed for craft performing operation to which welding is incidental. | | | | | |

Modification Page 17

| DECISION NO. CO79-5118 - Mod. #7 (44 FR 34724 - June 15, 1979) El Paso County, Colorado | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| Asbestos workers | $ 13.64 | .75 | 1.37 | | |
| Boilermakers | 13.87 | 1.375 | 1.15 | | .05 |
| Drywall Installers | 11.72 | 1.00 | .85 | 1.00 | .07 |
| Elevator Constructors | 13.26 | 1.195 | .82 | a | .035 |
| Elevator Constructors' Helpers | 9.28 | 1.195 | .82 | a | .035 |
| Ironworkers: Structural, Ornamental and Reinforcing | 12.35 | 1.04 | 1.25 | | .12 |
| Marble Setters | 11.79 | .85 | .70 | | |
| Terrazzo Workers | 12.40 | 1.10 | 1.15 | | .04 |
| Tile Setters | 11.79 | .85 | .70 | | |

Modification Page 18

| DECISION NO. CO79-5119 - Mod. #8 (44 FR 34728 - June 15, 1979) Delta, Garfield, Gunnison, Mesa, Montrose and Pitkin Counties, Colorado | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| Asbestos Workers | $ 13.64 | .75 | 1.37 | | |
| Boilermakers | 13.87 | 1.375 | 1.15 | | .05 |
| Drywall Installers | 11.72 | 1.00 | .85 | 1.00 | .07 |
| Electricians: | | | | | |
| Electricians | 14.10 | .75 | 3%+.50 | | 1½% |
| Cable Splicers | 14.35 | .75 | 3%+.50 | | 1½% |
| Elevator Constructors: | | | | | |
| Elevator Constructor | 13.26 | 1.195 | .82 | a | .035 |
| Elevator Constructors' Helpers | 9.28 | 1.195 | .82 | a | .035 |
| Sheet Metal Workers | 13.20 | 3%+.73 | 1.51 | | .01 |
| OMIT: | | | | | |
| Lathers | 11.94 | | | | .01 |
| ADD: | | | | | |
| Lathers: | | | | | |
| Delta, Gunnison, Montrose | 11.94 | | | | .01 |
| Garfield, Mesa and Pitkin | 12.94 | | | | .01 |

DECISION NO. CO79-5120 - Mod. #7
(44 FR 34733 - June 15, 1979)
Las Animas, Otero and Pueblo Counties, Colorado

CHANGE:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos workers | $ 13.64 | .75 | 1.37 | | |
| Boilermakers | 13.87 | 1.375 | 1.15 | | .05 |
| Drywall Installers | 11.72 | 1.00 | .85 | 1.00 | .07 |
| Elevator Constructors | 13.26 | 1.195 | .82 | a | .035 |
| Elevator Constructors' Helpers | 9.28 | 1.195 | .82 | a | .035 |
| Ironworkers: | | | | | |
| Structural, Ornamental and Reinforcing | 12.35 | 1.04 | 1.25 | | .12 |
| Sheet metal workers | 13.20 | .65 | .75 | .50 | .10 |



DECISION NO. FL79-1109 - MOD. #4
(44 FR 42856 - July 20, 1979)

Martin & Palm Beach Counties, Florida

Change:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos Workers | 13.79 | .70 | 1.02 | | .06 |
| Boilermakers | 12.75 | 1.275 | 1.10 | | .04 |
| Bricklayers | 11.95 | .65 | .70 | | .03 |
| Carpenters & Soft Floor Layers (All of Martin Co. & that portion of Palm Beach Co., North of a line from the Atlantic Ocean along Appleby St. in Boca Raton, West to US #1 to Canal C-15, then West to Palm Beach Co. line) | 10.85 | .55 | .90 | | .08 |
| Remainder of Palm Beach Co. | 10.85 | .90 | .55 | | .08 |
| Laborers (Permit value $500,000 and over): | | | | | |
| Air Tool Oprs., Mason Tenders, Mortar Mixers and Pipelayers | 8.10 | 1.07 | .50 | | .01 |
| Plasterers' Tenders | 8.28 | 1.07 | .50 | | .01 |
| Unskilled Laborers | 8.00 | 1.07 | .50 | | .01 |
| Laborers (Permit value up to $500,000): | | | | | |
| Air Tool Oprs., Mason Tenders, Mortar Mixers and Pipelayers | 6.40 | 1.07 | .50 | | .01 |
| Plasterers' Tenders | 6.58 | 1.07 | .50 | | .01 |
| Unskilled Laborers | 6.30 | 1.07 | .50 | | .01 |
| Painters: | | | | | |
| Brush | 9.23 | .65 | .70 | | .05 |
| Paperhanger, Roller | 9.48 | .65 | .70 | | .05 |
| Spray, Taper | 9.63 | .65 | .70 | | .05 |
| Piledrivers | 11.35 | .70 | .70 | | .10 |
| Roofers: | | | | | |
| Roofers | 11.40 | .40 | .50 | | .015 |
| Pot Fireman, Mud Mixers | 7.75 | .40 | .50 | | .015 |

Modification Page 21

| DECISION NO. FL79-1110 - MOD. #7 (44 FR 42858 - July 20, 1979) Dade County, Florida | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| Asbestos workers | 13.79 | .70 | 1.02 | | .06 |
| Bricklayers: Bricklayers;Cement Masons; Marble Setters;Plasterers; Stonemasons; Tile and Terrazzo Workers | 11.95 | .75 | .75 | | .07 |
| Carpenters | 10.85 | .90 | .55 | | .08 |
| Laborers (Permit value $500,000 and over) Air Tool Operators, Mason Tenders, Mortar Mixers and Pipelayers | 8.17 | 1.02 | .50 | | |
| Plasterers' Tenders | 8.35 | 1.02 | .50 | | |
| Unskilled | 8.07 | 1.02 | .50 | | |
| Laborers (Permit value up to $500,000) Air Tool Operators, Mason Tenders, Mortar Mixers and Pipe layers | 6.47 | 1.07 | .50 | | |
| Plasterers' Tenders | 6.65 | 1.07 | .50 | | |
| Unskilled | 6.37 | 1.07 | .50 | | |
| Piledrivers | 11.35 | .70 | .70 | | .10 |
| Refrigeration & Air Conditioning Mechanics: A/C units over 10 tons | 13.35 | 1.23 | 1.15 | | .15 |
| A/C units over 7.5 tons but under 10 tons | 10.03 | 1.23 | 1.15 | | .15 |

Modification Page 22

| DECISION NO. FL79-1019 - MOD. #6 (44 FR 6852 - February 2, 1979) Duval County, Florida | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Carpenters & Piledrivers | 9.75 | .72 | .70 | | .06 |
| Electricians | 11.15 | .55 | 3%+.81 | .81 | .10 |
| Laborers: Unskilled | 6.52 | .30 | .20 | | |

| DECISION NO. FL80-1088 - MOD. #1 (45 FR 51400 - August 1, 1980) Orange County, Florida | | | | | |
|---|---|---|---|---|---|
| Change: | | | | | |
| Elevator Constructors: | | | | | |
| Mechanics | 10.36 | 1.195 | .95 | a+b | .035 |
| Helpers | 7.25 | 1.195 | .95 | a+b | .035 |
| Roofers: | | | | | |
| Roofers | 8.90 | .35 | .25 | | |
| Kettlemen | 7.45 | .35 | .25 | | |

DECISION NO. FL80-1064 - MOD. #2
(45 FR 20860 - April 25, 1980)
Broward County, Florida

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| Asbestos Workers | 13.79 | .70 | 1.02 | | .06 |
| Boilermakers | 12.75 | 1.275 | 1.10 | | .04 |
| Carpenters & Soft Floor Layers | 10.85 | .90 | .55 | | .08 |
| Electricians: | | | | | |
| Zone I | | | | | |
| Electricians | 13.11 | .65 | 3%+.50 | | 1% |
| Cable Splicers | 13.93 | .65 | 3%+.50 | | 1% |
| Zone II | | | | | |
| Electricians | 13.61 | .65 | 3%+.50 | | 1% |
| Cable Splicers | 14.43 | .65 | 3%+.50 | | 1% |
| Ironworkers | 12.05 | .98 | 1.00 | | .10 |
| Laborers (Permit value $500,000 and over): | | | | | |
| Air Tool Oprs., Mason Tenders, Mortar Mixers and Pipelayers | 8.10 | 1.12 | .50 | | |
| Plasterers' Tenders | 8.28 | 1.12 | .50 | | |
| Unskilled Laborers | 8.00 | 1.12 | .50 | | |
| Laborers (Permit value up to $500,000): | | | | | |
| Air Tool Oprs., Mason Tenders, Mortar Mixers and Pipelayers | 6.40 | 1.07 | .50 | | |
| Plasterers' Tenders | 6.58 | 1.07 | .50 | | |
| Unskilled Laborers | 6.30 | 1.07 | .50 | | |
| Lathers | 11.10 | .90 | .55 | | .06 |
| Millwrights | 11.72 | .65 | .70 | | .10 |
| Piledrivermen | 11.35 | .70 | .70 | | .10 |
| Roofers | 10.18 | .50 | .20 | .90 | |



DECISION #ID79-5112 - Mod. #6
(44 FR 30570 - May 25, 1979)
Statewide, Idaho

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Change: | | | | | |
| Boilermakers: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties | $13.51 | $1.275 | $1.25 | $1.00 | .04 |
| Remaining Counties | 13.31 | 1.275 | 1.25 | 1.00 | .04 |
| Bricklayers; Stonemasons: | | | | | |
| Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties | 13.20 | .85 | 1.10 | | .05 |
| Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties | 12.25 | .90 | 1.00 | | |
| Carpenters: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the northern boundary of Township #29 north), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties: | | | | | |
| Carpenter | 14.04 | .96 | 1.20 | | .10 |
| Piledrivermen; Sawfilers; Stationary power woodworking tool operator; Floor layer; Floor finisher; Floor sander | 14.19 | .96 | 1.20 | | .10 |
| Carpenters (burned, charred, creosoted or similarly treated material); Boom Man | 14.29 | .96 | 1.20 | | .10 |
| Millwrights and Machine Erectors | 14.54 | .96 | 1.20 | | .10 |
| Piledriver (creosoted material) | 14.44 | .96 | 1.20 | | .10 |

## Modification Page 25

DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Cement Masons: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho County (north of 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties: | | | | | |
| Zone 1: | | | | | |
| Cement Masons | $13.23 | .95 | $1.50 | | .15 |
| Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base | 13.73 | .95 | 1.50 | | .15 |
| Power Tools | 14.23 | .95 | 1.50 | | .15 |
| Zone 2: | | | | | |
| Cement Masons | 14.28 | .95 | 1.50 | | .15 |
| Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base | 14.78 | .95 | 1.50 | | .15 |
| Power Tools | 15.28 | .95 | 1.50 | | .15 |
| Zone 3: | | | | | |
| Cement Masons | 14.68 | .95 | 1.50 | | .15 |
| Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base | 15.18 | .95 | 1.50 | | .15 |
| Power Tools | 15.68 | .95 | 1.50 | | .15 |
| Zone 4: | | | | | |
| Cement Masons | 16.33 | .95 | 1.50 | | .15 |
| Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base | 15.83 | .95 | 1.50 | | .15 |
| Power Tools | 15.33 | .95 | 1.50 | | .15 |

## Modification Page 26

DECISION #ID79-5112 (Cont'd):

| Change: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Cement Masons (Cont'd): | | | | | |
| Zone 5: | | | | | |
| Cement Masons | $16.08 | .95 | $1.50 | | .15 |
| Gunnite; Power Machine; Power Troweling Machine; Power Magnesite or other material with oxichloride base | 16.58 | .95 | 1.50 | | .15 |
| Power Tools | 17.08 | .95 | 1.50 | | .15 |
| Electricians; | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties: | | | | | |
| Electricians | 16.85 | .95 | 3% + .40 | | .02 |
| Cable Splicers | 17.25 | .95 | 3% + .40 | | .02 |
| Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties: | | | | | |
| Electricians | 13.90 | .75 | 3% + 1.00 | | 1% |
| Cable Splicers | 15.29 | .75 | 3% + 1.00 | | 1% |
| Remaining Counties: | | | | | |
| Electricians; Technicians | 13.95 | .75 | 3% + 1.00 | | 1% |
| Cable Splicers | 15.35 | .75 | 3% + 1.00 | | 1% |
| Elevator Constructors: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties: | | | | | |
| Elevator Constructors | 16.835 | 1.195 | .95 | a | .035 |
| Elevator Constructors' Helpers | 11.78 | 1.195 | .95 | a | .035 |
| Remaining Counties, except Adams, Lemhi, Valley and Washington Counties: | | | | | |
| Elevator Constructors | 12.91 | 1.195 | .95 | a | .035 |
| Elevator Constructors' Helpers | 9.04 | 1.195 | .95 | a | .035 |

DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Glaziers: | | | | | |
| Remaining Counties | $10.05 | .42 | .10 | b | |
| Ironworkers: | | | | | |
| Ornamental; Reinforcing; | | | | | |
| Structural: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties | 15.66 | .93 | 1.90 | | .10 |
| Remaining Counties and those portions of Adams, Idaho, Valley and Washington Counties located south of the Weiser-Gibbonsville Line | 13.19 | .90 | 1.45 | | .02 |
| Line Construction Workers: | | | | | |
| Area 1: | | | | | |
| Cable Splicers; Leadman Pole Sprayer | 16.15 | .45 | 3% +1.10 | .10 | 1/2% |
| Lineman; Pole Sprayer; Heavy Line Equipment Man; Certified Lineman Welder | 14.59 | .45 | 3% +1.10 | .10 | 1/2% |
| Tree Trimmer | 13.17 | .45 | 3% +1.10 | .10 | 1/2% |
| Line Equipment Man | 12.57 | .45 | 3% +1.10 | .10 | 1/2% |
| Head Groundman (Chipper); Head Groundman; Powderman; Jackhammer Man | 10.99 | .45 | 3% +1.10 | .10 | 1/2% |
| Groundman | 10.32 | .45 | 3% +1.10 | .10 | 1/2% |
| Area 2: | | | | | |
| Lineman | 13.00 | .45 | 3% + .50 | | 1% |
| Line Equipment Mechanic: | | | | | |
| Base Shop | 11.49 | .45 | 3% + .50 | .10 | 1% |
| Right-of-way | 12.29 | .45 | 3% + .50 | .10 | 1% |
| Line Equipment Serviceman | 11.49 | .45 | 3% + .50 | .10 | 1% |
| Line Equipment Operator | 11.68 | .45 | 3% + .50 | .10 | 1% |
| Groundman | 9.57 | .45 | 3% + .50 | .10 | 1% |
| Cable Splicer | 14.34 | .45 | 3% + .50 | .10 | 1% |



DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Marble Setters: | | | | | |
| Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties | $13.20 | .85 | $1.10 | | .05 |
| Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties | 12.25 | .90 | 1.00 | | |
| Painters: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce, Shoshone Counties: | | | | | |
| Brush | 11.85 | .47 | 1.00 | | .02 |
| Spray; Steel; Steam Cleaning; Rollers (over 9" or 10" handle); Finish Drywall Taper | 12.10 | .47 | 1.00 | | .02 |
| Swing Stage, over 30 ft. high | 12.20 | .47 | 1.00 | | .02 |
| Bitumastic; Sand Blast; Bridge; Towers; Stacks; Steeples; Tanks on Legs | 12.25 | .47 | 1.00 | | .02 |
| Ada, Adams, Boise, Canyon, Elmore (except Mt. Home AFB), Gem, Gooding County (western third of County including the City of Bliss), Idaho County (south of the 46th Parallel), Owyhee, Payette, Valley and Washington Counties: | | | | | |
| Painters and Tapers | 11.37 | .63 | .50 | | |
| Elmore County (Mt. Home AFB): | | | | | |
| Painters and Tapers | 12.37 | .63 | .50 | | |
| Plasterers: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho, Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties | 12.61 | .95 | 1.50 | | .15 |
| Remaining Counties | 10.71 | 1.04 | .85 | 1.25 | .20 |

Modification Page 29

DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Plumbers: | | | | | |
| Remaining Counties and Idaho County (south of the 46th Parallel) | $13.62 | $1.09 | $2.10 | | .10 |
| Roofers: | | | | | |
| Ada, Adams, Boise, Camas, Canyon, Custer, Elmore, Gem, Idaho County (south of the 46th Parallel), Lemhi, Owyhee, Payette, Valley and Washington Counties: | | | | | |
| Roofers; Kettlemen | 12.45 | .85 | .30 | | |
| Roofers working with coal tar and pitch products | 14.45 | .85 | .30 | | |
| Sheet Metal Workers: | | | | | |
| Remaining Counties | 13.71 | .73 | .96 | | .21 |
| Sprinkler Fitters | 14.79 | .85 | 1.20 | | .08 |
| Terrazzo Workers; Tile Setters: | | | | | |
| Ada, Adams, Boise, Canyon, Elmore, Gem, Owyhee, Payette, Valley and Washington Counties | 13.20 | .85 | 1.10 | | .05 |
| Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka and Twin Falls Counties | 12.25 | .90 | 1.00 | | |
| Omit: | | | | | |
| Carpenters: | | | | | |
| Remaining Counties and Idaho County (south of the northern boundary of Township #29 North): | | | | | |
| Zones 1 and 2 (Rates and Zone Descriptions) | | | | | |
| Cement Masons: | | | | | |
| Remaining Counties and Idaho County (south of 46th Parallel): | | | | | |
| Zones 1 and 2 (Rates and one Descriptions) | | | | | |

Modification Page 30

DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Omit: | | | | | |
| Laborers: | | | | | |
| Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties: | | | | | |
| Building Construction: | | | | | |
| Groups 1 thru 5-D (Rates and Group Descriptions) | | | | | |
| Heavy and Highway Construction: | | | | | |
| Groups 1 thru 5-D (Rates and Group Descriptions) | | | | | |
| Remaining Counties and Idaho County (south of the 46th Parallel): | | | | | |
| Zones 1 and 2 (Rates and Zone Descriptions) | | | | | |
| Power Equipment Operators: | | | | | |
| Area 1: | | | | | |
| Groups 1 thru 7 (Rates and Group Descriptions) | | | | | |
| Area 2: | | | | | |
| Zones 1 and 2 (Rates and Zone Descriptions) | | | | | |
| Truck Drivers: | | | | | |
| Remaining Counties and Idaho County (south of 46th Parallel): | | | | | |
| Zones 1 and 2 (Rates and Descriptions) | | | | | |

DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Add: | | | | | |
| Carpenters: | | | | | |
| Remaining Counties and Idaho County (south of the northern boundary of Township #29 North): | | | | | |
| *Zone 1: | | | | | |
| Carpenter; Floor layer; Shingler; Drywall Applicator | $11.28 | $1.05 | $1.05 | .90 | .15 |
| Saw Filer; Stationary Machine Operator; Piledrivermen; Bridgeman and Wharf Builder; Automatic Pile Threader | 11.45 | 1.05 | 1.05 | .90 | .15 |
| Millwright and Machine Erector; Piledriverman's boom man | 11.57 | 1.05 | 1.05 | .90 | .15 |
| *Zone 2: | | | | | |
| Carpenter; Floor layer; Shingler; Drywall Applicator | 12.78 | 1.05 | 1.05 | .90 | .15 |
| Saw Filer; Stationary Machine Operator; Piledrivermen; Bridgeman and Wharf Builder; Automatic Pile Threader | 12.95 | 1.05 | 1.05 | .90 | .15 |
| Millwright and Machine Erector; Piledriverman's boom man | 13.07 | 1.05 | 1.05 | .90 | .15 |
| *Zone 3: | | | | | |
| Carpenter; Floor layer; Shingler; Drywall Applicator | 13.03 | 1.05 | 1.05 | .90 | .15 |
| Saw Filer; Stationary Machine Operator; Piledrivermen; Bridgeman and Wharf Builder; Automatic Pile Threader | 13.20 | 1.05 | 1.05 | .90 | .15 |
| Millwright and Machine Erector; Piledriverman's boom man | 13.32 | 1.05 | 1.05 | .90 | .15 |
| *For definition of zones, | see Truck Drivers - Area 2. | | | | |



DECISION #ID79-5112 (Cont'd):

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Add: | | | | | |
| Cement Masons: | | | | | |
| Remaining Counties and Idaho County (south of 46th Parallel): | | | | | |
| *Zone 1: | | | | | |
| Group 1 | $10.71 | $1.04 | .85 | $1.25 | .20 |
| Group 2 | 10.91 | 1.04 | .85 | 1.25 | .20 |
| *Zone 2: | | | | | |
| Group 1 | 12.21 | 1.04 | .85 | 1.25 | .20 |
| Group 2 | 12.41 | 1.04 | .85 | 1.25 | .20 |
| *Zone 3: | | | | | |
| Group 1 | 12.46 | 1.04 | .85 | 1.25 | .20 |
| Group 2 | 12.66 | 1.04 | .85 | 1.25 | .20 |
| *For definition of zones, | see Truck Drivers - Area 2. | | | | |
| For definition of groups, | see last page of modification. | | | | |
| Laborers: | | | | | |
| Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties: | | | | | |
| Building Construction: | | | | | |
| Group 1 | 11.80 | .97 | 1.10 | | .10 |
| Group 2 | 12.05 | .97 | 1.10 | | .10 |
| Group 3 | 12.30 | .97 | 1.10 | | .10 |
| Group 4 | 12.55 | .97 | 1.10 | | .10 |
| Heavy and Highway Construction: | | | | | |
| Zone 1: | | | | | |
| Group 1 | 11.80 | .97 | 1.10 | | .10 |
| Group 2 | 12.05 | .97 | 1.10 | | .10 |
| Group 3 | 12.30 | .97 | 1.10 | | .10 |
| Group 4 | 12.55 | .97 | 1.10 | | .10 |
| Zone 2: | | | | | |
| Group 1 | 12.85 | .97 | 1.10 | | .10 |
| Group 2 | 13.10 | .97 | 1.10 | | .10 |
| Group 3 | 13.35 | .97 | 1.10 | | .10 |
| Group 4 | 13.60 | .97 | 1.10 | | .10 |
| Zone 3: | | | | | |
| Group 1 | 13.25 | .97 | 1.10 | | .10 |
| Group 2 | 13.50 | .97 | 1.10 | | .10 |
| Group 3 | 13.75 | .97 | 1.10 | | .10 |
| Group 4 | 14.00 | .97 | 1.10 | | .10 |

Modification Page 33

DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Laborers (Cont'd): | | | | | |
| Zone 4: | | | | | |
| Group 1 | $13.90 | .97 | $1.10 | | .10 |
| Group 2 | 14.15 | .97 | 1.10 | | .10 |
| Group 3 | 14.40 | .97 | 1.10 | | .10 |
| Group 4 | 14.65 | .97 | 1.10 | | .10 |
| Zone 5: | | | | | |
| Group 1 | 14.65 | .97 | 1.10 | | .10 |
| Group 2 | 14.90 | .97 | 1.10 | | .10 |
| Group 3 | 15.15 | .97 | 1.10 | | .10 |
| Group 4 | 15.40 | .97 | 1.10 | | .10 |
| For definition of groups, see last page of modification. | | | | | |
| Area 2: Remaining Counties and Idaho County (south of the 46th Parallel): | | | | | |
| *Zone 1: | | | | | |
| Group 1 | 9.36 | .90 | 1.49 | .60 | .15 |
| Group 2 | 9.46 | .90 | 1.49 | .60 | .15 |
| Group 3 | 9.56 | .90 | 1.49 | .60 | .15 |
| Group 4 | 9.66 | .90 | 1.49 | .60 | .15 |
| Group 5 | 9.71 | .90 | 1.49 | .60 | .15 |
| Group 6 | 9.96 | .90 | 1.49 | .60 | .15 |
| Group 7 | 10.21 | .90 | 1.49 | .60 | .15 |
| Group 8 | 9.51 | .90 | 1.49 | .60 | .15 |
| Group 9 | 9.66 | .90 | 1.49 | .60 | .15 |
| Group 10 | 9.96 | .90 | 1.49 | .60 | .15 |
| *Zone 2: | | | | | |
| Group 1 | 10.86 | .90 | 1.49 | .60 | .15 |
| Group 2 | 10.96 | .90 | 1.49 | .60 | .15 |
| Group 3 | 11.06 | .90 | 1.49 | .60 | .15 |
| Group 4 | 11.16 | .90 | 1.49 | .60 | .15 |
| Group 5 | 11.21 | .90 | 1.49 | .60 | .15 |
| Group 6 | 11.46 | .90 | 1.49 | .60 | .15 |
| Group 7 | 11.71 | .90 | 1.49 | .60 | .15 |
| Group 8 | 11.01 | .90 | 1.49 | .60 | .15 |
| Group 9 | 11.16 | .90 | 1.49 | .60 | .15 |
| Group 10 | 11.46 | .90 | 1.49 | .60 | .15 |

Modification Page 34

DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Laborers (Cont'd): | | | | | |
| *Zone 3: | | | | | |
| Group 1 | $11.11 | .90 | $1.49 | .60 | .15 |
| Group 2 | 11.21 | .90 | 1.49 | .60 | .15 |
| Group 3 | 11.31 | .90 | 1.49 | .60 | .15 |
| Group 4 | 11.41 | . 0 | 1.49 | .60 | .15 |
| Group 5 | 11.46 | .90 | 1.49 | .60 | .15 |
| Group 6 | 11.71 | .90 | 1.49 | .60 | .15 |
| Group 7 | 11.96 | .90 | 1.49 | .60 | .15 |
| Group | 11.26 | .90 | 1.49 | . 0 | .15 |
| Group 9 | 11.41 | .90 | 1. 9 | .90 | .15 |
| Group 10 | 11.71 | .90 | 1.49 | .60 | .15 |
| *For definition of zones, see Truck Drivers - Area 2. | | | | | |
| Power Equipment Operators: | | | | | |
| Area 1: | | | | | |
| Zone 1: | | | | | |
| Group 1 | 12.05 | 1.20 | 1.55 | | .08 |
| Group 2 | 12.35 | 1.20 | 1.55 | | .08 |
| Group 3 | 12.90 | 1.20 | 1.55 | | .08 |
| Group 4 | 13.05 | 1.20 | 1.55 | | .08 |
| Group 5 | 13.20 | 1.20 | 1.55 | | .08 |
| Group 6 | 13.45 | 1.20 | 1.55 | | .08 |
| Group 7 | 13.70 | 1.20 | 1.55 | | .08 |
| Group 8 | 14.70 | 1.20 | 1.55 | | .08 |
| Zone 2: | | | | | |
| Group 1 | 13.10 | 1.20 | 1.55 | | .08 |
| Group 2 | 13.40 | 1.20 | 1.55 | | .08 |
| Group 3 | 13.95 | 1.20 | 1.55 | | .08 |
| Group 4 | 14.10 | 1.20 | 1.55 | | .08 |
| Group 5 | 14.25 | 1.20 | 1.55 | | .08 |
| Group 6 | 14.50 | 1.20 | 1.55 | | .08 |
| Group 7 | 14.75 | 1.20 | 1.55 | | .08 |
| Group 8 | 15.75 | 1.20 | 1.55 | | .08 |
| Zone 3: | | | | | |
| Group 1 | 13.50 | 1.20 | 1.55 | | .08 |
| Group 2 | 13.80 | 1.20 | 1.55 | | .08 |
| Group 3 | 14.35 | 1.20 | 1.55 | | .08 |
| Group 4 | 14.50 | 1.20 | 1.55 | | .08 |
| Group 5 | 14.65 | 1.20 | 1.55 | | .08 |
| Group 6 | 14.90 | 1.20 | 1.55 | | .08 |
| Group 7 | 15.15 | 1.20 | 1.55 | | .08 |
| Group 8 | 16.15 | 1.20 | 1.55 | | .08 |

DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Power Equipment Operators (Con.) | | | | | |
| Zone 4: | | | | | |
| Group 1 | $14.15 | $1.20 | $1.55 | | .08 |
| Group 2 | 14.45 | 1.20 | 1.55 | | .08 |
| Group 3 | 15.00 | 1.20 | 1.55 | | .08 |
| Group 4 | 15.15 | 1.20 | 1.55 | | .08 |
| Group 5 | 15.30 | 1.20 | 1.55 | | .08 |
| Group 6 | 15.55 | 1.20 | 1.55 | | .08 |
| Group 7 | 15.80 | 1.20 | 1.55 | | .08 |
| Group 8 | 16.80 | 1.20 | 1.55 | | .08 |
| Zone 5: | | | | | |
| Group 1 | 14.90 | 1.20 | 1.55 | | .08 |
| Group 2 | 15.20 | 1.20 | 1.55 | | .08 |
| Group 3 | 15.75 | 1.20 | 1.55 | | .08 |
| Group 4 | 15.90 | 1.20 | 1.55 | | .08 |
| Group 5 | 16.05 | 1.20 | 1.55 | | .08 |
| Group 6 | 16.30 | 1.20 | 1.55 | | .08 |
| Group 7 | 16.55 | 1.20 | 1.55 | | .08 |
| Group 8 | 17.55 | 1.20 | 1.55 | | .08 |
| Area 2: | | | | | |
| *Zone 1: | | | | | |
| Group 1 | 11.26 | 1.18 | 1.22 | | .10 |
| Group 2 | 11.42 | 1.18 | 1.22 | | .10 |
| Group 3 | 11.79 | 1.18 | 1.22 | | .10 |
| Group 4 | 12.10 | 1.18 | 1.22 | | .10 |
| Group 5 | 12.27 | 1.18 | 1.22 | | .10 |
| Group 6 | 12.45 | 1.18 | 1.22 | | .10 |
| Group 7 | 12.81 | 1.18 | 1.22 | | .10 |
| Group 8 | 13.04 | 1.18 | 1.22 | | .10 |
| Group 9 | 13.27 | 1.18 | 1.22 | | .10 |
| Group 10 | 13.51 | 1.18 | 1.22 | | .10 |
| *Zone 2: | | | | | |
| Group 1 | 12.76 | 1.18 | 1.22 | | .10 |
| Group 2 | 12.92 | 1.18 | 1.22 | | .10 |
| Group 3 | 13.29 | 1.18 | 1.22 | | .10 |
| Group 5 | 13.60 | 1.18 | 1.22 | | .10 |
| Group 5 | 13.77 | 1.18 | 1.22 | | .10 |
| Group 6 | 13.95 | 1.18 | 1.22 | | .10 |
| Group 7 | 14.31 | 1.18 | 1.22 | | .10 |
| Group 8 | 14.54 | 1.18 | 1.22 | | .10 |
| Group 9 | 14.77 | 1.18 | 1.22 | | .10 |
| Group 10 | 15.01 | 1.18 | 1.22 | | .10 |



DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Power Equipment Operators (Con) | | | | | |
| *Zone 3: | | | | | |
| Group 1 | $13.01 | $1.18 | $1.22 | | .10 |
| Group 2 | 13.17 | 1.18 | 1.22 | | .10 |
| Group 3 | 13.54 | 1.18 | 1.22 | | .10 |
| Group 4 | 13.85 | 1.18 | 1.22 | | .10 |
| Group 5 | 14.02 | 1.18 | 1.22 | | .10 |
| Group 6 | 14.20 | 1.18 | 1.22 | | .10 |
| Group 7 | 14.56 | 1.18 | 1.22 | | .10 |
| Group 8 | 14.79 | 1.18 | 1.22 | | .10 |
| Group 9 | 15.02 | 1.18 | 1.22 | | .10 |
| Group 10 | 15.26 | 1.18 | 1.22 | | .10 |
| *For definition of zones, see Truck Drivers - Area 2. | | | | | |
| Truck Drivers: | | | | | |
| Remaining Counties and Idaho County (south of the 46th Parallel): | | | | | |
| *Zone 1: | | | | | |
| Group 1 | 10.41 | 1.05 | 1.26 | .75 | .20 |
| Group 2 | 10.47 | 1.05 | 1.26 | .75 | .20 |
| Group 3 | 10.53 | 1.05 | 1.26 | .75 | .20 |
| Group 4 | 10.59 | 1.05 | 1.26 | .75 | .20 |
| Group 5 | 10.64 | 1.05 | 1.26 | .75 | .20 |
| Group 6 | 10.90 | 1.05 | 1.26 | .75 | .20 |
| Group 7 | 10.96 | 1.05 | 1.26 | .75 | .20 |
| Group 8 | 11.02 | 1.05 | 1.26 | .75 | .20 |
| Group 9 | 11.13 | 1.05 | 1.26 | .75 | .20 |
| Group 10 | 11.19 | 1.05 | 1.26 | .75 | .20 |
| Group 11 | 11.25 | 1.05 | 1.26 | .75 | .20 |
| Group 12 | 11.31 | 1.05 | 1.26 | .75 | .20 |
| Group 13: | | | | | |
| Class A | 10.79 | 1.05 | 1.26 | .75 | .20 |
| Class B | 11.00 | 1.05 | 1.26 | .75 | .20 |
| Class C | 11.13 | 1.05 | 1.26 | .75 | .20 |
| Class d | 11.31 | 1.05 | 1.26 | .75 | .20 |
| Class E | 11.42 | 1.05 | 1.26 | .75 | .20 |
| Class F | 11.54 | 1.05 | 1.26 | .75 | .20 |
| Class G | 11.82 | 1.05 | 1.26 | .75 | .20 |
| Class H | 12.05 | 1.05 | 1.26 | .75 | .20 |
| Class I | 12.28 | 1.05 | 1.26 | .75 | .20 |
| Group 14 | 11.70 | 1.05 | 1.26 | .75 | .20 |

DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck Drivers (Cont'd): | | | | | |
| *Zone 2: | | | | | |
| Group 1 | $11.91 | $1.05 | $1.26 | .75 | .20 |
| Group 2 | 11.97 | 1.05 | 1.26 | .75 | .20 |
| Group 3 | 12.03 | 1.05 | 1.26 | .75 | .20 |
| Group 4 | 12.09 | 1.05 | 1.26 | .75 | .20 |
| Group 5 | 12.14 | 1.05 | 1.26 | .75 | .20 |
| Group 6 | 12.40 | 1.05 | 1.26 | .75 | .20 |
| Group 7 | 12.46 | 1.05 | 1.26 | .75 | .20 |
| Group 8 | 12.52 | 1.05 | 1.26 | .75 | .20 |
| Group 9 | 12.63 | 1.05 | 1.26 | .75 | .20 |
| Group 10 | 12.69 | 1.05 | 1.26 | .75 | .20 |
| Group 11 | 12.75 | 1.05 | 1.26 | .75 | .20 |
| Group 12 | 12.81 | 1.05 | 1.26 | .75 | .20 |
| Group 13: | | | | | |
| Class A | 12.29 | 1.05 | 1.26 | .75 | .20 |
| Class B | 12.50 | 1.05 | 1.26 | .75 | .20 |
| Class C | 12.63 | 1.05 | 1.26 | .75 | .20 |
| Class D | 12.81 | 1.05 | 1.26 | .75 | .20 |
| Class E | 12.92 | 1.05 | 1.26 | .75 | .20 |
| Class F | 13.04 | 1.05 | 1.26 | .75 | .20 |
| Class G | 13.32 | 1.05 | 1.26 | .75 | .20 |
| Class H | 13.55 | 1.05 | 1.26 | .75 | .20 |
| Class I | 13.78 | 1.05 | 1.26 | .75 | .20 |
| Group 14 | 13.20 | 1.05 | 1.26 | .75 | .20 |
| *Zone 3: | | | | | |
| Group 1 | 12.16 | 1.05 | 1.26 | .75 | .20 |
| Group 2 | 12.22 | 1.05 | 1.26 | .75 | .20 |
| Group 3 | 12.28 | 1.05 | 1.26 | .75 | .20 |
| Group 4 | 12.34 | 1.05 | 1.26 | .75 | .20 |
| Group 5 | 12.39 | 1.05 | 1.26 | .75 | .20 |
| Group 6 | 12.65 | 1.05 | 1.26 | .75 | .20 |
| Group 7 | 12.71 | 1.05 | 1.26 | .75 | .20 |
| Group 8 | 12.77 | 1.05 | 1.26 | .75 | .20 |
| Group 9 | 12.88 | 1.05 | 1.26 | .75 | .20 |
| Group 10 | 12.94 | 1.05 | 1.26 | .75 | .20 |
| Group 11 | 13.00 | 1.05 | 1.26 | .75 | .20 |
| Group 12 | 13.06 | 1.05 | 1.26 | .75 | .20 |
| Group 13: | | | | | |
| Class A | 12.54 | 1.05 | 1.26 | .75 | .20 |
| Class B | 12.75 | 1.05 | 1.26 | .75 | .20 |
| Class C | 12.88 | 1.05 | 1.26 | .75 | .20 |
| Class D | 13.06 | 1.05 | 1.26 | .75 | .20 |
| Class E | 13.17 | 1.05 | 1.26 | .75 | .20 |



DECISION #ID79-5112 (Cont'd):

| Add: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck Drivers (Cont'd): | | | | | |
| Class F | $13.29 | $1.05 | $1.26 | .75 | .20 |
| Class G | 13.57 | 1.05 | 1.26 | .75 | .20 |
| Class H | 13.80 | 1.05 | 1.26 | .75 | .20 |
| Class I | 14.03 | 1.05 | 1.26 | .75 | .20 |
| Group 14 | 13.45 | 1.05 | 1.26 | .75 | .20 |

DEFINITION OF ZONES:

Zone 1: That area within the state of Idaho located within 20 miles on either side of I-84 from the Oregon-Idaho state line on the west to the intersection of I-84 and I-86 in Cassia County, then following I-86 to Pocatello, then following I-15 north to Idaho Falls, then following state highway 191 north to the intersection with Moody Road (approximately 2 miles north of the city of Rexburg, Idaho); then following I-15 south from the city of Pocatello to a point approximately 1 mile south of the city of Downey, Idaho, which point is located by extending the northerly boundary of Franklin County to the west.

Zone 2: That area within the state of Idaho located over 20 miles and within 50 miles on either side of I-84 from the Oregon-Idaho state line on the west to the intersection of I-84 and I-86 in Cassia County, then following I-86 to Pocatello, then following I-15 north to Idaho Falls, then following state highway 191 north to the intersection with Moody Road (approximately 2 miles north of the city of Rexburg, Idaho); then following I-15 south from the city of Pocatello to a point approximately 1 mile south of the city of Downey, Idaho, which point is located by extending the northerly boundary of Franklin County to the west.

Zone 3: The remaining area of that portion of the state of Idaho south of parallel 46 (the Washington-Oregon state line extended eastward to Montana) that is not included in Zone 1 or Zone 2 as described above.

DECISION #ID79-5112 (Cont'd):

Cement Masons:
Remaining Counties and Idaho County (south of 46th Parallel):
Definition of groups:
Group 1: Cement Mason (including but not limited to hand chipping and patching; all types grouting and pointing of all concrete construction; screed setting including screed pins; dry packing of all concrete including Embeco; plugging and filling all voids, etc., concrete construction; waterproofing of concrete with thoroseal or similar materials)
Group 2: Cement Mason (Magnesite, terrazzo and mastic composition, two-component epoxies; Clary and similar type screed operator; Jackson vibrator and similar type screed operator; sandblasting of concrete for architectural finishes only; Power chipping and bushhammer; all color concrete work; Power trowel operator; Power grinder operator; Gunite and composition floor layer)

Laborers:
Area 1: Benewah, Bonner, Boundary, Clearwater, Idaho County (north of the 46th Parallel), Kootenai, Latah, Lewis, Nez Perce and Shoshone Counties:
Definition of Groups:
Group 1: Brush hog feeder; Carpenter tender; Cement Handler; Concrete crewman (includes stripping of forms, hand operating jacks on slip form construction, application of concrete curing compounds, pumpcrete machine, signaling, handling the nozzle of squeezecrete or similar machine - 6 inches and smaller); Concrete signalman; Crusher feeder; Demolition (includes clean-up, burning, loading, wrecking and salvage of all material); Dumpman; Fence erector (includes guard rails, guide and reference posts, sign posts and right-of-way markers); Form cleaning machine feeder, stacker; General laborer; Grout machine header tender; Bullgang, concrete crewman, Dumpman and pumpcrete crewman, including distributing pipe, assembly and dismantle, and Nipper; Nipper; Riprap man; Sandblast tailhoseman; Scaffold erector, wood or steel; Scaleman; Stake jumper; Structural mover (includes separating foundation, preparation, cribbing, shoring, jacking and unloading of structures); Tailhoseman (water nozzle); Timber bucker and faller (by hand); Truck laborer (RR); Truck loader; Well-point man; Window cleaner
Group 2: Asphalt raker; Asphalt roller, walking; Cement finisher tender; Concrete saw, walking; Demolition torch; Dope pot fireman, non-mechanical; Driller tender (when required to move and position machine); Form setter, paving; Grade checker using level; Jackhammer operator; Brakeman, Finisher, Vibrator and form setter; Nozzleman (includes squeeze and flow-crete nozzle); Nozzleman, water, air or steam; Pavement breaker, under 90 lbs.; Pipelayer, corrugated metal culvert; Pipelayer, multi-section; Pot tender; Powdermen tender; Power buggy operator; Power tool operator, gas, electric, pneumatic; Railroad equipment, power-driven, except dual mobile power spiker or puller; Railroad power spiker or puller, dual mobile; Rodder and spreader; Tamper (includes operation of Barco, Essex and similar tampers); Trencher, Shawnee; Tugger operator; Wagon Drills; Water pipe liner; Wheelbarrow, power-driven



DECISION #ID79-5112 (Cont'd):

Group 3: Air track drill; Brush machine (includes horizontal construction joint clean-up brush machine, power-propelled); Caisson worker, free air; Chain saw operator and faller; Concrete stack (includes laborers when working on free-standing concrete stacks for smoke or fume control above 40 ft. high); unite (includes operation of machine and nozzle); High scaler; Hod carrier; Laser Beam operator (includes grade checkers and elevation control); Miner, Nozzleman for concrete, and laser beam operator on tunnels; Monitor operator, air track or similar mounting; Mortar mixer; Nozzleman (includes jet blasting nozzleman, over 1200 lbs., jet blast machine power-propelled, sandblast nozzle); Pavement breaker, 90 lbs.,and over; Pipelayer (includes working topman, caulker, collarman, jointer, mortarman, rigger, jacker, shorer, valve or meter installer, tamper); Pipewrapper; Vibrators, all
Group 4: Drills with dual masts; Raise and Shaft miner, laser beam operator on raises and shafts; Powderman (receives .25 additional per hour); Welder, electric, manual or automatic

Power Equipment Operators:
Area 1:
Definition of Zones:
Group 1: Bit grinders; Bolt threading machine; Compressors (under 2,000 CFM, gas, diesel or electric power); Crusher Feeder (mechanical); Deck hand; Driller's tender; Fireman and heater tender; Grade checker; Tender, mechanic or welder, H.D.; Hydro-seeder, mulcher, nozzleman; Oiler; Oiler and cable tender, mucking machine; Pumpman; Rollers, all types on subgrade (farm type, Case, John Deere and similar, or compacting vibrator), except when pulled by dozer with operable blade; Steam cleaner; Welding machine
Group 2: A-Frame truck (single drum); Assistant refrigeration plant (under 1,000 tons); Assistant plant operator, fireman or pugmixer (asphalt); Bagley or stationary scraper; Belt finishing machine; Blower operator (cement); Cement hog; Compressors (2,000 CFM or over, 2 or more, gas, diesel or electric power); Concrete saw (multiple cut); Distributor leverman; Ditch Witch or similar; Elevator hoisting materials; Dope pots (power agitated); Fork lift or lumber stacker, hydra-lift; and similar; Gin trucks (pipeline); Hoist, single drum; Loaders (bucket elevators and conveyors); Longitudinal float; Mixer (portable - concrete); Pavement breaker, hydra-hammer and similar; Power broom; Railroad ballast regulation operator (self-propelled); Railroad tamper jack operator (self-propelled); Spray curing machine (concrete); Spreader box (self-propelled); Straddle buggy (Ross and similar on construction job only); Tractor (farm type R/T with attachments, except backhoe); Tugger operator
Group 3: A-Frame truck (2 or more drums); Assistant refrigeration plant and chiller operator (over 1,000 tons); Backfillers (Cleveland and similar); Batch plant and wet mix operator, single unit (concrete); Belt-crete conveyor with power pack or similar; Belt loader (Kocal or similar); Bending machine; Boring machine (earth); Boring machine (rock under 8-in. bit) (Quarry Master, Joy or similar); Bump cutter (Wayne, Saginau or similar); Canal lining machine (concrete); Chipper (without crane); Cleaning and Doping machine (pipeline); Deck engineer; Elevating Belt-type loader (Euclid, Barber Greene and similar); Elevating grader-type loader (Dumor, Adams or similar); Generator plant engineer (diesel electric); Gunite combination mixer and complessor; Locomotive engineer; Mixermobile; Mucking machine; Posthole auger or punch; Pump (grout or jet); Soil stabilizer (P & H or similar); Spreader machine; Tractor (to D-6 or equivalent) and Traxcavator; Traverse Finish machine; Turnhead operator

DECISION #ID79-5112 (Cont'd):

Group 4: Blade operator (motor patrol and attachments); Concrete pumps (squeeze-crete, flow-crete, pump-crete, Whitman and similar); Drills (Churn, Core, Calyx or diamond); Equipment serviceman, greaser and oiler; Hoist (2 or more drums or tower hoist); Loaders (overhead and front-end, under 4 yds. R/T); Pave or curb extruders (asphalt or concrete); Refrigeration plant engineers (under 1,000 tons); Rubber-tired skidders (R/T with or without attachments); Screed operator; Surface heater and planer machine; Trenching machines (under 7 ft. depth capacity); Turnhead (with re-screening); Vacuum drill (reverse circulation drill under 8-in. bit)

Group 5: Backhoe (under 1 yd.); Cranes (25 tons and under); Derricks and Stifflegs (under 65 tons); Drilling equipment (8-in. bit and over) (Robbins, reverse circulation and similar); Hoe ram; Piledriving engineers; Paving (dual drum); Railroad track liner operator (self-propelled); Refrigeration plant engineer (1,000 tons and over); Signalman (Whirleys, Highline, Hammerheads or similar)

Group 6: Asphalt plant operator; Automatic subgrader (Ditches and Trimmers) (Autograde, ABC, R.A. Hansen and similar on grade wire); Backhoes (1 yd. to 3 yds.); Batch plant (over 4 units); Batch and wet mix operator (Multiple units, 2 and including 4); Blade (finish and bluetop) (Automatic, CMI, ABC and similar when used as automatic); Boat operator; Boom Cats (side); Cableway controller (dispatcher); Clamshell operator (under 3 yds.); Concrete slip form paver; Cranes (over 25 tons, including 45 tons); Crusher, Grizzle and screening plant operator; Draglines (under 3 yds.); Drill doctor; H.D. mechanic; H.D. Welder; Loader operator (front-end and overhead, 4 yds. including 8 yds.); Multiple dozer units with single blade; Quad-track or similar equipment; Rollerman (finishing pavement); Rubber-tired scrapers (one motor with one scraper, under 40 yds.); Rubber-tired scrapers, multi-engine power with one scraper (Euclid, TS 24 and similar); Rubber-tired scraper, one motor with one scraper (40 yds. and over); Rubber-tired scraper, multiple-engine power with one scraper (Euclid, TS-24 and similar), Push Pull or Help Mate in use; Rubber-tired scraper, multiple engines with two scrapers; Shovels (under 3 yds.); Tractors (D-6 and equivalent and over); Trenching machines (7 ft. depth and over)

Group 7: Backhoe (3 yds. and over); Cableway operators; Clamshell operator (3 yds. and over); Cranes (over 45 tons, to 85 tons); Derricks and Stifflegs (65 tons and over); Draglines (3 yds. and over); Elevating belt (Holland type): Loader (360 degrees revolving Koehring Scooper or similar); Loaders (overhead and front-end, over 8 yds. to 10 yds.); Rubber-tired scrapers (multiple engine with three or more scrapers); Shovels (3 yds. and over); Whirleys and hammerheads, all

Group 8: Cranes (85 tons and over, and all climbing, rail and tower); Loaders (overhead and front-end, 10 yds. and over); Helicopter Pilot



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. IN80-2059 - MOD. #1 (45 FR 51401 - August 1, 1980) Brown, Clark, Crawford, Dearborn, Decatur, Fayette, Floyd, Franklin, Harrison, Henry, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Randolph, Ripley, Rush, Scott, Switzerland, Union, Washington, & Wayne Counties, Indiana | | | | | |
| ADD: FOOTNOTES TO TRUCK DRIVERS: a. Per Week Per Employee b. 1 Week's Paid Vacation after 1 Year's Service; 2 Weeks' Paid Vacation after 3 Years' Service; & 3 Weeks' Paid Vacation after 10 Years' Service. c. 7 Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; Day after Thanksgiving Day; & Christmas Day | | | | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. KY80-1098 - MOD. # 1 (45 FR 56285 - August 22, 1980) Fort Campbell (Located in Christian County, KY., and Montgomery County, TN.) | | | | | |
| Change: | | | | | |
| P.E.O. | | | | | |
| (Kentucky portion) | | | | | |
| CLASS A | 12.60 | .50 | .80 | | .05 |
| CLASS B | 9.86 | .50 | .80 | | .05 |
| CLASS C | 9.09 | .50 | .80 | | .05 |
| SPRINKLER FITTERS | | | | | |
| (Tennessee portion) | 12.80 | .85 | 1.20 | | .08 |
| DECISION NO. ME80-2009 - MOD. #1 (44 FR 16817 - March 14, 1980) York County, Maine | | | | | |
| CHANGE: | | | | | |
| BRICK MASON | $ 9.30 | .50 | .50 | | .02 |
| CARPENTERS: | | | | | |
| Carpenter | 9.98 | .65 | .70 | | .03 |
| Dock Builder | 10.83 | .65 | .70 | | .03 |
| Millwrights | 10.83 | .65 | .70 | | .03 |
| CEMENT MASONS | 8.69 | | | | |
| ELECTRICIANS | 12.65 | .75 | 3%+.25 | | .02 |
| GLAZIERS | 6.55 | | | | |
| IRONWORKERS | 11.35 | 1.15 | 1.55 | | .04 |
| LABORERS: | | | | | |
| Laborer | 8.07 | .75 | 1.10 | | .10 |
| Mason Tender (brick) | 8.24 | .75 | 1.10 | | .10 |
| PAINTERS | 5.44 | | | | |
| PLUMBERS AND PIPEFITTERS | 12.40 | .83 | .65 | | .02 |

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. ME80-2069 - MOD. #1 (45 FR 54614 - August 15, 1980) Cumberland County, Maine | | | | | |
| Change: | | | | | |
| Ironworkers | $11.55 | 1.15 | 1.35 | | .04 |
| Millwrights | 10.35 | .65 | .70 | | .03 |
| Plumbers and Pipefitters | 11.95 | .55 | 1.00 | | .02 |
| DECISION NO. MD 80-3021-Mod.#1 (45 FR 24976- April 11, 1980) Montgomery and Prince Georges Counties, Maryland | | | | | |
| CHANGE: | | | | | |
| ELECTRICIANS | $9.25 | .75 | 3% | | |

| DECISION NO. MI80-2063 MOD#1 (45 FR 54619 August 15, 1980) Alger, Baraga, Chippewa, Dickerson, Gogebic, Houghton Keweenaw, Mackinac, Marquette & Ontonagon Cos. Michigan | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| ASBESTOS WORKERS: | | | | | |
| Gogebic & Ontonagon Cos. | $13.85 | .50 | .75 | | |
| BOILERMAKERS | 14.67 | 1.38 | 1.45 | 2.00 | .05 |
| BRICKLAYERS: | | | | | |
| Alger & Marquette Cos.: Bricklayers, Stonemasons, Plasterers, & Marble-Tile-Terrazzo Workers | 12.46 | .80 | .75 | | .02 |
| Chippewa & Mackinac Cos.: Bricklayers, Stonemasons, Plasterers, Tile & Terrazzo Workers | 12.46 | .80 | .75 | | .02 |
| Remainder of Counties: Bricklayers, Stonemasons, Plasterers, Marble-Tile-Terrazzo Workers | 12.46 | .80 | .75 | | .02 |
| CEMENT MASONS: | | | | | |
| Alger & Marquette Cos. | 11.96 | .80 | .75 | | .02 |
| Chippewa & Mackinac Cos. | 11.96 | .80 | .75 | | .02 |
| Remainder of Counties | 11.96 | .80 | .75 | | .02 |
| ELECTRICIANS: | | | | | |
| Alger & Marquette Cos.: | | | | | |
| Contracts over $50,000 | 13.70 | .75 | 3%+1.00 | | ½ of 1% |
| Contracts $50,000 or less | 11.91 | .75 | 3%+1.00 | | ½ of 1% |
| Chippewa & Mackinac Cos. | 11.75 | .75 | 3%+1.00 | | 15.00p/m |
| Gogebic Co. | 12.13 | 4% | 7% | 11% | 2% |
| Remainder of Counties: | | | | | |
| Contracts $45,000 & over | 12.34 | .75 | 3%+1.00 | | ½ of 1% |
| Contracts up to $45,000 | 9.55 | .75 | 3%+1.00 | | ½ of 1% |
| PAINTERS: | | | | | |
| Baraga, Houghton, Keweenaw & the northern portion of Ontonagon Co. | | | | | |
| Brush/Paperhangers/Tapers and Glaizers | 10.35 | | | | |
| Spray/Sandblasting | 11.35 | | | | |



| DECISION NO. MI80-2063 MOD#1 (Cont.) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SPRINKLER FITTERS | 14.30 | .85 | 1.20 | | .08 |
| POWER EQUIPMENT OPERATORS: BUILDING, HEAVY & UNDERGROUND CONSTRUCTION | | | | | |
| CLASS A | 10.86 | 1.05 | *1.80 | 12% | .05 |
| CLASS B | 9.79 | 1.05 | *1.80 | 12% | .05 |
| CLASS C | 9.25 | 1.05 | *1.80 | 12% | .05 |
| CLASS D | 8.61 | 1.05 | *1.80 | 12% | .05 |

CLASS A - Regular equipment operator, crane, dozer, front end loader, job mechanic, pump crete, squeeze crete, welder

CLASS B - Air track drill, boom truck (non swing), concrete mixers, fork truck, material hoist & tugger, pumps 6" or over, pumpcrete, belt crete, sweeping machine, trencher, winches, well points and freeze systems, Head Grease Man

CLASS C - Air compressor, conveyor, concrete saw, farm tractor (without attachments) generator, guard post driver, mulching, pumps under 6", welding machines, Grease Man

CLASS D - Oiler, Fireman, Heater Operator

| POWER EQUIPMENT OPERATORS: STEEL ERECTION | | | | | |
|---|---|---|---|---|---|
| CLASS 1 - Operator | 11.08 | 1.05 | *1.80 | 12% | .05 |
| CLASS 2 - Compressor & Welder | 9.74 | 1.05 | *1.80 | 12% | .05 |
| CLASS 3 - Oiler & Fireman | 8.71 | 1.05 | *1.80 | 12% | .05 |

* .05 included in Pension Fund for Retiree Benefit.

DECISION MT80-5120 MOD. #6
(45 FR 43598 June 27, 1980)

STATEWIDE, MONTANA

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| BOILERMAKERS | $13.87 | 1.375 | 1.00 | | .05 |
| CARPENTERS | 11.13 | .85 | 1.00 | | .04 |
| PAINTERS | | | | | |
| Area 1 | | | | | |
| Brush or Roller, prep work, pot tender, | 12.08 | .52 | .50 | | .03 |
| Wet sandblasting, brush or roller application of cold tar epoxies and acid resistant materials | 14.08 | .52 | .50 | | .03 |
| Spray application of cold tar, epoxies and acid resistant materials | 17.08 | .52 | .50 | | .03 |
| Paper or vinyl hanger | 11.08 | .52 | .50 | | .03 |
| Structural steel: brush or roller | 14.08 | .52 | .50 | | .03 |
| Perfa-taping | 12.58 | .52 | .50 | | .03 |

DECISION MT80-5121 MOD. #6
(45 FR 43609 June 27, 1980

STATEWIDE, MONTANA

| | | | | | |
|---|---|---|---|---|---|
| CHANGE: | | | | | |
| BRICKLAYERS: Area 8 | 12.70 | .90 | .55 | | |
| BOILERMAKERS | 13.87 | 1.375 | 1.00 | | .05 |
| PAINTERS | | | | | |
| Area 4 | | | | | |
| Brush or roller, prep work, pot tender | 12.08 | .52 | .50 | | .03 |
| Wet sandblasting, brush or roller application of cold tar epoxies and acid resistant materials | 14.08 | .52 | .50 | | .03 |
| Spray application of cold tar, epoxies and acid resistant materials | 17.08 | .52 | .50 | | .03 |
| Paper or vinyl hanger | 11.08 | .52 | .50 | | .03 |
| Structural steel: brush or roller | 14.08 | .52 | .50 | | .03 |
| Perfa-taping | 12.58 | .52 | .50 | | .03 |



DECISION NO. MT80-5122 - Mod. #6
(45 FR 43624, June 27, 1980)

Cascade, Hill, Deer Lodge, Gallatin, Glacier, Missoula, Silver Bow and Valley Counties, Montana

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| BRICKLAYERS: | | | | | |
| Area 3 | $12.70 | .90 | .55 | | |
| PAINTERS: | | | | | |
| Area 2 and 3: | | | | | |
| Brush or roller, prep. work, pot tender | 12.08 | .52 | .50 | | .03 |
| Wet Sandblasting, brush or roller application of cold tar, epoxies and acid resistant materials | 14.08 | .52 | .50 | | .03 |
| Spray application of cold tar, epoxies, and acid resistant materials | 17.08 | .52 | .50 | | .03 |
| Paper or vinyl hanger | 11.08 | .52 | .50 | | .03 |
| Structural steel: brush or roller | 14.08 | .52 | .50 | | .03 |
| Perfa-taping | 12.58 | .52 | .50 | | .03 |

Modification Page 49

| DECISION NO. NJ79-3029 - MOD. #5 (44 FR 1350 - January 4, 1980) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Bergen, Essex, Hudson, Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey | | | | | |
| CHANGE: | | | | | |
| ASBESTOS WORKERS: | | | | | |
| Zone 1 | $13.125 | 1.00 | 1.50 | | .025 |
| Zone 2 | 15.04 | 1.41 | 1.67 | | .04 |
| BRICKLAYERS, STONE MASONS, CEMENT MASONS AND PLASTERERS: | | | | | |
| Zone 1 | 13.17 | .92 | 1.60 | | .05 |
| Zone 4 | | | | | |
| Bricklayers & Stone Masons | 13.66 | 1.02 | .75 | | |
| Cement Masons & Plasterers | 12.85 | .75 | 1.35 | | |
| Zone 8 | 12.45 | .95 | .75 | | .03 |
| Zone 9 | 12.78 | .75 | .70 | | .04 |
| CARPENTERS, INSULATORS & MILLWRIGHTS | | | | | |
| Zone 1 | 11.60 | 1.27 | 1.55 | | .06 |
| DOCK BUILDERS & PILEDRIVERMEN | 12.94 | 1.85 | 1.78 | 1.01 | .05 |
| ELECTRICIANS & CABLE SPLICERS: | | | | | |
| Zone 1 | 13.75 | 9% | 12% | | ¼% |
| Zone 2 | 14.88 | 7% | 6%+1.50 | | .02 |
| Zone 6 | | | | | |
| Wiremen | 15.70 | 7% | 10% | | |
| Cable Splicers | 16.77 | 7% | 10% | | |
| Zone 7 | 15.30 | 8% | 3%+1.00 | | .20 |
| Zone 9 | 15.05 | 7% | 3%+1.90 | | .02 |
| Zone 10 | 15.50 | 7% | 3%+1.40 | | .015 |

Modification Page 50

| DECISION NO. NJ79-3029 - MOD. #5 CONT'D | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS, HEAVY AND HIGHWAY CONSTRUCTION | | | | | |
| Group 1 | 9.50 | 1.25 | 1.00 | | .10 |
| Group 2 | 9.70 | 1.25 | 1.00 | | .10 |
| Group 3 | 10.00 | 1.25 | 1.00 | | .10 |
| Group 4 | 10.20 | 1.25 | 1.00 | | .10 |
| Group 5 | 10.45 | 1.25 | 1.00 | | .10 |
| Group 6 | 11.00 | 1.25 | 1.00 | | .10 |
| LABORERS-FREE AIR TUNNEL | | | | | |
| Group 1 | 10.95 | 1.25 | 1.00 | | .10 |
| Group 2 | 10.55 | 1.25 | 1.00 | | .10 |
| Group 3 | 10.40 | 1.25 | 1.00 | | .10 |
| Group 4 | 9.90 | 1.25 | 1.00 | | .10 |
| LINE CONSTRUCTION (excluding railroad construction) | | | | | |
| Zone 7 | | | | | |
| Linemen and equipment operators | 15.30 | 8% | 3%+1.00 | | 3/4% |
| Zone 13 | | | | | |
| Linemen, cable splicer, line truck operator & equipment Operator | 13.50 | 8% | 3%+1.00 | | 3/4% |
| Groundman | 7.43 | 8% | 3%+1.00 | | 3/4% |
| PAINTERS: | | | | | |
| Zone 4: | | | | | |
| Group 1 | 11.35 | .90 | 1.75 | .50 | |
| Group 2 | 12.50 | .90 | 1.75 | .50 | |
| Group 3 | 12.59 | .90 | 1.75 | .50 | |
| Group 4 | 13.00 | .90 | 1.75 | .50 | |
| PIPEFITTERS: | | | | | |
| Zone 3 | 15.31 | 1.04 | 1.20 | | .08 |
| SHEETMETAL WORKERS: | | | | | |
| Zone 2 | 12.64 | 1.27 | 1.34 | 1.01 | .01 |
| SPRINKLER FITTERS: | | | | | |
| Zone 1 | 14.53 | .85 | 2.20 | | .07 |

DECISION NO. NY79-3032 - Mod. #2
(44 FR 59061 - October 12, 1979)
Chemung County, New York

| Change: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos Workers | 13.83 | .90 | .93 | | .06 |
| Boilermakers | 13.70 | 1.275 | 1.775 | | .03 |
| Electricians | 13.80 | 1.00 | 3%+1.00 | | .05 |
| Elevator Constructors | 11.295 | 1.195 | .95 | c+d | .035 |
| Elevator Constructor Helper | 7.91 | 1.195 | .95 | c+d | .035 |
| Ironworkers | | | | | |
| Structural, Reinforcing, Ornamental, Machinery Mover, Rigger, Rodmen, Fence Erector, & Stone Derrickmen | 11.90 | .85 | 1.05 | | .05 |
| Sheeter | 12.15 | .85 | 1.05 | | .05 |
| Sheeter, Bucker-up | 12.02 | .85 | 1.05 | | .05 |
| Roofers | 11.00 | .99 | 1.19 | | |
| Sheet Metal Workers | 12.42 | 3%+.60 | .80 | | .11 |
| Sprinkler Fitters | 14.52 | .85 | 1.20 | | .08 |
| Power Equipment Operators: | | | | | |
| Building Construction: | | | | | |
| Group I | | | | | |
| I-A | 12.46 | 1.15 | 1.25 | a | .15 |
| I-B | 12.71 | 1.15 | 1.25 | a | .15 |
| I-C | 12.96 | 1.15 | 1.25 | a | .15 |
| I-D | 13.21 | 1.15 | 1.25 | a | .15 |
| I-E | 13.71 | 1.15 | 1.25 | a | .15 |
| I-F | 14.21 | 1.15 | 1.25 | a | .15 |
| I-G | 14.71 | 1.15 | 1.25 | a | .15 |
| I-H | 15.21 | 1.15 | 1.25 | a | .15 |
| Group II | 12.46 | 1.15 | 1.25 | a | .15 |
| Group III | 12.13 | 1.15 | 1.25 | a | .15 |
| Group IV | 10.99 | 1.15 | 1.25 | a | .15 |
| Group V | 9.05 | 1.15 | 1.25 | a | .15 |
| Group VI | 13.06 | 1.15 | 1.25 | a | .15 |



DECISION NO. NY79-3032 - Mod. #2 (Cont'd):

| LINE CONSTRUCTION | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Electrical Overhead & Underground Distribution Work | | | | | |
| Journeyman Lineman & Technician | 11.35 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 10.215 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver | 9.08 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer) | 9.6475 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman-Experienced | 8.5121 | 1.40 | 3%+1.00 | a | |
| All Overhead Transmission Line Work and Lighting for Athletic Fields | | | | | |
| Journeyman Lineman & Technician | 13.00 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 11.70 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver | 10.40 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.05 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman - Experienced | 9.75 | 1.40 | 3%+1.00 | a | |
| Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV | | | | | |
| Commercial Work, Street Lighting & Signal Systems | | | | | |
| Journeyman Lineman & Technician | 13.70 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 12.33 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver | 10.96 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.645 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman - Experienced | 10.275 | 1.40 | 3%+1.00 | a | |

DECISION NO. NY79-3032 - Mod. #2 (Cont'd):

| LINE CONSTRUCTION (CONT'D): | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| All Pipe type Cable Installations, Maintenance Jobs or Projects | | | | | |
| Journeyman Lineman | 13.70 | 1.40 | 3%+1.00 | a | |
| Certified Lineman Welder | 14.385 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Equipment Operator | 13.70 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.645 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Drivers | 10.96 | 1.40 | 3%+1.00 | a | |
| Groundman | 10.275 | 1.40 | 3%+1.00 | a | |

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday



DECISION NO. NY80-3008 - Mod. #2
(45 FR 10583 - February 15, 1980)
Saint Lawrence County, New York

| Change: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Asbestos Workers | 13.83 | .90 | .93 | | .06 |
| Boilermakers | 13.40 | 1.275 | 10% | | .03 |
| Bricklayers, Cement Masons, Marble Setters, Plasterers, Stone Masons, Tile & Terrazzo Workers | 11.87 | .70 | .70 | | .02 |
| Carpenters | | | | | |
| Carpenters & Soft Floor Layers | 11.70 | .55 | .90 | b | .005 |
| Millwrights | 11.95 | .55 | .90 | b | .005 |
| Piledrivermen | 11.85 | .55 | .90 | b | .005 |
| Electricians | | | | | |
| Electricians | 12.80 | .75 | 3%+.78 | | 8% |
| Cable Splicers | 13.05 | .75 | 3%+.78 | | 8% |
| Glaziers | | | | | |
| Remainder of County | 10.68 | | .20 | c | .01 |
| Ironworkers | | | | | |
| Structural, Ornamental, Rodman, Machinery Mover & Rigger, Fence Erector, Reinforcing, & Stone | | | | | |
| Derrickman | 12.17 | 1.11 | 1.02 | | .04 |
| Sheeters | 12.42 | 1.11 | 1.02 | | .04 |
| Sheeter Bucker-up | 12.295 | 1.11 | 1.02 | | .04 |
| Painters: | | | | | |
| Twps. of Massena, Louisville, Waddington, Lisbon, Oswegatchie, Morristown, Hammond, Rossie, Macomb, Depeyster, Madrid, Norfolk, Stockholm, Potsdam, Canton, Dekalb, Gouverneur, Fowler, Pitcairn, Edwards, Herman, Russel, Fine, Clare, Pierrepont, Colton, Clifton, and Parishville: | | | | | |
| Brush, Roller and Seamless Floor Application | 9.85 | .80 | .45 | | |
| Paperhanging, Paper Removal, Wallcovering, Cork & Taping | 10.10 | .80 | .45 | | |
| Steamcleaning, Swing Stage, Hydro Water Blasting, Window Jacks | 10.20 | .80 | .45 | | |
| Spray | 10.35 | .80 | .45 | | |
| Bosun Chair, Sandblasting, Steel Painting | 10.55 | .80 | .45 | | |

DECISION NO. NY80-3008 - Mod #2

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Painters, Cont'd | | | | | |
| Remainder of County: | | | | | |
| Painters | 10.13 | | .20 | c | .01 |
| Spray Cup, Paperhanging, Spray Structural Steel, Swing Scaffold, Boatswain Chair, Hanging Scaffold, Sandblasting & Taping | 10.68 | | .20 | c | .01 |
| Bridges | 10.88 | | .20 | c | .01 |
| Seamless Floor Material | 9.28 | | .20 | c | .01 |
| Roofers | 10.38 | | .20 | c | .01 |
| Sprinkler Fitters | 13.15 | 1.00 | 2.00 | | |
| | 14.52 | .85 | 1.20 | | .08 |
| LINE CONSTRUCTION | | | | | |
| Electrical Overhead & Underground Distribution Work | | | | | |
| Journeyman Lineman & Technician | 11.35 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 10.215 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver | 9.08 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer) | 9.6475 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman - Experienced | 8.5121 | 1.40 | 3%+1.00 | a | |
| All Overhead Transmission Line Work and Lighting for Athletic Fields | | | | | |
| Journeyman Lineman & Technician | 13.00 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 11.70 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver | 10.40 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.05 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman - Experienced | 9.75 | 1.40 | 3%+1.00 | a | |



DECISION NO. NY80-3008 - Mod. #2

| LINE CONSTRUCTION CONT'D | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems | | | | | |
| Journeyman Lineman & Technician | 13.70 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Digging Machine Operator, Groundman Dynamite Man | 12.33 | 1.40 | 3%+1.00 | a | |
| Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver | 10.96 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.645 | 1.40 | 3%+1.00 | a | |
| Driver Mechanic, Groundman - Experienced | 10.275 | 1.40 | 3%+1.00 | a | |
| All Pipe type Cable Installations, Maintenance Jobs or Projects | | | | | |
| Journeyman Lineman | 13.70 | 1.40 | 3%+1.00 | a | |
| Certified Lineman Welder | 14.385 | 1.40 | 3%+1.00 | a | |
| Cable Splicer | 15.07 | 1.40 | 3%+1.00 | a | |
| Groundman Equipment Operator | 13.70 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Driver (Tractor Trailer Unit) | 11.645 | 1.40 | 3%+1.00 | a | |
| Groundman Truck Drivers | 10.96 | 1.40 | 3%+1.00 | a | |
| Groundman | 10.275 | 1.40 | 3%+1.00 | a | |

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

DECISION NO. NY80-3008 - Mod. #2

| POWER EQUIPMENT OPERATORS: BUILDING CONSTRUCTION | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS 1 | 13.11 | 1.25 | 1.25 | a | .15 |
| CLASS 2 | 12.43 | 1.25 | 1.25 | a | .15 |
| CLASS 3 | 11.06 | 1.25 | 1.25 | a | .15 |
| CLASS 4 | 13.90 | 1.25 | 1.25 | a | .15 |
| CLASS 5 | 13.61 | 1.25 | 1.25 | a | .15 |
| CLASS 6 | 15.11 | 1.25 | 1.25 | a | .15 |
| CLASS 7 | 14.11 | 1.25 | 1.25 | a | .15 |

FOOTNOTE:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day, providing employee has worked fove consecutive working days before and the working day after the holiday.

CLASSIFICATIONS:

CLASS 1 - Air Plako, Asphalt and Blacktop Roller, Automated Concrete Spreader (CMI or equiv.), Automated Fine Grade Machine(CMI), Backhoe, Belt Placer, Blacktop Spreader (such as Barber Greene & Blaw Knox), Blacktop Plant (automated), Blast or Rotary Drill (Truck or cat mounted), Boom Truck, Cableway, Caisson Auger, Carry-all Scraper-Self loading, Central Mix Plant (Automated), Cherry Picker - over five (5) ton capacity, Compressor, Pump Generator or Welding Machine (when used in a battery of not more than four), Crane, Crusher - Rock, Derrick, Diesel Power Unit, Dragline, Dredge, Dual Drum Paver, Elevation Grader (self-propelled or towed), Elevator Hoist-Two Cage, Excavator-All Purpose-Hydraulically operated, Fork Lift (Factory rating 15 ft or more), Front End Loader (4c.y. and over), Gradall, Grader (Power), Head Tower (Saurman or equal), Hoist (2 or 3 Drum), (LCM's) work Boat Operator, Light plants; compressors and generators, Locomotive, Maintenance Engineer, Maintenance Welder, Mine Hoist, Micking Machine or Mole, Overhead Crane - Fixed Permanent, Pile Driver, Quarry Master or Equivalent, Refrigeration Equip. For Soil Stabilization, Sea Mule, Shovel, Side Boom, Slip Form Paver, Straddle Buggy (Ross Carrier, Lumber Carrier), Tractor Drawn Belt Type Loader (Euclid Loader), Trenching Machine (digging Capacity of over 4 ft. depth), Tug Operator (Manned, rented equip. excluded), Tunnel Shovel, Vibro or sonic Hammer Controls (when not mounted in proximity to the Rig Operator)



DECISION NO. NY80-3008 - Mod. #2

POWER EQUIPMENT OPERATORS:
BUILDING CONSTRUCTION (CONT'D)

CLASS 2 - "A" Frame Truck, Blacktop Plant (non-automatic), Boring Machine, Bulldozer, Cage-Hoist, Carry-All Scraper, Central Mix Plant (non-automated), Cherry Picker - five (5) tons and under, Compressor (500 C.F. and over), Concrete Paver (Single Drum over 16S), Concrete Pump, Core Boring Machine, Drill Rigs - Tractor mounted, Elevator as a material hoist, Fork Lift (factory rating less than 15 ft.), Front End Loader (under 4 c.y.), Gunite Machine, High Pressuer Boiler (151bs. & over), Hoist (one drum), Hydraulic Breaking Hammer (Drop Hammer), Kolman Plant Loader (screening gravel), Maintenance Grease Man, Mixer for stabilized base-self propelled (Seaman Mixer), Monorail Machine, Parapet Concrete or Pavement Grinder, Post Hole Digger (truck or tractor mounted), Power sweeper (Wayne or similar), Pump 4" and over, Pump-Crete or Squeeze-Crete, Road Widener (front end of Grader of self propelled), Roller, Shell Winder (motorized), Snorkel (overhead arms), Snowblower control man, Trenching Machine (digging capacity of 4 ft. or less), Tugger Hoist, Vibro Tamp, Well Drill, Well Point System (Submersible Pumps when used in lieu of well-point system), Which (notor driven), Winch Truck Winch Cat

CLASS 3 - Compressor (up to 500 C.F.), Concrete Paver or Mizer (under 16S), Concrete Pavement Spreaders and Finishers (not automated), Conveyor(over 12 ft.), Electric Submersible Pump (4" and over), Farm Tractor with or without accessories, Fine Grade Machine (not automated), Fireman, Form Tamper, Generator (2,500 Watts and over), Grout pump Hydraulic Pump, Mechanical Heaters, More than two (2) Mechanical Heaters or any Mechacnical Heater or Heaters whose combined output exceeds 640,000 BTU per hour (manufacturer's mating) plus one self contained heating unit (i.e. Sundog or Air Heat type, New Holland Hay Dryer type excluded), Mulching Machine, Oiler, Parts Man, Post Driver (Truck or Tractor Mounted), Power Driven Welding Machine - 300 amp. and over (other than all electric) one Welding Machine under 300 amp. will not require an enginneer unless in a battery, Power Heaterman (hay dryer), Pump (under 4"), Revinous Widener (road widener), Single Light Plant, Steam Cleaner or Jenny, Tractor with or without towed accessories.

CLASS 4 - Master Mechanic

CLASS 5 - Twoer Crane, Quad 9 Bulldozer or Multibowl Scraper

CLASS 6 - Crane or Derrick with a boom length over 300 ft. including jib.

