AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

8-23-85
Vol. 50 No. 164
Pages 34075-34440

federal register

Friday
August 23, 1985

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Air Pollution Control
Environmental Protection Agency

Alcohol and Alcoholic Beverages
Alcohol, Tobacco and Firearms Bureau

Aliens
Immigration and Naturalization Service

Aviation Safety
Federal Aviation Administration

Civil Rights
Veterans Administration

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National Oceanic and Atmospheric Administration

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

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How To Cite This Publication: Use the volume number and the page number. Example: 50 FR 12345.

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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 week.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 736

[Amdt. No. 1]

Grain Warehouses; Inspection Fees

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this rule is to amend the regulations for federally licensed grain warehouses (7 CFR 736).

The effect of this rule is to: (1) Allow for examination of a warehouse upon the request of the license holder and provide a fee for that examination; (2) provide for an examination after license suspension and provide a fee therefor; and (3) adjust fees charged for examinations to provide for an additional fee when a warehouseman has multiple warehouse locations under a single license. This rule is promulgated under the authority of the United States Warehouse Act as amended.

DATE: Effective October 1, 1985.

FOR FURTHER INFORMATION CONTACT: Harry J. Wishmire, 202–475–4028, Warehouse Division, U.S. Department of Agriculture, Agricultural Stabilization and Conservation Service, P.O. Box 2415, Washington, D.C. 20013.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under USDA procedures established in Departmental Regulation 1512–1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is February 17, 1986.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has determined that this action (1) is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, Federal, State or local government, or a geographic region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the Federal paperwork burden for individuals, small businesses, and other persons.

In compliance with 5 CFR Part 1320 Controlling Paperwork Burdens on the Public, which implements the Paperwork Reduction Act of 1980, Pub. L. 96–511, the information collection requirements, if any, resulting from these revisions—specifically reporting requirements—have been submitted to the Office of Management and Budget for review. Comments concerning the information collection requirements contained in these rules may be addressed to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer, ASCS/USDA, Washington, D.C. 20503, Telephone (202) 395–7340.

Merrill D. Marxman, Deputy Administrator for Commodity Operations, ASCS, has certified that this action will not have a significant economic impact on a substantial number of small entities and imposes no additional economic costs on small entities. Therefore, no regulatory flexibility analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. In addition, it will not adversely affect environmental factors such as wildlife habitat, water quality, or land use and appearance. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is required and none was prepared.

This action will not have a significant impact specifically upon area and community development, therefore review as established by Executive Order 12372 was not used to assure that units of local government are informed of this action

Background: The U.S. Warehouse Act (Act) (7 U.S.C. 241 *et seq.*) provides for the licensing of warehousemen who apply to the Secretary of Agriculture and meet statutory and regulatory standards. The primary objectives of the Act are to: (1) Protect producers and others who store their property in public warehouses; (2) assure the integrity of warehouse receipts as documents of title thereby facilitating trading in interstate commerce of agricultural commodities; and (3) set and maintain a standard for sound warehouse operations.

Changes in the economy, governmental administrative policy, the grain warehousing industry and needs of grain warehousemen have necessitated the Department to review on a continuous basis operations and requirements under the Act. Accordingly, rules and regulations have been promulgated by the Department from time to time, under authority of section 28 of the Act for the efficient execution of provisions of the Act.

Accordingly, a notice of proposed rulemaking was published by the Department in the **Federal Register** on Friday, June 28, 1985, requesting comments with respect to several proposals regarding changes in the regulations for grain warehouses. The comment period was for thirty days and ended on July 29, 1985.

Amendments to the regulations were proposed which would (1) allow for examination of a warehouse upon the request of the license holder and provide a fee for that examination; (2) provide for an examination after license suspension and provide a fee therefor; and (3) adjust fees charged for examinations to provide for an additional fee when a warehouseman has multiple warehouse locations under a single license.

One comment was received. This was from a grain warehouseman/dealer who operates a number of warehouses licensed under the Act and located in several States. Some of these licenses cover more than one warehouse and consequently the annual fees payable by the company will be affected. The company questioned if the new fees, which are based on capacity and number of locations, were reasonably indicative of the actual examination cost. The commenter pointed out that the record for multiple locations under one license are consolidated and that the proposed fee schedule does not take into consideration savings in time needed for examination of such records

as compared with number of single location warehouses.

Many cost factors were considered in establishing the fee such as number of and distance between locations, capacity, number and type of storage containers at each location, access to individual containers, and volume and availability of records. While all of these factors impact on the cost of an examination, many of them cannot be measured accurately or easily enough to be used in a fee schedule. Further, savings in one factor such as consolidation of records is often offset by increased costs because of distance between locations. Therefore, only the number of locations and capacity, which can be definitively measured, were included in the fee. Accordingly, it has been determined that all provisions of the proposed rule should be adopted as a final rule.

List of Subjects in 7 CFR 736

Administrative practice and procedure, Grain, License fees, Warehouses.

Final Rule

PART 736—GRAIN WAREHOUSE

Accordingly, the regulations for grain warehouses (7 CFR Part 736) are amended as follows:

1. The Authority Citation for 7 CFR Part 736 will continue to read as follows:

Authority: Sec. 28, 39 Stat. 490 (7 U.S.C. 268).

2. Section 736.58 is revised to read as follows:

§ 736.58 Warehouse inspection fees

(a) A fee shall be charged and collected:

(1) For each original examination or inspection, or reexamination or reinspection for modification of an existing license, of a warehouse under the Act computed at the rate of $10 for each 10,000 bushels of storage capacity or fraction thereof but not less than $100 nor more than $1,000;

(2) For each examination of a licensed warehouse, requested in writing by the warehouseman, computed at the rate of 75 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement (The request must state the purposes of the examination and contain an agreement to pay all required costs. The Secretary may refuse any such request if performing the examination would affect the Department's performance of regular program responsibilities.); and

(3) For each examination of a warehouse whose license has been suspended, the suspension is determined to be justified, and reinstatement is requested by the warehouseman, computed at the rate of 100 percent of the annual fee under paragraph (b) of this section applicable to warehouses not having a Uniform Grain Storage Agreement.

(b) Each warehouseman shall pay an annual fee computed in accordance with this subsection using the table set forth below. The fee will be assessed and payable when bond is first furnished for acceptance by the Secretary and annually thereafter on the bond renewal date. The fee will be determined by computing the amount due for each identifiable location under the license and adding those amounts together to determine the total amount due for the license. The warehouse capacity at each location will be determined by the Secretary. The total capacity of all warehouses at all locations shall not exceed the capacity stated in the current warehouse license. An identifiable location is a fully functional facility operated as a public warehouse as determined by the Secretary. An outlying unit which is not a fully functional operating facility is included under the nearest fully functional operating facility.

ANNUAL FEE TABLE

Location grain capacity (bushels)	Annual fee (dollars) for each warehouse location with uniform grain storage agreement	Annual fee (dollars) for each warehouse location without uniform grain storage agreement
1 to 150,000	100	200
150,001 to 250,000	200	400
250,001 to 500,000	300	600
500,001 to 750,000	400	800
750,001 to 1,000,000	500	1,000
1,000,001 to 1,200,000	600	1,200
1,200,001 to 1,500,000	700	1,400
1,500,001 to 2,000,000	800	1,600
2,000,001 to 2,500,000	900	1,800
2,500,001 to 5,000,000	1,000	2,000
5,000,001 to 7,500,000	1,100	2,200
7,500,001 to 10,000,000	1,200	2,400
100,000,001+	[1] 1,200	[2] 2,400

[1] Plus $30 per million bushels of capacity above 10 million or fraction thereof.
[2] Plus $60 per million bushels of capacity above 10 million or fraction thereof.

* * * * *

Signed at Washington, D.C. on August 19, 1985.

Everett Rank,

Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 85-20235 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 907

Navel Oranges Grown in Arizona and Designated Part of California; Independent Member Nomination Procedure

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule established procedures for the nomination of independent grower and handler members, alternate members, and additional alternate members to the Navel Orange Administrative Committee. This action is designed to encourage greater voter participation in the nomination process.

EFFECTIVE DATE: August 23, 1985.

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

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Secretary's Memorandum 1512-1 and Executive Order 12291, and has been designated a "nonmajor" rule. William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

This final rule is issued under Marketing Order 907, as amended (7 CFR Part 907, 50 FR 1429, 4957) regulating the handling of navel oranges grown in Arizona and a designated part of California. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (U.S.C. 601-674) ("the act"). It is hereby found that this final rule will tend to effectuate the declared policy of the act.

A proposed rule was published in the **Federal Register** (50 FR 7605) on February 25, 1985, to establish procedures for nominating independent grower and handler members, alternates and additional alternates to the Navel Orange Administrative Committee (NOAC), which operates under the order. As provided in § 907.22, such nominees shall be nominated by growers who are not affiliated with a cooperative marketing organization. NOAC recommended the changes in the nomination procedures in accordance with an amendment to the marketing order which became effective January 11, 1985.

The notice provided that interested persons could file views and comments on the proposal until March 27, 1985.

Comments were filed by NOAC, LoBue Bros., Sequoia Orange Company, Inc., Capital Legal Foundation on behalf of the Sequoia Orange Company, Inc., Nash-DeCamp Co., Sunny Cove Citrus, The Rayo Co., Riverbend Farms Inc., Sun World International, Cecelia Orchards Packing Corp., and Kings River Packing Co.

NOAC commented that the present practice of holding five meetings is inefficient. Specifically, NOAC cited the relatively light attendance at previous nomination meetings. Consequently, NOAC concluded that a minimum of two meetings will sufficiently fulfill the needs of the growers. Practically all of the navel orange producing acreage is located in Districts 1 and 2 and holding meetings in such locations would accommodate the greatest number of growers. None of the other comments received concerned these issues. Thus, the final rule provides that a minimum of two meetings, one each in District 1 and 2, should be held.

A petition form approved by the committee should be used for the purpose of obtaining evidence of industry support of any potential nominee. In the proposed rule comments were requested with respect to the required number of producer signatures for petitions submitted in person and by mail. NOAC recommended a minimum of twenty signatures if obtained by mail, and a minimum of five if obtained at a meeting. NOAC asserted that such a difference would provide an incentive to attend the meetings. The Capital Legal Foundation argued against such differing requirements and pointed out that the primary purpose of mail balloting is to encourage greater participation and not necessarily to promote greater attendance at meetings. For that reason it is concluded that the same number of signatures for a petition collected by mail or at meetings should be established. Also, in order to provide sufficient evidence of industry support, the final rule establishes a minimum of 10 eligible signatures on such petitions.

The comment submitted by NOAC suggested a modification of the proposal to provide that the name of the person receiving the highest number of votes for each of the handler positions shall be submitted to the Secretary as the nominee for such position. The names of the persons receiving the highest and second highest total number of votes for each of the grower positions shall be submitted to the Secretary as the nominees for such positions. This suggested modification is appropriate and consistent with provisions of the order which specify that independent marketing organizations should be represented on the committee by one handler member, an alternate member and an additional alternate member and two grower members, two alternate grower members, and two additional alternate grower members. Therefore, this modification is incorporated in the final rule. The comment submitted by NOAC suggested that a candidate for an independent grower position should only declare whether he or she is running for the member, alternate member or additional alternate member position. The final rule requires that persons submitting their names for candidacy specify the position for which they wish to be nominated (i.e. member, alternate, or additional alternate).

The comment submitted by Capital Legal Foundation indicated that mail balloting procedures should be sufficiently flexible to permit alignment of positions to allow candidates to run on a slate. The final rule does not preclude alignment of positions to afford candidates the opportunity to run on a slate if they desire to do so.

The Capital Legal Foundation commented that the ballots sent to growers should provide information beyond the names of the candidates, especially since one of the primary objectives of mail balloting is to increase grower participation. It said the ballot should therefore contain the mailing address and phone number for each candidate, a brief resume of each candidate's background qualifications, and a statement of reasonable length prepared by each candidate setting forth his or her views on matters of concern to the voters. The committee is authorized to include with the ballot such information about the candidates as it considers appropriate to inform growers voting in the nominations. This information should be obtained from the candidates on the petition form previously discussed.

Several comments were filed suggesting that in tabulating ballots producer votes should be weighted by the volume of production or the acreage under control of the producer as of January 1 of the year in which nominations are made. It was suggested that weighting votes on such basis (e.g. one vote for each acre) would allow for grower representation in committee decision making to be based on the quantity of oranges produced by each grower. It was also suggested that weighted votes would eliminate the incentive to proliferate grower entities as a method of obtaining unwarranted influence in the decision making process. The comment filed by NOAC opposed weighting of votes according to production (or acreage). The view was expressed that the interests of the greatest number of growers could best be served by allowing each grower an equal voice in choosing committee members.

The merits of the opposing views on the weighing of votes cast in nominations were carefully considered. The view was expressed that the current method of allowing each grower entity one vote provides an incentive to divide large grower entities into smaller grower entities each having a vote in the election. However, there is no evidence to indicate that there has been an increase in the number of grower entities for such purpose. In fact, available information indicates that the total number of growers of California-Arizona navel oranges is declining.

Section 907.22(e) provides that when voting for nominees, each grower shall be entitled to cast one vote. It also provides that the votes of cooperative marketing organizations voting in the "other cooperative" category shall be weighted in accordance with the volume of oranges handled during the year in which such nomination was made. There is no provision for weighting votes cast for independent members.

The California-Arizona navel orange industry consists essentially of small entities. Weighting of votes of growers in nominations could subordinate the interests of smaller growers to those of larger growers in committee decision making. Under current procedures each grower has an equal vote in elections irrespective of the volume of production or number of acres. As a consequence, nominees for positions on the committee tend to represent the consensus of growers in that category. This method of choosing nominees has been the custom under the order and has proved to be satisfactory and no change in such method is adapted in this rule.

Each person who produces navel oranges for market as an individual is considered a legal entity and each partnership, family enterprise, corporation, estate or trust is considered one legal entity. Thus, each legal entity is considered to be one producer for purposes of nominating committee members.

NOAC and several independent growers and handlers submitted comments concerning producer eligibility to nominate (i.e. vote for) independent members, alternate members, and additional alternate members to the NOAC. These comments generally indicated that producers who deliver any portion of their navel

oranges to handlers which are not cooperative marketing organizations (independent handlers) should be eligible to vote for nominees for independent positions. The comments suggested that unless voting is conducted in this manner producers who deliver any portion of their fruit to cooperative marketing organizations but are not members of such organizations would be disenfranchished in the elections for representatives from the independent sector. The comments suggested that only a small number of growers deliver to both independent and cooperative handlers and no significant problems are anticipated in handling nominations in this manner. Thus, this final rule so provides. The notice also contained a proposal concerning producer eligibility to serve on NOAC in any of these positions. In addition, one comment filed by LoBue Bros. Inc., proposed a definition of the term cooperative marketing organization.

While such a definition is related to the nomination procedure, it is more directly related to the criteria the Secretary uses in selecting nominees as is to serve on the committee. Since these issues are applicable to both the NOAC and Valencia Orange Administrative Committee membership, it is appropriate that such eligibility requirements be treated in a separate rulemaking proceeding. Thus, the comment proposing a definition of a cooperative marketing organization is denied.

It is found that it is impracticable and contrary to the public interest to postpone the effective date of this rule until 30 days after publication in the **Federal Register** (5 U.S.C. 553), and good cause exists for making this rule effective as specified in that: (1) The January 11, 1985, amendment of § 907.22 authorizes mail balloting for nominating independent members to the committee; (2) nominations for those positions on the committee have been delayed since last fall and preparations will take some time to complete; and (3) no useful purpose would be served by delaying the effective date of this rule.

In accordance with the Paperwork Reduction Act of 1980 (4 U.S.C. 3507), the reporting or recordkeeping provisions that are included in this final rule are not effective until they are approved by the Office of Management and Budget (OMB).

List of Subjects in 7 CFR Part 907

Marketing Agreements and Orders, California, Arizona, Oranges (Navel).

1. The authority citation for 7 CFR Part 907 continues to read as follows:

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

2. Paragraphs (a)(3), (4), and (5) of § 907.102 are removed and a new paragraph (a)(3) is added to read as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

§ 907.102 Nomination procedure.

(a)* * *

(3) Candidates for the member, alternate member and additional alternate member positions referred to in § 907.22(d) shall be nominated in accordance with the following procedures: (i) Any producer who in the current fiscal year is not affiliated with a cooperative marketing organization and delivered navel oranges to handlers which are not cooperative marketing organizations shall be eligible to vote for nominees. (ii) For the purpose of selecting candidates for nominations, the committee shall hold meetings in two or more districts, including one meeting each in Districts 1 and 2, prior to August 1 of each even-numbered year, or at other times as necessary to fill vacancies. Timely notice of such meetings shall be given by the committee to each eligible producer of record. (iii) Candidates shall be selected at the meetings by submitting their names on a form approved by the committee and signed by at least 10 eligible individuals (growers). Such form shall be used for the purpose of determining the qualifications of a candidate and may provide the opportunity to submit additional background material (such as resumes) as the committee may request. (iv) A person may also become a candidate without attending a candate selection meeting by submitting his or her name on a form approved by the committee, as specified in paragraph (a)(3)(iii) of this section, to the headquarters office of the committee and signed by at least 10 eligible individuals (growers). Such submittal, if mailed, must be postmarked at least 10 days prior to the date of the first of the district meetings held pursuant to paragraph (a)(3)(ii) of this section, and if hand delivered, must be received at least 5 days prior to such date. (v) Persons submitting their names for candidacy shall specify the position (i.e. grower or handler member, alternate, or additional alternate) for which they wish to be nominated. After a position is specified, it may not be changed. Candidates may withdraw by filing a written notice with the committee prior to the date on which the ballots are prepared for mailing to eligible producers. (vi) Following the candidate selection meetings, the committee shall mail to all eligible producers of record a ballot containing the names of the candidates for each available position. At the discretion of the committee, the ballot may include such other information about such candidates as was included on the candidate form specified in paragraph (a)(3)(iii) of this section and as the committee deems appropriate. Separate ballot forms shall be used in voting for handler nominees and producer nominees. A vote may be cast only for those candidates who have been selected according to the procedures set forth herein. (vii) In order to be valid, ballots must be executed in accordance with the instructions set forth on the ballot, and returned to the Secretary's agent at the location and within the time period prescribed. The validity of ballots shall be determined by the Secretary's agent, with such assistance from the committee as may be requested by the agent. (viii) The name of the person receiving the highest total number of votes for a particular handler position shall be submitted to the Secretary as the nominee for such position. The names of the persons receiving the highest and second-highest total number of votes for each of the grower positions shall be submitted to the Secretary as the nominee for such positions.

Dated: August 20, 1985.

William J. Doyle,

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

[FR Doc. 85–20234 Filed 8–22–85; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1076

Milk in the Eastern South Dakota Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: The action suspends for the months of August 1985 through February 1986 provisions of the Eastern South Dakota milk order relating to the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the provisions was requested by a cooperative association representing most of the producers supplying the market. The suspension is needed to prevent uneconomic movements of milk.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, Dairy Division, Agricultural Marketing Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447–7311.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued August 1, 1985; published August 5, 1985 (50 FR 31605).

William T. Manley, Deputy Administrator, Agricultural Marketing Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and of the order regulating the handling of milk in the Eastern South Dakota marketing area.

Notice of proposed rulemaking was published in the **Federal Register** on August 5, 1985 (50 FR 31605) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of August 1985 through February 1986 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1076.13, paragraphs (c) (2) and (3)

Statement of Consideration

This action removes for the months of August 1985 through February 1986 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The suspension was requested by Land O'Lakes, Inc. (LOL), an association of producers that supplies most of the market's reserve milk supplies.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

The suspension is necessary because the amount of milk pooled under the order by LOL in the first six months of 1985 has increased 8.3 percent over the amount pooled during the same period of 1984 while deliveries to pool distributing plants have decreased from 1984 levels by about 2.5 percent. Increases in producer milk deliveries are expected to continue.

Operation of the 35-percent diversion limit during August through February would require LOL to deliver 65 percent of its milk to pool plants. According to the cooperative's estimates, only 35 to 40 percent of its milk will be needed at distributing plants. Without suspension of the diversion limit the balance of LOL's members' milk would have to be delivered to a supply plant, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL and its member producers, with no offsetting benefits to other market participants.

In comments filed in response to the proposed suspension, LOL estimated that for the month of August 1985 only 33 percent of its member milk pooled under the Eastern South Dakota order would be required by pool distributing plants. According to LOL, most of the remaining 67 percent would have to be received first at the LOL supply plant and then transferred to manufacturing facilities in order to qualify for participation in the marketwide pool. LOL characterized such unnecessary handling and hauling as expensive and serving no useful purpose.

In view of these circumstances, it is concluded that the diversion limits in the Eastern South Dakota milk order should be suspended for the months of August 1985 through February 1986 to ensure the orderly marketing of milk supplies. The suspension will prevent uneconomic movements of some milk through pool plants merely for the purpose of qualifying it for producer milk status under the order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area in that without extensive unnecessary and expensive hauling and handling substantial quantities of milk from producers who regularly supply the market otherwise would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension. No comments were filed in opposition to this action.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register.**

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

PART 1076—[AMENDED]

The authority citation for Part 1076 continues to read as follows:

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

It is therefore ordered, that in § 1076.13, paragraphs (c) (2) and (3) are hereby suspended for the months of August 1985 through February 1986.

Effective Date. August 23, 1985.

Signed at Washington, D.C., on August 19, 1985.

Karen K. Darling,

Deputy Assistant Secretary, Marketing & Inspection Services.

[FR Doc. 85–20191 Filed 8–22–85; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Part 1472

Loans, Purchases, and Other Operations; Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1985)

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This interim rule amends the regulations at 7 CFR Part 1472 governing the Commodity Credit Corporation's (CCC) price support program for shorn wool and unshorn lambs (pulled wool) with respect to: (1) Marketings of shorn wool eligible for price support payments; (2) definitions which are applicable to the program; (3) producer eligibility for price support payments; (4) contents of sales documents which are submitted in support of price support payment applications; and (5) the deletion of certain obsolete references.

EFFECTIVE DATES: This interim rule shall become effective on August 23, 1985. Comments must be received on or before October 22, 1985 in order to be assured of consideration.

ADDRESS: Send comments on the interim rule to: Director, Emergency Operations and Livestock Programs Division, ASCS, Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. All written submissions made pursuant to this rule will be made available for public inspection in Room 4095 South Building, USDA, between the hours of 8:15 AM and 4:45 PM, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jerry W. Newcomb, Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, D.C. 20013. Telephone (202) 447-5621.

SUPPLEMENTARY INFORMATION: Information collection requirements contained in this regulation (7 CFR Part 1472) have been approved by the Office of Management and Budget in accordance with the provisions of 44 U.S.C. Chapter 35 and OMB Number 0560-0023 has been assigned.

This interim rule has been reviewed under U.S. Department of Agriculture (USDA) procedures established in accordance with provisions of Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that these program provisions will not result in: (1) An annual effect on the economy of $100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The title and number of the Federal assistance program to which this notice applies are: Title—Commodity Loans and Purchases; Number 10.051; as found in the Catalog of Federal Domestic Assistance.

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with the State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

Since the marketing of 1985 crop wool has begun, it has been determined that the provisions of this interim rule must be effective August 23, 1985. However, comments on this interim rule are requested and must be received not later than 60 days from the date of publication in the **Federal Register** in order to be assured of consideration. A final rule will be published discussing any amendments which are determined to be necessary.

Section 706 of the National Wool Act of 1954, as amended ("Wool Act"), provides that the Secretary of Agriculture shall determine the amounts, terms, and conditions of the wool price support program. This interim rule amends the regulations which relate to program operations and the price support program for shorn wool and unshorn lambs (pulled wool) for the 1985 marketing year, particularly with regard to the conditions under which price support payments will be made. The wool price support program is designed to encourage the continued domestic production of wool at prices fair to both producers and consumers in a manner which will assure a viable domestic wool industry. A review by the Office of the Deputy Administrator, State and County Operations (DASCO) of the Agricultural Stabilization and Conservation Service (ASCS) of a select number of 1983 shorn wool applications for payment and supporting documentation has revealed marketing practices which defeat the purposes of the program. This interim rule amends the regulations set forth at 7 CFR Part 1472 to prevent these practices.

Definitions

The regulations at 7 CFR 1472.1504 currently set forth the definitions of certain terms which are applicable to this subpart. This interim rule amends this section by redesignating the current definitions in § 1472.1504 in alphabetical order and adding the definitions of the following terms: (1) "Deputy Administrator"; (2) "family member"; (3) "grease wool"; (4) "shorn wool"; (5) "wool"; and (6) "wool incentive payment rate".

The definition of "shorn wool" has been added to ensure that there is no doubt or opportunity for the misinterpretation of the phrase. "Shorn wool" is defined as grease wool that has been sheared from live sheep or lambs, including black wool, tags crutchings, and murrain or other wool removed from dead animals. The definition of "shorn wool" would not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural grease weight state.

It has also been determined that the phrase "family member" needs to be defined in the regulations. This is necessary since § 1472.1507(c) has been amended to provide that a sale of wool to a family member is not considered to be a bona fide marketing. Therefore, the definition of "family member" has been added to the regulations at § 1472.1504 and means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse, or (f) a spouse of a brother or sister of the producer or the producer's spouse.

In addition, the definition of "sales document" has been amended to ensure that a producer does not receive a price for wool that would be inflated beyond the price for quality, type, and grade of the wool which the producer is marketing. This change in definition will result in marketing practices which encourage the sale of wool at fair prices by assuring that a producer does not sell wool to persons or businesses in a manner which would enable the producer to receive inflated prices for such marketings.

Price Support Payments

The regulations at 7 CFR § 1472.1505(a) provide that price support payments will be made on the basis of shorn wool marketed in a specified marketing year. Since the definition of shorn wool has been added at 7 CFR § 1472.1504, § 1472.1505(a) has been amended by deleting the reference to those marketings of wool which are not eligible for price support payments. Only shorn wool, as defined in § 1472.1504, would be eligible for such payments made in accordance with § 1472.1505(a).

The regulations at 7 CFR § 1472.1505(b) are amended to provide that the price support payment rate for shorn wool shall be determined and

announced by the Executive Vice President, CCC, or his designee, at the end of each specified marketing year.

Eligibility for Payment

The regulations at 7 CFR § 1472.1506 set forth the eligibility requirements for price support payments for shorn wool. This interim rule amends § 1472.1506 by designating the introductory paragraph as paragraph (a) and redesignating the remaining paragraphs accordingly. Redesignated § 1472.1506(a) has been revised to clarify that no payment will be made unless a producer has complied with all of the requirements of § 1472.1506. Redesignated § 1472.1506(b) is revised to provide that, with respect to joint applications for payment, only those marketings which are bona fide sales, as defined in § 1472.1507(c), will be eligible for price support payments. Newly redesignated § 1472.1506(c) is amended to incorporate the definition of shorn wool as set forth in § 1472.1504.

Previously, redesignated § 1472.1506(g) provided that only bona fide marketings of shorn wool would be eligible for price support payments. This interim rule amends § 1472.1506(g) to provide that shorn wool which has been processed in any manner into a wool product, as determined by the Deputy Administrator, shall not be eligible for price support payments. The purpose of this change is to ensure that only grease basis wool will be eligible for a wool price support payment. For example, processing the wool into wool products, such as yarn, wool yarn, skeins, novelty items made from wool or other products of this nature, will make the wool ineligible for price support payments.

The regulations at 7 CFR § 1472.1509(b) are similarly amended to provide that wool products shall not be eligible for price support payments.

Bona Fide Marketings.

In the review of the program which was conducted by DASCO, it was determined that in the number of instances producers sold wool to, or exchanged wool with, purchasers and received compensation in the form of wool or a wool product with no price established for the wool. This practice, it was found, often occurred with respect to the sale of wool among family members. These kinds of transactions are not considered bona fide marketings because they fail to establish a fair price for wool if indeed an actual sale does occur. Accordingly, the regulations at 7 CFR § 1472.1507(c) have been amended to provide that the sale of wool by a producer to a family member is not considered a bona fide marketing.

Furthermore, in order to make certain that producers do not receive inflated prices for their wool, the regulations at § 1472.1507(c) have been amended to provide that wool sold by a producer to a business in which the producer has more than a 20 percent interest shall not be considered to be a bona fide marketing.

The review of the program also disclosed the occurrence of sales of wool by producers to persons not previously engaged in the business of buying wool. These transactions are not bona fide marketings unless evidence is submitted, to the satisfaction of CCC, that such marketings have occurred. The review further revealed attempts to submit to CCC documents representing sales, transfers, or other arrangements with respect to wool which were fictitious or not legally binding. An example of such schemes are sales of wool where a part or all of the purchase price or product is returned to the purchaser in the form of money or merchandise, either directly from the seller or through other persons. These practices defeat the purpose of the wool price support program which is designed to encourage the domestic production of wool at prices fair to both producers and consumers. It was therefore, determined that the regulations, at § 1472.1507(c) should be revised to clearly set forth the requirements in addition to the prohibitions against a producer selling wool to a family member or to a business in which the producer has more than a 20 percent interest, which producers must meet in order to become eligible to receive price support payments for their marketings of shorn wool. These requirements provide that, in order to be considered as a bona fide marketing, the wool must be sold to a person or business engaged in the business of buying and selling grease basis wool and must be based upon a reasonably appraised price for wool.

In addition, the regulations at § 1472.1507(d) are amended to explain the basis for the exchange of wool for merchandise or service and to explain the relationship of such an exchange with the bona fide marketing of wool.

Sales Documents

The regulations at 7 CFR § 1472.1510 enumerate the information which must be listed on a sales document which is submitted to CCC for the purpose of verifying a price support payment application. In order to ensure that proper documentation is presented to the CCC, this interim rule amends § 1472.1510(a) to provide that any sales documents which are prepared by the purchaser of wool must have the original signature of the purchaser of the signature of an authorized representative of the purchaser. In order to obtain adequate information with respect to the quantity of wool which is sold by a producer, this interim rule amends § 1472.1510 to provide that all sales documents must contain the net weight of the wool sold on a grease basis. This change in the regulations is made to ensure that no price support payment is made for shorn wool which has been sold but which does not clearly meet the definition of shorn wool as defined in § 1472.1504. Accordingly, §§ 1472.1510 (a)(3) and (8) and (b)(3) are amended to require that sales documents reflect the quantity of wool marketed on a grease basis.

List of Subjects in 7 CFR Part 1472

Price support programs, Wool.

Interim Rule

PART 1472—WOOL

Accordingly, the regulations at 7 CFR Part 1472 are amended as follows:

1. The authority citation for 7 CFR Part 1472 (Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1982–1985) continues to read:

Authority: Secs. 4 and 5, 62 Stat. 1070 as amended (15 U.S.C. 714B and 714C); secs. 702–708, 68 Stat. 910–912, as amended (7 U.S.C. 1781–1787).

2. In Part 1472, the Subpart—Payment Program for Shorn Wool and Unshorn Lambs (Pulled Wool) (1974–1977) is removed.

3. In Part 1472, the Table of Contents is amended by revising the entry for § 1472.1507 and adding an entry for § 1472.1556 as follows:

* * * * *

1472.1507 Bona Fide Marketing Within a Specified Marketing Year

* * * * *

1472.1556 OMB Control Numbers Assigned Pursuant to the Paperwork Reduction Act.

* * * * *

4. Section 1472.1504 is amended by removing paragraph designations (a) through (n), rearranging the definitions in alphabetical order, revising the introductory paragraph and the term "sales document", and adding new definitions to read as follows:

§ 1472.1504 Definitions.

In determining the meaning of the provisions of this subpart, unless the context indicates otherwise, words importing the singular include and apply to several persons or things, words importing the plural include the singular,

words importing the masculine gender include the feminine, and words used in the present tense include the future as well as the present. The following terms shall have the following meanings:

"Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

"Family member" means a person who is (a) a parent or grandparent of the producer; (b) the spouse of the producer; (c) a lineal descendant of the producer or the producer's spouse; (d) the spouse of any lineal descendant of the producer or the producer's spouse; (e) a brother or sister of the producer or the producer's spouse or (f) a spouse of a brother or sister of the producer or the producer's spouse.

* * * * *

"Grease wool" means wool as it comes from the sheep or lambs before applying any process to remove the natural oils or fats.

* * * * *

"Sales document" means the account of sale, invoice, bill of sale, or other related document prepared by the purchaser evidencing the sale by the producer of shorn wool or unshorn lambs to the purchaser.

"Shorn wool" means grease wool sheared from live sheep or lambs, including black wool, tags, crutchings, and murrain or other wool removed from dead animals. Shorn wool does not include pelts or wool sheared from pelts, scoured, carbonized, or dyed wool or yarn, skeins or other terms which identify the wool as being other than in its natural greasy state.

* * * * *

"Wool" means, unless otherwise indicated, shorn wool.

"Wool price support payment rate" means the percentage required to bring the national average price received by all producers for the sale of shorn wool up to the support price.

5. Section 1472.1505 is revised to read as follows:

§ 1472.1505 Price support payments.

(a) *General.* With respect to each specified marketing year, price support payments on shorn wool marketed in each marketing year will be made available to producers in accordance with the provisions of this subpart.

(b) *Announcement of wool price support payment rate.* The wool price support payment rate shall be determined and announced by the Executive Vice President, CCC, or the Executive Vice President's designee at the end of each specified marketing year.

6. Section 1472.1506 is amended by designating the introductory paragraph as paragraph (a), redesignating paragraphs (a) through (g) as paragraphs (b) through (h), respectively, and revising newly redesignated paragraphs (a), (b), (c), and (h) as follows:

§ 1472.1506 Eligibility for payments.

(a) To be eligible for a payment with respect to shorn wool under this subpart, all requirements of this section must be fulfilled.

(b) Except as provided in § 1472.1544, the applicant must be the producer of shorn wool. In the case of a joint application for payment, each applicant must be a producer of shorn wool which is marketed in accordance with the provisions of § 1472.1507(c).

(c) The wool must have been shorn in the United States. If wool is shorn from imported sheep or lambs while they are held in quarantine in connection with their importation into the United States, such wool shall not be considered to have been shorn in the United States.

* * * * *

(h) Payments made in accordance with this subpart shall only be made with respect to bona fide marketings of shorn wool. The sale of shorn wool which has been altered in any manner through processing, other than scouring or carbonizing as provided in § 1472.1510(a)(3), or any other process or act that results in a wool product, as determined by the Deputy Administrator, is not eligible for payment under this subpart.

7. Section 1472.1507 is amended by revising the section heading and paragraphs (b), (c), (d), and (e) to read as follows:

§ 1472.1507 Bona fide marketing within a specified marketing year.

* * * * *

(b) A promissory note or other promise to pay, as well as a check not honored for any reason, shall not be considered as a payment to the producer unless the Deputy Administrator makes a determination that: (1) The producer acted in good faith in marketing the wool; (2) a bona fide marketing occurred; (3) the wool was not returned to the producer; (4) the producer was not aware and had no reason to suspect that the document tendered in payment for the wool was not worth its face value at the time of acceptance of the document, and (5) the producer made a diligent effort to obtain payment for the wool from the purchaser. Notwithstanding the foregoing provisions of this paragraph, the price utilized for the purpose of computing the net sales proceeds under the provisions of § 1472.1508 shall not exceed the fair market value of the wool as determined by the Deputy Administrator.

(c) For the purpose of determining the amount of a price support payment, a bona fide marketing shall be deemed to occur when a producer relinquishes title to the shorn wool in exchange for a specific amount of money for each pound of wool tendered, or for services or merchandise of a specific monetary value as provided in paragraph (d) of this section. A sale of wool by a producer shall constitute a bona fide marketing if: (1) The wool is sold to a person or business which normally buys wool; (2) the producer selling the wool does not sell the wool to a family member or to any business in which the producer has more than a 20 percent interest; (3) the sale is based on a reasonably appraised price for wool; and (4) the person or business buying the wool is also engaged in the business of buying and selling grease basis wool and buys the wool in the course of that business.

(d) The exchange of wool for merchandise or services of a nature other than wool or wool product will be considered as a bona fide marketing if a definite price for the wool is established by the parties prior to the exchange. Such price, or whatever other price the Deputy Administrator determines is the fair market value for such wool, whichever is lower, shall be used for the purpose of computing the net sales proceeds under the provisions of § 1472.1508.

(e) The delivery of wool on consignment to a marketing agency to be sold for the producer's account does not constitute a marketing whether or not a minimum sales price is guaranteed or an advance against the prospective sales price is given by the consignee. Notwithstanding the foregoing, wool delivered to a marketing agency on consignment is deemed to have been marketed if the marketing agency: (1) has guaranteed a minimum sales price; (2) is unable to sell the wool for more than the minimum sales price, and (3) takes possession of the wool at the minimum sales price with the producer's consent. The producer shall be deemed to have consigned the wool when the wool has been transferred to a marketing agency and the producer provides that such agency shall market the wool and that the producer shall be entitled to the proceeds of such marketing.

8. Section 1472.1509 is amended by revising paragraph (b) to read as follows:

§ 1472.1509 Preparation of application.

* * * * *

(b) *Supporting documents.* The application shall be supported by the original sales document evidencing the sale of wool. The processing of shorn wool by a process or act which, as determined by the Deputy Administrator, produces a wool product, shall make the wool ineligible for a price support payment. Payment shall not be made on marketings of wool products, including items identified as yarn, wool yarn, skeins, or novelty items. Trimming, skirting and cleaning by scouring or carbonizing, provided the grease basis weight is established, does not make the wool ineligible for a price support payment.

* * * * *

9. Section 1472.1510 is amended by revising the introductory text of paragraph (a), (a)(3), (a)(8), the introductory text of (b), and (b)(3) to read as follows:

§ 1472.1510 Contents of sales documents.

* * * * *

(a) *Sales other than at farm, ranch, or local shipping point.* Each sales document, except a document which involves a direct sale of wool at the producer's farm, ranch, or local shipping point, must be prepared by either: The purchaser, in which case the original signature of the purchaser or the signature of an authorized representative of the purchaser must be entered on the sales document, or the applicant's marketing agency. Each sales document must include at least the following:

* * * * *

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

* * * * *

(8) The amount paid to the seller of the wool on a grease basis.

* * * * *

(b) *Sales at farm, ranch, or local shipping point.* Each sales document involving a sale of wool at the producer's farm, ranch or local shipping point which is attached to an application for a price support payment shall be prepared by the purchaser with the original signature of the purchaser and must contain at least the following:

* * * * *

(3) The net weight of wool sold on a grease basis. If the wool was sold as scoured or carbonized wool, the original grease weight must be shown as well as the scoured or carbonized weight.

* * * * *

10. Section 1472.1556 is added to read as follows:

§ 1472.1556 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in these regulations (7 CFR Part 1472) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0023.

Signed at Washington, D.C. on August 16, 1985.

Everett Rank,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 85–20051 Filed 8–22–85; 8:45 am]

BILLING CODE 3410-05-M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 242

Proceedings To Determine Deportability of Aliens in the United States: Apprehension, Custody, Hearing, and Appeal

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule.

SUMMARY: This rule establishes a three-month test program to improve the processing of detained aliens by extending the authority to issue or cancel an order to show cause or warrant of arrest, to determine amount and conditions of bond or conditions of release, and to determine applications for release or amelioration of conditions of release to include the chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, California; Marfa, Texas; and Spokane, Washington; the assistant district director for deportation at Newark, New Jersey, and San Diego, California; and the assistant district director for examinations at San Francisco, California. These changes are intended to expedite the processing of aliens in deportation proceedings. If the test program is found to be effective, then a final rule with a request for comments will be promulgated.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT:

For General Information: Loretta J. Shogren, Director, Policy Directives and Instructions, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–3048.

For Specific Information: Gregory S. Bednarz, Senior Special Agent, Immigration and Naturalization Service, 425 I Street, NW., Washington, D.C. 20536. Telephone: (202) 633–2997

SUPPLEMENTARY INFORMATION: In order to improve the processing of detained aliens in deportation proceedings, the Service is establishing a three-month test program to extend the authority to issue or cancel an order to show cause or warrant of arrest, to determine amount and conditions of bond or conditions of release, and to determine applications for release or amelioration of conditions of release to include the following Service officers: chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, California; Marfa, Texas; and Spokane, Washington; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; and the assistant district director for examinations at San Francisco, CA.

Compliance with 5 U.S.C. 553 as to notice of proposed rule making and delayed effective date is unnecessary because this rule relates to agency organization and delegations of exercise of authority which are in the public interest.

In accordance with 5 U.S.C. 605(b), the Commissioner of Immigration and Naturalization certifies that this rule does not have a significant economic impact on a substantial number of small entities.

This is not rule within the meaning of section 1(a) of E.O. 12291 as it relates to agency organization and management.

As this is a limited period test program, comments are not being requested. If the changes established under the test program are determined to promote the efficiency of the Immigration and Naturalization Service by expediting the processing of aliens in deportation proceedings, then a final rule allowing for public comments will be promulgated.

List of Subjects in 8 CFR Part 242

Administrative practice and procedure, Authority delegation, Detention, Order to show cause, Cancellation proceeding.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations is amended as follows:

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES: APPREHENSION, CUSTODY, HEARING, AND APPEAL

1. The authority citation for Part 242 of Title 8 continues to read as follows:

Authority: Secs. 103 and 242 of the Immigration and Nationality Act, as amended; (8 U.S.C. 1103 and 1252).

2. In § 242.1, paragraph (a) is revised to read as follows:

§ 242.1 Order to show cause and notice of hearing.

(a) *Commencement.* Every proceeding to determine the deportability of an alien in the United States is commenced by the issuance and service of an order to show cause by the Service. In the proceeding the alien shall be known as the respondent. Orders to show cause may be issued by:

(1) all district directors, acting district directors, deputy district directors, assistant district directors for investigations;

(2) the chief patrol agent, deputy patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; and

(3) officers in charge at Agana, GU; Albany, NY; Charlotte Amalie, VI; Cincinnati, OH; Hammond, IN; Memphis, TN; Milwaukee, WI; Norfolk, VA; Oklahoma City, OK; Pittsburgh, PA; Providence, RI; Salt Lake City, UT; St. Louis, MO; Spokane, WA.

* * * * *

3. In § 242.2, paragraph (a) is revised to read as follows:

§ 242.2 Apprehension, custody, and detention.

(a) *Warrant of arrest.* At the commencement of any proceeding under this part, or at any time thereafter and up to the time the respondent becomes subject to supervision under the authority contained in section 242(d) of the Act, the respondent may be arrested and taken into custody under the authority of a warrant of arrest. However, such warrant may be issued by no one other than:

(1) A district director, acting district director, deputy district director, assistant district director for investigations;

(2) The chief patrol agent, deputy chief patrol agent, and assistant chief patrol agent at El Centro, CA; Marfa, TX; and Spokane, WA; the assistant district director for deportation at Newark, New Jersey, and San Diego, CA; the assistant district director for examinations at San Francisco, CA; or

(3) Officer in charge of an office enumerated in § 242.1(a), and then only whenever, in his/her discretion, it appears that the arrest of the respondent is necessary or desirable. If, after the issuance of a warrant of arrest, a determination is made not to serve it, any officer authorized to issue such warrant may authorize its cancellation. When a warrant of arrest is served under this part, the contents of the order to show cause shall be explained to the respondent, the reason for the arrest and his/her right to be represented by counsel of his/her own choice at no expense to the Government. He/she shall also be advised of the availability of free legal services programs qualified under Part 292a of this chapter, located in the district where the deportation hearing will be held. The respondent shall be furnished with a list of such programs, and a copy of Form I-618, Written Notice of Appeal Rights. Service of these documents shall be noted on Form I-213. He/she shall be advised that any statement made may be used against him/her. The respondent shall also be informed whether he/she is to be continued in custody or, if release from custody has been authorized, of the amount and conditions of the bonds or the conditions under which he/she may be released. A respondent on whom a warrant of arrest has been served may apply to any officer authorized by this section to issue such a warrant for release or for amelioration of the conditions under which he/she may be released. When serving the warrant of arrest and when determining any application pertaining thereto, the officers authorized by this section to issue warrants shall furnish the respondent with a notice of decision, which may be on Form I-286, indicating whether custody will be continued or terminated, specifying the conditions, if any, under which release is permitted, and advising the respondent appropriately whether he/she may apply to an immigration judge pursuant to paragraph (b) of this section for release of modification of the conditions of release or whether he/she may appeal to the Board. A direct appeal to the Board from a determination by an officer authorized by this section to issue warrants shall not be allowed except as authorized by paragraph (b) of this section.

* * * * *

4. In § 242.7, paragraph (a) is revised to read as follows:

§ 242.7 Cancellation proceedings.

(a) *Cancellation of an order to show cause.* Any officer authorized by § 242.1(a) of this part to issue an order to show cause may cancel an order to show cause or terminate proceedings prior to the actual commencement of the hearing under a served order to show cause provided the officer is satisfied that:

(1) The respondent is a national of the United States;

(2) The respondent is not deportable under immigration laws;

(3) The respondent is deceased;

(4) The respondent is not in the United States; or

(5) The proceedings were improvidently begun.

* * * * *

Dated: August 17, 1985.

Alan C. Nelson,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 85-20163 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 83-041C]

Authorization to Manufacture Brands or Other Marking Devices Containing Inspection Legend; Correction

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule; correction.

SUMMARY: This document corrects an illustration in a final rule published in the **Federal Register** on May 24, 1985, to require manufacturers of brands or other marking devices containing specified official inspection legends to obtain a certificate issued by FSIS that would authorize manufacture of these brands and other devices.

FOR FURTHER INFORMATION CONTACT: Irwin Dubinsky, Acting Director, Policy Office, Policy and Planning Staff, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-6735.

SUPPLEMENTARY INFORMATION: On May 24, 1985, the Food Safety and Inspection Service published a final rule in the **Federal Register** (50 FR 21420) amending certain sections under Parts 317 and 381 of the Federal meat and poultry inspection regulations.

§ 381.102 [Corrected]

This document corrects an error appearing on page 21423 of the May 24, 1985, **Federal Register** under Part 381. Punctuation marks in the illustration in figure 5 were incorrect; therefore, § 381.102 should be corrected to show the following as the new Figure 5:

All other information contained in the final rule remains unchanged.

Done at Washington, DC on: August 19, 1985.

L.L. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20243 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-DM-M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 20, and 50

Minor Clarifying Amendment; Definitions

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations pertaining to the domestic licensing of production and utilization facilities in order to rearrange the definitions section, which is currently arranged by alphabetical designators, into an undesignated alphabetical listing. This rearrangement will be easier to read and amend. In addition, cross references to specific paragraphs in § 50.2 are being revised in Parts 1, 20, and 50 to reflect the removal of designated paragraphs. This amendment is necessary to inform the public of this arrangement and clarifying change to NRC regulations.

EFFECTIVE DATE: August 23, 1985.

FOR FURTHER INFORMATION CONTACT: John Philips, Chief, Rules and Procedures Branch, Division of Rules and Records, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone 301-492-7086.

SUPPLEMENTARY INFORMATION: When the original § 50.2, Definitions was published on January 19, 1956 (21 FR 355), it was the intent of the rulemaking authors to arrange the definitions in alphabetical order. In the intervening years, the need to amend Part 50, a key part of the NRC's regulations, has been frequent. Occasionally, amendments have been prepared to remedy unanticipated emergency situations. As a result, there has been a deviation from the original intent. These amendments will correct this, and the alphabetized list of definitions will be easier for readers to use.

Because these are amendments dealing with agency practice and procedures, the notice provisions of the Administrative Procedure Act do not apply pursuant to 5 U.S.C. 553(b)(A). The amendments are effective upon publication in the **Federal Register**. Good cause exists to dispense the usual 30-day delay in the effective date because the amendments are of a minor and administrative nature dealing solely with the format of definitions in agency regulations. These amendments do not alter the contents of any definition.

Paperwork Reduction Act Statement

This final rule contains no information collection requirements and therefore is not subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

10 CFR Part 1

Organization and functions.

10 CFR Part 20

Byproduct material, Licensed material, Nuclear materials, Nuclear power plants and reactors, Occupational safety and health, Packaging and containers, Penalty, Radiation protection, Reporting and recordkeeping requirements, Special nuclear material, Source material, Waste treatment and disposal.

10 CFR Part 50

Antitrust, Classified information, Fire prevention, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Penalty, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting the following amendment, to 10 CFR Parts 1, 20, and 50.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION

1. The authority citation for Part 1 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

2. In § 1.60, paragraph (a) is revised to read as follows:

§ 1.60 Office of Nuclear Material Safety and Safeguards.

* * * * *

(a) The Division of Fuel Cycle and Material Safety performs those licensing and regulatory activities specified by the Atomic Energy Act of 1954, as amended, which pertain to the processing, transport, and handling of nuclear materials off the reactor site. These include: Performing safety and environmental reviews for protection facilities other than those defined in 10 CFR 50.2, licensing radioisotopes, certifying container designs for transportation of radioactive materials, developing and implementing a waste management program, assessing and improving the fuel studies on the nuclear fuel cycle, evaluating new technologies for improving safety and environmental protection, and identifying and coordinating related standards and research requirements.

* * * * *

PART 20—STANDARDS FOR PROTECTION AGAINST RADIATION

3. The authority citation for Part 20 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

4. In § 20.408, paragraph (a)(1) is revised to read as follows:

§ 20.408 Reports of personnel monitoring on termination of employment or work.

(a) * * *

(1) Operate a nuclear reactor designed to produce electrical or heat energy pursuant to § 50.21(b) or § 50.22 of this chapter or a testing facility as defined in § 50.2 of this chapter.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

5. The authority citation for Part 50 continues to read as follows:

Authority: Sec. 161, as amended (42 U.S.C. 2201); sec. 201, as amended (42 U.S.C. 5841).

§ 50.2 [Amended]

6. Section 50.2 is amended by removing the alphabetical designators and placing all definitions in alphabetical sequence.

7. In § 50.55a, paragraph (c)(2) introductory text is revised to read as follows:

§ 50.55a Codes and Standards.

* * * * *

(c) *Reactor coolant pressure boundary.* * * *

(2) Components which are connected to the reactor coolant system and are part of the reactor coolant pressure boundary as defined in § 50.2 need not meet the requirements of paragraph (c)(1) of this section, Provided:

* * * * *

Dated at Bethesda, Maryland, this 16th day of August 1985.

For the Nuclear Regulatory Commission.

Jack W. Roe,

Acting Executive Director of Operations.

[FR Doc. 85-20252 Filed 8-22-85; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM84-15-001, et al.]

Generic Determination of Rate of Return on Common Equity for Public Utilities

Issued: August 20, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order No. 420-A: Order Denying Rehearing.

SUMMARY: By this order, the Commission denies rehearing of Order No. 420.

In Order No. 420, the Commission determined a benchmark rate of return on common equity applicable to rate filings made during July of 1985 and a procedure for updating that benchmark quarterly through January of 1986.

FOR FURTHER INFORMATION CONTACT: Ronald L. Rattey, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, D.C. 20426, (202) 357-8015.

SUPPLEMENTARY INFORMATION:

Order Denying Rehearing

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon. Generic Determination of Rate of Return on Common Equity for Public Utilities. Docket Nos. RM84-15-001, RM84-15-002, RM84-15-003, and RM84-15-004; Order No. 420-A.

I. Introduction

The Federal Energy Regulatory Commission (Commission) has received four requests for rehearing [1] of Order No. 420.[2] This order denies rehearing on all issues raised by petitioners.[3]

II. Background

On May 20, 1985, the Commission issued a final rule in its first annual generic rate of return proceeding. By that rule, the Commission set the first benchmark rate of return on common equity applicable to rate filings made by public utilities in July of 1985. It also determined a procedure for updating the benchmark through January of 1986.

The benchmark rates of return established in this and the second annual proceeding, however, are advisory only. They are intended to guide companies and intervenors in rate cases and serve as a reference point for the Commission in making its decisions. The weight to be accorded these rates will depend on the record in each case.

The benchmark rates established in the third annual proceeding and thereafter will be given the status of a rebuttable presumption. That is, they will be presumed binding in all cases except where (1) there is a showing of significantly different risk, (2) there is a settlement among the parties to the proceeding, or (3) there is a finding of undue discrimination warranting a different rate of return.

In Order No. 420, the Commission determined that the average cost of common equity for the jurisdictional operations of electric utilities during the year ending June 30, 1984 (the "base year") was 15.31 percent. The Commission also decided on a quarterly indexing procedure to update this cost estimate and produce benchmark rates of return. The procedure adopted is based on fixed adjustment factors (determined in the annual proceedings) and changes in the median dividend yield for a broad-based sample of approximately 100 electric utilities. Applying this indexing procedure to data for the first quarter of 1985, the Commission determined that the first benchmark rate of return, applicable to rate filings in July 1985, should be set at 14.46 percent.[4]

In Order No. 420, the Commission stated that the cost of common equity consists of two components: (1) The market required rate of return, and (2) flotation costs. In determining the base year required rate of return, the Commission placed primary reliance on the discounted cash flow (DCF) method. In particular, the Commission relied on the following form of the DCF model to estimate the base year market required rate of return:

$$k = \frac{D_o}{P_o}(1+.5g)+g$$

where k = market required rate of return

$\frac{D_o}{P_o}$ = current dividend yield (current annual dividend rate divided by current market price)

g = expected dividend growth rate

With regard to the second component of the cost of common equity, the Commission determined that it should be based on the industry average annual flotation costs for the near term future.

Four petitions for rehearing of Order No. 420 have been filed with the Commission. Five issues were raised. First, three parties take issue with the particular form of DCF model the Commission adopted. Two parties allege that the Commission provided inadequate justification for the particular growth rate it adopted. Third, the method of estimating the adjustment for flotation costs is alleged to be deficient. Fourth, it is requested that the Commission specifically state that the benchmark would not be applicable to rate schedules for certain types of services which are alleged to be of low risk. Finally, one party requests that the Commission reconsider the procedural aspects of its rules and, for example,

[1] The pleadings were filed by: (1) The Southern Company, (Docket No. RM84-15-001) (Southern); (2) Edison Electric Institute (Docket No. RM84-15-002) (EEI); (3) Wholesale Customer Group (Docket No. RM84-15-003) (WCG); and (4) Public Systems (Docket No. RM84-15-004).

[2] Order No. 420, 50 FR 21802 (May 29, 1985).

[3] On July 19, 1985, the Commission issued an "Order Granting Rehearing for Purpose of Further Consideration" which tolled the period for consideration of the issues raised on rehearing. 50 FR 30141 (July 24, 1985).

[4] On July 17, 1985, the Commission issued its first update in this proceeding and found the benchmark rate of return applicable for the period August 1 through October 31, 1985 to be 13.96 percent. 50 FR 29955 (July 22, 1985).

provide for a public hearing prior to the promulgation of the final benchmark rates of return.

III. Issues on Rehearing

Except as discussed below, the Commission believes it has adequately dealt with the issues raised by parties on rehearing.

A. Discounted Cash Flow (DCF) Model

Southern and EEI argue that the adjustment to the dividend yield component of the DCF model adopted by the Commission in Order No. 420 to reflect the implications of the quarterly payment of dividends results in underestimates of the true cost of common equity. Essentially, EEI and Southern propose adjustments that would incorporate some return on the dividends paid out to investors. Southern states that the adjustment is intended to reflect that it is more expensive for utilities to pay quarterly rather than annual dividends, while EEI states that the adjustment is necessary to make the annual dividend rate equivalent, to the investor, to four quarterly payments.

WCG, on the other hand, argues that the adjustment overestimates the cost of common equity. WCG recommends that the continuous compounding form of the DCF model, with no adjustment to the dividend rate, be adopted. It asserts that no adjustment is necessary to account for quarterly dividend payments. It argues that the frequency of dividend payout is irrelevant since earnings not paid out are growing at the same rate within the firm as they would if they were paid out to investors. WCG contends that the model adopted by the Commission inappropriately assumes that earnings not paid out are not earning a return.

On review of the petitions of EEI and Southern, it appears that they are attempting to justify some form of DCF model that incorporates the effects of reinvestment of dividends by investors. They appear to be recommending that the allowed rate of return should be akin to an "effective" rate of return whereas the Commission set the benchmark as a "nominal" rate. The Commission rejected this notion in the final rule. The Commission believes that if the allowed rate of return is based on the "nominal" required rate of return (like a simple interest rate), investors are given the opportunity of earning the higher "effective" rate through their reinvestment of dividends (like a compound interest rate). The Commission is not persuaded that it should set the allowed rate at the higher effective rate.

The Commission also disagrees with WCG. The model adopted by the Commission adjusts the current dividend rate to obtain an estimate of the total cash flow expected to be received by investors over the course of the initial year. This cash flow incorporates some growth in dividends due to retention of some earnings. Rather, it is the continuous compounding DCF model advocated by WCG that seems to assume that earnings retained earn a zero return. Further, since the DCF analysis is intended to estimate the return expected by investors, it seems imperative that the cash flows used in the analysis reflect the perspective of what investors can expect to receive and not what the company may earn internally, as WCG seems to argue.

B. Flotation Costs

Southern contends that the Commission understated the required adjustment for flotation costs. First, it argues that the adjustment should reflect the permanent nature of flotation costs and that its method of adjusting the market price in the DCF model properly provides a return on the stockholder's full investment which includes flotation costs. Southern also argues that flotation costs incurred on past stock issues reduce the equity investment on which a return is allowed. Because of this, the only way a return can be earned on all issuance costs is if the adjustment to the allowed return is applied to all common equity not just new common stock issues.

The Commission is not persuaded by Southern's arguments in this proceeding that the benchmark includes an inadequate allowance for flotation costs. The method of compensation that the Commission chose is to allow sufficient additional revenues in each year to compensate for average annual (or "normalized") flotation costs. By allowing a current return *of* these costs, the Commission sees no need to provide a return *on* them. Further, with respect to recovery of past flotation costs, the Commission reiterates that to the extent that such costs were included in rate requests, companies were given adequate opportunity to obtain rates that recouped those expenses.

C. Applicability of the Benchmark to Special Wholesale Services

In their petition for rehearing, Public Systems argues that the Commission failed to address its concern that the benchmark should not be applicable in setting rates for wholesale services with special contract provisions which reduce the risk below the industry-average level. As examples, Public Systems cites life-of-unit contracts and other take-or-pay agreements which it alleges eliminate virtually all risks of owning utility common shares. Specifically, Public Systems asks that the rates for services such as these be exempted from the benchmark rate of return and be the subject of individual cases.

In response, the Commission notes that § 37.6 of its regulations states that the benchmark rate of return will not be binding if "the risk of the public utility operations under the rate schedule . . . is significantly different from the average risk for the jurisdictional operations of public utilities."[5] The Commission believes the language of this section is broad enough to address the concern raised by this petitioner. The benchmark rate of return approach adopted in Order No. 389, particularly during its advisory period, permits parties to raise a variety of risk-related issues for the Commission to evaluate in individual cases.

D. Commission Involvement in Annual Proceedings

EEI requests that the Commission reconsider the procedural aspects of the generic rule. EEI reiterates its view that it is important for the Commission to be directly involved in the annual proceedings. According to EEI, a public hearing prior to promulgation of the final rule might provide the forum it believes is necessary to involve the Commission more directly in a review of the financial and operating circumstances of the electric utility industry. In EEI's view, a public hearing would enable consideration of the financial implications of adopting a particular benchmark rate of return before it is used in individual rate proceedings.

The Commission appreciates the concern raised by EEI, but does not believe it necessary or desirable, at this time, to prescribe in its rules more specific procedures, such as, public hearings. To make such procedures a part of the rules may interfere with the intent of the Commission to streamline the ratemaking process. The Commission can, on its own or any interested party's motion, institute public hearings if circumstances arise which appear to warrant such. Moreover, the Commission does not believe that it is desirable to change the procedural aspects of its rules during the initial two year advisory period. Based on the Commission's evaluation of the results obtained during this period, the Commission will decide whether

[5] 18 CFR 37.6 (1985).

modifications in the rule appear desirable.

For the above reasons, the Commission denies rehearing.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20208 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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18 CFR Parts 154, 270, and 273

[Docket No. RM83-53-001; Order No. 423-A]

Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978

Issued: August 22, 1985.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Order denying rehearing.

SUMMARY: On May 30, 1985, the Federal Energy Regulatory Commission issued a final rule which, among other things, permits the use of billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). In this order, the Commission denies rehearing of that final rule.

EFFECTIVE DATE: August 22, 1985.

FOR FURTHER INFORMATION CONTACT: Richard Howe, Jr., Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426, (202) 357-8308.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is denying an application for rehearing of its final rule in Order No. 423.[1] That order, among other things, permits the use of billing adjustments to recover interim collection refunds under 18 CFR 273.302 (1984). The Commission received a timely application for rehearing from Tennessee Gas Pipeline Company (Tennessee). For the reasons stated below, this order denies rehearing.

II. Background

Producers and other sellers of first-sale natural gas must refund any amounts charged in excess of the applicable maximum lawful prices (MLP) under Title I of the Natural Gas Policy Act (NGPA).[2] Those refund obligations are of two types. The first is refunds of collections of NGPA incentive prices after denial or withdrawal of an application for a determination of eligibility to charge the incentive price.[3] The second type is all refunds other than interim collection refunds. These refunds are required by the general obligation in the Commission's regulations to refund amounts charged in excess of the applicable MLP.[4] Before Order No. 423, the Commission's regulations prohibited billing adjustments by purchasers to recover interim collection refunds [5] but allowed billing adjustment to collect general refund obligations.[6] In order to expedite the refund process, Order No. 423 eliminated the prohibition on billing adjustments to recover interim collection refunds. It did, however, require that the purchaser obtain the agreement of the seller before making a billing adjustment prior to the seller's 60-day deadline for making interim collection refunds. It also required that, before making any billing adjustment to recover interim collection refunds, the purchaser give the producer notice of the amount of the adjustment and the time period during which it will be made.[7]

III. Discussion

In its request for rehearing, Tennessee supports Order No. 423's elimination of the prohibition on billing adjustments to collect interim collection refunds. However, Tennessee states that its use of billing adjustments has been hampered by the failure of producers to provide sufficient information to calculate overcharges, specifically information concerning the volumes of gas sold from each well, the NGPA price category of the gas, and the delivery dates. The Commission's regulations do not now expressly require producers to provide such information to purchasers. Accordingly, Tennessee requests that, in order to increase the effectiveness of billing adjustments as a means to collect refunds, the Commission require that the producers include such information in their invoices to purchasers.

The Commission does not believe that it is necessary to set out in its regulations specific requirements detailing how first sellers of natural gas provide information to their purchasers in invoices for that gas. Rather, first sellers and purchasers must have the flexibility to determine what information a first seller must supply in order for the purchaser to ensure accurate billings for all gas purchased and sold. The Commission believes that, in the normal course of business, purchasers know the volume, NGPA category, and price of the gas they purchase. Based on the record in this proceeding and the Commission's general experience, the Commission does not believe that obtaining the necessary information is a widespread problem.

In the few cases where it is a problem, purchasers have the means to obtain the information without reliance upon a burdensome Commission regulation requiring first sellers in all cases to supply certain specific information with their invoices. For example, purchasers may withhold payment until the first seller supplies all the information necessary to ascertain that the price charged does not exceed the maximum lawful price. Such an action would be consistent with the purchaser's duty not to pay more than the NGPA allows.[8] Accordingly, the Commission will not modify the final rule adopted by Order No. 423 to specify the information sellers must include in their invoices. Tennessee's request for rehearing is denied.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20207 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

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[1] Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Act of 1978, 50 FR 23,669 (June 5, 1985).

[2] 15 U.S.C. 3301-3432 (1982).

[3] The categories of gas for which the NGPA provides incentive prices higher than those applicable to any other category are (1) new natural gas (section 102(c)); (2) certain gas produced from the Outer Continental Shelf (section 102(d)); (3) new onshore production wells (section 103(c)); (4) high-cost natural gas (section 107(c)); and (5) stripper well natural gas (section 108(b)).

[4] 18 CFR 270.101(c) (1984).

[5] 18 CFR 273.302(e) (1984).

[6] 18 CFR 270.101(e) (1984).

[7] Order No. 423 also amended the Commission's regulations to require interstate pipeline companies to file reports on any billing adjustments with their Purchased Gas Adjustment filings (18 CFR 270.101(f) and 273.302(f) (1984)) and to clarify that the Commission's regulations require pipeline companies to pay to their customers, and report to the Commission, all refunds recovered through billing adjustments (18 CFR 154.38(d)(4)(vii) (1984)).

[8] See Obligations of Sellers and Purchasers of First-Sale Natural Gas for Refunds Owed for Collections in Excess of Maximum Lawful Prices Under the Natural Gas Policy Act of 1978, 49 FR 34233, 34237 (Aug. 29, 1984) (Notice of Proposed Rulemaking and Statement of Policy).

18 CFR Part 271

[Docket No. RM79-76-088; Texas-15 Amdt.; Order No. 427]

High-Cost Gas Produced From Tight Formations, Texas; Final Rule

Issued August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated may receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission adopts the recommendation, as amended, of the Railroad Commission of Texas that a portion of the Deep Vicksburg Formation located in Starr County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-9115; or Walter W. Lawson, (202) 357-8556.

SUPPLEMENTARY INFORMATION:

Before Commissioners: Raymond J. O'Connor, Chairman; A. G. Sousa and Charles G. Stalon.

Based on an amended recommendation made by the Railroad Commission of Texas (Texas), the Commission amends its regulations [1] to include a portion of the Deep Vicksburg Formation in Starr County, Texas, as a designated tight formation eligible for incentive pricing. The Director of the Office of Pipeline and Producer Regulation (Director) issued a notice proposing the amendment on July 5, 1985.[2]

Background

On September 21, 1981, the Federal Energy Regulatory Commission (Commission) received a recommendation pursuant to § 271.703(d) of the Commissison's regulations [3] from Texas that a specified area of the Deep Vicksburg Formation, located in eastern Starr County, Texas, be designated as a tight formation. The Director issued a notice proposing the designation on October 27, 1981.[4] The Deep Vicksburg Formation, as originally described, consisted of an area approximately 6.5 miles long and 4.5 miles wide. The top of the formation, as originally described, was the top of the "hard" geopressure marker. The base was the top of the Jackson Shale.

Analysis of the data supporting the original recommendation revealed that the formation's average stabilized flow rate prior to stimulation, and calculated using the average depth to the top of the formation, exceeded the allowable flow rate set out in the Commission's regulations.[5]

On December 14, 1984, the Commission received an amended Deep Vicksburg recommendation from Texas. The amended recommendation consists of a rectangular area, approximately 2.8 miles long and 1.7 miles wide, centrally located within the area originally recommended, covering portions of the Ygnacio Flores A-725 and the Nicolasa Salinas A-411 surveys in eastern Starr County. The new vertical interval is that portion of the Deep Vicksburg sediments occurring between the top of the 9,250 foot sand, or the unconformity where the 9,250 foot sand has been eroded, and the base of the V-23 sand. Three existing wells within the area are specifically excluded from the tight formation description.[6]

Discussion

Analysis of data derived from a five-well sample (out of seven wells completed in the amended area) reveals that the average in-situ gas permeability throughout the pay section is less than the maximum of 0.1 millidarcy allowed under the regulations; the average pre-stimulation, stabilized flow rate against atmospheric pressure is not expected to exceed the maximum allowable production rate; and no well within the recommended area is expected to produce any crude oil. Accordingly, the Texas recommendation for the Deep Vicksburg Formation, as amended, meets the Commission guidelines set forth in § 271.703(c)(2)(i).[7]

The Commission orders:

Based on the discussion herein, the Commission adopts the recommendation of the Railroad Commission of Texas that a portion of the Deep Vicksburg Formation, as amended, be designated as a tight formation under § 271.703(d).

This amendment shall become effective September 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

PART 271—[AMENDED]

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, Code of Federal Regulations, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7101 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by revising paragraph (d)(171) to read as follows:

§ 271.703 Tight formations.

* * * * *

(d) *Designated tight formations.* * * *

(171) *Vicksburg Formation in Texas.* RM79-76-088 (Texas 15).

(i) *The Deep Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Deep Vicksburg Formation covers an area of approximately 4.8 square miles in portions of the Ygnacio Flores A-725 and Nicolasa Salinas A-411 surveys located in eastern Starr County, Texas, Railroad Commission District 4.

(B) *Depth.* The top of the Deep Vicksburg Formation is defined as the top of the 9250' sand, or the unconformity where the 9250' sand has been eroded. The base of the formation is the base of the V-23 sand.

(ii) *The Lower Vicksburg Formation in Starr County, Texas.*

(A) *Delineation of formation.* The Vicksburg Formation is located in

[1] 18 CFR 271.703(d) (1983).

[2] 50 FR 28221 (July 11, 1985). Champlin Petroleum Company filed comments in support of the recommendation on July 19, 1985. No party requested a public hearing, and no hearing was held.

[3] 18 CFR 271.703(d) (1983).

[4] 46 FR 54384 (November 2, 1981). The original recommendation also included a portion of the Lower Vicksburg Formation in Starr County, Texas. In Order No. 387, Docket No. RM 79-76-088 (Texas-15), 28 FERC § 61,039 (1984), 49 Fed. Reg. 27,935 (July 9, 1984), the Commission adopted the recommendation of the Railroad Commission of Texas that a portion of the Lower Vicksburg Formation be designated as a tight formation under § 271.703(d).

[5] 18 CFR 271.703(c)(2)(i)(B) (1983).

[6] Well numbers 66, 67, and 71.

[7] 18 CFR 271.703(c)(2)(i) (1983). (The Commission may approve a recommendation that a natural gas formation be designated as a tight formation if each of the enumerated guidelines contained in this section is met.)

Railroad Commission District 4 in the eastern half of Starr County, Texas.

(B) *Depth.* The top of the Vicksburg Formation is defined as the top of the Rincon Sand and the base as the top of the Yegua sand. Specifically, it is defined as that interval on the log of the Corpus Christi Oil and Gas Company, Heard #1 Well that occurs between a measured depth of 8,260 feet to 10,836 feet, which yields a gross thickness of 2,217 feet.

* * * * *

[FR Doc. 85-20209 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM79-76-241 (Kentucky-4); Order No. 429]

High-Cost Gas Produced From Tight Formations, Kentucky; Final Rule

Issued August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

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 which present extraordinary risks or costs. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas which may receive an incentive price (18 CFR 271.703 (1984)). This rule established procedures for jurisdiction agencies to submit recommendations of areas for designation as tight formations. This order adopts the recommendations of the Commonwealth of Kentucky's Public Service Commission that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group be designated as tight formations under § 271.703(d) of the Commission's Regulations.

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, (202) 357-9114 or C. W. Gray, Jr., (202) 357-8731.

Based on a recommendation made by the Public Service Commission of the Commonwealth of Kentucky, the Commission amends § 271.703(d) of its regulations [1] to include the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky, as designated tight formations eligible for incentive pricing under § 271.703. The Director of the Office of Pipeline and Producer Regulation issued a notice proposing the amendment on March 20, 1985.[2]

Evidence submitted by Kentucky supports the assertion that the "Corniferous Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group located in Lawrence and Johnson Counties, Kentucky meet the guidelines contained in § 271.703(c)(2). The Commission adopts Kentucky's recommendations.

This amendment shall become effective September 23, 1985.

List of Subjects in 18 CFR Part 271

Natural gas, Incentive price, Tight formations.

In consideration of the foregoing, Part 271 of Subchapter H, Chapter I, *Code of Federal Regulations*, is amended as set forth below.

By the Commission.

Kenneth F. Plumb,

Secretary.

PART 271—[AMENDED]

1. The authority citation for Part 271 continues to read as follows:

Authority: Department of Energy Organization Act, 42 U.S.C. 7171 *et seq.*; Natural Gas Policy Act of 1978, 15 U.S.C. 3301-3432; Administrative Procedure Act, 5 U.S.C. 553.

2. Section 271.703 is amended by adding paragraph (d)(211) to read as follows:

§ 271.703 Tight Formations.

* * * * *

(d) *Designated tight formations.*

* * * * *

(211) *"Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group in Kentucky.* RM79-76-241 (Kentucky-4)

(i) *Delineation of formations.* The "Corniferous-Big Six" Formation of the Hunton Group and the "Clinton" Formation of the Crab Orchard Group is found in Lawrence and Johnson Counties, Kentucky. Several areas in these counties are excluded from the designation and are shown on maps on file with the Commission.

(ii) *Depth.* The average depth to the top of the "Corniferous-Big Six" Formation ranges from 2,900 feet in the east to 1,750 feet in the west and has a thickness ranging from 500 feet to 775 feet. It is overlain by the Devonian Ohio Shale and underlain by the Silurian Rose Hill Shale. The average depth to the top of the "Clinton" Formation ranges from 2,460 feet in the west to 4,050 feet in the east and has thickness ranging from 0 to 35 feet. It is overlain by the Rose Hill Shale and underlain by the Brassfield Dolomite.

[FR Doc. 85-20211 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

18 CFR Part 271

[Docket No. RM 79-76-182; (Texas-8); Order No. 428]

High-Cost Gas Produced From Tight Formations; Texas; Final Rule

Issued: August 22, 1985.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: Under section 107(c)(5) of the Natural Gas Policy Act of 1978, the Federal Energy Regulatory Commission designates certain types of natural gas as high-cost gas. High-cost gas is produced under conditions which present extraordinary risks or costs and once designated many receive an incentive price. Under section 107(c)(5), the Commission issued a rule designating natural gas produced from tight formations as high-cost gas. Jurisdictional agencies may submit recommendations of areas for designation as tight formations. Here, the Federal Energy Regulatory Commission rejects the recommendation of the Railroad Commission of Texas that additional areas of the Geopressured Wilcox Lobo Formation located in Zapata County, Texas, be designated as a tight formation under § 271.703(d).

EFFECTIVE DATE: This rule is effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Frederick W. Peters, (202) 357-9115; or Walter W. Lawson, (202) 357-8556.

On January 24, 1983, the Federal Energy Regulatory Commission (Commission) received an amended recommendation pursuant to § 271.703(d) of the Commission's regulations [1] from the Railroad

[1] 18 CFR 271.703(d) (1984).

[2] Comments on the proposed rule were invited and none were received. No party requested a public hearing and no hearing was held. 50 F.R. 11,901, March 26, 1985.

[1] 18 CFR 271.703(d) (1983).

Commission of Texas (Texas) that two proration units in the Geopressured Wilcox Lobo formation, located in Zapata County, Texas, be designated as a tight formation. The units are on acreage previously excluded from tight formation designation under § 271.703(c)(2)(i).[2] The Director of the Office of Pipeline and Producer Regulation (Director) issued a notice proposing the amendment on April 1, 1983.[3]

Background

On December 13, 1983, Commission staff and Texas staff met to discuss the problems inherent in the proposed amended recommendation. Further work on the recommendation was suspended pending a response from Texas. No response from Texas has been received.[4]

Discussion

Under § 271.703(e)(2) of the Commission's regulations, the Commission may approve a recommendation by a jurisdictional agency that a natural gas formation be designated as a tight formation if certain geological criteria are met.[5] Although the individual wells satisfy the guidelines set forth in the regulations, the area surrounding the wells does not. Both wells are located in a block which contains three other wells which do not satisfy the guidelines.[6]

Texas originally excluded the subject block from tight formation designation because it was determined to be a "sweet spot" within an otherwise "tight" formation. Texas explicitly carved out this area from the acreage described in the applicant's proposal. Having reached that determination, the Commission will not now permit individual wells within the "sweet spot" to be eligible for tight formation designation.

The Commission Orders

Based on the discussion herein, the Commission rejects the recommendation of the Railroad Commission of Texas that two proration units be included within the previously approved Geopressured Wilcox Lobo Formation.

By the Commission.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20210 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 635, 710, 712, 713, 720, 740, 750 and 751

Relocation Assistance and Real Property Acquisition

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Rescission of regulations; technical amendments.

SUMMARY: This document rescinds FHWA's regulations relating to relocation assistance and the acquisition of real property, that are based on the Uniform Relocation Assistance and Real Property Acquisition Policies Act (42 U.S.C. 4601 *et seq.)* (Uniform Act). This action is being taken because those regulations have been superseded by a Department of Transportation (DOT) regulation, 49 CFR Part 25 (50 FR 8955, March 5, 1985). The DOT regulation prescribes uniform departmental procedures for compliance with the Uniform Act, and replaces the FHWA regulations that implement the Uniform Act. It is intended to serve as a model for all other Federal agencies operating under the Uniform Act.

EFFECTIVE DATE: July 3, 1985, or on such earlier date as the State elects to begin operating under 49 CFR Part 25.

FOR FURTHER INFORMATION CONTACT: Barbara Reichart, Chief, Relocation Division (202) 426-0116, Gerald Saunders, Chief, Real Estate Division (202) 426-0142, or Reid Alsop, Office of the Chief Counsel (202) 426-0800, 400 Seventh Street, SW., Washington, D.C. 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday.

SUPPLEMENTARY INFORMATION: In May 1982, the Office of Management and Budget (OMB) formed a Uniform Act Interagency Regulatory Review Working Group to review existing Federal agency regulations which implement the Uniform Act and to develop recommendations for uniform regulations to be adopted by each covered agency to implement the Uniform Act. This was done in response to concerns expressed by State and local governments through the President's Task Force on Regulatory Relief.

In addition to the Working Group, OMB also established a policy-level Interagency Regulatory Review Steering Group. The Steering Group and the Working Group, both chaired by OMB, included representatives of the Department of Housing and Urban Development, Department of Transportation (DOT), Department of Interior, Department of the Army (Corps of Engineers), and the Environmental Protection Agency. The Working Group developed a proposed regulation that was approved by the Steering Group. The DOT at the request of OMB, published the proposed regulation in the **Federal Register** on April 14, 1983, as a notice of proposed rulemaking (48 FR 16197).

Following the review of comments by the Working Group, a final rule was developed. On March 5, 1985, the Department of Transportation published the final rule in the **Federal Register** (50 FR 8955), as 49 CFR Part 25. This final rule was accompanied by a Presidential Memorandum (50 FR 8953) designating the DOT as the lead agency to coordinate administration and implementation of the Uniform Act. The Presidential Memorandum directed all affected executive departments and agencies to issue common regulations under the Uniform Act that would be consistent with the model rule promulgated by DOT.

The new DOT Uniform Act regulation replaced the prior DOT Uniform Act regulation of Part 25. The prior regulation, in 49 CFR 25.9, permitted the FHWA and other operating administrations in DOT to promulgate their own additional Uniform Act implementing regulations. No such authority is provided by FHWA in the new DOT regulations. Moreover, any such FHWA regulations would be

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[2] 18 CFR 271.703(c)(2)(i) (1983). In Order No. 153, Docket No. RM79-76 (Texas-8), 46 FR 31,255 (June 15, 1981), the Commission adopted Texas' recommendation that the Geopressured Wilcox Lobo formation underlying Webb and Zapata Counties, Texas, be designated as a tight formation. The area designated as a tight formation by Order No. 153 consists of all of Webb and Zapata Counties, with the exception of approximately 130 square miles identified by Texas in its original recommendation as an area that did not meet the Commission's requirements.

[3] 48 FR 14,974 (April 6, 1983). No comments were received, no party requested a hearing, and no hearing was held.

[4] In a November 16, 1984 letter to the Railroad Commission of Texas, Commission staff noted, "The permeability and flow rate data for each of the wells meets the standards . . . [h]owever, both wells are located in an area which Texas has termed substantially developed conventional production acreage . . . [a]verage reservoir characteristics for this area did not meet the . . . standards . . . [b]ecause of the current well spacing regulations . . . there would be little or no opportunity for further developmental drilling on the acreage recommended . . .".

[5] Section 271.703(c)(2)(i)(A)-(c) (1984). Incentive pricing under section 107(c)(5) is provided to encourage the exploration for and development of unconventional gas supplies.

[6] The average data for the block shows an average flow rate of 544 Mcf per well per day; the regulations require a flow rate not in excess of 336 Mcf per well per day.

contrary to the overall policy objectives of the new DOT regulation; that is to provide a single Federal regulation to be used by all agencies operating under the Uniform Act. Accordingly, FHWA regulations that implement the Uniform Act ceased to have effect on the date that a State begins operating under the new DOT regulation. Therefore, FHWA is herewith rescinding those provisions of Parts 710, 712, 713, 720, and 740 which implement the Uniform Act. Only procedural provisions that relate solely to program administration and funding, and other provisions that do not directly implement the Uniform Act are being retained. Several provisions have been moved or renumbered for clarity, and provisions providing a cross reference to the new DOT regulation have been added. This rescission will become effective on the date that the new DOT regulation becomes effective. (July 3, 1985, or earlier at the option of the State).

In order that these changes will be easier to follow, the following status table is provided.

Former Part/Section	Present status
§ 710, Subpart A	Removed.
§ 710.201 (b) and (d)	Removed.
§ 710.203(f)	Added.
§ 710.204	Removed.
§ 710.304(p)(1)(i)	Removed.
712, Subpart A	Removed.
§ 712.204(c)(3)(i)	Removed.
§ 712.304(a)	§ 710.203(e).
§ 712.304(f)(1)	§ 710.203(e)(4).
§ 712.404	Revised.
§ 713.102	Revised.
§ 713.103(b)	Removed.
§ 720.201(d)(1) and (2)	Revised as § 710.304(r).
§ 720.202(e)(5)(i) and (v)	§712.203(d)(1) and (2).
§ 720.200 through 720.203	Removed.
§ 720.204(e)(18)	Revised.
Appendix 1 of Part 720	Removed.
§ 720.201	Added.
§ 720.204	720.202.
§§ 740.1 through 740.6	Removed.
§§ 740.10 through 740.15	Removed.
§ 740, Subparts B through F	Removed.
§ 740.7	Revised as §740.2.
§ 740.8	Revised as § 740.3.
§ 740.9	Revised as § 740.4.
§ 740.1	Added.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant regulation under the regulatory policies and procedures of the Department of Transportation. Since this is a techhical amendment that merely rescinds FHWA provisions which have been superseded by DOT provisions which are more uniform, public comment is unnecessary. For this reason, the FHWA finds good cause to make the rescission final without prior notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedure Act. For the same reason, notice, and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action would result in the receipt of useful information. Again, for the reasons stated above, the preparation of an economic evaluation is unnecessary, since the economic impact is minimal. Also, under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

In consideration of the foregoing the FHWA hereby amends Parts 710, 712, 713, 720, and 740 of Title 23, Code of Federal Regulations as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning, and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Parts 710, 712, 713, 720, and 740

Grant programs—Transportation, Highways and roads, Real property acquisition, Relocation assistance, Rights-of-way.

Issued on: August 13, 1985.

L.P. Lamm,

Deputy Federal Highway Administrator.

PART 710—RIGHT-OF-WAY—GENERAL

1. The authority citation for Part 710 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.4 and 1.32; 42 U.S.C. 2000d *et seq.*; Executive Orders 11246, 11247, and 11375; 49 CFR 21.

Subpart A—[Removed and Reserved]

2. Subpart A of Part 710 (§§ 710.101–710.104) is removed and reserved.

Subpart B—State Highway Department Responsibilities

§ 710.201 [Amended]

3. Section 710.201 is amended by removing and reserving paragraphs (b) and (d).

4. Section 710.203 is amended by adding paragraph (f) to read as follows:

§ 710.203 General responsibilities.

* * * * *

(f) *Additional requirements.* Additional requirements governing federally assisted real property acquisition, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

§ 710.204 [Removed and reserved]

5. Section 710.204 is removed and reserved.

Subpart C—Reimbursement Provisions

§ 710.304 [Amended]

6. Section 710.304 is amended by removing and reserving paragraph (p)(1)(i).

PART 712—THE ACQUISITION FUNCTION

7. The authority citation for Part 712 is revised to read as follows:

Authority: 42 U.S.C. 2000d–1; 49 CFR 25; 23 U.S.C. 315 and 323; 49 CFR 1.48(b); 23 CFR 1.32.

Subpart A—[Removed and Reserved]

8. Subpart A of Part 712 (§§ 712.101 through 712.103) is removed and reserved.

Subpart B—General Provisions and Project Procedures

§ 712.204 [Amended]

9. Section 712.204 is amended by removing and reserving paragraph (c)(3)(i).

Subpart C—Negotiations

10. Subpart C of Part 712 (§§ 712.301 through 712.304) is removed and reserved with the exceptions of § 712.304(a) and (f)(1).

Paragraph (a) of § 712.304 is redesignated as § 710.203(e) and paragraph (f)(1) of § 712.304 is redesignated as § 710.203(e)(4).

Subpart D—Administrative Settlements, Legal Settlements, and Court Awards

11. Section 712.404 is revised to read as follows:

§ 712.404 Administrative settlements.

Administrative settlements on Federal and federally assisted highway projects are governed by the provisions of 49 CFR 25.102(i).

PART 713—RIGHT-OF-WAY—THE PROPERTY MANAGEMENT FUNCTION

12. The authority citation for Part 713 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; and 49 CFR 1.48(b).

Subpart A—Property Management

13. Section 713.102 is revised to read as follows:

§ 713.102 Applicability.

The policies in § 713.103 are applicable to all State and political subdivisions thereof that manage real property acquired for any highway or highway related project in which Federal funds will participate in any part of the right-of-way costs of the project. States are encouraged to adopt these procedures for all projects in which Federal funds will participate in any part of the project.

§ 713.103 [Amended]

14. Section 713.103 is amended by removing and reserving paragraph (b).

PART 720—APPRAISAL

15. The authority citation for Part 720 is revised to read as follows:

Authority: 23 U.S.C. 315; 49 CFR 25; 23 CFR 1.32; 49 CFR 1.48(b).

16. Paragraphs (d)(1) and (2) of § 720.201 are revised and redesignated as § 710.304(r) with a revised paragraph heading, as follows:

§ 710.304 Reimbursement policy.

* * * * *

(r) *Appraisal costs and minimum payment.* (1) If otherwise eligible, Federal funds may participate in the cost of appraisal and specialty reports obtained by the State in accordance with its accepted plan of operation.

(2) Where the State prescribes a minimum payment, not to exceed $500, for the acquisition of a parcel, although the approved appraisal estimate of just compensation reflects a lesser or even a zero consideration, Federal participation shall be allowed if such payment is otherwise eligible.

17. Paragraphs (e)(5)(i) and (v) of § 720.202 are redesignated as § 712.203(d) and given the heading "Reviewing appraiser" as follows:

§ 712.203 General provisions.

* * * * *

(d) *Reviewing appraiser.* The reviewing appraiser shall place in the parcel file a signed and dated statement setting forth:

(1) The estimate of just compensation including, where appropriate, the allocation of compensation for the real property acquired and for damages to remaining real property, and an identification or listing of the buildings, structures and other improvements on the land as well as the fixtures which he considered to be a part of the real property to be acquired if such allocation or listing differs from that of the appraisal(s).

(2) The value estimate of items compensable under State law but not eligible for Federal reimbursement, if any.

18. Part 720 is amended by removing § 720.200 through 720.203; removing the last sentence of § 720.204(e)(18); removing Appendix 1 at the end of § 720.204; adding a new § 720.201; and redesignating § 720.204 as § 720.202 as follows:

§ 720.201 Appraisal requirements.

Additional policies and requirements governing the appraisal of property for Federal and federally assisted projects, based upon the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25, Subpart B.

PART 740—RELOCATION ASSISTANCE

19. The authority citation for Part 740 is revised to read as follows:

Authority: 49 CFR 25; 23 U.S.C. 315; 49 CFR 1.48(b); 23 CFR 1.32.

20. Part 740, Subparts A, B, C, D, E, and F, (§§ 740.1–740.6, 740.10–740.15, 740.31–740.38, 740.51–740.59, 740.71–740.81, 740.91–740.97 and 740.111–740.121) are removed with the exceptions of §§ 740.7, 740.8, and 740.9.

21. Section 740.7 is redesignated as § 740.2 and is amended by removing paragraphs (c), (d), (g), (h), and (i); and by redesignating the paragraphs (e) and (f) as (c) and (d), respectively, and by revising new paragraph (c)(2) to read as follows:

§ 740.2 Eligibility for participation of Federal-aid funds.

* * * * *

(c) *Federal share.* * * *

(2) Federal funds may not participate in any costs of a project, including preliminary engineering, right-of-way, relocation and construction, costs, unless prior to their displacement from their home, comparable replacement dwellings were available or provided for displaced individuals and families.

* * * * *

§ 740.8 [Redesignated as § 740.3 and amended]

22. Section 740.8 is redesignated as § 740.3 and is amended by removing paragraph (b) in its entirety and by removing the designation to paragraph (a).

§ 740.9 [Redesignated as § 740.4 and amended]

23. Section 740.9 is redesignated as § 740.4 and is amended by removing paragraph (b); removing everything after the words "Executive Order 11246." in the introductory text of paragraph (c); removing the words "required by this part" and adding in lieu thereof "required by 49 CFR Part 25" in paragraph (e)(2)(ii); removing the words "to ascertain compliance with the provisions of this part" and adding a period after the word "necessary" in paragraph (f); and redesignating paragraphs (c), (d), (e), and (f) as (b), (c), (d), and (e), respectively.

24. Part 740 is amended by adding a new § 740.1 to read as follows:

§ 740.1 Relocation requirements.

Substantive requirements governing the fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs and projects, prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act, are contained in 49 CFR Part 25.

Technical Amendments

Due to the removal of a large portion of 23 CFR Part 740, and other changes the following technical amendments are necessary to correct references found in other parts of Title 23, CFR, and are set forth below.

PART 635—[AMENDED]

§ 635.309 [Amended]

25. In § 635.309, paragraph (c)(3) is amended by removing the reference "23 CFR 740.12" and inserting in lieu thereof "49 CFR 25.204".

PART 710—[AMENDED]

§ 710.304 [Amended]

26. In § 710.304, paragraph (o)(3)(iii) is amended by removing the phrase § 740.9(d) of this subchapter" and inserting in lieu thereof "49 CFR 25.6".

PART 712—[AMENDED]

§ 712.204 [Amended]

27. In § 712.204, paragraph (d)(5) is amended by removing the reference "23 CFR Part 740" and inserting in lieu thereof "49 CFR Part 25".

PART 750—[AMENDED]

§ 750.304 [Amended]

28. In § 750.304, paragraph (c)(4) is amended by removing the reference "23 CFR 710.204" and inserting in lieu thereof "23 CFR 710.304(h)".

PART 751—[AMENDED]

§ 751.21 [Amended]

29. In § 751.21, remove the reference "Part 740, 23 CFR" and insert in lieu thereof "49 CFR 25".

[FR Doc. 85-20079 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-22-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 45

Special Education; Establishment of Standards

AGENCY: Bureau of Indian Affairs.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs is publishing a final rule which establishes standards for the provision of special education and related services under the Education for All Handicapped Children Act of 1975, as amended, to Indian schools operated by or under the authority of the Bureau of Indian Affairs (BIA).

EFFECTIVE DATE: October 7, 1985.

FOR FURTHER INFORMATION CONTACT: Charles Cordova, Chief, Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Ave., N.W., Room 4651, Washington, D.C. 20245, telephone number: (202) 343-6675.

SUPPLEMENTARY INFORMATION: The authority for issuing this rule is contained in 5 U.S.C. 301; 25 U.S.C. 2 and 9. This notice is published in exercise of the authority delegated by the Secretary of the Interior to the Assistant Secretary for Indian Affairs by 209 DM 8.