CLASS 7 - Crane or Derrick with a boom length over 150 ft. including jib.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. VA78-3074-Mod. #7(45 FR 51588-Nov.3,1978) Henrico & the independent City of Richmond, Virginia | | | | | |
| DELETE: | | | | | |
| Lathers: | | | | | |
| Plasterer & Drywall Finish | | | | | |
| ADD: | | | | | |
| Lathers | $10.24 | | .20 | | .01 |
| DECISION NO: VA80-3052-Mod. #1 ( 45 FR54636-August 15,1980) THE INDEPENTENT CITIES OF CHESAPEAKE,HAMPTON,NEWPORT NEWS,NORFOLK,PORTSMOUTH, AND VIRGINIA BEACH, VIRGINIA | | | | | |
| DELETE: | | | | | |
| TRUCK DRIVER, HEAVY DUTY ( 7 C.Y. & UNDER) | | | | | |



| DECISION NO. OR80-5106 - Mod #2 (45 FR 8856 - February 9, 1980) Statewide Oregon | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CHANGE: | | | | | |
| BRICKLAYERS; Stonemasons: Clackamas, Clatsop, Columbia, Gilliam, Hood River, Marion, Multnomah, Morrow, Polk, Sherman and Tillamook Counties; Wasco County (north of the City of Maupin); Washington, Yamhill, Baker, Union, Umatilla and Wallowa Cos.; North half of Malheur Co. | $15.66 | 1.05 | 1.40 | | .22 |
| CARPENTERS: | | | | | |
| Acoustical and Drywall Applicator; Automatic Nailing Machine; Carpenters; Form Strippers; Manhole Builders | 13.80 | 1.00 | 1.00 | .65 | .07 |
| Floor Layers and Finishers; Stationary Power Saw Operators | 13.95 | 1.00 | 1.00 | .65 | .07 |
| Millwrights and Machine Erectors | 14.05 | 1.00 | 1.00 | .65 | .07 |
| Certified Welders, Instrument Men | 14.20 | 1.00 | 1.00 | .65 | .07 |
| Piledrivermen; Bridge, Dock and Wharf Builders | 13.90 | 1.00 | 1.00 | .65 | .07 |
| Boom Men | 14.00 | 1.00 | 1.00 | .65 | .07 |
| CEMENT MASONS: | | | | | |
| Cement Masons | 13.10 | 1.05 | 1.17 | 1.00 | .20 |
| ELECTRICIANS: | | | | | |
| Baker, Gilliam, Grant, Morrow, Umatilla, Wheeler Counties: | | | | | |
| Electricians | 16.65 | .95 | 3% +1.30 | | .05 |
| Lead Cable Splicers | 17.52 | .95 | 3% +1.30 | | .05 |

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DECISION NO. OR80-5106 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELECTRICIANS Cont'd | | | | | |
| Coos, Curry, Lincoln, and those portions of Douglas and Lane Counties lying west of a line north and south from the NW corner of Coos County to the SE corner of Lincoln County: | | | | | |
| Electricians | $17.05 | .90 | 3%+2.50 | | .04 |
| Cable Splicers | 18.75 | .90 | 3%+2.50 | | .04 |
| Benton, Crook, Deschutes and Jefferson Counties; Lane County (eastern portion); Linn, Marion and Polk Counties; S½ of Yamhill County: | | | | | |
| Electricians | 18.55 | .90 | 3%+1.00 | | .07 |
| Lead Cable Splicers | 20.41 | .90 | 3%+1.00 | | .07 |
| Clackamas, Clatsop, Columbia, Hood River, Multnomah, Sherman, Tillamook, Wasco and Washington Counties; N½ of Yamhill County: | | | | | |
| Electricians | 17.75 | .90 | 3%+1.80 | | .10 |
| Lead Cable Splicers | 18.50 | .90 | 3%+1.80 | | .10 |
| Harney, Jackson, Josephine, Klamath and Lake Counties; that portion of Douglas County lying east of a line running north and south from the NE corner of Coos County to the SE corner of Lincoln County: | | | | | |
| Electricians | 16.13 | .90 | 3%+2.00 | | .08 |
| Cable Splicers | 17.74 | .90 | 3%+2.00 | | .08 |

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DECISION NO. OR80-5106 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| IRONWORKERS: Structural; Reinforcing; Ornamental; Riggers; fence Erectors; Signal Men | $15.66 | .93 | 1.90 | | .10 |
| MASON TENDERS: (including tenders of plasterers, bricklayers, tile setters, marble setters and terrazzo worker; Topping for cement finishers and mortar mixer) | 12.95 | .95 | 1.30 | | .10 |
| PAINTERS: Remaining Counties: | | | | | |
| Brush | 12.42 | .90 | 1.00 | .50 | .09 |
| Spray | 12.97 | .90 | 1.00 | .50 | .09 |
| Bridges, High work over 50' (brush) | 13.32 | .90 | 1.00 | .50 | .09 |
| Bridges, High work over 50' (spray) | 13.87 | .90 | 1.00 | .50 | .09 |
| Drywall Tapers | 14.23 | .80 | .80 | | .06 |
| PLASTERERS: Benton, Coos, Crook, Curry Douglas, Deschutes, Harney and Jefferson Cos. Northern 1/3 of Klamath County; Lane County; Southern 1/2 of Lincoln, Linn, Wasco and Wheeler Counties | 15.04 | 1.00 | 1.00 | | .01 |
| PLUMBERS: Lane County (except the City of Florence); Douglas County (except Coast portion); Crook and Deschutes Counties; NW portion of Harney County; Northern portions of Klamath and Lake Counties S½ of Lincoln, Linn, Benton and Jefferson Cos. SW corner of Grant County | 19.07 | 1.21 | 1.90 | | .19 |

DECISION NO. OR80-5106 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PLUMBERS Cont'd | | | | | |
| Jackson and Josephine Counties N1/2 of Benton, Lincoln, and Linn Cos; S 1/2 of Tillamook and Yamhill Cos; Marion and Polk Counties | $16.96 | 1.25 | 1.90 | 1.75 | .12 |
| ROOFERS: | | | | | |
| Baker, Clackamas, Clatsop, Columbia, Grant, Gilliam, Hood River, Morrow, Multnomah, Sherman, Tillamook, Umatilla, Union, Wasco, Washington and Wheeler Counties: | | | | | |
| Roofers | 13.55 | .80 | 1.30 | | .10 |
| Handling of irritating material (coal, tar or epoxy) | 13.80 | .80 | 1.30 | | .10 |
| Handling of irritating material (coal, tar or epoxy) in confined area | 14.05 | .80 | 1.30 | | .10 |
| Coos, Crook, Curry, Deschutes, Douglas, Harney, Jackson, Josephine, Klamath, Lake and Lane Counties: | | | | | |
| Roofers | 13.25 | .96 | .50 | | |
| Spray and/or application of irritating materials in a confined area | 12.60 | .96 | .50 | | |
| Wallowa County | 13.06 | .85 | 1.45 | | .10 |
| SHEET METAL WORKERS: | | | | | |
| Benton, Clackamas, Clatsop, Columbia, Crook, Deschutes, Gilliam, Grant, Harney, Hood River, Jefferson, Lincoln, Linn, Marion, Multnomah, Polk, Sherman, Wheeler, Tillamook, Wasco, and Washington Cos | 15.04 | 3%+1.00 | 1.68 | 1.00 | .10 |



DECISION NO. OR80-5106 (Cont'd)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SOFT FLOOR LAYERS: | | | | | |
| All Counties except Malheur County | $12.415 | .60 | 1.05 | b | .12 |
| SPRINKLER FITTERS | 15.34 | .85 | 1.20 | | 08 |
| TILE SETTERS: | | | | | |
| Baker, Clatsop, Clackamas, Columbia, Gilliam and Hood River Counties; N½ of Malehur County; Morrow, Multnomah, Sherman, Tillamook, Umatilla, Union and Wallowa Cos.; Wasco County (north of Maupin); Washington Co.; N½ of Yamhill County | 15.66 | .90 | 1.20 | | .28 |
| Benton, Coos, Crook, Curry, Deschutes, Douglas Grant, Harney, Jackson, Josephine, Klamath, Lake, Lane, Lincoln and Linn Counties; S½ of Malheur and Wheeler Counties; Wasco County (Maupin and South thereof) | 14.60 | .95 | .95 | | .10 |

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. WA80-5125 - Mod.#1 (45-FR-56302 - August 22, 1980) Clallam, King, Kitsap, Pierce, Snohomish, and Thurston Counties, Washington | | | | | |
| CHANGE: ELECTRICIANS: Clallam, King, and Kitsap Counties | $9.50 | .98 | 3% + .40 | .19 | .05 |
| DECISION NO. DC 80-3039-Mod. #1 (45 FR 30976 - May 9, 1980) Washington D.C. | | | | | |
| CHANGE: | | | | | |
| ELECTRICIANS | $9.25 | .75 | 3% | | |
| GLAZIERS | 12.73 | .71 | .80 | | .05 |

Modification Page 66

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DECISION NO. WI80-2013 - MOD. #2 (45 FR 23282 - April 2, 1980) Milwaukee, Ozaukee, Waukesha and Washington Counties, Wisconsin | | | | | |
| Change: | | | | | |
| Boilermakers | $13.87 | 1.375 | 1.10 | | .05 |
| Carpenters | 12.97 | 1.35 | 1.15 | .51 | .08 |
| Millwrights | 13.71 | 1.35 | 1.15 | .76 | .08 |
| Piledrivermen | 13.82 | 1.35 | 1.15 | .51 | |
| DECISION NO. WI80-2027 - MOD. #1 (45 FR 26656 - April 18, 1980) Ashland, Bayfield, and Douglas Counties, Wisconsin | | | | | |
| Change: | | | | | |
| Boilermakers | $ 13.87 | 1.375 | 1.10 | | .05 |
| Carpenters: Ashland Co. | 11.20 | .60 | .60 | .40 | |
| Millwrights and Pile-drivermen: Ashland Co. | 11.40 | .60 | .60 | .40 | |
| DECISION NO. WI80-2079 - MOD. # 1 (45 FR 59112 -Sept. 5, 1980) Kenosha County, Wisconsin | | | | | |
| Change: | | | | | |
| Boilermakers | $13.87 | 1.375 | 1.10 | | .05 |
| Carpenters & Soft Floor Layers | 12.83 | .55 | 1.00 | | .06 |
| Millwrights | 13.12 | .55 | 1.00 | | .06 |
| Piledrivermen | 12.92 | .55 | 1.00 | | .06 |

SUPERSEDEAS DECISION

STATE: California

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura

DECISION NUMBER: CA80-5135 DATE: Date of Publication

Supersedes Decision No. CA80-5131 dated September 19, 1980, in 45 FR 62654

DESCRIPTION OF WORK: Building Projects (does not include single family homes ana apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS:* | | | | | |
| Area 1 | $22.49 | $1.30 | $1.45 | | .07 |
| Area 2 | 18.74 | 1.30 | 1.45 | | .07 |
| BOILERMAKERS:* | | | | | |
| Area 1 | 17.485 | 1.255 | 1.25 | 1.00 | .04 |
| Area 2 | 15.11 | 1.255 | 1.25 | 1.00 | .04 |
| BRICKLAYERS; Stonemasons:* | | | | | |
| Area 1 | 14.09 | 1.13 | 1.34 | | .12 |
| Area 2 | 15.74 | 1.15 | 2.21 | | .10 |
| Area 3 | 15.45 | 1.15 | 1.65 | | .07 |
| Area 4 | 13.35 | 1.30 | 1.75 | | .05 |
| Area 5 | 14.95 | 1.30 | 2.35 | | .10 |
| Area 6 | 15.32 | 1.45 | 2.00 | | .06 |
| Area 7 | 19.575 | 1.30 | 2.35 | | .10 |
| BRICK TENDERS | 11.23 | 1.25 | 2.90 | 1.00 | .12 |
| CARPENTERS:* | | | | | |
| Area 1: | | | | | |
| Carpenters | 15.81 | 1.63 | 2.21 | 1.00 | .10 |
| Saw Filers | 15.89 | 1.63 | 2.21 | 1.00 | .10 |
| Table Power Saw Operators | 15.91 | 1.63 | 2.21 | 1.00 | .10 |
| Shinglers, Piledrivermen, Bridge or Dock Carpenters | 15.94 | 1.63 | 2.21 | 1.00 | .10 |
| Hardwood Floorlayers | 16.01 | 1.63 | 2.21 | 1.00 | .10 |
| Pneumatic Nailers | 16.06 | 1.63 | 2.21 | 1.00 | .10 |
| Millwrights | 16.31 | 1.63 | 2.21 | 1.00 | .10 |
| Area 2: | | | | | |
| Carpenters | 13.81 | 1.63 | 2.21 | 1.00 | .10 |
| Saw Filers | 13.89 | 1.63 | 2.21 | 1.00 | .10 |
| Table Power Saw Operators | 13.91 | 1.63 | 2.21 | 1.00 | .10 |
| Shinglers; Piledrivermen, Bridge or Dock Carpenters | 13.94 | 1.63 | 2.21 | 1.00 | .10 |
| Hardwood Floorlayers | 14.01 | 1.63 | 2.21 | 1.00 | .10 |
| Pneumatic Nailers | 14.06 | 1.63 | 2.21 | 1.00 | .10 |
| Millwrights | 14.31 | 1.63 | 2.21 | 1.00 | .10 |
| *See AREA Descriptions - following TRUCK DRIVERS' Classifications | | | | | |
| CEMENT MASONS:* | | | | | |
| Area 1: | | | | | |
| Cement Masons | $15.26 | $1.30 | $1.85 | $1.25 | .08 |
| Cement Floating and Troweling Machine Operators | 15.51 | 1.30 | 1.85 | 1.25 | .08 |
| Area 2: | | | | | |
| Cement Masons | 13.61 | 1.30 | 1.85 | 1.25 | .08 |
| Cement Floating and Troweling Machine Operators | 13.86 | 1.30 | 1.85 | 1.25 | .08 |
| DRYWALL INSTALLERS:* | | | | | |
| Area 1 | 16.63 | 1.62 | 2.21 | .95 | .09 |
| Area 2 | 14.63 | 1.63 | 2.21 | .95 | .09 |
| DIVERS:* | | | | | |
| Diver, wet | 32.88 | 1.63 | 2.21 | 1.00 | .10 |
| Diver, Stand-by | 16.44 | 1.63 | 2.21 | 1.00 | .10 |
| Diver, Tender | 15.44 | 1.63 | 2.21 | 1.00 | .10 |
| ELECTRICIANS:* | | | | | |
| Area 1: | | | | | |
| Electricians | 15.98 | .75 | 3%+1.71 | | .09 |
| Cable Splicers | 16.28 | .75 | 3%+1.71 | | .09 |
| Area 2:: | | | | | |
| Electricians; Technicians | 17.05 | 1.10 | 3%+2.15 | | .15 |
| Cable Splicers | 18.65 | 1.10 | 3%+2.15 | | .15 |
| Area 3: | | | | | |
| Electricians; Technicians | 15.67 | 1.15 | 3%+2.70 | | .12 |
| Cable Splicers | 15.97 | 1.15 | 3%+2.70 | | .12 |
| Area 4: | | | | | |
| Electricians | 17.24 | .81 | 3%+1.45 | | .02 |
| Cable Splicers | 18.03 | .81 | 3%+1.45 | | .02 |
| Area 5: | | | | | |
| Electricians | 15.91 | .81 | 3%+1.45 | | .04 |
| Cable Splicers | 16.41 | .81 | 3%+1.45 | | .04 |
| Area 6: | | | | | |
| Electricians | 14.90 | 1.21 | 3%+2.90 | | .04 |
| Cable Splicers | 15.40 | 1.21 | 3%+2.90 | | .04 |
| Area 7: | | | | | |
| Electricians | 16.98 | 1.23 | 3%+1.50 | | .03 |
| Cable Splicers | 18.68 | 1.23 | 3%+1.50 | | .03 |
| *See AREA Descriptions - following TRUCK DRIVERS' Classifications | | | | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELECTRICIANS:* (Cont'd) | | | | | |
| Area 8: | | | | | |
| Electricians | $17.00 | $1.10 | 3%+1.50 | | .03 |
| Cable Splicers | 18.50 | 1.10 | 3%+1.50 | | .03 |
| Area 9: | | | | | |
| Electricians | 16.71 | 1.20 | 3%+1.95 | | .02 |
| Cable Splicers | 18.38 | 1.20 | 3%+1.95 | | .02 |
| Area 10: | | | | | |
| Electricians | 19.50 | 1.10 | 3%+1.50 | | .03 |
| Cable Splicers | 21.00 | 1.10 | 3%+1.50 | | .03 |
| Area 11: | | | | | |
| Electricians | 19.00 | 1.10 | 3%+1.95 | | .15 |
| Cable Splicers | 20.90 | 1.10 | 3%+1.95 | | .15 |
| ELEVATOR CONSTRUCTORS:* | | | | | |
| Area 1 | 15.41 | 1.045 | .82 | a | .035 |
| Area 2 | 16.37 | .895 | .82 | a | .035 |
| GLAZIERS:* | | | | | |
| Area 1 | 18.50 | 1.10 | 3.00 | | .07 |
| IRONWORKERS:* | | | | | |
| Fence Erectors: | | | | | |
| Zone 1 | 13.11 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 2 | 14.26 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 3 | 14.86 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 4 | 15.36 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 5 | 16.11 | 1.39 | 3.11 | 2.15 | .07 |
| Structural, Ornamental, Reinforcing: | | | | | |
| Zone 1 | 14.00 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 2 | 15.15 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 3 | 15.75 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 4 | 16.25 | 1.39 | 3.11 | 2.15 | .07 |
| Zone 5 | 17.00 | 1.39 | 3.11 | 2.15 | .07 |
| IRRIGATION and LAWN SPRINKLERS | 11.12 | 10% | 16% | 13% | 1½% |
| LATHERS:* | | | | | |
| Area 1 | 12.58 | 1.15 | 1.85 | .90 | .05 |
| Area 2 | 14.00 | 1.26 | 1.99 | | .03 |
| Area 3 | 15.63 | 1.63 | 2.21 | 1.00 | .10 |

*See AREA and ZONE Descriptions - following TRUCK DRIVERS' Classifications



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LATHERS:* (Cont'd) | | | | | |
| Area 4 | 13.60 | .95 | 1.70 | 1.00 | .03 |
| Area 5 | 14.11 | .90 | 1.41 | 1.03 | .01 |
| LINE CONSTRUCTION:* | | | | | |
| Area 1: | | | | | |
| Groundman | 12.40 | .75 | 3%+1.60 | | |
| Lineman | 16.13 | .75 | 3%+1.60 | | |
| Cable Spliecrs | 16.41 | .75 | 3%+1.60 | | |
| Area 2: | | | | | |
| Groundman | 11.75 | 1.15 | 3%+2.70 | | |
| Lineman | 15.67 | 1.15 | 3%+2.70 | | |
| Cable Splicers | 15.97 | 1.15 | 3%+2.70 | | |
| Area 3: | | | | | |
| Groundman | 12.12 | .81 | 3%+1.45 | | .02 |
| Lineman, Equipment Op. | 14.04 | .81 | 3%+1.45 | | .02 |
| Cable Splicer | 14.69 | .81 | 3%+1.45 | | .02 |
| Area 4: | | | | | |
| Groundman | 9.86 | 1.25 | 3%+1.95 | | |
| Lineman | 13.14 | 1.25 | 3%+1.95 | | |
| Cable Splicers | 13.44 | 1.25 | 3%+1.95 | | |
| Area 5: | | | | | |
| Groundman | 9.41 | 1.11 | 3%+2.00 | | .04 |
| Lineman | 12.71 | 1.11 | 3%+2.00 | | .04 |
| Cable Splicers | 13.44 | 1.11 | 3%+2.00 | | .04 |
| Area 6: | | | | | |
| Groundman | 9.65 | .85 | 3%+1.65 | | .04 |
| Lineman; Equipment Operator | 13.08 | .85 | 3%+1.65 | | .04 |
| Cable Splicers | 13.38 | .85 | 3%+1.65 | | .04 |
| Area 7: | | | | | |
| Groundman | 12.74 | 1.00 | 3%+1.35 | | .03 |
| Lineman; Equipment Operators | 16.98 | 1.00 | 3%+1.35 | | .03 |
| Cable Splicers | 18.68 | 1.00 | 3%+1.35 | | .03 |

*See AREA Descriptions following TRUCK DRIVERS' Classifications

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LINE CONSTRUCTION:* (Cont'd) | | | | | |
| Area 8: | | | | | |
| Groundman | $12.93 | $1.00 | 3%+1.35 | | .03 |
| Lineman | 14.21 | 1.00 | 3%+1.35 | | .03 |
| Cable Splicers | 15.63 | 1.00 | 3%+1.35 | | .03 |
| Area 9: | | | | | |
| Groundman | 12.75 | 1.10 | 3%+1.50 | | .03 |
| Lineman | 17.00 | 1.10 | 3%+1.50 | | .03 |
| Cable Splicers | 18.50 | 1.10 | 3%+1.50 | | .03 |
| Area 10: | | | | | |
| Groundman | 15.25 | 1.10 | 3%+1.50 | | .03 |
| Lineman | 19.50 | 1.10 | 3%+1.50 | | .03 |
| Cable Splicer | 21.00 | 1.10 | 3%+1.50 | | .03 |
| Area 11: | | | | | |
| Groundman | 15.00 | 1.10 | 3%+1.95 | | .15 |
| Lineman | 19.00 | 1.10 | 3%+1.95 | | .15 |
| Cable Splicers | 20.90 | 1.10 | 3%+1.95 | | .15 |
| MARBLE SETTERS:* | | | | | |
| Area 1 | 12.42 | 1.50 | 1.62 | 1.18 | |
| Area 2 | 13.54 | .81 | 1.17 | | .08 |
| MARBLE FINISHERS:* | | | | | |
| Area 1 | 9.44 | .81 | 1.17 | | .08 |
| PAINTERS:* | | | | | |
| Area 1: | | | | | |
| Brush; Paint Burners | 14.26 | 1.23 | 1.43 | .75 | .07 |
| Paperhangers | 14.76 | 1.23 | 1.43 | .75 | .07 |
| Sandblaster; Iron, Steel and Bridge (Swing Stage) | 15.26 | 1.23 | 1.43 | .75 | .07 |
| Sheet Rock Tapers | 15.26 | 1.23 | 1.43 | .75 | .07 |
| Brush (Swing Stage); Spray | 14.51 | 1.23 | 1.45 | .75 | .07 |
| Steeplejack | 15.91 | 1.23 | 1.43 | .75 | .07 |
| Area 2: | | | | | |
| Brush | 13.46 | 1.29 | 1.33 | .60 | .10 |
| Structural Steel and Bridge, Paint Burner | 13.58 | 1.29 | 1.33 | .60 | .10 |

*See AREA Descriptions - following TRUCK DRIVERS' Classifications



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS:* (Cont'd) | | | | | |
| Area 2: (Cont'd) | | | | | |
| Tapers | $14.06 | $1.29 | $1.33 | .60 | .10 |
| Brush Swing Stage (13 stories or less); Paperhangers; Sandblasters, Spray Painters | 13.71 | 1.29 | 1.33 | .60 | .10 |
| Brush Swing Stage (over 13 stories) | 13.83 | 1.29 | 1.33 | .60 | .10 |
| Structural Steel and Bridge, Swing Stage (13 stories or less) | 13.71 | 1.29 | 1.33 | .60 | .10 |
| Structural Steel, Bridge (swing stage)(over 13 stories) | 13.96 | | | | |
| Spray, Sandblaster, Swing Stage (over 13 stories) | 14.08 | 1.29 | 1.33 | .60 | .10 |
| Spray Painters; Sand blaster, Swing Stage (under 13 stories); Paste Machine; Special Coating Spray | 13.96 | 1.29 | 1.33 | .60 | .10 |
| Steeplejack | 14.71 | 1.29 | 1.33 | .60 | .10 |
| Area 3: | | | | | |
| Brush | 10.63 | .80 | 1.00 | | .03 |
| Brush or Roller (swing stage); Paperhangers; Tapers (sheet rock) | 10.88 | .80 | 1.00 | | .03 |
| Spray; Sandblasters | 11.13 | .80 | 1.00 | | .03 |
| Steeplejack | 12.13 | .80 | 1.00 | | .03 |
| Area 4: | | | | | |
| Brush, Pot Tender | 13.98 | 1.25 | 1.83 | | .03 |
| Paperhangers, Paste Machine Operators, Iron and Steel | 14.23 | 1.25 | 1.83 | | .03 |
| Spray, Taper, Sandblaster | 14.48 | 1.25 | 1.83 | | .03 |
| Steeplejack | 14.98 | 1.25 | 1.83 | | .03 |

*See AREA Descriptions - following TRUCK DRIVERS' Classifications

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS:* (Cont'd) | | | | | |
| Area 5: | | | | | |
| Brush, Pot Tender | $16.48 | $1.25 | $1.83 | | .03 |
| Paperhangers; Paste Machine Operator, Iron and Steel | 16.73 | 1.25 | 1.83 | | .03 |
| Spray. Taper, Sandblasters | 16.98 | 1.25 | 1.83 | | .03 |
| Steeplejack | 17.48 | 1.25 | 1.83 | | .03 |
| Parking Lot Striping Work and/ow Highway Markers: | | | | | |
| Area 1: | | | | | |
| Striper | 10.83 | .85 | .55 | b | |
| Traffic Delineating Device Applicator | 11.22 | .85 | .55 | b | |
| Wheel Stop Installer, Traffic Surface Sandblaster | 10.83 | .85 | .55 | b | |
| Slurry Seal Operation: | | | | | |
| Mixer Operator | 10.83 | .85 | .55 | b | |
| Squeegee Man | 9.64 | .85 | .55 | b | |
| Applicator Operator | 9.64 | .85 | .55 | b | |
| Shuttleman | 9.64 | .85 | .55 | b | |
| Top Man | 8.10 | .85 | .55 | b | |
| Area 2: | | | | | |
| Striper | 14.33 | .85 | .55 | b | |
| Traffic Delineating Device Device Applicator | 14.72 | .85 | .55 | b | |
| Wheel Stop Installer, Traffic Surface Sandblaster | 14.33 | .85 | .55 | b | |

*See AREA Descriptions following TRUCK DRIVERS' Classifications



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS: (Cont'd) | | | | | |
| Parking Lot Striping Work and/or Highway Markers: | | | | | |
| Area 2: (Cont'd) | | | | | |
| Slurry Seal Operation: | | | | | |
| Mixer Operator | $14.33 | .85 | .55 | b | |
| Squeegee Man | 13.14 | .85 | .55 | b | |
| Applicator Operator | 13.14 | .85 | .55 | b | |
| Shuttleman | 13.14 | .85 | .55 | b | |
| Topman | 11.60 | .85 | .55 | b | |
| PLASTERS:* | | | | | |
| Area 1 | 12.335 | .95 | 1.85 | | .12 |
| Area 2 | 18.95 | | | | |
| Area 3 | 12.00 | | | | |
| Area 4 | 15.10 | 1.00 | 1.30 | | |
| Area 5 | 14.51 | 1.30 | 3.00 | | .02 |
| Area 6 | 16.955 | 1.00 | 1.30 | | |
| PLASTERERS TENDERS:* | | | | | |
| Area 1 | 13.32 | 1.25 | 2.90 | 1.00 | |
| Area 2 | 11.25 | 1.25 | 2.90 | 1.00 | |
| Area 3 | 13.175 | 1.25 | 2.90 | 1.20 | |
| Area 4 | 12.48 | 1.25 | 2.90 | 1.20 | |
| Area 5 | 13.83 | 1.25 | 2.90 | 1.20 | |
| Area 6 | 15.73 | 1.25 | 2.90 | 1.20 | |
| Area 7 | 14.25 | 1.25 | 2.90 | 1.00 | |
| PLUMBERS; Steamfitters:* | | | | | |
| Area 1 | 15.25 | 1.53 | 2.44 | 1.98 | .31 |
| Area 2 | 15.88 | 1.05 | 2.25 | 1.45 | .17 |
| Area 3 | 20.88 | 1.05 | 2.25 | 1.45 | .17 |
| Area 4 | 16.75 | 1.53 | 2.44 | 1.98 | .31 |
| REFRIGERATION and AIR CONDITIONING:* | | | | | |
| Area 1 | 10.70 | .96 | .85 | 1.00 | .05 |
| Area 2 | 13.82 | 2.00 | 2.00 | 1.52 | .30 |
| ROOFERS:* | | | | | |
| Area 1 | 12.79 | .80 | 1.05 | 1.00 | |
| Area 2 | 12.05 | .80 | .60 | | .02 |
| Area 3 | 12.65 | .80 | 1.00 | 1.25 | |
| Area 4 | 13.31 | .97 | 2.05 | | .065 |
| Area 5 | 13.37 | .645 | 1.49 | | |
| Area 6 | 16.12 | .645 | 1.49 | | |

*See AREA Descriptions following TRUCK DRIVERS'

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SHEET METAL WORKERS:* | | | | | |
| Area 1 | $14.96 | $1.04 | $2.24 | | .01 |
| Area 2 | 14.51 | 1.14 | 1.80 | | .02 |
| Area 3 | 15.16 | 1.14 | 2.52 | | .10 |
| Area 4 | 14.16 | 1.14 | 2.64 | | .09 |
| Area 5 | 13.90 | 1.14 | 2.64 | | .16 |
| Area 6 | 14.93 | 1.14 | 2.52 | | |
| Area 7 | 16.975 | 1.00 | 1.30 | | .03 |
| SOFT FLOOR LAYERS:* | | | | | |
| Area 1 | 11.52 | .81 | 1.45 | | .10 |
| Area 2 | 12.72 | .75 | 1.20 | .75 | .08 |
| Area 3 | 12.80 | .85 | .85 | 1.18 | .07 |
| SPRINKLERFITTERS:* | | | | | |
| Area 1 | 18.67 | .85 | 1.20 | | .08 |
| Area 2 | 16.83 | .83 | 1.05 | | .09 |
| TERRAZZO WORKERS:* | | | | | |
| Area 1 | 12.69 | .81 | 1.17 | | .08 |
| TILE SETTERS:* | | | | | |
| Area 1 | 12.69 | .81 | 1.17 | | .08 |
| Area 2 | 13.81 | 1.06 | 1.40 | | .10 |
| Area 3 | 10.50 | 1.20 | 1.85 | | .07 |
| Area 4 | 12.95 | 1.03 | 1.35 | | |
| TILE FINISHERS:* | | | | | |
| Area 1 | 9.96 | 1.39 | 1.30 | | .13 |

FOOTNOTES:

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. Six Paid Holidays: A through F

b. Employer contributes $.23 per hour to Holiday Fund plus $.14 per hout to Vacation Fund for the first year of employment, 1 year but less than 5 years $.34 per hour to Vacation Fund, 5 years but less than 10 years $.44 per to Vacation Fund, over 10 years $.54 per hour to Vacation Fund

PAID HOLIDAYS:

A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day



| | Basic Hourly Rates | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|---|
| | | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS:* | AREA 1 | AREA 2 | | | | |
| Group 1 | $10.63 | $12.63 | $1.25 | $2.90 | .95 | .12 |
| Group 2 | 10.78 | 12.78 | 1.25 | 2.90 | .95 | .12 |
| Group 3 | 10.98 | 12.98 | 1.25 | 2.90 | .95 | .12 |
| Group 4 | 11.28 | 13.28 | 1.25 | 2.90 | .95 | .12 |
| Group 5 | 11.48 | 13.48 | 1.25 | 2.90 | .95 | .12 |
| GUNNITE | | | | | | |
| Group 1 | 12.62 | 14.62 | 1.25 | 2.90 | .95 | .12 |
| Group 2 | 11.97 | 13.97 | 1.25 | 2.90 | .95 | .12 |
| Group 3 | 10.91 | 12.91 | 1.25 | 2.90 | .95 | .12 |
| TUNNEL | | | | | | |
| Group 1 | 12.54 | 14.54 | 1.25 | 2.90 | .95 | .12 |
| Group 2 | 12.66 | 14.44 | 1.25 | 2.90 | .95 | .12 |
| Group 3 | 12.82 | 14.82 | 1.25 | 2.90 | .95 | .12 |
| Group 4 | 13.10 | 15.10 | 1.25 | 2.90 | .95 | .12 |

*See AREA Descriptions - following TRUCK DRIVERS' Classifications

LABORERS

Group 1: Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry Packing of concrete, plugging, filling of Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Flagman; Gas, Oil and/or Water Pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Mateiral Hoiseman (walls, slabs, floors and decks); Rigging and Signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee Man, Shuttle Man, Top Man); Striper, concrete or other paved surfaces; Tarman and Mortar Man; Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer, Chucktender; Chute Man, pouring concrete, the handling of the Chute from Ready Mix Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters and sideqlaks; Concrete Curer, Impervious Membrane and Form Oiler; CuttingTorch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, Oil and/or Water Pipeline Wrapper, Pot Tender and Form Man; Guineau Chaser; Headerboard Man, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (Leadman); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luteman, Ironer and Asphalt Spreader Boxes (all types); Buggymobile Man; Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw Man, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, Oil and/or Water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench, Mutli-plate; Kettlemen, Potmen and Men applying asphakt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, Vibrating Machines, Pavement Breakers, Air Balsting, Come-alongs, and similar mechanical tools not seperately classified herein; Pipelayer's Backup Man, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rovk Slinger; Rotary Scarificer or Multiple Head Concrete Chipping Scafifier; Steel Headerboard Man and Guideline Setter; Tampers, Barko, Wacker and similar type; Trenching Machine, ahnd propelled



LABORERS (Cont'd)

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, Hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Oversize Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzleman), water blasting; Welding in connection with Laborers' work

Group 5: Blasters Powderman, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

(GUNNITE)

Group 1: Nozzlemen and Rodmen

Group 2: Gunmen

Group 3: Reboundmen

(TUNNEL)

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trackman; Concrete Crew, including Rodders and Spreaders; Changehouseman; Dumpman; Dumpman (outside); Swamper (Brakeman and Switchman on tunnel work); Tunnel materials handling man; Tool Man

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Helper; Vibratorman, Jackhammer, pneumatic tools (except Driller); Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Balster, Driller, Powderman; Chemical Grout Jetman; Cherry Pickerman; Grout Gunman; Grout Mixerman; Grout Pumpman; Jackleg Miner; Jumbo Man; Kemper and other pneumatic concrete placer Operator; Miner, tunnel (hand or machine); Powderman (Primer House); Primer Man; Shotcrete Man; Steel Form Raiser and Setter; Timberman; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzleman; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise.Miner; Diamond Driller

| POWER EQUIPMENT OPERATORS:* | Basic Hourly Rates | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|---|
| | | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| | AREA 1 | AREA 2 | | | | |
| Group 1 | $13.60 | $16.10 | $1.10 | $2.65 | .90 | .14 |
| Group 2 | 13.88 | 16.38 | 1.10 | 2.65 | .90 | .14 |
| Group 3 | 14.17 | 16.67 | 1.10 | 2.65 | .90 | .14 |
| Group 4 | 14.31 | 16.81 | 1.10 | 2.65 | .90 | .14 |
| Group 5 | 14.53 | 17.03 | 1.10 | 2.65 | .90 | .14 |
| Group 6 | 14.64 | 17.17 | 1.10 | 2.65 | .90 | .14 |
| Group 7 | 14.76 | 17.26 | 1.10 | 2.65 | .90 | .14 |
| Group 8 | 14.93 | 17.43 | 1.10 | 2.65 | .90 | .14 |
| Group 9 | 15.06 | 17.56 | 1.10 | 2.65 | .90 | .14 |

*See AREA Descriptions following TRUCK DRIVERS' Classifications



## POWER EQUIPMENT OPERATORS

Group 1: Brakeman; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty Repairman; Helper; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, skip type, Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Raidoman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (aspahlt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and inlcidung 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Singlaman; Hydra-hammer-aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 ft.)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Forklift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (aspahlt or concrete); Mechanical Finisher (concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skiploader (Crawler and wheel type,, over 3/4 yard and up to and including 1½ yards); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 h.p., flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tna up to and including 30 tons); Welder-general

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey-Euclid, Sierra and similar type); Mateiral Hoist; Mucking Machine (1/4 yard rubber tired, rail or track type); Pneumatic Concrete Placing Machine (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpiller, Euclid, Athey Wagon, and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skiploader (Crawler and wheel type, over 1½ yards, up to and including 6½ yards); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel h.p. and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yards m.r.c.) (Long boom pay applicable); Self-propelled Curb and Gutter Machine

Group 7: Crane, over 25 ton up to and including 100 tons m.r.c. (Long boom pay applicable); Derrick Barge (Long boom pay applicable); able); Dual Drum Mixer; Heavy Duty Repairman, welder combination; Hoist, Sitff-legs, Guy Derrick or similar type, up to and including 100 tons (Long Boom pay applicable); Monorail Locomotive (diesel gas or electric); Motor Patrol-blade Operator (single engine); Mu-Multiple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpiller and similar)(over 25 yards and up to 5 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. m.r. c.) (Long Boom pay applicable); Tower Crane Repairman; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment



POWER EQUIPMENT OPERATORS (Cont'd)

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more)(Long boom applicable); Mass Excavator, less than 750 cu. yards; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine); Pipe Mobile Machine; Rubber-tired earth moving equipment (multiple engine, Euclid, Caterpiller and similar type, over 50 cu. yards struck); Rubber-tired Self-loading Scraper (paddle wheel, auger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; Highline Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yard)

| TRUCK DRIVERS:* | Basic Hourly Rates | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|---|
| | | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| | AREA 1 | AREA 2 | | | | |
| Group 1 | $12.91 | $15.41 | $1.25 | $1.33 | $1.35 | .15 |
| Group 2 | 12.99 | 15.49 | 1.25 | 1.33 | 1.35 | .15 |
| Group 3 | 13.05 | 15.55 | 1.25 | 1.33 | 1.35 | .15 |
| Group 4 | 13.14 | 15.64 | 1.25 | 1.33 | 1.35 | .15 |
| Group 5 | 13.17 | 15.67 | 1.25 | 1.33 | 1.35 | .15 |
| Group 6 | 13.19 | 15.69 | 1.25 | 1.33 | 1.35 | .15 |
| Group 7 | 13.23 | 15.73 | 1.25 | 1.33 | 1.35 | .15 |
| Group 8 | 13.24 | 15.74 | 1.25 | 1.33 | 1.35 | .15 |
| Group 9 | 13.29 | 15.79 | 1.25 | 1.33 | 1.35 | .15 |
| Group 10 | 13.32 | 15.82 | 1.25 | 1.33 | 1.35 | .15 |
| Group 11 | 13.37 | 15.87 | 1.25 | 1.33 | 1.35 | .15 |
| Group 12 | 13.39 | 15.89 | 1.25 | 1.33 | 1.35 | .15 |
| Group 13 | 13.44 | 15.94 | 1.25 | 1.33 | 1.35 | .15 |
| Group 14 | 13.69 | 16.19 | 1.25 | 1.33 | 1.35 | .15 |
| Group 15 | 13.94 | 16.44 | 1.25 | 1.33 | 1.35 | .15 |
| Group 16 | 14.04 | 16.54 | 1.25 | 1.33 | 1.35 | .15 |
| Group 17 | 14.14 | 16.64 | 1.25 | 1.33 | 1.35 | .15 |
| Group 18 | 14.44 | 16.94 | 1.25 | 1.33 | 1.35 | .15 |
| Group 19 | 14.94 | 17.44 | 1.25 | 1.33 | 1.35 | .15 |

*See AREA Descriptions following TRUCK DRIVERS' Classifictions



TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than six tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted Power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Bootman; Cement Distributor; Fuel Truck; Road Oil Spreader Truck; Water Truck, 2 axle

Group 6: Dump, of less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 6½ yards

Group 8: Truck Repairman Helper

Group 9: Water Truck, 3 or more axles

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working Truck including Winch, but limited to truck applicable to Pipeline and Untility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tireman (50¢ per hour additional for Tireman)

Group 11: Transit-mix, 3 yards or more; Dumpcrete, 6½ yards and over

Group 12: Driver of vehicle or combination of vehicles of 4 or more axles

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame of Swedish Crane, or similar type of equipment driver; Fork Lift Driver; Ross Carrier, highway

Group 15: All Off-highway Equipment within Teamsters' jurisdiction (off highway combination of vehicles or equipment with multiple power sources, $1.00 per hour additional); Dump, 25 yards or more; Truck Repairman

Group 16: Truck Repairman Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

BOILERMAKERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

BRICKLAYERS; Stonemasons:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Los Angeles and Orange Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County
Area 7: Point Arguello and Vendenberg Air Force Base

CARPENTERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

CEMENT MASONS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenberg Air Force Base
Area 2: Remaining Counties

DRYWALL INSTALLERS:
Area 1: Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Station, Point Arguello and Vandenbert Air Force Base
Area 2: Remaining Counties



AREA DESCRIPTIONS (Cont'd)

DIVERS:*
Shall recieve a minimum of 8 hours pay for any day of part thereof.

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono, and San Bernardino Counties
Area 7: San Luis Obispo County
Area 8: Santa Barbara (Remainder of County)
Area 9: Ventura County
Area 10: Point Arguello and Vandenberg Air Force Base
Area 11: China Lake Naval Ordnance Test Station and Edwards Air Force Base

ELEVATOR CONSTRUCTORS:
Area 1: Imperial, Inyo, Kern (south of Tehachapi Range), Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, And Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

GLAZIERS:
Area 1: Imperial County

IRONWORKERS:
Where project is located 35 miles or more from the City Halls indicated, Zone rate applies:

Zone 1: 0 to 35 miles
Zone 2: 35 to 50 miles
Zone 3: 50 to 60 miles
Zone 4: 60 to 100 miles
Zone 5: 100 miles and over

City Hall of San Francisco, Oakland, San Jose, Sacramento, Stockton, Fresno, Bakersfield, Eureaka, Redding, Napa, Los Angeles, San Diego, San Bernardino, Ventura, and El Centro

AREA DESCRIPTIONS (Cont'd)

LATHERS:
Area 1: Inyo, Kern, and Mono Counties
Area 2: Los Angeles County (except City of Lancaster)
Area 3: Ventura County
Area 4: Orange County
Area 5: Riverside County

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Orange County
Area 4: Los Angeles County
Area 5: Inyo, Mono, and San Bernardino Counties
Area 6: Riverside County
Area 7: San Luis Obispo County
Area 8: Ventura County
Area 9: Point Arguello and Vandenberg Air Force Base
Area 10: China Lake Naval Ordnance Test Station and Edwards Air Force Base

MARBLE SETTERS:
Area 1: Inyo and Mono Counties
Area 2: Imperial County

MARBLE, TERRAZZO AND TILE FINISHERS:
Area 1: Imperial County
Area 2: Kern, Inyo, and Mono Counties

PAINTERS:
Area 1: Imperial, Orange, Riverside, Los Angeles (Pomona Area), San Bernardino (excluding western portion)
Area 2: Inyo, Los Angeles (except Pomona Area), Mono, San Bernardino (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area), Kern County east of the Los Angeles Aqueduct)
Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)



AREA DESCRIPTIONS (Cont'd)

PAINTERS: (Cont'd)
Area 4: San Luis Obispo, Santa Barbara and Ventura Counties
Area 5: Point Arguello and Vandenberg Air Force Base

Parking Lot Striping Work and/or Highway Markers; and Slurry Seal Operation:
Area 1: Remainder of Counties
Area 2: Point Arguello and Vandenberg AFB

PLASTERERS:
Area 1: Los Angeles and OrangeCounties
Area 2: Riverside and San Bernardino Counties
Area 3: San Luis Obispo County
Area 4: Santa Barbara County
Area 5: Ventura County
Area 6: Point Arguello and Vandenberg Air Force Base

PLASTERERS TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside, and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Ventura County
Area 7: China Lake Naval Ordnance Test Station and Edwards Air Force Base

PLUMBERS; Steamfitters:
Area 1: Imperial, Los Agneles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara, and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties
Area 3: Edwards Air Force Base, Naval Weapons Center and China Lake Naval Ordnance Test Center
Area 4: Point Arguello and Vandenberg Air Force Base

REFRIGERATION and AIR CONDITIONING:
Area 1: Riverside and San Bernardino Counties
Area 2: Los Angeles and OrangeCounties

AREA DESCRIPTIONS (Cont'd)

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange, and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties
Area 6: Point Arguello and Vandenberg Air Force Base

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties, Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (Remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara and Ventura Counties
Area 7: Point Arguello and Vandenberg Air Force Base

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino, and Ventura Counties
Area 3: Kern County (including that portion lying east of the Los Angeles Aqueduct and that portion of Inyo County included within the Inyo-Kern Naval Reservation

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, Mono, Orange (except Santa Ana), Riverside, San Bernardino (except Ontario, San Luis Obispo, Santa Barbara and Ventura Counties (except Santa Paula, Point Mugu and Port Hueneme)
Area 2: Los Angeles City and area within 25 miles and Poma), Orange County (Santa Ana); San Bernardino County (Ontario) and Ventura County (Santa Paula, Point Mugu and Port Hueneme)
Area 3: Point Arguello and Vandenberg Air Force Base



AREA DESCRIPTIONS (Cont'd)

TERRAZZO WORKERS:
Area 1: Imperial County

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, and Ventura Counties
Area 3: San Lusi Obispo and Santa Barbara Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Inyo, Kern, and Mono Counties

TILE FINISHERS:
Area 1: Los Angeles, Orange, and Ventura Counties

LABORERS:
Area 1: Remainder of Counties
Area 2: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg Air Force Base

POWER EQUIPMENT OPERATORS:
Area 1: Remainder of Counties
Area 2: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg Air Force Base

TRUCK DRIVERS:
Area 1: Remainder ofCounties
Area 2: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg Air Force Base

SUPERSEDEAS DECISION

STATE: Hawaii COUNTIES: Statewide
DECISION NUMBER: HI80-5134 DATE: Date of Publication
Supersedes Decision No. HI78-5130 dated November 24, 1980, in 43 FR 55143
DESCRIPTION OF WORK: Building Projects (including single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | $12.19 | .70 | $2.50 | | .06 |
| BOILERMAKERS | 12.68 | .65 | 1.00 | | .03 |
| BRICKLAYERS; Stonemasons | 10.88 | 1.30 | 2.00 | .60 | .15 |
| CARPENTERS: | | | | | |
| Carpenters; Hardwood Floorlayers; Patent Scaffold Erectors; Pneumatic Nailer; Shinglers | 11.00 | 1.44 | 1.95 | 1.00 | .06 |
| Power Saw Operator (2 HP and over) | 11.15 | 1.44 | 1.95 | 1.00 | .06 |
| Millwrights | 11.25 | 1.44 | 1.95 | 1.00 | .06 |
| CEMENT MASONS: | | | | | |
| Cement Masons | 10.83 | 1.30 | 2.00 | .60 | .15 |
| Troweling Machine Operators | 10.98 | 1.30 | 2.00 | .60 | .15 |
| DRAPERY INSTALLERS | 6.45 | .50 | .40 | b | |
| DRYWALL APPLICATOR | 11.10 | 1.44 | 1.95 | 1.00 | .07 |
| ELECTRICIANS: | | | | | |
| Electricians; Linemen | 12.86 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Technicians | 13.25 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Cable Splicers | 14.15 | 1.17 | 15%+1.84 | 11.6% | .55 |
| ELEVATOR CONSTRUCTORS | 13.83 | .895 | .69 | a | .03 |
| FENCE ERECTORS: | | | | | |
| Chain Link | 5.39 | .23 | .29 | .10 | .03 |
| GLAZIERS | 10.50 | 1.20 | 1.07 | .97 | .20 |
| IRONWORKERS: | | | | | |
| Bridge; Ornamental; Reinforcing; Structural | 11.50 | 1.05 | 1.75 | 1.25 | .12 |
| LINE CONSTRUCTION WORKERS: | | | | | |
| Electricians; Linemen | 12.86 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Technicians | 13.25 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Heavy Equipment Operator | 11.57 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Groundmen | 9.65 | 1.17 | 15%+1.84 | 11.6% | .55 |
| Cable Splicers | 14.15 | 1.17 | 15%+1.84 | 11.6% | .55 |
| MARBLE SETTERS | 10.92 | 1.30 | 2.00 | | .15 |
| PAINTERS: | | | | | |
| Brush | 11.35 | .84 | 3.00 | .75 | .10 |
| Tapers | 11.55 | .84 | 3.00 | .75 | .10 |
| Spray | 11.85 | .84 | 3.00 | .75 | .10 |
| PLASTERERS | 10.79 | 1.30 | 2.30 | .60 | .21 |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PLUMBERS; Steamfitters | $13.00 | $1.05 | $2.05 | $1.95 | .15 |
| ROOFERS | 12.20 | 1.15 | 1.50 | .50 | .15 |
| SHEET METAL WORKERS | 12.65 | 1.78 | 2.96 | | .44 |
| SOFT FLOOR LAYERS | 12.00 | .75 | 1.75 | .55 | .29 |
| SPRINKLER FITTERS | 14.75 | .85 | 1.20 | | .08 |
| TERRAZZO WORKERS and TILE SETTERS: | | | | | |
| Terrazzo Base Grinder | 9.83 | 1.30 | 2.00 | | .15 |
| Terrazzo Floor Grinder and Finisher | 8.74 | 1.30 | 2.00 | | .15 |
| Terrazzo Workers and Tile Setters | 10.92 | 1.30 | 2.00 | | .15 |
| TRUCK DRIVERS: | | | | | |
| Flatbed | 9.53 | 1.05 | 2.20 | .75 | .10 |
| Dump, 8 yards and under; Water Truck (up to and including 2000 gallons) | 9.80 | 1.05 | 2.20 | .75 | .10 |
| Water Truck (over 2000 gallons) | 10.11 | 1.05 | 2.20 | .75 | .10 |
| Semi-trailer or Semi-Dump | 10.76 | 1.05 | 2.20 | .75 | .10 |
| Slip-in or Pup | 11.08 | 1.05 | 2.20 | .75 | .10 |
| End Dumps, unlicensed (Euclid, Mack, Caterpillar or similar); Tractor Trailer (hauling equipment) | 11.19 | 1.05 | 2.20 | .75 | .10 |

RIGGERS; WELDERS: Receive rate prescribed for craft performing operation to which rigging or welding is incidental

FOOTNOTES:
a. Employer contributes 4% of basic hourly rate for 5 years' service and 2% of basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A thru F.
b. Seven Paid Holidays: A thru F plus Kamehaha Day. In order to be eligible for a Paid Holiday, employees must work the last working day before the Holiday and the first working day following the Holiday. If the employee did not work either of these two days due to illness or layoff, he shall be entitled to Holiday Pay. In case of illness, the Company may require proof of illness.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DREDGING | | | | | |
| Hydraulic Suction Dredges; Clamshell Dredges; Boat Operators; Derrick: | | | | | |
| Group 1 | $12.14 | $1.35 | $2.80 | .90 | .10 |
| Group 2 | 11.53 | 1.35 | 2.80 | .90 | .10 |
| Group 3 | 11.08 | 1.35 | 2.80 | .90 | .10 |
| Group 4 | 9.80 | 1.35 | 2.80 | .90 | .10 |
| Group 5 | 9.53 | 1.35 | 2.80 | .90 | .10 |
| Group 6 | 9.36 | 1.35 | 2.80 | .90 | .10 |
| Group 7 | 11.89 | 1.35 | 2.80 | .90 | .10 |
| Group 8 | 10.76 | 1.35 | 2.80 | .90 | .10 |
| Group 9 | 11.59 | 1.35 | 2.80 | .90 | .10 |
| Group 10 | 8.88 | 1.35 | 2.80 | .90 | .10 |

Group 1: Clamshell or Dipper Operator; Operators (Derricks, Piledrivers and Cranes)

Group 2: Mechanic or Welder; Assistant Engineer; Assistant Engineer (steam or electric)

Group 3: Deckmate; Barge Mate (Seagoing)

Group 4: Fireman

Group 5: Oiler; Deckhand (can operate Anchor Scow under direction of Deck Mate)

Group 6: Bargeman; Leveeman

Group 7: Leverman; Master Boat Operator

Group 8: Winchman (Stern Winch on Dredge)

Group 9: Boat Operator

Group 10: Boat Deckhand



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS | | | | | |
| Group 1 | $8.61 | $1.09 | $1.56 | .60 | .08 |
| Group 1-A | 8.66 | 1.09 | 1.56 | .60 | .08 |
| Group 1-B | 9.01 | 1.09 | 1.56 | .60 | .08 |
| Group 1-C | 9.21 | 1.09 | 1.56 | .60 | .08 |
| Group 1-D | 9.06 | 1.09 | 1.56 | .60 | .08 |
| Group 1-E | 9.31 | 1.09 | 1.56 | .60 | .08 |
| Group 1-F | 9.36 | 1.09 | 1.56 | .60 | .08 |
| Group 1-G | 9.56 | 1.09 | 1.56 | .60 | .08 |
| Group 1-H | 8.61 | 1.09 | 1.56 | .60 | .08 |
| Group 2 | 8.86 | 1.09 | 1.56 | .60 | .08 |
| Group 3 | 9.06 | 1.09 | 1.56 | .60 | .08 |

LABORERS

Group 1: All clean-up work of debris, grounds, buildings; Bridge Laborers; Construction Laborers; Dumpman; General Laborers; Limbers, Brush Loaders and Pilers

Group 1-A: Plaster Laborers

Group 1-B: Plaster Hod Carrier

Group 1-C: Plaster Mortar Mixer

Group 1-D: Mason Tender

Group 1-E: High Scaler

Group 1-F: Gunnite Operator

Group 1-G: Powderman

Group 1-H: Landscape and Irrigation Laborer

Group 2: Asphalt Shovelers; Cement Dumpers; Choke-setter and Rigger (clearing work); Concrete Chipping; Driller's Tender, Chuck Tender, Outside Nipper; Guinea Chaser (Stakeman); High Pressure Nozzleman-hydraulic Monitor (over 100# pressure) excluding levee work; Loading and unloading, carrying and handling of all rods and materials for use in reinforcing concrete construction; Sloper; All pneumatic, gas and electric tools not listed in Group 1

Group 3: Asphalt Ironers, Rakers and Hand Rollers; Barko and similar type Tampers; Buggymobile; Chainsaw, Faller, Logloader and Bucker; Concrete and Magnesite Mixer under 1/2 yard; Concrete Grinder; Concrete Pan Work; Concrete Saw (walking or hand type); Cribbers; Cut Granite Curb Setters; Form Raisers; Header Board; Mortar Mixers (block-brick-masonry); Jackhammer Operator Jackson and similar type Compactors; Lagging, Sheeting, Whaling, Bracing, Trench-jacking, Hand-guided Lagging Hammer; Magnesite and Mastic Workers (wet or dry); Mechanical Drillers not covered elsewhere; Pavement Breakers; Pipelayers, Caulkers, Bander; Pipewrappers, Kettlemen, Potmen and men applying asphalt, Lay-Kold, Creosote and similar type materials; Post Hole Diggers (hand held-gas, air and electric); Riprap, Stonepaver and Rockslinger, including placing of sacked concrete (wet or dry); Rotary Scarifier; Roto-tiller; Sandblasters; Tank Cleaners; Tree Climbers; Vibra-screed (Bull Float in connection with Laborers' work); Vibrator; Burning, welding, signaling and rigging in connection with Laborers' work; Concrete Pump Machine; Joy Drill Model TWM-2A, Gardner Denver DH-143 and similar type drills; Tract Drillers, Diamond, Core and Wagon Drillers; Davis Trencher T-66 or similar types; Concrete Laborers (wet or dry), including Bucket Tender for concrete



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS (Except Piledriving and Steel Erection) | | | | | |
| Group 1 | $9.25 | $1.35 | $2.80 | .90 | .10 |
| Group 2 | 9.36 | 1.35 | 2.80 | .90 | .10 |
| Group 3 | 9.53 | 1.35 | 2.80 | .90 | .10 |
| Group 4 | 9.80 | 1.35 | 2.80 | .90 | .10 |
| Group 5 | 10.11 | 1.35 | 2.80 | .90 | .10 |
| Group 6 | 10.76 | 1.35 | 2.80 | .90 | .10 |
| Group 7 | 11.08 | 1.35 | 2.80 | .90 | .10 |
| Group 8 | 11.19 | 1.35 | 2.80 | .90 | .10 |
| Group 9 | 11.30 | 1.35 | 2.80 | .90 | .10 |
| Group 9-A | 11.53 | 1.35 | 2.80 | .90 | .10 |
| Group 10 | 11.59 | 1.35 | 2.80 | .90 | .10 |
| Group 10-A | 11.74 | 1.35 | 2.80 | .90 | .10 |
| Group 11 | 11.89 | 1.35 | 2.80 | .90 | .10 |
| Group 12 | 12.25 | 1.35 | 2.80 | .90 | .10 |
| ASPHALT PAVING GROUP: | | | | | |
| Asphalt Raker | 9.80 | 1.35 | 2.80 | a | |
| Asphalt Roller | 10.76 | 1.35 | 2.80 | a | |
| Asphalt Spreader | 11.08 | 1.35 | 2.80 | a | |

FOOTNOTE:

a. An Employee who has completed two to five years' service shall receive a vacation of one week with pay; each additional year an additional one day vacation with pay; ten or more years, a vacation for two weeks each year; for each year of completed service thereafter to and including fifteen years' service, an addition of one day vacation with pay; fifteen or more years of service, a vacation of three weeks each year with pay.

POWER EQUIPMENT OPERATORS
(Except Piledriving and Steel Erection)

Group 1: Partsman (heavy duty repair shop parts room when needed); Repairman Tender

Group 2: Compressor, electrically, diesel or gas powered etc.; Hydraulic Monitor; Material Loader and/or Conveyor Operator (handling building material); Mixer Box Operator (concrete plant); Pump Ooerator; Spreader Boxman (with screeds); Tar Pot Fireman (power agitated)

Group 3: Oiler; Fireman; Switchman; Brakeman; Deckhand; Tar Pot Fireman; Box Operator (bunker); Locomotive (up to and including 30 tons); Roller (5 tons and under); Screedman (except asphalt concrete paving); Self-propelled, automatically applied concrete Curing Machine (on streets, highways, airports and canals); Tugger Hoist, single drum; Rodman and Chainman

Group 4: Boom Truck or Dual Purpose "A" Frame Truck; Dinky Operator; Fork Lift or Lumber Stacker (construction job site); Material Hoist (1 drum); Straddle Truck; Ross Carrier and similar (job site)

Group 5: Agri-Cat (mini-cat); Concrete Mixer (up to 2 yards); Concrete Pumps or Pumpcrete Guns; Generators, gasoline or diesel driven (100 K.W.); Lubrication and Service Engineer (mobile and grease rack); Towermobile; Welding Machine (gasoline diesel)

Group 6: Combination Loader and Backhoe including Hopto (up to and including 1/2 yard); Concrete Batch Plants (wet or dry); Concrete Saws and/or Grinder (self-propelled unit on streets, highways, airports, and canals); Drilling Machinary not to apply to Waterliners, Wagon Drills or Jackhammers); Highline Cableway Signalman; Loader (up to and including 2½ cu. yds.); Lull High Lift; Maginnis Internal Full Slab Vibrator (on airports, highways, canals, and warehouses); Mechanical Finishers (concrete) (large Clary, Johnson Bidwell Bridge Deck or similar types); Mobile Crane Driver; Pavement Breakers; Portable Crushers; Power Jumbo Operator (setting slip forms, etc. in tunnels); Rollers (over 5 tons); Self-propelled Compactor (single engine); Slip Form Pumps (power driven hydraulic, electric, air, gas, etc. lifting device for concrete forms); Small Rubber-tired Tractors; Trenchers (up and including 6 feet)



POWER EQUIPMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection) (Cont'd)

Group 7: Crusher Plant; Dual Drum Mixer; Gradesetter (mechanical or otherwise); Hoist (2 drums); Loader (over 2½ cu. yds. up to and including 5 cu. yds.); Mechanical Finishers or Spreader Machine, Asphalt (Barber Greene and similar); Mine or Shaft Hoist; Mixermobile (over 5 tons); Pavement Breaker, truck mounted, with compressor combination; Pavement Breaker with compressor combination (operates 1 or 2); Pipe Cleaning Machine (tractor propelled and supported); Pipe Wrapping Machine (tractor propelled and supported); Pipe Bending Machine (pipe lines only); Self-propelled Elevating Grade Plane; Slusher Operator; Small Tractor (with boom D-6 or similar); Trencher (over 6 ft.); Water Tanker (pulled by Euclids, T-Pulls, DW-10, 20, 21 or similar); Instrument Man

Group 8: Boring Machine; Cast-in-place Pipe Laying Machine; Concrete Batch Plant (multiple units); Combination Loader and Hydraulic Backhoe (over 1/2 yd. up to and including 3/4 yd.); Conveyor (tunnel); Engineer, Locomotive (over 30 tons up to and including 100 tons); Finishing Machine Operator (airports and highways); Hydraulic Backhoe (over 1/2 yd. to and including 3/4 yard); Kolman Loader; Mechanic Trench Shield; Mucking Machine; No-joint Pipe Laying Machine; Portable Crushing and Screening Plants; Saurman type Dragline (under 5 yards); Self-propelled Boom type Lifting Device; Stationary Pipe Wrapping, Cleaning and Bending Machine; Surface Heater and Planer; Tunnel Badger; Tri-batch Paver

Group 9: Boom type Backfilling Machine; Combination Mixer and Compressor (gunite); Do-more Loader and Adams Elegrader; Lull Hi-lift (40' or over); Rubber-tired Earthmoving Equipment (up to 12 cu. yds.); Wheel Trencher (over 6")

Group 9-A: Dozers; Heavy Duty Repairman or Welder; Push Cats; Scrapers; Self-propelled Compressor with Dozer; Sheet Foot; Tractors; Tractors (with boom, larger than D-6 and similar)

Group 10: Chicago Boom; Hoist (3 drums); Koehring Skooper; Loader (over 5 yards up to and including 12 yards); Locomotive (over 100 tons) (single or multiple units); Power Blade Operator; Rubber-tired Earthmoving Equipment (up to and including 35 cu. yds., Euclid, T-Pulls, DW-10, 20, 21 and similar); Saurman type Dragline (5 yards or over); Soil Stabilizer (P & H equal); Sub-grader (Gurries or other automatic type); Track-laying type Earthmoving Machine (single engine with Tandem Scraper); Tractor, Compressor, Drill Combination; Tractor (tandem Scraper); Tractors (D-9 or equivalent); Chief of Party

POWER EQUIOMENT OPERATORS (Cont'd)
(Except Piledriving and Steel Erection)

Group 10-A: Cranes (not over 25 tons); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (up to and including 1 cu. yd.)

Group 11: Automatic Slip Form Paver (concrete or asphalt); Cranes (over 25 tons); DW-10, 20, etc. (Tandem); Earthmoving Machine (multiple propulsion power units and two or more scrapers)(up to and including 35 cu. yds. struck MRC); High-line Cableway; Lift Slab Machine; Loader (over 12 yds.); Power Shovels, Clamshells, Draglines, Backhoes, Gradealls (over 1 yd. and up to 7 yds.); Power Blade Operator (16 or over); Pre-stress Wire Wrapping Machine; Self-propelled Compactor (with multiple propulsion power units); Single Engine Rubber Tired Earth Moving Machine (with tandem scraper); Tandem Cats; Tower Cranes, mobile; Trencher (pulling attached shield); Universal, Liebher, Linden and similar types of tower cranes; Wheel Excavator (up to and including 750 cu. yds. per hour)

Group 12: Band Wagon (in conjunction with wheel excavator); Derricks; Drill Rigs; Multi-propulsion Earth Moving Machines (2 or more scrapers) (over 35 cu. yds. "struck" MRC); Power Shovels and Draglines (7 cu. yds. M.R.C. and over); Rubber-tired Earthmoving Equipment (over 35 cu. yds., Euclids, T-Pulls, DW-10, 20, 21 and similar); Wheel Excavator (over 750 cu. yds.)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

SUPERSEDEAS DECISION

STATE: KENTUCKY COUNTIES: *SEE BELOW
DECISION NUMBER: KY80-1109 DATE: Date of Publication
Supersedes Decision Number: KY79-1138, dated October 19, 1979
44 FR 60525
DESCRIPTION OF WORK: HEAVY AND HIGHWAY PROJECTS.

ANDERSON, BATH, BOURBON, BOYD, BOYLE, BRACKEN, BREKINRIDGE, BULLITT, CARROLL, CARTER, CLARK, ELLIOT, FAYETTE, FLEMING, FRANKIN, GALLATION, GRAYSON, GRANT, GREENUP, HARDIN, HARRISON, HENRY, JEFFERSON, JESSAMINE, LARUE, LEWIS, MADISON, MARION, MASON, MEADE, MERCER, MONTGOMERY, NELSON, NICHOLAS, OLDHAM, OWEN, ROVERSTON, ROWAN, SCOTT, SHELBY, SPENCER, TRIMBLE, WASHINGTON, & WOODFORD

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| BRICKLAYERS | $11.44 | .50 | .40 | | .01 |
| CARPENTERS: | | | | | |
| Heavy Rate of Pay | 11.26 | .65 | .45 | | .05 |
| Highway Rate of Pay | 10.66 | .65 | .45 | | .05 |
| CEMENT MASONS | 10.94 | 1.00 | .70 | | .08 |
| ELECTRICIANS (OUTSIDE): | | | | | |
| Linemen & Cable Splicers | 15.10 | .75 | 3%+1.25 | | ½ of1% |
| Groundmen | 9.36 | .75 | 3%+1.25 | | ½ of1% |
| IRONWORKERS | 12.75 | 1.00 | 2.30 | | .06 |
| MILLWRIGHTS: | | | | | |
| Heavy Rate of Pay | 12.01 | .65 | .45 | | .05 |
| Highway Rate of Pay | 11.41 | .65 | .45 | | .05 |
| PAINTERS: | | | | | |
| Brush | 10.41 | .45 | .40 | | .03 |
| Spray | 10.86 | .45 | .40 | | .03 |
| Bridge Work - work on bridges over navigable water shall carry a preminium of $2.00 per hour added to the base rate. | | | | | |
| PILEDRIVERMEN: | | | | | |
| Heavy Rate of Pay | 11.51 | .65 | .45 | | .05 |
| Highway Rate of Pay | 10.91 | .65 | .45 | | .05 |
| PIPEFITEERS | 12.77 | .75 | 1.40 | | .10 |
| PLUMBERS | 13.28 | .80 | 1.24 | | .15 |
| WELDERS: Receive Rate prescribed for craft performing operation to which welding is incidental. | | | | | |

DECISION NO. KY80-1109

LABORERS:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 1 | 9.22 | .40 | .70 | | |
| GROUP 2 | 9.47 | .40 | .70 | | |
| GROUP 3 | 9.52 | .40 | .70 | | |
| GROUP 4 | 10.12 | .40 | .70 | | |

LABORERS' CLASSIFICATIONS DEFINITIONS

GROUP 1 - Asphalt Plant Laborers, Concrete Laborers, Asphalt Laborers, Storm & Sanitary Sewer Laborers, Carpenter Tenders, Cement Masons Tenders, Mesh Handlers & Placers, Landscaping and Seeding, Planters & Tree-trimmers, Sign Guard Rail & Fence Installers, Grade Checkers, Aging & Curing of Concrete, Truck Spotters & Dumpers, Batch Truck Dumpers, Flagmen, Rip-Rap & Grouters, Dredging Laborers, Right of Way Laborers, Wrecking & Demolition Laborers, Drill Tenders, & all Hand Digging and Hand Back filling

GROUP 2 - Wagon Drills, Jack Hammers, Paving Breakers, Chain Saw, Concrete Saw, Paving Joint Machine, Vibrator Operator, Power Driven Georgia Buggy or Wheel Barrow, Sand Blaster & Concrete Chppers, Green Concrete Cutting, Brickmason Tenders & Mortar Mixers, Pipe Layers, Joint Maker, Batter Board Man (Sanitary & storm sewer), Dry Cement Handlers, Concrete Rubbers, Walk-behind Tamper Machine, Walk-behind Trenching Machine, Surface, Grinderman, Hand Operated Grouter & Grinder Machine, Operator & Deckhand Scow Man, Burner & Welder

GROUP 3 - Powderman and Blaster, Side Rail Setters - including Rail Paved Ditches, Tunnel Labor (free air), Gunnite Operator & Mixer Man, Gunnite Nozzleman, Asphalt Luteman & Rakeman, Air Tact Driller (all types), Grout Pump Operator

GROUP 4 - Tunnel Blasters, Tunnel Muckers (free air), Miners & Drillers (free air), Caisson Workers (free air).



DECISION NO. KY80-1109

POWER EQUIPMENT OPERATORS

HEAVY CONSTRUCTION:

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | 12.07 | .50 | 1.00 | | .08 |
| CLASS B | 9.24 | .50 | 1.00 | | .08 |
| CLASS C | 8.44 | .50 | 1.00 | | .08 |
| CLASS D | 12.32 | .50 | 1.00 | | .08 |

NOTE: Railroad and Highway Bridges across commercially navigable Rivers; i. e. Navigable to Loaded Barge tow, (including setting super structure steel on bridges) shall receive the HEAVY rate of pay.

CLASS A - Auto Patrol, Batcher Plant, Bituminous Paver, Cableway, Central Compressor Plant Operator, Clamshell, Concrete Mixer ( 21. cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick, Derrick Boat, Ditching and Trenching Machine, Dragline, Dredge Engineer, Elevator (used for hoisting building materials), Elevating Grader and all types of Loaders, Hoe-type Machine, Hoisting Engine, Locomotive, LeTourneau or Carry-all Scoop, Bulldozer, Mechanic, Mechnic Welder, Orangepeel Bucket, Pile, Driver, Power Blade, Roller (bituminous), Scrarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift, Fork Lift (regardless of lift height), all types of Boom Cats, Core Drill, tow or Push Boat, A-frame Winch Truck, Concrete Paver, Grade-all, Hoist (two or more drums), Hyster, Pumpcrete, Ross Carrier, Side Boom, Tail Boom, Rotary, Drill, Mucking Machine, Rock Spreader attached to Equipment, Scoopmobile, KeCal Loader, Tower Cranes (French, German & other types), Hyrocrane, Backfiller, Gurries, Subgrader

CLASS B - All Air Compressors (over 900 cu. ft. per min. or greater capacity), Bituminous Mixer, Concrete Mixer (under 21 cu. ft.), Welding Machine, Form Grader, Roller (rock), Tugger, Tractor (50 H. P. and over), Bull Float, Finish Machine Outboard Motor Boat, Well Points, Flexplane, Fireman, Boom Type Tamping Machine, Truck Crane Oiler, Greaser on Grease Facitities servicing Heavy Equipment, Switchman or Brakeman, Joint Sealing Machine, Mechanic Helper, Whirley Oiler, Tract-air and road-widening Trencher, Grout Pump, Electric Vibrator Compactor/self-propelled Compactor, Throttle Valve, Elevator (one drum or buck hoist), Power Sweeper (riding type), Core Drill and Caisson Drill Helper (truck mounted)

CLASS C - Bituminous Distributor, Cement Gun Conveyor, Mud Jack Paving Joint Machine, Pump, Roller (earth), Tamping Machine, Tractors (under 50 H.P.), Vibrator, Oiler, Concrete Daw, Burlap, and curing Machine, Hydro-seeder, Power Form Handling Equipment, Deckhand, Steerman, Hydraulic Post Driver, Core Drill and Caisson Drill Helper (track or skid mounted)

CLASS D - Operators or Cranes with Booms one hundred fifty feet (150') and over (including jib)

DECISION NO. KY80-1109

| POWER EQUIPMENT OPERATORS HIGHWAY CONSTRUCTION: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS A | 10.72 | .50 | 1.00 | | .08 |
| CLASS B | 8.30 | .50 | 1.00 | | .08 |
| CLASS C | 8.68 | .50 | 1.00 | | .08 |
| CLASS D | 8.04 | .50 | 1.00 | | .08 |

CLASS A - Auto Patrol, Batcher Plant, Bituminous Paver, Cableway, Central Compressor Plant Operator, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Pump, Crane, Crusher Plant, Derrick boat, Ditching and Trenching Machine, Dragline, Elevator (when used for hoisting any building material) Elevating Grader and all types of Loaders, Hoe-type Machine, Hoisting Engine (two or more drums), Locomotives, Motor Scraper, Bulldozer, Mechanic, Orangepeel Bucket, Pile Driver, Power Blade, Roller (bituminous), Scrarifier, Shovel, Tractor Shovel, Truck Crane, Winch Truck, Push Dozer, High Lift (regardless or lift height), all types of Boom cats, Core Drill, Tow or Push Boat, A-Frame Winch Truck, Concrete Paver, Grade-all, Hoist (two or more drums), Hyster, Pumpcrete, Ross Carrier, Side Boom, Rotary Drill (5" and over), Mucking Machine, Rock Spreader attached to Equipment, Scoop-mobile, KeCal Loader, Tower Cranes (French, German and other types), Hydrocrane, Backfiller, Gurriers, Subgrader, Tailboom and Dredge Engine

CLASS B - All Air Compressors (over 900 cu. ft. per min.), Bituminous Mixer, Concrete Mixer (under 21 cu. ft.), Elevator (one drum or buck hoist), Welding Machine, Form Grader, Grout Pump, Roller (rock), Tractor (50 HP or over), Bull Float, Finish Machine, Outboard Motor Boat, Electric Vibrator Compactor/Self-Propelled Compactor, Boom Type Tamping Machine, Truck Crane Oiler, Switchman or Brakeman, Mechanic Helper, Whirley Oiler, Tractair and Road Widening Trencher, Joint Sealing Machine, Rotary Drill (under 5"), Throttle Valve Man, Tugger, Well Points, Flexplane, Fireman, and Hoist (one drum)

CLASS C - Greaser on Grease Facilities serviving Heavy Equipment

CLASS D - Bituminous Distributor, Cement Gun, Conveyor, Mud Jack, Paving Joint Machine, Pump, Roller (earth), Tamping Machine, Tractors (under 50 HP), Vibrator, Oiler, Concrete Saw, Burlap and Curing Machine, Hydro Seeder, Power Form Handling Equipment, Deck-hand Oiler, and Hydraulic Post Driver



DECISION NO. KY80-1109

| TRUCK DRIVERS: | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Truck Tender | 9.68 | *a | *b | | |
| Mobile Batch Truck Tender | 9.68 | *a | *b | | |
| Greaser, Tire Changer, & Mechanic Tender | 9.79 | *a | *b | | |
| Driver - Single Axle Dump & flat Bed Trucks, Semi-Trailer or Pole Trailer (when used to pull building materials and equipment), Dump Truck Tandem Axle, Distributor, & Truck Mechanic | 9.97 | *a | *b | | |
| Driver - Mixer truck (all types) | 10.00 | *a | *b | | |
| Driver - Euclid & other Heavy Earth Moving Equipment, Low Boy, Winch Truck & A-frame Truck (when used in transporting materials), Ross Carrier, Fork Lift Truck (when used to transport building materials), & Pavement Breakers | 10.07 | *a | *b | | |

FOONOTES:
a. $26.00 for Health and Welfare per week
b. $24.00 for pension per week

*Fringe Benefits Apply to employees who have been employed a minimum of twenty (20) work days within any ninety (90) consecutive day period for that employer

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

**SUPERSEDEAS DECISION**

STATE: KENTUCKY

COUNTIES: CAMPBELL, KENTON & PENDLETON

DECISION NUMBER: KY80-1111

Supersedes Decision Number KY79-1073, dated April 20, 1979, in 44FR 23724

DISCRIPTION OF WORK: RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and apartments up to and including 4 stories)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| AIR CONDITIONING AND HEATING MECHANICS | 6.04 | | | | |
| BRICKLAYERS | 9.55 | | | | |
| CARPENTERS | 5.70 | | | | |
| CEMENT MASONS | 6.95 | | | | |
| DRYWALL HANGERS | 5.94 | | | | |
| DRYWALL FINISHERS | 6.00 | | | | |
| ELECTRICIANS | 7.90 | | | | |
| INSULATION INSTALLERS | 4.70 | | | | |
| LABORERS: | | | | | |
| General Laborers | 4.67 | | | | |
| Mason Tenders | 5.00 | | | | |
| PAINTERS, BRUSH | 5.60 | | | | |
| PLUMBERS & PIPEFITTERS | 7.50 | | | | |
| SHEET METAL WORKERS | 5.82 | | | | |
| P.E.O. | | | | | |
| BACKHOE | 11.90 | | | | |
| BULLDOZER | 10.00 | | | | |
| FRONT END LOADER | 11.94 | | | | |
| WELDERS: Rate for craft | | | | | |
| Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the Labor Standards Contract Clauses (29 CFR 5.5 (a) (1) (ii)) | | | | | |

**SUPERSEDEAS DECISION**

STATE: Louisiana

PARISHES: Allen, Beauregard, Bossier, Caddo, Calcasieu, Cameron, Jefferson, Jefferson Davis, Orleans, Plaquemines, St. Bernard & St. Charles

DECISION NO.: LA80-4072

DATE: Date of Publication

Supersedes Decision No. LA80-4027 dated June 13, 1980, in 45 FR 56266

DESCRIPTION OF WORK: Highway Projects (does not include building structures in rest area projects & airports in Bossier, Caddo, Calcasieu, Jefferson & Orleans Parishes)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| BRICKLAYERS & STONEMASONS | | | | | |
| ZONE 1 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes | $13.50 | .53 | .67 | | .05 |
| ZONE 2 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes | 12.00 | .75 | .435 | | .10 |
| ZONE 3 - Bossier & Caddo Parishes | 10.95 | .55 | .65 | | |
| CARPENTERS & PILEDRIVERMEN | | | | | |
| ZONE 1 - Bossier & Caddo Parishes | 10.52 | .55 | .45 | | .04 |
| ZONE 2 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes | 11.40 | .70 | .60 | | .06 |
| ZONE 3 - Calcasieu Parish | 11.08 | .70 | .33 | | .07 |
| ZONE 4 - Cameron & Jefferson Davis Parishes | 9.05 | .70 | .33 | | .07 |
| ZONE 5 - Allen & Beauregard Parishes | 8.55 | .70 | .33 | | .07 |
| CEMENT MASONS | | | | | |
| ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes | 10.57 | .69 | .40 | | .09 |
| ZONE 2 - Bossier & Caddo Parishes | 10.50 | .40 | | | |
| ZONE 3 - Calcasieu Parish | 11.10 | | | | |
| ZONE 4 - Cameron & Jefferson Davis Parishes | 10.15 | | | | |
| ZONE 5 - Allen & Beauregard Parishes | 9.65 | | | | |

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELECTRICIANS | | | | | |
| ZONE 1 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes: | | | | | |
| Electricians | $14.75 | .55 | 3%+.40 | | 1/10% |
| Cable Splicers | 15.00 | .55 | 3%+.40 | | 1/10% |
| ZONE 2 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes: | | | | | |
| Electricians | 13.20 | .45 | 3%+.40 | | .05 |
| Cable Splicers | 13.20 | .45 | 3%+.40 | | .05 |
| ZONE 3 - Bossier & Caddo Parishes: | | | | | |
| Electricians | 13.25 | 1.75 | 3% | | 1% |
| Cable Splicers | 13.75 | 1.75 | 3% | | 1% |
| IRONWORKERS | | | | | |
| ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes | 11.26 | .93 | .65 | | .08 |
| ZONE 2 - Calcasieu Parish | 11.20 | .60 | .65 | | .05 |
| ZONE 3 - Bossier & Caddo Parishes | 10.05 | .60 | 1.45 | | .06 |
| ZONE 4 - Cameron & Jefferson Davis Parishes | 8.85 | .60 | .65 | | .05 |
| ZONE 5 - Allen & Beauregard Parishes | 8.35 | .60 | .65 | | .05 |
| LABORERS | | | | | |
| ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes: | | | | | |
| GROUP 1 | 7.58 | .30 | .27 | | .05 |
| GROUP 2 | 7.68 | .30 | .27 | | .05 |
| GROUP 3 | 8.13 | .30 | .27 | | .05 |
| GROUP 4 | 8.38 | .30 | .27 | | .05 |
| ZONE 2 - Bossier & Caddo Parishes | | | | | |
| GROUP 1 | 6.78 | .25 | .27 | | .05 |
| GROUP 2 | 6.88 | .25 | .27 | | .05 |
| GROUP 3 | 7.33 | .25 | .27 | | .05 |
| GROUP 4 | 7.58 | .25 | .27 | | .05 |



| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ZONE 3 - Calcasieu Parish: | | | | | |
| GROUP 1 | $ 7.63 | .25 | .27 | | .05 |
| GROUP 2 | 7.73 | .25 | .27 | | .05 |
| GROUP 3 | 8.18 | .25 | .27 | | .05 |
| GROUP 4 | 8.43 | .25 | .27 | | .05 |
| ZONE 4 - Cameron & Jefferson Davis Parishes: | | | | | |
| GROUP 1 | 6.43 | .25 | .27 | | .05 |
| GROUP 2 | 6.53 | .25 | .27 | | .05 |
| GROUP 3 | 6.98 | .25 | .27 | | .05 |
| GROUP 4 | 7.18 | .25 | .27 | | .05 |
| ZONE 5 - Allen & Beauregard Parishes: | | | | | |
| GROUP 1 | 6.23 | .25 | .27 | | .05 |
| GROUP 2 | 6.33 | .25 | .27 | | .05 |
| GROUP 3 | 6.78 | .25 | .27 | | .05 |
| GROUP 4 | 6.98 | .25 | .27 | | .05 |

LABORERS CLASSIFICATIONS DEFINITIONS

GROUP 1 - Laborers, including but not limited to signalman; foundation driller & demolishing & dismantling man

GROUP 2 - Raker, concrete spreader, carpenter tenders, distributor man, finisher tenders, formsetter tenders, jackhammer operator, jetting laborer, painter tenders, pit man, pipelayer or tile layer, power monkey tender, tamper, tree pruner, stonemason tender, stoker, asphalt raker, concrete shovelers, power tool operator & motorized buggy operator

GROUP 3 - Formsetter, head or master-high type pavement

GROUP 4 - Powderman

DECISION NO. LA80-4072 Page 4

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LINE CONSTRUCTION | | | | | |
| ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes | | | | | |
| GROUP 1 - Lineman | $13.20 | .45 | 3%+.40 | | .05 |
| GROUP 2 - Operator hole digging equipment; operator tractor with winch & derrick operator; operator line truck with winch & derrick working hot lines | 75% JR | .45 | 3%+.40 | | .05 |
| GROUP 3 - Operator using hole truck & trailer or pole hauling & setting truck (not in energized lines) | 65% JR | .45 | 3%+.40 | | .05 |
| GROUP 4 - Operator using truck without winch | 45% JR | .45 | 3%+.40 | | .05 |
| GROUP 5 - Groundmen | 50% JR | .45 | 3%+.40 | | .05 |
| ZONE 2 - Allen, Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes: | | | | | |
| GROUP 1 - Linemen, equipment operators | 14.75 | .55 | 3%+.40 | | 1/10% |
| GROUP 2 - Cable Splicers | 15.00 | .55 | 3%+.40 | | 1/10% |
| GROUP 3 - Groundmen | 12.75 | .55 | 3%+.40 | | 1/10% |
| ZONE 3 - Bossier & Caddo Parishes: | | | | | |
| GROUP 1 - Linemen; operators | 13.25 | 1.75 | 3% | | 1% |
| GROUP 2 - Cable Splicers | 13.75 | 1.75 | 3% | | 1% |
| GROUP 3 - Groundmen | 11.25 | 1.75 | 3% | | 1% |
| PAINTERS | | | | | |
| ZONE 1 - Allen (except northeast corner), Beauregard, Calcasieu, Cameron & Jefferson Davis Parishes: | | | | | |
| GROUP 1 - Brush | 12.615 | | .30 | | |
| GROUP 2 - Spray, sandblasting, hydroblasting, spider operator, rubberizing & pyroflexing, steam jennies | 12.96 | | .30 | | |

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS (CONT'D) | | | | | |
| GROUP 3 - Bridge work | $14.405 | | .30 | | |
| ZONE 2 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes: | | | | | |
| GROUP 1 - Painters | 9.845 | .625 | .60 | | .08 |
| GROUP 2 - Spray, Swing stage | 10.22 | .625 | .60 | | .08 |
| GROUP 3 - Industrial | 11.095 | .625 | .60 | | .08 |
| ZONE 3 - Allen (northeastern most corner, north of Rt. 10) Parish | | | | | |
| GROUP 1 Painters | 9.60 | | | | |
| GROUP 2 Spray, stage, steeple work | 10.10 | | | | |
| GROUP 3 - All Industrial work including sandblasting or power tools of any kind | 10.60 | | | | |
| ZONE 4 - Bossier & Caddo Parishes | 10.60 | .40 | .30 | | .05 |
| PLUMBERS & PIPEFITTERS | | | | | |
| ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes | 12.65 | .60 | 1.00 | | .10 |
| ZONE 2 - Bossier & Caddo Parishes | 11.87 | .70 | 1.10 | 1.00 | .09 |
| ZONE 3 - Allen, Beauregard Calcasieu, Cameron & Jefferson Davis Parishes | 13.73 | .67 | .72 | | .08 |
| POWER EQUIPMENT OPERATORS | | | | | |
| ZONE 1 - Jefferson, Orleans, Plaquemines, St. Bernard & St. Charles Parishes | | | | | |
| GROUP 1 | 11.26 | .65 | 1.00 | | .10 |
| GROUP 2 | 11.51 | .65 | 1.00 | | .10 |
| GROUP 3 | 11.01 | .65 | 1.00 | | .10 |
| GROUP 4 | 9.68 | .65 | 1.00 | | .10 |
| GROUP 5 | 9.30 | .65 | 1.00 | | .10 |
| GROUP 6 | 8.21 | .65 | 1.00 | | .10 |
| GROUP 7 | 7.62 | .65 | 1.00 | | .10 |
| GROUP 8 | 9.35 | .65 | 1.00 | | .10 |
| GROUP 9 | 9.60 | .65 | 1.00 | | .10 |
| GROUP 10 | 7.87 | .65 | 1.00 | | .10 |

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| POWER EQUIPMENT OPERATORS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ZONE 2 - Bossier & Caddo Parishes | | | | | |
| GROUP 1 | $10.53 | .65 | 1.00 | | .10 |
| GROUP 2 | 10.78 | .65 | 1.00 | | .10 |
| GROUP 3 | 10.28 | .65 | 1.00 | | .10 |
| GROUP 4 | 9.17 | .65 | 1.00 | | .10 |
| GROUP 5 | 8.56 | .65 | 1.00 | | .10 |
| GROUP 6 | 7.48 | .65 | 1.00 | | .10 |
| GROUP 7 | 7.01 | .65 | 1.00 | | .10 |
| GROUP 8 | 8.85 | .65 | 1.00 | | .10 |
| GROUP 9 | 9.10 | .65 | 1.00 | | .10 |
| GROUP 10 | 7.26 | .65 | 1.00 | | .10 |
| ZONE 3 - Calcasieu Parish | | | | | |
| GROUP 1 | 10.91 | .65 | 1.00 | | .10 |
| GROUP 2 | 11.16 | .65 | 1.00 | | .10 |
| GROUP 3 | 10.66 | .65 | 1.00 | | .10 |
| GROUP 4 | 9.36 | .65 | 1.00 | | .10 |
| GROUP 5 | 8.72 | .65 | 1.00 | | .10 |
| GROUP 6 | 7.63 | .65 | 1.00 | | .10 |
| GROUP 7 | 7.01 | .65 | 1.00 | | .10 |
| GROUP 8 | 9.03 | .65 | 1.00 | | .10 |
| GROUP 9 | 9.28 | .65 | 1.00 | | .10 |
| GROUP 10 | 7.26 | .65 | 1.00 | | .10 |
| ZONE 4 - Cameron & Jefferson Davis Parishes | | | | | |
| GROUP 1 | 8.50 | .65 | 1.00 | | .10 |
| GROUP 2 | 8.75 | .65 | 1.00 | | .10 |
| GROUP 3 | 8.25 | .65 | 1.00 | | .10 |
| GROUP 4 | 7.24 | .65 | 1.00 | | .10 |
| GROUP 5 | 6.71 | .65 | 1.00 | | .10 |
| GROUP 6 | 5.74 | .65 | 1.00 | | .10 |
| GROUP 7 | 5.45 | .65 | 1.00 | | .10 |
| GROUP 8 | 6.98 | .65 | 1.00 | | .10 |
| GROUP 9 | 7.23 | .65 | 1.00 | | .10 |
| GROUP 10 | 5.70 | .65 | 1.00 | | .10 |
| ZONE 5 - Allen & Beauregard Parishes | | | | | |
| GROUP 1 | 8.00 | .65 | 1.00 | | .10 |
| GROUP 2 | 8.25 | .65 | 1.00 | | .10 |
| GROUP 3 | 7.75 | .65 | 1.00 | | .10 |
| GROUP 4 | 6.74 | .65 | 1.00 | | .10 |
| GROUP 5 | 6.21 | .65 | 1.00 | | .10 |



| POWER EQUIPMENT OPERATORS (ZONE 5 CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| GROUP 6 | $ 5.24 | .65 | 1.00 | | .10 |
| GROUP 7 | 4.95 | .65 | 1.00 | | .10 |
| GROUP 8 | 6.48 | .65 | 1.00 | | .10 |
| GROUP 9 | 6.73 | .65 | 1.00 | | .10 |
| GROUP 10 | 5.20 | .65 | 1.00 | | .10 |

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - 60 ton crane & over; crane with ft. boom
GROUP 2 - Crane with ft. boom
GROUP 3 - Crane all types; deck winches (2); hi-ho & similar type equipment; 3 drums (or more) stabilizers; pulls all types; concrete mixer 1 yd. & over; all pavers; ditching or trenching machines (track type); mechanics & equipment welders; well point system; hoist, 2 drums or more; hoist, 1 drum, 40 vertical ft. or more; scrapers, bulldozers, rubber-tired or track other than farm-type; scoopmobiles; motor patrol; gradall; rollers on hot mix; asphalt paving machines; front end loaders, other than farm-type, 1 cu. yd. or over; shovels & backhoes, all types, & equivalent equipment; piledrivers; sideboom cats; a-frame trucks when handling steel or pipe; work boats requiring license ops.; tugboats; fork lifts over 10 ton capacity; foundation drilling machines
GROUP 4 - 2 drums stabilizers; front end loaders under 1 cu. yd. A-frame truck except when handling steel or pipe; finishing machines (concrete); power subgraders; tow tractor (crawler type); 1 drum hoist under 40 vertical ft.; firemen; concrete spreader; pugmill; bituminous distributor on surface treatment & equivalent; bullfloats & equivalent; job grease man; unit op.; work boats not requiring licensed ops.; inboard motored crew boats
GROUP 5 - Single drum stabilizers; concrete mixer under 1 yd., spray curing machines; rollers on subgrade; 1 air compressor over 125 cu. ft.; form graders; asphalt finisher screed man; pump over 4"; scale op.; crusher ops.; concrete jointing machines; concrete saw; tack machines & equivalent equipment; pump crete; electric elevator (inside); oiler-driver; farm-type rubber tired tractor, with attachments, except backhoes; kolum buff & similar equipment; fork lifts, 10 ton capacity & under; outboard crew boats
GROUP 6 - Batch plant operator
GROUP 7 - Oiler
GROUP 8 - Firemen
GROUP 9 - Fireman operating steam valve
GROUP 10 - Oiler on crane using air to drive piles

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SHEET METAL WORKERS | | | | | |
| ZONE 1 - Calcasieu Parish | 12.25 | .52 | .55 | | .14 |
| ZONE 2 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes | 11.35 | 3%+.65 | 1.11 | | .14 |
| ZONE 3 - Allen, Beauregard, Cameron & Jefferson Davis Parishes | 13.57 | .55 | .80 | | .16 |
| ZONE 4 - Bossier & Caddo Parishes | 12.09 | 3%+.69 | .50 | | .19 |
| TRUCK DRIVERS | | | | | |
| ZONE 1 - Jefferson, Orleans Plaquemines, St. Bernard & St. Charles Parishes: | | | | | |
| GROUP 1 | $ 7.93 | .45 | | | |
| GROUP 2 | 8.06 | .45 | | | |
| GROUP 3 | 8.12 | .45 | | | |
| GROUP 4 | 8.20 | .45 | | | |
| GROUP 5 | 8.39 | .45 | | | |
| ZONE 2 - Bossier & Caddo Parishes: | | | | | |
| GROUP 1 | 7.96 | | | | |
| GROUP 2 | 8.06 | | | | |
| GROUP 3 | 8.29 | | | | |
| GROUP 4 | 8.50 | | | | |
| GROUP 5 | 8.92 | | | | |
| ZONE 3 - Calcasieu Parish: | | | | | |
| GROUP 1 | 7.84 | .70 | | | |
| GROUP 2 | 7.97 | .70 | | | |
| GROUP 3 | 8.03 | .70 | | | |
| GROUP 4 | 8.10 | .70 | | | |
| GROUP 5 | 8.29 | .70 | | | |
| ZONE 4 - Allen & Beauregard Parishes | | | | | |
| GROUP 1 | 6.22 | .70 | | | |
| GROUP 2 | 6.35 | .70 | | | |
| GROUP 3 | 6.41 | .70 | | | |
| GROUP 4 | 6.48 | .70 | | | |
| GROUP 5 | 6.68 | .70 | | | |



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| TRUCK DRIVERS (CONT'D) | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ZONE 5 - Cameron & Jefferson Davis Parishes: | | | | | |
| GROUP 1 | $ 6.32 | .70 | | | |
| GROUP 2 | 6.45 | .70 | | | |
| GROUP 3 | 6.51 | .70 | | | |
| GROUP 4 | 6.58 | .70 | | | |
| GROUP 5 | 6.77 | .70 | | | |

TRUCK DRIVERS CLASSIFICATION DEFINITIONS

GROUP 1 - 1 ton & under; warehouseman, material checker, receiving clerk, spotter & dumper
GROUP 2 - 1½ tons to & including 2 tons (exclusive of dump trucks)
GROUP 3 - Single axle dump trucks, single axle water trucks
GROUP 4 - Heavy equipment, tandem axle dump & tandem axle water trucks, winch lift, transit mix, floats, pole trailers, 4 axle trailers & truck mechanic
GROUP 5 - Special equipment, euclids & 5 axle moving equipment

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Mississippi COUNTIES: See below*
DECISION No. MS80-1110 DATE: Date of Publication
Supersedes Decision No.: MS78-1063, dated August 4, 1978, in 43 FR 34668
DESCRIPTION OF Work: Residential Construction consisting of single family homes and apartments up to and including 4 stories.

*COUNTIES: Covington, Forrest, Greene, Jefferson Davis, Jones, Lamar, Marion. Perry, and Wayne.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| Bricklayers | $ 7.80 | | | | |
| Carpenters | 7.17 | | | | |
| Carpet Layers, Soft Floor Layers | 6.17 | | | | |
| Cement Masons | 6.00 | | | | |
| Electricians | 7.50 | | | | |
| Laborers: | | | | | |
| Laborers | 3.37 | | | | |
| Mason Tenders | 4.50 | | | | |
| Mortar Mixers | 3.50 | | | | |
| Painters, Brush | 6.57 | | | | |
| Plumbers and Pipefitters | 6.00 | | | | |
| Tile Setters | 6.25 | | | | |
| Truck Drivers | 3.80 | | | | |
| Power Equipment Operators | | | | | |
| Asphalt Spreader | 7.60 | | | | |
| Backhoe | 5.15 | | | | |

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Elk, Forest,, McKean and Warren
DECISION NUMBER: PA80-3033 DATE: Date of Publication
Supersedes Decision No. PA78-3043 dated May 12, 1978, in 43 FR 20707.
DESCRIPTION OF WORK: Building Construction (does not include single family homes or apartments up to and including 4 stories)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS: | | | | | |
| Elk County | 14.12 | .95 | 1.85 | | |
| Forest County | 14.69 | .55 | 1.50 | | .02 |
| McKean & Warren Counties | 12.85 | 1.32 | 1.40 | | .07 |
| BOILERMAKERS | 13.88 | 5% | 7%+.95 | | .02 |
| BRICKLAYERS, CEMENT MASONS & STONEMASONS: | | | | | |
| Elk, McKean and Warren Cos. | 13.15 | .80 | 1.10 | | |
| Forest County | 13.20 | .75 | .95 | | .05 |
| CARPENTERS & SOFT FLOOR LAYERS: | | | | | |
| Elk, Forest, all of McKean County except Kane and Bradford | 11.50 | 6% | 8% | 10% | 1½% |
| McKean County; Townships of Kane & Bradford; Warren County in its entirety | 11.25 | 6% | 6% | 10% | 1/2% |
| ELECTRICIANS: | | | | | |
| Elk, Forest and Warren Counties | 14.10 | .72 | 3%+1.08 | .75 | 1/2% |
| McKean County | 11.25 | .60 | 3%+.40 | | 1% |
| GLAZIERS: | | | | | |
| Forest & Warren Cos. | 12.34 | .60 | .80 | | .01 |
| Elk County | 12.44 | 1.02 | 1.35 | 1.23 | .02 |
| IRONWORKERS: | | | | | |
| Forest & Warren Cos. | 14.00 | 1.85 | 1.01 | | .15 |
| Elk and McKean Cos. | 12.75 | .975 | 1.665 | | .04 |

| DECISION NO. PA80-3033 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: | | | | | |
| Common laborer, carpenter tender, scaffold builder for masons, window cleaner, form stripper and mover, scaffold and runways, building materials handlers (loading and unloading), concrete pitman, puddler, mason tender | 11.00 | 9% | 8% | | |
| Mechanical tamper (power) powered wheelbarrows and buggies and worklifts, sweepers and similar, mortar mixer, ball bottom man on furnaces and stacks, jackhammer man, concrete buster, wagon drill helper, concrete saw operator, blaster's helper drill runner's helper (includes drill mounted truck, track or similar), sheeters and shores, vibrator operators, power tamper torch, carryable pumps, chain saw operator, pipe layers, all material conveyors and elevators, signal man, walk behind fork lift or similar, whacker, sand blaster, maintenance man, west brick buggies or similar scaffold builder for plasterers regardless of height, hod carrier, plasterer tender, form cleaning machine operator, plasterer applicating and or pump machine operator, | | | | | |



| DECISION NO. PA80-3033 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: (CONT'D) | | | | | |
| paving breaker, asphalt raker, lancer, berfix cutting tool, gunnite potman, blacksmith, tool dresser (cable tools) | 11.25 | 9% | 8% | | |
| Blasters, wagon drill operator, drill runner, gunnite nozzle man, grout machine operator, walk behind power roller and tamper, welder driller (cable tools) | 11.80 | 9% | 8% | | |
| Wrecking Laborers | 11.00 | 9% | 8% | | |
| Low Burner | 11.25 | 9% | 8% | | |
| Jackhammer Operator | 11.25 | 9% | 8% | | |
| High Burner | 12.05 | 9% | 8% | | |
| High Burner Helper | 11.75 | 9% | 8% | | |
| LEADBURNERS | 10.75 | .40 | .25 | a | .01 |
| LINE CONSTRUCTION: | | | | | |
| Linemen, Dynamite man, Heavy equipment operator | 12.37 | .55 | 3% | | 3/8 of1% |
| Winch truck operator | 8.68 | .55 | 3% | | 3/8 of1% |
| Groundman | 8.30 | .55 | 3% | | 3/8 of1% |
| MARBLE SETTERS: | | | | | |
| Elk, McKean and Warren Cos. | 12.10 | .70 | .60 | | |
| MILLWRIGHTS: | | | | | |
| Elk, Forest & McKean County | 12.14 | 6.5% | 6% | 25% | ½% |
| Warren County | 11.75 | 6% | 8% | 10% | ½% |
| PAINTERS: | | | | | |
| Elks, Forest & Warren Cos; Townships in McKean County, Wetmore, Hamlin, Hamilton, Sergent and Norwich | | | | | |
| Commercial: | | | | | |
| Brush and Roller | 12.90 | .75 | 1.50 | | |
| Spray | 13.90 | .75 | 1.50 | | |
| Industrial: | | | | | |
| Brush & Roller | 13.40 | .75 | 1.50 | | |
| Spray | 14.40 | .75 | 1.50 | | |
| Remainder of McKean County | | | | | |
| Brush & Roller | 11.40 | | | | |
| Spray | 12.55 | | | | |

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PILEDRIVERMEN | 14.05 | 6% | 10% | | .5% |
| PLASTERERS: | | | | | |
| Elk, McKean and Warren Cos. | 12.10 | .70 | .60 | | |
| PLUMBERS & STEAMFITTERS | | | | | |
| Elk County | 12.78 | .83 | 1.18 | .75 | .25 |
| Forest County: | | | | | |
| Contracts under $10,000 | 8.98 | .95 | 1.30 | | .15 |
| Contracts over $10,000 | 13.75 | .95 | 1.30 | | .15 |
| McKean & Warren Counties: | | | | | |
| Contracts under $500.00 | 9.54 | .68 | .55 | | .04 |
| Contracts over $500.00 | 13.21 | .68 | .55 | | .04 |
| POWER EQUIPMENT OPERATORS | | | | | |
| CLASS 1 | 13.875 | 1.05 | 1.00 | | .09 |
| CLASS 1-A | 14.125 | 1.05 | 1.00 | | .09 |
| CLASS 1-B | 14.375 | 1.05 | 1.00 | | .09 |
| CLASS 1-C | 14.625 | 1.05 | 1.00 | | .09 |
| CLASS 2 | 13.725 | 1.05 | 1.00 | | .09 |
| CLASS 3 | 11.85 | 1.05 | 1.00 | | .09 |
| CLASS 3-A | 12.35 | 1.05 | 1.00 | | .09 |
| CLASS 4 | 11.20 | 1.05 | 1.00 | | .09 |
| CLASS 5 | 10.15 | 1.05 | 1.00 | | .09 |
| CLASS 6 | 10.45 | 1.05 | 1.00 | | .09 |
| CLASS 6-A | 10.55 | 1.05 | 1.00 | | .09 |
| CLASS 6-B | 10.70 | 1.05 | 1.00 | | .09 |
| CLASS 6-C | 11.45 | 1.05 | 1.00 | | .09 |

CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS

CLASS 1 - Austin-Western or similar type under 25 ton, austin-western similar type 25 ton or over, auto grader (CMI or similar, backhoe, batch plant when conveyors are used for direct feeding or discharge, batch plant no conveyors for direct feeding or discharge (without oiler), Cableway, caisson drill, central mix plant, cranes (excluding overhead) (truck or crawler type), cranes tower (mobile) cranes tower (stationary) (climbing type) use of oil to be discussed at per job) cranes tower (climbing type) cranes hydraulic self contained over 18 ton cranes hydraulic self contained - 18 ton or less, derrick traveler (self propelled), derrick (all types) when assistance required it will be an oiler or apprentice) derrick boats, dragline, dredge, engineer maintenace, franki or similar type pile driver, gradall (remote



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CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS CONT'D

CLASS 1 CONT'D - control or otherwise), helicopter (when used for erection purposes), hi-lift 4 yds or over, hoist-hod (2 cages up to 10 floors) Chicago Boom attached hoist (50 Ft. or over) stacks, stoves or furnances) hoist (slipform jobs hop to or similar type with 180 swing hop to or similar type with 360 swing local koehring scooper, metro chip harvester or similar type, mix mobile or similar type (with self-loading attachment) mix mobiling or similar type, mucking machine (tunnel), multiple bowl machines, pipe driver (sonic or similar type) (when assistance required it will be an oiler or apprentice), post driver-guard rail (truck mounted), post driver-guard rail (skid type), pumpkrete - mobile or similar type, quad nine, shovels (all types), slip form paver (CMI or similar), tractors - boom mounted (all types), tractors (all types with hydraulic backhoe attached), tug boat, whirley

CLASS 1-A - Austin-Western or similar type under 25 ton with jib, austin-western or similar type 25 ton or over with jib, cranes (boom or mast 100 ft. or over up & including 150 ft. +$.25) (truck or crawler type), cranes mobile (any type 15 ton or over placed on any bldg. structure + $.25), hoist-hod (2 cages over 10 floors) Class I rate +$.25, Hoist single cage with

CLASS 1-B - Cranes (boom or mast over 150 ft. up to & including 200 ft. +$.50) (truck or crawler type), engineer lead

CLASS 1-C - Cranes (boom or mast over 200 ft. + .75)

CLASS 2 - Asphalt plant operator, Athey loader, Auger - truck or tractor, mounted, back filling machine, boat material or personnel carrying (powered) boat - job work (inboard or outboard), bulldozer, cable layer, compactor with blade, compressor (1) and air tugger (1) (combination), compressor (1) and gunite machine (1) (combination), concrete belt placer, crane - overhead, crushing & screening plants, drill - davey or similar type drill - core (truck or skid mounted), drill - well & core (truck mounted), elevator (New buildings), euclid loader, excavating equipment (all other), forklift-lull or similar, grader, grader-elevating, greaser-equipment (head), hi-Lift - less than 4 yds., hoist - one drum (4 floors or over), hoist - hod (buildings 4 floors or more),

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CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS CONT'D

CLASS 2 CONT'D - hoist - ( 2 drums or more in one unit), jumbo operator, locomotive, lift slab machine (hydraulic) mixer - paving mulching machine, pipe cleaning machine, refrigeration plant (used for construction jobs that is, cooling concrete & holding banks), ross carrier (or similar type), scoop (single bowl) (self-powered & tractor drawn), spreader - concrete, asphalt and stone, tower mobile (hoisting or lowering material), trencher, well point systems, (The following machines shall be considered minor), compressors (3 within a reasonable distance); generators electric (3) (over) 5 KW up to 20 KW), pumps (1½" discharge or less) (4 to 5 within reasonable distance), pumps (3) (over 1½" discharge) (with-reasonable distance) (othe than electrically driven), grout pump (10 H. P. or over), elevator (when used for alterations & remodeling all buildings), paver operator - asphalt (spreader), pumpkrete or similar type (not self-propelled), pumpcrete machine operator (stationary), tire repairman (when assigned job), welder (repairman)

CLASS 3 - Boiler, compactor (ridden or self-propelled), compressor (over 125 CFM and air pump), compressor (1) and sand blasting machine (1), (combination), crane (carry), curb builder (self-propelled), drills-well & horizional truck mounted, forklifts (ridden or self-propessed), hoist one drum (regardless of power used), pavement breaker (self-propelled or ridden), pipe dream, roller, saw (concrete), soil stabilizer (pump type), stone crusher, stone spreader self-propelled, tractors (when used for snaking and hauling), tube finisher (CMI or similar type), tugger, truck, (winch) truck or hydraulic boom (when hoisting & placing), (The following machines shall be considered minor) compressors (2) generators (2) mortar machine over 10 cu. ft., and single unit conveyor, pumps (1½" discharge or less (2 to 3), pumps (over 1½" discharge (2) in bank) (within reasonable distance), welding machine (2 to 3), (other than electrically driven)

CLASS 3-A - Conveyors 4 units or more



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CLASSIFICATION DEFINITIONS
POWER EQUIPMENT OPERATORS CONT'D

CLASS 4 - Ballast regulator, boring machine, broom, power (except push type), compressor - single (over 65 CFM), conveyor over 1 and up to 3 units (regardless of power used) form line machine, generator (over 5 KW), hoist (monorail) (regardless of power used) hoist roof (regardless of power used), huck machine or similar type, mixer concrete (regardless of power used) mixer mortar - over 10 cu. ft. (regardless of power used) pump (over 1½" discharge regardless of power used) spray cure machine (power driven) steam jenny (or similar type) syphon (steam or air) welding machine single (300 amp or over) (other than electrically driven) plant, private or industrial air of steam valve

CLASS 5 - Compressor - 65 cubic ft. or under (regardless of power used) conveyor one (1) unit (regardless of power used) heaters - up to and including 6 jack motor hydraulic (single type) power driven ladevator, mixer mortar, (10 cubic ft. or under), mulching machine, pin puller (powered) pulverizer, pump - 1½" discharge or less, seeding machine, spreader side delivery, should (attachment) tie tamper (multiple heads) tractor farm (when used for landscaping) water blaster, oiler-truck crane 50 ton up to not incl. 100 ton

CLASS 6 - Brake man, deck hand, helicopter signalman, oiler, mechanic helper

CLASS 6-A - Crane truck oiler & fireman

CLASS 6-B - Oiler - Truck crane 50 ton up to & incl. 100 ton

CLASS 6-C - Oiler - Truck crane 100 ton and over

| DECISION NO. PA80-3033 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ROOFERS: | | | | | |
| Elk and Forest Cos. | 14.76 | .77 | 1.50 | | .16 |
| McKean and Warren Cos. | 10.95 | .65 | .45 | .15 | |
| SHEET METAL WORKERS | 12.60 | 1.02 | 1.56 | | .21 |
| SPRINKLER FITTERS | 14.53 | .85 | 1.20 | | .08 |
| TILE SETTERS AND TERRAZZO WORKERS: | | | | | |
| Elk, McKean and Warren Cos. | 12.10 | .70 | .60 | | |
| Forest County | 13.20 | .75 | .95 | | .05 |
| Welders - rate of craft | | | | | |

FOOTNOTE:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day and Good Friday, provided the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive months.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTY: Erie
DECISION NO.: PA80-3059 DATE: Date of Publication
Supersedes Decision No. PA78-3071, dated October 6, 1978, in 43 FR 46477.
DESCRIPTION OF WORK: Building Erection and Foundation Excavation, (does not include single family homes or apartments up to and including 4 stories).

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | 14.69 | .55 | 1.50 | | .02 |
| BOILERMAKERS | 14.68 | 1.20 | 1.40 | | .03 |
| BRICKLAYERS | 13.05 | .75 | .60 | 1.00 | .02 |
| CARPENTERS | 11.99 | .65 | 8% | 10% | .02 |
| CEMENT MASONS | 13.735 | .60 | | | .015 |
| ELECTRICIANS | 14.10 | .72 | 3%+1.08 | .75 | ½% |
| ELEVATOR CONSTRUCTORS | 13.605 | 1.195 | .95 | a+b | .035 |
| ELEVATOR CONSTRUCTORS' HELPERS | 70%JR | 1.195 | .95 | a+b | .035 |
| ELEVATOR CONSTRUCTORS' HELPERS (PROB.) | 50%JR | | | | |
| GLAZIERS | 12.34 | .60 | .80 | | .01 |
| IRONWORKERS: | | | | | |
| Structural | 14.00 | 1.86 | 1.01 | | .15 |
| Ornamental | 14.00 | 1.86 | 1.01 | | .15 |
| Reinforcing | 14.00 | 1.86 | 1.01 | | .15 |
| LATHERS | 11.28 | .30 | .10 | | .02 |
| LABORERS: | | | | | |
| Common Laborers | 10.69 | 9% | 8% | | 3% |
| Mason Tenders | 11.09 | 9% | 8% | | 3% |
| LINE CONSTRUCTION: | | | | | |
| Linemen, Heavy Equipment operator | 12.37 | .55 | 3% | | 3/8 of1% |
| Winch - Truck Driver | 8.68 | .55 | 3% | | 3/8 of1% |
| Groundmen | 8.30 | .55 | 3% | | 3/8 of1% |
| MARBLE SETTERS | 12.60 | .75 | .60 | | .02 |
| MILLWRIGHTS | 12.14 | 6.5% | 6% | 25% | ½% |
| PAINTERS: | | | | | |
| Brush | 10.70 | .60 | .50 | | .02 |
| Structural steel | 11.45 | .60 | .50 | | .02 |
| Spray | 11.20 | .60 | .50 | | .02 |
| PILEDRIVERMEN | 14.05 | 6% | 10% | | .5% |
| PLASTERERS | 12.96 | .60 | | | .015 |
| PLUMBERS | 13.92 | .75 | 1.05 | | .06 |
| ROOFERS: | | | | | |
| Composition | 13.39 | .60 | .30 | | .02 |
| SHEET METAL WORKERS | 12.60 | 1.02 | 1.56 | | .21 |
| SOFT FLOOR LAYERS | 11.99 | 6.5% | 8% | | .02 |
| SPRINKLER FITTERS | 14.53 | .85 | 1.20 | | .08 |
| STEAMFITTERS | 13.92 | .75 | 1.05 | | .06 |

| DECISION NO. PA80-3059 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| STONEMASONS | 13.05 | .75 | .60 | 1.00 | .02 |
| TERRAZZO WORKERS | 12.60 | .75 | .60 | | .02 |
| TILE SETTERS | 12.60 | .75 | .60 | | .02 |
| TRUCK DRIVERS | 9.12 | c | d | e | |

WELDER: Receive rate prescribed for craft performing operation to which is incidental

| | | | | | |
|---|---|---|---|---|---|
| POWER EQUIPMENT OPERATORS | | | | | |
| Class 1 | 14.27 | 1.05 | 1.00 | | .10 |
| Class 1-A | 14.56 | 1.05 | 1.00 | | .10 |
| Class 1-B | 14.83 | 1.05 | 1.00 | | .10 |
| Class 1-C | 15.11 | 1.05 | 1.00 | | .10 |
| Class 2 | 13.77 | 1.05 | 1.00 | | .10 |
| Class 3 | 13.60 | 1.05 | 1.00 | | .10 |
| Class 4 | 12.11 | 1.05 | 1.00 | | .10 |
| Class 5 | 11.82 | 1.05 | 1.00 | | .10 |
| Class 6 | 12.84 | 1.05 | 1.00 | | .10 |
| Class 6-A | 12.11 | 1.05 | 1.00 | | .10 |
| Class 6-B | 11.82 | 1.05 | 1.00 | | .10 |

POWER EQUIPMENT OPERATORS

Class 1: Auger (truck or tractor mounted), Austin Western or similar type, Austin Western or similar type up to 25 tons (25 tons or over requires an oiler), Backhoe, Backhoe (under 5/8 yd.), Batch Plant - Automatic, Boom - side, Cableways, Conveyors Belts - up to 4 floors, Conveyor Belts - over 4 units, Crane - Tower (climbing type), Derrick (all types), Derrick - Traveler, Dragline, Drill - Caisson, Electro Matic or similar, Gradall (remote control or otherwise), Helicopter, Helicopter - hoisting operating Hi-lift (3 yards or over), Hoist - on 50 ft. stack or over, Hoist on slip form job, Hoist - hod (single cage), Hoist - hod (2 cages up to 10 floors), Hop-to or similar type with 360 degree swing, Hop-to or similar type with 360 degree swing under 5/8 yd., Koehring Scooper, Kocal or similar type, Leverman, Mix Mobile or similar type, Mixer - concrete paving, Mixer - paving (self-propelled), Multiple Bowel Machines or Multi-engine, Pile Driver - Franki or



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POWER EQUIPMENT OPERATORS CONT'D

Class 1 Cont'd: similar type, Pile Driver (when assistance in required it will be an operating engineer), Placer - belt (concrete), Plant - Central Mix, Quad Nine, Shovels (all types), Shovels under 5/8 yd., Tractors - Boom mounted (all types), Tugboat, Whirlers, Boat - job work (inboard or outboard), Bulldozer, Carrier Ross or similar type, Compactor - (with blade attached), Curb Builder - self-propelled, Drill - Core, Drill - Well and Core (truck mounted), Engineer - maintenance (daily rated) Grader, Grader - Elevating, Greaser - equipment, Hi-lift (less than 3 yards), Hoist 2 drums in one unit, Hop-to or similar type with 180 degree swing, Tractors (all types with hydraulic backhoe attached), Cranes, Tower, Metro Chip Harvester (or similar type), Mixer - paving mixer - mortar - over 10 cu. ft., Plant - crushing and screening, Pumpcrete - mobile or similar type, Road Builder - Automatic, Scoop - self-powered and Tractor drawn (single bowl), spray Cure Machine (power drivern), Spreader, Steam Jenny (or similar type), Syphon (steam or air) Tractors (all types with hydraulic backhoe attached)

Class 1-A: Austin Western or similar type with jib + 25¢, Austin Western or similar type 25 tons or over with jib + 25¢, Cranes (excluding over head cranes), Crane - placed on building structure, Hoist single cage with Chicago Boom attached + 25¢, Engineer - lead, Hoist hod (2 cages over 10 floors), Cranes - 100 feet to 150 feet

Class 1-B: Cranes - 150 feet to 200 feet

Class 1-C: Cranes - 200 feet and over

Class 2: Backfilling Machine, Boat - material or personnel, Compressor and air pump, Compressor and air tugger, Compressor and gunnite machine (combination), Compressors and sandblasting unit (combination), Compressors (two), crane - overhead, Fork lift - elevating - lull or similar type generators - two Grade - sub, Jumbo - power, Layer - cable, Layer - pipe - no joint, Lift Slab Machine, Locomotive Machines - other minor, machines - small (two),

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POWER EQUIPMENT OPERATORS CONT'D

Class 2 Cont'd: Mucking Machine, Mobile Tower, Pipe - bending Machine (pipeline only), Pipe - cleaning machine, Pipe - wrapping machine, Plant - asphalt operator, Plant - portable crushing and screening, Plant - refrigeration pump - grout, Spreader-concrete, Asphalt and Stone, Well point systems (Section IC), Winch Truck (handling steel), Wire wrapping machine - pre-stress, Drill - Davey or similar, Drill - truck mounted and/or core drill for testing, Elevator (new buildings and major remodeling of old), Hoist one drum, Paver - asphalt, Post Driver - guard rail (other than truck mounted), post Driver - guard rail (truck mounted), Pumpcrete or similar type (not self-propelled), Tire Repairman, Trencher Machine, Welder Machines (up to and including 4)

Class 3: Boiler, Breaker - pavement (self-propelled or ridden), Compactor (ridden or self-propelled), Crane - carry, Crusher - stone, Drill - well (horizontal), Drill (self-propelled and self contained), Elevator (alterations of old buildings), Finisher - broom (C.M.I. or similar type), Finishing Machine and Spreader (concrete), Forklifts (ridden or self-propelled), Form Line Machine, Minor equipment (all other), Motorman, Pipe Dream, Roller, Saw - concrete (ridden or self-propelled), Soil Stabilizer, Tractors (when used for snaking and hauling), Truck - winch, Tugger

Class 4: Compressors single over 65 cu. ft. regardless of power used, Hoist - monorail (regardless of power used), Pump (over 1½ inch discharge regardless of power used), Oiler - truck crane (50 tons or over and Fireman)

Class 5: Blaster - water, Boring Machine, Broom - power, Compressor - 65 cu. ft. or under (regardless of power used) (2 gun painters), Conveyor - 1 story (regardless of power used), Conveyor (over 1 and up to 3 units regardless of power used), Generator (4 KW or over), Hauck Machine or similar type, Heaters - up to and including four), Jack and Pump - motor hydraulic, Jenny - steam (or similar type), Ladavator, Mixer - concrete (regardless of power used), Mixer - mortar (over 10 cu. ft. regardless of power used), Monile - track (or similar type), Mulching Machine, Pin Puller, Pulverizer, Pump - 1½ inch discharge or less, Regulator - Ballast, Seeding Machine, Shoulder, Spray Cure Machine, Syphon - (steam or air), Tie Tamper (multiple heads), Tractor - farm (when used for landscaping), Welding machine - single (300 amp. or over), Oiler, Truck Crane



DECISION NO. PA80-3059

POWER EQUIPMENT OPERATORS CONT'D

Class 6: Brake man, Deck hand, Helicopter, signalman, Oiler, Mechanic helper

Class 6-A: Oiler, Truck Crane

Class 6-B: Oiler, Truck crane (50 tons or over)

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. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Holidays: A through F, plus Friday after Thanksgiving Day.

c. Employer agree to contribute $137.27 per month to a Health and Welfare Fund.

d. Employer agree to contribute $26.00 per week to a pension fund.

e. One week vacation after 1 years work; two weeks vacation after five years of service.

SUPERSEDEAS DECISION

STATE: Pennsylvania COUNTIES: Lawrence & Mercer

DECISION NO.: PA80-3058 DATE: Date of Publication

Supersedes Decision No. PA79-3003 dated March 9, 1979, in 44 FR 13228.

DESCRIPTION OF WORK: Building Erection and Foundation Excavation Projects (does not include single family homes or apartments up to and including 4 stories)

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | 14.69 | .55 | 1.50 | | .02 |
| BOILERMAKERS | 13.88 | 5% | 7%+.95 | | .01 |
| BRICKLAYERS & STONEMASONS: | | | | | |
| Mercer County | 12.83 | .85 | 1.38 | | .02 |
| Lawrence County | 12.78 | .90 | 1.38 | | .02 |
| CARPENTERS: | | | | | |
| Lawrence County | 12.80 | 6% | 8% | 10% | |
| Mercer County | 12.77 | 1.34 | 1.35 | | .06 |
| CEMENT MASONS: | | | | | |
| Lawrence County | 14.39 | | | | |
| Mercer County: Townships of Greene, Sugar Grove, Salem, Sandy Creek, Deer Creek, French Creek, Mill Creek, New Vernon, Perry, Fairview, Lake, Sandy Lake, Worth, Jackson, Wolf Creek, Pine, Liberty and Findley. Also included are portions of the following townships determined by a line running in a north-western direction from the center of the southern border of Springfield Township north by a line running east to north west from Southern border of Otter Creek Township to approximately the center of the Western boundary of West Salem township, Springfield, Coolspring, Otter Creek, Hempfield and West Salem | 12.83 | .85 | 1.38 | | .02 |
| Remainder of Mercer County | 13.26 | .93 | 2.13 | | |
| ELECTRICIANS | 13.57 | 6% | 3% | 1.00 | 1½% |
| ELEVATOR CONSTRUCTORS | 13.70 | 1.195 | .82 | b+c | .035 |
| ELEVATOR CONSTRUCTORS HELPERS | 70%JR | 1.195 | .82 | b+c | .035 |



DECISION NO. PA80-3058

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELEVATOR CONSTRUCTOR'S HELPERS (PROB.) | 50%JR | | | | |
| GLAZIERS | 13.76 | .85 | 1.00 | | |
| IRONWORKERS, STRUCTURAL, ORNAMENTAL & REINFORCING | 14.25 | .75 | 1.30 | | .09 |
| LABORERS: | | | | | |
| Laborers, carryable pumps, west brick buggy or similar, vibrator operators walk behind fork lift or similar (non self-propelled) stripper & mover or forms, cement masons, footers, window cleaner, tool room man, all material conveyor (regardless of power used, including starting & stopping) | 11.06 | 9% | 9% | | |
| West brick buggy or similar (self-propelled), power wheelbarrows and buggies, walk behind forklift or similar, (self-propelled) wagon drill runners's helper, (including drill mounted on truck, track or similar), blaster's helper, all operators of compacting equipment, pipe layer, burner, jackhammer man concrete buster | 11.18 | 9% | 9% | | |
| Hod Carrier, scaffold builder bell and bottom man on furnaces and stacks, mortar mixer, mortar mixing machine (regardless of power used, including starting and stopping) grout machine feeder and pump operators and concrete saw operator, wagon drill operators | 11.31 | 9% | 9% | | |

DECISION NO. PA80-3058

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: (CONT'D) | | | | | |
| Gunnite nozzleman | 11.56 | 9% | 9% | | |
| Blaster | 11.75 | 9% | 9% | | |
| LANDSCAPING: | | | | | |
| Landscape laborer to include general landscaping work and driving of trucks for the distributing of materials on the job site but not to include dump trucks used to transport supplies to the job | 7.79 | 12% | 10% | | |
| Landscape Tractor Operator to operate small industrial rubber tire tractor equipped with front end loader and back hoe attachment used for the sole purpose of landscape work including soil spreading, but not for heavy and highway construction work | 8.21 | 12% | 10% | | |
| LEAD BURNERS | 10.75 | .40 | .25 | a | .01 |
| LINE CONSTRUCTION: | | | | | |
| Linemen, dynamite man, heavy equipment operator | 12.37 | .55 | 3% | | 3/8% |
| Winch truck operator | 8.68 | .55 | 3% | | 3/8% |
| Groundman | 8.30 | .55 | 3% | | 3/8% |
| MARBLE SETTERS: | | | | | |
| Lawrence County | 12.78 | .90 | 1.38 | | .02 |
| Mercer County | 13.56 | | | | |
| MILLWRIGHTS: | | | | | |
| Lawrence County | 12.14 | 6.5% | 6% | 25% | ½% |
| Mercer County | 15.255 | | | | |
| PAINTERS: | | | | | |
| Commercial - shall include stores, schools, warehouses not in plant showrooms, churches, apartment buildings, commercial garage, office buildings: | | | | | |
| Brush & Roller | 12.90 | .75 | 1.50 | | |
| Spray | 13.90 | .75 | 1.50 | | |



DECISION NO. PA80-3058

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS: CONT'D | | | | | |
| Industrial - shall include sewage treatment plants, water works or authorities, and power plants, all skelton steel, railroad and highway bridges, towers, tanks, storage tanks, furnances, machinery, corrugated ceiling and sidewalks, sheeting steel sash and all steel surfaces, offices and hospital, both interior and exterior: | | | | | |
| Brush & Roller | 13.40 | .75 | 1.50 | | |
| Spray | 14.40 | .75 | 1.50 | | |
| PILEDRIVERMEN: | | | | | |
| Lawrence | 14.05 | 6% | 10% | | .5% |
| Mercer County | 13.56 | 1.34 | 1.35 | | .06 |
| PLASTERERS: | | | | | |
| Lawrence County | 14.74 | | | | .01 |
| Mercer County: Townships of Greene, Sugar Grove, Salem, Sandy Creek, Deer Creek, French Creek, Mill Creek, New Vernon, Perry, Fairview, Lake, Sandy Lake, Worth, Jackson, Wolf Creek, Pine, Liberty and Findley. Also included are portions of the following townships determined by a line running in a north-western direction from the center of the southern border of Springfield Township north by a line running east to north west from southern border of Otter Creek Township to approximately the center of the Western | | | | | |

| DECISION NO. PA80-3058 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PLASTERERS: CONT'D | | | | | |
| boundary of West Salem township, Springfield, Coolspring, Otter Creek, Hempfield and West Salem | 12.83 | .85 | 1.38 | | .02 |
| Remainder of Mercer County | 13.26 | .93 | 2.13 | | |
| PLUMBERS & STEAMFITTERS: | | | | | |
| Lawrence | 14.48 | 1.21 | 1.26 | | .05 |
| Mercer County | 14.65 | .50 | 1.05 | | .05 |
| ROOFERS | 13.70 | .85 | .90 | | .02 |
| SHEET METAL WORKERS: | | | | | |
| Lawrence | 12.60 | 1.02 | 1.56 | | .21 |
| Mercer County | 14.14 | .75 | .83 | | .06 |
| SOFT FLOOR LAYERS: | | | | | |
| Lawrence County | 12.30 | .80 | .98 | .68 | .06 |
| Mercer County | 12.28 | 1.29 | 1.35 | | .05 |
| SPRINKLER FITTERS | 14.53 | .85 | 1.20 | | .08 |
| TERRAZZO WORKERS & TILE SETTERS: | | | | | |
| Lawrence County | 12.78 | .90 | 1.38 | | .02 |
| Mercer County | 15.255 | | | | |

Welders - Receive rate for craft

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. 8 paid Holidays, A through F and Washington's Birthday, Good Friday, and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the days preceding and following the holiday.

b. Employer contributes 8% basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as vacation pay credit.

c. Paid Holiday: A through F, plus the Friday after Thanksgiving Day.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))."



| DECISION NO. PA80-3058 | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS | | | | | |
| CLASS I | 14.425 | 1.05 | 1.00 | | .09 |
| CLASS I-A | 14.675 | 1.05 | 1.00 | | .09 |
| CLASS I-B | 14.925 | 1.05 | 1.00 | | .09 |
| CLASS I-C | 15.175 | 1.05 | 1.00 | | .09 |
| CLASS II | 14.225 | 1.05 | 1.00 | | .09 |
| CLASS III | 12.66 | 1.05 | 1.00 | | .09 |
| CLASS III-A | 13.16 | 1.05 | 1.00 | | .09 |
| CLASS IV | 11.77 | 1.05 | 1.00 | | .09 |
| CLASS V | 11.48 | 1.05 | 1.00 | | .09 |
| CLASS V-A | 11.58 | 1.05 | 1.00 | | .09 |
| CLASS V-B | 11.73 | 1.05 | 1.00 | | .09 |
| CLASS V-C | 12.48 | 1.05 | 1.00 | | .09 |

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS I - Austin-Western or similar type under 25 Ton, Austin-Western or similar type 25 ton or over; auto grader (CMI or similar); backhoe; batch plant - when conveyors are used for direct feeding or discharge, batch plant - no coveyors for direct feeding or discharge; cableway; caisson drill, central mix plant; cranes (excluding overhead) (truck or crawler type); cranes - tower (mobile); cranes - tower (stationary) (climbing type); cranes - tower (climbing type); cranes - hydraulic self-contained wagon crane - over 18 ton; cranes - hydraulic self-contained wagon crane - 18 ton or less; derrick-traveler (self-propelled); derrick (all types); derrick boats; dragline; dredge; engineer-maintenance; franki or similar type pile driver; gradall (remote control or otherwise);helicopter (when used for erection purposes); helicopter hoist operators (when used for erection purposes); hi-lift 4 yds. or over; hoist-hod (2 cages up to 10 floors; hoist-single cage with Chicago boom attached; hoist (50 ft. or over) (stacks, stoves or furnaces); hoist (slipform jobs; hop-to or similar type with 180° swing; hop-to or similar type with 360° swing; kocal; koehring scooper; metro chip harvester or similar type; mix mobile or similar type (with self-loading attachment); mix mobile or similar type; mucking machine (tunnel); multiple bowl machines; pile driver (sonic or similar type); post driver - guard rail (truck mounted); post driver - guard rail (skid type); pumpkrete - mobile or similar type; quad nine; shovels (all types); tractors (all types with hydraulic backhoe attached); tug boat and whirley

DECISION NO. PA80-3058

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

CLASS I-A - Austin-Western or similar type under 25 ton with jib; Austin-Western or similar type 25 ton or over with jib; cranes (boom or mast 100 ft. or over to & including 150 ft. (truck or crawler type); cranes - mobile (any type 15 ton or over placed on any bldg. structure; hoist-hod (2 cages over 10 floors)

CLASS I-B - Cranes (boom or mast over 150 ft. up to & including 200 ft. truck or crawler type)

CLASS I-C - Cranes (boom or mast over 200 ft.)

CLASS II - Asphalt plant operator; athey loader; auger - truck tractor mounted; back filling machine; boat - material or personnel carrying (powered); boat - job work (inboard or outboard); bull-dozer; cable layer; compactor with blade; compressor (1) and air tugger (1) (combination); compressor (1) and gunite machine (1) (combination); concrete belt placer; crane - overhead; crushing & screening plants; drill - Davey or similar type; drill - core (truck or skid mounted); drill - well & core (truck mounted); elevator (new Buildings); euclid loader; excavating equipment (all other); forklift-lull or similar; grader; grader-elevating; greaser-equipment (head); hi-lift - less than 4 yds; hoist - one drum (4 floors or over); hoist - hod (buildings 4 floors or more); hoist - (2 drums or more in one unit); jumbo operator; locomotibe; lift slab machine (hydraulic); mixer - paving; mucking machine; pipe cleaning machine; refrigeration plant (used for constr. jobs i.e., cooling, concrete & holding banks); ross carrier (or similar type); scoop (single bowl) (self-powered & tractor drawn); spread-er - concrete, asphalt and stone; tower mobile (hoisting or lowering material); trencher; well point systems; compressors (3 within a reasonable distance); generators electric (3) (over) 5 KW up to 20 KW); pumps (1½" discharge or less) (4 to 5 within reason-able distance); pumps (3) (over 1½ discharge) (within reasonable distance); welding machines (4 to 5 within reasonable distance) (other than electrically driven); elevator (when used for alter-ations & remodeling all bldgs); grout pump (10 H.P. or over); paver operator - asphalt (spreader); pumpkrete or similar type (not self--propelled); pumpkrete machine operator (stationary); tire repairman (when assigned to job); welder (repairman)



DECISION NO. PA80-3058

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS CONT'D

CLASS III - Ballast regulator; boiler; boring machine; broom, power (except push type); compressor - single (over 65 CFM; compressor (over 125 CFM and air pump); compressor (1) and sand blasting machine (1) (combination); conveyor over 1 and up to 3 units (regardless of power used); crane (carry); curb builder (self propelled); drills - well and horizontal truck mounted; forklifts (ridden or self-propelled); form line machine; generator (over 5 KW); hoists (monorail) (regardless of power used); hoist one drum (regardless of power used); hoist roof (regardless of power used); huck machine or similar type; mixer concrete (regardless of power used); mixer mortar - over 10 cu. ft. (regardless of power used); pavement breaker (self-propelled or ridden); pipe dream; plant, private or industrial air or steam valve; pump (over 1½" discharge regardless of power used); roller; saw (concrete); soil stabilizer (pump type); spray cure machine (power driven); steam jenny (or similar type); stone crusher; stone spreader self-propelled; syphon (steam or air); tractors (when used for snaking and hauling); truck or hydraulic boom (when hoisting & placing); tube finisher (CMI or similar type); tugger; welding machine single (300 amp or over) (other than electrically driven); compressors (2); genera-tors (2); mortar machine over 10 cu. ft. and single unit convey-or; pumps (1½" discharge or less) (2 to 3); pumps (over 1½" dis-charge (2) in bank) (within reasonable distance); welding machines (2 to 3) (other than electrically driven)

CLASS III-A - Conveyors 4 units or more

CLASS IV - Compressor - 65 cubic ft. or under (regardless of power used); conveyors one (1) unit (regardless of power used); heaters -up to and including 6; jack motor hydraulic (single type) power driven; ladavator; mixer mortar (10 cubic ft. or under); mulching machine; pin puller (powered); pulverizer; pump - 1½" discharge or less; seeding machine; spreader side delivery shoulder (attach-ment); tie tamper (multiple heads); tractor farm (when used for landscaping); water blaster

CLASS V - Brakeman; deckhand; helicopter oiler; mechanic

CLASS V-A - Truck crane; oiler & fireman

CLASS V-B - Oiler on truck crane 50-ton up to but not incl. 100-ton

CLASS V-C - Oiler truck crane 100 ton and over

DECISION NO. PA80-3058

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS | | | | | |
| CLASS 1 | 10.86 | 9.6% | 6.9% | a | |
| CLASS 2 | 10.91 | 9.6% | 6.9% | a | |
| CLASS 3 | 10.93 | 9.6% | 6.9% | a | |
| CLASS 4 | 11.01 | 9.6% | 6.9% | a | |
| CLASS 5 | 11.20 | 9.6% | 6.9% | a | |
| CLASS 6 | 11.03 | 9.6% | 6.9% | a | |
| CLASS 7 | 11.19 | 9.6% | 6.9% | a | |

CLASSIFICATIONS DEFINITIONS

CLASS 1 - Warehouseman, chauffeur & ambulance drive, service truck (pickup, jeep, busses, station wagon, panel truck, escort vehicle, including fuel and water trucks)

CLASS 2 - Dump and flat top (including fuel and water trucks, fork lift in warehouse or job site storage area and single axle trucks with power tailgate); distributor truck over 33,000 lbs. gross weight (oil, tar asphalt products two man operation, bot men)

CLASS 3 - Transit mix, single axle

CLASS 4 - Transit mix, tandem

CLASS 5 - Heavy duty tractor and trailer with low bed, 6 to 16 wheels and pole trailer and wide load

CLASS 6 - Distributor truck up to 33,000 lbs. gross weight (oil, tar asphalt products) one man operation; truck with dolly and scissor truck; truck with dump trailer or tandem, including mixer, drivers towing equipment

CLASS 7 - Winch truck and form truck

FOOTNOTE:

a. Paid Holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day and Veterans Day and Good Friday, provided the employee is available for work the day before and the day after the holiday and has been employed by the employer a minimum of 40 hours each calendar month for two consecutive months.

SUPERSEDEAS DECISION

STATE: Pennsylvania

COUNTIES: Bucks, Chester, Delaware, Montgomery & Philadelphia

DECISION NO.: PA80-3055

DATE: Date of Publication

Supersedes Decision No.: PA79-3009 dated May 4, 1979, in 44 FR 26518.

DESCRIPTION OF WORK: Building Construction, including single family homes and garden type apartments up to including 4 stories Chester County Building Construction Only

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ASBESTOS WORKERS | | | | | |
| ZONE 1 | 12.91 | 1.00 | 1.35 | | .08 |
| ZONE 2 | 12.10 | .90 | 1.05 | | .025 |

AREA COVERED BY ASBESTOS WORKERS

ZONE 1 - Chester, Delaware, Montgomery, Philadelphia and Remainder of Bucks County

ZONE 2 - Bridgeton, Durham, Lower Makefield, Middletown Falls, Morristown, New Hope, Newton, Noxkamixon, Plumstead Riegelsville, Solebury, Tullytown, Tinicum, Upper Makefield and Yardley Townships in Bucks County

| | | | | | |
|---|---|---|---|---|---|
| BOILERMAKER | 15.57 | 1.275 | 1.00 | | .02 |
| BRICKLAYERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 10.48 | .77 | 1.05 | | .02 |
| New Residential: | | | | | |
| Under 4 stories | 11.48 | .77 | 1.05 | | .02 |
| All other Work: | | | | | |
| ZONE 1 | 11.73 | 1.10 | 1.15 | | .02 |
| ZONE 2 | 12.00 | 1.37 | 1.75 | | .02 |
| ZONE 3 | 11.46 | 1.07 | .95 | | .02 |

AREA COVERED BY BRICKLAYERS ZONES

ZONE 1 - Bucks, Chester, Philadelphia Counties, Radnor and Haverford Township in Delaware County, Lower Marion, Abington, Upper Moreland and Cheltenhan Townships in Montgomery County

ZONE 2 - Remainder of Delaware County

ZONE 3 - Remainder of Montgomery County

DECISION NO. PA80-3055

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CARPENTERS: | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four(4) stories which is intended for predominently resident use | 10.27 | 2.63 | 1.40 | | .13 |
| Residential Under 4 stories: | | | | | |
| Bucks, Chester, Delaware and Montgomery Counties | 9.13 | 1.13 | 1.40 | | .13 |
| Philadelphia County | 11.02 | 2.63 | 1.40 | | .13 |
| All other work | 11.27 | 2.63 | 1.40 | | .13 |
| CEMENT MASONS: | | | | | |
| Rehabilit ation work to include demolition, on any existing structure of not more than four(4) stories which is intended for predominently residental use: | | | | | |
| ZONE 1 | 10.02 | 2.09 | 2.20 | | |
| All other work: | | | | | |
| ZONE 1 | 10.34 | 2.09 | 2.36 | | |
| ZONE 2 | 8.70 | .58 | .42 | | |
| ZONE 3 | 10.29 | | 1.65 | | |

AREA COVERED BY CEMENT MASONS ZONES

ZONE 1 - Bucks, Delaware and Philadelphia Counties, Remainder of Chester County and Remainder of Montgomery County

ZONE 2 - Oxford, Kenneth Square, Avondale and Longwood Townships in Chester County

ZONE 3 - Pennsburg and Pottstown Townships in Montgomery County



DECISION NO. PA80-3055

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| DRYWALL FINISHERS: | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structures of not more than four(4) stories which is intended for predominently residential use | 9.50 | 1.69 | .75 | | .03 |
| All other work | 9.70 | 1.44 | .75 | .85 | .03 |
| ELECTRICIANS: | | | | | |
| Rehabilitation work to include molition, repair and alteration, on any alteration, on any existing structure of not more than four(4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 13.17 | .76 | 3%+.76 | | .24 |
| ZONE 2 | 10.74 | .71 | 3%+.83 | | .06 |
| ZONE 3 | 9.75 | .46 | 3%+.58 | | .15 |
| ELECTRICIANS | | | | | |
| ZONE 1 | | | | | |
| Commercial | 13.88 | .83 | 3%+.83 | | 1 3/4% |
| Residential up to and including 4 stories | 11.77 | 6% | 3%+.71 | | 2% |
| ZONE 2 | | | | | |
| Commercial | 13.58 | 5% | 9% | | 1.5% |
| Residential up to and including 3 stories | 10.57 | 3.4% | 1%+2.6% | | 1.5% |
| ZONE 3 | | | | | |
| Commercial | 14.44 | 6% | 3%+10% | | 1/2 of1% |
| Residential up to and including 3 stories | 8.75 | 4.4% | 1%+3% | | 1/2 of1% |
| ZONE 4 | | | | | |
| Commercial | 11.90 | 9% | 9% | | 1/4 of1% |
| ZONE 5 | | | | | |
| Commercial | 13.39 | .78 | 3%+.30 | | .03 |
| ZONE 6 | | | | | |
| Commercial | 11.20 | 6% | 3%+1.00 | | .02 |
| ZONE 7 | | | | | |
| Commercial | 12.45 | .70 | 3%+.80 | | .02 |
| ZONE 8 | | | | | |
| Commercial | 14.64 | 7% | 3%+.80 | | .15 |

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AREA COVERED BY ELECTRICIANS ZONES

ZONE 1

Bucks County - starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad bridge to Route 09113, north 09113 to Route 152, north along Route 152 to the Humeville Road, east on Humeville Road to Route 333, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 to Route 09028, west on 09028 to Route 152, north on 152 to TR 232, north on TR 532 to Tr 113, north on TR 113 to TR 232 at Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough line at the southwest corner of the Borough of New Hope. The Borough of New Hope is excluded.

starting at the Delaware at the Delaware River and proceeding southwest along the Plumstead-Solebury and the Plumstead-Buckingham Township lines to Route 09064, northwest on 09064 to U.S. Highway 611 south on 611 to the spur of Route 270, northwest along the spur to Route 397, southwest on 397 to Route 350, southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041 southwest on 09041 to the Montgomery County line.

Delaware County - that portion east of a line following State Highway 320 from Montgomery County to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road, along Powell Road to State Highway 420 and continuing in a straight line to the Delaware River.

Montgomery County - that portion southeast of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on the Bethlehem Pike to the Penllyn Pike, southwest on the Penllyn and Blue Bell Pikes to the Wissahickon Creek, southeast on the Wissahickon Creek to the Butler Pike to North Lane near Conshohocken Borough, southwest on North Lane to Schuylkill RIver and continuing southeast in a line to the Spring Mill Road and southwest on the Spring Mill Road to Delaware County.



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AREA COVERED BY ELECTRICIANS ZONE CONT'D

Philadelphia County - in its entirety.

ZONE 2

Bucks County - Hilltown and New Britain Townships in their entirety; that portion of telford Borough northeast of County Line Road (Main Street) and bounded by West Rockhill and Hilltown Township; that portion of Dublin Borough west of State Highway 313, and that portion of Doylestown and Warrington Townships and Doylestown Borough northwest of a line following U.S. Highway 611 south from Route 09064 to the spur of Route 270, and proceeding northwest along the spur to Route 397, southwest on 397 to Route 350, Southeast on 350 to Route 395, southwest on 395 to Route 09069, southeast on 09069 to Route 09041, southwest on 09041 to the Montgomery County Line.

Chester County - East Coventry, East Vincent, West Vincent, East Pikeland, West Pikeland, Uwchlan, Upper Uwchlan, East Brandywine, Schuylkill and Charlestown Townships in their entirety, and that portion of Caln, East Caln, West Whiteland, East Whiteland, Tredyffrin, Willstown, Easttown Townships and the Borough of Downingtown north of U. S. Highway 30.

Delaware County - That portion of Radnor Township north of U.S. Highway 30 and west of State Highway 320.

Norristown, Montgomery County - That portion northwest of a line following Lower State Road from Bucks County southwest to the Bethlehem Pike (U.S. Highway 309), south on Bethlehem Pike to the Penllyn Pike, southwest onthe Penllyn and Blue Bell Pikes to the Wissahickon Creek to the Butler Pike, southwest Wissahickon Creek to the Butler Pike, southwest on the Butler Pike, to North Lane near Conshohocken Borough, southeast on North Lane to the Schuylkill River and continuing southeast in a line to the Spring Mill Road, southwest on the Spring Mill Road to Delaware County; but excluding Upper Hanover, Douglas, Upper Pottsgrove, West Pottsgrove Townships and also excluding that portion of the

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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 2 CONT'D
Borough of Pottstown north and west of a line drawn northeast on Keim Street from the Schuylkill River to the Reading Railroad northwest on the railroad to Madison Street, to High Street, east on High Street to Green Street, north on Green Street and northeast on Mintzer Street to the Lower Pottsgrove Township Line, along this township line and the borough line northwest to Adams Street and the Beehive ROad, northeast on the Beehive Road to the Township Line at Mervine Street in the State Of Pennsylvania.

ZONE 3
Chester County - That portion south of U.S. Highway 30 and north and west of U. S. Highway 1

Delaware County - That portion south of U.S. Highway 30 and north of that part of U.S. Highway 1 between U.S. Highway 202 and the Chester County Line, and east of that part of U.S. Highway 202 betwen U.S. Highway 1 and the Delaware Line, and west of a line extending from Montgomery County along State Route 320 to Maple, then along the Springfield Road to Saxer Avenue, along Saxer Avenue to Powell Road; along Powell Road to State Highway 420; along 420 and continuing in a straight line to the Delaware River in the State of Pennsylvania.

ZONE 4
Chester County - Oxford, Avondale and Kenneth Square Twps.

ZONE 5
Chester County - West Clan, West Brandywine, Honey Brook, Wallace, West Nantmeal, East Nantmeal, Warwich, South Coventy, Valley Twps. and Coatesville.

Montgomery County - West Pottsgrove, Upper Pottsgrove, Douglas Twps., Pottstown.



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AREA COVERED BY ELECTRICIANS ZONE CONT'D

ZONE 6
Bucks County - Plumstead, Bedminister, Tinicum, Nockomixon, Bridgeton and Durham Townships in their entireties, and that portion of Haycock and Springfield Townships east of a line following State Highway 412, from Northampton County south to Route 09071 to State Highway 212, along highway 212 to Route 09068, and along 09068 to State Highway 313. Also included is that portion of Bublin Borough east of State Highway 313.

ZONE 7
Bucks County - East Rock Hill, West Rock Hill, Milford and Richland Townships in their entirety and that portion of Haycock and Springfield Townships west of a line following State Highway 212 from Northampton County South to Route 09071 along 09071 to State Highway 212, along Highway 212 to Route 09068 and along 09068 to State Highway 313

Montgomery County - Upper Hanover in its entirety

ZONE 8
Bucks County - That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U.S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmevilla Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252 continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to TR 532, north on TR 532 to TR 113, north on TR 113 to TR 232 as Anchor Inn, northeast on TR 232 and continue northeast along Route 659 to Route 09060, West on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included.

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ELEVATOR CONSTRUCTORS: | | | | | |
| Elevator Constructors | 13.26 | 1.195 | .95 | a+b | .035 |
| Elevator Constructors Helpers | 9.28 | 1.195 | .95 | a+b | .035 |
| Elevator Constructors Helpers (Prob.) | 6.63 | | | | |
| GLAZIERS | | | | | |
| ZONE 1 | 10.53 | .50 | .30 | | .01 |
| ZONE 2 | 9.19 | .40 | .40 | | .01 |

AREA COVERED BY GLAZIERS ZONES

ZONE 1 - Delaware and Philadelphia Counties, Remainder of Bucks, Chester and Montgomery Counties

ZONE 2 - Milford, West Rockville, Rickland, E. Rockville, Haycock, Durham, Springfield, Richlandtown, Sqoherton, Nockamixon Townships in Bucks County, Warwick, S. Coventry, E. Coventry, N. Coventry, Spring City and Royersford Townships in Chester County, Pottstown, Lower Pottsgrove, Limrick, Lower Frederick, Upper Salford, Sounderton, Greeland, Upper Hanover, New Hanover, Douglas, Marlboro Twps. in Mongtomery County

| | | | | | |
|---|---|---|---|---|---|
| IRONWORKERS: | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 11.62 | 1.14 | 1.36 | | .04 |
| All other work | | | | | |
| ZONE 1 | 10.36 | .79 | 1.11 | | .05 |
| ZONE 2 | 10.53 | .79 | 1.11 | | .05 |
| ZONE 3 | | | | | |
| Structural & Ornamental | 13.77 | 1.34 | 1.36 | | .04 |
| Reinforcing | 12.80 | 1.24 | 1.96 | | .01 |



DECISION NO. PA80-3055

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Bucks County

ZONE 2 - Chester County

ZONE 3 - Delaware, Montgomery & Philadelphia Cos.

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| IRONWORKERS: | | | | | |
| Rigger, machinery mover | 13.20 | 1.34 | 1.36 | | |
| LABORERS: | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use: | | | | | |
| CLASS I | 8.55 | .90 | .65 | | |
| CLASS II | 8.65 | .90 | .65 | | |
| CLASS III | 8.70 | .90 | .65 | | |
| CLASS IV | 8.85 | .90 | .65 | | |
| CLASS V | 8.95 | .90 | .65 | | |
| CLASS VI | 8.49 | .90 | .65 | | |

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concrete form work, loading, carrying 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pheumatic tools, building scaffolds, raking, shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

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CLASSIFICATION DEFINITIONS CONT'D

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard workers

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LABORERS: | | | | | |
| New Residential under 4 stories | 9.08 | .90 | .85 | | .025 |
| All other work | | | | | |
| CLASS I | 9.80 | .90 | .85 | | |
| CLASS II | 9.90 | .90 | .85 | | |
| CLASS III | 9.95 | .90 | .85 | | |
| CLASS IV | 10.10 | .90 | .85 | | |
| CLASS V | 10.20 | .90 | .85 | | |
| CLASS VI | 9.74 | .90 | .85 | | |

CLASSIFICATIONS DEFINITIONS

CLASS I - Stripping & dismantling concrete form work, loading, carry 7 handling of all reinforced steel 7 steel mesh, handling lumber and other building materials, operating jackhammers, paving breakers 7 all other pneumatic tools, building scaffolds, raking, shoveling 7 tamping of asphalt, spading & concrete pit work, grading, form pinning, shoring, demolition except burners, laying conduits and ducts, sheathing, lagging, laying non metallic pipe & caulking, all other types of Laborers

CLASS II - Mason tender, power buggies, burners on demolition

CLASS III - Wagon drill operator (single)

CLASS IV - Powdermen, wagon drill operator (multiple), circular caissons excavation: Caisson groundmen, Underpinning excavation: Laborers, working at depth of 8 feet or under

CLASS V - Caisson bottom man

CLASS VI - Yard Workers



DECISION NO. PA80-3055

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| LANDSCAPE LABORERS: | | | | | |
| CLASS I | 8.30 | .95 | .35 | c | |
| CLASS II | 8.80 | .95 | .85 | c | |

CLASSIFICATIONS DEFINITIONS

CLASS I - Landscape Laborers

CLASS II - Farm tractor driver, hydroseeder nozzle man and mulcher nozzle man

| | | | | | |
|---|---|---|---|---|---|
| LATHERS | | | | | |
| ZONE 1 | 11.27 | 2.63 | 1.40 | | |
| ZONE 2 | 9.15 | .50 | .15 | | |
| ZONE 3 | 7.69 | .40 | .25 | | |
| ZONE 4 | 7.75 | .25 | .25 | | .02 |

AREA COVERED BY LATHERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Coatesville & lower part of Chester County

ZONE 3 - Milford, Trumbersville, Richland, Quakertown, Springfield, Durham, Riegelsville, Bridgetown, Noxkamixon, Tinicum, Plumstead, Dublin, Bedminister, Haycock, East Rockhill, Perkasie, Sellersville, West Rockhill Townships in Bucks County

ZONE 4 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown Townships in Bucks County

| | | | | | |
|---|---|---|---|---|---|
| LEAD BURNERS | 10.75 | .40 | .25 | d | .01 |
| LINE CONSTRUCTION | | | | | |
| ZONE 1 | | | | | |
| Linemen | 15.10 | .45 | 3% | | 1% |
| Groundmen | 9.06 | .45 | 3% | | 1% |
| Winch truck operator | 10.57 | .45 | 3% | | 1% |
| ZONE 2 | | | | | |
| Linemen, cable splicers, heavy equipment operator, truck driver | 14.64 | 7% | 3%+.75 | | 3/4% |
| Groundman, winch operator | 11.71 | 7% | 3%+.75 | | 3/4% |

DECISION NO. PA80-3055

AREA COVERED BY LINE CONSTRUCTION

ZONE 1 - Remainder of Bucks County, Chester, Delaware, Montgomery, Philadelphia Counties

ZONE 2 - Bucks county: That portion east of a line starting at the Delaware River and following the west limits of the Borough of Bristol, along the continuation of U. S. Highway 13 and under the Pennsylvania Railroad Bridge to Route 09113, north along 09113 to Route 152, north along Route 152 to the Hulmeville Rd., east on the Hulmeville to Route 344, north on Route 344 to the junction of Spurs 281 and 252, continue north on Spur 252 and Route 09028, west on 09028 to Route 152, north on 152 to Tr 532, north on Tr 532 to Tr 113, north on Tr 113 to Tr 232 at Anchor Inn, northeast on Tr 232 and continue northeast along Route 559 to Route 09060, west on 09060 to Route 402, north on 402 to the Borough Line at the southwest corner of the Borough of New Hope. The Boroughs of New Hope and Bristol are included

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| MARBLE SETTERS | 11.10 | .87 | 1.57 | | |
| MILLWRIGHTS | 11.77 | 2.63 | 1.40 | | .13 |
| PAINTERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structures of not more than four (4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 10.00 | 1.225 | .60 | | .06 |
| All other work: | | | | | |
| ZONE 1 | | | | | |
| Brush | 11.995 | 1.225 | .70 | | .06 |
| Spray, steel & swing | 12.445 | 1.225 | .70 | | .06 |
| Roller | 11.995 | 1.225 | .70 | | .06 |



DECISION NO. PA80-3055

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| PAINTERS: (Cont'd) | | | | | |
| ZONE 2 | | | | | |
| Commercial, brush | 11.58 | 1.00 | 1.00 | | |
| Commercial, spray | 12.08 | 1.00 | 1.00 | | |
| ZONE 3 | | | | | |
| Brush | 10.25 | .80 | .95 | | |
| Steel and spray | 11.30 | .80 | .95 | | |
| Roller | 10.25 | .80 | .95 | | |
| ZONE 4 | | | | | |
| Brush | 12.04 | 1.50 | 1.20 | | .14 |
| Steel | 12.79 | 1.50 | 1.20 | | .14 |

AREA COVERED BY PAINTERS ZONES

ZONE 1 - Bucks & Philadelphia Counties: Randnor, Haverford, Newton, Maple, Springfield, Upper Darby, Barby, Ridley, Tinicum & Yeondon Townships in Delaware County, Cheltenahm, Abington, Upper and Lower Moreland, Springfield Whitemarsh, Plymouth, Upper Dubling, Horsham, Whitpain, Upper and Lower Gwynodd, Lower Marion, Upper Southampton, Townships in Montgomery County

ZONE 2 - Chester County and Remainder of Delaware County

ZONE 3 - Pottstown, Pottsgrove, New Hanover and Douglas Townships in Montgomery County

ZONE 4 - Remainder of Montgomery County

| | | | | | |
|---|---|---|---|---|---|
| PAPERHANGERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use | 10.89 | .95 | .60 | | .03 |
| PILEDRIVERMEN | 11.97 | 2.63 | 1.40 | g | .13 |

DECISION NO. PA80-3055

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POINTERS, CAULKERS AND CLEANERS | 12.35 | 1.00 | 1.10 | | |
| PLASTERERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 9.49 | .93 | | | .01 |
| All other work | | | | | |
| Zone 1 | 12.96 | .93 | | | .01 |
| Zone 2 | 10.81 | | 1.65 | | .01 |
| Zone 3 | 8.97 | .65 | | | .01 |
| Zone 4 | 9.45 | | | | .01 |

AREA COVERED BY PLASTERERS ZONES

ZONE 1 - Bucks & Philadelphia Counties; remainder of Chester County, Remainder of Montgomery County

ZONE 2 - Pennsburg Township in Montgomery County

ZONE 3 - Longwood, Kennett Square, Avondale and Oxford Townships in Chester County

ZONE 4 - Delaware County

| | | | | | |
|---|---|---|---|---|---|
| PLUMBERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structure or not more than four (4) stories which is intended for predominently residential use: | | | | | |
| ZONE 1 | 12.13 | .81 | 1.30 | | .14 |
| All other work: | | | | | |
| ZONE 1 | 13.63 | .85 | 1.40 | | .14 |
| ZONE 2 | 13.23 | .85 | 1.40 | | .14 |



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AREA COVERED BY PLUMBERS ZONES

ZONE 1 - Delaware, Chester, Montgomery, Philadelphia Counties; remainder of Bucks County

ZONE 2 - Bridgton, Durnham, Haycock, Milford, Nockamixon, Richland, East Rockhill, West Rockhill and Springfield Townships in Bucks County

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| ROOFERS: | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structure or not more than four (4) stories which in intended for predominently residential use: | | | | | |
| ZONE 1 | | | | | |
| Composition, damp and waterproofers | 10.57 | .80 | .70 | | |
| All other work: | | | | | |
| ZONE 1 | | | | | |
| Commercial | | | | | |
| Composition, damp & waterproofers | 14.17 | 1.40 | .95 | e | |
| Roofers Assistant | 7.00 | 1.40 | .95 | e | |
| ZONE 2 | | | | | |
| Commercial | | | | | |
| Composition & state | 12.28 | | 1.55 | | |
| ZONE 3 | | | | | |
| Commercial | | | | | |
| Composition roofers | 11.62 | 1.33 | .80 | | |
| ZONE 4 | | | | | |
| Commercial | | | | | |
| Composition, damp & Waterproofing | 10.60 | .45 | .25 | f | |
| Slate, tile & asbestos | 11.15 | .45 | .25 | f | |
| Precast Slab | 11.40 | .45 | .25 | f | |

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AREA COVERED BY ROOFERS ZONES

ZONE 1 - Delaware, Montgomery and Philadelphia Counties, Remainder of Bucks and Chester Counties

ZONE 2 - Milford, Trumbbaversville, Richland, Quakertown, Strongfield, Durham, Reigllville Townships in Bucks County

ZONE 3 - Solebury, New Hope, Upper Makefield, Wrightstown, Newton, Yardley, Lower Makefield, Morrisville, Falls, Tullytown and Bistol Townships in Bucks County

ZONE 4 - Parksbury Township in Chester County

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SHEETMETAL WORKERS | | | | | |
| ZONE 1 (Commercial) | 12.65 | 1.47 | 1.18 | | .03 |
| ZONE 2 (Residential) | 7.43 | 1.02 | 1.65 | | |
| ZONE 3 (Commercial) | 11.41 | 1.33 | .80 | | .03 |

AREA COVERED BY SHEET METAL WORKERS ZONES

ZONE 1 - Remainder of Bucks, Chester, Delaware, Montgomery & Philadelphia Counties

ZONE 2 - Chester, Delaware, Montgomery Counties and Bucks County excluding the Townships of Falls, Buckingham, Newton, Upper and Lower Makefield, Solebury, Plumstead and Wrightstown

ZONE 3 - Townships in Bucks County; Plumstead, Solesbury, Buckingham, Wrightstown, Upper and Lower Makefield, Newton and Falls



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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SOFT FLOOR LAYERS: | | | | | |
| Rehabilitation work to include demolition, repair, and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential use | 8.58 | 2.18 | 1.40 | | .13 |
| All other work | 10.08 | 2.63 | 1.40 | | .13 |
| SPRINKLER FITTERS | | | | | |
| ZONE 1 | 14.53 | .85 | 1.20 | | .08 |
| ZONE 2 | 13.87 | .85 | 1.20 | | .10 |

AREA COVERED BY SPRINKLER FITTERS ZONES

ZONE 1 - Bucks, Chester, Delaware & Montgomery Counties

ZONE 2 - Philadelphia County

| | | | | | |
|---|---|---|---|---|---|
| STEAM FITTERS | | | | | |
| ZONE 1 | 13.66 | | 1.45 | | .11 |

AREA COVERED BY STEAMFITTERS ZONES

ZONE 1 - Bucks, Delaware, Philadelphia Counties and Remainder of Montgomery County

| | | | | | |
|---|---|---|---|---|---|
| STONE MASONS | | | | | |
| ZONE 1 | 10.53 | .87 | 1.57 | | |
| ZONE 2 | 11.46 | 1.07 | 1.45 | | .02 |
| ZONE 3 | 10.75 | .95 | .78 | | .01 |
| ZONE 4 | 9.30 | .77 | .75 | | |

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AREA COVERED BY STONE MASONS ZONES

ZONE 1 - Delaware & Philadelphia Counties; Remainder of Bucks County

ZONE 2 - Montgomery County

ZONE 3 - Chester County

ZONE 4 - Bristol Township in Bucks County

| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| SOUND AND PUBLIC ADDRESS INSTALLATION TECHICIANS (Existing buildings only) | 9.50 | | 3% | | |
| TERRAZZO WORKERS | 10.75 | .87 | 1.57 | | |
| TILE SETTERS | | | | | |
| Rehabilitation work to include demolition, repair and alteration, on any existing structure of not more than four (4) stories which is intended for predominently residential | 10.25 | 1.25 | .40 | | .14 |
| All other work | 10.25 | 1.35 | 1.40 | | .14 |

WELDERS - rate prescribed for craft performing operation to which welding is incidental.



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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. Employer contributes 8% of basic hourly rate for 5 years or more of service or 6% basic hourly rate for 6 months to 5 years of service as Vacation Pay Credit.

b. Holidays: A through F, plus the Friday after Thanksgiving Day.

c. Holidays: July 4th; Labor Day and Thanksgiving Day.

d. Holidays, A through F, Washington's Birthday, Good Friday and Christmas Eve, provided the employee has worked 45 days for the employer during the 120 days prior to the holiday, and is available for work the day preceding and following the holiday.

e. Holidays: Election Day.

f. Holidays: Labor Day and Election Day

g. Holidays: A through F, Washington's Birthday, Good Friday and Christmas Eve providing the employee has worked 45 full days for the same employer during the 120 calendar days prior to the holiday & is available for work the days preceding & following the holiday.

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| | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| POWER EQUIPMENT OPERATORS: | | | | | |
| GROUP 1 | 13.50 | 7.9% | 10.3% | a | 1.8% |
| GROUP 2 | 13.24 | 7.9% | 10.3% | a | 1.8% |
| GROUP 3 | 12.37 | 7.9% | 10.3% | a | 1.8% |
| GROUP 4 | 12.16 | 7.9% | 10.3% | a | 1.8% |
| GROUP 5 | 11.85 | 7.9% | 10.3% | a | 1.8% |
| GROUP 6 | 11.68 | 7.9% | 10.3% | a | 1.8% |
| GROUP 7 | 11.17 | 7.9% | 10.3% | a | 1.8% |
| GROUP 8 | 10.43 | 7.9% | 10.3% | a | 1.8% |

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1 - Handling steel and stone in connection with erection, cranes doing hook work, any machine handling machinery, cable spinning machine, helicopters, machines similar to above

GROUP 2 - All types of cranes, all types of backhoes, cableways, draglines, keystones, all types of shovels, derricks, trench shovels, trenching machines, pippin type backhoes, hoist with two towers, pavers 21E and over, all types overhead cranes, building hoists - double drum (unless used as single drum) mucking machines in tunnel, gradalls, frontend loaders 3½ cu. yd. 7 over boat captain, tandem, scrapers, tower type crane operation, erecting, dismantling, jumping or jacking, drills self-contained (drillmaster type) fork lift (20 ft. and over), motor patrols (fine grade) batch plant with mixer, machine similar to the above

GROUP 3 - Conveyors (except building conveyors) building hoists (single drum) scrapers and tournapulls, asphalt plant engineers, roller (high grade finishing) frone-end loaders under 3½ cu. yds. mechanic-welder, spreaders, high or low pressure boilers, concrete pumps, well drillers, front lift trucks of all types bulldozers and tractors, ditch witch type trencher, motor patrol, machines similar to the above

GROUP 4 - Conncrete breaking machines rollers, machines similar to the above



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POWER EQUIPMENT OPERATORS CLASSIFICATIONS CONT'D

GROUP 5 - Seaman pulverizing mixer, tireman on power equipment maintenanceengineer (power boat) machines similar to the above

GROUP 6 - Conveyors (building) welding machines, heaters, well-points, compressors, farm tractors, fine grade machines, from line graders, road finishing machines, pumps, power broom (self-contained), seed spreader, machines similar to the above

GROUP 7 - Fireman, grease truck

GROUP 8 - Oilers and deck hands (personnel boats) grease truck helper

FOOTNOTE:

a. Paid Holidays: New Year's Day; Memorial Day; Independence Day; Labor Day; Thanksgiving Day; and Christmas Day providing the employee works the day before and after the holiday.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)9ii))."

| DECISION NO. PA80-3055<br>BUILDING CONSTRUCTION | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| TRUCK DRIVERS | | | | | |
| CLASS I | 8.845 | .9175 | .975 | a+b | |
| CLASS II | 8.945 | .9175 | .975 | a+b | |
| CLASS III | 9.145 | .9175 | .975 | a+b | |

CLASSIFICATIONS DEFINTITIONS

CLASS I - Warehouseman, checker, fork lift driver, stake body truck (single axle), 1½ ton and under vehicles

CLASS II - Truck driver over 1½ tons, dump trucks, tandem and batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS III - Euclid type-off-highway equipment - back or belly dump trucks and double - hitched equipment straddle (Ross) carrier, lowbed trailers

FOOTNOTES:

a. Employer will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days (40 hours pay) calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitled to all days of vacation, employees with five (5) years or more senority shall be eligible for two (2) weeks of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day; Veterans Day and (5) personal holidays for employees who have worked a minimum of thirty days and are on the employer's senority list, provided he works the schedule work days before and after the said holidays.