This final rule establishes criteria for governing the operation of special education programs for handicapped Indian children enrolled or eligible for enrollment in BIA operated and/or funded schools. The regulations establish a single comprehensive set of standards for ensuring all handicapped children enrolled in BIA operated and/or funded schools are provided a free appropriate education in the least restrictive educational environment appropriate to their needs, consistent with their rights and related procedural safeguards.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969.

This rule does not contain information collection requirements which require approval by the Office of Management and Budget under 44 U.S.C. 3504(h) *et seq.* The information collections identified in §§ 45.19(d) and 45.33 are required by the Department of Education in 34 CFR 300.

The primary author of this document is Charles G. Cordova, Bureau of Indian Affairs, telephone number: (202) 343-6675.

The Department of Interior has determined that this document pertains only to schools operated or funded by the BIA; and therefore, is not a major rule under E.O. 12291 and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*)

The Bureau of Indian Affairs published a proposed rule 25 CFR Part 31k (renumbered throughout this document as Part 45) on September 29, 1980. Public comments were invited until November 27, 1981. In response to this invitation, individuals, groups, schools and interested persons submitted comments. In addition, the Bureau of Indian Affairs, Office of Indian Education Programs, conducted public hearings throughout the Country where large percentages of Indian people are located. During these public hearings, commenters were given an opportunity to write or record their comments for transcript. Copies of the proposed regulations were made available for their convenience. A task force of Bureau of Indian Affairs' (BIA) educators was selected from various locations to review and respond to the comments from the field. The Bureau of Indian Affairs, Office of Indian Education Programs, has carefully considered the views of the public as reflected in the written comments and testimonies at public hearings. The following is a description of these views and BIA responses to them.

Subpart A—General

During the comment period, recommendations of numerous changes were received to improve the clarity of the rule and make it consistent with previous regulations relative to Indian children. Several editorial changes were incorporated into the final rule which include the following items:

General responsibility (§ 45.1)

Comment: Several commenters recommended the term "public" be deleted as it relates to public education since Bureau schools are Federally funded education facilities.

Response: We agree that the schools are not public in the strictest sense of the word and the term "public" has been deleted.

Enrollment in early childhood education programs (§ 45.2)

The title of this section has been changed to "Provisions of Early Childhood Special Education Programs and Services."

Comments: One commenter suggested that the title of this section read: "Provisions of Early Childhood Special Education Programs and Services."

Several commenters suggested that a definition of Early Childhood Special Education be included in the regulations.

Several commenters recommended that this section be charged to include children from birth to five (5) years of age and that the BIA provide special education services to these children.

Response: This section has been changed to agree with the requirements of the Indian School Equalization Program (25 CFR Part 39). The ISEP program provides funding for children enrolled in BIA operated or funded schools. At this time, there are no provisions to enroll children in pre-kindergarten programs. Because of the supplemental nature of the funds received through Pub. L. 94-142, it has been determined that funding can only be provided toward the education of children enrolled in BIA operated or funded schools. To require schools to serve zero to five (0-5) year olds would be inconsistent with BIA regulations and practice. Since BIA is not eligible to receive pre-school incentive funds from the Department of Education, a limited number of model programs for handicapped Indian children from birth to age five (5) may be approved for funding. The number will be based on need and funding limitations. Although funding will be limited for children from birth to age five (5), every effort will be made by the BIA to locate and identify handicapped children and to refer them to appropriate service providers.

Children of ages eighteen through twenty-one (§ 45.3)

Comment: Several comments were received regarding the age range of three (3) to twenty-one (21) years. The commenter felt the age limit of twenty-one (21) should be raised.

Response: No change has been made. Pub. L. 94-142 as well as Pub. L. 95-561 provide for services to students only through the age of 21 years.

Equal education opportunity (§ 45.4)

The title of this section has been changed to read "Full Educational Opportunity."

Comment: Several comments were received regarding lowering the age of provision of Full Educational Opportunity as well as the time line given. One commenter requested a clarification of "all handicapped children."

Response: As explained in the response in § 45.2, the BIA only requires the schools to serve handicapped children who are enrolled or eligible to be enrolled; therefore, the age requirement was changed from ages three (3) through twenty-one (21) to ages five (5) through twenty-one (21). The time line was dropped since the date has now passed. These schools not in compliance will be monitored and assistance will be provided to help bring them into compliance.

Every effort will be made to locate, identify and refer handicapped children from birth to five (5) years of age.

Definition (§ 45.5)

Comment: A comment was received concerning paragraph (a) "Agency" and the Agency's role in reference to contract schools.

Response: No changes have been made. The Director has designated specific agency or area offices as being responsible for tribally operated contract schools. The term area/agency is used interchangeably as far as organizational responsibilities are concerned.

Comment: A comment was received regarding paragraph (b) "Agency Superintendent for Education", concerning the definition of Agency Superintendent for Education in relation to off-reservation boarding schools.

Response: No change was made. Pub. L. 95–561 specifically defines the responsibilities of the Agency Superintendent for Education and the Area Education Program Administrator toward off-reservation boarding schools.

Comment: One comment was received regarding paragraph (c) "Approved public or non-public school," and the State of New Mexico's non-participation in Part B of the Education of the Handicapped Act Programs and suggested that a provision be added to allow the BIA schools in this State to make placements, where appropriate, based on a determination of the Office of Indian Education Programs.

Response: No change was made. The state of New Mexico has established special education rules which are consistent with Federal regulations. The state is in compliance with the requirements and placement should not present a problem.

Comment: One comment was received in reference to paragraph (f) "Boarding school" as one offering "residential care."

Response: The definition of boarding school has been changed to read "Boarding school" which means a Bureau school offering a residential center and support services as well as an academic program.

Comment: One comment was received pertaining to paragraph (i) "Cooperative agreements" which asked if "cooperative agreements" must be formal agreements.

Response: No change was made. It was felt that some type of formal agreement should be in effect for audit and monitoring purposes. Such an agreement should help to delineate the responsibilities of the Bureau school and the public school district for providing Special Education services.

Comment: Several comments were received concerning the definition of "Counseling services" in paragraph (j).

Response: No change was made. The definition of counseling services was taken directly from the Pub. L. 94–142 regulations with the addition of counselor training for social workers. It is the intent of these regulations to insure that all individuals providing counseling services to handicapped children have high qualifications and meet the standards set forth by the state licensing office.

Comment: Several comments were received regarding the inconsistency between the definitions in paragraph (o) of "Handicapped Child" in these regulations and Pub. L. 94–142 regulations.

Response: The definition of handicapped child has been made consistent with Pub. L. 94–142 regulations by adding "seriously" to emotionally disturbed; "specific" to the definition of learning disabled and removing the term "severe language disorder" from the definition. The definition of each handicapping condition has been listed alphabetically under the definition "Handicapped Child."

Comment: Several comments were made concerning the exclusion of the term "gifted and talented" from the definitions.

Response: No change was made. No provisions were made for this category under Pub. L. 94–142, The Education of the Handicapped Act. Appropriate guidelines, standards or regulations will be published if a program for gifted and talented is included in the Indian School Equalization Formula. (24 CFR 39.10–39.23)

Comment: Several comments were received concerning paragraph (q) "Individualized Education Program", stating that it was not the Pub. L. 94–142 definition.

Response: A change has been made. The definition is now consistent with the requirement of this Part and Pub. L. 94–142.

Comment: Two commenters were concerned with parts of the paragraph on "Individual Intelligence Quotient" (IQ) test. The commenters stated furture mental abilities could not be measured and the word retarded should be deleted.

Response: A change has been made. It was determined that the words in question were unnecessary and they were deleted from the definition.

Comment: Many comments were received regarding paragraph (v) pertaining to the inconsistency between the definition of "least restrictive environment" (LRE) contained in these regulations and the Pub. L. 94–142 regulations.

Response: A change has been made. The definition is more specific and is consistent with the Pub. L. 94–142 regulations.

Comment: One commenter requested inserting other words instead of those in the definition of "Native language" in paragraph (w).

Response: A change has been made. The definition of native language has been changed to insure understanding of special education proceedings by the parents.

Comment: Several comments were received pertaining to paragraph (x) which referred to the lack of specificity in the definition of "parent."

Response: A change has been made. The definition is now specific and includes persons acting in place of the parent.

Comment: Several comments were made regarding the terseness of the definition of "parental consent" in paragraph (y).

Response: A change has been made. The definition is now more specific and consistent with the Pub. L. 94–142 regulations.

Comment: Several comments were received concerning paragraph (cc), "School" which objected to the inclusion of "private schools/facilities/institutions" in the definition.

Response: No change has been made. The term "school" as used in various sections of this regulation includes private schools/facilities/institutions and they should be included in the

definition. The Bureau supports the education activities of several private schools for handicapped Indian children.

Comment: A few comments were received regarding the definition of "Special Education Coordinator" in paragraph (ff) in relation to the role of the Area/Agency and schools.

Response: No change has been made. The term Special Education Coordinator refers to the individual at the Agency or Area level who has the responsibility for coordinating the provisions of special education services for one or more schools under the general supervision of the Agency Superintendent for Education or Area Education Program Administrator. The term does not include the local school personnel.

General Comment: Many general comments were received regarding definitions of handicapping conditions requesting they be made more specific. It was also suggested various words be added or deleted, additional definitions be added and/or existing definitions be reworded.

Response: No change has been made. The definitions of handicapping conditions are consistent with Pub. L. 94–142 regulations and the ISEP regulations.

Subpart B—Identification and Evaluation of Handicapped Children

Child find (§ 45.11)

Comment: Several commenters referred to identifying and locating handicapped children under the age of three years. Some of these comments indicated that funding was available to serve these children.

Response: No change has been made. In cooperation with other programs, the BIA will continue to locate and identify these children; however, funding for pre-school programs can not be assured at this time.

Comment: Several comments were received which indicated the child find section of the regulations was unclear.

Response: A change has been made. The requirements are now more specific. The reference to off-reservation boarding schools was deleted. This section now requires that all schools must conduct in-school identification.

Child find elements (§ 45.12)

Comment: Many comments indicated the major responsibility for child find elements should not rest with the Agency or schools since they do not have appropriate funding, personnel or time to do an effective job in their area.

Response: A change has been made. This section was rewritten to allow more options for the Agency. The Agency has the responsibility to establish child find procedures. The intent of these procedures is to identify all children who may be in need of Special Education Services.

Register of children (§ 45.13)

Comment: Several comments were received regarding the register of children to be maintained at the school. These comments questioned the legality of maintaining such a register and necessity of the list.

Response: A change has been made. The requirement to keep a register of all children was dropped. The section now includes a requirement that all information collected and maintained must be in accordance with the confidentiality requirements of Pub. L. 94–142 and the Privacy Act.

General entry screening (§ 45.14)

Comment: Due the stringent requirements in the general entry screening sections, many comments were received regarding the burden placed on the local school to obtain the required information.

Response: A change has been made. Only the minimum requirements are now included. A school may choose whatever screening instrument they desire. The intent is that every child enrolled in school be properly screened to identify those children who may need further evaluation.

Waiver of general entry screening (§ 45.15)

The title of this section has been changed to read: "Periodic school screening."

Comment: Several comments were received questioning the right to regulate parents through this part.

Response: A change has been made. The section on waivers has been combined with the section on General entry screening. The intent is to give parents an option and to minimize the number of times a child would be screened. Parents still have the right to waive the screening.

Screening personnel (§ 45.16)

Comment: Several comments were received asking for clarification of the term "certified, licensed or qualified" in regard to the screening personnel.

Response: A change has been made. It was the intent of this section to require that school personnel doing the screening should be trained in these duties. Classroom teachers, special education teachers and in the case of some specific screening, technician aides may be trained to perform the screening. This section has been changed and directs the school to utilize personnel who are trained to do the specific screening which is being performed.

Report of general screening (§ 45.17)

The title of this section has been changed to read "Screening results and referrals."

Comment: Several commenters expressed confusion regarding the implications of a general entry screening. Many also recommended changing the time lines.

Response: A change has been made. This section was rewritten and the time lines were adjusted to accommodate the needs of the schools with limited staff. The school now has 30 days to complete their reports and confer with the parents.

Individual evaluations (§ 45.18)

Comment: Several comments expressed concern that the requirements as written might be against a parent's wishes.

Response: A change has been made. This section now states specifically when a child should be evaluated. Parent consent is always required for the initial evaluation (see § 45.52).

Evaluation procedures (§ 45.19)

Comment: Many comments were received regarding this section. These comments covered a wide range of concerns including: (1) comments stating this section did not outline evaluation procedures and (2) possible violation of parent's rights.

Response: A change has been made. This section has been rewritten and it outlines the evaluation procedures step by step. The reference to parent was deleted and may now be found in Subpart D.

Individual evaluation objectives (§ 45.20)

Comment: Several comments were received requesting that assessment team members recommend intervention strategies.

Response: A change has been made. The section lists intervention strategies as one of the objectives.

Formation of multi-disciplinary evaluation teams (§ 45.21)

Comment: Several comments were received regarding the responsibility for selecting the multi-disciplinary evaluation teams.

Response: A change has been made. This section was rewritten to eliminate the contradiction of responsibilities. The

school supervisor has overall responsibility for the individual evaluation; however, the Special Education Coordinators, because of their specialized training and experience, will coordinate the effort.

Composition of multi-disciplinary evaluation teams (§ 45.22)

Comment: Several comments were received concerning the term "certified."

Response: A change has been made. The term certified has been deleted and "qualified" has been inserted.

Content of individual evaluations (§ 45.23)

Comment: Many commenters were concerned about the cost and the limited number of personnel in their schools. Some commenters stated that the requirement was unrealistic, particularly the one requiring vocational assessments when most schools do not have a vocational education program.

Response: A change has been made. The regulation now only requires an educational assessment, a health assessment and a psychological assessment for children referred for reasons other than a speech impairment. The portion on vocational education has been deleted.

Test administration (§ 45.24)

Comment: Several comments were received which requested definitions for racial, cultural, and sex bias.

Response: No change was made. It is the responsibility of the multidisciplinary team to ensure appropriateness of tests.

Location of evaluation (§ 45.25)

Comment: Several comments were received requesting clarification of the term geographical proximity.

Response: A change has been made. The term geographical proximity has been deleted. Testing may occur at a site compatible with the child's condition upon agreement between the school official and the parents.

Multi-disciplinary evaluation team procedures (§ 45.26)

Comment: Several commenters questioned whether the school supervisor or the Special Education Coordinator should be the designated responsible official. There was much concern with the time lines and lack of adequate resources.

Response: No change has been made. The time lines have not changed. The intent of this requirement is to complete the evaluations as soon as possible and to provide a comprehensive assessment of each child. The Special Education Coordinator has been designated to ensure appropriate procedures are followed. The members of the evaluation team have a right and the responsibility to determine the appropriate material to be used and any additional information which would assist them in the comprehensive assessment of each child to determine if he/she is indeed handicapped and in need of exceptional education.

Emergency evaluation and placement (§ 45.27)

Comment: Several commenters requested that time lines and procedures be further clarified.

Response: A change was made to emphasize that emergency placement is temporary and specific time lines have been incorporated.

Independent educational evaluations (§ 45.28)

Comment: Several commenters questioned the independent evaluation at public expense.

Response: No changes were made. The outlined procedures comply with the requirements of the regulations implementing Pub. L. 94–142.

Additional procedures for evaluating specific learning disabilities (§ 45.29)

Comments: Many comments were received regarding the length and extensiveness of the Specific Learning Disability regulations.

Response: No change has been made. The requirements reflect those set forth in 34 CFR 300.540. Pertaining to evaluation of learning disabled children.

Subpart C—Provision of Special Education and Related Services

Free, appropriate public education (§ 45.30)

Comment: Several commenters made reference to the absence of the terms "Each BIA funded or operated school. . . ."

Response: A change was made. These regulations apply to all schools funded or operated by the BIA.

Individualized education program (IEP) (§ 45.31)

Comment: One commenter questioned the development of an IEP based on the "results of an individual evaluation" and requested a change to "as a result of the determination of a multi-disciplinary team."

Response: A change was made. The recommendation was adopted.

Content of individualized education program (§ 45.32)

Comment: Several commenters wanted to know who would determine whether the objectives were being met.

Response: No change has been made. The individuals providing the direct services are the logical persons to determine when objectives are being met. The annual review of the IEP would also help determine whether objectives were being met.

IEP development (§ 45.33)

Comment: Several commenters objected to the described process of obtaining permission from the Central Office Director because it would delay the writing of the IEP if diagnosis was made near the end of the school year.

Response: A change was made. "Agency Superintendent for Education" has been substituted for the "Director" to allow for localization of policy and procedures.

Comment: Two commenters objected to mandated progress reporting for elementary and secondary handicapped students.

Response: No change has been made. Progress reports should be made on handicapped students on a regular basis just as for the regular student population.

Comment: Several commenters requested that a sixth listing of specific related service personnel be included in the IEP Committee.

Response: No change has been made. To do so might serve to limit related service personnel participation, whereas the term "other individuals" as referred to in paragraph (b)(5) allows more extended participation.

Placement recommendation in the IEP (§ 45.34)

Comment: One commenter requested clarification on the definition of continuum of services for placement in regard to the least restrictive environment.

Response: No change has been made. This continuum is self-explanatory and needs no further clarification.

Comment: Several commenters responded regarding the boarding school as being the least restrictive environment.

Response: No change has been made. The intent is to differentiate between Bureau operated boarding schools and other non-Bureau residential facilities. It would not be unusual to place a handicapped Indian student in a Bureau funded boarding school; whereas in the private sector, placement in a residential facility would probably

indicate an inability of the school system to provide services due to the severity of the handicapping condition.

Comment: Several comments were received concerning the schools' ability to contract for services to the handicapped.

Response: No change has been made. Should a school find that it is impossible to offer the full continuum of services, due to isolation or non-availability of personnel, then alternate means for providing an appropriate education in the least restrictive environment should be considered. This might include contractural cooperative arrangements.

Comment: Several comments were received regarding paragraph (j) "respite care."

Response: A change was made. The paragraph was deleted because this option was not relevant to Bureau education programs.

Comment: Several concerns were expressed over the teacher-pupil ratio in paragraph (g) guidelines since they have not been published.

Response: A change has been made. Reference to teacher-pupil ratio has been deleted. The complexity of the BIA education program demands that teacher-pupil ratio have enough flexibility to meet the needs of the students and to be cost effective in each given situation.

Approval of IEP and placement recommendation (§ 45.35)

Comment: One commenter felt the need to require official minutes of each meeting be kept in the child's folder.

Response: No change has been made. The documentation required in the development of an IEP should be sufficient documentation of the IEP meeting.

Comment: Several commenters wanted the term "School Supervisor" defined further in paragraph (c)(3).

Response: A change was made. The word coordinator was inadvertently left in the draft and has been deleted.

Comment: One commenter advanced the idea that while the parent is encouraged to attend IEP meetings, they are not encouraged to participate.

Response: No change has been made. The actions recommended in paragraph (b) of § 45.35 encourage the attendance and participation of the parents.

Comment: One commenter reported an inaccurate reference in § 45.35(b)(5).

Response: A change was made. The reference was changed to § 45.58.

Comment: Several comments requested the term "Evaluation Coordinator" be changed to "Special Education Coordinator" in paragraph (b)(1).

Response: A change was made adopting the comment.

Comment: One commenter suggested that an interpreter fluent in English and the Native languages be made available to parents who are deficient in English where appropriate.

Response: No change was made. § 45.35(d) specifies "The School Supervisor should take whatever action is necessary to insure that the parents understand the IEP and the proposed placement . . ." and § 45.36(e) requires that an interpreter be provided.

Comment: Several comments were received which encouraged the term "or his designee" be included along with the school supervisor.

Response: A change was made to adopt the comment.

Parent participation (§ 45.36)

Comment: Several commenters responded regarding the necessity of encouraging parental participation in both the placement and IEP meetings.

Response: No change has been made. This section outlines the procedures a school must use to involve parents in the IEP meeting; however, in some instances parents may be unresponsive even after repeated efforts to involve them. In these cases a school must have documentation of their efforts to prove they were not out of compliance with the parent participation requirement.

IEP implementation and placement (§ 45.37)

Comment: One commenter made reference to the Indian Child Welfare Reform Act in placement involvement.

Response: No change was made. § 45.33(b)(1) outlines individuals who must be involved in the IEP development meeting, including "other individuals at the discretion of the parent, agency or school."

Comment: Clarification was requested on § 45.37(c) regarding the IEP.

Response: A change has been made. The IEP must be reviewed at least annually. Emphasis is made on having a valid IEP for students who were in the special education program during the previous school term.

Comment: One reader commented that the language in § 45.37(a)(2) is not clear.

Response: A change has been made. The paragraph was not clear. It has been rewritten to clarify the requirement.

Comment: One commenter suggested that placement within 30 days of written parental approval may not be possible.

Response: No change has been made. The intent is to provide special education to the child as soon as possible. It is the Agency Superintendent's responsibility to make appropriate decisions regarding all children within his/her area of supervision.

IEP revision, review of placement (§ 45.38)

Comment: One commenter asked if a child should have an IEP update if the child is to move from one grade or one school to another.

Response: No change has been made. An annual update is required. There is nothing to prevent more frequent updates or revisions. This concern is addressed in § 45.38(a).

Comment: One commenter suggested that the term "long-term" be removed and "short-term" educational needs be inserted in § 45.38(a)(5).

Response: A change has been made. The statement was corrected.

Comment: One commenter wanted to know if all participants involved in the original assessment of the student should be involved in the annual review.

Response: No change has been made. The annual review is in reference to the IEP. Persons involved must be consistent with the requirement of this part. Involvement of the multi-disciplinary team is based on the needs of the student, the parent and the school.

Re-evaluation (§ 45.39)

Comment: Several commenters suggested that the school, rather than the agency, has the responsibility for re-evaluation of a child.

Response: A change has been made. The schools are now responsible.

Comment: A commenter expressed a concern that requests for re-evaluation might become redundant or unreasonable and the school authority should have the right to deny a request.

Response: A change has been made. This section was rewritten to include a "reasonable request."

Comment: Several commenters responded that parental consent should be required should the school seek to re-evaluate the student before the three year period expires.

Response: A change has been made. This section was rewritten to clarify the intent: however, the requirement is only that parents must be notified of the re-evaluation. This is consistent with the requirements of 34 CFR 300.504.

Comment: One commenter noted that a re-evaluation, at least every three years, is required.

Response: A change has been made. A final phrase was added which states: "a re-evaluation at least once every

three years" to re-emphasize this legal requirement.

Extended school year services (§ 45.40)

Comment: Commenters were concerned about the availability of funds.

Response: No change has been made. If a student's IEP calls for more than 180 days, it is the school's responsibility to provide such services. (See Crawford v. Pittman 708 F. 2nd 1028 (5th Cir. 1983).

Outcome goals (§ 45.41)

Comment: Several commenters expressed the concern that this section would result in "tracking" handicapped children, i.e., putting children in a program over which they and their parents have no control and forcing him/her to remain in that "track."

Response: A change has been made. This section now allows optional vocational education opportunities for handicapped students.

Comment: One commenter requested clarification of "regular" high school diploma.

Response: No change has been made. The term "regular" when used in special education refers to that program or service available to non-handicapped students within the school.

Related services (§ 45.42)

Comment: Several commenters requested more specificity as to the definition of related services.

Response: A change has been made. This section has been changed to insure the provision of services from any source. To be more specific could limit the services provided to a child. Services provided should meet the needs of the individual child in order to provide him/her with an appropriate education.

Non-academic and extra-curricular services (§ 45.43)

Comment: One commenter wanted to know if funding was available for non-academic extra-curricular services.

Response: No change has been made. The purpose of this section is to assure the inclusion of handicapped children in all programs available to non-handicapped children.

Physical education and athletics (§ 45.44)

Comment: Several commenters were concerned whether the specially designed physical education required by the child should be indicated on the IEP.

Response: No change has been made. The IEP must contain the specialized physical education program required by the child as well as any other services which are necessary for an appropriate education.

Discipline (§ 45.45)

The title of this section has been changed to "Expulsion/Suspension."

Comment: One commenter expressed concern that this section prohibits temporary removal of a disruptive handicapped student from the regular or alternative program.

Response: No change has been made. The removal of a disruptive student from a class for a brief cooling-off period is still a viable option for a school. The intent of this section was to simply prohibit the use of expulsion and suspension as replacements for appropriate programming and to emphasize that alternative action must be considered.

Comment: One commenter was concerned about the lack of residential programs available.

Response: No change has been made. It is the LEA's responsibility to provide the handicapped child with a free appropriate education. If the multi-disciplinary team determines that residential placement is necessary, placement in a state or private facility is considered. Such placements are coordinated with Social Services and the responsible Education Specialist for institutional placement.

Comment: Several commenters expressed concern that this section is too broad and all inclusive as written.

Response: A change has been made. This section has been rewritten. The issue is not that handicapped students cannot be disciplined but rather that expulsion or suspension is not a viable alternative to be used in lieu of appropriate programming. It was not the intent to prohibit any and all disciplinary actions regarding handicapped students.

Geographic accessibility (§ 45.46)

Comment: Several commenters expressed concern regarding placement of children in off-reservation boarding schools.

Response: No change has been made. This section only reiterates that attendance in an off-reservation boarding school is not a restrictive placement and may be considered as a school nearest the child's home if it is a school that he/she would normally attend if he/she were not handicapped.

Architectural barriers and program accessibility (§ 45.47)

Comment: Several commenters referred to the lack of administrative control to assure compliance when dealing with constructual arrangements for facilities.

Response: A change has been made to reflect the concerns stated. The American National Standards and Institute accessibility standards must be followed. The wording of the regulation was changed to be more specific in terms of administrative responsibility.

Comment: A commenter suggested that the regulation as written was a standard and as such belonged under standards for special education, in proposed 25 CFR Part 36.

Response: No change has been made. Reference was made to the fact that standards for facilities and programs accessibility are contained in Part 45 because of the need for administrative awareness to comply with these standards. It was decided to clarify several sections and that they would keep them under Part 45.

Handicapped children in private schools placed or referred by agencies (§ 45.48)

Comment: Several commenters requested clarification of this section.

Response: No change has been made. This section meets the requirements of 34 CFR 300.347 and assures that children placed in private or state schools have the same rights and receive equitable treatment with children attending BIA funded or operated schools.

Handicapped children in private schools placed by parents (§ 45.49)

Comment: Several commenters requested clarification of the funding source for private schools.

Response: No change has been made. § 45.48 and § 45.49 differentiate the funding source depending on who places a child in a facility other than a BIA funded or operated school.

Subpart D—Procedural Safeguards

Full and effective notice (§ 45.51)

The title of this section has been changed to read: "Notice to parents."

Comment: One commenter was concerned that a full explanation of due process and Family Educational Rights and Privacy Act rights had to be given with each note sent home.

Response: No change has been made. This Subpart carefully outlines procedural safeguard. This does not prohibit sending a notice to parents. It outlines the minimum requirements that a school must meet in order to comply with the law.

Comment: Two commenters suggested that a specific number of days be specified regarding written notification to parents.

Response: No change has been made. The intent is to assure that parents are notified of any action involving their child and that they are aware of their rights in regard to the special education programs.

Parental consent (§ 45.52)

Comment: One commenter stated that there appeared to be a conflict between this section and the Privacy and Freedom of Information Acts.

Response: A change has been made to indicate that all disclosures made under this section will be consistant with the disclosure provisions of the Privacy Act.

Comment: One commenter mentioned that § 45.52 allowed all agencies listed in § 45.12(d) to gather identifiable data without parental consent.

Response: No change has been made. The intent of §45.12(d) was to establish a procedure to regularly collect data. All agencies listed are still required to secure appropriate consent prior to actual collection of any information.

Rights of handicapped children (§ 45.53)

Comment: Several commenters questioned the appointment of surrogate parents.

Response: A change has been made. The regulations concerning appointment of surrogate parents are now clearly stated in § 45.56.

Access rights (§ 45.54)

Comment: One commenter suggested the addition of a section regarding the parents' right to insert material into the student's record.

Response: A change has been made. Paragraph (b)(4) was added to § 45.54 detailing the parents' rights to add information and/or comments to their child's record.

Confidentiality of information (§ 45.55)

Comment: A few commenters expressed concern for the handling of personally identifiable records when they are no longer needed to provide educational services to the child.

Response: No change has been made. The specific policy for complying with this section is to be addressed by the local school boards.

Surrogate parents (§ 45.56)

Comment: Many commenters were concerned with the legality of appointing a surrogate parent.

Response: A change has been made. A child's rights must be protected in instances of educational decision making, identification, evaluation and placement. An alternate process for selecting surrogate parents has been added.

Hearing officers (§ 45.59)

Comment: A few commenters questioned the appropriateness of the Agency Superintendent for Education selecting the hearing officer.

Response: No change has been made. The Agency Superintendent for Education is the educational authority at the Agency level. The decision is subject to challenge as outlined in paragraph (c) of this section.

Impartial hearing officer (§ 45.60)

Comment: One commenter requested information regarding the qualifications of the hearing officer.

Response: No change has been made. It is believed that the regulations sufficiently address the process for the selection of the hearing officer. Qualifications may be adopted by the local school boards. Additionally, all hearing officers must be properly trained in the procedures.

Hearing rights (§ 45.61)

The title of this section has been changed to "Hearing reports."

Comment: One commenter suggested changing "accompanied and advised by counsel" to "represented by counsel."

Response: No change has been made. This hearing is not intended to replace a court. The intent is for all parties to have expert advice during the proceedings.

Comment: One commenter suggested including a regulation on paying attorney fees.

Response: No change has been made. The purpose of a hearing is to ensure that handicapped children are provided a free appropriate education. No provision has been made relating to hearing costs.

Administrative appeal (§ 45.63)

Comment: Some comments were received concerning legal actions and the legal aspects of appealing to the Director following due process hearing.

Response: A change has been made. When a parent or the school disagrees and cannot informally come to terms, then a third party is brought in to have a hearing. If that does not provide resolution to the matter, either party may appeal to the Assistant Secretary—Indian Affairs.

Appointment of a special education coordinator (§ 45.64)

Comment: Commenters disagreed on this section. Some wanted more precise requirements, and some requested deleting the entire section.

Response: A change has been made. This section was deleted. The regulation as written would have infringed on the rights of the Agency and Agency School Board to structure their organization to meet local needs. Deletion of this section, however, does not guarantee that funds will be available to all agencies desiring a Special Education Coordinator.

In-Service training (§ 45.65)

Comment: Two commenters requested a definition of the term "LEA."

Response: A change has been made. Training sources have been clearly specified, references to "LEA" have been deleted.

Comment: One commenter recommended that this section be expanded to insure that each Agency and/or school develop and implement an in-service training plan regardless of the funding source.

Response: A change has been made. The section was rewritten to clarify the necessary assurances for in-service training and insure coordination between agencies and schools.

Qualifications of staff (§ 45.66)

Comment: A number of commenters expressed concern regarding staff qualifications in non-BIA operated schools.

Response: No change has been made. BIA personnel regulation, 25 CFR 38.4, require certification of school personnel. It is assumed that the tribes operating non-BIA schools will, in the interest of a sound education for their children, establish certification standards for the staff. Additionally, a child receiving services from a non-certified teacher can not be counted to receive ISEP funds.

Self-evaluation (§ 45.71)

The title of this section has been changed to "Annual evaluation."

Comment: One commenter requested that the Director be required to measure and evaluate the effectiveness of the Bureau's efforts to provide a free appropriate education to all handicapped Indian children.

Response: No change has been made. Internal evaluations should be directed by the governing body of the school with input from parents and advocates for the students.

Comment: Several commenters recommended a clarification of self-evaluation responsibilities and evaluation procedures.

Response: A change has been made. Annual evaluation rules have been added to this section in accordance with the requirements of 34 CFR 300.146.

Comment: One commenter felt that keeping self-evaluation records for three years did not seem necessary.

Response: A change has been made. The requirement has been deleted. After submitting the annual evaluation report to the Central Office the Agency/school should retain the results only as long as they are useful to improve the special education program.

Non-Discrimination (§ 45.73)

Comment: Several commenters recommended including the word "Indian" between "handicapped" and "child."

Response: A change has been made. The word "Indian" has been included to identify the children to be served.

The Division (§ 45.74)

Comment: Several commenters questioned the Director's role and responsibility for educational programs for handicapped children.

Response: No change has been made. The Director has the responsibility to insure an appropriate education for all Indian children attending BIA operated or funded schools.

Monitoring (§ 45.75)

Comment: One commenter recommended that § 45.75(a)(3) be revised to allow for a review of the exceptional child component of the ISEP regulations in addition to Federal fund utilization.

Response: A change has been made. The monitoring of special education programs includes a review of all funds utilized in the program regardless of source. § 45.75(a)(3) has been clarified.

Comment: One commenter recommended that the monitoring include consideration of small agencies, rural areas, cultural values and tribal traditions.

Response: No change has been made. The purpose of monitoring is to determine compliance with Pub. L. 94–142. The consideration for and incorporation of cultural values and tribal traditions into the special education programs rests with the local school boards.

Comment: One commenter recommended parental involvement in the monitoring process.

Response: No change has been made. Parental involvement at the local level is highly encouraged, particularly as the program affects and meets their own child's needs. The parents should have access to the monitoring findings and recommendations; however, the purpose of monitoring is to determine the degree of compliance with Pub. L. 94–142 in providing special education to handicapped children.

Comment: One commenter recommended that the regulations include a provision that the Division of Exceptional Education provide a written monitoring report to the Agency.

Response: A change has been made. The Division of Exceptional Education does provide a written report to the Agency; however, this was not addressed in this section. A new paragraph (f) has been added to § 45.75 to address this concern.

Use of available funds (§ 45.77)

Comment: One commenter recommended that this section be expanded to include funding received through the exceptional education component of ISEP.

Response: A change has been made. The intent of this section was to include all funding specifically appropriated for the special education program of the Bureau. All special education funds must be used for the identification, evaluation and the provision of an appropriate education to handicapped Indian children. This section has been re-written to clarify this requirement.

Children for whom the Division of Social Services has accepted financial responsibility (§ 45.78)

Comment: Several commenters requested that a clearer statement be made concerning the Division of Exceptional Education and the Division of Social Services.

Response: This section was rewritten to include suggestions from the commenters. The regulations as stated here are compatible with Social Services regulations (25 CFR Part 20).

Cooperative agreements (§ 45.79)

Comment: Several commenters recommended the inclusion of cooperative agreements with other Federal agencies such as Indian Health Services.

Response: No change was made. The BIA can not regulate other agencies. Indian Health Service has a responsibility to provide medical services to Indian people.

Comment: One commenter recommended that the section be deleted suggesting that the contents were covered in § 45.34.

Response: No change has been made. Section 45.34 does not refer to cooperative agreements. This also does not negate the authority of schools or agencies from entering into cooperative agreements for the provision of special education and related services to handicapped Indian children.

Vocational education coordinator (§ 45.80)

Comment: Several commenters expressed confusion over the intent of this section.

Response: A change has been made. This section has been deleted. This was a policy statement, not a regulation.

Bureau of Indian Affairs' Advisory Committee for Exceptional Children (§ 45.81)

Comment: One commenter recommended several modifications be made, suggesting the inclusion of "within the BIA" after "handicapped childern".

Response: A change has been made. The term "Indian" was added to § 45.81(a) and now reads: "the education of handicapped Indian children". § 45.81(b) has been changed to "children attending BIA operated or funded schools".

Comment: One commenter requested that paragraph (a)(4) of § 45.81 "State and local educational offices" be changed to read: "BLA Agency and school officials.

Response: A change has been made. The proposed wording was adopted.

Comment: One commenter recommended that § 45.81(b)(1) be expanded to include the Assistant Secretary of Indian Affairs.

Response: No change was made on paragraph (b)(1) of § 45.81. However, paragraph (b)(2) was changed by deleting "Director" and inserting the words "Assistant Secretary—Indian Affairs."

Comment: One commenter recommended that paragraph (b)(1) of § 45.81 be changed to read: "Unmet special education needs of Indian children."

Response: A change has been made. The proposed wording was adopted.

Comment: One commenter recommended that the Bureau place limits on the number of meetings held during the fiscal year.

Response: No change has been made. The Advisory Council activities are coordinated with the Division of Exceptional Education and meetings are called only when necessary to conduct its business.

Comment: One commenter recommended that "reasonable and necessary expenses" should be more explicitly defined.

Response: A change has been made. Paragraph (h) of § 45.81 now reads: "will be reimbursed for travel and expenses in compliance with Federal travel regulations" issued by the General

Service Administration. § 45.81 is hereby redesignated as § 45.80 to assure continuity of section numbers.

Further guidelines and directives (§ 45.82)

Comment: Several commenters recommended that this section was unnecessary and should be deleted from the regulations.

Response: A change has been made. This recommendation was adopted and this section was deleted.

List of Subjects in 25 CFR Part 45

Education of handicapped, elementary and secondary education, Equal education opportunity, Indian education and students.

A new Part 45 to Subchapter E, Chapter I of Title 25 of the Code of Federal Regulations is added to read as follows:

PART 45—SPECIAL EDUCATION

Subpart A—General

Sec.
45.1 General responsibility.
45.2 Provisions of early childhood special education programs and services.
45.3 Children of ages eighteen through twenty-one.
45.4 Full educational opportunity.
45.5 Definitions.

Subpart B—Identification and Evaluation of Handicapped Children

45.11 Child find.
45.12 Child find—elements.
45.13 Register of children.
45.14 General entry screening.
45.15 Periodic school screening.
45.16 Screening personnel.
45.17 Screening results and referral.
45.18 Individual evaluations.
45.19 Evaluation procedures.
45.20 Individual evaluation objectives.
45.21 Formation of multi-desciplinary evaluation teams.
45.22 Composition of multi-disciplinary evaluation teams.
45.23 Content of individual evaluations.
45.24 Test administration.
45.25 Location of evaluation.
45.26 Multi-disciplinary evaluation team procedures.
45.27 Emergency evaluation and placement.
45.28 Independent educational evaluation.
45.29 Additional procedures for evaluating specific learning disabilities.

Subpart C—Provision of Special Education and Related Services

45.30 Free appropriate public education.
45.31 Individualized education program (IEP).
45.32 Content of individualized education program (IEP).
45.33 Individualized education program development.
45.34 Placement recommendation in the IEP.
45.35 Approval of IEP and placement recommendation.
Sec.
45.36 Parent participation
45.37 IEP implementation and placement.
45.38 IEP revision, review of placement.
45.39 Re-evaluation.
45.40 Extended school year services.
45.41 Outcome goals.
45.42 Related services.
45.43 Non-academic and extracurricular services.
45.44 Physical education and athletics.
45.45 Expulsion/suspension.
45.46 Geographic accessibility.
45.47 Architectural barriers and program accessibility.
45.48 Handicapped children in private schools placed or referred by agencies.
45.49 Handicapped children in private schools placed by parents.

Subpart D—Procedural Safeguards

45.51 Notice to parents.
45.52 Parental consent.
45.53 Rights of handicapped children.
45.54 Access rights.
45.55 Confidentiality of information.
45.56 Surrogate parents.
45.57 Conciliation/mediation.
45.58 Initiation of hearings.
45.59 Hearing officers.
45.60 Impartial hearing officer.
45.61 Hearing reports.
45.62 Timeliness and convenience of hearings and reviews.
45.63 Administrative appeal: impartial review.

Subpart E—Personnel

45.65 In-service training.
45.66 Qualifications of staff.

Subpart F—School Administration

45.70 Assurance of compliance.
45.71 Annual evaluation.
45.72 Comparability of facilities.
45.73 Non-discrimination.

Subpart G—Responsibilities of the Division

45.74 The Division.
45.75 Monitoring.
45.76 Complaint procedures.
45.77 Use of available funds.
45.78 Children for whom the Division of Social Services has accepted financial responsibility.
45.79 Cooperative agreements.
45.80 Bureau of Indian Affairs Advisory Committee for Exceptional Children.

Authority: 5 U.S.C. 301; 25 U.S.C. 2 and 9; 20 U.S.C. 1411–1420.

Subpart A—General

§ 45.1 General responsibility

(a) Schools are responsible for providing a free appropriate education to all handicapped Indian children enrolled in a school operated or funded by the Bureau of Indian Affairs (BIA) who are between the ages of five (5) and twenty-one (21). Children whose fifth birthday occurs on or before December 31 or whose twenty-second birthday occurs during the course of the regular school year shall be regarded as eligible children for the entire school year.

(b) The BIA has the responsibility to ensure the provision of a free appropriate education until a handicapped child successfully completes a secondary school program, voluntarily withdraws or attains the age of twenty-two (22) years, regardless of whether the handicapped child is provided special education and related services:

(1) By a school directly;

(2) Through a contract entered into by the school with a public or private agency;

(3) By an educational cooperative of which the school is a member; or

(4) By an approved public or non-public school program (following placement or referral).

§ 45.2 Provision of early childhood special education programs and services.

(a) Children from birth to four (4) years of age, who are not enrolled in BIA funded or operated schools, may receive special education services through coordination with Head Start and other existing Early Childhood Special Education programs (ECSE).

(b) Early Childhood Special Education (ECSE) means specially designed special education and related services, to meet the unique needs of a child under the age of five (5) years whose handicap or impairment adversely affects the child's educational performance or learning abilities.

§ 45.3 Children of ages eighteen through twenty-one.

A child of ages eighteen (18) through twenty-one (21) shall be entitled to all of the rights given to children and parents by this part.

§ 45.4 Full educational opportunity.

A full educational opportunity must be provided to all handicapped children, ages five (5) through twenty-one (21) who are enrolled in schools operated or funded by the BIA.

§ 45.5 Definitions.

(a) "Agency" means an organizational unit of the Bureau which provides direct services to the governing body or bodies of one or more specified Indian tribes. The term includes Bureau Area Education offices only with respect to off-reservation boarding schools, cooperative schools, and tribally operated contract schools located in the Area for which the Director has not designated an Agency.

(b) "Agency Superintendent for Education" means the Bureau official in charge of Bureau education programs and functions in an Agency, and who

reports to the Director, Office of Indian Education Programs (OIEP).

(c) "Approved public or non-public school" means:

(1) either a public school operated by an intermediate educational unit, a local education agency or other public agency (as those terms are defined in 34 CFR 300.7, 8, 11) of a State which receives funds under Part B of the Education of the Handicapped Act, as amended (20 U.S.C. 1411–1420) pursuant to a current annual program plan approved by the Secretary of Education; or

(2) a non-public school located in a State determined by the State educational agency to be in full compliance with all applicable State and Federal special education requirements.

(d) "Area Education Program Administrator" means the Bureau official in charge of Bureau Education programs and functions in a Bureau Area office and who reports to the Director.

(e) "Assistant Secretary" means the Assistant Secretary—Indian Affairs, Department of the Interior, or his/her designee.

(f) "Boarding school" means a Bureau school offering a residential center and support services as well as an academic program.

(g) "Bureau" means the Bureau of Indian Affairs of the Department of the Interior.

(h) "Child identification" means the identification, location, and individual evaluation of handicapped children.

(i) "Cooperative agreements" means an agreement between schools operated or funded by the BIA and state and local education agencies for the provision of special education and related services to handicapped children enrolled or eligible to be enrolled in the BIA school.

(j) "Counseling services" means services provided by qualified social workers (with training as counselors), psychologists, guidance counselors, or other qualified personnel.

(k) "Days" mean consecutive calendar days.

(l) "Director" means the Director, Office of Indian Education Programs.

(m) "The Division" means the Branch of Exceptional Education, Office of Indian Education Programs, Bureau of Indian Affairs, Department of the Interior.

(n) "EHA" means Part B of the Education of the Handicapped Act as amended by the Education for All Handicapped Children Act of 1975 (Pub. L. 94–142), 20 U.S.C. 1411–1420, and the regulations issued by the U.S. Department of Education, 34 CFR 300.1.

(o) "Handicapped child" means a child evaluated in accordance with the requirements of this Part who is determined to be mentally retarded, hard of hearing, deaf, deaf-blind, speech impaired, visually handicapped, seriously emotionally disturbed, multi-handicapped, orthopedically impaired, other health impaired or as having specific learning disabilities and who because of these impairments needs special education and related services. The terms used in this definition are defined as follows:

(1) "Deaf" means a hearing impairment which is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, which adversely affects educational performance.

(2) "Deaf-Blind" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children.

(3) "Hard of hearing" means a hearing impairment, whether permanent or fluctuating, which adversely affects a child's educational performance but which is not included under the definition of "deaf" in this section.

(4) "Mentally retarded" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.

(5) "Multi-handicapped" means concomitant impairments (such as mentally retarded-blind, mentally retarded-orthopedically impaired, etc., but not including speech impaired), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include deaf-blind children.

(6) "Orthopedically impaired" means a severe orthopedic impairment which adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (*e.g.*, clubfoot, absence of member, etc.), impairments caused by disease (*e.g.*, poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns which cause contractures).

(7) "Other health impaired" means (i) having an autistic condition which is manifested by severe communication and other developmental and educational problems; or (ii) having limited strength, vitality or alertness, due to chronic or acute health problems such as a heart condition, tuberculosis, rheumatic fever, nephritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, or diabetes, which adversely affects a child's educational performance.

(8) "Seriously emotionally disturbed" is defined as follows:

(i) The term means a condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, which adversely affects educational performance including:

(A) An inability to learn which cannot be explained by intellectual, sensory, or health factors;

(B) An inability to build or maintain satisfactory interpersonal relationships with peers and teachers;

(C) Inappropriate types of behavior or feelings under normal circumstances;

(D) A general pervasive mood of unhappiness or depression; or

(E) A tendency to develop physical symptoms or fears associated with personal or school problems.

(ii) The term includes children who are schizophrenic. The term does not include children who are socially maladjusted, unless it is determined that they are seriously emotionally disturbed.

(9) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell, or to do mathematical calculations. The term includes such conditions as perceptual handicaps, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor handicaps, or mental retardation, or emotional disturbance, or of environmental, cultural, or economic disadvantage.

(10) "Speech impaired" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.

(11) "Visually handicapped" means a visual impairment which even with correction, adversely affects a child's educational performance. The term includes both partially seeing and blind children.

(p) "Independent education evaluation" means an evaluation conducted by a qualified examiner who

is not employed by the Agency responsible for the education of the child in question.

(q) "Individualized Education Program" (IEP) means the written individualized education for a handicapped child which is consistent with all the requirements of § 45.31–38 of this part.

(r) "Indian" means a person who is a member of an Indian tribe.

(s) "Indian Tribe" means any Indian Tribe, Band, Nation, Rancheria, Pueblo, Colony or Community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688) which is recognized by the Secretary as eligible for the special programs and services provided through the Bureau to Indians because of their status as Indians.

(t) "Individual Intelligent Quotient (IQ) test" means any individual test, device, or measure which purports to assess a child's current mental abilities, capacity, intellectual functioning, intellectual development or aptitude, but does not include achievement test or adaptive behavior scales.

(u) "In-service training" means training other than that received by an individual in a full-time program which leads to a degree.

(v) "Least Restrictive Environment" (LRE) means that to the maximum extent appropriate, handicapped children in public or private institutions or other care facilities, are educated with children who are not handicapped; and that special classes, separate schooling or other removal of handicapped children from the regular environment occurs only when the nature or severity of the handicap is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

(w) "Native language" when used with reference to a person of limited English-speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two.

(x) "Parent" means a parent, a guardian, or person acting as a parent of a child, or a surrogate parent who has been appointed in accordance with § 45.56. The term "parent" is defined to include persons acting in the place of a parent, such as a grandmother or step-parent with whom a child lives, as well as persons who are legally responsible for a child's welfare.

(y) "Parental Consent" means: (1) that the parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication; (2) the parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records (if any) which will be released and to whom; and (3) the parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.

(z) "Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.

(aa) "Physical education" means the development of physical and motor fitness; fundamental motor skills and patterns; skills in aquatics, dance, individual, and group games and sports. The term includes special physical education, adaptive physical education, movement education and motor development.

(bb) "Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a handicapped child to benefit from special education and includes speech pathology and audiology, psychological services, physical and occupational therapy, recreation, early identification and assessment of disabilities in children, counseling services, and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training.

(cc) "School" means educational or residential centers operated by or under contract with the Bureau of Indian Affairs offering services to Indian students under the authority of a local school board and the direction of the school supervisor. A school may be located on more than one physical site. The term "school", unless otherwise specified, is meant to encompass day schools, boarding schools, cooperative schools, and contract schools as those terms are commonly used. The term "school" shall also encompass private schools, facilities, and institutions, with which the Bureau of Indian Affairs may contract for services to handicapped Indian children.

(dd) "Section 504" means section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794.

(ee) "Special education" means specially designed instruction, at no cost to the parent, to meet the unique needs of a handicapped child, including classroom instruction, instruction in physical education, home instruction, and instruction in hospitals and institutions.

(ff) "Special education coordinator" means the qualified employee of an Area/Agency responsible for ensuring that all requirements of this part are complied with by the schools within the jurisdiction of the Area/Agency.

(gg) "Supervisor" or "school supervisor" means the individual in the position of authority at any school.

(hh) "Tribally operated contract school" means a school (other than a public school) which is financially assisted under a contract with the Bureau.

(ii) "Vocational education" means organized educational programs which are directly related to the preparations of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree.

Subpart B—Identification and Evaluation of Handicapped Children

§ 45.11 Child find.

Each Agency must insure that every child within its jurisdiction between the ages of birth and twenty-two years who is suspected of being handicapped and in need of special education and related services is identified and located. A formal child find effort must be conducted at least once each school year and must include procedures to identify children:

(a) Enrolled in a regular education program operated by the schools of the Agency;

(b) Enrolled in a pre-school or day-care program on or near the reservation; or

(c) Currently out-of-school, including dropouts but excluding children who have graduated or otherwise successfully completed programs. Schools shall conduct child find activities for in-school identification as described in § 45.12.

§ 45.12 Child find—elements.

Each Agency shall:

(a) Conduct a *formal community* survey through any effective method to identify children of all ages who may be in need of special education and related services.

(b) Regularly present or distribute child find information at tribal

government or agency meetings, tribal fairs, chapter/district meetings, etc.

(c) Establish a system of in-school identification by which each local school supervisor or designee refers children whose academic performance, attendance, or other behavior indicates the possibility of a handicapping condition for an individual evaluation.

(d) Establish a procedure by which child identification data is regularly collected from the Indian Health Service, local Headstart programs, day care facilities, group homes, local public and non-public schools, the state education agency (of the state in which the Agency is located), tribal agencies and/or organizations and any other appropriate education, health, welfare or social service organization in the community served by the Agency. A formal procedure for the exchange of information between the State Organizational Unit conducting the "Early Periodic Screening, Diagnosis and Treatment Program" (mandated by Title XIX of the Social Security Act) for the state in which the school is located and the Agency in which the school is located shall be established within 180 days from the effective date of this part.

(e) Publish public information articles and programs in local media, including announcements of times, dates, and places of free orientation workshops and free screening.

(f) Initiate annual community-wide communication to all parents of school age children which describes the special education program. Such communication shall emphasize the availability of programs and services for school age children.

§ 45.13 Register of children.

Each school shall maintain information on each handicapped child enrolled in the program. All information collected and maintained must be kept in accordance with the confidentiality requirements of Pub. L. 94–142 and the Privacy Act.

§ 45.14 General entry screening.

Each school shall participate in a screening program for all *newly* enrolled children and children who have not previously been screened in the school. Such screening shall be conducted by the school in order to identify those children who should be referred for a full individual evaluation. The general entry screening shall consist of the following elements, appropriately adapted for use with children of his/her particular age. This screening must be completed within thirty (30) days of the child's enrollment and include at a minimum:

(a) An appropriate vision screening;

(b) An appropriate hearing screening;

(c) A screening of the child's primary language skills;

(d) The administration by a classroom teacher of a general screening instrument (i.e., rating scale) to provide information regarding:

(1) Current academic performances,

(2) Social and emotional behavior,

(3) Gross motor skills,

(4) Fine motor skills,

(5) Any observable health problems, and

(6) The teachers impression of the need for additional assessment.

§ 45.15 Periodic school screening

(a) At a minimum, schools must annually screen all students enrolled in odd numbered grades (i.e., first, third, fifth, seventh, ninth and eleventh grades) within the first thirty (30) days of enrollment.

(b) For schools using a non-graded system, the screening must occur every other year, beginning with the first level of enrollment at the school. The periodic school screening must meet the requirements set forth in § 45.14. Nothing in this part exempts newly enrolled students in even numbered grades, kindergarten, or pre-school from being screened as required in § 45.14.

§ 45.16 Screening personnel.

The school shall utilize personnel who are trained to do the specific screening which is being performed.

§ 45.17 Screening results and referrals.

The school supervisor or designee shall review all results obtained through the screening procedures indicated in § 45.14–15 with the classroom teacher as a team within ten (10) days of completion of this screening and determine if an individual evaluation is warranted.

(a) Upon the determination that an individual evaluation is needed, the school supervisor or designee shall within twenty (20) days complete the following:

(1) Inform the parents of the screening results and the recommendations of the team.

(2) Explain parental rights as required in § 45.51 to the parents.

(3) Obtain parental consent to perform an individual evaluation.

(4) When parental consent for an individual evaluation is obtained a formal referral must be prepared according to procedures established by the Agency Special Education Coordinator in consultation with the school supervisor. The referral shall be fowarded to the appropriate personnel for action.

(b) Should parental consent be denied, possible alternatives to formal evaluation such as modifications to the regular classroom program must be considered and discussed with the parent and classroom teacher prior to implementing due process procedures as provided in § 45.58. The discussion required in this part must be held within five (5) days of formal denial of consent and any modifications agreed upon must be implemented within thirty (30) days. If no agreement can be reached through these "conciliation" measures the due process procedures in § 45.58 should be considered.

(c) Nothing in this part is to be interpreted as prohibiting the child's parent, teacher or school administrator from referring a child for an individual evaluation should they feel that an evaluation is needed regardless of the screening cycle.

(d) Screening scales completed on children must be kept in the child's cumulative file until the succeeding scale is completed. If a child is placed in a Special Education Program, the screening results will then become a part of the child's handling file. The child, once placed, will become exempt from the screening procedures conducted thereafter.

§ 45.18 Individual evaluations.

(a) An individual evaluation must be conducted after receiving parental consent when:

(1) The child is referred based on the screening results, or

(2) Requested by the parent, teacher or administrator in writing.

(b) A student must be re-evaluated when:

(1) A disagreement occurs between the school and parent regarding a change of placement from one program to another (i.e., full-time special education to regular classroom, part-time special education to regular classroom, etc.),

(2) A change is proposed for the identification of a student's handicapping condition to a different condition (i.e., seriously emotionally disturbed to specific learning disabled, mentally retarded to specific learning disability, etc.),

(3) A child is currently enrolled in a special education program and the last evaluation was administered three years ago, or

(4) Requested by the parent.

§ 45.19 Evaluation procedures.

Procedures for selecting testing and evaluation materials and procedures developed for the purpose of evaluation and placement of handicapped children will not be racially or culturally discriminatory. Materials or procedures shall be provided and administered in the child's native (primary) language or mode of communication unless it is clearly not feasible to do so. No single procedure shall be the sole criterion for determining an appropriate educational program for a child. Assessment instruments should be selected on a child-by-child basis. Assessments must be reported in such a manner as to indicate present levels of the child's performance, to determine the need for special education and related services. Based on the individual needs of the child, additional specialized assessments may be required.

Assessment reports should contain a summary of the diagnosis and specific educational recommendations for remediation. Assessment of a handicapped child will be multi-disciplinary, in order to provide a comprehensive view of the child from the perspective of the school, home, and community.

(a) For the purposes of non-discriminatory testing and evaluation practices, the following shall apply:

(1) Assessment instruments shall be appropriately adapted when used with children of impaired sensory, physical, or speaking skills and such adaptation shall consider each child's age and socio-economic and cultural background.

(2) Specialists implementing evaluation procedures must be familiar with local, cultural, language, and social patterns and practices.

(3) Interpretors, in the native language and/or sign language may be used throughout all phases of the evaluation.

(4) Communication with parents and the child shall be in the native language of the home (through the use of an interpretor) unless the English language is well understood by the parents, guardians, or child.

(5) Local community norms shall be considered when norm referenced tests are used.

(6) Criterion referenced instruments should be used.

(7) Developmental checklist(s) should be used where appropriate.

(8) Instruments shall be administered only by trained personnel and according to the producer's instructions.

(9) Instruments shall assess specific abilities, not merely produce a single IQ score.

(10) No one result shall determine placement.

(b) Assessment instruments should be adapted in accordance with the producers instructions to meet the individual needs of the child being evaluated. This requires that:

(1) Instruments be adapted according to age, socioeconomic, and cultural background of each child before or during a child's evaluation.

(2) Instruments be adapted for children with perceptual problems either before or during an evaluation.

(c) Evaluation shall be conducted in educationally related areas to verify a child's suspected need for special education. Evaluations shall be accomplished through coordination with the school supervisor and the Agency Special Education Coordinator when appropriate.

(d) An assessment by a psychologist shall be provided when appropriate to the child's needs. Such assessment may include:

(1) An individually appropriate psychological examination culminating in specific recommendations, based upon the child's developmental and social history.

(2) Observation of the child in familiar surroundings, such as a classroom or home.

(3) Inventory of sensory, motor, language, perceptual, attentional, cognitive, affective, attitudinal, self-image, interpersonal, behavioral, interest and vocational factors, in regard to the child's maturity, integrity and interaction with the educational and/or home context.

(e) An assessment by a nurse, social worker, or a counselor shall be provided when appropriate for the child. Such assessment of pertinent family history and home situation factors shall include:

(1) A description of pertinent family history and individual developmental history and estimates of adaptive behavior at home in the neighborhood and in local peer groups.

(2) Estimates of adaptive behavior shall be based to the greatest possible degree on information obtained by direct observation or interview of the child and/or parent in the neighborhood setting.

(f) Each qualified specialist providing an assessment component shall give the child a professionally sound, complete and suitable individualized examination or assessment in the context of the child's physical, developmental, social and educational history and current circumstances.

(g) Individual evaluations shall be conducted on a child unless there are written and documented reasons determined on an individual basis, for waiving evaluations. Acceptable reasons may include but are not limited to circumstances where:

(1) The parents refuse to permit an evaluation.

(2) The parents arrange for an equivalent evaluation of their child by a qualified professional.

(3) An equivalent evaluation has been completed within the past three (3) years.

§ 45.20 Individual evaluation objectives.

The objectives of an individual evaluation are to:

(a) Determine where a child is handicapped;

(b) Diagnose and evaluate the nature and extent of the effect of such impairment or condition on the educational performance of the child; and

(c) Assess the need for special education and related services and to recommend intervention strategies.

§ 45.21 Formation of multi-disciplinary evaluation teams.

(a) The school supervisor will be responsible for the overall conduct of the individual evaluation and shall collect and review all pertinent information regarding the child to be evaluated.

(b) The Special Education Coordinator shall coordinate through the school supervisor, the selection of a multi-disciplinary evaluation team for the conduct of the evaluation.

§ 45.22 Composition of Multi-disciplinary evaluation teams.

The multi-disciplinary evaluation team shall be composed of qualified persons appropriate to complete an assessment of the suspected disability. In all cases the classroom teacher (or other instructional staff member) familiar with the child and a person knowledgeable with respect to the suspected disability must be included on the team.

§ 45.23 Content of individual evaluations.

Each individual evaluation must include:

(a) An assessment of the child's educational status which includes:

(1) A history of the child's prior evaluations.

(2) A statement of the child's attendance pattern to include schools attended and average daily attendance in prior years.

(3) An educational history including:

(i) The child's academic grades.

(ii) The child's achievement and aptitude test scores and a statement of

the child's current academic standing or school readiness.

(iii) Previous educational strategies used to remediate the child's educational need.

(iv) A statement of the child's social relations with groups, peers, and adults based on classroom and teacher observations.

(v) A description of the child's academic strengths that promote learning.

(vi) A description of the child's physical limitations and behavior that inhibit learning.

(vii) A statement of the child's attentional capacity and communication skills.

(b) A health assessment which includes:

(1) Present and past medical review.

(2) Physical examination.

(3) Current existing medical conditions and prescribed treatment(s).

(c) An assessment by a psychologist, including an individual psychological examination culminating in specific recommendations, as contained in § 45.19.

(d) Children who have a speech impairment as their primary handicap may not need a complete battery of assessments (e.g., psychological, physical, or adaptive behavior). However, a qualified speech-language pathologist will:

(1) Evaluate each speech impaired child using procedures that are appropriate for the diagnosis and appraisal of speech and language disorders, and

(2) Where necessary, make referrals for additional assessments needed to make an appropriate placement decision. For example, if a child is suspected of being seriously emotionally disturbed, the child should be evaluated by either a clinical psychologist or a psychiatrist.

§ 45.24 Test administration.

Agencies shall insure, at a minimum, that:

(a) Tests and other evaluation materials:

(1) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so;

(2) Have been validated for the specific purpose for which they are used; and

(3) Are administered by trained personnel in conformance with the instructions provided by their producer;

(b) Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient;

(c) Tests are selected and administered so as best to ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure);

(d) No single procedure is used as the sole criterion for determining an appropriate educational program for a child;

(e) The child is assessed in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities;

(f) Tests, to the greatest extent possible, are free from racial, cultural and sexual bias; and

(g) Determinations of mental retardation are based on an assessment of a variety of factors including adaptive behavior and past and current development activities (e.g., indices or manifestations of social, intellectual, adaptive, verbal, motor, language, emotional and self-care development for age).

§ 45.25 Location of evaluation.

(a) The evaluation shall take place in the school or at another facility which is jointly approved by the child's parents and school officials.

(b) When a child has been referred for an evaluation and, at the time of such referral, such child is in a hospital or is otherwise living away from home, the Agency shall make appropriate arrangements for the provision of the evaluation.

§ 45.26 Multi-disciplinary evaluation team procedures.

(a) Each individual evaluation must be completed, with full attention to its comprehensiveness and thoroughness, within thirty days from the date of written parental consent. An extension of time of thirty additional days may be approved in writing by the Agency Superintendent for Education after written documentation by the school that unusual circumstances exist preventing completion of the individual evaluation in the specified time. No more than one extension may be approved in connection with a single individual evaluation unless approved in writing by the Director, or designee.

(b) The comprehensive assessment must reflect a compilation of information drawn from different assessment sources. The depth of the assessment in each area will vary based on the initial review of screening information conducted by the school supervisor.

(c) The Special Education Coordinator is responsible for ensuring that full and complete records of information collected or generated in connection with an individual evaluation are maintained. A report setting forth a full written explanation of the findings and the recommendations made by the multi-disciplinary evaluation team must be prepared. The report must include:

(1) A description of the child's present level of functioning;

(2) A description of the needs of the child in rank order of importance;

(3) A recommendation of the types of services which should be provided for each listed need;

(4) A written summary of the procedures employed, the results, and the diagnostic impression;

(5) A proposed date for the review of the child's progress prior to the review required in § 45.38, if such assessment so indicates; and

(6) Criteria by which at that time, the effectiveness of the child's program may be determined.

(d) Each member of the multi-disciplinary evaluation team shall certify in writing whether the report prepared by the team reflects his or her conclusions, and if not, shall submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evaluation.

(e) Members of the multi-disciplinary evaluation teams must be responsible for all aspects of the individual evaluation including: the selection; administration and interpretation of evaluation materials; the collection of all appropriate social and cultural background and adaptive behavior information related to each evaluation; and the confidentiality of information collected during the individual evaluation.

§ 45.27 Emergency evaluation and placement.

(a) Where a child demonstrates documented instances of dangerously assaultive or self-abusive behavior, the school supervisor may approve a temporary change in placement (i.e., to a special education setting other than the regular classroom) on an emergency

basis. The school supervisor shall immediately notify the Special Education Coordinator of the placement. The Agency shall no later than the following day determine the appropriateness of the placement and initiate the evaluation process.

(b) The parent shall be informed immediately of the child's behavior and shall participate (if possible within the constraints of time) in the emergency placement decision and consent for evaluation will be obtained.

(c) An individual evaluation must be completed within fifteen days of the emergency placement. Procedures as outlined in § 45.23 must be followed. A final placement determination, made by the IEP committee, must be made within five (5) days following completion of the individual evaluation.

§ 45.28 Independent educational evaluation.

(a) The parents of a handicapped child have the right under this part to obtain an independent educational evaluation of the child, subject to paragraphs (b) through (e) of this section. Each school/Agency shall provide to parents, on request, information about where an independent educational evaluation may be obtained.

(b) A parent has the right to an independent education evaluation at public expense if the parent disagrees with an evaluation obtained by the school or Agency. However, the school or Agency may initiate a hearing in accordance with the procedures of this part to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate, the parent still has the right to an independent educational evaluation, but not at school expense.

(c) If the parent obtains an independent educational evaluation at private expense, the results of the evaluation:

(1) Must be considered by the school in any decision made with respect to the provision of a free appropriate public education to the child; and

(2) May be presented as evidence at a hearing regarding that child.

(d) If a hearing officer requests an independent educational evaluation as part of a hearing, the cost of the evaluation must be at school or Agency expense.

(e) Whenever an independent evaluation is at school or Agency expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the school or Agency uses when it initiates an evaluation.

§ 45.29 Additional procedures for evaluating specific learning disabilities.

(a) In evaluating a child suspected of having a specific learning disability, in addition to the requirements of § 45.22, each Agency shall include on the multi-disciplinary evaluation team:

(1) The child's regular teacher; or

(2) If the child does not have a regular teacher, a regular classroom teacher qualified to teach a child of his or her age; or

(3) For a child of less than school age, an individual qualified to teach a child of his or her age; and

(4) At least one person qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher.

(b) At least one team member other than the child's regular teacher shall observe the child's academic performance in the regular classroom setting. (In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child of that age.)

(c) The team may determine that a child has a specific learning disability if:

(1) The child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph (c)(2) of this section, when provided with learning experiences appropriate for the child's age and ability levels; and

(2) The team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas:

(i) Oral expression;

(ii) Listening comprehension;

(iii) Written expression;

(iv) Basic reading skill;

(v) Reading comprehension;

(vi) Mathematics calculation; or

(vii) Mathematics reasoning.

(d) The multi-disciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of:

(1) A visual, hearing, or motor handicap;

(2) Mental retardation;

(3) Emotional disturbance; or

(4) Environmental, cultural or economic disadvantage.

(e) The multi-disciplinary team shall prepare a written report of the results of the evaluation. The report must include a statement of:

(1) Whether the child has a specific learning disability;

(2) The basis for making the determination;

(3) The relevant behavior noted during the observation of the child;

(4) The relationship of that behavior to the child's academic functioning;

(5) The educationally relevant medical findings, if any;

(6) Whether there is a severe discrepancy between achievement and ability which is not correctable without special education and related services; and

(7) The determination of the team concerning the effects of environmental, cultural, or economic disadvantage.

(f) Each team member shall certify in writing whether the report reflects his or her conclusion. If it does not reflect his or her conclusion, the team member must submit a separate statement presenting his or her conclusions. The report must be prepared no later than fifteen (15) days after completion of the evalution.

Subpart C—Provision of Special Education and Related Services

§ 45.30 Free appropriate public education.

(a) Each BIA funded or operated school must ensure that a free appropriate public education is provided to every handicapped Indian child enrolled in the school between the ages of five (5) and twenty-one (21) years.

(b) An appropriate education is one which meets the needs of a handicapped child as set forth in the individual education program in the least restrictive educational setting. An appropriate education involves the provision of regular education, special education and related aids or services and may include pre-school, elementary school, or secondary school education.

(c) The provision of a free education is the provision of educational and related services without cost to the child (or parents), *except* for those fees that are imposed on a non-handicapped child, and may consist of the provision of free services or the payment of the costs of the program. Transportation must be provided in order to assure access of persons to services.

§ 45.31 Individualized education program (IEP).

If, as a result of the determination of a multi-disciplinary team, a child is diagnosed as being handicapped and in need of special education and related services, schools are required to develop an IEP within thirty (30) days from the date of receipt of the written individual evaluation report. The IEP shall set forth the approach which will be taken to

ensure that the child will be provided a free, appropriate education.

§ 45.32 Content of individualized education program (IEP).

At a minimum, the IEP must contain:

(a) A statement of the child's present levels of educational performance;

(b) A statement of annual goals, including short term instructional objectives;

(c) A statement of the specific special education and related services to be provided to the child, and the extent to which the child will be able to participate in regular education progams;

(d) The projected dates for initiation of services and the anticipated duration of the services;

(e) Appropriate objective criteria and evaluation procedures and schedules for determining, on at least an annual basis, whether the short term instructional objectives are being achieved;

(f) A description of the nature and duration of physical education services to be provided to the child; and

(g) A statement that all services recommended by the multi-disciplinary team are being provided, or if all recommended services are not provided, a justification for the exclusion of the services.

§ 45.33 Individualized education program (IEP) development.

(a) Overall responsibility for the development of each IEP rests with the school supervisor.

(b) The IEP shall be developed by a committee which shall hold at least one meeting and includes among its members the following:

(1) The School Supervisor, or designee (who shall chair the committee) other than the child's teacher, who is qualified to provide or supervise the provision of special education;

(2) The child's teacher and/or other relevant instructional staff;

(3) One or both of the child's parents;

(4) The child, where appropriate; and

(5) Other individuals at the discretion of the parent, Agency, or school.

(c) For a handicapped child who has been evaluated for the first time, the Agency shall insure:

(1) That a member of the evaluation team participates in the meeting; or

(2) That the representative of the school, the child's teacher, or some other person is present at the meeting, who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation.

(d) Upon receiving written application from the school, the Agency Superintendent for Education may allow the school to postpone the development of an initial IEP to the beginning of a new school year, if the written evaluation report is completed within fifteen (15) days of the end of the current school year and, if the Agency Superintendent for Education determines that an IEP need not be implemented during the summer.

(e) Schools must prepare a progress report related to the instructional objectives specified in the IEP for each handicapped child and must include it with, or in lieu of the grading report prepared by the school for all elementary and secondary students.

§ 45.34 Placement recommendation in the IEP.

(a) Placement recommendations shall be made by the School Supervisor or designee in concert with the IEP committee and shall be incorporated in the IEP.

(b) The appropriate placement must be selected from the following:

(1) The regular classroom;

(2) The regular classroom with consultation;

(3) The regular classroom with resource teacher;

(4) The regular classroom with itinerant resource teacher;

(5) The regular classroom in conjunction with a resource room;

(6) A self-contained special classroom with part-time instruction in regular class;

(7) A self-contained special class (regular campus);

(8) A self-contained special class in a special day facility;

(9) Homebound instruction; and

(10) Instruction in hospitals and residential facilities.

(c) Schools may not decline to propose placement for a child or recommend to parents that a child be enrolled "voluntarily" in a non-BIA operated/funded school program. In selecting from the continuum of alternative settings, no handicapped child may be proposed for placement in any alternative settings unless it can be demonstrated that the nature or severity of the child's disability is such that education in regular class (in the school the child attends if not handicapped) with the use of supplementary aids and services cannot be achieved satisfactorily. Each school must insure that a continuum of alternative placements which meets the particular needs of each enrolled handicapped child is available.

(d) Placement of a handicapped child in a boarding school operated by the Bureau which concurrently enrolls non-handicapped children of the same age and grade shall be considered a placement in a regular school campus.

(e) Alternative placements may be provided directly by the school, or through cooperative arrangements with local and state education agencies or, except as provided in paragraph (h) of this section, through contractual arrangements with approved non-public schools, agencies or institutions.

(f) Alternative (9), homebound instruction may be selected only when the handicapped child:

(1) Currently possesses a physical impairment or illness which directly (or because of treatment required) precludes the movement of the child from a hospital or home environment to the general education environment; or

(2) Has been determined (after an individual evaluation) to require a program of continuous mental health care and treatment which would be seriously disrupted by movement to the general educational environment. The proposed homebound instruction should permit the return of the child to the general education environment at a specified date. The Agency Superintendent for Education must be immediately notified in writing of each homebound placement made by the school.

(g) Alternative placement (10) may be selected only when the health or safety of the child precludes the child's attendance at a nearby school for special education services.

(h) Alternative placements (1)–(8) may not be provided through contractual arrangements with approved non-BIA operated/funded schools, Agencies or institutions if there are a sufficient number of handicapped children with similar educational needs who live within the attendance area served by the school to justify the allocation of one teacher.

(i) Handicapped individuals who do not meet the age requirements of the Bureau may be served by the local school, provided they are not counted for ISEP formula funding, with the approval of the local school board and the Agency Superintendent for Education, and so long as such placement does not dilute the quality and/or quantity of services provided to eligible handicapped students.

(j) If the multi-disciplinary team determines that a residential placement for a child is appropriate they should notify the Agency Special Education Coordinator in writing. Upon receipt of such notice, the Special Education Coordinator, with the approval of the Agency Superintendent for Education,

will consult with the Education Specialist for institutional placement to determine that the placement is in compliance with Federal laws regarding the education of handicapped children.

§ 45.35 Approval of IEP and placement recommendation.

(a) The school must attempt to schedule a meeting which includes the school supervisor or designee, the child's parent(s), and the receiving teacher and others as identified in § 45.33.

(b) The parent(s) of the child must be provided full and effective written notice of the meeting and all reasonable efforts must be made by the school supervisor to ensure parental participation. The written notice to parents shall also contain the following information:

(1) A statement that the evaluation has been completed and that the parents have the right to meet with the School Supervisor, the Special Education Coordinator or any member of the IEP committee to discuss and plan the IEP.

(2) A statement that all papers relevant to the evaluation, including the actual written assessments, are available for inspection by the parents or a designated representative of the parents;

(3) A statement that the parent has a right to an independent evaluation as provided in § 45.28;

(4) A statement of the parent's options under paragraph (c) of this section and a form for indicating the option selected by the parent; and

(5) A statement explaining the consequences of the parent's rejection of the proposed IEP under the due process procedures established by § 45.58.

(c) The parent of a child, upon receipt of full and effective notice, may exercise any of the following options (by giving written notice to the school):

(1) To accept or reject a written evaluation finding that the child does not need special education;

(2) To accept or reject the IEP. A parent may accept an IEP in whole or in part and the school shall immediately implement the mutually accepted elements of the IEP;

(3) To accept a modified IEP that has been mutually agreed upon with the School Supervisor or designee following the meeting described in paragraph (a) of this section; or

(4) To postpone a decision on the IEP until the completion of an independent evaluation; and

(5) To obtain an independent evaluation of their child.

(d) This meeting may be the first and only full meeting of the IEP committee. The meeting must include a thorough discussion of the results of the child's individual evaluation, the child's proposed IEP and the child's proposed educational placement. The school supervisor or designee should take whatever action is necessary to insure that the parents understand the proposed IEP and the proposed educational placement before requesting consent for placement. At the close of the final meeting, each member of the committee shall sign the completed IEP to signify their participation and agreement with the educational plan.

§ 45.36 Parent participation.

(a) Each school shall take steps to encourage that one or both of the parents of the handicapped child are present at each meeting including:

(1) Try to schedule the meeting at a mutually agreed upon time and place.

(2) Notifying parents of the meeting early enough to insure that they will have an opportunity to attend.

(b) The notice under paragraph (a)(2) of this section must indicate the purpose, time, and location of the meeting, and who will be in attendance.

(c) If neither parent can attend, the school shall use other methods to insure parent participation, including individual or conference telephone calls.

(d) A meeting may be conducted without a parent in attendance if the school is unable to convince the parents that they should attend. In this case the school must have a record of its attempts to arrange a mutually agreed on time and place such as:

(1) Detailed records of telephone calls made or attempted and the results of those calls;

(2) Copies of correspondence sent to the parents and any responses received; and

(3) Detailed records of visits made to the parent's home or place of employment and the results of those visits.

(e) The school shall take whatever action is necessary to insure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English.

(f) The school shall give the parent a copy of the IEP.

§ 45.37 IEP implementation and placement.

(a) For newly identified children, the IEP must be implemented and educational placement must be made:

(1) Within thirty (30) days after the written parental approval of the placement has been received; or

(2) In cases involving due process, placement will be made within thirty (30) days of the final written decision of the hearing officer, unless an appeal is filed by the aggrieved party.

(b) If the school cannot, within thirty (30) days, provide any or all of the services called for in the IEP the School Supervisor must consult the Agency Superintendent for Education on alternate means of providing the services to fully implement the IEP. The Agency Superintendent for Education must make provision for the service within fourteen (14) days of the consultation.

§ 45.38 IEP revision, review of placement.

Consistent with the requirements of § 45.37, the IEP must be reviewed and updated annually. The review and revision of the IEP must be completed no later than the first day of school of the next full term. Whenever possible, the review shall be scheduled near the time that there may be a change in the personnel providing the major services to the child under the IEP, as when the child is to move from one grade or school to another. The review shall be conducted as follows:

(a) The school supervisor, the parents, and the person(s) providing the major services to the child under the IEP shall meet and make a careful review of the child's progress based upon the progress reports submitted by the school during the grading period, and the observations of those working with the child.

(b) The School Supervisor shall invite (in writing) the child's parents and, where appropriate, the child, to attend and participate in the review meeting. The School Supervisor or the parents may, at their discretion, invite other person(s) who have worked with, are working with, or will be working with the child to attend the review meeting.

(c) The participants in the review meeting shall determine:

(1) Whether the child has achieved the goals set forth in the IEP;

(2) Whether the child has met the criteria which indicate readiness to enter a less restrictive program;

(3) Whether the program the child is in should be specifically modified to make it more suitable to the child's needs; and

(4) Whether it is desirable to refer the child for an individual re-evaluation.

(d) The participants in the review meeting shall review the current IEP and revise it as appropriate in accordance with § 45.34. If a re-evaluation of the child is scheduled in accordance with § 45.39, the revision of the new IEP shall be deferred until completion of the re-evaluation. If the parent is unable to

attend the review meeting, the school shall provide the parent with copies of all relevant documents within five (5) days after the review meeting has been completed.

(e) During the annual review, the description of current educational performance in the IEP must be updated and the overall educational needs, long-term educational goals, short-term objectives, and related services modifications made. Schools are required to rewrite sections of the IEP only to the extent necessary to update or modify the plan.

§ 45.39 Re-evaluation.

Parental approval is not required for the conduct of a re-evaluation if the child has been initially placed and his/her individualized education program has been reviewed following the requirements of this part. Notice of the conduct of the re-evaluation must be provided to the parent prior to re-evaluation. A written summary of the re-evaluation must be provided to the parents within five (5) days of the scheduled review meeting. A child *must* be re-evaluated at least every three (3) years.

§ 45.40 Extended school year services.

(a) The IEP may provide for continuous instruction (uninterrupted by the regular summer recess) whenever:

(1) Continuous instruction is likely to be necessary in order to sustain, with only minor regression, current important educational skills and information retention; or

(2) The child lives in a residential facility or institution.

(b) The extension of an IEP for a ten (10) to twelve (12) month instructional program shall not result in a more restrictive change in placement on the continuum of alternative placements nor shall it constitute a basis for any deviation from any other educational placement requirement of § 45.34 of this part. However, the increased isolation of handicapped children which could result from the operation of an instructional program for handicapped children during a period of time when non-handicapped children are not attending school would not violate any requirements of this part.

§ 45.41 Outcome goals.

IEP's for children over the age of fifteen (15) years may contain, as appropriate, either a description of regular and/or special education instructional services leading to the attainment of a regular high school diploma before the age of twenty-two *or* a program of regular or special vocational education leading to participation in a work-experience (or sheltered employment) program and the attainment of an appropriate level of vocational proficiency to permit, whenever possible, the child's entry into competitive employment upon or before reaching the age of twenty-two.

§ 45.42 Related services.

The school must ensure that each handicapped child has developmental, corrective and other supportive services (to the maximum extent feasible) to benefit from special education.

§ 45.43 Non-academic and extracurricular services.

(a) Non-academic and extracurricular services and activities must be offered in a way which allows equal opportunity for handicapped children to participate in services and activities.

(b) Non-academic and extracurricular services, meals and recess periods must be provided in the most integrated setting appropriate to the needs of the child.

§ 45.44 Physical education and athletics.

(a) Handicapped children must be provided an equal opportunity for participation in physical education courses and inter-scholastic, club or intramural athletics sponsored by the school.

(b) Physical education services must be provided to handicapped children in the regular physical education program and may not be different from those provided other children, unless:

(1) The child is enrolled full time in a separate facility or needs specially designed physical education; and

(2) A separate physical education setting is the least restrictive environment.

§ 45.45 Expulsion/suspension.

A handicapped child may not be expelled or suspended from school if the behavior for which action is being taken is related to the child's disability. If the child's behavior is so disruptive that the education of others is impaired, a review of the child's IEP and placement as described in § 45.38 of this Part must be undertaken in order to meet the needs of the child.

§ 45.46 Geographic accessibility.

Consistent with the requirements of the IEP, the educational placement of a child must be as close to the child's home as possible. The placement of a handicapped child in an off-reservation boarding school operated by the Bureau *shall not* be regarded as inconsistent with this requirement to the extent that similarly situated non-handicapped students are also placed in such a school.

§ 45.47 Architectural barriers and program accessibility.

(a) Facilities used by schools, directly, or through contractual arrangement, must be accessible to and usable by handicapped children. The accessibility standards of the American National Standards Institute (ANSI A117.1–1961 (R 1971)) shall be followed. Schools located in isolated locations may make application to the Director for an annual waiver of any standard. Such a request must be based on documented inability to meet the standards. In no event may architectural barriers prevent a handicapped child from being educated in the least restrictive educational environment as defined in § 45.34.

(b) Program accessibility (*i.e.*, where each program or activity, when viewed in its entirety, is readily accessible to handicapped children) must be ensured in all existing facilities.

(c) Program accessibility may be accomplished through the following methods:

(1) Redesign of equipment;

(2) Reassignment of classes or other services to accessible building;

(3) Assignment of aides to children;

(4) Home visits;

(5) Alteration of existing facilities; or

(6) Other methods.

(d) The method for accomplishing program accessibility which offers programs and activities to children in the least restrictive environment.

§ 45.48 Handicapped children in private schools placed or referred by Agencies.

Requirements of this section apply to handicapped children who are or have been placed in or referred to a private school or facility by an Agency as a means of providing special education and related services.

(a) Each Agency shall insure that a handicapped child who is placed in or referred to a private school or facility is:

(1) Provided special education and related services in conformance with an IEP which meets the requirements under § 45.30–§ 45.38 at no cost to the parents; and

(2) At a school or facility which meets the standards that apply to the Agencies (including the requirements in this part).

(b) In implementing the requirements of this part the Agency shall:

(1) Monitor compliance through procedures such as written reports, on-site visits, and parent questionnaires;

(2) Disseminate copies of applicable standards to each private school and

facility to which an Agency has referred or placed a handicapped child;

(3) Provide an opportunity for those private schools and facilities to participate in the development and revision of BIA standards which apply to them; and

(c) Assure that handicapped children have all of the rights of a non-handicapped child.

§ 45.49 Handicapped children in private schools placed by parents.

(a) If a handicapped child has available a free appropriate public education and the parents choose to place the child in a private school or facility, the Agency is not required by this part to pay for the child's education at the private school or facility.

(b) Disagreements between a parent and a public agency regarding the availability of a program appropriate for the child, and the question of financial responsibility, are subject to the due process procedures under § 45.57–§ 45.63.

Subpart D—Procedural Safeguards

§ 45.51 Notice to parents.

(a) Written notice must be given to the parents of a handicapped child a reasonable time before the school:

(1) Proposes to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child, or

(2) Refuses to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child.

(b) The notice described under paragraph (a) of this section must include:

(1) A full explanation of all the procedural safeguards available to the parents including confidentiality requirements;

(2) A description of the proposed (or refused) action, explaining the reasons for such action and describing any options which were considered and rejected;

(3) A description of each evaluation procedure, test, record or report used as a basis for the action and any other relevant factors;

(4) The name(s) of the employee(s) of the school who may be contacted for further information;

(5) Language understandable to the general public, provided in the language of the parent or other mode of communication used by the parent(s) unless clearly not feasible.

(c) The notice must be communicated orally (where necessary) in the primary language or other mode of communication to insure that the parent understands the content.

(d) If an interpreter is used as part of the procedure for providing full and effective notice, the school must maintain a written statement, signed by the interpreter, to the effect that the parent understood the content of the matter presented.

§ 45.52 Parental consent.

(a) Parental consent must be obtained before:

(1) Conducting a preplacement evaluation; and

(2) Initial placement of a handicapped child in a program providing special education and related services.

(b) Parental consent must also be obtained before personally identifiable information is:

(1) Disclosed to anyone other than officials of participating agencies collecting or using the information consistant with the dislosure provisions of the Privacy Act of 1974, as amended;

(2) Used for any purpose other than meeting a requirement under this part; or

(3) Used for purposes other than those previously specified to the parent.

§ 45.53 Rights of handicapped children.

Handicapped children shall have the right to:

(a) Non-discrimination on the basis of being handicapped;

(b) A free appropriate education;

(c) An independent educational evaluation as provided in this part, and careful consideration of the results of an independent evaluation with respect to the provision of a free appropriate education;

(d) Be accompanied and represented by persons of his/her choice at any meeting or conference required or permitted by this part;

(e) Inspect and review all relevant records with respect to the identification, evaluation and placement of the child and the provisions of a free appropriate education;

(f) A hearing on any action for which notice is required with opportunity for direct participation, representation by counsel, and other procedural rights;

(g) Appeal to the Agency Superintendent for Education, or the Area Education Program Administrator, as appropriate, and to the Director relating to identification, evaluation or placement or to the provision of a free, appropriate education;

(h) A surrogate parent, when appropriate;

(i) A copy of the full written explanation and findings of the individual evaluation as soon as it is completed together with a full oral explanation (effectively communicated) of both the findings and the recommendations;

(j) A personal consultation with the members of the multi-disciplinary team;

(k) Full and effective notice of proposed actions as provided in this part;

(l) Parental approval or disapproval as provided in this part; and

(m) Information concerning any free or low-cost legal and other relevant services available upon request or if a hearing is initiated.

§ 45.54 Access rights.

(a) Each school and Agency must permit parents to inspect and review any records directly relating to their children which are collected and maintained by them or by a party acting for the school.

(b) A parental request to inspect and review records must be honored without unnecessary delay and before any meeting regarding an IEP or hearing relating to the identification, evaluation, or placement of the child, and in no case more than fourteen (14) days after the request has been made. The right to inspect and review educational records under this section includes:

(1) The right to a response to reasonable requests for explanations and interpretations of the records;

(2) The right to request that copies of the records containing the information be provided at no cost to the parents;

(3) The right to have a representative of the parent (authorized in writing) inspect and review the records.

(4) The right to place a statement in the records a school maintains on a child. Such statement may comment on any information or set forth any reason for disagreeing with the decisions of the Agency. Any explanation placed in the records must be maintained by the Agency. If the contested portion of the record is disclosed to any party, the parent's explanation must also be disclosed.

(c) The parent shall be presumed to have authority to inspect and review records relating to his or her child *unless* the school has been advised, in writing, that the parent does not have the authority under applicable tribal or state law governing such matters as guardianship, separation, and divorce.

(d) A record of parties obtaining access to education records (except access by parents and authorized employees of the school) must be kept and must include the name of the party, and the date access took place.

(e) Parents, upon request, shall be provided with a list of the types and the purpose of the authorized use of education records of their child.

(f) If any education record includes information on more than one child, the parents of those children shall have the right to inspect and review only the information relating to their child or to be informed of that specific information.

(g) A parent who believes that information in the education records is inaccurate or misleading or violates the privacy or other rights of the child, may request that the information be amended. The school or Agency must decide whether to amend the information as requested within fourteen (14) days of receipt of request. If the school or Agency decides to refuse to amend the information, it must inform the parent of the refusal and advise the parent of the right to a hearing.

§ 45.55 Confidentiality of information.

(a) The confidentiality of personally identifiable information must be protected at collection, storage, disclosure, and destruction stages.

(b) *One person* designated by the school must assume responsibility for insuring the confidentiality of any personally identifiable information.

(c) All persons collecting or using personally identifiable information must receive training or instruction regarding the policies and procedures set forth in this subpart.

(d) Schools must maintain, for public inspection, a current listing of the names and positions of the employees who may have access to personally identifiable information.

(e) Schools must inform parents when personally identifiable information collected, maintained, or used under this part is no longer needed to provide educational services to the child. The information must be destroyed at the request of the parents. However, a permanent record of a student's name, address, phone number, grades, attendance record, classes attended, grade level completed, and year completed may be maintained without time limitation.

§ 45.56 Surrogate parents.

(a) After documented, repeated and reasonable efforts to identify and locate a parent of a handicapped child, or of a child suspected of being a handicapped child, or whenever a child is a ward of a court, the School Supervisor must institute a proceeding before an appropriate tribunal to determine the need for a surrogate parent and, if need is found, for the appointment of a surrogate parent.

(b) The person appointed as a surrogate parent shall:

(1) Have no interest that conflicts with the interests of the child and shall not be a present employee of the school involved in the education or care of the child or a present employee of Office of Indian Education Programs;

(2) Have knowledge and skills that insure adequate representation of the child; and

(3) Wherever possible, be a member of the child's extended family, or if that is not possible, a member of the same tribe as the child.

(c) The surrogate parent shall represent the child in all matters relating to the identification, individual evaluation and educational placement of the child and the provision of a free appropriate public education.

(d) Surrogate parents may not be appointed for the sale purpose of representing parents at the IEP conference.

(e) Payment of fees for service as a surrogate parent does not, in and of itself, render a person an employee of the BIA.

§ 45.57 Conciliation/mediation.

(a) The school must make all reasonable efforts consistent with its obligations under this part, to resolve informally any ongoing disputes between the parent and the school.

(b) Prior to the initiation of a due process hearing, the Bureau shall attempt to intervene with the mediation process. The following is a statement which describes this technique.

(1) Mediation is a dispute resolution process which is non-adversarial in nature. It seeks not to declare winners or losers, but to find reconciliation between disputing parties. This process is conducted through the skills of a trained mediator. Its focus is the mutually satisfactory resolution of disputes. No third party acts as judge or jury. The parties themselves arrive at an assessment through the process. Mediation can be initiated by either a parent or the Bureau in order to resolve informally a disagreement with respect to the identification, evaluation, or educational placement of, or the free appropriate education provided to an Indian child. Mediation shall consist of, but not be limited to, an informal discussion of the differences between the parties in an effort to resolve those differences. The parents and the appropriate school officials may attend mediation sessions between the parties in an effort to resolve those differences.

(2) Mediation must be conducted, attempted, or refused in writing by concerned parties of the handicapped child whose education is at issue before a request for, or initiation of, a hearing authorized by this part. Any request by the Bureau for a hearing shall state in writing how this requirement has been satisfied. No stigma may be attached to the refusal of the concerned parties to mediate or to an unsuccessful attempt to mediate. Mediation may not be used to deny or delay a parent's right to impartial due process hearing.

§ 45.58 Initiation of hearings.

(a) If the parent disagrees with any action taken by a school for which full and effective notice to parents is required by this part, a hearing may be initiated by the parent of a handicapped child or a child suspected of being a handicapped child, by sending a written request for hearing to the Agency Superintendent for Education. The Agency Superintendent for Education must acknowledge receipt of the written request within five (5) days of actual receipt.