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| DECISION NO. PA80-3055<br>TRUCK DRIVERS:<br>SITE PREPARATION, PAVING, AND UTILITIES | Basic Hourly Rates | Fringe Benefits Payments | | | |
|---|---|---|---|---|---|
| | | H & W | Pensions | Vacation | Education and/or Appr. Tr. |
| CLASS 1 | 8.695 | .9175 | .975 | a+b | |
| CLASS 2 | 8.795 | .9175 | .975 | a+b | |
| CLASS 3 | 8.995 | .9175 | .975 | a+b | |

SITE PREPARATION, PAVING, AND UTILITIES CLASSIFICATIONS

CLASS 1: Helpers, Stake Body Truck (single axle, dumpster)

CLASS 2: Dump trucks, tandem & batch trucks, semi-trailers, agitator mixer trucks, and dumpcrete type vehicles, asphalt distributors, farm tractor when used for transportation, stake body truck (tandem)

CLASS 3: Euclid type, off-highway equipment or belly dump trucks and double hitched equipment, staddle (ross) carrier, low-bed trailers

FOOTNOTES:

a. Employee will earn one (1) vacation day every two (2) months up to a maximum of five (5) vacation days per calendar year. During each two (2) consecutive months period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will be entitile to all days of vacation.

b. Paid Holidays: Memorial Day; Independence Day; Labor Day and Veterans Day and five (5) personal holidays provided such employee work the scheduled work days before and after said holiday; and employee gives employer one (1) week's notice requesting a personal holiday. The eligibility for personal holidays will be as follows: Employee will earn one (1) personal holiday every two (2) months up to a maximum of five (5) personal holidays per calendar year. During each two (2) consecutive month period, employee must have worked twenty-six (26) days in that two month period. After 130 workdays the employee will entitled to all person holidays.

federal register

Friday
October 3, 1980

Part III

# Department of Labor

## Occupational Safety and Health Administration

## Inspections and Investigations; Obtaining Warrants on an Ex Parte Basis and Prior to Attempting Entry

**DEPARTMENT OF LABOR**

**Occupational Safety and Health Administration**

**29 CFR Part 1903**

## Obtaining Warrants on an Ex Parte Basis and Prior to Attempting Entry

**AGENCY:** Occupational Safety and Health Administration (OSHA); U.S. Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** This document amends 29 CFR 1903.4 to authorize the Secretary of Labor ("Secretary") to seek inspection warrants on an *ex parte* basis. In addition, the amended rule authorizes the Secretary to seek warrants prior to attempting entry of an employer's premises and also authorizes regional agency non-legal personnel to seek process with the approval of the Regional Administrator and Regional Solicitor. The amended rule is intended to provide the agency with effective and efficient procedures and policies for the conduct of inspections and investigations in order to carry out its responsibilities under the Occupational Safety and Health Act of 1970, 29 U.S.C. 651 *et seq.* (the "Act").

**EFFECTIVE DATE:** November 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Jerald Pasternak, Room S–4014, 200 Constitution Avenue NW., Washington, D.C. 20210. Telephone (202) 523–6655.

**SUPPLEMENTARY INFORMATION:**

### A. Background

On May 20, 1980, the Occupational Safety and Health Administration ("OSHA" and the "agency") published in the **Federal Register** proposed amendments to 29 CFR 1903.4 regarding the obtaining of inspection warrants on an *ex parte* basis and prior to attempting entry of an employer's premises (45 FR 33652). The agency invited the public to submit written data, views and arguments with respect to the proposal and all issues involved therein. Comments were to be postmarked on or before July 21, 1980.

The agency has received numerous comments from businesses, unions, trade associations, law firms and others. All submissions were made part of the official record and were duly considered.

Several commentors requested public hearings on the proposed amendments. Exhibits 2–29, 2–39, 2–47, 2–58, 2–74,4–13. The agency reviewed these requests and determined that public hearings would not be held. Since the regulation at 29 CFR 1903.4 is not an occupational safety and health standard as defined by Section 3(8) of the Act, 29 U.S.C. 652(8), the provisions of section 6(b) of the Act, 29 U.S.C. 655(b), do not apply. Additionally, hearings are not required by the Administrative Procedure Act ("APA") when, as here, an agency is engaged in informal rulemaking. 5 U.S.C. 553; *Vermont Yankee Nuclear Power* v. *National Resources Defense Council, Inc.*, 435 U.S. 519 (1978). Furthermore, no commentor claimed an inability to adequately present its views through written submissions, and a review of the comments received tended to reinforce our view that hearings would only result in the addition to the record of information which would at most duplicate or corroborate the written comments without providing further insight into or elucidation of the issues involved. Accordingly, the agency determined that public hearings, with their concomitant costs and delay, would not be held. However, in order to avoid prejudicing any commentor who might have relied to his or her detriment on the availability of public hearings to present comments, each commentor who had timely requested public hearings was given additional time beyond the July 21, 1980 deadline in which to submit those comments.

One commentor requested that the comment period be extended an additional sixty days but did not claim an inability to timely file his submission. Exhibit 2–39. In view of the above and the fact that the agency had already provided more than sixty days in which to submit comments, it was decided that the comment period would not be extended. Again, an additional period was offered to the commentor who had requested an extension, in order to avoid any possible prejudice.

One commentor suggested that the proposed rule does not comply with Executive Order 12044 (43 FR 12661) relating to preparation of a regulatory analysis. However, no regulatory analysis is required in this instance since the proposed regulation does not meet the Executive order's or the agency's criteria for a major action. See 44 FR 5570 *et seq.*

### B. General Information

The Fourth Amendment to the United States Constitution states in pertinent part that "The rights of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause. . . ."

In *Marshall* v. *Barlow's, Inc.*, 436 U.S. 307 (1978), the Supreme Court held that the Fourth Amendment requires a warrant for a non-consensual OSHA inspection. The Court noted the almost unbridled discretion devolved upon executive and administrative officers by the authority to make warrantless searches and concluded that a warrant issued by a neutral officer safeguards employers' rights to be free from unreasonable intrusions. 436 U.S. at 323–24. The Court recognized that "the Act . . . regulates a myriad of safety details that may be amenable to speedy alteration or disguise" and that there is a risk "that during the interval between an inspector's initial request to search a plant and his procuring a warrant following the owner's refusal of permission, violations of this . . . type could be corrected and thus escape the inspector's notice." *Id.* at 316. However, the Court was not convinced that this risk sufficiently justified warrantless inspections, noting that "the advantages of surprise would [not] be lost, if after being refused entry, procedures were available for the Secretary to seek an *ex parte* warrant and to reappear at the premises without further notice to the establishment being inspected." *Id.* at 320. Additionally, the Court noted that "[i]nsofar as the Secretary's statutory authority is concerned, a regulation expressly providing that the Secretary could proceed *ex parte* to seek a warrant or its equivalent would appear to be as much within the Secretary's power as the regulation currently in force and calling for 'compulsory process.' " *Id.* at 320, n. 15. Finally, the Court recognized that *ex parte* warrants issued in advance of an inspection might become necessary in order to carry out the surprise inspections specifically contemplated by the Act. *Id.* at 316.

Six months after the *Barlow's* decision, a federal district court, ruling that the Secretary lacked authority under 29 CFR 1903.4 to seek *ex parte* warrants, entered a preliminary injunction prohibiting the Secretary from seeking warrants on an *ex parte* basis. *Cerro Metal Products* v. *Marshall*, 467 F.Supp. 869 (E.D. Pa. 1979), *aff'd*, 620 F.2d 964 (3d Cir. 1980). One month later, in December 1978, the Secretary amended 29 CFR 1903.4 in order to clarify that regulation and to make clear his authority to seek *ex parte* warrants. 43 FR 59839. The amendment also made clear that compulsory process may be sought in advance of an inspection under appropriate circumstances and that process may be sought by the Area Director or his designee. 43 FR 59839. Because the amendments were considered "an interpretive rule, general statement of policy and rule of agency procedures and practice," 43 FR 59839,

public participation and delay in effective date were not provided, in accordance with the provisions of the APA. 5 U.S.C. 553.

In March 1979, the district court which had entered the above-mentioned preliminary injunction refused to dissolve it. The court acknowledged that *ex parte* warrants are proper under the Fourth Amendment but found the December 1978 amendment of § 1903.4 invalid for failure to use notice and comment rulemaking. *Cerro Metal Products* v. *Marshall, supra,* 467 F.Supp. at 882–83. The court acknowledged, however, that the authority to seek *ex parte* warrants could be obtained through rulemaking and that "[t]he Secretary already is armed with the extensive language of Mr. Justice White for a majority of the [Supreme] Court in *Marshall* v. *Barlow's, Inc.,* with assurance that a revised regulation setting out a procedure for *ex parte* warrants would be within the statute and *a fortiori* within the Constitution." *Id.* In April, 1980, a divided panel of the U.S. Court of Appeals for the Third Circuit, while recognizing that the authority to seek warrants *ex parte* could be established by amending 29 CFR 1903.4 after notice and comment rulemaking, upheld the district court's decision. During the interim period, the Tenth Circuit, *Marshall* v. *W and W Steel Co., Inc.,* 604 F.2d 1322 (1979) and the majority of district courts that considered the issue rejected challenges to the Secretary's authority under 29 CFR 1903.4 to obtain *ex parte* warrants.

**C. Summary of Proposed Amendments**

On May 20, 1980, the Secretary, without conceding the necessity for doing so, proposed to repromulgate the December 1978 amendments to 29 CFR 1903.4. Paragraph (a) of the proposed regulation is the same as the former § 1903.4(a) and authorizes the Secretary to obtain compulsory process in those cases in which an employer refuses to permit an OSHA inspection. Paragraph (b) of the proposed regulation permits the Secretary to seek a warrant or other process before attempting an inspection in those cases in which it is desirable or necessary for any one of a number of reasons to do so. Paragraph (c) of the proposed regulation authorizes regional agency non-legal personnel to seek process with the approval of the Regional Administrator and Regional Solicitor. Paragraph (d) of the proposed regulation defines the term "compulsory process" to mean the institution of any appropriate action, including *ex parte* application for an inspection warrant or its equivalent.

The agency received 116 timely comments and 14 comments filed after the July 21, 1980 deadline. As noted earlier, all comments were made part of the official record and were duly considered. Following is a discussion of the major comments received and the agency's responses.

*Discussion of Major Comments, Ex Parte Warrants and the Constitution*

Several commentors expressed the view that an *ex parte* warrant procedure compromises employers' Fourth Amendment rights. See, e.g., Exhibits 2–1, 2–16, 2–30, 2–58, 2–78, 2–96, 4–8. As noted earlier, the Fourth Amendment guarantees people the right to be free from unreasonable searches. This right is safeguarded by interposing between the employer and OSHA a neutral officer whose duty is to ascertain whether there is probable cause to inspect. Probable cause renders the attempted search reasonable by definition and *ipso facto* protects employers' privacy interests. That the warrant is sought *ex parte* does not compromise Fourth Amendment rights. The Supreme Court in *Barlow's,* 436 U.S. at 320, and the Tenth Circuit in *W & W Steel Co., Inc., supra,* 604 F.2d at 1325, have recognized that OSHA could obtain *ex parte* warrants without violating employers' Fourth Amendment rights. The district court in *Cerro,* 467 F. Supp. at 882–83, also conceded that *ex parte* warrants are proper under the Fourth Amendment.

Some commentors expressed concern that *ex parte* proceedings deny due process and that employers' rights are not adequately protected at an *ex parte* proceeding. See, e.g., Exhibits 2–13, 2–27, 2–43, 2–69, 2–96, 2–109, 2–112. However, the fact that warrants are typically granted *ex parte* and, in the area of criminal law, are "necessarily *ex parte,*" *Franks* v. *Delaware,* 438 U.S. 154, 169 (1978), indicates that *ex parte* warrants are not violative of Fifth Amendment due process rights. See also *Matter of Carlson,* 580 F.2d 1365, 1373–74 (10th Cir. 1978). Additionally, the agency believes that employers' rights are competently protected by the magistrate at an *ex parte* proceeding, and the availability of subsequent review of the issuance of a warrant provides further safeguards for employers' rights. The agency disagrees with the concerns expressed by some commentors that, when a warrant is sought in the absence of the employer, magistrates "rubber stamp" requests for warrants and routinely issue warrants of unlimited scope. See, e.g., Exhibits 2–93, 2–96. The agency is unwilling, along with the Third Circuit, to indulge in a presumption that magistrates do not perform their duties properly. See *Babcock & Wilcox Co.* v. *Marshall,* 610 F.2d 1128, 1135 (3d Cir. 1979). Indeed, the agency's experience indicates that magistrates have denied requests for inspection warrants and have issued warrants of more limited scope than requested.

Several commentors suggested that the proposed rules be revised to include standards of probable cause under which issuance of a warrant would be proper. See, e.g., Exhibits 2–27, 2–59, 2–66, 2–76, 4–3. In *Barlow's, supra,* the Supreme Court enunciated the standard of probable cause which would justify the issuance of a warrant:

> Whether the Secretary proceeds to secure a warrant or other process, with or without notice, his entitlement to inspect will not depend on his demonstrating probable cause to believe that conditions in violation of OSHA exist on the premises. Probable cause in the criminal law sense is not required. For purposes of an administrative search such as this, probable cause justifying the issuance of a warrant may be based not only on specific evidence of an existing violation but also on a showing that "reasonable legislative or administrative standards for conducting an . . . inspection are satisfied with respect to a particular [establishment]. . . ."A warrant showing that a specific business has been chosen for an OSHA search on the basis of a general administrative plan for the enforcement of the Act derived from neutral sources such as, for example, dispersion of employees in various types of industries across a given area, and the desired frequency of searches in any of the lesser divisions of the area, would protect an employer's Fourth Amendment rights.

436 U.S. at 320–21 (citations and footnotes omitted). In view of the fact that the Supreme Court has articulated the standards of probable cause which justify issuance of OSHA inspection warrants, it is not necessary for the agency to include such standards in § 1903.4.

Some commentors argued that a preponderance of complaints about hazardous conditions are groundless and that the employer's presence at an adversary hearing is therefore necessary. In support of their position, some commentors rely on an April 9, 1979 General Accounting Office ("GAO") report on OSHA's complaint procedures. See, e.g., Exhibits 2–32, 2–41, 2–64, 2–68, 2–79, 4–2, 4–12, 4–14.

These comments are predicated on the assertion that in many cases no violations are found as a result of complaint inspections. However, the issue to be resolved when a warrant is requested is not whether the alleged violation in fact exists but whether there is probable cause to believe that it does. Whether or not the alleged condition

ultimately is found to exist is not relevant to the correctness of the probable cause finding. Moreover, even if employers may provide some additional information at adversary hearings, other considerations, discussed below, i.e., necessity for surprise and consumption of enforcement resources, outweigh the limited benefit derived from such adversary hearings. With respect to the GAO study, the agency notes that the report deals with the issue of whether violations were ultimately found and that the procedures outlined in OSHA Instruction CPL 2.12A, September 1, 1979 were adopted in part as a result of the GAO findings and in order to establish an efficient and expeditious system for evaluating complaints.

*Statutory Authority*

Some commentors stated that the Act does not authorize, explicitly or implicitly, the agency to seek *ex parte* warrants. See, e.g., Exhibits 2–76, 2–78, 2–82. The agency disagrees with this view. Section 8(g)(2) of the Act authorizes the Secretary to "prescribe such rules and regulations as he may deem necessary to carry out [his] responsibilities under this Act, including rules and regulations dealing with the inspection of an employer's establishment." 29 U.S.C. 657(g)(2). This provisions, described in *Barlow's* as a grant of "broad authority" to the Secretary, 436 U.S. at 317, n. 12, clearly authorizes rulemaking for these amendments. Furthermore, the Supreme Court in *Barlow's* made clear that the Secretary is authorized by the Act to seek the authority to obtain inspection warrants on an *ex parte* basis.

*Surprise*

In proposing the amendments to § 1903.4, the Secretary noted that the structure and fundamental policies of the Act mandate that inspection warrants be obtained *ex parte.* The remarks of Congressman Daniels, sponsor of the House Bill, reflect the fundamental importance of unannounced inspections:

> Essential to the effective enforcement of this Act is the premise that employers will not be forewarned of inspections of their plants. Experience under the Walsh-Healey Act has indicated that the practice of advance notice to an employer has been a prime cause of the breakdown in that statute's enforcement provisions.

*Legislative History of the Occupational Safety and Health Act of 1970, 856–57 (Comm. Print 1971)*

In furtherance of the Congressional intent to preserve the element of surprise in workplace inspections is the provision of the Act that imposes criminal sanctions against any person who gives unauthorized advance notice of an OSHA inspection. 29 U.S.C. 666(f). The Supreme Court recognized in *Barlow's,* 436 U.S. at 317, that the penalty provisions for giving advance notice and the Secretary's own regulations at 29 CFR 1903.6 (1977) "indicate that surprise searches are indeed contemplated." Furthermore, Section 8(a) of the Act directs the Secretary to "enter without delay" onto an employer's worksite. One court has concluded that the words "without delay" were inserted by Congress "to preserve the element of surprise deemed essential to inspection" which would be lost in an adversary proceeding. *Marshall* v. *Shellcast Corp.,* 592 F.2d 1369, 1371–72 and n. 5 (5th Cir. 1979); *Marshall* v. *Gibson's Products, Inc. of Plano,* 584 F.2d 668, 672–73 and n. 6 (5th Cir. 1978), *citing* 116 Cong. Rec. 38709 (1970). The Fifth Circuit concluded that "Congress, desiring an enforcement scheme based on surprise and undelayed searches, would vary much prefer immediate execution of duly issued *ex parte* warrants to the litigation-laden delays [resulting from any procedures that provides notice to employers]." *Marshall* v. *Shellcast Corp., supra,* 592 F.2d at 1372. Accordingly, the agency believes that the statutory scheme mandates that inspection warrants be obtained *ex parte.*

In addition to the above, the agency believes that surprise inspections are necessary for effective enforcement of the Act and that *ex parte* warrants are necessary in preserving the surprise element. The Supreme Court has recognized that the Act regulates "a myriad of details amenable to speedy alteration and disguise." *Barlow's, supra,* 436 U.S. at 316. The Secretary has noted his experience that often "compliance" which occurs following advance notice of an inspection in many cases does not fully or permanently abate the underlying hazard. 45 FR 33655. Several commentors have corroborated the Secretary's experience. Some commentors described how some employers shut down equipment when an OSHA inspector arrives, only to restart the equipment after the inspector leaves. See, e.g. Exhibits 2–87, 3–17. Some commentors expressed concern that advance notice is particularly destructive to industrial hygiene inspections because dust and fumes can be manipulated by temporary reductions in production. See, e.g., Exhibits 2–87,2–105. Other commentors stated that advance notice of an inspection permits temporary clean-ups, temporary repairs, modification of operations and sanitization of work areas by interim measures that temporarily disguise the true extent of an existing hazard. See, e.g., Exhibits 2–86, 2–87, 2–89, 2–92, 3–17. Some commentors noted that, when inspections take place over an extended period of time, employers have an opportunity to work ahead of the inspector to modify operations or apply temporary corrective action. See, e.g., Exhibit 2–108. One commentor submitted a company memo which stated "Next week OSHA will be [inspecting certain locations]. You have the advantage of time. . . ." Exhibit>2–108. In fact, several employers in their comments have admitted that during the time between the inspector's presentation of his credentials and the walkaround inspection, it is "inevitable that the company and its loyal workforce will be looking to their workplace hazards. To do less would be against human nature." See, e.g., Exhibits 2–11, 2–23, 2–32, 2–42. In view of the above, the agency believes that surprise is necessary in order to examine working conditions as they exist, without the benefit of special alteration.

In opposition to the agency's reliance on the need for surprise inspections, many commentors stated that the surprise element may be eliminated or diminished by OSHA's own procedures or by certain options which in any event would be available to the employer. See, e.g., Exhibits 2–11, 2–23, 2–29, 2–41, 2–68. Commentors have noted that, when voluntary entry is attempted, an employer can obtain advance notice by demanding a warrant. See, e.g., Exhibits 2–68, 4–6. Moreover, an employer can obtain knowledge of the specific complaint area by examining a copy of the complaint which the inspector is required to provide at the opening conference. Some commentors noted that the surprise element can be defeated even when a warrant has been obtained since the employer can examine the warrant application and then refuse to honor the warrant. See, e.g., Exhibits 2–29, 2–104. These commentors also noted that under OSHA instruction CPL 2.12A, a letter written to the employer in response to a complaint eliminates the element of surprise.

The agency acknowledges that absolute surprise is not possible in every case. However, the surprise element of every inspection must be preserved to the extent allowable in view of the fact that surprise inspections

are both mandated by the Act and necessary for effective enforcement of the Act. Furthermore, the fact that employers have indicated that the surprise element of OSHA inspections can be lessened underscores rather than weakens the need for *ex parte* warrants and, in some instances, the need to obtain such warrants prior to attempting entry.

With respect to OSHA Instruction CPL 2.12A, the agency notes that these procedures do not indicate a willingness to forego the element of surprise. The agency has implemented the letter-writing procedures only in cases of informal complaints. There is no statutory requirement that the agency conduct an inspection in response to informal complaints, and because of backlogs of complaints and limited resources, OSHA would be unable in many cases to conduct any inspection in such circumstances. The letter-writing procedure, therefore, is an attempt to obtain abatement without conducting an inspection. It is not an undermining of the statutory policy of surprise inspections. All formal complaints meeting the requirements of Section 8(f)(1) of the Act and 29 CFR 1903.11 still result in workplace inspections with the element of surprise preserved.

Several commentors expressed concern that surprise inspections disrupt business or create dangers at the worksite by distracting personnel. See, e.g., Exhibits 2–7, 2–8, 2–22, 2–46, 2–88, 4–10. The agency acknowledges that some inconvenience is inevitable in view of the requirement and need for surprise inspections. However, Section 8(a) of the Act dictates that entry onto an employer's worksite must be at reasonable times and that an inspection and investigation must be within reasonable limits and in a reasonable manner. Additionally, the Secretary's regulation at 29 CFR 1903.7(d) states that "[t]he conduct of inspections shall be such as to preclude unreasonable disruption of the operations of the employer's establishment." See also Field Operations Manual, Chapter V, General Inspection Procedures. These provisions adequately protect employers from unreasonable burdens.

Some commentors stated that surprise is not a necessary element of an inspection since a citation may be affirmed even though the inspector did not actually observe the violation. See, e.g., Exhibits 2–29, 2–39. These commentors ignore the Congressional intent that inspections be conducted without advance notice. Moreover, though a violation may be sustained on the basis of employee testimony, such evidence often lacks the probative value of the direct, visual observation by the inspector of a hazardous condition. The inspectors are specially trained to recognize safety and health hazards, and as a result their assessment of a condition, as well as the photographic and documentary evidence they gather, is generally more valuable than employee testimony. Indeed, the agency's experience in cases involving fatalities illustrates the difficulties encountered when testimony based on direct observation of worksite conditions is unavailable. In such instances, the agency often finds it difficult to obtain probative information pertaining to the hazardous conditions. Furthermore, the value of employee testimony to establish a violation is lessened by the natural reluctance of employees to testify against their employers. Indeed, it was in recognition of these fears that Congress enacted Section 11(c) of the Act, prohibiting the discharge of or discrimination against any employee because such employee has, *inter alia*, testified in any proceeding under or related to the Act. It has been the Secretary's experience that, despite the protections afforded by Section 11(c), some employees are wary of testifying against their employer.

Several commentors expressed the view that surprise is unnecessary since it is difficult to remedy or conceal certain serious violations even with advance notice of an inspection. See, e.g., Exhibits 2–10, 2–109, 2–115. In addition to the fact that Congress requires surprise inspections, the agency believes, and the record and agency experience substantiate, that violations may be concealed by modifications of operations, interim measures that temporarily disguise the true extent of the hazard, or other means. While the agency believes that most employers refrain from these practices and are concerned for employee safety and health, the comments confirm that violations may be concealed if an employer desires to do so. Indeed, the Supreme Court in *Barlow's*, 436 U.S. at 316, recognized that "the Act . . . regulates a myriad of safety details that may be amenable to speedy alteration or disguise."

*Resource Consumption and Delay*

The record substantiates the agency's experience that obtaining warrants after an adversary hearing delays the Secretary's entry onto an employer's worksite. Significant delays in obtaining warrants after adversary hearings have been experienced by various Regional Solicitor offices. The New York Regional Solicitor's Office reports that, of fifteen post-*Barlow's* adversary proceedings involving warrants, three cases took three months to resolve, one case took four months, three cases awaiting the court's decision have already taken four months, and one case that is awaiting the court's decision has already consumed eight months. Exhibit 3–6. The Dallas Regional Solicitor's Office reports that adversary hearings delay the inspection from ten to sixty days. Exhibit 3–7. The Philadelphia Regional Solicitor's Office lists one case in which a warrant was issued five months after an adversary hearing and one case in which no decision has been issued even though six months have elapsed since an adversary hearing was held. Exhibit 3–9. Indeed, adversary warrant proceedings delayed the inspection of the Cerro Metal Products worksite for 42 days following the filing of the adversary application. *Cerro, supra,* 620 F.2d at 968 n.4.

Various Regional Solicitor's Offices provided details that corroborated the Secretary's experience that the adversary hearing is likely to consume several days trial time. One office reported a three-day hearing and another office reported a five-day hearing. Exhibits 3–7, 3–9. Subsequent to the decision by a magistrate to issue a warrant, hearings have been held regarding the proper scope and form of the warrant. Additionally, some offices reported that warrant requests have been turned into full-blown hearings, thus realizing the concerns expressed in a related context by the Court in *Marshall* v. *Chromalloy American Corp.*, 589 F.2d 1335, 1342 (7th Cir.) *cert. denied,* 100 S. Ct. 174 (1979) ("simple warrant requests would be turned into full-blown hearings"). See, e.g., Exhibits 3–9, 3–10. And, in some cases, courts have gone beyond the issue of whether the agency had reasonable grounds to *believe* that a violation exists to the issue of whether the violation *in fact* exists, thus assuming a function more properly left to the Occupational Safety and Health Review Commission. See, e.g., *West Point Pepperell, Inc.* v. *Marshall,* No. C80–160R (N.D. Ga. 1980).

In addition to the delay created by adversary hearings, obtaining warrants only after such hearings would severely drain the agency's scarce enforcement resources since OSHA compliance personnel would be required to be present in order to testify. Additionally, Regional Solicitors have expressed concern that there will be a substantial impact on attorney resources if warrants were to be issued only after an adversary hearing. The projected resource drain created by the added

time for preparation, travel, hearings and paperwork has been characterized by Regional Solicitors as "severe," "gross" and "significant." See Exhibits 3–9, 3–11, 3–15. One office estimates that it would be required to double at a minimum the number of attorneys assigned to warrant cases; another office would anticipate a 25–30 percent increase in its workload. See Exhibits 3–3, 3–7. Offices have indicated their inability to adequately handle the projected increase in workload. Notably, these concerns and projections are based on the assumption that the rate of referrals will remain constant. However, at least one office would expect a significant increase in the refusal rate if adversary hearings were required. See Exhibit 3–15.

Some commentors expressed the view that the agency's concerns regarding consumption of resources are exaggerated in light of the fact that less than 3% of employers demand warrants. See, e.g., Exhibits 2–4, 2–18, 2–20, 2–73, 2–78, 2–104. The agency acknowledges that the current rate of refusal is approximately 2½ percent. However, the 2½ percent refusal rate produces almost 1400 refusals annually. The time and resource expenditures required to evaluate and act upon these cases are significant, particularly in view of the facts that OSHA and the Solicitor's Office operate within a limited budget. Additional time spent on adversary hearings on OSHA warrants would also decrease the amount of attorney time available for other enforcement activity, both for OSHA and for the other laws enforced by the Department of Labor.

Many commentors suggested that the most efficient manner in which to seek a warrant is to do so after an adversary hearing, a process which, the commentors stated, tests the validity of the warrant at the outset and forecloses subsequent actions to quash the warrant or enjoin the inspection. See, e.g., Exhibits 2–27, 2–45, 2–55, 2–56, 2–57, 2–77, 2–100, 4–4. The agency disagrees. It is the agency's experience that, in cases in which a warrant has been obtained, most employers appear to be satisfied that the magistrate has protected their rights and they do not institute actions to quash the warrant or enjoin the inspection. Quite apart from the agency's experience that most employers permit the inspection after a warrant is obtained, the views expressed by these commentors would require the agency to assume that magistrates do not perform their jobs properly, and, as indicated above, the agency is unwilling to indulge in this presumption. Moreover, even in cases in which a warrant had been issued after an adversary hearing, employers have pursued challenges to the warrant. See, *e.g., Cerro Metal Products, supra,* 620 F.2d at 968 n. 4; *Marshall* v. *Milwaukee Boiler Manufacturing Co., Inc.* No. 79–2164 (7th Cir. 1980); *American Chain & Cable Co.* v. *Marshall,* No. 80–0749 (W.D. Pa. 1980), *appeal docketed,* 80–2041 (3d. Cir. July 18, 1980).

Several commentors expressed the view that resources are needlessly consumed in cases in which a court of appeals, after Review Commission proceedings, rules that the warrant was improperly issued and that the evidence obtained under the warrant must be suppressed. See, e.g., Exhibits 2–29, 2–45, 2–104. These commentors indicated that employer participation at the time the warrant is sought would eliminate or minimize the needless consumption of litigation energies.

While recognizing that enforcement resources are consumed in those cases in which employers challenge the validity of inspection warrants, regardless of the outcome, the agency believes that *ex parte* proceedings best conserve litigation resources. As noted above, it is the agency's experience that most employers do not challenge the issuance of *ex parte* inspection warrants. Additionally, employer participation at a hearing when a warrant is sought will not necessarily eliminate or reduce the consumption of litigation resources since the Secretary may appeal the denial of a warrant request and the employer may appeal the granting of a warrant request. And, since the applicability of the exclusionary rule in OSHA proceedings is unresolved, it is not clear that citations will be dismissed if a reviewing court determines that a warrant was issued improperly.

Some commentors suggested that adversary hearings would force the agency to give priority to genuine hazards. See, e.g., Exhibits 2–49, 2–61,2–70, 2–114, 4–9. The agency has already adopted procedures to assign priorities. See, e.g., OSHA Instruction CPL 2.12A, September 1, 1979; see also Field Operations Manual, Chapter IV. Even with these new procedures, the agency believes that adversary hearings would drain enforcement resources and severely hamper the Act's effectiveness. Moreover, these commentors appear to assume that the agency is inspecting for hazards that are not "genuine." The agency disagrees with this assumption and notes that the fact that a requirement of adversary hearings would potentially limit the number of cases which can be pursued does not mean that those cases not pursued involve hazards any less genuine.

One commentor argued that adversary hearings would place less of a burden on courts than do *ex parte* hearings since in an adversary hearing more information is elicited, thereby making easier the decision of whether or not a warrant should issue. Exhibit 2–50. The commentor misconstrues the nature of the burden adversary hearings place on courts. The issue is not the difficulty of the decision but rather the burden imposed by the significant amounts of time and energies that would be consumed by adversary hearings. The geometric increase of cases within the jurisdiction of the Federal courts, the increasingly burdensome volume of motions and the already severely rationed time of judges have already been noted by the Third Circuit. See *Kushner* v. *Winterthur Swiss Insurance Company,* 620 F.2d 404, 406 (3d Cir. 1980). The added strain on court dockets which would result from adversary hearings each time the agency seeks a warrant is an additional factor which, when considered with the reasons discussed herein, justify adoption of the proposed rules.

*Seeking Warrants Prior to Attempted Entry*

Many commentors opposed that portion of the proposed rule that would permit the Secretary to seek inspection warrants prior to attempting entry of an employer's workplace. Some of these commentors stated that the authority is unnecessary in view of the fact that most employers consent to a warrantless inspection. See, e.g., Exhibits 2–4, 2–21, 2–60, 2–63. The agency agrees that a substantial majority of employers presently consent to a warrantless inspection and expects that this practice will continue. Nonetheless, the agency believes that in some circumstances it is necessary or desirable to seek a warrant prior to attempting entry. In these instances, employers' rights are protected by the magistrate from whom a warrant is sought. However, in response to a number of commentors who expressed the view that there are no guidelines in the proposed rule as to when such preinspection warrants may be sought, the agency is revising proposed 1903.4(b) by inserting the following language:

Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to): (1) when the employer's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed; (2) when an

inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite; (3) when an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

Some commentors object to the use of an employer's past practice of demanding warrants as a basis for seeking warrants prior to attempting a consensual entry. See, e.g., Exhibits 2–39, 2–44, 2–45, 2–54. However, the agency believes that prior refusals or interference with an inspection on the part of an employer is a valid criterion for seeking compulsory process in advance of an attempt to inspect. The agency is in no way contending that an employer's past practice of refusing entry or interfering with an inspection constitutes sufficient probable cause for the issuance of a warrant; even in instances in which a warrant is sought prior to an attempted consensual entry, the agency must establish probable cause to inspect. Rather, the agency believes that, in view of the reasons for obtaining warrants *ex parte,* the Secretary should be authorized to seek warrants prior to an attempted consensual entry when it is reasonably clear that an attempt to perform a warrantless inspection would be futile. The seeking of a warrant in advance of the inspection does not deprive employers of any constitutional right or chill the exercise thereof. As noted earlier, the right of employers is to be free from unreasonable searches, a right which is safeguarded by the neutral officer from whom a warrant is sought. Those commentors who stated that the use of prior refusals chills the exercise of employers' rights have miscontrued those rights. Although it is unclear to the agency what right employers believe they have, it appears that some employers want the right to confront the OSHA inspector face-to-face with a demand for a warrant. Such a right, which inherently includes advance notice of an inspection, is not contemplated by the Constitution, Congress or the courts.

Some commentors object to the use of travel time and expenditure of resources as criteria for obtaining warrants prior to attempting entry. See, e.g., Exhibits 2–63, 2–75. However, the agency believes that these considerations are important to its enforcement activities. In cases in which an inspection is scheduled far from the local office, the compliance officer may desire to procure a warrant prior to leaving to conduct the inspection in order to avoid, in case of refusal, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite. In addition to the expenditure of time and resources by the inspector, the use of sophisticated monitoring devices and the presence of experts are often required during inspections. The difficulties and costs encountered in coordinating the availability of the necessary equipment and personnel may weigh heavily in favor of seeking warrants prior to attempting entry. The agency acknowledges that, as with a history of prior refusals, the expenditure of time and resources does not constitute probable cause to inspect and believes that the right of employers to be free from unreasonable searches is not violated if the agency obtains a warrant prior to attempting entry.

*Obtaining of Process by Regional Agency Nonlegal Personnel*

Many commentors expressed the view that proposed 1903.4(c) permits delegation of excessive authority to persons not qualified or trained in legal proceedings. See, e.g., Exhibits 2–17, 2–54, 2–97, 2–111, 2–116, 4–11. Concerned that a person untrained in the law might make incorrect representations to a magistrate and adversely affect employers' rights, some commentors suggested that this provision be deleted and that all court appearances be made through counsel. The agency does not believe that the appearance of the Area Director or his designee before a magistrate will adversely affect employers' rights. In this regard, it should be noted that, when applying for a warrant, police officers routinely appear without counsel before a magistrate. Furthermore, any application for an OSHA inspection warrant must be made to a neutral and detached judicial officer who must ascertain whether the legal prerequisities have been satisfied prior to the issuance of a warrant. In addition, the ongoing participation of the Regional Solicitor's office alleviates the concerns that employers' rights will be adversely affected. The attorneys work closely with agency personnel to determine when it is appropriate to seek a warrant and in which cases the Area Director or his designee can appear without counsel before the magistrate. In view of the above and the fact that this procedure, where instituted, will result in the conservation of Regional Solicitor resources, the agency declines to delete § 1903.4(c).

One commentor suggested deletion from proposed § 1903.4(c) of the requirement that the Regional Solicitor's approval be sought before the Area Director or his designee seeks compulsory process. Exhibit 2–101. The agency believes that the Regional Solicitor's approval is a desirable element in OSHA's internal screening procedures to assure protection of employers' rights. Accordingly, the agency declines to modify § 1903.4(c).

*General Comments*

Some commentors expressed the view that the instant rulemaking is of a spurious nature and that the agency is already committed to adopting the proposed rule. See, e.g., Exhibits 2–75, 2–100, 2–115. The agency acknowledges that, consistent with its prior practice, OSHA continued to seek warrants *ex parte* during the rulemaking period in jurisdictions in which no contrary ruling precluded it from doing so. However, this policy predilection is in no way inconsistent with the purposes of notice and comment rulemaking. The agency has carefully evaluated all comments and the proposed rule was subject at all times to revision. Indeed, the rule issued below in final form reflects changes made in response to questions and suggestions raised by commentors.

Several commentors expressed the view that the proposed rule establishes a harmful precedent for other governmental agencies. See, e.g., Exhibits 2–12, 2–27, 2–71. The agency notes that this rule does not make it the first agency to establish or confirm authority to seek warrants *ex parte.* The Consumer Products Safety Commission, after recent rulemaking proceedings, concluded that it should have authority to obtain warrants *ex parte.* 44 FR 34923 *et seq.* Additionally, the authorty of NIOSH to obtain *ex parte* warrants has been affirmed by two courts. *In re Establishment Inspection of Pfister & Vogel Tanning Company,* 1980 CCH OSHD ¶24,671 (E.D. Wisconsin 1980); *In re Establishment Inspection of Keokuk Steel Castings,* 1980 CCH OSHD ¶24,672 (S.D. Iowa 1980). Moreover, even if the proposed rule would establish a precedent, the agency does not believe and there is no evidence to show that the precedent would be harmful.

Several commentors argued that the authority to seek *ex parte* warrants leaves employers with inadequate remedies to challenge the validity of the warrant. See, e.g., Exhibits 2–102, 2–104, 2–115. The issue of whether the remedy is adequate assumes the invalidity of the warrant, and the agency is not

willing to assume that there is not probable cause in most cases. See *Babcock & Wilcox, supra,* 610 F.2d at 1136. Additionally, courts have afforded judicial review to an employer who resists entry, expeditiously moves to quash and, if necessary, expeditiously files an appeal. *Babcock & Wilcox, supra,* 610 F.2d at 1135–36. Although the employer may be risking contempt in pursuing this course of conduct, the possibility of being held in contempt will deter frivolous challenges to the warrant. Subsequent to execution of the warrant, the employer may raise constitutional challenges during Review Commission proceedings and appeal to a court of appeals as a matter of right from an adverse Review Commission decision. *Id.* The foregoing procedures have been characterized by one court as "more than adequate to protect the employer's right to be free from unreasonable searches." *Matter of Worksite Inspection of S.D. Warren, Division of Scott Paper,* 481 F. Supp. 491, 495 (D. Maine 1979).

One commentor expressed the view that the available remedies are expensive and that it costs less to be represented at an adversary hearing. Exhibit 2–39. The commentor has not provided any supporting evidence for his claim. Furthermore, resolution of an adversary warrant hearing in favor of the employer does not necessarily reduce the employer's litigation costs since the Secretary may appeal the decision.

Some commentors argued that the remedies available are inadequate in view of the agency's position that the exclusionary rule should not apply in OSHA proceedings. See, e.g., Exhibits 2–29, 2–112, 2–115. The agency notes again that neither the courts nor the Review Commission has held that the exclusionary rule is inapplicable in OSHA proceedings. Furthermore, the exclusionary rule is not a personal remedy and even those courts that have applied the rule have done so not to vindicate the individual employer's right but to deter future unlawful conduct by government officials. Even if the exclusionary rule is inapplicable, remedies are available in some circumstances to vindicate employers' rights.

Many commentors expressed concern that adoption of the proposed amendments would exacerbate relations between OSHA and employers. See, e.g., Exhibits 2–72, 2–82, 2–93, 2–94, 2–109, 4–7. The agency continues to recognize that cooperation and voluntary compliance form the cornerstone of effectiveness of the Act. While the agency does not desire to strain relations with employers, the agency remains convinced that the authority to seek warrants *ex parte* and, in some instances, prior to attempting entry is essential to proper enforcement of the Act. However, in view of some of the concerns expressed by some commentors, the agency will direct Compliance Safety and Health Officers to seek the consent of the employer prior to presentation of compulsory process in those cases in which process is obtained in advance of an attempt to inspect or investigate. This procedure will give employers the opportunity to assess the basis for the inspection and to voluntarily consent to the inspection when they believe that the attempted inspection is reasonable. In addition, compliance officers will be directed to inform the magistrate who issued the warrant that a consensual entry will be attempted prior to presentation of the warrant to the employer.

Several commentors expressed concern that the employer's absence at the *ex parte* warrant proceeding increases the opporuntity for unions, disgruntled employees or business competitors to harass an employer. See, e.g., Exhibits 2–3, 2–25, 2–40, 2–65, 2–67. The agency is not unmindful of this potential. Indeed, Congress recognized that the employee complaint provisions of the Act could be used to harass industry, but nevertheless the provisions were enacted. See *Legislative History of the Occupational Safety and Health Act of 1970,* 348, 399 (Comm. Print 1971). The agency of course does not intend to be used as a harassment device. Toward that end, the agency has developed internal procedures designed to identify frivolous complaints and reduce the possibilities of harassment. See generally Field Operations Manual, Chapter VI, Safety and Health Complaints; OSHA Instruction CPL 2.12A, *supra.* However, the agency notes that the Occupational Safety and Health Review Commission has held that the motive of a complainant is not relevant to a determination of whether there is probable cause to inspect. *Quality Stamping Products Co.,* No. 78–235, 1979 CCH OSHD § 23,520 (R.C. 1979); *Aluminum Coil Anodizing Corp.,* No. 829, 1977–78 *CCH OSHD ¶21,789 (R.C. 1977). Moreover, the agency's duty is to determine whether or not there is cause to inspect the employer's workplace rather than to attempt to discern the complainant's motive.*

Some commentors expressed concern over the potential use of force by an inspector to carry out an inspection. See, e.g., Exhibits 2–81, 4–10. The agency notes that its compliance officers are instructed not to use force either to seek entry or to complete an inspection. See Field Operations Manual, Chapter V. Despite the fact that the Fifth Circuit has indicated that physical force is available for the execution of a warrant, *Marshall v. Shellcast Corp., supra,* 592 F.2d at 1372 n. 7, the Secretary's general policy is to initiate contempt proceedings when confronted with an employer's refusal to honor a warrant.

One commentor suggested that the word "promptly" be inserted in the last sentence in § 1903.4(a) so that the sentence would read "The Area Director shall consult with the Regional Solicitor, who shall promptly take appropriate action, including compulsory process, if necessary." Exhibit 2–92. The agency reiterates that although it continues to be OSHA's policy to minimize delay in entering onto the worksite, the Regional Solicitor must be given discretion in assigning priorities to these cases. Thus, the agency declines to revise the sentence as suggested.

One commentor argued that adversary warrant hearings are appropriate in view of the fact that mine operators who are covered by the Mine Safety Act and who object to inspections have the opportunity without risk of contempt to present evidence before the District Court when the Secretary seeks an order to compel entry. Exhibit 2–104. This analogy is not appropriate. In a proceeding analogous to a contempt proceeding, the mine operator who does not permit an inspection is subject to possible civil penalties under the Mine Safety Act. Moreover, whereas employers covered by the OSH Act have a privacy expectation, mine operators covered by the Mine Safety Act are not entitled to require search warrants because of the highly regulated nature of the mining industry. See *Marshall v. Stoudt's Ferry Preparation Company,* 602 F. 2d 589 (3d Cir. 1979). Accordingly, in enforcing the Mine Safety Act, the Secretary need not establish probable cause in order to secure an order compelling entry.

Some commentors suggested that § 1903.4(b) be revised by substituting the word "shall" for the word "may" in order to make mandatory the seeking of *ex parte* warrants prior to an attempted consensual entry when the Area Director and Regional Solicitor find such warrants to be desirable or necessary. Exhibit 2–92, 2–108. In view of the earlier discussions regarding the necessity for surprise and the effects on enforcement energies, and in order to make clear that *ex parte* warrants shall be sought when, in the judgment of the Area Director and

the Regional Solicitor, such preinspection process is necessary or desirable, the agency has modified the language of § 1903.4(b) as suggested. Furthermore, the agency has, on its own initiative, inserted the word "attempted" in the first sentence of § 1903.4(b) in order to make clear that the paragraph authorizes the seeking of compulsory process, in certain instances, prior to an attempted consensual entry. In addition, the agency has added the word "such" to the first sentence for purposes of clarification. As amended, the first sentence of § 1903.4(b) now reads as follows:

> Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, circumstances exist which make such preinspection process desirable or necessary.

One commentor believed that the statistical information found at Page Two of the OSHA Denial of Entry Monthly National Summary Report (Exhibit 3–18) indicates that adversary hearings should be held prior to the issuance of a warrant. Exhibit 2–29. According to the commentor, the Summary indicates that approximately 25 percent of the warrant proceedings that were concluded between October 1978 and April 1980 resulted in denial of the warrant sought by OSHA, thus demonstrating the need for the protection of the courts without requiring the employer to risk contempt. Initially, the agency notes that even if the 25 percent figure represents a proper reading of the statistical information, the data would show that magistrates are doing their jobs properly and are not "rubber stamping" agency requests for warrants. However, the commentor has misinterpreted the statistical information. Page Two of the Summary indicates the following for the time period in question: (1) warrants have been granted by a magistrate in 918 cases; (2) there have been 305 cases in which either the Solicitor's Office declined to pursue the agency's request for a warrant or the magistrate denied the request; (3) there have been 456 cases in which either the agency withdrew its request from the Solicitor's Office or the Solicitor's Office withdrew its request from the magistrate. Thus, the statistics do not support the commentor's conclusion that 25 percent of the concluded proceedings resulted in the court's denying a warrant. Rather, the statistics indicate that the agency, Solicitor's Office and magistrate operate independently to screen out cases in which a warrant is unnecessary or unjustified. The agency reviews cases in which it has requested a warrant and, if circumstances change or new facts are discovered, the request may be withdrawn. Moreover, before a warrant is sought, the Regional Solicitor's Office reviews the sufficiency of the legal and factual grounds for the agency's request. In those cases in which the Solicitor's Office has been provided with insufficient information, or in cases in which it is determined that, in terms of priorities, other enforcement activities should be pursued, a warrant is not sought. In those cases in which the Solicitor's Office seeks a warrant, the request may be withdrawn if new facts are discovered or if circumstances change. For example, a warrant request may be withdrawn if, after first refusing entry, an employer later decides to permit the inspection. Finally, the agency reiterates that the magistrate must be satisfied that probable cause exists before a warrant will issue. These procedures safeguard employers' rights to be free from unreasonable searches.

Several commentors suggested that the proposed rule is deficient in that it fails to state that *ex parte* warrants will be the major, if not sole form of compulsory process sought to gain entry onto a worksite. See, e.g., Exhibits 2–86, 2–87, 2–89, 2–92, 2–108. In view of all the factors discussed herein, the agency wishes to make clear that *ex parte* warrants are the preferred form of compulsory process under § 1903.4. Applicable sections of the Act, the Secretary's regulations and the Field Operations Manual mandate that no advance notice of an inspection shall be given to an employer, except in unusual circumstances. Accordingly, the agency has modified § 1903.4(d) to reflect a preference for *ex parte* warrants.

*Promulgation*

After carefully reviewing all submissions in the record, the agency finds that the authority to seek warrants on an *ex parte* basis and, in some circumstances, prior to attempting a warrantless inspection is necessary in order to carry out its responsibilities under the Act. Primary support for the agency's conclusion is found in the clear Congressional mandate, as evidenced by the structure of the Act and its legislative history, that OSHA inspections be conducted without advance notice to the employer, except in unusual circumstances. The Supreme Court in *Barlow's*, 436 U.S. at 317, has recognized that "surprise searches are indeed contemplated." And, consistent with the Congressional intent to preserve the element of surprise in workplace inspections, the Secretary has adopted a regulation prohibiting unauthorized advance notice of inspections. See 29 CFR 1903.6. In promulgating the amendments to § 1903.4, the agency recognizes that the statutory scheme mandates that inspection warrants be obtained *ex parte*.

Quite apart from the Congressional mandate that surprise inspections be conducted, the agency finds that surprise inspections are necessary for effective enforcement of the Act and that *ex parte* warrants are necessary in preserving the surprise element. The Supreme Court has noted in *Barlow's*, 436 U.S. at 316, that the Act regulates "a myriad of details amenable to speedy alteration and disguise." The agency's experience, amply corroborated by the comments in the record, demonstrates the need to examine working conditions as they truly exist, without the benefit of special alteration.

The delay and consumption of enforcement resources that often accompany adversary hearings are also important considerations which make necessary the authority to seek warrants *ex parte* and, at times, prior to attempting entry. The agency is best able to allocate its resources and, based upon its experience and the record assembled in connection with this rulemaking, the agency finds that its resources can be more efficiently utilized with the authority provided by this rule.

Accordingly, pursuant to the provisions of the Occupational Safety and Health Act of 1970, Section 8(g)(2), 84 Stat. 1590 (1970), as amended by 92 Stat. 183 (1978), 29 U.S.C. 651 *et seq.*, 29 CFR 1903.4 is amended to read as follows:

**§ 1903.4 Objection to inspection.**

(a) Upon a refusal to permit the Compliance Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with § 1903.3 or to permit a representative of employees to accompany the Compliance Safety and Health Officer during the physical inspection of any workplace in accordance with § 1903.8, the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records, or interviews concerning which no objection is raised. The Compliance Safety and Health Officer shall endeavor to ascertain the reason for

such refusal, and shall immediately report the refusal and the reason therefor to the Area Director. The Area Director shall consult with the Regional Solicitor, who shall take appropriate action, including compulsory process, if necessary.

(b) Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Area Director and the Regional Solicitor, circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

(1) When the employer's past practice either implicitly or explicitly puts the Secretary on notice that a warrantless inspection will not be allowed;

(2) When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the worksite;

(3) When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

(c) With the approval of the Regional Administrator and the Regional Solicitor, compulsory process may also be obtained by the Area Director or his designee.

(d) For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including *ex parte* application for an inspection warrant or its equivalent. *Ex parte* inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

Signed at Washington, D.C., this 26th day of September, 1980.

**Eula Bingham,**

*Assistant Secretary, Occupational Safety and Health.*

[FR Doc. 80-30502 Filed 10-2-80; 8:45 am]

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Friday
October 3, 1980

Part IV

# Department of Labor

## Office of the Secretary

## Labor Organizations; Election Enforcement Provisions

## DEPARTMENT OF LABOR

### Office of the Secretary

### 29 CFR Part 452

### Election Enforcement Provisions

**AGENCY:** Department of Labor.

**ACTION:** Proposed amendments.

**SUMMARY:** The Department proposes to amend its regulations which set forth the procedures for enforcing alleged violations of Title IV of the Labor-Management Reporting and Disclosure Act of 1959, as Amended (LMRDA) relating to the election of union officers, including the exhaustion of internal union remedies by members, timely complaints to the Secretary of Labor, and investigation and litigation by the Secretary. The Department also proposes to make technical amendments to Subpart K of 29 CFR Part 452.

**DATE:** Comments must be received on or before December 2, 1980.

**ADDRESS:** Written comments should be submitted to the Assistant Secretary of Labor for Labor-Management Relations, Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

**FOR FURTHER INFORMATION CONTACT:** Herbert Raskin (202) 523–7373.

**SUPPLEMENTARY INFORMATION:** Title IV of the LMDRA (29 USC 481–484) provides standards for the election of officers of labor organizations and assigns enforcement of the standards to the Secretary of Labor through litigation, after complaint and exhaustion of internal union remedies, in the federal courts. The Department has issued interpretative regulations concerning the standards for union officer elections (Subparts A through I of 29 CFR Part 452), the enforcement procedures (Subpart J) and the effective dates and scope of application (Subpart K).

The following proposed amended Subpart J sets forth the enforcement procedures for alleged violations of the union officer election standards of Title IV of the LMRDA, including the exhaustion of internal union remedies by members, timely complaints to the Secretary of Labor, and investigation and litigation by the Secretary. In addition, the proposed regulations revoke the obsolete provision of the current Subpart K relating to effective dates (29 CFR 452.137) and renumber the remaining provisions of Subpart K.

Therefore, pursuant to Title IV of the LMRDA, 29, USC 481–484, and Secretary's Order No. 9–77 (September 14, 1977), I hereby propose to amend Title 29, Code of Federal Regulations, Part 452 by revising §§ 452.135 through 452.138 (Subparts J and K) to read as follows:

## PART 452—GENERAL STATEMENT CONCERNING THE ELECTION PROVISIONS OF THE LABOR-MANAGEMENT REPORTING AND DISCLOSURE ACT OF 1959

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### Subpart J—Election Enforcement Provisions

Sec.
452.135 General considerations.
452.136 Limited private pre-election enforcement.
452.137 Complaints of members in general.
452.138 Who may file a complaint.
452.139 Pursuing union remedies.
452.140 When to file a complaint with the Secretary.
452.141 Complaint procedure following invocation of union pre-election remedies.
452.142 Complaint procedure when required election not held.
452.143 Miscellaneous filing requirements.
452.144 Investigation of complaints by the Secretary.
452.145 Suits by the Secretary.
452.146 Remedies.

### Subpart K—Application of Other Laws

Sec.
452.147 Application of other laws.

**Authority:** Secs. 401, 402, 73 Stat. 532, 534, 29 U.S.C. 481, 482, Secretary's Order No. 9–77 (September 14, 1977).

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## Subpart J—Election Enforcement Provisions

### § 452.135 General considerations.

(a) This subpart sets forth procedures for enforcing Title IV of the Act which reflect the intent of Congress to ensure the rights of union members to democratic union officer elections with a minimum of government involvement in internal union affairs. The Title IV enforcement procedures promulgated in these regulations set forth a post-election remedy through the Secretary which allows labor organizations a reasonable opportunity to correct election violations before intervention by the Secretary.

(b) The regulations in this subpart shall be construed liberally to effectuate the purposes and provisions of the Act.

### § 452.136 Limited private pre-election enforcement.

(a) Under Title IV of the Act the Secretary has exclusive authority to challenge an election which has already been conducted.[57] However, a member may pursue pre-election remedies through private litigation under the following circumstances:

(1) A bona fide candidate in a union election may bring suit under section 401(c) of the Act before the election to require the labor organization to distribute at the candidate's expense, to members in good standing, literature supporting his or her candidacy and to restrain the labor organization from discriminating in favor of or against any candidate regarding the distribution of such literature or the use of the organization's membership list.

(2) A member may exercise any existing right to bring suit in a state court before an election to enforce provisions of the constitution and bylaws of a labor organization with respect to the election.[58]

(b) The exclusive post-election remedy for violations of Title IV does not bar a member from filing suit, either before or after an election, to enforce any provision of Title I of the Act which may pertain to the election.[59] provided that the suit does not, in effect, raise a Title IV complaint.[60] For example, a member may file suit under Title I to challenge a disciplinary suspension from membership which precludes his or her eligibility to run for office. However, a member may not file a Title I suit either before or after an election to challenge the validity of a union rule establishing qualifications on candidacy since this matter deals directly with Title IV election provisions and is, therefore, under the exclusive post-election jurisdiction of the Secretary.

### § 452.137 Complaints of members in general.

Any member of a labor organization may file a complaint with the Secretary alleging a violation of Title IV of the Act concerning an election of officers or delegates who elect officers (including any violation of election provisions in the organization's constitution and bylaws which are not inconsistent with the Act).[61] The complaint may be filed after the member has either (a) exhausted remedies available under the constitution and bylaws of the organization and its parent body, or (b) invoked such remedies without obtaining a final decision within three calendar months after invoking them.[62]

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[57] Act, sec. 403 (29 U.S.C. 483).

[58] Act, sec. 403 (29 U.S.C. 483).

[59] See 29 CFR 452.7.

[60] *Calhoon* v. *Harvey*, 379 U.S. 134 (1964).

[61] Procedures concerning the removal of local labor organization officers as provided for in section 401(h) of the Act are set forth at 29 CFR Part 417.

[62] Act, sec. 402(a) (29 U.S.C. 482).

**§ 452.138 Who may file a complaint.**

(a) A complaint may be filed by any member of a labor organization as defined in section 3(o) of the Act. The complaining member need not be a candidate in the challenged election.[63]

(b) The Secretary may accept a complaint from a member who is not considered to be in good standing by the labor organization if, for example, it is evident that charges were brought against the member for exercising a right guaranteed by the Act [64] or that the member was suspended, expelled or otherwise disciplined without due process in violation of section 101(a)(5) of the Act.[65] Thus, a complaint may be accepted from a member who was expelled for exercising the right of free speech established in section 101(a)(2) of the Act or who was disciplined without first being served with written, specific charges as required by section 101(a)(5) of the Act.[66]

**§ 452.139 Pursuing union remedies.**

(a) In protesting an election within a labor organization as required by Title IV of the Act a member must comply with all procedures and time limits in the constitution and bylaws of the organization. However, the Secretary may accept a complaint from a member who has not complied with such requirements if the Secretary finds that the procedures and time limits were unclear or unreasonable and that the member attempted in good faith to pursue the remedies within the labor organization.[67]

(b) If the constitution and bylaws of the labor organization or its parent body do not provide a specific procedure for protesting an election, a member should pursue whatever general remedies may be provided. If no procedure is specified, the member must take some measure reasonably calculated to advise the organization that he or she is protesting the election, such as filing a letter of protest with any responsible union official.[68]

(c) If the constitution and bylaws of the labor organization do not specify a time limit within which election protests must be raised, a member should initiate the protest in the organization within a reasonable time period, ordinarily within thirty days from the date on which the election is completed.

(d) A member's election protest to the labor organization should include all violations of which he or she is aware, since matters known by the member which were not protested within the organization may not be raised in any subsequent Title IV suit by the Secretary.[69]

**§ 452.140 When to file a complaint with the Secretary.**

(a) Since the Act contemplates a post-election remedy, the Secretary will accept an election complaint only after the election is completed. At such time a member who has exhausted the union remedies or who has pursued those remedies for three calendar months without receiving a final decision may file a complaint with the Secretary within one calendar month thereafter.

(b) Following a completed election, a member who has not received a final decision from the labor organization within three calendar months from the date of initiating a protest within the organization has the option of filing a complaint with the Secretary within one calendar month thereafter or of continuing to wait for a final decision. If the member continues to wait and ultimately receives a decision that is unfavorable, he has one calendar month from the date that the final decision is received to file a complaint with the Secretary.[70]

(c) The final decision of a labor organization on an election protest is the decision rendered at the highest level of appeal in the constitution and bylaws of the labor organization. However, if a labor organization provides for a final appeal to a convention and the convention will not be held within a reasonable time after the decision has been rendered at the last prior level of appeal, ordinarily within two or three months, the decision at the last prior level may be considered the final decision of the labor organization.[71]

(d) A member who (1) protests an election at a convention of a labor organization or (2) who files an appeal on an election protest to be heard at a convention will be considered to have received a final decision from the organization on the date the convention is adjourned, whether or not the convention has made any ruling on the protest or appeal. In either circumstance, the Secretary will accept a complaint from the member within one calendar month from the date the convention is adjourned.

(e) Although the preceding subsections set forth certain situations in which the Secretary will accept a complaint from a member which is filed beyond four months after invocation of the internal union remedies, it should be noted that the member assumes risks because of any such delay. For example, the Department's investigation of the complaint may become more difficult with the lapse of time. Moreover, if the complaint is filed a year or more after the challenged election, an effective investigation may be impossible since the Act requires a labor organization to retain the records pertaining to a specific election for only one year.

**§ 452.141 Complaint procedure following invocation of union pre-election remedies.**

(a) Ordinarily, the Secretary will accept a complaint only from a member who has initiated an election protest within the labor organization after the election. However, under the following limited circumstances the Secretary will accept a complaint from a member who has initiated a protest before the end of the election:

(1) In a labor organization which provides that members must protest any violation concerning nominations before the election is completed, a member is required to invoke that exclusive pre-election remedy. The member must file any subsequent complaint with the Secretary concerning the nominations within one calendar month from the date on which the election is completed.[72]

(2) If a member files a pre-election protest within a labor organization

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[63] *Wirtz* v. *Independent Petroleum Workers of America, Local 1*, 307 F. Supp 462 (N.D. Ind. 1969); *Wirtz* v. *National Maritime Union*, 284 F. Supp 47 (S.D. N.Y. 1968) aff'd 399 F.2d 544 (2nd Cir. 1968); *Wirtz* v. *Local 57, IUOE*, 293 F. Supp 89 (D.R.I. 1968); *Shultz* v. *Local 1291, Int'l Longshoremen's Assoc.*, 338 F. Supp 1204 (E.D. Pa. 1972).

[64] See Act, sec. 609 (29 U.S.C. 529).

[65] "No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (A) served with written specific charges; (B) given a reasonable time to prepare his defense; (C) afforded a full and fair hearing."

[66] *Wirtz* v. *IBEW, 1377*, 54 L.C. ¶11,391 (N.D. Ohio, E. Div. 1966); *Brennan* v. *Independent Lift Truck Builders Union*, 490 F. 2d 213 (7th Cir. 1974).

[67] *Shultz* v. *Radio Officers Union of United Tel. Workers*, 344 F. Supp. 58 (S.D. N.Y. 1972).

[68] *Shultz* v. *Local 1291, ILA*, 429 F.2d 592 (3rd Cir. 1970).

[69] *Hodgson* v. *Local 6799, USWA*, 403 U.S. 333 (1971).

[70] *Usery* v. *Local Union 1177, Laborers' International Union of North America*, 536 F.2d. 583 (5th Cir. 1976).

[71] If a labor organization provides for a final appeal to a body outside the organization, such as a public review board, a member who pursues union remedies beyond four calendar months from the date of initiating his protest must file that appeal to exhaust the remedies available through the labor organization. In that circumstance the Secretary will accept a complaint only within one calendar month from the date the member receives the decision from the public review board.

[72] See *Hodgson* v. *USWA*, (District 19), 459 F.2d 348 (3rd Cir. 1972).

under circumstances which are not covered in § 452.141(a)(1), the following rules will apply:

(i) If a labor organization accepts and makes a final decision on a member's pre-election protest before the election is over, and if any post-election protest to the union would allege only the same violations and be heard by the same persons, the member must file his or her complaint with the Secretary within one calendar month from the date on which the election is completed.

(ii) If a labor organization which does not provide an exclusive pre-election remedy takes action with respect to member's pre-election protest after the election but does not render a final decision, the member need wait only three calendar months from the date of initiating the pre-election protest before filing a complaint with the Secretary.

(b) If a pre-election protest procedure is available only to candidates, a non-candidate must initiate a protest with the union after the election in accordance with any post-election procedures which may be available.

**§ 452.142 Complaint procedure when required election not held.**

If a labor organization does not hold an election within the appropriate time period specified in the Act or within any shorter period which may be specified in its constitution and bylaws [73], a member should protest to the labor organization as soon as it is evident that the required election will not be held. Before filing a complaint with the Secretary the member must pursue whatever remedies are available within the labor organization for three calendar months or until a final decision is received. If the member receives a final decision from the labor organization before the date on which the election was to have been held, he or she may file a complaint with the Secretary within one calendar month from the date of receipt of the final decision. If the member pursues the union remedies for three calendar months prior to the date of the required election without receiving a final decision from the labor organization, he or she may file a complaint with the Secretary within one calendar month from the date on which the election should have been held.

**§ 452.143 Miscellaneous filing requirements.**

(a) For the purpose of filing a complaint with the Secretary the term "one calendar month" means the period running from a given day of any month to the corresponding day, or last day, of the next month. For example, a calendar month commencing on July 15 would end on August 15. One commencing on May 31 would end on June 30. If the corresponding day of the next calendar month is a Saturday, Sunday or Federal legal holiday, the calendar month would end on the next regular work day.[74] Thus a complaint due by July 4 would be considered timely if received on the next regular work day after the holiday.

(b) The date of receipt of a formal complaint to the Secretary is controlling in deciding whether a complaint has been timely filed. The complaint must be received by the Department on or before the last day of the time period during which the complaint must be filed.[75]

(c) A member may present a complaint in any written form such as a letter, telegram or petition.[76] The complaint may be transmitted directly, either in person or by mail, or through an agent, such as an attorney. The complaint should be filed with the nearest field office of the Labor-Mangement Services Administration, United States Department of Labor, which is authorized to act on such complaints on behalf of the Secretary. The member may also transmit the complaint directly to the Secretary of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210. In order to expedite the processing of the complaint, the envelope and enclosed documents should clearly indicate the following: "Attention: Director, Office of Labor-Management Standards Enforcement."

**§ 452.144 Investigation of complaints by the Secretary.**

(a) The Secretary shall investigate each complaint of a violation filed in accordance with the requirements of Title IV of the Act. Although the Secretary has the authority under section 601 to investigate any possible violation of Title IV of the Act, he may take enforcement action with regard to an election only upon receipt of a timely, written complaint. Consequently, the Secretary will not normally undertake an investigation of alleged Title IV violations until the challenged election has been completed and the procedural requirements for filing a complaint have been met. Any question involving the use or threatened use of force or violence under circumstances which may violate section 610 (29 U.S.C. 530) of the Act which may be brought to the Department's attention at any time during an election will be referred promptly to the Department of Justice for appropriate action.[77]

(b) A trusteeship imposed on a labor organization will not bar the Secretary's investigation of a timely election complaint or a suit to set aside an election involving Title IV violations.

(c) Under normal circumstances, the Secretary's investigation of an election complaint shall be completed within 60 days after the filing of the complaint, since any suit brought by the Secretary to set aside an election is to be instituted during that time period.[78] However, the 60-day period may be extended by agreement with the labor organization.[79] In addition, if the investigation could not be completed during that time period because of a delay caused by the labor organization, the 60-day period may be extended by at least the length of time of the delay.[80] It should also be noted that the Secretary will require a waiver of any defense that a labor organization may have under the 60-day statutory time limit for bringing suit, if the organization has made an agreement for voluntary compliance with the requirements of Title IV. If the last day of the time period falls on a Saturday, Sunday or legal holiday, the complaint may be filed on the next regular work day.[81]

**§ 452.145 Suits by the Secretary.**

(a) After investigation of a timely, written complaint filed in accordance with the requirements of the Act, the Secretary may bring suit to set aside a challenged election if he finds probable cause to believe that there has been a violation of Title IV of the Act which has not been remedied and which may have affected the outcome of the election. If the Secretary decides not to file suit, the complainant is advised in writing of the reasons for that decision.[82] The Secretary may also reach a voluntary compliance agreement with a labor organization, instead of filing suit, to remedy uncorrected Title IV violations which may have affected the outcome of a challenged election.

(b) A suit by the Secretary will not be barred by an intervening regular

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[73] See 29 CFR 452.23.

[74] *Wirtz* v. *Laborers' Local Union 169*, 246 F.Supp. 741 (D. Nev. 1965); *Brennan* v. *Independent Lift Truck Builders Union*, 490 E.2d 213 (7th Cir. 1973).

[75] *Shultz* v. *United Steelworkers of America*, (District 19), 319 F.Supp. 1172 (W.D. PA. 1970); *Wirtz* v. *Local 169, International Hod Carriers*, etc., 246 F.Supp. 741 (D. Nev. 1965).

[76] See *Shultz* v. *Radio Officers Union of United Telegraph Workers*, 344 F. Supp. 58, 63 (S.D. N.Y. 1972).

[77] See 29 CFR 452.4.

[78] Act, sec. 402(b) (29 U.S.C. 482).

[79] *Hodgson* v. *Machinists Lodge 851*, 454 F.2d 545 (7th Cir. 1971); *Hodgson* v. *International Pressmen*, 440 F.2d 1113 (6th Cir. 1971), Cert. denied 404 U.S. 828 (1971).

[80] *Wirtz* v. *Independent Workers Union*, 65 LRRM 2104 (M.D. Fla. 1967); *Wirtz* v. *Great Lakes District Local 47*, 240 F. Supp. 859 (N.D. Ohio 1965).

[81] *Wirtz* v. *Peninsula Shipbuilders Association*, 382 F.2d 237 (4th Cir. 1967).

[82] *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975. The decision of the Secretary not to file suit is reviewable only to the extent of determining whether the decision was arbitrary and capricious.

election [83] or by a special election [84] conducted by the union to remedy Title IV violations.

(c) The Secretary may bring suit only with rspect to matters which may fairly be regarded as having been raised by the member in protest within the labor organization. However, the Secretary may include in his suit any violation not raised in the member's internal union protest which could not have been known to the member.[85] In addition, the Secretary will interpret a member's complaint broadly to include in his suit any violation that could reasonably have been remedied by the labor organizations during its review of the member's protest.[86] And will seek to set aside elections for offices other than those challenged in a member's complaint if the Title IV violations which are alleged in the suit could have affected the outcome of those elections.

(d) In a Title IV suit the Secretary may seek to set aside the challenged election and to supervise the conduct of a new election. The Secretary may seek new elections for all offices or only for those offices affected by violations. An election supervised by the Secretary includes nominations. Under appropriate circumstances, however, the Secretary may waive the conduct of new nominations. the Secretary may also seek remedial action which does not involve the conduct of a new election. For example, the Secretary may ask the court to order the installation of candidates who were properly elected but improperly deprived of their offices.

(e) Challenged elections are presumed valid pending a final decision. Until such time, the affairs of the labor organization shall be conducted by the elected officers unless the constitution and bylaws specfically provide otherwise.[87]

(f) After the suit has been filed, the court may take appropriate action to preserve the assets of the labor organization.[88]

**§ 452.146 Remedies.**

(a) If the court finds upon a preponderance of evidence after a trial on the merits (1) that an election was not held within the time prescribed by Title IV or (2) that a violation of Title IV may have affected the outcome of the election, the court shall declare the election, if any, to be void and shall direct the conduct of an election supervised by the Secretary. A supervised election will be conducted in accordance with the Act and, so far as lawful and practicable, in conformity with the constitution and bylaws of the labor organization.[89] The Secretary shall determine whether any provision of the labor organization's constitution and bylaws may be applied in the supervised election.

(b) An appeal of a court order directing an election or other appropriate remedial action will not stay implementation of the court order.[90]

(c) The Secretary shall certify to the court the names of the persons elected.[91] Certification may be withheld and a new election sought if the Secretary finds that the supervised election did not meet the standards required by the Act.

(d) Complaints concerning a supervised election should be filed promptly with the Secretary's election supervisor. the court's decree accepting the Secretary's certification of the election terminates all action in a particular case.

## Subpart K—Application of Other Laws

**§ 452.147 Application of other laws.**

(a) Section 403 [92] provides that no labor organization shall be required by law to conduct elections of officers with greater frequency or in a different form or manner than is required by its own constitution or bylaws, except as otherwise provided by the election provisions of the Act.

(b) The remedy [93] provided in the Act for challenging an election already conducted is exclusive.[94]

However, existing rights and remedies to enforce the constitutions and bylaws of such organizations before an election has been held are unaffected by the election provisions. Section 603,[95] which applies to the entire Act states that except where explicitly provided to the contrary, nothing in the Act shall take away any right or bar any remedy of any union member under other Federal law or law of any State.

(Secs. 401, 402, 73 Stat. 532, 534, 29 U.S.C. 481, 482, and Secretary's Order No. 9–77 (September 14, 1977))

Signed at Washington, D.C., this 24th day of September 1980.

**William P. Hobgood,**

*Assistant Secretary of Labor for Labor-Management Relations.*

[FR Doc. 30679 Filed 10–2–80; 8:45 am]

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[83] *Wirtz* v. *Glass Bottle Blowers, Local 153,* 389 U.S. 463 (1968).

[84] *Hodgson* v. *Bakery Workers, Local 400,* 491 F.2d 1348 (9th Cir. 1974).

[85] *Hodgson* v. *Local 6799, USWA,* 403 U.S. 333 (1971).

[86] *Wirtz* v. *Local 125, Laborers' International Union of North America,* 389 U.S. 477 (1968).

[87] Act, sec. 402(a)(2) (29 U.S.C. 482).

[88] Act, sec. 402(b) (29 U.S.C. 482).

[89] Act, sec. 402(c) (29 U.S.C. 482).

[90] Act, sec. 402(d) (29 U.S.C. 482).

[91] Act, sec. 402(c) (29 U.S.C. 482).

[92] Act, sec. 403 (29 U.S.C. 483).

[93] Act, sec. 402 (29 U.S.C. 482).

[94] Act, sec. 403 (29 U.S.C. 483). See Daily Cong. Rec. 86th Cong. 1st sess., p. 9115, June 8, 1959, pp. 13017 and 13090, July 27, 1959, H. Rept. 741, p. 17; S. Rept. 187, pp. 21–22, 101, 104. Hearings, House Comm. on Education and Labor, 86th Cong., 1st sess., pt 1. p. 1611.

[95] Act, sec. 603 (29 U.S.C. 532).

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Friday
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Part V

# Department of Agriculture

## Food and Nutrition Service

## Food Stamp Program; Sanction/Incentive Systems

**DEPARTMENT OF AGRICULTURE**

**Food and Nutrition Service**

**7 CFR Parts 271, 275 and 277**

**[Amendment No. 169]**

## Food Stamp Program—Sanction/ Incentive Systems

**AGENCY:** Food and Nutrition Service, USDA.

**ACTION:** Proposed rule.

**SUMMARY:** This proposed rulemaking addresses implementation of Sections 125 and 126 of Pub. L. 96–249 which modified Section 16(c) of the Food Stamp Act of 1977 and added a new Section 16(g). These sections establish systems for determining (1) whether a State is eligible for enhanced administrative funding and (2) whether a State is liable to the Federal Government for the dollar value equivalent of a portion of its issuance. Both determinations are based upon States' quality control (QC) error rates. This rulemaking includes proposed amendments to 7 CFR Part 271 to incorporate the necessary definitions and Parts 275 and 277 to establish the rules for determining each State's status relative to enhanced funding or sanctions based upon QC error rates.

**COMMENT PERIOD:** Comments must be received by December 3, 1980 in order to be assured of consideration.

**ADDRESS:** Comments should be submitted to Alberta Frost, Deputy Administrator for Family Nutrition Programs, Food and Nutrition Service, USDA, Washington, D.C. (202) 447–8982. All written comments, suggestions or objections will be open to public inspection at the Food and Nutrition Service, 500 12th Street, S.W. Washington, D.C. 20250.

**FOR FURTHER INFORMATION CONTACT:** Maurice C. Tracy, Chief, Performance Reporting System Branch, Food and Nutrition Service, USDA, Washington, D.C. (202) 447–4002.

The Draft Impact Analysis is available on request from the above named individual.

**SUPPLEMENTARY INFORMATION:** This proposed action has been reviewed under USDA procedures established in the Secretary's Memorandum 1955 to implement Executive Order 12044 and has been classified as "significant."

### Introduction

The Food Stamp Act of 1977 (Pub. L. 95–113, 91 Stat. 958, September 29, 1977) as amended by Pub. L. 96–249 (94 Stat. 364–365, May 26, 1980) requires the establishment of a system based upon QC error rates that will encourage States to reduce high error rates and maintain error rates as low as possible. To this end, Pub. L. 96–249 amended the enhanced administrative funding provisions of the Food Stamp Act of 1977 to offer more opportunities for States to obtain extra funding through reducing error rates and maintaining low error rates. Pub. L. 96–249 also added provisions designed to encourage lower error rates by holding States liable for a portion of the food stamps issued in error above certain national standards. These regulations outline the Department's proposed method of implementing the new provisions of the Food Stamp Act. While the basic structures of both the incentive and sanction systems are established in the Act, there are some areas where the Department has discretion. These areas were discussed in some detail in meetings held in May, June and July 1980 with representatives from States and the American Public Welfare Association. At these meetings, the Department described the issues, offered alternatives and sought comment.

Some of these comments were directed at the provisions of law which the Department has no authority to modify. However, many suggestions were made which played a part in the development of the proposed regulations discussed below. In addition, House Report No. 96–788 (96th Congress, 2nd Session, February 27, 1980) on the Food Stamp Act Amendments of 1980 was carefully studied in developing these proposed regulations because it discusses extensively Congressional intent on the purpose and operation of the error reduction systems.

### Comments

This rulemaking allows a 60-day comment period as provided for under Executive Order 12044 (issued March 23, 1978, 43 FR 12661). All interested parties are encouraged to comment on these proposed rules with the understanding that all comments received within the 60-day period will be carefully considered. Commenters are encouraged to examine the Food Stamp Act of 1977, cited above; Public Law 96–249, cited above; the Senate Conference Report on S. 1309, Conference Report 96–704, 96th Congress, 2nd Session, May 14, 1980; the House Report on S. 1309, cited above; the final Performance Reporting System regulations of August 3, 1979, 44 FR 45880 and March 11, 1980, 45 FR 15884 and any other related materials. As mentioned earlier, it is important to recognize that comments on a provision of the law itself cannot be considered and that commenters should concentrate their efforts on regulatory issues.

### Implementation

The implementation date for the sanction and enhanced funding provisions of the legislation is established as October 1, 1980, except that the Food Stamp Act of 1977 provision for receiving enhanced funding has been modified retroactive to October 1, 1978. As a result this rulemaking will, when issued in final form, be retroactive to these dates.

The Act of 1977 called for Federal funding to match 60 percent of administrative costs for any State with cumulative allotment error rates of less than 5 percent. This provision has been amended by Section 125 of Public Law 96–249 to add the qualification that the State must also have a rate of invalid decisions less than a nationwide percentage established by the Secretary as reasonable. Thus, any State claiming 60 percent enhanced funding for fiscal year 1980 will have to meet a standard for invalid decisions on negative cases. This has been established in law and is not a regulatory issue.

### Sanction System

Section 16(g) of the Food Stamp Act of 1977 as amended by section 126 of Public Law 96–249 establishes a system for determining States' liability for payment error rates which will operate as outlined below.

The first 6 months of each fiscal year serves as the base period for the following fiscal year. During each base period, a national standard payment error rate is constructed, which is the weighted (by each State's total issuance) mean payment error rate for all States during the base period. States' individual payment error rates are then evaluated relative to the national standard.

Each State with an error rate less than or equal to the national standard during the base period must remain at or below the national standard of the base period during each period of the following fiscal year to avoid any liability. Those States with payment error rates greater than the national standard during the base period must reduce their error rates during each period of the following fiscal year to either the national standard of the base period, or by an amount specified by the Secretary as the national annual rate of error reduction, whichever yields the higher error rate goal. Thus, States must either remain at or below the national standard or reduce their error rates all or part of the way to the national standard to avoid liability for excessive error rates. For

example, if the national standard error rate is 10 percent in a base period and the national rate of error reduction as determined by the Secretary is 8 percent, a State with a 15 percent error rate would be required to achieve payment error rates of 13.8 percent in each period of the following fiscal year to avoid liability. A State with a 10.5 percent payment error rate in the base period would only be required to reduce to 10 percent (the national standard) in each period to avoid liability as this is higher than the 9.7 percent figure that is generated by applying an 8 percent rate of reduction to 10.5.

This system then will establish goals for States: either the national standard, or their error rates for the base period less the annual rate of error reduction. If a State fails to meet its goal in either or both 6-month QC reporting periods of a fiscal year, the State would be liable for the dollar value equivalent of the difference between its payment error rate and its goal. For instance, if a State issues one million dollars worth of food stamps in a 6-month period and has an error rate goal of 10 percent, but the State's actual error rate is 12 percent, the State would be liable for 2 percent of its issuance in that period ($20,000).

In the above discussion, the phrases "payment error rate" and "national annual rate of reduction" were used to describe the workings of the system. The payment error rate is the sum of the absolute values of ineligible, overissuance and underissuance allotment error rates and is the same as the cumulative allotment error rate used to determine a State's eligibility for enhanced funding. However, the payment error rate may, in the future, also include the value of allotments not issued to households which were incorrectly denied participation in the program. This possibility will be briefly discussed below. The national annual rate of reduction is a percentage figure which will be applied to all States' payment error rates which are above the national standard payment error rate during the base period to determine States' goals for the following fiscal year. Given this basic structure of the sanction system, the Department identified issues where regulatory decisions are necessary for implementation of the system.

*National annual rate of reduction.* The issue here is what the annual rate of reduction should be for those States with payment error rates above the national standard during a base period. The law states that the rate of reduction is ". . . determined by the Secretary taking into account program circumstances and rates of error reduction in comparable Federal or Federally assisted public assistance programs . . ." (Pub. L. 96–249, Section 126, 94 Stat. 364).

The Department examined the Department of Health and Human Service's (HHS) required rates of reduction of 6.4 in AFDC and 15.7 percent in Medicaid established in their rulemaking of March 7, 1979, 44 FR 12578, which implemented a sanction system similar to the one described above. (However, the March 7 rulemaking will be superseded as of October 1, 1980 by regulations published January 25, 1980, 45 FR 6326, which will implement the sanction system established by the Michel amendment (Pub. L. 95–480, 92 Stat. 1584, October 18, 1979).) This issue, together with the Department's alternatives, were presented at the meetings held with State and APWA representatives.

Following is a discussion of four alternatives regarding the establishment of a rate of reduction which were examined by the Department prior to development of this proposed rulemaking. As some of these alternatives are complex and the Department wishes to promote a complete understanding of these alternatives, examples accompany each alternative. Commenters are encouraged to develop their own examples to further understand each alternative and how it may affect a specific State.

A. The first alternative considered would require the establishment of a fixed rate of error reduction that would be applied to all States with error rates which exceed the national standard. An advantage of this alternative, relative to alternatives B and D, is that States would be better able to anticipate their reduction goals in advance. This could permit States to develop long term corrective actions based upon a known constant rate of reduction. In addition, once a rate was in place for a number of QC periods, modifications of the rate would be relatively simple based upon States' experiences in those periods. A difficulty with this alternative (and with some of the other alternatives as well) is the subjectivity involved in establishing the intial rate of reduction. Due to the lack of QC data on the program since implementation of the October 17, 1978 food stamp certification regulations, the Department does not have information on current program circumstances, which makes it difficult to establish an intial rate of reduction.

The method of determining States' goals under this alternative is relatively simple. If the rate of reduction were 10 percent, one would multiply a State's error rate by 90 percent to determine its goal for the subsequent fiscal year.

B. The second alternative examined would establish the rate of reduction based upon the difference between the national standard payment error rate and the weighted mean payment error rate of all States above the national standard during a base period. For example, if 20 States were above the national standard of 12 percent during a base period and the weighted mean error rate for these States was 15 percent, the national annual rate of reduction would be 20 percent (15 percent−12 percent=3 percent, which is a 20 percent reduction from 15 percent). Under this alternative the annual rate of reduction would be calculated after each base period. The rationale behind this option is to require States above the national standard to approach the national standard in only one year. However, the Department recognizes the somewhat arbitrary nature of this alternative which results from the relationship between the national standard and the mean of those States above it. This relationship could result in very high or moderate rates of reduction being established without the Department or any individual State having any influence on what this rate would be. There is also a potential for a rate of reduction in excess of 25 percent which has been established by Congress as deserving of enhanced funding under Section 125 of Pub. L. 96–249, discussed below. Clearly, it is inconsistent to hold a State liable for funds on the one hand and provide enhanced funding on the other. A variation of this alternative would be to calculate the rate of reduction as described above and spread the desired reduction over a two year period (requiring a 10 percent rate of reduction each year in the above example). However, this approach would render the idea of reducing to the national standard confusing, assuming the national standard will change over a two year period. Therefore, the Department has rejected this alternative because of its uncontrollable nature and its potential for unrealistic rates of reduction.

C. The third alternative the Department considered was to establish a fixed goal of either the national standard during the October 79—March 80 base period, or an 8 percent or 5 percent payment error rate. The significance of 8 or 5 percent results from the provisions for enhanced funding described below. Once a goal was established, the Department would establish a percentage rate of reduction which would be applied to the

difference between each State's error rate above the goal and the goal. For example, if the goal was established to be the national standard of the first base period (say 12 percent) and a reduction rate of 20 percent were specified, a State with an 18 percent error rate during the base period would be required to reduce its error rate by one-fifth of the difference. The primary distinction between this option and the second option (option B) is that the rate of reduction is based upon the difference between each State's error rate and the goal rather than the difference between the mean error rate of a group of States and the goal. As a result, this alternative is more sensitive to each State's actual circumstances. At the same time, however, if the goal were established as the national standard, this alternative would still have a serious problem. The national standard could change over time, leaving the goal with little meaning for future QC periods. Therefore, use of this alternative with the national standard as the goal has been rejected.

This problem is alleviated, however, if the goal is fixed at five or eight percent, rather than at a changing national standard. This alternative, with use of a five percent or eight percent goal, has an advantage over option A. Under this alternative, the higher a State's error rate, the higher the overall rate of reduction that would be required. This places more exphasis on error reduction in key problem States with the highest error rates, while requiring a less steep reduction rate in States closer to the national standard. (It should be noted that if a goal of five or eight percent were adopted, States whose error rates in the base period were above this goal but under the national standard, would still avoid sanctions if their error rates remained below the national standard the following year.)

Under this approach, if the goal were established as five percent with a 10 percent reduction required, a State with a 16 percent error rate in the base period (assuming a 12 percent national standard) would be required to reduce its error rate to 14.9 percent in the next fiscal year.

D. The fourth option considered would be to base the national annual rate of reduction on the reduction in the national standard from one base period to the next. For example, if the national standard in the base period October 79—March 80 is 12 percent, and the national standard error rate in the October 80—March 81 period was 10 percent, the annual rate of reduction for fiscal year 1981 would be 16.6 percent. The rationale behind this option is that States would be required to reduce at a level which coincides with the actual national reduction. States above the national standard would only have to keep pace with the average of all other State's reductions to avoid liability. However, if the national standard failed to decrease significantly, there is the concern that the required annual rate of reduction could be minimal, or if the national standard increased, there would be no rate of reduction. This outcome would clearly be contrary to the intent of Congress.

While comments from States at the May-July meetings varied on this issue, the general consensus seemed to be that FNS should initially establish a fixed rate of reduction and when the system has been implemented for an appropriate period of time, to adjust the rate based upon historical data. The Department did initially seek to establish a fixed rate of reduction. This is the approach taken in the Department of Health and Human Services (DHHS's) March 9, 1979 rulemaking where the 6.4 percent rate of reduction was based upon historical error rate patterns in that program. It is difficult to establish a rate for the Food Stamp Program in a similar fashion since the Food Stamp Program was changed substantially on March 1, 1979, pursuant to regulations implementing the 1977 Food Stamp Act and national QC data reflecting operation under current rules is not yet available.

The regulations propose that the system described in alternative C be the method used to determine States' goals. Specifically, the regulations propose that when a State's error rate exceeds the national standard, the State would be required to reduce its error rate by 12 percent of the difference between its error rate and a 5 percent error rate. The 5 percent goal has been selected as a reasonable goal for use in this rulemaking, and it corresponds to the threshold Congress has established for the highest level of enhanced funding. The 1977 Act established a 60 percent enhanced funding level for error rates below 5 percent, and the 1980 Act increased the funding level to 65 percent for States with error rates below 5 percent.

Congress has recognized that all States cannot be expected to reach this goal or even the national standard in a short period of time. (Indeed, the Congress has also provided enhanced funding, at a lower level, for States with error rates below either 8 percent or the national standard, whichever is lower). The Department proposes to transfer this recognition to the regulations by adoption of the 12 percent reduction requirement. The Department's analysis has identified 12 percent as a desirable and realistic rate of reduction relative to the 5 percent goal. This rate is reasonable in terms of States' abilities and would result insignificant error reduction each year. This proposal also recognizes the variations in States' error rates and requires a progressively greater reduction from States with higher error rates. Thus, States with error rates substantially higher than the national standard must make extra efforts to reduce their error rates. The Department believes that States with higher error rates can generally achieve greater error rate reductions through corrective action, and that achieving significant error rate reduction is generally more difficult as error rates decline. Under this proposal, the lower a State's error rate, the less the State's absolute rate of reduction would be relative to States with higher error rates.

For example, assuming a 12 percent national standard payment error rate, a State with a 17 percent error rate would have a goal of 15.6 percent in the following fiscal year, while another state with a 14 percent error rate in the base period would have a 12.9 percent goal. The higher a State's error rate, the higher the percentage rate of reduction that would be required.

The Department is especially interested in comment on this issue. States in particular are encouraged to provide their comments on this proposal with any suggestions for improvement. The Department also plans to continue studying this matter in the future as more QC data becomes available and as program circumstances change.

*Incorrect/incomplete sampling.* Another area of concern to the Department is what provisions are necessary to account for States that may select their sample incorrectly or fail to complete 95 percent of their sample (as required in 7 CFR 275.11(f)) in either a base period or in a period of the following fiscal year.

Noncompletion of the required sample by a State can affect both the State's payment error rate and the national standard payment error rate. The primary concern is that unmeasurable bias may be introduced. Thus, there would be less certainty about the ccuracy of State's error rates when samples are incomplete and less certainty about the national standard payment error rate. The difficulty that arises when sampling is incorrect (and cannot be corrected) is that there is no data on which to judge the State's performance or to use in the construction of the national standard.

In developing these proposed rules, the Department considered a variety of alternative ways of dealing with the above problems. One alternative is to accept and use States' data regardless of whether the sample is complete or correct. The Department believes this alternative ignores rather than addresses the above concerns and has thus rejected this option. Another alternative considered would be not to use States' data when samples are incomplete or incorrect. Under this option the national standard would be constructed using only those States' payment error rates which are based upon complete and correct samples. The problem with excluding entire States from construction of the national standard is that this would have a greater impact than using even unreliable data. The exclusion of one large State with a high error rate could reduce the national standard significantly and incorrectly place other States in a position of being sanctioned. Further, this option does not address what will be done with individual States when their samples are deficient. The Department cannot adopt a policy that could result in providing a State with an incentive to undermine its QC system in order to avoid liability.

The Department believes that each State's error rate must be used in construction of the national standard and that each State must have an error rate to measure against this standards. Therefore, the Department proposed in these regulations that: (1) when a State's sample is incorrect, and cannot be corrected, the Department will assign the State an error rate based upon the best information available, i.e., past error rates, Federal reviews and/or Federal audits; and (2) when a State's sample is incomplete, FNS will examine the State's sample and if there is the indication of significant bias, adjust the sample to compensate for such bias. While the Department recognizes that it is unlikely that an assigned error rate will precisely match the error rate the State's QC system would have discovered, the Department will attempt to use the most objective data available.

Regarding incomplete sampling, the Department proposes that this problem be handled on a State-by-State basis. The proposed regulations would require FNS to examine each State's QC sample which is less than 95 percent complete. If there is no indication of a systematic bias that could significantly affect a State's error rate, the State's error rate would be accepted without any adjustment for incomplete sampling. Conversely, if there were an indication that bias had been introduced, the upper limit of the confidence interval (the statistical bounds of the reported error rate) for the State's payment error rate would be assigned to each uncompleted case and the State's error rate recalculated. Again, the Department does not contend that this method will result in a "true" error rate since this is not possible unless all cases were completed. (This procedure could result in overstating or understating the State's "true" error rate somewhat, depending on the circumstances.) Rather, this procedure is intended to compensate for bias using the most equitable method possible. The Department believes these proposals to be reasonable but solicits any suggestions on alternative ways of addressing this issue.

It should be noted that in the meetings with APWA and States, suggestions were made that incomplete cases be completed as much as possible and included in the State's error rates and/or that the 95 percent completion standard be reduced to 90 percent. While the Department will continue to study these recommendations, they do not address the problem of biased samples but only redefine what constitutes a complete case or sample. From a statistical point of view, the completion standard should be 100 percent. The Department is proposing to retain the 95 percent standard as this is traditional to QC and was the standard in effect at the time Congress developed the sanction system. A final point is that States which sample incorrectly/incompletely may be subject to the suspension/disallowance provisions of 7 CFR 276.4.

*Good cause.* a third area of major concern was the development of a good cause provision to ensure that no State is held liable for an excessive error rate when the State had no means of controlling some part of that error rate. The concept of good cause is mentioned in the new Section 16(g)(1) of the Act (P.L. 96–249, Section 126, 94 Stat. 364) and significantly expanded upon in the House Report on the 1980 amendments. The House Report cites a variety of circumstances which would constitute good cause for excessive errors (House Report 73–74). (Many of these are similar to those in the Department of Health and Human Service's January 7, 1980 rulemaking.) All of these have been incorporated into the proposed regulations together with more specifics.

The Department's proposal on this issue is that good cause will be determined on a State-by-State basis and it is to the advantage of both the Department and States that a good deal of flexibility be built into this area. Therefore, the proposed good cause criteria is intended to be general so as not to limit its application.

On the other hand, the Department does not want to give the impression that good cause will be found automatically. States have suggested that a "good faith effort" on their part should automatically constitute a basis for a good cause exemption from error rate sanctions. They have suggested that several critieria be utilized to measure whether a good faith effort has been made to reduce errors. The suggested criteria include: demonstrated commitment by top management to the error reduction program; sufficiency and quality of systems designed to reduce errors; use of effective systems and procedures for the statistical and program analysis of QC and related data; and effective management and execution of the corrective action process.

The Department agrees with the States' contention that the effort States have expended toward error reduction should be considered in determining whether a good cause exemption from all or part of a sanction should be granted. However, the Department does not agree that a "good faith effort" alone should automatically be a sufficient basis to grant a good cause exemption. It is very difficult to evaluate States' intentions and efforts in a sufficiently objective manner to make this criterion alone, in and of itself, an automatic trigger for a good cause determination. Furthermore, the department is concerned over the possibility of facing a State's claim for "good faith effort" exemptions year after year, without the State having made progress toward the basic goal of the sanction system—the reduction of error rates.

Effort expended by States to reduce errors would be considered in determining whether good cause exists under § 275.25(d)(5)(G) of the proposed regulations. This provision would afford FNS broad authority to determine whether good cause exists from any relevant circumstances. It might be possible, for instance, for States to establish good cause by proving they have made exemplary efforts to reduce errors or have invested an unusual amount of resources into achieving error reduction, and that error reduction has begun to result after the conclusion of the QC measurement period. Alternatively, States may be able to show that their efforts to reduce errors, in combination with other factors, should constitute a basis for a good cause exemption.

It should be noted that the House Report directs the Secretary to consider the need "... to maintain a fairly stringent sanction mechanism ..." when determining good cause and that "Good cause would not encompass any State failure to act upon necessary legislative changes or to obtain budget authorization for needed staff or other resources, since these failures are clearly within State control." (House Report 73–74). The Department will follow this guidance in all determinations of good cause.

Therefore, the proposed provisions of § 275.25(d)(5)(i) would be applied on an exception basis relative to each State's individual circumstances. For example, if the implementation of a new provision in certification regulations was the basis for a State claim of good cause under § 275.25(d)(5)(i)(D), a State would have to demonstrate the adverse effect the new provision had on that individual State.

In any event, States would be entitled to administrative and judicial review of any final determination to impose a sanction, including the question of good cause, under Section 14 of the Act (7 U.S.C. 2023 (1977 Edition)).

In regard to the sanction system and corrective action planning, some States recommended that FNS delete the requirement that corrective actions designed to reduce error rates be approved by FNS. The idea here is that States should be given as much flexibility as possible since the liability for high error rates would fall on them. While the Department will continue to examine this idea, the Federal approval process has been retained in this proposed rulemaking. The Department believes that States have the flexibility necessary to implement any corrective action they feel will work. Further, some States have stated that FNS should provide more guidance in this area and elimination of the approval process would only reduce such guidance.

*Federal validation.* Another area examined prior to this proposed rulemaking was that of Federal validation of States' reported error rates. This was required in the March 11, 1980, 45 FR 15884, regulations for any State claiming enhanced funding. The proposed regulations would require Federal validation of all States' error rates for each 6-month reporting period. This is the system currently used by HHS in the AFDC and Medicaid QC programs. While other alternatives were considered because of the resources this will require, the Department concluded that full validation of all States will be necessary. This is due to the nature of the sanction system where each State's performance is measured against the performance of all other States through the establishment of a national standard during each base period.

Two other alternatives examined would have required validation on a predetermined cycle or on an as needed basis. While these methods would reduce Federal manpower requirements they would result in use of a mixed data base in constructing the national standard payment error rate.

Another option considered was suggested by some APWA representatives, although opposed by some other State representatives, and would have involved conducting "blind" reviews. This alternative would call for completely independent Federal reviews of State cases rather than rereviews. The Department perceives little gain from such a procedure and, given the significant increase in manpower it would require, has not proposed this idea.

Each validation review would consist of rereviewing a subsample of the State's QC sample; reviewing the State's sampling, estimation, and data management procedures and examination of the State's completion rate. Based upon a validation review, a State's reported error rate may be adjusted if some aspect of the QC system is found to be deficient.

*Negative cases.* Section 16(g)(3) (as amended by Section 126 of Pub. L. 96–249) of the Act, directs the Secretary to conduct a study to determine the feasibility of including invalid decisions on denials and terminations in States' payment error rates and in the national standard payment error rate. In the House Report the committee recommends that the Department use the Department of Health and Human Service's method of including negative case dollar losses in payment error rates in the AFDC program (House Report 71). This is done in AFDC QC by:

(1) determining the State's negative case error rate;

(2) multiplying this by the total number of negative cases subject to review in a 6-month period;

(3) multiplying the product of step 2 above by the average payment to participating cases; and

(4) adding the product of step 3 above to the total dollars issued in error to active cases and calculating a total payment error rate.

Examinations of this possibility has already begun but due to a number of technical issues, more study will be necessary before the Department is prepared to establish a position on this issue. The Department views this as a critical issue and any decisions in this area will be included in proposed regulations prior to any final action. However, the Department encourages comments on applying the AFDC method to the Food Stamp Program and on any alternative methods of including invalid denials and terminations.

*Relationship to negligence billings.* In the development of these proposed regulations, the Department recognized the potential for billing a State twice for the same dollar loss under the QC sanction system and the negligence provisions of § 276.3. The proposed regulations would prohibit such an occurrence.

An even more basic question is what should be the relationship between the QC sanction system and the negligence provisions. Both recover dollar losses that are due to State errors.

The proposed regulations attempt to structure a relationship between these two provisions that would minimize any conflict or overlap between them. The sanction system measures States' overall certification error rates. It is not concerned with specific findings of State negligence, and does not assume negligence when a State fails to meet its error rate target. A specific finding of negligence is not necessary for sanction of a State that has failed to meet its error rate target.

The negligence provision, on the other hand, is to be used in certain instances where specific certification requirements are not met. For example, a State could be found negligent for failing to implement the provisions of Pub. L. 96–249 removing most students from the program. A negligence finding may be made regardless of whether a State's error rate is high or low. A State with an error rate below the national standard, for example, could still be found to have committed negligence for failing to implement the student restrictions.

The distinction here is between losses due to a State's failing to meet its error rate target (which will be treated under the QC sanction system) and losses due to a State's negligent noncompliance with specific certification requirements. To underscore this distinction, the proposed rules state that negligence billings shall not be invoked solely based on certification error rates. To do so would conflict with those provisions of Pub. L. 96–249 which establish certain error rate levels to trigger sanctions or incentives under the QC sanction system. Accordingly, a negligence billing based on all bonus dollars issued in error in a State or project area would not be allowed. The sole sanctions based on high error rates would be

those prescribed in this rulemaking under the QC sanction system.

Since a State could, however, be found negligent regarding specific certification requirements included in the overall QC error rate, and also be found liable under the sanction mechanism for an excessive error rate, a possibility for double billing does still exist. Therefore, these regulations would prohibit double payment for the same dollar loss. The Department would be required to adjust the billings as necessary to assure that a State was not billed twice for the same loss.

It should also be noted that the warning process described in § 276.4(d) would not apply to any claim assessed against a State under the QC sanction system since the State will have full knowledge of what must be done to avoid sanctions prior to each fiscal year.

**Enhanced Funding**

Section 16(c) of the Food Stamp Act of 1977, as amended by Section 125 of Pub. L. 96–249, expands upon the current enhanced funding provision of 60 percent funding for States having a cumulative allotment error rate of less than 5 percent. Effective October 1, 1980, States with cumulative allotment error rates of less than 5 percent will be eligible for 65 percent administrative funding, while States with cumulative rates between 5 percent and either 8 percent or the national standard payment error rate of the base period (whichever is lower) shall be eligible for administrative funding at a 60 percent rate. A new condition has been added by the statutory amendment which applies to both of these provisions which requires that the State also have a rate of invalid decisions which is less than a nationwide percentage established by the Secretary. This criterion is retroactive to October 1, 1978, which means any State claiming enhanced funding for low error rates during fiscal year 1980 will have to meet it before the extra funding can be made available. There is also a third provision which would provide funding at a 55 percent rate of funding for any State whose annual rate of reduction is equal to or exceeds 25 percentum. No State would be eligible for more than one of these increased funding levels in a 6-month period, with the higher level always taking precedence.

The only regulatory issue resulting from these new legislative provisions is the question of what level of invalid decisions to deny or terminate should be used to determine States' eligibility for 60 or 65 percent funding. The current corrective action regulations use 1 percent as a tolerance level for triggering actions to reduce error rates. While this provision will be retained, the Department is proposing that the national weighted mean negative case error rate be the standard for enhanced funding purposes. Thus, if a State's negative case error rate is above the national mean, it cannot qualify for 60 or 65 percent funding regardless of its cumulative allotment error rate.

Regarding the 55 percent funding for States that reduce their payment error rate by 25 percent or more annually, eligibility for this would be calculated by comparing a State's cumulative allotment error rate in one QC reporting period and comparing this figure to the State's cumulative allotment error rate in the comparable period of the previous fiscal year. This method is clearly outlined in the Conference Report on S. 1309 (Conference Report 25). There is no threshhold for negative case error rates in qualifying for 55% funding. The statute does not prescribe that a low negative case error rate shall be a condition of 55% funding, and as a result, the Department is not establishing such a condition in these regulations.

Therefore, the Department proposes that Part 271 be amended to include the following definitions and Parts 275 and 277 be amended to read as follows:

## PART 271—GENERAL INFORMATION AND DEFINITIONS

**§ 271.2 [Amended]**

1. Section 271.2 is amended to include the following definitions and reads as follows:

"Base Period" means the first 6-month reporting period of each fical year.

"National Standard Payment Error Rate" means the weighted mean of all States' payment error rates during a base period.

"Payment Error Rate" means cumulative allotment error rate.

* * * * *

(Pub. L. 95–113, 91 Stat. 958 (7 U.S.C. 2011–2027), as amended by P.L. 96–249, 94 Stat. 364–365, May 26, 1980)

## PART 275—PERFORMANCE REPORTING SYSTEM

2. Section 275.3(b)(2) is deleted and § 275.3(c) is amended to read as follows:

**§ 275.3 Federal monitoring.**

* * * * *

(c) *Validation of States Payment/ Cumulative Allotment Error Rates.* FNS shall validate each State's reported error rates during each 6-month quality control (QC) reporting period. These validation reviews shall include: reviewing a subsample of the State's QC sample and adjusting the State's reported error rate if necessary; reviewing the State's sampling, estimation, and data management procedures and correcting the State's reported error rate if necessary; and validation of the State's QC completion rate. The findings of validation reviews shall be used to determine the accuracy of a State's reported error rates and to provide a basis for adjusting them if necessary. To ensure that error rates are validated as expeditiously as possible, FNS may begin reviews prior to the end of the six-month reporting period. In addition to the above validation activities, FNS shall review each State's negative case procedures in at least one 6-month period of each fiscal year and for each period that a State claims enhanced funding due to a cumulative allotment error rate below 8 percent or the national standard, whichever is lower. Any deficiencies detected in States' QC systems shall be included in the State's corrective action plans.

* * * * *

3. Section 275.16(b)(3) is amended to read as follows:

**§ 275.16 Corrective action planning.**

(b) * * *

(3) Are the causes for a cumulative allotment error rate for States which do not receive enhanced funding as described in § 275.25(c)(2) for any reporting period (actions to correct errors in individual cases, however, shall not be submitted as part of the State plan.);

* * * * *

4. Section 275.25(c) is amended and a new paragraph (d) is added to read as follows:

**§ 275.25 Determination of State Agency Program performance.**

* * * * *

(c) *Federal enhanced funding.* (1) Before making enhanced funding available to a State agency as described in § 277.4(b), FNS will:

(i) Validate the State's reported cumulative allotment error rate as provided for in Subpart A of this Part;

(ii) Ensure that the sampling techniques used by the State are FNS-approved procedures as established in Subpart C of this part;

(iii) Validate the State's quality control completion rate to ensure that the rate is at the level required by § 275.11(f) of these regulations; and

(iv) For States claiming 60 or 65 percent enhanced funding, validate the State's negative case error rate following the procedures of (i), (ii) and (iii) above.

(2) Upon completion of the activities specified in paragraph (c)(1) of this section, FNS may correct or adjust a State's error rate as described in paragraph (d)(5) of this section. After validation of States' error rates, the following levels of funding will be provided:

(i) States with cumulative allotment error rates of less than 5 percent for a 6-month period shall be eligible for a 65 percent Federally funded share of administrative costs, provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(ii) States with a cumulative allotment error rate during a 6-month QC period of 5 percent or more but less than 8 percent or the national standard, whichever is lower, of the prior year's base period shall be entitled to a 60 percent share of Federally funded administrative costs, provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(iii) States with a 25 percent or greater reduction in their cumulative allotment error rate from one QC period to the comparable period of the next fiscal year shall be entitled to a 55 percent share of Federally funded administrative costs for the 6-month QC period(s) of the second fiscal year.

(3) States entitled to enhanced funding shall receive such funding on a retroactive basis only for the review period in which their error rates are less than the levels described in paragraph (c)(2) of this section. The procedures for enhanced funding are described in Part 277.

* * * * *

(d) *State Liabilities for Payment Error Rates.* (1) During each 6-month QC reporting period, States' payment error rates will be evaluated to determine whether they exceed the goals established in the paragraphs below. If a State's payment error rate is equal to or less than its goal, the State will have no liability for its payment error rates. If a State's payment error rate exceeds its goal for a 6-month period, the State will be held liable for a percentage of its payment error rate as specified in paragraph (d)(3) of this section.

(2) *Establishment of Payment Error Rate Goals.* For each 6-month period, the base period shall be the first 6-month period of the preceding fiscal year.

(i) The payment error rate goal for each State with a payment error rate below the national standard payment error rate during the base period shall be the national standard payment error rate for the base period. For example, if the national standard payment error rate during the base period is 10 percent and a State's payment error rate is 9 percent during the same period, the State's goals for each 6-month period of the following fiscal year would be 10 percent or less.

(ii) The payment error rate goal for a State with a payment error rate above the national standard payment error rate during the base period shall be the higher of either:

(A) The national standard payment error rate during the base period; or

(B) The State's payment error rate during the base period less 12 percent of the difference between that error rate and the payment error rate of 5 percent.

(C) For example, if the national standard is 10 percent during the base period and a State's payment error rate is 12 percent during the same period, the State's goal for each 6-month period of the following fiscal year would be an error rate of 11.2 percent (12−(12−5)(.12)=11.16). However, if the State's payment error rate had been 10.5 percent during the base period, its goal would be 10 percent rather than 9.8 percent since 10 percent is the higher of the two figures.

(3) *States Failing to Achieve Payment Error Rate Goals.* Each State which fails to achieve its payment error rate goal during a 6-month period shall be liable for the dollar value equivalent of the difference between its goal and its actual error rate expressed as a percentage of its total issuance during the 6-month period. Thus, if a State's goal is 10 percent during a 6-month period and its payment error rate is determined to be 12 percent, the State would be liable for 2 percent of its total issuance during the 6-month period.

(4) *Relationship to Warning Process and Negligence.* (i) States' liability for payment error rates as determined above are not subject to the warning process of § 276.4(d). While the amount of a State's liability may be recovered through offsets to their letter of credit as identified in § 277.16(c), FNS shall also have the option of billing a State directly or using other claims collection mechanisms authorized under the Federal Claims Collection Act, depending upon the amount of the State's liability.

(ii) FNS shall not determine negligence (as described in § 276.3) based on the overall allotment error rate for issuances to ineligible households and overissuances to eligible households in a State or political subdivision thereof. FNS may establish a claim under § 276.3 for dollar losses from failure to comply, due to negligence on the part of the State agency (as defined under § 276.3), with specific certification requirements.

(iii) While FNS may determine a State to be liable for dollar loss under the provisions of this section and the negligence provisions of § 276.3, FNS shall not bill a State for the same dollar loss under both provisions. If FNS finds a State liable under both the sanction system and the negligence provisions, FNS shall adjust the billings to ensure that two claims are not made against the State for the same dollar loss.

(5) *Good Cause and Appeals.* (i) When a State is determined to be liable for a portion of its payment error rate as described in paragraphs (2) and (3) above, FNS may determine that the State had good cause for not achieving its payment error rate goal. FNS shall evaluate good cause based upon any one or more of the following criteria:

(A) Natural disasters or civil disorders that adversely affect program operations;

(B) Strikes by State staff necessary to the determination of eligibility and processing of case changes;

(C) Significant caseload growth prior to or during a 6-month period of, for example, 15 percent;

(D) Changes in the food stamp or other Federal or State programs that have a substantial adverse impact upon management of the State's Food Stamp Program;

(E) Misapplication of Federal policy where such misapplication directly affects the State's QC error rates and was incorrectly provided or approved by an FNS representative who is reasonably believed to have the necessary authority;

(F) Direction of resources to other aspects of program operation which FNS determines to be of higher priority; and

(G) Any other circumstances in which FNS determines good cause to exist.

(ii) If FNS determines that there was good cause for a State's payment error rate to exceed its goal in a 6-month period, FNS shall either reduce or waive the State's liability.

(iii) Whenever a State is assessed for an excessive payment error rate, the State shall have the right to request an appeal in accordance with the procedures of § 276.7

(6) *Determination of Payment Error Rates.* As specified in § 275.3(c), FNS will validate all States' reported error rates through rereviewing a sample of each State's QC sample and ensuring that each State's sampling, estimation and data management procedures are correct.

(i) FNS will adjust States' reported error rates through findings of rereviewed cases. This adjusted error rate will then become the State's official error rate for use in the liability determination.

(ii) If FNS determines that a State has sampled incorrectly, estimated improperly, or has deficiencies in its QC data management system, FNS will correct the State's reported error rate based upon a correction to that aspect of the State's QC system which is deficient. If FNS cannot accurately correct the State's deficiency, FNS will assign the State an error rate based upon the best information available. This assigned error rate will then be used in the above described liability determination.

(iii) Should a State fail to complete 95 percent of its required sample size as required by § 275.11(f), FNS shall either accept the State's reported error rate (if it is determined that a minimal amount of bias has been introduced) or shall adjust the State's error rate by assigning an error rate equal to the upper limit of the confidence interval to that portion of cases between the State's completion rate and 100 percent, and recalculate the State's error rate.

(iv) When a State's reported error rates are modified through assignment of error rates by FNS as described in paragraph (d)(6) (ii) and (iii) of this section, the State's final error rate shall continue to be subject to adjustment as described in paragraph (d)(6)(i) of this section.

* * * * *

(Pub. L. 95–113, 91 Stat. 958 (7 U.S.C. 2011–2027), as amended by Pub.L. 96–249, 94 Stat. 364–365, May 26, 1980)

## PART 277—PAYMENT OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

(8) Section 277.4(b) is amended by renumbering paragraph (b)(5) as (b)(8), modifying paragraph (b)(2), and adding paragraphs (b)(5), (6), and (7) to read as follows:

**§ 277.4 Funding.**

(b) *Federal reimbursement rate.* * * *

(1) * * *

(2) For the period beginning October 1, 1978, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State's cumulative allotment error rate is less than 5 percent; provided that the State's negative case error rate is less than the national weighted mean negative case error rate for the period of enhanced funding.

(3) * * *

(4) * * *

(5) For the period beginning October 1, 1980, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 65 percent when that State meets the standards contained in § 275.25(c)(2)(i).

(6) For the period beginning October 1, 1980, a State agency's federally-funded share of Food Stamp Program administrative costs shall be increased to 60 percent when the State meets the standards contained in § 275.25(c)(2)(ii).

(7) For the period beginning October 1, 1980, a State agency which meets the standards of § 275.25(c)(2)(iii) shall be eligible for 55 percent federal funding for allowable program charges.

* * * * *

(Pub. L. 95–113, 91 Stat. 958 (7 U.S.C. 2011–2027), as amended by Pub. L. 96–249, 94 Stat. 364–365, May 26, 1980)

[Catalog of Federal Domestic Programs No. 10.551, Food Stamps]

Dated: September 30, 1980.

**Carol Tucker Foreman,**

*Assistant Secretary.*

[FR Doc. 80–30713 Filed 10–2–80; 8:45 am]

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Part VI

# Environmental Protection Agency

Ocean Discharge Criteria

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 125**

**[FRL 1609-1]**

## Ocean Discharge Criteria

**AGENCY:** Environmental Protection Agency.

**ACTION:** Final rule.

**SUMMARY:** EPA is promulgating final guidelines under section 403(c) of the Clean Water Act. These guidelines will be applied in issuing and revising National Pollutant Discharge Elimination System Permits for discharges into the territorial seas, the contiguous zone and the oceans.

**DATES:** These guidelines become effective on November 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** Kenneth Farber, Office of Water Regulations and Standards (WH-586), Environmental Protection Agency, 401 M Street, SW, Washington, D.C. 20460, 202-472-5746.

**SUPPLEMENTARY INFORMATION:**

### I. Background

EPA is today promulgating revised guidelines for determining the degradation of the territorial seas, the contiguous zone and the oceans. Pursuant to section 403(a) of the Clean Water Act, no National Pollutant Discharge Elimination System ("NPDES") permit for discharges into these marine waters may be issued when these guidelines are in effect except in compliance with the guidelines.

These guidelines are issued pursuant to section 403(c)(1) which provides that:

> The Administrator shall, within one hundred and eighty days after enactment of this Act (and from time to time thereafter), promulgate guidelines for determining the degradation of the waters of the territorial seas, the contiguous zone, and the ocean, which shall include:
>
> (A) the effect of disposal of pollutants on human health or welfare, including but not limited to plankton, fish, shellfish, wildlife, shorelines, and beaches.
>
> (B) the effect of disposal of pollutants on marine life, including the transfer, concentration, and dispersal of pollutants or their byproducts through biological, physical, and chemical processes; changes in marine ecosystem diversity, productivity, and stability; and species and community population changes;
>
> (C) the effect of disposal of pollutants on esthetic, recreation, and economic values;
>
> (D) the persistence and permanence of the effects of disposal of pollutants;
>
> (E) the effect of the disposal at varying rates, of particular volumes and concentrations of pollutants;
>
> (F) other possible locations and methods of disposal or recycling of pollutants including land-based alternatives; and
>
> (G) the effect on alternate uses of the oceans, such as mineral exploitation and scientific study.

On October 15, 1973, EPA promulgated combined regulations implementing section 102(a) of the Marine Protection, Research, and Sanctuaries Act and section 403(c) of the Clean Water Act. The primary focus of these regulations was on the ocean disposal of waste material, including sewage sludges, liquid and solid industrial wastes and dredged materials, by dumping from moving vessels.

In practice, these regulations proved unworkable in many respects as section 403 ocean discharge criteria. At the same time, operating experience demonstrated that the ocean dumping regulations themselves required revision. EPA therefore determined that both the ocean dumping regulations and the ocean discharged criteria should be revised and published as separate regulations. All reference to section 403(c) guidelines was deleted from the revised ocean dumping regulations which were promulgated on January 11, 1977 (42 FR 2468). However, the Agency encountered substantial difficulty in developing revised ocean discharge guidelines, and, until recently, there have been no published national guidelines in place. Since withdrawal of the original guidelines, permit writers have been implementing section 403 on a case-by-case basis.

On June 21, 1979, the Pacific Legal Foundation filed suit in United States District Court for the Eastern District of California, seeking, among other things, that EPA promulgate revised section 403(c) guidelines, *Pacific Legal Foundation* v. *Costle*, Civ. No. S-79-429-PCW. The National Wildlife Federation intervened in that lawsuit. On October 31, 1979, the Court ordered EPA both to promulgate these guidelines and to publish interim guidelines stating Agency policy in reviewing, issuing, or denying NPDES permits under section 403, pending promulgation of the final guidelines. The interim guidelines were published in the **Federal Register** on November 15, 1979, 44 FR 65751, and they will be superseded by the final guidelines published today.

The Agency then published proposed ocean discharge criteria in the **Federal Register** (45 FR 9548) on February 12, 1980, held an oral hearing on the proposal on March 21, 1980, and provided a comment period for submission of written comments which was to end on March 28, 1980. At the request of various interested groups, the comment period was extended for 30 days. Based on the extended comment period and on the large volume of comments received, the Agency moved the court to extend the final promulgation date by 120 days beyond the July 30 deadline. The court extended the final deadline until September 30, 1980.

### II. Development of the 403 Guidelines

*1. Synopsis of the Guidelines*

Section 403 is intended to prevent unreasonable degradation of the marine environment and to authorize imposition of effluent limitations, including a prohibition of discharge, if necessary, to ensure this goal. These guidelines were developed to satisfy this intent. They provide flexibility to permit writers to tailor application requirements, effluent limitations, and reporting requirements to the specific circumstances of each discharger's situation, while ensuring consistency and certainty by imposing minimum requirements, in situations where the long-term impact of a discharge is not fully understood.

Under these guidelines, no NPDES permit may be issued which authorizes a discharge of pollutants that will cause unreasonable degradation of the marine environment. Prior to permit issuance, the director, defined as either the Regional Administrator or the State Director where there is an approved State program, or an authorized representative, is required to evaluate whether a proposed discharge will cause such degradation. In making this determination, the director is to consider the factors specified in § 125.122 (a) and (b).

In cases where sufficient information is available for the director to make a reasonable determination whether unreasonable degradation of the marine environment will occur, the director is governed by § 125.123 (a) and (b) of the regulations. Discharges which will cause unreasonable degradation will be prohibited; other discharges may be permitted under conditions necessary to ensure that such degradation will not occur.

In those cases where the director is unable to determine whether unreasonable degradation will occur, § 125.123(c) governs. No discharge in this situation is allowed unless the director can reasonably determine that: (1) the discharge will not cause irreparable harm to the marine environment while further evaluation is undertaken; (2) there are no reasonable

alternatives to the discharge; and (3) the discharge will comply with certain mandatory permit conditions, including a bioassay-based discharge limitation and monitoring requirements. These permit conditions will assist in determining whether and to what extent further limitations are necessary to ensure that the discharge does not cause unreasonable degradation. If further limitations are necessary, § 125.123(d)(4) provides that the permit must be then modified to include these additional limitations or else revoked.

These guidelines encourage the use of available information in addition to any supplied by the permit applicant. Thus, the director may make determination based on information such as that contained in any relevant environmental impact statement, section 301(h) or other variance applications, existing technical and environmental field studies, or EPA industrial and municipal waste surveys.

*2. Relationship Between the Statute and the Guidelines*

(a) *Section 403(c)(1)*—Section 403(c)(1) specifies seven factors which are to be included in guidelines for determining the degradation of marine waters. These factors form the basis for the determinations which must be made pursuant to these guidelines.

Most of the statutory factors, including 403(c)(1)(A), (B), (C), (D), (E), and a portion of (G), involve consideration of the biological effects of the discharge of pollutants. These factors, either directly or indirectly, must be evaluated by the director in determining whether a discharge will cause unreasonable degradation of the marine environment. Section 125.122(a) requires that the director assess such variables as the location of the discharge, including the composition of the biological community and existence of special aquatic sites, such as marine sanctuaries; the nature of the pollutants which are to be discharged, including their quantities, composition, potential for bioaccumulation, persistence and their transport in the environment, and the effect on human health. This assessment should adequately address the statutory factors relating to biological effects of the discharge.

Section 403(c)(1)(C) also involves consideration of economic and social impacts of the discharge, as does section 403(c)(1)(G). The guidelines address these factors in assessing whether a discharge will cause unreasonable degradation of the marine environment. Section 122.121(f) defines "unreasonable degradation of the marine environment" to include, among other things, "loss of esthetic, recreational or economic values which are unreasonable in relation to the benefit derived from the discharge." Thus, even where the director has determined that there are no significant changes in ecosystem diversity, productivity and stability, and there is no threat to human health, he may conclude that a discharge may not be authorized if the adverse impact on such activities as fishing, recreation, and/or other economic or social benefits is unreasonable in relation to benefits, such as oil and gas production, derived from the discharge.

Section 403(c)(1)(F) involves consideration of other possible locations and disposal methods for pollutants. Although EPA has considered this factor in developing these guidelines, the director is not required to assess alternatives in all cases. Under section 125.123(c)(2) the director must assess the availability of alternatives, including land-based alternatives, only in those cases where he cannot determine that a discharge will not cause unreasonable degradation of the marine environment.

Additionally, the guidelines establish a presumption that discharges in compliance with sections 301(h), 316(a), 301(g) and State water quality standards under section 303 will not cause unreasonable degradation. Although the director may, on the basis of the factors specified in § 125.122(a), conclude that additional permit limitations are in fact necessary even though the requirements of these other sections have been met, the similarity between the objectives and requirements of these provisions and those of section 403 warrants a presumption that discharges in compliance with these sections also satisfy section 403. Also, even though the regulations provide that a successful section 316(a) demonstration creates only a rebuttable presumption that section 403 has been satisfied, the provisions of section 316(c) may in some cases preclude the imposition of more stringent limitations under section 403.

POTWs obtaining section 301(h) variances are entitled to a presumption that their entire discharge is in compliance with section 403. However, the presumption applies only to the thermal component of a discharge subject to a 316(a) variance or to those specific non-conventional pollutants subject to a section 301(g) variance or to pollutants specifically limited by criteria in State water quality standards. Each of those provisions, like section 403, is geared toward assessing the environmental impact of a discharge. In order for a point source to receive a section 301(g), 301(h) or 316(a) variance, an evaluation of the biological and environmental effect of the discharge is required. Indeed, the statutory factors specified in these sections are similar to those contained in section 403(c). Similarly, State water quality standards established pursuant to section 303 of the Act are designed to preserve the quality of waters under State jurisdiction, including the territorial seas, and compliance with these standards should insure protection of the uses for which the waters are designated with respect to pollutants for which standards have been established.

(b) *Section 403(c)(2)*—Section 403(c)(2) states that:

> Where insufficient information exists on any proposed discharge to make a reasonable judgment on any of the guidelines established pursuant to this section no permit shall be issued under section 402 of this Act.

This section is the basis for two central elements of these regulations. First, the guidelines require that the director make potentially complex factual determinations on the basis of information which, in many cases, may be conflicting and in dispute. Section 403(c)(2) provides that the standard on which the director is to make these judgments is one of "reasonableness." In assessing the information in the administrative record, the director may authorize the discharge of pollutants if he is able to make a "reasonable judgment" about the determinations specified in the guidelines. Although these issues may involve scientific matters, the director is not bound by the same burden of proof which a scientist might require to reach a conclusion. The administrative process and the burden of proof in making these determinations are discussed below.

Second, the regulation provides, as required by section 403(c)(2), that the director may not authorize the discharge of pollutants if there is insufficient information to make these judgments. The regulation does not, however, require that there be complete knowledge of the impact of a discharge prior to permit issuance. Section 125.123(c) provides that a permit may be issued if the director has sufficient information to reasonably conclude, among other things, that the discharge will not cause irreparable harm to the environment while additional information is collected. The provision implements Congress' intent that "discharges permitted today will not irreversibly modify the oceans for future uses." S. Rep. No. 92–414, 92nd Cong., 1st Sess. at 75 (1971). It should insure adequate protection of the environment at all times while allowing the director to issue NPDES permits where existing

data may not be adequate to assess the long term impact of a discharge.

*3. The Role of Section 403(c) Guidelines in NPDES Permit Issuance*

These guidelines will be used to develop NPDES permits for the discharge of pollutants into the territorial seas, the contiguous zone and the oceans. Application of the guidelines will aid in protecting marine resources and their uses from the impact of pollution and in preventing unreasonable degradation of the marine environment.

Although sometimes described here as "guidelines" or "criteria", these promulgated regulations establish minimum requirements on discharges to protect the receiving waters. These guidelines will be used in evaluating applications for new, modified or renewed permits as they are submitted.

These guidelines apply in addition to other applicable provisions of the Clean Water Act. Permittees subject to section 403 must still comply with all other requirements of the Act, including applicable technology-based requirements specified by sections 301, 304 or 306 and water-quality based limitations specified by sections 303 or 307. Permittees may in certain circumstances be subject to the provisions of section 311 as well.

Section 403 applies to all discharges seaward of the inner boundary of the territorial seas. This boundary is defined by section 502(a) of the Act to be the—

> belt of the seas measured from the line of ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters. . . .

This definition limits the number of land-based dischargers subject to section 403. For example, Chesapeake Bay, Boston Harbor, New York Harbor, San Francisco Bay and Puget Sound lie inside this inner boundary so that discharges into these waters are not subject to section 403 requirements. Of the approximately 62,400 existing NPDES permittees, 232 are land-based point sources discharging seaward of this inner boundary. These include 102 publicly-owned treatment works, 74 industrial plants, 25 steam electric plants and 31 federal facilities. These figures do not include the dischargers in Alaska whose location relative to the baseline defining the ocean boundary is not known.

In addition to these land-based dischargers, section 403 applies to all other point sources discharging into the marine waters covered by this regulation. By far the largest group of marine dischargers are oil and gas exploratory and production facilities. The Agency estimates that there are approximately 3,000 such facilities now operating.

**III. Modifications to the Proposal**

EPA provided both an oral hearing and a written comment period on the proposal, the latter extended by thirty days in response to the request of several interested groups. The preamble to the proposal specifically solicited comment on certain points, including mixing zone definition and determination, control of toxic pollutants; monitoring requirements and procedures; and effect of meeting requirements for a Section 301(h) variance.

Ten persons testified at the March 21, 1980 hearing on the proposal, and written comments were received from 81 parties, including many industrial groups, municipalities, conservation groups, federal agencies and several State governments. A listing of these commenters is presented in Appendix A. The commenters addressed the issues raised for comment in the preamble and raised a range of additional issues concerning EPA's approach in developing the proposed regulations. Detailed responses to the major public comments are presented in Appendix B.

In conjunction with the public comment review, EPA has reevaluated the proposed regulations and concluded that certain changes are appropriate. The final regulations retain the basic approach of the proposal. As in the proposal, this regulation provides that the director must determine whether a discharge will cause unreasonable degradation of the marine environment. Based on review of the numerous comments, however, EPA has made certain modifications which are intended to provide greater clarity to the permit writer, to ensure consistency in application of this regulation and to minimize burdens on the permit applicant.

Under the proposed regulation, applicants were required to submit a wide range of analyses and evaluations. Numerous commenters objected, stating that submission of this information was unnecessary, and in many cases redundant. In response to these comments, the final regulations now provide that the director may request information from the applicant but is encouraged to use other available sources, such as environmental impact statements, section 301(h) variance applications, consolidated permit applications, or EPA industrial and municipal waste surveys.

These final regulations also clarify the director's authority to issue permits where certain pre-issuance determinations relating to the effects of a discharge cannot be made. These regulations now provide that, in those cases, the discharge of pollutants may be authorized only where the director has sufficient information to make reasonable determinations regarding the potential for irreparable harm from the discharge and on the availability of alternatives. These regulations also establish certain minimum permit requirements in these cases. These requirements, identified as possible permit conditions in the proposed regulation, have been made mandatory in part in response to comments that the regulations needed to provide greater guidance to the director and applicant regarding permit conditions.

Finally, with respect to the relationship between the permit requirements of section 403(c) and variances issued under sections 301(g), 301(h), or 316(a), the final regulation provides that an applicant who has met the conditions necessary to receive such a variance is presumed to be in compliance with section 403(c) for those pollutants to which the variance applies.

**IV. Procedures for Issuance of Permits Under Guidelines**

*1. Determination of Applicability of Section 403*

The threshold determination for applicability of the section 403 guidelines is whether a proposed discharge will occur seaward of the inner boundary of the territorial seas. EPA's consolidated permit regulations (45 FR 33290, May 19, 1980) require that applicants list the latitude, longitude and name of the receiving waters for each outfall. Where the director is uncertain as to whether the outfall is within the waters covered by section 403(c), he should request guidance from EPA headquarters. Where the proposed discharge is in an area where the baseline defining the boundary of the territorial seas has not been determined, EPA will request a determination from the Department of State, which is responsible for defining the boundaries of the territorial seas.

*2. Determination of Information Requirements Under Section 403(c)*

Once a determination has been made that section 403(c) applies to a particular discharge, the director must determine what information is required to evaluate the discharge according to the section 403(c) criteria. The first thing that the director should do is survey the

currently available information about the discharge itself and about the area in which the discharge would occur. This information would include the data contained in the consolidated application form, as well as the data available from Agency reports and studies. The director should also notify the applicant of the existence of other currently available information.

After completing this survey of the available information, the director should determine what additional information would be required from the applicant for the evaluation of the impact of the ocean discharge as required by section 403(c). The applicant will have the responsibility of collecting this additional information and of submitting it to the director.

*3. Determination of Unreasonable Degradation of the Marine Environment*

Section 125.121(e) defines "unreasonable degradation of the marine environment" to include—

(1) significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities; (2) threats to human health through direct exposure to pollutants or consumption of exposed aquatic organisms; or (3) loss of esthetic, recreational, scientific or economic values which are unreasonable in relation to the benefits derived from the discharge.

Sections 125.122 (a) and (b) specify an array of factors relevant in making these determinations.

In many cases the director will be able to reach conclusions based on data related to the nature of the proposed discharge. In areas which do not contain sensitive species or unusual biological communities or are not important for surrounding biological communities, the director may conclude that discharges containing primarily conventional pollutants will not cause unreasonable degradation. This is especially appropriate where the data indicate that there will be significant mixing with the receiving waters based on the flow of the discharge and the physical characteristics of the discharge site, such as water depth and turbulence. This determination may be appropriate for such dischargers as small publicly owned treatment works ("POTWs") and for industrial dischargers such as fruit canneries and fish processors.

For discharges into areas of biological concern or for complex or toxic discharges, additional evaluation may be necessary to determine whether a proposed discharge will cause unreasonable degradation. In assessing the need for further evaluation, the director should consider the vulnerability of the area of discharge and its role in the larger biological community. Significant or sensitive areas might include spawning sites, nursery or forage areas, migratory pathways or areas necessary for other functions or critical stages in the life cycle of organisms, areas of high productivity, or areas under stress due to biological or climatic conditions or discharges from other sources. Additionally, the director should consider whether a discharge will affect marine and wildlife species which are identified as endangered or threatened pursuant to the Endangered Species Act, 16 U.S.C. § 1531 *et seq.*, and those species critical to the structure or function of the ecosystem, such as in food chain relationships.

An assessment of the potential toxicity of a discharge should initially focus on the pollutants which are present in significant quantities relative to marine water quality criteria developed pursuant to section 304(a). The potential for bioaccumulation or persistence of pollutants in the environment is of particular importance.

The director must also consider the potential impacts of the discharge on human health either directly as through physical contact or indirectly through the food chain. These factors should be addressed when considering the location of the discharge and the type and volume of the discharger's effluent.

Determinations of the economic impact of the discharge should be based on the potential effect of the discharge on such activities as commercial fishing, recreation, mineral exploitation and scientific study. In considering whether a discharge will cause unreasonable economic impacts, the social as well as economic effects on a community should be considered.

Much, if not all, of the information necessary to make these evaluations already will be available to the director. Pursuant to section 122.53 of the consolidated permit regulations, applicants for NPDES permits must submit a range of significant information, including in many cases a detailed analysis of toxic pollutants in the waste stream. Additionally, any relevant environmental impact statements or section 301(h), 301(g) or 316(a) variance applications should provide significant data about the environmental impact of the proposed discharge. EPA industrial and municipal waste surveys and any data from relevant technical and environmental field studies that may have been conducted may serve as a source of information. Finally, Coastal Zone Management Plans or proposals for designation of an area as a marine sanctuary should also contain relevant information.

In cases where available information is insufficient for the director to make a determination, he may request additional information of the applicant pursuant to § 125.124. Where further analysis of the area of the proposed discharge is required, the director may require the applicant to perform assessments similar to those identified in the Technical Support Document prepared in conjunction with EPA's section 301(h) regulations (44 FR 34784, June 15, 1979). EPA headquarters will be available to provide assistance to the permit writer in developing information requirements where the discharge may be affecting an area of biological concern.

The director should work with the applicant to determine what types of assessment are necessary and to review or evaluate the assessment as it progresses. This level of participation is intended to determine the actual feasibility and the costs of such assessments for the applicant. Furthermore, it should avoid duplicative or inadequate assessments, thereby preventing delays in permit issuance. The Agency recognizes that some of the anticipated assessments required for permit issuance on the Outer Continental Shelf are beyond those which can reasonably be expected of the applicant and will require continued Agency research efforts.

The guidelines establish a presumption that discharges in compliance with sections 301(g), 301(h), 316(a) or State water quality standards will not cause unreasonable degradation with respect to the pollutants covered by those sections. Unless available data indicate that a discharge will cause unreasonable degradation, the director need not take additional steps, including the compilation of additional data, to support a conclusion that no further limitations on the discharge of these pollutants is necessary.

*4. Determination of Irreparable Harm*

Section 125.123(c)(1) requires that the director determine whether a discharge will cause irreparable harm to the marine environment in situations where he cannot determine whether the discharge will cause unreasonable degradation. Although the concepts of "irreparable harm" and "unreasonable degradation" involve similar considerations, the determination of "irreparable harm" is much narrower in scope.

In assessing the probability of "irreparable harm", the director need not focus his analysis on the overall impact of the discharge. Rather, he is only required to make a reasonable determination that the discharger, operating pursuant to the permit conditions established in § 125.123(c), will not cause permanent and significant harm to the environment during the period in which further data on the effects of the discharge are collected. In cases where such data, primarily that produced by monitoring, indicate that continued discharge will produce unreasonable degradation, the discharge must be halted or additional limitations established. Although evaluation of irreparable harm may in some cases involve difficult factual issues, determinations of this kind are currently a part of the NPDES permit issuance process. Pursuant to 40 CFR 124.60(a)(2)(ii), the presiding officer at an evidentiary hearing may authorize a facility to commence discharging prior to receipt of a final NPDES permit if the permit applicant demonstrates, among other things, that the discharge will not cause "irreparable harm to the environment . . ." This is essentially the same finding which the director must now make pursuant to these guidelines.

Certain factors are particularly significant in assessing the likelihood of "irreparable harm". Two such factors are the quantity of pollutants expected to be discharged and their potential for persistence in the marine environment. For example, a permit writer might authorize the operation of exploratory oil and gas facilities or a limited number of production facilities based on a conclusion that these limited operations will not cause irreparable harm to an area.

An additional factor is the sensitivity of the area into which the discharge is proposed. The director might conclude that a discharge could cause irreparable harm to unusual and interdependent communities, such as the coral reefs and associated communities of the Flower Garden Banks proposed marine sanctuary in the Gulf of Mexico. In such areas special conditions, including the prohibition of discharge, might be required.

Finally, data on the effect of similar discharges in similar areas is directly relevant to the determination of irreparable harm. Information demonstrating the recovery of the environment after the cessation of discharges from similar facilities would be a strong indication that irreparable harm is not likely to occur. For example, data indicate that even in areas of biological concern, biological communities reestablish themselves after the termination of discharges from publicly-owned treatment works. Thus, where the other provisions of § 125.123(c) are satisfied, the director might properly conclude that discharges from POTWs pursuant to this section may be authorized while further information is being collected.

*5. Determination of Reasonable Alternatives*

These guidelines establish two bases for determining whether reasonable alternatives to the proposed discharge exist. The first is the physical availability of alternative sites for disposal of pollutants. Such alternative sites might include either disposal facilities located on land, discharge point(s) within internal waters, or existing ocean dumping sites approved pursuant to the Marine Preservation, Research and Sanctuaries Act. In determining whether a site is a reasonable alternative to on-site disposal, the director should consider its distance from the site of the proposed discharge and whether its use would cause unwarranted economic impact on the discharger. For example, shipping wastes over long distances would likely impose such impact. This provision is intended to ensure some rule of reason in evaluating alternatives, it is not intended to impose a "cost/benefit" analysis of alternative sites.

In considering the availability of alternatives the director shall consider, based on available information or that requested from the applicant, the estimates of the amount of material requiring disposal. He should review the availability of existing land-based disposal sites and ocean dumping sites within a reasonable distance from the point of discharge and the estimated uncommitted capacity of such sites. The director should evaluate any reports of economic impact of discharge alternatives as may be supplied by the applicant.

The second basis for evaluating the feasibility of alternative sites relates to the relative environmental harm of disposal. Pursuant to section 121(e)(2), alternative disposal sites are not considered "reasonable alternatives" if on-site disposal is judged to be environmentally preferable. Thus, the discharge of pollutants might be authorized where disposal in alternative sites might produce equal or greater environmental harm than on-site discharge, or where transportation to alternative sites might produce a significant risk of greater environmental harm or a significant risk to human safety. For example, during certain seasons it may be undesirable to transport wastes off-site in areas of the North Atlantic or Alaska. Where the environmental or human health risks of transportation are significant, such transportation should not be considered a reasonable alternative.

*6. Determination of Permit Conditions*

Section 125.123(d) identifies specific permit conditions which are required for the issuance of a permit where a pre-permit issuance determination regarding degradation of the marine environment cannot be made. The director may also require any necessary permit conditions identified in section 125.123(d) to assure that unreasonable degradation of the marine environment will not occur under § 125.123(a).

*(a) Limiting Permissible Concentration Requirements*—Section 125.123(d)(1) requires, if a determination regarding unreasonable degradation cannot be made, that the discharge must pass certain bioassay-based requirements similar to those of EPA's ocean dumping regulations (40 CFR Part 227).

The applicant must demonstrate that his discharge will not exceed the limiting permissible concentration ("LPC") at the boundary of the mixing zone for a liquid phase and a suspended particular phase bioassay, in accordance with procedures for determining the LPC which are described in *Bioassay Procedures for the Ocean Disposal Permit Program*, U.S. EPA 600/9–78–010 March 1978 and in *Ecological Evaluation of Proposed Discharge of Dredge Material into the Ocean Waters*, EPA/Corps of Engineers, July 1977. If these manuals are revised in the future, bioassays shall be performed in accordance with any such revisions.

These regulations require an LPC which is derived from, but not identical to, the ocean dumping bioassay requirements. First, these regulations do not use section 304(a)(1) marine water quality criteria as a basis for determining an LPC. By use of a bioassay-based LPC, the ocean discharge criteria address the impact of the whole effluent and account for any synergistic or antagonistic effects. EPA recognizes that section 304(a)(1) criteria may in some cases require changes to reflect site-specific conditions, and the Agency is reevaluating the use of marine water quality criteria in the ocean dumping program.

The ocean discharge criteria also use a mixing zone extending laterally 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated

by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing zone is more appropriate. In calculating the dilution at the boundary of the mixing zone, the discharger may use any of the various documented plume models and dispersion models appropriate for the discharge and approved by the director. Some of these models are referenced in the technical documents for EPA's ocean dumping regulations and the technical document for EPA's section 301(h) regulations.

Where the discharge contains a solid phase, the applicant will be required to perform the solid phase bioassay and bioaccumulation testing on the waste material in accordance with procedures described in *Ecological Evaluation of Proposed Discharge of Dredge Material into the Ocean Waters*, EPA/Corps of Engineers, July 1977. For example, if a bioassay analysis is required in the case of offshore oil and gas platforms, the solid phase bioassay would be conducted as a test on drilling muds and cuttings which are to be discharged.

Not all applicants may have to perform bioassay tests on their effluents. Applicants may submit bioassay analyses performed on other wastes if the applicant provides documentation to show that the composition of the waste analyzed typifies that which the applicant is discharging or intends to discharge.

*(b) Monitoring Requirements*—Where a pre-issuance determination regarding degradation of the marine environment cannot be made, § 125.123(d)(2) requires that a monitoring program be in place which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge. This monitoring program may include effluent analysis, bioassay analysis and field studies. The technical document for EPA's section 301(h) regulations should provide support in developing such a monitoring program. It is not possible to make an *a priori* determination as to what constitutes an acceptable monitoring program. Site-specific conditions such as the size of the discharger's waste stream, the types of pollutants discharged, and the location of the discharge will play a role in determining what if any specific monitoring will be required under section 403(c) in addition to other NPDES monitoring requirements.

Section 125.123(d)(2) provides the director a flexible mechanism to develop such site-specific monitoring requirements. For example, a low volume discharger whose waste stream is unlikely to contain significant amounts of toxic pollutants will not be required in most cases to establish a monitoring program under these regulations. Similarly, a discharger of pollutants into an area of biological concern may be subject to more stringent monitoring requirements than one not discharging into such an area.

Monitoring programs, in some instances, may be coordinated for several dischargers. For example, with offshore oil and gas platforms, areawide monitoring programs for several dischargers may be the desirable monitoring approach. EPA headquarters has been active in assisting the regions in developing monitoring programs for offshore oil and gas exploration in areas of biological concern such as the Flower Garden Banks and Georges Bank. Those monitoring programs will serve as valuable guides for the development of additional monitoring programs for other areas of offshore oil and gas exploration and production. EPA headquarters will continue to play an active role in providing technical assistance in developing such monitoring programs.

*(c) Other Permit Conditions*—Under § 125.123(d)(3), the director may also require under other permit conditions on the discharge. For example, the director may require seasonal restrictions on the volume of wastes discharged where such restrictions are needed to assure protection of the marine environment. Seasonal restrictions may be necessary where the discharge is itself affected by seasonal conditions or where the biological community may become more sensitive to the impact of the discharge during certain seasonal conditions, such as during migration or spawning.

The director may require that the applicant perform bioaccumulation testing of the liquid and/or suspended particulate phase of the discharge where the director suspects such potential for bioaccumulation may exist, based on the nature of the pollutants discharged.

The director may also require process modifications, such as the substitution of less hazardous chemicals for those which are potentially harmful. He may also require process changes which would favor the recycling and reuse of potentially harmful pollutants. The Agency has recently established a task force to evaluate the discharges from offshore oil and gas exploration and production facilities and to evaluate alternate control strategies to mitigate the effects of such discharges, which include drilling muds and cuttings and produced water. Its recommendations may be used in drafting future requirements under section 403(c) authority.

The director may also require that diffuser systems for the discharger be sufficient to assure adequate dispersion of the waste stream.

*7. The Administrative Process and Burden of Proof*

Under the Act and this regulation, the director is responsible for making "reasonable judgments" on the preceding issues, and these judgments will be made on available information compiled in the administrative record of the permit issuance. As discussed above, this information may come from many sources including data submitted under the consolidated permit application form, environmental impact statements or section 301(h) variance applications. These guidelines do not require that all applicants submit specific information to support the section 403 determinations, and the director is encouraged to make use of existing information not prepared by applicants.

However, under the Clean Water Act, the Administrative Procedure Act, and EPA's consolidated permit regulations it is the applicant who is responsible for persuading the Agency that a permit should be issued. See 40 CFR 124.85(a)(1) and Opinion of the General Counsel No. 72. This obligation is particularly apparent with respect to applicants seeking permits to discharge into marine waters. Section 403(c)(2) requires that the director deny an NPDES permit application if there is insufficient information to make reasonable judgments under the guidelines. This means that the permit applicants should be prepared to submit sufficient information to support a determination to issue an NPDES permit.

Under the Agency's permit issuance procedures there is opportunity to submit information for the administrative record. An applicant or interested person who disputes any permit condition or tentative decision to deny an application must submit available information supporting their position during the public comment period. 40 CFR 124.13. In any subsequent evidentiary hearing on the permit, the Agency will have the burden of going forward to present its case supporting a challenged permit condition, but, at the conclusion of the Agency's presentation, the applicant or any other hearing participant has the burden of going forward to present its case. 40 CFR 124.85(a) (2) and (3). Moreover, the ultimate burden of persuading the

Agency to issue a permit remains at all times on the permit applicant.

## V. Cost and Economic Impacts

Executive Order 12044, 43 FR 12661 (March 23, 1978), requires EPA and other agencies to perform Regulatory Analyses of certain regulations. EPA's plan for implementing Executive Order 12044, 44 FR 30988 (May 29, 1979), requires a Regulatory Analysis for major regulations involving annual compliance costs of $100 million or meeting other specified criteria. Where these criteria are met, EPA's implementation plan requires a formal Regulatory Analysis including an economic impact analysis and an evaluation of regulatory alternatives. The Agency has determined that none of the criteria for requiring a regulatory analysis has been exceeded and therefore, the promulgated regulations for ocean dischargers do not require a formal Regulatory Analysis. Nevertheless, EPA performed an analysis that does meet all the requirements of Executive Order 12044 and EPA's plan for its implementation.

In accordance with the requirements under section 2(d)(8) of Executive Order 12044, the Agency intends to review the effectiveness and need for continuation of the provisions contained in this action no more than five (5) years from the effective date of these regulations. In particular, we will solicit comments from affected parties with regard to actual costs incurred and other burdens associated with compliance and will also review environmental data to evaluate the effectiveness of the regulation after it has gone into effect.

EPA's economic analysis divides the affected dischargers under the proposed regulation into five subcategories: POTWs, industrial dischargers, electric utilities, federal facilities, and offshore oil and gas wells. This analysis has assessed unit price increases, production changes for industrial dischargers, and user cost increases at POTWs.

The total cost of compliance is expected to be $13 million in 1981 and to increase to $28 million by 1985, in 1980 dollars. Costs may increase in succeeding years. The Agency expects no significant economic impacts will result from this regulation.

### *1. POTW s*

There are presently 102 POTWs discharging 2.1 billion gallons of effluent a day into the ocean. These POTWs are currently operating under EPA's NPDES regulations. Under these regulations POTWs may be required to monitor, perform benthic analyses, bioaccumulation tests and run further analyses of disposal alternatives in addition to those required under their present NPDES permit. The Agency performed an economic analysis to determine the potential costs and increases in user charges currently paid by households serviced by affected POTWs. EPA estimates that 47 POTWs will incur additional costs, due to their location and the size of their discharges, consisting of a first year cost of $1.2 million and an average annual cost of $.828 million thereafter.

For 46 of the 47 affected POTWs, user charges will increase between $.09 to $.83 per family per year. The impact analysis then compared these costs to median family incomes and found that no significant economic impacts would occur. However, the impact analysis has indicated that for one community user costs could increase by $33.00 per family per year.

Currently 36 POTWs subject to these regulations have applied for 301(h) variances. EPA has not yet begun to issue decisions on section 301(h) variance requests. However, much of the information generated for purposes of section 301(h) applications can be utilized in determining compliance with the requirements of these regulations. Furthermore, in recent years there has been a trend towards centralization of POTWs in many coastal areas. This continued centralization will reduce the number of ocean outfalls, thus lowering total monitoring and user costs.

### *2. Industrial Dischargers*

Industrial dischargers will face the same type of compliance requirements as POTWs. Monitoring and compliance requirements for industrial dischargers are dependent on the particular geographic area as well as the composition and volume of the effluent. At the present time there are 74 industrial operations affected by this regulation, discharging approximately 212 million gallons per day of effluent. The Agency expects that small industrial plants discharging non-toxic pollutants will not be affected by this regulation. EPA estimates 46 dischargers will incur additional costs due to this regulation, with a first year cost of $4.72 million, and annual costs of $3.52 million in the following years.

An analysis was conducted for a sample of industrial dischargers on both the East and West Coasts to determine the potential price increases that could result due to this regulation. EPA estimates that average unit prices for products produced will generally increase less than .1 percent to comply with this regulation. No plant closures, unemployment or other significant economic impacts are expected due to these requirements.

### *3. Federal Facilities*

At the present time there are 31 federal facilities affected by this regulation. These facilities are discharging approximately 124 million gallons per day of effluent into the ocean. The greater part of the total, 75 million gallons per day, originates from the strategic oil reserve construction site on the Texas coast. The remaining 49 million gallons a day are from a variety of small sources, e.g., Defense Department and Coast Guard installations. The Agency estimates that four federal facilities discharging 102 million gallons per day will actually incure additional costs from this regulation. The total annual costs for compliance under the proposed regulation is expected to be approximately $.476 million, with the largest proportion of this amount being related to the construction of the United States strategic oil reserve. EPA does not expect any significant economic impacts to occur due to expenditures by these facilities.

### *4. Electric Utilities*

The Agency does not expect any significant costs to be incurred by electric utilities. Compliance with the present effluent limitation requirements and with regulations implementing section 316(a) of the Clean Water Act are expected to result in compliance with requirements in this regulation. The Agency expects that monitoring for chlorine discharges may be required at some facilities. However, the cost of such monitoring would not be significant, and no economic impacts are expected to occur.

### *5. Offshore Oil and Gas Operations*

There are presently fewer than 30 oil and gas platforms which are expected to incur additional costs due to this regulation. The Agency estimates that 7,582 exploratory and production wells will be drilled between 1981–1985 with approximately 835 (11 percent) expected to incur additional costs resulting from compliance with this regulation. The Agency has based its assessment on the assumption that compliance with applicable NPDES permit requirements will generally result in compliance with these regulations for all oil and gas wells except those located in areas of biological concern. Wells that cannot meet the requirements of this regulation through compliance with their NPDES permit terms will be required to initiate

monitoring, testing, or changes in their discharge practices.

The Agency's evaluation of the economic effects of this regulation assumed the installation of "zero discharge" technologies in order to evaluate the maximum possible impact of these regulations. The cost of "zero discharge" varies according to geographic location, differences in weather conditions, water depths, biological communities, and other similar factors. The economic analysis groups wells into four regions—the Atlantic Ocean, Gulf Ocean, West Coast, and Alaskan waters.

The number of wells that would need to make expenditures beyond those required under existing NPDES permit requirements was estimated from Department of Interior data regarding current and future lease tracts in the ocean and from current trends in new drilling. The estimates here project activity from 1981–1985. Should the amount of new drilling increase or decrease beyond that time the annual cost of this regulation would increase or decrease proportionately.

It is estimated that the annual cost for offshore oil and gas operations locating in or near areas of biological concern will incur compliance costs ranging from seven to 23 million dollars per year between 1981 and 1985. Costs for various forms of monitoring are expected to be less. There are numerous alternatives which include process changes, mud substitution and shunting as potential compliance alternatives. A number of combinations are possible, depending on geographic location, water depth, temperature and specific biological life. For this reason only the worst case, "zero discharge" requirement is presented here.

The typical compliance cost per year for each geographical area for the no discharge alternative is presented below. Costs for operations in the Atlantic Ocean are expected to range between .6 and 6.9 million dollars per year, and Gulf of Mexico operations will face costs ranging between 1 and 3.6 million dollars per year. Operations located on the West Coast will face costs ranging between 4.3 and 12.4 million dollars per year. However, the California Ocean Plan requires outer continental shelf operations to conform to strict State requirements, which may reduce the incremental compliance costs under this regulation. Alaskan operations will face compliance costs ranging between 1.2 and 4.5 million dollars per year.

Oil and gas prices at the well head are not expected to be affected by this regulation, since compliance costs cannot be directly passed forward due to various price controls. However, the cost of this regulation may be manifested in reduced bids for new lease tracts. The net effect of this regulation would be a loss in future revenues to the federal government in the amount which this regulation costs the oil industry.

Dated: September 26, 1980.

**Douglas M. Costle,**

*Administrator.*

**Appendix A—Public Comments**

The following parties responded with comments regarding the February 12, 1980 Ocean Discharge Criteria postmarked on or before the April 28, 1980 close of the public comment period: Charles A. Lunsford, Commonwealth of Virginia, State Water Control Board; State of Hawaii, Dept. of Health; County of San Diego, Community Services Agency, Dept. of Sanitation & Flood Control; City of Los Angeles, California Dept. of Public Works; Menasha Corporation; National Manufacturing Company; Commonwealth of Virginia, State Water Control; County Sanitation Districts of Los Angeles County; Crown Zellerbach Environmental Services; Kaiser Aluminum & Chemical Corporation; Boise Cascade, Paper Group; Davies Hamakua Sugar Company; Dept. of Health, Education & Welfare, Public Health Service; Hawaiian Sugar Planters' Association; Hilo Coast Processing Company; Netarts-Oceanside Sanitary District; International Paper Company; State of Alaska, Dept. of Fish & Game; Commonwealth of Virginia, Hampton Roads Sanitation District; Marathon Oil Company, Production Operations; San Francisco Wastewater Program, City and County of San Francisco, California; U.S. Cape May County Municipal Utilities Authority, New Jersey; Dept. of the Army, South Atlantic Division, Corps of Engineers; State of California, Resources Agency, Dept. of Fish and Game; National Fisheries Institute, Inc., Natural Resources Defense Council, Inc., Sussex County Council, Georgetown, Delaware; American Paper Institute/ National Forest Products Association, Environmental Program, Houston Audubon Society; Texas Eastern Transmission Corporation; State of Delaware, Department of Natural Resources and Environmental Control, Division of Environmental Control; Department of the Air Force, Engineering and Serivce Center; Star-Kist Foods, Inc.; State of California, Resources Agency, State Water Resources Control Board; Office of the Assistant Secretary of Defense, Energy, Environment and Safety; the Ocean County Utilities Authority, New Jersey, National Wildlife Federation; Department of the Army, Office of the Chief of Engineers; Shell Oil Company; Texaco, Inc., American Cyanamid Company; Atlantic Richfield Company; E. I. du Pont de Nemours and Company, Inc.; Public Service Company of New Hampshire; Chevron U.S.A., Inc., Environmental Affairs; Commonwealth of Puerto Rico, Puerto Rico Aqueduct and Sewer Authority; Exxon Company, U.S.A.; Offshore Operators Committee, Southern California Edison Company; Virgin Islands Rum Industries, Ltd., Fried, Frank, Harris, Shriver & Kampelman; Chevron U.S.A. Inc., Pillsbury, Madison & Sutro; City of Watsonville, California; Conoco, Inc.; Conservation Law Foundation of New England, Inc.; Mobil Oil; Corporation; Western Oil & Gas Association; Alaska Lumber and Plup Company, Inc., Robertson, Monagle, Eastaugh & Bradley; American Petroleum Institute; Cody Biggs; Chemical Manufacturers Association, Covington & Burling; City of Skagway, Alaska, Robertson, Monagle, Eastaugh & Bradley; Columbia Gas System Service Corporation; Department of Energy; Gulf Oil Exploration & Production Company; National Food Processors Association; Pacific Legal Foundation; Phillips Petroleum Company; Tuna Research Foundation, Inc.; Union Oil Company of California; U.S. Department of Commerce, National Oceanic and Atmospheric Administration, Environmental Research Laboratories; Natural Resources Defense Council, Inc.; U.S. Fish & Wildlife Service, Alaska Area Office; Utility Water Act Group, Hunton, & Williams; Department of Water & Power, the City of Los Angeles, California; U.S. Department of the Interior, Geological Survey.

The following parties responded with comments postmarked after the April 28, 1980 close of public comment period: U.S. Department of the Interior; Chevron, U.S.A., Pillsbury, Madison & Sutro; University of Southern Maine for State Planning Office, State of Maine; Monmouth County Board of Health, New Jersey; State of Maine, State Planning Office; Western Oil and Gas Association.

The following parties testified at the March 21, 1980 hearing: George P. Haley, Chevron USA; Frank Parker, Coordinator, Environmental and Government Affairs Chevron USA; Elizabeth F. Kroop, Counsel for the National Wildlife Federation; Walter J. Zizik, Project Coordinator, South Monmouth Regional Sewerage

Authority; Curt D. Rose, Manager, Aquatic Sciences Division, Energy Resources Company; Frank Melone, Southern California Edison Company; William A. Anderson, Attorney, Utility Water Act Group; Joseph F. Dietz, Coordinator of Environmental Affairs, San Diego Gas and Electric Company; Edward G. Gladbach, Civil Engineer, Department of Water and Power, City of Los Angeles; Peter Holmes, Research Assistant, Atlantic Coast Project, Natural Resources Defense Council.

**Appendix B—Response to Public Comments**

1. *Comment.* The Agency received several public comments questioning the accuracy of the inventory in the proposal and noting that there was uncertainty over the exact location of the baseline marking the landward boundary of the territorial seas, particularly in parts of Alaska, Florida, Puerto Rico, Oregon and Washington.

*Response.* Even where the baseline has not been plotted, there are available nautical charts for the various bays and harbors in question. The Office of the Geographer in the Department of state is responsible for the charts plotting closing lines across islands and shoreline markers depicting the baseline of the territorial sea. That office is assisted by the Interagency Baseline Committee, chaired by the Department of State, with other members coming from the National Oceanic and Atmospheric Administration, the Coast Guard, and the Departments of Justice and the Interior. The Committee meets several times a year to make baseline determinations.

To facilitate the ongoing implementation of section 403, EPA has identified dischargers whose coverage under that provision is in question, due to uncertainty concerning the location of the baseline. The Agency has submitted a written rquest to the Department of State and the Interagency Baseline Committee for a determination whether these dischargers are outside the baseline of the territorial seas and thus subject to section 403. EPA will continue to seek determinations when NPDES permits are issued, modified, or reissued, where there is doubt as to whether a discharger is within the purview of section 403.

2. *Comment.* One commenter stated that while it appeared that the Agency intended for coastal electric utilities to be subject to the regulations, these plants were not counted among the 71 land-based industrial dischargers.

*Response.* Electric utilities outside the baseline are covered by this regulation and EPA, in response to the comment, confirmed this with representatives of the affected industry during the public comment period. The Agency also extended the comment period by thirty days, at the request of this commenter and others, to allow additional time for submission of comments on the proposal.

The Agency has identified 25 covered plants, which are included in the cost and economic impact analysis for the regulation. In addition, EPA has updated the inventory of subject marine dischargers. As the preamble notes, the number of land-based dischargers subject to section 403 is limited. The updated inventory identifies 232 such dischargers, including 102 POTWs, 74 industrial facilities, 25 steam electric utilities, and 31 federal facilities. These figures do not include dischargers in Alaska whose location relative to the baseline defining the boundary of the territorial seas has not been established. However, the Agency believes that most of these dischargers are small and that any environmental or economic impacts would be minimal. The Agency also estimates that there are some 3,000 subject offshore oil and gas platforms.

3. *Comment.* A number of commenters stated that under the proposed regulation, ocean dischargers might be subject to more stringent controls and, accordingly, might incur higher costs than would dischargers into potentially more sensitive estuarine and freshwater systems where the assimilative capacity of the body of water may be less than in the oceans and the potential impact of pollution on the ecosystem greater.

*Response.* As the preamble to the regulation notes, the Clean Water Act limits the coverage of section 403 to dischargers into waters seaward of the baseline marking the territorial seas. This additional assurance of protection and its limitation to the waters of the territorial seas, the contiguous zone, and the oceans is, therefore, a matter of Congressional mandate. EPA has designed its regulations to provide this protection, as Congress has directed. As to the question of costs, the Agency anticipates that in most cases, technology-based effluent limitations required under other provisions of the Act will be adequate in themselves to afford the necessary protection for the marine environment. As to freshwater and estuarine systems, the Agency agrees that these waters must be protected also; the statutory authority to accomplish this, however, rests in other sections of the Act and in other environmental statutes.

4. *Comment.* A number of commenters suggested that the ocean discharge criteria should merely have the effect of guidelines, rather than regulatory requirements, and should provide flexibility and allow for discretion on the part of the director to apply appropriate portions of the guidelines to the situation of an individual discharger.

*Response.* As noted in the preamble, these regulations, although from time to time described as "guidelines" or "criteria" to avoid repetition, establish mandatory requirements authorized by section 403(c). Whatever the terminology, they have the effect of mandatory regulations because, at any time that promulgated guidelines are in effect, no NPDES permit may be issued "except in compliance with such guidelines." Nevertheless, the regulation provides the permit writer flexibility in tailoring information requests and permit conditions to the circumstances of individual dischargers, based on local conditions.

5. *Comment.* Several commenters expressed the concern that while the proposed regulation required a permit applicant to demonstrate to the director that its discharge would have no unreasonable adverse impact on the environment, or that adequate toxics control and monitoring programs were in place, the proposal failed to tell the applicant how to make such a demonstration.

*Response.* In order to ensure that applicants will receive adequate guidance, the final regulation has been clarified to require that the director inform an applicant of any specific information that must be supplied. In addition, in an attempt to minimize the information collection obligation of applicants, the final regulation provides that the director may consider information already available to him in making the determinations required under § 125.123(a), (b), or (c).

6. *Comment.* Several commenters suggested that, for the territorial seas, the purposes of section 403 were being served already by State water quality standards required under section 303 and by technology-based effluent limitations under sections 301 and 304 of the Clean Water Act. Another commenter stated that pretreatment programs required under section 307 should also ensure protection of the marine environment.

*Response.* The Agency agrees that State water quality standards, technology-based limitations and pretreatment programs are all necessary to protect the marine environment. While in most instances discharges in compliance with such standards, limits, and programs will also be determined to pass the "no unreasonable degradation" test in these regulations, there may be

instances where this will not be the case. For example, there may be instances where no State water quality standards have been established for specific pollutants being discharged. Further, State water quality standards do not generally apply beyond the limits of the territorial seas, while the section 403 criteria apply also to the contiguous zone and the oceans. In addition, there may be instances in which technology-based controls will not be sufficient to assure protection of a particular marine environment, necessitating more stringent controls to assure that the section 403 criteria are met. Such may also be true of pretreatment programs; while the director may consider the effectiveness of a given pretreatment program in making the "unreasonable degradation" determination, he should not assume that the existence of pretreatment ensures protection of the marine environment for purposes of section 403.

7. *Comment.* Several commenters stated that while the proposed regulation differentiated special "areas of biological sensitivity" to assure those areas were not adversely affected, the regulation failed to adequately define what constitutes such areas. Another commenter suggested that the term should be replaced by "areas of biological concern" because "biological sensitivity" connotes a narrow concern for unique or fragile ecosystems. The commenter suggested that the emphasis of the regulation should be on unwarranted ecological damage regardless of the biological sensitivity of the area.

*Response.* The scope of this regulation is broader than protecting only those areas that are termed "sensitive"; as in the proposed regulation, these guidelines seek to prevent unreasonable degradation of the marine environment regardless of where the discharge occurs. Although the regulation no longer attempts to classify areas as "sensitive" or "nonsensitive", the location of the discharge is an important element in determining the level of control necessary to prevent such degradation. Section 125.122 identifies for the director a number of factors relating to the biology of the local community which are important in assessing the impact of a discharge.