(b) Hearings may be initiated by a school by providing full and effective notice to parents in any instance where, after reasonable efforts at conciliation, a parent either fails to provide written approval of a proposed action, or provides a formal disapproval.

(c) Whenever a hearing is initiated, full and effective notice of the initiation of the hearing must be provided by the hearing officer to all persons concerned.

(d) The written notice of hearing shall include:

(1) A statement of the date, time, place and nature of the hearing;

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) A reference to the particular sections of the statutes or regulations involved; and

(4) A short and plain statement of matters asserted.

§ 45.59 Hearing officers.

(a) A proposed hearing officer must be selected by the Agency Superintendent for Education within one (1) day of receipt of a request for a hearing, from a list established and maintained by the Agency.

(b) After selecting a proposed hearing officer, the Agency Superintendent for Education must, within three (3) days, give the parent(s) and the school full and effective notice of the name of the proposed hearing officer.

(c) The parent and school, each upon notice of the selection of proposed hearing officer, may request that the Agency/Area determine that the person so proposed is not impartial and may

exercise one automatic disqualification during the appointment process. The Director shall resolve all challenges for cause (i.e., partiality).

(d) If the proposed hearing officer is automatically disqualified or found to be not impartial by the Director, the Agency Superintendent for Education must within three (3) days designate another person.

(e) Final appointment of a hearing officer occurs whenever a proposed hearing officer is selected by the Agency Superintendent for Education and the parent or the school fails to notify the Agency Superintendent for Education of a decision to challenge the impartiality of the proposed hearing officer or of a decision to automatically disqualify the proposed hearing officer (available only once for each party), or when the Director determines that no doubt exists as to the impartiality of a proposed hearing officer.

§ 45.60 Impartial hearing officer.

(a) A hearing may not be conducted:

(1) By a person who is an employee of a school, or of the BIA, who is involved in the education or care of the child, or

(2) By any person having a personal or professional interest which would conflict with his or her objectivity in the hearing.

(b) A person who otherwise qualifies to conduct a hearing under paragraph (a) of this section is not an employee of the Agency solely because he or she is paid by the Agency to serve as a hearing officer.

§ 45.61 Hearing reports.

(a) Any party to a hearing has the right to:

(1) Be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of handicapped children. The cost for such counsel or expert representatives shall be borne by the party employing them;

(2) Present evidence and confront, cross-examine, and compel the attendance of witnesses;

(3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five (5) days before the hearing;

(4) Obtain a written or electronic verbatim record of the hearing; and

(5) Obtain written findings of fact and decisions.

(b) Parents involved in hearings must be given the right to:

(1) Have the child who is the subject of the hearing present; and

(2) Open the hearing to the public.

§ 45.62 Timelines and convenience of hearings and reviews.

(a) The Agency shall ensure that a final decision is reached by the hearing officer and a copy of the decision is mailed to each of the parties within 45 days after receipt of a request for a hearing.

(b) A copy of the decision made in a review conducted by the Assistant Secretary—Indian Affairs must be mailed to each of the parties within 30 days of the request for a review.

(c) The hearing or reviewing officer may grant specific extensions of time at the request of either party.

(d) Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parents and child involved.

§ 45.63 Administrative appeal: impartial review.

(a) A decision made in a hearing conducted under this subpart is final, unless a party to the hearing appeals the hearing decision.

(b) A party aggrieved by the findings and decision in the hearing may, within ten (10) days of the decision, appeal to the Assistant Secretary—Indian Affairs who may designate an official to conduct the review.

(c) The Official conducting the review shall:

(1) Examine the entire hearing record;

(2) Insure that the procedures at the hearing more consistent with the requirements of due process;

(3) Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the rights in § 45.62 apply;

(4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;

(5) Make an independent decision on completion of the review; and

(6) Provide written findings and the decision to the parties.

(d) The Department of the Interior considers the decision made by the reviewing official as final.

Subpart E—Personnel

§ 45.65 In-service training.

(a) Each Agency must provide a written plan which insures that ongoing in-service training programs are made available to all personnel who are engaged in the education of handicapped children. To avoid duplication, Agencies and schools must jointly determine training needs.

(b) Each plan must:

(1) Describe the process used in determining the in-service training needs of personnel engaged in the education of handicapped children;

(2) Identify the areas in which training is needed (i.e. individualized education programs, non-discriminatory assessment, least restrictive environment, procedural safeguards, and surrogate parents);

(3) Specify the groups requiring training (i.e. special education teachers, regular teachers, administrators, psychologists, speech-language pathologists, audiologists, physical education teachers, physical therapists, occupational therapists, medical personnel, parents, volunteers, hearing officers, and surrogate parents);

(4) Describe the content and nature of training for each area under paragraph (b)(2) of this section;

(5) Describe how the training will be provided in terms of:

(i) Location and scope; and

(ii) Staff training source (i.e. college and university staff, state, school, Agency personnel, and non-Agency personnel);

(6) Specify:

(i) The funding sources to be used;

(ii) The timeframe for providing staff training; and

(iii) Procedures for effective evaluation of the extent to which program objectives are met.

§ 45.66 Qualifications of staff.

Job qualifications requirements shall be in conformance with 25 CFR 38.4 of the BIA Education Personnel Regulations.

Subpart F—School Administration

§ 45.70 Assurance of compliance.

In connection with each annual application for assistance under this part, each School Supervisor must sign a written assurance that the special education elementary and secondary program operated by the school is currently in compliance with and will, in the future, be operated in compliance with this part and any other applicable Federal law.

§ 45.71 Annual evaluation.

Each Agency must insure that an annual evaluation of the effectiveness of programs in meeting the educational needs of handicapped children is completed. The annual evaluation will be performed in accordance with the following:

(a) The evaluation will be based on the projections made in each agency/school funding application and must include an evaluation of the individual education programs.

(b) Local School Boards and parents must be given the opportunity to be involved in the evaluation.

(c) The Agency Special Education Coordinator will, through a review and comparison of the report with monitoring findings, certify the validity for the annual report.

(d) The Agency Special Education Coordinator will compile the reports and submit the compilation to the Division of Exceptional Education.

(e) The Division will consolidate the evaluation data into a single report on the BIA special education programs.

§ 45.72 Comparability of facilities.

Facilities which are identifiable as being for handicapped children and the services and activities provided therein, must meet the same standards and level of quality as do facilities, services and activities provided to non-handicapped children.

§ 45.73 Non-discrimination.

(a) No Bureau of Indian Affairs operated and/or funded school shall deny admission to any qualified Indian handicapped child on the basis of handicap.

(b) Each school must provide each handicapped Indian child enrolled therein whatever educational support services (including tutoring, access to instructional equipment, auxiliary aids) are necessary to permit the child to fully benefit from the program of special education and related services.

Subpart G—Responsibilities of the Division

§ 45.74 The Division.

(a) The Division of Exceptional Education shall provide staff assistance to the Director, Office of Indian Education Programs to insure conformance with the requirements of this part. The Division shall prepare and submit the annual program plan required by the Education of the Handicapped Act. The Division shall be under the supervision of a Division Chief who reports to the Director.

(b) The Director is responsible for educational programs for handicapped children and has overall responsibility for insuring that every handicapped Indian child enrolled in a Bureau operated or funded school is provided a free appropriate education, and that all requirements of this part are fully complied with by schools, Agencies, and Areas.

§ 45.75 Monitoring.

(a) The Division of Exceptional Education shall monitor and evaluate the compliance of schools, Agencies, Areas and other affected public and non-public agencies with the requirements of this part consistent with written procedures. This monitoring will include:

(1) Data collection;

(2) On-site visits;

(3) Review of special education Federal fund utilization;

(4) Review of IEP implementation; and

(5) Review of the continued need for residential placements.

(b) Schools, Agencies, Areas, non-public school programs and other affected Agencies shall keep timely, complete and accurate compliance reports. These reports shall contain information to enable the Division to ascertain compliance with the requirements of this part.

(c) Schools, Agencies, Areas, non-public school programs and other affected Agencies must permit the staff of the Division of Exceptional Education access to books, records, accounts, and other pertinent information necessary to ascertain compliance.

(d) The Division of Exceptional Education may conduct inquiries on behalf of an individual child or group of children, regarding failure to comply with any provision of this part.

(e) The Division of Exceptional Education shall monitor implementation of the procedural safeguard requirements of this part.

(f) The Division will provide a written report on the findings and will recommend actions for compliance to the responsible Agency. The Agency has the responsibility of providing this information to the individual school boards and appropriate school officials.

§ 45.76 Complaint Procedures.

(a) The Director shall receive, review, and resolve complaints and act on any allegations of substance on actions taken by a school or Agency that are contrary to the requirements of this part.

(b) In carrying out the requirements of paragraph (a) of this section the Division will assist Agencies to achieve compliance through:

(1) Technical assistance;

(2) Negotiation; and/or

(3) Third party mediation.

(c) Failure to comply with the requirements of this part (after appropriate action as described in paragraph (b) of this section) shall result in sanctions under existing BIA procedures including the withholding of Pub. L. 94–142 Subpart B funds until the Agency or school achieves compliance with the requirements of this part.

§ 45.77 Use of available funds.

The Director shall insure that all funds to which schools become entitled because of the enrollment of handicapped children, be used for the identification, evaluation, and the provision of a free, appropriate education to handicapped Indian children.

§ 45.78 Children for whom the Division of Social Services has accepted financial responsibility.

(a) After the effective date of this part, no handicapped Indian child in the care of the Division of Social Services may be placed in, or referred to any public or private residential facility until the Director is consulted and the education component has been approved.

(b) The Director shall insure that no later than one (1) year from the effective date of this part, every handicapped child currently the responsibility of the Division of Social Services in a public or private residential facility has been evaluated and provided an IEP in full conformance with the requirements of this part. The need of the children for continued residentially-based education services will be carefully accessed during this process.

(c) Nothing in this part relieves an insurer or similar third party from an otherwise valid obligation to provide or pay for services provided to a handicapped child.

§ 45.79 Cooperative agreements.

(a) The Director, or designee, is authorized to enter into cooperative agreements with state and local education agencies for the provision of special education and related services to handicapped children enrolled in schools, operated and/or funded by the Bureau.

(b) The Director may not enter into any cooperative agreement for the provision of special education and related services with state or local education agencies which, with respect to any aspect of the cooperative special education program, discriminates or has the effect of discriminating, against any child on the basis of race, creed, national origin, tribal affiliation, religion, sex, handicap or eligibility for services provided by the Bureau.

(c) The Director is responsible for ensuring that every eligible Indian handicapped child participating in a cooperative special education program is provided a free, appropriate education in the least restrictive environment consistent with the procedural safeguards required by § 45.34.

§ 45.80 Bureau of Indian Affairs Advisory Committee for Exceptional Children.

(a) The BIA Advisory Committee for Exceptional Children has been chartered under and is subject to the provisions of the Federal Advisory Committee Act, Pub. L. 92-463. The membership of the BIA Advisory Committee for Exceptional Children must be composed of persons involved in or concerned with the education of handicapped Indian children. The membership shall include, but not be limited to:

(1) Handicapped individuals.

(2) Teachers of handicapped children.

(3) Parents of handicapped children.

(4) Agency and school officials.

(5) Special education program administrators.

(b) The advisory committee shall:

(1) Advise the Secretary of Interior, through the Assistant Secretary—Indian Affairs, of unmet special education needs of Indian children;

(2) Comment publicly on the annual program plan and rules or regulations proposed for issuance by the Assistant Secretary—Indian Affairs regarding the education of handicapped Indian children attending BIA operated or funded schools and the procedures for distribution of funds under this part; and

(3) Assist the Assistant Secretary—Indian Affairs in developing and reporting such information and evaluation.

(c) The advisory committee shall meet as often as necessary to conduct its business.

(d) By July 1 of each year, the advisory committee shall submit an annual report of panel activities and suggestions to the Director and the Assistant Secretary—Indian Affairs. This report must be made available to the public.

(e) Official minutes must be kept on all panel meetings and shall be made available to the public upon request.

(f) All advisory committee meetings and agenda items must be publicly announced prior to the meeting, and meetings must be open to the public.

(g) Interpreters and other necessary services must be provided at committee meetings for committee members or participants.

(h) The advisory panel shall serve without compensation but will be reimbursed for travel and expenses, in compliance with current Federal travel regulations, as published by GSA, for attending meetings and performing duties.

Kenneth Smith,

Assistant Secretary—Indian Affairs.

[FR Doc. 85-20059 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-02-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 170 and 252

[T.D. ATF-212]

Distilled Spirits; Increase in Rate of Tax and Floor Stocks Tax

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

ACTION: Final rule (Treasury decision).

SUMMARY: This document implements section 27 of the Deficit Reduction Act of 1984 by (1) amending ATF distilled spirits regulations to conform to the increase in the distilled spirits tax rate, and (2) adding new regulations for the collection of floor stocks tax on certain taxpaid distilled spirits and imported perfumes which are held for sale on October 1, 1985.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Robert G. Hardt or J. R. Whitley, Distilled Spirits and Tobacco Branch, (202) 566-7531. Mailing address: Bureau of Alcohol, Tobacco and Firearms, Distilled Spirits and Tobacco Branch, P.O. Box 385, Washington, DC 20044-0385.

SUPPLEMENTARY INFORMATION: Public Law 98-369, entitled "Deficit Reduction Act of 1984", was enacted on July 18, 1984. Section 27 of this Act increases the rate of tax on distilled spirits from $10.50 to $12.50 per proof gallon. The rate of tax on imported perfumes is increased from $10.50 to $12.50 per wine gallon. All distilled spirits and imported perfumes removed from bonded premises on or after October 1, 1985, will be subject to the higher tax rates.

Floor Stocks Tax

The distilled spirits floor stocks tax is a one-time tax, equal to the difference between the old and new tax rates. It is imposed on all Federally taxpaid or tax-determined distilled spirits that are held for sale on the first moment of October 1, 1985, by any person, with the exception of spirits held by wholesale or retail liquor dealers who have 500 wine gallons or less of distilled spirits on hand on that date. However, dealers with more than 500 wine gallons on hand are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is smaller. (The credit may not exceed the amount for which the dealer is liable.) The term "dealer" means any wholesale or retail dealer in liquors, as defined by sections 5112(b) and 5122(a) of the Internal Revenue Code of 1954 respectively, and would include importers and taxpaid storage rooms operated by distilled spirits plants.

Manufacturers, importers, wholesalers, and retailers are liable for floor stocks tax irrespective of the location where their distilled spirits are held. The floor stocks tax applies only to distillled spirits held for sale that were taxpaid or tax-determined before October 1, 1985. Distilled spirits that are taxpaid or tax-determined on or after that date are subject to the increased tax rate, but are not subject to the floor stocks tax.

Distilled spirits subject to floor stocks tax are regarded as held by the one who owns them at the first moment of October 1, 1985. Distilled spirits in transit, or in a storeroom or warehouse, must be included in the tax return and inventory of the owner. If ownership does not pass to the consignee until delivery, distilled spirits in transit at the first moment of October 1, 1985, must be regarded as owned or held by the consignor at that time.

A floor stocks tax is also imposed on all Federally taxpaid or tax-determined imported perfumes containing distilled spirits (ethyl alcohol) held for sale by any person. However, all imported perfumes held at retail establishments and any imported perfumes held by other persons who have 500 wine gallons or less on hand as of October 1, 1985, are exempted from this tax. The $800 credit provision also applies to holders of imported perfume.

The exemption for retail establishments applies only to imported perfumes held at the place where they are intended to be sold at retail. This exemption is broad enough to include imported perfumes in storage facilities that are within or form an integral part of the retail premises at the same physical location. However, the exemption does not apply to imported perfumes held by retail establishments in warehouses or other similar storage facilities located away from the retail premises where retail customers do not have regular access to them. Imported perfumes held by retail establishments in these separate storage facilities are subject to the floor stocks tax in the same manner as imported perfumes held for sale by other industry members.

Liability for the floor stocks tax must be established by a physical inventory, except that a source record inventory may be used by persons holding distilled spirits for sale if the source records from which the inventory is derived conform to certain regulatory standards. The physical or source record inventory will be the basis for

establishing the quantity of distilled spirits and imported perfumes held subject to the floor stocks tax, as of the first moment of October 1, 1985. If the taxpayer prefers not to take a physical inventory on October 1, 1985, it may be taken any time between September 23, 1985, and October 6, 1985. (Or, if the business is closed before September 23, and will remain closed through October 1, 1985, the inventory may be taken on the last business day before closing.) If the physical inventory is not taken between the end of the last business day of September 1985, and the beginning of the first business day of October 1985, it must be reconciled to October 1, 1985, and supported by records which substantiate all receipts and dispositions between October 1, and the date of the inventory.

The intent of Congress was to impose a minimal burden on persons who hold distilled spirits or imported perfumes subject to floor stocks tax, particularly proprietors of retail establishments, without jeopardizing the revenue. Therefore, certain allowances relating to inventory procedures have been provided for retailers of distilled spirits. In calculating the physical inventory for open stock, retail dealers may: round fractional label proofs to the nearest whole proof (for example, 86.8 proof would be rounded to 87 proof); record only the proof and size of bottles in stock; and use a shortened factor of 0.26 instead of the standard factor of 0.264172 for converting quantities in liters to wine gallons. As used here, "open stock" refers to both opened bottles and to full, unopened bottles of various sizes, proofs, and brands. In addition, all opened bottles of the same proof, regardless of size, may be totalled and computed as a single entry.

Every person subject to the distilled spirits floor stocks tax must take either a physical inventory or use a source record (book) inventory supported by the appropriate source records, and must prepare and file a floor stocks tax return. This includes wholesale or retail liquor dealers with an inventory of 500 wine gallons or less, although those dealers will not be required to convert their wine gallon inventory to a proof gallon inventory since no tax will be due. Every person holding taxpaid or tax-determined imported perfumes subject to the floor stocks tax must take a physical inventory; however, a floor stocks tax return must be filed only if tax is actually due. Tax returns will be available by September 1, 1985, and may be obtained from any ATF regional office or from the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, D.C. 20226; telephone (202) 566–7531.

The tax return must be filed, accompanied by full payment, on or before April 1, 1986, except that small and medium-sized retail or wholesale dealers may elect to pay the tax in three equal installments due on or before April 1, July 1, and October 1, 1986. The term "small or medium-sized dealer" refers to any dealer whose aggregate gross sales receipts for all products (not just distilled spirits or other alcoholic beverages) for the most recent taxable year ending before October 1, 1985, does not exceed $500,000. The Internal Revenue Service will bill these dealers for the installment payments due on or before July 1, and October 1, 1986. These dealers will be responsible for filing the tax return with the first payment on or before April 1, 1986.

A 5% per month failure to file penalty, up to a maximum of 25%, may be assessed for late filing of the tax return. If a return is filed with no payment or with partial payment (other than an installment payment), a 0.5% per month failure to pay penalty may be assessed on the unpaid balance, again up to a maximum of 25%. In addition, 26 U.S.C. 5684 imposes, for failure to pay any alcohol excise tax, a penalty of 5% of the tax due but unpaid. Interest must also be paid on any delinquent tax due at the rate established by IRS, compounded daily from April 1, 1986, until the tax is paid.

If any underpayment of floor stocks tax is due to fraud, there is a penalty of 50% of the amount of underpayment, plus 50% of the interest payable on the portion of the underpayment attributable to fraud, per 26 U.S.C. 6653. The Internal Revenue Code also provides for criminal penalties, including fines and/or imprisonment, which are applicable to this floor stocks tax.

Effective Date

The changes made by the Deficit Reduction Act of 1984 relating to a distilled spirits tax rate increase and a floor stocks tax take effect on October 1, 1985, and require immediate planning by dealers not now required to file returns and pay tax. Consequently, it is found that it would be impracticable within the meaning of 5 U.S.C. 553(b) to provide a notice of proposed rulemaking prior to issuance of any regulations. Accordingly, the amendments made by this document shall be effective on September 23, 1985.

Executive Order 12291

It has been determined that this final rule is not a major rule within the meaning of Executive Order 12291, 46 FR 13193 (February 17, 1981), because the economic effects flow directly from the underlying statute, the Deficit Reduction Act of 1984, and not from this final rule. Therefore, it is found that this final rule will not cause:

(a) An annual effect on the economy of $100 million or more;

(b) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

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

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to a final regulatory flexibility analysis (5 U.S.C. 604) are not applicable to this document, because it was not required to be preceded by a general notice of proposed rulemaking under 5 U.S.C. 553, and because the revenue effects of the rulemaking on small businesses flow directly from the underlying statute. These regulations will not cause any adverse secondary or incidental effects, or any significant new reporting, recordkeeping, or other compliance burdens.

Paperwork Reduction Act

The requirements to collect information imposed by this final rule have been approved by the Office of Management and Budget under sec. 3507 of the Paperwork Reduction Act of 1980, Pub. L. 96–511, 44 U.S.C. Chapter 35.

Drafting Information

The principal drafter of this document is Robert Hardt of the Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms. However, other people from ATF and from other offices in the Department of the Treasury participated in the development of these regulations.

List of Subjects

27 CFR Part 170

Alcohol and alcoholic beverages, Authority delegations, Beer, Claims, Customs duties and inspection, Disaster assistance, Excise taxes, Floor stocks taxes, Labeling, Liquors, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds, Wine.

27 CFR Part 252

Aircraft, Alcohol and alcoholic beverages, Armed forces, Authority delegations, Beer, Claims, Excise taxes, Exports, Fishing vessels, Foreign trade zones, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Surety bonds, Vessels, Warehouses, Wine.

Authority and Issuance

PART 170—MISCELLANEOUS REGULATIONS RELATING TO LIQUOR

Paragraph 1. The authority citation for 27 CFR Part 170 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917 (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

Par. 1a. The Table of Contents of Part 170 is amended to add the subpart and section titles of Subpart D. As amended, the Table of Contents reads as follows:

* * * * *

Subpart D—Floor Stocks Tax on Distilled Spirits and Imported Perfumes Held for Sale on October 1, 1985

Sec.

170.60 OMB control number.
170.61 Scope of subpart.
170.62 Meaning of terms.
170.63 Alternate methods or procedures.

Distilled Spirits

170.64 Scope of tax.
170.65 Rate of tax.
170.66 Payment of tax.
170.67 Return.
170.68 Inventory procedures for other than retail establishments.
170.69 Inventory procedures for retail establishments.
170.70 Computation of wine and proof gallons.

Imported Perfumes

170.71 Scope of tax.
170.72 Rate of tax.
170.73 Payment of tax.
170.74 Return.
170.75 Inventory.

General

170.76 Retention of records.
170.77 Refunds of floor stocks tax.
170.78 Penalties and interest.
170.79 Authority of ATF officers.

Par. 2. A new Subpart D is added to Part 170 to read as follows:

Subpart D—Floor Stocks Tax on Distilled Spirits and Imported Perfumes Held for Sale on October 1, 1985

Authority: Section 27, Pub. L. 98-369, 98 Stat. 507, unless otherwise noted.

§ 170.60 OMB control number.

The recordkeeping and reporting requirements of this subpart have been approved by the Office of Management and Budget under control number 1512-0473.

§ 170.61 Scope of subpart.

The regulations in this subpart relate to the floor stocks tax imposed by Pub. L. 98-369 on all taxpaid or tax-determined distilled spirts held for sale on October 1, 1985, including imported perfumes containing distilled spirits.

§ 170.62 Meaning of terms.

When used in this subpart, terms shall have the meaning ascribed below:

(a) *Bulk distilled spirits.* The term "bulk distilled spirits" means distilled spirits in a container having a capacity in excess of one gallon.

(b) *Controlled group.* A related group of dealers under common control. Controlled groups include:

(1) *Controlled group of corporations.* The term "controlled group of corporations" has the meaning given to that term by 26 U.S.C. 1563(a), except that the phrase "more than 50% percent" shall be substituted for the phrase "at least 80 percent" each time it appears in that subsection. Controlled groups of corporations include, but are not limited to:

(i) Parent-subsidiary controlled groups as defined in 26 CFR 1.1563-1(a)(2).

(ii) Brother-sister controlled groups as defined in 26 CFR 1.1563-1(a)(3).

(iii) Combined groups as defined in 26 CFR 1.1563-(a)(4).

(2) *Nonincorporated dealers under common control.* Dealers are considered to be part of a controlled group when the group would qualify as a controlled group of corporations under the definition in paragraph (b)(1) of this section except that one or more of the dealers is not incorporated.

(3) *"Control" States or political subdivisions.* Each State or political subdivision of a State that operates as a dealer in distilled spirits, whether as a retailer, wholesaler, or both, shall be regarded as a controlled group.

(c) *Dealer.* Any person who sells, or offers for sale, any distilled spirits.

(d) *Gallon or Wine gallon.* The liquid measure equivalent to the volume of 231 cubic inches.

(e) *Industry Member.* For purposes of the floor stocks tax on imported perfumes, this term shall include importers, wholesale dealers or other persons holding for sale imported perfumes containing distilled spirits. This term shall not include retail establishments.

(f) *Person.* This term shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation. It also includes any State or political subdivision thereof, or any agency or instrumentality of a State or political subdivision thereof.

(g) *Proof gallon.* A gallon of liquid at 60 degrees Fahrenheit which contains 50 percent by volume of ethyl alcohol having a specific gravity of 0.7939 at 60 degrees Fahrenheit referred to water at 60 degrees Fahrenheit as unity, or the alcoholic equivalent thereof.

(h) *Retail dealer.* Any dealer who sells, or offers for sale, distilled spirits to any person other than a dealer.

(i) *Wholesale dealer.* Any dealer who sells, or offers for sale, distilled spirits to another dealer.

§ 170.63 Alternate methods or procedures.

The proprietor, on specific approval by the Director as provided in this paragraph, may use an alternate method or procedure in lieu of a method or procedure specifically prescribed in this subpart. The Director may approve an alternate method or procedure, subject to stated conditions, when he finds that—

(a) Good cause has been shown for the use of the alternate method or procedure;

(b) The alternate method or procedure is within the purpose of, and consistent with the effect intended by, the specifically prescribed method or procedure, and affords equivalent security to the revenue; and

(c) The alternate method or procedure will not be contrary to any provision of law, and will not result in an increase in cost to the Government or hinder the effective administration of this subpart. No alternate method or procedure relating to the assessment, payment, or collection of tax, shall be authorized under this paragraph. Where the proprietor desires to employ an alternate method or procedure, he shall submit a written application to the regional director (compliance), for transmittal to the Director. The application shall specifically describe the proposed alternate method or procedure, and shall set forth the reasons therefor. Alternate methods or procedures shall not be employed until the application has been approved by the Director. The proprietor shall, during the period of authorization of an alternate method or procedure, comply with the terms of the approved application. Authorization for any alternate method or procedure may be

withdrawn whenever in the judgment of the Director the revenue is jeopardized or the effective administration of this subpart is hindered by the continuation of such authorization.

Distilled Spirits

§ 170.64 Scope of tax.

(a) *General.* The floor stocks tax is imposed on all Federally taxpaid or tax-determined distilled spirits, not exempt under paragraph (b) of this section, which at the first moment of October 1, 1985, are held by any person for sale. The floor stocks tax does not apply to distilled spirits which are not removed from bonded premises or Customs bonded as of the first moment of October 1, 1985.

(b) *Exempt dealer stocks.* Distilled spirits held by wholesale or retail dealers are exempt from floor stocks tax if, on October 1, 1985, the aggregate liquid volume of distilled spirits held by such dealer does not exceed 500 wine gallons. Dealers claiming this exemption from the floor stocks tax shall comply with the inventory requirements of §§ 170.68 and 170.69, and file a tax return as required by § 170.67.

(c) *Controlled groups.* Dealers who are component members of a controlled group as described in § 170.62 must apportion the 500 wine gallon exemption allowed under the provisions of paragraph (b) among the members of that group in proportion to the amount each member has in inventory. A controlled group may only claim the exemption if the aggregate liquid volume of distilled spirits held by all members of the controlled group does not exceed 500 wine gallons.

§ 170.65 Rate of tax.

(a) *General.* The rate of floor stocks tax on distilled spirits is $2.00 per proof gallon, and a proportionate tax at the like rate on all fractional parts of a proof gallon.

(b) *Credit against tax.* Wholesale and retail dealers in distilled spirits are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is smaller. Dealers who do not owe floor stocks tax as a result of this credit shall comply with the inventory requirements of §§ 170.68 and 170.69, and file a tax return as required by § 170.67.

(c) *Controlled group.* Dealers who are component members of a controlled group as described in § 170.62 must apportion the $800 credit allowed under paragraph (b) of this section among the members of that group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 170.67 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

§ 170.66 Payment of tax.

(a) *General.* The floor stocks tax shall be paid by every person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined distilled spirits except those distilled spirits held by dealers that are exempt under § 170.64(b). The floor stocks tax return shall be filed on or before April 1, 1986. Except as provided in paragraph (b) of this section, payment of the tax in full, minus the credit allowed under § 170.65(b), if any, shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Internal Revenue Service, and shall show the taxpayer's name and employer identification number or social security number if the taxpayer does not have an employer identification number.

(b) *Payment by small or middle-sized dealer.* Small and middle-sized dealers in distilled spirits may elect to pay the distilled spirits floor stocks tax in three equal installments. The first installment shall accompany the return due on or before April 1, 1986. The second and third installments shall be paid no later than July 1, 1986, and October 1, 1986, respectively. For the purposes of this section the term "small and middle-sized dealer" refers to any dealer if the aggregate gross sales receipts of that dealer from all products (not just distilled spirits or other alcoholic beverages) did not exceed $500,000 for the most recent tax year ending before October 1, 1985. If the taxpayer does not pay any installment on or before the date prescribed for payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary. In addition, penalties and interest will be assessed in accordance with § 170.78.

(c) *Controlled group.* Dealers who are component members of a controlled group as described in §170.62 may not elect to pay the applicable floor stocks tax in installments as allowed by paragraph (b) of this section unless the combined aggregate gross sales receipts for all products (not just distilled spirits or other alcoholic beverages) for all members of the controlled group did not exceed $500,000 for the most recent taxable year ending before October 1, 1985.

§ 170.67 Return.

(a) *General.* Each person who holds for sale, on the first moment of October 1, 1985, Federally taxpaid or tax-determined distilled spirits shall make and file a return for the distilled spirits so held. The return shall be made on IRS Form 11, Special Tax Return and Application for Registry. When distilled spirits subject to the floor stocks tax are held at more than one location, a consolidated return representing the total liability may be filed if each location shares a common employer identification number. If a consolidated return is filed, the name and address of each place of business where distilled spirits are held for sale, and the quantity of distilled spirits held at each such place, shall be shown on the form or an attachment. Distilled spirits which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused distilled spirits will be offered for sale. If distilled spirits held in a warehouse are offered for sale at several locations, the distilled spirits so held shall either be reported on the tax return filed by any one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations. The return shall be prepared in duplicate in accordance with the instructions on the form. The original shall be filed no later than April 1, 1986, with the Internal Revenue Service at the appropriate Internal Revenue Service Center address indicated on the form. The copy shall be retained by the taxpayer as prescribed in § 170.76.

(b) *Controlled groups.* When distilled spirits subject to floor stocks tax are held at more than one location or place of business by members of a controlled group, a consolidated return representing the total liability may be filed if the members share a common employer identification number. A separate return is required to be filed by each member having an individual employer identification number. If a consolidated return is filed, the controlled group shall show, on the form or an attachment, the name and address of each place of business where distilled spirits are held subject to floor stocks tax, and the quantity of distilled spirits held at each such place.

§ 170.68 Inventory procedures for other than retail establishments.

(a) *General.* The distilled spirits floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a physical inventory, except as provided in paragraph (b) of this section. All persons holding distilled spirits for sale including those holding distilled spirits exempt from floor stocks

tax under the provisions of § 170.64(b) shall take a complete inventory in wine gallons at each location where distilled spirits are held. Persons holding spirits not exempt under § 170.64(b) shall convert this wine gallon inventory into proof gallons. The conversion from metric sizes to wine gallons, and from wine gallons to proof gallons, shall be made using the procedures in § 170.70. Distilled spirits in transit on the first moment of October 1, 1985, shall be included in the inventory of the owner of the distilled spirits at that moment.

(b) *Source record inventory.* In lieu of a physical inventory, a book or record inventory may be used if supported by source records which indicate the receipt and disposition of distilled spirits. The source record inventory must reflect the actual quantity of distilled spirits on hand as if a physical inventory had been taken as of the first moment of October 1, 1985. Records of receipt and disposition shall include (1) the name and address of the consignor and consignee, (2) date of receipt and disposition, (3) brand name, (4) kind of spirits, and (5) quantity of spirits involved (wine gallons or liters and proof).

(c) *Record of inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer. The record of the physical or source record inventory shall be retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of the physical or source record inventory shall show the taxpayer's name and address of the place of business where the distilled spirits are held. The record of the physical inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required; however, the physical or source record inventory shall identify all products by brand name, proof, and size of container. For each product, full cases, full unopened bottles, and opened bottles may be listed in separate sections of the inventory or shown in the same section. Persons holding taxpaid or tax-determined spirits in bulk shall list the kind of spirits, the wine gallons, proof, and proof gallons, the name of the distiller, and the serial number of each container (tank truck, tank car, barrel, drum, etc.) of distilled spirits.

(d) *Time of taking physical inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to reflect the actual on-hand quantity as of the first moment of October 1, 1985, and shall be supported by commercial records of receipt and disposition as prescribed in 27 CFR Part 194.

§ 170.69 Inventory procedures for retail establishments.

(a) *General.* The distilled spirits floor stocks tax liability required to be shown on the floor stocks tax return shall be established either by a physical inventory or by a source record inventory conforming to the standards stated in § 170.68(b). All persons holding distilled spirits for sale including those holding distilled spirits exempt from floor stocks tax under the provisions of § 170.64(b) shall take a complete inventory in wine gallons at each location where distilled spirits are held. Persons holding spirits not exempt under § 170.64(b) shall convert this wine gallon inventory into proof gallons. Distilled spirits in transit on the first moment of October 1,1985, shall be included in the inventory of the owner of the distilled spirits at that moment.

(b) *Special conversion provisions.* In taking the physical inventory of full unopened bottles and opened bottles in stock, retailers may use a shortened factor of 0.26 for converting quantities in liters to wine gallons in lieu of the factor stated in § 170.70. In converting wine gallons to proof gallons, retailers may round fractional label proofs to the nearest whole proof. These provisions do not apply to distilled spirits in full cases, and if used, shall be used consistently.

(c) *Record of inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer. The record of the physical or source record inventory shall be retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of the physical or source record inventory shall show the taxpayer's name and the address of the place of business where the distilled spirits are held. The record of the physical inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the physical inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required. However, the record of inventory for full cases shall identify all products by brand name, proof, and size of container. The record of inventory for full unopened bottles and opened bottles shall identify all products by proof and size of container. For each product, full cases, full unopened bottles, and opened bottles may be listed in separate sections of the inventory or shown in the same section. The contents of all open bottles of the same proof, regardless of size, may be totalled and listed as a single entry designated "miscellaneous open bottles ——— proof".

(d) *Time of taking physical inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to reflect the actual on-hand quantity as of the first moment of October 1, 1985. The reconciliation shall be supported by commercial records which show all receipts and dispositions between the first moment of October 1, 1985, and the date of the inventory. The records of receipt shall be maintained in the form prescribed in 27 CFR Part 194. The records of disposition shall identify the distilled spirits removed in accordance with the requirements of paragraph (c) of this section. For example, for full cases the record of disposition must show the brand, size, and proof of the distilled spirits, while only the proof and size are required to be shown for open stock.

§ 170.70 Computation of wine and proof gallons.

(a) *Conversion between liters and wine gallons.* Whenever quantities in liters are converted to wine gallons, the quantity in liters shall be multiplied by the standard conversion factor 0.264172 to determine the equivalent quantity in wine gallons. Retail establishments may use the factor 0.26 for all bottles in stock

not in full cases, as provided in § 170.69(b). Conversions from liters to wine gallons made before multiplying by the total number of cases and/or bottles of a specific item in inventory shall be first rounded to the nearest sixth decimal place. This shall then be rounded to the nearest hundredth decimal place when multiplied by the total quantity of each specific item in inventory. If the conversion from liters to wine gallons is made after multiplying by the total number of cases and/or bottles of a specific item in inventory, the quantity shall be rounded off to the nearest hundredth.

(b) *Computation of proof gallons.* In computing proof gallons (wine gallons times proof divided by 100), the actual proof, including fractional parts of proof, of the spirits as shown on the bottle label or case markings shall be shown in the inventory and used in all calculations, except as provided in § 170.69(b) for retail establishments. Decimals shall be rounded to the nearest tenth place after the last computation is made. For example, 3 wine gallons times 86.8 proof divided by 100 equals 2.604 proof gallons, which shall be rounded to 2.6 proof gallons.

(c) *Examples.* The following examples illustrate how conversions from metric to U.S. units are to be rounded off. In both examples the taxpayer has on hand 4,567 cases of 1.75 liter bottles of a specific item at 80 proof.

(1) 1.75 liters × 6 bottles = 10.5 liters per case; 10.5 × 0.264172 = 2.773806 wine gallons per case; 2.773806 × 4,567 cases = 12,667.97 wine gallons; 12,667.97 × 0.8 (proof dividend by 100) = 10,134.4 proof gallons.

(2) 1.75 liters × 6 bottles = 10.5 liters per case; 10.5 × 4,567 cases = 47,953.50 liters; 47,953.50 × 0.264172 = 12,667.97 wine gallons; 12,667.97 × 0.8 = 10,134.4 proof gallons.

(d) *Case markings.* Full cases that are marked on a side (government panel) of the case with the wine gallon and/or proof gallon contents may be inventoried by using these case markings to establish the quantity of wine gallons and/or proof gallons contained in the case.

Imported Perfumes

§ 170.71 Scope of tax.

(a) *General.* A floor stocks tax is imposed on all Federally taxpaid or tax-determined imported perfumes containing distilled spirits (ethyl alcohol), not exempt under paragraph (b) or (c) of this section, which at the first moment of October 1, 1985, are held by any person for sale. The floor stocks tax does not apply to imported perfumes containing distilled spirits which are not removed from Customs bond as of the first moment of October 1, 1985. Imported perfumes which do not contain distilled spirits are not subject to the floor stocks tax.

(b) *Exempt stocks held at retail establishments.* The floor stocks tax is not imposed on imported perfumes held at the premises of a retail establishment. Establishments qualifying under this exemption are not required to take the inventory prescribed by § 170.75 or file a return under § 170.74. However, this exemption does not apply to imported perfumes held in storage facilities that are not within or do not form an integral part of the retail premises. The quantity of imported perfumes so held must be inventoried under the provisions of § 170.75, and a tax return must be filed unless the imported perfumes are exempt under the provisions of paragraph (c) of this section.

(c) *Exempt stocks held by industry members.* Imported perfumes held by industry members, including imported perfumes held in storage facilities that are not within or do not form an integral part of a retail establishment, are exempt from floor stocks tax if, on October 1, 1985, the aggregate liquid volume of imported perfumes held by such an industry member does not exceed 500 wine gallons. Industry members claiming this exemption from the floor stocks tax shall comply with the inventory requirements of § 170.75, but are not subject to the filing requirements of § 170.74.

(d) *Controlled groups.* Industry members who are component members of a controlled group as described in § 170.62 must apportion the 500 wine gallon exemption allowed under the provisions of paragraph (c) of this section among the members of that group in proportion to the amount each member has in inventory. A controlled group may only claim the exemption if the aggregate liquid volume of distilled spirits held by all members of the controlled group does not exceed 500 wine gallons.

§ 170.72 Rate of tax.

(a) *General.* The rate of floor stocks tax on imported perfumes containing distilled spirits is $2.00 per wine gallon, and a proportionate tax at the like rate on all fractional parts of a wine gallon.

(b) *Credit against tax.* Industry members who deal in imported perfumes are allowed as a credit against the floor stocks tax an amount equal to $800 or the amount of tax liability, whichever is less. Industry members who do not owe floor stocks tax as a result of this credit shall comply with the inventory requirements of § 170.75.

(c) *Controlled group.* Industry members who are component members of a controlled group as described in § 170.62 must apportion the $800 credit allowed under paragraph (b) of this section among the members of that group. The credit may be divided equally among the members or apportioned in any other manner agreeable to the members. An attachment shall be made to the tax returns required by § 170.74 for the members of the controlled group showing the name, address, and amount of credit taken by each member of the controlled group.

§ 170.73 Payment of tax.

(a) *General.* The floor stocks tax shall be paid by every person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined imported perfumes except those imported perfumes held by retail establishments or industry members exempt under § 170.71 (b) or (c). The floor stocks tax return shall be filed on or before April 1, 1986. Except as provided in paragraph (b), payment of the tax in full, minus a credit allowed under § 170.72(b), if any, shall accompany the floor stocks tax return. Checks and money orders shall be made payable to the Internal Revenue Service, and shall show the taxpayer's name and employer identification number or social security number if the taxpayer does not have an employer identification number.

(b) *Payment by small or middle-sized industry member.* Small and middle-sized industry members who are liable for the floor stocks tax on imported perfumes may elect to pay the floor stocks tax in three equal installments. The first installment shall accompany the return, due on or before April 1, 1986. The second and third installments shall be paid no later than July 1, 1986, and October 1, 1986 respectively. For the purposes of this section the term small and middle-sized industry member refers to any person if the aggregate gross sales receipts for all products (not just imported perfumes containing distilled spirits) of that person did not exceed $500,000 for the most recent tax year ending before October 1, 1985. If the taxpayer does not pay any installment on or before the date prescribed for payment, the whole of the unpaid tax shall be paid upon notice and demand from the Secretary. In addition, penalties and interest will be assessed in accordance with § 170.78.

(c) *Controlled group.* Industry members who are component members

of a controlled group as described in § 170.62 may not elect to pay the applicable floor stocks tax in installments as allowed by paragraph (b) of this section unless the combined aggregate gross sales receipts for all products (not just imported perfumes) for all members of the controlled group did not exceed $500,000 for the most recent taxable year ending before October 1, 1985.

§ 170.74 Return.

(a) *General.* Each person who holds for sale, at the first moment of October 1, 1985, Federally taxpaid or tax-determined imported perfumes containing distilled spirits, and who is liable for tax on the imported perfumes so held, shall make and file a return. The return shall be made on IRS Form 11, Special Tax Return and Application for Registry. When imported perfumes subject to the floor stocks tax are held at more than one location, a consolidated return representing the total liability may be filed if each location shares a common employer identification number. If a consolidated return is filed, the name and address of each place of business where imported perfumes are held for sale, and the quantity of imported perfumes held at each such place, shall be shown on the form or an attachment. Imported perfumes which are warehoused at one or more locations shall be reported on a tax return representing the location from which the warehoused imported perfumes will be offered for sale. If imported perfumes held in a warehouse are offered for sale at several locations, the imported perfumes so held shall either be reported on the tax return filed by any one of those locations, or shall be apportioned among the several locations in any manner and reported on the tax returns filed at those locations. The return shall be prepared in duplicate in accordance with the instructions of the form. The original shall be filed no later than April 1, 1986, with the Internal Revenue Service at the address indicated on the form. The copy shall be retained by the taxpayer as prescribed in § 170.76.

(b) *Controlled group.* When imported perfumes subject to floor stocks tax are held at more than one location or place of business by members of a controlled group, a consolidated return representing the total liability may be filed if the members share a common employer identification number. A separate return is required to be filed by each member having an individual employer identification number. If a consolidated return is filed, the controlled group shall show, on the form or an attachment, the name and address of each place of business where imported perfumes are held subject to floor stocks tax, and the quantity of imported perfumes held at each such place.

§ 170.75 Inventory.

(a) *General.* The floor stocks tax liability required to be shown on the floor stocks tax return shall be established by a physical inventory. All persons, except retail establishments, holding imported perfumes for sale, including those industry members who have less than 500 wine gallons on hand, shall take a complete physical inventory in wine gallons. Imported perfumes in transit on the first moment of October 1, 1985, shall be included in the inventory of the owner of the imported perfumes at that moment.

(b) *Record of established inventory.* Physical inventories shall be recorded in writing as they are being taken by the taxpayer and retained as prescribed in § 170.76. Quantities in transit shall be recorded separately from quantities actually on hand. The record of inventory shall show the taxpayer's name and the address of the place of business where the imported perfumes are held. The record of inventory shall include complete and accurate information showing the details of the inventory, when, and by whom the inventory was taken. If the inventory was verified by anyone other than the person taking it, the name and title of that other person shall also be shown. No specific format is required, however, the inventory must identify the quantity of all products held by brand name and size of container.

(c) *Time of taking inventory.* The physical inventory shall be taken no later than October 6, 1985, and no earlier than September 23, 1985. However, if any place of business is closed prior to September 23, 1985, and remains closed through October 1, 1985, then the physical inventory for that place of business may be taken following the close of business on the last business day before such closing. If the physical inventory is not taken between the close of business on the last business day of September 1985, and the beginning of business on the first business day of October 1985, the record of inventory shall be reconciled to the first moment of October 1, 1985, and shall include complete supporting records of receipt and disposition.

General

§ 170.60 OMB control number.

Each person liable for floor stocks tax shall keep a copy of his floor stocks tax return and inventory record at the place of business covered thereby. In the case of a consolidated return, the return shall be kept at the taxpayer's principal place of business with a copy of each inventory record supporting the tax return, and a copy of the inventory record shall also be kept at the specific place of business to which the inventory pertains. These documents and records shall be retained for at least 3 years after the date of filing of the floor stocks tax return, and shall be available for inspection by ATF officers. The regional director (compliance) may also require these documents and records to be retained for an additional period of not more than 3 years in any case where he deems such retention to be necessary or advisable for the protection of the revenue.

§170.77 Refunds of floor stocks tax.

(a) A claim for refund may be filed by any person who has paid a floor stocks tax on distilled spirits or imported perfumes and who claims that an overpayment of tax was made or who returns distilled spirits to bond under the provisions of 27 CFR Part 19. Such a claim shall be filed on IRS Form 843, contain the information required by the form, and be supported by a statement of the facts and evidence upon which the claim is based.

(b) The claim shall be filed either with the Regional Director (Compliance), Bureau of Alcohol, Tobacco and Firearms, for the region in which the business is located, or with the Chief, Regulations and Procedures Division, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226. Claims filed under this section shall comply with the provisions of Subpart E of this part.

§ 170.78 Penalties and interest.

(a) *Penalties.* All civil and Criminal penalties and forfeiture provisions of the Internal Revenue Code (Title 26 U.S.C.), which are applicable to excise taxes on distilled spirits are applicable also to distilled spirits floor stocks tax.

(b) *Interest.* Interest shall accrue at the rate established by IRS, compounded daily, on all floor stocks tax that is not paid on or before April 1,

1966, except for that tax paid in installments under the provisions of § 170.66 or § 170.73. If any installment payment is not timely made, interest and penalties shall accrue from that time on the entire unpaid balance. (See 26 U.S.C. 6601)

(68A Stat. 817, as amended (26 U.S.C. 6601); sec. 7, Pub. L. 93-625, 88 Stat. 2114, as amended (26 U.S.C. 6621; sec. 344, Pub. L. 97-248, 96 Stat. 635 (26 U.S.C. 6622))

§ 170.79 Authority of ATF officers.

(a) *Entry of premises; penalties for interference.* Any officer of the Bureau may, in the performance of his duty, enter in the daytime any building or place where any articles or objects subject to tax are made, produced, or kept, so far as it may be necessary for the purpose of examining said articles or objects and also enter at night any such building or place, while open, for a similar purpose. See 26 U.S.C. 7212 relating to penalties for attempts to interfere with the administration of Internal Revenue laws.

(b) *Examination.* With respect to ATF examination of books and witnesses done in connection with ascertaining, determining, or collecting floor stocks tax, see 27 CFR 70.22.

(68A Stat. 855, 872, 901, as amended, 903, as amended (26 U.S.C. 7212, 7342, 7602, 7606); sec. 204, Pub. L. 85-859, 72 Stat. 1429, as amended (26 U.S.C. 7606))

PART 252—EXPORTATION OF LIQUORS

Paragraph 1. The authority citation for Part 252 continues to read as follows:

Authority: August 16, 1954, Chapter 736, 68A Stat. 917, as amended (26 U.S.C. 7805); 44 U.S.C. 3504(h), unless otherwise noted.

§ 252.195b [Amended]

Par. 2. Section 252.195b is amended to remove in the second sentence of paragraph (b) the words "$10.50 per proof gallon" and insert in their place the words "the rate of tax imposed by 26 U.S.C. 5001 or 7652 on each proof gallon or part thereof of distilled spirits produced in or imported into the United States".

Signed: May 17, 1985.

W.T. Drake,

Acting Director.

Approved: August 12, 1985.

Edward T. Stevenson,

Acting Assistant Secretary, (Enforcement and Operations).

[FR Doc. 85-20120 Filed 8-22-85; 8:45 am]

BILLING CODE 4810-31-M

PANAMA CANAL COMMISSION

35 CFR Part 256

Collection by Salary Offset From Federal Employees Indebted to the United States

AGENCY: Panama Canal Commission.

ACTION: Final rule.

SUMMARY: The Administrator of the Panama Canal Commission issues final regulations establishing rules for the offset of a debt against the Federal pay of a current or former Federal employee who is indebted to the United States. These regulations implement debt collection procedures provided for under the Debt Collection Act of 1982.

EFFECTIVE DATE: These regulations shall take effect August 23, 1985.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Rhode, Jr., Secretary, Panama Canal Commission, 2000 L Street NW, Suite 550, Washington, D.C. 20036 (Tel. No. (202) 634-6441) or Mr. Jess K. Trotten, Acting General Counsel, Panama Canal Commission 34011 (Tel. No. in Balboa Heights, Republic of Panama, 011-507-52-7511).

SUPPLEMENTARY INFORMATION: On May 9, 1985, the Administrator published in the **Federal Register**, 50 FR 19539, a notice of proposed rulemaking setting forth proposed rules for offsetting the Federal pay of current and former Federal employees who are indebted to the United States. The preamble to the notice of proposed rulemaking set forth, in detail, the basis and purpose of the proposed rule. The Administrator is adopting the proposed rule as a final rule with only minor technical changes and accordingly, is incorporating by reference into this preamble the preamble to the proposed rule (50 FR 19539-19541, May 9, 1985).

Comments and Responses

Interested persons were invited to submit comments and recommendations regarding the proposed regulations within a 30-day period following publication. No comments or recommendations were received.

Paperwork Reduction Act of 1980

Under section 3518 of the Paperwork Reduction Act of 1980 and 5 CFR 1320.3(c), the information collection provisions contained in these regulations are not subject to the Office of Management and Budget review and approval.

Executive Order 12291

The Panama Canal Commission has determined that this rule does not constitute a major rule within the meaning of Executive Order 12291 dated February 17, 1981 (47 FR 13193). The bases for that determination are, first, that the rule, upon implementation, will not have an effect on the economy of $100 million or more per year. Secondly, the rule would not result in a major increase in costs of process of consumers, individual industries or local governmental agencies or geographic regions. Finally, the agency has determined that implementation of the rule would not have a significant adverse effect on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulation Flexibility Act Certification

The Administrator certifies pursuant to 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities. These regulations will not affect small entities, but only individuals employed by the United States.

List of Subjects in 35 CFR Part 256

Claims, Debt collection, Government employees.

Dated: June 28, 1985.

Fernando Manfredo, Jr.,

Acting Administrator.

Accordingly, the Title 35 of the Code of Federal Regulations is amended by adding a new part, Part 256, to read as follows:

PART 256—SALARY OFFSET FOR FEDERAL EMPLOYEES WHO ARE INDEBTED TO THE UNITED STATES

Sec.

256.1 Collection of debts by offset; scope of regulations.
256.2 Definitions.
256.3 Pay subject to offset.
256.4 Advance notice of debt; request for records; submission of information.
256.5 Formal notice to employee.
256.6 Request for a hearing; prehearing submissions.
256.7 Hearings; time, date, and location.
256.8 Consequence of employee's failure to meet deadline dates.
256.9 Hearing procedures.
256.10 Representation.
256.11 Applicable legal principles.
256.12 Standards for determining extreme financial hardship.
256.13 Collection of debts on behalf of other agencies by offsetting the pay of a Commission employee.

Authority: 5 U.S.C. 5514, as amended by section 5 of Public Law 97-365, 96 Stat. 1751-1752.

§ 256.1 Collection of debts by offset; scope of regulations.

(a) If it is determined that an employee of the United States is indebted to the Panama Canal Commission, the employee's pay may be offset to satisfy that indebtedeness under the procedures set forth in this part.

(b) Debts owed by Commission employees to other agencies of the United States may be recovered by offset against the employee's pay in accordance with § 256.13. Similar provision in the regulations of other agencies permit the Commission to recover by offset debts owed to the Commission by the employee of another agency, if the Commission first complies with the provisions of §§ 256.1 through 256.12 of this part.

(c) An offset against pay shall be carried out in accordance with the standards established under the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3701 *et seq.*).

(d) The regulations in this part do not apply to, and do not impair the United States' authority with regard to, the collection of a debt, by offset or by other means, if the debt is owed to the United States by a Federal employee and the debt arose under the Internal Revenue Code of 1954 as amended (26 U.S.C. 1 *et seq.*), or in any other circumstances in which collection of a debt by salary offset is explicitly provided by Federal statute, such as the collection authority granted the Commission pursuant to 22 U.S.C. 3645.

(e) These regulations do not preclude an employee from questioning the amount or validity of a debt by submitting a claim to the General Accounting Office, but the Commission need not suspend the collection of the debt because of the filing of such a claim.

(f) These regulations do not preclude the compromise, suspension or termination of collection actions where appropriate under the standards set forth at 4 CFR 101.1 *et seq.*

(g) An employee's involuntary payment of all or any portion of an alleged debt being collected pursuant to this part shall not be construed as a waiver of any rights which the employee may have under this subpart or any other provision of law, except as otherwise provided by law.

(h) Amounts paid or deducted pursuant to this subpart shall be promptly refunded to an employee if the debt is waived or otherwise found not owing to the United States or if the Commission is directed by a competent judicial or administrative authority to refund amounts deducted from an employee's current pay.

(i) The procedures in this part and the collection of debts by the Panama Canal Commission shall be carried out by the Chief Financial Officer.

(j) The Commission will not initiate salary offset to collect a debt under this subpart more than ten years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known by the official or officials of the Government who are charged with discovering and collecting the debt in question.

§ 256.2 Definitions.

As used in this part:

"Agency" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Creditor agency" means the Federal agency to which the debt is owed.

"Day," unless specified otherwise, means a calendar day, and time limits are to be computed by counting calendar days, rather than only those days on which Commission offices are open for business.

"Debt" means an amount owed to the United States from any source, except as provided in this part. Such debts include, but are not limited to, those arising from loans insured or guaranteed by the United States, fees, leases, rents, royalties, services, sales of real or personal property, overpayments, fines penalties, damages, interest forfeitures, etc. Interest, penalties, and administrative costs may be assessed on debts collected pursuant to this part. These charges shall be assessed or waived in accordance with the provisions of 4 CFR 102.13.

"Delinquent debt" means (a) a debt which has not been paid, or for which arrangements for payment have not been agreed to by the creditor agency and the employee, by the date specified in the creditor agency's initial written notification or (b) a debt for which the employee fails to comply with the terms of payment arrangements agreed to with the creditor agency.

"Disposable pay" shall have the same meaning as prescribed in 5 CFR 550.1103.

"Employee" means a current—

(a) Civilian employee, as defined in 5 U.S.C. 2105;

(b) Member of the Armed Forces or Reserves of the United States;

(c) Employee of the United States Postal Service; or

(d) Employee of the Postal Rate Commission.

"Pay" means basic pay, premium pay, special pay, incentive pay, retired pay, retainer pay, or, in case of an employee not entitled to basic pay, other authorized pay.

"Paying agency" means the Federal agency or branch of the Armed Forces or Reserves employing the individual or disbursing his or her current pay.

"Salary offset" means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction at one or more officially established pay intervals from the current pay of an employee without his consent.

"Waiver" means the cancellation, remission, forgiveness or nonrecovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 5 U.S.C. 8346(b), 10 U.S.C. 2774, or 32 U.S.C. 716, or any other law.

§ 256.3 Pay subject to offset.

(a) An offset from an employee's pay from the Commission may not exceed 15 percent of the employee's disposable pay, unless the employee agree in writing to a larger offset.

(b) If collection in one lump-sum payment would exceed 15 percent of the employee's disposable pay, an offset shall be made biweekly or at officially established pay intervals from the employee's current pay account. Whenever possible, the installment payments shall be sufficient in size to liquidate the debt during a period not greater than the anticipated period of active duty or employment of the debtor employee.

(c) If an employee retires, resigns, or is discharged, or if his employment period or period of active duty otherwise ends before collection of the debt is completed, an offset may be made from subsequent payments of any nature (*e.g.*, final salary payment, lump-sum leave, etc.) due the individual from the employing agency, to the extent necessary to liquidate the debt. If the final payment due the employee is insufficient to satisfy the debt, the creditor agency shall take steps necessary to provide for payment of the debt by administrative offset from payments of any kind due the former employee from the United States pursuant to 31 U.S.C. 3716. (See 4 CFR 102.4)

§ 256.4 Advance notice of debt, request for records submission of information.

(a) Before initiating an offset proceeding, the Chief Financial Officer of the Panama Canal Commission will establish an individual administrative case file for each employee to be

covered by the offset proceeding and notify the employee—

(1) That he has determined that the employee is indebted to the United States in a specific amount as the result of a debt due and owing to the Panama Canal Commission;

(2) That he intends to satisfy that indebtedness by offsetting 15 percent of the employee's disposable pay unless the employee can demonstrate that he is not indebted to the United States or that the proposed offset schedule would produce an extreme financial hardship, as defined in § 256.12 of this part;

(3) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including a description of the conditions under which a waiver must be granted, notice that the employee has an opportunity to request such a waiver, and instructions on how to apply for a waiver; and

(4) The options available to him and time limits within which submission of additional information or documents must be made.

(b)(1) An employee who has been notified of the Chief Financial Officer's determination of the existence and amount of the debt and the proposed offset schedule, may submit to him a request—

(i) Not later than 10 days from the date the employee receives the notice, for a copy of the records in the possession of the agency relating to the debt,

(ii) Within the time specified in paragraph (c) of this section, that he reconsider his determination of the existence or amount of the debt,

(iii) Within the time set forth in paragraph (c) fo this section, that he reconsider the proposed offset schedule, on the basis that it would produce an extreme financial hardship for the employee, and

(iv) Within the time set forth in paragraph (c) of this section, that he consider a request for waiver of the debt, if a waiver provision is applicable to the debt.

(2) If the employee requests a reconsideration of the determination of the existence or amount of the debt, the employee shall submit a statement, with supporting documents, indicating why the employee believes he is not so indebted.

(3) If the employee requests a reconsideration of the proposed offset schedule, the employee shall file an alternative proposed offset schedule and a statement, with supporting documents, showing why the schedule proposed by the agency would produce an extreme financial hardship for the employee. The supporting documents must show, for the employee and his spouse and legal dependents, for the one-year period preceding the receipt of the notice and for the repayment period proposed by the employee in his or her offset schedule, the—

(i) Income from all sources,

(ii) Assets,

(iii) Liabilities,

(iv) Number of legal dependents,

(v) Expenses for food, housing, clothing, and transportation,

(vi) Medical expenses, and

(vii) Exceptional expenses, if any.

(c) An employee who requests a reconsideration of the existence or amount of the debt, or the proposed offset schedule, shall submit his statement, with supporting documents, to the Chief Financial Officer no later than—

(1) Forty-five days from the date the employee receives the notice of the debt, if he does not make a timely request for records under paragraph (b)(1)(i); or

(2) Forty-five days from the date the employee receives the records, if a timely request for records was made.

(d) If the employee submits a timely request for reconsideration under paragraph (b), together with the required documents, the Chief Financial Officer will reconsider whether the employee is indebted to the United States, the amount that the employee owes, or whether the proposed offset schedule is appropriate.

(e) If the employee files a timely request for waiver of the debt, the Chief Financial Officer will consider that request. If the employee files a request for waiver that is not timely, the request will be considered if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(f) The Chief Financial Officer's decision on the employee's request for reconsideration will be based on agency records and the material submitted by the employee. He shall promptly notify the employee of his decision concerning the existence and amount of the debt and the appropriateness of the employee's proposed alternative offset schedule.

(g) If the Chief Financial Officer determines that the employee is indebted to the United States, he will include in the notice to the employee the following matters:

(1) A statement of the reasons for the decision regarding the indebtedness, including, if applicable, the reasons for any reduction of the amount of the indebtedness; and

(2) The notice described in § 256.5.

(h) If the Chief Financial Officer determines that his original offset schedule, or a modified schedule (other than the one proposed by the employee) will not impose an extreme financial hardship on the employee, he will include in the notice to the employee—

(1) A statement of the reasons for his conclusion that his original or modified offset schedule will not impose an extreme financial hardship, and

(2) The notice described in § 256.6.

§ 256.5 Format notice to employee.

(a) At least 30 days before requesting an agency to offset the pay of an employee or commencing the offset of the pay of an employee of the Commission, the Chief Financial Officer will send the employee a notice stating—

(1) The nature and amount of the debt he has determined that the employee owes the United States;

(2) His intenfion to collect the debt by offset;

(3) The amount that the agency determines will be offset from the employee's disposable pay, including the proposed schedule for the deductions;

(4) Unless such payments are excused in accordance with 4 CFR 102.13, an explanation of the creditor agency's requirements concerning interest, penalties, and administrative costs;

(5) The employee's right to inspect and copy Government records relating to the debt or, if the employee or his representative cannot personally inspect the records, to request and receive a copy of such records.

(6) If not previously provided, the opportunity (under terms agreeable to the Commission) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, signed by both the employee and the Commission, and documented in the Commission's files (4 CFR 102.2(e));

(7) If the applicable law includes a provision requiring waiver of debts in certain circumstances, notice of the waiver provision, including notice of the period within which such a waiver must be requested and an explanation of the conditions under which waiver may be granted;

(8) That amounts paid or deducted for the alleged debt which are later waived or found not owed to the United States

will be promptly refunded to the employee;

(9) The employee's right to a hearing on the Chief Financial Officer's determination concerning the existence and amount of the debt and the proposed offset schedule. This notice shall include a description of the applicable hearing procedures and requirements;

(10) That the timely filing of a petition for hearing on the existence or amount of a debt or the offset schedule will stay the commencement of collection proceedings; but that a request for a waiver or a hearing on the employee's credibility of veracity in connection with a request for a permissive waiver will not stay the collection proceedings;

(11) That a final decision on the hearing (if one is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing unless the employee requests and the hearing official grants a delay in the proceedings;

(12) The method and time period for requesting a hearing; and

(13) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary or adverse action;

(ii) Penalties under the False Claims Act, sections 3729–3731 of title 31, United States Code, or any other applicable statutory authority; or

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code or any other applicable statutory authority.

(b) The formal notice prescribed by paragraph (a) is not applicable to any pay adjustment arising out of an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

§ 256.6 Request for a hearing; prehearing submissions.

(a) An employee's request for a hearing or waiver under section 256.5 must be filed not later than 15 days from the date of receipt of the formal notice.

(b) Not later than three days prior to a scheduled hearing date, the employee may notify the Chief Financial Officer of his election to have the matter determined by the hearing official solely on the basis of written submissions. If no such election is filed by the employee, the hearing shall be conducted as an oral proceeding.

(c) If an employee files a timely petition for a hearing, the Chief Financial Officer will—

(1) Notify the employee of the time, date, and location of the hearing, if a determination solely on the basis of written submissions has not been requested; and

(2) Provide copies of the records in the possession of the agency relating to the employee's debt to the hearing official and, if he has not previously received the records, to the employee.

(d) If the employee files a request for a hearing that is not timely, he will be granted a hearing if he establishes that his failure to file within the time prescribed was because of circumstances beyond his control or because he did not receive the notice of the time limit and was not otherwise aware of it.

(e) If the employee contests the Commission determination of the existence or amount of the debt, he shall, not later than 10 days prior to the scheduled hearing date, file the following documents:

(1) A statement of the reasons why the employee believes that the Commission determination of the existence or amount of the debt was clearly erroneous. The statement shall include a recitation of the facts on which the employee relies to support his belief and any legal arguments supporting his position;

(2) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(3) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(f) If the employee contests the Commission's proposed offset schedule, he shall, not later than 10 days prior to the scheduled hearing date, file the following:

(1) A proposed alternative offset schedule;

(2) A statement of the reasons why the proposed offset against disposable pay will produce an extreme financial hardship;

(3) The information required in § 256.4(b)(3) of this part;

(4) A list of witnesses the employee intends to call at the hearing and a statement of why their testimony is desired; and

(5) A copy of the records that the employee intends to introduce at the hearing, if they differ from those provided by the Commission.

(g) The Chief Financial Officer shall file, not later than 10 days prior to the scheduled hearing date, a list of witnesses that the Commission intends to call at the hearing.

(h) Material submitted by an employee in connection with a request for reconsideration or for a waiver under section 256.4 need not be resubmitted in connection with the proceeding under this section.

(i) Material required to be filed under paragraphs (e), (f), and (g) of this section shall be filed with the hearing official and copies shall be provided to the opposing party.

§ 256.7 Hearings, time, date, and location.

(a) If an employee files a timely request for a hearing under § 256.6, the Commission will select the time, date, and location for the hearing. A hearing will be granted on a request for a waiver only if such waiver is provided for by law and if the request, in the judgment of the Chief Financial Officer, raises issues of veracity or credibility of the employee. To the extent feasible, the Commission will select a date and location that is convenient for the employee.

(b) For an employee who resides on the Isthmus of Panama, the hearing will be held in Panama. Hearings may be scheduled in New Orleans or Washington, D.C. for persons not residing in Panama.

§ 256.8 Consequence of employee's failure to meet deadline dates.

(a) An employee shall be considered to have waived his right to a hearing, and will have his disposable pay offset in accordance with the offset schedule proposed by the Commission, if the employee fails to appear at the time fixed for a hearing, or fails to file the required submissions under § 256.6 within five days after the filing date established under that section.

(b) The hearing official may excuse the employee's failure to meet any of the foregoing requirements if the employee shows that he exercised due diligence and that there is good cause for his failure to meet the requirements.

§ 256.9 Hearing procedures.

(a) The hearing will be conducted by a hearing official who is not an employee of the Commission or otherwise under its supervision or control, except that hearings on waivers may be conducted by an employee of the Commission.

(b) The hearing official shall prepare a summary record of the hearing, which will be maintained by the Commission as a part of the record of the offset procedures; however, no transcript of the hearing shall be made.

(c) The hearing shall not be conducted in accordance with formal rules of evidence with regard to the

admissibility or use of evidence, except that the hearing official shall limit the evidence to testimony and documents which are relevant to the issues being considered.

(d) At the hearing, the employee and the Commission may introduce evidence and may call witnesses, consistent with the provisions of paragraph (c) of this section. Witnesses shall testify under oath and are subject to cross-examination.

(e) If the matter being contested is the existence or amount of a debt, the hearing official shall issue a decision upholding the Commission determination, unless the hearing official finds that the Commission determination was clearly erroneous.

(f) If the hearing official finds that the Commission's determination of the amount of the debt was clearly erroneous, he shall determine the amount owed by the employee, if any.

(g) If the matter being contested is the Commission's proposed offset schedule, the hearing official shall uphold that schedule unless the employee has demonstrated by clear and convincing evidence that the payments called for under that schedule would result in an extreme financial hardship for the employee.

(h) If the matter being contested is the credibility or veracity of the employee in connection with his request for a waiver, the hearing official shall make a determination as to the employee's credibility or veracity.

(i) If the hearing official finds that the payments called for under the Chief Financial Officer's proposed offset schedule will produce an extreme financial hardship for the employee, the hearing official shall establish an offset schedule that will result in the repayment of the debt in the shortest period of time which will not result in an extreme financial hardship for the employee.

(j) The hearing official shall issue a written opinion setting forth his decision and a statement of the reasons supporting it as soon as practicable, but not more than 60 days after the filing of the petition requesting the hearing, unless the hearing official has granted a delay in the proceedings at the request of the employee. The opinion shall contain his determinations as to the existence and amount of the debt, the origin of the debt, and, if a request for a waiver has been made, the employee's veracity or credibility.

(k) If the employee files a petition for a hearing in connection with a request for a waiver under a statute requiring a waiver and meets the time limits for filing material prior to the hearing, no deductions to effect the offset will be made until the employee has been provided a hearing and a final written decision has been issued.

§ 256.10 Representation.

An employee may represent himself or may be represented by another person, including an attorney, during any proceedings under this part.

§ 256.11 Applicable legal principles.

(a) The hearing official may not find that the Commission's determination of the existence or amount of the employee's debt was erroneous—

(1) On the basis of State or local statutes of limitations;

(2) On the basis that the employee is owed monies by the United States (other than regular salary) and that payment of that debt by the United States would eliminate or reduce the debt, unless the employee has, not later than 45 days after receipt of advance notice of the debt under section 256.4, submitted written confirmation by the agency which is indebted to the employee that such money is owed and has assigned the payment of that money to the Commission; or

(3) On the basis of any factual or legal argument that was decided on the merits adversely to the employee in a court of competent jurisdiction.

(b) In determining whether the Chief Financial Officer's decision concerning the existence or amount of the employee's debt is clearly erroneous, the hearing official shall be bound by the relevant Federal statutes and regulations governing the program which gave rise to the debt, and general principles of the law of the United States, if relevant.

§ 256.12 Standards for determining extreme financial hardship.

(a) An offset will be considered to produce an extreme financial hardship for an employee if the offset prevents the employee from meeting the costs necessarily incurred for essential subsistence expenses of the employee and his spouse and dependents. Essential subsistence expenses consist of the costs incurred for medical care, food, housing, clothing, and transportation only.

(b) In determining whether an offset would prevent the employee from meeting the essential subsistence costs described in paragraph (a) of this section, the following matters shall be considered—

(1) The income from all sources of the employee and his spouse and dependents;

(2) The extent to which the assets of the employee and his spouse and dependents are available to pay the debt or the essential subsistence expenses;

(3) Whether the essential subsistence costs have been minimized to the greatest extent possible;

(4) The extent to which the employee and his spouse and dependents can borrow money to pay the debt or the essential subsistence expenses; and

(5) The extent to which the employee and his spouse and dependents have other exceptional expenses that should be taken into account, and whether these expenses have been minimized.

§ 256.13 Collection of debts on behalf of other agencies by offsetting the pay of a commission employee.

(a) Upon completion of the procedures established by the creditor agency under 5 U.S.C. 5514, the creditor agency shall forward to the Commission a certified statement of the existence of the debt. This document shall include a statement that the employee owes the debt, the amount and basis of the debt, the date on which payment is due, the date on which the claim against the debtor accrued, if different from the payment due date, and a statement that agency regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management.

(b) Unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the writing or statement is attached to the debt claim form, the creditor agency must also indicate the actions taken under section 5514(b) and give the dates the actions were taken.

(c) If, after the debt claim has been submitted by the creditor agency, the employee transfers to a position in another agency, the Commission will certify the total amount of the collection made on the debt. One copy of the certification will be furnished to the employee, and one copy will be furnished to the creditor agency, together with notice of the employee's transfer. The original of the debt claim form shall be inserted in the employee's official personnel folder, together with the certification of the amount which has been collected. Upon receiving the official personnel folder, it will be the responsibility of the new paying agency to resume the collection from the individual's current pay and notify the employee and the creditor agency of the resumption. In cases in which an employee transfers to the Commission while a debt is being collected from him

by another Federal agency by offset, the Commission will resume the collection and notify the employee that it is doing so.

(d) For collections of debts by offset under this section, the Commission will not repeat the procedures prescribed by 5 U.S.C. 5514 and agency regulations under section 5514.

(e) If the Commission receives an incomplete or improperly certified debt claim, it will return the claim to the creditor agency with a notice that procedures under 5 U.S.C. 5514 must be complied with and a complete debt claim must be submitted before any action will be taken to collect the debt by offset from the employee's current pay.

(f) If the Commission receives a complete debt claim, deductions shall be scheduled to begin on the next officially established pay interval, if possible. A copy of the debt claim form shall be given to the debtor, together with notice of the date deductions will commence.

(g) The Commission will not review the merits of the creditor agency's determination with respect to the amount or validity of the debt.

[FR Doc. 85-20153 Filed 8-22-85; 8:45 am]
BILLING CODE 3640-04-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Delaware Water Gap National Recreation Area, Pennsylvania and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises fees charged to commercial vehicles operated on U.S. Highway 209 within Delaware Water Gap National Recreation Area, Pennsylvania. Public Law 98-63 provided for the establishment of a fee schedule for commercial vehicles exempted from the prohibition found in National Park Service general regulations. The Service published a Proposed Rule in the Federal Register on January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule that ranges from $.50 to $5.00 to a schedule ranging from $1.00 to $10.00. The Service, after considering public comment, is now implementing a revised commercial fee schedule ranging from $1.00 for two-axle cars, vans or pickups to $7.00 for vehicles with five or more axles. This increase will provide an estimated $195,550 in additional revenue to be used to offset partially the costs of management, operation, construction and maintenance of U.S. Highway 209 within the boundary of the recreation area.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Albert A. Hawkins, Superintendent, Delaware Water Gap National Recreation Area, Telephone (717) 588-6637.

SUPPLEMENTARY INFORMATION:

Background

On July 30, 1983, Pub. L. 98-63 was enacted restricting commercial vehicle use on U.S. Highway 209 and mitigating the conditions of 36 CFR 5.6, which otherwise would be applicable. Pub. L. 98-63 authorized certain commercial vehicles to use the highway and directed that fees be established, not to exceed $10.00 per trip, for certain commercial vehicle operations on U.S. Highway 209. On October 14, 1983, the National Park Service published in the **Federal Register**, special regulations codified at 36 CFR 7.71 (d) and (e) to implement Pub. L. 98-63.

The commercial vehicles authorized to operate within the boundaries by the 1983 special regulations, are those vehicles: (i) Operated by businesses based within the recreation area; (ii) operated by businesses that, as of July 30, 1983, operated a commercial vehicular facility in Monroe, Pike or Northampton Counties, Pennsylvania, and the vehicular operation originates or terminates at such facility; or (iii) operated in order to provide services to businesses and persons located in or contiguous to the boundaries of the recreation area.

In accordance with Pub. L. 98-63, the National Park Service also published, as part of § 7.71 (e) (i), a fee schedule based on the number of axles of lightweight, and heavy commercial vehicles. By law, the fees collected are for the management, operation, construction, and maintenance of U.S. Highway 209 within the boundary of the recreation area.

The interim fees were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at $.25 per axle and for vehicles with more than four wheels at $1.00 per axle. The interim fees were determined as follows:

$.50..... Two axle car, van or pickup.
$1.00..... Two axle--four wheel vehicle with trailer.
$2.00..... Two axle--six wheel vehicle.
$3.00..... Three axle vehicle.
$4.00..... Four axle vehicle.
$5.00..... Five or more axle vehicle.

The closure and exceptions provisions of Pub. L. 98-63, absent any additional Congressional action, were to terminate on December 31, 1983. Congress directed in Pub. L. 98-63, that in the interim, a commission be established to make recommendations to Congress by October 30, 1983, regarding a permanent transportation improvement program in the affected area. The 209 Commission was directed, among other things, to evaluate the statutory closure and exceptions. Their report was transmitted to Congress on October 30, 1983.

The statutory closure of U.S. Highway 209 was amended and extended until December 31, 1985 by passage of Pub. L. 98-151 on November 14, 1983. In addition to the exemptions established by Pub. L. 98-63, Pub. L. 98-151 also provided exemptions for up to 150 northbound and 150 southbound commercial vehicles per day serving businesses or persons in Orange County, New York.

The Service published a Proposed Rule with Request for Comments in the **Federal Register** of Tuesday, January 8, 1985 (50 FR 973), to increase the interim one-way fee schedule (ranging from $.50 for two axle car/vans or pickups to $5.00 for a five or more axle vehicle) to a fee schedule ranging from $1.00 for nonexempt commercial cars/vans or pickups to $10.00 for a five or more axle vehicle. This proposed rule was based upon the recommendations of the Congressionally mandated 209 Commission Report and revised estimates of costs for management, operation, construction and maintenance of U.S. Highway 209 within Delaware Water Gap National Recreation Area. This proposed rule was open to public comment until February 7, 1985. The Service has now analyzed the written comments received regarding the proposed rule, and has determined that a revised fee schedule ranging from $1.00 for two axle cars/vans or pickups to $7.00 for a five or more axle vehicle is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

Summary of Comments

During the public comment period, January 8, 1985 to February 7, 1985, the National Park Service received 198 timely written comments regarding the regulation. Comments were received from 188 individuals, 1 member of the

legal profession representing a trucking company, 1 trucking company, 4 local businesses, 2 local governments and 2 state representatives.

Analysis of Comments

The National Park Service received 51 letters opposing the proposed increase in commercial vehicle fees. Of these, at least 28 letters were written by employees of the largest trucking company which would be affected by this increase. This company currently employs over 800 local people. Forty comments expressed concern that higher fees would have a negative economic impact on business in the four county area. This impact would result if trucking companies were to relocate. Commentors believed the higher shipping costs could not be competitively passed on to the consumer. According to some commentors unemployment in the three counties would increase as trucking companies relocate. The National Park Service estimates that the proposed fee increase would have had an immediate economic impact on the four county commercial vehicle industry of $486,000 maximum. The increase would have cost the largest commercial vehicle operation approximately $190,000 more than they are currently paying for the use of the highway (based upon figures supplied by the company). This cost constitutes an increase in shipping costs of approximately $0.25 per ton of goods for 5 axle vehicles ($5.00 fee increase for 5 axle vehicles divided by 20 tons per load). The revised fee schedule ($2.00 fee increase for 5 axle vehicles) will reduce the immediate economic impact on the four county commercial vehicle industry to $195,550 maximum. This increase is expected to cost the largest commercial vehicle operation approximately $76,000 more than they are currently paying. The comparable increase in shipping costs will be approximately $0.10 per ton of goods for 5 axle vehicles. As visitation to the Recreation Area increases, business income from tourists in the Pocono region is expected to increase as it did in Pike County in 1983 (U.S. 209 Commission Report). This increase is expected to partially offset the negative economic impact that might occur in the region.

Twenty-five comments contend that U.S. Highway 209 is currently the highest cost per mile toll road in the United States while four other comments stated that doubling the fees would make the toll exorbitant. Currently the $5.00 fee for five axle trucks for 21 miles of highway constitutes a cost of $0.24 per mile. Increasing the fee to $7.00 would make the charge $0.33 per mile. A fee schedule ranging from $9.00 for a 2 axle, 4-wheel vehicle up to $25.00 for a five axle vehicle is currently in effect on the 20 mile Chesapeake Bay Bridge-Tunnel in Virginia, a charge of $1.25 per mile.

The cost of a 5 axle vehicle to travel on the shortest alternate route currently available at the $1.115 per mile operating cost estimated in September 1982 (Final Environmental Impact Statement, National Park Service) is $16.73. U.S. Highway 209 is not intended to be a turnpike-toll road comparable to the Pennsylvania or Ohio Turnpike. It is a park road upon which only specific commercial vehicles are authorized to travel until such time as a reasonable alternative route is established (Pub. L. 98–63). Congress mandated, in Pub. L. 98–63, that a fee not to exceed $10.00 per trip be charged for this use.

Seventeen comments stated that it was not the intent of Congress in Pub. L. 98–63 that the fees should cover all of the costs of maintenance and operation of U.S. Highway 209. In Pub. L. 98–63 Congress explicitly stated that the fees collected were to be available for management, operation, construction and maintenance of U.S. Highway 209. Congress did not state whether fees were intended to cover all costs incurred in operating the highway. January 1985 cost projections for annual management, operation, construction and maintenance are $2,117,760. Of this cost, $1,145,450 is currently funded from National Park Service funds. Another $972,310 will be required to meet this projected need. Of these additional funds required, only $681,700 will be derived from U.S. Highway 209 fees. The Service will seek alternative funding to obtain the remaining $290,600 necessary to manage the highway.

Twelve commentors felt that the commercial vehicle fees discriminate against the trucking industry, and fifteen commentors recommended that tolls should be extended to all users. Two additional commentors stated that maintenance and operational costs would occur irrespective of the type of user. The National Park Service has no legislative authority to charge non-commercial vehicles for use of U.S. Highway 209. Pub. L. 98–63 mandates that a fee, not to exceed $10.00, be charged for all commercial vehicles from the ban, except for those commercial vehicles servicing the Recreation Area or servicing businesses or persons located contiguous to the boundaries of the Recreation Area. The commercial vehicle fees apply not only to five axle trucks, but also to all passenger cars, vans, pickups and other vehicles which are used for commercial purposes.

Ten commenters emphasized that no feasible alternative routes currently exist. The Final Environmental Impact Statement on U.S. Highway 209, September 1982, and the U.S. 209 Commission Report identified the interstate highways (I–80, I–81, I–380, I–84) as alternate routes to U.S. Highway 209. The U.S. 209 Commission is currently studying alternatives for development and construction of another alternate route in the area.

One hundred and forty-seven letters were received which supported the proposal to increase commercial vehicles fees. One hundred and forty-six commentors stated that the increased fees were necessary to help produce a useful Recreation Area. One commentor stated that the privilege and beauty of the Recreation Area are for all, not for a special purpose commercial concern unrelated to the Recreation Area.

Section-by-Section Analysis

Public Law 98–63 was enacted July 30, 1983, closing U.S. Highway 209 in accordance with § 5.6 of Title 36 of the Code of Federal Regulations, prohibiting commercial vehicles from Delaware Water Gap National Recreation Area, authorizing the exemption of some commercial vehicles, and directing that fees not to exceed $10.00, be established for certain commercial vehicle operations on Highway 209. The fees collected are for the management, operation, construction and maintenance of Highway 209 within the boundary of the Recreation Area.

The interim fees which were effective on October 14, 1983 were based on the probable impact of vehicles on road structure. Rates were calculated for four-wheel vehicles and four-wheel vehicles with trailers at $.25 per axle and for vehicles with more than four wheels at $1.00 per axle.

A further analysis of information concerning the permitted commercial use of U.S. Highway 209 has indicated that the interim fees as published on October 14, 1983, were too low. Consequently, the decision was made to increase these fees based on the following:

The recommendation of the Congressionally mandated 209 Commission (U.S. 209 Congressional Commission Report, October, 1983), to continue collecting a toll not to exceed $10.00 per trip; and

Revised estimates of costs for the management, operation, construction and maintenance of U.S. Highway 209.

The Service published a Proposed Rule with Request for Comments in the Federal Register of Tuesday, January 8, 1985 (50 FR 973). This proposed rule would have doubled the interim fees. The Service has subsequently analyzed the public comments received regarding the proposed rule, and has developed a revised fee schedule. The potential economic impacts of the proposed rule were weighed against the needs for funds to manage, operate, and maintain U.S. Highway 209 as a safe road for public use and the comments supporting the proposed fee increase. The Service believes that the revised fee schedule (ranging from $1.00 for two axle cars/vans or pickups to $7.00 for five or more axle vehicles) is a compromise which will accommodate the needs of the public, the local businesses, and the Service.

The following table compares the interim fees, the fees proposed in the proposed rulemaking, and the revised fees which represent the Service's final fee schedule determination.

	Interim fees	Proposed fees	Revised (final) fees
Two axle cars/vans/pickups	$.50	$1	$1
Two axle 4 wheel vehicle with trailer	1.00	2	2
Two axle 6 wheel vehicle	2.00	4	3
Three axle vehicle	3.00	6	4
Four axle vehicle	4.00	8	6
Five or more axle vehicle	5.00	10	7

This regulation will be effective 30 days after publication in the Federal Register.

Drafting Information

The principal author of this rulemaking is Paul R. Anderson, Delaware Water Gap National Recreation Area, National Park Service, Bushkill, Pennsylvania 18324.

Paperwork Reduction Act

The rulemaking contains no provision that would entail the collection of information or require compliance with 44 U.S.C. § 3501 *et seq.*

Compliance With Other Laws

An Environmental Assessment and Finding of No Significant Impact has been prepared on the imposition of the fee schedule. The revision of the fee schedule is within the range of alternatives initially discussed, and does not constitute a significant deviation from the original proposed action. The final EIS on the management of U.S. Highway 209 (September 1982) addresses the impacts of commercial vehicular traffic on U.S. Highway 209 and the diversion of that traffic. Copies of these documents are available at the address noted at the beginning of this notice. The Department has determined that it is not necessary to prepare any additional documents concerning this regulation in order to comply with the National Environmental Policy Act (42 U.S.C. 4321 *et. seq.*).

The Department of the Interior has determined that this rulemaking is not a "major rule" within the meaning of E.O. 12291, and certifies that this document will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule will affect about 200 small businesses. The maximum economic impact is projected to be $195,550 in additional user fees.

List of Subjects in 36 CFR Part 7

National parks.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 462(k).

2. By revising section 7.71(e)(1) to read as follows:

§ 7.71 Delaware Water Gap National Recreation Area

* * * * *

(e) *Commercial vehicle fees.*—(1) *Fee Schedule:* Fees are charged for those commercial vehicular uses described in paragraphs (d)(1)(i), (ii) and (iii) of this section based on the number of axles and wheels on a vehicle, regardless of load or weight, as follows:

(i) Two-axle car, van or pickup	$1
(ii) Two-axle 4-wheel vehicle with trailer	2
(iii) Two-axle 6-wheel vehicle	3
(iv) Three-axle vehicle	4
(v) Four-axle vehicle	6
(vi) Five or more-axle vehicle	7

The fees charged are for one trip, one way.

* * * * *

Dated: August 2, 1985.

William P. Horn,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 85-20231 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

VETERANS ADMINISTRATION

38 CFR Part 17

Amount of Aid Payable; Rates

AGENCY: Veterans Administration.

ACTION: Notice of Per Diem Rates.

SUMMARY: The Veterans Administration hereby gives notice that the amount of aid payable to a recognized State home under 38 CFR 17.166c shall be at the following per diem rates:

Type of care	Rate
Domiciliary care	$7.30
Nursing home care	17.05
Hospital care	15.25

EFFECTIVE DATE: These rates are payable pursuant to 38 U.S.C. 641(a) effective on date of enactment of Pub. L. 98-160, sec. 105(a), November 21, 1983.

FOR FURTHER INFORMATION CONTACT: F. Brent Baker (202) 389-3854.

Dated: August 14, 1985.

By direction of the Administrator.

John A. Gronvall,

Deputy Chief Medical Director.

[FR Doc. 85-20091 Filed 8-22-85; 8:45 am]

BILLING CODE 8320-01-M

38 CFR Part 18

Nondiscrimination on the Basis of Age

AGENCY: Veterans Administration.

ACTION: Final regulations.

SUMMARY: The VA (Veterans Administration) issues these final regulations to carry out its responsibilities under the "Age Discrimination Act of 1975" and the governmentwide regulations published in the Federal Register on June 12, 1979, codified at 45 CFR Part 90. The Age Discrimination Act of 1975 prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act also contains certain exceptions that permit, under limited circumstances, use of age distinctions or factors other than age that may have a disproportionate effect on the basis of age.

These regulations are designed to guide the actions of recipients of financial assistance from the VA. The regulations incorporate the basic standards for determining what is age discrimination that were set forth in the governmentwide regulations. They discuss the circumstances under which a statutory exception may be invoked; the responsibilities of the VA and recipients

of Federal financial assistance from the VA; and the investigation, conciliation and enforcement procedures the VA will use to ensure compliance with the Act and these regulations.

EFFECTIVE DATE: September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Ana Matilde del Toro (006B5), Equal Opportunity Specialist, Office of Equal Opportunity, 810 Vermont Avenue, NW, Washington, DC 20450. Telephone number (202) 389-2150).

SUPPLEMENTARY INFORMATION:

Background

In November 1975, Congress enacted the Age Discrimination Act (42 U.S.C. 6101, et seq.) as part of the amendments to the Older Americans Act (Pub. L. 94-135). At that time, the express purpose of the Act was to prohibit unreasonable discrimination based on age in programs and activities receiving Federal financial assistance. The Act also permitted federally assisted programs and activities, and recipients of Federal funds, to continue to use: (1) Some age distinctions, and (2) "reasonable factors other then age." The Act applies to persons of all ages.

Prior to the promulgation of any regulations, the Act required the Commission on Civil Rights to conduct a study of age discrimination in federally funded programs and activities. The Commission transmitted its study to the President and the Congress on January 10, 1978. The Commission published the second part of its study in January 1979. The Act also required each affected Federal agency to respond to the Commission's findings and recommendations.

After the receipt of the report of the Commission on Civil Rights and the Federal agency responses to the report, Congress considered amendments to the Age Discrimination Act of 1975. In October 1978, Congress amended the Act (Pub. L. 95-478). Among other changes, Congress struck the word "unreasonable" from the statement of purpose clause, so that the purpose of the Act is to prohibit discrimination based on age in programs or activities receiving Federal financial assistance. However, Congress retained the exceptions to the prohibition against age discrimination. Thus, the Act still permits the use of: (1) Some age distinctions, and (2) "reasonable factors other than age." The ACT continues to apply to persons of all ages.

The Act required HHS (Department of Health and Human Services), formerly HEW (Department of Health, Education and Welfare) to develop and issue governmentwide regulations to guide the development of specific regulations by each Federal agency that administers programs of Federal financial assistance. HHS's final governmentwide regulations were published in the Federal Register on June 12, 1979 (45 CFR Part 90).

The Act requires each department or agency that operates programs of Federal financial assistance to issue proposed and then final regulations which must be consistent with the governmentwide regulations. On November 18, 1983, the VA published in the Federal Register proposed regulations to implement the Act (48 FR 52485-52491). Interested persons were given 30 days to submit their comments. No public comments were received. However, comments suggested by the VA Department of Veterans Benefits have been considered in the final rules hereby adopted.

Overview of the Regulations

The following paragraphs summarize the provisions contained in these regulations and explain any changes that have been made as a result of the comments received from the VA Department of Veterans Benefits.

This subpart is divided into four major sections: General; Standards for Determining Age Discrimination; Responsibilities of Recipients; and Investigation, Conciliation and Enforcement Procedures. It also contains two appendices. Appendix A provides a listing of the statutory provisions to which this subpart applies. Appendix B contains a listing of age distinctions found in statutes and regulations governing VA assisted programs.

The "General" section explains the purpose of VA's age discrimination regulations and defines terms used in this subpart. These regulations apply to any program or activity receiving Federal financial assistance provided by the VA directly or through another recipient (§ 18.502). It should be noted that these regulations do not apply to assistance programs administered by the Federal government directly to beneficiaries, e.g., individual payment of veterans' benefits (compensation). However, the regulations may apply whenever direct aid is provided to an individual on condition that the aid be spent in providing services or benefits to others.

Although the Act generally covers all programs and activities that receive Federal financial assistance, it does not apply to any age distinction "established under authority of any law" which provides benefits for establishes criteria for participation on the basis of age or in age related terms. Thus, age distinctions that are "established under authority of any law" may continue in use. These regulations adopt, without change, the definition of "any law" established in the governmentwide regulations (45 CFR 90.3(b)(1)). Therefore, these regulations do not apply to age distinctions contained in Federal statutes, State statutes, or local statutes or ordinances adopted by elected, general purpose legislative bodies (§ 18.502(b)(1)).