8. *Comment.* A substantial number of comments submitted on behalf of various dischargers suggested that the dischargers in question—including small POTWs, electric utilities, seafood processors, Alaskan logging operations, and offshore oil and gas exploration and production wells—should be exempt from the requirements of section 403. Several commenters made the argument, in some cases based on submissions of technical data and reports, that their discharges already were subject to controls adequate to protect the marine environment. Some stated that their discharges resulted in only *de minimus* effects on the environment. Some stated that compliance with various provisions of the proposal would result in economic hardship.

*Response.* EPA has concluded that there is no basis for categorically exempting classes of subject dischargers from the coverage of section 403. While the data submitted by some commenters may be useful in determining whether a particular discharge will meet the "unreasonable degradation" test, it does not provide a basis for such a blanket exemption. However, while a permit writer is not precluded from seeking additional site-specific information, the submission of large quantities of data for particular dischargers or classes of dischargers makes it unlikely that a permit writer will find it necessary to require these applicants to submit any substantial quantity of additional data. Similarly, in the cases of small POTWs and others where the discharge is expected to have only a minimal impact, the flexibility which the final regulation provides will allow the permit writer to take this situation into account, rather than mandating a rigid across-the-board application of all requirements, with their associated costs.

9. *Comment.* Several commenters suggested that POTWs granted section 301(h) variances from secondary treatment requirements should be exempt from section 403 because of significant similarities in the two provisions. Another commenter, however, stated that section 301(h) contains no analogue to section 403(c)(1)(F) or (G) and asserted that toxic pollutants are not adequately controlled under section 301(h).

*Response.* Despite differences in statutory language, sections 403 and 301(h) share similar objectives in seeking to assure protection of the marine environment, and the respective determinations whether those objectives have been met under each provision is based on similar information. Section 301(h)(2) requires that a successful applicant for a variance demonstrate, among other things, that "such modified requirements will not interfere with the attainment or maintenance of that water quality which assure protection of public water supplies and the protection of shellfish, fish, and wildlife, and allows recreational activities in and on the water." Section 125.61 of EPA's section 301(h) regulations requires full and detailed descriptions of the physical characteristics of the discharge, its biological impact on the marine environment, and its impact on public water supplies and recreation. Given therefore that a successful section 301(h) applicant will have collected and presented substantial amounts of data on the effect of its discharge on the marine environment, including its inhabitants and uses, the final ocean discharge regulations provide that a successful section 301(h) demonstration creates a rebuttable presumption that an applicant will satisfy the section 403(c) guidelines as well. While a permit writer is not precluded from placing additional requirements on such an applicant under these regulations, it is unlikely that this will be necessary in light of the through-going demonstration the applicant has made for purposes of section 301(h).

This approach is consistent with legislative history to the effect that section 301(h) applicants must comply also with section 403. This language indicates that Congress did not intend for section 403 to become a dead letter with the subsequent enactment of section 301(h). Unlike the approach of those commenters who sought to make compliance with section 403 automatic for an applicant who had obtained a section 301(h) variance, the "rebuttable presumption" approach does not treat section 403 as redundant. Nor, however, does it impose a redundant data-gathering task on successful section 301(h) applicants either, taking account as it does of the unmistakable similarities in the showings required under the two provisions.

The Agency disagrees with the comment that the toxic control provisions of the section 301(h) regulations are not adequate. Moreover, if a permit writer determines that toxic pollutants in the discharge of a successful section 301(h) applicant are not adequately controlled for purposes of section 403, he can require additional controls or, if necessary, require zero-discharge permit terms for those pollutants.

10. *Comment.* Several commenters suggested that coastal steam electric utility plants granted a variance under section 316(a) of the Act should be exempt from demonstrating compliance with section 403, on the grounds that the demonstration necessary for obtaining a section 316(a) variance provides the requisite assurance that the marine environment is protected for purposes of section 403(c).

*Response.* To obtain a section 316(a) variance, an applicant must demonstrate

that effluent controls on its thermal discharge will be sufficient to assure the protection and propagation of a balanced indigenous population of shellfish, fish and wildlife in and on the water. The Agency agrees that in most cases the demonstration required of a successful section 316(a) applicant will be sufficient to allow the permit writer to conclude that there will be no unreasonable degradation of the marine environment due to excess heat. While on the reasoning set out in the previous response successful section 316(a) applicants will not be exempt from section 403, the regulation provides that a successful section 316(a) application creates a rebuttable presumption of compliance with section 403(c) for the thermal component of the discharge.

11. *Comment.* Commenters also suggested that those publicly-owned treatment works which installed secondary treatment should be exempt from requirements under section 403.

*Response.* Limitations established pursuant to section 403 are a supplement to technology-based limitations such as secondary treatment for POTWs, and no class of a discharger is exempt from compliance with these regulations. However, it is likely that secondary treatment will generally be adequate to satisfy section 403 requirements where there is adequate pretreatment by industrial sources and where the POTW is not discharging into areas of biological concern.

12. *Comment.* As noted above, some commenters asserted that the ocean discharge criteria should merely be guidelines providing information to the permit writer. Other commenters, however, stated that the guidelines should require that a discharge pass a quantitative test, such as the bioassay requirements used in the ocean dumping regulations, and comply with State and EPA water quality criteria as a prerequisite to permit issuance.

*Response.* The Agency has revised the proposed regulation to allow necessary flexibility to the director in assessing both the impact of a discharge and permit limitations. However, the regulation does impose minimum permit limitations, including a bioassay-based limitations, in areas where the long range impact of a discharge is not fully understood. This approach should provide certainty and consistency in permit limitations in areas where the determinations by the permit writer would be the most difficult and complex.

Discharges into the territorial seas must comply with any applicable state water quality criteria. However, the Act generally does not provide for the application of these criteria to the contiguous zone and oceans. Although the Act establishes a complete water quality program for State waters based on designated uses and supporting criteria, no such scheme exists for marine waters beyond State jurisdiction. The 403(c) regulation is consistent with the Agency policy outlined in the section 301(h) regulations (44 FR 34810–34811), and will utilize water quality criteria published pursuant to section 304(a)(1), as they are developed, as a basis for assessing the environmental impact of such pollutants.

13. *Comment.* Several commenters asserted that, under the proposed regulation, no predischarge determination was required by the director to assure that the marine environment was protected. Instead, commenters stated, the proposed regulation relied on post discharge monitoring.

*Response.* Under the final regulations, no discharge of pollutants may be authorized unless, before permit issuance, the director has sufficient information to make a reasonable determination that there will be no irreparable harm to the environment while monitoring is undertaken to determine if there will be unreasonable degradation. In addition the permit must specify certain mandatory limitations.

14. *Comment.* The Agency received numerous comments regarding the monitoring requirements outlined in section 125.127 of the proposed regulation. The major issue raised was that the monitoring requirements should be as flexible as possible providing an applicant a clear description of the information he must provide. Commenters suggested that the rigor of the monitoring program should be tailored to site-specific conditions such as the nature and location of the discharge. In addition, a number of commenters stated that compliance with the proposed monitoring requirements would result in severe economic hardship for small dischargers. It was suggested that the latter, especially small POTWs, be exempted from the monitoring requirements.

*Response.* As discussed in the preamble, these regulations have been revised to allow the permit writer to request from the applicant only that information necessary to make judgments required by the guidelines. In some cases this will involve monitoring programs, and the director will work with the applicant in identifying specific information that must be supplied as part of the permit application process.

Since no discharge may be allowed which would result in unreasonable degradation of the marine environment, and since the permit writer must be afforded the means to make the necessary determinations under these regulations, EPA has concluded that it may not exempt categories of dischargers, even small dischargers, from monitoring requirements as an initial matter. Nevertheless, the final regulations do not require monitoring in all cases, and, where monitoring is necessary, provide for flexibility in fashioning site specific requirements. Although any monitoring that may be necessary will depend on the nature and location of the discharge in question, small dischargers generally are not expected to incur significant economic costs as a result of this regulation.

15. *Comment.* Several commenters suggested that, in light of the similarities between section 403(c) of the Clean Water Act and section 102(a) of the Marine Protection, Research and Sanctuaries Act, the ocean discharge criteria should be similar to the ocean dumping regulations.

*Response.* EPA recognizes that in section 403(c) of the Clean Water Act and section 102(a) of the Marine Protection, Research, and Sanctuaries Act, Congress adopted similar although not identical provisions. Hence, in the regulations implementing the respective statutes, similar criteria may be appropriate.

EPA first promulgated ocean dumping criteria in 1973; those criteria were amended in 1977. Initially, the regulations served as joint regulations for the CWA and the MPRSA. Since promulgation of the ocean dumping regulations, however, EPA has received a number of comments based on those regulations. In addition, increasing data has become available in respect to the environmental impact of disposing of material at various locations in the ocean, by various methods.

The ocean discharge regulations being promulgated today are based on the latest data and information available to EPA, and the Agency believes these regulations are consistent with the CWA and with current scientific and technical knowledge. Various factors, including the MPRSA comments and the new data, suggest that it may now be appropriate for EPA to review the ocean dumping regulations as well. Such a review may provide further insights on an appropriate overall approach for protecting the ocean; and inconsistencies which may exist between the current sets of regulations can be resolved in the context of that action. However, in addition to any statutory distinctions, differences in the manner of disposal and the types of pollutants discharged may warrant

different regulatory approaches under these two statutes.

16. *Comment.* Several commenters suggested that dischargers who were not causing unreasonable degradation of the marine environment should not be required to assess the availability of alternatives.

*Response.* The proposed regulation has been modified to require the assessment of reasonable alternatives only where the director cannot determine whether the discharge will cause unreasonable degradation of the marine environment. In cases where the director determines that the discharge will not cause such degradation, an NPDES permit may be issued notwithstanding the availability of an alternative to ocean disposal.

Although the Clean Water Act contains as an ultimate goal the complete elimination of the discharge of pollutants, the water quality provisions of the Act, including sections 303 and 403, do not require that discharges into either inland or offshore waters be prohibited in the absence of unreasonable water quality impacts.

17. *Comment.* Several commenters expressed concern that the requirements for general permits, specified in section 125.129 of the proposed regulation, were not consistent with the requirements for individual permits.

*Response.* Section 125.129 has been deleted from the final regulation, and the director is required to make the same determinations when issuing either general or individual permits.

18. *Comment.* A few commenters objected to language in the preamble of the proposal to the effect that the permitting authority would be free to draw on his own knowledge of conditions in the vicinity of an outfall in determining whether a discharge adversely affected the marine environment. These commenters expressed the "due process" concern that this language allowed the permitting authority to issue permits on the basis of information not made known to the permittee and not in the administrative record.

*Response.* The language in question does not appear in the final regulation or in its preamble. While the regulation provides that the director make the determinations under § 125.123(a), (b), or (c) on the basis of "available information," that language was added in response to the suggestion of numerous commenters that permit applicants should not be required for purposes of Section 403 to resubmit data which was already available to the permit writer.

19. *Comment.* EPA received comment to the effect that the reference in the proposed regulations to schedules allowing additional time for compliance with Section 403 requirements should be limited to existing dischargers, consistent with the provisions of the NPDES regulations.

*Response.* Section 125.123(d)(3) of the final regulation provides for "schedules of compliance for existing dischargers," as suggested above.

20. *Comment.* The Agency received several comments regarding the mixing zone analysis as described in § 125.123. Some commenters suggested that the models identified by the Agency in the proposal would not be appropriate for all types of discharge. Other commenters suggested that the Agency should use the ocean dumping mixing zone definition.

*Response.* The mixing zone analysis in the final regulations is intended for use in calculating whether the limiting permissible concentration is violated in instances where bioassay analysis is required. The proposed regulation required a mixing zone analysis for all dischargers to assure that, following initial dilution, the discharge was dispersed so as not to adversely affect areas of biological sensitivity. As noted previously, this requirement has been deleted from the final regulation. In the final regulation, a mixing zone analysis is required only in those instances where the director cannot determine that unreasonable degradation will not occur and where a bioassay analysis is required.

The mixing zone definition in these regulations is consistent with the ocean dumping mixing zone definition identified in the EPA/Corps of Engineers technical manual, with some modifications to account for the differences in the nature of discharged wastes versus those which are dumped. The ocean dumping mixing zone was devised primarily to facilitate analysis of impacts from intermittent discharges from moving vessels, whereas the 403(c) regulations are intended to facilitate analysis of continuous discharges from stationary sources. The final regulation also allows the discharger to use alternative methods for determining the mixing zone where scientific evidence demonstrates they are appropriate and where EPA concurs.

A new Subpart M is added to read as follows:

## Subpart M—Ocean Discharge Criteria

Sec.

125.120 Scope and purpose.
125.121 Definitions.
125.122 Determination of unreasonable degradation of the marine environment.
125.123 Permit requirements.
125.124 Information required to be submitted by applicant.

### § 125.120 Scope and purpose.

This subpart establishes guidelines for issuance of National Pollutant Discharge Elimination System (NPDES) permits for the discharge of pollutants from a point source into the territorial seas, the contiguous zone, and the oceans.

### § 125.121 Definitions.

(a) "Irreparable harm" means significant undesirable effects occurring after the date of permit issuance which will not be reversed after cessation or modification of the discharge.

(b) "Marine environment" means that territorial seas, the contiguous zone and the oceans.

(c) "Mixing zone" means the zone extending from the sea's surface to seabed and extending laterally to a distance of 100 meters in all directions from the discharge point(s) or to the boundary of the zone of initial dilution as calculated by a plume model approved by the director, whichever is greater, unless the director determines that the more restrictive mixing zone or another definition of the mixing zone is more appropriate for a specific discharge.

(d) "No reasonable alternatives" means: (1) No land-based disposal sites, discharge point(s) within internal waters, or approved ocean dumping sites within a reasonable distance of the site of the proposed discharge the use of which would not cause unwarranted economic impacts on the discharger, or, notwithstanding the availability of such sites,

(2) On-site disposal is environmentally preferable to other alternative means of disposal after consideration of: (i) The relative environmental harm of disposal on-site, in disposal sites located on land, from discharge point(s) within internal waters, or in approved ocean dumping sites, and

(ii) The risk to the environment and human safety posed by the transportation of the pollutants.

(e) "Unreasonable degradation of the marine environment" means: (1) Significant adverse changes in ecosystem diversity, productivity and stability of the biological community within the area of discharge and surrounding biological communities,

(2) Threat to human health through direct exposure to pollutants or through consumption of exposed aquatic organisms, or

(3) Loss of esthetic, recreational, scientific or economic values which is unreasonable in relation to the benefit derived from the discharge.

**§ 125.122 Determination of unreasonable degradation of the marine environment.**

(a) The director shall determine whether a discharge will cause unreasonable degradation of the marine environment based on consideration of: (1) The quantities, composition and potential for bioaccumulation or persistence of the pollutants to be discharged;

(2) The potential transport of such pollutants by biological, physical or chemical processes;

(3) The composition and vulnerability of the biological communities which may be exposed to such pollutants, including the presence of unique species or communities of species, the presence of species identified as endangered or threatened pursuant to the Endangered Species Act, or the presence of those species critical to the structure or function of the ecosystem, such as those important for the food chain;

(4) The importance of the receiving water area to the surrounding biological community, including the presence of spawning sites, nursery/forage areas, migratory pathways, or areas necessary for other functions or critical stages in the life cycle of an organism.

(5) The existence of special aquatic sites including, but not limited to marine sanctuaries and refuges, parks, national and historic monuments, national seashores, wilderness areas and coral reefs;

(6) The potential impacts on human health through direct and indirect pathways;

(7) Existing or potential recreational and commercial fishing, including finfishing and shellfishing;

(8) Any applicable requirements of an approved Coastal Zone Management plan;

(9) Such other factors relating to the effects of the discharge as may be appropriate;

(10) Marine water quality criteria developed pursuant to section 304(a)(1).

(b) Discharges in compliance with sections 301(g), 301(h), or 316(a) variance requirements or State water quality standards shall be presumed not to cause unreasonable degradation of the marine environment, for any specific pollutants or conditions specified in the variance or the standard.

**§ 125.123 Permit requirements.**

(a) If the director on the basis of available information including that supplied by the applicant pursuant to § 125.124 determines prior to permit issuance that the discharge will not cause unreasonable degradation of the marine environment after application of any necessary conditions specified in § 125.123(d), he may issue an NPDES permit containing such conditions.

(b) If the director, on the basis of available information including that supplied by the applicant pursuant to § 125.124 determines prior to permit issuance that the discharge will cause unreasonable degradation of the marine environment after application of all possible permit conditions specified in § 125.123(d), he may not issue an NPDES permit which authorizes the discharge of pollutants.

(c) If the director has insufficient information to determine prior to permit issuance that there will be no unreasonable degradation of the marine environment pursuant to § 125.122, there shall be no discharge of pollutants into the marine environment unless the director on the basis of available information, including that supplied by the applicant pursuant to § 125.124 determines that: (1) Such discharge will not cause irreparable harm to the marine environment during the period in which monitoring is undertaken, and

(2) There are no reasonable alternatives to the on-site disposal of these materials, and

(3) The discharge will be in compliance with all permit conditions established pursuant to paragraph (d) of this section.

(d) All permits which authorize the discharge of pollutants pursuant to paragraph (c) of this section shall: (1) Require that a discharge of pollutants will: (A) following dilution as measured at the boundary of the mixing zone not exceed the limiting permissible concentration for the liquid and suspended particulate phases of the waste material as described in section 227.27(a) (2) and (3), section 227.27(b), and section 227.27(c) of the Ocean Dumping Criteria; and (B) not exceed the limiting permissible concentration for the solid phase of the waste material or cause an accumulation of toxic materials in the human food chain as described in sections 227.27 (b) and (d) of the Ocean Dumping Criteria;

(2) Specify a monitoring program, which is sufficient to assess the impact of the discharge on water, sediment, and biological quality including, where appropriate, analysis of the bioaccumulative and/or persistent impact on aquatic life of the discharge;

(3) Contain any other conditions, such as performance of liquid or suspended particulate phase bioaccumulation tests, seasonal restrictions on discharge, process modifications, dispersion of pollutants, or schedule of compliance for existing discharges, which are determined to be necessary because of local environmental conditions, and

(4) Contain the following clause: In addition to any other grounds specified herein, this permit shall be modified or revoked at any time if, on the basis of any new data, the director determines that continued discharges may cause unreasonable degradation of the marine environment.

**§ 125.124 Information required to be submitted by applicant.**

The applicant is responsible for providing information which the director may request to make the determination required by this subpart. The director may require the following information as well as any other pertinent informaton: (a) An analysis of the chemical constituents of any discharge;

(b) Appropriate bioassays necessary to determine the limiting permissible concentrations for the discharge;

(c) An analysis of initial dilution;

(d) Available process modifications which will reduce the quantities of pollutants which will be discharged;

(e) Analysis of the location where pollutants are sought to be discharged, including the biological community and the physical description of the discharge facility;

(f) Evaluation of available alternatives to the discharge of the pollutants including an evaluation of the possibility of land-based disposal or disposal in an approved ocean dumping site.

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Part VII

# Environmental Protection Agency

## Standards of Performance for New Stationary Sources; Addition of Reference Methods 24 and 25 to Appendix A

40 CFR Part 60

[FRL 1525-7]

## Standards of Performance for New Stationary Sources; Addition of Reference Methods 24 and 25 to Appendix A

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This action establishes two new reference methods to be added to Appendix A of 40 CFR Part 60, Standards of Performance for New Stationary Sources. Reference Method 24 will be used to determine the volatile organic compound (VOC) content of coating materials, and Reference Method 25 will be used to determine the percentage reduction of VOC emissions achieved by emission control devices. These reference methods will be used in several air pollution regulations for industrial surface coatings which are being developed for proposal and promulgation.

**EFFECTIVE DATE:** October 3, 1980.

**ADDRESSES:** *Background Information Document.* The Background Information Document (BID) for the promulgated test methods may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, North Carolina 27711, telephone number (919) 541-2777. Please refer to "Reference Methods 24 and 25—Background Information for Promulgated Test Methods," EPA-450/3-79-030c.

*Docket.* Docket No. A-79-05, containing all supporting information and public comments, is available for public inspection and copying between 8:00 a.m. and 4:00 pm., Monday through Friday, at EPA's Central Docket Section, Room 2902, Waterside Mall, 401 M Street SW., Washington, D.C. 20460.

**FOR FURTHER INFORMATION CONTACT:** Mr. Gene W. Smith, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5421.

**SUPPLEMENTARY INFORMATION:**

### Summary of Reference Methods

Reference Method 24, "Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings," is used to determine the volatile matter content, water content, density, volume solids, and weight fraction solids of paint, varnish, or related surface coatings. Several ASTM standard methods which comprise Method 24 are used to make these determinations. All coatings are analyzed by the same procedure except for the additional step of measuring the water content of waterborne (water reducible) coatings. A data validation procedure is used to establish precision limits for the coating analysis. This verifies the ability of the analyst and the analytical procedure to obtain reproducible results for the coatings tested. In addition for waterborne coatings, the measured parameters are modified by the appropriate confidence limits based on between-laboratory precision statements.

Reference Method 25, "Determination of Total Gaseous Nonmethane Organic Emissions as Carbon," is used to measure the total gaseous nonmethane organics in source emissions. An evacuated cylinder is used to withdraw emission samples from the stack through a chilled condensate trap. After sampling is completed, the contents of the condensate trap and evacuated cylinder are analyzed separately. The organic content of the condensate trap is oxidized to $CO_2$ which is quantitatively collected in an intermediate collection vessel; a portion of the carbon dioxide is reduced to methane and measured by a flame ionization detector (FID). A portion of the sample collected in the gas sampling tank is injected into a gas chromatograph which separates the nonmethane organics from carbon monoxide, methane, and carbon dioxide; the nonmethane organics are oxidized to carbon dioxide, reduced to methane, and measured by FID. The results of the analyses are combined and reported as total gaseous nonemethane organics.

### Background

On October 5, 1979, as an appendix to the proposed standards of performance for automobile and light-duty truck surface coating operations, EPA proposed reference methods for analyzing the volatile organic compound (VOC) content of coatings. These proposed methods were Reference Method 24 (Candidate 1) and (Candidate 2). Candidate 1 expresses the VOC content of surface coating in terms of mass of carbon. Candidate 2, based on the use of several ASTM methods, reports the mass of VOC. Both test methods were proposed to obtain public comment.

Reference Method 25 was proposed at the same time. It measures the volatile organic emissions in effluent streams from stationary sources. When used to measure the inlet and outlet streams of an emission control device, the efficiency of the device can be determined.

These methods would normally be promulgated with the standards of performance for automobile and light-duty truck surface coating operations which are scheduled to be promulgated in the fall of 1980. However, the methods are being promulgated earlier because several changes have been made to the proposed methods, and several regulations are being developed for proposal in the near future which will require the use of these methods. This will allow the public to have the opportunity to comment on the use of these final methods in their respective industries.

### Public Participation

During development of the test methods, trade and professional associations and individual companies supplied information and data on these methods. After proposal on October 5, 1979, comments were received from coatings manufacturers and suppliers, trade and professional associations, and State air pollution control agencies. The methods were also discussed at a public hearing held on November 9, 1979. The public comment period was extended from October 5, 1979, to December 14, 1979.

### Public Comments and Changes Made to Proposed Reference Methods

Fifteen comment letters were received on the proposed test methods. These comments have been carefully considered and, where determined to be appropriate by the Administrator, changes have been made in the proposed test methods. A detailed discussion of these comments is contained in the background document entitled, "Reference Methods 24 and 25—Background Information for Promulgated Test Methods," which is referred to in the ADDRESSES section of this preamble.

#### *General*

The Administrator has rejected proposed Reference Method 24 (Candidate 1) and selected proposed Reference Method 24 (Candidate 2) as the test method to be used to determine the volatile organic content of coatings. Conclusive data were presented by commenters showing that certain coatings representing a significant portion of those in use could not be distilled as required by proposed Method 24 (Candidate 1). For this reason, the Administrator concluded that proposed Method 24 (Candidate 1) is not applicable to all coatings and should not be selected as the reference method.

Several procedural and editorial changes have been made to Reference Method 24 (Candidate 2) and Reference Method 25 as proposed in order to clarify and to improve the sampling and analytical procedures. These changes are based on additional information obtained by EPA from experience with the methods and on the public comments received.

*Reference Method 24*

The following discussion summarizes the procedural changes made to proposed Reference Method 24, Candidate 2. The procedures were added to protect the source owner from invalid results that might result from poor analytical techniques, application of the method to a coating not suitable for analysis with Reference Method 24, or imprecision in Reference Method 24 resulting from a high percentage of water in the solvent.

The promulgated reference method requires the analyst to complete duplicate analyses on each sample tested. A comparison is then made between these results and the within-laboratory precision statements for each parameter. Duplicate analyses are made until the results fall within the range established for the within-laboratory precision statements. The purpose of the procedures is to verify that the analyst can achieve a level of precision for the coating under analysis equal to or better than the precision obtained by experienced analysts participating in the ASTM studies of the method. Because of the variety of coatings that may be subject to analysis, it is possible that certain coatings may not be amenable to analysis using Reference Method 24; that is, in certain cases it may not be possible to achieve results which meet the precision limits. In this case, the method provides for a case-by-case evaluation and development of a suitable procedure.

An additional procedure for waterborne coatings was added to the promulgated reference method to protect the source owner or operator from a determination of noncompliance when the owner is actually in compliance. This procedure is needed because the results of Reference Method 24 are dependent on the difference between the weight of total solvents and the weight of water. As the percent weight of water increases, the difference decreases. As a result, any imprecision in the measurement of the weight of total solvent in water is magnified in the calculation of organic solvent content. For example, if the total solvent of a coating is measured as 100±2 units and the water content is measured at 90±2 units, the organic solvent content would be in the range of 6 to 14 units. The magnitude of the range, as a percent of the true organic solvent content, increases with increasing water content and could, as shown in the example, lead to a conclusion of noncompliance even when the owner is in compliance. The procedure added to Reference Method 24 for waterborne coatings protects the owner or operator from this erroneous determination by minimizing the calculated value for VOC content. This is done, for example, by subtracting the between-laboratory precision statement from the average value of total solvent and adding the between-laboratory precision statement to the average value for water content. Thus, if a source owner is in compliance based on average coating values, the compliance method will automatically show a lower VOC content because of the adjustments made to the average values based on the between-laboratory precision statements.

Based on comments from manufacturers that ASTM 2697 has only been shown to be applicable to architectural coatings, the analytical procedure for determining volume solids has been eliminated from Reference Method 24. The commenters stated that this ASTM procedure was not applicable to all the coatings that Method 24 was intended to cover. Therefore, Method 24 requires that the volume solids be calculated from manufacturer's formulation data.

The coatings classifications step in the proposed method was eliminated because industry comments indicated that it was only necessary to separate waterborne (water reducible) and solvent-borne (solvent reducible) coatings. Therefore, the "Procedure" discussed in Section 4 of the proposed method has been simplified.

Several commenters recommended that the use of coatings manufacturers' data be allowed in calculating VOC content of coatings rather than required Method 24. Coatings manufacturers' data will be allowed in calculating VOC content of coatings because this will reduce the burden on the industry to measure all coatings with Method 24. Use of this method to calculate VOC content of coatings will require industries to closely monitor and record all organic solvents added to the coatings at the plant. Method 24 will be the reference method.

One commenter suggested that EPA should specify the volume fraction of solids for the various types of coatings similar to the way transfer efficiencies were listed. Based on comments from manufacturers that ASTM 2697 has only been shown to be applicable to architectural coatings, the volume fraction of solids determination in Method 24 has been removed. Method 24 specifies the use of manufacturer's formulation data for calculating volume fraction of solids.

*Reference Method 25*

The majority of the procedural changes made to Method 25 relate to calibration requirements and are meant to improve quality assurance and at the same time simplify the daily operation of the analytical equipment. This is accomplished by requiring performance tests on the analytical equipment (nonmethane organic analyzer and condensate recovery and conditioning apparatus) prior to initial use; specific criteria for the performance tests are provided. Routine daily calibrations (much less time consuming than previously required) are conducted and the results are compared to performance test reference values to determine whether the performance of the analytical equipment is still acceptable.

In the promulgated test method, several important system components are not specified; instead, minimum performance specifications for these components are provided. The method is written in this manner to allow individual preference in choosing components, as well as to encourage development and use of improved components. Therefore, Addendum I which lists specific information regarding system components found to be acceptable has been added to the method to provide guidance for users.

Specifics of the most important procedural changes that have been included in the promulgated test method are as follows:

1. Section 1.1. Applicability. This section was rewritten to clarify the applicability of Method 25 in relation to several other organic measurement methods.

2. Section 2.2.2 Nonmethane Organic Analyzer. The reference to the analyzer is changed from "total gaseous nonmethane organic analyzer" to nonmethane organic analyzer (NMO). The description is clarified to indicate that the NMO analyzer is also used to quantify $CO_2$ from trap condensate recovery. Furthermore, a requirement that the NMO analyzer meet an initial performance test with specific criteria is added. Previously, only demonstration of "proper separation, oxidation, reduction and measurement" was required.

3. Section 4.1.3 Pretest Leak Check. The leak check procedure is simplified. Instead of evacuating the sample train,

the sample probe is plugged and then the sample value is opened; the sample tank vacuum gauge is monitored for a change in vacuum.

4. Section 4.1.4 Sample Train Operation. This section is clarified to indicate that any probe extension used must be positioned totally in the stack effluent; any portion of the sample probe outside the stack wall must be analyzed as part of the condensate trap.

5. Section 4.1.5 Post Test Leak Check. The leak check procedure is simplified (see "3" above).

6. Section 4.3.3 Recovery of Condensate Trap Sample. A requirement for mixing auxiliary oxygen with the carrier gas just prior to the catalyst is added. The procedures are clarified to indicate that the condensate trap is placed in a muffle furnace at 500°C (changed from 600°C) and that the probe must be heated.

7. Section 5.1 Initial Performance Check for Condensate Recovery and Conditioning Apparatus. A requirement is added for an initial performance test of the system which includes a carrier gas blank value determination (section 5.1.1), and oxidation catalyst efficiency check (section 5.1.2), and an overall system performance check via liquid injections (section 5.1.3). Previously, only a catalyst efficiency check was required.

8. Section 5.2 Initial NMO Analyzer Performance Test. The calibration criteria for the NMO analyzer are changed to include an initial performance test. This performance test requires an oxidation catalyst check (5.2.1), and an analyzer linearity check (5.2.2), determination of a NMO calibration response factor (5.2.2), determination of a $CO_2$ calibration response factor (5.2.3), determination of a NMO blank value (5.2.4) and a system check using several gaseous organic compounds (5.2.5).

9. Section 5.3 NMO Daily Calibration. This section requires that a daily calibration of the NMO analyzer be conducted. The calibration involves one $CO_2$ calibration gas and one propane calibration gas. Response factors are determined for both $CO_2$ and NMO, and a NMO blank value is measured. This calibration is conducted with the oxidation and reduction catalysts in full operation. The results obtained are compared to the reference values obtained during the initial performance test in order to determine if the analyzer performance is acceptable. This daily calibration procedure is greatly simplified compared to the procedure previously required which included bypassing the oxidation and reduction catalysts and using several different concentration levels of methane, carbon dioxide and propane calibration gases.

10. Section 6.2 Noncondensible Organics. The calculation for the NMO concentration of the contents of each collection tank is changed by rewriting the equation to include the subtraction of the daily NMO blank value from the measured concentration.

11. Section 6.3 Condensible Organics. The calculation for the NMO concentration of the contents of each condensate trap is changed by rewriting the equation to include the substraction of the daily condensate recovery and conditioning system carrier blank value from the measured $CO_2$ concentration.

*Other Comments*

1. One commenter noted that the drying time was different for ASTM D-2369 and ASTM D-2697, and that these procedures were not consistent with each other. Since ASTM D-2697 has been deleted, this comment is no longer applicable.

2. Three commenters recommended that the direct use of a flame ionization detection (FID) system or similar instrumentation systems be allowed instead of Method 25. The specific comments made and EPA's responses are as follows:

a. *Direct FID is simpler and more precise.* While the direct use of an FID system is simpler than Method 25, it will not give accurate results in many situations because the instrument response varies with different compounds. Therefore, the FID system cannot be considered an adequate reference method, but may be acceptable as an alternative compliance procedure on a case-by-case basis as allowed in 40 CFR 60.8(b).

b. *The ability to conduct on-site analyses and DOT restrictions associated with shipping organic samples from a source location to a laboratory make the FID preferable.* The ability to use the FID system to conduct on-site analyses is not in itself sufficient justification to allow the use of direct flame ionization detection. DOT regulations regarding shipment of hazardous materials do require that great care be taken in shipping the test samples. The DOT regulations impose strict packaging requirements on flammable liquids and compressed flammable gases. However, exemptions for the strict packaging requirements are permitted for most liquids if less than one quart is shipped (see 49 CFR 172.101). In addition, the gas sample tanks likely to be shipped from an on-site location to a laboratory for analyses do not meet the DOT definition of a compressed flammable gas because the sample tanks are not under high pressure and, therefore, should not pose a shipping problem (see 49 CFR 173.300).

**Miscellaneous**

This final rulemaking is issued under the authority of Sections 111, 114, and 301(a) of the Clean Air Act as amended (42 U.S.C. 7411, 7414, and 7601(a)).

Dated: September 25, 1980.

**Douglas M. Costle,**

*Administrator.*

Appendix A of 40 CFR Part 60 is amended by adding Reference Methods 24 and 25 as follows:

**Appendix A—Reference Methods**

* * * * *

**Method 24—Determination of Volatile Matter Content, Water Content, Density, Volume Solids, and Weight Solids of Surface Coatings**

*1. Applicability and Principle*

1.1 Applicability. This method applies to the determination of volatile matter content, water content, density, volume solids, and weight solids of paint, varnish, lacquer, or related surface coatings.

1.2 Principle. Standard methods are used to determine the volatile matter content, water content, density, volume solids, and weight solids of the paint, varnish, lacquer, or related surface coatings.

*2. Applicable Standard Methods*

Use the apparatus, reagents, and procedures specified in the standard methods below:

2.1 ASTM D 1475-60. Standard Method of Test for Density of Paint, Lacquer, and Related Products.

2.2 ASTM D 2369-81. Provisional Method of Test for Volatile Content of Paints.

2.3 ASTM D 3792-79. Standard Method of Test for Water in Water Reducible Paint by Direct Injection into a Gas Chromatograph.

2.4 ASTM Provisional Method of Test for Water in Paint or Related Coatings by the Karl Fischer Titration Method.

*3. Procedure*

3.1 Volatile Matter Content. Use the procedure in ASTM D 2369-81 to determine the volatile matter content (may include water) of the coating. Record the following information:

$W_1$ = Weight of dish and sample before heating, g.

$W_2$ = Weight of dish and sample after heating, g.

$W_3$ = Sample weight, g.

Run analyses in pairs (duplicate sets) for each coating until the criterion in section 4.3 is met. Calculate the weight fraction of the volatile matter ($W_v$) for each analysis as follows:

$$W_v = \frac{W_1 - W_2}{W_3} \quad \text{Eq. 24-1}$$

Record the arithmetic average ($W_v$).

3.2 Water Content. For waterborne (water reducible) coatings only, determine the weight fraction of water ($W_w$) using either "Standard Method of Test for Water in Water Reducible Paint by Direct Injection into a Gas Chromatograph" or "Provisional Method of Test for Water in Paint or Related Coatings by the Karl Fischer Titration Method." A waterborne coating is any coating which contains more than 5 percent water by weight in its volatile fraction. Run duplicate sets of determinations until the criterion in section 4.3 is met. Record the arithmetic average ($W_w$).

3.3 Coating Density. Determine the density ($D_c$, kg/liter) of the surface coating using the procedure in ASTM D 1475–60.

Run duplicate sets of determinations for each coating until the criterion in section 4.3 is met. Record the arithmetic average ($D_c$).

3.4 Solids Content. Determine the volume fraction ($V_s$) solids of the coating by calculation using the manufacturer's formulation.

*4. Data Validation Procedure*

4.1 Summary. The variety of coatings that may be subject to analysis makes it necessary to verify the ability of the analyst and the analytical procedures to obtain reproducible results for the coatings tested. This is done by running duplicate analyses on each sample tested and comparing results with the within-laboratory precision statements for each parameter. Because of the inherent increased imprecision in the determination of the VOC content of waterborne coatings as the weight percent water increases, measured parameters for waterborne coatings are modified by the appropriate confidence limits based on between-laboratory precision statements.

4.2 Analytical Precision Statements. The within-laboratory and between-laboratory precision statements are given below:

| | Within-laboratory | Between-laboratory |
|---|---|---|
| Volatile matter content, $W_v$ | 1.5 pct $W_v$ | 4.7 pct $W_v$. |
| Water content, $W_w$ | 2.9 pct $W_w$ | 7.5 pct $W_w$. |
| Density, $D_c$ | 0.001 kg/liter | 0.002 kg/liter. |

4.3 Sample Analysis Criteria. For $W_v$ and $W_w$, run duplicate analyses until the difference between the two values in a set is less than or equal to the within-laboratory precision statement for that parameter. For $D_c$ run duplicate analyses until each value in a set deviates from the mean of the set by no more than the within-laboratory precision statement. If after several attempts it is concluded that the ASTM procedures cannot be used for the specific coating with the established within-laboratory precision, the Administrator will assume responsibility for providing the necessary procedures for revising the method or precision statements upon written request to: Director, Emission Standards and Engineering Division, (MD–13) Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

4.4 Confidence Limit Calculations for Waterborne Coatings. Based on the between-laboratory precision statements, calculate the confidence limits for waterborne coatings as follows:

To calculate the lower confidence limit, subtract the appropriate between-laboratory precision value from the measured mean value for that parameter. To calculate the upper confidence limit, add the appropirate between-laboratory precision value to the measured mean value for that parameter. For $W_v$ and $D_c$ use the lower confidence limits, and for $W_w$, use the upper confidence limit. Because $V_s$ is calculated, there is no adjustment for the parameter.

*5. Calculations*

5.1 Nonaqueous Volatile Matter.

5.1.1 Solvent-borne Coatings.

$$W_o = W_v \qquad \text{Eq. 24–2}$$

Where:

$W_o$ = Weight fraction nonaqueous volatile matter, g/g.

5.1.2 Waterborne Coatings.

$$W_o = W_v - W_w \qquad \text{Eq. 24–3}$$

5.2 Weight fraction solids.

$$W_s = 1 - W_v \qquad \text{Eq. 24–4}$$

Where: $W_s$ = Weight solids, g/g.

*6. Bibliography*

6.1 Provisional Method Test for Volatile Content of Paints. Available from: Chairman, Committee D–1 on Paint and Related Coatings and Materials, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. ASTM Designation D 2369–81.

6.2 Standard Method of Test for Density of Paint, Varnish, Lacquer, and Related Products. In: 1980 Book of ASTM Standards, Part 27. Philadelphia, Pennsylvania, ASTM Designation D 1475–60. 1980.

6.3 Standard Method of Test for Water in Water Reducible Paint by Direct Injection into a Gas Chromatograph. Available from: Chairman, Committee D–1 on Paint and Related Coatings and Materials, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103. ASTM Designation D 3792–79.

6.4 Provisional Method of Test Water in Paint or Related Coatings by the Karl Fischer Titration Method. Available from: Chairman, Committee D–1 on Paint and Related Coatings and Materials, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103.

**Method 25—Determination of Total Gaseous Nonmethane Organic Emissions as Carbon**

*1. Applicability and Principle*

1.1 Applicability. This method applies to the measurement of volatile organic compounds (VOC) as total gaseous nonmethane organics (TGNMO) as carbon in source emissions. Organic particulate matter will interfere with the analysis and therefore, in some cases, an in-stack particulate filter is required. This method is not the only method that applies to the measurement of TGNMO. Costs, logistics, and other practicalities of source testing may make other test methods more desirable for measuring VOC of certain effluent streams. Proper judgment is required in determining the most applicable VOC test method. For example, depending upon the molecular weight of the organics in the effluent stream, a totally automated semi-continuous nonmethane organic (NMO) analyzer interfaced directly to the source may yield accurate results. This approach has the advantage of providing emission data semi-continuously over an extended time period.

Direct measurement of an effluent with a flame ionization detector (FID) analyzer may be appropriate with prior characterization of the gas stream and knowledge that the detector responds predictably to the organic compounds in the stream. If present, methane will, of course, also be measured. In practice, the FID can be applied to the determination of the mass concentration of the total molecular structure of the organic emissions under the following limited conditions: (1) Where only one compound is known to exist; (2) when the organic compounds consist of only hydrogen and carbon; (3) where the relative percentage of the compounds is known or can be determined, and the FID response to the compounds is known; (4) where a consistent mixture of compounds exists before and after emission control and *only* the relative concentrations are to be assessed; or (5) where the FID can be calibrated against mass standards of the compounds emitted (solvent emissions, for example).

Another example of the use of a direct FID is as a screening method. If there is enough information available to provide a rough estimate of the analyzer accuracy, the FID analyzer can be used to determine the VOC content of an uncharacterized gas stream. With a sufficient buffer to account for possible inaccuracies, the direct FID can be a useful tool to obtain the desired results without costly exact determination.

In situations where a qualitative/quantitative analysis of an effluent stream is desired or required, a gas chromatographic FID system may apply. However, for sources emitting numerous organics, the time and expense of this approach will be formidable.

1.2 Principle. An emission sample is withdrawn from the stack at a constant rate through a chilled condensate trap by means of an evacuated sample tank. TGNMO are determined by combining the analytical results obtained from independent analyses of the condensate trap and sample tank fractions. After sampling is completed, the organic contents of the condensate trap are oxidized to carbon dioxide ($CO_2$) which is quantitatively collected in an evacuated vessel; then a portion of the $CO_2$ is reduced to methane ($CH_4$) and measured by a FID. The organic content of the sample fraction collected in the sampling tank is measured by injecting a portion into a gas chromatographic (GC) column to achieve separation of the nonmethane organics from carbon monoxide (CO), $CO_2$ and $CH_4$; the nonmethane organics (NMO) are oxidized to

$CO_2$, reduced to $CH_4$, and measured by a FID. In this manner, the variable response of the FID associated with different types of organics is eliminated.

*2. Apparatus*

The sampling system consists of a condensate trap, flow control system, and sample tank (Figure 1). The analytical system consists of two major sub-systems: an oxidation system for the recovery and conditioning of the condensate trap contents and a NMO analyzer. The NMO analyzer is a GC with backflush capability for NMO analysis and is equipped with an oxidation catalyst, reduction catalyst, and FID. (Figures 2 and 3 are schematics of a typical NMO analyzer.) The system for the recovery and conditioning of the organics captured in the condensate trap consists of a heat source, oxidation catalyst, nondispersive infrared (NDIR) analyzer and an intermediate collection vessel (Figure 4 is a schematic of a typical system.) TGNMO sampling equipment can be constructed from commercially available components and components fabricated in a machine shop. NMO analyzers are available commercially or can be constructed from available components by a qualified instrument laboratory.

2.1 Sampling. The following equipment is required:

2.1.1 Probe. 3.2-mm OD (⅛-in.) stainless steel tubing.

2.1.2 Condensate Trap. Constructed of 316 stainless steel; construction details of a suitable trap are shown in Figure 5.

2.1.3 Flow Shut-off Valve. Stainless steel control valve for starting and stopping sample flow.

2.1.4 Flow Control System. Any system capable of maintaining the sampling rate to within ±10 percent of the selected flow rate (50 to 100 cc/min range).

2.1.5 Vacuum Gauge. Gauge for monitoring the vacuum of the sample tank during leak checks and sampling.

2.1.6 Sample Tank. Stainless steel or aluminum tank with a volume of 4 to 8 liters, equipped with a stainless steel female quick connect for assembly to the sample train and analytical system.

2.1.7 Mercury Manometer. U-tube mercury manometer capable of measuring pressure to within 1 mm Hg in the 0–900 mm range.

2.1.8 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.2 Analysis. The following equipment is required:

2.2.1 Condensate Recovery and Conditioning Apparatus. An apparatus for recovering and catalytically oxidizing the condensate trap contents is required. Figure 4 is a schematic of such a system. The analyst must demonstrate prior to initial use that the analytical system is capable of proper oxidation and recovery, as specified in section 5.1. The condensate recovery and conditioning apparatus consists of the following major components.

2.2.1.1 Heat Source. A heat source sufficient to heat the condensate trap (including probe) to a temperature where the trap turns a "dull red" color. A system using both a propane torch and an electric muffle-type furnace is recommended.

2.2.1.2 Oxidation Catalyst. A catalyst system capable of meeting the catalyst efficiency criteria of this method (section 5.1.2). Addendum I of this method lists a catalyst system found to be acceptable.

2.2.1.3 Water Trap. Any leak-proof moisture trap capable of removing moisture from the gas stream.

2.2.1.4 NDIR Detector. A detector capable of indicating $CO_2$ concentration in the zero to 1 percent range. This detector is required for monitoring the progress of combustion of the organic compounds from the condensate trap.

2.2.1.5 Pressure Regulator. Stainless steel needle valve required to maintain the trap conditioning system at a near constant pressure.

2.2.1.6 Intermediate Collection Vessel. Stainless steel or aluminum collection vessel equipped with a female quick connect. Tanks with nominal volumes in the 1 to 4 liter range are recommended.

2.2.1.7 Mercury Manometer. U-tube mercury manometer capable of measuring pressure to within 1 mm Hg in the 0–900 mm range.

2.2.1.8 Gas Purifiers. Gas purification systems sufficient to maintain $CO_2$ and organic impurities in the carrier gas and auxiliary oxygen at a level of less than 10 ppm (may not be required depending on quality of cylinder gases used).

2.2.2 NMO Analyzer. Semi-continuous GC/FID analyzer capable of: (1) separating CO, $CO_2$, and $CH_4$ from nonmethane organic compounds, (2) reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$ and (3) oxidizing the nonmethane organic compounds to $CO_2$, reducing the $CO_2$ to $CH_4$ and quantifying as $CH_4$. The analyst must demonstrate prior to initial use that the analyzer is capable of proper separation, oxidation, reduction, and measurement (section 5.2). The analyzer consists of the following major components:

2.2.2.1 Oxidation Catalyst. A catalyst system capable of meeting the catalyst efficiency criteria of this method (section 5.2.1). Addendum I of this method lists a catalyst system found to be acceptable.

2.2.2.2 Reduction Catalyst. A catalyst system capable of meeting the catalyst efficiency criteria of this method (section 5.2.3). Addendum I of this method lists a catalyst system found to be acceptable.

2.2.2.3 Separation Column(s). Gas chromatographic column(s) capable of separating CO, $CO_2$, and $CH_4$ from NMO compounds as demonstrated according to the procedures established in this method (section 5.2.5). Addendum I of this method lists a column found to be acceptable.

2.2.2.4 Sample Injection System. A GC sample injection valve fitted with a sample loop properly sized to interface with the NMO analyzer (1 cc loop recommended).

2.2.2.5 FID. A FID meeting the following specifications is required.

2.2.2.5.1 Linearity. A linear response (± 5%) over the operating range as demonstrated by the procedures established in section 5.2.2.

2.2.2.5.2 Range. Signal attenuators shall be available to produce a minimum signal response of 10 percent of full scale for a full scale range of 10 to 50000 ppm $CH_4$.

2.2.2.6 Data Recording System. Analog strip chart recorder or digital intergration system compatible with the FID for permanently recording the analytical results.

2.2.3 Barometer. Mercury, aneroid, or other barometer capable of measuring atmospheric pressure to within 1 mm Hg.

2.2.4 Thermometer. Capable of measuring the laboratory temperature within 1°C.

2.2.5 Vacuum Pump. Capable of evacuating to an absolute pressure of 10 mm Hg.

2.2.6 Syringe (2). 10 μl and 100 μl liquid injection syringes.

2.2.7 Liquid Sample Injection Unit. 316 SS U-tube fitted with a Teflon injection septum, see Figure 6.

*3. Reagents*

3.1 Sampling. Crushed dry ice is required during sampling.

3.2 Analysis.

3.2.1 NMO Analyzer. The following gases are needed:

3.2.1.1 Carrier Gas. Zero grade gas containing less than 1 ppm C. Addendum I of this method lists a carrier gas found to be acceptable.

3.2.1.2 Fuel Gas. Pure hydrogen, containing less than 1 ppm C.

3.2.1.3 Combustion Gas. Zero grade air or oxygen as required by the detector.

3.2.2 Condensate Recovery and Conditioning Apparatus.

3.2.2.1 Carrier Gas. Five percent $O_2$ in $N_2$, containing less than 1 ppm C.

3.2.2.2 Auxiliary Oxygen. Zero grade oxygen containing less than 1 ppm C.

3.2.2.3 Hexane. ACS grade, for liquid injection.

3.2.2.4 Toluene. ACS grade, for liquid injection.

3.3 Calibration. For all calibration gases, the manufacturer must recommend a maximum shelf life for each cylinder (i.e., the length of time the gas concentration is not expected to change more than ± 5 percent from its certified value). The date of gas cylinder preparation, certified organic concentration and recommended maximum shelf life must be affixed to each cylinder before shipment from the gas manufacturer to the buyer. The following calibration gases are required.

3.3.1 Oxidation Catalyst Efficiency Check Calibration Gas. Gas mixture standard with nominal concentration of 1 percent methane in air.

3.3.2 Flame Ionization Detector Linearity and Nonmethane Organic Calibration Gases (3). Gas mixture standards with nominal propane concentrations of 20 ppm, 200 ppm, and 3000 ppm, in air.

3.3.3 Carbon Dioxide Calibration Gases (3). Gas mixture standards with nominal $CO_2$ concentrations of 50 ppm, 500 ppm, and 1 percent, in air. Note: total NMO less than 1 ppm required for 1 percent mixture.

3.3.4 NMO Analyzer System Check Calibration Gases (4).

3.3.4.1 Propane Mixture. Gas mixture standard containing (nominal) 50 ppm CO, 50 ppm $CH_4$, 2 percent $CO_2$, and 20 ppm $C_3H_8$, prepared in air.

3.3.4.2 Hexane. Gas mixture standard containing (nominal) 50 ppm hexane in air.

3.3.4.3 Toluene. Gas mixture standard containing (nominal) 20 ppm toluene in air.

3.3.4.4 Methanol. Gas mixture standard containing (nominal) 100 ppm methanol in air.

*4. Procedure*

4.1 Sampling.

4.1.1 Sample Tank Evacuation and Leak Check. Either in the laboratory or in the field, evacuate the sample tank to 10 mm Hg absolute pressure or less (measured by a mercury U-tube manometer) then leak check the sample tank by isolating the tank from the vacuum pump and allowing the tank to sit for 10 minutes. The tank is acceptable if no change in tank vacuum is noted.

4.1.2 Sample Train Assembly. Just prior to assembly, measure the tank vaccuum using a mercury U-tube manometer. Record this vaccum ($P_{ti}$), the ambient temperature ($T_{ti}$), and the barometric pressure ($P_{bi}$) at this time. Assuring that the flow shut-off valve is in the closed position, assemble the sampling system as shown in Figure 1. Immerse the condensate trap body in dry ice to within 2.5 or 5 cm of the point where the inlet tube joins the trap body.

4.1.3. Pretest Leak Check. A pretest leak check is required. After the sampling train is assembled, record the tank vacuum as indicated by the vaccum gauge. Wait a minimum period of 10 minutes and recheck the indicated vacuum. If the vacuum has not changed, the portion of the sampling train behind the shut-off valve does not leak and is considered acceptable. To check the front portion of the sampling train, assure that the probe tip is tightly plugged and then open the sample train flow shut-off valve. Allow the sample train to sit for a minimum period of 10 minutes. The leak check is acceptable if no visible change in the tank vacuum gauge occurs. Record the pretest leak rate (cm/Hg per 10 minutes). At the completion of the leak check period, close the sample flow shut-off valve.

4.1.4. Sample Train Operation. Place the probe into the stack such that the probe is perpendicular to the direction of stack gas flow; locate the probe tip at a single preselected point. If a probe extension which will not be analyzed as part of the condensate trap is being used, assure that at least a 15 cm section of the probe which will be analyzed with the trap is in the stack effluent. For stacks having a negative static pressure, assure that the sample port is sufficiently sealed to prevent air in-leakage around the probe. Check the dry ice level and add ice if necessary. Record the clock time and sample tank gauge vacuum. To begin sampling, open the flow shut-off valve and adjust (if applicable) the control valve of the flow control system used in the sample train; maintain a constant flow rate (±10 percent) throughout the duration of the sampling period. Record the gauge vacuum and flowmeter setting (if applicable) at 5-minute intervals. Select a total sample time greater than or equal to the minimum sampling time specified in the applicable subpart of the regulation; end the sampling when this time period is reached or when a constant flow rate can no longer be maintained due to reduced sample tank vacuum. When the sampling is completed, close the flow shut-off valve and record the final sample time and guage vacuum readings. Note: If the sampling had to be stopped before obtaining the minimum sampling time (specified in the applicable subpart) because a constant flow rate could not be maintained, proceed as follows: After removing the probe from the stack, remove the used sample tank from the sampling train (without disconnecting other portions of the sampling train) and connect another sample tank to the sampling train. Prior to attaching the new tank to the sampling train, assure that the tank vacuum (measured on-site by the U-tube manometer) has been recorded on the data form and that the tank has been leak-checked (on-site). After the new tank is attached to the sample train, proceed with the sampling until the required minimum sampling time has been exceeded.

4.1.5 Post Test Leak Check. A leak check is mandatory at the conclusion of each test run. After sampling is completed, remove the probe from the stack and plug the probe tip. Open the sample train flow shut-off valve and monitor the sample tank vacuum gauge for a period of 10 minutes. The leak check is acceptable if no visible change in the tank vacuum gauge occurs. Record the post test leak rate (cm Hg per 10 minutes). If the sampling train does not pass the post leak check, invalidate the run or use a procedure acceptable to the Administrator to adjust the data.

4.2 Sample Recovery. After the post test leak check is completed, disconnect the condensate trap at the flow metering system and tightly seal both ends of the condensate trap. Keep the trap packed in dry ice until the samples are returned to the laboratory for analysis. Remove the flow metering system from the sample tank. Attach the U-tube manometer to the tank (keep length of connecting line to a minimum) and record the final tank vacuum ($P_t$); record the tank temperature ($T_t$) and barometric pressure at this time. Disconnect the manometer from the tank. Assure that the test run number is properly identified on the condensate trap and the sample tank(s).

4.3 Condensate Recovery and Conditioning. Prepare the condensate recovery and conditioning apparatus by setting the carrier gas flow rate and heating the catalyst to its operating temperature. Prior to initial use of the condensate recovery and conditioning apparatus, a system performance test must be conducted according to the procedures established in section 5.1 of this method. After successful completion of the initial performance test, the system is routinely used for sample conditioning according to the following procedures:

4.3.1 System Blank and Catalyst Efficiency Check. Prior to and immediately following the conditioning of each set of sample traps, or on a daily basis (whichever occurs first) conduct the carrier gas blank test and catalyst efficiency test as specified in sections 5.1.1 and 5.1.2 of this method. Record the carrier gas initial and final blank values, $B_{ti}$ and $B_{tf}$, respectively. If the criteria of the tests cannot be met, make the necessary repairs to the system before proceeding.

4.3.2 Condensate Trap Carbon Dioxide Purge and Sample Tank Pressurization. The first step in analysis is to purge the condensate trap of any $CO_2$ which it may contain and to simultaneously pressurize the sample tank. This is accomplished as follows: Obtain both the sample tank and condensate trap from the test run to be analyzed. Set up the condensate recovery and conditioning apparatus so that the carrier flow bypasses the condensate trap hook-up terminals, bypasses the oxidation catalyst, and is vented to the atmosphere. Next, attach the condensate trap to the apparatus and pack the trap in dry ice. Assure that the valves isolating the collection vessel connection from the atmospheric vent and the vacuum pump are closed and then attach the sample tank to the system as if it were the intermediate collection vessel. Record the tank vacuum on the laboratory data form. Assure that the NDIR analyzer indicates a zero output level and then switch the carrier flow through the condensate trap; immediately switch the carrier flow from vent to collect. The condensate trap recovery and conditioning apparatus should now be set up as indicated in Figure 8. Monitor the NDIR; when $CO_2$ is no longer being passed through the system, switch the carrier flow so that it once again bypasses the condensate trap. Continue in this manner until the gas sample tank is pressurized to a nominal gauge pressure of 800 mm Hg. At this time, isolate the tank, vent the carrier flow, and record the sample tank pressure ($P_{tf}$), barometric pressure ($P_{bf}$), and ambient temperature ($T_{tf}$). Remove the sample tank from the system.

4.3.3 Recovery of Condensate Trap Sample. Oxidation and collection of the sample in the condensate trap is now ready to begin. From the step just completed in section 4.3.1.2 above, the system should be set up so that the carrier flow bypasses the condensate trap, bypasses the oxidation catalyst, and is vented to the atmosphere. Attach an evacuated intermediate collection vessel to the system and then switch the carrier so that it flows through the oxidation catalyst. Switch the carrier from vent to collect and open the valve to the collection vessel; remove the dry ice from the trap and then switch the carrier flow through the trap. The system should now be set up to operate as indicated in Figure 9. During oxidation of the condensate trap sample, monitor the NDIR to determine when all the sample has been removed and oxidized (indicated by return to baseline of NDIR analyzer output). Begin heating the condensate trap and probe with a propane torch. The trap should be heated to a temperature at which the trap glows a "dull red" (approximately 500°C). During the early part of the trap "burn out," adjust the carrier and auxiliary oxygen flow rates so that an excess of oxygen is being fed to the catalyst system. Gradually increase the flow of carrier gas through the trap. After the NDIR indicates that most of the organic matter has been purged, place the trap in a muffle furnance (500°C). Continue to heat the probe with a torch or some other procedure (e.g., electrical resistance heater). Continue this procedure for at least 5 minutes after the NDIR has returned to baseline. Remove the heat from the trap but continue the carrier flow until the intermediate collection vessel is pressurized to a gauge pressure of 800 mm

Hg (nominal). When the vessel is pressurized, vent the carrier; measure and record the final intermediate collection vessel pressure ($P_f$) as well as the barometric pressure ($P_{bv}$), ambient temperature ($T_v$), and collection vessel volume ($V_v$).

4.4 Analysis. Prior to putting the NMO analyzer into routine operation, an initial performance test must be conducted. Start the analyzer and perform all the necessary functions in order to put the analyzer in proper working order, then conduct the performance test according to the procedures established in section 5.2. Once the performance test has been successfully completed and the $CO_2$ and NMO calibration response factors determined, proceed with sample analysis as follows:

4.4.1 Daily operations and calibration checks. Prior to and immediately following the analysis of each set of samples or on a daily basis (whichever occurs first) conduct a calibration test according to the procedures established in section 5.3. If the criteria of the daily calibration test cannot be met, repeat the NMO analyzer performance test (section 5.2) before proceeding.

4.4.2 Analysis of Recovered Condensate Sample. Purge the sample loop with sample and then inject a preliminary sample in order to determine the appropriate FID attenuation. Inject triplicate samples from the intermediate collection vessel and record the values obtained for the condensible organics as $CO_2$ ($C_{cm}$).

4.4.3 Analysis of Sample Tank. Purge the sample loop with sample and inject a preliminary sample in order to determine the appropriate FID attenuation for monitoring the backflushed non-methane organics. Inject triplicate samples from the sample tank and record the values obtained for the nonmethane organics ($C_{tm}$).

*5. Calibration and Operational Checks*

Maintain a record of performance of each item.

5.1 Initial Performance Check of Condensate Recovery and Conditioning Apparatus.

5.1.1 Carrier Gas and Auxiliary Oxygen Blank. Set equal flow rates for both the carrier gas and auxiliary oxygen. With the trap switching valves in the bypass position and the catalyst in-line, fill an evacuated intermediate collection vessel with carrier gas. Analyze the collection vessel for $CO_2$; the carrier blank is acceptable if the $CO_2$ concentration is less than 10 ppm.

5.1.2 Catalyst Efficiency Check. Set up the condensate trap recovery system so that the carrier flow bypasses the trap inlet and is vented to the atmosphere at the system outlet. Assure that the valves isolating the collection system from the atmospheric vent and vacuum pump are closed and then attach an evacuated intermediate collection vessel to the system. Connect the methane standard gas cyclinder (section 3.3.1) to the system's condensate trap connector (probe end, Figure 4). Adjust the system valving so that the standard gas cylinder acts as the carrier gas and adjust the flow rate to the rate normally used during trap sample recovery. Switch off the auxiliary oxygen flow and then switch from vent to collect in order to begin collecting a sample. Continue collecting a sample in a normal manner until the intermediate vessel is filled to a nominal gauge pressure of 300 mm Hg. Remove the intermediate vessel from the system and vent the carrier flow to the atmosphere. Switch the valving to return the system to its normal carrier gas and normal operating conditions. Analyze the collection vessel for $CO_2$; the catalyst efficiency is acceptable if the $CO_2$ concentration is within ±5 percent of the expected value.

5.1.3 System Performance Check. Construct a liquid sample injection unit similar in design to the unit shown in Figure 6. Insert this unit into the condensate recovery and conditioning system in place of a condensate trap and set the carrier gas and auxiliary oxygen flow rates to normal operating levels. Attach an evacuated intermediate collection vessel to the system and switch from system vent to collect. With the carrier gas routed through the injection unit and the oxidation catalyst, inject a liquid sample (see. 5.1.3.1 to 5.1.3.4) via the injection septum. Heat the injection unit with a torch while monitoring the oxidation reaction on the NDIR. Continue the purge until the reaction is complete. Measure the final collection vessel pressure and then analyze the vessel to determine the $CO_2$ concentration. For each injection, calculate the percent recovery using the equation in section 6.6.

The performance test is acceptable if the average percent recovery is 100 ± 10 percent with a relative standard deviation (section 6.7) of less than 5 percent for each set of triplicate injections as follows:

5.1.3.1 100 μl hexane.
5.1.3.2 10 μl hexane.
5.1.3.3 100 μl toluene.
5.1.3.4 10 μl toluene.

5.2 Initial NMO Analyzer Performance Test.

5.2.1 Oxidation Catalyst Efficiency Check. Turn off or bypass the NMO analyzer reduction catalyst. Make triplicate injections of the high level methane standard (section 3.3.1). The oxidation catalyst operation is acceptable if no FID response is noted.

5.2.2 Analyzer Linearity Check and NMO Calibration. Operating both the oxidation and reduction catalysts, conduct a linearity check of the analyzer using the propane standards specified in section 3.3. make triplicate injections of each calibration gas and then calculate the average response factor (area/ppm C) for each gas, as well as the overall mean of the response factor values. The instrument linearity is acceptable if the average response factor of each calibration gas is within ±5 percent of the overall mean value and if the relative standard deviation (section 6.7) for each set of triplicate injections is less than ±5 percent. Record the overall mean of the propane response factor values as the NMO calibration response factor ($RF_{NMO}$).

5.2.3 Reduction Catalyst Efficiency Check and $CO_2$ Calibration. An exact determination of the reduction catalyst efficiency is not required. Instead, proper catalyst operation is indirectly checked and continuously monitored by establishing a $CO_2$ response factor and comparing it to the NMO response factor. Operating both the oxidation and reduction catalysts make triplicate injections of each of the $CO_2$ calibration gases (section 3.3.3). Calculate the average response factor (area/ppm) for each calibration gas, as well as the overall mean of the response factor values. The reduction catalyst operation is acceptable if the average response factor of each calibration gas is within ±5 percent of the overall mean value and if the relative standard deviation (section 6.7) for each set of triplicate injections is less than ±5 percent. Additionally, the $CO_2$ overall mean response factor must be within ±10 percent of the NMO calibration response factor ($RF_{NMO}$) calculated in section 5.2.2. Record the overall mean of the response factor values as the $CO_2$ calibration response factor ($RF_{CO_2}$).

5.2.4 NMO System Blank. For the high level $CO_2$ calibration gas (section 3.3.3) record the NMO value measured during the $CO_2$ calibration conducted in section 5.2.3. This value is the NMO blank value for the analyzer ($B_a$) and should be less than 10 ppm.

5.2.5 System Performance Check. Check the column separation and overall performance of the analyzer by making triplicate injections of the calibration gases listed in section 3.3.4. The analyzer performance is acceptable if the measured NMO value for each gas (average of triplicate injections) is within ±12 percent of the expected value.

5.3 NMO Analyzer Daily Calibration.

5.3.1 NMO Blank and $CO_2$. Inject triplicate samples of the high level $CO_2$ calibration gas (section 3.3.3) and calculate the average response factor. The system operation is adequate if the calculated response factor is within ±10 percent of the $RF_{CO_2}$ calculated during the initial performance test (section 5.2.2). Use the daily response factor ($DRF_{co_2}$) for analyzer calibration and the calculation of measured $CO_2$ concentrations in the collection vessel samples. In addition, record the NMO blank value ($B_a$); this value should be less than 10 ppm.

5.3.2 NMO Calibration. Inject triplicate samples of the mixed propane calibration cylinder (section 3.3.4.1) and calculate the average NMO response factor. The system operation is adequate if the calculated response factor is within ±10 percent of the $RF_{NMO}$ calculated during the initial performance test (section 5.2.1). Use the daily response factor ($DRF_{NMO}$) for analyzer calibration and calculation of NMO concentrations in the sample tanks.

5.4 Sample Tank. The volume of the gas sampling tanks used must be determined. Prior to putting each tank in service, determine the tank volume by weighing the tanks empty and then filled with deionized distilled water; weigh to the nearest 5 gm and record the results. Alternatively, measure the volume of water used to fill the tanks to the nearest 5 ml.

5.5 Intermediate Collection Vessel. The volume of the intermediate collection vessels used to collect $CO_2$ during the analysis of the condensate traps must be determined. Prior to putting each vessel into service, determine the volume by weighing the vessel empty and then filled with deionized distilled water; weigh to the nearest 5 gm and record the results. Alternatively, measure the volume of water used to fill the tanks to the nearest 5 ml.

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6. Calculations

Note: All equations are written using absolute pressure; absolute pressures are determined by adding the measured barometric pressure to the measured gauge pressure.

6.1 Sample Volume. For each test run, calculate the gas volume sampled:

$$V_s = 0.386\ V \left( \frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}} \right)$$

6.2 Noncondensible Organics. For each sample tank, determine the concentration of nonmethane organics (ppm C):

$$C_t = \left[ \frac{\frac{P_{tf}}{T_{tf}}}{\frac{P_t}{T_t} - \frac{P_{ti}}{T_{ti}}} \right] \left[ \frac{1}{r} \sum_{j=1}^{r} C_{tm_j} - B_a \right]$$

6.3 Condensible Organics. For each condensate trap determine the concentration of organics (ppm C):

$$C_c = 0.386 \frac{V_v P_f}{V_s T_f} \left[ \frac{1}{q} \sum_{k=1}^{q} C_{cm_k} - B_t \right]$$

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6.4 Total Gaseous Nonmethane Organics (TGNMO). To determine the TGNMO concentration for each test run, use the following equation:

$$C = C_t + C_c$$

6.5 Total Gaseous Nonmethane Organics (TGNMO) Mass Concentration. To determine the TGNMO mass concentration as carbon for each test run, use the following equation:

$$M_c = 0.498\ C$$

6.6 Percent Recovery. To calculate the percent recovery for the liquid injections to the condensate recovery and conditioning system use the following equation:

$$\text{percent recovery} = 1.6 \frac{M}{L} \frac{V_v}{\rho} \frac{P_f}{T_f} \frac{C_{cm}}{N}$$

6.7 Relative Standard Deviation.

$$RSD = \frac{100}{\bar{X}} \sqrt{\frac{\Sigma (x_i - \bar{x})^2}{n - 1}}$$

Where:

$B_a$ = Measured NMO blank value for NMO analyzer, ppm C.

$B_t$ = Measured $CO_2$ blank value for condensate recovery and conditioning system carrier gas, ppm $CO_2$.

C = total gaseous nonmethane organic (TGNMO) concentration of the effluent, ppm C equivalent.

$C_c$ = Calculated condensible organic (condensate trap) concentration of the effluent, ppm C equivalent.

$C_{cm}$ = Measured concentration (NMO analyzer) for the condensate trap (intermediate collection vessel), ppm $CO_2$.

$C_t$ = Calculated noncondensible organic concentration (sample tank) of the effluent, ppm C equivalent.

$C_{tm}$ = Measured concentration (NMO analyzer) for the sample tank, ppm NMO.

L = Volume of liquid injected, microliters.

M = Molecular weight of the liquid injected, g/g-mole.

$M_c$ = total gaseous non-methane organic (TGNMO) mass concentration of the effluent, mg C/dscm.

N = Carbon number of the liquid compound injected (N=7 for toluene, N=6 for hexane).

$P_f$ = Final pressure of the intermediate collection vessel, mm Hg absolute.

$P_{ti}$ = Gas sample tank pressure prior to sampling, mm Hg absolute.

$P_t$ = Gas sample tank pressure after sampling, but prior to pressurizing, mm Hg absolute.

$P_{tf}$ = Final gas sample tank pressure after pressurizing, mm Hg absolute.

$T_f$ = Final temperature of intermediate collection vessel, °K.

$T_{ti}$ = Sample tank temperature prior to sampling, °K.

$T_t$ = Sample tank temperature at completion of sampling, °K.

$T_{tf}$ = Sample tank temperature after pressurizing °K.

V = Sample tank volume, cm.

$V_v$ = Intermediate collection vessel volume, cm.

$V_s$ = Gas volume sampled, dscm.

n = Number of data points.

q = Total number of analyzer injections of intermediate collection vessel during analysis (where k = injection number, 1 . . . q).

r = Total number of analyzer injections of sample tank during analysis (where j = injection number, 1 . . . r).

$x_i$ = Individual measurements.

X = Mean value.

p = Density of liquid injected, g/cc.

*7. Bibliography*

7.1 Salo, Albert E., Samuel Witz, and Robert D. MacPhee. Determination of Solvent Vapor Concentrations by Total Combustion Analysis: A Comparison of Infrared with Flame Ionization Detectors. Paper No. 75–33.2 (Presented at the 68th Annual Meeting of the Air Pollution Control Association. Boston, MA. June 15–20, 1975.) 14 p.

7.2 Salo, Albert E., William L. Oaks, and Robert D. MacPhee. Measuring the Organic Carbon Content of Source Emissions for Air Pollution Control. Paper No. 74–190. (Presented at the 67th Annual Meeting of the Air Pollution Control Association. Denver, CO. June 9–13, 1974.) 25 p.

**Method 25**

*Addendum I. System Components*

In test Method 25 several important system components are not specified; instead minimum performance specifications are provided. The method is written in this manner to permit individual preference in choosing components, as well as to encourage development and use of improved components. This addendum is added to the method in order to provide users with some specific information regarding components which have been found satisfactory for use with the method. This listing is given only for the purpose of providing information and does not constitute an endorsement of any product by the Environmental Protection Agency. This list is not meant to imply that other components not listed are not acceptable.

1. Condensate Recovery and Conditioning System Oxidation Catalyst. ⅜" OD×14" inconel tubing packed with 8 inches of hopcalite* oxidizing catalyst and operated at 800°C in a tube furnace. Note: At this temperature, this catalyst must be purged with carrier gas at all times to prevent catalyst damage.

2. NMO Analyzer Oxidation Catalyst. ¼" OD×14" inconel tubing packed with 6 inches of hopcalite oxidizing catalyst and operated at 800°C in a tube furnace. (See note above.)

3. NMO Analyzer Reduction Catalyst. Reduction Catalyst Module; Byron Instruments, Raleigh, N.C.

4. Gas Chromatographic Separation Column. ⅛ inch OD stainless steel packed with 3 feet of 10 percent methyl silicone, Sp 2100 (or equivalent) on Supelcoport (or equivalent), 80/100 mesh, followed by 1.5 feet Porapak Q (or equivalent) 60/80 mesh. The inlet side is to the silicone. Condition the column for 24 hours at 200°C with 20 cc/min $N_2$ purge.

During analysis for the nonmethane organics the separation column is operated as follows: First, operate the column at −78°C (dry ice bath) to elute CO and $CH_4$. After the $CH_4$ peak operate the column at 0°C to elute $CO_2$. When the $CO_2$ is completely eluted, switch the carrier flow to backflush the column and simultaneously raise the column temperature to 100°C in order to elute all nonmethane organics (exact timings for column operation are determined from the calibration standard).

**Note.**—The dry ice operating condition may be deleted if separation of CO and $CH_4$ is unimportant.

**Note.**—Ethane and ethylene may or may not be measured using this column; whether or not ethane and ethylene are quantified will depend on the $CO_2$ concentration in the gas sample. When high levels of $CO_2$ are present, ethane and ethylene will elute under the tail of the $CO_2$ peak.

5. Carrier Gas. Zero grade nitrogen or helium or zero air.

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*MSA registered trademark.

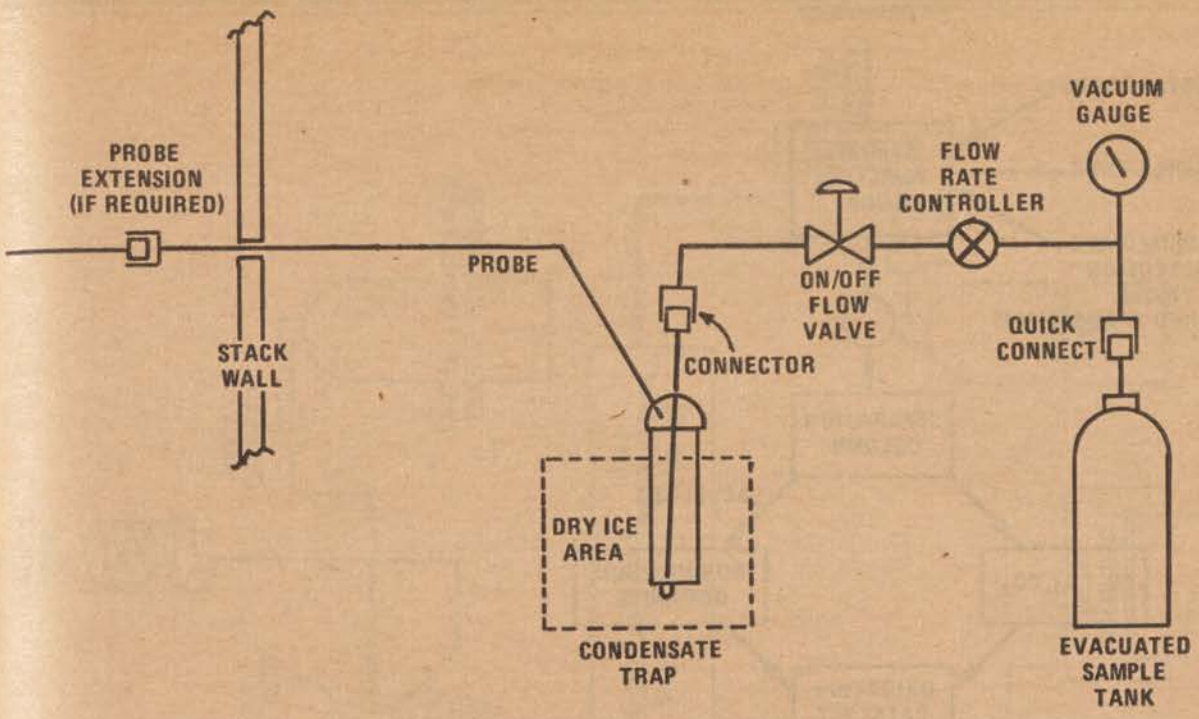



Figure 1. Sampling apparatus.

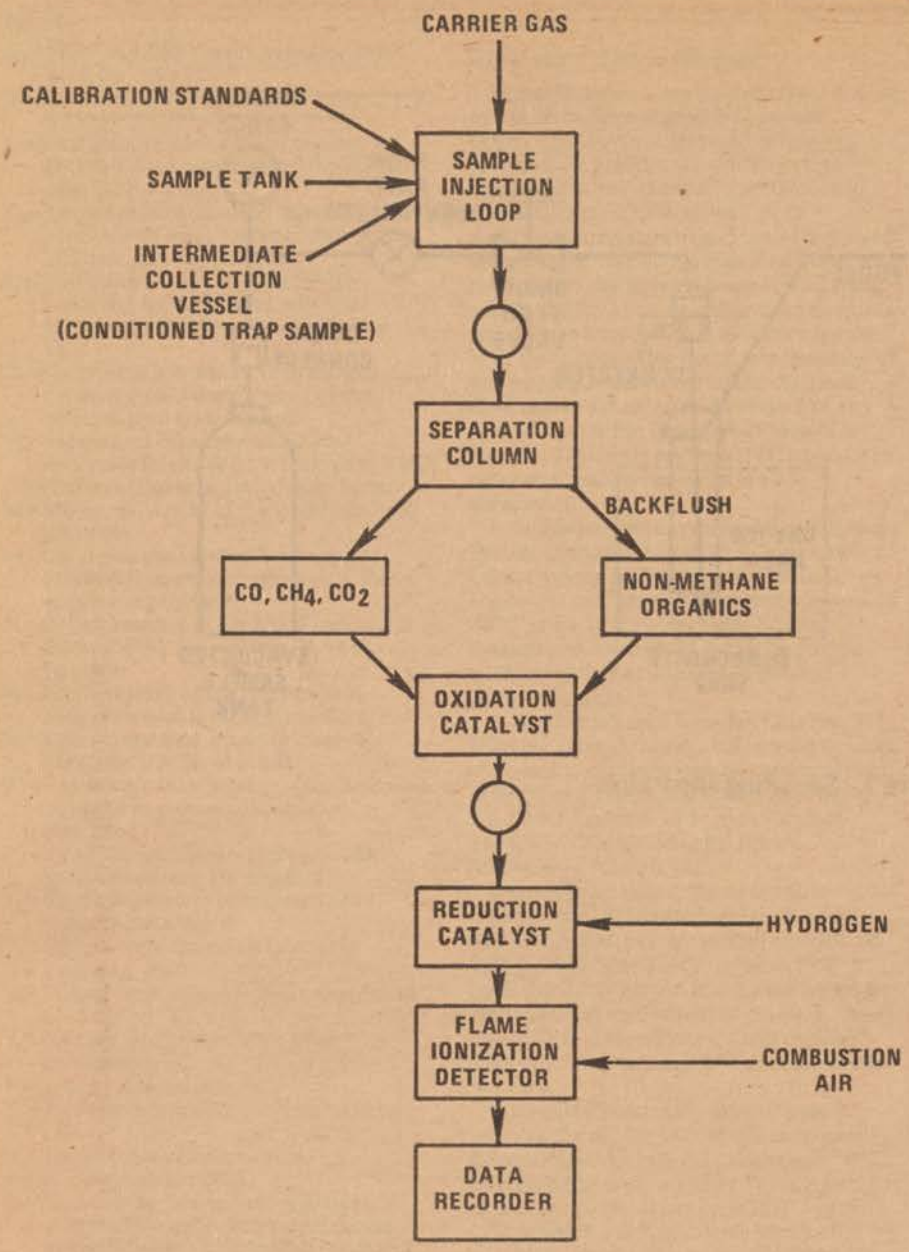



Figure 2. Simplified schematic of non-methane organic (NMO) analyzer.