The Act also excludes from its coverage employment practices, except in programs funded for public service employment under the Job Training Partnership Act (§ 18.502(b)(2)).

The general and specific prohibitions against discrimination on the basis of age (§ 18.511), as well as the exceptions to those prohibitions (§ 18.513 and § 18.514), are set forth in the sections under "Standards for Determining Age Discrimination." As a general rule, under these regulations, no person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving financial assistance from the VA.

The Act contains several exceptions which limit the general prohibitions against age discriminaiton. Section 304(b)(1) of the Act permits the use of age distinctions which are based on reasonable factors other than age. These regulations provide definitions for two terms which are essential to an understanding of those exceptions: "normal operation" and "statutory objective" (§ 18.512). "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives. "Statutory objective" is defined to mean any purpose which is explicitly stated in a Federal statute, State statute or local statute or ordinance.

The regulations establish a four-part test, all parts of which must be met for an explicit age distinction to satisfy one of the statutory exceptions and to continue in use in a federally assisted program (§ 18.513). This four-part test will be used to scrutinize age distinctions which are imposed in the administration of VA's assisted programs, but which are not explicitly authorized by Federal, State or local statute.

Recipients of VA funds are also permitted to take an action otherwise prohibited by the Act, if the action is based on "reasonable factors other than age." In that event, the action may be

taken even though it has a disproportionate effect on persons of different ages. However, according to the regulations (§ 18.514), the factors other than age must bear a direct and substantial relationship to the program's normal operation or to the achievement of a statutory objective.

Sections under "Responsibilities of Recipients" explain the duties of VA recipients. VA recipients are responsible for ensuring that their programs and activities are in compliance with the Act and these regulations (§ 18.531).

Where a VA recipient initially receiving funds makes those funds available to a subrecipient, the recipient must notify subrecipients of their obligations under the Act and these regulations (§ 18.532).

Each recipient of Federal financial assistance must sign an assurance that it will comply with the Act and these regulations. The VA may require recipients employing the equivalent of 15 or more full-time employees to examine their use of age distinctions under the Act as part of a compliance review or a complaint investigation conducted by the VA (§ 18.533).

Each VA recipient must make available, upon request, information that the VA determines is necessary to establish whether the recipient is in compliance with the Act and these regulations. Recipients must allow the VA reasonable access to books, records, other recipient facilities and sources of information to the extent necessary to determine compliance with the Act and these regulations (§ 18.534(b)).

The sections under "Investigation, Conciliation and Enforcement Procedures" establish the procedures the VA will use for investigation, conciliation and enforcement of the Act. These procedures reflect the procedural requirements of the governmentwide regulations (45 CFR Part 90).

The VA may conduct compliance or preaward reviews or other similar procedures to ensure compliance with the Act and these regulations. These procedures may be used even in the absence of a complaint against a recipient. The reviews may be as comprehensive as necessary to determine whether a violation has occurred (§ 18.541).

Complaints of age discrimination may be filed with the VA by an individual or a class or by a third party. The complainant must allege discrimination occurring on or after July 1, 1979. A complainant must file a complaint within 180 days from the date the complainant first knew of the alleged act of discrimination, although the VA may extend this time for good cause (§ 18.542(a)).

A complainant must identify the parties involved and the date the complainant first had knowledge of the alleged violation, describe generally the practice complained of, and the complaint must be signed by the complainant (§ 18.542(b)(2)). The complainant and recipient will be notified of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure. The VA will acknowledge in writing the receipt and acceptance of a complaint. The VA will permit a complainant to add information to a complaint where necessary to meet the requirements of a sufficient complaint (§ 18.542(b)(3)).

The VA will refer to another appropriate Federal agency a complaint that does not fall within the jurisdiction of the VA. The complainant will be notified in writing of the referral, the reasons why the complaint is not within the jurisdiction of the VA, and the name, agency, and address of the official to whom the complaint was referred (§ 18.542(c)).

Section 18.543 introduces mediation into the complaint process for age discrimination. The VA will refer all complaints that fall within the coverage of the Act and these regulations to the Federal Mediation and Conciliation Service, which was designated by the Secretary of the Department of Health and Human Services to manage the mediation process. Complainants and recipients are required to participate in the effort to reach a mutually satisfactory mediated settlement of the complaint. Mediation may last no more than 60 days from the date the responsible agency official receives a complaint. No further action will be taken by the VA in connection with a successfully mediated complaint. However, the VA will investigate complaints which are unresolved after mediation or are reopened because the mediation agreement is violated.

A recipient may not intimidate or retaliate against any person who attempts to exercise a right protected by the Act or who participates in any aspect of the proceedings used to resolve allegations of age discrimination (§ 18.545).

The procedures for securing compliance with the Act and these regulations are taken from the governmentwide regulations. The procedures include termination of funds after an opportunity for a hearing on the record, referral to the Department of Justice, or the use of the services of any Federal, State or local government agency to correct a violation (§ 18.546). These regulations include a provision for the Deferral of new Federal financial assistance from the VA when termination proceedings are initiated (§ 18.546(d)).

The VA will use the procedural provisions contained in the regulations implementing Title VI of the Civil Rights Act of 1964 to enforce these regulations (38 CFR 18.9–18.11 and Part 18b).

Where the VA finds that a recipient has discriminated on the basis of age, the VA may require the recipient to take necessary remedial action to overcome the effects of the discrimination (§ 18.548).

When the VA withholds funds from a recipient, the Administrator may disburse those funds to an alternate recipient. The alternate recipient must demonstrate the ability to comply with these regulations and to achieve the goals of the Federal statute which authorizes the financial assistance (§ 18.549).

Complainants may file civil actions when administrative remedies are exhausted. Administrative remedies are exhausted if either 180 days have elapsed since the complainant filed the complaint and the VA has made no finding, or if the VA issues a finding in favor of the recipient. The complainant may then file a suit in a U.S. district court for the district where the recipient is found or transacts business. The complainant must indicate, at the time the suit is filed, if attorney's fees will be demanded in the event that the complainant is successful. No action can be brought if the same alleged violation by the same recipient is the subject of a pending action in any U.S. court. Complainants who wish to file an action must give 30 days notice to the Attorney General, the Administrator, and the recipient (§ 18.550).

Finally, these regulations incorporate two changes recommended by the VA Department of Veterans Benefits. A provision was added to § 18.542 for the VA to acknowledge receipt and acceptance of a complaint in writing (§ 18.542(b)(1)). Also, paragraph (c) of this section has been revised to provide more assistance to the complainant when a complaint is not within the jurisdiction of the VA. Under paragraph (c), the VA will refer a complaint outside of its jurisdiction to an appropriate Federal agency and provide to the complainant the name, address, and agency of the official to which the complaint was referred.

Regulatory Requirements

Regulatory Flexibility Act

The Administrator of Veterans Affairs hereby certifies that these final regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–602. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory flexibility analyses requirements of section 603 and 604.

Executive Order 12291

The VA has determined that these regulations are nonmajor in accordance with Executive Order 12291, Federal Regulation. The annual effect on the economy will be less than $100 million. They will not result in any major increases in costs or prices for anyone. They will have no significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete in domestic or export markets.

Paperwork Reduction Act

The information collection requirements contained in §§ 18.532 and 18.542 of these regulations have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, and have been assigned OMB Control Numbers 2900–0400 and 2900–0401.

List of Subjects in 38 CFR Part 18

Administrative practice and procedures, Age discrimination, Authority delegations (Government agencies), Civil rights, Handicapped.

Approved: August 7, 1985.

By direction of the Administrator.

Everett Alvarez, Jr.,

Deputy Administrator.

PART 18—NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE VETERANS ADMINISTRATION

38 CFR Part 18 is amended by adding a new Subpart E to read as follows:

Subpart E—Nondiscrimination on the Basis of Age

General

Sec.

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18.502 Application.
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Standards for Determining Age Discrimination

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18.512 Definitions of "normal operation" and "statutory objective."
18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.
18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.
18.515 Burden of proof.
18.516 Affirmative action by recipients.

Responsibilities of Veterans Administration Recipients

18.531 General responsibilities.
18.532 Notice to subrecipients.
18.533 Assurance of compliance and recipient assessment of age distinctions.
18.534 Information requirements.

Investigation, Conciliation, and Enforcement Procedures

18.541 Compliance reviews.
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18.543 Mediation.
18.544 Investigation.
18.545 Prohibition against intimidation or retaliation.
18.546 Compliance procedure.
18.547 Hearings, decisions, post-termination proceedings.
18.548 Remedial action by recipient.
18.549 Alternate funds disbursal procedure.
18.550 Exhaustion of administrative remedies.

Appendix A—Statutory Provisions to Which This Subpart Applies
Appendix B—List of Age Distinctions Contained in Statutes and Regulations Governing Federal Financial Assistance Programs of the Veterans Administration

Authority: Age Discrimination Act of 1975, as amended, 42 U.S.C. 6101, et seq.; 45 CFR Part 90 (1979).

Subpart E—Nondiscrimination on the Basis of Age

General

§ 18.501 Purpose.

The purpose of these regulations is to set out VA (Veterans Administration) policies and procedures under the Age Discrimination Act of 1975 and the governmentwide age discrimination regulations at 45 CFR Part 90. The Act and the governmentwide regulations prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Act and the governmentwide regulations permit federally assisted programs and activities, and recipients of Federal funds, to continue to use age distinctions and factors other than age which meet the requirements of the Act and its implementing regulations.

(42 U.S.C. 6101–6107)

§ 18.502 Application.

(a) These regulations apply to any program or activity receiving Federal financial assistance provided by the VA directly or through another recipient.

(b) These regulations do not apply to:

(1) An age distinction contained in that part of a Federal, State, or local statute or ordinance adopted by an elected, general purpose legislative body which:

(i) Provides any benefits or assistance to persons based on age; or

(ii) Establishes criteria for participation in age-related terms; or

(iii) Describes intended beneficiaries or target groups in age-related terms.

(2) Any employment practice of any employer, employment agency, labor organization, or any labor-management joint apprenticeship training program, except any program or activity receiving Federal financial assistance for public service employment under the Job Training Partnership Act, 29 U.S.C. 1501, et seq.

(42 U.S.C. 6101–6107)

§ 18.503 Definitions.

As used in these regulations:

(a) "Act" means the Age Discrimination Act of 1975, as amended (Title III of Pub. L. 94–135, 42 U.S.C. 6101–6107.)

(b) "Action" means any act, activity, policy, rule, standard, or method of administration; or the use of any policy, rule, standard, or method of administration.

(c) "Administrator" means the Administrator of Veterans Affairs or designees.

(d) "Age" means how old a person is, or the number of elapsed years from the date of a person's birth.

(e) "Age discrimination" means unlawful treatment based on age.

(f) "Age distinction" means any action using age or an age-related term.

(g) "Age-related term" means a word or words which necessarily imply a particular age or range of ages (for example, "children," "adult," "older persons," but not "student").

(h) "Day" means calendar day.

(i) "Federal financial assistance" means any grant, entitlement, loan, cooperative agreement, contract (other than a procurement contract or a contract of insurance or guaranty), or any other arrangement by which a Federal agency or department provides or otherwise makes available assistance in the form of:

(1) Funds; or

(2) Services of Federal personnel; or

(3) Real and personal property or any interest in or use of property, including:

(i) Transfers or leases of property for less than fair market value or for reduced consideration; and

(ii) Proceeds from a subsequent transfer or lease of property if the Federal share of its market value is not returned to the Federal Government.

(j) "Recipient" means any State or its political subdivision, any instrumentality of a State or its political subdivision, any public or private agency, institution, organization, or other entity, or any person to which Federal financial assistance is extended, directly or through another recipient. Recipient includes any successor, assignee, or transferee, but excludes the ultimate beneficiary of the assistance.

(k) "Subrecipient" means any of the entities in the definition of "recipient" to which a recipient extends or passes on Federal financial assistance. A subrecipient is generally regarded as a recipient of Federal financial assistance and has all the duties of a recipient in these regulations.

(l) "United States" means the fifty States, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, the Trust Territories of the Pacific Islands, the Northern Marianas, and the territories and possessions of the United States.

(42 U.S.C. 6101–6107)

Standards for Determining Age Discrimination

§ 18.511 Rules against age discrimination.

The rules in this section are limited by the exceptions contained in §§ 18.513 and 18.514 of these regulations.

(a) *General rule.* No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving Federal financial assistance.

(b) *Specific rules.* A recipient may not, in any program or activity receiving Federal financial assistance, directly or through contractual licensing, or other arrangements, use age distinctions or take any other actions which have the effect, on the basis of age, of:

(1) Excluding individuals from, denying them the benefits of, or subjecting them to discrimination under, a program or activity receiving Federal financial assistance; or

(2) Denying or limiting individuals in their opportunity to participate in any program or activity receiving Federal financial assistance.

(c) The specific forms of age discrimination listed in paragraph (b) of this section do not necessarily constitute a complete list.

(42 U.S.C. 6101–6107)

§ 18.512 Definitions of "normal operation" and "statutory objective."

For the purpose of these regulations, the terms "normal operation" and "statutory objective" shall have the following meaning:

(a) "Normal operation" means the operation of a program or activity without significant changes that would impair its ability to meet its objectives.

(b) "Statutory objective" means any purpose of a program or activity expressly stated in any Federal statute, State statute, or local statute or ordinance adopted by an elected, general purpose legislative body.

(42 U.S.C. 6101–6107)

§ 18.513 Exceptions to the rules against age discrimination; normal operation or statutory objective of any program or activity.

A recipient is permitted to take an action, otherwise prohibited by § 18.511, if the action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity. An action reasonably takes into account age as a factor necessary to the normal operation or the achievement of any statutory objective of a program or activity, if:

(a) Age is used as a measure or approximation of one or more other characteristics; and

(b) The other characteristic(s) must be measured or approximated in order for the normal operation of the program or activity to continue, or to achieve any statutory objective of the program or activity; and

(c) The other characteristic(s) can be reasonably measured or approximated by the use of age; and

(d) The other characteristic(s) are impractical to measure directly on an individual basis.

(42 U.S.C. 6101–6107)

§ 18.514 Exceptions to the rules against age discrimination; reasonable factors other than age.

A recipient is permitted to take an action otherwise prohibited by § 18.511 which is based on a factor other than age, even though that action may have a disproportionate effect on persons of different ages. An action may be based on a factor other than age only if the factor bears a direct and substantial relationship to the normal operation of the program or activity or to the achievement of a statutory objective.

(42 U.S.C. 6101–6107)

§ 18.515 Burden of proof.

The burden of proving that an age distinction or other action falls within the exceptions outlined in §§ 18.513 and 18.514 is on the recipient of Federal financial assistance.

(42 U.S.C. 6101–6107)

§ 18.516 Affirmative action by recipients.

Even in the absence of a finding of discrimination, a recipient may take affirmative action to overcome the effects of conditions that resulted in limited participation in the recipient's program or activity on the basis of age.

(42 U.S.C. 6101–6107)

Responsibilities of Veterans Administration Recipients

§ 18.531 General responsibilities.

Each VA recipient must ensure that its programs and activities are in compliance with the Act and these regulations.

(42 U.S.C. 6101–6107)

§ 18.532 Notice of subrecipients.

Where a recipient passes on Federal financial assistance from the VA to programs and activities of subrecipients, the recipient shall provide the subrecipients written notice of their obligations under the Act and these regulations with respect to such programs and activities.

(Approved by the Office of Management and Budget under control number 2900–0400.)

(42 U.S.C. 6101–6107)

§ 18.533 Assurance of compliance and recipient assessment of age distinctions.

(a) Each recipient of Federal financial assistance from the VA shall sign a written assurance as specified by the Administrator that it will comply with the Act and these regulations.

(b) *Recipient assessment of age distinctions.* (1) As part of a compliance review under § 18.541 or complaint investigation under § 18.544, the Administrator may require a recipient employing the equivalent of 15 of more employees to complete a written self-evaluation, in a manner specified by the responsible agency official, of any age distinction imposed in its programs or activities receiving Federal financial assistance from the VA to assess the recipient's compliance with the Act.

(2) Whenever an assessment indicates a violation of the Act or these regulations, the recipient shall take corrective action.

(42 U.S.C. 6101–6107)

§ 18.534 Information requirements.

Each recipient shall:

(a) Make available upon request to the VA information necessary to determine whether the recipient is

complying with the Act and these regulations.

(b) Permit reasonable access by the VA to the books, records, accounts, and other recipient facilities and sources of information to the extent necessary to determine whether the recipient is in compliance with the Act and these regulations.

(42 U.S.C. 6101–6107)

Investigation, Conciliation and Enforcement Procedures

§ 18.541 Compliance reviews.

(a) The VA may conduct compliance reviews and preaward reviews of recipients or use other similar procedures that will permit it to investigate and correct violations of the Act and these regulations. The VA may conduct these reviews even in the absence of a complaint against a recipient. The review may be as comprehensive as necessary to determine whether a violation of these regulations has occurred.

(b) If a compliance review or preaward review indicates a violation of the Act or these regulations, the VA will attempt to achieve voluntary compliance with the Act. If voluntary compliance cannot be achieved, the VA may institute enforcement proceedings as described in § 18.546.

(42 U.S.C. 6101–6107)

§ 18.542 Complaints.

(a) Any person, individually or as a member of a class or on behalf of others, may file a complaint with the VA alleging discrimination prohibited by the Act or these regulations based on an action occurring on or after July 1, 1979. A complainant shall file a complaint within 180 days from the date the complainant first had knowledge of the alleged act of discrimination. However, for good cause shown, the VA may extend this time limit. Complaints may be submitted to the Director, Office of Equal Opportunity (006B), Veterans Administration, 810 Vermont Avenue, NW, Washington, DC 20420.

(b) The VA will attempt to facilitate the filing of complaints wherever possible, including taking the following measures:

(1) Acknowledging receipt and acceptance of a complaint in writing.

(2) Accepting as a sufficient complaint, any written statement which identifies the parties involved and the date the complainant first had knowledge of the alleged violation, describes generally the action or practice complained of, and is signed by the complainant.

(3) Freely permitting a complainant to add information to the complaint to meet the requirements of a sufficient complaint.

(4) Widely disseminating information regarding the obligations of recipients under the Act and these regulations.

(5) Notifying the complainant and the recipient of their rights and obligations under the complaint procedure, including the right to have a representative at all stages of the complaint procedure.

(6) Notifying the complainant and the recipient (or their representatives) of their right to contact the VA for information and assistance regarding the complaint resolution process.

(c) The VA will refer a complaint of discrimination based on age to another appropriate Federal agency when the complaint is outside the jurisdiction of the VA. The VA will notify the complainant in writing that the complaint has been referred; explain the reason why the complaint is not within the jurisdiction of the VA; and give the complainant the name, agency, and address of the official to whom the complaint was referred.

(Approved by the Office of Management and Budget under control number 2900–0401).
(42 U.S.C. 6101–6107)

§ 18.543 Mediation.

(a) Referral of complaints for mediation. The VA will refer to the Federal Mediation and Conciliation Service all complaints that:

(1) Fall within the jurisdiction of the Act and these regulations; and

(2) Contain all information necessary for further processing.

(b) Both the complainant and the recipient shall participate in the mediation process to the extent necessary to reach an agreement or make an informed judgment that an agreement is not possible. However, the recipient and the complainant need not meet with the mediator at the same time.

(c) If the complainant and the recipient reach an agreement, the mediator shall prepare a written statement of the agreement and have the complainant and the recipient sign it. The mediator shall send a copy of the agreement to the VA. The VA will take no further action on the complaint unless the complainant or the recipient fails to comply with the agreement.

(d) The mediator shall protect the confidentiality of all information obtained in the course of the mediation process. No mediator shall testify in any adjunctive proceeding, produce any document, or otherwise disclose any information obtained in the course of the mediation process without prior approval of the head of the mediation agency.

(e) The VA will use the mediation process for a maximum of 60 days after the responsible agency official receives a complaint.

(f) Mediation ends if:

(1) 60 days elapse from the time the responsible agency official receives the complaint; or

(2) Prior to the end of that 60-day period, an agreement is reached; or

(3) Prior to the end of that 60-day period, the mediator determines that an agreement cannot be reached.

(g) The mediator shall return unresolved complaints to the VA.

(42 U.S.C. 6101–6107)

§ 18.544 Investigation.

(a) *Informal investigation.* (1) The VA will investigate complaints that are reopened because of a violation of a mediation agreement.

(2) As part of the initial investigation the VA will use informal fact finding methods, including joint or separate discussions with the complainant and recipient to establish the facts and, if possible, settle the complaint on terms that are mutually agreeable to the parties. The VA may seek the assistance of any involved State program agency.

(3) The VA will put any agreement in writing and have it signed by the parties and an authorized official from the VA.

(4) The settlement shall not affect the operation of any other enforcement effort of the VA, including compliance reviews and investigation of other complaints which may involve the recipient.

(5) A settlement need not contain an admission of discrimination or other wrongdoing by the recipient nor should it be considered a finding of discrimination against the recipient.

(b) *Formal investigation.* If the VA cannot resolve the complaint through informal investigation, it will begin to develop formal findings through further investigation of the complaint. If the investigation indicates a violation of these regulations, the VA will attempt to obtain voluntary compliance. If voluntary compliance cannot be achieved, the VA may institute enforcement proceedings as described in § 18.546.

(42 U.S.C. 6101–6107)

§ 18.545 Prohibition against intimidation or retaliation.

A recipient may not engage in acts of intimidation or retaliation against any person who:

(a) Attempts to assert a right protected by the Act or these regulations; or

(b) Cooperates in any mediation, investigation, hearing, or other part of the VA's investigation, conciliation, and enforcement process.

(42 U.S.C. 6101–6107)

§ 18.546 Compliance procedure.

(a) The VA may enforce the Act and these regulations through:

(1) Termination of Federal financial assistance from the VA with respect to a recipient's program or activity that has violated, the Act or these regulations. The determination of the recipient's violation may be made only after a recipient has had an opportunity for a hearing on the record before an administrative law judge. Therefore, cases which are settled in mediation, or prior to a hearing, will not involve termination of a recipient's Federal financial assistance from the VA.

(2) Any other means authorized by law including but not limited to:

(i) Referral to the Department of Justice for proceedings to enforce any rights of the United States or obligations of the recipient created by the Act or these regulations.

(ii) Use of any requirement of or referral to any Federal, State, or local government agency that will have the effect of correcting a violation of the Act or these regulations.

(b) The VA will limit any termination under paragraph (a)(1) of this section to the particular program or activity or part of such program and activity of a recipient that the VA finds to be in violation of the Act or these regulations. The VA will not base any part of a termination on a finding with respect to any program or activity of the recipient which does not receive Federal financial assistance from the VA.

(c) The VA will take no action under paragraph (a) of this section until:

(1) The Administrator has advised the recipient of its failure to comply with the Act and these regulations and has determined that voluntary compliance cannot be obtained.

(2) Thirty days have elapsed after the Administrator has sent a written report of the circumstances and grounds of the action to the committees of the Congress having legislative jurisdiction over the Federal program or activity involved. The Administrator will file a report whenever any action is taken under paragraph (a) of this section.

(d) The VA also may defer granting new Federal financial assistance from the VA to a recipient when a hearing under paragraph (a)(1) of this section is initiated.

(1) New Federal financial assistance from the VA includes all assistance for which the VA requires an application or approval, including renewal or continuation of existing activities, or authorization of new activities during the deferral period. New Federal financial assistance from the VA does not include increases in funding resulting solely from a change in the formula or method of computing awards, nor does it include assistance approved prior to the beginning of a hearing under paragraph (a)(1) of this section.

(2) The VA will not begin a deferral until the recipient has received a notice of an opportunity for a hearing under paragraph (a)(1) of this section. The VA will not continue a deferral for more than 60 days unless a hearing has begun within that time or the time for beginning the hearing has been extended by mutual consent of the recipient and the Administrator. The VA will not continue a deferral for more than 30 days after the close of the hearing, unless the hearing results in a finding against the recipient.

(42 U.S.C. 6101–6107)

§ 18.547 Hearings, decisions, post-termination proceedings.

Certain VA procedural provisions applicable to Title VI of the Civil Rights Act of 1964 apply to the VA enforcement of these regulations. They are found at §§ 18.9 through 18.11 and Part 18b of this title.

(42 U.S.C. 6101–1607)

§ 18.5481 Remedial action by recipient.

Where the VA finds that a recipient has discriminated on the basis of age, the recipient shall take any remedial action that the VA may require to overcome the effects of the discrimination. If another recipient exercises control over the recipient that has discriminated, the VA may require both recipients to take remedial action.

(42 U.S.C. 6101–1607)

§ 18.549 Alternate funds disbursal procedure.

(a) When the VA withholds funds from a recipient under these regulations, the Administrator may disburse the withheld funds directly to an alternate recipient: any public or non-profit private organization or agency, or State or political subdivision of the State.

(b) The Administrator will require any alternate recipient to demonstrate:

(1) The ability to comply with these regulations; and

(2) The ability to achieve the goals of the Federal statute authorizing the program or activity.

(42 U.S.C. 6101–1607)

§ 18.550 Exhaustion of administrative remedies.

(a) A complainant may file a civil action following the exhaustion of administrative remedies under the Act. Administrative remedies are exhausted if:

(1) 180 days have elapsed since the complainant filed the complaint and the VA has made no finding with regard to the complaint; or

(2) The VA issues any finding in favor of the recipient.

(b) If the VA fails to make a finding within 180 days or issues a finding in favor of the recipient, the VA will:

(1) Promptly advise the complainant of this fact; and

(2) Advise the complainant of his or her right to bring a civil action for injunctive relief; and

(3) Inform the complainant that:

(i) The complainant may bring a civil action only in a United States district court for the district in which the recipient is found or transacts business;

(ii) A complainant prevailing in a civil action has the right to be awarded the costs of the action, including reasonable attorney's fees, but the complainant must demand these costs in the complaint;

(iii) Before commencing the action, the complainant shall give 30 days notice by registered mail to the Administrator, the Attorney General of the United States, and the recipient;

(iv) The notice must state: the alleged violation of the Act; the relief requested; the court in which the complainant is bringing the action; and, whether or not attorney's fees are demanded in the event the complainant prevails; and

(v) The complainant may not bring action if the same alleged violations of the Act by the same recipient is the subject of a pending action in any court of the United States.

(42 U.S.C. 6101–6107)

Appendix A to Subpart E—Statutory Provisions to Which This Subpart Applies

1. Approval of educational institutions (38 U.S.C. 104).

2. Space and office facilities for representatives of State employment services (38 U.S.C. 244(1)).

3. Medical care for survivors and dependents of certain veterans (38 U.S.C. 613).

4. Transfers for nursing home care; adult day health care (38 U.S.C. 620).

5. Treatment and rehabilitation for alcohol or drug dependence or abuse disabilities (38 U.S.C. 620A).

6. Payments to State Homes (38 U.S.C. 641–643).

7. Aid to States for establishment, expansion, and improvement of veterans' cemeteries (38 U.S.C. 1008).

8. Vocational Rehabilitation; Post-Vietnam Era Veterans' Educational Assistance; Survivors' and Dependents' Educational Assistance; and Administration of Educational Benefits (38 U.S.C. Chapters 31, 32, 34, 35 and 36 respectively).

9. Space and office facilities for representatives of recognized national organizations (38 U.S.C. 3402(a)(2)).

10. Veterans' Administration Health Professional Scholarship Program (38 U.S.C. 4141–4146).

11. State Home Facilities for Furnishing Domiciliary, Nursing Home and Hospital Care (38 U.S.C. 5031–5037).

12. Sharing of Medical Facilities, Equipment and Information (38 U.S.C. 5051–5057).

13. Assistance in Establishing New State Medical Schools; Grants to Affiliated Medical Schools; Assistance to Health Manpower Training Institutions (38 U.S.C. Chapter 82).

14 Emergency Veterans' Job Training (Pub. L. 98–77, 97 Stat. 443–452).

Appendix B to Subpart E—List of Age Distinctions Contained in Statutes and Regulations Governing Federal Financial Assistance Programs of the Veterans Administration

Section 90.31(f) of the governmentwide regulations (45 CFR Part 90) requires each Federal agency to publish an appendix to its final regulations containing a list of age distinctions in Federal statutes and regulations affecting financial assistance administered by the agency. This appendix is VA's list of age distinctions contained in Federal statutes and VA regulations which:

(1) Provide benefits or assistance to persons based upon age; or

(2) Establish criteria for participation in age-related terms; or

(3) Describe intended beneficiaries or target groups in age-related terms.

Appendix B deals only with VA's programs of financial assistance covered by the Age Discrimination Act. It does not list age distinctions used by the VA in its direct assistance programs, such as veterans' compensation. Also, this appendix contains only age distinctions in Federal statutes and VA regulations in effect on January 1, 1985.

This appendix has two sections: A list of age distinctions in Federal statutes, and a list of age distinctions in VA regulations. The first column contains the name of the program; the second column has the statute name and U.S. Code citation for statutes, or the regulation name and Code of Federal Regulations citation for regulations; the third column contains the section number of the statute or regulation and the description of the age distinction; and the fourth column cites the Catalog of Federal Domestic Assistance number for the program(s) affected where it is available.

AGE DISTINCTIONS IN STATUTES GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION

Program	Statute	Section and Age Distinction	CFDA
Veterans' Benefits	Section 101 of the Veterans' Benefits Act of 1957, as amended; 38 U.S.C. 101.	Section 101(4)(A) defines the term "child" for the purposes of title 38, U.S.C. (except for chapter 19 and section 5202(b) of title 38) as "a person who is unmarried and—(i) who is under the age of eighteen years; (ii) who, before attaining the age of eighteen years, became permanently incapable of self-support; or (iii) who, after attaining the age of eighteen years and until completion of education or training (but not after attaining the age of twenty-three years), is pursuing a course of instruction at an approved educational institution; and who is a legitimate child, a legally adopted child, a stepchild who is a member of a veteran's household or was a member at the time of the veteran's death, or an illegitimate child but, as to the alleged father, only if acknowledged in writing signed by him, or if he has been judicially ordered to contribute to the child's support or has been, before his death, judicially decreed to be the father of such child, or if he is otherwise shown by evidence satisfactory to the Administrator to be the father or such child. . . .".	
		Section 101(4)(B) provides that for the purposes of section 101(4)(A) of title 38, in the case of an adoption under the laws of any jurisdiction other than a State, a person residing outside any of the States shall not be considered a legally adopted child of a veteran during the lifetime of that veteran, unless, among other things, such a person was less than eighteen years of age at the time of the adoption.	
Approval of Educational Institutions	Section 104 of the Veterans' Benefits Act of 1957, as amended, 38 U.S.C. 104.	Section 104(a) authorizes the Administrator to approve or disapprove an educational institution for the purpose of determining whether or not benefits are payable under title 38, U.S.C. (except chapter 15 of title 38) for a child over the age of eighteen years and under the age of twenty-three years who is attending a school, college, academy, seminary, technical institution, university, or other educational institution.	
		Section 104(b) provides that the Administrator may not approve an educational institution under section 104 of title 38, unless the institution has agreed to report the termination of attendance of any child. If the educational institution fails to report any such termination promptly, the approval of the Administrator shall be withdrawn.	
Civilian Health and Medical Program of the Veterans Administration (CHAMPA).	Section 103(b) of the Veterans Health Care Expansion Act of 1973, as amended; 38 U.S.C. 613.	Section 613(a) authorizes the Administrator to provide medical care to: "(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, (2) the surviving spouse or child of a veteran who (A) died as a result of a service-connected disability, or (B) at the time of death had a total disability permanent in nature, resulting from a service-connected disability, and (3) the surviving spouse or child of a person who died in the active military, naval, or air service in the line of duty and not due to such person's own misconduct, who are not otherwise eligible for medical care under chapter 55 of title 10, U.S.C. (CHAMPUS).	64.009
		Section 613(c) provides that for the purposes of this program, "a child between the ages of eighteen and twenty-three (1) who is eligible for benefits under subsection (a) of this section, (2) who is pursuing a full-time course of instruction at an educational institution, approved under chapter 36 of this title, and (3) who while pursuing such course of instruction, incurs a disabling illness or injury . . . which results in such child's inability to continue or resume such child's chosen program of education . . . shall remain eligible for benefits under this section until the end of the six-month period beginning on the date the disability is removed, the end of the two-year period beginning on the date of the onset of the disability, or the twenty-third birthday of the child, whichever occurs first".	
VA Hospital, Domiciliary or Nursing Home Care	Section 510 of the Veterans' Benefits Act of 1957, amended; 38 U.S.C. 610.	Section 610 authorizes the Administrator, within the limits of VA facilities, to furnish hospital care or nursing home care. Among the persons eligible for such care are veterans with a nonservice-connected disability if they are sixty-five years of age or older.	64.009 64.010 64.015 64.016
Post-Vietnam Era Veterans' Educational Assistance.	Post Vietnam Era Veterans' Educational Act of 1977, as amended; U.S.C. Chapter 32.	Section 1601 states that the purpose of chapter 32 of title 38, U.S.C. is: "(1) to provide educational asssistance to those men and women who enter the Armed Forces after December 31, 1976, (2) to assist young men and women in obtaining an education they might not otherwise be able to afford, and (3) to promote and assist the all volunteer military program of the United States by attracting qualified men and women to serve in the Armed Forces".	64.120

AGE DISTINCTIONS IN STATUTES GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION—Continued

Program	Statute	Section and Age Distinction	CFDA
Veterans' Educational Assistance	Section 2 of the Veterans' Readjustment Benefits Act of 1966, amended; 38 U.S.C. Chapter 34.	Section 1651 states that the education program created by this chapter is for the purpose of: " . . . (1) enhancing and making more attractive service in the Armed Forces of the United States, (2) extending the benefits of higher education to qualified and deserving young persons who might not otherwise be able to afford such an education, (3) providing vocational readjustment and restoring lost educational opportunities to those service men and women whose careers have been interrupted or impeded by reason of active duty after January 31, 1955, and (4) aiding such persons in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country". Section 1692(b) authorizes the Administrator to pay to an eligible veteran receiving tutorial assistance pursuant to section 1692(a) of this chapter, the cost of such tutorial assistance, subject to certain limits, upon certification by the educational institution that " . . . (2) the tutor chosen to perform such assistance is qualified and is not the eligible veteran's parent, spouse, child (whether or not married or over eighteen years of age), brother, or sister; and (3) the charges for such assistance do not exceed the customary charges for such tutorial assistance".	64.111
Survivors' and Dependents' Educational Assistance.	War Orphans' Educational Assistance Act of 1956, as amended; 38 U.S.C. Chapter 35.	Section 1700 states that "the educational program established by this chapter is for the purpose of providing opportunities for education to children whose education would otherwise be impeded or interrupted by reason of the disability or death of a parent from a disease or injury incurred or aggravated in the Armed Forces after the beginning of the Spanish-American War, and for the purpose of aiding such children in attaining the educational status which they might have aspired to and attained but for the disability or death of such parent. The Congress further declares that the educational program extended to the surviving spouses of veterans who died of service-connected total disabilities and to spouses of veterans with a service-connected total disability permanent in nature is for the purpose of assisting them in preparing to support themselves and their families at a standard of living level which the veteran, but for the veteran's death or service disability, could have expected to provide for the veteran's family". Section 1701 defines the term "eligible person" as: "(A) a child of a person who—(i) died of a service-connected disability, (ii) has a total disability permanent in nature resulting from a service-connected disability, or who died while a disability so evaluated was in existence or (iii) at the time of application for benefits under this chapter is a member of the Armed Forces serving on active duty listed, pursuant to section 556 of title 37 [U.S.C.] and regulations issued thereunder, by the Secretary concerned in one or more of the following categories . . . for a total of ninety days: (A) missing in action, (B) captured in line of duty by a hostile force, or (C) forcibly detained or interned in line of duty by a foreign government or power, . . ." Subparagraph (a)(2) of this section provides that the term "child" includes individuals who are married and individuals who are above the age of twenty-three years. Section 1712 establishes periods of eligibility. Provides that the educational program to which an eligible child within the meaning of this chapter is entitled to may be afforded, ". . . during the period beginning on the person's eighteenth birthday, or on the successful completion of the person's secondary schooling, whichever first occurs, and ending on the person's twenty-sixth birthday, except that—(1) if the person is above the age of compulsory school attendance under applicable State law, and the Administrator determines that the person's best interests will be served thereby, such period may begin before the person's eighteenth birthday; (2) if the person has a mental or physical handicap, and . . . the person's best interests will be served by pursuing a program of special restorative training or a specialized course of vocational training approved under section 1736 of this title, such period may begin before the person's fourteenth birthday; (3) if the Administrator finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or if the death of the parent from whom eligibility is derived occurs, after the eligible person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless paragraph (4) applies) such period shall end 8 years after, whichever date last occurs: (A) the date on which the Administrator first finds that the parent from whom eligibility is derived has a service-connected total disability permanent in nature, or (B) the date of death of the parent from whom eligibility is derived; (4) if the person serves on duty with the Armed Forces as an eligible person after the person's eighteenth birthday but before the person's twenty-sixth birthday, then such period shall end 8 years after the person's first discharge or release from such duty with the Armed Forces . . . in no event shall such period be extended beyond the person's thirty-first birthday by reason of this paragraph; and (5)(A) if the person becomes eligible by reason of the the provisions of section 1701(a)(1)(A)(iii) of this title after the person's eighteenth birthday but before the person's twenty-sixth birthday, then (unless clause (4) of this section applies) such period shall end eight years after the date on which the person becomes eligible by reason of such provisions, but in no event shall such period be extended beyond the person's thirty-first birthday by reason of this clause. . . .". Section 1713 provides that the parent or guardian of a person or the eligible person (if such person has attained legal majority) for whom the educational assistance is sought under chapter 35 shall submit an application to the Administrator, which shall be in such form and contain such information as the Administrator shall prescribe. Section 1762 provides that the commencement of a program of education or special restorative training under chapter 35 shall be a bar, "(1) to subsequent payments of compensation, dependency and indemnity compensation, or pension based on a death of a parent to an eligible person over the age of eighteen by reason of pursuing a course in an educational institution, or (2) to increased rates, or additional amounts of compensation, dependency and indemnity compensation, or pension because of such a person whether eligibility is based upon the death or upon the total permanent disability of the parent". Section 1763 states that "The Administrator shall notify the parent or guardian of each eligible person as defined in section 1701(a)(1)(A) of this title of the educational assistance available to such person under chapter 35. Such notification shall be provided not later than the month in which such eligible person attains such person's thirteenth birthday or as soon thereafter as feasible".	64.117

AGE DISTINCTIONS IN REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION

Program	Regulation	Section and Age Distinction	CFDA
Veterans' Benefits	Adjudication (38 CFR Part 3)	Section 3.57 defines the term "child" of a veteran as, ". . . an unmarried person who is a legitimate child, a child legally adopted before the age of 18 years, a stepchild who acquired that status before the age of 18 years and who is a member of the veteran's household or was a member of the veteran's household at the time of the veteran's death, or an illegitimate child; and (i) Who is under the age of 18 years; or (ii) Who, before reaching the age of 18 years, became permanently incapable of self-support; or (iii) Who, after reaching the age of 18 years and until completion of education or training (but not after reaching the age of 23 years) is pursuing a course of instruction at an approved educational institution. (2) For the purposes of determining entitlement of benefits based on a child's school attendance, the term "child" of the veteran also includes the following unmarried persons: (i) A person who was adopted by the veteran between the ages of 18 or 23 years. (ii) A person who became a stepchild of a veteran between the ages of 18 or 23 years and who is a member of the veteran's household at the time of the veteran's death. . . ."	
Survivors' and Dependents' Educational Assistance.	Adjudication (38 CFR Part 3)	Section 3.807(d) sets forth basic eligibility criteria for the program of educational assistance under 38 U.S.C. Chapter 35. Defines the term "child" as the son or daughter of a veteran who meets the requirements of 38 CFR 3.57, except as to age or marital status.	64.117
	Survivors' and Dependent's Educational Assistant Under 38 U.S.C. Chapter 35 (38 CFR Part 21, Subpart C).	Section 21.3021 describes beneficiaries of the program. Paragraph (a) defines the term "eligible person" as, "(1) A child of a: (i) Veteran who died of a service-connected disability. . . ." Paragraph (b) defines the term "child" as a son or daughter of a veteran as defined in 38 CFR 3.807(d). Section 21.3023 states that: "(a) Child; age 18. A child who is eligible for educational assistance and who is also eligible for pension, compensation dependency and indemnity compensation based on school attendance must elect whether he or she will receive educational assistance or pension, compensation or dependency and indemnity compensation. (1) An election of education assistance either before or after the age of 18 years is a bar to subsequent payment or increased rates or additional amounts of pension, compensation or dependency and indemnity compensation on account of a child based on school attendance on or after the age of 18 years. . . . (2) Payment of pension, compensation or dependency and indemnity compensation to or on account of a child after his or her 18th birthday does not bar subsequent payments of educational assistance. . . . (b) Child; under 18 or helpless. Educational assistance allowance or special restorative training allowance may generally be paid concurrently with pension, compensation or dependency and indemnity compensation for a child under the age of 18 years or for a helpless child based on the service of one or more parents. Where, however, entitlement is based on the death of more than one parent in the same parental line, concurrent payments in two or more cases may not be authorized if the death of one such parent occurred on or after June 9, 1960. In the latter cases, an election of educational assistance and pension, compensation or dependency and indemnity compensation in one case does not preclude a reelection of benefits before attaining age 18 or while helpless based on the service of another parent in the same parental line. . . ." Section 21.3040 sets forth criteria for the commencement and termination of the program of education or special restorative training for an eligible child under 38 U.S.C. Chapter 35. Paragraph (a) of this section provides that a program of education or special restorative training may not be afforded prior to the eligible persons' 18th birthday or the completion of secondary schooling, whichever is earlier, unless it is determined through counseling that the best interests of the eligible person will be served by entering training at an earlier date and the eligible person has passed: (1) Compulsory school attendance age under State law; or (2) his or her 14th birthday and due to physical or mental handicap may benefit by special restorative or specialized vocational training. Paragraph (c) of this section provides that no person is eligible for educational assistance who reached his or her 26th birthday on or before the effective date of a finding of permanent total service-connected disability, or on or before the date the veteran's death occurred, or on or before the 91st day of listing by the Secretary concerned of the member of the Armed Forces or whose service eligibility is claimed as being is one of the missing categories identified in 38 CFR 21.3021(a) (1)(iii) and (3)(ii). Paragraph (d) provides that no person is eligible for educational assistance beyond his or her 31st birthday, except in certain exceptional cases. Section 21.3041 sets forth periods of eligibility for an eligible child. Paragraph (a) of this section provides the basic beginning date for the educational assistance as the person's 18th birthday or successful completion of secondary schooling, whichever occurs first. Paragraph (b) authorizes certain exceptions to the basic beginning date, if: (1) A person has passed compulsory school attendance under applicable State law, or (2) has passed his or her 14th birthday and has a physical or mental handicap. Paragraph (c) provides the basic ending date as the person's 26th birthday. Paragraphs (d) and (e) set forth criteria for modifying or extending the ending date.	
	Administration of Educational Benefits; 38 U.S.C. Chapter 34, 35, and 36 (38 CFR Part 21, Subpart D).	Section 21.3300 provides that the VA may prescribe special restorative training for the purpose of enabling an eligible child to pursue a program of education, special vocational program, or other appropriate goal, where needed to overcome or lessen the effects of a physical or mental disability. Section 21.4102(a) requires the VA to provide counseling for the purpose set forth in 38 CFR 21.4100 to an eligible child when: (1) the eligible child may require specialized vocational or special restorative training, or (2) the eligible child has reached compulsory school attendance age under State law, but has neither reached his or her 18th birthday nor completed secondary schooling, or (3) if requested by the eligible child or his or her parent or guardian for the purpose of preparing an educational plan. Section 21.4139(b) provides that the VA will make payment of educational assistance under 38 U.S.C. Chapter 35 to the eligible person if: (1) He or she has attained majority and has no known legal disability or (2) is in the eligible person's best interests, and there is no reason not to designate the eligible person as payee. The VA may pay minors under this provision. Section 21.4141 provides that payment of educational assistance allowance under 38 U.S.C. Chapter 35 will be subject to offsets of amounts of pension, compensation, or dependency and indemnity compensation paid over the same period on behalf of a child based on school attendance.	
VA Hospital, Domiciliary or Nursing Home Care.	Eligibility for hospital, domiciliary or nursing home care of persons discharged or released from active military, naval, or air service (38 CFR 17.47).	Section 17.47(e) provides that within the limits of VA facilities, hospital or nursing home care may be provided to any veteran with a nonservice-connected disability if such a veteran is 65 years of age or older.	64.009 64.010 64.015 64.016

AGE DISTINCTIONS IN REGULATIONS GOVERNING FEDERAL FINANCIAL ASSISTANCE PROGRAMS OF THE VETERANS ADMINISTRATION—Continued

Program	Regulation	Section and Age Distinction	CFDA
Civilian Health and Medical Program of the Veterans Administration (CHAMPA).	Medical Care for Survivors and Dependents of Certain Veterans (38 CFR 17.54).	Section 17.54 states that medical care may be provided for: "(1) the spouse or child of a veteran who has a total disability, permanent in nature, resulting from a service-connected disability, and (2) the surviving spouse or child of a veteran who—(a) died as a result of a service-connected disability, or (b) at the time of death had a total disability, permanent in nature resulting from a service-connected disability and—(3) the surviving spouse or child of a person who died in the active military, naval or air service . . . Who are not otherwise eligible for medical care as beneficiaries of the Armed Forces under the provisions of chapter 55 of title 10, United States Code (CHAMPUS) . . . and (4) An eligible child who is pursuing a full-time course of instruction approved under 38 U.S.C. ch. 36, and who incurs a disabling illness or injury while pursuing such course; . . . shall remain eligible for medical care until: (a) the end of the 6-month period beginning on the date the disability is removed, or (b) the end of the 2-year period beginning on the date of the onset of the disability; or (c) the 23d birthday of the child, whichever occurs first. . . ."	64.009
Veterans' Educational Assistance	Administration of Educational Benefits; 38 U.S.C. Chapters 34, 35, and 36 (38 CFR Part 21, Subpart D).	Section 21.4135(d) sets forth the following dates for the discontinuance of the educational assistance allowance provided for a dependent child, under chapter 34 of title 38. ". . . (1) Last day of the in calendar year in which marriage occurred unless discontinuance is required at an earlier date under other provisions. (2) Age 18. Day preceding 18th birthday. (3) School attendance. Last day of month in which 23rd birthday, whichever is earlier. (4) Helplessness ceased. Last day of month school attendance ceased or day preceding following 60 days after notice to payee that helplessness has ceased." Section 21.4136 sets forth monthly rates for the payment of educational assistance allowance under 38 U.S.C. Chapter 34. Paragraph (f) defines the term "dependent" as a spouse, child or dependent parent who meets the definitions of relationship specified in 38 CFR §§ 3.50, 3.51, 3.57 and 3.59.	

[FR Doc. 85-20082 Filed 8-22-85; 8:45 am]
BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 61

[Docket Nos. AM702MD et al.; A-3-FRL-2876-5]

New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants; Delegation of Authority to the State of Maryland, the Commonwealth of Pennsylvania and the City of Philadelphia

AGENCY: Environmental Protection Agency.

ACTION: Delegation of Authority.

SUMMARY: Sections 111(c) and 112(d) of the Clean Air Act permit EPA to delegate to the States authority to implement and enforce the standards set out in 40 CFR Part 60, New Source Performance Standards (NSPS) and 40 CFR Part 61, National Emission Standards for Hazardous Air Pollutants (NESHAP). The State of Maryland, the Commonwealth of Pennsylvania and the City of Philadelphia have been delegated this authority and have requested delegation of any future NSPS or NESHAP standards immediately upon promulgation in the **Federal Register.** The present delegations for these areas require that they request delegation each time a new standard is promulgated. Automatic delegation would remove this requirement.

EFFECTIVE DATES:

Maryland—May 10, 1985
Pennsylvania—May 7, 1985
Philadelphia—May 8, 1985

ADDRESSES: All material relevant to these delegations may be examined during normal business hours at the following locations:

All Delegations

U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107, Attn: Patricia Gaughan (3AM11)

Specific State and Local Delegations

Department of Public Health, Air Management Services, 500 South Broad Street, Philadelphia, PA 19146, Attn: William Reilly

Bureau of Air Quality Control, Pennsylvania Department of Environmental Resources, P.O. Box 2063, Third and Locust Street, Harrisburg, Pennsylvania 17120, Attn: James K. Hambright

Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201, Attn: George P. Ferreri

FOR FURTHER INFORMATION CONTACT: Michael C. Giuranna at the EPA, Region III address above, telephone (215) 597-9189.

SUPPLEMENTARY INFORMATION: On April 9, 1985, the Director of the Maryland Air Management Administration submitted a letter to EPA, Region III, requesting automatic delegation of NSPS and NESHAP. Maryland was delegated authority for NSPS on September 15, 1978 (44 FR 69362) and for NESHAP on October 9, 1979 (45 FR 13193). These original delegations require that Maryland make separate requests in writing in order to implement and enforce any NSPS and NESHAP source categories not covered in their original delegation. Maryland will now receive delegation of future NSPS and NESHAP source categories upon EPA promulgation and State adoption. The following letter was sent to Maryland on May 10, 1985, giving them automatic delegation. Notices of earlier delegations and amendments were published on December 3, 1979 (44 FR 69362), February 28, 1980 (45 FR 13193), December 29, 1983 (48 FR 57275) and March 1, 1985 (50 FR 8324).

Mr. George P. Ferreri,
Director, Air Management Administration, Maryland State Department of Health and Mental Hygiene, 201 West Preston Street, Baltimore, MD 21201

Dear Mr. Ferreri: In response to your April 9, 1985 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under Sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegations on December 3, 1979, and February 28, 1961, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the State of Maryland and the Maryland Air Management Administration's (AMA) history of implementing the programs and have determined that the AMA has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your April 9, 1985 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the AMA to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in the State of Maryland subject to

the NSPS promulgated in 40 CFR Part 60 and NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions.

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act Section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act Section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b) (2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commercial demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The AMA may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the AMA based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of public availability of information provided to or otherwise obtained by U.S. EPA under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c) (4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e) (3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the AMA must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a preformance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in the State of Maryland will be the primary responsibility of the AMA. Pursuant to sections 111(c)(2) and 112(d)(2) of the Clean Air Act, 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act. Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the AMA acts in a manner inconsistent with the term of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within the State of Maryland subject to NSPS and NESHAP regulations.

5. The AMA may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The AMA will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the AMA grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the AMA shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The AMA and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between an AMA interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the AMA. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in State of Maryland; (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR §§ 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submission to the AMA, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between an AMA regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the AMA. If the AMA does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The AMA will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the AMA will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that an AMA program of enforcing or implementing the NSPS or NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the AMA.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Maryland should be submitted to the AMA in addition to U.S. EPA, Region III. Any original reports which have been or may be received by EPA, Region III will be promptly transmitted to the AMA.

Since this delegation is effective immediately, there is no requirement that the AMA notify U.S. EPA of its acceptance. Unless U.S. EPA receives from the AMA written notice of objections within ten (10) days of receipt of this letter, the AMA will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

On December 11, 1984, the Secretary of the Pennsylvania Department of Environmental Resources (DER) submitted a letter to EPA, Region III, requesting delegation of authority for two categories of NESHAP and two categories of NSPS. These categories were delegated to Pennsylvania on January 7, 1985. This letter also requested that EPA give Pennsylvania automatic delegation for all future NSPS and NESHAP standards. Pennsylvania received delegation of authority for NSPS on December 7, 1979 (45 FR 3109) and for NESHAP on September 30, 1978 (42 FR 6887). These delegations required that Pennsylvania submit to EPA, separate requests to receive authority

for any standards not included in their original delegation. Automatic delegation removes this requirement. Pennsylvania can now implement and enforce all future NSPS and NESHAP source categories upon EPA promulgation.

The following letter was sent to Pennsylvania on May 7, 1985, giving them automatic delegation. It should be noted that NSPS and NESHAP sources in Philadelphia and Allegheny County, Pennsylvania are not covered under this delegation. Additionally, on May 31, 1985, EPA received a letter from the DER which stated that Condition 10 of the May 7, 1985 letter did not apply in Pennsylvania. This Condition requires the DER to revise their regulations from time to time to incorporate any amendments or newly promulgated regulations into the State NSPS or NESHAP regulations. Pennsylvania's regulations allow them to do this automatically. Thus, EPA agrees that Condition 10 of the following letter is not applicable in Pennsylvania.

Notices of earlier delegations were published on February 4, 1977 (42 FR 6887), January 16, 1980 (45 FR 3109), July 13, 1984 (49 FR 28555), February 28, 1985 (50 FR 8111).

Mr. Nicholas DeBenedictis,
Secretary, Pennsylvania Department of Environmental Resources, P.O. Box 2063, Harrisburg, PA 17120

Dear Mr. DeBenedictis: In response to your December 11, 1984 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegations on January 16, 1980 and February 4, 1977, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the Commonwealth of Pennsylvania and the Pennsylvania Department of Environmental Resources' (DER) history of implementing the programs and we have determined that the DER has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your December 11, 1984 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the DER to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in Pennsylvania subject to the NSPS promulgated in 40 CFR Part 60 and the NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions:

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b)(2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commerical demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The DER may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the DER based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of public availability of information provided to or otherwise obtained by U.S. EPA under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c)(4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e)(3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the DER must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.6(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in the Commonwealth of Pennsylvania will be the primary responsibility of the DER. Pursuant to Sections 111(c)(2) and 112(d)(2) of the Clean Air Act, 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act.

Where the DER determines that such enforcement is not feasible and so notifies EPA, or where the DER acts in a manner inconsistent with the terms of this delegation, U.S. EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within Pennsylvania subject to NSPS and NESHAP regulations.

5. The DER may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The DER will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the DER grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the DER shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The DER and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a DER interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the DER. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in Pennsylvania; (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submission to the DER, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between a DER regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the DER. If the DER does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The DER will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the DER will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that a DER program for enforcing or implementing the NSPS or NESHAP regulations is inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the DER.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Pennsylvania should be submitted to the DER in addition to U.S. EPA, Region III. Any original reports which have been or may be received by U.S. EPA, Region III will be promptly transmitted to the DER.

Since this delegation is effective immediately, there is no requirement that the DER notify EPA of its acceptance. Unless EPA receives from the DER written notice of objections within ten (10) days of receipt of this letter, the DER will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

On February 11, 1985, the Commissioner of the Philadelphia Department of Public Health submitted a letter to EPA, Region III requesting automatic delegation of all future NSPS and NESHAP source categories. Philadelphia had originally received delegation of authority for NSPS and NESHAP on September 30, 1976 (42 FR 6886). This delegation required Philadelphia to submit separate requests to EPA to receive authority for any standards not included in their original delegation. Automatic delegation removes this requirement. Philadelphia can now implement and enforce all future NSPS and NESHAP standards upon EPA promulgation. The following letter was sent to Philadelphia on May 8, 1985 giving them automatic delegation. Notices of earlier delegations were published on February 4, 1977 (42 FR 6886), July 13, 1984 (49 FR 28556), and February 28, 1985 (50 FR 8620).

Dr. Stuart H. Shapiro,

Commissioner, City of Philadelphia, Department of Public Health, Municipal Services Building, Room 540, Philadelphia, PA 19107

Dear Dr. Shapiro: In response to your February 11, 1985 letter, we are amending the delegation of authority agreement for New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) under sections 111 and 112 of the Clean Air Act, 42 U.S.C. 7411, 7412. Since the original delegation on September 30, 1976, a number of additional NSPS and NESHAP categories have been promulgated and changes in delegation policy have been made. Therefore, this letter replaces the original delegation.

We have reviewed the pertinent laws and regulations of the City of Philadelphia and the Philadelphia Department of Public Health's (Department) history of implementing the programs and we have determined that the Department has the resources to implement and enforce the NSPS and NESHAP programs in the manner which was requested in your February 11, 1985 letter. Therefore, subject to the specific conditions and exceptions set forth below, the U.S. Environmental Protection Agency (U.S. EPA) hereby grants delegation of authority to the Department to implement and enforce the NSPS and NESHAP as follows:

Authority for all sources located or to be located in Philadelphia subject to the NSPS promulgated in 40 CFR Part 60 and the NESHAP promulgated in 40 CFR Part 61. This delegated authority includes all future standards promulgated for additional pollutants and source categories and all revisions and amendments to existing and future standards.

This delegation is based upon the following conditions and exceptions:

1. This delegation replaces the previous NSPS and NESHAP delegations.

2. Certain provisions of the NSPS and NESHAP regulations allow only the Administrator to take further standard setting actions. Such provisions cannot be delegated and are as follows:

For NSPS:

a. Alternative means of emission limitations in the Clean Air Act section 111(h)(3) which is codified in 40 CFR 60.11a and 60.484.

b. Innovative technology waivers in the Clean Air Act section 111(j).

c. Alternative testing times for Primary Aluminum Reduction Plants in 40 CFR 60.195(b).

d. Approval of equivalent and alternate test methods in 40 CFR 60.8(b) (2) and (3).

e. Establishment of alternate opacity standards in 40 CFR 60.11(e).

f. Issuance of commercial demonstration permits under 40 CFR 60.45a.

g. The portions of the Stationary Gas Turbine Standards dealing with nitrogen fuel allowance in 40 CFR 60.332(a)(3) and the ambient condition correction factors in 40 CFR 60.335(a)(ii).

h. The authority to make applicability determinations pertaining to sources subject to the NSPS and NESHAP. The Department may refer to the Compendium of Applicability determinations issued by U.S. EPA annually, and updated quarterly. Any applicability determinations not explicitly treated in the U.S. EPA Compendium must be referred to EPA for determination. Also, any correspondence from the Department based on the Compendium must be sent to U.S. EPA to maintain National consistency.

For NESHAP:

a. Determinations of whether actions taken or intended to be taken constitute construction or modification or the commencement thereof under 40 CFR 61.06, unless previously addressed in the NESHAP applicability compendium.

b. Determinations of Public availability of information provided to or otherwise obtained by U.S. EPA, under 40 CFR 61.15 unless you have legal authority similar to section 114 of the Clean Air Act.

c. Authority to approve alternate and equivalent test and analytical methods per 40 CFR 61.14.

d. The list of approved design, maintenance, and housekeeping practices under 40 CFR 61.53(c)(4) is only available from the Administrator of U.S. EPA.

e. Approval of alternative means of emission limitation to any design, equipment, work practice, or operational standard under section 112(e)(3) of the Clean Air Act.

3. The following provisions are included in this delegation and can only be exercised on a case-by-case basis. When any of these authorities are exercised, the Department must notify U.S. EPA, Region III in accordance with the reporting procedures referred to in item 7 of the conditions and exceptions:

a. Waiver of a performance test in accordance with 40 CFR 60.8(b)(4) or make minor modifications in accordance with 40 CFR 60.8(b)(1).

b. Determination of representative conditions for the purpose of conducting a performance test as allowed by 40 CFR 60.8(c).

c. Approval of shorter sampling times or smaller sampling volumes under 40 CFR 60.46 (b) or (d).

d. Authorization of both the use of wet collectors in accordance with 40 CFR 61.154(b)(1) and also the use of filtering equipment as explained in 40 CFR 61.154(b)(2).

e. Approval of sampling techniques as specified in 40 CFR 61.43(a).

4. Enforcement of the NSPS and NESHAP regulations in Philadelphia will be the primary responsibility of the Department. Pursuant to Sections 111(c)(2) and 112(d)(2) of the Clean Air Act 42 U.S.C. 7411(c)(2) and 7412(d)(2), U.S. EPA retains authority to enforce any NSPS or NESHAP standard whenever such enforcement is deemed by the U.S. EPA to be necessary to carry out the purposes of the Clean Air Act.

Where the Department determines that such enforcement is not feasible and so notifies EPA, or where the Department acts in a manner inconsistent with the terms of this delegation, EPA will exercise its concurrent enforcement authority, pursuant to section 113 of the Clean Air Act, as amended, with respect to sources within Philadelphia subject to NSPS and NESHAP regulations.

5. The Department may only grant waivers of compliance within 90 days of promulgation of a NESHAP regulation.

6. The Department will not grant a variance for compliance with the applicable NSPS regulations if such variance delays compliance with the Federal Standards (40 CFR Part 60). Should the Department grant such a variance, EPA will consider the source receiving the variance to be in violation of the applicable Federal regulations and may initiate enforcement action against the source pursuant to section 113 of the Clean Air Act. The granting of such variances by the Department shall also constitute grounds for revocation of delegation by U.S. EPA.

7. The Department and U.S. EPA, Region III will develop a system of communication sufficient to guarantee that each office is always fully informed regarding the interpretation of applicable regulations. In instances where there is a conflict between a Department interpretation and a Federal interpretation of applicable regulations, the Federal interpretation must be applied if it is more stringent than that of the Department. This system of communication will insure that both agencies are informed on (a) the current compliance status of subject sources in Philadelphia (b) the interpretation of applicable regulations; (c) the description of sources and source inventory data; and, (d) compliance test waivers and approvals listed in item 3 of the conditions and exceptions. The reporting provisions in 40 CFR 60.4 and 61.04 requiring sources to make submissions to the U.S. EPA are met by sending such submissions to the Department, in addition to U.S. EPA, Region III.

8. If at any time there is a conflict between a Department regulation and a Federal regulation, 40 CFR Part 60 or 61, the Federal regulation must be applied if it is more stringent than that of the Department. If the Department does not have the authority to enforce the more stringent Federal regulation they shall notify U.S. EPA in writing as soon as possible, so that this portion of the delegation may be revoked.

9. The Department will utilize the methods in 40 CFR Parts 60 and 61 in performing source tests pursuant to these regulations.

10. From time to time when appropriate, the Department will revise its NSPS and NESHAP regulations to include the provisions of Federal amendments and newly promulgated regulations for NSPS and NESHAP pollutant source categories.

11. If the Director of the Air Management Division, or equivalent, determines that a Department program for enforcing or implementing the NSPS or NESHAP regulations in inadequate, or is not being effectively carried out, this delegation may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the Department.

A notice announcing this delegation will be published in the **Federal Register** in the near future. The notice will state, among other things, that effective immediately, all reports required pursuant to the above-referenced NSPS or NESHAP regulations by sources located in Philadelphia should be submitted to the Department in addition to U.S. EPA, Region III. Any original reports which have been or may be received by U.S. EPA, Region III will be promptly transmitted to the Department.

Since this delegation is effective immediately, there is no requirement that the Department notify EPA of its acceptance. Unless EPA receives from the Department written notice of objections within ten (10) days of receipt of this letter, the Department will be deemed to have accepted all of the terms of the delegation.

Sincerely,

W. Ray Cunningham,

Director, Air Management Division.

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

Authority: (Sec. 111(c), and 112(d) Clean Air Act (42 U.S.C. 7411(c) and 7412(d)).

Dated: August 16, 1985.

James M. Seif,

Regional Administrator.

[FR Doc. 85-20215 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 61

[AD-FRL-2886-1]

National Emission Standards for Hazardous Air Pollutants; Benzene Emissions From Maleic Anhydride Plants, Ethylbenzene/Styrene Plants, Benzene Storage Vessels, and Benzene Equipment Leaks

AGENCY: Environmental Protection Agency (EPA).

ACTION: Denial of petition for reconsideration.

SUMMARY: The Natural Resources Defense Council (NRDC) has petitioned EPA to reconsider final decisions published June 6, 1984, to withdraw proposed benzene standards for maleic anhydride process vents, ethylbenzene/styrene (EB/S) process vents, and benzene storage vessels (49 FR 23558), and to reconsider promulgated standards for benzene equipment leaks (49 FR 23498). The petitioner contended that EPA's June benzene decisions were not based on analysis of the most current scientific evidence of the health effects associated with benzene exposure. The petitioner concluded that if all relevant benzene health data were considered, EPA would reverse its decision not to regulate the three source categories and would set more stringent standards for benzene equipment leaks. The petitioner also raised several technical issues specific to EB/S flares and the benzene equipment leaks standards.

The Administrator finds that the objections raised do not provide substantial support for revising these decisions. Also, many of the objections could have been raised during the original rulemakings.

The petition for reconsideration is therefore denied.

DATES: The denial of the petition to reconsider is a final action under sections 307(d)(7)(B) and 307(b)(1) of the Clean Air Act. Review of the denial 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 today's publication, as provided in section 307(b)(1).

ADDRESSES: The dockets, No. OAQPS 79-3 (Part I and II), A-79-49, A-80-14, and A-79-27, containing supporting information are available for public inspection and copying between 8 a.m. and 4:30 p.m., Monday through Friday, at Central Docket Section, West Tower Lobby, Gallery 1, Waterside Mall, 401 M Street SW., Washington, D.C. 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the benzene unit risk factor, contact Mr. Robert Kellam, Pollutant Assessment Branch, Strategies and Air Standard Division (MD-12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5645. For further information on the regulatory aspects addressed in this notice, contact Mr. Gilbert Wood, Standards Development Branch, Emission Standards and Engineering Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

SUPPLEMENTARY INFORMATION:

Background

On October 17, 1984 the NRDC petitioned the Administrator of the EPA, pursuant to section 307(d)(7)(B) of the Clean Air Act, to reconsider four final decisions regarding emissions of the hazardous air pollutant benzene as published in a **Federal Register** notice June 6, 1984 (49 FR 23478, 23498, and 23558). Section 307(d)(7)(B) provides that EPA 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 under section 307 (b)(1); and (2) such objection

is of central relevance to the outcome of the rule. Such objections are of central relevance only if they provide substantial support for the argument that the standards should be revised. See Denial of Petition to Revise NSPS for Stationary Gas Turbines, 45 FR 81653, 81654 (Dec. 11, 1980) and decisions cited therein.

Specifically the NRDC requested reconsideration of:

- The standard promulgated for benzene emissions from equipment leaks, termed fugitive benzene emissions.
- The withdrawal of the proposed standard for benzene emissions from maleic anhydride process vents.
- The withdrawal of the proposed standard for benzene emissions from EB/S.
- The withdrawal of the proposed standard for benzene emissions from benzene storage vessels.

In the petition, the NRDC raised objections to the June 6, 1984, EPA decisions on the grounds that health data relevant to the health risks of benzene were not available to the petitioner during the prescribed public comment period corresponding to a notice proposing withdrawal of proposed benzene standards (49 FR 8380). The petitioner contended that EPA's June benzene decisions were not based on analysis of the most current and up-to-date scientific evidence of the health effects associated with benzene exposure. Moreover, the NRDC argued that the EPA's latest assessment of the carcinogenicity of benzene occurred in 1981. Thus, the Agency did not include current studies that may have a substantial impact on risk analyses. Specifically, the NRDC contended that two major epidemiological studies and one animal bioassay related to benzene exposure were not considered by the EPA in evaluating the carcinogenic potency of benzene. These studies are:

- An epidemiological study of Ohio rubber hydrochloride workers as reported by Rinsky *et al.*, 1981, in which a study by Infante, *et al.*, 1977, was updated.
- An epidemiological study of chemical workers submitted to EPA by the Chemical Manufacturers Association and reported by Wong *et al.*, 1983.
- An animal bioassay conducted by the National Toxicological Program (NTP, 1983).

In addition to consideration of these studies, the petitioners also requested that the EPA consider an unpublished update through 1983 of the Rinsky *et al.*, study, and a document on the health effects of benzene published by the California Department of Health Services (DHS, November 1984).

While NRDC submitted that the unit risk estimate derived from Human studies would increase EPA's unit risk factor used in the recent decisions, NRDC contended that the unit risk estimate used in making regulatory decisions on benzene should be based solely on the NTP (1983) animal bioassay and not the human studies. Moreover, the NRDC submitted that the unit risk estimate based on the NTP bioassay should be derived from the dose-response curve of the incidence of preputial gland tumors of male B6C3F mice because this assessment results in the highest unit risk estimate and thus would be a more "conservative" estimate. The NRDC alleged that the appropriate unit risk estimate is 0.340 per ppm and not the 0.0223 per ppm unit risk estimate used by EPA in the June, 1984 decisions.

The NRDC contended that the 15-fold increase in the unit risk estimate used in the June 1984 decisions would show a high cancer risk to the exposed population, and would warrant an reversal of the decision not to regulate benzene emissions from maleic anhydride process vents, EB/S process vents, and benzene storage vessels. Moreover, while the NRDC agreed with the decision to regulate fugitive benzene emissions from petroleum refinery and chemical manufacturing facilities, NRDC did not agree with the risk analysis supporting the decision. The NRDC contended that the EPA failed to correct for an admitted 2 to 3-fold underestimate of benzene exposure around fugitive sources, and that such an adjustment coupled with a revised unit risk estimate would raise the post-regulation estimate of the lifetime risk of cancer for the most exposed individuals by as much as 46-fold. Finally, NRDC requested reconsideration of several technical aspects associated with controlling flares at EB/S plants and equipment leaks.

Updating the Health Risk Assessment for Benzene

Of central relevance to NRDC's reconsideration request is the contention that the health risk assessment relied upon in June was outdated, and that the risk estimate for benzene should be revised to reflect the most current literature on benzene carcinogenesis. In this regard, the NRDC stated that "the petition for reconsideration raises centrally relevant objections based on data and analyses which have become available only since the close of the comment period for these decisions."

On March 6, 1984, EPA proposed withdrawal of proposed standards for benzene emissions from the various source categories (49 FR 9396). The comment period for that notice ended April 5, 1984. During that time the EPA received written comments from the NRDC regarding the risk assessment used in those decisions (Docket No. OAQPS 79-3(II), VI-D-4). In those comments, the NRDC stated that the unit risk estimate for benzene did not reflect consideration of all available and most recent studies. They were critical of the fact that the EPA had not evaluated the leukemia response observed in a 1983 epidemiologic study of chemical workers exposed to benzene (Wong, *et al.* 1983) in the derivation of the unit risk estimate. Also, the NRDC stated that the EPA had not included the cancer response seen in a 1983 chronic animal bioassay (NTP, 1983), and that "the inclusion of these studies may affect the unit risk estimate." Thus, the NRDC has previously made comment on the same health issues as addressed in the petition.

The petitioner also suggested inclusion of a further update through 1983 of the epidemiologic study of Ohio rubber hydrochloride workers by Rinsky *et al.*, and to consider a review of the health effects literature and a quantitative risk assessment published by the California Department of Health Services (DHS, 1984).

The Benzene Unit Risk Factor. Since a specific environmental carcinogen is likely to be responsible for at most a small fraction of a community's overall cancer incidence, and since the general population is exposed to a complex mixture of potentially toxic agents, it is currently not possible to directly link actual human cancers with ambient air exposure to chemicals such as benzene. Today's epidemiologic techniques are not sensitive enough to measure the association. Therefore, EPA must rely upon mathematical modeling techniques to estimate human health risks. These techniques, termed "quantitative risk assessment," are means whereby the risk of adverse health effects from exposure to benzene in the ambient environment can be estimated mathematically by extrapolating effects found at higher occupational exposure levels to lower concentrations characteristic of human exposure in the vicinity of industrial sources of benzene. The analysis estimates the risk of cancer at various levels of exposure. A unit risk factor for benzene is derived from the dose-response relationship observed in

the occupational studies and is a measure of carcinogenic potency. For benzene, the unit risk represents the probability of contracting leukemia as a result of a lifetime of exposure to a unit air concentration, one part benzene per million parts air (PPM).

Incorporation of More Recent Health Data. The NRDC contended in the petition, as they did during the response period for the June decisions, that the EPA's unit risk estimate for benzene is at least 3 years out of date. They argued that EPA derived the risk estimate in 1981; and, therefore, the computations did not include the scientific literature published since that time. The EPA acknowledges that the June 1984 decisions did not include quantitative consideration of the NTP (1983) animal bioassay, the Wong et al. (1983) epidemiologic study, and the Rinsky *et al.* (1981) epidemiologic study. However, EPA does not agree with the petitioner that these studies became available only after the close of the public comment periods on the relevant benzene rulemakings.

In response to the concerns of the petitioner, the EPA evaluated the risk implications of the epidemiological findings of the Rinsky et al. (1981) study and the Wong et al. (1983) study. In addition, the Ott et al. (1977) chemical worker mortality study was included in the analysis. The following section is a synopsis of this analysis.

The latest Rinsky (unpublished) study of a follow-up of the same rubber hydrochloride workers as reported in the 1981 study cannot be used at this time because the results of this particular study are currently undergoing internal scientific review within the National Institute of Occupational Safety and Health (NIOSH), and has not been released by that Agency. Until the most recent Rinsky et al. study has been released by NIOSH for publication, the EPA cannot include this study in a computation of a benzene risk estimate. It is not EPA's policy to include data that have not been reviewed by the scientific community. Upon completion of formal review and approval by NIOSH of the most recent Rinsky update, the Agency will review the data, and take action as appropriate.

The EPA does agree with the petitioner that the carcinogenic potency of benzene should be reevaluated to reflect the recent updates to the benzene scientific literature. The EPA evaluation, described below, includes consideration of recent publications as well as the *Report to* the *Scientific Review Panel On Benzene* (1984) published by the California Department of Health Services (DHS).

Methodology for Risk Factor Determinations. The petitioner alleged that basing a risk analysis on these studies would result in a "dramatic" increase in the unit carcinogenic risk estimate for benzene. Relying on the DHS report, NRDC alleged that the potency estimate for leukemia derived from the Rinsky et al. 1981 study of rubber hydrochloride workers would be more than two times the estimates used by EPA in the June 1984 decisions. Using the NTP (1983) animal bioassay showing elevated incidence of leukemia and lymphoma increases the estimate more than 10 times; and if the carcinomas of the preputial glands found to be significantly increased in male mice are included, the unit risk estimate is increased 15 times over the value used by EPA in the June 1984 decisions. While NRDC submitted that the risk estimate derived from human studies will increase EPA's unit risk factor used in the recent decisions, NRDC contended that the unit risk estimate used in making regulatory decisions on benzene should be based solely on the NTP (1983) animal bioassay and not the human studies. Moreover, the NRDC submitted that the unit risk estimate based on the NTP bioassay should be derived from the dose-response curve of the incidence of preputial gland tumors of male B6C3F mice because this assessment results in the highest unit risk estimate and, thus, would be a more "conservative" estimate. The NRDC argued that such an increase in the unit estimate would increase the computed risk of leukemia to people residing in the vicinity of industrial sources of benzene; and, therefore, the June 1984 decisions not to regulate certain source categories should be reversed. Furthermore, the petitioner was critical of EPA's methodology of calculating a unit risk estimate from the epidemiologic studies. As stated in the DHS document (1984), the focus of the criticism is the exclusion of the Rinsky *et al.* (1981) and Wong *et al.* (1983) studies in the analysis.

In the March 6, 1984 **Federal Register** notice (49 FR 8386), the EPA explained the health basis for withdrawing proposed benzene standards. The quantitative unit risk estimate used in the risk assessment had been revised to take into consideration comments received after the maleic anhydride proposal (45 FR 26660) concerning the appropriateness of the various epidemiologic studies. The EPA reexamined and reevaluated the scientific literature on benzene carcinogenisis (49 FR 8388) and revised the estimate from a probability of leukemia of 0.024/ppm to a probability of leukemia of 0.022/ppm (a reduction of about 7 percent).

The NRDC commented on EPA's methodology in deriving the revised risk estimate during the prescribed comment period. The petition reiterated those comments. The principal comment by NRDC was that EPA developed its estimate of risk by pooling or aggregating the dose-response curve of three epidemiological studies; and, therefore, did not yield the most conservative unit risk estimate. The NRDC stated during the comment period that, "a truly conservative assessment would have given principal weight to the study yielding the higher risk estimate" (Docket No. OAQPS 79-3(II), VI-D-4).

The EPA disagrees that the estimates of cancer risk for benzene should be appropriately based on the single study that yields the highest possible risk estimate. Where several quality data sets are available, the measure of carcinogenic potency gains certainly from their combined use. The EPA methodology for the evaluation of the unit risk estimate for benzene is described in a document entitled *Interim Quantitative Cancer Risk Estimates Due to Inhalation of Benzene* (OAQPS 79-3 (I), VIII-A-4). Although the animal bioassays were considered, the EPA believes that the unit risk estimate for inhalation of benzene is appropriately based upon the principal epidemiologic studies since these studies are of recognized quality and have the greatest relevance in the estimation of health risks for the general population. In the revaluation of the unit risk estimate, the EPA pooled the leukemia responses observed in the Rinsky *et al.* (1981) and Ott *et al.* (1977) cohorts, and computed a geometric mean risk estimate. The results of Wong *et al.* (1983) were then pooled together with the results of Rinsky *et al.* (1981) and Ott *et al.* (1977) and compared with the results obtained from pooling the results of Rinsky and Ott only. The resulting ratio between these two pooled sets of data was used to adjust the computed geometric means estimate. Based on these calculations, the unit risk factor was revised upward from 0.022/ppm to 0.026/ppm. The revised estimate represents a 17 percent increase in the estimate used in the June 1984 decisions.

Use of Animal Data to Calculate a Unit Risk Estimate. The NRDC alleged that the cancer incidence observed in a 2-year rodent bioassay conducted by the National Toxicological Program (NTP, 1983) should be used by the EPA to develop a unit cancer risk estimate for

exposure to benzene instead of epidemiological studies. The NRDC argued that the NTP animal study has several technical advantages in comparison to the human studies.

- First, in the NTP study, the animals were subjected to detailed physical examination, whereas the human studies examined death certificates alone. Death certificate studies are known to suffer from uncertainty due to lack of quality control in characterizations of causes of death recorded.
- Second, in the NTP study, both sexes were exposed and the animals were examined for all types of cancer. All of the human studies have focused only male populations; none of the studies examined breast cancer in women, for example. Most of the human studies focused solely on detecting leukemia; in only the Wong study and the in-progress Rinsky study were other lung cancers examined.
- Third, in most of the human studies, many subjects have not been followed to the end of their life expectancy, whereas in the NTP study, the animals were studied to the end of their normal lifespans.

The EPA does not accept NRDC's contention that animal data should supersede epidemiological studies in determining risk of exposure to airborne benzene. Well-designed analytical epidemiological studies are a means of observing directly the elevated cancer risk associated with human exposure to a chemical agent. Low-dose risk estimate derived from laboratory animal data extrapolated to humans are complicated by a varity of factors that differ among species and potentially affect the observed response of carcinoma. Included among these factors are differences between humans and experimental test animals with respect to life span, body size, genetic variability, population homogeneity, existence of concurrent diseases, pharmacokinetic effects such as metabolism and excretion patterns, and the exposure regimen. Therefore, when making interspecies comparisons between the cancer response in laboratory animals to a predicted response in humans, it is necessary to extrapolate using standardized scaling factors. Commonly employed dosage scales include mg per kg body weight per day, ppm in the diet or water, mg per m^2 body surface area per day, and mg per kg body weight per lifetime. The accuracy of these scaling factors as predictors of the human responses is highly uncertain.

On the other hand, well-conducted epidemiological studies provide direct evidence of a causal link between the chronic exposure in humans and adverse health effects. This direct evidence of human carcinogenesis avoids the biological uncertainties inherent in extrapolating animal cancers to humans.

Although a clear dose-response association between carcinoma and benzene exposure was demonstrated in rodent bioassays, the EPA believes that human data, when available, should be the principal factor in the derivation of a unit cancer risk estimate. There is strong evidence of benzene carcinogenicity resulting from well-conducted analytical epidemiologic studies of people chronically exposed to airborne benzene in the work place.

The reliability of the epidemiological studies is given additional strength by the fact that leukemia mortality rates were observed among independent cohorts in different occupational settings by independent investigators. In addition, individuals exposed to benzene were followed over a time period that spanned the latency of leukemia. Given the wide range of levels of benzene exposures and durations of exposure, the epidemiologic studies showed a 3-fold to 20-fold increase in risk of leukemia above individuals not exposed to benzene.

Withdrawal of Proposed Benzene Standards

The petitioner felt that the withdrawal of proposed standards for maleic anhydride, EB/S, and benzene storage should be reconsidered in light of an increased unit risk factor. The petitioner believed that higher health risk estimates would lead the Agency to conclude that the source categories pose significant risk to the public and that regulation is warranted.

The EPA applied the revised benzene unit risk factor to the source categories for which the proposed standards were withdrawn. In addition to the adjustment made to the benzene unit risk factor, EPA also adjusted exposures (benzene concentration times population) in the maleic anhydride industry because of the significant changes in emissions that have occurred. This consisted of eliminating the United States Steel, Neville Island, and Pfizer, Terre Haute, plants from the health risk calculations, because neither plant now produces maleic anhydride from benzene. The United States Steel plant producers maleic anhydride entirely from butane, and Pfizer no longer produces but purchases all the maleic acid it needs for fumaric acid production.

The Monsanto, St. Louis, plant is now the only in the U.S. that produces maleic anhydride from benzene. The Monsanto emissions are sent to an incinerator when necessary to generate steam for heating in the colder months and to meet current State Implementation Plan (SIP) volatile organic compound (VOC) control requirements. Because it is more expensive to produce maleic anhydride from benzene than butane, the benzene units are used as "swing" capacity, i.e., to meet variations in maleic anhydride demand, and do not operate at full production capacity. Based on confidential information submitted by Monsanto [OAQPS 79-3(II), VIII-A-6], the benzene units are expected to be operated only part of 1985, with most emissions being incinerated. In addition, the State of Missouri is expected to incorporate into its SIP stringent VOC reduction requirements for air oxidation processes (maleic anhydride production is an air oxidation process) later this year. The revised health risk estimates (OAQPS 79-3(II), VIII-A-8) reflect this combination of anticipated events as well as the increased unit risk factor. The EPA also notes that the Chemical Manufacturers Association supplied information (A-79-49, IV-D-2) indicating that benzene emissions from EB/S process vents declined to 155 Mg/yr from 210 Mg/yr due to additional controls and process modifications.

In recalculating the health risk estimates, the annual incidence for maleic anhydride process vents decreases to 0.005 from 0.029, and the maximum lifetime risk to 1.4×10^{-6} from 7.6×10^{-6}. For EB/S process vents, the annual incidence increases to 0.0067 from 0.0057, and the maximum lifetime risk to 1.6×10^{-4} from 1.4×10^{-4}.

For benzene storage vessels, the annual incidence was previously estimated to fall within a range from 0.043 to a maximum of 0.09; this would increase to a range of 0.05 to 0.11. For maximum lifetime risk, the corresponding ranges are 3.6×10^{-5} to 3.6×10^{-4}, with the increase to 4.2×10^{-5} to 4.2×10^{-4}. However, EPA's best judgment is that the correct values are in the middle or upper portion of these ranges.

As stated in the final withdrawal (49 FR 23563; June 6, 1984), these numbers reflect an "* * * extremely conservative emission estimate to tanks equipped with shingle seals." These estimates are characterized as conservative because the existing test data results reflect higher emisssions due to testing irregularities, as well as the type of seal alone. However, because the portion of emission increase due to testing

irregularities cannot be quantified, the estimate reflecting the total uncertainty must be used, explicitly recognizing that these estimates reflect the upper bound of total uncertainty in emissions, and a lower bound based on continuous seals.

Although two of these source categories, EB/S process vents and benzene storages vessels, show increases, the health risks are still considered small by the Administrator (and impacts for EB/S plants would be even smaller, if recalculated based on 155 Mg/yr). Likewise, potential reductions are also considered small. For EB/S, annual incidence could be reduced to about 0.0012 and maximum lifetime risk to about 1.1×10^{-5}. For benzene storage annual incidence could be reduced to about 0.042 and maximum lifetime risk to about 3.4×10^{-5}. Also, no significant reductions would be achieved at maleic anhydride plants because all remaining benzene emissions would be controlled by incineration. As a result, the Administrator considers the impacts of the reanalysis as still too small to warrant Federal regulatory action under Section 112. The petitioner's objection does not give substantial support for the argument that the withdrawals should be reversed and is, therefore, not of central relevance to the outcome of the rule.

Flares at Ethylbenzene/Styrene Plants

The petitioner questioned the Agency's assumption that every flare within the EB/S industry achieves 98 percent reduction of benzene. In making this argument, the petitioner points to: (1) Data indicating that some flare efficiencies are less than 98 percent, and (2) the absence of requirements for EB/S flare operation that the Agency promulgated in the benzene fugitive rulemaking to ensure 98 percent reduction.

The petitioner cited data contained in "Flare Efficiency Study," EPA–600/2–83–052 (Docket No. A–79–49, IV–A–4) and "Evaluation of the Efficiency of Industrial Flares: Test Results" (Docket No. A–79–49, VI–A–1), as evidence that flares do not achieve 98 percent reduction under certain operating conditions. The documents indicate that such operating conditions are not typical of industry operating practices. Indeed, as the petitioner points out, the documents conclude that when flares are operated under conditions representative of industrial practices, greater than 98 percent reduction can be expected.

In the notice to withdraw the proposed EB/S standards (49 FR 23563; June 6, 1984), in the response to the same comment made by the petitioner at that time, EPA also noted that operators at EB/S plants are unlikely to allow their flares to operate under conditions resulting in less than 98 percent reduction, for safety and economic considerations. Therefore, EPA felt it reasonable to assume a 98 percent average flare efficiency at EB/S plants for estimating impacts. For calculating plant-by-plant emissions and exposures, EPA necessarily had to extend this 98 percent average assumption to each flare, because actual flare efficiency data for each flare are not available. It should be emphasized that the Agency did not and does not assume that every flare, in fact, achieves at least 98 percent reduction.

In addition, EPA does not feel that the exact percent is a critical factor in estimating baseline impacts. A simplified but conservative (would tend to overestimate exposures) sensitivity analysis that assumes an average flare efficiency at EB/S plants as low as 80 percent results in only about a 15 percent increase in annual incidence and no increase in maximum lifetime risk for the source category (A–79–49, VIII–A–5).

In the benzene fugitive rulemaking, by contrast, EPA set standards that ensure that every flare used to control equipment leak emissions achieves 98 percent reduction. The important distinction is that in this case the Agency is not deciding what source category to regulate, but rather is deciding the appropriate control level for sources that it has previously concluded warrant regulation.

The petitioner further questioned the Agency's assumed flare efficiency by citing EPA's conclusions on the need for further research on flare efficiencies to better quantify flare performance in "Evaluation of the Efficiency of Industrial Flares: Background—Experimental Design—Facility," EPA–600/2–83–070 (Docket No. A–79–49, IV–A–5). The petitioner apparently is implying that because the Agency recommends additional research on flares in quantifying reduction efficiencies, it is inappropriate to assign any numerical efficiency to flare performance at all. However, EPA feels it desirable, if not necessary, to try to quantify impacts to identify appropriate regulatory actions. The Agency does not agree that exact estimates are needed, and believes that the information on flare efficiency and typical industry practices is adequate to assume an average efficiency value for flares.

In summary, after review of the petitioner's objection regarding EB/S flare efficiency, EPA has concluded two points. First, the objection was raised in the previous comment period and, therefore, is not "new." Second, the objection is not of central relevance to the outcome of the withdrawal action. Thus, EPA has decided that reconsideration of this objection is not warranted.

Benzene Equipment Leaks

The NRDC requested reconsideration of the national emission standard for equipment leaks of benzene by raising five basic objections:

1. The NRDC requested that more stringent control requirements be established based on alleged underestimates of risk and exposure. The maximum lifetime risk, according to NRDC, is underestimated by a factor of approximately 31- to 46.5-fold.

2. The NRDC requested that EPA reconsider the use of sealed bellows valves and dual mechanical seals for pumps, which were not required, and that EPA reconsider the 2 percent level for the alternative standards for valves.

3. The NRDC questioned EPA's technical judgment in selecting 10,000 ppmv as the definition of an equipment leak and requested that it be changed to 1,000 ppmv. In addition, NRDC requested that EPA reduce the 5-day first-attempt-at-repair period to 24 hours and the 15-day period for completing repairs to 5 days when feasible. The NRDC also requested that EPA require the use of a directed preventive maintenance program to reduce emissions.

4. The NRDC questioned the use of cost effectiveness as the basis for the exemption from monitoring for difficult-to-monitor valves and the exemption for equipment at plant sites that process less than 1,000 megagrams (Mg) of benzene annually.

5. The NRDC questioned the reasonableness of keeping repair records for only 2 years and requested that records be kept for at least 5 years. In addition, NRDC requested that each piece of leaking equipment be specifically identified and tagged.

The EPA reviewed each of NRDC's five basic objections. After reviewing these objections, EPA concluded that none of NRDC's objections provides a substantial basis for revising the standards. They are therefore not of central relevance to these standard; and, therefore, EPA is not reconsidering any of these aspects. In addition, NRDC's objections were either considered before promulgation of the standards or could have been raised by NRDC (but were not) during their development. This section summarizes EPA's responses to

NRDC's petition for reconsideration. In Docket Item A–79–27 VI–B–1, EPA presents in detail the results of this review.

The EPA reviewed NRDC's concerns about correcting the alleged bias contained in the exposure assessment used in evaluating the standard. As one aspect of this review (see section entitled "Updating the Health Risk Assessment for Benzene"), EPA decided that the unit risk number should be about 17 percent larger than used in the risk assessment. The EPA also reviewed NRDC's concerns about estimating exposure to benzene around plants using or producing benzene. In order to test the sensitivity of the regulatory decisions to changes in the exposure assessment, EPA recalculated the exposure assessment by increasing the ambient concentrations and, therefore, exposure by 300 percent. A factor of 300 percent was used because it seems to be the upper limit on the alleged underestimation based on the analysis presented in Appendix C of the Benzene Fugitive Emissions Background Information for Promulgated Standards and detailed in Docket Item A–79–27, IV–B–18. After doing so, EPA concluded that the standard would not change based on the new exposure assessment and; therefore, this objection is not of central relevance to the standard. Thus, EPA is not reconsidering this objection.

The EPA reviewed NRDC's concerns about sealed bellows valves, dual mechanical seals for pumps, and the alternative standards for valves. Based on recalculated estimates of annual leukemia incidence and maximum risk, EPA determined that, because of the relatively small health benefits to be gained with the additional costs of requiring the additional control of sealed bellows valves and dual mechanical seals instead of the controls required by the standard for valves and pumps, EPA considers the risks remaining after application of the technologies selected for equipment covered by the standard not to be unreasonable. Based on these considerations, the Administrator has not changed the decisions about the levels of control associated with these aspects of the standard.

Concerning NRDC's request to revise the level for the alternative standard for valves from 2 to 1 percent, this standard is set at a level that is achievable, not at a level that is achievable only half the time, as would be the case with NRDC's suggestion. In addition, there is no practical difference between limits of 1 and 2 percent of valves leaking; that is, an owner or operator of a process unit would implement the same control measures to comply with the alternative valve standards whether the limit is set at 1 or 2 percent.

The EPA reviewed NRDC's concerns about EPA's technical judgment on the definition of a leak, the repair intervals, and the effectiveness of preventive maintenance programs. With respect to the definition of a leak, the EPA does not disagree with NRDC that additional emission reductions could be achieved by reducing the leak definition from 10,000 to 1,000 ppmv. However, while EPA has concluded that 10,000 ppmv is a reasonable leak definition (i.e., there are large enough emissions that repair can be accomplished with reasonable costs), EPA has not concluded that 1,000 ppmv is a reasonable leak definition. Therefore, until EPA has adequate data to support the repair potential associated with leak definitions like 1,000 ppmv, EPA is selecting a reasonable leak definition (i.e., 10,000 ppmv). With respect to the repair intervals, EPA previously explained its justification for the 5-day first-attempt-at-repair interval and the 15-day repair interval for valves, pumps, and pressure relief devices. Basically, the repair intervals were based on EPA's understanding of modern industry maintenance practices and leak detection and repair programs, which included technical judgments on the practicality of control techniques and work practices. During development of the proposed standard, EPA personnel made a concerted effort to investigate and gain knowledge about industry maintenance practices. After considering all of the comments during the rulemaking, EPA concluded that NRDC's suggestions of a 24-hour first attempt period and a 5-day period for completing repairs should not be adopted.

In response to NRDC's request to mandate a directed preventive maintenance program, EPA does not believe that a directed preventive maintenance program would necessarily improve the standard's leak detection and repair program. Directed preventive maintenance does not entirely eliminate leaks. While adding a directed preventive maintenance program to the standard can possibly reduce emissions, it can increase emissions also. The EPA continues to believe that, in some instances, attempting repair of a nonleaking valve can result in creating a leaking source. The additional cost of such a program (e.g., routine replacement of valve packing) could be unreasonable; it would not reduce emissions by more than the standard's leak detection and repair program but it would include considerable additional costs.

The EPA reviewed NRDC's concerns with the provisions for difficult-to-monitor valves and the basis for the small plant cutoff. Even though EPA expects few difficult-to-monitor valves at a typical plant, these provisions are needed to reduce unreasonable costs that would otherwise be incurred. The use of a probe on a boom for monitoring leaks, as NRDC suggests, is neither practical nor precise; and the labor cost of monitoring a small number of valves using a "cherry picker" would not be justified considering the small emissions reduction achieved. In response to NRDC's concern about the effects of inflation on the basis for the size cutoff, EPA based the smaller plant exemption on May 1979 dollars. The fact that the cost-effectiveness criterion developed in 1978 had inflated to 1982 dollars is not relevant because the cost of the standard would also increase proportionally. In fact, most plant sites have production rates much greater than 1,000 Mg/yr; and, therefore, few, if any, plants would be exempted from the standard on the basis of the size cutoff. The accuracy of the cost-effectiveness number used in this decision, consequently, is not important.

The EPA reviewed NRDC's concerns with the recordkeeping and reporting requirements of the standard. The EPA believes that these requirements provide for effective enforcement. Concerning NRDC's request for a longer period than 2 years for keeping records, EPA believes that 2 years is long enough to review and determine compliance for most owners or operators affected by the standards; therefore, it would not be necessary for a plant to keep records longer than 2 years. In response to NRDC's requests to tag and report the identity of each individual piece of leaking equipment, EPA does not specifically require tagging because it is unnecessarily restrictive. Any form of identification is acceptable as long as it is weatherproof and readily visible (e.g., a detailed diagram locating valves). The EPA believes that it is unnecessary to require reporting of individual leaking equipment and that reporting the number of leaking equipment is sufficient in helping to determine compliance. This system of reporting leaks will effectively reduce the number of inspections without reducing the effectiveness of compliance efforts.

In summary, EPA reviewed each of NRDC's five basic objections to the promulgated benzene equipment leaks standard. After reviewing these

objections, EPA concluded that none of NRDC's objections are of central relevance to the standard and therefore, EPA is not reconsidering any of these objections.

Dated: August 16, 1985.

Lee M. Thomas,

Administrator.

[FR Doc. 85-20212 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 21, 74, and 78

[Gen. Docket 82-334 et al.]

Establishment of a Spectrum Utilization Policy and Amendment of the Rules With Respect to Digital Termination Systems, Point-to-Point Microwave Systems, the World Administrative Radio Conference, and Expansion of Certain Available Frequencies

AGENCY: Federal Communications Commission.

ACTION: Final rules; correction.

SUMMARY: This document corrects several errors in various final rule documents. This action is taken to clarify the amendments in each of the documents and to ensure the accuracy of each amendment as it will appear in the Code of Federal Regulations.

FOR FURTHER INFORMATION CONTACT: Donald Campbell, (202) 653-8177.

Erratum

In the matter of establishment of a spectrum utilization policy for the fixed and mobile services' use of certain bands between 947 MHz and 40 GHz, (Gen. Doc. 82-334); amendment of Parts 2, 21, 74 and 94 of the Commission's Rules to allocate spectrum at 18 GHz for, and to establish other rules and policies pertaining to the use of radio in Digital Termination Systems and in point-to-point microwave radio systems for the provision of Digital Electronic Message Services, and for other common carrier, private radio and broadcast auxiliary services; and to establish rules and policies for the private radio use of Digital Termination Systems at 10.6 GHz, (Gen. Doc. 79-188); amendment of Part 2 of the Commission's Rules Regarding Implementation of the Final Acts of the World Administrative Radio Conference, Geneva, 1979, (Gen. Doc. 80-739); and amendment of Parts 2, 21, 74 and 94 of the Commission's Rules and Regulations to Expand the Frequencies Available for use by Aural Broadcast STL and Intercity Relay stations, (Gen. Doc. 82-335).

Released: August 16, 1985.

1. Several inadvertent omissions and typographical errors have been detected in the Orders issued by the Commission in the above captioned proceedings. Those omissions and errors are addressed in the following paragraphs by rule section affected.

Section 21.703

2. On August 17, 1984 the Commission issued a *Memorandum Opinion and Order (MO&O)* in Gen. Doc. 82-334 and 79-188, 49 FR 37760 (September 26, 1984) which amended § 21.703 by: (1) removing paragraphs (a), (b), (c), (d), (e) and (f); (2) redesignating paragraph (g) as new paragraph (a) and paragraph (h) as new paragraph (b); and (3) revising all the entries between 6,425 MHz and 19,700 MHz in the Table in new paragraph (a). Two errors were made in this table. First, the bandwidth for 19,160 to 19,260 MHz band should have been listed as 10 MHz, not 220 MHz. Second, there should have been an entry for the 19,260 to 19,700 MHz band indicating a maximum bandwidth of 220 MHz.

3. On November 27, 1984, the Commission issued a *Third Report and Order* in Gen. Doc. 80-739, 49 FR 48694 (December 14, 1984) which amended § 21.703 by revising the table in paragraph (e). Paragraph (e) was removed by the *MO&O*; therefore, these changes are moot.

4. On February 8, 1985, the Commission issued a *Second Report and Order (2nd R&O)* in Gen. Doc. 82-334, 50 FR 7338 (February 22, 1985) which amended § 21.703 by revising all entries between 29,500 and 38,600 MHz in the Table in paragraph (g). The *MO&O* previously redesignated paragraph (g) as new paragraph (a); therefore, the revisions should have been made to paragraph (a).

Section 74.502

5. On January 18, 1985, the Commission issued a *Report and Order (R&O)* in Gen. Doc. 82-335, 50 FR 4655 (February 1, 1985) which amended § 74.502 by deleting paragraph (d). The *2nd R&O* in Gen. Doc. 82-334 also amended this section by redesignating paragraphs (c) and (d) as paragraphs (d) and (e); and by adding a new paragraph (c). Since paragraph (d) was previously deleted by the *R&O*, the *2nd R&O* should have only redesignated paragraph (c) as paragraph (d) and added new paragraph (c).

Section 74.637

6. The *2nd R&O* in Gen. Doc. 82-334 amended § 74.637 by replacing the phrase "17,700-19,700 MHz band" with the phrase "17,700-19,700 MHz and 31,000-31,300 HMz bands". The frequency unit for the latter band is incorrectly stated; it should read "MHz", not "HMz".

Section 78.18

7. The *2nd R&O* amended § 78.18 by adding a new subparagraph (a)(5) which contained two further subparagraphs (1) and (2). Those two designations should have been (i) and (ii) respectively.

Federal Communications Commission.

William J. Tricarico,

Secretary.

[FR Doc. 85-19933 Filed 8-22-85; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Parts 81 and 83

[PR Docket No. 85-7]

Implementation of Maritime Distress and Safety Frequencies in the 2-18 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The FCC is amending Parts 81 and 83 of its rules (concerning the maritime radio services) to implement distress and safety frequencies allocated by the 1983 World Administrative Radio Conference for the Mobile Services. This proceeding was initiated because of actions in the international community to implement a new distress and safety system. The intended effect is to aid the transition to an improved maritime distress and safety system.

DATE: Effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, (202) 632-7175.

SUPPLEMENTARY INFORMATION:

List of Subjects

47 CFR Part 81

Coast stations, Radio.

47 CFR Part 83

Marine safety, Radio, Ship stations.

Report and Order (Proceeding Terminated)

In the matter of amendment of Parts 81 and 83 of the Commission's rules to implement frequencies for the Future Global Maritime Distress and Safety System; PR Docket No. 85-7.

Adopted: August 5, 1985.

Released: August 15, 1985.

By the Commission.

1. On January 7, 1985, the Commission adopted a *Notice of Proposed Rule Making* (FCC 85-5, 50 FR 3574) in the above captioned proceeding. The *Notice*

was in response to actions taken by the 1983 World Administrative Radio Conference for the Mobile Services (MOB–83) which allocated distress and safety frequencies between 2 MHz and 18 MHz for the Future Global Maritime Distress and Safety System. By this action, we are implementing the new frequencies in Parts 81 and 83 of the Commission's rules. Early availability is intended to permit voluntary participation in the evaluation and testing of the new distress and safety system.

Background

2. The International Telecommunications Union (ITU) held a World Administrative Radio Conference for the Mobile Services in Geneva, Switzerland, in 1983. Referred to as "MOB–83", it dealt almost entirely with distress and safety issues. The International Maritime Organization (IMO) provided MOB–83 with a design for a Future Global Maritime Distress and Safety System (FGMDSS).[1] This design featured automatic distress alerting followed by automatic transmission of additional information concerning a distress incident. On the basis of the IMO design, MOB–83 revised the international Radio Regulations to identify frequencies for the new distress and safety system.[2] Those revisions to the 2–18 MHz maritime bands are the subject to this proceeding.

Discussion

3. Two parties filed comments in this proceeding: the United States Coast Guard (USCG) and the American Institute of Merchant Shipping (AIMS). Both parties voiced strong support for our proposal. The USCG states that the ultimate success of the FGMDSS depends upon gaining operational experience now with each of the subsystems making up the FGMDSS. The USCG feels that this action is consistent with its efforts toward full FGMDSS readiness by about 1990. AIMS agrees that this action will facilitate the implementation of the FGMDSS. AIMS states that FGMDSS will allow communications in an emergency with equipment that is commensurate with today's technology.

4. The *Notice* proposed to incorporate the FGMDSS frequencies adopted at MOB–83 into the Commission's maritime rules (Parts 81 and 83). There are five radiotelephony frequencies, six NB-DP frequencies and six DSC frequencies for distress and safety purposes. These frequencies are specified as follows.

5. The telephony carrier frequencies 4125.0 kHz, 6215.5 kHz, 8257.0 kHz, 12392.0 kHz, and 16522.0 kHz are available for simplex distress and safety communications. In the United States, the frequency 4125.0 kHz in currently available for business and operational communications between ships, and between ships and limited coast stations. Since MOB–83 did not dedicate this telephony frequency exclusively for distress and safety purposes, we are allowing the current uses of 4125.0 kHz to continue.

6. MOB–83 set aside the frequencies 2187.5 kHz, 4188.0 kHz, 6282.0 kHz, 8375.0 kHz, 12563.0 kHz and 16750.0 kHz exclusively for distress and safety communication using digital selective calling (DSC) techniques. These frequencies are the subject of the *Further Notice of Proposed Rule Making* in PR Docket 83–431 [3] and their implementation in the maritime rules will be treated in that proceeding.

7. MOB–83 also provided for the frequencies 2174.5 kHz, 4177.5 kHz, 6268.0 kHz, 8357.5 kHz, 12520.0 kHz and 16695.0 kHz to be used exclusively for distress and safety communications by means of narrow-band direct-printing telegraphy (NB–DP). Five of the NB–DP distress and safety frequencies are currently NB–DP working frequencies. To conform with MOB–83, we are making these frequencies available exclusively for distress and safety communications and deleting them from the table of NB–DP working frequencies in Part 83 of the rules.

8. Although the formal transition to the FGMDSS has not yet begun, we are making these frequencies available now for the testing and introduction of ship radio installations which will eventually comprise part of the FGMDSS. The operation of such installations will be complementary to and not adversely affect existing distress and safety services. These amendments do not require any equipment to be installed on ships or in coast stations.

9. Pursuant to section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), we certify that the new rules will not significantly impact a substantial number of small entities. This action makes available frequencies dedicated for maritime distress and safety purposes by the 1983 World Administrative Radio Conference for the Mobile Services. Since frequency use will be voluntary, no new equipment is mandated and no existing equipment is made obsolete by the action.

10. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or record keeping, labeling, disclosure, or record retention requirements; and will not increase or decrease burden hours imposed on the public.

11. Accordingly, it is ordered, That under the authority contained in sections 4(i) and 303 (c) and (r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303 (c) and (r), the Commission's rules ARE AMENDED as set forth in the attached Appendix, effective September 23, 1985.

12. It is further ordered, That a copy of the Report and Order shall be sent to the Chief Counsel for Advocacy of the Small Business Administration.

13. It is further ordered, That this proceeding is terminated.

14. Regarding questions on matters covered in this document contact Maureen Cesaitis (202) 632–7175.

Federal Communications Commission.

William J. Tricarico,

Secretary.

Appendix

Parts 81 and 83 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 81—STATIONS ON LAND IN THE MARITIME SERVICES AND ALASKA FIXED SERVICE.

1. The authority citation for Part 81 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; unless otherwise noted.

2. Section 81.204 is amended by adding new paragraph (e) to read as follows:

§ 81.204 Assignable frequencies—Narrow-band direct-printing radiotelegraph and data transmission systems.

* * * * *

(e) The following frequencies are available exclusively for distress and safety communications by narrow-band direct-printing telegraphy:

[1] The phasing in of this system is expected to begin in 1990. It will replace the present maritime distress and safety system which relies on ship-to-ship distress alerting using manual international Morse Code. The future system will rely primarily on ship-to-shore distress alerting using satellites and high frequency terrestrial systems employing digital selective calling techniques.

[2] The Final Acts of MOB–83 are currently before the U.S. Senate pending ratification.

[3] In the Matter of Digital Selective Calling System in the Maritime Mobile Service, released October 29, 1984, FCC 84–499, 49 FR 43718.

NB–DP Distress Frequencies (kHz)

2174.5	6268.0	12520.0
4177.5	8357.5	16695.0

3. In § 81.304, the frequency table in paragraph (a) is amended by adding the following frequencies and conditions of use in frequency order, and by adding subparagraph (b)(23).

§ 81.304 Frequencies available.

(a) * * *

Carrier frequency	Conditions of use	
	Section	Limitations
Kilohertz:		
4125.0	81.305	23
* * * *	*	
6215.5	81.305	23
* * * *	*	
8257.0	81.305	23
* * * *	*	
12392.0	81.305	23
* * * *	*	
16522.0	81.305	23
* * * *	*	

(b) * * *

(23) Use of this frequency by coast stations is authorized for distress and safety communications by radiotelephony.

* * * * *

4. Section 81.305 is amended by adding new paragraph (d) to read as follows:

§ 81.305 Frequencies for calling and distress.

* * * * *

(d) The frequencies 4125.0 kHz, 6215.5 kHz 8257.0 kHz, 12392.0 kHz and 16522.0 kHz may be used by coast stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for communications between aircraft stations and maritime mobile stations for distress and safety purposes.

5. Section 81.361 is amended by adding the footnote "[1]" after the frequency 4125.0 in the table in paragraph (a) and adding the text of the footnote after the table to read as follows:

§ 81.361 Frequencies available.

(a) * * *

[1] The frequency 4125.0 kHz is available domestically for distress, and safety and internationally for calling purposes.

* * * * *

PART 83—STATIONS ON SHIPBOARD IN THE MARITIME SERVICES

6. The authority citation for Part 83 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303, unless otherwise noted. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609; 3 UST 4726, 12 UST 2377, unless otherwise noted.

§ 83.321 [Amended]

7. In § 83.321, the frequency table in paragraph (b) is amended by removing the frequencies 4177.5, 6268.0, 8357.5, 12520.0 and 16695.0 kHz.

8. Section 83.322 is amended by adding new paragraph (e) to read as follows:

§ 83.322 Frequencies for use in distress.

* * * * *

(e) The following frequencies are available exclusively for distress and safety communications using narrow-band direct-printing telegraphy:

NB–DP Distress Frequencies (kHz)

2174.5	6268.0	12520.0
4177.5	8357.5	16695.0

9. In § 83.351, the frequency table in paragraph (a) is amended by revising the rule sections listed opposite the frequency 4125.0 kHz and adding the frequencies 6215.5, 8257.0, 12392.0 and 16522.0 kHz in frequency order to read as follows:

§ 83.351 Frequencies available.

(a) * * *

Carrier frequency	Conditions of use	
	Section	Limitations
Kilohertz:		
4125.0	83.352, 83.360	
* * *	* *	
6215.5	83.352	
* * *	* *	
8257.0	83.352	
* * *	* *	
12392.0	83.352	
* * *	* *	
16522.0	831352	
* * *	* *	

10. Section 83.352 is amended by adding new text at the end of paragraph (a) to read as follows:

§ 83.352 Frequencies for use in distress and search and rescue operations.

(a) * * *

Additionally the frequencies 4125.0 kHz, 6215.0 kHz, 8257.0 kHz, 12392.0 kHz and 16522.0 kHz are available for use by coast and ship stations on a simplex basis for distress and safety communications. The frequency 4125.0 kHz may also be used for communications between aircraft stations and maritime mobile stations for distress and safety purposes.

* * * * *

11. Section 83.360 is amended by placing the footnote "[1]" after the frequency 4125.0 kHz in the table in paragraph (a) and adding the text of the footnote after the table to read as follows:

§ 83.360 Frequencies for business and operational purposes

(a) * * *

[1] The frequency 4125.0 kHz is also available domestically for distress and safety and internationally for calling purposes.

* * * * *

[FR Doc. 85–19792 Filed 8–22–84; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74–14; Notice 40]

Federal Motor Vehicle Safety Standards for Occupant Crash Protection; Improvement of Seat Belt Assemblies

AGENCY: Department of Transportation.

ACTION: Final rule.

SUMMARY: This notice adopts a one-year delay, from September 1, 1985, to September 1, 1986, in the effective date for the safety belt comfort and convenience requirements issued by NHTSA is January 1981. The agency proposed a one-year delay in a notice issued in April of this year. The April notice also proposed several minor modifications to the comfort and convenience requirements, which will be addressed in a subsequent notice.

This notice also denies the petitions submitted by American Motors Corporation and the Motor Vehicle Manufacturers Association for an indefinite delay in the proposed effective date of these amendments. The denial is based on the agency's belief that the substantive issues in the proposal will be quickly resolved in a separate final rule and that delaying the effective date for one year will give the motor vehicle industry sufficient time to meet the modified comfort and convenience requirements.

DATE: Any petitions for reconsideration of this rule must be received within 30 days after the date of publication of this notice. The new effective date for the seat belt comfort and convenience requirements is September 1, 1986.

ADDRESS: Any petitions for reconsideration should refer to the docket number and notice number of this notice and be submitted to: Docket Section, Room 5109, National Highway Traffic Safety Administration, 400

Seventh Street, SW., Washington, D.C. 20590. Docket hours are from 8 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Nelson, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, Washington, D.C. 20590 (202–426–2264).

SUPPLEMENTARY INFORMATION: On January 8, 1981, NHTSA amended Standard No. 208, *Occupant Crash Protection*, to specify additional performance requirements to promote the comfort and convenience of both manual and automatic safety belt systems installed in motor vehicles with a GVWR of 10,000 pounds or less (46 FR 2064). The requirements have not yet become effective. In partial response to seven petitions for reconsideration, the agency extended the effective date of the comfort and convenience requirements for one year, from September 1, 1982, to September 1, 1983 (47 FR 7254). Subsequently, the agency adopted (48 FR 24717) a further extension of the effective date for the requirements to September 1, 1985.

On April 12, 1985, the agency proposed to change the effective date of the comfort and convenience requirements to September 1, 1986, to coincide with the effective date of the Department's July 11, 1984 rule requiring the installation of automatic restraints. This notice also proposed modifications to certain aspects of the comfort and convenience performance requirements in order to clarify the agency's intent and to address the concerns raised in the petitions for reconsideration (50 FR 14580).

After the April 12, 1985 notice of proposed rulemaking was issued, American Motors Corporation and the Motor Vehicle Manufacturers Association petitioned NHTSA to postpone the effective date immediately and indefinitely, until all issues concerning the comfort and convenience requirements are resolved. They stated their belief that a final rule on the former effective date is unlikely to be issued before production of 1986 model year vehicles begins in July 1985; that manufacturers will be uncertain of the standard's applicable requirements; and that it is unreasonable to have this critical timing issue tied to the rulemaking process. Chrysler Corporation, General Motors Corporation and Volkswagen of America, Inc. supported this request in submissions to the docket. General Motors stated that deferral is essential to provide time to resolve the many interrelated issues of Notices 37, 38, and 39, as well as to provide time to meet the final requirements flowing from these rulemaking actions. The agency disagrees. Although each of these proposals concerns Standard No. 208, the agency maintains that the issues are separable, as are the notices proposing them.

The agency realizes that September 1, 1985, is an inappropriate effective date for the comfort and convenience requirements because there is insufficient lead time before the beginning of the new model year to comply with the requirements either in the currently adopted version or in the version proposed in April 1985. The agency believes that an effective date of September 1, 1986, provides sufficient time for industry to meet either version of the comfort and convenient requirements. This conclusion is based on NHTSA's own analysis and on the absence of indication in the comments of the other domestic and foreign motor vehicle manufacturers, seat belt manufacturers, and a technical representative that a September 1, 1986 effective date would pose any problems in complying with the proposed requirements. Since its range of choices regarding the substantive differences in the two versions is not large, the agency does not foresee that there will be any changes to the comfort and convenience requirements which would necessitate additional lead time beyond September 1, 1986. Therefore, the agency is adopting that date as the new effective date for all requirements except the one discussed immediately below. However, if the final rule on the substantive issues does include changes for which the industry might need additional lead time, the agency will consider these circumstances and, if necessary, take appropriate steps to adjust the effective date.

In a separate final rule to be issued in the very near future, the agency will respond to the substantive issues raised in the notice of proposed rulemaking and the comments thereon.

Regulatory Impacts

The Department has considered the economic and other impacts of this final rule and determined that the rule is not a major rule within the meaning of Executive Order No. 12291. The agency has further determined that the rule is not significant within the meaning of the Department of Transportation's regulatory policies and procedures. In issuing the final rule on January 8, 1981, NHTSA released a final regulatory evaluation which contains the agency's assessment of the societal benefits and economic consequences of that rule. Copies of the evaluation can be obtained by writing to NHTSA's Docket Section at the address given at the beginning of this notice.

A supplement to that evaluation, concerning the proposed modifications to the comfort and convenience requirements, was placed in the public docket on April 12, 1985. The agency has determined that a full regulatory evaluation is not needed for this notice since the economic and other impacts of a one-year delay in the effective date are minimal. Since the one-year delay will provide manufacturers and consumers with more leadtime to comply with the requirements, costs to manufacturers and consumers should be slightly reduced. The safety impact of this delay should be minimal; however, the agency cannot quantify the magnitude of that impact. Any adverse impacts should be minimized as manufacturers begin to implement voluntarily the comfort and convenience requirements before the mandatory effective date of September 1, 1985.

The agency has also analyzed this proposal for purposes of the National Environmental Policy Act and has determined that it will not have a significant effect on the human environment.

Furthermore, the agency has reviewed the effects of this rule on small entities under the Regulatory Flexibility Act. Based on this evaluation, I certify that the rule will not have a significant economic impact on a substantial number of small entities. Due to the minimal effect on testing costs, the final rule will not significantly affect the manufacturing costs of any seat belt manufacturers who are small entities or the retail price of vehicles purchased by any small organizations or governmental units. In accordance with this evaluation, no regulatory flexibility analysis has been prepared.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1391, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. S71.1.1.3 is revised to read as follows:

S7.1.3. A lap belt installed at any front outboard designated seating position in a vehicle manufactured on or after September 1, 1986, shall meet the requirements of this section by means of

an emergency-locking retractor that conforms to Standard No. 209 (571.209) of this chapter.

3. S7.4 is reviewed to read as follows:

S7.4 *Seat belt comfort and convenience.*

(a) Automatic seat belts installed in any vehicle with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.1, S7.4.2, and S7.4.3.

(b) Manual seat belts, other than manual Type 2 belts in front seating positions in passenger cars, installed in any vehicle with a GVWR of 10,000 pounds or less manufactured on or after September 1, 1986, shall meet the requirements of S7.4.3, S7.4.4, S7.4.5, and S7.4.6.

Issued on August 19, 1985.

Diane K. Steed,

Administrator.

[FR Doc. 85-20150 Filed 8-20-85; 10:41 am]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 652

[Docket No. 50575-5075]

Atlantic Surf Clam and Ocean Quahog Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency rule, extension of effective date.

SUMMARY: An emergency rule amending the Fishery Management Plan for the Atlantic Surf Clam and Ocean Quahog Fisheries (FMP) is in effect until August 21, 1985. The Secretary of Commerce (Secretary) extends this rule for an additional 90 days, through November 18, 1985, because the conditions requiring the emergency measures still exist. This extension continues the revised management system for the New England Area.

EFFECTIVE DATES: August 21, 1985, through November 18, 1985.

FOR FURTHER INFORMATION CONTACT: Monique Rutledge, 617-281-3600, extension 351.

SUPPLEMENTARY INFORMATION: Under section 305(e)(2) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary issued an emergency rule amending the FMP effective May 24, 1985 (50 FR 23014, May 30, 1985). This rule extends the Amendment 6 management measures for an additional 90 days. A detailed discussion of the background, the issues and regulations, and the classification of the rulemaking is set forth in the preamble to the original emergency rule.

The Mid-Atlantic Fishery Management Council has voted to extend this emergency rule for an additional 90 days, since the conditions within the fishery requiring the original emergency rule still exist. This action is authorized by section 305(e)(3)(B) of the Magnuson Act.

The emergency rule is exempt from the normal review procedures of Executive Order 12291 as provided for in section (8)(a)(1) of that order. This rule is being reported to the Director of the Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

(16 U.S.C. 1801 *et seq.*)

List of Subjects in 50 CFR Part 652

Fisheries, Fishing.

Dated: August 20, 1985.

[FR Doc. 85-20233 Filed 8-20-85; 4:09 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 50, No. 164
Friday, August 23, 1985

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

[Amdt. No. 1; Docket No. 2688S]

General Administrative Regulations—Standards for Approval; Agency Sales and Service Agreement

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend the Standards for Approval; Agency Sales and Service Agreement as contained in 7 CFR Part 400—Subpart C. The intended effect of this rule is to: (1) Require licensing, certification, and errors and omissions insurance coverage under an Agency Sales and Service Contract; (2) change "agreement" to "contract" in the title and throughout this subpart; and (3) provide for codification of OMB information collection control numbers. The authority for the promulgation of this rule is the Federal Crop Insurance Act, as amended.

DATE: Written comment, data, and opinions on this proposed rule must be submitted not later than September 23, 1985, to be sure of consideration.

ADDRESS: Written comments on this proposed rule may be sent to the Office of the Manager, Federal Crop Insurance Corporation, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C., 20250.

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

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation No. 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of those regulations under those procedures. The sunset review date established for these regulations is September 17, 1987.

Merritt W. Sprague, Manager, FCIC, has determined that this action (1) is not a major rule as defined by Executive Order No. 12291 because it will not result in: (a) An annual effect on the economy of $100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) will not increase the federal paperwork burden for individuals, small businesses, and other persons.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

FCIC proposes to amend the Standards of Approval-Agency Sales and Service Agreement, as published in the **Federal Register** on Monday, December 13, 1982, at 47 FR 55886, to require that contractor representatives hold a current State license authorizing the sales of specific types of insurance in all states where the representative will be selling FCIC crop insurance and that the contractor be authorized to act as an insurer or to conduct business as an insurance agency in the State in which the contractor is domiciled. Further, this rule requires that the contractor have and maintain an errors and omissions insurance policy.

Contractor representatives will be required to be certified by FCIC for the crop or crops they will be selling and to hold a current insurance license issued by each State in which they will be selling FCIC crop insurance in at least one or more of the following lines (a) multi-peril crop insurance; (b) crop hail insurance; (c) casualty insurance; (d) property insurance; or (e) liability insurance.

Representatives who are not licensed but who are presently active representatives and permitted by FCIC to solicit or conduct business will be allowed until July 1, 1986, to secure the required license. Contractors who held an Agency Sales and Service Agreement for 1985 will be allowed until July 1, 1986, to become authorized to act as an insurer or to conduct business as an insurance agency in the State of domicile.

Under the proposed rule, FCIC will require errors and omissions liability insurance coverage as part of the contractor's responsibilities in order to provide indemnification to FCIC in the event an error by the contractor, or its representatives, causes a loss to FCIC under the contract.

In addition, FCIC proposes to require that the errors and omissions liability insurance, if issued on a claims base basis, be maintained for at least two years beyond the termination of the Agency Sales and Service Contract.

Errors and Omissions Liability Insurance Coverage is presently a factor to be considered by FCIC when determining whether a waiver may be granted when a Certified Public Accountant (CPA) has issued an adverse or qualified opinion on the contractor's financial statement. It is proposed that that reference to errors and omissions liability insurance be removed in this context since errors and omissions liability insurance will not be required of all contractors.

FCIC proposes to require that all sales and service contractors and their representatives be licensed or otherwise authorized to sell and service in the States where they are domiciled (contractor) or doing business for FCIC (representative). This proposal has been under consideration by FCIC for a number of years for the purposes of increasing the professionalism of those who sell and service FCIC's policies and of upgrading the program image. The

present Agency Sales and Service Agreement requires that representatives be trained in an FCIC approved training program and be approved by FCIC for sales and service of crop insurance policies. The representative agreement also requires that representatives be licensed where required by applicable law.

Subsection 507(c)(3) of the Federal Crop Insurance Act, as amended, requires that FCIC:

> . . . to the maximum extent possible . . . encourage the sale of Federal crop insurance through licensed private insurance agents and brokers and give the insured the right to renew such insurance for successive terms through such agents and brokers . . . .

Many of the contractors and representatives presently certified and selling Federal Crop Insurance also sell and service other types of insurance and are therefore now State licensed.

Through July 31, 1985, 587 claims in the total amount of $3,234,493.06 have been filed against FCIC under the provisions of the "Good Faith Reliance on Misrepresentation" section contained in each crop insurance regulation. The amount of $860,448.03 was paid under this provision in FY 1984. Although some of these claims are the result of FCIC error, the majority of these claims are the direct result of errors by the contractor or the representative. Some way must be found to reduce this outlay of funds and still maintain program credibility with the insured.

Although FCIC cannot now determine which losses under this clause are caused by licensed as opposed to unlicensed representatives, we believe that the additional professionalism and knowledge which may be required by State licensing authorities and the additional supervision which may attend such licensing, including dispute resolution available in some states between the insured and the licensed agent, should reduce the number of claims under this clause.

Although FCIC itself will not be licensed and the State will have no authority over policy language or interpretation, the State through its licensing authority will provide another safeguard against those few agents whose lack of integrity and professionalism cast a shadow on all connected with the Federal crop insurance program.

This requirement should also reduce the conflict which has, in the past, occured between the State licensing authorities and FCIC because of the sale of Federal crop insurance by unlicensed agents.

The proposed regulation does allow those representatives and contractors who presently are not licensed or authorized to operate by States but who are active in the sale of Federal crop insurance, until July 1, 1986, to obtain the necessary State license or authority to operate.

Finally, FCIC proposes to change the references to Agency Sales and Service Agreement in the title and throughout Subpart C to "Agency Sales and Service Contract" to conform with the title of the document entered into between the contractor and FCIC.

FCIC is soliciting public comment on this proposed rule for 30 days after publication in the **Federal Register.** Written comments will be available for public inspection in the Office of the Manager, Room 4096, South Building, U.S. Department of Agriculture, Washington, D.C. 20250, during regular business hours, Monday through Friday.

List of Subjects in 7 CFR Part 400

Crop Insurance, Administrative practice and procedure, Agency Sales and Service contract, Standards of approval.

Proposed Rule

PART 400—[AMENDED]

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby proposes to amend 7 CFR Part 400, Subpart C, the General Administrative Regulations; Standards for Approval—Agency Sales and Service Agreement, effective for the 1986 and succeeding contract years, in the following instances:

1. The authority citation for 7 CFR Part 400, Subpart C, continues to read as follows:

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

§ 400.27—400.34 (Subpart C) [Amended]

2. In Subpart C all references to "Agency Sales and Service Agreement" in the title and throughout Subpart C (§§ 400.27—400.34) are changed to read "Agency Sales and Service Contract" and references to "agency" are changed to "contractor."

3. Definitions for "certification", "claims made errors and omissions liability insurance", "contractor", and "representative" are added to § 400.28, and the section is revised in its entirety, to read as follows:

§ 400.28 Definitions.

For the purposes of these financial standards:

(a) "Adverse opinion" means an opinion by a CPA which states that the financial statements do not present fairly the financial position or changes in financial position of the reporting entity in conformity with generally accepted accounting principles.

(b) "Agency Sales and Service Contract" also known as "Master Marketing Contract", means the contract between the Federal Crop Insurance Corporation (FCIC or the Corporation) and the contractor for the purpose of selling and servicing FCIC crop insurance contracts.

(c) "Certification" means successful completion of formal training and testing administered by the Corporation in:

(1) New crop programs and policy changes;

(2) Corporation procedures;

(3) Sales and servicing techniques; and

(4). Other related areas prescribed by the Corporation.

(d) "Claims made errors and omissions liability insurance" means an error and omission liability insurance policy under which indemnification is payable by the insurance carrier for an act which is made known to the insured party during the period the liability insurance is in force, whether or not the act itself occurred during the period the liability insurance was in force.

(e) "Contractor" means a private insurance company which has entered into an Agency Sales and Service Contract with FCIC to sell and service FCIC crop insurance contracts.

(f) "CPA" means a Certified Public Accountant who is licensed as such by the State in which he/she practices.

(g) "CPA Audit" means a professional examination meeting certain standards on the basis of which the auditor expresses an independent professional opinion respecting the fairness of presentation of the financial statements.

(h) "CPA review" means that, under the standards of the American Institute of Certified Public Accountants, a limited assurance is given stating that the auditor is not aware of any material modification that should be made to the financial statement in order for it to be in compliance with generally accepted accounting principles.

(i) "Current assets" means assets, including cash, that are reasonably expected to be realized in cash or consumed during the normal operating cycle of the business or within one year if the operation cycle is shorter than one year.

(j) "Current liabilities" means current liabilities included in those expected to be satisfied by either the use of assets

classified as current in the same balance sheet, or the creation of other current liabilities, or those expected to be satisfied within a relatively short period of time, usually one year.

(k) "Disclaimer of opinion" means the opinion by a CPA which states clearly that the auditor does not express an opinion on the financial statements.

(l) "Financial statements" means the document(s) submitted to FCIC by a contractor applying for an Agency Sales and Service Contract which have been audited or reviewed by a CPA for the most recent fiscal year and which most accurately reflects the financial position, result of operations, and change in financial position of the applicant.

(m) "Qualified opinion" means an opinion by a CPA which states that "except for" or "subject to" the effects of the matter to which the qualification relates, the financial statement presents fairly the financial position, result of operations, and changes in financial position in conformity with generally accepted accounting principles.

(n) "Representative(s)" means individuals licensed in the State in which they conduct or solicit business for a contractor and who are certified by FCIC for each crop upon which they sell or service insurance.

(o) "Unqualified opinion" means the opinion of a CPA which states that the financial statements present fairly the financial position, result of operations, and change in financial position in conformity with generally accepted accounting principles.

(p) "Waiver" means the approval given by FCIC to waive the requirements of the Financial Standards when the contractor submits a plan to eliminate the deficiency in the contractor's financial position.

4. New §§ 400.35, 400.36, and 400.37 are added to read as follows:

§ 400.35 Representative licensing and certification and contractor authorization.

(a) Except as provided in paragraph (b) of this section, the contractor and its representatives who sell and service policies or represent the contractor in sales or service of policies must:

(1) In the case of representatives, hold a current license as issued by each State in which they sell FCIC policies authorizing the sale of insurance in at least one of the following lines: (i) Multiple peril crop insurance; (ii) crop hail insurance; (iii) casualty insurance.

(2) In the case of representatives, be certified by FCIC for each crop for which they sell or service insurance.

(3) In the case of the contractor, be authorized by the State in which the contractor is domiciled to act as an insurer or to conduct business as an insurance agency in any line of property or casualty insurance pursuant to the laws or regulations of such State; and

(4) In the case of the contractor, submit evidence, satisfactory to the Corporation, verifying the type of State authority held and the date of expiration of such authority.

(b) Any representative shall have until July 1, 1986, to submit verification of State licensing if such representative has earned compensation for the sale or service of Federal Crop Insurance policies for 1984 or subsequent crop year.

(c) Any contractor who held an Agency Sales and Service Agreement for 1985 shall be exempt from the requirements of paragraph (a)(3) and (4) of this section until July 1, 1986.

§ 400.36 Errors and omissions liability insurance coverage.

The contractor must:

(a) Have an errors and omissions liability insurance policy having limits of not less than $1,000,000.00 and a deductible of not more than $5,000.00 at the time of application for the Agency Sales and Service Contract.

(b) Maintain such coverage for the same period of time as the period of contractor's performance under the Agency Sales and Service Contract; and

(c) If said policy is written on a claims made basis, maintain such coverage for at least two years beyond the termination of the Agency Sales and Service Contract.

§ 400.37 OMB control numbers.

OMB control numbers are contained in Subpart H of Part 400 in Title 7 CFR.

Done in Washington, D.C. on August 16, 1985.

Peter F. Cole,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 85-20288 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-08-M

Food Safety and Inspection Service

9 CFR Part 319

[Docket No. 83-028N]

Requirements for Partially Defatted Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of intent to initiate proposed rulemaking.

SUMMARY: This notice announces the intent of the Food Safety and Inspection Service (FSIS) to propose compositional and processing requirements for various low temperature rendered meat food products. The need for these requirements is based on considerations of regulatory compliance, nutritional value of the products, processing safety and product labeling. This notice describes these considerations as well as several processing and labeling options and requests comments from interested persons as to how the Agency should proceed.

DATE: Comments on this notice of intent must be received on or before November 21, 1985.

ADDRESS: Written comments to: Policy Office Att: Annie Johnson, Food Safety and Inspection Service, U.S. Department of Agriculture, Room 3803, South Agriculture Building, Washington, D.C. 20250.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret Glavin, Director, Standards and Labeling Division, Meat and Poultry Inspection Technical Services, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, D.C. 20250, (202) 447-6042.

SUPPLEMENTARY INFORMATION:

Comments

Interested persons are invited to submit comments concerning this notice. Written comments must be sent in duplicate to the Regulations Office and should refer to the docket number that appears in the heading of this document. All comments submitted in response to this notice will be made available for public inspection in the Regulations Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Background

"Partially defatted products", as a general term used in this notice, is intended to encompass low temperature rendered products such as partially defatted beef fatty tissue (PDBFT), partially defatted chopped beef (PDCB), partially defatted pork fatty tissue (PDPFT), partially defatted chopped pork (PDCP), and similar products. These products are also referred to generically as partially defatted (species) fatty tissue (PD)(S)FT) and partially defatted chopped (species) (PDC(S)) and they have been used as ingredients in various processed meat food products for a number of years.

The widespread use of these products has resulted in certain conditions which suggest a need for public rulemaking. For example, the definitions of PDBFT and PDCB have not been precise enough to assure distinct products. This has resulted in compliance determination

difficulties for the Agency and the potential for commercial misrepresentation of some partially defatted products. Additionally, the list of meat food products in which partially defatted products is permitted has grown in a rather *ad hoc* fashion which leaves the Agency without a clearly defined basis for future regulation of these defatted products. Finally, various individual processors have requested labeling relief from partially defatted ingredient names which they regard as onerous. This suggests that some kind of reform of partially defatted product names is in order. Furthermore, the receipt and consideration of such individual requests by the Agency raises questions of labeling equity which can best be addressed in a public notice-and-comment proceeding.

Regulatory Compliance

Partially defatted (species) fatty tissue (PD(S)FT) is produced from fresh beef or pork fatty trimmings by low temperature rendering, (not exceeding 120 °F.) (48.9 °C). PD(S)FT is considered to be a meat byproduct by regulation and it has been used in processed meat food products since the 1950's. Currently the only specifications for this product are that it have a pinkish color and a fresh odor and appearance (9 CFR 319.15(e) and 319.29). The use level of this product as an ingredient of other meat food products may vary for different products. For example, the cooked sausage standard (9 CFR 319.180(b)) allows PD(S)FT to be used in an amount not to exceed 15 percent of the meat and meat byproduct portion of the meat, meat byproduct and poultry portion of frankfurters, hotdogs, weiners, bologna, knockwurst and similar cooked products. There is currently no limit on the amount of PD(S)FT that may be used in some other products such as non-specific loaves. (9 CFR 319.280 and 319.281).

In contrast, partially defatted chopped (species) (PDC(S)) is considered to be a meat product under current Agency policy. There is no standard for this ingredient in the meat inspection regulations with regard to definition, sources, and uses in other products. The Meat and Poultry Inspection Manual (Part 18.55) indicates that the source trimmings must contain at least 12 percent lean meat as determined by knife cutting separation and that leaner cuts of meat may not be added to lots of raw material which fail these requirements to bring them into compliance. PDC(S) is classified as a meat product, but the federal meat inspection regulations do not provide for its use in any standardized meat food products. Agency policy permits the use of PDC(S) in a number of products including some standardized products at levels up to a maximum of 25 percent of the meat content.

In summary, PD(S)FT is described in the federal meat inspection regulations (9 CFR 319.15(e) and 319.29), but PDC(S) is not. The current policy for distinguishing the two is that product can be labeled as PDC(S) if the source trimmings contain at least 12 percent lean meat and as PD(S)FT if the source trimmings contain less than 12 percent lean. After freezing, PDC(S) and PD(S)FT have the same physical appearance and are not readily distinguishable from each other. The market price of PDC(S) is significantly higher than that of PD(S)FT. The similarity in physical appearance of the two products makes it extremely difficult for the Agency to perform compliance and monitoring activities designed to assure truthful labeling and to prevent commercial misrepresentation of the less costly product.

Nutritional Considerations

An additional concern about partially defatted products is their nutritional value relative to the expected nutritional value of most meat food products. The Agency acknowledges that the existing data on the comparative nutritional value of partially defatted products is somewhat limited. But what data there are have led to public expressions of concern at both the State and Federal levels about partially defatted products. For example, in 1972 the Food and Nutrition Service (FNS) of USDA advised school districts that partially defatted tissues are considered as byproducts and are not acceptable for meeting the meat requirements of Type A school lunches. That notice pointed out that the only meat present in PD(S)FT is that which adheres to the fat in the starting material and that it would constitute at best somewhat less than 12 percent of the product and more likely amount to only 3 to 4 percent.

The limited available analytical data suggest that the calculated protein values of PDBFT or PDPFT are in the range of 16 to 19 percent. These high values are due in part to the presence of a high free nonprotein nitrogen fraction of the product that was included in the calculations. The PER (Protein Efficiency Ratio) values of PDBFT and PDCB are around 1.13 and 1.75 relative to casein which is 2.5. These low PER values are due primarily to the presence of cell walls and connective tissue which are the main constituents of these products and which are low in essential amino acids. These limited data indicate that the nutritional values of these products may vary widely and are generally much lower than those expected of meat.

Processing and Handling

A third concern about partially defatted products is the temperature used during processing. Currently these products are partially rendered at temperatures not exceeding 120 °F. (48.9 °C). The original rationale for the specification of this temperature was that a product processed above this temperature may change the appearance and the product might be regarded as cooked. The Agency is concerned that rendering temperatures not exceeding 120 °F. may be suitable for the growth of some pathogenic microorganisms, particularly when the raw material is not handled properly. For example, laboratory analyses of partially defatted products in 1967 confirmed high levels of spoilage bacteria such as *Escherichia coli, Clostridium perfringens* and various *Salmonellae*. As a result of that study, the Agency issued a notice in 1974 directing rigid enforcement of regulations for inspection of raw materials, general sanitation, equipment, and processing methods. A question that the Agency poses at this time is whether enforcement of general sanitation is adequate to assure the microbiological safety of partially defatted products or whether elevation of the rendering temperature would more directly curb the growth of microorganisms in partially defatted products. The Agency requests comments on this issue.

Product Labeling and Use Levels in Processed Products

A final concern of the Agency is the labeling of partially defatted products especially when they are used as ingredients of other meat food products. PD(S)FT are described in the meat inspection regulations (9 CFR 319.15(e) and 319.29, respectively), so the name of these products is the name prescribed in Part 319 (9 CFR Part 319). For PDC(S) however, the proper name of the product is more uncertain. Under current Agency policy, the ingredient may be declared as "beef" or "pork" in some products at certain use levels, but it must be declared as PDCB or PDCP at other use levels even in the same product. In the case of other products, a request to use PDC(S) as an ingredient, regardless of how it might be declared, may be denied simply because the use of PDC(S) in that product is not listed in the Agency's policy issuances or regulations. Thus the expanded use of the ingredient in some

products becomes increasingly difficult. The Agency believes that the industry, consumers, and the Agency itself may benefit from a more precise definition of partially defatted products and a more rational and orderly system for determining their use as ingredients of meat food products.

Options Under Consideration

The preceding paragraphs describe several concerns about the use and control of partially defatted products as ingredients of meat food products. The Agency believes that certain regulatory or policy reforms could be taken to ameliorate all or most of these concerns. For example, the definition of partially defatted products as a single class of product rather than two classes could alleviate some of the compliance enforcement difficulties and discourage potential commercial misrepresentation of partially defatted products. Second, the prescription of limits or ranges for protein content, fat content and protein efficiency ratio (PER) or essential amino acid content could alleviate much of the concern about the nutritional value of partially defatted products relative to other meat food products. Third, elevation of the rendering temperature for partially defatted products combined with subthermal handling requirements could effectively prevent the growth of pathogenic microorganisms in partially defatted products. Finally, adoption of suitable names for product that meets the specifications and for product that does not, would alleviate many of the labeling concerns about partially defatted products. An added benefit of partially defatted product name reform would be a more rational and uniform use pattern for this ingredient in a wider variety of meat food products. The Agency believes that a revised approach to the processing, composition and naming of partially defatted products would allow processors to utilize a full range of processed products, diversify the food supply, and maintain public confidence in meat food products as a good source of high quality protein.

The specific policy and/or regulatory options that the Agency is considering for partially defatted products include the following:

1. The definition of a single class of product to replace the current product categories PD(S)FT and PDC(S).

2. Removing the current lean requirements of raw material as determined by knife cutting separation and replacing it with compositional requirements for partially rendered products.

3. Prescription of limits or ranges for protein content, fat content, and PER or essential amino acid content. The Agency is considering values of these parameters that are comparable to those values which are expected for meat food products. The Agency invites the submittal of specific values of these parameters supported by data which indicate that processed products in which partially rendered products are used retain the nutritional characteristics expected of meat food products.

4. Elevation of the rendering temperature to not less than 125 °F not more than 135°F. Rendering temperatures within this range would prevent further microbial growth without imparting a cooked appearance.

5. Special temperature handling requirements including short-term holding at refrigeration temperatures and long-term storage at 0° F or less.

6. The establishment of a descriptive name for product that meets the specifications in item 3 above. Names that are under consideration include:

Partially Rendered (Species)
Partially Defatted (Species)
Partially Extracted (Species)
Partially Separated (Species)
Thermally Separated (Species)
Thermally Extracted (Species)
Thermally Defatted (Species)
Low Temperature Rendered (Species)
Low Temperature Defatted (Species)
Low Temperature Extracted (Species)
Low Temperature Separated (Species)

7. For partially rendered product that does not meet the requirements of item 3 above, the Agency is considering names such as those in item 6 followed by a word such as "Tissue" or "Product".

8. Permitting the use of product that meets the requirements of item 3 above at higher levels than currently permitted in a wider variety of products as long as nutritional characteristics of the products are not affected. This would also simplify the determination of the use and labeling requirements of partially defatted products in finished meat food products.

9. The Agency is considering permitting the use of product that does not meet the requirements of item 3 above only in meat food products in which byproducts are permitted. The meat food product name would be qualified by a phrase such as "with byproducts" or "with variety meats" and the common or usual name of ingredient would appear in the ingredient statement.

The Agency believes that there may be other views on the definitions, standards and policy for partially defatted products. Therefore, before the Agency decides whether to propose any changes in the present standards and policy on partially defatted products, the Administrator requests that interested persons submit their views and other relevant information as comments on this notice. These comments may help the Agency to fashion a policy on partially defatted products that will meet the needs of both industry and the consumers.

Done at Washington, D.C. on August 20, 1985.

L.I. Gast,

Acting Administrator, Food Safety and Inspection Service.

[FR Doc. 85-20245 Filed 8-22-85; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 17

[Docket No. 85-13]

Required Notification To Nominate Bank Directors

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking..

SUMMARY: The Office of the Comptroller of the Currency (Office) proposes to remove Part 17. Part 17 provides that a national bank may require shareholders, other than the bank's present management, who desire to nominate a candidate for election to the board of directors, to notify the bank and the Office at least 14 but no more than 50 days in advance of the shareholder meeting called for the election of directors. This action is needed to remove an unnecessary regulation and one that may encourage adoption of bank articles or by-laws which are unfair to minority shareholders.

DATE: Written comments must be received on or before October 22, 1985.

ADDRESSES: Comments should be directed to: [Docket No. [85-13], Communications Division, Fifth Floor, Office of the Comptroller of the Currency, 490 L'Enfant Plaza East SW., Washington D.C. 20219, Attention: Lynnette Carter. Comments will be available for public inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: James T. Pitts, Assistant Director, Securities and Corporate Practices Division, Office of the Comptroller of the Currency, (202) 447-1954.

SUPPLEMENTARY INFORMATION:

Background

This action involves a regulation which provides that a national bank may adopt an article of association or by-law requiring shareholders other than present management to notify the bank and the Comptroller of an intention to nominate candidates to the bank's Board of Directors.

On April 14, 1980, the Office published for comment a similar NPRM in the Federal Register (45 FR 25078). In response to that proposal, 51 letters were received from the private sector (primarily banks). Thirty-five commentors favored retention or revision, 14 favored rescinding the regulation, and two letters expressed no opinion.

Issues Involved

Two issues are involved in this proposal. The first is whether any significant regulatory purpose is served by retention of 12 CFR Part 17. Historically, the Office has not maintained logs of notices filed under the regulation, in part because filings have been so infrequent. The Part, by its terms, is permissive; there is no requirement that a bank adopt an article of association or bylaw, requiring notice from nonmanagement nominees. Part 17 thus appears unnecessary because, even in its absence, a bank may, under prevailing law, adopt an article of association or bylaw requiring advance notice at least to the bank of nonmanagement nominees.

The second issue is whether retention of Part 17 is unfair to minority shareholders. By its terms, an article or by-law which is consistent with 12 CFR 17, would impose notification requirements only on nonmangement nominees. Management nominees would not be required to submit the information listed in § 17.1 (a)–(e) or to comply with its other provisions.

Alternatives Available

There are alternatives to removing 12 CFR Part 17. One alternative would be to retain the Part, but require management nominees to submit the same information as nonmanagement nominees. Another alternative would be to remove the requirement that the Office be notified. A third alternative would be to retain 12 CFR Part 17 in its present form.

Comments Requested

The Office is once again publishing the proposal for comment. The Office is unsure of whether commentors on the previous proposal understood that even if the regulation were removed, a bank could still provide for prior bank notification in its articles of association or bylaws, or both. The Office requests specific comment on the following issues:

(1) The regulatory purpose to be served by this regulation and the legal ability of a national bank to adopt similar requirements in the absence of regulation;

(2) The treatment of nonmanagement nominees since similar notice is not required for management nominees;

(3) The application of 12 CFR Part 17 as a method to restrict the exercise of cumulative voting rights provided by statute (12 U.S.C. 61);

(4) Whether any useful purpose is served by the current provision stating that "any nomination for director not made in accordance therewith, may be disregarded and the votes cast for such nominee may be disregarded by the vote teller." Under this language, management could refuse to accept the nominees of a minority shareholder, and the votes intended therefore, on the basis that 12 CFR 17 was not precisely followed; and

(5) The alternatives available.

Regulatory Flexibility Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–602), it is certified that this proposal, if adopted as a final rule, will not have a significant economic impact on a substantial number of small entities. This proposal would remove the burden of the existing regulation. The effect of the proposal is beneficial rather than adverse, and small entities are generally expected to share the benefits equally with larger institutions.

Executive Order 12291

The Office has determined that this proposal does not constitute a "major rule" and, therefore, does not require a regulatory impact analysis. This proposal would ease burdens imposed by regulations and would have no adverse effect on the operations of national banks.

List of Subjects in 12 CFR Part 17

National banks, Nomination of directors.

Authority and Issuance

Under the Comptroller of the Currency's authority in 12 U.S.C. 93a and for the reasons set out in the preamble, 12 CFR Chapter I is proposed to be amended as follows:

PART 17—[REMOVED]

1. By removing Part 17.

Dated: July 12, 1985.

H. Joe Selby,

Acting Comptroller of the Currency.

[FR Doc. 85-20199 Filed 8-22-85; 8:45 am]

BILLING CODE 4810-33-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 85-NM-86-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the prestall warning electrical system on certain Fokker Model F27 series airplanes. One case of a shorted flap down limit switch caused flap extension, when not selected, through the prestall warning circuits. Unselected flap extension could result in structural failure. This condition may be corrected by isolating the prestall warning circuits from the flap down limit switch circuits.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-86-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijkluchvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker Model F27 airplanes. One case of a short circuit in the flap down limit switch, located in the right hand nacelle, was reported, which caused the flaps to extend in flight without having been selected. To preclude this, the prestall warning circuits must be deleted from the flap down limit switch. Fokker issued Service Bulletin F27/34-52 to prescribe these modifications. The RLD issued an airworthiness directive on March 28, 1983, to make Service Bulletin F27/34-52 modifications mandatory. Unselected flap extension could result in structural failure.

This airplane model is manufactured in The Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require modification of Fokker Model F27 series airplanes that may be operated in the U.S. registry.

It is estimated that there are 40 Fokker Model F27 airplanes on the U.S. register. An investigation in August 1984 disclosed that all of those airplanes had been modified in accordance with Fokker Service Bulletin F27/34-52. However, other Fokker Model F27 series airplanes are eligible for import onto the U.S. register. This NPRM proposes an AD to ensure that unsafe conditions are corrected in the event affected airplanes are imported. The labor costs are estimated at 2 manhours per airplane and $40 per manhour, for a total cost impact of $80 for each affected airplane.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F27 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, certificated in any category, serial numbers 10102 to 10642 inclusive and 10644. Compliance required within 60 days after the effective date of this AD unless already accomplished:

A. To prevent unselected flap extension, isolate the prestall warning power supply wires from the flap down limit switch in accordance with Fokker Service Bulletin F27/34-52 dated March 23, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20157 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-87-AD]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection of the pilots' restraint harnesses and the emergency lighting system on certain Fokker Model F28 series airplanes and replacement, modification, or repair as necessary, to correct certain unsafe conditions which may exist. This action is necessary to ensure that the flight crew is properly restrained and that the emergency lighting system properly illuminates door operating instructions.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product

Support, P.O. Box 7600, 1172J Schiphol Oost, The Netherlands, or may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:
Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (202) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-87-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of two unsafe conditions that may exist on certain Fokker Model F28 airplanes. One condition concerns the inertia reels used with some Fokker Model F28 pilot and copilot seats manufactured in the United Kingdom Civil Aviation Authority has made mandatory a service bulletin issued by the manufacturer of the inertia reels. Fokker followed this action with a Fokker service bulletin specifically applicable to F28 airplanes. The other condition concerns the emergency lighting system for one type of interior. Fokker issued a service bulletin calling for modifications to the system, which the RLD classified as mandatory on September 10, 1984. The unsafe conditions and corrective actions are described as follows:

A. Cases of spring failure have occurred in the inertia reel assemblies used with the pilot and copilot seats, which have caused loss of safety harness rewind function and crew restraint during turbulence. Replacement of the spring and a mounting collar with parts of a new design is necessary to ensure proper functioning of the pilots' harnesses. (Reference Fokker Service Bulletin F28/25-93 and Teleflex Morse Limited Service Bulletin 25-00-185429, Issue 2.)

B. For one type of interior arrangement, the instruction placards for operation of the service/emergency door are not legible when emergency lighting is in operation. Modification of the emergency lighting system is necessary to ensure an acceptable level of crashworthiness. (Ref. Fokker Service Bulletin F28/33-32.)

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions may exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require inspections, modifications, and repairs, as necessary, of the affected Fokker Model F28 series airplanes that may be operated on the U.S. registry.

It is estimated that there are 30 Fokker F28 airplanes on the U.S. register which are currently active. None of these airplanes are affected by these service bulletins. However, airplanes that are affected may be imported and placed onto the U.S. register. This NPRM proposes an AD to ensure that unsafe conditions are corrected in that event. It would require a total of 25 manhours at $40 per manhour to accomplish the requirements of the proposed AD. Parts are estimated to be $431 per airplane. Based on these figures, the total cost per airplane would be $1,431.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F28 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised) Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F28 airplanes as indicated in the applicability statement of each service bulletin listed below. Compliance is requested within the next 120 days after the effective date of this airworthiness directive, unless already accomplished.

A. To prevent loss of the pilot and copilot restraint function of the safety harnesses, replace the inertia reel springs and mounting collars in accordance with Fokker Service Bulletin F28/25-93 dated June 4, 1984, and Teleflex Morse Limited Service Bulletin 25-00-185429, Issue 2, dated September 1983.

B. To ensure that instruction placards on the service/emergency door in emergency lighting conditions are legible, modify the emergency lighting system in accordance with Fokker Service Bulletin F28/33-32, dated September 17, 1984.

C. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 1172J Schiphol

Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20156 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-75-AD]

Airworthiness Directives; Fokker Model F27 Series Airplanes

AGENCY: Federal Aviation Adminstration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require modification of the inboard hinge bolt installation on certain Fokker Model F27 series airplanes. One case has been reported of restricted aileron movement due to a loose bolt/bush connection at the aileron inboard hinge point, which permitted the spring tab balance lever to interfere with the wing cutout. Restricted aileron movement or a jammed aileron could result in loss of roll control.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Adminstration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Project Support, P.O. 7600, 1117ZJ Schiphol Oost, The Netherlands. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Moutain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-75-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijkluchvaartdeinst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker Model F27 airplanes. One case has been reported of restricted aileron movement which was attributed to a loose bolt/bush connection at the inboard aileron hinge point at wing station 10030. Fokker issued Service Bulletin F27/57-58 to establish a means to modify the hinge bolt installation and preclude the interference. The RLD issued an airworthiness directive on June 30, 1983, to make the service bulletin modifications mandatory.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since this condition is likely to exist or develop on airplanes of this type design registered in the United States, an AD is proposed that would require modification of the aileron inboard hinge bolt installations.

It is estimated that 32 airplanes of U.S. registry would be affected by this AD, that it would take approximately 3 manhours per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Repair parts are estimated at $44 per airplane. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $5,248.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Fokker Model F27 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Model F27 airplanes, serial numbers 10105 to 10635 inclusive, certificated in any category. Compliance required within 180 days after the effective date of this AD, unless already accomplished:

A. To prevent restricted aileron movement or jamming, modify the aileron inboard hinge bolt installations in accordance with Fokker Service Bulletin F27/57-58 dated May 16, 1983.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Project Support, P.O. Box 11172] Schiphol Oost, The Netherlands. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20155 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 39

[Docket No. 85-NM-76-AD]

Airworthiness Directives; Fokker B.V. Model F28 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This notice proposes to adopt an airworthiness directive (AD) that would require inspection, and modification, if necessary, of certain cabin fire extinguishers installed in Fokker Model F28 series airplanes. Several fire extinguishers have been found which have out-of-tolerance cartridge holders which could prevent activation of the extinguisher in the event of a cabin fire. Correction of out-of-tolerance cartridge holders is necessary to ensure proper operation of the fire extinguisher.

DATES: Comments must be received on or before October 15, 1985.

ADDRESSES: Send comments on the proposal in duplicate to Federal Aviation Administration, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172] Schiphol Oost, The Netherlands, or Walter Kidde, S.E. Service Center, 3994 N.W. 27th Street, Miami, Florida 33142. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark E. Baldwin, Standardization Branch, ANM-113; telephone (206) 431-2978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Office of the Regional Counsel, Attention: Airworthiness Rules Docket No. 85-NM-76-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

The Ministerie van Verkeer en Waterstaat, Rijksluchtvaartdienst (RLD), the Civil Aviation Authority of the Netherlands, has, in accordance with existing provisions of a bilateral agreement, notified the FAA of an unsafe condition that may exist on certain Fokker F28 airplanes. Several cartridge holders on certain Walter Kidde portable fire extinguishers were reported to have out-of-tolerance internal dimensions which could cause the extinguishers to malfunction. Walter Kidde Service Bulletin 26-20-240 was issued to correct the problem. Fokker Service Bulletin F28/26-12 was issued September 28, 1981, to provide the means for corrective action specifically for Model F28 airplanes. On October 23, 1981, the RLD made the Fokker Service Bulletin mandatory by the issuance of an airworthiness directive.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable airworthiness bilateral agreement.

Since these conditions are likely to exist on airplanes of this type design registered in the United States, an AD is proposed that would require inspection of certain Walter Kidde fire extinguishers, located in the cabin of Model F28 airplanes, and modification if out-of-tolerance cartridge holders are found.

It is estimated that 16 airplanes of U.S. registry would be affected by this AD, that it would take approximately 1 manhour per airplane to accomplish the required actions, and that the average labor cost would be $40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be $640.

For the reasons discussed above, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule pursuant to the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities because few, if any, Model F28 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

PART 39—[AMENDED]

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

2. By adding the following new airworthiness directive:

Fokker B.V.: Applies to Fokker Model F28 airplanes, S/N's 11003 to 11171 inclusive, 11991 and 11992, certificated in any category, equipped with Walter Kidde fore extinguishers P/N 8900317, 892480, or 893948. Unless already accomplished, as indicated with an "x" punch stamped or "SB26.20.240" ink-stamped on the cartridge holder, accomplish the following within 60 days after the effective date of this AD:

A. To preclude the malfunctioning of these fire extinguishers, inspect the cartridge holders for proper internal dimension tolerances, and replace, if necessary, in accordance with Fokker Service Bulletin F28/26-12 dated September 28, 1981.

B. Alternate means of compliance which provide an acceptable level of safety may be used when approved by the Manager, Standardization Branch, FAA, Northwest Mountain Region.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of inspections and/or modifications required by this AD.

All persons affected by this directive who have not already received these documents from the manufacturer may obtain copies upon request to the Manager of Maintenance and Engineering, Fokker B.V., Product Support, P.O. Box 7600, 11172J Schiphol Oost, The Netherlands, or Walter Kidde, S.E. Service Center, 3994 N.W. 27th Street, Miami, Florida 33142. These documents may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on August 16, 1985.

Charles R. Foster,

Director, Northwest Mountain Region.

[FR Doc. 85-20154 Filed 8-22-85; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 177

Proposed Change of Practice Regarding Country of Origin (Substantial Transformation) Determinations of Threading of Certain Pipe Fittings

AGENCY: Customs Service, Treasury.

ACTION: Proposed change of practice and request for comments.

SUMMARY: Customs is reviewing its practice in which pipe fittings, produced in one country, are considered to have been substantially transformed by threading operations performed in a second country so as to be considered products of the second country. The current practice is based upon a published Customs ruling in which it was found that pipe fittings were transformed into products of the country in which such threading operations occurred and, as a result, the fittings were denied duty-free entry under the Generalized System of Preferences (GSP). The proposed change, however, is not limited to importations involving GSP issues since the question could just as easily arise in a non-GSP context. Comments are invited on the proposed change before any determination is made with regard to the issue.

DATES: Written comments must be received on or before October 22, 1985.

ADDRESS: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Control Branch, U.S. Customs Service, Room 2426, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8237).

FOR FURTHER INFORMATION CONTACT: John L. Valentine, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-8181).

SUPPLEMENTARY INFORMATION:

Background

Customs is reviewing its practice of considering pipe fittings which are produced in one country and threaded in a second country, to have been substantially transformed by the threading operation. As a result of the substantial transformation, the country of origin for the threaded pipe fittings has been considered to be the second country. The country of origin of imported products is determinative of a number of issues for Customs purposes, including the amount of duty owed, qualification for duty-free entry under the statutory Generalized System of Preferences (GSP), and the application of certain quota restrictions.

The current practice is based upon a published Customs Service ruling of November 9, 1978 (C.S.D. 79-437, 13 Cust. Bul. 1666 (1979)). Pursuant to § 177.10(b), Customs Regulations (19 CFR 177.10(b)), the publication of a ruling in the Customs Bulletin which affects a rate of duty or charge, will establish a practice. Further, pursuant to section 315, Tariff Act of 1930, as amended (19 U.S.C. 1315), and § 177.10(c), Customs Regulations (19 CFR 177.10(c)), prior to publication of a ruling which changes an established practice, Customs is required to publish the fact that the practice is under review and to afford interested parties an opportunity to comment on the contemplated change.

The practice is under review in light of several judicial decisions on whether specific processing operations are sufficient to affect the country of origin of an imported article for Customs tariff purposes. One example is the decision in the case of *Uniroyal, Inc.* v. *United States*, 3 C.I.T. 220, 542 F. Supp. 1026 (1982), in which pre-shaped soles were attached to substantially complete shoes from Indonesia, after the shoes had entered the U.S. The court found that the shoes were not substantially transformed as a result of the domestic application of soles, and thus remained products of Indonesia for marking purposes. Although the long-standing criteria which examine whether the name, character, or use of an article have been altered by post-manufacture processing are still valid, the court in *Uniroyal, supra.*, again reviewed and discussed the criteria which may be considered in determining whether such processing has led to a substantial transformation of a product. Among these are the nature of the processing in the second country and whether this processing has left the identity and fundamental character of the first country product intact. Although the case focused primarily on the issue of country of origin marking, the findings and reasoning of the court can have application to other Customs considerations.

Accordingly, Customs is seeking comments on the proposal to consider the threading of pipe fittings in a second country to be insufficient to affect the country of origin of the imported merchandise.

Authority

Because the proposed change, if adopted, could change the amount of duties assessed on the merchandise or involve quota restrictions, and could be of significant interest to both importers and the domestic industry, Customs is giving this notice and opportunity to comment as provided by section 315(d), Tariff Act of 1930, as amended (19 U.S.C. 1315(d)), and § 177.10(c)(1), Customs Regulations (19 CFR 177.10(c)(1)).

Comments

Before making a determination on this matter, Customs will consider any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.6, Treasury Department Regulations (31

CFR 1.6), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), between 9:00 a.m. and 4:30 p.m. on normal business days, at the Regulations Control Branch, Room 2426, U.S. Customs Service Headquarters, 1301 Constitution Avenue, NW., Washington, D.C. 20229.

Drafting Information

The principal author of this document was Larry L. Burton, Regulations Control Branch, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

William von Raab,

Commissioner of Customs.

Approved: June 13, 1985.

John M. Walker, Jr.,

Assistant Secretary of the Treasury.

[FR Doc. 85-20206 Filed 8-22-1985; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 2

[Docket Nos. 84P-0231 and 84P-0268]

Chlorofluorocarbon Propellants in Self-Pressurized Containers; Proposed Essential Uses; Correction

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a document that proposed to add to the list of products containing chlorofluorocarbon for an essential use metered-dose nitroglycerin human drugs and metered-dose cromolyn sodium human drugs. The correct route of administration of metered-dose nitroglycerin human drugs is "to the oral cavity" rather than "for oral inhalation." This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Ed Farha, Center for Drugs and Biologics (HFN-364), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.

SUPPLEMENTARY INFORMATION: In FR Doc. 85-17530 appearing on page 30210 in the issue for Wednesday, July 24, 1985, the following corrections are made:

1. On page 30210, second column, the first sentence under "Summary" should have read "The Food and Drug Administration (FDA) is proposing to add to the list of products containing a chlorofluorocarbon for an essential use metered-dose nitroglycerin human drugs administered to the oral cavity and metered-dose cromolyn sodium human drugs administered by oral inhalation."

2. On page 30210, third column, second paragraph under "II. Petitions Received by FDA," the second sentence should have read "It requests that § 2.125(e) be amended to include metered-dose glyceryl trinitrate human drugs administered to the oral cavity as an essential use of chlorofluorocarbon."

3. On page 30211, third column, § 2.125(e)(10) should have read "Metered-dose nitroglycerin human drugs administered to the oral cavity."

Dated: August 19, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20162 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, and 7

[Notice No. 568; Ref: Notice No. 566]

Disclosure of Sulfiting Agents in the Labeling of Wine, Distilled Spirits and Malt Beverages; Extension of Comment Period

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the 60-day comment period for Notice No. 566 (50 FR 26001, June 24, 1985). In Notice no. 566, ATF proposes the disclosure of the presence of sulfur dioxide or sulfiting agent on the label of a beverage alcohol product where the level of sulfur dioxide or sulfiting agent, expressed as total sulfur dioxide, equals or exceeds the level of measurable detection established by the U.S. Food and Drug Administration (FDA) for sulfiting agents added to foods and beverages. In the Federal Register of April 3, 1985, FDA proposed 10 parts per million as the level of measurable detection.

DATE: Comments must be received by December 23, 1985.

ADDRESS: Send written comments to: Chief, FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385, (Ref: Notice No. 566).

Copies of this proposal and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Room 4406, 1200 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Michael J. Breen, Coordinator, or James P. Ficaretta, Coordinator, FAA, Wine and Beer Branch, Room 6237, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226, telephone: (202) 566-7626.

SUPPLEMENTARY INFORMATION:

Background

In the Federal Register of June 24, 1985, ATF published Notice No. 566 wherein ATF proposed the disclosure of the presence of sulfur dioxide or of a sulfiting agent on the label of a beverage alcohol product in which sulfur dioxide or a sulfiting agent is present at a measurable level of detection, namely, 10 parts per million expressed as total sulfur dioxide.

ATF has received numerous verbal inquiries and written requests for an extension of the comment period. Among the requests is that of the Wine Institute of San Francisco, California, for sufficient time to conclude ongoing medical and scientific testing which has the potential to develop new information relative to the proposal. The wine industry has funded research in order to determine whether the use of sulfiting agents in the processing of wine presents the health risks found in some sulfited foods. ATF believes that the granting of additional time is warranted in order to complete the public record and, accordingly, is extending the comment period to December 23, 1985.

Drafting Information

The authors of this document are Coordinators Michael J. Breen and James P. Ficaretta of the FAA, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

Authority

This notice is issued under the authority contained in Chapter 814, sec. 5, 49 Stat. 981, as amended (27 U.S.C. 205), unless otherwise noted.

Approved: August 19, 1985.

Stephen E. Higgins,

Director.

[FR Doc. 85-20175 Filed 8-22-85; 8:45 am]

BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 772, 773, 774, 779, 780, 783, and 784

Permit Application and Coal Exploration, Historic Preservation Requirements; Availability of Petition To Initiate Rulemaking

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a petition to initiate rulemaking and request for comments.

SUMMARY: The Office of Surface Mining (OSM) seeks comments in relation to rule changes suggested in a petition, submitted pursuant to the Surface Mining Control and Reclamation Act (the Act), to amend OSM's existing regulations on permit application and coal exploration requirements.

The suggested changes in the rules would (1) Require applicants for permits for surface coal mining operations to review State Historic Preservation Office files for information on historic resources in the region of the permit area and to conduct such field inspections as the State Historic Preservation Officer recommends, consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards, (2) cause applicants for permits to explore for coal or to develop surface mines to develop a program, in consultation with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Preservation, to ensure that historic resources in the permit area are not adversely affected during coal exploration, and are physically preserved or recorded, and (3) ensure that the Advisory Council is afforded a reasonable opportunity to consult with State regulatory authorities and permit applicants on applicants' proposed programs.

The comments on the rule changes suggested in the petition will assist the Director of OSM in making the decision whether to grant or deny the petition.

DATE: OSM will accept written comments on the petition until 5:00 p.m. Eastern Daylight time on October 7, 1985.

ADDRESS: Written comments must be mailed to the Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, 1951 Constitution Ave., NW., Washington, D.C. 20240, or hand-delivered to Office of Surface Mining, U.S. Department of the Interior, Division of Permit and Environmental Analysis, Room 5111, 1100 L St., NW., Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Mark Boster at the Washington, D.C. address listed above (telephone: 202–343–1480).

SUPPLEMENTARY INFORMATION:

I. Public Commenting Procedures

Written Comments

Written comments submitted on the suggested rule changes should be specific, should be confined to issues pertinent to the petition, and should explain the reasons for the comment. Comments received after the close of the comment period (see **"DATES"**) may not necessarily be considered or included in the administrative record on the petition. OSM cannot ensure that written comments received or delivered during the comment period to any location other than that specified under **"ADDRESS"** above will be considered and included in the administrative record on this petition.

Availability of Copies

Additional copies of the petition and copies of appropriate sections of 30 CFR Chapter VII may be obtained at the location listed under **"ADDRESS."**

Public Meetings

No public hearing is being set. However, the Headquarters staff of OSM will be available to meet with the public during business hours, 8:00 a.m. to 4:00 p.m., during the comment period. In order to arrange such a meeting, call or write to the person listed above under **"FOR FURTHER INFORMATION CONTACT."**

II. Background and Substance of Petition

OSM received a letter dated September 15, 1983, from the Society of Professional Archeologists (SOPA), presenting a petition for revision of the historic preservation requirements found throughout various sections of 30 CFR Chapter VII by amending 30 CFR 772, 773, 774 (formerly 788), 779, 780, and 784. Part 783 for underground mines would be subject to the same changes as Part 779 for surface mines. Pursuant to Section 201(g) of the Act, any person may petition for a change in OSM's permanent program rules. The Act allows for a period of 90 days within which to decide to grant or deny a petition (Section 201(g)(4); 30 U.S.C. 1211(g)(4)). Under the applicable regulations for rulemaking petitions, 30 CFR 700.12(c), the Director may first determine whether the petition may have a reasonable basis.

On January 13, 1984, the Director notified SOPA that the petition was being rejected. Subsequently, SOPA appealed this determination and requested that the petition be reconsidered. Since several of the issues addressed by the petition were at that time before the District Court of the District of Columbia, OSM postponed further consideration of the petition, pending a decision in the litigation. On July 15, 1985, the District Court issued its decision. *In Re: Permanent Surface Mining Regulations Litigation, (11),* No. 79–1144 (D.D.C. 1985).

The Director has determined that the petition for amendment of the regulations has a sufficient basis to seek comments on the proposed rule changes. Accordingly, OSM seeks public comments on the amendments suggested by SOPA. The substance of the petition was included in four attachments to the petition and appears as an appendix to this notice; briefly, the petition seeks changes in the regulations which would (1) require applicants for permits for surface coal mining operations to review State Historic Preservation Office files for information on historic resources in the region of the permit area and to conduct such field inspections as the State Historic Preservation Officer recommends, consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards, (2) cause applicants for permits to explore for coal or to develop surface mines to develop a program, in consultation with the appropriate State Historic Preservation Officer and the Advisory Council on Historic Preservation, to ensure that historic resources in the permit area are not adversely affected during coal exploration, and are physically preserved or recorded, and (3) ensure that the Advisory Council is afforded a reasonable opportunity to consult with State regulatory authorities and permit applicants on applicants' proposed programs.

At the close of the comment period, a decision will be made whether to grant or deny the petition. If the decision is made to grant the petition, either in part or whole, rulemaking proceedings will be initiated in which public comment will again be sought before any final rulemaking notice appears. if the decision is made to deny the entire petition, no further rulemaking action will occur pursuant to the petition.

III. Procedural Matters

Publication of this notice of the receipt of the petition for rulemaking is a preliminary step in the rulemaking process. If a decision is made to grant the petition, a formal rulemaking process will be initiated. Thus, no regulatory flexibility analysis is needed at this stage nor is a regulatory impact analysis necessary under Executive Order 12291.

Publication of this notice does not constitute a major Federal action having a significant effect on the human environment for which an environmental impact statement under the National Environmental Policy Act, 42 U.S.C. 4322(2)(C), is needed.

List of Subjects

30 CFR 772, 774

Coal mining, Reporting and recordkeeping requirements, Surface mining, Underground mining.

30 CFR 773

Coal mining, Surface mining, Underground mining.

30 CFR 779

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR 780

Coal mining, Reporting and recordkeeping requirements, Surface mining.

30 CFR 783

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

30 CFR 784

Coal mining, Reporting and recordkeeping requirements, Underground mining.

Dated: August 19, 1985.

Brent Wahlquist,

Acting Director.

Appendix

Attachment #1: Statement of Petitioner's Interest

The Society of Professional Archeologists (SOPA) is a national archeological organization among whose central purposes it is to represent the professional practitioners of the discipline of archeology. Among the preeminent responsibilities of every professional archeologist is the responsibility to "actively support conservation of the archeological resource base" (SOPA Code of Ethics 1.1(b).). Whenever an archeological or historic property or site is lost to surface coal mining without prior professional-quality study, the American people as a whole lose a little of their heritage. Without archeological sites to study, archeologists cannot answer the multitude of questions about past human behavior, changing natural and social systems, and culture-history that are fundamental to our knowledge of past human cultures and their relationship to the present.

Many of SOPA's members live and work in states having substantial coal resources in non-federal ownership, and have first-hand experience with the variety of ways in which State Regulatory Authorities approach (or ignore) the problems of archeological site identification when considering permits to mine coal. Accordingly, SOPA is aware of the impacts that coal mining is having on archeological and historic properties today in the absence of effective federal regulation.

Since 1978, SOPA has had a standing committee on surface mining which has reviewed and commented on regulations and agreements dealing with historic preservation and surface mining.

Attachment #2: Facts, Technical Justification, and Law Supporting Need For Rulemaking

30 CFR 772.12(b)(8) (ii) and (iii) of OSM's proposed amended regulations require applicants for permits to explore for coal to describe "cultural or historical resources known to be eligible for listing in the National Register of Historic Places and . . . . known archaeological resources located within the proposed exploration area." 30 CFR 776.12(a)(5) of the existing regulations requires that "historic . . . features" be mapped by applicants for exploration permits.

30 CFR 779.12(b) and 779.24(i) require that properties eligible for inclusion in the National Register of Historic Places be identified and located on maps, "based on all available information" (30 CFR 779.12(b)). 30 CFR 783.12(b) and 783.24(i) impose the same requirements upon applicants for permits for underground mining.

Both the existing and proposed regulations are silent, however, as to:

(a) How properties eligible for but not yet listed in the National Register of Historic Places are to be identified by applicants, and

(b) What a State Regulatory Authority is to do when mining will impact such a property.

Absent guidance from the regulations on these matters, some states have reached the logical conclusion that they should establish procedures parallel with those used by the Department of the Interior and the Advisory Council on Historic Preservation to implement sections 106 and 110 of the National Historic Preservation Act and Executive Order 11593 (36 CFR Parts 63 and 800).

Such states (e.g., Maryland) require applicants to consult with the State Historic Preservation Officer (SHPO) and carry out field surveys as necessary to identify eligible properties; they then require that provision be made in mining plans for the preservation of such properties or for their thorough scientific study before their destruction. A few states (notably Maryland) have undertaken the development of "predictive models" to guide applicants and regulatory authorities in decision making, along the lines espoused by the OSM in its proposed Programmatic Memorandum of Agreement covering coal mining on Federal lands.

Other states (e.g., Indiana, Kentucky), however, have not reached the same conclusion, and surface mines are permitted in areas which; (1) contain recorded historic properties that have not yet been evaluated for National Register Listing; and (2) have not been surveyed for historic properties but can be predicted to contain properties which may be eligible for such listing. Effectively, these states require consideration only of those properties that, for one reason or another, have already been entered in the National Register. For all practical purposes this excludes from any consideration in coal mine planning all historic properties except those that meet the OSM's strict standards for designation as "unsuitable for mining"—that is, those properties that are publicly owned and included in the National Register (30 CFR 761.11(c) proposed).

The privately owned historic properties that are excluded from consideration by some State Regulatory Authorities represent a variety of site types (small camps, settlements, villages, cemeteries, burial mounds, etc.) and some 12,000 years of our nations' cultural heritage. There are many thousands of these properties, but only a small proportion are likely to meet OSM's unsuitable for mining criteria as significant to our nation's history and prehistory. The significant properties that are being and will be lost to surface mining are finite and non-renewable historic and scientific resources. The loss is clearly a national concern. Because both Euro-American and prehistoric and historic American Indian settlements were located *without respect* to state boundaries, the state's unequal consideration of historic

properties has resulted in an unsatisfactory patch-work attempt to conserve and research the important aspects of our nation's heritage. When unmitigated destruction by surface mining removes from the scientific record particular types of properties or portions of settlement patterns, then there is no further opportunity to study those types or patterns.

Although we disagree with the OSM's interpretation of the requirement of law pertinent to designation of lands unsuitable, it is not the intent of this petition to challenge this interpretation. Rather, we are concerned about the large numbers of properties which have not yet been physically identified and registered with authorities, or which have been found but have not yet passed through the administrative processes for listing in the National Register. Any one of these properties may or may not, on its own merits, be worthy of preservation or data recovery in advance of its sacrifice to coal mining, but each certainly deserves to be identified and considered during decision making on a mining permit application. OSM apparently agrees, since it requires that information on such properties be placed by the applicant before the State Regulatory Authority. In the absence of clear Federal guidance as to how such properties are to be (a) identified and (b) considered in decision making, however, such properties are not being identified and considered in many states, and hence will continue to be lost without prior scientific study.

Attachment #3: Previous Consideration in Rulemaking

30 CFR Section 700.12(c) says that "facts, technical justification or law previously considered in a petition or rulemaking on the same issue shall not provide a reasonable basis" for new rulemaking. A broad reading of this statement could be taken to bar from consideration anything that a rule maker had thought about during the drafting process; we assume that a much narrower reading is in order, if Section 700.12 is to serve any purpose.

Although discussions of "cultural resources" in the Final Environmental Statement (FES) on OSM's proposed regulation changes (See especially pages III–10 through 12, Volume 1) suggest that the subject of our concern has been considered in rulemaking, we contend that it has not. In fact, OSM's consideration of cultural resources has been dominated by its concern for narrowing the application of the criteria for designating lands unsuitable for mining, which is *not* the subject of this petition. Nowhere in OSM's proposed revisions to the permanent program regulations do we find effective treatment of how State Regulatory Authorities are to ensure that submissions pursuant to Sections 772.12(b)(8)(ii) and (iii), 776.12(a)(5), 779(12)(b), 779.24(i), 783.12(b) and 783.24(i) contain meaningful data on historic properties, or that such data are meaningfully used in permit decisionmaking; nor do we see in the FES any evidence that providing such treatment was seriously considered. The FES essentially circumvents the issue by alluding to a Programmatic Memorandum of Agreement entered into by the OSM and Advisory Council on Historic Preservation, which, if it had been implemented, would have required rule changes to ensure that historic properties were effectively identified and considered. The FES goes on to say, however, that "the PMOA, which has not been fully implemented, is being renegotiated" (FES Vol. 1, p. III–12). We contacted the Advisory Council on Historic Preservation regarding this renegotiation, and were advised that no negotiations have occurred. To quote Dr. Thomas F. King, Director of the Council's Office of Cultural Resource Preservation:

> Both we and OSM have been concentrating on the Federal coal PMOA (note: pertaining only to Federal lands; not pertinent to this discussion); we've suggested starting serious talks about non-Federal lands in the wake of the Niquette petition (note: a lands unsuitable petition in Kentucky), but nothing has moved as yet.

In other words, OSM in its rulemaking has merely deferred indefinitely any consideration of the concerns that stimulate this petition. The purpose of this petition is to request that this deferral be ended and the matter be dealt with at once.

Attachment #4: Suggested Regulatory Language

(1) We suggest that language similar to the following be inserted in 30 CFR Sections 772.12(b)(8)(ii), 779.12(b), and 788.12(b):

"To identify resources eligible for listing on the National Register of Historic Places, the applicant shall review files and publications made available by the State Historic Preservation Officer and other authorities on the history, prehistory, architectural history, and archaeology of the region in which the permit area lies, and conduct such field inspections as the State Historic Preservation Officer recommends in a manner consistent with applicable Department of the Interior and Advisory Council on Historic Preservation standards and guidelines."

(3) We suggest that language similar to the following be inserted in 30 CFR Section 772.12(b)(8):

"(iv) A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that cultural, historical, and archaeological resources are not adversely affected during the proposed exploration or, if adverse effect is unavoidable, that the effect is appropriately mitigated."

(3) We suggest that language similar to the following be inserted in 30 CFR Sections 780.11 and 784.11:

"(c) A program, developed in consultation with the Advisory Council on Historic Preservation, the National Conference of State Historic Preservation Officers, and the relevant State Historic Preservation Officer, to ensure that properties included in and eligible for the National Register of Historic Places and known archaeological sites are physically preserved or subjected to such recordation and data recovery as is necessary to preserve their research and other values in the public interest."

(4) We suggest that language similar to the following be inserted in 30 CFR Section 773.12:

"Pursuant to Section 106 of the National Historic Preservation Act, the Advisory Council on Historic Preservation and the State Historic Preservation Officer will be afforded the opportunity to consult with the regulatory authority and the applicant regarding the applicant's program for preserving historic properties under Section 772.12(b)(8), Section 780.11, or Section 784.11, whichever is applicable."

[FR Doc. 85–20173 Filed 8–22–85; 8:45 am]
BILLING CODE 4310–05–M

Notices

Federal Register
Vol. 50, No. 164
Friday, August 23, 1985

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 COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submittted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Travel and Tourism Administration
Title: In-Flight Survey of International Air Travelers
Form Number: Agency—N/A; OMB—0605–0007
Type of Request: Extension of the expiration date of a currently approved collection
Burden: 165,600 respondents; 27,600 reporting hours
Needs and uses: The information is used to provide consumer marketing data on international travelers
Affected Public: Individuals
Frequency: On occasion
Respondent's Obligation: Voluntary
OMB Desk Officer: Sheri Fox, 395–3785.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals (202) 377–4217, Department of Commerce, Room 6622, 14th and Constitution Avenue NW., Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent to Sheri Fox, OMB Desk Officer, Room 3235, New Executive Office Building, Washington, D.C. 20503.

Dated: August 15, 1985.

Edward Michals,

Departmental Clearance Officer.

[FR Doc. 85–20192 Filed 8–22–85; 8:45 am]

BILLING CODE 3510–CW–M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council will convene a public meeting, September 18–19, 1985, at the Ramada Inn, 76 Industrial Highway, Essington, PA (telephone: 215–521–9600), to discuss the Atlantic Mackerel, Squid and Butterfish Fishery Management Plan, the surf clam and ocean quahog fishery, a task force project, as well as other fishery management matters. For further information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: August 19, 1985.

Richard B. Roe,

Director, Office of Protected Species and Habitat Conservation, National Marine Fisheries Service.

[FR Doc. 85–20167 Filed 8–22–85; 8:45 am]

BILLING CODE 3510–22–M

Announcement of Public Hearings on the Draft Environmental Impact Statement Prepared on the Proposed Virginia Coastal Resources Managment Program

Notice is hereby given that the Office of Ocean and Coastal Resource Management (OCRM), National Oceanic and Atmospheric Administration U.S. Department of Commerce, will hold public hearings for the purpose of receiving comments on the Draft Environmental Impact Statement (DEIS) prepared on the proposed Virginia Coastal Resources Management Program (VCRMP).

Hearings will be held at the following locations:

September 30, 1985: Fairfax, Virginia, George Mason University, Student Union Building No. II, Rooms 3 & 4, 7:30 p.m.
October 1, 1985: Norfolk, Virginia, Old Dominion University, Webb Center, Room 148–150, 7:30 p.m.
October 2, 1985: Richmond, Virginia, State Capitol Building, House Room 4, 2:00 p.m.
October 3, 1985: Melfa, Virginia, Eastern Shore Community College, Lecture Hall, 7:30 p.m.

The views of interested persons and organizations on the adequacy of the DEIS and the proposed VCRMP are solicited, and may be expressed orally or in written statements. Presentations will be scheduled on a first-come, first-heard basis and may be limited to a maximum of 10 minutes. This time allotment may be extended before the hearing when the number of speakers can be determined. No verbatim transcript of the hearing will be prepared; but staff present will record the general thrust of the remarks. The comment period for this draft environmental impact statement will end on October 7, 1985.

As part of the procedures leading toward approval of the Virginia Coastal Resources Management Program, a Final Environmental Impact Statement (FEIS), reflecting consideration of these comments, will be prepared pursuant to the National Environmental Policy Act of 1969 and its implementing guidelines. All written comments received by OCRM prior to the deadline will be included in the FEIS. Any questions concerning the hearings, please contact Joseph A. Uravitch, Great Lakes and South Atlantic Regional Manager (202) 634–4124.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: August 14, 1985.

Peter L. Tweedt,

Director, Office of Ocean and Coastal Resource Management.

[FR Doc. 85–20194 Filed 8–22–85; 8:45 am]

BILLING CODE 3510–08–M

Marine Mammals; Proposed Permit Modification; Donald B. Siniff

Notice is hereby given that Donald B. Siniff, Department of Ecology and Behavioral Biology, 109 Zoology, 318 Church Street, S.E. Minneapolis, Minnesota 55455 has requested a modification to Permit No. 479 issued on July 26, 1984 (49 FR 30770), under the authority of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

The Permit Holder is requesting to take, in McMurdo Sound, Antarctica, twenty(20) of one hundred (100) authorized adult female and pup Weddell seals (*Leptonychotes weddelli*) to assess energy flux via collection of milk samples (adult females), and via tritiated water turnover and blood samples (pups).

Concurrent with the publication of this notice the **Federal Register**, the Secretary of Commerce is forwarding copies of the modification request to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data reviews, or requests for a public hearing on this modification request should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, Washington, D.C. 20235 within 30 days of the publication of this notice.

Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this request are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

The Permit is available for review by interested persons in the following offices:

Assistant Administrator for Fisheries, National Marine Fisheries Service, 300 Whitehaven Street, NW., Washington, D.C.; and

Regional Director, Northeast Region, National Marine Fisheries Service, 14 Elm Street, Federal Building, Gloucester, Massachusetts 01930.

Dated: August 16, 1985.

Carmen J. Blondin,

Deputy Assistant Administrator for Fisheries Resource Management, National Marine Fisheries Service.

[FR Doc. 85-20239 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Rescission of Notice of Intent To Grant Exclusive Patent License

This rescinds the notice of intent to grant an exclusive patent license, FR Document 85-16047, published in the **Federal Register** on July 5, 1985 at pages 27648 and 27649.