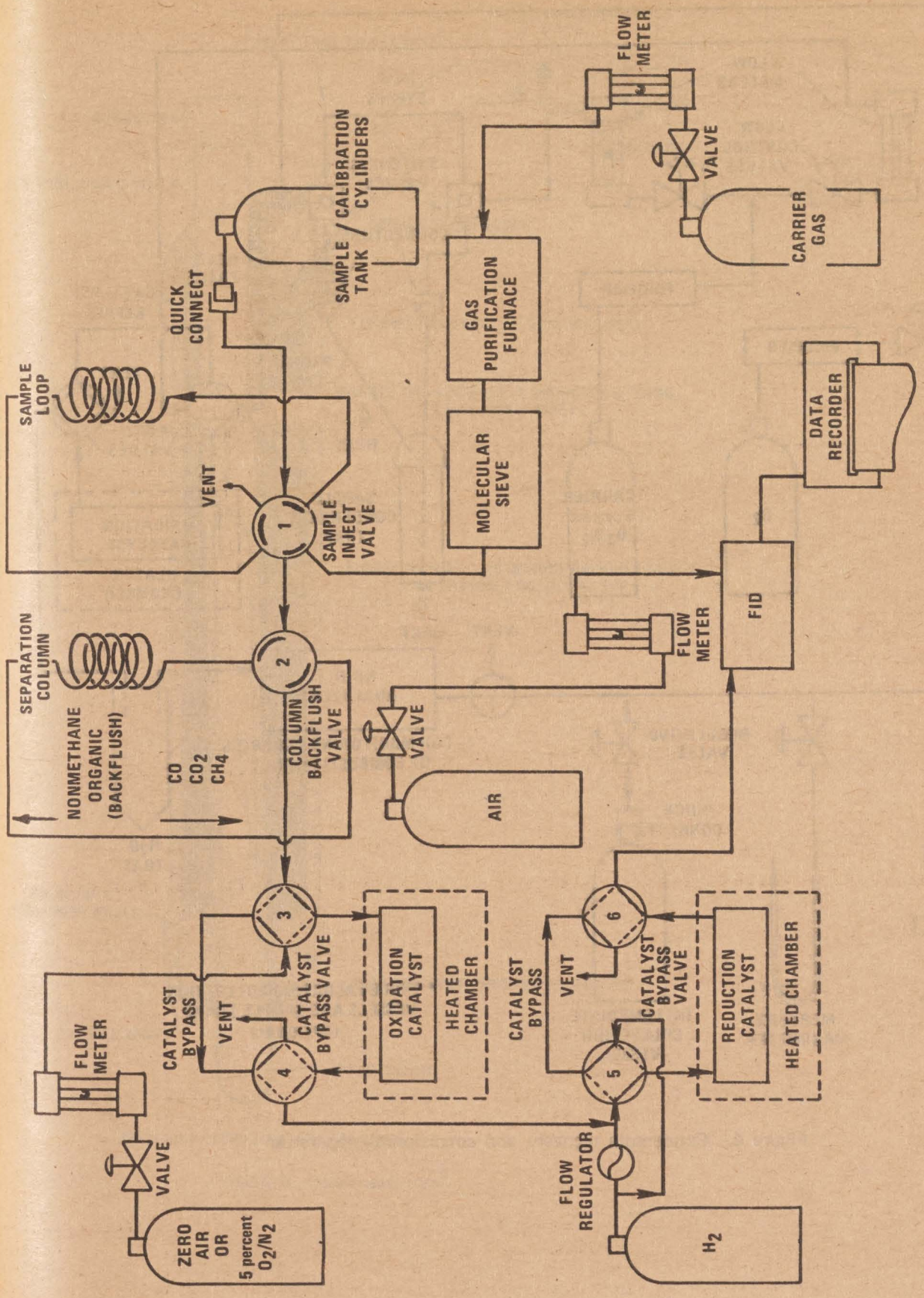



Figure 3. Nonmethane organic (NMO) analyzer.

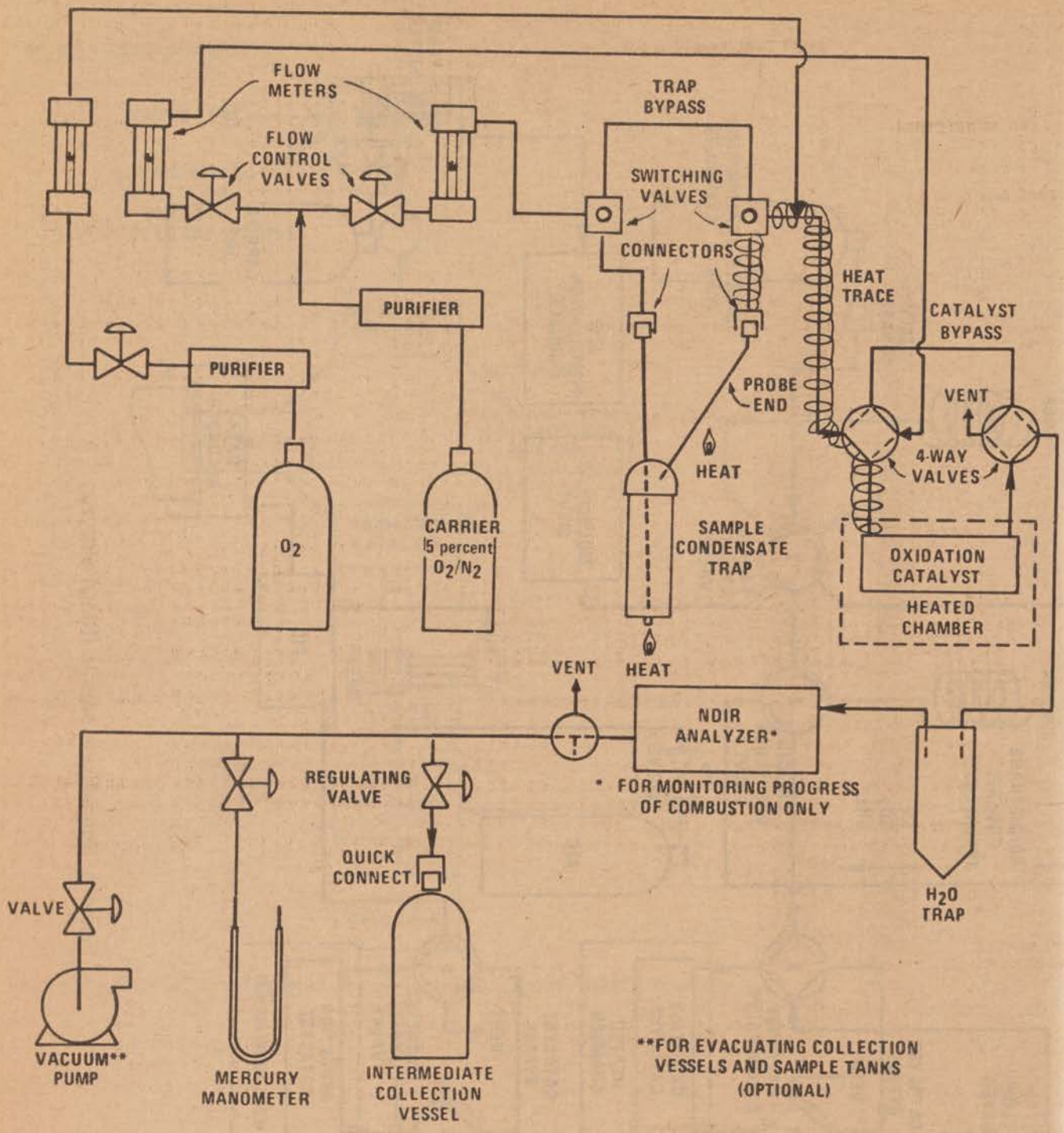



Figure 4. Condensate recovery and conditioning apparatus.

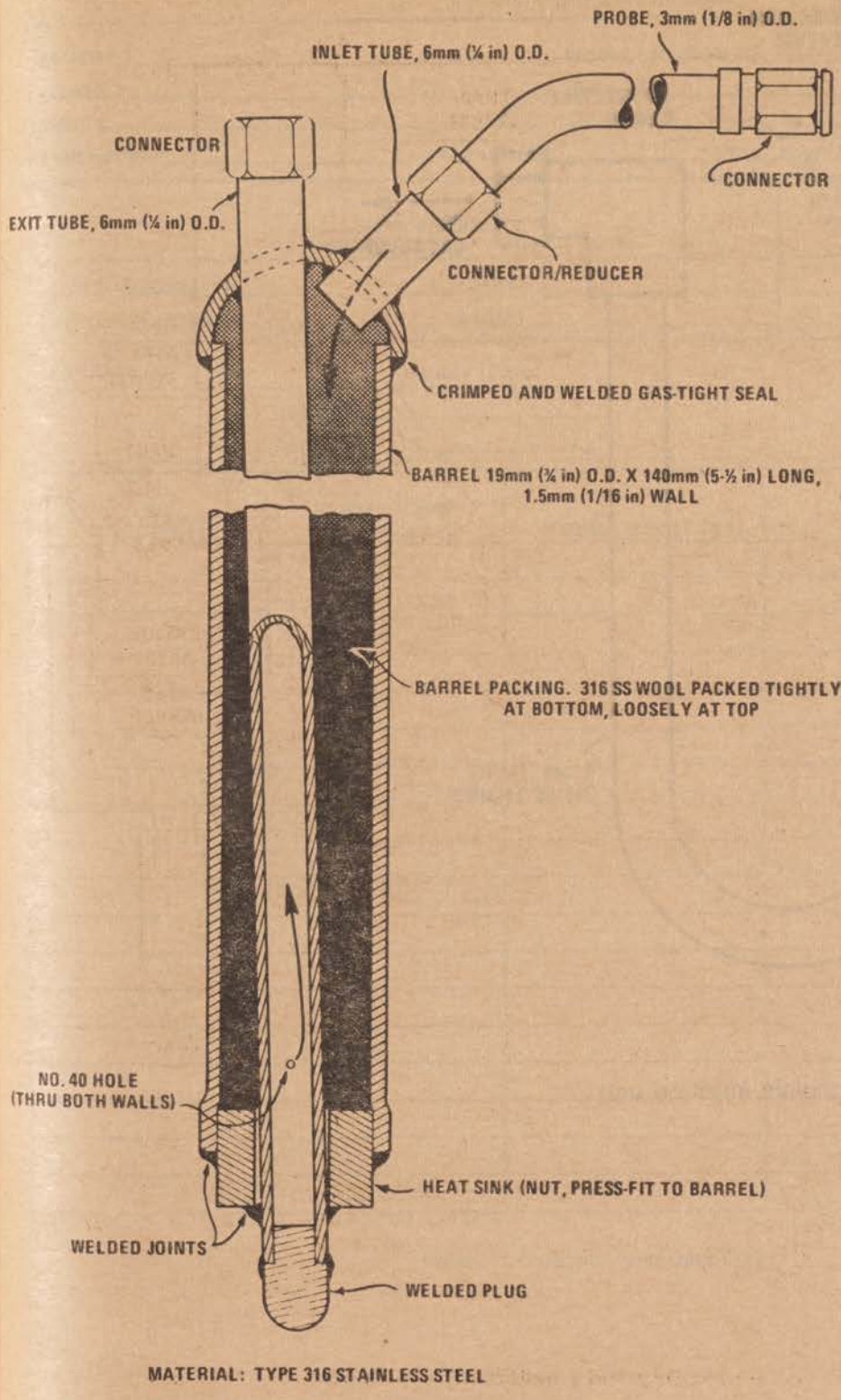



Figure 5. Condensate trap[2].

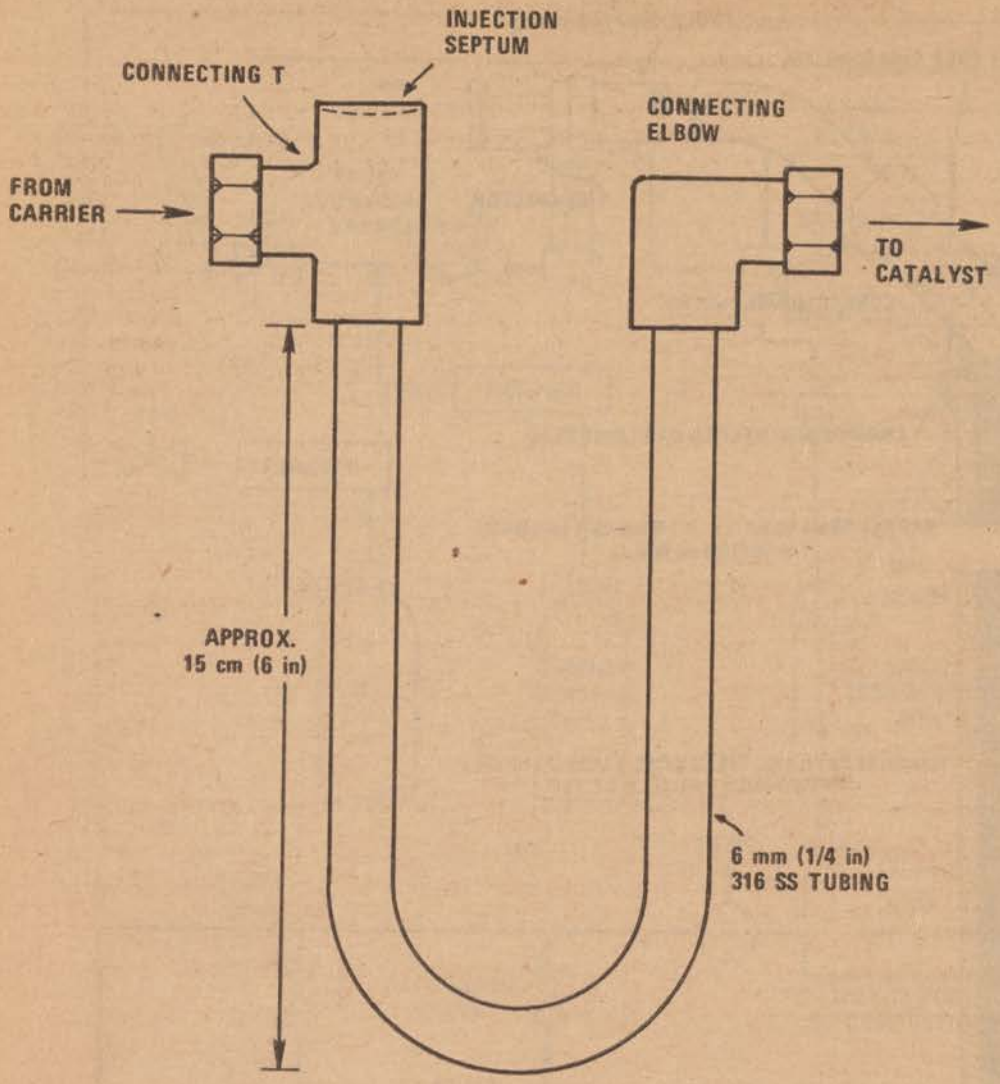



Figure 6. Liquid sample injection unit.

## VOLATILE ORGANIC CARBON

FACILITY_____ SAMPLE LOCATION_____

LOCATION_____ OPERATOR_____

DATE_____ RUN NUMBER_____

TANK NUMBER_____ TRAP NUMBER_____ SAMPLE ID NUMBER_____

| | TANK VACUUM, mm Hg / cm Hg | BAROMETRIC PRESSURE, mm Hg | AMBIENT TEMPERATURE, °C |
|---|---|---|---|
| PRETEST (MANOMETER) | (GAUGE) | | |
| POST TEST (MANOMETER) | (GAUGE) | | |

LEAK RATE cm Hg / 10 min

PRETEST_____

POST TEST_____

| TIME CLOCK/SAMPLE | GAUGE VACUUM, cm Hg | FLOWMETER SETTING | COMMENTS |
|---|---|---|---|
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Figure 7. Example Field Data Form.

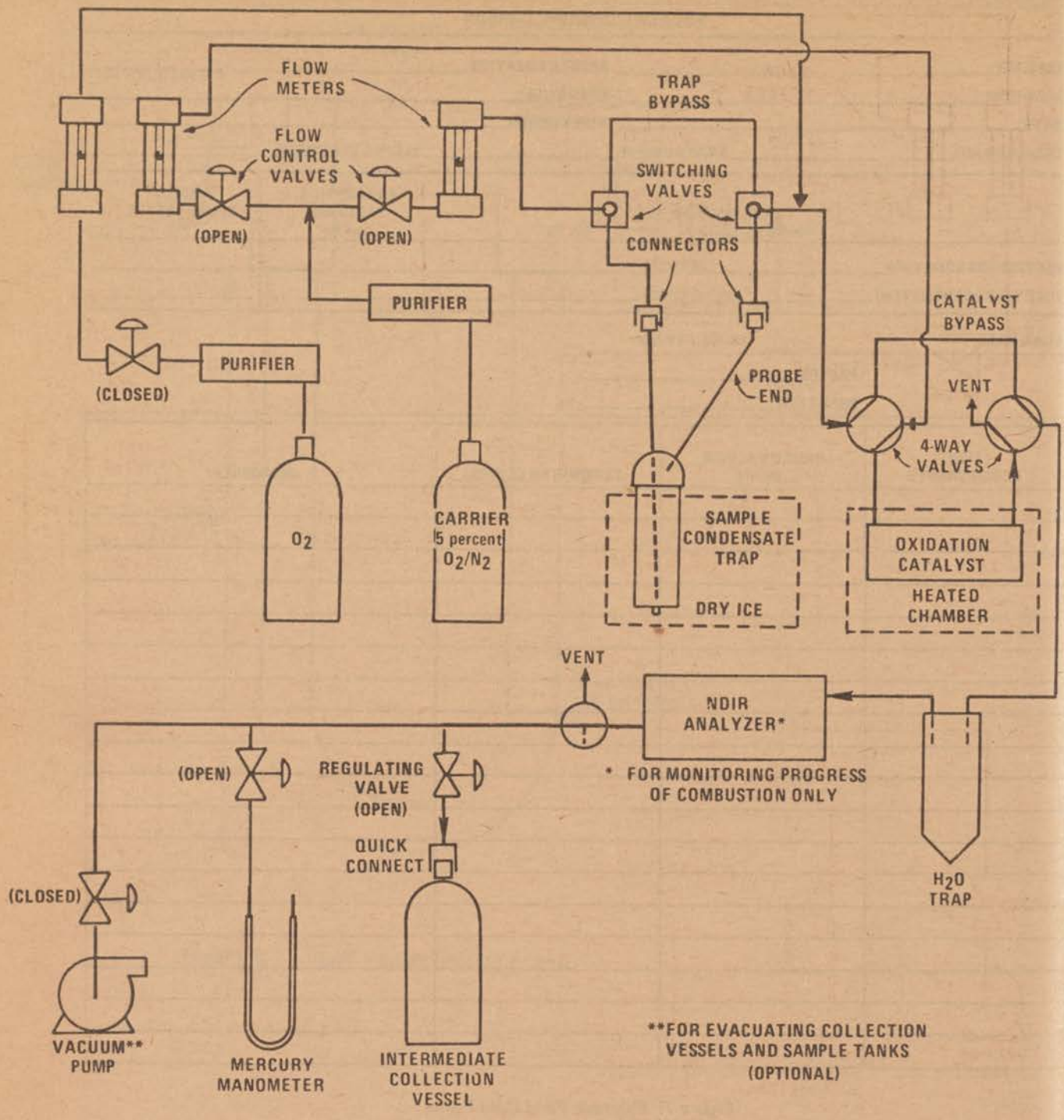



Figure 8. Condensate recovery and conditioning apparatus, carbon dioxide purge.

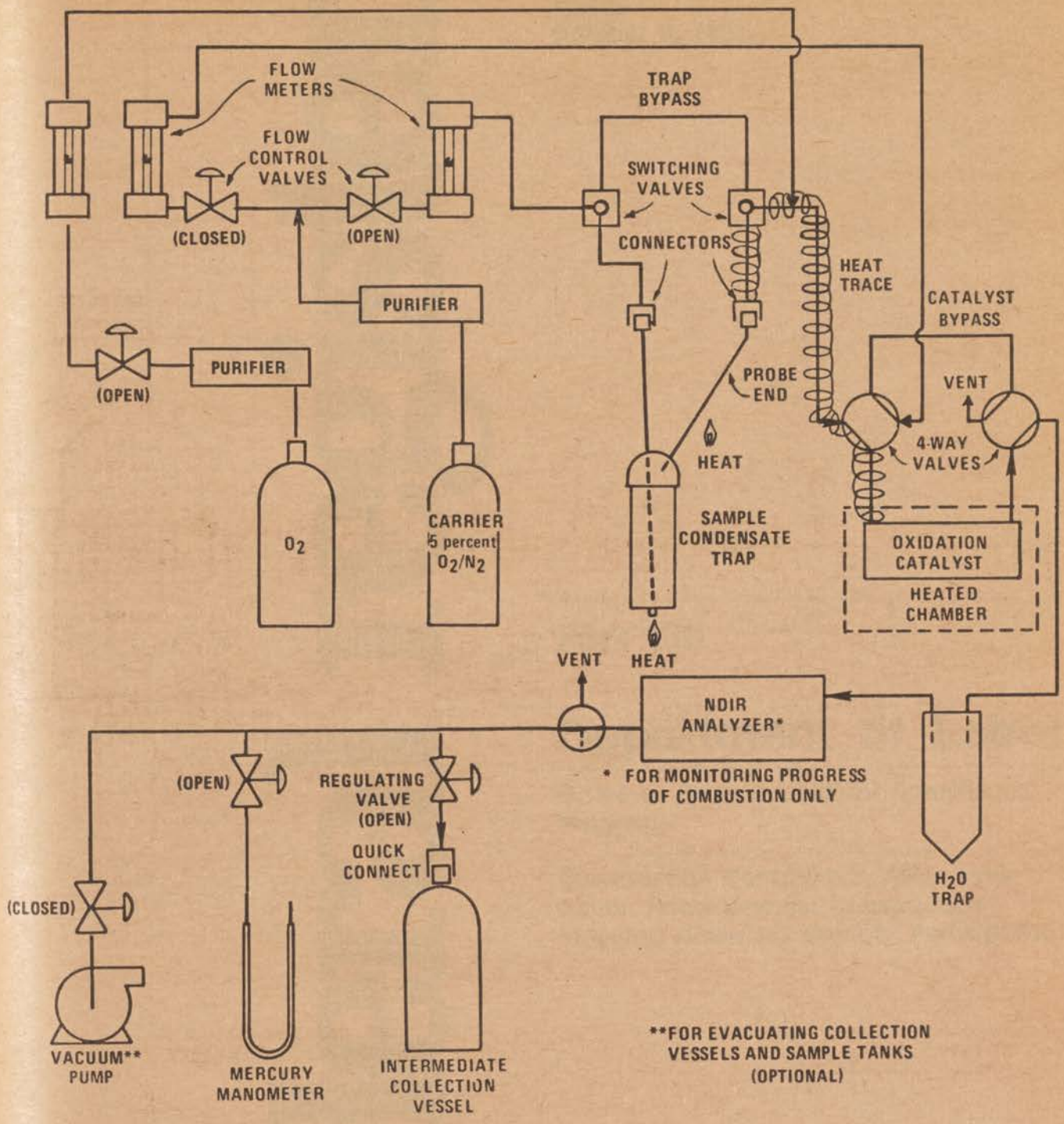



Figure 9. Condensate recovery and conditioning apparatus, collection of trap organics.

[FR Doc. 80-30716 Filed 10-2-80; 8:45 am]
BILLING CODE 6560-01-C

federal register

Friday
October 3, 1980

Part VIII

# Department of Labor

## Office of Federal Contract Compliance Programs

## Construction Contractors, Affirmative Action Requirements; Construction Industry, Goals for Minority Participation

**DEPARTMENT OF LABOR**

**Office of Federal Contract Compliance Programs**

**41 CFR Part 60–4**

**Construction Contractors, Affirmative Action Requirements**

**AGENCY:** Office of Federal Contract Compliance Programs, Labor.

**ACTION:** Final rule.

**SUMMARY:** The regulations published today clarify the existing requirement in 41 CFR 60–4.1 that a nonexempt construction contractor's total construction workforce is covered under 41 CFR Part 60–4 even though some of the contractor's employees perform work on non-Federal or nonfederally assisted construction contracts or subcontracts, and even though such nonfederally related work may occur in geographical areas where the contractor does not currently have work on Federal or federally assisted construction projects.

**EFFECTIVE DATE:** These regulations shall take effect November 3, 1980.

**FOR FURTHER INFORMATION CONTACT:** James Cisco, Acting Director, Division of Program Policy, Office of Federal Contract Compliance Programs, Room C–3324, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20210, Telephone (202) 523–9426.

**SUPPLEMENTARY INFORMATION:** On September 7, 1979, the Office of Federal Contract Compliance Programs (OFCCP), U.S. Department of Labor, published for comment in the **Federal Register** (44 FR 52283) a proposal to clarify 41 CFR Part 60–4, regulations for the construction industry, pursuant to Executive Order 11246, as amended. (30 FR 12319, 32 FR 14303, 43 FR 14888.) Also published for comment was a proposed Notice and Appendix to establish goals for minority employment for each SMSA and EA (44 FR 52348). That Notice and Appendix are published in final form today elsewhere in the **Federal Register**. Comments were received until November 6, 1979, on each proposal.

One hundred fifty-four written comments were submitted by individuals and groups during the comment period. The comments were directed either to the proposed clarification, the proposed minority employment goals or to both proposals. Each submission has been thoroughly reviewed, and each criticism and each suggestion has been given careful consideration. Additional comments received and postmarked after November 6, 1979, were analyzed and considered, but are not included in the above count. None of the 154 comments dealt with the proposed clarification of 41 CFR 60–4.6, and only 34 dealt with the proposed clarification of paragraph 7q of 41 CFR 60–4.3. The overwhelming majority of the comments dealt solely with the proposed nationwide minority goals contained in the separate September 7, 1979, **Federal Register** Notice.

**Summary of Comments**

1. Several contractors and contractor associations objected to coverage of nonfederally involved construction projects. Contractors and their associations contended that the clarifying proposal is in reality a major change in the regulations. They contended further that such coverage would be inflationary, would place them in a poor competitive position with respect to companies without Federal contracts, would make companies reluctant to bid on Federal contracts in the future, and would be an intrusion in private sector affairs.

2. Contractor associations contended that there will be additional and burdensome reporting requirements associated with monitoring activity on private sector projects.

3. Both contractors and individuals recognized the industry's legal obligations to take affirmative action, but objected to the $10,000 jurisdictional amount for goals coverage; some suggested instead that the jurisdictional amount be raised to $50,000 or $100,000.

4. Contractor associations contended that the net result of implementing section 7q and nationwide goals will be a decrease in the number of minority employees, and in some instances "reverse discrimination" as contractors attempt to meet specific goals.

5. One comment proposed that the regulation apply to private sector projects only after a Federal award has been made, i.e. prospectively, and then only to private projects in areas where a contractor has Federal or federally assisted construction.

6. Several public interest groups, advocacy groups, and Government agencies praised the proposal. However, they expressed concern about OFCCP's ability to monitor compliance adequately on private sector projects, and called for the establishment of improved employee reporting mechanisms.

**Discussion**

Some comments suggested that the application of Executive Order affirmative action requirements to nonfederally related construction projects is a new requirement. More specifically, they asserted that paragraph 7q constitutes a substantive change in the regulations rather than a clarification of existing requirements as stated in the September 7, 1979, **Federal Register** proposal (43 FR 52283). To the contrary, by its expressed terms, the proposal did not establish a new requirement. Rather the proposal simply clarified which goals (that is, the goals of a specific geographical area) are applicable to a contractor's workforce when the contractor is performing construction work in two or more locations and each location is subject to different goals (e.g., two separate SMSAs).

The relevant regulation is 41 CFR 60–4.1, which was promulgated as a final rule on April 7, 1978 (43 FR 14888), and which has been effective since May 8, 1978. That regulation provides, in pertinent part, as follows:

> This part applies to all contractors and subcontractors which hold any Federal or federally assisted construction contract in excess of $10,000. The regulations in this part are applicable to all of a construction contractor's or subcontractor's construction employees who are engaged in onsite construction *including those construction employees who work on a nonfederally funded or nonfederally assisted construction site* * * * (Emphasis added.)

Nothing in the language proposed as paragraph 7q would alter, by extension or otherwise, that basic obligation. Further, the Department of Labor's nationwide goals for female participation in the construction industry have, since their effective date (May 8, 1978), been applicable to a non-exempt contractor's total onsite construction workforce throughout the United States—regardless of whether the total workforce is employed on a federally related or non-federally related project (and regardless of whether there were specific goals in existence for minorities (43 FR 14899)). The regulation is consistent with the general approach under Executive Order 11246 regulations that a contractor's acceptance of a single covered contract makes all of that contractor's workforce and facilities covered unless otherwise specifically exempt. See, for example, 41 CFR Part 60–2 (Revised Order 4) under which each nonconstruction contractor subject to Revised Order 4 must comply with the written affirmative action program requirements at each of its establishments.

This same approach has been applicable to the construction industry since 1971. The Philadelphia Plan, for

example, initially was limited to federally involved construction projects. Contractors at the time of a compliance review would shift their minority workers from private sites to federally involved projects. This practice was referred to as "bicycling." The Philadelphia Plan was amended in 1971 to cover the contractor and therefore covered both federally related and private projects. (See Nash, *Affirmative Action Under Executive Order 11246*, 46 N.Y.U.L. Rev. 225, 240 (1971).)

The proposal then did not propose to establish new requirements; rather it was designed to eliminate confusion surrounding the phrase "covered area" as that phrase is used in 41 CFR Part 60–4 in referring to the various geographical units where goals have been established. Questions were raised, for example, as to whether a contractor which is awarded a federally involved construction contract in SMSA X should apply the goals established for SMSA X to its non-Federal work in SMSA Y or the goals established for SMSA Y to that non-Federal work in SMSA Y. Paragraph 7q merely was intended to explain that construction contractors and subcontractors were to apply the goals of the SMSA or EA where the contract was actually being performed. The proposed amendment to 41 CFR
60–4.6 was intended to achieve the same purpose. The proposal, as has been stated herein, would achieve the clarification in part by adding a new paragraph q to clause 7 of the Standard Federal Equal Employment Opportunity Construction Contract specifications. Upon reflection, however, paragraph 4 of the specifications appears to be a more appropriate point to add the amendment. Accordingly, paragraph 4 of the specifications has been amended rather than to add a paragraph q to paragraph 7.

The September 7, 1979, Federal Register notice did not propose an amendment to 41 CFR 60–4.2. However, paragraph 2 of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)" (which follows 41 CFR 60–4.2(d)) also may need clarification on the same point. Accordingly, paragraph 2 of the Notice has been amended to make it clear that a covered construction contractor is subject to the goals applicable to the geographical location where the construction work is being performed and that all its projects, whether or not they are federally involved, are covered by the goal requirement.

The other comments which were received on the proposal and which have been summarized above simply are not on point. Each comment, as indicated above, however, has been considered. In addition, those comments also have been treated in the Notice and Appendix regarding minority goals which are published elsewhere in the **Federal Register** today.

It has been determined that this document does not contain a major proposal requiring the preparation of a regulatory analysis under Executive Order 12044 (43 FR 12661) or under the Department's guidelines implementing Executive Order 12044.

This document was prepared under the direction and control of Weldon J. Rougeau, Director, Office of Federal Contract Compliance Programs.

Accordingly, 41 CFR Part 60–4 is amended as set forth below:

Dated: September 30, 1980.

**Ray Marshall,**

*Secretary of Labor.*

**John N. Gentry,**

*Under Secretary.*

**Donald Elisburg,**

*Assistant Secretary, Employment Standards Administration.*

**Weldon J. Rougeau,**

*Director, Office of Federal Contract Compliance Programs.*

(Secs. 201, 202, 205, 211, 301, 302, and 303 of E.O. 11246, as amended, 30 FR 12319; 32 FR 14303; 43 FR 46501)

1. 41 CFR 60–4.2(d) is amended by revising paragraph 2 of the "Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)," to read as follows:

**§ 60–4.2 Solicitations.**

* * * * *

(d) The following notice shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally assisted construction contracts or subcontracts in excess of $10,000 to be performed in geographical areas designated by the Director pursuant to § 60–4.6 of this part (see 41 CFR 60–4.2(a)):

**Notice of Requirement for Affirmative Action To Ensure Equal Employment Opportunity (Executive Order 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.

2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

| Timetables | Goals for minority participation for each trade | Goals for female participation in each trade |
|---|---|---|
| | Insert goals for each year. | Insert goals for each year |

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and nonfederally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60–4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60–4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60–4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of $10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed giving the state, county and city, if any).

2. 41 CFR 60–4.3(a) is amended by revising paragraph 4 of the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) to read as follows:

**§ 60–4.3 Equal opportunity clauses.**

(a) * * *

**Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246)**

* * * * *

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted constuction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the **Federal Register** in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

3. 41 CFR 60–4.6 is amended to read as follows:

**§ 60–4.6 Goals and timetables.**

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the **Federal Register**, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60–4.2. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed.

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## DEPARTMENT OF LABOR

### Office of Federal Contract Compliance Programs

### Goals for Minority Participation in the Construction Industry

On September 7, 1979, the Department of Labor published in the Federal Register (44 FR 52348) a notice requesting comments on proposed employment goals for minority workers in the construction industry. The proposed notice contemplated a single goal for minority employment, and an appendix was attached which proposed goals for minority utilization in each standard metropolitan statistical area and in each economic area. On October 5, 1979, the Equal Employment Opportunity Commission (EEOC) published a related document in the Federal Register (44 FR 57491) requesting comments on the question of whether a specific and separate percentage goal should be established for each minority group.

This final Notice and the Appendix B–80 attached hereto, supersede Appendix B of the Notice issued on April 7, 1978, (43 FR 14899) and corrected on May 5, 1978, (43 FR 19473) and Appendix B–1 of the Notice issued on March 20, 1979, (44 FR 17116) which established goals under Executive Order 11246 for minorities working on construction projects located in certain areas. This Notice is issued pursuant to 41 CFR 60–4.6 and establishes goals under Executive Order 11246, as amended (30 FR 12319, 32 FR 14303 and 43 FR 46501), for minorities in the construction industry.

#### Background

Executive Order 11246, as amended, prohibits nonexempt Federal and federally assisted construction contractors and subcontrators from discriminating against any employee or applicant for employment because of race, color, religion, sex, or national origin. In addition, such contractors and subcontractors are required to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin. Section 201 of the Order provides that the Secretary of Labor shall adopt rules, regulations and orders as he deems necessary and appropriate to achieve the purposes of the Order.

Service and supply contractors (i.e., nonconstruction contractors) with at least 50 employees and a contract of at least $50,000 are required to develop and implement written affirmative action programs (see 41 CFR Part 60–2). These affirmative action programs, among other things, are required to contain separate goals and timetables for minorities and women. The goals reflect the difference between such contractors' rate of utilization of minority and female employees and the availability of those groups in the relevant labor area. Service and supply contractors for a number of years now have been under an obligation to implement the Executive Order's affirmative action requirement in this manner.

A different approach was developed with regard to construction contractors. Unlike service and supply contractors, construction contractors normally have not been required to develop, on an individual basis, written affirmative action programs. Rather, for the construction industry, written affirmative action programs have been developed by the local construction industry itself, subject to approval by the Department of Labor, or the Office of Federal Contract Compliance Programs would develop the affirmative action programs for various geographical areas. These programs did contain affirmative action goals. Nonexempt construction contractors working in those geographical areas would then be required to comply with the affirmative action programs. This requirement or obligation was imposed by incorporating the written area-wide affirmative action program into the contractor's contract.

All construction contractors traditionally were required to comply with the Executive Order's Equal Opportunty clause, published at 41 CFR 60–1.4(a) and (b), which mandates nondiscrimination and affirmative action. (See Executive Order 11246, § 202 and § 301.) Not all construction contractors were subject to goals and timetables, however, because these area-wide programs were not developed for each geographical area where contruction was taking place.

This difference in treatment between construction industry contractors and service and supply contractors resulted because of the limitations of the three basic types of affirmative action programs which the Office of Federal Contract Compliance Programs (OFCCP) designed for the construction industry. The three baisc type of affirmative action programs developed for the construction industry were (1) Imposed Plans, (2) Hometown Plans and (3) Special Bid Conditions. One of the basic limitations of these types of plans or affirmative action programs was that they were limited to a specific geographical area or, in the case of Special Bid Conditions, limited to specific construction projects. Accordingly, neither type of affirmative action program provided for a nation-wide system of defined affirmative action goals. We turn now to a brief description and analysis of each of these types of plans.

Imposed Plans for the most part were implemented in major metropolitan areas where there was substantial Federal or federally assisted construction, and applied only to those projects which were valued in excess of $500,000. These areas included at one time or another Philadelphia, Washington, D.C., San Francisco, St. Louis, Atlanta, Camden, and Chicago. Imposed plans generally were published in 41 CFR Chapter 60, but the Philadelphia Imposed Plan was never codified in the Code of Federal Regulations.

Hometown Plans were tripartite agreements among the contractors and the unions in an area and the local minority community. The three groups would develop a plan for compliance with the Executive Order and present it to the OFCCP for approval. If the OFCCP approved the plan, it constituted the contractors' obligations under the Executive Order and so long as they complied with the plan they also were in compliance with the Order. Presently, there are 27 approved Hometown Plans in operation.

Special Bid Conditions were developed to impose affirmative action obligations on construction contractors which were working on certain high impact projects which were being constructed in an area which was not covered, as a general rule, by a Hometown or Imposed Plan.

These three types of affirmative action plans were not implemented through a regulatory scheme applicable to the construction industry on a nation-wide basis. Rather they were included in the solicitations which precede the award of contracts. One of the shortcomings of these approaches was that substantial federally involved construction was being conducted outside of the small number of geographical areas which had either an Imposed or Hometown Plan, and such construction therefore took place without benefit of specific affirmative action requirements. Also, contracting officers were confused by the different types of affirmative action plans and sometimes did not know which ones covered specific geographical areas or projects. In addition, some contracting agencies, perhaps because of the confusion, did not adhere to the different notices and formats developed

by OFCCP. As a consequence, construction contracts frequently were awarded which did not contain the notice indicating that they were subject to the Executive Order even though the contracts were subject to the Executive Order and were to be performed in an area which had either an Imposed or Hometown Plan. The Imposed Plans presented a special problem because a number of contractors sometimes failed to sign the certification which appeared in the appendix in Imposed Plans. Failure to sign the certification frequently was unrelated to the contractors' commitment to the affirmative action requirements. However, the certification was held to be a material part of the bid and those bids which did not contain a signed certification were rejected as nonresponsive. A number of these rejected bids were low bids, and the result was to increase the cost of construction to the Government.

Another deficiency in the old programs was that no specific affirmative action standards were applicable to women in the construction industry.

Under the old procedures, compliance agencies developed Special Bid Conditions for high impact projects for which they had compliance responsibility. OFCCP approved the Special Bid Conditions, but the Bid Conditions were applicable only to the project for which they were approved. Accordingly, if a compliance agency failed to develop Special Bid Conditions for a project for which it had compliance responsibility, the project was not covered by an affirmative action plan (i.e., if the project was not otherwise in an area covered by a Hometown or an Imposed Plan). This would be true even though another project in the same labor market area may have been covered by Special Bid Conditions developed by another compliance agency. The Special Bid Conditions did apply, however, to a covered contractor's entire workforce working in the labor market area where the covered project was located although some employees may not have worked on the project.

To correct the deficiencies and limitations of the different types of affirmative action programs for construction contractors, the Department of Labor on April 7, 1978, published a regulation (presently codified at 41 CFR Part 60–4) governing the employment practices of contractors which had construction contracts in excess of $10,000. In addition, the Imposed Plans were terminated. Hometown Plans were retained but specified obligations were imposed with which signatories to the plans were required to comply within a certain period of time in order to continue OFCCP's approval of the specific Hometown Plan. (See 43 FR 14890.) The Model EEO Bid Conditions, the procurement device by which the affirmative action obligation under the old system was placed on construction contractors, also were discontinued.

In lieu of these procedures, the April 7, 1978, regulations developed new procedures for Federal agencies and procurement contracting officers to follow in awarding Federal and federally assisted construction contracts. In a separate action on that same day, goals were established for women in the construction industry on a nationwide basis. Although the Imposed Plans were terminated, the regulations continued in effect the goals which had been developed for minority workers under the Imposed Plans until new goals were adopted for such groups by OFCCP. The Imposed Plan goals applied only to minorities; however, a number of the plans defined minority to include minority women.

A key element of that regulation is 41 CFR 60–4.6. With regard to this section of the regulations, the preamble to the April 7, 1978, regulations stated in relevant part as follows (43 FR 14892):

> This section requires the Director of OFCCP to issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic or other relevant data. The goals shall cover specific construction projects or construction contracts performed in specific geographical areas. * * * It is anticipated that within the very near future OFCCP will propose standards and goals for minority utilization pursuant to 41 CFR 60–4.6 of the regulations published today. Until those goals are published in final form, the goals and timetables applicable under existing OFCCP requirements will continue to be effective.
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> Section 201 of Executive Order 11246, as amended, mandates the Secretary of Labor to 'adopt such rules and regulations and issue such orders as he deems necessary and appropriate to achieve the purposes * * * of the Executive Order. Section 202 of the Executive Order requires every nonexempt Federal contractor or subcontractor, including Federal and federally assisted construction contractors and subcontractors (see § 301 of the Order), to take affirmative action.
>
> "The Department of Labor's experience with affirmative action has demonstrated that goals and timetables are the most concrete and effective system for implementing the affirmative action obligation contained in the Executive Order. Since goals and timetables were implemented as an affirmative action requirement, all Federal contractors and subcontractors except construction contractors have been required to establish goals and timetables for women. Construction contractors, on the other hand, have been required to establish goals for minority workers, and then, only if the construction contract was being performed in a geographical area covered by a Hometown Plan or an Imposed Plan or if the contract was awarded subject to Special Bid Conditions. * * * Unlike nonconstruction contractors, who were and are required to develop detailed affirmative action programs (which include goals and timetables for women and minorities), the only implemented affirmative action obligation imposed on construction contractors had been the goals and timetables established in the Hometown Plans, Imposed Plans or Special Bid Conditions. Nevertheless, all Government contractors and subcontractors, including construction contractors and subcontractors, agree in every contract to "* * * take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex or national origin."(Section 202, cl. 1, Executive Order 11246, as amended.)
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> A number of methods and procedures for establishing goals and timetables for the construction industry have been considered, and the OFCCP has concluded that this Notice form is the most reasonable and efficient way to inform construction contractors of their obligations and to protect workers under the Executive Order. First, the Hometown Plan concept contemplates that contractors, unions and the local community voluntarily will agree to an affirmative action plan, submit it to the OFCCP for approval and, if approved, compliance with the plan will constitute compliance with the Executive Order. This process is time consuming and does not always guarantee agreement. Indeed, under this process only 62 Hometown Plans have been developed and approved and only 33 presently exist. These plans cover only a small fraction of the cities in the country and only a small portion of Federal and federally assisted construction. Similarly the Imposed Plans require long and drawn-out proceedings before they are implemented. These proceedings include public hearings in each area where the plan is imposed and subsequent publication in the **Federal Register** and codification in the Code of Federal Regulations. Moreover, the hearing process did not always produce reliable data upon which reasonable goals could be based thereby making it necessary for the OFCCP to develop the goals using Census Bureau prepared data. Through this process, seven plans have been imposed.
>
> In order to cover some of the major Federal and federally assisted construction contracts being performed outside of Hometown and Imposed Plan areas, Special Bid Conditions were designed. Under this concept the compliance agencies establish goals and timetables for construction contracts for which they have compliance responsibility and submit the Special Bid Conditions to the OFCCP for approval prior to the time the bids or offers were solicited. Special Bid

Conditions unlike Hometown and Imposed Plans, however, are limited to the projects for which they were designed. Accordingly, two projects being in close proximity would require separate Bid Conditions if the projects involved were assigned to different agencies for compliance purposes, or no Bid Conditions at all if the compliance agency did not act prior to the solicitation.

The three affirmative action methods previously used do not allow for an efficient system which provides a fair degree of protection for construction employees. The notice system, on the other hand, allows for the use of the best data available, which was not always forthcoming in hearings, and an efficient and prompt implementation of the goals which result from that data.

* * * * *

It was against this background that the Department of Labor published a notice in the **Federal Register** (44 FR 52348) on September 7, 1979, proposing to establish numerical goals for minority utilization in the construction industry pursuant to Section 202 of Executive Order 11246 and 41 CFR 60–4.6. In proposing the goals, the Department of Labor had several concerns. First, there was concern that standards, methodologies and procedures should be established which are not confusing to contracting agencies and procurement contracting officers at both the Federal and State and local government levels (in the case of federally assisted construction). In this connection, it was important that once such standards and methodologies are developed that they conveniently lend themselves to utilization by procurement contracting officers.

Second, it also was important that all covered construction be subject to the numerical goal requirements. In this connection, the Department of Labor was concerned that a system as uniform as possible be established so that all covered contractors are treated equally and that one does not enjoy advantages over others in competing for federally involved construction contracts.

Finally, the Department was concerned that numerical goals be based on a rational, reliable, valid and uniform information base. Accordingly, the Department of Labor proposed to use Census Bureau prepared data and selected the Standard Metropolitan Statistical Area (SMSA) as the standard geographical unit for establishing goals. Where there was no SMSA, the Economic Area (EA) was selected as the standard geographical unit. The numerical goal itself was the minority percentage in the experienced civilian labor force of the SMSA or the EA, whichever is applicable in a given area. Thus, a contractor performing a nonexempt construction contract in an SMSA with a 20 percent minority labor force would have a minority goal of 20 percent for each craft and trade employed by the contractor in the SMSA, and would be required to take every good faith step to ensure that 20 percent of its work hours were performed by minority workers.

One hundred fifty-four written comments were received by the Department of Labor during the comment period. The comments were directed both to the proposed notice regarding minority goals and to the proposed clarification of 41 CFR Part 60–4, published for comment on the same date (44 FR 52283). Each of the comments has been thoroughly reviewed and considered including comments which were received after the closing date. In addition, we have analyzed and given careful consideration to comments received by the Equal Employment Opportunity Commission (EEOC) pursuant to its October 5, 1979 (44 FR 57491), request for public comment on whether the proposed minority goals should be aggregated or disaggregated by individual minority subgroup. The comments received after the closing date and by EEOC are in addition to the 154 comments mentioned above.

**Summary of Comments**

1. A number of the contractor associations objected to the Economic Area (EA) and Standard Metropolitan Statistical Area (SMSA) as the basic geographical units on which goals are to be established. The associations expressed the view that their contractor-members' respective EAs bore neither geographical nor economic relationships to SMSAs. Further, a significant number of associations contended that the commuting patterns in their members' localities were inverse to the models determined by the Bureau of the Census, i.e., the associations asserted that workers travel from EAs to SMSAs for employment opportunities, not from SMSAs (cities) to EAs (rural areas); and that minorities resist traveling to work sites in the large geographical units covered by the EAs from urban centers where they reside. As such, they argued that minority availability will not be sufficient to meet the proposed goals.

2. A number of comments objected to the use of 1970 Census data to determine goal levels. Contractors and contractor associations stressed the need for data that are localized and based on requisite skills of workers. State, Federal and local government officials ("Government") and minority advocate groups contended that 1970 Census data are outmoded. Although these latter groups supported the suggestion that current, local data be utilized, or that 1980 data, when available, be used to set minority goals, they cited different reasons for their conclusions. Some comments also asserted that the 1970 Census data undercounted minorities, and that the resultant goals should, therefore, be higher than those proposed by OFCCP.

3. Government officials and advocacy groups also expressed concern for what they perceived to be a lessening of employment opportunities for minorities in the construction industry. These comments identified specific major cities where the proposed goals would be lower than existing Hometown Plan goals or locally legislated goals or the OFCCP's interim minority goals published at 43 FR 14888. Some comments suggested, and in some instances advocated, adoption of a three-goal concept (central city goal, SMSA goal, and EA goal). Other comments suggested that some form of "targeting" of critical areas would be preferable in order to maintain or increase minority gains in urban areas.

4. Other comments, primarily from contractors, objected to the use of the "single goal for all crafts" concept. They contended that a single goal is unrealistic and ignores variations in skill levels and the actual availability of skilled workers.

As indicated above, on October 5, 1979, the Equal Employment Opportunity Commission (EEOC) also published a proposal requesting comments on whether OFCCP's minority goals should be disaggregated. That is, whether there should be separate goals for each minority group. Also, as indicated above, the Department of Labor has analyzed those comments as well.

The comments received by EEOC supporting aggregation may be summarized as follows:

1. Because the construction industry's workforce is not stable due to the fact that "most of the workers are employed for a short duration, and only in specialized skills," separate goals would increase the administrative burdens involved in monitoring and reporting minority hiring and would raise construction costs. Some comments suggested that the paperwork involved would have its greatest impact on small contractors to whom it may be prohibitively expensive.

2. Where total or individual minority group populations are very small, it would be difficult to meet percentage goals. Furthermore, where the total onsite construction workforce is small, goals of less than one percent would be

impossible to comply with; nevertheless, contractors would be cited for underutilization. In such instances, goals of less than one percent should be set for all minorities or for particular minorities.

3. Individual minority group goals would require contractors to overlook qualified members of one minority group to hire members from another minority group in order to meet specific goals. One comment described a hypothetical newspaper advertisement seeking members for specific jobs: "Note, blacks need not apply, we have met our goals." Another comment noted: "Substantial expense, wasted effort, and loss in productivity results from having to pass over presently available minorities possessing requisite skills simply to satisfy the goal for another minority group."

4. Contractors would have to incur the additional expense of recruiting and training members of specific minority groups in order to meet individual minority group goals.

5. Separate minority group goals would lead to divisiveness among the various minority groups, i.e., to the extent that a particular group believed its goal to be too low, any increases would be perceived as coming at the expense of another group in order that the overall minority goal remain equal to the minority percentage of the experienced civilian labor force. In this regard, some comments stated that only some minority groups would gain, leaving others at a significant disadvantage.

The comments received by EEOC opposing aggregation may be summarized as follows:

1. Reporting minority hiring on an aggregate basis can give the appearance of full minority utilization when in fact some minority groups are being totally excluded or seriously underutilized. As a result, a particular minority group might have a disproportionately greater share of job opportunities relative to other minority groups, and the problems of smaller minority groups might be masked by a full utilization figure. In contrast, disaggregation would yield a more accurate data base for the identification of underutilization.

2. Contractors could freely engage in discriminatory practices targeted against particular minority groups and thereby favor or exclude members of a particular minority group and still meet the single minority goal. Disaggregation of goals would effectively reduce contractor opportunities to exercise discriminatory preferences.

In the discussion section below, we will take up the issues raised in these comments.

**Discussion**

1. Some contractor associations objected to the use of SMSAs and EAs as the basic geographical units for establishing goals. As indicated above, the Executive Order mandates that the Department of Labor promulgate regulations to implement the affirmative action requirement of the Order. Numerical employment goals have proven to be an effective method of achieving equal employment opportunity. Previous affirmative action requirements adopted by OFCCP for the purpose of placing employment goals on construction contractors left most construction work uncovered because the plans did not lend themselves to widespread use (see discussion of this point above). Moreover, the public hearings and other procedures utilized for the purpose of giving the public an opportunity to provide input did not always produce reliable data on whih goals could be based. Consequently, additional research was required to produce the data on which such goals could be based.

The Department, in attempting to improve equal employment opportunity in the construction industry through employment goals, has used a number of different geographical units as the base on which the goals were established. These units have included cities, combinations of cities and counties, SMSAs and an entire state. In addition, and as stated in the **Federal Register** notice when the goals were proposed (44 FR 52348–52349):

> The Department also examined the possibility of using other geographical divisions as goal setting areas. Principally, the Department examined the Federal Wage Survey Areas as a possible geographical base for setting goals. These are contiguous areas which cover the entire country and are based upon the commuting patterns of Federal employees. However, construction trades are not part of the survey and the areas reflect the commuting patterns of Federal employees who usually work at fixed locations.

However, when all objectives are considered (e.g., consistent, uniform and equal treatment of contractors which constantly compete against each other for contracts, uniform and broad protection of employees and applicants for employment, a uniform and reliable data base, and standards and methodologies which can be administered on a coherent basis), the SMSAs and EAs are the geographical untis which possess the most positive characteristics and the smallest number of negative characteristics. SMSAs, for example, have been conceptually developed and defined by the Office of Management and Budget. These statistical areas (or geographical units) represent a reasoned judgment as to how metropolitan areas may be defined statistically in a uniform manner, using data items that are: (1) widely recognized as indicative of metropolitan character (population, urban character, non-agricultural employment, population density, commuting ties); and (2) available from a body of Federal statistics which has been uniformly and simultaneously collected in all parts of the country, and processed and tabulated according to consistent standards. Thus, if a project is located within an SMSA, it can be concluded that a reasonable commuting area exists within that SMSA, and that goals based on SMSA statistics are accurate. Furthermore, the majority of the United States' population lives in the counties contained in the SMSAs. (For a more complete discussion of the underlying concepts and derviations of SMSAs, see "Standard Metropolitan Statistical Areas," Office of Management and Budget, 1975.)

The "Economic Areas" concept was developed and defined by the Bureau of Economic Analysis in the U.S. Department of Commerce. Economic Areas are viewed as centers of commerce and generally cover areas which include the places of work and residence for most workers. There are 183 such areas, defined along county lines, covering the entire country. Counties were assigned to these economic in accordance with commuting patterns based primarily on data gathered by the Bureau of the Census. (For a fully explanation of the derivation of EAs, see "The BEA Economic Areas: Structural Changes and Growth 1950–73," *Survey of Current Business*, November 11, 1975.)

Those comments which contend that the proposed minority employment goals for SMSAs and EAs are to high because construction workers tend to travel from EAs and SMSAs to central cities and that minority workers will not travel to rural and suburban areas are not persuasive. Numerous studies have demonstrated that minorities tend to be concentrated in the central cities. Like other workers, minorities will travel to the areas where the jobs are generated and, according to data obtained from the Bureau of the Census, the construction jobs will be, for the most part, in the SMSAs and the suburban communities. That data, which reported the dollar value of building construction permits

let by political jurisdictions across the country, reveal that over 72 percent of the total dollar amount was for projects located outside of the central or core city. Based on the assumption that the greater the dollar value of the construction, the greater the number of jobs to be created, it is reasonable to assume that, with few exceptions, the number of jobs for minorities will be greater in these fringe areas, and the proposed goals should reflect this. In addition, it is a well-known fact that construction workers follow the work, even if it means traveling long distances. There is no evidence that this traveling factors is different for minorities than it is for nonminorities. Indeed, there have been instances where minorities have moved to locations in order that they avail themselves of construction employment opportunities.

2. Contractors contended that the minority goals should be by individual trade/craft rather than a single goal for all crafts because to do otherwise ignores the unavailability of minority construction workers, both skilled and unskilled, and makes it virtually impossible for contractors to meet the goal. After giving consideration to the use of individual craft/trade goals, the Department concluded that the "single goal for all crafts" concept reflects the relevant pool from which minority workers can be drawn, and offers a greater opportunity for minorities to work in all construction trades at this time.

Further, the Department of Labor has reviewed the data available on which individual trade/craft goals might be based and finds that they are seriously limited. The 1970 Census has some data on minority participation in the individual trades; however, it reflects pre-1970 employment practices of the construction industry which excluded minorities from working in many trades regardless of their skill. Individual craft data at the county level are unreliable because of the small population samples and the even smaller number of minorities employed in the trades. Such data, therefore, cannot provide an accurate basis for setting appropriate individual craft/trade goal levels.

Bearing in mind that the intent of the goals is an initial measure of the contractors' good faith efforts to increase the employment opportunities for minorities and women, and that many trades have minimal entry education and skill requirements, the single goal approach is appropriate and reasonable. Moreover, the single goal concept is predicated upon the proposition that had it not been for the long-standing exclusion of minorities from the skilled construction crafts, minorities would be represented in these crafts at least to the extent of their representation in the total labor force in a given geographical area. (See, *United Steelworkers of America* v. *Weber*, 443 U.S. 193.)

3. The Department is sensitive to those comments which state that 1970 Census data are outmoded. The Census data, of course, are collected decennially. Nevertheless, the advantages of the Census data far outweigh the advantages of data which may have been collected more recently. The latest nationwide labor force data, for example, are contained in the 1970 Census of Population. At the request of the Department of Labor, the Bureau of Census has made a tabulation of the 1970 Census data which provides counts of minority and other persons in the experienced civilian labor force. Moreover, the method adopted here for establishing goals lends itself to easy amendment, and it is expected that the goals will be adjusted when the 1980 Census data have been tabulated.

4. Some groups objected that the SMSA and EA goals in some instances were lower than presently existing goals in Hometown Plans or goals retained from the old Imposed Plans. Protection of employees and applicants for employment will not be lessened by the new goals established in the attached Appendix. First, they are affirmative action goals, and contractors are required to use every good faith effort to meet them. They do not preclude OFCCP from requiring either higher goals or stronger corrective action of individual contractors in specific cases to remedy the effects of past discriminatory practices. Needless to say, Administrative Law Judges and courts would not be bound to follow these affirmative action goals when additional relief is necessary to correct discriminatory practices. Second, the Hometown Plan goals are not affected by the goals adopted today. Signatories to current Hometown Plans will continue to follow the Hometown Plan goals (see 41 CFR 60–4.5). Third, Imposed Plans primarily covered and were confined to major metropolitan areas where minority concentrations tend to be high. The percentage goals for minorities in the plans accordingly tended to be high. However, by expanding the geographical area (i.e., from city to SMSA or to EA), the total number of minorities protected by the goals adopted today increases, although there may be some decrease in the percentage level of the goals. Fourth, all nonexempt construction will be subject to the relevant minority numerical goal whereas such requirements now are limited to a relatively small number of major metropolitan areas.

5. The goals published today for minority utilization are based upon both male and female minority representation in the labor force. In addition, a single goal or aggregated goal for all minority groups is adopted. Mnay useful comments were submitted in response to EEOC's request for public comments on whether an aggregated minority goal or whether disaggregated minority goals should be adopted by OFCCP for construction contractors. The Department and EEOC also have had productive discussions on this issue.

As a consequence, the Department of Labor and EEOC have agreed that disaggregated minority goals—for each race and national origian group, by sex—will be instituted as soon as detailed tabulated 1980 Census data are available. The 1980 Census data are expected to include precise data on a widespread basis for various minority subgroups.

EEOC and the Department of Labor will propose appropriate minority subgroup participation rates below which aggregation will occur in order to ensure meaningful minority subgroup goals for individual contractor workforces.

### Minority Goals for New York City

Minority hiring goals as proposed on September 7, 1979, for the five counties comprising the City of New York will not be adapted at this time. The proposed goals will be held in abeyance pending resolution of whether or not the proposed goals conform to the terms of a court order entered in *Percy* v. *Brennan*, 384 F. Supp. 800 (1975). Until such time as that issue has been resolved, the goals in existence for those counties now will remain effective, and those by-trade goals have been published in the Appendix.

### Conclusions

Based on all those considerations, the Department of Labor hereby adopts the SMSA as the basic geographical unit for establishing goals and the Economic Area as the geographical unit for those areas located outside of the SMSA's. The goal established for minority utilization for each of these geographical units is the minority civilian labor force percentage for each such geographical unit.

The latest available nationwide labor force data are contained in the 1970 Census of Population. To prepare the proposed goals, the Bureau of Census has prepared for OFCCP a tabulation of

the 1970 Census data that provides counts of minority and other persons in the experienced civilian labor force.

A single minority goal is established for each SMSA and EA without a timetable. Timetables for the achievement of minority goals are not provided because it is assumed that after 10 years of Executive Order and other equal employment opportunity efforts to increase the minority participation in the labor force, these levels should be at least at the 1970 minority force figures. The minority utilization goals adopted today were calculated using the 1970 Census tabulation mentioned above, and are set at the 1970 minority representation in the experienced civilian labor force.

Separate goals are established for each of the SMSA's and for each of the EA's. When a covered construction contract or subcontract is for a project located in an SMSA, the goals for that SMSA apply. When a covered construction contract or subcontract is for a project located in an area outside of an SMSA, the EA goals for that area apply.

The minority (male and female) goals apply to Federal and federally assisted construction contractors and subcontractors which have covered contracts. The goals are expressed as a percentage of the total hours worked by such a covered contractor's or subcontractor's entire onsite construction workforce which is working on any construction site within a relevant area. The goal applies to each construction craft and trade in the contractor's entire workforce in the relevant area including those employees working on private nonfederally involved projects.

The applicable goals for the contractor or subcontractors are the goals for the geographical area where the contract is being performed, and all the work of a Federal or federally assisted construction contractor or subcontractor is covered regardless of whether the work is being performed on a covered contract. Therefore, a contractor with a covered contract in SMSA X would apply the goals for SMSA X for that contract. The same contractor, however, would apply the SMSA Y goals to all its construction work in SMSA Y even though that contractor's contracts in SMSA Y were neither Federal nor federally assisted.

Finally, this notice and Appendix B–80 do not affect contractors which are participating under Hometown Plans approved by OFCCP with respect to contracts being performed in the geographical area covered by the Hometown Plan.

Each contracting agency, each applicant, and each contractor is required to include the appropriate goal set forth below in all invitations for bids or other solicitations for Federal or federally assisted construction contracts of subcontracts in excess of $10,000.

Accordingly, Appendix B of the Notice issued on April 7, 1978, (43 FR 14899) and corrected on May 5, 1978, (43 FR 19473) and Appendix B–1 of the notice issued on March 20, 1979, (44 FR 17116) which established goals for minority utilization in the construction industry are hereby superseded.

A new Appendix B–80 is hereby issued as set forth below which shall become effective on November 3, 1980.

Dated: September 30, 1980.

**Ray Marshall,**

*Secretary of Labor.*

**John N. Gentry,**

*Under Secretary.*

**Donald E. Elisburg,**

*Assistant Secretary, Employment Standards Administration.*

**Weldon Rougeau,**

*Director, Office of Federal Contract Compliance Programs.*

**Appendix B–80**

Until further notice, the following goals for minority utilization in each construction craft and trade shall be included in all Federal or federally assisted construction contracts and subcontracts in excess of $10,000 to be performed in the respective geographical areas. The goals are applicable to each nonexempt contractor's total onsite construction workforce, regardless of whether or not part of that workforce is performing work on a Federal, federally assisted or nonfederally related project, contract or subcontract.

Construction contractors which are participating in an approved Hometown Plan (see 41 CFR 60–4.5) are required to comply with the goals of the Hometown Plan with regard to construction work they perform in the area covered by the Hometown Plan. With regard to all their other covered construction work, such contractors are required to comply with the applicable SMSA or EA goal contained in this appendix B–80.

**Economic Areas**

| State | Goal (percent) |
|---|---|
| **Maine:** | |
| 001 Bangor, ME: | |
| Non-SMSA Counties | 0.8 |
| ME Aroostook; ME Hancock; ME Penobscot; ME Piscataquis; ME Waldo; ME Washington. | |
| 002 Portland-Lewiston, ME: | |
| SMSA Counties: | |
| 4243 Lewiston-Auburn, ME | 0.5 |
| ME Androscoggin. | |
| 6403 Portland, ME | 0.6 |
| ME Cumberland; ME Sagadahoc. | |
| Non-SMSA Counties | 0.5 |
| ME Franklin; ME Kennebec; ME Knox; ME Lincoln; ME Oxford; ME Somerset; ME York. | |
| **Vermont:** | |
| 003 Burlington, VT: | |
| Non-SMSA Counties | 0.8 |
| NH Coos; NH Grafton; NH Sullivan; VT Addison; VT Caledonia; VT Chittenden; VT Essex; VT Franklin; VT Grand Isle; VT Lamoille; VT Orange; VT Orleans; VT Rutland; VT Washington; VT Windsor. | |
| **Massachusetts:** | |
| 004 Boston, MA: | |
| SMSA Counties: | |
| 1123 Boston - Lowell - Brockton - Lawrence - Haverhill, MA–NH | 4.0 |
| MA Essex; MA Middlesex; MA Norfolk; MA Plymouth; MA Suffolk; NH Rockingham. | |
| 4763 Manchester-Nashua, NH | 0.7 |
| NH Hillsborough. | |
| 5403 Fall River-New Bedford, MA | 1.6 |
| MA Bristol. | |
| 9243 Worcester - Fitchburg - Leominster, MA | 1.6 |
| MA Worcester. | |
| Non-SMSA Counties | 3.6 |
| MA Barnstable; MA Dukes; MA Nantucket; NH Belknap; NH Carroll; NH Merrimack; NH Strafford. | |
| **Rhode Island:** | |
| 005 Providence - Warwick - Pawtucket, RI: | |
| SMSA Counties: | |
| 6483 Providence - Warwick - Pawtucket, RI | 3.0 |
| RI Bristol; RI Kent; RI Providence; RI Washington. | |
| Non-SMSA Counties | 3.1 |
| IR Newport. | |
| **Connecticut (Mass):** | |
| 006 Hartford - New Haven - Springfield, CT–MA: | |
| SMSA Counties: | |
| 3283 Hartford - New Britain - Bristol, CT | 6.9 |
| CT Hartford; CT Middlesex; CT Tolland. | |
| 5483 New Haven - Waterbury - Meriden, CT | 9.0 |
| CT New Haven. | |
| 5523 New London - Norwich, CT | 4.5 |
| CT New London. | |
| 6323 Pittsfield, MA | 1.6 |
| MA Berkshire. | |
| 8003 Springfield - Chicopee - Holyoke, MA–CT | 4.8 |
| MA Hampden; MA Hamphire. | |
| Non-SMSA Counties | 5.9 |
| CT Litchfield; CT Windham; MA Franklin; NH Cheshire; VT Windham. | |
| **New York:** | |
| 007 Albany - Schenectady - Troy, NY: | |
| SMSA Counties: | |
| 0160 Albany - Schenectady - Troy, NY | 3.2 |
| NY Albany; NY Montgomery; NY Rensselaer; NY Saratoga; NY Schenectady. | |
| Non-SMSA Counties | 2.6 |
| NY Clinton; NY Columbia; NY Essex; NY Fulton; NY Greene; NY Hamilton; NY Schoharie; NY Warren; NY Washington; VT Bennington. | |
| 008 Syracuse - Utica, NY: | |
| SMSA Counties: | |
| 8160 Syracuse, NY | 3.8 |
| NY Madison; NY Onondaga; NY Oswego. | |
| 8680 Utica - Rome, NY | 2.1 |
| NY Herkimer; NY Oneida. | |
| Non-SMSA Counties | 2.5 |
| NY Cayuga; NY Cortland; NY Franklin; NY Jefferson; NY Lewis; NY St. Lawrence. | |
| 009 Rochester, NY: | |
| SMSA Counties: | |
| 6840 Rochester, NY | 5.3 |
| NY Livingston; NY Monroe; NY Ontario; NY Orleans; NY Wayne. | |
| Non-SMSA Counties | 5.9 |
| NY Genesee; NY Seneca; NY Yates. | |
| 010 Buffalo, NY: | |
| SMSA Counties: | |
| 1280 Buffalo, NY | 7.7 |
| NY Erie; NY Niagara. | |
| Non-SMSA Counties | 6.3 |
| NY Allegany; NY Cattaraugus; NY Chautauqua; NY Wyoming; PA McKean; PA Potter. | |
| 011 Binghamton-Elmira, NY: | |
| SMSA Counties: | |
| 0960 Binghamton, NY–PA | 1.1 |

**Economic Areas—Continued**

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| NY Broome; NY Tioga; PA Susquehanna. | |
| 2335 Elmira, NY | 2.2 |
| NY Chemung | |
| Non-SMSA Counties | 1.2 |
| NY Chenango; NY Delaware; NY Otsego; NY Schuyler; NY Steuben; NY Tompkins; PA Bradford; PA Tioga. | |
| 012 New York, NY: | |
| SMSA Counties: | |
| 1163 Bridgeport - Stamford - Norwalk - Danbury, CT | 10.2 |
| CT Fairfield. | |
| 3640 Jersey City, NJ | 12.8 |
| NJ Hudson. | |
| 4410 Long Branch - Asbury Park, NJ | 9.5 |
| NJ Monmouth | |
| 5380 Nassau - Suffolk, NY | 5.8 |
| NY Nassau; NY Suffolk. | |
| 5460 New Brunswick - Perth Amboy - Sayreville, NJ. | |
| NJ Middlesex. | |
| 5600 New York, NY, NJ | |
| NJ Bergen; NY Putnam; NY Rockland; NY Westchester; NY New York City. | |

(The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens and Richmond.)

| | |
|---|---|
| Electricians | 9.0 to 10.2 |
| Carpenters | 27.6 to 32.0 |
| Steam fitters | 12.2 to 13.5 |
| Metal lathers | 24.6 to 25.6 |
| Painters | 28.6 to 26.0 |
| Operating engineers | 25.6 to 26.0 |
| Plumbers | 12.0 to 14.5 |
| Iron workers (struct) | 25.9 to 32.0 |
| Elevator constructors | 5.5 to 6.5 |
| Bricklayers | 13.4 to 15.5 |
| Asbestos workers | 22.8 to 28.0 |
| Roofers | 6.3 to 7.5 |
| Iron workers (ornamental) | 22.4 to 23.0 |
| Cement masons | 23.0 to 27.0 |
| Glaziers | 16.0 to 20.0 |
| Plasterers | 15.8 to 18.0 |
| Teamsters | 22.0 to 22.5 |
| Boilermakers | 13.0 to 15.5 |
| All others | 16.4 to 17.5 |

| | |
|---|---|
| 5640 Newark, NJ | 17.3 |
| NJ Essex; NJ Morris; NJ Somerset; NJ Union. | |
| 6040 Paterson - Clifton - Passaic, NJ | 12.9 |
| NJ Passaic. | |
| 6460 Poughkeepsie, NY | 6.4 |
| NY Dutchess | |
| Non-SMSA Counties | 17.0 |
| NJ Hunterdon, NJ Ocean; NJ Sussex; NY Orange; NY Sullivan; NY Ulster; PA Pike. | |
| **PENNSYLVANIA:** | |
| 013 Scranton—Wilkes - Barre, PA: | |
| SMSA Counties | |
| 5745 Northeast Pennsylvania | 0.6 |
| PA Lackawanna; PA Luzerne; PA Monroe. | |
| Non-SMSA Counties | 0.5 |
| PA Columbia; PA Wayne; PA Wyoming. | |
| 014 Williamsport, PA: | |
| SMSA Counties | |
| 9140 Williamsport, PA | 1.0 |
| PA Lycoming. | |
| Non-SMSA Counties | 0.7 |
| PA Cameron; PA Centre; PA Clearfield; PA Clinton; PA Elk; PA Jefferson; PA Montour; PA Northumberland; PA Snyder; PA Sullivan; PA Union. | |
| 015 Erie, PA: | |
| SMSA Counties: | |
| 2360 Erie, PA | 2.8 |
| PA Erie. | |
| Non-SMSA Counties | 1.8 |
| PA Clarion; PA Crawford; PA Forest; PA Venango; PA Warren. | |
| 016 Pittsburgh, PA: | |
| SMSA Counties | |
| 0280 Altoona, PA | 1.0 |
| PA Blair. | |
| 3680 Johnson, PA | 1.3 |
| PA Cambria; PA Somerset. | |
| 6280 Pittsburgh, PA | 6.3 |
| PA Allegheny; PA Beaver; PA Washington; PA Westmoreland. | |
| Non-SMSA Counties | 4.8 |
| MD Allegany; MD Garrett; PA Armstrong; PA Bedford; PA Butler; PA Fayette; PA Greene; PA Indiana; WV Mineral. | |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| 017 Harrisburg - York - Lancaster, PA: | |
| SMSA Counties | |
| 3240 Harrisburg, PA | 6.2 |
| PA Cumberland; PA Dauphin; PA Perry. | |
| 4000 Lancaster, PA | 2.0 |
| PA Lancaster. | |
| 9280 York, PA | 2.2 |
| PA Adams; PA York. | |
| Non-SMSA Counties | 3.1 |
| PA Franklin; PA Fulton; PA Huntingdon; PA Juniata; PA Lebanon; PA Mifflin. | |
| 018 Philadelphia, PA: | |
| SMSA Counties | |
| 0240 Allentown - Bethlehem - Easton, PA–NJ | 1.6 |
| NJ Warren; PA Carbon; PA Lehigh; PA Northampton. | |
| 0560 Atlantic City, NJ | 18.2 |
| NJ Atlantic. | |
| 6160 Philadelphia, PA–NJ | 17.3 |
| NJ Burlington; NJ Camden; NJ Gloucester; PA Bucks; PA Chester; PA Delaware; PA Montgomery; PA Philadelphia. | |
| 6680 Reading, PA | 2.5 |
| PA Berks. | |
| 8480 Trenton, NJ | 16.4 |
| NJ Mercer. | |
| 8760 Vineland - Millville - Bridgeton, NJ | 16.0 |
| NJ Cumberland. | |
| 9160 Wilmington, DE–NJ–MD | 12.3 |
| DE New Castle; MD Cecil; NJ Salem. | |
| Non-SMSA Counties | 14.5 |
| DE Kent; DE Sussex; NJ Cape May; PA Schuylkill. | |
| **Maryland** | |
| 019 Baltimore MD: | |
| SMSA Counties: | |
| 0720 Baltimore, MD | 23.0 |
| MD Anne Arundel; MD Baltimore; MD Carroll; MD Harford; MD Howard; MD Baltimore City. | |
| Non-SMSA Counties | 23.8 |
| MD Caroline; MD Dorchester; MD Kent; MD Queen Annes; MD Somerset; MD Talbot; MD Wicomico; MD Worcester; VA Accomack; VA Northampton. | |
| **Washington, DC:** | |
| 020 Washington, DC: | |
| SMSA Counties: | |
| 8840 Washington, DC–MD–VA | 26.0 |
| DC District of Columbia; MD Charles; Montgomery; MD Prince Georges; VA Arlington; VA Fairfax; VA Loudoun; VA Prince William; VA Alexandria; VA Fairfax City; VA Falls Church. | |
| NON-SMSA Counties | 25.2 |
| MD Calvert; MD Frederick; MD St. Marys; MD Washington; VA Clarke; VA Culpeper; VA Fauquier; VA Frederick; VA King George; VA Page; VA Rappahannock; VA Shenandoah; VA Spottsylvania; VA Stafford; VA Warren; VA Westmoreland; VA Fredericksburg; VA Winchester; WV Berkeley; WV Grant; WV Hampshire; WV Hardy; WV Jefferson; WV Morgan. | |
| **Virginia:** | |
| 021 Roanoke-Lynchburg, VA: | |
| SMSA Counties: | |
| 4640 Lynchburg, VA | 19.3 |
| VA Amherst; VA Appomattox; VA Campbell; VA Lynchburg. | |
| 6800 Roanoke, VA | 10.2 |
| VA Botetourt; VA Craig; VA Roanoke; VA Roanoke City; VA Salem. | |
| Non-SMSA Counties | 12.0 |
| VA Alleghany; VA Augusta; VA Bath; VA Bedford; VA Bland; VA Carroll; VA Floyd; VA Franklin; VA Giles; VA Grayson; VA Henry; VA Highland; VA Montgomery; VA Nelson; VA Patrick; VA Pittsylvania; VA Putaski; VA Rockbridge; VA Rockingham; VA Wythe; VA Bedford City; VA Buena Vista; VA Clifton Forge; VA Covington; VA Danville; VA Galex; VA Harrisonburg; VA Lexington; VA Martinsville; VA Radford; VA Staunton; VA Waynesboro; WV Pendleton. | |
| 022 Richmond, VA: | |
| SMSA Counties: | |
| 6140 Petersburg - Colonial Heights - Hopewell, VA | 30.8 |
| VA Dinwiddie; VA Prince George; VA Colonial Heights; VA Hopewell; VA Petersburg. | |
| 6760 Richmond, VA | 24.9 |
| VA Charles City; VA Chesterfield; VA Goochland; VA Hanover; VA Henrico; VA New Kent; VA Powhatan; VA Richmond. | |
| Non-SMSA Counties | 27.9 |
| VA Albemarle; VA Amelia; VA Brunswick; VA Buckingham; VA Caroline; VA Charlotte; VA Cumberland; VA Essex; VA Fluvanna; VA Greene; VA Greensville; VA Halifax; VA King And Queen; VA King William; VA Lancaster; VA Louisa; VA Lunenberg; VA Madison; VA Mecklenburg; VA Northumberland; VA Nottoway; VA Orange; VA Prince Edward; VA Richmond; VA Sussex; VA Charlottesville; VA Emporia; VA South Boston. | |
| 023 Norfolk - Virginia Beach - Newport News, VA: | |
| SMSA Counties: | |
| 5680 Newport News-Hampton, VA | 27.1 |
| VA Gloucester; VA James City; VA York; VA Hampton; VA Newport News; VA Williamsburg. | |
| 5720 Norfolk - Virginia Beach - Portsmouth, VA–NC | 26.6 |
| NC Currituck; VA Chesapeake; VA Norfolk; VA Portsmouth; VA Suffolk; VA Virginia Beach. | |
| Non-SMSA Counties | 29.7 |
| NC Bertie; NC Camden; NC Chowan; NC Gates; NC Hertford; NC Pasquotank; NC Perquimans; VA Isle of Wight; VA Matthews; VA Middlesex; VA Southampton; VA Surry; VA Franklin. | |
| **North Carolina:** | |
| 024 Rocky Mount - Wilson - Greenville, NC: | |
| Non-SMSA Counties | 31.7 |
| NC Beaufort; NC Carteret; NC Craven; NC Dare; NC Edgecombe; NC Greene; NC Halifax; NC Hyde; NC Jones; NC Lenoir; NC Martin; NC Nash; NC Northampton; NC Pamlico; NC Pitt; NC Tyrrell; NC Washington; NC Wayne; NC Wilson. | |
| 025 Wilmington, NC: | |
| SMSA Counter: | |
| 9200 Wilmington, NC | 20.7 |
| NC Brunswick; NC New Hanover. | |
| Non-SMSA Counties | 23.5 |
| NC Columbus; NC Duplin; NC Onslow; NC Pender. | |
| 026 Fayetteville, NC: | |
| SMSA Counties: | |
| 2560 Fayetteville, NC | 26.2 |
| NC Cumberland. | |
| Non-SMSA Counties | 33.5 |
| NC Bladen; NC Hoke; NC Richmond; NC Robeson; NC Sampson; NC Scotland. | |
| 027 Raleigh - Durham, NC: | |
| SMSA Counties: | |
| 6640 Raleigh - Durham, NC | 22.8 |
| NC Durham; NC Orange; NC Wake. | |
| Non-SMSA Counties | 24.7 |
| NC Chatham; NC Franklin; NC Granville; NC Harnett; NC Johnston; NC Lee; NC Person; NC Vance; NC Warren. | |
| 028 Greensboro - Winston Salem - High Point, NC: | |
| SMSA Counties: | |
| 1300 Burlington, NC | 16.2 |
| NC Alamance. | |
| 3120 Greensboro - Winston Salem - High Point, NC | 16.4 |
| NC Davidson; NC Forsyth; NC Guilford; NC Randolf; NC Stokes; NC Yadkin. | |
| Non-SMSA Counties | 15.5 |
| NC Alleghany; NC Ashe; NC Caswell; NC Davie; NC Montgomery; NC Moore; NC Rockingham; NC Surry; NC Watauga; NC Wilkes. | |
| 029 Charlotte, NC: | |
| SMSA Counties: | |
| 1520 Charlotte - Gastonia, NC | 18.5 |
| NC Gaston; NC Mecklenburg; NC Union. | |
| Non-SMSA Counties | 15.7 |
| NC Alexander; NC Anson; NC Burke; NC Cabarrus; NC Caldwell; NC Catawba; NC Cleveland; NC Iredell; NC Lincoln; NC Rowan; NC Rutherford; NC Stanley; SC Chester; SC Lancaster; SC York. | |
| 030 Asheville, NC | |
| Non-SMSA Counties: | |
| 0480 Asheville, NC | 8.5 |
| NC Buncombe; NC Madison. | |
| Non-SMSA Counties | 6.3 |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| NC Avery; NC Cherokee; NC Clay; NC Graham; NC Haywood; NC Henderson; NC Jackson; NC McDowell; NC Macon; NC Mitchell; NC Swain; NC Transylvania; NC Yancey. | |
| **South Carolina:** | |
| 031 Greenville - Spartanburg, SC: | |
| SMSA Counties: | |
| 3160 Greenville - Spartanburg, SC | 16.0 |
| SC Greenville; SC Pickens; SC Spartanburg. | |
| Non-SMSA Counties | 17.8 |
| SC Polk; SC Abbeville; SC Anderson; SC Cherokee; SC Greenwood; SC Laurens; SC Oconee; SC Union. | |
| 032 Columbia, SC: | |
| SMSA Counties: | |
| 1760 Columbia, SC | 23.4 |
| SC Lexington; SC Richland. | |
| Non-SMSA Counties | 32.0 |
| SC Calhoun; SC Clarendon; SC Fairfield; SC Kershaw; SC Lee; SC Newberry; SC Orangeburg; SC Saluda; SC Sumter. | |
| 033 Florence, SC: | |
| Non-SMSA Counties | 33.0 |
| SC Chesterfield; SC Darlington; SC Dillon; SC Florence; SC Georgetown; SC Horry; SC Marion; SC Marlboro; SC Williamsburg. | |
| 034 Charleston-North Charleston, SC: | |
| SMSA Counties: | |
| 1440 Charleston - North Charleston, SC | 30.0 |
| SC Berkeley; SC Charleston; SC Dorchester. | |
| Non-SMSA Counties | 30.7 |
| SC Collection. | |
| **Georgia:** | |
| 035 Augusta, GA: | |
| SMSA Counties: | |
| 0600 Augusta, GA–SC | 27.2 |
| GA Columbia; GA Richmond; SC Aiken. | |
| Non-SMSA Counties | 32.8 |
| GA Burke; GA Emanuel; GA Glascock; GA Jefferson; GA Jenkins; GA Lincoln; GA McDuffie; GA Taliaferro; GA Warren; GA Wilkes; SC Allendale; SC Bamberg; SC Barnwell; SC Edgefield; SC McCormick. | |
| 036 Atlanta, GA: | |
| SMSA Counties: | |
| 0520 Atlanta, GA | 21.2 |
| GA Butts; GA Cherokee; GA Clayton; GA Cobb; GA Dekalb; GA Douglas; GA Fayette; GA Forsyth; GA Fulton; GA Winett; GA Henry; GA Newton; GA Paulding; GA Rockdale; GA Walton. | |
| Non-SMSA Counties | 19.5 |
| GA Banks; GA Barrow; GA Bartow; GA Carroll; GA Clarke; GA Coweta; GA Dawson; GA Elbert; GA Fannin; GA Floyd; GA Franklin; GA Gilmer; GA Gordon; GA Greene; GA Habersham; GA Hall; GA Haralson; GA Hart; GA Heard; GA Jackson; GA Jasper; GA Lamar; GA Lumpkin; GA Madison; GA Morgan; GA Oconee; GA Oglethorpe; GA Pickens; GA Pike; GA Polk; GA Rabun; GA Spalding; GA Stephens; GA Towns; GA Union; GA Upson; GA White. | |
| 037 Columbus, GA: | |
| SMSA Counties: | |
| 1800 Columbus, GA–AL | 29.6 |
| AL Russell; GA Chattahoochee; GA Columbus. | |
| Non-SMSA Counties | 31.6 |
| AL Chambers; AL Lee; GA Harris; GA Marion; GA Meriwether; GA Quitman; GA Schley; GA Stewart; GA Sumter; GA Talbot; GA Troup; GA Webster. | |
| 038 Macon, GA: | |
| SMSA Counties: | |
| 4680 Macon, GA | 27.5 |
| GA Bibb; GA Houston; GA Jones; GA Twiggs. | |
| Non-SMSA Counties | 31.7 |
| GA Baldwin; GA Bleckley; GA Crawford; GA Crisp; GA Dodge; GA Dooly; GA Hancock; GA Johnson; GA Laurens; GA Macon; GA Monroe; GA Peach; GA Pulaski; GA Putnam; GA Taylor; GA Telfair; GA Treutlen; GA Washington; GA Wheeler; GA Wilcox; GA Wilkinson. | |
| 039 Savannah, GA: | |
| SMSA Counties: | |
| 7520 Savannah, GA | 30.6 |
| GA Bryan; GA Chatham; GA Effingham. | |
| Non-SMSA Counties | 29.8 |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| GA Appling; GA Atkinson; GA Bacon; GA Bulloch; GA Candler; GA Coffee; GA Evans; GA Jeff Davis; GA Liberty; GA Long; GA McIntosh; GA Montgomery; GA Screven; GA Tattnall; GA Toombs; GA Wayne; SC Beaufort; SC Hampton; SC Jasper. | |
| 040 Albany, GA: | |
| SMSA Counties: | |
| 0120 Albany, GA | 32.1 |
| GA Dougherty; GA Lee. | |
| Non-SMSA Counties | 31.1 |
| GA Baker; GA Ben Hill; GA Berrien; GA Brooks; GA Calhoun; GA Clay; GA Clinch; GA Colquitt; GA Cook; GA Decatur; GA Early; GA Echols; GA Grady; GA Irwin; GA Lanier; GA Lowndes; GA Miller; GA Mitchell; GA Randolph; GA Seminole; GA Terrell; GA Thomas; GA Tift; GA Turner; GA Worth. | |
| **Florida:** | |
| 041 Jacksonville, FL: | |
| SMSA Counties: | |
| 2900 Gainesville, FL | 20.6 |
| FL Alachua. | |
| 3600 Jacksonville, FL | 21.8 |
| FL Baker; FL Clay; FL Duval; FL Nassau; FL St. Johns. | |
| Non-SMSA Counties | 22.2 |
| FL Bradford; FL Columbia; FL Dixie; FL Gilchrist; FL Hamilton; FL LaFayette; FL Levy; FL Marion; FL Putnam; FL Suwannee; FL Union; GA Brantley; GA Camden; GA Charlton; GA Glynn; GA Pierce; GA Ware. | |
| 042 Orlando - Melbourne - Daytona Beach, FL: | |
| SMSA Counties: | |
| 2020 Daytona Beach, FL | 15.7 |
| FL Volusia. | |
| 4900 Melbourne - Titusville - Coca, FL | 10.7 |
| FL Brevard. | |
| 5960 Orlando, FL | 15.5 |
| FL Orange; FL Osceola; FL Seminole. | |
| Non-SMSA Counties | 14.9 |
| FL Flagler; FL Lake; FL Sumter. | |
| 043 Miami - Fort Lauderdale, FL: | |
| SMSA Counties: | |
| 2680 Fort Lauderdale - Hollywood, FL | 15.5 |
| FL Broward. | |
| 5000 Miami, FL | 39.5 |
| FL Dade. | |
| 8960 West Palm Beach - Boca Raton, FL | 22.4 |
| FL Palm Beach. | |
| Non-SMSA Counties | 30.4 |
| FL Glades; FL Hendry; FL Indian River; FL Martin; FL Monroe; FL Okeechobee; FL St. Lucie. | |
| 044 Tampa - St. Petersburg, FL: | |
| SMSA Counties: | |
| 1140 Bradenton, FL | 15.9 |
| FL Manatee. | |
| 2700 Fort Myers, FL | 15.3 |
| FL Lee. | |
| 3960 Lakeland - Winter Haven, FL | 18.0 |
| FL Polk. | |
| 7510 Sarasota, FL | 10.5 |
| FL Sarasota. | |
| 8280 Tampa - St. Petersburg, FL | 17.9 |
| FL Hillsborough; FL Pasco; FL Pinellas. | |
| Non-SMSA Counties | 17.1 |
| FL Charlotte; FL Citrus; FL Collier; FL Desoto; FL Hardee; FL Hernando; FL Highlands. | |
| 045 Tallahassee, FL: | |
| SMSA Counties: | |
| 8240 Tallahassee, FL | 24.3 |
| FL Leon; FL Wakulla. | |
| Non-SMSA Counties | 29.5 |
| FL Calhoun; FL Franklin; FL Gadsden; FL Jackson; FL Jefferson; FL Liberty; FL Madison; FL Taylor. | |
| 046 Pensacola - Panama City, FL: | |
| SMSA Counties: | |
| 6015 Panama City, FL | 14.1 |
| FL Bay. | |
| 6080 Pensacola, FL | 18.3 |
| FL Escambia; FL Santa Rosa. | |
| Non-SMSA Counties | 15.4 |
| FL Gulf; FL Holmes; FL Okaloosa; FL Walton; FL Washington. | |
| **Alabama:** | |
| 047 Mobile, AL: | |
| SMSA Counties: | |
| 5160 Mobile, AL | 25.9 |
| AL Baldwin; AL Mobile. | |
| 6025 Pascagoula-Moss Point, MS | 16.9 |
| MS Jackson. | |
| Non-SMSA Counties | 26.4 |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| AL Choctaw; AL Clarke; AL Conecuh; AL Escambia; AL Monroe; AL Washington; AL Wilcox; MS George; MS Greene. | |
| 048 Montgomery, AL: | |
| SMSA Counties: | |
| 5240 Montgomery, AL | 29.9 |
| AL Autauga; AL Elmore; AL Montgomery. | |
| Non-SMSA Counties | 29.9 |
| AL Barbour; AL Bullock; AL Butler; AL Coffee; AL Coosa; AL Covington; AL Crenshaw; AL Dale; AL Dallas; AL Geneva; AL Henry; AL Houston; AL Lowndes; AL Macon; AL Perry; AL Pike; AL Tallapoosa. | |
| 049 Birmingham, AL: | |
| SMSA Counties: | |
| 0450 Anniston, AL | 14.3 |
| AL Calhoun. | |
| 1000 Birmingham, AL | 24.9 |
| AL Jefferson; AL St. Clair; AL Shelby; AL Walker; AL Etowah. | |
| 8600 Tuscaloosa, AL | 20.6 |
| AL Tuscaloosa. | |
| Non-SMSA Counties | 20.7 |
| AL Bibb; AL Blount; AL Cherokee; AL Chilton; AL Clay; AL Cleburne; AL Cullman; AL Fayette; AL Greene; AL Hale; AL Lamar; AL Marion AL Pickens; AL Randolph; AL Sumter; AL Talladega; AL Winston. | |
| 050 Huntsville - Florence, AL: | |
| SMSA Counties: | |
| 2650 Florence, AL | 11.9 |
| AL Colbert; AL Lauderdale. | |
| 3440 Huntsville, AL | 12.0 |
| AL Limestone; AL Madison; AL Marshall. | |
| Non-SMSA Counties | 11.2 |
| AL Franklin; AL Lawrence; AL Morgan; TN Lincoln. | |
| **TENNESSEE:** | |
| 051 Chattanooga, TN: | |
| SMSA Counties: | |
| 1560 Chattanooga, TN–GA | 12.5 |
| GA Catoosa; GA Dade; GA Walker; TN Hamilton; TN Marion; TN Sequatchie. | |
| Non-SMSA Counties | 8.6 |
| AL De Kalb; AL Jackson; GA Chattooga; GA Murray; GA Whitfield; TN Bledsoe; TN Bradley; TN Grundy; TN McMinn; TN Meigs; TN Monroe; TN Polk; TN Rhea. | |
| 052 Johnson City - Kingsport - Bristol, TN–VA: | |
| SMSA Counties: | |
| 3660 Johnson City - Kingsport - Bristol, TN–VA | 2.6 |
| TN Carter; TN Hawkins; TN Sullivan; TN Unicoi; TN Washington; VA Scott; VA Washington; VA Bristol. | |
| Non-SMSA Counties | 3.2 |
| TN Greene; TN Hancock; TN Johnson; VA Buchanan; VA Dickenson; VA Lee; VA Russell; VA Smyth; VA Tazewell; VA Wise; VA Norton; WV McDowell; WV Mercer. | |
| 053 Knoxville, TN: | |
| SMSA Counties: | |
| 3840 Knoxville, TN | 6.6 |
| TN Anderson; TN Blount; TN Knox; TN Union. | |
| Non-SMSA Counties | 4.5 |
| KY Bell; KY Harlan; KY Knox; KY Laurel; KY McCreary; KY Wayne; KY Whitley; TN Campbell; TN Claiborne; TN Cocke; TN Cumberland; TN Fentress; TN Grainger; TN Hamblen; TN Jefferson; TN Loudon; TN Morgan; TN Roane; TN Scott; TN Sevier. | |
| 054 Nashville, TN: | |
| SMSA Counties: | |
| 1660 Clarksville - Hopkinsville, TN–KY | 18.2 |
| KY Christian; TN Mongomery. | |
| 5360 Nashville - Davidson, TN | 15.8 |
| TN Cheatham; TN Davidson; TN Dickson; TN Robertson; TN Rutherford; TN Sumner; TN Williamson; TN Wilson. | |
| Non-SMSA Counties | 12.0 |
| KY Allen; KY Barren; KY Butler; KY Clinton; KY Cumberland; KY Edmonson; KY Logan; KY Metcalfe; KY Monroe; KY Simpson; KY Todd; KY Trigg; KY Warren; TN Bedford; TN Cannon; TN Clay; TN Coffee; TN DeKalb; TN Franklin; TN Giles; TN Hickman; TN Houston; TN Humphreys; TN Jackson; TN Lawrence; TN Lewis; TN Macon; TN Marshall; TN Maury; TN Moore; TN Overton; TN Perry; TN Pickett; TN Putnam; TN Smith; TN Stewart; TN Trousdale; TN Van Buren; TN Warren; TN Wayne; TN White. | |
| 055 Memphis, TN: | |
| SMSA Counties: | |
| 4920 Memphis, TN–AR–MS | 32.3 |