The notice of a prospective licensee, published pursuant to 37 CFR 404.7 (a)(1)(i), and the requirement to submit written objections within 60 days are hereby cancelled.

Douglas J. Campion,

Office of Federal Patent Licensing, U.S. Department of Commerce, National Technical Information Service.

[FR Doc. 85-20241 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increasing the Import Restraint Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Romania

August 20, 1985.

The Chairman of the Committee for the Implementation of Textile Agreements (CITA), under the authority contained in E.O. 11651 of March 3, 1972, as amended, has issued the directive published below to the Commissioner of Customs to be effective on August 20, 1985. For further information contact Eve Anderson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

Background

Under the terms of the Bilateral Wool and Man-Made Fiber Textile Agreement of September 3 and November 3, 1980, as amended, between the Governments of the United States and the Socialist Republic of Romania, a special, agreed increase was applied to the import restraint limit established for man-made fiber sweaters in Category 645/646, produced or manufactured in Romania and exported during 1984. This amount was not fully utilized in 1984; accordingly, the unused amount is being restored to the 1985 limit for this category, increasing it from 182,091 dozen to 195,914 dozen. In addition, the Government of the Socialist Republic of Romania, under the terms of the new Bilateral Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated November 7 and 16, 1984, has requested the application of available carryforward for 1985 in the amount of 11,755 dozen, further increasing the limit to 207,669 dozen. To the extent this carryforward is utilized in 1985, it will be deducted from the 1986 limit for the category. The letter to the Commissioner of Customs which follows this notice makes the aforementioned adjustment.

A description of the textile categories in terms of T.S.U.S.A. numbers was published in the **Federal Register** on December 13, 1982 (47 FR 55709), as amended on April 7, 1983 (48 FR 15175), May 3, 1983 (48 FR 19924), December 14, 1983 (48 FR 55607), December 30, 1983 (48 FR 57584), April 4, 1984 (49 FR 13397), June 28, 1984 (49 FR 26622), July 16, 1984 (49 FR 28754), November 9, 1984 (49 FR 44782), and in Statistical Headnote 5, Schedule 3 of the Tariff Schedules of the United States Annotated (1985).

Ronald I. Levin,

Acting Chairman, Committee for the Implementation of Textile Agreements.

August 20, 1985.

Committee for the Implementation of Textile Agreements

Commissioner of Customs,
Department of the Treasury, Washington, D.C. 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 21, 1984 from the Chairman of the Committee for the Implementation of Textile Agreements which directed you to prohibit entry of certain wool and man-made fiber textile products, produced or manufactured in Romania and exported during 1985. The letter further advised you that the limits are subject to adjustment.[1]

Effective August 20, 1985, paragraph 1 of the directive of December 21, 1984 is hereby amended to increase the limit established for Category 645/646 to 207,669 dozen.[2]

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553 (a)(1).

Sincerely,

Ronald I. Levin,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 85-20193 Filed 8-22-85; 8:45 am]

BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the

[1] The term "adjustment" refers to those provisions of the Bilateral Wool and Man-Made Fiber Textile Agreement of November 7 and 16, 1984 which provide, in part, that: (1) Specific limits may be increased for carryover and carryforward; (2) consultations may be held to adjust levels for categories not subject to specific limits; and (3) administrative arrangements or adjustments may be made to resolve minor problems arising in the implementation of the agreement.

[2] The limit has not been adjusted to reflect any imports exported after December 21, 1984.

Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained. .

New

Post Card Registration and Absentee Ballot Request; Standard Form 76

This notice of intent is to revise the Federal Post Card Application form to be used for absentee voting in accordance with the Federal Voting Assistance Act of 1955 and the Overseas Citizens Voting Rights Act of 1975, as amended. Individuals covered by these Acts are as follows: (a) a member of the armed forces or merchant marine in active service; (b) a spouse or dependent of (a) above; (c) a U.S. citizen temporarily residing outside the U.S.; (d) a spouse or dependent residing with (c) above; (e) U.S. citizen overseas by virtue of employment; (f) a spouse or dependent residing with (e) above; and (g) other U.S. citizen residing outside the United States. 42 U.S.C. 1973cc & dd requires the Presidential designee, currently the Secretary of Defense, to design a single form of postcard application for registration to vote for an absentee ballot request. The same law recommends that each State accept any official postcard which is duly executed by citizens covered by the Acts as a simultaneous application for registration and for absentee ballot. This proposed change incorporates the information submitted by the States to meet the requirement set forth by 42 U.S.C.

Individuals
Responses 3,000,000
Burden hours 250,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone 202/746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Henry Valentino, Director, Federal Voting Assistance Program, Washington, DC 20301, telephone 202/697–6125.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
August 19, 1985.
[FR Doc. 85–20184 Filed 8–22–85; 8:45 am]
BILLING CODE 3810–01–M

Department of the Air Force

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection

Wage Rates and Fringe Benefits

Section 4(c) of the Service Contract Act provides that where negotiated wages and fringes appear to be substantially at variance with those that prevail in the locality of performance, the affected party(s) may request a hearing to establish prevailing rates. It is necessary to conduct a survey of similar operations utilizing the job classifications in question within the locality for this purpose.

Businesses, large or small, nonprofit institutions.
Responses 150
Burden hours 150

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503, and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Mr W. Doyle Williams, HQ USAF/RDC-LA, Washington, DC 20330, commercial phone (202) 697–1879.

Linda M. Lawson,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
August 19, 1985.
[FR Doc. 85–20182 Filed 8–22–85; 8:45 am]
BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number, if applicable; (3) Abstract statement of the need for and uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Existing Collection in Use Without an OMB Number

Air Force ROTC Scholarship Nomination (AFROTC Form 36)

The information provided on the form by the applicant is used by the Air Force Reserve Officer Training Corps (AFROTC) Scholarship Central Selection Board in evaluating an applicant's qualifications for a scholarship award. The form reflects information on academic aptitude and performance and includes an evaluation by the applicant's Professor of Aerospace Studies.

Individuals
Responses 2,000
Burden hours 2,000

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DOD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204,

Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

SUPPLEMENTARY INFORMATION: A copy of the information collection proposal may be obtained from Capt Mark W. Rader, AFROTC/RRUC, Maxwell AFB, AL 36112–6663, telephone number (205) 293–6588.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20183 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Department of the Army

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

Reinstatement of Previously Approved Collection

Army ROTC 4-Year Scholarship Application, TRADOC Draft Form

ROTC Scholarships provide the Army with highly qualified men/women who desire to pursue a commission in the U.S. Army. The application and information provided with it forms the basis for a scholarship award.

ROTC Scholarship Applications
Responses: 10,400
Burden Hours: 7,800

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Herbert F. Ewert, DAIM–ADI–M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 694–0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20179 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of Defense has submitted to OMB for review the following proposal for the collection of information under the provisons of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) To whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

Dispersed Use Recreation Survey

Recreation use figures are needed to supplement research efforts directed toward program evaluation and increasing cost efficient planning, design and management of Corps projects. Standardized survey procedures previously developed for controlled access areas need to be modified to determine the use of undeveloped disbursed use areas.

Individuals or households
Responses: 2,000
Burden Hours: 200

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr. Herbert F. Ewert, DAIM-ADI-M, Room 1C638, The Pentagon, Washington, DC 20310–0700, telephone (202) 922–0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85–20180 Filed 8–22–85; 8:45 am]

BILLING CODE 3810–01–M

Public Information Collection Requirement Submitted to OMB for Review

SUMMARY: The Department of defense has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Each entry contains the following information: (1) Type of submission; (2) Title of Information Collection and Form Number if applicable; (3) Abstract statement of the need for and the uses to be made of the information collected; (4) Type of Respondent; (5) An estimate of the number of responses; (6) An estimate of the total number of hours needed to provide the information; (7) to whom comments regarding the information collection are to be forwarded; and (8) The point of contact from whom a copy of the information proposal may be obtained.

New

U.S. Army New Manning System Facility Health Study

As part of the assessment of the Army's New Manning system, Army personnel managers need to examine the impact of these operational strategies on the health and general well being of Army family members. Army desires to assess the development and outcome of enhanced banding among unit families. The information collected will be maintained in the Army System of records "Health Care and Medical Treatment Records (AO197.01DASG)."

Spouses of Army members
Responses: 2,480
Burden Hours: 3,720

ADDRESSES: Comments are to be forwarded to Mr. Edward Springer, Office of Manegement and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503 and Mr. Daniel J. Vitiello, DoD Clearance Officer, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202–4302, telephone number (202) 746–0933.

FOR FURTHER INFORMATION CONTACT: A copy of the information collection proposal may be obtained from Mr.

Herbert F. Ewert, DAIM-ADI-M, Room 1C638, The Pentagon, Washington, DC 20310-0700, telephone (202) 694-0754.

Linda M. Lawson,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

August 19, 1985.

[FR Doc. 85-20181, Filed 8-22-85; 8:45 am]

BILLING CODE 3810-01-M

Department of the Navy

Intent To Prepare a Supplement to the Environmental Impact Statement for a Fleet Ballistic Missile Naval Submarine Support Base, Kings Bay, GA

Pursuant to the regulations implementing the procedural provisions of the National Environmental Policy Act (NEPA) (Title 40 CFR) and the requirements of Executive Order 12372, Intergovernmental Review of Federal Programs, the Officer in Charge of Construction (OICC), TRIDENT, announces the Navy's intent to prepare a Supplement to the Final Environmental Impact Statement for Preferred Alternative Location for a Fleet Ballistic Missile Submarine Support Base, Kings Bay, Georgia.

Completed in August 1977, Draft and Final Environmental Impact Statements (EIS's) described the environmental impacts of locating one tender-based submarine squadron at Kings Bay.

Soon thereafter, Kings Bay was selected by the Navy as the eastcoast base for one TRIDENT submarine squadron. This proposal covered ashore-based facilities development including strategic and defensive weapons storage and transfer, refit industrial support, crew training, waterfront support, administrative and personnel support, on-base housing, and waterfront facilities renovation. The OICC TRIDENT prepared a supplement to the EIS in August 1980 to address the development of ashore-based facilities. Construction dredging plans and configuration for the TRIDENT development were addressed at that time.

The *Ohio* Class submarine is currently undergoing sea trials in the Atlantic Ocean. Recent results of the sea trials have indicated the need for additional water depths in the less-protected coastal waters such as the St. Mary's Entrance. Construction dredging to accommodate this requirement will therefore be required. Depending upon the final decision, the proposed action could include up to 500 acres of additional dredging and 6.7 million cubic yards of additional material disposal. The Navy intends to document its evaluation of environmental impacts associated with the proposed action by the preparation of a Supplemental EIS. This document will update the first Supplemental EIS to incorporate the expanded scope of additional dredging.

Environmental protection during dredging is regulated by the U.S. Army Corps of Engineers pursuant to Section 404 of the Clean Water Act and Selection 10 of the River and Harbors Act. Maintenance of environmental quality is specifically addressed by legal permit requirements placed upon the Navy.

The OICC TRIDENT has retained an unaffiliated consulting firm to prepare the supplemental environmental statement. During preparation, characteristics of the existing environment will be documented. The potential environmental effects of each of several alternatives and the No-Action Alternative will be addressed. In addition, potential cumulative effects resulting from the proposed action will be evaluated. Comments regarding this evaluation will be sought during the EIS process from interested local, state, and federal governmental agencies during preparation. Written comment is requested before 5 September 1985.

Questions and comments regarding this notice may be addressed to: Officer in Charge of Construction, TRIDENT, Attention: Code 09XE3, 293 Point Peter Road, St. Marys, Georgia 31558, (912) 673-2304.

Dated: August 16, 1985.

William F. Roos, Jr.,

LT, JAGC, USNR, Federal Register Liaison Officer.

[FR Doc. 85-20172 Filed 8-22-85; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Inventory of Commercial Activities

AGENCY: Department of Energy (DOE).

ACTION: Notice of DOE commercial activities scheduled for review in accordance with the OMB Circular A-76.

SUMMARY: Pursuant to the requirements of the revised OMB Circular A-76 (dated August 1983), the DOE developed and published an inventory of its commercial activities in 50 FR 20260, dated May 15, 1985, of the **Federal Register.** The information contained in this Notice modifies the Department's inventory by adding additional components to a commercial activity previously listed.

Organization and commercial activity	Geographic location	Date of review
Assistant Secretary, Management and Administration ADP operations, systems programming,* message services, and SACNET operations*.	MD: Germantown	Sept. 1985

*New components.

FOR FURTHER INFORMATION CONTACT: Douglas G. Stinchcum, Acting Chief, Management Systems Development and Evaluation Branch, Department of Energy (MA-213.2), Room 4B-194, Forrestal Building, 1000 Independence Avenue SW., Washington D.C. 20585.

Issued in Washington, D.C.: August 19, 1985.

William S. Heffelfinger,

Director of Administration.

[FR Doc. 85-20198 Filed 8-22-85; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP85-437-000, CP85-552-000]

Mojave Pipeline Co., and Kern River Gas Transmission Co.; Pipeline Projects to Supply Natural Gas for Enhanced Oil Recovery in California; Intent To Prepare a Draft Environmental Impact Statement and Request for Comments on its Scope

August 23, 1985.

Introduction

Applications for approval of the above projects have been filed with the Federal Energy Regulatory Commission (FERC) pursuant to section 7(c) of the Natural Gas Act. The projects would transport natural gas from various sources outside of California to the Bakersfield, California, area for use in enhanced oil recovery (EOR) and related cogeneration projects. In each case, producers of crude oil in the San Joaquin Valley would use the natural gas as boiler fuel to create steam which would be injected into the oil fields to produce crude oil not recoverable by primary recovery methods. Some of the steam would also be used to generate electricity. The producers currently use crude oil and a limited amount of natural gas for steam generation; these projects would allow substitution of natural gas for the crude oil now used, and may allow entry in the market of producers which presently cannot get authority to burn oil due to air pollution restrictions.

The applicants, Mojave Pipeline Company and Kern River Gas Transmission Company, would transport natural gas purchased by the producers. Neither applicant would own the gas transported through their respective pipelines.

In addition to the above projects, the El Dorado Pipeline Project may be filed in the near future. Facilities for this project would be very similar to those proposed for the Mojave Pipeline Project. The scope of the study will include an analysis of all filed projects.

Notice of Intent

Notice is hereby given that the staff of the FERC has determined that approval of these projects would be a major Federal action significantly affecting the quality of the human environment. Therefore, pursuant to § 2.82(b) of the Commission's Rules of Practice and Procedure (18 CFR 2.82(b)), a draft environmental impact statement (DEIS) will be prepared. The FERC will be the lead Federal agency and, with the California State Lands Commission (SLC), will produce a joint environmental impact statement/ environmental impact report (EIS/EIR) satisfying the requirements of the National Environmental Policy Act (NEPA) and the California Environmental Quality Act (CEQA), respectively. The EIS/EIR will be prepared by an environmental consultant under contract to the SLC and the joint supervision of both the FERC and the SLC.

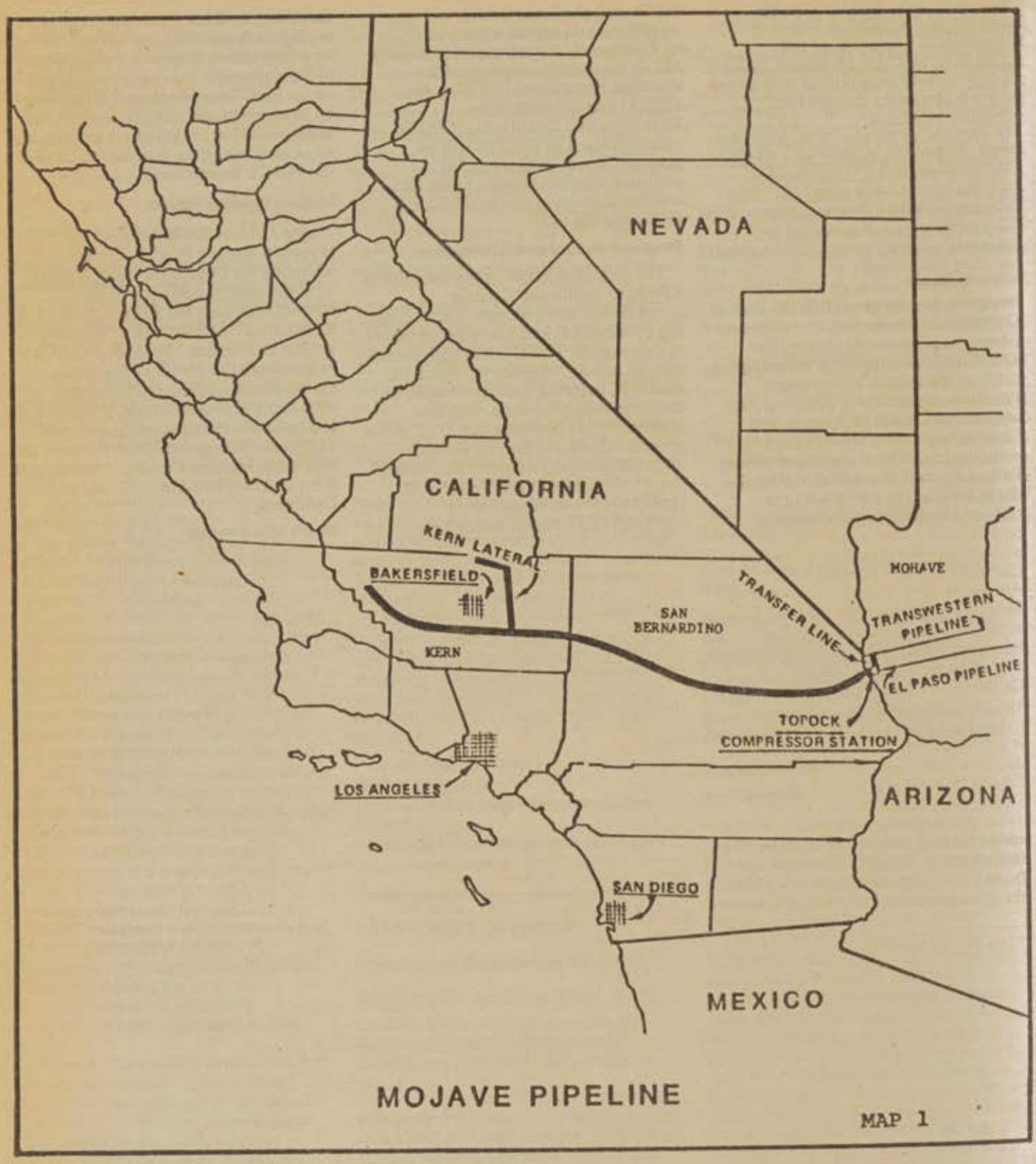
Proposed Action and Alternatives

The proposed action is the issuance of a Federal certificate of public convenience and necessity authorizing the construction and operation of one of these projects. The EIS/EIR will discuss the "no action" alternative, which for the FERC involves disapproving all of the competing proposals, and the alternative of approving one or all of the projects. Choice of the "no action" alternative might not neam that natural gas would not be available for EOR projects in the volumes herein contemplated because natural gas distributors within California might supply such gas. This "no action" may have one of two results: a continuation of the status quo in oil and natural gas usage for EOR in Southern California or an increase in use comparable to what is proposed but provided via existing or expanded intrastate facilities not under the FERC's jurisdiction.

Mojave Pipeline Project

Map 1 shows the location of the proposed Mojave Pipeline Project, including the 24-inch-diameter Mojave Transfer Line, the 36-inch-diameter Mojave Mainline, the 20-inch-diameter Kern Lateral, and the new compressor station in Arizona. The total project is approximatley 389 miles long, and would directly affect approximately 4700 acres of Federal, state, private, and Indian lands during construction, and 2400 acres during operation. It would be located in Mohave County, Arizona, and Kern and San Bernardino Counties, California.

BILLING CODE 6717-01-M



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The proposed Mojave Transfer line traverses the Fort Mohave Indian Reservation and the Havasu National Wildlife Refuge (NWR) in Mohave County, Arizona. This route parallels an existing EL Paso Natural gas (EPNG) pipeline right-of-way (ROW) for 14.0 miles (85 percent of its overall length). EPNG has second line rights for its existing line and this right might be exercised for the Mojave Transfer Line. The northern end of the proposed Mojave Transfer Line parallels a newly installed EPNG line.

The proposed Mojave Mainline traverses the Havasu NWR; the Colorado River; the northernmost portion of Edwards Air Force Base in Kern County, California; the western boundaries of the Elk Hills Naval Petroleum Reserve; and the California and Los Angeles aqueducts in Kern County, California. The majority of the mainline in California is either within Bureau of Land Management (BLM) designated utility corrodors in the California Desert Conservation Area or parallels other existing and proposed pipeline ROW's (Pacific Gas and Electric, Pacific Lighting, and All American). The mainline would follow BLM utility corridor H from near Topock at the Arizona/California border (milepost [HP] 1.25) to near Siberia (MP 90) in San Bernardino County, California.[1] Two existing Pacific Gas and Electric (PG&E) 34-inch-diameter natural gas lines also are within corridor H up to this point. The proposed route deviates from BLM corridors between Siberia (MP 90) and Boron (MP 191) in Kern county, California, in order to avoid the various towns and subdivisions traversed by corridor G in this area (e.g., Daggett, Barstow, and Boron). The proposed route does follow the aforementioned PG&E pipelines west from Siberia to Pisgah (MP 115) outside corridor H. The All American Pipeline would also follow the aforementioned PG&E pipelines in this area. At MP 115 the route leads west-northwest across the Cady Mountains and the north end of Troy Lake to a crossing of the Mojave River and Interstate 15 just east of Toomey. It then heads west around the southern end of the Calico Mountains, north of Lead Mountain, and through the Mitchel Range 2 miles north of Barstow to a point one mile south of Mt. General. From here it heads generally west-northwest to MP 191 north of Boron. The proposed Mojave Mainline generally follows BLM corridor G/proposed All American Pipeline[2] route from near Boron (MP 191) to the area south of Tehachapi in Kern County, California (MP 230); and the proposed All American Pipeline route to the area south of Bakersfield (MP 287). In this general area, the proposed mainline turns in a northwest direction, intermittently paralleling existing Pacific Lighting pipelines over short distances in western Kern County for the final 40 miles.

The 46-mile-long Kern Lateral would begin about 7 miles east of Mettler. It would extend north parallel and about 1/4-mile east of the powerline east of Rancho Road and Rancho Drive, curve east around Comanche Point in the Tejon Hills, leave the powerline, and then head north parallel and about 1/10-mile east of Rock Pile Road. After crossing Highway 58 at Caliente Creek and the AT & SF tracks to the north, it would curve west around the base of the hills and head northwest, crossing Highway 178 due west of the Ant Hill Oil Field, Kern River 2½ miles northwest of Ant Hill, and reach Pasco Creek at the mouth of Mon Canyon. It would head west four miles along the floodplain of Pasco Creek before heading about one mile southwest to its terminus adjacent to the Premier Oil Field.

The new compressor station required for this project would have 22,500 horsepower of compression. It would be located at the junction of the Mojave Transfer Line and the Mojave Mainline. Facilities and equipment at the compressor station would include compressors and a building to house them, buildings for storage, instrumentation and control, a communications tower, gas coolers and dehydrators, water supply, watewater system, and electrical supply.

Kern River Project

Map 2 shows the location of the proposed Kern River Project including the 36-inch-diameter Kern River mainline, the 30-inch-diameter Taft and Kern River Laterals, and the proposed new compressor stations.[3] The project would cross 15 counties in 4 states, extending between an existing interstate natural gas transmission facility near Opal, Wyoming, and the Bakersfield, California area. Total length of the mainline and two laterals would be approximately 837 miles, distributed as shown in table 1; new compression would total 36,200 horsepower. The proposal would directly affect about 7,600 acres of Federal, state, private and Indian lands during construction and 5,100 acres during operation.

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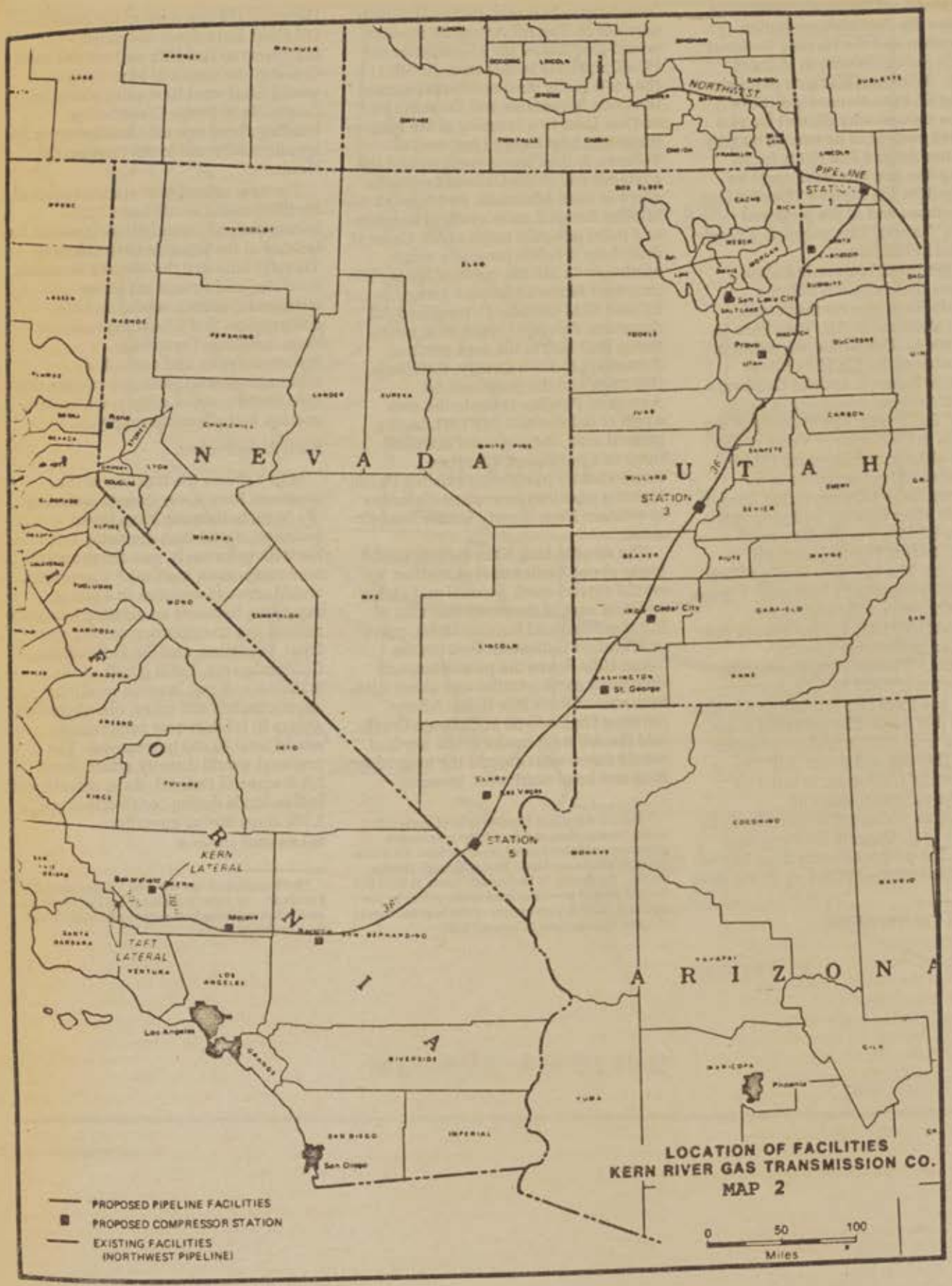
[1] All MP's are approximate.

[2] The All American Pipeline project, presently under construction, entails a 1,200 mile buried pipline to transport heated crude oil from the Santa Barbara and Santa Maria Basins through Emidio Station, California, to McCamey, Texas. A final EIS for this project was circulated to the public by the SLC and the U.S. Department of the Interior, Bureau of Land Management in January 1985.

[3] Both applicants use the term " Kern Lateral." For clarity, the term "Kern River Lateral" shall be used when referring to the appropriate portion of the Kern River Project.



LOCATION OF FACILITIES
KERN RIVER GAS TRANSMISSION CO.
MAP 2

BILLING CODE 6717-01-C

TABLE 1.—KERN RIVER PROJECT GEOGRAPHICAL DISTRIBUTION OF FACILITIES

State and county	Miles of pipe proposed (approximate)	Compressor station number and horsepower (site-rated)
Wyoming:		
Lincoln	17	#1—17,200 hp
Uinta	38	
Utah:		
Summit	45	
Wasatch	26	
Utah	37	
Sanpete	4	
Juab	43	
Millard	63	#3-9,100 hp
Beaver	37	
Iron	50	
Washington	48	
Nevada:		
Lincoln	23	#5-9,900 hp
Clark	106	
California:		
San Bernardino	144	
Kern	81 (mainline) 75 (laterals)	

The proposed Kern River Mainline commences about 6 miles southwest of Opal, Wyoming at an interconnection with the mainline facilities of Northwest Pipeline Corporation and proceeds southwesterly passing east of Evanston to the Wyoming-Utah border (MP 57). The route continues diagonally across Utah to the southwest corner of the state (MP 409), traversing about 55 miles of land in the Uinta and Dixie National Forests (MP 118 to 183 and 360 to 380, respectively). Minor portions of Manti-La Sal and Fishlake National Forests would also be crossed (MP 170 and 227, respectively). The route would cross the southern tip of Nevada, including a small section of the Moapa River Indian Reservation (MP 464) and the Jean Offroad Recreational Vehicle Use Area (MP 525 to 548), and would pass about 5 miles to the east of Las Vegas (MP 486). From the Nevada/California border (MP 536), approximately 2 miles southwest of Roach, Nevada, the route would follow BLM utility corridor D through a portion of the California Desert Conservation Area to a point in the northern Mojave Valley. Here the route would bend westward, exit corridor D and pass to the north of the Calico mountains.[4] The final segment of the mainline would pass about 7 miles to the north of Barstow and cross the northernmost portion of Edwards Air Force Base (MP 681 through 696), the Los Angeles Aqueduct (MP 714), the Pacific Crest National Scenic Trail (MP 732), and the Arvin Edison Canal (MP 761) before terminating at the bifurcation point (MP 762) about 19 miles south of Bakersfield, California.

[4] Although designated by the BLM for utility routing, corridor D traverses land under study for inclusion in the National Wilderness Preservation System.

From the bifurcation point, the Kern River Lateral would extend northward 28 miles to the Kern River Oilfield 2 miles north of Bakersfield on the east side of Oildale. The lateral would cross the Arvin Edison Canal (MP 16KR), the East Side Canal (MP 17KR) and the Kern River (MP 25KR).[5] The Taft Lateral would extend about 47 miles to the west of the bifurcation point, crossing the Elk Hills Naval Petroleum Reserve and the California Aqueduct (MP 25T) before passing east of and terminating on the north side of McKittrick.

Overall, the Kern River Project (including the mainline and both laterals) would follow existing transportation and utility corridors for approximately 54 percent (450 miles) of its length.

The Kern River Project would require three new compressor stations at MP 0 (6 miles southwest of Opal, Wyoming), MP 267 (25 miles southwest of Fillmore, Utah) and MP 518 (20 miles south of Las Vegas, Nevada). Facilities and equipment at each new station would include compressors and a building to house them, a separate building for storage, instrumentation and control, a communications tower, gas coolers, water supply, wastewater system, and electrical supply.

Pipeline Safety Standards

Both the proposed pipelines would conform to the minimum pipeline safety standards set by the U.S. Department of Transportation. These standards specify minimum pipe wall thickness, strength, and depth of burial for different population densities encountered along the route. Thicker walled pipe is normally used at road crossings and major creek and river crossings. All such crossings, would follow the requirements of all applicable codes and permits. Pipe would be installed by boring beneath railroad tracks and major highways to avoid disrupting their use. Most county roads would be crossed during construction by an open trench.

Land Requirements

The Mojave Pipeline Project, as proposed, would involve a 100-foot-wide construction ROW, disturbing about 4,700 acres. The Kern River Project, as proposed, would require a minimum width of 75 feet, disrupting about 7,600 acres during construction. Both projects would require additional land at watercourse, railroad and highway crossings, as well as for metering stations, communications facilities, maintenance bases, and pipe storage and staging areas to the extent that such are necessary. Additional acreage requirements would range from about 0.5 acre at a new communications site up to 4 acres at a major river crossing; requirements for maintenance bases have not yet been determined.

Permanent ROW's, about 50 feet wide, would be maintained. Except at aboveground facilities, access roads, and where the ROW crosses formerly wooded areas, the ROW could be used as it was before construction as long as structures were not built.

The Compressor station for the Mojave Pipeline Project would require 20 of the 40 acres currently owned by EPNG at its existing Topock Compressor Station. Sites for the Kern River Project's compressor stations would be 20 to 50 acres each.

Construction Procedures

In general, either project is proposed to be constructed within a period of 10–12 months. Construction at any one place along the pipelines would take 6 to 8 weeks between the initial land disturbance and the end of restoration; however, the trench would be open only a few days.

Construction would begin with ROW clearing and grading. The trench, nomally dug by tracked, rotary-wheeled trenching machines, would be deep enough to provide a minimum cover of 30 inches in normal soils and about 18 inches in rock. Trenching in rock generally requires that a tractor-mounted ripper or blasting and backhoe be used.

The pipe would be strung along the ROW and bent as required to conform to the bottom of the trench. Pipe sections would be welded and radiographically inspected in compliance with the Department of Transportation's minimum Federal Safety Standards. Before being placed in the trench, the pipe would be coated to inhibit corrosion. After the pipe was placed in the trench, the trench would be backfilled with the spoil excavated from the ditch. Select backfill would be used where the trench was excavated in rock. The backfill would be compacted, and a 2–8 inch crown would generally be left over the ditch to compensate for settlement.

Land would be returned to near-original contours, and generally restored in accord with landowner requirements, where possible. Detailed of the companies' erosion control and revegetation plans are not yet available.

[5] MP numbers along the Kern River Lateral are followed by "KR", while those along the Taft Lateral are followed by "T".

The method of trench excavation across streams would vary with the characteristics of the stream. Normal trenching methods would be used to traverse dry washes, intermittent or small streams. Conventional bucket-type dredges operating from the banks would generally be used for medium-sized streams. In-stream methods employing barges or partial diversion of the streamflow would be used for larger streams and rivers except where the Mojave Mainline crosses the Colorado River. Here the proposed pipeline would be placed on an existing bridge which previously was part of U.S. Highway 66.

After construction, the pipeline would be hydrostatically tested in lengths dictated by elevation differentials and availability of water. This would require approximately 81,900 to 268,000 gallons of water per test mile segment for 20- and 36-inch-diameter pipe, respectively. Test water would be obtained from rivers, creeks, or existing wells and would be reused as many times as practical. The water would be returned to its source or to another suitable point of discharge in accordance with applicable state and Federal regulations.

Construction of each compressor station would be contemporaneous with pipeline construction and would take 6 to 10 months. After site preparation and foundation excavation, the foundations for the engines and building would be poured. Construction would be scheduled so that the compressor engines could be installed before any significant work began on the building to house it. Following engine installation, the building and the rest of the station would be completed.

Construction of the Mojave Pipeline Project would be within or near:

Fort Mohave Indian Reservation (AR)
Havasu National Wildlife Refuge (AR)
Edwards Air Force Base (CA)
California Desert Conservation Area (CA)
Pacific Crest National Scenic Trail (CA)
Elk Hills Naval Petroleum Reserve (CA)

Construction of the Kern River Project would be within or near:

Uinta National Forest (UT)
Manti-La Sal National Forest (UT)
Fishlake National Forest (UT)
Dixie National Forest (UT)
Moapa River Indian Reservation (NV)
Jean Off-Road-Vehicle Recreation Area (NV)
Sunrise Mountain Natural Area (NV)
Rainbow Gardens Natural Area (NV)
California Desert Conservation Area (CA)
East Mojave National Scenic Area (CA)
Edwards Air Force Base (CA)
Pacific Crest National Scenic Trail (CA)
Elk Hills Naval Petroleum Reserve (CA)

Cooperating Agencies

The following Federal agencies are being formally requested under separate cover to indicate whether they wish to be cooperating agencies in production of the EIS:

Advisory Council on Historic Preservation
Department of Agriculture:
Soil Conservation Service
U.S. Forest Service
Department of Commerce:
National Oceanic and Atmospheric Administration
Department of Defense:
Department of the Air Force
Department of the Army
Department of the Navy
U.S. Marine Corps
Corps of Engineers
Department of Energy
Department of the Interior:
U.S. Fish and Wildlife Service
U.S. Geological Survey
Bureau of Indian Affairs
National Park Service
Bureau of Reclamation
Bureau of Land Management[6]
Department of Transportation:
Federal Highway Administration
Federal Railroad Administration
Environmental Protection Agency
Interstate Commerce Commission.

Any other agencies desiring cooperating agency status should send a request describing how they would like to be involved to:

Kenneth F. Plumb, Secretary,
Federal Energy Regulatory Commission,
825 North Capitol Street, NE.,
Washington, DC. 20426

The request should reference the above dockets and should be received by October 11, 1985. Additional information, including maps of limited areas of the proposed routes, about these projects and FERC's involvement in the EIS/EIR may be obtained from Mr. Robert K. Arvedlund, Environmental Evaluation Branch, OPPR, at the address on the previous page or by telephone: (202) 357-9043. Mr. Arvedlund should be sent a copy of any request for cooperating agency status.

Cooperating agencies are encouraged to participate in the scoping process and to provide information to the lead agencies. Cooperating agencies are also welcome to suggest format and content modifications to facilitate ultimate adoption of the EIS; however, the lead agencies will decide what modifications will be adopted in light of production constraints.

Information concerning the involvement of the SLC in the EIS/EIR may be obtained from Ms. Mary Griggs, 1807 13th Street, Sacramento, California 95814, telephone (916) 322-0354. As of this notice the FERC is aware that the BLM will be a cooperating agency. The BLM contact for the environmental analysis of these projects is Mr. Bill Haigh, California Desert District, 1695 Spruce Street, Riverside, California 92507, telephone (714) 351-6428.

Comment and Scoping Procedure

The FERC and the SLC intend to prepare an EIS/EIR for these projects under the overall title: *Natural Gas for EOR In Southern California.* The scope and geographic diversity of the competing proposals would make a single volume EIS unwieldy. It is currently anticipated that separate volumes will be prepared for the Mojave and El Dorado [7] Pipeline Projects, and the Kern River Project. A comparative analysis and discussion for the environmental considerations of the three proposals will also be prepared in a separate volume.

A copy of this notice has been distributed to Federal, state, and local agencies, public interest groups, and parties to the FERC and any SLC proceedings. Interested readers of this notice are encouraged to comment on anticipated environmental concerns associated with the projects. Comments will be used by the FERC and the SLC to identify the issues which require in-depth environmental analysis.

Comments (on the scope of the EIS/EIR) should also be addressed to the Secretary, Federal Energy Regulatory Commission. Recommendations that the EIS address specific issues should be supported with a detailed explanation of the need to consider such issues. Written comments should be submitted by October 11, 1985, and referenced to Docket Nos. CP85-437-000, and CP85-552-000.

Joint scoping meetings will be conducted by the FERC and the SLC. At present, joint scoping meetings are planned for Heber City, Utah; Las Vegas, Nevada; and Barstow and Bakersfield, California. The dates, locations, and format of the meetings will be identified in a subsequent **Federal Register** notice. Commenters are encouraged to nominate potential scoping meeting locations.

[6] BLM has agreed to be a cooperating agency.

[7] This assumes that the El Dorado Pipeline Project is filed in a timely manner.

Mailing Lists

Organizations and individuals receiving this Federal notice of intent to prepare an EIS have been selected to ensure public awareness of these projects and public involvment in the review process under both NEPA and CEQA. The EIS will be sent automatically to addressees on the Federal Energy Regulatory Commission's official service list for these projects, the California State Lands Commission's mailing list, and to the appropriate Federal agencies, and state clearing houses in states where each project is located. However, to reduce printing and mailing costs and related logistical problems, the EIS's will only be distributed to those other organizations, local agencies and individuals who specifically make a request, preferably within 90 days of the date of this notice. These requests should indicate whether you wish to receive (1) Kern River EIS Volume, (2) Mojave/El Dorado EIS Volume, (3) Comparative Analysis Volume, or (4) All of the above. These requests should be sent, along with your mailing address to: ATTN: Robert K. Arvedlund, Room 7102, Office of Pipeline and Producer Regulation, Environmental Evaluation Branch, Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20119 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 7004-001, 8841-000, 8848-000, 9032-000, 9071-000]

City of Rock Falls, et al.; Availability of Environmental Assessment and Finding of No Significant Impact

August 19, 1985.

In accordance with the National Environmental Policy Act of 1969, the Office of Hydropower Licensing, Federal Energy Regulatory Commission (Commission), has reviewed the applications for exemption from licensing listed below and has assessed the environmental impacts of the proposed developments.

EXEMPTIONS

Project No.	Project name	State	Water body	Nearest town	Applicant
7004-001	Upper Sterling Dam	IL	Rock River	Rock Falls	City of Rock Falls.
8841-000	Otter Creek	NY	Otter Creek	Glenfield	W. Kruger & M. Preston.
8848-000	Sawyer Mills Dam	NH	Bellamy River	Dover	Sawyer-Bellamy Mill Associates.
9032-000	Bell	CA	Fiddler Green Canal	Auburn	Swiss-American Company.
9071-000	Santa Rosa Valley	CA	Calleguas Municipal Water District.	Thousand Oaks	Calleguas Municipal Water District.

Environmental assessments (EA's) were prepared for the above proposed projects. Based on independent analyses of the above actions as set forth in the EA's, the Commissioner's staff concludes that these projects would not have significant effects on the quality of the human environment. Therefore, environment impact statements will not be prepared.

Copies of the EA's are available for review in the Commission's Division of Public Information, Room 1000, 825 North Capitol Street NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20216 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CS85-63-000 et al.]

Craig, Ltd., a Texas Limited Partnership; Applications for "Small Producer" Certificates [1]

August 16, 1985.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7(c) of the Natural Gas Act and § 157.40 of the Regulations thereunder for a "small producer" certificate of public convenience and necessity authorizing the sale for resale and delivery of natural gas in interstate commerce, all as more fully set forth in the applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make protest with reference to said applications should on or before September 3, 1935, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No.	Date filed	Applicant
CS85-63-000	[1] 7/16/85	Craig, Ltd., a Texas Limited Partnership, P.O. Box 1351, Midland, Texas 79702.
CS85-73-000	8/3/85	American International Energy Corporation, 5701 Woodway, Suite 333, Houston, Texas 77057.
CS85-87-000	8/24/85	Domain Exploration Company, 2414 Fourth Natl. Bank Bldg., Tulsa, Okla. 74119.
CS85-91-000	7/11/85	Silverridge Corporation, 302 Pointer Trail West, Van Buren, Arkansas 72956.
CS85-92-000	7/16/85	Thomas C. Mueller, P.O. Box 3738, Fort Smith, Arkansas 72913.
CS85-93-000	8/1/85	Bynum Oil Company, Inc., et al., 525 Western United Life Bldg., Midland, Texas 79701.
CS85-94-000	8/7/85	M.O. Rife, III Trust A and M.O. Rife, Jr., P.O. Box 9437, Forth Worth, Texas 76107.
CS77-76-001	[2] 7/29/85	The Elizabeth H. White Family Trust, Linda Payne, Trustee, and beneficiaries of that Trust, Linda Payne, Janet Rader, Kenyon Girard Rader & Darcy Lee Rader (Mrs. Elizabeth H. White) 3969 Davila Street, Dallas, Texas 75220.
CS85-77-000	6/7/85	Meadowbrook Oil Corporation of Oklahoma, Inc., 3612 South Epperly Drive, Del City, Okla. 73115.
CS85-88-000	7/5/85	Tolex Energies, Inc., 1010 Mid America Tower, 20 North Broadway, Oklahoma City, Okla. 73102.
CS85-89-000	7/8/85	Challenger Minerals Inc., 12707 N. Freeway, Suite 500, Houston, Texas 77060.
CS85-90-000	7/11/85	Russell T. Lund Oil Trust, 1450 West Lake Street, Minneapolis, Minn. 55408.

[1] Letter dated 7-19-85, requesting that Applicant's small producer certificate issued in Docket No. CS85-63-000 be redesignated under the name of Craig, Ltd.

[2] Amending small producer certificate in Docket No. CS77-76, by *deleting* Mrs. Elizabeth H. White and *adding* The Elizabeth H. White Family Trust, Linda Payne, Janet Rader, Kenyon Girard Rader and Darcy Lee Rader.

[FR Doc. 85-20222 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

[Docket No. G-20213-000 et al.]

Fina Oil & Chemical Co.; Motion To Amend Certificates, Temporary Authorization and Redesignated on Rate Schedules

August 19, 1985.

Take notice that on August 5, 1985, Fina Oil and Chemical Company of P.O. Box 2159, Dallas, Texas 75221, pursuant to the provisions of the Natural Gas Act as amended and the Rules and Regulations of the Commission, moved the Commission to amend the proceedings under the docket numbers shown in Exhibit "A" attached hereto, the applications for and certificates of public convenience and necessity as they or any of them have been supplemented or amended, and such temporary authorizations as may have been issued under the said docketed proceedings, by deleting therefrom the name American Petrofina Company of Texas (APCOT) and by substituting therefor the name Fina Oil and Chemical Company (Fina), as provided hereinafter so that the latter shall succeed to and be possessed of those rights, privileges, obligations and responsibilities heretofore had in said proceedings by APCOT, just as if Fina had been the original parties to said proceedings and had appeared throughout these proceedings wherever and whenever the name APCOT appears therein.

By action of the Board of Directors of American Petrofina Company of Texas taken on June 4, 1985 Article First of the certificate of incorporation of the Company was amended by changing the name of the company to Fina Oil and Chemical Company. Such Amendment was to be effective July 1, 1985. As a result of such name change Fina succeeded to APCOT's position and its rights and obligations under the certificates in the docket proceeding shown on Exhibit "A" attached hereto.

Fina further respectfully requests as a result of the above corporate action that the respective rate schedules of American Petrofina Company of Texas as shown in Exhibit "A" attached hereto, be redesignated as rate schedules of Fina, who adopts same in all respects.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

EXHIBIT A

Rate schedule No.	Docket No.	Purchaser
6	G-20213	Tennessee Gas Pipe Line.
7	G-10312	Texas Eastern Transmission.
9	2945	Columbia Gas Co.
11	7396	United Gas Pipe Line Co.
16	G-11506	El Paso Natural Gas Co.
17	G-14614	Northwest Pipeline.
18	G-14548	El Paso Natural Gas Co.
19	G-14548	Do.
20	G-11506	Do.
21	CI62-771	Do.
22	G-11506	Do.
23	G-11506	Do.
24	G-11506	Do.
25	G-11506	Do.
26	CI69-359	Do.
27	G-18628	Valero Interstate Transmission.
28	CI60-134	Do.
30	CI61-672	Trunkline Gas Co.
32	CI62-635	El Paso Natural Gas Co.
33	CI60-60	Texas Eastern Transmission.
34	G-8003	El Paso Natural Gas Co.
35	CI60-249	Do.
36	CI60-51	Do.
39	CI62-175	Do.
40	CI63-1143	Texas Eastern Transmission.
41	CI54-861	Northwest Pipeline.
42	CI65-36	Do.
43	CI65-177	Transwestern.
44	G-14611	Texas Eastern Transmission.
46	CI66-357	Northwest Pipeline.
47	G-19246	Texas Gas Transmission Corp.
48	CI62-489	Transcontinental Gas Pipe Line Co.
51	CI60-484	Texas Gas Transmission Corp.
52	CI61-519	Tennessee Gas Pipe Line.
53	CI61-1106	Northwest Central Pipe Line Corp.
54	CI61-1107	Zenith Natural Gas Co.
56	CI61-1109	Northwest Central Pipe Line Corp.
57	CI61-1110	Do.
59	CI61-1566	United Gas Pipe Line Co.
60	CI63-369	Tennessee Gas Pipe Line.
63	G2947	Texas Eastern Transmission.
66	CI66-1097	Arkansas-Louisiana Pipeline.
67	G-19191	Columbia Gas Co.
68	CI65-28	Do.
69	CI66-285	El Paso Natural Gas Co.
70	CI64-1351	Phillips Petroleum Co.
72	CI68-1169	Tennessee Gas Pipe Line.
73	CI68-1307	Northern Natural Gas Co.
74	CI68-1383	El Paso Natural Gas Co.
77	CI72-585	Tennessee Gas Pipe Line.
78	CI72-239	El Paso Natural Gas Co.
79	CI72-815	ANR Pipeline.
80	CI72-819	El Paso Natural Gas Co.
81	CI72-860	Do.
83	CI66-1059	Southern Natural Gas Co.
84	CI66-1066	Texas Gas Transmission Corp.
85	CI66-1070	Do.
86	CI66-1068	Do.
87	CI66-1060	Southern Natural Gas Co.
88	CI66-1056	Texas Eastern Transmission.
89	CI66-1057	Tennessee Gas Pipe Line.
90	CI66-1058	Do.
91	CI70-249	Panhandle Eastern.
92	CI70-225	Do.
93	CI75-39	Transcontinental Gas Pipe Line Co.
94	CI75-29	Tennessee Gas Pipe Line.
95	CI75-51	Do.
96	CI75-58	United Gas Pipe Line Co.
97	CI75-60	Do.
100	CI75-216	Northern Natural Gas Co.
101	CI74-634	Panhandle Eastern.
102	CI75-384	El Paso Natural Gas Co.
103	CI75-338	Transcontinental Gas Pipe Line Co.
104	CI75-154	ANR Pipeline.
105	CI74-220	Natural Gas Co.
106	CI76-825	United Gas Pipe Line Co.
107	CI76-748	El Paso Natural Gas Co.
108	CI77-176	Tennessee Gas Transmission Corp.
109	CI77-548	Northern Natural Gas Co.
110	CI77-572	Do.
111	CI77-648	Do.
112	CI77-687	Do.
113	CI77-808	Do.
114	CI78-169	Do.
115	CI78-581	Natural Gas Co.
116	CI78-815	United Gas Pipe Line Co.
117	CI78-781	Northern Natural Gas Co.
118	CI75-778	Transco Gas Supply Co.
119	CI78-897	Valero Interstate Transmission Co.
121	CI60-161	El Paso Natural Gas Co.
122	CI81-111	United Gas Pipe Line Co.
123	CI81-324	Kansas-Nebraska Gas Co.
124	CI83-3400	Valero Interstate Transmission.

[FR Doc. 85-20217 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER85-582-000]

Gulf States Utilities Co.; Order Accepting for Filing and Suspending Rates, Noting Interventions, Granting Waiver, and Establishing Hearing Procedures

Issued: August 16, 1985.

Before Commissioners: Raymond J. O'Connor, Chairman; A.G. Sousa and Charles G. Stalon.

On June 19, 1985, Gulf States Utilities Company (GSU) submitted a petition for waiver of § 35.14 of the Commission's regulations (18 CFR 35.14), together with a proposed modification of the fuel cost and purchased economic power adjustment clause (FAC) contained in its firm power rates to fourteen wholesale customers.[1] Specifically, GSU requests that the FAC charges collected from its wholesale customers be determined as though energy provided by facilities undergoing test operations is not available to GSU for supply to such customers. GSU notes that it is presently preparing for test operations of the 940 MW River Bend Nuclear Unit No. 1 (River Bend).[2] River Bend is expected to

[1] *See* Attachment for rate schedule designations.

[2] GSU has a 70% ownership interest in River Bend.

begin an estimated four month testing period prior to its anticipated commercial service date in December 1985. Gulf States estimates that during the testing period its ownership share in the station will provide output of about 922 million kWh.

Since the output of River Bend would become part of the energy supply to GSU's system, the fuel consumption of GSU's other generating units and purchased power costs would be reduced substantially.[3] GSU contends that the savings due to test energy should not automatically flow through the FAC to wholesale customers since only a small portion of River Bend's carrying costs have been collected from its customers to date.[4] Additionally, GSU asserts that using the fair value of test energy to offset the cost of construction of River Bend will achieve rate continuity and is consistent with the Uniform System of Accounts, Electric Plant Instructions, section 3, Paragraph 18 (18 CFR 101).

Under the proposed FAC, GSU proposes to value the test energy at an amount equal to the displacement cost of fuel, *i.e.*, fuel costs related to energy generated or economic power costs which would be incurred to replace the test energy if that test energy had not been available to serve its load.[5] The reconstruction of costs will be performed for each hour during the month, and pro forma system generation and purchases will be determined to reflect the situation that would have existed without the test energy. GSU states that the method for calculating fair value will be easy to audit and verify. The company proposes an effective date of August 19, 1985.

Notice of the company's filing was published in the **Federal Register**,[6] with comments due on or before July 11, 1985.

On July 11, 1985, a timely motion to intervene was filed jointly by Sam Rayurn Municipal Power Agency (SRMPA), Sam Rayburn Dam Electric Cooperative, Inc. (SRDEC), and the City of College Station, Texas (College Station). While requesting intervenor status, they do not raise any substantive issues in their pleading. In addition, a timely motion to intervene was filed by Sam Rayburn G&T, Inc. (Sam Rayburn). Sam Rayburn requests that the Commission reject the proposed modification of GSU's fuel clause. In support, it states that, over the past twelve months, Sam Rayburn has experienced a 55.6% increase in rates due to GSU's rate increase in Docket No. ER84–568–000 and the expiration of the company's low cost natural gas contract with Exxon. Sam Rayburn contends that rejection would provide ratepayers some relief from the enormous rate shock being experienced, and that such a denial would be a proper exercise of the Commission's discretion of balancing equitable considerations.

Discussion

Under Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 365.214), the timely motions to intervene serve to make Sam Rayburn, SRMPA, SRDEC, and College Station parties to this proceeding.

With respect to GSU's proposed treatment of test energy in its fuel adjustment clauses, we have previously accepted several similar applications. In *Pennsylvania Power and Light Co.*, (*PP&L*) Opinion No. 176, 23 FERC ¶ 61,395 (1983), we granted the company's request for waiver and approved the modifications to its fuel adjustment clauses. In that case, we found that, absent waiver of the fuel clause regulations, current ratepayers would receive the benefits of the test energy in the form of decreased fuel costs. Future ratepayers would, however, incur all the costs associated with the test energy through higher rates which result from inclusion of such cost in the CWIP account and ultimately in rate base. We concluded that, by allowing waiver of the regulations and crediting the fair value of test energy to the plant account, future ratepayers who ultimately bear the costs associated with the facility undergoing testing will receive benefits through lower rates. This ratemaking treatment would, the Commission determined, avoid problems of intergenerational inequity.

In this proceeding, since GSU's wholesale customers have not been paying for the total carrying costs associated with the River Bend Unit 1 CWIP, some retention of test energy savings by GSU is appropriate. Unlike *PP&L*, however, retention of all the benefits by GSU is, we believe, inappropriate. The company's present rates became effective September 30, 1984 and include CWIP associated with River Bend. Thus, GSU's wholesale customers have been paying rates to compensate the company for some of its carrying costs associated with River Bend. In *PP&L*, however, the customers had not contributed to any of the fixed costs of the facility undergoing testing. GSU's wholesale customers should receive credit for a portion of the test energy generated by the plant. Accordingly, we shall grant waiver of § 35.14 of the regulations, accept GSU's proposed modification to its FAC's for filing, and set for hearing the question of what portion of the savings should be passed on to the wholesale customers.

Our review of the company's filing indicates that the rates have not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. Accordingly, we shall accept the rates for filing and suspend them as ordered below.

In *West Texas Utilities Co.*, 18 FERC ¶ 61,189 (1982), we explained that where our preliminary examination indicates that the proposed rates may be unjust and unreasonable, but may not be substantially excessive, as defined in *West Texas*, we would generally impose a minimal suspension. Here our examination suggests that the proposed rates may not yield substantially excessive revenues. Further, since maximum suspension would extend the effectiveness of the fuel adjustments beyond the testing stage and result in the company retaining more of the benefits of test energy, we find that minimal suspension is appropriate. Accordingly, we shall accept GSU's proposed fuel adjustment clauses for filing and suspend them for one day, to become effective on August 20, 1985, subject to refund.[7]

Finally, we note that the rate schedules submitted by GSU reflect the settlement rates submitted in Docket No. ER84–568–000. Because the Commission has not yet acted upon the settlement, we shall accept GSU's proposed fuel clauses subject to the outcome of our determination in Docket No. ER84–568–000.

The Commission Orders

(A) GSU's request for waiver of § 35.14 of the Commission's regulations is hereby granted.

(B) GSU is hereby ordered to file within thirty (30) days of the date of this order or the end of testing of River Bend, whichever is later, the accounting entries made to effect its treatment of test power, including a detailed explanation of the derivation of all figures.

[3] GSU estimates that the reduction in energy costs during the testing of River Bend will be approximately $8.4 million.

[4] GSU asserts that its present rates being collected subject to refund (in Docket No. ER84–568–000) since September 30, 1984, included only about sixteen percent of construction work in progress (CWIP) related to River Bend.

[5] The determined fair value of test energy is to be credited to the investment in River Bend.

[6] 50 FR 27337 (1985).

[7] *Accord, Kansas Gas and Electric Co.*, 32 FERC ¶ 61,083 (1985).

(C) GSU's proposed fuel clauses are hereby accepted for filing and suspended for one day, to become effective on August 20, 1985, subject to refund, and further, subject to the outcome of the Commission's action in Docket No. ER84-568-000.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 CFR Chapter I), a public hearing shall be held concerning the justness and reasonableness of GSU's proposed fuel clauses.

(E) A presiding administrative law judge, to be designated by the Chief Administrative Law Judge, shall convene a conference in this proceeding to be held within approximately fifteen (15) days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(F) Subdocket -000 of Docket No. ER85-582-000 is hereby terminated. The evidentiary proceeding established herein is designated as Docket No. ER85-582-001.

(G) The Secretary shall promptly publish this order in the **Federal Register.**

By the Commission.

Kenneth F. Plumb,

Secretary.

ATTACHMENT.—GULF STATES UTILITIES COMPANY, RATE SCHEDULE DESIGNATIONS, DOCKET NO. ER85-582-000

Designation	Description
(1) Supplement No. 18 to Rate Schedule FERC No. 110 (Supersedes Supplement No. 17).	WSD Rates with test energy clause to Kirbyville Light and Power Company.
(2) Supplement No. 12 to Rate Schedule FERC No. 112 (Supersedes Supplement No. 11).	WSD Rates with test energy clause to the City of Caldwell.
(3) Supplement No. 13 to Rate Schedule FERC No. 115 (Supersedes Supplement No. 12).	WSD Rates with test energy clause to the City of Newton.
(4) Supplement No. 19 to Rate Schedule FERC No. 126 (Supersedes Supplement No. 17).	WSD Rates with test energy clause to Brazos Electric Power Coop.

ATTACHMENT.—GULF STATES UTILITIES COMPANY, RATE SCHEDULE DESIGNATIONS, DOCKET NO. ER85-582-000—Continued

Designation	Description
(5) Supplement No. 22 to Rate Schedule FERC No. 128 (Supersedes Supplement No. 21).	WSD Rates with test energy clause to Cajun Electric Power Coop.
(6) Supplement No. 12 to Rate Schedule FERC No. 129 (Supersedes Supplement No. 11).	WSD Rates with test energy clause to Sam Rayburn Dam Electric Coop.
(7) Supplement No. 18 to Rate Schedule FERC No. 114 (Supersedes Supplement No. 17).	WST Rates with test energy clause to the Town of Welsh.
(8) Supplement No. 10 to Rate Schedule FERC No. 123 (Supersedes Supplement No. 9).	WST Rates with test energy clause to the City of College Station.
(9) Supplement No. 20 to Rate Schedule FERC No. 126 (Supersedes Supplement No. 18).	WST Rates with test energy clause to Brazos Electric Power Coop.
(10) Supplement No. 12 to Rate Schedule FERC No. 127 (Supersedes Supplement No. 11).	WST Rates with test energy clause to the Town of Rayne.
(11) Supplement No. 7 to Supplement No. 4 to Rate Schedule FERC No. 129 (Supersedes Supplement No. 6 to Supplement No. 4).	WST Rates with test energy clause to Sam Rayburn Dam Electric Power Coop.
(12) Supplement No. 7 to Rate Schedule FERC No.139 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the Town of Abbeville.
(13) Supplement No. 19 to Rate Schedule FERC No. 118 (Supersedes Supplement No. 17).	WST Rates with test energy clause to the Town of St. Martinville.
(14) Supplement No. 7 to Rate Schedule FERC No. 142 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the City of Gueydan.
(15) Supplement No. 7 to Rate Schedule FERC No. 143 (Supersedes Supplement No. 6).	WST Rates with test energy clause to the Town of Kaplan.
(16) Supplement No. 7 to Rate Schedule FERC No. 144 (Supersedes Supplement No. 6).	WST Rate with test energy clause to the City of Erath.

[FR Doc. 85-20218 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3083-005]

KAMO Electric Cooperative Inc. and Oklahoma Municipal Power Authority; Application for Partial Transfer of License (Major)

August 20, 1985.

Take notice that KAMO Electric Cooperative Inc., Licensee for the unconstructed Kaw Dam Project No. 3083, and Oklahoma Municipal Power Authority have requested that the project license be partially transferred to Oklahoma Municipal Power Authority. KAMO Electric Cooperative Inc. proposes to sell part of its ownership in the project to Oklahoma Municipal Power Authority so that the two entities would become co-owners of the project. The Kaw Dam project would be located at the U.S. Army Corps of Engineers' Kaw Dam on the Arkansas River in Kay County, Oklahoma. The licensed installed capacity of the project is 37 MW.

Comments, Protests, or Motion to Intervene—Anyone may file comments, a protest, or a motion to intervene in accordance with the requirements of Rules 211 or 214, 18 CFR 385.211 or 385.214, 47 FR 19025-28 (1982). In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be filed on or before September 30, 1985.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", of "MOTION TO INTERVENE", as applicable, and the Project Number of this notice. Any of the above named documents must be filed by providing the original and those copies required by the Commission's regulations to: Kenneth F. Plumb, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, D.C. 20426.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20219 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. G-15791-002 et al.]

Applications for Certificates, Abandonments of Service and Petitions to Amend Certificates; [1] Sun Exploration & Production Co., et al.

August 19, 1985.

Take notice that each of the Applicants listed herein has filed an application or petition pursuant to section 7 of the Natural Gas Act for authorization to sell natural gas in interstate commerce or to abandon service as described herein, all as more fully described in the respective applications and amendments which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, petitions to intervene or protests in accordance with the requirements of the Commission's

[1] This notice does not provide for consolidation for hearing of the several matters covered herein.

Rules of Practice and Procedure (18 CFR 385.211, .214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file petitions to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

Docket No. and date filed	Applicant	Purchaser and location	Price per Mcf	Pressure base
G-15791-002, D, July 18, 1985	Sun Exploration & Production Co., P.O. Box 2880, Dallas, Texas, 75221-2880.		[1]Transwestern Pipeline Company, Hugoton-Anadarko Area Field, Various Counties in Texas and Oklahoma.	
G-17554-000, D, Aug. 5, 1985	Conoco Inc., P.O. Box 2197, Houston, Texas 77252	Texas Gas Transmission Corporation Bayou Pigeon Field, Iberia Parish, Louisiana.	[2]	
G-18236-000, D, Aug. 8, 1985	Cities Service Oil & Gas Corp., P.O. Box 300, Tulsa, Okla. 74102.	Transwestern Pipeline Company Walton Gas Unit No. 1 well, N½ NE¼ Sec. 31-1-25E, Beaver County, Oklahoma.	[3]	
CI60-691-002, D, July 24, 1985	Conoco Inc	Panhandle Eastern Pipe Line Company, Northwest Avard & Various other Fields, Alfalfa, Dewey, Major and Woods Counties, Oklahoma.	[4]	
CI61-1425-000, D, Aug. 9, 1985	Sun Exploration & Production Co	El Paso Natural Gas Company, Jalmat Field, Lea County, New Mexico.	[5]	
CI65-1355-002, D, July 29, 1985	Mobil Producing Texas & New Mexico Inc., Nine Greenway Plaza—Suite 2700, Houston, Texas 77046.	El Paso Natural Gas Company, Coyanosa, Waha, Worsham-Bayer Fields, Pecos and Reeves Counties, Texas.	[6]	
CI67-152-004, D, July 22, 1985	Sun Exploration & Production Co	Panhandle Eastern Pipe Line Company, South Peek Field, Ellis County, Oklahoma.	[7]	
CI75-543-000, F, Aug. 8, 1985	Monsanto Oil Company (Succ. in Interest to Partnership Properties Company), 1300 Post Oak Tower, 5051 Westheimer, Houston, Texas 77056.	K-N Energy, Inc., Certain acreage located in Fremont County, Wyoming.	[8]	14.73
CI83-179-001, C, July 26, 1985	Amoco Production Company, P.O. Box 50879, New Orleans, La. 70150.	Amoco Gas Company, Matagorda Island Block 623, Offshore Texas.	[9]	14.73
CI84-396-002, July 25, 1985	Sohio Petroleum Company, P.O. Box 4587, Houston, Texas 77210.	Texas Eastern Transmission Corporation, Eugene Island 330, Offshore Louisiana.	[10]	14.73
CI85-597-000, E, July 26, 1985	Empire Exploration, Inc. (Succ. to National Fuel Gas Supply Corp.), 10 Lafayette Square, Buffalo, N.Y. 14203.	National Fuel Gas Supply Corp., Various field locations in New York and Pennsylvania.	[11]	14.73
CI85-599-000 (CI71-799), B, July 29, 1985.	The Superior Oil Company, Nine Greenway Plaza, Suite 2700, Houston, Texas 77046.	United Gas Pipe Line Company, Lake Tom Field, Iberia Parish, Louisiana.	[12]	
CI85-604-000 (CI80-163), B, Aug. 5, 1985.	Geo. Oil and Gas Company of Houston, P.O. Box 2511, Houston, Texas 77001.	Northwest Pipeline Corporation, South Canyon Field, Garfield County, Colorado.	[13]	
CI85-605-000, B, Aug. 6, 1985	Bogert Oil Company, 2601 N.W. Expressway, 1000W Oklahoma City, Okla, 73112.	Arkansas Louisiana Gas Company, Southwest Lacy Field J.O. Brown #1, SW NE of Sec. 29-18N-10W, Blaine County, Oklahoma.	[14]	
CI85-609-000, A, Aug. 8, 1985	CNG Producing Company, Suite 3100, Canal Place One, New Orleans, La. 70130.	Consolidated Gas Transmission Corporation Eugene Island Block 314, Offshore, Louisiana.	[15]	14.73
CI85-610-000, B, Aug. 8, 1985	Union Texas Petroleum Company, P.O. Box 2120, Houston, Texas 77252.	Transwestern Pipeline Company, North Avalon Field, Eddy County, New Mexico.	[16]	
CI85-611-000, F, Aug. 8, 1985	Monsanto Oil Company (Succ. in Interest to Petro-Lewis Funds, Inc.) 1300 Post Oak Tower, 5052 Westheimer, Houston, Texas 77056.	K-N Energy, Inc., Acreage located within the Madden Unit Lower Fort Union Participating Area, Fremont County, Wyoming.	[17]	14.73
CI85-612-000, B, Aug. 9, 1985	Tonkawa Gas Processing Company, First City Center, LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Panhandle Eastern Pipe Line Company, Speakman #1, Sec. 8, Twp. 5N, Range 9ECM, Cimarron County, Oklahoma.	[18]	
CI85-613-000, B, Aug. 13, 1985	TXO Production Corp., First City Center LB 10, 1700 Pacific Avenue, Dallas, Texas 75201-4696.	Northern Natural Gas Company, Barby No. 1 Well, Sec. 28-T4N-R26, Beaver County, Oklahoma.	[19]	
CI85-614-000, B, Aug. 12, 1985	do	Northern Natural Gas Company, Menager #1 well, Sec. 27-T5N-R27 ECM, Beaver County, Oklahoma.	[19]	
CI85-615-000, B, Aug. 12, 1985	do	Northwest Central Pipeline Corporation, McQuigg A No. 1 well, Sec. 12-T17N-R26W, Ellis County, Oklahoma.	[19]	
CI85-616-000, B, Aug. 12, 1985	do	Northwest Central Pipeline Corporation, Haight No. 1 well, Sec. 35-T5N-R22 ECM, Beaver County, Oklahoma.	[19]	

[1] Partial Assignment and Bill of Sale of Kirk Gas Unit No. 1 to Vernon E. Faulconer.
[2] Lease expired 8-14-77.
[3] Compression facilities are required for the subject well to deliver gas into the purchaser's line, and since neither Buyer nor Seller desires to compress the gas, such well has been released from the subject contract.
[4] Part of the acreage subject to R.S. No. 202 has expired or been assigned.
[5] Assignment of E.E. Jack lease No. T20212 to Doyle Hartman.
[6] Gas to be used for injection into a cycling project.
[7] Partial Assignment and Bill of Sale of J.W. Berryman Unit to Oilsearch Corp.
[8] By Assignment dated 12-26-84, but effective 10-1-84, PPCo., *et al.*, assigned their undivided interest in said acreage to Monsanto.
[9] Applicant is filing to add dedication by Contract Amendment dated 5-1-85.
[10] Applicant is filing for an additional delivery point.
[11] Effective date of transfer of ownership: 12-1-84. Proposed effective date of assignment: 12-1-84. Empire Exploration, Inc. requests that the certificate issued to it be made effective 10-1-85.
[12] The 2 wells committed have been plugged and abandoned.
[13] Sale of dedicated properties to Quinoco Petroleum, Inc. on 1-1-84.
[14] Uneconomical.
[15] Applicant is filing under Gas Purchase Contract dated 7-22-85.
[16] No gas has been delivered from the leases dedicated to this contract since November 1983.
[17] By Assignment effective 10-1-84, Petro-Lewis Funds, Inc., *et al.*, assigned their undivided interest in said acreage to Monsanto.
[18] Depleted.

Filing Code: A—Initial Service; B—Abandonment; C—Amendment to add acreage; D—Amendment to delete acreage; E—Total Succession; F—Partial Succession.

[FR Doc. 85-20220 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CI85-606-000]

Application for Blanket Limited Term Certificate and Limited Partial Abandonment Authorization; Texas Eastern Gas Trading Co.

August 16, 1985.

Take notice that on August 8, 1985, Texas Eastern Gas Trading Company, ("GTC"), P.O. Box 2521, One Houston Center, Houston, Texas 77252, filed an application pursuant to sections 4 and 7 of the Natural Gas Act, 15 U.S.C. 717c, 717f, and the provisions of 18 CFR Part 157, for a blanket limited-term certificate of public convenience and necessity authorizing GTC to conduct a short-term spot sales marketing program, hereinafter referred to as TEEM, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Approval would (1) authorize the sale of natural gas for resale in interstate commerce; (2) permit limited-term, partial abandonment of certain natural gas sales; (3) confer pre-granted abandonment authorization for sales of natural gas made pursuant to the requested certificate; (4) authorize transportation of natural gas by interstate pipeline companies able and willing to participate in the TEEM Program; and (5) confer pre-granted abandonment authorization for the transportation service allowed under the requested certificate. GTC also requests the Commission to declare that, with respect to GTC and its activities, the Commission will only assert Natural Gas Act ("NGA") jurisdiction over sales for resale and transportation not otherwise exempt from the NGA.

Under the TEEM Program, GTC proposes to sell natural gas qualifying for the sections 102, 103, 107, and 108 rates under the Natural Gas Policy Act of 1978 (NGPA), 15 U.S.C. 3301-3432. Only contractually committed gas will be sold. GTC and participating producers will seek temporary releases of gas from the purchasers in order to meet market demand for natural gas sales. Releasing purchasers will be absolved from take-or-pay liability for any volumes of gas released and sold under the program. Arrangements for transporting the released gas will be made on a case-by-case basis.

Any person desiring to be heard or to make any protest with reference to said application should on or before September 3, 1985, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Persons wishing to become parties to a proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Under the procedure herein provided for, unless Applicant is otherwise advised, it will be unnecessary for Applicant to appear to be represented at the hearing.

Kenneth F. Plumb,

Secretary.

[FR Doc. 85-20221 Filed 8-22-85; 8:45 am]

BILLING CODE 6717-01-M

Office of Conservation and Renewable Energy

Energy Conservation Program for Consumer Products; Decision and Order Granting Waiver From Refrigerator and Refrigerator-Freezer Test Procedure to Whirlpool Corp. [Case No. RF-001]

AGENCY: Conservation and Renewable Energy Office; Energy.

ACTION: Decision and Order.

SUMMARY: Notice is given of the Decision and Order [Case No. RF-001] granting Whirlpool Corporation a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls from the existing U.S. Department of Energy refrigerator and refrigerator-freezer test procedure.

FOR FURTHER INFORMATION CONTACT:

Michael J. McCabe, U.S. Department of Energy, Office of Conservation and Renewable Energy, Mail Station CE-112.1, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20565, (202) 252-9127

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC-12, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 252-9513.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 430.27(g), notice is hereby given of the issuance of the Decision and Order set out below. In the Decision and Order, Whirlpool Corporation has been granted a waiver for its refrigerator-freezer models equipped with electronic adaptive defrost controls, permitting the company to use an alternate test method.

Issued in Washington, DC, August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

Decision and Order of the Department of Energy, Office of Conservation and Renewable Energy

In the matter of: Whirlpool Corporation; Case No.RF-001.

The Energy Conservation Program for Consumer Products was established pursuant to the Energy Policy and Conservation Act, Pub. L. 94-163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act, Pub. L. 95-619, 92 Stat. 3266, which requires the Department of Energy (DOE) to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including refrigerators and refrigerator-freezers. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchase decisions. These test procedures appear at 10 CFR Part 430, Subpart B.

The Department of Energy amended the prescribed test procedure regulations, by adding 430.27, to allow the Assistant Secretary for Conservation and Renewable Energy to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing of the basic model according to the prescribed test procedure or when the prescribed test procedure may evaluate the basic model in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparative data. 45 FR 64108 (Sept. 26, 1980).

Pursuant to 430.27(g), the Assistant Secretary shall publish in the Federal Register notice of each waiver granted, and any limiting conditions of each waiver.

On November 14, 1984, Whirlpool Corporation (Whirlpool) filed a "Petition for Waiver" with the Office of Conservation and Renewable Energy of DOE in accordance with 10 CFR 430.27. At the same time Whirlpool filed an "Application for Temporary Exception" with the Office of Hearings and Appeals (OHA) of DOE in accordance with 10 CFR 205.125. On November 30, 1984, OHA issued a Decision and Order granting Whirlpool a temporary exception from the DOE refrigerator and

refrigerator-freezer test procedure for the two models of refrigerator-freezers which use an electronic adaptive defrost control system and which are manufactured by the firm. OHA stipulated in its Decision and Order that the temporary exception relief granted shall remain in effect until the Office of Conservation and Renewable Energy of DOE issues a final Decision and Order with respect to Whirlpool's Petition for Waiver under the authority of 10 CFR 430.27 or until the close of business on August 31, 1985, whichever occurs first.

With regard to Whirlpool's Petition for Waiver, the Office of Conservation and Renewable Energy published the petition in the **Federal Register** and solicited comments, data, and information respecting the petition in conformance with the requirements of 10 CFR 430.27. 50 FR 1628 (January 11, 1985). Comments were received from two parties, both manufacturers of refrigerators and refrigerator-freezers. These comments are discussed later in this notice.

On June 10, 1985, Whirlpool submitted field test data regarding the mean time between defrosts for refrigerator-freezer units equipped with electronic adaptive defrost controls.

The Office of Conservation and Renewable Energy consulted with the Federal Trade Commission on June 28, 1985, concerning the Whirlpool petition.

Asssertions and Determinations

Whirlpool is a manufacturer of home appliances, including refrigerator-freezers. Whirlpool has developed what it terms an "electronic adaptive defrost control" (herein "ADC") for refrigerator-freezers that initiates defrost cycles in response to operating conditions and usage patterns. Whirlpool's petition requested DOE to grant Whirlpool relief from the DOE test procedure for refrigerators and refrigerator-freezers for its ADC-equipped refrigerator-freezer models on the basis that the existing test procedure yields materially inaccurate estimate of the energy consumption of such units.

Whirlpool stated that its ADC-equipped refrigerator-freezers initiate defrost on the basis of compressor run time, refrigerator and freezer door openings, and the length of the preceding defrost period. The petition cited three faults with using the current DOE test procedure for refrigerators and refrigerator-freezers to evaluate the energy consumption of ADC-equipped refrigerator-freezers.

First, the current test procedure has no provision for determining the interval between defrost cycles for ADC-equipped refrigerator-freezers which would be comparable to normal usage patterns. Second, the current test procedure would likely underestimate the actual energy consumption of such products because the low humidity conditions normally encountered within the product during the test and the lack of refrigerator and freezer compartment door openings during the test lengthens the period between defrost cycles beyond that which would be expected under normal usage conditions. Third, this lengthening of the period between defrost cycles lengthens the duration of the test to the point that is unduly burdensome to conduct.

Further, Whirlpool evaluated the applicability of two alternate test methods for ADC-equipped refrigerator-freezers and determined that neither was appropriate for use in testing units equipped with electronic adaptive defrost controls. Whirlpool contended that no acceptable alternate test procedure exists and that the development of such an alternate test procedure should await field data which reflects the actual performance of such products under varying conditions of use and operation.

Comments were received from two manufacturers of refrigerators and refrigerator-freezers, Greenville Products Company (Greenville), a Division of White Consolidated Industries, Inc., and General Electric Company (GE), in response to the publication of Whirlpool's waiver request in the **Federal Register.** Whirlpool submitted a rebuttal statement to DOE responding to the GE comments as provided by DOE's test procedure waiver regulations. The comments received and Whirlpool's rebuttal to the comments are summarized below.

Greenville commented that it supports waiving testing requirements for Whirlpool's ADC-equippped refrigerator-freezers models on the basis that the existing DOE test procedure does not provide a satisfactory means of testing units so equipped.

GE questioned whether it is possible for Whirlpool to state with confidence that the existing test procedure would mislead the public and be unfair to Whirlpool without any acceptable alternate test procedure suggested by Whirlpool. GE commented that it believes that Whirlpool has the responsibility to provide an alternate test procedure, based on current knowledge, which provides the most reasonable results of energy consumption for a representative average use cycle. GE observes that the determination of the time between defrost cycles seems to be the most significant problem with the existing DOE test procedure in Whirlpool's case. Since Whirlpool developed the algorithm that is built into the electronic adaptive defrost control to control the time between defrost cycles, GE suggests that Whirlpool could insert into the algorithm typical values of door openings and compressor run time to determine the typical time between defrost cycles. Once this value is known, GE suggests that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure, i.e., a two part procedure which reduces test time substantially when the time between defrost cycles is long and known, can be applied to the Whirlpool ADC-equipped units to determine energy consumption.

Whirlpool resonded that it, too, believes that the provisions for testing long-time automatic defrost refrigerator-freezers can be adapted for testing its ADC-equipped units if an appropriate value for the typical time between defrost cycles can be determined. However, Whirlpool stated that GE's suggested approach of inserting "typical" values for the parameters that factor into the ADC algorithm to determine the time between defrost cycles is unworkable. Whirlpool said that sufficient field usage information is not yet available to determine typical values for all of the parameters. Whirlpool claimed that the algorithm used to determine defrost intervals is a complex function of the parameters, and includes, for example, door opening duration as well as frequency. Whirlpool submitted a copy of its patent on the ADC device to substantiate its claim regarding the complexity of the algorithm.

Whirlpool stated that it strongly believes that the only way to obtain a meaningful value for the typical time between defrost periods for its ADC-equipped refrigerator-freezers is to monitor the performance of such units in actual usage under various operating conditions in the field. Whirlpool said that it had placed a number of ADC-equipped units in the field with metering devices to measure the actual interval between defrost cycles in order to generate a data base on which to base an appropriate value for the typical time between defrost cycles. (Whirlpool provided some preliminary data on defrost cycle intervals from this field test program to DOE by letter dated June 10, 1985.)

DOE agrees with Whirlpool that the existing DOE test procedure for refrigerators and refrigerator-freezers (Appendix A1) is not appropriate for

testing ADC-equipped refrigerator-freezers since it would not yield results reflective of the expected energy consumption of such units in actual usage and would be burdensome to conduct because of the extremely long length of each test period. Information contained in Whirlpool's patent for its ADC device show that door opening frequency and duration are heavily weighted factors in determining the time between defrost periods. Whirlpool's claim appears reasonable that the time between defrost cycles of ADC-equipped units could be as long as nine days under the closed door conditions of the current DOE test procedure.

DOE agrees with Whirlpool and GE that the provisions for testing "long-time" automatic defrost refrigerator-freezers found in the existing DOE test procedure can be adapted for testing Whirlpool's ADC-equipped refrigerator-freezer models. The primary issue, as pointed out by Whirlpool and GE, is the determination of the typical time between defrost cycles. DOE consulted the National Bureau of Standards (NBS) regarding Whirlpool's waiver request since NBS performed all of the laboratory work associated with the development of the DOE test procedure for refrigerators and refrigerator-freezers. Based on its review of Whirlpool's petition, the comments received on the petition, and Whirlpool's rebuttal to these comments, NBS recommended that, should DOE act to order an alternate test procedure for Whirlpool's ADC-equipped refrigerator-freezer models, the alternate test should be the "long-time" automatic defrost test and the value for the typical time between defrost cycles for use in the alternate test should be three days (72 hours) which equates to 0.33 cycles per day. NBS arrived at its recommended value on the basis that it credits the ADC-equipped units with 80 to 90 percent of the maximum energy reduction possible. (For this estimate the maximum energy reduction possible, i.e., 100 percent energy reduction, is defined to be the condition where a defrost operation never occurs.) NBS evaluated GE's recommendation that "typical" values be substituted for the parameters that factor into the algorithm to determine a "typical" time between defrost cycles. NBS found that this approach would be workable, although complicated, if such typical values for the parameters were known but that sufficient field data is not available upon which such values can be confidently based. With regard to the approach of using estimated values for the parameters, NBS is of the opinion that the complexity of the application of the estimated parameters in the algorithm and the uncertainty associated with the outcome is such that this approach offers no advantages over directly estimating the time between defrost cycles.

DOE notes that there is a practical limit on the energy savings that can be achieved by even the most sophisticated automatic defrost control system that could be devised for a refrigerator-freezer. Based on the patent information supplied by Whirlpool, its ADC device is intended to achieve the optimal condition of initiating defrosting operations at a frequency and duration matched to the rate and amount of frost build-up while keeping the contribution of defrosting operation energy consumption to total consumption at a minimum. The Whirlpool ADC device does not respond to frost build-up directly however. Rather, it responds to indicators of frost build-up and removal. Therefore, it can trigger a defrosting operation under less than optimal conditions. Weighing these considerations, DOE finds that the NBS recommended alternate test procedure for Whirlpool's ADC device would fairly evaluate the energy consumption of Whirlpool's ADC-equipped refrigerator-freezer models.[1]

GE commented that Whirlpool failed to mention that the two models of side-by-side regfrigerator-freezers that Whirlpool has equipped with its ADC device have other features that impact energy consumption. GE identified two newly introduced consumer-actuated features that appear on the ADC-equipped models as "MAX COOL" and MAX FREEZE/ICE". GE stated that these features are part of the "SYSTEMS SENTINEL™ 11" control that is built into these units. GE remarked that the availability of these two features, which give the consumer the means to cause the unit to operate in a maximum cooling mode for fast chilling and freezing, may result in increased energy consumption for refrigerator-freezer models so equipped as a result of consumer usage of the features. GE contended that the Whirlpool petition should have addressed these features as well since they have a bearing on the energy consumption of the ADC-equipped units.

Whirlpool responded to GE's comment by saying that it did not identify the MAX COOL and MAX FREEZE/ICE features on the ADC-equipped units in its petition because they are specifically addressed by the existing DOE test procedure and properly excluded from the determination of the estimated annual energy consumption of refrigerator-freezers.

The existing DOE test procedure requires that the operational conditions of the refrigerator or refrigerator-freezer undergoing testing shall be maintained in accordance with the Association of Home Appliance Manufacturers Standard HRF-1-1979 (Section 2.2, Apendix A1, 10 CFR Part 430). This standard stipulates that features which are electrically powered, manually initiated and automatically terminated (such as customer operated dispensers, fast chill compartments, electric door openers, etc.) are to be operated at their lowest energy usage position. DOE agrees with Whirlpool that these features are properly excluded.

GE commented that Whirlpool had not provided proper identification of the models of refrigerator-freezers that it wished to be covered by the test procedure waiver. Subsequently, Whirlpool identified Whirlpool model ED26SSXM and Sears model 106.85569 as the two ADC-equipped refrigerator-freezer models which it wished to be covered by the waiver. DOE uses the model numbers provided by Whirlpool in today's Decision and Order to specifically identify the ADC-equipped refrigerator-freezer to which it applies. DOE considers the use of model numbers to be appropriate in this case since there is no reason why the presence or absence of the ADC device on any particular refrigerator-Freezer model would be self evident to even an informed observer.

It is therefore ordered that:

(1) The "Petition for Waiver" filed by Whirlpool Corporation (Case No. RF-001), is hereby granted as set forth in paragraph (2) below, subject to the provision of paragraph (3) and (4).

[1] DOE notes that NBS made its recommendation regarding an alternate test procedure for Whirlpool's ADC-equipped refrigerator-freezers prior to Whirlpool's June 10, 1985, submission of field usage data for such units. The Whirlpool field test involves 23 ADC-equipped units in three parts of the country. The June 10 submission presents data covering the operation of 13 units over a 3 to 5 month period. (Whirlpool stated that instrumentation and communication problems resulted in valid data being available for only the 13 products covered by the June 10 submission.) DOE reviewed the data only to determine whether they disputed the NBS recommended value for the typical time between defrost cycles. They did not. Since the data covered only a wintertime period of operation of the ADC-equipped units, DOE did not consider it appropriate to assign very much weight to the data. DOE believes, as Whirlpool stated, that data covering one complete year of operation of several units at several geographical locations are what is needed for the derivation of a representative value for the typical time between defrost cycles.

(2) Notwithstanding any contrary provisions of Appendix A1 of 10 CFR, Part 430, Subpart B, Whirlpool Corporation shall be permitted to test Whirlpool ED26SSXM and Sears 106.85569 refrigerator-freezer models equipped with electronic adaptive defrost controls on the basis of the test procedure specified in 10 CFR, Part 430, with the modifications set forth below:

(i) Section 4.1.2 is modified by adding the following sentence at the end of the section:

If the model being tested has an electronic adaptive defrost control, the provisions of section 4.1.2.2 shall apply.

(ii) Section 4.1.2.2 is added to read:

4.1.2.2 Electronic Adaptive Defrost Control. If the model being tested has an electronic adaptive defrost control system, the test time period shall consist of two parts. The first part shall be the same as the test for a unit having no defrost provisions (section 4.1.1). The second part shall start when a defrost period is deliberately initiated during a compressor "on" cycle and shall terminate at the third turn "on" of the compressor motor after initiating the defrost period or after four hours, whichever comes first.

(iii) Section 5.1.2 is modified by adding the following sentence at the end of the section:

For models equipped with electronic adaptive defrost controls, compartment temperatures shall be those measured in the first part of the test period specified in section 4.1.2.2.

(iv) Section 5.2.1.3 is added to read:

5.2.1.3 Electronic Adaptive Defrost Control. The energy consumption in kilowatt-hours per day shall be calculated equivalent to:

$$ET = (1440 \times EP1/T1) + [(EP2 - (EP1 \times T2/T1)) \times 0.33]$$

where:

ET and 1440 are defined in 5.2.1.1.

EP1 = energy expended in kilowatt-hours during the first part of the test

EP2 = energy expended in kilowatt-hours during the second part of the test

T1 = length of time in minutes of the first part of the test

T2 = length of time in minutes of the second part of the test

0.33 = predicted number of defrost cycles per day expressed in units of day $^{-1}$

(3) The waiver shall remain in effect from the date of issuance of this order until the Department of Energy prescribes final test procedures appropriate to Whirlpool ED26SSXM and Sears 106.85569 refrigerator-freezers models equipped with electronic adaptive defrost controls manufactured by Whirlpool Corporation.

(4) This waiver is based upon the presumed validity of statements, allegations, and documentary materials submitted by the applicant. This waiver may be revoked or modified at any time upon a determination that the factual basis underlying the application is incorrect.

Issued in Washington, DC, August 8, 1985.

Donna R. Fitzpatrick,

Acting Assistant Secretary, Conservation and Renewable Energy.

[FR Doc. 85-20196 Filed 8-22-85; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-51585; FRL-2887-4]

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. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). This notice announces receipt of thirty PMNs and provides a summary of each.

DATES: Close of Review Period.

P 85-1328, 85-1329 and 85-1330, November 6, 1985

P 85-1331, 85-1332, 85-1333 and 85-1334, November 9, 1985

P 85-1335, 85-1336 and 85-1337, November 10, 1985

P 85-1338, 85-1339, 85-1340, 85-1341, 85-1342, 85-1343, 85-1344 and 85-1345, November 11, 1985

P 85-1346, 85-1347, 85-1348, 85-1349, 85-1350, 85-1351, 85-1352, 85-1353, 85-1354, 85-1355, 85-1356 and 85-1357, November 12, 1985

Written comments by:

P 85-1328, 85-1329 and 85-1330, October 7, 1985

P 85-1331, 85-1332, 85-1333 and 85-1334, October 10, 1985

P 85-1335, 85-1336 and 85-1337, October 11, 1985

P 85-1338, 85-1339, 85-1340, 85-1341, 85-1342, 85-1343, 85-1344 and 85-1345, October 12, 1985

P 85-1346, 85-1347, 85-1348, 85-1349, 85-1350, 85-1351, 85-1352, 85-1353, 85-1354, 85-1355, 85-1356 and 85-1357, October 13, 1985.

ADDRESS: Written comments, identified by the document control number "[OPTS-51585]" and the specific PMN number should be sent to: Document Control Officer (TS-793), Chemical Information Branch, Information Mangement Division, Office of Toxic Substances, Environment Protection Agency, Rm. E-201, 401 M Street SW., Washington, DC 20460 (202-382-3532).

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M Street SW., Washington, DC 20460 (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address.

P 85-1328

Importer. Diamond Shamrock Chemicals Company.

Chemical. (G) Urethane polymer.

Use/Import. (G) Rheology modifiers for latex paint production for industrial, commercial and consumer use. Import range: Confidential.

Toxicity Data. No data submitted

Exposure. Processing and use: dermal, a total of 2 workers.

Environmental Release/Disposal. Release primarily through transportation incidents. Disposal by incineration or landfill.

P 85-1329

Importer. Marubeni America Corporation.

Chemical. (S) Chromate(5-), bis[3-carboxy-1-[4-[[6-[(2-carboxyphenyl)azo]-5-hydroxy-7-sulfo-2-naphthalenyl]amino]-6-[[4-[(4-sulfophenyl)azo]phenyl]amino]-1,3,5-triazin-2-yl]pyridiniumato (5-)]-, pentasodium, dihydrate.

Use/Import. (S) Commercial dye for leather. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; TLm 48 hr (Orange medaka): >1,000 parts per million (ppm); Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85-1330

Importer. Marubeni America Corporation.