## Economic Areas—Continued

| State | Goal (percent) |
|---|---|
| AR Crittenden; MS De Soto; TN Shelby; TN Tipton. | |
| Non-SMSA Counties | 26.5 |
| AR Clay; AR Craighead; AR Cross; AR Greene; AR Lawrence; AR Lee; AR Mississippi; AR Phillips; AR Poinsett; AR Randolph; AR St. Francis; MS Alcorn; MS Benton; MS Bolivar; MS Calhoun; MS Carroll; MS Chickasaw; MS Clay; MS Coahoma; MS Grenada; MS Itawamba; MS Lafayette; MS Lee; MS Leflore; MS Marshall; MS Monroe; MS Montgomery; MS Panola; MS Pontotoc; MS Prentiss; MS Quitman; MS Sunflower; MS Tallahatchie; MS Tate; MS Tippah; MS Tishomingo; MS Union; MS Washington; MS Webster; MS Yalobusha; MO Dunklin; MO New Madrid; MO Pemiscot; TN Benton; TN Carroll; TN Chester; TN Crockett; TN Decatur; TN Dyer; TN Fayette; TN Gibson; TN Hardemart; TN Hardin; TN Haywood; TN Henderson; TN Henry; TN Lake; TN Lauderdale; TN McNairy; TN Madison; TN Obion; TN Weakley. | |
| **Kentucky:** | |
| 056 Paducah, KY: | |
| Non-SMSA Counties | 5.2 |
| IL Hardin; IL Massac; IL Pope; KY Ballard; KY Caldwell; KY Calloway; KY Carlisle; KY Crittenden; KY Fulton; KY Graves; KY Hickman; KY Livingston; KY Lyon; KY McCracken; KY Marshall. | |
| 057 Louisville, KY: | |
| SMSA Counties: | |
| 4520 Louisville, KY-IN | 11.2 |
| IN Clark; IN Floyd; KY Bullitt; KY Jefferson; KY Oldham. | |
| Non-SMSA Counties | 9.6 |
| IN Crawford; IN Harrison; IN Jefferson; IN Orange; IN Scott; IN Washington; KY Breckinridge; KY Grayson; KY Hardin; KY Hart; KY Henry; KY Larue; KY Marion; KY Meade; KY Nelson; KY Shelby; KY Spencer; KY Trimble; KY Washington. | |
| 058 Lexington, KY: | |
| SMSA Counties: | |
| 4280 Lexington-Fayette, KY | 10.8 |
| KY Bourbon; KY Clark; KY Fayette; KY Jessamine; KY Scott; KY Woodford. | |
| Non-SMSA Counties | 7.0 |
| KY Adair; KY Anderson; KY Bath; KY Boyle; KY Breathitt; KY Casey; KY Clay; KY Estill; KY Franklin; KY Garrard; KY Green; KY Harrison; KY Jackson; KY Knott; KY Lee; KY Leslie; KY Letaher; KY Lincoln; KY Madison; KY Magoffin; KY Menifee; KY Mercer; KY Montgomery; KY Morgan; KY Nicholas; KY Owsley; KY Perry; KY Powell; KY Pulaski; KY Rockcastle; KY Russell; KY Taylor; KY Wolfe. | |
| **West Viginia:** | |
| 059 Huntington, WV: | |
| SMSA Counties: | |
| 3400 Huntington-Ashland, WV-KY-OH | 2.9 |
| KY Boyd; KY Greenup; OH Lawrence; WV Cabell; WV Wayne. | |
| Non-SMSA Counties | 2.5 |
| KY Carter; KY Elliott; KY Floyd; KY Johnson; KY Lawrence; KY Martin; KY Pike; KY Rowan; OH Gallia; WV Lincoln; WV Logan; WV Mason; WV Mingo. | |
| 060 Charleston, WV: | |
| SMSA Counties: | |
| 1480 Charleston, WV | 4.9 |
| WV Kanawha; WV Putnam. | |
| Non-SMSA Counties | 4.2 |
| WV Boone; WV Braxton; WV Calhoun; WV Clay; WV Fayette; WV Gilmer; WV Greenbrier; WV Jackson; WV Monroe; WV Nicholas; WV Pocahontas; WV Raleigh; WV Roane; WV Summers; WV Webster; WV Wyoming. | |
| 061 Morgantown-Fairmont, WV: | |
| Non-SMSA Counties | 2.1 |
| WV Barbour; WV Doddridge; WV Harrison; WV Lewis; WV Marion; WV Monogalia; WV Preston; WV Randolph; WV Taylor; WV Tucker; WV Upshur. | |
| 062 Parkersburg, WV: | |
| SMSA Counties: | |
| 6020 Parkersburg-Marietta, WV-OH | 1.1 |
| OH Washington; WV Wirt; WV Wood. | |
| Non-SMSA Counties | 1.2 |
| WV Pleasants; WV Ritchie. | |
| 063 Wheeling - Steubenville - Wierton, WV-OH: | |
| SMSA Counties: | |
| 8080 Steubenville-Wierton, OH-WV | 4.3 |
| OH Jefferson; WV Brooke; WV Hancock. | |
| 9000 Wheeling, WV-OH | 2.4 |
| OH Belmont; WV Marshall; WV Ohio. | |
| Non-SMSA Counties | 3.0 |
| OH Harrison; OH Monroe; WV Tyler; WV Wetzel. | |
| **Ohio:** | |
| 064 Youngstown-Warren, OH: | |
| SMSA Counties: | |
| 9320 Youngstown-Warren, OH | 9.4 |
| OH Mahoning; OH Trumbull. | |
| Non-SMSA Counties | 6.7 |
| OH Columbiana; PA Lawrence; PA Mercer. | |
| 065 Cleveland, OH: | |
| SMSA Counties: | |
| 0080 Akron, OH | 7.8 |
| OH Portage; OH Summit. | |
| 1320 Canton, OH | 6.1 |
| OH Carroll; OH Stark. | |
| 1680 Cleveland, OH | 16.1 |
| OH Cuyahoga; OH Geauga; OH Lake; OH Medina. | |
| 4440 Lorain-Elyria, OH | 9.3 |
| OH Lorain. | |
| 4800 Mansfield, OH | 6.3 |
| OH Richland. | |
| Non-SMSA Counties | 11.3 |
| OH Ashland; OH Ashtabula; OH Coshocton; OH Crawford; OH Erie; OH Holmes; OH Huron; OH Tuscarawas; OH Wayne. | |
| 066 Columbus, OH: | |
| SMSA Counties: | |
| 1840 Columbus, OH | 10.6 |
| OH Delaware; OH Fairfield; OH Franklin; OH Madison; OH Pickaway. | |
| Non-SMSA Counties | 7.3 |
| OH Athens; OH Fayette; OH Guernsey; OH Hocking; OH Jackson; OH Knox; OH Licking; OH Marion; OH Meigs; OH Morgan; OH Morrow; OH Muskingum; OH Noble; OH Perry; OH Pike; OH Ross; OH Scioto; OH Union; OH Vinton. | |
| 067 Cincinnati, OH: | |
| SMSA Counties: | |
| 1640 Cincinnati, OH - KY - IN | 11.0 |
| IN Dearborn; KY Boone; KY Campbell; KY Kenton; OH Clermont; OH Hamilton; OH Warren. | |
| 3200 Hamilton-Middletown, OH | 5.0 |
| OH Butler. | |
| Non-SMSA Counties | 9.2 |
| IN Franklin; IN Ohio; IN Ripley; IN Switzerland; KY Bracken; KY Carroll; KY Fleming; KY Gallatin; KY Brant; KY Lewis; KY Mason; KY Owen; KY Pendleton; KY Robertson; OH Adams; OH Brown; OH Clinton; OH Highland. | |
| 068 Dayton, OH: | |
| SMSA Counties: | |
| 2000 Dayton, OH | 11.5 |
| OH Greene; OH Miami; OH Montgomery; OH Preble. | |
| 7960 Springfield, OH | 7.8 |
| OH Champaign; OH Clark. | |
| Non-SMSA Counties | 9.9 |
| OH Darke; OH Logan; OH Shelby. | |
| 069 Lima, OH: | |
| SMSA Counties: | |
| 4320 Lima, Oh | 4.4 |
| OH Allen; OH Auglaize; OH Putnam; OH Van Wert. | |
| Non-SMSA Counties | 3.5 |
| OH Hardin; OH Mercer. | |
| 070 Toledo, OH: | |
| SMSA Counties: | |
| 8400 Toledo, OH-MI | 8.8 |
| MI Monroe; OH Fulton; OH Lucas; OH Ottawa; OH Wood. | |
| Non-SMSA Counties | 7.3 |
| MI Lenawee; OH Hancock; OH Henry; OH Sandusky; OH Seneca; OH Wyandot. | |
| **Michigan:** | |
| 071 Detroit, MI: | |
| SMSA Counties: | |
| 0440 Ann Arbor, MI | 8.5 |
| MI Washtenaw. | |
| 2160 Detroit, MI | 17.7 |
| MI Lapeer; MI Livingston; MI Macomb; MI Oakland; MI St. Clair; MI Wayne. | |
| 2640 Flint, MI | 12.6 |
| MI Genesee; MI Shiawassee. | |
| Non-SMSA Counties | 16.7 |
| MI Sanilac. | |
| 072 Saginaw, MI | |
| SMSA Counties: | |
| 0800 Bay City, MI | 2.2 |
| MI Bay. | |
| 6960 Saginaw, MI | 14.3 |
| MI Saginaw. | |
| Non-SMSA Counties | 5.2 |
| MI Alcona; MI Alpena; MI Arenac; MI Cheboygan; MI Chippewa; MI Clare; MI Crawford; MI Gladwin; MI Gratiot; MI Huron; MI Iosco; MI Isabella; MI Luce; MI Mackinac; MI Midland; MI Montmorency; MI Ogemaw; MI Oscoda; MI Otsego; MI Presque Isle; MI Roscommon; MI Tuscola. | |
| 073 Grand Rapids, MI: | |
| SMSA Counties: | |
| 3000 Grand Rapids, MI | 5.2 |
| MI Kent; MI Ottawa. | |
| 5320 Muskegon - Norton Shores - Muskegon Heights, MI | 9.7 |
| MI Muskegon; MI Oceana. | |
| Non-SMSA Counties | 4.9 |
| MI Allegan; MI Antrim; MI Benzie; MI Charlevoix; MI Emmet; MI Grand Traverse; MI Kalkaska; MI Lake; MI Leelanau; MI Manistee; MI Mason; MI Mecosta; MI Missaukee; MI Montcalm; MI Newaygo; MI Osceola; MI Wexford. | |
| 074 Lansing - Kalamazoo, MI: | |
| SMSA Counties: | |
| 0780 Battle Creek, MI | 7.2 |
| MI Barry; MI Calhoun. | |
| 3520 Jackson, MI | 5.1 |
| MI Jackson. | |
| 3720 Kalamazoo-Portage, MI | 5.9 |
| MI Kalamazoo; MI Van Buren. | |
| 4040 Lansing-East Lansing, MI | 5.5 |
| MI Clinton; MI Eaton; MI Ingham; MI Ionia. | |
| Non-SMSA Counties | 5.5 |
| MI Branch; MI Hillsdale. | |
| **Indiana:** | |
| 075 South Bend, IN: | |
| SMSA Counties: | |
| 7800 South Bend, IN | 7.1 |
| IN Marshall; IN St. Joseph. | |
| 2330 Elkhart, IN | 4.0 |
| IN Elkhart. | |
| Non-SMSA Counties | 6.2 |
| IN Fulton; IN Kosciusko; IN Lagrange; MI Berrien; MI Cass; MI St. Joseph. | |
| 076 Fort Wayne, IN: | |
| Non-SMSA Counties | 4.4 |
| IN Allen; IN Dekalb; IN Wells; IN Huntington; IN Noble; IN Steuben; IN Whitley; OH Defiance; OH Paulding; OH Williams. | |
| 077 Kokomo-Marion, IN: | |
| SMSA Counties: | |
| 3850 Kokomo, IN | 4.4 |
| IN Howard; IN Tipton. | |
| Non-SMSA Counties | 3.7 |
| IN Cass; IN Grant; IN Miami; IN Wabash. | |
| 078 Anderson-Muncie, IN: | |
| SMSA Counties: | |
| 0400 Anderson, IN | 4.9 |
| IN Madison. | |
| 5260 Muncie, IN | 5.3 |
| IN Delaware. | |
| Non-SMSA Counties | 3.9 |
| IN Blackford; IN Fayette; IN Henry; IN Jay; IN Randolph; IN Union; IN Wayne. | |
| 079 Indianapolis, IN: | |
| SMSA Counties: | |
| 1020 Bloomington, IN | 3.1 |
| IN Monroe. | |
| 3480 Indianapolis, IN | 12.5 |
| IN Boone; IN Hamilton; IN Hendricks; IN Johnson; IN Marion; IN Morgan; IN Shelby. | |
| Non-SMSA Counties | 9.7 |
| IN Bartholomew; IN Brown; IN Daviess; IN Decatur; IN Greene; IN Jackson; IN Jennings; IN Lawrence; IN Martin; IN Owen; IN Putnam; IN Rush. | |
| 080 Evansville, IN: | |
| SMSA Counties: | |
| 2440 Evansville, IN-KY | 4.8 |
| IN Gibson; IN Posey; IN Vanderburgh; IN Warrick; KY Henderson. | |
| 5990 Owensboro, KY | 4.7 |
| KY Daviess. | |
| Non-SMSA Counties | 3.5 |
| IL Edwards; IL Gallatin; IL Hamilton; IL Lawrence; IL Saline; IL Wabash; IL White; IN Dubois; IN Knox; IN Perry; IN Pike; IN Spencer; KY Hancock; KY Hopkins; KY McLean; KY Muhlenberg; KY Ohio, KY Union; KY Webster. | |
| 081 Terre Haute, IN: | |
| SMSA Counties: | |
| 8320 Terre Haute, IN | 3.1 |
| IN Clay; IN Sullivan; IN Vermillion; IN Vigo. | |
| Non-SMSA Counties | 2.5 |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| IL Clark; IL Crawford; IN Parke. | |
| 082 Lafayette, IN: | |
| SMSA Counties: | |
| 3920 Lafayette - West Lafayette, IN | 2.7 |
| IN Tippecanoe; | |
| Non-SMSA Counties | 1.5 |
| IN Benton; IN Carroll; IN Clinton; IN Fountain; IN Montgomery; IN Warren; IN White. | |
| **Illinois:** | |
| 083 Chicago, IL: | |
| SMSA Counties: | |
| 1600 Chicago, IL | 19.6 |
| Cook; Du Page; Kane; Lake; McHenry; Will. | |
| 2960 Gary - Hammond - East Chicago, IN | 20.9 |
| IN Lake; IN Porter. | |
| 3740 Kankakee, IL | 9.1 |
| IL Kankakee. | |
| 3800 Kenosha, WI | 3.0 |
| WI Kenosha. | |
| Non-SMSA Counties | 18.4 |
| IL Bureau; IL De Kalb; IL Grundy; IL Iroquois; IL Kendall; IL La Salle; IL Livingston; IL Putnam; IL Jasper; IN Laporte; IN Newton; IN Pulaski; IN Starke. | |
| 084 Champaign-Urbana, IL: | |
| SMSA Counties: | |
| 1400 Champaign - Urbana - Rantoul, IL | 7.8 |
| IL Champaign. | |
| Non-SMSA Counties | 4.8 |
| IL Coles; IL Cumberland; IL Douglas; IL Edgar; IL Ford; IL Piatt; IL Vermilion. | |
| 085 Springfield-Decatur, IL: | |
| SMSA Counties: | |
| 2040 Decatur, IL | 7.6 |
| IL Macon. | |
| 7880 Springfield, IL | 4.5 |
| IL Menard; Sangamon. | |
| Non-SMSA Counties | 4.0 |
| IL Cass; IL Christian; IL De Witt; IL Logan; IL Morgan; IL Moultrie; IL Scott; IL Shelby. | |
| 086 Quincy, IL: | |
| Non-SMSA Counties | 3.1 |
| IL Adams; IL Brown; IL Pike; MO Lewis; MO Marion; MO Pike; MO Ralls. | |
| 087 Peoria, IL: | |
| SMSA Counties: | |
| 1040 Bloomington - Normal, IL | 2.5 |
| IL McLean. | |
| 6120 Perioa, IL | 4.4 |
| IL Peoria; IL Tazewell; IL Woodford. | |
| Non-SMSA Counties | 3.3 |
| IL Fulton; IL Knox; IL McDonough; IL Marshall; IL Mason; IL Schuyler; IL Stark; IL Warren. | |
| 088 Rockford, IL: | |
| SMSA Counties: | |
| 6880 Rockford, IL | 6.3 |
| IL Boone; IL Winnegago. | |
| 3620 Janesville - Beloit, WI | 3.1 |
| Rock Co. | |
| Non-SMSA Counties | 4.6 |
| IL Lee; IL Ogle; IL Stephenson. | |
| **Wisconsin:** | |
| 089 Milwaukee, WI: | |
| SMSA Counties: | |
| 5080 Milwaukee, WI | 8.0 |
| WI Milwaukee; WI Ozaukee; WI Washington; WI Waukesha. | |
| 6600 Racine, WI | 8.4 |
| WI Racine. | |
| Non-SMSA Counties | 7.0 |
| WI Dodge; WI Jefferson; WI Sheboygan; WI Walworth. | |
| 090 Madison, WI: | |
| SMSA Counties: | |
| 4720 Madison, WI | 2.2 |
| WI Dane. | |
| Non-SMSA Counties | 1.7 |
| WI Adams; WI Columbia; WI Green; WI Iowa; WI Marquette; WI Richland; WI Sauk. | |
| 091 La Crosse, WI: | |
| SMSA Counties: | |
| 3870 La Crosse, WI | 0.9 |
| Non-SMSA Counties | 0.6 |
| MN Houston; MN Winona; WI Buffalo; WI Jackson; WI Juneau; WI Monroe; WI Trempealeau; WI Vernon. | |
| 092 Eau Claire, WI: | |
| SMSA Counties: | |
| 2290 Eau Claire, WI | 0.5 |
| WI Chippewa; WI Eau Claire. | |
| Non-SMSA Counties | 0.6 |
| WI Barron; WI Dunn; WI Pepin; WI Rusk; WI Sawyer; WI Washburn. | |
| 093 Wausau, WI: | |
| Non-SMSA Counties | 0.6 |
| WI Clark; WI Langlade; WI Lincoln; WI Marathon; WI Oneida; WI Portage; WI Price; WI Taylor; WI Vilas; WI Wood. | |
| 094 Appleton - Green Bay - Oshkosh, WI: | |
| SMSA Counties: | |
| 0460 Appleton-Oshkosh, WI | 0.9 |
| WI Calumet; WI Outagamie; WI Winnebago. | |
| 3080 Green Bay, WI | 1.3 |
| WI Brown. | |
| Non-SMSA Counties | 1.0 |
| MI Alger; MI Baraga; MI Delta; MI Dickinson; MI Houghton; MI Iron; MI Keweenaw; MI Marquette; MI Menominee; MI Schoolcraft; WI Door; WI Florence; WI Fond Du Lac; WI Forest; WI Green Lake; WI Kewaunee; WI Manitowoc; WI Marinette; WI Menomiee; WI Oconto; WI Shawano; WI Waupaca; WI Waushara. | |
| 095 Duluth, MN: | |
| SMSA Counties: | |
| 2240 Duluth - Superior, MN-WI | 1.0 |
| MN St. Louis; WI Douglas. | |
| Non-SMSA Counties | 1.2 |
| MI Gogebic; MI Ontonagon; MN Carlton; MN Cook; MN Itasca; MN Koochiching; MN Lake; WI Ashland; WI Bayfield; WI Iron. | |
| **Minnesota:** | |
| 096 Minneapolis-St. Paul, MN: | |
| SMSA Counties: | |
| 5120 Minneapolis-St. Paul, MN-WI | 2.9 |
| MN Anoka; MN Carver; MN Chisago; MN Dakota; MN Hennepin; MN Ramsey; MN Scott; MN Washington; MN Wright; MN St. Croix. | |
| 6980 St. Cloud, MN | 0.5 |
| MN Benton; MN Sherburne; MN Stearns. | |
| Non-SMSA Counties | 2.2 |
| MN Aitkin; MN Big Stone; MN Blue Earth; MN Brown; MN Cass; MN Chippewa; MN Crow Wing; MN Douglas; MN Faribault; MN Goodhue; MN Grant; MN Isanti; MN Kanabec; MN Kandiyohi; MN Lac Qui Parle; MN Le Sueur; MN McLeod; MN Martin; MN Meeker; MN Mille Lacs; MN Morrison; MN Nicollet; MN Pine; MN Pope; MN Renville; MN Rice; MN Sibley; MN Stevens; MN Swift; MN Todd; MN Traverse; MN Wadena; MN Waseca; MN Watonwan; MN Yellow Medicine; WI Burnett; WI Pierce; WI Polk. | |
| 097 Rochester, MN: | |
| SMSA Counties: | |
| 6820 Rochester, MN | 1.4 |
| MN Olmsted. | |
| Non-SMSA Counties | 0.9 |
| MN Dodge; MN Fillmore; MN Freeborn; MN Mower; Mn Steele; MN Wabasha. | |
| **Iowa:** | |
| 098 Dubuque, IA: | |
| SMSA Counties: | |
| 2200 Dubuque, IA | 0.6 |
| IA Dubuque | |
| Non-SMSA Counties | 0.5 |
| IL Jo Daviess; IA Allamakee; IA Clayton; IA Delaware; IA Jackson; IA Winneshiek; WI Crawford; WI Grant; WI Lafayette. | |
| 099 Davenport Rock Island Moline, IA-IL: | |
| SMSA Counties: | |
| 1960 Davenport Rock Island Moline, IA-IL | 4.6 |
| IL Henry; IL Rock Island; IA Scott. | |
| Non-SMSA Counties | 3.4 |
| IL Carroll; IL Handcock; IL Henderson; IL Mercer; IL Whiteside; IA Clinton; IA Des Moines; IA Henry; IA Lee; IA Louisa; IA Muscatine; MO Clark. | |
| 100 Cedar Rapids, IA: | |
| SMSA Counties: | |
| 1360 Cedar Rapids, IA | 1.7 |
| IA Linn. | |
| Non-SMSA Counties | 1.5 |
| IA Benton; IA Cedar; IA Iowa; IA Johnson; IA Jones; IA Washington. | |
| 101 Waterloo, IA: | |
| SMSA Counties: | |
| 8920 Waterloo-Cedar Falls, IA | 4.7 |
| IA Black Hawk. | |
| Non-SMSA Counties | 2.0 |
| IA Bremer; IA Buchanan; IA Butler; IA Cerro Gordo; IA Chickasaw; IA Fayette; IA Floyd; IA Franklin; IA Grundy; IA Hancock; IA Hardin; IA Howard; IA Mitchell; IA Winnegago; IA Worth. | |
| 102 Fort Dodge, IA: | |
| Non-SMSA Counties | 0.4 |
| IA Buena Vista; IA Calhoun; IA Carroll; IA Clay; IA Dickinson; IA Emmet; IA Greene; IA Hamilton; IA Humboldt; IA Kossuth; IA Palo Alto; IA Pocahontas; IA Sac; IA Webster; IA Wright. | |
| 103 Sioux City, IA: | |
| SMSA Counties: | |
| 7720 Sioux City, IA-NE | 1.9 |
| IA Woodbury; NE Dakota. | |
| Non-SMSA Counties | 1.2 |
| IA Cherokee; IA Crawford; IA Ida; IA Monona; IA O'Brien; IA Plymouth; IA Sioux; NE Antelope; NE Cedar; NE Cuming; NE Dixon; NE Knox; NE Madison; NE Pierce; NE Stanton; NE Thurston; NE Wayne; SD Bon Homme; SD Clay; SD Union; SD Yankton. | |
| 104 Des Moines, IA: | |
| SMSA Counties: | |
| 2120 Des Moines, IA | 4.5 |
| IA Polk; IA Warren. | |
| Non-SMSA Counties | 2.4 |
| IA Adair; IA Appanoose; IA Boone; IA Clarke; IA Dallas; IA Davis; IA Decatur; IA Guthrie; IA Jasper; IA Jefferson; IA Keokuk; IA Lucas; IA Madison; IA Mahaska; IA Marion; IA Marshall; IA Monroe; IA Poweshiek; IA Ringgold; IA Story; IA Tama; IA Union; IA Van Buren; IA Wapello; IA Wayne. | |
| **Missouri:** | |
| 105 Kansas City, MO: | |
| SMSA Counties: | |
| 3760 Kansas City, MO-KS | 12.7 |
| KS Johnson; KS Wayandotte; Mo Cass; MO Clay; MO Jackson; MO Platte; MO Ray. | |
| 4150 Lawrence, KS | 7.2 |
| 7000 St. Joseph, MO | 3.2 |
| MO Andrew; MO Buchanan. | |
| Non-SMSA Counties | 10.0 |
| KS Anderson; KS Atchison; KS Brown; KS Doniphan; KS Franklin; KS Leavenworth; KS Linn; KS Miami; MO Atchison; MO Bates; MO Benton; MO Caldwell; MO Caroll; MO Clinton; MO Daviess; MO Dekalb; MO Gentry; MO Grundy; MO Harrison; MO Henry; MO Holt; MO Johnson; MO Lafayette; MO Livingston; MO Mercer; MO Nodaway; MO Pettis; MO Saline; MO Worth. | |
| 106 Columbia, MO: | |
| SMSA Counties: | |
| MO Boone. | |
| 1740 Columbia, MO | 6.3 |
| Non-SMSA Counties | 4.0 |
| MO Adair; MO Audrain; MO Callaway; MO Camden; MO Chariton; MO Cole; MO Cooper; MO Howard; MO Knox; MO Linn; MO Macon; MO Miller; MO Moniteau; MO Monroe; MO Morgan; MO Osage; MO Putnam; MO Randolph; MO Schuyler; MO Scotland; MO Shelby; MO Sullivan. | |
| 107 St. Louis, MO: | |
| SMSA Counties: | |
| 7040 St. Louis, MO-IL | 14.7 |
| IL Clinton; IL Madison; IL Monroe; IL St. Clair; MO Franklin; MO Jefferson; MO St. Charles; MO St. Louis; MO St. Louis City | |
| Non-SMSA Counties | 11.4 |
| IL Alexander; IL Bond; IL Calhoun; IL Clay; IL Effingham; IL Fayette; IL Franklin; IL Greene; IL Jackson; IL Jasper; IL Jefferson; IL Jersey; IL Johnson; IL Macoupin; IL Marion; IL Montgomery; IL Perry; IL Pulaski; IL Randolph; IL Richland; IL Union; IL Washington; IL Wayne; IL Williamson; MO Bollinger; MO Bulter; MO Cape Girardeau; MO Carter; MO Crawford; MO Dent; MO Gasconade; MO Iron; MO Lincoln; MO Madison; MO Maries; MO Mississippi; MO Montgomery; MO Perry; MO Phelps; MO Reynolds; MO Ripley; MO St. Francois; MO Ste. Genevieve; MO Scott; MO Stoddard; MO Warren; MO Washington; MO Wayne. | |
| 108 Springfield, MO: | |
| SMSA Counties: | |
| 7920 Springfield, MO | 2.0 |
| MO Christian; MO Greene. | |
| Non-SMSA Counties | 2.3 |

**Economic Areas**—Continued

| State | Goal (percent) |
|---|---|
| KS Allen; KS Bourbon; KS Cherokee; KS Crawford; KS Labette; KS Montgomery; KS Neosho; KS Wilson; KS Woodson; MO Barry; MO Barton; MO Cedar; MO Dade; MO Dallas; MO Douglas; MO Hickory; MO Howell; MO Jasper; MO Laclede; MO Lawrence; MO McDonald; MO Newton; MO Oregon; MO Ozark; MO Polk; MO Pulaski; MO St. Clair; MO Shannon; MO Stone; MO Taney; MO Texas; MO Vernon, MO Webster; MO Wright; OK Craig; OK Ottawa. | |
| **Arkansas:** | |
| 109 Fayetteville, AR: | |
| Non-SMSA Counties | 3.3 |
| AR Baxter; AR Benton; AR Boone; AR Carroll; AR Madison; AR Marion; AR Newton; AR Searcy; AR Washington; OK Adair; OK Delaware. | |
| 110 Fort Smith, AR: | |
| SMSA Counties: | |
| 2720 Fort Smith, AR-OK | 5.6 |
| AR Crawford; AR Sebastian; OK Le Flore; OK Sequoyah. | |
| Non-SMSA Counties | 6.6 |
| AR Franklin; AR Logan; AR Polk; AR Scott; OK Choctaw; OK Haskell; OK Latimer; OK McCurtain; OK Pittsburg; OK Pushmataha. | |
| 111 Little Rock-North Little Rock, AR: | |
| SMSA Counties: | |
| 4400 Little Rock-North Little Rock, AR | 15.7 |
| AR Pulaski; AR Saline. | |
| 6240 Pine Bluff, AR | 31.2 |
| AR Jefferson. | |
| Non-SMSA Counties | 16.4 |
| AR Arkansas; AR Ashley; AR Bradley; AR Calhoun; AR Chicot; AR Clark; AR Cleburne; AR Cleveland; AR Conway; AR Dallas; AR Desha; AR Drew; AR Faulkner; AR Fulton; AR Garland; AR Grant; AR Hot Spring; AR Independence; AR Izard; AR Jackson; AR Johnson; AR Lincoln; AR Lonoke; AR Monroe; AR Montgomery; AR Ouachita; AR Perry; AR Pope; AR Prairie; AR Sharp; AR Stone; AR Union; AR Van Buren; AR White; AR Woodruff; AR Yell. | |
| **Mississippi:** | |
| 112 Jackson, MS: | |
| SMSA Counties; | |
| 3560 Jackson, MS | 30.3 |
| MS Hinds; MS Rankin. | |
| Non-SMSA Counties | 32.0 |
| MS Attala; MS Choctaw; MS Claiborne; MS Clarke; MS Copiah; MS Covington; MS Franklin; MS Holmes; MS Humphreys; MS Issaquena; MS Jasper; MS Jefferson; MS Jefferson Davis; MS Jones; MS Kemper; MS Lauderdale; MS Lawrence; MS Leake; MS Lincoln; MS Lowndes; MS Madison; MS Neshoba; MS Newton; MS Noxubee; MS Oktibbeha; MS Scott; MS Sharkey; MS Simpson; MS Smith; MS Warren; MS Wayne; MS Winston; MS Yazoo. | |
| **Louisiana:** | |
| 113 New Orleans, LA: | |
| SMSA Counties: | |
| 0920 Biloxi-Gulfport, MS | 19.2 |
| MS Hancock; MS Harrison, MS Stone. | |
| 5560 New Orleans, LA | 31.0 |
| LA Jefferson; LA Orleans; LA St. Bernard; LA St. Tammany. | |
| Non-SMSA Counties | 27.7 |
| LA Assumption; LA Lafourche; LA Plaquemines; LA St. Charles; LA St. James; LA St. John The Baptist; LA Tangipahoa; LA Terrebonne; LA Washington; MS Forrest; MS Lamar; MS Marion; MS Pearl River; MS Perry; MS Pike; MS Walthall. | |
| 114 Baton Rouge, LA: | |
| SMSA Counties: | |
| 0760 Baton Rouge, LA | 26.1 |
| LA Ascension; LA East Baton Rouge; LA Livingston; LA West Baton Rouge. | |
| Non-SMSA Counties | 30.4 |
| LA Concordia; LA E. Feliciana; LA Iberville; LA Pointe Coupee; LA St. Helena; LA West Feliciana; MS Adams; MS Amite; MS Wilkinson. | |
| 115 Lafayette, LA: | |
| SMSA Counties: | |
| 3880 Lafayette, LA | 20.6 |
| LA Lafayette. | |
| Non-SMSA Counties | 24.1 |
| LA Acadia; LA Evangeline; LA Iberia; LA St. Landry; LA St. Martin; LA St. Mary; LA Vermilion. | |
| 116 Lake Charles, LA: | |
| SMSA Counties: | |
| 3960 Lake Charles, LA | 19.3 |
| LA Calcasieu. | |
| Non-SMSA Counties | 17.8 |
| LA Allen; LA Beauregard; LA Cameron; LA Jefferson Davis; LA Vernon. | |
| 117 Shreveport, LA: | |
| SMSA Counties: | |
| 0220 Alexandria, LA | 25.7 |
| LA Grant; LA Rapides. | |
| 7680 Shreveport, LA | 29.3 |
| LA Bossier; LA Caddo; LA Webster. | |
| Non-SMSA Counties | 29.3 |
| LA Avoyelles; LA Bienville; LA Claiborne; LA De Soto; LA Natchitoches; LA Red River; LA Sabine; LA Winn. | |
| 118 Monroe, LA: | |
| SMSA Counties: | |
| 5200 Monroe, LA | 22.8 |
| LA Ouachita. | |
| Non-SMSA Counties | 27.9 |
| LA Caldwell; LA Catahoula; LA East Carroll; LA Franklin; LA Jackson; LA La Salle; LA Lincoln; LA Madison; LA Morehouse; LA Richland; LA Tensas; LA Union; LA West Carroll. | |
| **Texas:** | |
| 119 Texarkana, TX: | |
| SMSA Counties: | |
| 8360 Texarkana, TX-Texarkana, AR | 19.7 |
| AR Little River; AR Miller; TX Bowie. | |
| Non-SMSA Counties | 20.2 |
| AR Columbia; AR Hempstead; AR Howard; AR Lafayette; AR Nevada; AR Pike; AR Sevier; TX Camp; TX Cass; TX Lamar; TX Morris; TX Red River; TX Titus. | |
| 120 Tyler-Longview, TX: | |
| SMSA Counties: | |
| 4420 Longview, TX | 22.8 |
| TX Gregg; TX Harrison. | |
| 8640 Tyler, TX | 23.5 |
| TX Smith. | |
| Non-SMSA Counties | 22.5 |
| TX Anderson; TX Angelina; TX Cherokee; TX Henderson; TX Houston; TX Marion; TX Nacogdoches; TX Panola; TX Rusk; TX San Augustine; TX Shelby; TX Upshur; TX Wood. | |
| 121 Beaumont-Port Arthur, TX: | |
| SMSA Counties: | |
| 0640 Beaumont-Port Arthur-Orange, TX | 22.6 |
| TX Hardine; TX Jefferson; TX Orange. | |
| Non-SMSA Counties | 22.6 |
| TX Jasper; TX Newton; TX Sabine; TX Tyler. | |
| 122 Houston, TX: | |
| SMSA Counties: | |
| 1260 Bryan-College Station, TX | 23.7 |
| TX Brazos. | |
| 2920 Galveston-Texas City, TX | 28.9 |
| TX Galveston. | |
| 3360 Houston, TX | 27.3 |
| TX Brazoria; TX Fort Bend; TX Harris; TX Liberty; TX Montgomery; TX Waller. | |
| Non-SMSA Counties | 27.4 |
| TX Austin; TX Burleson; TX Calhoun; TX Chambers; TX Colorado; TX De Witt; TX Fayette; TX Goliad; TX Grimes; TX Jackson; TX Lavaca; TX Leon; TX Madison; TX Matagorda; TX Polk; TX Robertson; TX San Jacinto; TX Trinity; TX Victoria; TX Walker; TX Washington; TX Wharton. | |
| 123 Austin, TX: | |
| SMSA Counties: | |
| 0640 Austin, TX | 24.1 |
| TX Hays; TX Travis; TX Williamson. | |
| Non-SMSA Counties | 24.2 |
| TX Bastrop; TX Blanco; TX Burnet; TX Caldwell; TX Lee; TX Llano. | |
| 124 Waco-Killeen-Temple, TX: | |
| SMSA Counties: | |
| 3810 Killeen-Temple, TX | 16.4 |
| TX Bell; TX Coryell. | |
| 8800 Waco, TX | 20.7 |
| 5TX McLennan. | |
| Non-SMSA Counties | 18.6 |
| TX Bosque; TX Falls; TX Freestone; TX Hamilton; TX Hill; TX Lampasas; TX Limeston; TX Milam; TX Mills. | |
| 125 Dallas-Fort Worth, TX: | |
| SMSA Counties: | |
| 1920 Dallas-Fort Worth, TX | 18.2 |
| TX Collin; TX Dallas; TX Denton; TX Ellis; TX Hood; TX Johnson; TX Kaufman; TX Parker; TX Rockwall; TX Tarrant; TX Wise. | |
| 7640 Sherman-Denison, TX | 9.4 |
| TX Grayson. | |
| Non-SMSA Counties | 17.2 |
| OK Bryan; TX Cooke; TX Delta; TX Erath; TX Fannin; TX Franklin; TX Hopkins; TX Hunt; TX Jack; TX Montague; TX Navarro; TX Palo Pinto; TX Rains; TX Sommervell; TX Van Zandt. | |
| 126 Wichita Falls, TX: | |
| SMSA Counties: | |
| 9080 Whichita Falls, TX | 12.4 |
| TX Clay; TX Whichita. | |
| Non-SMSA Counties | 11.0 |
| 4TX Archer; TX Baylor; TX Cottle; TX Foard; TX Hardeman; TX Wilbarger; TX Young. | |
| 127 Ahilene, TX: | |
| SMSA Counties: | |
| 0040 Abilene, TX | 11.6 |
| TX Callahan; TX Jones; TX Taylor. | |
| Non-SMSA Counties | 10.9 |
| TX Brown; TX Coleman; TX Comanche; TX Eastland; TX Fisher; TX Haskell; TX Kent; TX Knox; TX Mitchell; TX Nolan; TX Scurry; TX Shackelford; TX Stephens; TX Stonewall; TX Throckmorton. | |
| 128 San Angelo, TX: | |
| SMSA Counties: | |
| 7200 San Angelo, TX | 19.2 |
| TX Tom Green. | |
| Non-SMSA Counties | 20.0 |
| TX Coke; TX Concho; TX Crockett; TX Irion; TX Kimble; TX McCulloch; TX Mason; TX Menard; TX Reagan; TX Runnels; TX San Saba; TX Schleicher; TX Sterling; TX Sutton; TX Terrell. | |
| 129 San Antonio, TX: | |
| SMSA Counties: | |
| 4080 Laredo, TX | 87.3 |
| TX Webb. | |
| 7240 San Antonio, TX | 47.8 |
| TX Bexar; TX Comal; TX Guadalupe. | |
| Non-SMSA Counties | 49.4 |
| TX Atascosa; TX Bandera; TX Dimmit; TX Edwards; TX Frio; TX Gillespie; TX Gonzales; TX Jim Hogg; TX Karnes; TX Kendall; TX Kerr; TX Kinney; TX La Salle; TX Mc Mullen; TX Maverick; TX Medina; TX Real; TX Uvalde; TX Val Verde; TX Wilson; TX Zapata; TX Zavala. | |
| 130 Corpus Christi, TX: | |
| SMSA Counties: | |
| 1880 Corpus Christi, TX | 41.7 |
| TX Nueces; TX San Patricio. | |
| Non-SMSA Counties | 44.2 |
| TX Aransas; TX Bee; TX Brooks; TX Duval; TX Jim Wells; TX Kenedy; TX Kyberg; TX Live Oak; TX Refugio. | |
| 131 Brownsville-McAllen-Harlingen, TX: | |
| SMSA Counties; | |
| 1240 Brownsville-Harlingen-San Benito, TX | 71.0 |
| TX Cameron. | |
| 4880 McAllen-Pharr-Edinburg, TX | 72.8 |
| TX Hidalga. | |
| Non-SMSA Counties | 72.9 |
| TX Starr; TX Willacy. | |
| 132 Odessa-Midland, TX: | |
| SMSA Counties: | |
| 5040 Midland, TX | 19.1 |
| TX Midland. | |
| 5800 Odessa, TX | 15.1 |
| TX Ector. | |
| Non-SMSA Counties | 18.9 |
| TX Andrews; TX Crane; TX Glassock; TX Howard; TX Loving; TX Martin; TX Pecos; TX Reeves; TX Upton; TX Ward; TX Winkler. | |
| 133 El Paso, TX: | |
| SMSA Counties: | |
| 2320 El Paso, TX | 57.8 |
| TX El Paso. | |
| Non-SMSA Counties | 49.0 |
| NM Chaves; NM Dona Ana; NM Eddy; NM Grant; NM Hidalgo; NM Luna; NM Otero; NM Sierra; TX Brewster; TX Culberson; TX Hudspeth; TX Jeff Davis; TX Presidio. | |
| 134 Lubbock, TX: | |
| SMSA Counties: | |
| 4600 Lubbock, TX | 19.6 |
| TX Lubbock. | |
| Non-SMSA Counties | 19.5 |
| NM Lea; NM Roosevelt; TX Bailey; TX Borden; TX Cochran; TX Crosby; TX Dawson; tx Dickens; TX Floyd; TX Gaines; TX Garza; TX Hale; TX Hockley; TX King; TX Lamb; TX Lynn; TX Motley; TX Terry; TX Yoakum. | |
| 135 Amarillo, TX: | |
| SMSA Counties: | |
| 0320 Amarillo, TX | 9.3 |
| TX Potter; TX Randall. | |
| Non-SMSA Counties | 11.0 |

## Economic Areas—Continued

| State | Goal (percent) |
|---|---|
| NM Curry; NM Harding; NM Quay; NM Union; OK Beaver; OK Cimarron; OK Texas; TX Armstrong; TX Briscoe; TX Carson; TX Castro; TX Childress; TX Collingsworth; TX Dallam; TX Deaf Smith; TX Donley; TX Gray; TX Hall; TX Hansford; TX Hartley; TX Hemphill; TX Hutchinson; TX Lipscomb; TX Moore; TX Ochiltree; TX Oldham; TX Parmer; TX Roberts; TX Sherman; TX Swisher; TX Wheeler. | |
| **Oklahoma:** | |
| 136 Lawton, OK: | |
| SMSA Counties: | |
| 4200 Lawton, OK | 14.8 |
| OK Comanche. | |
| Non-SMSA Counties | 10.8 |
| OK Cotton; OK Greer; OK Harmon; OK Jackson; OK Jefferson; OK Kiowa; OK Stephens; OK Tillman. | |
| 137 Oklahoma City, OK: | |
| SMSA Counties: | |
| 5880 Oklahoma City, OK | 10.2 |
| OK Canadian; OK Cleveland; OK McClain; OK Oklahoma; OK Pottawatomie. | |
| Non-SMSA Counties | 9.0 |
| OK Alfalfa; OK Atoka; OK Beckham; OK Blaine; OK Caddo; OK Carter; OK Coal; OK Custer; OK Dewey; OK Ellis; OK Garfield; OK Garvin; OK Grady; OK Grant; OK Harper; OK Hughes; OK Johnston; OK Kingfisher; OK Lincoln; OK Logan; OK Love; OK Major; OK Marshall; OK Murray; OK Okfuskee; OK Pontotoc; OK Roger Mills; OK Seminole; OK Washita; OK Woods; Ok Woodward. | |
| 138 Tulsa, OK: | |
| SMSA Counties: | |
| 8560 Tulsa, OK | 10.2 |
| OK Creek; OK Mayes; OK Osage; OK Rogers; OK Tulsa; OK Wagoner. | |
| Non-SMSA Counties | 10.0 |
| OK Cherokee; OK Key; OK McIntosh; OK Muskogee; OK Noble; OK Nowata; OK Okmulgee; OK Pawnee; OK Payne; OK Washington. | |
| **Kansas:** | |
| 139 Wichita, KS: | |
| SMSA Counties: | |
| 9040 Wichita, KS | 7.9 |
| KS Butler; KS Sedgwick. | |
| Non-SMSA Counties | 5.7 |
| KS Barber; KS Barton; KS Chase; KS Chautauqua; KS Clark; KS Comanche; KS Cowley; KS Edwards; KS Elk; KS Finney; KS Ford; KS Grant; KS Gray; KS Greeley; KS Greenwood; KS Hamilton; KS Harper; KS Harvey; KS Haskell; KS Hodgeman; KS Kerny; KS Kingman; KS Kiowa; KS Lane; KS McPherson; KS Marion; KS Meade; KS Morton; KS Ness; KS Pawnee; KS Pratt; KS Reno; KS Rice; KS Rush; KS Scott; KS Seward; KS Stafford; KS Stanton; KS Stevens; KS Sumner; KS Wichita. | |
| 140 Salina, KS: | |
| Non-SMSA Counties | 1.5 |
| KS Cheyenne; KS Cloud; KS Decatur; KS Dickinson; KS Ellis; KS Ellsworth; KS Gove; KS Graham; KS Jewell; KS Lincoln; KS Logan; KS Mitchell; KS Norton; KS Osborne; KS Ottawa; KS Phillips; KS Rawlins; KS Republic; KS Rooks; KS Russell; KS Saline; KS Sheridan; KS Sherman; KS Smith; KS Thomas; KS Trego; KS Wallace. | |
| 141 Topeka, KS: | |
| SMSA Counties | |
| 8440 Topeka, KS | 9.0 |
| KS Jefferson; KS Osage; KS Shawnee. | |
| Non-SMSA Counties | 6.5 |
| KS Clay; KS Coffey; KS Geary; KS Jackson; KS Lyon; KS Marshall; KS Morris; KS Nemaha; KS Pottawatomie; KS Riley; KS Wabaunsee; KS Washington. | |
| **Nebraska:** | |
| 142 Lincoln, NE: | |
| SMSA Counties: | |
| 4360 Lincoln, NE | 2.8 |
| NE Lancaster. | |
| Non SMSA Counties | 1.9 |
| NE Butler; NE Fillmore; NE Gage; NE Jefferson; NE Johnson; NE Nemaha; NE Otoe; NE Pawnee; NE Polk; NE Richardson; NE Saline; NE Seward; NE Thayer; NE York. | |
| 143 Omaha, NE: | |
| SMSA Counties: | |
| 5920 Omaha, NE–IA | 7.6 |
| IA Pottawattamie; NE Douglas; NE Sarpy. | |
| Non-SMSA Counties | 5.3 |

## Economic Areas—Continued

| State | Goal (percent) |
|---|---|
| IA Adams; IA Audubon; Cass; IA Fremont; IA Harrison; IA Mills; IA Montgomery; IA Page; IA Shelby; IA Taylor; NE Burt; NE Cass; NE Colfax; NE Dodge; NE Platte; NE Saunders; NE Washington. | |
| 144 Grand Island, NE: | |
| Non SMSA Counties | 1.4 |
| NE Adams; NE Aurther; NE Blaine; NE Boone; NE Boyd; NE Brown; NE Buffalo; NE Chase; NE Cherry; NE Clay; NE Custer; NE Dawson; NE Dundy; NE Franklin; NE Frontier; NE Furnas; NE Garfield; NE Gosper; NE Grant; NE Greeley; NE Hall; NE Hamilton; NE Harlan; NE Hayes; NE Hitchcock; NE Holt; NE Hooker; NE Howard; NE Kearney; NE Keith; NE Keya Paha; NE Lincoln; NE Logan; NE Loup; NE McPherson; NE Merrick;; NE Nance; NE Nuckolls; NE Perkins; NE Phelps; NE Red Willow; NE Rock; NE Sherman; NE Thomas; NE Valley; NE Webster; NE Wheeler. | |
| 145 Scottsbluff, NE: | |
| Non-SMSA Counties | 5.3 |
| NE Banner; NE Box Butte; NE Cheyenne; NE Dawes; NE Deuel; NE Garden; NE Kimball; NE Morrill; NE Scotts Buff; NE Sheridan; NE Sioux; NE Goshen. | |
| **South Dakota:** | |
| 146 Rapid City, SD: | |
| SMSA Counties: | |
| 6660 Rapid City, SD | 3.4 |
| SD Pennington; SD Meade. | |
| Non-SMSA Counties | 7.9 |
| SD Bennett; SD Buffalo; SD Butte; SD Campbell; SD Corson; SD Custer; SD Dewey (Armstrong); SD Fall River; SD Haakon; SD Harding; SD Hughes; SD Hyde; SD Jackson; SD Jones; SD Lawrence; SD Lyman; SD Mellette; SD Perkins; SD Potter; SD Shannon (Washington); SD Stanley; SD Sully; SD Todd; SD Tripp; SD Walworth; SD Washabaugh; SD Ziebach; WY Crook; WY Niobrara; WY Weston. | |
| 147 Sioux Falls, SD: | |
| SMSA Counties: | |
| 7760 Sioux Falls, SD | 1.2 |
| SD Minnehaha. | |
| Non-SMSA Counties | 0.8 |
| IA Lyon; IA Osceola; MN Cottonwood; MN Jackson; MN Lincoln; MN Lyon; MN Murray; MN Nobles; MN Pipestone; MN Redwood; MN Rock; SD Aurora; SD Beadle; SD Brookings; SD Brule; SD Charles Mix; SD Davison; SD Douglas; SD Gregory; SD Hand; SD Hanson; SD Hutchinson; SD Jerauld; SD Kingsbury; SD Lake; SD Lincoln; SD McCook; SD Miner; SD Moody; SD Sanborn; SD Turner. | |
| 148 Aberdeen, SD: | |
| Non-SMSA Counties | 1.3 |
| SD Brown; SD Clark; SD Codington; SD Day; SD Deuel; SD Edmunds; SD Faulk; SD Grant; SD Hamlin; SD McPherson; SD Marshall; SD Roberts; SD Spink. | |
| **North Dakota:** | |
| 149 Fargo-Moorhead, ND–MN: | |
| Non-SMSA Counties | 0.7 |
| MN Becker; MN Clay; MN Cass; MN Wilkin; ND Barnes; ND Dickey; ND Eddy; ND Foster; ND Griggs; ND La Moure; ND Logan; ND McIntosh; ND Ransom; ND Richland; ND Sargent; ND Steele; ND Stutsman; ND Traill. | |
| 150 Grand Forks, ND: | |
| SMSA Counties: | |
| 2985 Grand Forks, ND–MN | 1.2 |
| MN Polk; ND Grand Forks. | |
| Non-SMSA Counties | 2.0 |
| MN Bletrami; MN Clearwater; MN Hubbard; MN Kittson; MN Lake of the Woods; MN Mahnomen; MN Marshall; MN Norman; MN Pennington; MN Red Lake; MN Roseau; MN Benson; ND Cavalier; ND Nelson; ND Pembina; ND Ramsey; ND Towner; ND Walsh. | |
| 151 Bismarck, ND: | |
| SMSA Counties: | |
| 1010 Bismarck, ND | 0.4 |
| ND Burleigh; ND Morton. | |
| Non-SMSA Counties | 1.3 |
| ND Adams; ND Billings; ND Bowman; ND Dunn; ND Emmons; ND Golden Valley; ND Grant; ND Hettinger; ND Kidder; ND Mercer; ND Oliver; ND Sheridan; ND Sioux; ND Slope; ND Stark; ND Wells. | |
| 152 Minot, ND: | |
| Non-SMSA Counties | 4.4 |

## Economic Areas—Continued

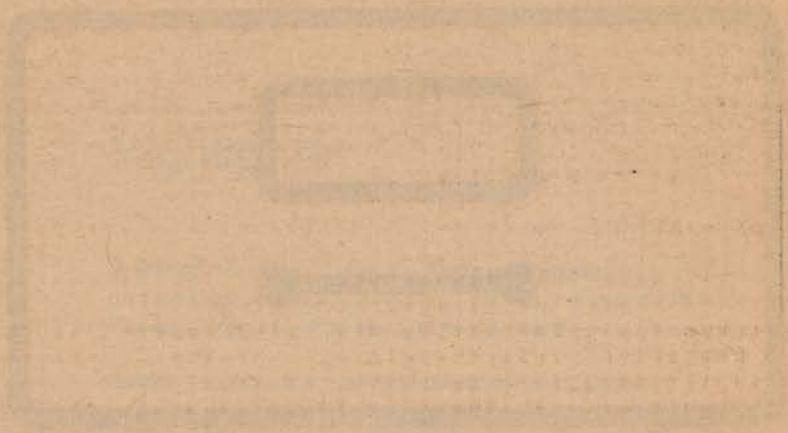
| State | Goal (percent) |
|---|---|
| MT Daniels; MT Richland; MT Roosevelt; MT Sheridan; ND Bottineau; ND Burke; ND Divide; ND McHenry; ND McKenzie; ND McLean; ND Mountrail; ND Pierce; ND Renville; ND Rolette; ND Ward; ND Williams. | |
| **Montana:** | |
| 153 Great Falls, MT: | |
| SMSA Counties: | |
| 3040 Great Falls, MT | 3.2 |
| MT Cascade. | |
| Non-SMSA Counties | 4.1 |
| MT Blaine; MT Broadwater; MT Chouteau; MT Fergus; MT Glacier; MT Hill; MT Jefferson; MT Judith Basin; MT Lewis and Clark; MT Liberty; MT Meagher; MT Petroleum; MT Phillips; MT Pondera; MT Teton; MT Toole; MT Valley; MT Wheatland. | |
| 154 Missoula, MT: | |
| Non-SMSA Counties | 2.7 |
| MT Beaverhead; MT Deer Lodge; MT Flathead; MT Granite; MT Lincoln; MT Madison; MT Mineral; MT Missoula; MT Powell; MT Ravalli; MT Sanders; MT Silver Bow. | |
| 155 Billings, MT: | |
| SMAS Counties: | |
| 0880 Billings, MT | 3.3 |
| MT Yellowstone. | |
| Non-SMSA Counties | 3.3 |
| MT Big Horn; MT Carbon; MT Carter; MT Custer; MT Dawson; MT Fallon; MT Gallatin; MT Garfield; MT Golden Valley; MT McCone; MT Musselshell; MT Park; MT Powder River; MT Prairie; MT Rosebud; MT Stillwater; MT Sweet Grass; MT Treasure; MT Wilbaux; MT Yhwst N Pk & Part; WY Big Horn; WY Hot Springs; WY Park; WY Sheridan; WY Washakie. | |
| 156 Cheyenne-Casper, WY: | |
| Non-SMSA Counties | 7.5 |
| CO Jackson; WY Albany; WY Campbell; WY Carbon; WY Converse; WY Fremont; WY Johnson; WY Laramie; WY Natrona; WY Platte. | |
| 157 Denver, CO: | |
| SMSA Counties: | |
| 2080 Denver-Boulder, CO | 13.8 |
| CO Adams; CO Arapahoe; CO Boulder; CO Denver; CO Douglas; CO Gilpin; CO Jefferson. | |
| 2670 Fort Collins, CO | 6.9 |
| CO Larimer. | |
| 3060 Greeley, CO | 13.1 |
| CO Weld. | |
| Non-SMSA Counties | 12.8 |
| CO Cheyenne; CO Clear Creek; CO Elbert; CO Grand; CO Kit Carson; CO Logan; CO Morgan; CO Park; CO Phillips; CO Sedgwick; CO Summit; CO Washington; CO Yuma. | |
| 158 Colorado Springs-Pueblo, CO: | |
| SMSA Counties: | |
| 1720 Colorado Springs, CO | 10.9 |
| CO El Paso; CO Teller. | |
| 6560 Pueblo, CO | 27.5 |
| CO Pueblo. | |
| Non-SMSA Counties | 19.0 |
| CO Alamosa; CO Baca; CO Bent; CO Chaffee; CO Conejos; CO Costilla; CO Crowley; CO Custer; CO Fremont; CO Huerfano; CO Kiowa; CO Lake; CO Las Animas; CO Lincoln; CO Mineral; CO Otero; CO Prowers; CO Rio Grande; CO Saguache. | |
| 159 Grand Junction, CO: | |
| Non-SMSA | 10.2 |
| CO Archuleta; CO Delta; CO Dolores; CO Eagle; CO Garfield; CO Gunnison; CO Hinsdale; CO La Plata; CO Mesa; CO Moffat; CO Montezuma; CO Montrose; CO Ouray; CO Pitkin; CO Rio Blanco; CO Routt; CO San Juan; CO San Miquel; UT Grand; UT San Juan. | |
| **New Mexico:** | |
| 160 Albuquerque, NM: | |
| SMSA Counties: | |
| 0200 Albuquerque, NM | 38.3 |
| NM Bernalillo; NM Sandoval. | |
| Non-SMSA Counties | 45.9 |
| NM Catron; NM Colfax; NM De Baca; NM Guadalupe; NM Lincoln; NM Los Alamos; NM McKinley; NM Mora; NM Rio Arriba; NM San Juan; NM San Miguel; NM Santa Fe; NM Socorro; NM Taos; NM Torrance; NM Valencia. | |
| **Arizona:** | |
| 161 Tuscon, AZ: | |
| SMSA Counties: | |
| 8520 Tuscon, AZ | 24.1 |

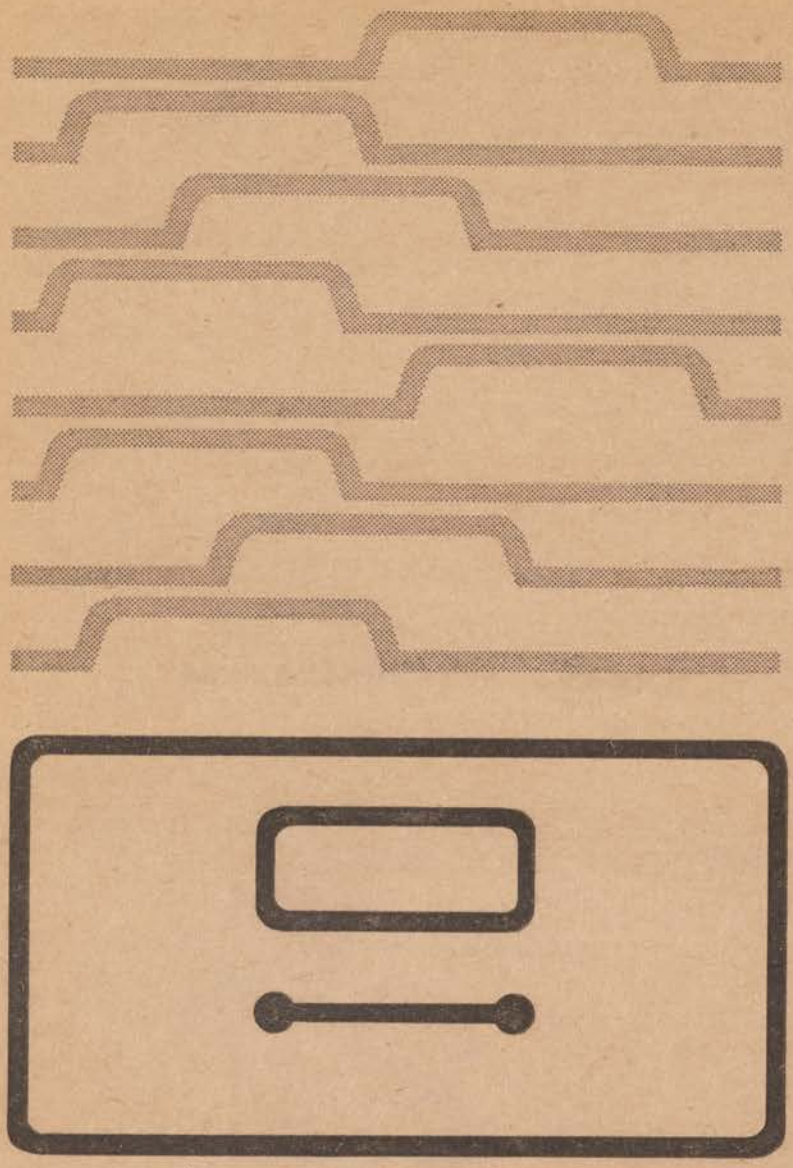
## Economic Areas—Continued

| State | Goal (percent) |
|---|---|
| AZ Pima. | |
| Non-SMSA Counties | 27.0 |
| AZ Cochise; AZ Graham; AZ Greenlee; AZ Santa Cruz. | |
| 162 Phoenix, AZ: | |
| SMSA Counties: | |
| 6200 Phoenix, AZ | 15.8 |
| AZ Maricopa. | |
| Non-SMSA Counties | 19.6 |
| AZ Appache; AZ Coconino; AZ Gila; AZ Mohave; AZ Navajo; AZ Pinal; AZ Yavapai; AZ Yuma. | |
| **Nevada:** | |
| 163 Las Vegas, NV: | |
| SMSA Counties: | |
| 4120 Las Vegas, NV | 13.9 |
| NV Clark. | |
| Non-SMSA Counties | 12.6 |
| NV Esmeralds; NV Lincoln; NV Nye; UT Beaver; UT Garfield; UT Iron; UT Kane; UT Washington. | |
| 164 Reno, NV: | |
| SMSA Counties: | |
| 6720 Reno, NV | 8.2 |
| NV Washoe. | |
| Non-SMSA Counties | 9.2 |
| NV Churchill; NV Douglas; NV Elko; NV Eureka; NV Humboldt; NV Lander; NV Lyon; NV Mineral; NV Pershing; NV Storey; NV White Pine; NV Carson City. | |
| **Utah:** | |
| 165 Salt Lake City-Ogden, UT: | |
| SMSA Counties: | |
| 6520 Provo-Orem, UT | 2.4 |
| UT Utah. | |
| 7160 Salt Lake City-Ogden, UT | 6.0 |
| UT Davis; UT Salt Lake; UT Toole; UT Weber. | |
| Non-SMSA Counties | 5.1 |
| ID Bear Lake; ID Franklin; ID Oneida; UT Box Elder; UT Cache; UT Carbon; UT Daggett; UT Duchesne; UT Emery; UT Juab; UT Millard; UT Morgan; UT Piute; UT Rich; UT Sanpete; UT Sevier; UT Summit; UT Uintah; UT Wasatch; UT Wayne; WY Lincoln; WY Sublette; WY Sweetwater; WY Unita. | |
| **Idaho:** | |
| 166 Pocatello-Idaho Falls, ID: | |
| Non-SMSA Counties | 4.0 |
| ID Bannock; ID Bingham; ID Baline; ID Bonneville; ID Butte; ID Camas; ID Caribou; ID Cassia; ID Clark; ID Custer; ID Fremont; ID Gooding; ID Jefferson; ID Jerome; ID Lemhi; ID Lincoln; ID Madison; ID Minidoka; ID Power; ID Teton; ID Twin Falls; WY Teton. | |
| 167 Boise City, ID: | |
| SMSA Counties: | |
| 1080 Boise City, ID | 2.3 |
| ID Ada. | |
| Non-SMSA Counties | 4.4 |
| ID Adams; ID Boise; ID Canyon; ID Elmore; ID Gem; ID Owyhee; ID Payette; ID Valley; ID Washington; OR Harney; OR Malheur. | |
| **Washington:** | |
| 168 Spokane, WA: | |
| SMSA Counties: | |
| 7840 Spokane, WA | 2.8 |
| WA Spokane. | |
| Non-SMSA Counties | 3.0 |
| ID Benewah; ID Bonner; ID Boundary; ID Clearwater; ID Idaho; ID Kootenai; ID Latah; ID Lewis; ID Nez Perce; ID Shoshone; WA Adams; WA Asotin; WA Columbia; WA Ferry; WA Garfield; WA Lincoln; WA Pend Oreille; WA Stevens; WA Whitman. | |
| 169 Richland, WA: | |
| SMSA Counties: | |
| 6740 Richland-Kennewick, WA | 5.4 |
| WA Benton; WA Franklin. | |
| Non-SMSA Counties | 3.6 |
| OR Baker; OR Gilliam; OR Grant; OR Morrow; OR Umatilla; OR Union; OR Wallowa; OR Wheeler; WA Walla Walla. | |
| 170 Yakima, WA: | |
| SMSA Counties: | |
| 9260 Yakima, WA | 9.7 |
| WA Yakima. | |
| Non-SMSA Counties | 7.2 |
| WA Chelan; WA Douglas; WA Grant; WA Kittitas; WA Okanogan. | |
| 171 Seattle, WA: | |
| SMSA Counties: | |
| 7600 Seattle-Everett, WA | 7.2 |
| WA King; WA Snohomish. | |
| 8200 Tacoma, WA | 6.2 |
| WA Pierce. | |
| Non-SMSA Counties | 6.1 |
| WA Clallam; WA Grays Harbor; WA Island; WA Jefferson; WA Kitsap; WA Lewis; WA Mason; WA Pacific; WA San Juan; WA Skagit; WA Thurston; WA Whatcom. | |
| **Oregon:** | |
| 172 Portland, OR: | |
| SMSA Counties: | |
| 6440 Portland, OR-WA | 4.5 |
| OR Clackamas; OR Multnomah; OR Washington; WA Clark. | |
| 7080 Salem, OR | 2.9 |
| OR Marion; OR Polk. | |
| Non-SMSA Counties | 3.8 |
| OR Benton; OR Clatsop; OR Columbia; OR Crook; OR Deschutes; OR Hood River; OR Jefferson; OR Lincoln; OR Linn; OR Sherman; OR Tillamook; OR Wasco; OR Yamhill; WA Cowlitz; WA Klickitat; WA Skamania; WA Wahkiakum. | |
| 173 Eugene, OR: | |
| SMSA Counties: | |
| 2400 Eugene-Springfield, OR | 2.4 |
| OR Lane. | |
| Non-SMSA Counties | 2.4 |
| OR Coos; OR Curry; OR Douglas; OR Jackson; OR Josephine; OR Klamath; OR Lake. | |
| **California:** | |
| 174 Redding, CA: | |
| Non-SMSA Counties | 6.8 |
| CA Lassen; CA Modoc; CA Plumas; CA Shasta; CA Siskiyou; CA Tehama. | |
| 175 Eureka, CA: | |
| Non-SMSA Counties | 6.6 |
| CA Del Norte; CA Humboldt; CA Trinity. | |
| 176 San Francisco-Oakland-San Jose, CA: | |
| SMSA Counties: | |
| 7120 Salinas-Seaside-Monterey, CA | 28.9 |
| CA Monterey. | |
| 7360 San Francisco-Oakland, CA | 25.6 |
| CA Alameda; CA Contra Costa; CA Marin; CA San Francisco; CA San Mateo. | |
| 7400 San Jose, CA | 19.6 |
| CA Santa Clara. | |
| 7485 Santa Cruz, CA | 14.9 |
| CA Santa Cruz. | |
| 7500 Santa Rosa, CA | 9.1 |
| CA Sonoma. | |
| 8720 Vallejo-Fairfield-Napa, CA | 17.1 |
| CA Napa; CA Soland. | |
| Non-SMSA Counties | 23.2 |
| CA Lake; CA Mendocino; CA San Benito. | |
| 177 Sacramento, CA: | |
| SMSA Counties: | |
| 6920 Sacramento, CA | 16.1 |
| CA Placer; CA Sacramento; CA Yolo. | |
| Non-SMSA Counties | 14.3 |
| CA Butte; CA Colusa; CA El Dorado; CA Glenn; CA Nevada; CA Sierra; CA Sutter; CA Yuba. | |
| 178 Stockton-Modesto, CA: | |
| SMSA Counties: | |
| 5170 Modesto, CA | 12.3 |
| CA Stanislaus. | |
| 8120 Stockton, CA | 24.3 |
| CA San Joaquin. | |
| Non-SMSA Counties | 19.8 |
| CA Alpine; CA Amador; CA Calaveras; CA Mariposa; CA Merced; CA Tuolumne. | |
| 179 Fresno-Bakersfield, CA: | |
| SMSA Counties: | |
| 0680 Bakersfield, CA | 19.1 |
| CA Kern. | |
| 2840 Fresno, CA | 26.1 |
| CA Fresno. | |
| Non-SMSA Counties | 23.6 |
| CA Kings; CA Madera; CA Tulare. | |
| 180 Los Angeles, CA: | |
| SMSA Counties: | |
| 0360 Anaheim-Santa Ana-Garden Grove, CA | 11.9 |
| CA Orange. | |
| 4480 Los Angeles-Long Beach, CA | 28.3 |
| CA Los Angeles. | |
| 6000 Oxnard-Simi Valley-Ventura, CA | 21.5 |
| CA Ventura. | |
| 6780 Riverside-San Bernardino-Ontario, CA | 19.0 |
| CA Riverside; CA San Bernardino. | |
| 7480 Santa Barbara-Santa Maria-Lompoc, CA | 19.7 |
| CA Santa Barbara. | |
| Non-SMSA Counties | 24.6 |
| CA Inyo; CA Mono; CA San Luis Obispo. | |
| 181 San Diego, CA: | |
| SMSA Counties: | |
| 7320 San Diego, CA | 16.9 |
| CA San Diego. | |
| Non-SMSA Counties | 18.2 |
| CA Imperial. | |
| **Alaska:** | |
| 182 Anchorage, AK: | |
| SMSA Counties: | |
| 0380 Anchorage, AK | 8.7 |
| AK Anchorage Division. | |
| Non-SMSA Counties | 15.1 |
| AK Aleutian Islands Division; AK Angoon Division; AK Barrow-North Slope Division; AK Bethel Division; AK Bristol Bay Borough; AK Bristol Bay Division; AK Cordova McCarthy Division; AK Fairbanks Division; AK Haines Division; AK Juneau Division; AK Kenai-Cook Inlet Division; AK Ketchikan Division; AD Kobuk Division; AK Kodiak Division; AK Kwskokwim Division; AK Matansuska-Susitna Division; AK Nome Division; AK Outer Ketchikan Division; AK Prince of Wales Division; AK Seward Division; AK Sitka Division; AK Skagaway-Yakutat Division; AK Southeast Fairbanks Division; AK Upper Yukon Division; AK Valdez-Cilina-Whittier Division; AK Wade Hampton Division; AK Wrangell-Petersburg Division; AK Yukon-Koyukuk Division. | |
| **Hawaii:** | |
| 183 Honolulu, HI: | |
| SMSA County: | |
| 3320 Honolulu, HI | 69.1 |
| HI Honolulu. | |
| Non-SMSA Counties | 70.4 |
| HI Hawaii; HI Kauai, HI Maui and Kalowao. | |

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