Chemical. (S) Copper, [29H,31H-phthalocyaninato (2-)-N29,N30,

N31,N32]-aminosulfonyl[[2-[[4-(3-Carboxypyridinio)-6-methoxy-1,3,5,-triazin-2-yl]amino]ethyl]amino]sulfonyl sulfo derivs., hydroxides, sodium salts.

Use/Import. (S) Commercial dye for cellulosic fibres. Import range: 10,000 kg/yr.

Toxicity Data. Acute oral: >5,000 mg/kg; TLm 48 hr (Orange medaka): >1,000 ppm; Ames test: Negative.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1331

Importer. Confidential.

Chemical. (S) Naphthalene-1,2,3,4-tetrahydro (1-phenylethyl).

Use/Import. (S) Solvent for carbonless copy paper, electrical insulating and heat transfer fluid. Import range: Confidential.

Toxicity Data. Acute oral: >5 g/kg; Acute dermal: <3.16 g/kg; Irritation: Skin—Mild, Eye—Slight to moderate; LC_{50} 96 hr (Fathead minnow): 20 parts per billion (ppb); LC_{50} initial (Fathead minnow): 482 ppb; LC_{50} 48 hr (Fathead minnow): 230 ppb; EC_{50} 48 hr (Daphnia magna): 53.9; EC_{50} (Daphnia magna): 22.5; Ames test: Non-mutagenic; Skin sensitization: Non-sensitizing; 28 day repeat dermal test: Low potential; Invitro cytogenetic test: Non-cytogenetic; Ultimate biodegradability test: Not readily biodegraded.

Exposure. Import and use: dermal and inhalation, up to 8 hrs/da, with less than 0.2 ppm for a 40 hr/work week.

Environmental Release/Disposal. Released to air water and land. Disposal by navigable waterway, incineration and landfill.

P 85–1332

Importer. Confidential.

Chemical. (S) Mixture of: diphenyl methane diisocyanate 2,4, diphenyl methane diisocyanate 4,4 trimethylol propane.

Use/Import. (G) The substance will be used in a closed system. Import range: 454–3,200 kg/yr.

Toxicity Data. No data submitted.

Exposure. No data submitted.

Environmental Release/Disposal. No data submitted.

P 85–1133

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters and methacrylic acid esters with an aliphatic acid monomer and an aromatic vinyl monomer.

Use/Production. (G) Gloss coating for paper stock. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 1 kg to 10 kg release to water. Disposal by publicly owned treatment works (POTW).

P 85–1334

Manufacturer. Confidential.

Chemical. (G) Polymer of acrylic acid esters and methacrylic acid esters with an aliphatic acid monomer and an aromatic vinyl monomer.

Use/Production. (G) Gloss coating for paper stock. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 5 workers, up to 4 hrs/da, up to 49 da/yr.

Environmental Release/Disposal. 1 kg to 10 kg release to water. Disposal by POTW.

P 85–1335

Manufacturer. Confidential.

Chemical. (G) Functional acrylate type polymer.

Use/Production. (G) Industrial paint ingredient. Prod. range: 125,000–163,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 20 workers, up to 8 hrs/da, up to 55 da/yr.

Environmental Release/Disposal. 2 to 48 kg/batch release to land. Disposal by incineration and landfill.

P 85–1336

Manufacturer. Confidential.

Chemical. (G) Oil modified polyester of aromatic and dibasic acids.

Use/Production. (S) Commercial protective coating. Prod. range: 72,666–145,333 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 5 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 10 lb/batch released to land. Disposal by landfill.

P 85–1337

Manufacturer. Boehme Filatex Inc.

Chemical. (G) Omega,omega'-dialkyl polyglycol ethers.

Use/Production. (S) Industrial fiber finish. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 2 workers, up to 2 hrs/da, up to 3 da/yr.

Environmental Release/Disposal. 80 to 8,000 kg approximately released to water. Disposal by POTW and biological water treatment plant.

P 85–1338

Manufacturer. Confidential.

Chemical. (G) Polyurethane.

Use/Production. (G) Oligomer. Prod. range: 1,000–3,000 kg/yr.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 4 da/yr, the first year.

Environmental Release/Disposal. Minor waste released to land.

P 85–1339

Manufacturer. H. B. Fuller Company.

Chemical. (G) Bisphenol A, epichlorohydrin, diethanolamine, polysubstituted alkane adduct polymer.

Use/Production. (G) Adhesive. Prod. range: 100,000–1,200,000 kg/yr.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Processing: dermal, a total of 40 workers, up to 2 hrs/da, up to 40 da/yr.

Environmental Release/Disposal. 50 kg/batch released to land. Disposal by licensed landfill.

P 85–1340

Importer. KAY-FRIES, INC.

Chemical. (G) Polyester resin.

Use/Import. (S) Industrial metal coating. Import range: Confidential.

Toxicity Data. No data submitted.

Exposure. Processing and use: dermal, up to 3 sites.

Environmental Release/Disposal. No data submitted.

P 85–1341

Manufacturer. Confidential.

Chemical. (G) Sulfonates of ethoxylated alcohols.

Use/Production. (S) Emulsion polymerization, cosmetics and toiletries, enhanced oil recovery and agricultural chemical emulsifiers. Prod. range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Confidential.

Environmental Release/Disposal. Confidential.

P 85–1342

Importer. Confidential.

Chemical. (G) Substituted diazo compound.

Use/Import. (G) Dispersant. Import range: Confidential.

Toxicity Data. No data on the PMN substance submitted.

Exposure. Use: Six customers.

Environmental Release/Disposal. No release.

P 85–1343

Manufacturer. Confidential.

Chemical. (S) Silicon substituted organic amine.

Use/Production. (S) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: Male—200 mg/kg, female—191 mg/kg. Conbined—196 mg/kg; Acute dermal: >2,000 mg/kg; Irritation: Skin—Non-irritant, Eye—Severe; Bacterial reverse mutation assay: Non-genetic.

Exposure. Manufacture: dermal, a total of 6 workers, up to 4 hrs/da, up to 20 da/yr.

Environmental Release/Disposal. Less than 5 to less than 20 kg released. Disposal by incineration and landfill.

P 85-1344

Manufacturer. Confidential.

Chemical. (G) Alkali metal salt of substituted sulfo-aryl transition metal complex.

Use/Production. (S) Dye. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 24–72 hr (Rainbow trout): >560 mg/L; LC_{50} 96 hr (Rainbow trout): 474.4 mg/1; Ames test: Negative; Skin sensitization: Non-sensitizer; EC_{50} 24 hr (Daphina magna): >1,000 mg/L; $E(_{50}$ 48 hr (Daphnia magna): 560 mg/L; Green algae test: No observed effect concentration: 32 mg/L; Lowest effect concentration: 56 mg/L; Median effect concentration: (E_bC_{50})—102 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85-1345

Manufacturer. Confidential.

Chemical. (G) Polysubstituted sulfo-aryl transition metal complex.

Use/Production. (G) Intermediate. Prod. range: Confidential.

Toxicity Data. Acute oral: >5.0 g/kg; Irritation: Skin—Non-irritant, Eye—Non-irritant; LC_{50} 24 hr (Rainbow trout)—101.1 mg/L, LC_{50} 48–96 hr (Rainbow trout)—67.7 mg/L; Ames test:—Negative; EC_{50} 24 hr (Daphnia magna): >320 mg/L; EC_{50} 48 hr (Daphnia magna): 100 mg/L; Green algae test: No observed effect concentration—5.6 mg/L; Lowest significant effect concentration: 10 mg/L; Median effect concentration, growth rate (E_rC_{50}): 42 mg/L.

Exposure. Confidential.

Environmental Release/Disposal. Confidential. Disposal by navigable waterway.

P 85-1346

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol, polypropylene glycol and glycerine.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85-1347

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol and diethylene glycol.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85-1348

Manufacturer. FRP Company.

Chemical. (G) Rosin maleated, fumerated ester with pentaerythritol, diethylene glycol glycerine, ethylene glycol and caster oil.

Use/Production. (S) Printing ink and coatings. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 18 workers.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85-1349

Manufacturer. FRP Company.

Chemical. (G) Polyamide vehicle.

Use/Production. (S) Industrial printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 16 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 22 kg/batch released. Disposal by evaporation lagoons.

P 85-1350

Manufacturer. FRP Company.

Chemical. (G) Polyamide.

Use/Production. (S) Industrial printing inks. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 12 workers, up to 4 hrs/da, up to 10 da/yr.

Environmental Release/Disposal. 2 kg/batch released to land. Disposal by evaporation lagoons.

P 85-1351

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-1,1' biphenyl, 4,4' diisocyanato-3,3' dimethyl, water, silicone, surfactant, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85-1352

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4' diisocayanato-3,3' dimethyl, 1,4-butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85-1353

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) 1,3-benzenedicarboxylic acid, polymer with 1,6 hexanediol and nonanedioic acid, naphthalene, 1,5 diisocyanato-,phenol, 4,4'-(methanetetrayldinitrilo)bis(3,5-bis(1-methylethyl)hexamethylene 1,6-distearyldiurethane, ethanol, 2,2'-(1,4-phenylenebis(oxy)bis-1,4 butanediol.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Releases/Disposal. No release.

P 85-1354

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4'-diisocyanato-3,3' dimethyl,1,4 butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechancial goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85-1355

Manufacturer. Disograin Industries Corporation.

Chemical. (S) Polymer of poly(oxy-1,4-butanediyl), alpha-hydro-omega-hydroxy-,1,1' biphenyl, 4,4'-diisocyanato-3,3' dimethyl, 1,4 butanediol, 1,3-propanediol, 2-(hydroxymethyl)-2 methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85-1356

Manufacture. Disogrin Industries Corporation.

Chemical (S) Polyer of Hexanedioic acid, polymer with 1,2-ethanediol, naphthalene,1,5, diisocyanato-, castor oil, phenol, 4,4'-(methanetetrayldinitrilo), bis[3,5-bis[1,-methylethyl]-, castor oil, sulfonated, castor oil, sulfonated, sodium salt, water, silicone additive, triethylene diamine catalyst.

Use/Production. (S) To be molded on site into mechanical goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

P 85-1357

Manufacturer. Disogrin Industries Corporation.

Chemical. (S) Polymer of epsilon-caprolactone and trimethylol propane, castor oil, 1,1' biphenyl,4,4'-diisocyanato-3,3' dimethyl, phenol, 4,4'-(methanetetrayldinotrilo)bis[3,5-bis[1-methylethyl]-,1,4 butanediol, 1,3-propanediol, 2-[hydroxymethyl]-2-methyl, 1,4-diazabicyclo[2.2.2] octane.

Use/Production. (S) To be molded on site into mechancial goods, i.e. machinery components. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture: dermal, a total of 1 worker, up to 8 hrs/da, up to 12 da/yr.

Environmental Release/Disposal. No release.

Dated August 19, 1985.

Linda A. Travers,

Acting Director, Information management Division.

[FR Doc. 85-20213 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59728; FRL 2887-3]

Certain Chemicals Premanufacture Notice

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. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in EPA statements of the final rule published in the **Federal Register** of May 13, 1983 (48 FR 21722). In the **Federal Register** of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. PMNs for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of two such PMNs and provides a summary of each.

DATES: Close of Review Period:
Y 85-132—September 3, 1985.
Y 85-133—September 4, 1985.

FOR FURTHER INFORMATION CONTACT: Wendy Cleland-Hamnett, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Rm. E-611, 401 M St., SW., Washington, DC 20460, (202-382-3725).

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission by the manufacturer on the exemptions received by EPA. The complete non-confidential document is available in the Public Reading Room E-107 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 85-132

Manufacturer. Rilsan Corporation

Chemical. (G) Copolyetheresteramide

Use/Production. (G) Molding, extrusion resin, non-dispersive use. Prod. range: Confidential

Toxicity Data. No data submitted

Exposure. No data submitted

Environmental Release/Disposal. No data submitted

Y 85-133

Manufacturer. Confidential

Chemical. (G) Alkali metal salt of ester of polyfunctional alkylene oxide polymer

Use/Production. (G) Component of cellular and elastomeric plastic compositions. Prod. range: Confidential

Toxicity Data. No data submitted on the PMN substance

Exposure. Confidential

Environmental Release/Disposal. Confidential

Dated: August 19, 1985.

Linda A. Travers,

Acting Director, Information Management Division.

[FR Doc. 85-20214 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2886-8]

Environmental Impact Statements; Availability

Responsible Agency

Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements filed August 12, 1985 through August 16, 1985 Pursuant to 40 CFR 1506.9

EIS No. 850345, Final, FHW, AK, Fairbanks Urban Reconnaissance/Geist Road Extension, Connection, Steese Expessway to Downtown Fairbanks, *Due:* September 23, 1985, *Contact:* Thomas Neunaber (907) 586-7427.

EIS No. 850346, Final, GSA CA, Los Angeles Federal Center Master Plan, Development, Construction, Los Angeles County, *Due:* September 23, 1985, *Contact:* Veronica Holland (415) 974-7624.

EIS No. 850347, Final, BLM, AZ, Lower Gila South Resource Management Plan, *Due:* September 23, 1985, *Contact:* Bill Carter (602) 863-4464.

EIS No. 850348, Draft, USA, LA, Fort Polk Multipurpose Range Complex, Cosntruction, 5th Infantry Division, Vernon Parish, *Due:* October 7, 1985, *Contact:* Stephen Parris (318) 535-7008.

EIS No. 850349, Draft, FWS, CA, Coachella Valley Fringe-Toed Lizard Incidental Take Section 10(a) Permit, Habitat Conservation Plan, Adoption/Implementation, Riverside County, *Due:* October 15, 1985, *Contact:* Merle Richmond (503) 231–6131.

EIS NO. 850350, Draft, NOA, VA, Commonwealth of Virginia Coastal Resources Management Program, Approval, *Due:* October 7, 1985, *Contact: Joseph Uravitch (202) 634–4124.*

EIS N. 850351, Draft, BOP, FL, Marianna Federal Correctional Institution and Federal Prison Camp, Construction and Operation, Jackson County, *Due:* October 11, 1985, *Contact:* Loy Hayes (202) 275–6535.

EIS No. 850352, Final, IBR, AZ, Tucson Aqueduct Phase B, Construction, Operation and Maintenance, Feature of Central Arizona Project, Pima and Pinal Counties, *Due:* September 23, 1985, *Contact:* Cecil Ocullette (702) 293–8560.

EIS No. 850353, Final, FHW, IN, US–27 Improvement, County Road 50 South to County Road 850 North, and a Connector from US 33 to US 27, Widening and Alignment, Adams County, *Due:* September 23, 1985, *Contact:* James Threlkeld (317) 269–7481.

EIS 850354, Draft, AFS, IL, Shawnee National Forest, Land and Resource Management Plan, *Due: November 27, 1985, Contact:* Kenneth Henderson (618) 253–7114.

EIS No. 850355, Draft, AFS, CO, Stevens Gulch Road Extension and Hubbard, Dyke and Elk Creeks Timber Sale Offerings, Delta and Mesa Counties, *Due:* October 28, 1985, *Contact:* Raymond Evans (303) 874–7691.

EIS No. 850356, Draft COE, IL, Lake Calumet Area Wetland Sanitary Landfill Development. Section 10 and 404 Permit, Cook County, *Due:* October 7, 1985, *Contact:* Thomas Slowinski (312) 353–6428.

EIS No. 850357, Final, ICC, MT, Tongue River Railroad Construction, Operation, Miles City to Ashland, Certificate,-Custer, Rosebud, and Powder River Counties, *Due:* September 23, 1985, *Contact:* Carl Bausch (202) 275–0800.

EIS No. 850358, Final, BLM, AZ, CA, Yuma District Resource Management Plan, *Due:* September 23, 1985, *Contact:* Dennis Turowski (602) 726–6300.

EIS No. 850359, Draft, AFS, UT, CO, MantiLaSal National Forest, Land and Resource Managment Plan, *Due:* November 29, 1985, *Contact:* Lee Foster (801) 637–2817.

EIS NO. 850360, DSuppl, FHW, MD, National Freeway/US–48 Gap Completion, Wolfe Mill to M.V. Smith Road, Construction, Alleghany County, *Due:* October 16, 1985, *Contact:* Edward Terry (301) 952–4010.

Amended Notice

EIS No. 850234, Draft, FWS, AK, Togiak National Wildlife Refuge, Comprehensive Conservation Plan and Wilderness Review, *Due:* September 30, 1985, Published FR 6–14–85—Review extended.

Dated: August 20, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85–20259 Filed 8–22–85; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–2886–9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared August 5, 1985 through August 9, 1985 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382–5075/76. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated October 19, 1984 (49 FR 41108).

Draft EISs

ERP No. D–AFS–G60005–NM, Rating LO, Alvarado Realty Land Exchange, Cibola Nat'l Forest, Acquisition, NM. **SUMMARY:** EPA expressed no objections to the proposed action as described in the DEIS.

ERP No. DS–COE–C36005–NY, Rating EC2, Saw Mill River Basin Flood Protection Project, Elmsford and Greenburgh Areas, NY. **SUMMARY:** EPA's review identified potential environmental impacts and requested that additional information regarding wetland impacts, dredged material disposal, sediment toxicity, and appropriate mitigation measures be detailed in the supplemental FEIS.

ERP No. D–FHW–E40684–KY, Rating EC2, US 31E/150 (Bardstown—Louisville Rd.) Reconstruction, Brentlinger Rd. to US 31E/150, KY. **SUMMARY:** EPA's review revealed two primary environmental concerns: 1) the proposed project would include a 3,400-foot stream channel change, and 2) traffic-generated noise elevations as high as +19dBA above ambient if the preferred alternative were implemented. EPA recommended these impacts be mitigated and requested additional information be included in the FEIS, including a Corps jurisdictional wetland determination.

ERP No. D–FHW–G40115–AR, Rating EO2, US 65 Bypass Construction, US 65/US 270 Interchange and Bryant St. Intersection to US 65/US65B Interchange, AR. **SUMMARY:** EPA expressed environmental objections to the selection of the preferred highway alignment, Alt. A. EPA requested that the FEIS include additional information to establish the project need, and to identify secondary impacts. EPA prefers Alt. B; however, EPA would not object to Alt. C with the inclusion of appropriate mitigation measures as discussed in the DEIS. EPA would likely recommend denial of a Sect. 404 permit for the filling and deterioration of wetlands proposed by Alt. A.

ERP No. D–FHW–K40119–HI, Rating LO, Moanalua Rd. Improvement, Pali Momi St. to AIEA Interchange, HI. **SUMMARY:** EPA expressed a lack of objection to the project and recommended the FEIS discuss water quality impacts and erosion control measures in more detail. EPA noted that if a Clean Water Act section 404 permit is needed for the project, EPA would further review the project for compliance with Specification of Disposal Sites for Dredged or Fill Material (40 CFR 230).

Final EISs

ERP No. F–AFS–G65039–00, Cibola Nat's Forest and Kiowa Rita Blanca, Black Kettle and McClellan Creek Nat'l Grasslands, Land and Resource Mgmt. Plan, NM. **SUMMARY:** The FEIS adequately responded to EPA comments issued on the DEIS.

ERP. No. F–BLM–K65065–NV, Walker Resource Area, Mina and Walker United, Land and Resource Mgmt. NV. **SUMMARY:** EPA commended the Bureau of Land Management (BLM) on their measures to protect riparian zones. However, EPA recommended that an inventory be conducted of all riparian acreage, including a water quality monitoring program and baseline air quality data for the area. EPA expressed concerns regarding BLM's decision not to recommend certain areas as wilderness.

ERP No. F–COE–E32061–MS, Pascagoula Harbor and Bayou Cassote Navigation Channels Improvement, Deepening, MS. **SUMMARY:** The bulk of EPA's initial reservations to this proposal have been lessened with the elimination of the Tenneco spoil disposal site. EPA continues to be

concerned about the disposal of maintenance material within the Mississippi Sound and believes that there are compelling environmental reasons to eliminate long term practices which shallow and/or alter the near shore circulation of this water body.

EPA No. F-COE-F32131-OH, Lorain Small Boat Harbor Construction, Recreational Navigation Improvements, Lake Erie, OH. **SUMMARY:** EPA's review of the FEIS did not identify any significant environmental impacts requiring changes to the proposed project.

Dated: August 20, 1985.

Allan Hirsch,

Director, Office of Federal Activities.

[FR Doc. 85-20260 Filed 8-22-85; 8:45 am]

BILLING CODE 6560-50-M

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATE: Comments must be received on or before October 7, 1985. If you anticipate commenting on a report form, but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and the Agency Liaison Officer of your intent as early as possible.

ADDRESS: Copies of the proposed report form, the request for clearance, (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Liaison Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Liaison Officer Margaret P. Ulmer, Financial and Resource Management Services, Room 386, 2401 E. Street, NW, Washington, DC, 20507; Telephone (202) 634-1932.

OMB REVIEWER: James Mason, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC, 20503; Telephone (202) 395-6880.

Type of Request: Revision of a currently approved collection
Title: Higher Education Staff Information Report EEO-6
Frequency of Report: Biennially
Type of Respondent: Business/other institutions/State or local governments
Standard Industrial Classification (SIC) Code: 822,824,829
Description of Affected Public: Institutions of higher education with 15 or more full-time employees.
Responses: 3,000
Reporting Hours: 12,000
Federal Costs: $48,000.00
Applicable Under section 3504(h) of Pub. L. 95-511: Not applicable
Number of Forms: 1

Data are used by EEOC in its compliance, litigation, and conciliation and voluntary programs activities. Data are shared with other Federal agencies, and 25 State and 77 local Fair Employment Practices Commissions (FEPC's) in support of their EEO programs after pledging to abide by EEO-6 confidentiality restrictions.

For the Commission.

John Seal,

Management Director, Equal Employment Opportunity Commission.

[FR Doc. 85-20242 Filed 8-22-85; 8:45 am]

BILLING CODE 6570-06-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-739-DR]

Amendment to Notice of a Major-Disaster Declaration; California

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of California (FEMA-739-DR), dated July 18, 1985, and related determinations.

DATE: August 14, 1985.

FOR FURTHER INFORMATION CONTACT: Sewall H.E. Johnson, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, D.C. 20472, (202) 646-3616.

Notice: The notice of a major disaster for the State of California, dated July 18, 1985, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of July 18, 1985:

Those portions of Los Angeles County that were not previously designated eligible for assistance are hereby designated as adjacent areas for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Samuel W. Speck,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 85-20174 Filed 8-22-85; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, D.C. Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217-010643-001.

Title: Farrell/SITRAM Space Charter Agreement.

Parties:

Farrell Lines Incorporated (Farrell)

Societe Ivoirienne de Transport Maritime (SITRAM)

Synopsis: The proposed amendment would expand the scope of the agreement to include all West African ports and all U.S. ports and would permit the parties to charter space on each other's vessels moving in both directions in the agreement trade. The original agreement restricted this chartering to cargo moving under SITRAM bills of lading on Farrell's westbound sailings only. It would also make certain changes of an administrative nature to the terms of the agreement. The parties have requested a shortened review period.

Dated: August 19, 1985.

By Order of the Federal Maritime Commission.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85-20189 Filed 8-22-85; 8:45 am]

BILLING CODE 6730-01-M

Issuance of Casualty and Nonperformance Certificates; Sky Cruises Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Pub. L. 89–777 (80 Stat. 1356, 1357) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Sky Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Blvd., Miami, Florida 33132.

Dated: August 19, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20170 Filed 8–22–85; 8:45 am]

BILLING CODE 6730–01–M

Issuance of Casualty and Nonperformance Certificates; Sky Cruises Ltd.

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Pub. L. 89–777 (80 Stat. 1357, 1358) and Federal Maritime Commission General Order 20, as amended (46 CFR Part 540): Sky Cruises Limited and SeaEscape Limited, c/o SeaEscape Limited, 1080 Port Blvd., Miami, Florida 33132.

Dated: August 19, 1985.

Bruce A. Dombrowski,

Acting Secretary.

[FR Doc. 85–20171 Filed 8–22–85; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Bank of Middlebury Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than September 13, 1985.

A. **Federal Reserve Bank of Boston** (Richard E. Randall, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Bank of Middlebury Corporation,* Middlebury, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of The National Bank of Middlebury, Middlebury, Vermont.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Toledo Trustcorp, Inc.,* Toledo, Ohio; to acquire 99 percent of the voting shares of Society National Bank of Mid-Ohio, Bucyrus, Ohio. Comments on this application must be received not later than September 16, 1985.

2. *Toledo Trustcorp, Inc.,* Toledo, Ohio; to acquire 100 percent of the voting shares of Society National Bank of Northwest Ohio, Fostoria, Ohio. Comments on this application must be received not later than September 16, 1985.

C. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *The First Bankers Corp. of Florida,* Pompano Beach, Florida; to acquire 90 percent of the voting shares of The Island Bank, Holmes Beach, Florida.

D. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *American Fletcher Corporation,* Indianapolis, Indiana; to acquire 100 percent of the voting shares of Union Bank and Trust Company, Franklin, Indiana.

E. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Slayton Bancshares, Inc.,* Slayton, Minnesota; to become a bank holding company by acquiring 80.58 percent of the voting shares of Peoples State Bank of Slayton, Slayton, Minnesota.

F. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Summit Bancorporation, Inc.,* Minneapolis, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Summit County Bank, Frisco, Colorado.

G. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *American National Bancshares, Inc.,* Ruston, Louisiana; to become a bank holding company by acquiring 80 percent of the voting shares of American Bank of Ruston, N.A., Ruston, Louisiana. Comments on this application must be received not later than September 16, 1985.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85–20176 Filed 8–22–85; 8:45 am]

BILLING CODE 6210–01–M

Hub Bancshares, Inc., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed in application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo,* either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would

not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 16, 1985.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *Hub Bancshares, Inc.*, Lafayette, Louisiana; to engage *de novo* through its subsidiary, Hub Services, Inc., Lafayette, Louisiana, in real estate appraising as permitted by § 225.25(b)(13) of Regulation Y. This activity will be conducted in the south central Louisiana area.

2. *The First Bankers Corp. of Florida*, Pompano Beach, Florida; to engage *de novo* through its subsidiary, The First Bankers Management Group, Inc., Pompano Beach, Florida, in management and consulting advice to bank and nonbank depository institutions. These activities would be conducted in the central and southern Florida area.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20177 Filed 8-22-85; 8:45 am]

BILLING CODE 6210-01-M

Southwest First Community, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and §225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than September 13, 1985.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Southwest First Community, Inc.*, Beeville, Texas; to engage *de novo* through its subsidiary, Southwest First Community Data, Inc., Beeville, Texas, in providing data processing and data transmission services; facilities and data bases (including data processing and data transmission hardware; software or operating personal) or access to such services, facilities or data bases.

Board of Governors of the Federal Reserve System, August 19, 1985.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 85-20178 Filed 8-22-85; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Commission on the Evaluation of Pain; Meeting

AGENCY: Department of Health and Human Services.

ACTION: Notice of Meeting.

SUMMARY: This notice announces the schedule and proposed agenda of the forthcoming meeting of the Commission on the Evaluation of Pain (the Commission). This notice also describes the purpose, structure, and termination date of the Commission.

DATES:

General session—September 5, 1985, 8:30 a.m. to 5:00 p.m.

General session—September 6, 1985, 8:30 a.m. to 5:00 p.m.

ADDRESS: National Academy of Sciences, 2101 Constitution Avenue NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Nancy Dapper, Executive Director, Commission on the Evaluation of Pain, Room 118, Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235, (301) 597-1597.

SUPPLEMENTARY INFORMATION: The Commission is established and governed by the provisions of section 3(b) (1) through (6) of the Social Security Disability Benefits Reform Act of 1984 (Pub. L. 98-460). The purpose of the Commission is to conduct a study concerning the evaluation of pain in determining under titles II and XVI of the Social Security Act whether an individual is under a disability. The study is to be conducted in consultation with the National Academy of Sciences.

The study will consist of expert testimony and a review of research data regarding how pain should be considered in making disability determinations under titles II and XVI. The Commission may engage technical assistance in order to carry out its function.

The Commission is to submit a report, consisting of the findings of the study and any recommendations, to the Secretary of Health and Human Services (the Secretary) who in turn is to submit the report to the Committee on Ways and Means of the House of Representatives and to the Committee on Finance of the Senate.

The statute provides that the Commission terminate on December 31, 1985. This is also the deadline for the Secretary to submit the report.

The Secretary has appointed the members of the Commission in accordance with the provisions of the statute. This notice announces the third working meeting of the Commission. The Commission is chaired by Kathleen M. Foley, M.D.

This meeting is open to the public. Anyone wishing to submit his or her views for consideration by the Commission should send them to the Executive Director of the Commission at her address shown above.

A transcript of the Commission meeting will be made available to the public on an at-cost-of-duplication basis. The transcript can be ordered from the Executive Director of the Commission.

Agenda

September 5, 1985

8:30 a.m.—General session of expert testimony and research data presentations.

5:00 p.m.—Adjourn general session.

September 6, 1985

8:30 a.m.—General session of (1) continued expert testimony and research data presentations, (2) discussion on the agenda, priorities, and date of the next meeting, and (3) writing assignments.

5:00 p.m.—Adjourn the meeting.

Dated: August 19, 1985.

Nancy J. Dapper,

Executive Director, Commission on the Evaluation of Pain.

[FR Doc. 85-20227 Filed 8-22-85; 8:45 am]

BILLING CODE 4190-11-M

Food and Drug Administration

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents; 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 summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

Meetings: The following advisory committee meetings are announced:

Ad Hoc Advisory Committee on Hypersensitivity to Food Constituents

Date, time, and place. September 12 and 13, 9 a.m., Auditorium, 330 Independence Ave. SW., Washington, DC.

Type of meeting and contact person. Open committee discussion, September 12, 9 a.m. to 12 m.; open public hearing, 1:30 p.m. to 2:30 p.m.; open committee discussion, 2:30 to 4 p.m., September 13, 9 a.m. to 12 m.; Mary C. Custer, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-9463.

General function of the committee. The committee will review and evalaute available information relevant to adverse reactions in humans associated with the use of food constituents.

Agenda—Open public hearing. Interested persons requesting to present data, information, or views, orally or in writing, on issues pending before the committee should communicate with the committee contact person.

Open committee discussion. The committee will hear presentations on the terminology associated with adverse reactions to foods, a clinical approach to adverse reactions to foods, and patient strategy for coping with adverse reaction to foods.

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.

Public hearings are subject to FDA's guideline (Subpart C of 21 CFR Part 10) concerning the policy and procedures to expedite electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR Part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

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 Dockets Management Branch (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.

This notice 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's regulations (21 CFR Part 14) on advisory committees.

Dated: August 19, 1985.

Mervin H. Shumate,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 85-20166 Filed 8-20-85; 10:07 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0346]

Foodways National, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Foodways National, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame in frozen cheesecake, fruit, and fruit toppings.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3874) has been filed by Foodways National, Inc., P.O. Box 44, Boise, ID 83707, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame to sweeten frozen cheesecake, fruit, and fruit toppings.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's

finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: August 14, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20161 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 85F-0345]

Pfizer, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Pfizer, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of aspartame in frozen desserts.

FOR FURTHER INFORMATION CONTACT: Anthony P. Brunetti, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 5A3861) has been filed by Pfizer Central Research, Pfizer, Inc., 235 East 42nd Street, New York, NY 10017, proposing that § 172.804(c) (21 CFR 172.804(c)) be amended to provide for the safe use of aspartame to sweeten frozen desserts, where standards of identity do not preclude this use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c), as published in the Federal Register of April 26, 1985 (50 FR 16636).

Dated: August 15, 1985.

Richard J. Ronk,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 85-20160 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Application Announcement for Grants for Predoctoral Training in Family Medicine

The Bureau of of Health Professions, Health Resources and Services Administration, announces that applications for Fiscal Year 1986 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a) of the Public Health Service Act, as amended.

Applicants should be advised that this application announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. The Administration's budget request for Fiscal Year 1986 does not include funding for this program. This notice regarding applications does not reflect any change in this policy.

In addition, programmatic changes may result from currently ending legislative action. Should such changes be necessary, all applicants will be notified at a later date.

Section 786(a) of the Public Health Service Act authorizes the award of grant to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support for both the program and the trainees.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine. In accordance with § 57.1605(b)(2), a funding preference will be accorded approved applications for projects in which:

1. Substantial training experience is in settings which exemplify interdependent utilization of physicians and physician assistants or nurse practitioners; and/or

2. Substantial portions of the training program are conducted in a primary medical care manpower shortage area which is a part of a health manpower shortage area(s) designated under Section 332 of the PHS Act, or, in an Area Health Education Center funded, at least in part, under Section 781 of the Act.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-16, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Should additional programmatic information be required, please contact: Multidisciplinary Resources Development Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-3614.

The deadline date for receipt of applications is September 30, 1985. Applications shall be considered as meeting the deadline date if they are either:

(1) *Received* on or before the deadline date, or

(2) *Postmarked* on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance.* It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs or 45 CFR Part 100.

Dated: August 19, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85-20168 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-16-M

Public Health Service

Recovery of Funds in Transactions Affecting Ownership of Federally Assisted Health Professions and Nurse Teaching Facilities

AGENCY: Health Resources and Services Administration (HRSA); Public Health Service, HHS.

ACTION: Statement of General Policy.

SUMMARY: HRSA announces its recovery policy regarding purported leases and sales of (1) health professions teaching facilities or affiliated hospitals constructed with grant funds under Part B of Title VII of the Public Health Service Act, and (2) nurse teaching facilities constructed with grant funds under Title VIII of the Act.

FOR FURTHER INFORMATION CONTACT: Richard Ashbaugh, Associate Director for Health Facilities, (301) 443–6560.

SUPPLEMENTARY INFORMATION: Sections 723(a)(1) and 723(b)(1) of the Public Health Service Act (42 U.S.C. 293c(a)(1), 293c(b)(1)) provide that if ownership of a teaching facility for which construction grant funds were awarded under Part B of Title VII of the Act passes to an entity that would not have been qualified to receive such a grant within 20 years after completion of construction, the Secretary of the Department of Health and Human Services has a statutory duty to recover funds pursuant to a formula set out in the statute.

Similarly, section 804(1) of the Act (42 U.S.C. 296c(1)) states that if ownership of a nurse teaching facility for which construction grant funds were awarded under Title VIII of the Act passes to a non-qualified entity within 20 years, the Secretary has a statutory duty to effect a recovery.

On the other hand, recovery is not required under any of the recovery provisions where the facility is *leased* to such an entity, since a lease, which is a transfer of an interest in and possession of property for a prescribed period of time in exchange for an agreed consideration called "rent," does not involve a change of ownership. Recently, an agreement was entered into between a nonprofit owner of a Title VII-assisted affiliated hospital and an organization that would not have been qualified for a grant (in this case, a proprietary entity). The agreement was denominated a "lease" by the parties. Under the agreement, the proprietary entity was to pay millions of dollars for a 14-year lease and at the end of the lease period have the option to purchase the facility for a nominal sum. Under these facts, the Department determined that the transaction was in fact a sale, and that the statute required that the Government seek recovery under section 723 of the Act. In anticipation that similar transactions may occur, a statement of the general policy of the Department is desirable.

It is the policy of the Department in such cases to look to the substance of the transaction, not the form of the agreement or the label placed on it by the parties. Thus, if the money paid is a payment for the use of property and the agreement contemplates return of the rented property at the termination of the agreement, we would conclude that no change of ownership has occurred, and no recovery would be required on the basis of section 723(a)(1), 723(b)(1), or 804(1). However, if payments are required to be made in amounts that actually cover the full economic value of the property and ownership will ultimately be transferred, the payments are a payment for ownership and the Government's recovery will be pursued. More specifically, in determining whether a transaction is a sale or lease, the policy of the Department is to follow the guidelines established by the Internal Revenue Service for making such a determination. A transaction is to be treated as a sale rather than a lease, in the absence of compelling persuasive factors of contrary implication, if one or more of the following is found:

1. Portions of the periodic payments are made specifically applicable to an equity to be acquired by the lessee.

2. The lessee will acquire title upon the payment of a stated amount of "rentals" which under the contract the lessee is required to make.

3. The total amount which the lessee is required to pay for a relatively short period of use constitutes an inordinately large proportion of the total sum required to be paid to secure the transfer of the title.

4. The agreed "rental" payments materially exceed the current fair rental value. This may be indicative that the payments include an element other than compensation for the use of the property.

5. The property may be acquired under a purchase option at a price which is nominal in relation to the value of the property at the time when the option may be exercised, as determined at the time of entering into the original agreement, or which is a relatively small amount when compared with the total payments which are required to be made.

6. Some portion of the periodic payments is specifically designated as interest or is otherwise readily recognizable as the equivalent of interest.

Dated: August 19, 1985.

John H. Kelso,

Acting Administrator.

[FR Doc. 85–20228 Filed 8–22–85; 8:45 am]

BILLING CODE 4150-04-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. 85–1546]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: Robert Fishman, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street S.W., Washington, D.C. 20410, telephone (202) 755–6050. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals described below for the collection of information to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposals; (2) the office of the agency to collect the information; (3) the agency form number, if applicable; (4) how frequently information submissions will be required; (5) what members of the public will be affected by the proposal; (6) an estimate of the total number of hours needed to prepare the information submission; (7) whether the proposal is new or an extension or reinstatement of an information collection requirement; and (8) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Copies of the proposed forms and other available documents submitted to OMB may be obtained from David S. Cristy, Reports Management Officer for the Department. His address and telephone number are listed above. Comments regarding the proposals should be sent to the OMB Desk Officer at the address listed above.

The proposed information collection requirements are described as follows:

Notice of Submission of Proposed Information Collection to OMB

Proposal: Civil Rights Tenant Characteristics/Occupancy Report—Insured Unsubsidized Housing Programs

Office: Fair Housing and Equal Opportunity

Form number: HUD-949

Frequency of submission: Annually

Affected public: Businesses or Other For-Profit
Estimated burden hours: 1,353
Status: Extension
Contact: Mary T. George, HUD, (202) 755-2288, Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 1, 1985.
Proposal: Single Audit Act of 1984—OMB Circular No. A-128, Audits of State and Local Governments
Office: Administration
Form number: None
Frequency of submission: Annually
Affected public: State or Local Governments
Estimated burden hours: 20,750
Status: New
Contact: Lawrence S. Traynham, HUD, (202) 755-9083, Robert Fishman, OMB, (202) 395-7316

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 2, 1985.
Proposal: Mortgagor's Certificate of Actual Cost
Office: Housing
Form number: FHA-2330
Frequency of submission: On Occasion
Affected public: Businesses or Other For-Profit
Estimated burden hours: 6,160
Status: Extension
Contact: Richard S. Fitzgerald, HUD, (202) 426-0283, Robert Fishman, OMB, (202) 395-6880

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: August 7, 1985.

Dennis F. Geer,

Director, Office of Information Policies and Systems.

[FR Doc. 85-20246 Filed 8-22-85; 8:45 am]

BILLING CODE 4210-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Child Welfare Act; Receipt of Designated Tribal Agents for Service of Notice

August 12, 1985.

This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

The regulations implementing the Indian Child Welfare Act provide that Indian tribes may designate an agency other than the tribal chairman for service of notice of proceedings under the Act, 25 CFR 23.12. The Secretary of the Interior shall publish in the **Federal Register** on an annual basis the names and addresses of the designated agents.

This is the fourth list of Designated Tribal Agents for service of notice, and includes the listings of designated tribal agents received by the Secretary of the Interior prior to the date of this publication. Those groups noted with an asterisk are not federally recognized tribes.

Ak-Chin Indian Community, Rt. 2, Box 27, Maricopa, Arizona 85239, Theodore Enos, Chief of Police, (602) 568-2281, (602) 568-2415 (Home), or Delores Machado, Court Clerk-Dispatcher, (602) 568-2507

Akhiok Village, P.O. Box 172, Kodiak, Alaska 99615, (907) 486-5725, KANA, President, Director of Social Services and Director of Health

Ambler Traditional Council, Ambler, Alaska 99786, President, (907) 445-2125

Angoon Community Association, Carolyn Nease, Executive Director, P.O. Box 138, Angoon, Alaska 99820, (907) 788-3411

Blackfeet Tribe, Marlene Salway, Director, Blackfeet Child Abuse, Neglect and Treatment Program, P.O. Box 850, Browning, Montana 59417, (406) 338-7733

Buckland IRA Council, Buckland, Alaska 99727, President, (907) 494-2121

Caddo Tribe of Oklahoma, Caddo Tribal Enrollment Clerk, P.O. Box 487, Binger, Oklahoma 73009, (405) 656-2344/5

Central Council of the Tlingit and Haida Indians of Alaska, 320 West Willoughby Avenue, Suite 300, Juneau, Alaska 99801, Art Holmberg, Director Human Services, (907) 586-1432

Cherokee Nation of Oklahoma, P.O. Box 948, Tahlequah, Oklahoma 74465, Ross O. Swimmer, Principal Chief, (918) 456-0671

Cheyenne-Arapaho Tribes of Oklahoma, P.O. Box 38, Concho, Oklahoma 73022, Mr. Winnifred E. White Tail

Cheyenne River Sioux Tribal Court, Eagle Butte, South Dakota 57625, James Chasing Hawk, Juvenile Judge, (605) 964-6601

Chickasaw Nation of Oklahoma, P.O. Box 1548, Ada, Oklahoma 74820, Overton James, Governor, (405) 436-2603

Chilkat Indian Village, Klukwan IRA, P.O. Box 220, Haines, Alaska 99827, James Stevens, President, (907) 766-2805/2556

Chilkoot Indian Association IRA, P.O. Box 419, Haines, Alaska 99827, Roy Clayton, President, (907) 766-2310

Chippewa Cree Tribe, Rocky Boy Route, Box 544, Box Elder, Montana 59521, Suzanne Billy, ICW Worker, (406) 395-4700

Choctaw Nation of Oklahoma, P.O. Drawer 1210, Durant, Oklahoma 74701, Hollis E. Roberts, Chief, (405) 924-8280

Citizen Band Potawatomi Indians of Oklahoma, Route 5, Box 151, Shawnee, Oklahoma 74801, Mozella Larney, ICW Coordinator, (405) 275-3121

Cocopah Tribe of Arizona, P.O. Box G, Somerton, Arizona 85350, Gregory D. Yuma, Tribal Court Coordinator

Confederated Tribes of the Colville Reservation of Washington, P.O. Box 150, Nespelem, Washington 99155, Al Aubertin, Chairman

Confederated Tribes of the Siletz Reservation, Siletz Tribal Council, P.O. Box 670, Siletz, Oregon 97380, Arthur S. Bensell, Tribal Chairman

Confederated Tribes of the Warm Springs Reservation of Oregon, Warm Springs, Oregon 97761, Merritt E. Youngdeer, Superintendent

Crow Tribe, P.O. Box 159, Crow Agency, Montana 59022, Tyron Ten Bear, Staff Coordinator, (406) 638-2601

Crow Creek Sioux Tribe of South Dakota, Crow Creek Agency, Box 616, Fort Thompson, South Dakota 57339, Superintendent, (605) 245-2311, or Clerk of Courts, Crow Creek Sioux Tribal Court, Box 551, Fort Thompson, South Dakota 57339, (605) 245-2325

Craig Community Association IRA Council, P.O. Box 25, Craig, Alaska 99921, Gordon James, President, (907) 826-3316

Creek Nation of Oklahoma, P.O. Box 580, Okmulgee, Oklahoma 74447, Claude A. Cox, Principal Chief, (918) 756-8700

Deering IRA Council, Deering, Alaska 99736, President, (907) 363-2138

Delaware Tribe of Western Oklahoma, Delaware Indian Child Welfare, P.O. Box 825, Anadarko, Oklahoma 73005, Linda S. Poolaw, Coordinator, Office (405) 247-9393, Home (405) 247-5263

Devils Lake Sioux Tribe of North Dakota, Ft. Totten, North Dakota 58335, Elmer White, Chairman, (701) 766-4221

Douglas Indian Association, P.O. Box 472, Douglas, Alaska 99824, Frank A. Wilson, Chairman, (907) 586-4985

Duckwater Shoshone Tribe, Box 68, Duckwater, Nevada 89314, Social Worker, (702) 863-0227

Ely Colony Council, 16 Shoshone Circle, Ely, Nevada 89301, Marylee Delucia, (702) 289–3013

English Bay Village Council,* English Bay VIA, Homer, Alaska, Vincent Kvasnifoff, President, (907) 235–8292, or The North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

Eyak Village Council, Eyak Native Village, P.O. Box 878, Cordova, Alaska 99578, Agnes Nichols, Eyak Village President, (907) 424–3619

Flandreau Santee Sioux Tribe of South Dakota, P.O. Box 283, Flandreau, South Dakota 57028, Judith Hanssen Miller, Social Worker Coordinator, (605) 997–3844

Fort Belknap Tribes, P.O. Box 249, Harlem, Montana 59526, Franklin R. Perez, President, Tribal Council, (406) 353–2205

Fort Peck Tribes, Fort Peck Agency, Poplar, Montana 59255, Norman Hollow, Chairman, Fort Peck Tribal Executive Board, (406) 768–5311 ext. 300

Fort Sill Apache Tribe, Route 2, Box 121, Apache, Oklahoma 73006, Bob Cannon, (405) 588–2296

Gila River Pima-Maricopa Indian Community of the Indian Reservation of Arizona, P.O. Box 427, Sacaton, Arizona 85247, Lewis Lane, (602) 899–9665

Goshute Business Council, Confederated Tribes of the Goshute Reservation of Nevada and Utah, Ibapah, Utah 84034, Dan Murphy, Chairman

Hoonah Indian Association, P.O. Box 144, Hoonah, Alaska 99829, Millie Hack, Child Welfare Associate I, (907) 945–3600

Hopi Tribe of Arizona, P.O. Box 156, Keams Canyon, Arizona 86034, Hopi Tribal Court, Richard Parsons, Children's Court Counselor, (602) 738–2288/9

Hydaburg Cooperative Association, P.O. Box 57, Hydaburg, Alaska 99922, Adrain LeCornu, President, (907) 285–3608

Iowa Tribe of Kansas and Nebraska, P.O. Box 206, Horton, Kansas 66439, Director, Four Tribes Social Services, (913) 486–2837

Jicarilla Apache Tribe of New Mexico, P.O. Box 221, Dulce, New Mexico 87528, Jicarilla Apache Tribal Court, Chief Tribal Judge, (505) 759–3366

Kaibab-Paiute Tribe, Tribal Affairs Building, Fredonia, Arizona 86022, Vivienne C. Jake, Social Services Representative, (602) 643–7214

Kake Council, Organized Village of Kake, P.O. Box 121, Kake, Alaska 99830, (907) 785–6434

Kasaan Council, Organized Village of Kasaan, General Delivery, Kasaan, Alaska 99924, Louis Thompson, President, (907) 542–8001

Kawerak, Inc.,* P.O. Box 948, Nome, Alaska 99762, Mary Miller, Director, (907) 443–5231

Ketchikan Indian Corporation, 429 Deermount, Ketchikan, Alaska 99901, Julian O. Arge, Director of Social Services, (907) 225–5158

Kiana Traditional Council, Kiana, Alaska 99749, President, (907) 475–2109

Kickapoo Tribe of Kansas, R.R. 1, Box 157–A, Horton, Kansas 66439, Fredrick R. Thomas, Chairman, (913) 486–2131

Kickapoo Tribe of Oklahoma, P.O. Box 70, McLoud, Oklahoma 74851, Tribal Administrator, (405) 964–2075

Kiowa Tribe of Oklahoma, P.O. Box 361, Carnegie, Oklahoma 73015, Bess Yeahquo, Director of Social Services, Julia Roubideaux, Child Welfare Specialist, (405) 654–2300

Kivalina IRA Council, Kivalina, Alaska 99750, President, (907) 645–2138

Klawock Cooperative Association, Klawock IRA, P.O. Box 112, Klawock, Alaska 99925, James Martinez, President, (907) 755–2265

Kobuk Traditional Council, Kobuk, Alaska 99751, President, (907) 948–8001 (Earth Station)

Kodiak Alaska—Natives of Kodiak, Inc.,* P.O. Box 172, Kodiak, Alaska 99615, KANA, President, Director of Health, (907) 486–5725

Kotzebue IRA Council, P.O. Box 296, Kotzebue, Alaska 99752, President, (907) 442–3467

Lower Brule Sioux Tribe, Lower Brule, South Dakota 57548, Rose McCauley, Juvenile Probation Officer, (605) 473–5528

Maniilag Association,* P.O. Box 256, Kotzebue, Alaska 99752, Maureen Pie', Tribal Operations Coordinator, (907) 442–3311

Mescalero Apache Tribe of New Mexico, Mescalero Apache Agency, Mescalero, New Mexico 88340, Wendell Chino, President

Metlakatla Indian Community, P.O. Box 8, Metlakatla, Alaska 99926, Frieda Haldane, Juvenile Probation Officer, (907) 886–4021

Miami Tribe of Oklahoma P.O. Box 636, Miami, Oklahoma 74355, Bill Dickey Allen, Chief (918) 542–2445

Minnesota Chippewa Tribes (Fond du Lac, Grand Portage, Leech Lake, Mille Lacs, Nett Lake (Bois Forte), White Earth), P.O. Box 217, Cass Lake, Minnesota 56633, Director of Human Services, (218) 335–2252

Modoc Tribe of Oklahoma P.O. Box 939, Miami, Oklahoma 74355, Bill G. Follis, Chief, (918) 542–1190

Mr. Marathon Native Association* P.O. Box 1457, Seward, Alaska 99664, (907) 224–3666, or North Pacific Rim, 903 West Northern Lights Blvd, Suite 203, Anchorage, Alaska 99503 (907) 276–2121

Native Village of Ouzinkie, P.O. Box 172, Kodiak, Alaska 99615, KANA, President, Director of Health, (907) 486–5725

The Navajo Nation, Division of Social Welfare, P.O. Drawer "JJ", Window Rock, Arizona 86515, Mrs. Ella Shirley, Social Worker III, (602) 871–6807

Noatak IRA Council, Noatak, Alaska 99761, President, (907) 485–2173

Noorvik IRA Council, Noorvik, Alaska 99763, President, (907) 636–2144

Northern Cheyenne Tribe, Lame Deer, Montana 59043, Patsy Tallbull, Director of Social Services, (406) 477–8321

Northern Idaho Agency, c/o Nez Perce Tribal Executive Committee, P.O. Box 305, Lapwai, Idaho 83540, Bernice Moffett

Oglala Sioux Tribe of the Pine Ridge Reservation, Oglala Sioux Tribal Council, Pine Ridge, South Dakota 57770, Newton Cummings, Chairman (605) 867–5821

Omaha Tribal Council, Omaha Tribe of Nebraska, P.O. Box 143, Macy, Nebraska 68039, Jessiline Anderson, Director, (402)837–5391

Osage Tribe of Oklahoma, Tribal Administration Building, Pawhuska, Oklahoma 74056, George R. Tallchief, Principal Chief, (918) 287–4622

Ottawa Tribe of Oklahoma, P.O. Box 110, Miami, Oklahoma 74355, Lewis H. Barlow, Chief, (918) 540–1536

Paiute Indian Tribe of Utah, 600 North 100 East, Cedar City, Utah 84720, Lewis Kunz, Director of Social Services

Papago Tribe of Arizona, Papago Human Service Department, P.O. Box 837, Sells, Arizona 85634, Human Service Director, (602) 383–7206

Pascua Yaqui Tribe, 7474 South Camino De Oeste, Tucson, Arizona 85746, David Ramirez, Chairman (602) 883–2838

Pawnee Indian Tribe of Oklahoma, Pawnee Business Council, P.O. box 470, Pawnee, Oklahoma 74058, Delbert Horsechief, President, (918) 762–3624

Pelican Tlingit & Haida Community Council,* P.O. Box 7272, Pelican, Alaska 99832, James E. Phillips, President, (907) 735–4471/2242

Peoria Indian Tribe of Oklahoma, P.O. Box 1527, Miami, Oklahoma 74355, Rodney F. Arnette, Chief, (918) 540–2535

Petersburg Indian Association, P.O. box 1128, Petersburg, Alaska 99883, Richard Kito, President

Petersburg Native Association,* P.O. Box 588, Petersburg, Alaska 99833, Gertrude Lyons, Social Services Associate II, (907) 772–3074

Ponca Tribe of Oklahoma, P.O. Box 2, White Eagle, Ponca City, Oklahoma 74601, Ms. Janie Braden, (405) 762–8104

Port Graham Village Council, Homer, Alaska 99603, Walter Maganack, Sr., Village President, (907) 433–8001, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

Port Lions Tribal Council, Native Village of Port Lions, P.O. Box 172, Kodiak, Alaska 99615, (907) 486–5725

Potawatomi Indians of Oklahoma, Route 5, Box 151, Shawnee, Oklahoma 74801, John Barrett, Tribal Administrator, (405) 275–3121

Prairie Band of Potawatomi Indians, P.O. Box 97, Mayetta, Kansas 66509, (913) 966–2255

Pueblo of Acoma of New Mexico, P.O. Box 347, Acoma, New Mexico 87034, Bonnie Martinez, Tribal Court Clerk, (505) 552–6632

Pueblo of Isleta of New Mexico, P.O. Box 317, Isleta, New Mexico 87022, John L. Jojola, Lt. Governor

Pueblo of Nambe of New Mexico, Route 1, Santa Fe, New Mexico 87501, Ms. Karen Quintana, (505) 455–7692

Pueblo of Picuris of New Mexico, P.O. Box 228, Penasco, New Mexico 87553, Mary Louise Keesing, Pueblo Tribal Secretary, (505) 587–2519

Pueblo of Pojoague of New Mexico, Route 1, Box 71, Santa Fe, New Mexico 87501, Arthur F. Garcia, Tribal Agent, (505) 455–2271

Pueblo of San Felipe of New Mexico, P.O. Box "A", San Felipe, New Mexico 87001, Ms. Gail Aguilar, (505) 867–3381

Pueblo of San Ildefonso of New Mexico, Route 5, Box 315–A, Santa Fe, New Mexico 87501, P. Bert Naranjo, Tribal Judge, (505) 455–2273

Pueblo of San Juan of New Mexico, P.O. Box 1099, San Juan Pueblo, New Mexico 87566, Mr. Johnny Abeyta, (505) 852–4400

Pueblo of Santa Clara of New Mexico, P.O. Box 580, Espanola, New Mexico 87532, Frankie V. Gutierrez, Tribal Judge, Pasqualita Frenier, Director, Joseph Abeyta, Sr., (505) 753–7326

Pueblo of Tesuque of New Mexico, Route 1, Box 1, Santa Fe, New Mexico 87501, Mr. Louis Hena, (505) 983–2667

Pueblo of Zuni of New Mexico, P.O. Box 339, Zuni, New Mexico 87327, Mark J. Romancito, Director, (505) 782–4481, ext. 111

Puyallup Nation Health Authority, Puyallup Tribe of Washington, 2209 East 32nd Street, Tacoma, Washington 98404, Rod Smith, Executive Director, (206) 597–6380

Quapaw Tribe of Oklahoma, Quapaw Tribal Business Committee, Route 1, Quapaw, Oklahoma 74363, Jesse McKibben, Chairman, (918) 542–1853

Quechan Tribe of the Fort Yuma Reservation of California, P.O. Box 1352, Yuma, Arizona 85364, Isadore Quahlupe, Vice-President, (714) 572–0213

Ramah Navajo School Board, Inc., Ramah Navajo Family Service Center,* P.O. Box Drawer 1—Pine Hill CPO, Pine Hill, New Mexico 87321, Beverly J. Coho, Director of Social Services, Vivian Hailstorm, NSW, Social Worker, Ceceilia S. Ensrude, Child Legal Advocate, (505) 783–5011

Red Lake Tribe of Minnesota, Red Lake Court of Indian Offenses, Red Lake, Minnesota 56671, Gary Graves, Prosector, (218) 679–3303

Reno-Sparks Indian Colony, Reno-Sparks Tribal Court, 98 Colony Road, Reno, Nevada 89502, (702) 329–2936 or Director, Social Services, 34 Reservation Road, Reno, Nevada 89502, (702) 329–2936

Rosebud Sioux Tribe of South Dakota, Rosebud, South Dakota 57570, Elizabeth Garriott, Tribal Social Services, (605) 747–2258

Sac and Fox Tribe of Missouri, Tribal Administrator, Rural Route 1, Reserve, Kansas 66434, Ms. Margie Parsons, Tribal Secretary, (913) 742–7471

Salt River Pima-Maricopa Indian Community, Route 1, Box 216, Scottsdale, Arizona 85256, Ms. Alberta Mercado, Juvenile Judge, Community Court, (602) 941–7212, Mr. Robert Lewis, Social Services Director, (602) 941–7201

Santee Sioux Tribe of Nebraska, Santee Sioux Tribal Council, Niobrara, Nebraska 68706, Richard Kitto, Chairman, Donald LaPointe, Vice-Chairman, Roger Crudell, Business Manager, Patty Frazer, Secretary, (402) 857–3302

Sauk-Suiattle Indian Tribe of Washington, 4229 76th Street NE., Marysville, Washington 98270, Jean Fish, Chairman

Sault Ste. Marie Tribe of Chippewa Indians of Michigan, 206 Greenough Street, Sault Ste. Marie, Michigan 49783, Ms. Kathy Fike, Mr. Joseph K. Lumsden, Tribal Chairman, or Martha Snyder, Social Worker, P.O. Box 432, Manistique, Michigan 49854

Saxman IRA Council, Organized Village of Saxman, P.O. Box 6138, Ketchikan, Alaska 99901, Nora DeWitt, Acting President, (907) 225–4166

Selawik IRA Council, Selawik, Alaska 99770, President, (907) 484–2225

Seminole Nation of Oklahoma, P.O. Box 745, Wewoka, Oklahoma 74884, James N. Milam, Principal Chief, (405) 382–7913

Seneca-Cayuga Tribe of Oklahoma, P.O. Box 1283, Miami, Oklahoma 74355, James H. Allen, Chief, (918) 542–6609

Shoshone-Bannock Tribes of the Fort Hall Reservation of Idaho, P.O. Box 306, Fort Hall, Idaho 83203, Fort Hall Tribal Court, John Taylor, Court Administrator, (208) 238–3904

Shoshone-Paiute Tribes, Shoshone-Paiute Social Services Program, P.O. Box 219, Owyhee, Nevada 89832, (702) 757–3211

Shungnak IRA Council, Shungnak, Alaska 99773, President, (907) 437–2161

Sisseton-Wahpeton Sioux Tribe of the Lake Traverse Reservation of South Dakota, Sisseton-Wahpeton Sioux Tribal Court, Sisseton, South Dakota 57262, Lorraine Rousseau, Chief Judge, (605) 698–3911

Sitka Community Association, Sitka Community Association Tribal Court, Box 1450, Sitka, Alaska 99835, Judge William Brady, (907) 747–3207

Skagua Traditional Village Council,* P.O. Box 848, Haines, Alaska 99827, Gene P. Strong, President, (907) 766–2727

Skokomish Indian Tribe of Washington, Route 5, Box 432, Shelton, Washington 98584, James Byrd, Sr., Chairman, (206) 877–5113

Southern Ute Indian Tribe, Department of Social Services, P.O. Box 737, Ignacio, Colorado 81137

Standing Rock Sioux Tribe of the Standing Rock Reservation of North and South Dakota, Fort Yates, North Dakota 58538, Chief Judge, (701) 854–7244

Tatitlek Village Council, Native Village of Tatitlek, General Delivery, Tatitlek, Alaska 99677, Gary Kompkoff, President, (907) 257–8001, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

Te-Moak Band of Western Shoshone Indians of Nevada, Western Shoshone Social Services Program, 1545 Silver Eagle Road, Elko, Nevada 89801, Robert Yablunsky, Program Director, (702) 738–9251, or Elko Band Council, P.O. Box 748, Elko, Nevada 89801, Ursula Eaglestaff, Social Worker

Three Affiliated Tribes, of the Fort Berthold Reservation of North Dakota P.O. Box 699, New Town, North Dakota 58763, Alyce Spotted Bear, Chairperson, (701) 627–4781

Toiyabe Indian Health Project, Inc.,* P.O. Box 1296, Bishop, California 93514, Mr. Art Martinez, (619) 873–6394, Mr. Larry Stidham, (619) 873–3581

Turtle Mountain Band of Chippewa Indians, Belcourt, North Dakota 58316,

Richard LaFromboise, Chairman, (701) 477–6121

Ute Mountain Ute Tribe General Delivery Towaoc, Colorado 81334, Melinda Bronson, Director, (303) 565–3751, ext. 265

Valdez Native Association,* P.O. Box 1106, Valdez, Alaska 99686, Helen Dunlap, President, (907) 835–4951, or North Pacific Rim, 903 West Northern Lights Blvd., Suite 203, Anchorage, Alaska 99503, (907) 276–2121

White Mountain Apache Tribe, Tribal Court Center, P.O. Box 1570, Whiteriver, Arizona 85941, Juvenile Probation Officer

Wichita Indian Tribe of Oklahoma, P.O. Box 729, Anadarko, Oklahoma 73005, Newton Lamar, President, (405) 247–2425

Wind River Tribes, Arapahoe Business Council P.O. Box 396, Fort Washakie Wyoming 82514 Burnett White Pume, Chairman, (307) 255–8259, or Shoshone Tribal Administration Complex, P.O. Box 538, Fort Washakie, Wyoming 82514, Joyce A. Posey, Tribal Secretary, (307) 255–8257

Winnebago Tribe of Nebraska, Box 626, Winnebago, Nebraska 68071, Norma Stealer, Director, (402) 878–2570

Wrangell Cooperative Association, Tribal Governing Body, P.O. Box 868, Wrangell, Alaska, 99929, President, (907) 874–3335, or Central Council of Tlingit & Haida Indians of Alaska, 320 West Willoughby Avenue, Suite 300, Juneau, Alaska 99801, President, (907) 586–1432

Wyandotte Tribe of Oklahoma, P.O. Box 470, Miami, Oklahoma 74355, Leaford, Bearskin, Chief, (918) 540–1541

Yakutat, Inc.,* Yakutat, Alaska 99689, Henry Porter, President

Yankton Sioux Tribe of South Dakota, Box 28, Marty, South Dakota 57361, Alvin R. Zephier, Chairman, (605) 384–3804/5687

James S. Bregman,

Acting Deputy Assistant Secretary—Indian Affairs.

[FR Doc. 85–20152 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[Group 760]

California; Filing of Plat of Survey

August 16, 1985.

1. This plat of the following described land will be officially filed in the California State Office, Sacramento, California immediately:

Mount Diablo Meridian, Amador County

T. 7 N., R. 12 E.

2. This plat, representing the dependent resurvey of a portion of the east and north boundaries, a portion of the subdivisional lines and certain mineral surveys, and the survey of the subdivision of sections 1, 2, 7, 12, 13, 14, 19, and 20, Township 7 North, Range 12 East, Mount Diablo Meridian, under Group No. 760, California, was accepted July 30, 1985.

3. This plat will immediately become the basic record of describing the land for all authorized purposes. This plat has been placed in the open files and is available to the public for information only.

4. This plat was executed to meet certain administrative needs of the Bureau of Land Management.

5. All inquiries relating to this land should be sent to the California State Office, Bureau of Land Management, Federal Office Building, 2800 Cottage Way, Room, E-2841, Sacramento, California 95825.

Celia Anderson,

Acting Chief, Records and Information Section.

[FR Doc. 85–20254 Filed 8–22–85; 8:45 am]

BILLING CODE 4310-40-M

Recreation Management; Long-Term Visitor Permit Program, Designation and Revision of Long-Term Visitor Areas, and Establishment of Supplementary Rules; Yuma District, AZ, and California Desert District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Continued implementation of the long-term visitor permit program, designation and revision of long-term visitor areas, and establishment of supplementary rules in the Yuma District, Arizona, and the California Desert District, California.

SUMMARY: The Bureau of Land Management's (BLM) Yuma District and California Desert District are continuing implementation of the "Long-Term Visitor Program" which was instituted in 1983. The program established an annual long-term use season from October 1 to May 31. During this time, visitors who wish to camp on public lands in one location for extended periods must stay in designated Long-Term Visitor Areas (LTVAs) and purchase a $25 Long-Term Visitor Permit.

Beginning with the 85–86 use season, the following modifications are being made to the Long-Term Visitor Program:

1. Between October 1 and May 31, visitors who wish to camp in an LTVA for less than 14 days are required to register when entering the area. There is no fee for stays of less than 14 days.

2. The California Desert District is designating one additional LTVA and the Yuma District is revising the boundaries of the La Posa LTVA and the Yuma District portion of the Imperial Dam LTVA. (See Table 1).

TABLE 1.—LONG-TERM VISITOR AREAS

District	Area	Approximate size (acres)	Location
California Desert	Dunes Vista LTVA (Addition).	50	T. 16 S., R. 20 E. (SBM), Secs. 14, 23.
Yuma	Imperial Dam LTVA (Revision of Yuma District Portion).	3,260	T. 14 S., R. 24 E. (SBM), Secs. 31, 32. T. 15 S., R. 24 E. (SBM Secs. 5, 6, 7, 8, 17, 18, 19.
Yuma	La Posa LTVA (Revision).	10,920	T. 3 N., R. 19 W. (G&SRM), Secs. 1, 2, 3, 4, 9, 10, 11, 12, 14, 15, 16, 17, 21, 22, 23. T. 4 N., R. 19 W., (G&SRM), Secs. 26, 27, 28, 33, 34, 35, 36.

3. In addition to rules of conduct set forth in CFR Title 43, Chapter II, § 8365.1–5, the following supplementary rules apply to designated Long-Term Visitor Areas:

a. The speed limit is 15 MPH. Motorized vehicle free play is prohibited, and motorized vehicles will be used for access to and from campsites only.

b. Pets must be kept on a leash or under some other form of physical control at all times.

c. A 15–foot space must be maintained between campfires, vehicles, and dwelling units.

d. Quiet hours are from 10 p.m. to 6 a.m. Operation of audio devices or motorized equipment in a manner that makes unreasonable noise that disturbs other visitors is prohibited.

e. Dumping of gray water is prohibited unless otherwise posted.

f. Discharge of firearms, weapons, or fireworks is prohibited within one-half mile of LTVAs.

g. Landing or taking off of aircraft, including ultra-lites, is prohibited within the Mule Mountain LTVA.

h. Boarding of livestock (horses, cattle, sheep, goats, etc.) within the boundaries of LTVAs is permitted only through authorization by the local Area Manager.

i. Campers, trailers, and other dwelling units must remain mobile. Wheels must remain on all wheeled vehicles. No permanent structures or

alterations to the natural landscape are allowed.

j. No wood collecting is permitted within the boundaries of Imperial Dam and La Posa LTVAs.

k. Within the Imperial Dam and La Posa LTVAs overnight occupancy is prohibited in desert washes.

l. Overnight occupancy is prohibited between Old Highway 80 and Interstate 8 in Hot Spring LTVA.

m. Food or beverages are prohibited within 50 feet of the hot spring facilities in Hot Spring LTVA.

n. Camping is restricted to self-contained camping units only in the La Posa, Pilot Knob, Dunes Vista, Tamarisk, and Hot Spring LTVAs. The Imperial Dam LTVA is also restricted to self-contained camping units only except for the vicinity of Senator Wash Reservoir and Squaw Lake Campground.

EFFECTIVE DATE: August 15, 1985.

FOR FURTHER INFORMATION CONTACT: David Mensing, Outdoor Recreation Planner, California Desert District, Riverside, California 92507, (714) 351-6402, or Hal Hallett, Outdoor Recreation Planner, Yuma District, Yuma, Arizona 85364, (602) 726-6300.

SUPPLEMENTARY INFORMATION: The purpose of the Long-Term Visitor Program is to provide areas for long-term winter camping use. The sites designated as Long-Term Visitors Area are, in most cases, the traditional use areas of long-term visitors. Designated sites were selected using criteria developed during the management planning process and environmental assessments were completed for each site location.

The program was established to property accomodate the increasing demand for long-term winter visitation and to provide natural resource protection through improved management of this use. The designation of Long-Term Visitor Areas will assure that specific locations are available for long-term use year after year, and assure that inappropriate areas are not used for extended periods.

Visitors may camp without a Long-Term Visitor Permit in LTVAs or on public lands not otherwise closed to camping for up to 14 days in any 28-day period unless posted otherwise.

Authority for the designation of Long-Term Visitor Areas contained in CFR Title 43, Chapter II, § 8372.0-5(g). Authority for the establishment of a long-term visitor permit program is contained in CFR Title 43, Chapter II, § 8372.1 and payment of fees in CFR Title 36, Chapter I, Part 71.

The authority for establishing supplementary rules is contained in CFR Title 43, Chapter II, § 8365.1-6. These rules have been developed to meet the goals of individual resource management plans. Rules will be available in each local office having jurisdiction over the lands, sites, or facilities affected and posted near and/or within the lands, sites or facilities affected. Violations of supplementary rules are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

Maps showing the location of all Long-Term Visitor Areas are available at both the Desert District and Yuma District Offices.

D. Dean Bibles,

State Director, Arizona.

Ed Hastey,

State Director, California.

[FR Doc. 85-20255 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-32-M

Prioritization of Processing of Record Title and Operating Rights Assignments of Oil and Gas Leases

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of prioritization for processing of record title and operating rights assignments of oil and gas leases.

SUMMARY: As part of the Bureau of Land Management's (BLM) continuing commitment to eliminating delays in casework processing and in the interest of providing the best possible service to the public, notice is hereby given that applications for approval of record title and operating rights assignments of oil and gas leases, filed in accordance with 43 CFR 3106, will be prioritized for processing. All assignments will be processed. However, to enable the BLM office to focus on those assignments which are either required to track record title in Federal leases or are necessary for development to occur, a priority ranking system will be used. Assignments will be prioritized as follows:

Category 1. (a) All assignments of record title and (b) assignments of operating rights, accompanied by a certificate of title described below, which are for producing or unitized leases or accompanied by or necessary for approval of an Application for Permit to Drill (APD) or an agreement under 43 CFR 3105 or 3181.3.

Category 2. Assignments of operating rights for producing or unitized leases or accompanied by or necessary for approval of an APD or an agreement under 43 CFR 3105 or 3181.3 which are not accompanied by a certificate of title.

Category 3. Assignment of operating rights accompanied by a certificate of title.

Category 4. All other assignment of operating rights.

Certificates of title must contain full disclosure of all interests in the lands involved, prepared by a person, association or corporation authorized by the law of the State in which the lands are located to execute such a certificate. The certificate of title must state that the certificate is accurate and fully complete as to all instruments of conveyance of record affecting title to the subject lands as reflected by the records of the BLM and/or the appropriate recording office of the State where the lands are located. It must bring the chain of title forward for all record title interests and must give land description, percentage of interest held, the full name and address of the lessee or assignee, as appropriate, and his/her Bureau identification number. Where operating rights are segregated from the record title, the chain of title for all operating rights must be brought forward separately and must also give the land description, percentage of interest held, the full name and address of the lessee or assignee, as appropriate, and his/her Bureau identification number. The listing of operating rights must set forth each specific horizontal zone segregated from all lands included in the assignment.

It is important to note that the public must continue to timely file assignments of record title, as well as, assignments of operating rights for leases in production or covered by unit or communitization agreements. However, the public is advised that assignments of operating rights for nonproducing or nonunitized leases need not be filed with the BLM until such time as approval of the assignment is necessary for approval of an APD or an agreement under 43 CFR 3105 or 3181.3. Assignees of operating rights who do not file shall assume any risk arising from the fact that any subsequent purchaser of operating rights will not be on notice of their interest. Some assignments should accompany the APD or application for approval of an agreement, and should include as exhibits a certificate of title as described above and an originally executed copy, or copy certified by the legal custodian of the records in the appropriate State recorder's office, of each assignment of operating rights not yet filed with or approved by the BLM. Compliance with these requests will ensure timely processing by the BLM since the operating rights assignment will be processed in conjunction with the APD or agreement (see priority

Category 1 above) based on the certificate of title and the supporting documentation. The certificate of title will suffice as the statement to the BLM that any assignment not filed within 90 days from the date of execution is still in force as required by 43 CFR 3106.1(a), and the approval by BLM of the operating rights assignment will incorporate approval of any interim assignments, copies of which should be included as exhibits.

It is expected that these measures will better enable BLM State Offices to approve promptly those assignments affecting record title to Federal leases and those assignments of operating rights pertinent to post lease oil and gas operations. These steps are being taken as interim measures until such time as rules modifying the requirements for assignments of operating rights may be promulgated.

FOR FURTHER INFORMATION CONTACT: Lois Mason, (202) 343–2190.

James M. Parker,

Acting Director.

July 26, 1985.

[FR Doc. 85–20003 Filed 8–22–85; 8:45 am]

BILLING CODE 4310–84–M

Shoshone District Grazing Advisory Board Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Grazing Advisory Board.

DATE: Thursday, September 26, 1985 at 10:00 a.m.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: Jon Idso, ADM for Resources, Shoshone District Office, P.O. Box 2B, Shoshone, Idaho 83352. Telephone (208) 886–2206 or FTS 554–6576.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:

Recommendations on Utilization of Range-Betterment Funds
Future Composition of the Board
Review the Transfer of Certain Lands From the Shoshone District to the Burley District

The Shoshone District Grazing Advisory Board is established under Section 403 of the Federal Land Policy and Management Act, as amended Operation and Administration of the Board will be in accord with the Federal Advisory Committee Act of 1972 (Pub. L. 92–463,; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement between 1:00 p.m. and 2:00 p.m., or may file a written statement regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the Shoshone District Manager by September 25, 1985. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

Jon Idso,

Acting District Manager.

[FR Doc. 85–20253 Filed 8–22–85; 8:45 am]

BILLING CODE 4310–GG–M

Realty Action, Exchange of Public Lands in Boundary, Bonner, Kootenai Counties, ID

Correction

In FR Doc. 85–17113, appearing on page 29277, in the issue of Thursday, July 18, 1985, make the following corrections:

In the second column:

1. In T. 6 S., R. 28 E., B.M., Sec. 36, the fifth and sixth lines of legal description should read:

NE¼NW¼SE¼SW¼, W½W½SE¼ SW¼, NW¼NW¼SE¼.

2.a. The thirteenth line from the top of the page should read "T. 7 S., R. 27 E., B.M.".

b. Under the above-mentioned township and range, the legal description for Sec. 16 should read "N½, E½SW¼SW¼, SE¼SW¼, N½SW¼".

BILLING CODE 1505–01–M

Fish and Wildlife Service

Honeoye Creek Wetlands Project; Draft Environmental Impact Statement Comment Period Extended

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the comment period on the DEIS on the Honeoye Creek Wetland Project has been extended to September 15, 1985. At the public hearing on the project held on July 2, 1985, Fish and Wildlife Service and New York State Department of Environmental Conservation representatives annunced an extension of the comment period. Originally comments were due to Fish and Wildlife Service by August 15, 1985.

ADDRESS: Comments should be addressed to: Howard N. Larsen Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele, U.S. Fish and Wildlife Service, One Gateway Center, Suite 700, Newton Corner, Massachusetts 02158, (617) 965–5100 X382.

Individuals wishing copies of this DEIS for review should immediately contact the above individual. Copies have been sent to all agencies, organizations and individuals who participated in the scoping process and in the review process to date.

William C. Ashe,

Acting Regional Director.

[FR Doc. 85–20226 Filed 8–22–85; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Gateway National Recreation Area; Gateway Advisory Commission Meeting

AGENCY: National Park Service—Gateway Advisory Commission, Interior.

ACTION: Notice of Meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Gateway Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act.

DATE: September 11, 1985, commencing at 3 p.m.

ADDRESS: Theodore Roosevelt Birthplace National Historic Site, 28 East 20th Street, New York, New York.

FOR FURTHER INFORMATION CONTACT: Robert W. McIntosh, Jr., Superintendent, Gateway National Recreation Area, Headquarters, Building No. 69, Floyd Bennett Field, Brooklyn, New York 11234, (718) 338–3575).

SUPPLEMENTARY INFORMATION:

The Advisory Commission was established by Pub. L. 92–592, to meet and consult with the Secretary of the Interior on general policies and specific matters relating to the development of Gateway National Recreation Area. The agenda for the meeting will include: (1) Riis Park Development; (2) Status of Advisory Commission; (3) New business as may come before the board.

The meeting will be open to the public. The facility at which the meeting will be held is considered physically accessible. If interpretive services for the deaf or hearing impaired will be needed, they should be requested within five working days before the meeting. Facilities and space to accommodate members of the public are limited, and persons will be accommodated on a first-come, first-served basis.

Any member of the public may file with the Commission a written statement concerning agenda items to be discussed. The statement should be addressed to the Commission, c/o Gateway National Recreation Area, Building No. 69, Headquarters, Floyd Bennett Field, Brooklyn, New York 11234. Minutes of the meeting will be available for inspection four weeks after the meeting at Gateway National Recreation Area Headquarters Building in Brooklyn, New York.

Dated: August 15, 1985.

Robert W. McIntosh, Jr.

Superintendent, Gateway National Recreation Area.

[FR Doc. 85-20165 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

Land Protection Plan; Cape Cod National Seashore; Availability

AGENCY: National Park Service, Cape Cod National Seashore, Interior

ACTION: Notice of availability of land protection plan.

SUMMARY: This notice announces that a Land Protection Plan for Cape Cod National Seashore is available at the Cape Cod National Seashore headquarters building, Marconi Station, South Wellfleet, Massachusetts 02663.

DATE: The Land Protection Plan was approved by Steven H. Lewis, Acting Regional Director, North Atlantic Region on August 8, 1985.

This Plan can be obtained from Jim Killian at the above address or telephone (517) 349-3785.

Herbert Olsen,

Superintendent, Cape Cod National Seashore.

August 15, 1985.

[FR Doc. 85-20164 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

Availability of Development Concept Plan and Public Meeting; Fort Washington Marina, Piscataway Park, MD

The State of Maryland, in cooperation with the National Park Service, has prepared a Development Concept Plan for Fort Washington Marina, Piscataway Park, that identifies the state's proposal for future development and operation of the marina.

A public meeting will be held to solicit comments on this proposal. The time and location of the meeting is as follows: September 11, 1985 at 7:30 p.m. in the All Purpose Room of the Potomac Landing Elementary School, 12500 Ft. Washington Boulevard, Fort Washington, Maryland. Please contact the Superintendent, National Capital Parks-East at 202-433-1186, 5 days prior to the meeting if an interpreter is needed for the hearing impaired.

Written comments on this Development Concept Plan are invited and will be accepted until October 11, 1985. Written comments should be sent to: Superintendent, National Capital Parks-East, 1900 Anacostia Drive SE., Washington, D.C. 20020.

Copies of the Development Concept Plan are available by writing to the above address.

Dated: August 19, 1985.

Manus J. Fish,

Regional Director, National Capital Region.

[FR Doc. 85-20230 Filed 8-22-85; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Housing Guaranty Program; Mauritius; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of a loan for Mauritius as part of A.I.D's development assistance program. The proceeds of this loan will be used to finance shelter projects for low income families in Mauritius. The name and address of the representative of the Borrower to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Mauritius

Project: 642-HG-001—$6,000,000

Attention: Mr. M. Baquant, Financial Secretary, Ministry of Finance, New Government Center, Port Louis, Mauritius, Telex No. 4249, Extern IW

Interested investors should telegran their bids to the Borrower's representative on September 5, 1985 but no later than 12:00 midnight New York time. Bids should be open for at least 48 hours. Copies of all bids should be simultaneously sent to the following addresses:

American Embassy, Rogers House (via commercial cable), Port Louis, Mauritius, Attn: Fredrik Hansen

Agency for International Development, Michael G. Kitay, PRE/H, Room 625, SA-12, Washington, D.C. 20523, Telex No. 892703

For the $6,000,000 loan (642-HG-001) the Borrower is requesting either fixed rate or variable rate bids (with an option to convert to fixed rate) for the full amount, to be disbursed in 3 tranches as follows: $2.0 million on or about November 1, 1985, $2.0 million on or about November 1, 1986 and $2.0 million on or about May 1, 1988. Fees will be allowed up front.

Bids should specify a grace period on repayment of principal of ten (10) years and a grace period on interest of eighteen (18) months from the date of first disbursement. Borrower reserves the right to consider alternate bids.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrowers and thereafter subject to approval by A.I.D. The lender and A.I.D. shall enter into a Contract of Guaranty, covering the loan. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (a) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loan must be repayable in full no latet than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rate may be higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from: Director, Office of Housing and Urban Programs, Agency for International Development, Room

625, SA/12, Washington, D.C. 20523, Telephone: (202) 632-3544.

Pamela B. Hussey,

Deputy Director, Office of Housing and Urban Programs.

[FR Doc. 85-20250 Filed 8-22-85; 8:45 am]

BILLING CODE 4710-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 30701]

Consolidated Rail Corp. Trackage Rights; the Milwaukee Road, Inc.; Exemption

The Milwaukee Road, Inc. has agreed to grant trackage rights to Consolidated Rail Corporation over a line of track between Chase (milepost 176.8) and Elnora, IN. (milepost 223.9). The trackage rights were effective on August 12, 1985.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction.

Dated: August 15, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-20202 Filed 8-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30706]

Exploration Cruise Lines, Inc.; Purchase of Alaska Tour and Marketing Services, Inc.

ACTION: Notice of proposed acquisition of water carrier operating authority and other assets under 49 U.S.C. 11343.

SUMMARY: By application under 49 U.S.C. 11343, Exploration Cruise Lines, Inc. (Exploration), proposes to acquire the water carrier operating authority and other assets of Alaska Tour and Marketing Services, Inc. (ATMS), a regulated water carrier operating under certificate No. W-1328. Exploration is a noncarrier subsidiary of Anheuser-Busch Companies, Inc. (ABC), which controls, pursuant to prior Commission approval in FD. No. 30096, Manufacturers Railway Company, a rail carrier subject to the jurisdistion of this Commission, and Williamsburg Transport, Inc. (MC-165498) and Busch Industrial Products, Inc. (MC-165507), both interstate motor contract carriers.

DATES: Comments are due by September 13, 1985.

ADDRESSES: Send comments to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

and

(2) Petitioners' representatives: Edward G. Lowry III, Bogle & Gates, 2100 Bank of California Ctr., Seattle, WA 98164

and

Leroy F. Fuller, Bogle & Gates, Suite 900, One Thomas Circle NW., Washington, DC 20005.

Comments should refer to Finance Docket No. 30706.

FOR FURTHER INFORMATION CONTACT: Harold Johnson, (202) 275-7971.

SUPPLEMENTARY INFORMATION: The transaction embraces the transfer to Exploration of all of ATMS's interstate operating authority in certificate No. W-1328 which authorizes transportation as a water common carrier of passengers and their baggage, (1) between ports and points in Washington, Oregon, and Idaho on the Columbia, Willamette, and Snake Rivers; and (2) between ports and points in California, Oregon, Washington, and Alaska. Exploration is 80 percent owned by Busch Entertainment Corp., a wholly-owned subsidiary of ABC, and 20 percent owned by ATMS. Exploration will also acquire ATMS's charter interests in the two vessels now being used to conduct ATMS's service, as well as certain land, personal property, fixtures, and other business assets.

By decision entered July 25, 1985, the Commission's Motor Carrier Board granted the parties' temporary authority application under 49 U.S.C. 11349, authorizing Exploration to manage and control ATMS pending the Commission's consideration of the permanent application under 49 U.S.C. 11343-11344.

By the Commission, Heber P. Hardy, Director Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-20205 Filed 8-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 30690]

Pigeon River Railroad Co.; Petition for Exemption

AGENCY: Interstate Commence Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts Pigeon River Railroad Company from the requirements of (1) 49 U.S.C. 10901 to operate an abandoned 14.27-mile rail line in Steuben, LaGrange, and Noble Counties, IN; and (2) 49 U.S.C. 11301 to issue up to $250,000 in debt and equity securities.

DATES: This exemption is effective on August 23, 1985. Petitions to reopen must be filed by September 12, 1985.

ADDRESSES: Send comments referring to Finance Docket No. 30690 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

(2) Petitioner's representative: Carl M. Miller, Miller & Miller, P.O. Box 248, New Haven, IN 46774.

FOR FURTHER INFORMATION CONTACT: Louis E. Gitomer, (202) 275-7245.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to T.S. InfoSystems, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or call 289-4357 (DC Metropolitan area) or toll free (800) 424-5403.

Decided: August 2, 1985.

By the Commission, Chairman Taylor, Vice Chairman Gradison, Commissioners Sterrett, Andre, Simmons, Lamboley, and Strenio. Commissioner Lamboley concurred in the result.

James H. Bayne,

Secretary.

[FR Doc. 85-20203 Filed 8-22-85; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-26 (Sub-31X)]

Southern Railway Co. Southern Railway—Carolina Division; Discontinuance of Operations and Abandonment Exemption In Rutherford and McDowell Counties, NC; Exemption

Applicants have filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to discontinue operations and abandon approximately 16.66 miles of rail line between milepost SB-183.34 at Gilkey, NC, and milepost SB-205.0, near Marion, NC in Rutherford and McDowell Counties, NC.

Applicants have certified (1) that no local traffic has moved over the line for at least 2 years and that overhead traffic is not moved over the line, and (2) that no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year

period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979).

The exemption will be effective September 26, 1985 (unless stayed pending reconsideration). Petitions to stay must be filed by September 6, 1985, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by September 16, 1985, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Nancy S. Fleischman, 1050 Connecticut Avenue NW., Suite 740, Washington, DC 20036.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

A notice to the parties will be issued if use of the exemption is conditioned upon environmental or public use conditions.

Decided: August 13, 1985.

By the Commission, Heber P. Hardy, Director, Office of Proceedings.

James H. Bayne,

Secretary.

[FR Doc. 85-20204 Filed 8-22-85; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Termination of Final Judgment

Notice is hereby given that ASARCO Incorporated ("ASARCO") has filed with the United States District Court for the Southern District of New York a motion to terminate the Final Judgment in *United States* v. American Smelting and Refining Company, Civil No. 88-249; and the Department of Justice ("Department"), in a stipulation also filed with the court, has consented to termination of the Judgment, but has reserved the right to withdraw its consent for at least seventy (70) days after the publication of this notice. The complaint in this case (filed on October 9, 1953) alleged American Smelting and Refining Company ("ASR") and St. Joseph Lead Company ("St. Joe"), the two largest U.S. producers of primary lead, had combined and conspired in violation of Sections 1 and 2 of the Sherman Act, 15 U.S.C. § 1 and 2, to restrain and monopolize, and had attempted to monopolize, the mining, smelting, refining and sale of primary lead in the United States. ASR and St. Joe allegedly agreed to, and did fix prices and limit production of primary lead and took joint action to fix and stabilize world prices and limit U.S. imports of lead.

The Final Judgment entered upon consent on October 11, 1957 settled the case as to ASR. The Judgment enjoins any agreement, plan or program to fix prices, price differentials, price discounts or others terms and conditions for the sale of primary lead in the United States. ASR is specifically enjoined from exchanging information or consulting with St. Joseph Lead Company with respect to any future change in the price for primary lead by either company. ASR is prohibited from agreeing to limit, reduce or restrict the mining, smelting, refining or selling of primary lead in the United States. The Judgment enjoins ASR from agreeing, except with a foreign government, to restrict U.S. imports or exports of lead ore, lead concentrate, lead bullion or primary lead. ASR is prohibited from agreeing to fix prices for primary lead in the foreign or domestic commerce of the United States provided that the provision does not apply to any act in a foreign country required by the government thereof.

The Judgment required termination of a tolling contract with St. Joe and regulates the terms and condition of any future contract with St. Joe.

The Judgment prohibits ASR from acquiring any lead smelter or lead refinery existing as of the date of the Judgment. ASR is enjoined from entering into any tolling contract that would tend substantially to lead to the permanent cessation of production by a smelter or refinery that previously handled the business.

The Department has filed with the court a memorandum setting forth the reasons why the Department believes that termination of the Judgment would serve the public interest. Copies of the complaint and Final Judgment, ASARCO's motion papers, the stipulation containing the Government's consent, the Department's memorandum and all further papers filed with the court in connection with this motion will be available for inspection in the Legal Procedure Unit of the Antitrust Division, Room 7416, Department of Justice, 10th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20530 (telephone 202-633-2481), and at the Office of the Clerk of the United States District Court for the Southern District of New York, Federal Courthouse, Foley Square, New York, New York. Copies of any of these materials may be obtained from the Legal Procedure Unit upon request and payment of the copying fee set by Department of Justice regulations.

Interested persons may submit comments regarding the proposed termination of the Judgment to the Department. Such comments must be received within sixty days, and will be filed with the court. Comments should be addressed to Anthony V. Nanni, Chief, Trial Section, Antitrust Division, Department of Justice, Washington, D.C. 20530 (telephone: 202-633-2541).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 85-20201 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 85-8]

Avner Kauffman, M.D.; Revocation of Registration and Denial of Application

On January 22, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an order to show cause to Avener Kauffman, MD. (Respondent) 4440 West Lincoln Highway, Matteson, Illinois 60443 seeking to revoke DEA Certificate of Registration AK2002664, and to deny any pending applications for registration under 21 U.S.C. 823(f). The statutory predicate under 21 U.S.C. 824(a)(3) for the order to show cause was the summary suspension by the Illinois Department of Registration and Education on March 23, 1984, of the controlled substances license previously issued to Respondent by the Department. Respondent, through counsel, requested a hearing on the issues raised by the order to show cause. The matter was placed on the docket of Administrative Law Judge Francis L. Young.

The Matter was continued for 60 days, until May, 1985, pending possible action by the Illinois authorities. The Illinois authorities took no further action, leaving Respondent without authority to possess, prescribe, dispense or otherwise handle controlled substances in Illinois. On May 29, 1985, Government counsel moved for summary disposition of the Matter based on Respondent's lack of state authority to handle controlled substances. Counsel for Respondent replied to the motion for summary disposition by stating that he and the Illinois authorities had negotiated an order providing for partial

reinstatement of Dr. Kauffman's controlled substances privileges.

Judge Young entered an opinion and recommended decision on June 17, 1985. He stated that this agency has consistently held that if a registrant or applicant is without authority to handle controlled substances under the laws of the state in which he practices, or proposes to practice, DEA is without statutory authority to issue or maintain a registration. In such cases, a motion for summary disposition is properly entertained and granted. See *David Sachs, M.D.*, Dk. 77-2, 42 FR 29112 (1977); *James Waymon Mitchell, M.D.*, DK. 79-16, 44 FR 11873 (1978); *Floyd A. Santner, M.D.*, Dk. 79-23, 47 FR 51831 (1982). The Administrative Law Judge also noted that there is no issue of fact presented, and that no evidentiary hearing is necessary in the Matter, citing *United States* v. *Consolidated Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

The Administrator agrees with this interpretation of section 824(a)(3). DEA has consistently maintained that lack of state authority to handle controlled substances precludes DEA from registering a practitioner. Respondent lacks authority under state law to handle controlled substances in Illinois, the state in which he wishes to remain registered. Therefore, DEA cannot register Respondent in Illinois. The Administrator also agrees that there is no material issue of fact, and therefore there is no need for a plenary hearing.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR 0.100, the Administrator hereby revokes Certificate of Registration AK2002664, and denies any pending application, for reason that Avner Kauffman, M.D. is without authority to possess, prescribe, dispense, administer or otherwise handle controlled substances in Illinois. The revocation and denial will be effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20236 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 84-39]

Paul H. Norton, D.P.M.; Revocation of Registration and Denial of Application

On August 24, 1984, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an order to show cause to Paul H. Norton, D.P.M., the Respondent in this Matter. The order sought to revoke DEA Certificate of Registration AN2010217 and to deny any pending applications for registration under 21 U.S.C. 823(f). The statutory predicate for the order under 21 U.S.C. 824(a)(2) was the conviction of Dr. Norton on November 28, 1983, in the Court of Common Pleas, Cuyahoga County, Ohio of 11 counts of making, uttering and selling false prescriptions for Percodan, a Schedule II drug, and Valium, a Schedule IV drug, in violation of Ohio Drug Law R.C. 2925.23. These are felonies relating to controlled substances.

A previous order to show cause was sent by registered mail on June 22, 1984, to 16102 Chagrin Boulevard, Shaker Heights, Ohio, the last address at which Dr. Norton was registered. The order was returned as unclaimed. The August 24, 1984 order was sent registered mail to Respondent at the Correctional Pre-Release Center in Orient, Ohio, where Respondent was incarcerated. Respondent, proceeding *pro se*, replied to the order and requested that the Matter be continued until his release date of March 11, 1985. The Matter was placed on the docket of Administrative Law Judge Francis L. Young, who continued the Matter until his release date of March 11, 1985. The Matter was placed on the docket of Administrative Law Judge Francis L. Young, who continued the Matter until March 11, 1985, as requested by Respondent. Judge Young required Respondent to inform the office of the Administrative Law Judge within 10 days of his release.

On April 25, 1985, Judge Young ordered the parties to file prehearing statements stating issues and identifying evidence for presentation at a hearing. The Government complied with the order but Respondent filed nothing in response even after the Administrative Law Judge extended the date for filing until July 1, 1985. Respondent did not inform the office of the Administrative Law Judge of his release date or of his new address, which the DEA Cleveland Resident Office learned was 10526 Glenville, Cleveland, Ohio.

Government counsel filed a motion for termination of proceedings on July 19, 1985. Judge Young granted the motion and terminated the proceedings before him on August 1, 1985. In his memorandum and order terminating proceedings, the Administrative Law Judge noted that since Respondent has failed to file a prehearing statement it appears that he does not intend to raise any issues or to present any evidence at a hearing if one were to be held. Judge Young found, as does the Administrator, that Respondent has waived his opportunity for a hearing. Accordingly, the Administrator bases this final order on the investigative record as it appears. 21 CFR 1301.54(d); *Marshall D. Nickerson, M.D.*, Dk. 80-19, 45 FR 72310 (1980); *Elvin Edward Walker, D.O.*, Dk. 84-47, 50 FR 3848 (1985) citing *Costle v. Pacific Legal Foundation*, 445 U.S. 198 (1980); *National Independent Coal Operators' Assoc.* v. *Kleppe*, 423 U.S. 388 (1976); *United States* v. *Consolidation Mines and Smelting Co., Ltd.*, 455 F.2d 432, 453 (9th Cir. 1971).

Upon examination of the investigative record, the Administrator finds that Respondent was a podiatrist practicing in Cleveland, Ohio. In 1983, Medical Mutual of Cleveland, Inc. (Blue Cross/Blue Shield) began an investigation of Respondent's excessive billing for medical procedures and controlled substances. A Medical Mutual investigator went to Respondent's office on March 17, 1983, and obtained a prescription for Percodan without showing any foot ailment that would require a potent Schedule II narcotic. Six times during the spring and early summer of 1983 the investigator went to Respondent's office and obtained prescriptions for controlled substances. The investigator manifested no podiatric complaint yet Respondent billed Medical Mutual each time for "bone surgery" or "ingrown toenail" in amounts from $150 to $300. Several times the investigator told Respondent that his "friends" wanted to "party" with the drugs they obtained via Respondent's prescriptions. Respondent once told the investigator that the drugs would make his "feet feel happy." Whenever the investigator brought in a new "patient," Respondent would "reward" him with another prescription.

Respondent's transactions with the Medical Mutual investigator were not unique. The Cuyahoga County Sheriff's Department noticed that Respondent's prescriptions were on the street in Cleveland in early 1983. Prescriptions written by Respondent were found in pharmacies throughout metropolitan Cleveland. Most of these prescriptions were for Percodan. They were apparently facially valid, being written for 15 to 20 dosage units. However, they were usually written in one name and were found in batches totalling about 250 dosage units.

It is clear to the Administrator that Dr. Norton is unable to meet the obligations of responsibly handling controlled substances. A practitioner who writes a prescription for Percodan, telling an investigator that Percodan will make his feet feel happy, and then fraudulently bills for this "service," is unfit to possess DEA registration. Respondent

has submitted no evidence in explanation or mitigation. Given the facts in this case, the Administrator has no choice but to revoke the registration previously issued to Dr. Norton.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a), and redelegated by 28 CFR 0.100, the Administrator hereby revokes Certificate of Registration AN2010217, and denies any pending applications for registration, for reason that Paul H. Norton, D.P.M., was convicted of felonies relating to controlled substances, such revocation and denial to be effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20223 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

Roger Lee Palmer, D.M.D.; Denial of Application

On June 17, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) directed an order to show cause to Roger Lee Palmer, D.M.D., (Respondent) 1871 High Street, Lakeport, California 95453. The order to show cause sought to deny the application for registration Respondent executed on February 15, 1985. The statutory predicate under 21 U.S.C. 824(a)(3) for the order to show cause was Respondent's conviction on December 4, 1981, in the United States District Court for the Northern District of California of obtaining a controlled substance by misrepresentation, in violation of 21 U.S.C. 843(a)(1), a felony relating to controlled substances.

Respondent explicitly waived his opportunity for a hearing in a letter dated July 15, 1985. He submitted various letters and petitions in support of his application, which the Administrator has considered in reaching his determination in this matter. Pursuant to 21 CFR 1301.54(e), the Administrator finds that Respondent has waived his opportunity for a hearing.

This is not the first time that an Administrator of DEA has considered the registration status of Respondent. In *Roger Lee Palmer, D.M.D.*, Dk. 83-1, 49 FR 950 (January 6, 1984), a prior Administrator denied an application for registration executed by Dr. Palmer. That denial of application followed a hearing presided over by Administrative Law Judge Francis L. Young, who recommended that the Administrator deny the application. Based on Judge Young's findings, the Administrator found that Respondent diverted a huge quantity of cocaine into illicit channels. Respondent was sentenced to participate in a drug counseling program but nothing in Dr. Palmer's testimony at the hearing indicated that his meetings with the drug counselors constituted a meaningful and effective drug counseling program. The Administrator found that Respondent ingested pharmaceutical cocaine up to 20 times a day.

Turning to the current application, the Administrator notes that one Mylan Hopkins, M.D., who testified for Dr. Palmer at the hearing, submitted a letter in support of Dr. Palmer's current application. In the earlier proceeding, the Administrator found that Dr. Hopkins received or used cocaine from Respondent in the presence of the Government's chief witness at the criminal trial of Respondent. Dr. Hopkins signed a stipulation with the California authorities in which he admitted that he had "prescribed, furnished, given away and administered narcotics and dangerous drugs to addicts and habitues" as detailed in a 36-page list of prescriptions written from November 1973 to early 1979. Certainly the recommendation of Dr. Hopkins is of no weight to the Administrator in deciding whether to register Respondent.

Most of the remainder of Respondent's submission consists of petitions from his patients "to the United States Congress and the President of the United States" as well as the DEA to "reinstate the narcotics license" of Respondent. The petitions state that Respondent is the only doctor in Lake County, California who has taken care of emergency patients for oral surgery and facial trauma. Respondent raised this contention at his hearing in 1983. The Administrator found that there was sufficient testimony in the record, including expert testimony from a prominent local dentist, to conclude that alternative dental services are available to the members of the Lakeport community.

The Administrator can find nothing new in support of this application that was not present, in some form, in Dr. Palmer's prior case. Respondent is still unable to responsibly handle controlled substances. The crimes of which he was convicted was serious. Having examined the record, the Administrator cannot in good conscience register Respondent.

Accordingly, pursuant to the authority vested in the Attorney General by 21 U.S.C. 824(a) and redelegated by 28 CFR 0.100, the Administrator hereby denies the application executed by Roger Lee Palmer, D.M.D. on February 15, 1985, and any other pending applications for registration, for reason that Roger Lee Palmer, D.M.D. was convicted of felonies relating to controlled substances. The denial will be effective September 23, 1985.

Dated: August 20, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20224 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

Donald Patsy Rocco, D.D.S.; Revocation of Registration

On May 30, 1985, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), directed an Order to Show Cause to Donald Patsy Rocco, D.D.S., (Respondent), 2029 North Main Street, P.O. Box 3677, Salinas, California 93912, proposing to revoke his DEA Certificate of Registration AR2533710 as a practitioner. The statutory basis for the proposed action, under 21 U.S.C. 824(a)(2) was Respondent's conviction in the Superior Court of Los Angeles, State of California of illegal sale of cocaine in violation of California Health and Safety Code Section 11352, a felony relating to controlled substances. An additional statutory ground pursuant to 21 U.S.C. 824(a)(1) was the fact that Dr. Rocco indicated on an application for DEA registration, and on an application for renewal of that registration, that he had not been convicted of a felony relating to controlled substances, constituting a material falsification of an application for registration. Dr. Rocco received the Order to Show Cause by registered mail, return receipt requested on June 10, 1985. He was advised in the Order to Show Cause that he had 30 days to respond or request a hearing. On July 29, 1985, a letter from Dr. Rocco dated July 12, 1985, was received in the office of the Deputy Assistant Administrator, Office of Diversion Control. Dr. Rocco did not request a hearing. In addition, his response came well beyond the 30-day period. The Administrator therefore finds that Respondent has waived his opportunity for a hearing. 21 CFR 1301.54(d). Even though not timely filed, the Administrator will consider Dr. Rocco's letter and include it in the record. Accordingly, the Administrator hereby issues his final order in this matter on the record as it appears. 21 CFR 1301.54(e).

The Administrator finds that on January 12, 1976, Dr. Donald Patsy

Rocco attempted to sell two ounces of pharmaceutical cocaine bearing lot number 72515 to undercover Los Angeles Police Department officers and DEA Agents. At this time Dr. Rocco was registered with the Drug Enforcement Administration as a dentist in Livermore, California, and assigned DEA number AR1401102. Two days after the attempted sale, a DEA Diversion Investigator went to Dr. Rocco's registered location in Livermore, California, and attempted to speak to Dr. Rocco and review his records pertaining to controlled substances. After being identified to the receptionist and waiting several minutes, the Investigator was informed that Dr. Rocco had left the office. Subsequent investigation revealed that Dr. Rocco had reported a theft of cocaine bearing lot number 72515 from the safe in his office to the Livermore, California Police Department on January 15, 1976. The doctor's receptionist later told police that when the Investigator arrived, she went back and told Dr. Rocco and he left by the rear door leaving his safe open and empty. On June 4, 1976, Dr. Rocco met with the DEA Diversion Investigator and explained his records and office use of cocaine. Dr. Rocco had ordered 19.25 ounces of pharmaceutical cocaine in the 20 months from March, 1974 to November, 1975. The doctor's dispensing records did not indicate quantities dispensed and he had several unverified destructions of cocaine, including a broken one ounce bottle of cocaine which he said he destroyed. He also told the investigator that 9.5 ounces of cocaine were stolen from his office on January 14 or 15, 1976. He did not report this theft as he is required to do, until June 14, 1976.

On June 28, 1976, Dr. Rocco pled guilty to illegal sale of cocaine, a violation of California Health and Safety Code section 11352(a). This is a felony relating to controlled substances. Dr. Rocco was sentenced to one year in the Los Angeles County Jail. After an Order to Show Cause was issued, Dr. Rocco's DEA Certificate of Registration was revoked on June 28, 1977. Subsequently, Dr. Rocco's dental license was placed on five years probation pursuant to a stipulated order of the California Board of Dental Examiners. One of the terms of the probation was that Dr. Rocco not maintain a DEA registration during the five year term of his probation.

The Administrator further finds that on September 12, 1983, Dr. Donald Patsy Rocco signed a DEA application for registration. On this application Dr. Rocco indicated that he had not been convicted of a felony in connection with controlled substances under state or federal law, and that he had not had a previous Controlled Substances Act registration revoked. On March 25, 1985, Dr. Rocco submitted a renewal for that registration on which he indicated that he had not been convicted of a felony relating to controlled substances, nor had a previous CSA registration been revoked. The fact that Dr. Rocco materially falsified two application forms for DEA registration provides yet another ground for revocation of a registration pursuant to 21 U.S.C. 824(a)(1).

Dr. Rocco submitted a letter dated July 12, 1985, to the Deputy Assistant Administrator, Office of Diversion Control, in which he responded to the Order to Show Cause. In Dr. Rocco's brief letter he states that he applied for a DEA Certificate of Registration after the State of California, "dismissed the charges of December 21, 1976." Dr. Rocco also indicated in his letter that his statement that a previous registration had not been revoked was not false because he never renewed the registration.

Dr. Rocco's felony conviction of December 21, 1976, was set aside or dismissed pursuant to section 1203.4 of the California Penal Code on May 15, 1979. The Administrator finds, however, that the California court's action under California statute does not "erase" the conviction for purposes of 21 U.S.C. 824. This finding is based upon decisions of federal courts interpreting the relationship of California Penal Code section 1203.4 to actions by federal agencies predicated upon dismissed felony convictions, the language of the Penal Code Section itself, and agency precedent affording the term "conviction" with the broadest possible meaning.

The United States Court of Appeals for the Ninth Circuit has upheld the use of felony convictions which have been dismissed or set aside pursuant to California Penal Code section 1203.4 as a predicate to federal actions under federal statutes. *United States* v. *Andrino*, 497 F.2d 1103 (9th Cir. 1974) [gun control]; *Cruz-Martinez* v. *Immigration and Naturalization Service*, 404 F.2d 1198 (9th Cir. 1968) [deportation]. In the *Cruz-Martinez* decision, which involved deportation based upon a violation of California State narcotics law, the Ninth Circuit Court of Appeals stated at page 1200, "It would defeat the purpose . . . (of federal law) if provisions of local law, dealing with rehabilitation of a convicted person, could remove them from the ambit of (federal penal enactments) . . . We do not think Congress intended such result. *Reyes* v. *United States*, 258 F.2d 774 (9th Cir. 1958)." There have been no judicial decisions regarding California Penal Code section 1203.4 as it relates to the term "conviction" used in 21 U.S.C. 824. It was surely not the intent of Congress to predicate the revocation of a practitioner's DEA Certificate of Registration upon a conviction and then have federal actions vary depending upon the state in which the conviction arose and the nature of a state's post conviction remedies.

Respondent was found guilty of a felony relating to controlled substances, he served a jail sentence, paid a fine, and was on supervised probation. The setting aside of the conviction was not a finding of innocence. Its purpose was to facilitate the rehabilitation of the convicted person. Even in the language of the statute itself, the California legislature chose to include the following provision, ". . . the probationer shall be informed that the order does not relieve him of the obligation to disclose the conviction in response to any direct question contained in any questionnaire or application for public office or for licensure by any state or local agency." Ca P.C. 1203.4.

In other revocation actions by the Administrator of the Drug Enforcement Administration pursuant to 21 U.S.C. 823 and 824, the Administrator has determined that the term "conviction" should be afforded its broadest possible meaning. See *In Re Faunce Drug Store*, Docket No. 82-3, 47 FR 30122 (1982). The Administrator continues to find that Congress intended the word "convicted" as used in 21 U.S.C. 823 and 824 to be interpreted in its broadest sense.

Respondent may believe that the dismissal or setting aside of his felony conviction by the California court precludes its disclosure to the Drug Enforcement Administration on an application for registration. However, where it was clearly the intent of the California legislature that a conviction dismissed or set aside under California Penal Code section 1203.4 be disclosed to state and local licensing agencies, and upon finding that Respondent's conviction is a conviction of a felony relating to controlled substances pursuant to 21 U.S.C. 824(a)(2), the Administrator finds that the Respondent should have disclosed such information on his DEA application for registration, and that failure to do so was material falsification of an application for registration purusant to 21 U.S.C. 824(a)(1).

Dr. Rocco's previous DEA Certificate of Registration was revoked in June, 1977. Dr. Rocco and his attorney of record were advised of that fact via registered letter dated June 28, 1977. This revocation was based upon the Respondent's conviction in December of 1976 of attempted sale of two ounces of pharmaceutical cocaine, cocaine which came into his possession through his DEA Certificate of Registration. The Respondent indicated in his letter dated July 12, 1985, that he cooperated with DEA through his attorney. Counsel represented Respondent in the previous Show Cause proceeding that resulted in the June, 1977 revocation of Dr. Rocco's previous DEA Certificate of Registration. Counsel also arranged a meeting between a DEA Investigator and Respondent in June, 1976, for a review of Respondent's controlled substance records. There is no record of any assistance provided by Dr. Rocco to DEA.

The Respondent has provided the Administrator with no information which would serve in mitigation of his past actions. Respondent is only registered with DEA at the present time due to his failure to disclose the prior felony conviction, and revocation action.

In consideration of the foregoing, and having a lawful basis for such action, 21 U.S.C. 824 (a)(1) and (a)(2), it is the decision of the Administrator that Dr. Rocco's DEA Certificate of Registration should be revoked.

Accordingly, pursuant to the authority vested in him by 21 U.S.C. 824 and 28 CFR 0.100(b), the Administrator hereby revokes Certificate of Registration AR2533710 previously issued to Donald Patsy Rocco, D.D.S. and denies any pending applications for renewal, effective September 23, 1985.

Dated: August 19, 1985.

John C. Lawn,

Administrator.

[FR Doc. 85-20225 Filed 8-22-85; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Employment and Training Administration

United States Employment Service; Labor Certification Process for the Temporary Employment of Aliens in Agriculture; 1985 Adverse Effect Wage Rates and Plans for 1986

Correction

In FR Doc. 85-19623 beginning on page 33121 in the issue of Friday, August 16, 1985, make the following correction on page 33122: In the first column, in the table, in the entry for Texas, in the second column under the heading "1984 rates", "497" should read "3.97".

BILLING CODE 1505-01-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4918 et al.]

Proposed Exemptions; K's Merchandise Mart, Inc., et al.

AGENCY: Pension and Welfare Benefit Programs, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESS: All written comments and requests for a hearing (at least three copies) should be sent to the Office of Fiduciary Standards, Pension and Welfare Benefit Programs, Room C-4526, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, D.C. 20216. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-4677, 200 Constitution Avenue, NW., Washington, D.C. 20216.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type of requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

K's Merchandise Mart, Inc. Profit Sharing Plan and Trust (the Plan) Located in Decatur, Illinois

[Application No. D-4918]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code shall not apply to the proposed cash sale of a 3.28 acre parcel of unimproved real property (the Property) by the Plan to K's Merchandise Mart, Inc. (the Employer), provided that the price paid for the Property is not less than its fair market value at the time of sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan, established by the Employer on December 15, 1971. As of December 31, 1982, the Plan had 450 participants and net assets of $1,993,870.27, of which 92% consisted of parcels of real property including the Property. The trustees of the Plan (the Trustees) are David Kay Eldridge and Ray Eldridge, Jr., each of whom owns 50% of the stock of the Employer.

2. On August 20, 1975, the Employer purchased a 10 acre parcel of real property, which includes the Property, from Pownall and Clara Carder, unrelated parties with respect to the Plan, for $169,981 in cash, for the purpose of constructing the Employer's headquarters. In March, 1976, the Employer contributed eight acres of said parcel to the Plan, valuing the contribution at 80% of the purchase price of the entire 10 acre parcel.[1] On April 26, 1977, the Plan sold 4.72 acres of the contributed parcel for $94,750 in cash to Karl Thacker, an unrelated third party, leaving the Plan with the 3.28 acre Property. The Plan has paid $7,784.18 in property taxes and has incurred no other holding costs with respect to the Property.

3. The applicant represents that the Employer has made use of portions of the Property from time to time, including driving semi-tractor and trailer units over that portion of the Property located behind the Employer's headquarters, parking tractor-trailer equipment in that area, and storing construction material and parking trailers on that portion of the Property located to the north of the Employer's headquarters. The Employer has paid no rent in connection with its use of the Property. Accordingly, the applicant represents that the Employer will pay the Plan the fair market value rent for its use of the Property plus the fair market rate of interest on these overdue rental payments. The applicant further represents that the Employer will pay all applicable excise taxes for all prior prohibited transactions within 60 days of the date of a grant of an exemption for the proposed sale of the Property.

4. The applicant seeks an exemption to permit the cash sale of the Property by the Plan to the Employer. On August 22, 1983, Louis J. Kienzler, MAI appraised the Property and determined that it had a fair market value of $70,000 as of that date. In a letter dated November 2, 1983, Mr. Kienzler stated that the value of the Property received no enhancement by virtue of the Employer's ownership of adjacent properties. The Plan will not incur any real estate commissions or fees in connection with the sale. The Trustees represent that the sale of the Property is in the best interests of the Plan because it allows the Plan to divest itself of a portion of its real estate investments, providing the Plan with greater diversification and liquidity.

5. In summary, the applicant represents that the proposed transaction meets the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the sales price of the Property is based on an independent appraisal; (c) the Plan will incur no real estate commissions or fees in connection with the sale; (d) the sale will enable the assets of the Plan to be more diversified and more liquid; and (e) the Trustees have determined that the proposed transaction is in the best interests of the Plan.

For Further Information Contact: David M. Cohen of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

Rex Stanley Feed Yard, Inc. Employees Pension Trust (the Plan) Located in Dodge City, Kansas

[Application No. D-5926]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply, for a period of 5 years, to the proposed loans by the Plan of up to 25% of its assets to Rex Stanley Feed Yard, Inc. (the Employer), provided that the terms of the transactions are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party at the time of consummation of each transaction.

Temporary Nature of Exemption

The proposed exemption is temporary and, if granted will expire five years after the date of grant with respect to the making of any loan. Subsequent to the expiration of this exemption, the Plan may hold loans originated during this five year period until the loans are repaid. Should the applicant wish to continue entering into loan transactions beyond the five year period, the applicant may submit another application for exemption.

Summary of Facts and Representations

1. The Plan is a defined benefit plan with 6 participants and net assets of approximately $178,824 as of June 30, 1983. The trustee of the Plan, Mr. Rex Stanley (Mr. Stanley), is also the president and principal stockholder of the Employer. The Employer is a corporation engaged in the operation of a cattle feed lot.

2. The Plan proposes to make a series of loans to the Employer over a period of 5 years involving up to 25% of the Plan's assets. The loans will be used by the Employer to purchase cattle and equipment as well as to help finance its ongoing business operations.

3. The applicant represents that each loan will be evidenced by a promissory note and collateralized by a filed and perfected security agreement on one or more pieces of existing machinery of the Employer. Further, each loan will at all times be collateralized in an amount at least equal to 200% of the outstanding balance of such loan. The Employer's existing machinery has an approximate fair market value of $90,000 as determined by an appraisal performed on June 18, 1985 by Mr. Phil Ochs, of Ochs Farm Equipment.

4. The applicant represents that the maximum length of any loan will be 60 months with the principal and interest payable in substantially equal annual installments and each loan would have a maturity date not to exceed 5 years beyond the exemption period. The interest rate on the loans will be fixed at the time each loan is made at 3% above the current prime lending rate as quoted in the Wall Street Journal with a guaranteed minimum rate of 11%. At the time of making any loan, no more than 25% of the market value of the assets of the Plan will be used for loans, measured by the aggregate of the then outstanding loan balances. The Employer will adequately insure the machinery and all other collateral against named beneficiary of such insurance. Each loan will be guaranteed by the Employer and Mr. Stanley. The Employer as of December 31, 1983, had a net worth of approximately $879,500.00 and Mr. Stanley's net worth, as of that same date was approximately $1,775,500.00.

5. Mr. John E. Cross, CPA (Mr. Cross), a partner in the accounting firm of Miller & Cross, Great Bend, Kansas, has agreed to serve as an independent fiduciary for the proposed loans. Mr. Cross represents that prior to becoming a partner in his accounting firm, he was employed by Compensation Planning, Inc., a pension consulting firm, where he worked directly with pension and profit sharing plan administration. Mr. Cross represents that he has been advised by legal counsel of his responsibilities and potential liabilities in serving as an

[1] This proposed exemption is limited to the sale of the Property to the Employer. This proposed exemption does not exempt any contribution of real property by the Employer to the Plan to the extent such contribution constitutes a prohibited transaction.

independent fiduciary. Mr. Cross states that he is totally independent from all parties involved in this transaction. Mr. Cross represents that after examining the terms of the proposed loans and the history of the Employer and the Plan, he has determined that such loans would be appropriate and suitable for the Plan and that the terms of the loan are at least equal to those which the Plan could receive in a similar transaction with an unrelated party. Mr. Cross represents that he will make the same determination immediately prior to the consummation of each loan transaction taking into account the facts and circumstances at the time of such proposed loan transaction. In arriving at these conclusions, he was reviewed the proposed loans with respect to: (a) The Plan's overall investment portfolio, (b) the cash flow needs of the Plan, (c) the necessity of the sale of any of the Plan's assets, (d) the diversification of the Plan's assets, both before and after such loans and (e) the terms of the loans as such terms conform with the Plan's investment policy. Mr. Cross represents that the proposed interest rate of 3% above the current prime rate as quoted in the Wall Street Journal with a guaranteed minimum rate of 11% is sufficient considering the amount of collateral securing the loans. Mr. Cross has agreed to accept the responsibility to enforce the terms of the loan agreement between the Employer and the Plan, including making demand for timely payment, bringing suit or other appropriate process against the Employer in the event of default and keeping accurate records on the performance of the loans. Mr. Cross will take whatever steps are necessary during the year to ensure that the value of the collateral remains at least equal to 200% of the outstanding balance of the loans during the duration of the loans.

6. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act because:

(a) The loans will be approved and monitored by an independent fiduciary;

(b) The loans will be secured by collateral which at all times will be at all times will be at least equal to 200% of the outstanding balances of the loans;

(c) The exemption will be for a 5 year period with a repayment date not to exceed 10 years from the date of granting of the exemption; and

(d) The Plan's independent fiduciary has determined that the transactions are in the best interests of the Plan's participants and beneficiaries and protective of their rights.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

The Birr, Wilson & Co., Inc. Employee's Profit Sharing Plan (the Profit Sharing Plan) and The Birr, Wilson & Co., Inc. Financial Security Plan for Account Executives (the Security Plan Collectively, the Plans) Located in San Francisco, CA

[Application Nos. D-5927 and D-5928]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed exercise of stock options (the Options) by the Plans to purchase from Birr, Wilson & Co., Inc. (the Employer) stock in unrelated companies; or 2) the potential repurchase of the Options from the Plans by the Employer, provided that the terms and conditions of the transactions are at least as favorable to the Plans as those obtainable in similar transactions with an unrelated party.

Summary of Facts and Representations

1. The Employer is a closely held regional stock brokerage firm with its principal place of business in San Francisco, California. It also has offices in other cities in California and in New York, Idaho, Oregon, Nevada and Washington. It has seats on the New York and Pacific Stock Exchanges and is a member of the National Association of Securities Dealers, Inc. The Employer is also subject to the Securities Act of 1933, the Securities Exchange Act of 1934, and the rules and regulations promulgated thereunder, and is a registered investment adviser under the Investment Advisers Act of 1940. The Employer has no obligation to pay dividends and the last cash dividend paid was $.06 per share paid in March, 1977.

2. The Profit Sharing Plan is a profit sharing plan covering employees of the Employer who are not account executives or account executive trainees. As of November 30, 1984, it had 221 participants and assets of $1,604,711.74.

3. The Security Plan is a profit sharing plan covering account executives of the Employer who are compensated primarily on a commission basis. As of November 30, 1984, it had 135 participants and assets of $4,522,837.29.

4. The trustee of both Plans is Security Pacific National Bank (the Trustee).

5. As an underwriter, the Employer frequently purchases and will continue to purchase warrants to acquire shares of stock in issuers for whom it is performing underwriting services. The Employer acquires these warrants for a cash purchase price equal to what it believes to be the fair market value of the warrants. The Employer has acquired a warrant to purchase 53,000 shares of the common stock of All Seasons Resorts, Inc. (Seasons) and a warrant to purchase 24,036 shares of the common stock of Transtector Systems, Inc. (Transtector).

6. As of March 20, 1984, the Profit Sharing Plan held 80,501 shares of common and Class B (non-voting) common stock of the Employer (Employer Stock). On the same date, the Security Plan held 24,046 shares of Employer Stock.

7. On March 20, 1984 the Employer declared a dividend, payable to all holders of record on March 20, 1984 of Employer Stock. The dividend is an option to purchase .062608 shares of common stock of Seasons per share of Employer Stock held on March 20, 1984. The Trustee has an option to purchase on behalf of the Plans 6,545.48 shares of the common stock of Seasons (the Seasons Option) at a price of $8.10 per share, the total purchase price being $53,018.38. The Profit Sharing Plan would pay $40,824.07 for 5040.01 shares and the Security Plan would pay $12,194.31 for 1505.47 shares.

8. On July 19, 1984, the Employer declared another dividend payable to all holders of record on July 19, 1984 of Employer Stock. As of July 19, 1984, the Profit Sharing Plan held 80,085 shares of Employer Stock; the Security Plan held 23,921 shares of Employer Stock. The dividend is an option to purchase .032894 shares of common stock of Transtector per share of Employer Stock held on July 19, 1984. The Trustee has an option to purchase on behalf of the Plans 3,421.19 shares of Transtector common stock (the Transtector Option) at a price of $6.60 per share, the total purchase price being $22,579.85. The Profit Sharing Plan would pay $17,386.58 for 2,634.33 shares and the Security Plan would pay $5,193.27 for 786.86 shares.

9. The Options become exercisable on the dates on which the Option holder receives notification from the Employer

that the Options are exercisable. The Options will remain exercisable for a period of thirty days following the dates of the original exercise notices. The Options may be exercised only by purchasing all of the stock which the Option holder has a right to purchase. The exercise notice for the Seasons Option may not be given prior to February 18, 1985, or subsequent to February 18, 1989; provided, however, that the Employer may, in its absolute discretion, give the Seasons Option holder the exercise notice at any time during the exercise notice period. If the Employer has not given the exercise notice to a Seasons Option holder, it is required pursuant to the terms of the Seasons Option agreement to give the exercise notice to the Seasons Option holder not later than February 18, 1989.

10. The exercise notice for the Transtector Option may not be given prior to June 19, 1985, or subsequent to June 19, 1987; provided, however, that the Employer may, in its absolute discretion, give the Transtector Option holder the exercise notice at any time during the exercise notice period. If the Employer has not given the exercise notice to a Transtector Option holder, it is required pursuant to the terms of the Transtector Option agreement to give the exercise notice to the Transtector Option holder not later than June 19, 1987.

11. The applicant represents that the decision of when to give the exercise notice to Option holders will be based on the Employer's evaluation of factors which will include, but not be limited to, the current market price of the shares which could be acquired pursuant to the Options, the time remaining on the Options and the expectation of market performance in relation to the time remaining on the Options.

12. The applicant represents the Employer may exercise the warrants it has acquired from Seasons and Transtector at a price equal to 120% of the initial offering price for shares of stock. This is represented to be an accepted practice in the investment banking industry.

13. The Options may be exercised by the Trustee at a price equal to the price at which the Employer may acquire shares of Seasons and Transtector pursuant to its warrant.

14. No commissions will be paid by the Plans in connection with their acquisition of Seasons and Transtector shares pursuant to the Options.

15. The purchase price under each Option is subject to adjustment if Seasons or Transtector pays a dividend in shares of its common stock, subdivides (split) its outstanding shares of common stock, combines (reverse split) its outstanding shares of common stock or issues by reclassification of its shares of common stock any shares or other securities of Seasons or Transtector, or distributes to holders of its common stock any securities of Seasons or Transtector or of any other entity. If any of the foregoing events were to occur, and in fact such an event has already occurred, the number of shares of common stock of Seasons or Transtector or other securities which the Trustee is entitled to purchase pursuant to the Option immediately prior to the occurrence of any of the foregoing events shall be adjusted so that the Trustee will be entitled to receive upon exercise the number of shares of common stock or other securities which it would have owned or would have been entitled to receive after the occurrence of any of the events described above had the Option been exercised immediately prior to the happening of such event, and the exercise price per share shall be correspondingly adjusted. No adjustment in the number of shares and/or the exercise price shall take place unless such adjustment would require an increase or decrease of at least 1% in the exercise price or the number of shares which could otherwise be acquired pursuant to the Option. Notwithstanding the foregoing, any adjustment which is not required pursuant to the terms of the Option agreements shall be carried forward and taken into account in the event of any subsequent adjustment.

An adjustment made pursuant to the Option agreements shall become effective immediately after the record date in the case of a stock dividend, or other distribution, subdivision, combination or reclassification of the shares of Seasons or Transtector. If Seasons or Transtector is consolidated or merged with or into another corporation or if all or substantially all of its assets are conveyed to another corporation, each Option holder will be permitted to purchase the kind and number of shares of stock or other securities receivable upon such consolidation, merger or conveyance based on the number of shares of common stock of Seasons or Transtector which could have been purchased under the Option immediately prior to such consolidation, merger or conveyance.

16. The Employer, at any time prior to the exercise of the Options, may repurchase the Options from the Trustee in the event the Employer sells or otherwise disposes of its warrants to acquire shares of Seasons or Transtector or the Employer exercises the warrants and sells or otherwise disposes of all of the Seasons or Transtector shares acquired pursuant to the warrants. In the event the Employer exercises its repurchase rights as described above, it will pay each Seasons or Transtector Option holder cash in an amount determined in accordance with a formula contained in the Option agreements, which assures that the Plans receive their proportionate share of the proceeds of the sale or other disposition of either the warrants or the shares. The Plan will bear no expenses with respect to such a repurchase.

17. The decision of whether or not the Plans will exercise the Options will be made by the investment advisor(s) appointed by the Employee Plan Committee. The Employer currently anticipates that the investment advisor will be Roger E. Engemann & Associates, Inc. (Engemann) of Pasadena, California. Engemann is a registered investment advisor under the Investment Advisors Act of 1940 and is not related to the Company in any respect other than in its capacity as investment advisor to the Plan. The applicant represents however, that Engemann may, in certain cases, choose to have the Employer execute brokerage transactions on behalf of its clients. In determining whether the Options should be exercised, Engemann will give appropriate consideration to those facts and circumstances which Engemann knows or should know are relevant to the exercise of the Options in question. This consideration will include, but will not necessarily be limited to, a determination that the exercise of the Options is reasonably designed, as part of the portfolio of the Plans, to further the purposes of the Plans, taking into consideration the risk of loss and the opportunity for gain or other return associated with the exercise of the Options and the effect that the exercise of the Options will have on the portfolio with regard to diversification; the liquidity and current return of the portfolio relative to the anticipated cash flow requirements of the Plans; and the projected return of the portfolio relative to the funding objectives of the Plans.

18. The applicant represents that the value of the Options is less than .1% of the value of the aggregate assets of the Plans as of November 30, 1984, and if both Options are exercised and the exercise price equals the fair market value of the stock purchased, that the value of such stock would equal to more than 3.5% of the value of the assets of the Profit Sharing Plan and .5% of the value of the assets of the Security Plan.

19. In summary, the applicant represents that the criteria of section 408(a) of the Act are satisfied in the subject transaction because: (a) The terms of the Options granted to the Plans are the same as those granted to all shareholders of the Employer; (b) the Plans will be able to exercise the Options at the same price at which the Employer exercises its warrants; (c) an independent fiduciary, Engemann, will decide whether it is in the Plans interests to exercise the Options; (d) in the event the Employer repurchases either Option, the Plans will receive their full share of the proceeds and bear no expense with respect to such resale; and (e) failure to grant the exemption will prevent the Plans from benefiting from these dividends issued to stock holders of the Employer or from the repurchase of the Options by the Employer.

For Further Information Contact: David Lurie of the Department, telephone (202) 523–8884. (This is not a toll-free number.)

Radiology Associates, P.A. Pension Plan (the Plan) Located in Little Rock, Arkansas

[Application No. D–5967]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406 (a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the code shall not apply to the loan by the Plan of $328,600 to Medical Equipment Leasing Company (the Partnership), a party in interest with respect to the Plan, provided that the terms of the loan are no less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated third party.

Summary of Facts and Representations

1. The Plan is a money purchase pension plan with approximately 47 participants. As of January 31, 1985, the Plan had assets of approximately $2,531,153. The trustees of the Plan (the Trustees) are Drs. David H. Newbern and James R. Morrison, each of whom is a partner in the Partnership and a stockholder of the Employer. The Employer is an Arkansas professional association which provides radiology services, and had total assets of approximately $2,395,591 on January 31, 1985. Most of the stockholders of the Employer are also partners in the Partnership. The primary business of the Partnership is purchasing radiology equipment to be leased to the Employer. As of December 31, 1984, the Partnership had assets of approximately $3,392,853.

2. The Partnership requests an exemption to permit the Plan to make a loan to the Partnership (the Loan) in the amount of $328,600. The proceeds of the Loan will be used to provide permanent financing for the Partnership's recent purchase and improvement of certain condominium space, and land adjacent thereto, for use as a facility for a magnetic resonance imaging system. Magnetic resonance imaging uses magnetic fields to produce radio waves which create an image similar to that obtained by computerized axial tomography (CAT) scanning. On November 8, 1983, the Partnership purchased 807 square feet of condominium space in the Freeway Medical Towers located in Little Rock, Arkansas for $106,600 and approximately 2,900 usable square feet of unimporved real property immediately adjacent thereto for the construction of an attached "imaging" unit for $135,000 (together, the Property). The Property was purchased from Southern Medical Realty Associates Limited Partnership and Medical Corridor Associates Limited Partnership, which are unrelated to the Employer or the Plan. The Partnership also paid $87,000 to Keene Corporation, an unrelated party, for the installation of special radio frequency shielding in the "imaging" unit. Temporary financing for the Property and shielding was provided by First Commercial Bank of Little Rock, Arkansas. The Partnership also incurred substantial additional expenses for capital improvements, which were financed with an unsecured loan from First South Federal Savings & Loan Association of Pine Bluff, Arkansas, in the amount of $625,000.

3. The Loan will be evidenced by a promissory note and will be secured by a first mortgage on the Property and the improvements made thereon. On July 23, 1984, Mr. George Fox, Jr. of Appraisal Consultants, Inc., and M.A.I. appraiser who has no other relationship to the Employer or the Partnership, determined that the Property as improved had a fair market value of $1,107,000. In addition, the Partnership will give the Plan a second secured lien on all the equipment (the Equipment) currently owned by the Partnership. The balance currently outstanding on the first lien on the Equipment is approximately $331,400. The Equipment was appraised by Valuation Counselors Southwestern, Inc., an unrelated party, on December 31, 1983, at which time it was determined that the Equipment had a fair market value of $576,060. At all times the collateral will have an unencumbered fair market value equal to at least 150% of the outstanding balance of the Loan. If the value of the collateral falls below 150% of the outstanding Loan balance, the Partnership will offer any additional collateral that may be required to assure that the collateralization remains at least 150% of the outstanding Loan balance. The collateral will be insured by a qualified, licensed insurance company which the plan designated as the loss payee.

4. The Loan will be repaid over a period of twenty (20) years in monthly installments of principal and interest. The interest rate for the initial year of the Loan will be fixed at a rate equal to one percent over the prime rate prevailing in Little Rock, Arkansas on the date the Loan agreement is consummated. For each subsequent year, the Loan will be adjusted on the anniversary of the Loan agreement and will be fixed for the following year at the Little Rock prime rate on the anniversary date plus one percent. However, the interest rate will never be lower than ten percent per annum.

5. Union National Bank of Little Rock, Arkansas, will serve as the independent fiduciary (the Independent Fiduciary). The applicant represents that the Employer and the partners in the Partnership have no banking or other relationships with the Independent Fiduciary. The applicant further represents that the Independent Fiduciary's duties will include monitoring and enforcing the performance of the Partnership's obligation under the Loan, determining the need for additional collateral to ensure that the total value of the collateral securing the Loan is equal to at least 150% of the outstanding Loan balance, determining whether adequate insurance is being maintained on the collateral to protect the Plan against loss, executing and filing a valid mortgage in favor of the Plan, and verifying the annual adjustments of the interest rate.

6. The Independent Fiduciary has made the following representations:

(a) That it understands the general fiduciary duties and responsibilities it has agreed to perform in accordance with section 404 of the Act;

(b) That the value of the collateral for the Loan will be determined by

independent appraisals to assure that at all times the collateral represents 150% of the outstanding balance of the Loan;

(c) That it will have the authority to monitor the collateral to assure that it remains 150% of the outstanding balance of the Loan and will act on behalf of the Plan to require additional collateral should the existing collateral decrease in value below the 150% limit, and will take whatever steps are necessary to protect the Plan assets invested in the Loan, including any actions involving foreclosure;

(d) That the interest rate on the Loan will be a similar rate to that charged by outside lending institutions on similar loans to similar companies;

(e) That the Loan fits into the overall asset investment scheme of the Plan and that no Plan assets other than liquid assets will be sold to fund the Loan; and

(f) That it has determined that the Loan is in the interest of and protective of the Plan and its participants and beneficiaries.

7. In summary, the applicant represented that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The Loan will be adequately secured at all times by a promissory note and a recorded first lien on the Property and a recorded second lien on the Equipment which will have an aggregate appraised fair market value of at least 150% of the outstanding balance of the Loan;

(b) The Loan will be monitored by an independent fiduciary; and

(c) The Independent Fiduciary has determined that the Loan is in the interest of and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Ms. Linda Shore of the Department, telephone (202) 523-8196. (This is not a toll-free number.)

Dan-Ric, Inc. Pension Plan (the Pension Plan) and Dan-Ric, Inc. Profit Sharing Plan (the Profit Sharing Plan; Together, the Plans), Located in LaGrange, Georgia

[Application Nos. D-6018 & D-6019]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale by the Plans of a one-half interest in certain unimproved real property (the Property) to Dan-Ric, Inc. (the Employer), the sponsor of the Plans, provided that all terms and conditions of such sale are at least equivalent to those which the Plans could obtain in dealing at arm's length with an unrelated party.

Summary of Facts and Representations

1. The Pension Plan is a defined benefit plan with two participants and total net assets of $26,640 as of December 31, 1983. The Profit Sharing Plan is a defined contribution pension plan with two participants and total net assets of $54,616 as of December 31, 1983. The assets of the Plans are consolidated under one trust for administrative and accounting purposes. The Employer is a closely-held Georgia corporation engaged in real estate brokerage, development, and construction. The trustee of both Plans is Harry Durand (the Trustee), who is also the sole stockholder and president of the Employer.

2. Among the assets of the Plans is a one-half interest in the Property, the remaining one-half interest of which is owned by West Georgia Estates, Inc. (WGE), a Georgia corporation which is unrelated to the Plans and Employer. The Property is a 52.38 acre parcel of unimproved land located in an area near LaGrange, Georgia which is in transition from rural farm land to suburban residential development. The Plans obtained their interest in the Property under the following circumstances: During 1981, while the Employer was engaged in the development of certain real property which lies south of the Property, the Trustee determined that the Property was attractive as a long-term investment for the Plans, due to developments in the vicinity of the Property's location. The owner of the Property at that time, Harry Borger (Borger), who is not related to the Plans or the Employer, was offering the Property for sale but was not willing to partition the 52.38 acres or to sell divided interests in the Property. After determining that the Plans had insufficient cash to purchase the entire Property and that it would be imprudent for the Plans to invest to such extent in unimproved real property, the Trustee learned that WGE was developing land nearby and was interested in investing in the Property. Pursuing mutual interests in the Property, the Plans and WGE purchased the Property from Borger on July 9, 1981, with WGE obtaining an undivided one-half interest in the Property and the Plans obtaining the remaining undivided one-half interest in the Property. For their one-half interest in the 52.38 acre Property, the Plans paid Borger a purchase price of $18,333, with the Pension Plan contributing $10,983 and the Profit Sharing Plan contributing $7,350. This undivided ownership of one-half of the Property is allocated between the Plans in the same proportion which each Plan contributed toward the purchase price. Accordingly, the Pension Plan is credited with ownership of the equivalent of 15.69 acres while the Profit Sharing Plan is credited with ownership of the equivalent of 10.50 acres. After the Plans' purchase of their one-half interest in the Property, development of sites nearby and changes in market conditions caused a rapid increase in the Property's value. With the Property's value increasing, WGE desired to develop the Property with the construction of single-family residences in the $100,000 range. Since WGE's one-half interest in the Property was also undivided, any development of the Property required the participation of WGE and the Plans. However, the Plans did not have sufficient cash available to participate in the development of the Property as proposed by WGE. Failing to obtain the Plans' participation in arrangements for the Property's development, WGE filed a lawsuit against the Plans in March of 1984 seeking specific performance of an alleged oral contract between the Plans and WGE for development of the Property. Counsel for the Plans represents that as of October 24, 1984, such lawsuit has been settled in all respects. The lawsuit was settled with the agreement that the Property be developed with each party bearing its own costs. Thus, the Plans are obligated generally to facilitate the development of the Property. The Plans' costs in the aforementioned suit have been paid by the Employer. The Property remains undeveloped and WGE maintains its desire to develop the Property. Pursuant to the agreement in settlement of WGE's lawsuit and in order for the Plans to benefit from the substantial increase in the value of the Property since its purchase by the Plans and WGE, the Trustee proposes that the Plans sell their one-half interest in the Property to the Employer, which is more suitably situated financially to cooperate with WGE in the development of the Property. Therefore, the Trustee is requesting an exemption to permit the Employer's purchase of the Plans' one-half interest in the Property under the terms and conditions described herein.

3. The Property was appraised on January 10, 1985 by Rudolph T. Quillian (Quillian), a professional real estate

appraiser with Valuation Services of LaGrange, Inc. of LaGrange, Georgia, who found that as of that date the Property had a fair market value of $445,500. The Employer proposes to pay the Plans cash in an amount no less than $222,750, which is one-half of the fair market value of the Property by Quillian's appraisal. In addition, the Plans will not incure any real estate fees or commisions in connection with the sale.

4. The Trustee has appointed Dan C. Newton (Newton), an insurance broker residing in Columbus, Georgia, as an independent fiduciary to represent the interests of the Plans with respect to the proposed transaction. Newton represents that he is independent of and unrelated to the Employer and the Trustee and that he had never met any of the individuals concerned in this transaction prior to being approached to serve in this capacity. Newton represents that his familiarity with the fiduciary responsibility provisions of the Act and his experience in real estate brokerage and appraisal work qualify him to act in this capacity on behalf of the Plans. Newton has undertaken a review and analysis of all the surrounding circumstances and the terms of the transaction proposed herein, including examination of relevant documents, plats, appraisal reports and other pertinent correspondence and data, an interveiw of the Trustee, and an on-site inspection of the subject Property and its locale. Based on his review, Newton has determined that the failure to proceed with the proposed transaction at this time would be detrimental to the Plans' interests. Newton has determined that any postponement of development of the Property could result in a lowering of the Property's value, due to potential market saturation caused by developments of other sites nearby, while he has verified that the Plans cannot participate in development of the Property due to lack of sufficient free capital. Newton represents that the Plans can best realize the gain from the increased value of the Property by the proposed sale to the Employer because (1) it will allow the agreed resolution of WGE's suit for specific performance without requiring the Plans to produce cash which is not currently available, (2) it will prevent the Plans' expenditures on advertising costs, sales expenses and other costs which the Plans could expect in a sale transaction with an unrelated party, and (3) it will allow the Plans to realize an immediate gain made available by recent market developments and will prevent any risk of loss on that gain through delayed development of the Property. Newton will oversee all aspects of the proposed sale transaction to ensure that it proceeds under the terms and conditions described herein. Newton's duties include the ordering of an update of Quillians' appraisal as of the date of the proposed sale, and the final purchase price will be increased commensurate with any increase in the Property's value over Quillian's appraisal, but in no event will the Employer pay the Plans less than $222,750 for their one-half interest in the Property.

5. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) The Plans will realize a substantial gain on an asset which is currently producing no income; (2) The Plans will not incur any expenses of locating a buyer or any of the sales costs to be expected in an arm's-length sale to an unrelated party; (3) The Plans will receive a purchase price for their one-half interest in the Property which reflects the fair market value of the Property as of the date of the proposed sale to the Employer; and (4) The interests of the Plans with respect to the proposed transaction are represented by an independent fiduciary, Newton, who has determined that the transaction will be in the Plans' best interests and will be based on fair market terms which are at least equivalent to an arm's-length transaction between unrelated parties.

For Further Information Contact: Mr. Ronald Willett of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Michigan Valve & Fitting Company Employees Profit-Sharing Plan and Trust (the Plan) Located in Detroit, Michigan

[Application No. D-6035]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If an exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed cash sale of a certain office building (the Building) located in Detroit, Michigan by the Plan to Michigan Valve & Fitting Company (the Plan Sponsor), a party in interest with respect to the Plan, provided that the Plan receives not less than the appraised fair market value for the Building as of the date of sale.

Summary of Facts and Representations

1. The Plan is a profit sharing plan with 10 participants and assets of $843,246 as of August 31, 1984. The trustee of the Plan (the Trustee) is Manufacturers National Bank of Detroit.

2. The Building is located at 17236 East Warren Avenue, in Detroit, Michigan. The Plan acquired the Building from Bernice J. Van Ostaeyen in June of 1969 for $31,500 and has leased it to the Plan Sponsor since that time. The current rent is $600 per months on a net, net basis, with the Plan Sponsor paying the property taxes, insurance, water and maintenance expenses. An appraisal of the fair market rental value of the Building was conducted on April 3, 1985 by Edward Henkel, M.A.I., S.R.P.A., A.S.A., a party independent of the Plan Sponsor. Mr. Henkel represents that the net rental is equal to a gross rent of $800 per month. He appraised the gross fair market rental value of the Building as $665 per month, and concluded that the Plan is receiving more than fair market rent for the Building. Mr. Henkel appraised the fair market value of the Property as $30,000 as of January 1, 1985.

3. The applicant represents that it was unaware that the lease of the Building was a prohibited transaction until an audit of the Plan was done by the Internal Revenue Service in November of 1984. The applicant also represents that the lease of the Building was exempted from the prohibited transaction rules until July 1, 1984 by reason of sectoin 414(c)(2) of the Act.[2] The applicant has paid the applicable excise tax for the period of July 1, 1984 to August 31, 1984 (the end of its last tax year), and represents that it will pay the excise tax for a period commencing September 1, 1984 to the date of a grant of this proposed exemption within 60 days of the date of such a grant.

4. The applicant proposes to purchase the Building for the price the Plan originally paid for it, $31,500, in cash. This amount is $1,500 above its curent fair market value. The applicant represents that the Plan has borne no costs with respect to holding the Building; the Plan Sponsor has paid the taxes, insurance, water, and maintenance on the Building. The Plan

[2] The Department expresses no opinion herein as to whether the lease of the Building by the Plan satisfied the conditions of section 414(c)(2) of the Act.

will bear no costs with respect to the transaction.

5. The Trustee represents that it is extremely doubtful that the Plan could receive the same rent for the Building in any future leases with the Plan Sponsor or a third party. In addition, the real estate market in the area of the Building is very poor, and while most local real estate markets have shown increased property values recently, the property in the Building's area has continued to fall in value, including the Building. The apparent high rate of return the Plan is receiving is therefore offset by the loss of value in the underlying asset. The Trustee also represents that the Building is an inflexible investment that limits its ability to respond to changing economic and financial conditions.

6. The applicant represents the proceeds of the sale will be invested in the Trustee's equity and fixed income portfolios, which will diversify the investments of the Plan.

7. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act because: (a) The sale will be a one-time transaction for cash; (b) the Plan will receive the price it paid for the Building, which is greater than its current fair market value; (c) the Plan Sponsor will pay all applicable excise taxes with respect to the leasing of the Building beyond July 1, 1984; and (d) the Plan will not incur any expenses with respect to the sale of the Building.

For Further Information Contact: Mr. David Lurie of the Department, telephone (202) 523-8884. (This is not a toll-free number.)

The Colorado National Bank of Denver (the Bank) Located in Denver, Colorado

[Application No. D-6059]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(b)(2) of the Act shall not apply to the sale on December 23, 1983 of certain securities by the Amax Inc. Commingled Fund (the Fund), for which the Bank was a fiduciary, to three of the Bank's collective investment accounts, provided that the sales price for each security was the fair market value of such security on the date of the sale.

Effective Date: If the proposed exemption is granted, the exemption will be effective December 23, 1983.

Summary of Facts and Representations

1. The Fund is a master trust arrangement which serves as a funding medium for twenty separate plans of Amax, Inc. (Amax), the sponsoring employer. All participating plans maintain a beneficial interest in all assets of the Fund. There are approximately 4,000 participants in the plans that participate in the Fund. As of December 31, 1983, the Fund has total assets of $408,119,959.

2. The United States Trust Company of New York (U.S. Trust) acted as trustee of the Fund and the Bank acted as one of the investment managers. There is no affiliation between U.S. Trust and the Bank. The Bank also acted as a fiduciary for three collective investment accounts, namely the Common Stock Fund, the Pooled Equity Fund, and the Pooled Self-Employed Equity Fund (the Accounts). The applicant states that two of the three Accounts, the Pooled Equity Fund and the Pooled Self-Employed Equity Fund, contain funds from employee benefit plans. The applicant states further that no portion of the Fund was invested in the Accounts and there was no party in interest relationship between the Accounts and the Fund. The value of the Fund which the Bank managed was $19,514,000 and the value of the Accounts was $82,926,000 at the time of the transaction.

3. On December 23, 1983, Amax directed the Bank to liquidate all assets of the Fund's portfolio which the Bank managed. The proceeds of the liquidation were needed to purchase annuities for the Amax Inc. Salaried Retirement Plan, which was terminating. In addition, the Bank and certain other investment managers were terminated as investment managers for the Fund in 1983. The Bank sold some of the Fund's assets, namely publicly traded common stocks in Norstar, Great Lakes International and Cooper Tire and Rubber (collectively, the Securities), directly to the Accounts (the Transaction). The Banks liquidated 97.9% of the assets of the Fund which it managed through traditional brokerage executions on the open market. Only 2.1% of the Fund's assets managed by the Bank were involved in the Transaction.

4. The applicant states that the price of the Securities was determined by averaging the high and low for the trades on the date of sale, December 23, 1983, at the close of the market. The total amount paid for the Securities was $418,700, which represented approximately 2.1% of the value of the Fund which the Bank managed and .5% of the value of the Accounts. Further, the Bank managed only 4.78% of the entire Fund and the value of the Securities represented approximately .1% of the entire Fund. The applicant states that no brokerage commissions were charged on the Transaction.

5. The applicant represents that U.S. Trust, as trustee of the Fund, was consulted prior to settlement and determined that the sales price for the Transaction should be the market price for the Securities on December 23, 1983 as indicated by the average of the high and low for the trades based upon published quotations for that date. Both the applicant and U.S. Trust represent that they were unaware at the time of the Transaction that the Transaction was a violation of the Act.

6. The applicant represents that the Trust Committee of the Bank in its usual course of business had recommended the purchase of the Securities for the Accounts as well as for individually managed portfolios and had purchased the Securities actively for the Accounts prior to the Transaction. The Bank represents that it determined, as a fiduciary for the Accounts, that it was appropriate to buy the Securities on December 23, 1983 from the Fund on behalf of the Accounts at a purchase price which was the quoted market price for the Securities on such date at an average between the high and low for the trades based upon published quotations. The Bank represents further that the Transaction was in the best interest of the participants of both the Fund and of the Accounts since the price was determined by the market but the market itself was not impacted and brokerage commissions were avoided.

7. In summary, the applicant represents that the Transaction satisfied the statutory criteria of section 408(a) of the Act because: (a) The Transaction was a one-time cash transaction; (b) the price set for the Securities represented their fair market value on the date of sale as evidenced by published quotations; (c) no brokerage commissions were charged upon the sale or purchase; and (d) the Bank determined that it was in the best interest of the Accounts to purchase the Securities and U.S. Trust approved of the Transaction on behalf of the Fund.

For Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Harden, Napheys, Schmidt & Hass, P.C. Restated Profit Sharing Plan (the Plan)

[Application No. D-6164]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code shall not apply to the proposed cash sale by the Plan of a certain parcel of real property (the Property) to the United Bank of Fort Collins (the Bank), a party in interest with respect to the plan, provided that the price paid is not less than the fair market value of the Property on the date of the sale.

Summary of Facts and Representations

1. The Plan is a defined contribution plan with seven participants and total assets of $372,894.20 as of May 10, 1985. The Plan is sponsored by the Harden, Schmidt & Hass, P.C. (the Employer), a Colorado professional corporation engaged in the practice of law in Fort Collins, Colorado. The Bank is the trustee of the Plan with limited discretionary authority over plan investments. The applicant represents that the Employer and the Plan's Advisory Committee are the decision-makers with regard to most plan investments, including the proposed transaction for which an exemption is requested.

2. The Property is a parcel of three lots and three frame houses located at 1343, 1345, and 1349 South College Avenue, Fort Collins, Larimer County, Colorado. The applicant states that the Employer and Advisory Committee directed the Bank to acquire each of the three lots. The Property was purchased on April 1, 1977 for $35,000, $42,000, and $37,500, respectively.

3. The applicant represents that the Plan desires to sell the Property to the Bank for the sum of $218,190. The Bank owns some real estate abutting two sides of the Property. The applicant states that the Bank is offering to purchase the Property at an above-market price in order to enhance the saleability of its adjoining real estate. The contract of sale and purchase requires the Bank to pay the entire purchase price in cash at closing. The Property is occupied by three old houses which, the applicant states, are expensive to maintain and difficult to rent. The applicant concludes that the Plan will achieve greater returns by selling the Property and using the proceeds in other investments offering a higher rate of return.

4. The applicant represents that the Bank acquired the real estate adjoining the Property on August 23, 1984 through an exchange of seven foreclosure properties which were difficult to manage. The exchange was precipitated by Mr. Harold H. Miller, a long-time client of the Bank who had an interest in all seven parcels the Bank was holding. The applicant states taht the Bank proceeded with the exchange in order to acquire one large parcel which was less expensive to manage and more marketable. The applicant states further that the Bank contemplated using the real estate to construct a drive/up facility for the Bank.

5. The Property was appraised on June 3, 1985 by Donald J. Shannon, M.A.I., an independent real estate appraiser in Fort Collins, as having a fair market value of $200,000. The appraisal makes particular reference to the potential special value of the Property to the Bank since it owns the adjoining real estate.

6. The applicant states that the Plan will not be responsible for any commissions or other charges in connection with the sale or purchase.

7. The applicant represents that the contract for the sale and purchase of the Property was the result of arm's length negotiations between the Employer, acting on behalf of the Plan as seller, and the Bank, as purchaser. All of the terms of the proposed sale including the price were negotiated between the Employer and the Advisory Committee on behalf of the Plan and the Bank as purchaser. The applicant states that the Bank, as trustee, did not in fact participate in the negotiations leading up to the execution of the contract of sale and did not exercise any discretion with respect to this sale. The applicant represents further that the Bank, as the plan trustee, did not render advice to the Employer or the Advisory Committee regarding this sale, and that the Employer and the Advisory Committee made the decision to sell the Property according to the terms of the subject contract.

8. In summary, the applicant represents that the transaction satisfies the criteria of section 408(a) of the Act because: (a) The transaction will be a one-time transaction for cash; (b) the Plan will receive an amount equal to or greater than the fair market value for the Property as determined by an independent qualified appraiser; (c) the Plan will not be required to pay any real estate fees or commissions in connection with the sale; and (d) the transaction will allow the Plan to divest itself of the Property and acquire investment yielding a higher rate of return.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Gerald G. Olson, M.D., Profit Sharing Plan and Money Purchase Pension Plan (Collectively, the Plans) Located in Redwood City, California

[Application No. D-6221]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain real property (the Property) to Gerald G. Olson, M.D. (Dr. Olson), a party in interest with respect to the Plans, for cash in the amount of $150,000, provided that such amount is not less than the fair market value of the Property on the date of sale.

Summary of Facts and Representations

1. The Plans are comprised by a profit sharing plan and a money purchase pension plan, each of which had three participants on September 30, 1984. The assets of the Plans are commingled for investment purposes. On September 30, 1984, the Plans had assets, in the aggregate, of approximately $364,182. Dr. Olson is the trustee and administrator of the Plans and is solely responsible for investment decisions regarding the assets of the Plans.

2. The Property consists of approximately 10.3 acres of unimproved land with water service in the upper Carmel Valley of California and is accessed by a paved private road. The Property is not adjacent to any property owned by parties in interest with respect to the Plans. The Plans purchased the Property in January, 1981, from an unrelated party for cash in the amount of $125,000. The applicant states that the Plans purchased the Property with the expectation of substantial appreciation in its value.

3. The Property was appraised as of June 14, 1985 by Haskell Berry, Jr.,

M.A.I., an appraiser with Urban Property Research Company, Monterey, California. Mr. Berry, who is independent of Dr. Olson, stated that the fair market value of the Property on the date was $150,000. Mr. Berry stated also that the highest and best use of the Property is for a single family dwelling.

4. Since its purchase, the Property has been vacant and has not been used in any way, or produced any income for the Plans. The Plans have incurred expenses with respect to the Property of approximately $1,300 for each year of ownership, in addition to a one-time payment of $1,283 for water service. Dr. Olson states that it would be in the best interest of the Plans to dispose of the Property because it constitutes over 40% of the Plans' portfolio, resulting in insufficient liquidity, and because it has appreciated at a rate of only 4.7% per annum.

5. Dr. Olson proposes to purchase the Property from the Plans for cash in the amount of $150,000. An updated appraisal of the Property by a qualified, independent appraiser may be made prior to the Plans' sale of the Property. However, the purchase price will not be less than $150,000 in any event. If a subsequent appraisal shows a higher fair market value for the Property, Dr. Olson will pay the higher amount. No fees or commissions will be paid by the Plans with respect to the sale.

6. Dr. Olson represents that the proposed sale is protective of and in the best interest of the Plans and their participants and beneficiaries because the purchase price was determined by a qualified and independent M.A.I. appraiser; because the Plans will substantially increase their liquidity by disposing of an illiquid investment constituting over 40% of their proceeds of the sale in more profitable and liquid investments; and because the Plans will not have to pay any sales commissions or fees with respect to the sale.

7. In summary, the applicant represents that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The sale will be a one-time transaction for cash;

(b) The sale will increase the Plans' liquidity;

(c) The sale price was determined by a qualified and independent M.A.I. appraiser; and

(d) No fees or commissions will be paid by the Plans with respect to the sale.

For Further Information Contact: Ms. Katherine D. Lewis of the Department, telephone (202) 523-8882. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 20th day of August, 1985.

Robert J. Doyle,

Deputy Assistant Administrator for Regulations and Interpretations, Office of Pension and Welfare Benefit Programs, U.S. Department of Labor.

[FR Doc. 85-20251 Filed 8-22-85; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Agency Information Collection Activities Under OMB Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATE: Comments on this information collection must be submitted 30 days from the date of this notice.

ADDRESSES: Send comments to Ms. Ingrid Foreman, Management Assistant, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue NW., Washington, D.C. 20506, 202/786-0233 or Mr. Joseph Lackey, Office of Management and Budget, New Executive Office Building 726 Jackson Place NW., Room 3208, Washington, D.C. 20503, 202/395-7316.

FOR FURTHER INFORMATION CONTACT: Ms. Ingrid Foreman, National Endowment for the Humanities, Administrative Services Office, Room 202, 1100 Pennsylvania Avenue, NW., Washington, D.C. 20506, 202/786-0233 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form, (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extension

Title: Classification of the Amount of Request for Payment on Letter of Credit
Form Number: OMB 3136-0056
Frequency of Collection: On Occasion
Respondents: State and Local Governments, Non-Profit Institutions
Use: To Request Payment Through Letter of Credit (LOC-TFCS)
Estimated Number of Respondents: 61
Estimated Hours for Respondents to Provide Information: 229

Title: Process of application, Evaluation, Award and Report of NEH Fellowships for Independent Study and Research and Fellowships for College Teachers Programs.
Form Number: OMB 3136-0083
Frequency of Collection: Collections occur once yearly, according to individual program application deadlines
Respondents: Academic scholars-teachers and independent scholars
Use: Application, evaluation, and award process for individuals in the Fellowships for Independent Study and Research and Fellowships for College Teachers program
Estimated Number of Respondents: 15,530
Estimated Hours for Respondents to Provide Information: 1.5

Susan Metts,

Acting Director of Administration.

[FR Doc. 85-20195 Filed 8-22-85; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision or extension: Revision.

2. The title of the information collection: 10 CFR Part 11—Criteria and Procedures for Determining Eligibility for Access to or Control Over Special Nuclear Material.

3. The form number if applicable.

NRC Form 1—Personnel Security Questionnaire
NRC Form 237—Request for Access Authorization

4. How often the collection is required: New applications may be submitted at any time. Renewal applications must be submitted every five years.

5. Who will be required or asked to report: Employees (including applicants for employment), contractors, and consultants of NRC licensees and contractors whose activities involve dealing with special nuclear material at either fixed sites or in transportation activities.

6. An estimate of the number of responses:

NRC Form 1—525
NRC Form 237—6
10 CFR Section 11.16—5

7. An estimate of the total number of hours needed to complete the requirement or request:

NRC Form 1—788
NRC Form 237—1
10 CFR Section 11.16—1

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: This amendment to 10 CFR Part 11 would allow conversion of current comparable personnel security clearance information from another Federal agency for use in NRC's special nuclear material access authorization program without reinvestigation and with a reduced administrative burden. The amendment would also permit use of some of the Department of Energy (DOE) documentation for individuals subject to comparable DOE programs.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 1717 H Street NW., Washington, DC 20555.

Comments and questions should be directed to the OMB reviewer, Jefferson B. Hill, (202) 395-7340.

The NRC Clearance Officer is R. Stephen Scott, (301) 492-8585.

Dated at Bethesda, Maryland, this 13th day of August 1985.

For the Nuclear Regulatory Commission.

Patricia G. Norry,

Director, Office of Administration.

[FR Doc. 85-20256 Filed 8-22-85; 8:45 am]

BILLING CODE 7590-01-M

[NUREG/CR-2815]

Draft Probabilistic Safety Analysis Procedures Guide; Availability and Inquiry

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability of the draft probabilistic safety analysis procedures guide (NUREG/CR-2815) for public comments.

SUMMARY: The Nuclear Regulatory Commission has issued for public comments a draft of the Probabilistic Safety Analysis Procedures Guide (NUREG/CR-2815). The NUREG's intent is to provide guidance to the performance of probabilistic safety analysis studies which involve probabilistic predictive models that can be used, extended, and modified and reused by the utilities and by NRC to sharpen the focus of inquiries into a range of issues affecting reactor safety.

The procedures guide has two volumes. The first volume describes the evaluation of core-damage frequency resulting from accident initiators internal to the plant (i.e., intrinsic to plant operations) and from loss of offsite electric power. The scope includes human reliability analysis, treatment of common cause failures and systems interactions, determination of the importance of various accident scenarios, and an explicit treatment and display of uncertainties for key accident sequences. The second volume of the procedures guide deals with estimation of core-damage frequency associated with the so-called external events, which include earthquakes, fires, floods, and high wind.

NUREG/CR-2815 provides the structure of a probabilistic safety study to be performed, and indicates the level as well as the products of the study that would be valuable in regulatory decision making. Due to the relative maturity of techniques used for internal events, procedures in volume one are treated only to the extent necessary to indicate the range of methods which are acceptable; ample references are given to alternative methodologies which may be utilized in performance of the study. In the case of external event methods, which are less mature compared to internal events, more specific and explicit guidance is provided.

The enclosed draft NUREG was developed by the Reliability and Risk Assessment Branch (RRAB) of DST, with technical support from Brookhaven National Laboratory and its consultants. This draft was preceded by the January 1984 issue of the NUREG which did not include the treatment of external events and did not reflect the 1983-1985 advancements in the state-of-the-art in internal events probabilistic analyses.

Public comments are being solicited on the draft guide and should be sent to Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555 no later than 45 days following the date of issuance of this notice.

Copies of the NUREG/CR-2815 are available for inspection, and copying for a fee, in the Commission's Public Document Room, 1717 H Street NW., Washington, D.C. 20555. For further information contact Adel El-Bassioni, Reliability and Risk Assessment Branch, U.S. Nuclear Regulatory Commission,

Washington, D.C. 20555. Telephone (301) 492–7646.

Dated at Bethesda, Maryland this 16th day of August, 1985.

Ashok Thadani, Chief,

Reliability and Risk Assessment Brnach, Division of Safety Technology, Office of Nuclear Reactor Regulation.

[FR Doc. 85–20258 Filed 8–22–85; 8:45 am]

BILLING CODE 7590–01–M

Advisory Panel for the Decontamination of Three Mile Island Unit 2; Meeting

Notice is hereby given pursuant to the Federal Advisory Committee Act that the Advisory Panel for the Decontamination of Three Mile Island Unit 2 (TMI–2) will be meeting on September 11, 1985 from 6:00 PM to 9:00 PM at the Environmental Matters Committee Room, Room 160, House Office Building, College Avenue, Annapolis, Maryland 21401. The meeting will be open to the public.

At this meeting the Panel will receive a status report on the progress of the cleanup from General Public Utilities Nuclear Corporation. The Panel will also receive presentations by the various State and Federal agencies involved in the cleanup effort. The licensee will brief the Panel on the status of the processed water that resulted from the 1979 accident. Members of the public will be given the opportunity to address the Panel.

Further information on the meeting may be obtained from Dr. Michael T. Masnik, Three Mile Island Program Office, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301/492–7466.

Dated: August 19, 1985.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 85–20257 Filed 8–22–85; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 22–13935]

Application and Opportunity for Hearing; American Express Credit Corporation

August 19, 1985.

Notice is hereby given that American Express Credit Corporation has filed an application under clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (the "Act") for a finding by the Commission that the trusteeship of Manufacturers Hanover Trust Company ("MHTC") under an indenture which was qualified and an offering thereunder and an indenture which was not qualified under the Act are not so likely to involve a material conflict of interest as to make it necessary in the public interst or for the protection of investors to disqualify MHTC from acting as trustee under either or the two indentures.

Section 310(b) of the Act provides, in part, that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest defined in the section, it shall within ninety days after ascertaining that it has such conflicting interest either eliminate such conflicting interest or resign. Subsection (1) of this section provides, with certain exceptions, that a trustee is deemed to have a conflicting interest if it is acting as trustee under another indenture under which any other securities of the same obligor are outstanding. However, pursuant to clause (ii) of subsection (1), there may be excluded from the operation of this provision another indenture or indentures under which other securities of such obligor are outstanding, if the issuer shall have sustained the burden of proving on application to the Commission, and after opportunity for a hearing thereon, that trusteeship under the qualified indenture and such other indenture is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify such trustee from acting as trustee under any of such indentures.

The Applicant alleges that:

1. On December 15, 1984, American Express Credit Corporation (the "Applicant") filed a registration statement (Registration No. 2–94851), covering up to $900,000,000 principal amount of Securities.

2. Applicant and Security Pacific National Bank entered into an Indenture, dated as of December 15, 1984, as supplemented by the First Supplemental Indenture dated as of April 1, 1985 (the Indenture and the First Supplemental Indenture hereinafter referred to as the "Previous Indenture"), authorizing the amount of debentures, notes or other evidences of indebtedness (the "Securities"), as authorized from time to time by one or more resolutions of the Board of Directors of the Applicant.

3. The Applicant and MHTC entered into a Second Supplemental Indenture, dated as of April 15, 1985, to the Indenture, which enables MHTC to act as Trustee for a series of Securities as designated by a company order of the Applicant, from time to time (the "MHTC Indenture") (the Previous Indenture and the MHTC Indenture hereinafter sometimes collectively referred to as the "Shelf Indenture").

4. The Company has issued $100,000,000 aggregate principal amount of 11½% Senior Notes due March 15, 1989 under the Previous Indenture for which Security Pacific National Bank is the Trustee; the Applicant is not in default under the Shelf Indenture.

5. Applicant and MHTC entered into an Indenture, dated as of May 15, 1985, (the "May Indenture") pursuant to which $100,000,000 in aggregate principal amount of 10¾% Senior Notes due 1990 were issued (the "EuroNotes"). Inasmuch as the EuroNotes were offered and sold outside the United States, its territories and possessions to persons who are not nationals or residents thereof, the EuroNotes were not registered under the Securities Act of 1933 and the May Indenture was not qualified under the Act.

6. The Applicant, pursuant to Registration No. 2–94851, issued on June 10, 1985, $100,000,000 in aggregate principal amount of 10¼% Senior Notes due June 15, 1985 (the "Notes").

7. The Notes were issued pursuant to the Shelf Indenture and the Applicant appointed to appoint MHTC, by resolution of the Board of Directors, as indenture trustee for the Notes under the MHTC Indenture.

8. The Shelf Indenture and the May Indenture are both wholly unsecured. The notes and the EuroNotes are senior debt and will be of equal rank. Accordingly, in the opinion of the Applicant, the trusteeships of MHTC under the Shelf Indenture and the May Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors that MHTC be disqualified from acting as trustee under one of such Indentures.

The Applicant waives notice of hearing and waives hearing and waives any and all rights to specific procedures under the rules of practice of the Commission with respect to the application.

For a more detailed account of the matters of fact and law asserted, all persons are referred to said application, File No. 22–13935, which is a public document on file in the offices of the Commission at the Public Reference Room, 450 Fifth Street, Washington, D.C.

Notice is further given that any interested person may, not later than September 10, 1985, 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 law or fact raised by such application 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: John Wheeler, Secretary, Securities and Exchange Commission, Washington, D.C. 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest or for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20186 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14678; File No. 811-4270]

Frank Russell Capital Company; Notice of Application for an Order Declaring that Applicant Has Ceased To Be an Investment Company

August 16, 1985

Notice is hereby given that Frank Russell Capital Company ("Applicant"), 1050 First Interstate Plaza, Tacoma, WA 98402, a Massachusetts business trust, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified, management investment company of the "series" type with seven series ("Funds"), filed an application on July 29, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

Applicant states that it filed a notification of registration and registation statement pursuant to section 8(b) of the Act on March 26, 1985, has never made a public offering of its Funds' securities, has fewer than 100 security holders for purposes of section 3(c)(1) of the Act and the rules thereunder, and does not propose to make a public offering or engage in business of any kind. Applicant further states that each Fund has issued one subscription-share for $10 per share. According to the application, other than the holder of those subscription-shares, Applicant does not have any security holders, has no more than $70 in assets, is not a party to any litigation or administrative proceeding, and does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Applicant represents that it will maintain its legal existence as a Massachusetts business trust.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon an Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20187 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-23798; 70-7136]

Gulf Power Co.; Proposal To Issue and Sell First Mortgage Bonds

August 19, 1985.

Gulf Power Company ("Gulf"), 75 North Pace Boulevard, P.O. Box 1151, Pensacola, Florida 32520, a wholly owned subsidiary of The Southern Company, a registered holding company, has filed a declaration with this Commission subject to sections 6(a), 7, and 12(c) of the Public Utility Holding Company Act of 1935 ("Act") and Rules 42 and 50 thereunder.

Gulf proposes, on or prior to September 1, 1986, to issue and sell up to $50 million aggregate principal amount of first mortgage bonds ("Bonds") in one or more series, having a maturity of not less than five nor more than 30 years. The Bonds will be issued under the indenture dated as of September 1, 1941, between Gulf and the Chase Manhattan Bank and The Citizens & Peoples National Bank of Pensacola, as Trustees, as supplemented ("Indenture").

Gulf may provide that the Bonds will not be redeemed for up to five years at a regular redemption price if such redemption is for the purpose or in anticipation of refunding such through the use, directly or indirectly, of funds borrowed by Gulf at an effective interest cost to Gulf of less than the effective interest cost to Gulf of the Bonds. Such limitation will not apply to redemptions at a special redemption price by operation of the improvement fund or the maintenance and replacement provisions of the Indenture or by the use of proceeds of released property.

In addition, Gulf may make provisions for a madatory cash sinking fund for the benefit of the Bonds. Gulf may have the non-cumulative option in any year of making an optional sinking fund payment in an amount not exceeding such mandatory sinking fund payment.

In order to enhance the marketability of the Bonds, it may be desirable to provide for an adjustable interest rate which will be adjusted on a periodic basis. Gulf proposes to use the proceeds to pay a portion of its cash requirements to carry on its electric utility business. Gulf may use such proceeds to redeem outstanding first mortgage bonds.

Gulf may request by amendment hereto that such proposed sale of the Bonds be excepted from the competitive bidding requirement of Rule 50 under the Act should circumstances develop which, in the opinion of Gulf's management, make such exception in the best interests of Gulf and its investors and consumers. Unless previously so excepted, Gulf proposes to comply with the requirements of Rule 50.

The declaration and any amendments thereto are available for public inspection through the Commission's Office of Public Reference. Interested persons wishing to comment or request a hearing should submit their views in writing by September 12, 1985, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549, and serve a copy on the declarant at the address specified above. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for a hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in this matter. After said date, the declaration, as filed or as it may be amended, may be permitted to become effective.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20188 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 14680; File No. 812-6168]

Morgan Guaranty Trust Company of New York; Notice of Application for Order Permitting Foreign Custodian Arrangements

August 16, 1985.

Notice is hereby given that Morgan Guaranty Trust Company of New York, 23 Wall Street, New York, NY 10015 ("Morgan"), filed an application on February 13, 1985, and an amendment

thereto on August 14, 1985, requesting an order of the Commission pursuant to section 6(c) of the Investment Company Act of 1940 ("Act") exempting Morgan, any investment company registered under the Act (other than an investment company registered under section 7(d) of the Act) and Morgan Bank Nederland ("MBN"), from the provisions of section 17(f) of the Act so as to permit Morgan, as the custodian of the securities and other assets of a company ("Securities") or as subcustodian of the Securities as to which any other entity is acting as custodian, and such other entity for which Morgan so acts, to deposit, or to cause or permit the deposit of, such Securities in MBN in The Netherlands, subject to certain conditions. As used herein the term "Securities" shall not include securities issued by the Government of the United States or by any State or any political subdivision thereof or by any agency thereof or any securities issued by any entity organized under the laws of the United States or any State thereof (other than certificates of deposit, evidences of indebtedness and other securities, issued or guaranteed by an entity so organized which have been issued and sold outside the United States). All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act and the rules thereunder for the text of the relevant provisions.

According to the application, at December 31, 1984, Morgan was the fourth largest bank in the United States based on shareholders' equity, and the fifth largest based on deposits. According to the application, responding to customer requirements by adopting services to meet its customers' needs is an important objective of Morgan. To provide its investment company clients a safe, efficient and economical system for maintaining custody of foreign investments, Morgan proposes to provide foreign custody services to such clients by using a network of subcustodians which will include foreign banks and trust companies and foreign securities depositories.

According to the application, MBN was founded as a limited liability company in 1930, has been affiliated with Morgan since 1976, and became an indirect wholly-owned subsidiary of Morgan in March 1984. As of December 31, 1984, MBN ranked approximately fifteenth in size by total assets among commercial banks in The Netherlands. Morgan represents further that MBN has been providing custody services for over 55 years, and that Morgan's New York and European branches have utilized MBN's custody services (which do not involve investment company assets) since 1977. MBN currently maintains custody of securities and other assets having a value in excess of approximately U.S. $365,074,528 at exchange rates on June 21, 1985. In addition, Morgan states that MBN is regulated as a banking institution by the Central Bank of The Netherlands. A copy of MBN's 1984 Annual Report in the English language is included as Exhibit A to the application.

The Commission has designated September 1, 1985, as the date by which investment companies must conform their foreign custody arrangements to the requirements of Rule 17f–5, or obtain additional exemptive relief to continue such arrangements.[2] Morgan states that, MBN currently has shareholders' equity of less than U.S. $100 million, and thus, does not satisfy the minimum requirement to qualify as an "eligible foreign custodian" under Rule 17f–5. Accordingly, Morgan requests an exemptive order permitting Morgan to deposit Securities (i) in The Netherlands with MBN so long as such deposit is made in accordance with an agreement, which agreement would be required to remain in effect at all times during when MBN would not meet the requirements of Rule 17f–5 relating to shareholders' equity, among (a) the company or a custodian of the Securities of the company for which Morgan acts as subcustodian, (b) Morgan and (c) MBN pursuant to the terms of which Morgan would act as the custodian or subcustodian, as the case may be, of the Securities of the company and MBN would be delegated such duties and obligations of Morgan thereunder as would be necessary to permit MBN to hold in custody the Securities in the company in The Netherlands, provided that such delegation would not relieve Morgan of any responsibility to the company for any loss due to such delegation, except such loss as may result from political risk (*e.g.*, exchange control restrictions, confiscation, expropriation, nationalization, insurrection, civil strife or armed hostilities) and other risk of loss (excluding bankruptcy or insolvency of MBN) for which neither Morgan nor MBN would be liable under Rule 17f–5 (*e.g.*, despite the exercise of reasonable care, loss due to Acts of God, nuclear incident and the like).

In support of the exemptive relief requested, Morgan represents that the proposed foreign custody arrangement with MBN will comply with all the remaining terms of Rule 17f–5, except those relating to shareholders' equity. Morgan further represents that it will provide its investment company clients with information regarding foreign custody arrangements in order to permit investment company directors to conduct their annual reviews of such arrangements as required by Rule 17f–5. Information provided at that time will include, among other things, each foreign banking institution's most recent publicly available financial information.

According to Morgan, it believes that the procedures it proposes would provide its investment company clients with adequate protection. Additionally, Morgan believes such procedures are within the policy underlying Rule 17f–5. In view of the above, Morgan states that its application for exemption is 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 wishing to request a hearing on the application may, not later than September 10, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address states above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date, an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85–20189 Filed 8–22–85; 8:45 am]

BILLING CODE 8010–01–M

[2] *See* Investment Company Act Release No. 14132 (September 7, 1984) (49 FR 36080), which adopted Rule 17f–5 and notified investment companies that they had until March 1, 1985, to conform their foreign custody arrangements to the rule. That compliance date was extended until June 1, 1985, in Investment Company Act release No. 14347 (February 4, 1985) (50 FR 52341) and then until September 1, 1985 in Investment Company Act Release No. 14538 (May 30, 1985) (50 FR 24540).

[Release No. IC-14682; File No. 811-3002]

World Resources Fund, Ltd.; Notice of Application

August 19, 1985.

Notice is hereby given that World Resources Fund, Ltd. ("Applicant"), Box 491143, Los Angeles, California 90049, registered under the Investment Company Act of 1940 ("Act") as an open-end, diversified management investment company, filed an application on June 19, 1985, for an order of the Commission, pursuant to section 8(f) of the Act, declaring that Applicant has ceased to be an investment company. All interested persons are referred to the application on file with the Commission for a statement of the representations contained therein, which are summarized below, and to the Act for the applicable provisions thereof.

The application states that Applicant, which filed a registration statement pursuant to section 8(b) of the Act on March 5, 1980, never made a public offering of its securities, has fewer than 100 securityholders for purposes of 3(c)(1) of the Act and the rules thereunder, and does not propose to make another public offering or engage in business of any kind. Applicant represents that it is not a party to any litigation or administrative proceeding and it does not intend to engage in any business activities other than those necessary for the winding up of its affairs. Finally, the application represents that Applicant's legal existence under state law has been suspended.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 13, 1985, at 5:30 p.m., do so by submitting a written request setting forth the nature of his interest, the reasons for his request, and the specific issues, if any, of fact or law that are disputed, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549. A copy of the request should be served personally or by mail upon Applicant at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed with the request. After said date an order disposing of the application will be issued unless the Commission orders a hearing upon request or upon its own motion.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 85-20190 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

Forms Under Review by Office of Management And Budget

Agency Clearance Officer: Kenneth A. Fogash, (202) 272-2142.

Upon Written Request Copy Available from: Securities and Exchange Commission, Office of Consumer Affairs and Information Services, 450 Fifth Street, NW., Washington, D.C. 20549.

Revision

Form SE, File No. 270-289
Form ET, File No. 270-290
Form ID, File No. 270-291

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted for clearance revised forms for use by the registrants voluntary participating in the EDGAR Pilot Project. Form SE is used by new registrants to file paper copies of exhibit documents that cannot be transmitted electronically; Form ET, Transmittal Form for Electronic Format Documents, will accompany tapes and diskettes submitted to the Commission; and Form ID is the Uniform Application for Identification Numbers and Passwords. The revision allows for use of these forms under the Investment Company Act of 1940.

Submit comments to OMB Desk Officer: Ms. Katie Lewin, (202) 395-7231, Offices of Information and Regulation Affairs, Office of Management and Budget, Room 3235 NEOB, Washington, D.C. 20503.

Shirley E. Hollis,

Assistant Secretary.

August 16, 1985.

[FR Doc. 85-20237 Filed 8-22-85; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[CM-8/875]

Advisory Committee on International Investment, Technology and Development; Meeting

The Department of State will hold a meeting of the Subcommittee on Transborder Data Flows of the Advisory Committee on International Investment, Technology, and Development on September 18, 1985 from 10 a.m. to noon. The meeting will be held in the Loy Henderson Conference Room of the Department of State, 2201 C Street, NW., Washington, DC, 20520.

The purpose of the meeting will be to discuss the results of the June meeting of the Working Party on Transborder Data Flows of the OECD's Committee on Information, Computers, and Communications Policy (ICCP Committee), the meeting of the full ICCP Committee scheduled for October 1, and preparation for the ICCP's Special Session on Telecommunications Policy scheduled for November 18.

Access to the State Department is controlled. Therefore, members of the public wishing to attend the meeting must contact the Office of Investment Affairs, (202) 632-2728, in order to arrange admittance. Please use the C street entrance.

The Chairman of the Subcommittee will, as time permits, entertain comments from members of the public at the meeting.

Dated: August 15, 1985.

Walter B. Lockwood, Jr.

Deputy Director, Office of Investment Affairs.

[FR Doc. 85-20240 Filed 8-22-85; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q of Department of Transportation's Procedural Regulations; Week Ended August 16, 1985

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further procedings. (See 14 CFR 302.1701 et seq.)

Date filed	Docket No.	Description
Aug. 12, 1985	43201	Tropical Airways, Inc., c/o Courtney A.B. Hamilton, Courtney A.B. Hamilton & Associates, 182-38 Hillside Avenue, Jamaica, New York 11432. Supplement to the Application of Tropical Airways, Inc. for interstate and overseas scheduled air transportation of persons, property and mail. Answers may be filed by September 9, 1985.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 85-20247 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-62-M

[Docket No. 35583]

Pan American World Airways Employee Protection Program Investigation; Notice of Prehearing Conference

By Order 85-8-27, the Department of Transportation vacated the stay of all procedural steps imposed by the Civil Aeronautics Board in this proceeding. In view of the elapsed time and events which have occurred since the Board stayed all further procedural steps in this proceeding, it is deemed advisable to hold a prehearing conference to determine what procedural steps need to be taken and what timetable needs to be imposed. Accordingly, a prehearing conference will be held on September 25, 1985, at 10:00 a.m. (local time), in Room 5332, Nassif Building, 400 7th Street, SW., Washington, DC.

In order to facilitate the conduct of the conference, parties are directed to submit one copy to each party and two copies to the Judge of: (1) Any proposed revision or addition to the statement of issues; (2) proposed stipulations; (3) proposed additional requests for information or evidence; (4) supplemental statements of position; and (5) proposed procedural dates. The Aviation Enforcement and Proceedings Office (AEP) will circulate its material on or before September 11, 1985, and the other parties on or before September 18, 1985. The submissions of the other parties shall be limited to points on which they differ with AEP, and shall follow the numbering and lettering used by AEP to facilitate cross-referencing.

Dated at Washington, D.C., August 19, 1985.

John M. Vittone,
Administrative Law Judge.
[FR Doc. 85-20248 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-62-M

National Highway Traffic Safety Administration

National Driver Register Advisory Committee; Public Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I), notice is hereby given of a meeting of the National Driver Register Advisory Committee to be held on September 10, 1985, in Washington, DC. The meeting will be held at the DOT Headquarters Building from 8:00 a.m. to 4:00 p.m. in room 6200. Issues to be discussed are: the Federal Register Notice on the NDR Final Rule; an update on the recent activities of the NDR; and old/new business.

The meeting is open to the interested public, but may be limited in attendance to the space available. Members of the public may present a written statement to the Committee at any time. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Additional information is available from the NHTSA Executive Secretariat, Room 5221, 400 Seventh Street SW., Washington, DC 20590, telephone 202-426-2870.

Issued in Washington, DC on: August 20, 1985.

Carole Guzzetta,
Director, Executive Secretariat.
[FR Doc. 85-20249 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-59-M

Sunshine Act Meetings

Federal Register
Vol. 50, No. 164
Friday, August 23, 1965

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).

1

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

August 20, 1985.

TIME AND DATE: 10:00 a.m., Thursday, August 29, 1985.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. Secretary of Labor, MSHA on behalf of Rober Ribel v. Eastern Associated Coal Corp., Docket No. WEVA 84-33-D. (Issues include whether the administrative law judge erred in concluding that the miner had been discharged in violation of the Mine Act and properly denied attorney's fees to the miner's private counsel.)

This matter was previously scheduled for August 22, 1985. It was determined by a unanimous vote of Commissioners that this meeting be postponed and that no earlier announcement of the meeting was possible.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Thus, the Commission may, subject to the limitations of 29 CFR 2706.150(a)(3) and 2706.160(e), ensure access for any handicapped person who gives reasonable advance notice.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen, (202) 653-5632.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 85-20238 Filed 8-21-85; 9:42 am]

BILLING CODE 6735-01-M

Federal Register

Friday
August 23, 1985

Part II

Environmental Protection Agency

40 CFR Parts 468 and 471

Nonferrous Metals Forming and Metal Powders Point Source Category; Copper Forming Point Source Category; Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 468 and 471

[OW-FRL-2854-9]

Nonferrous Metals Forming and Metal Powders Point Source Category; Copper Forming Point Source Category; Effluent Limitations Guidelines; Pretreatment Standards, and New Source Performance Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final regulation.

SUMMARY: This regulation establishes effluent limitations guidelines and standards under the Clean Water Act to limit the discharge of pollutants into navigable waters of the United States and into publicly owned treatment works (POTW) by existing and new sources that conduct nonferrous metals forming and metal powders ("nonferrous metals forming") operations. The Clean Water Act and a consent decree require EPA to issue this regulation. This regulation establishes effluent limitations guidelines based on "best practicable technology" (BPT) and "best available technology" (BAT), new source performance standards (NSPS) based on "best demonstrated technology," and pretreatment standards for existing and new indirect dischargers (PSES and PSNS, respectively). This rulemaking also makes a minor adjustment to the applicability of the limitations and standards for the copper forming point source category, 40 CFR Part 468.

DATES: In accordance with 40 CFR Part 23 (50 FR 7268, February 21, 1985), this regulation shall be considered issued for the purposes of judicial review at 1:00 p.m. Eastern time on September 6, 1985. This regulation shall become effective October 7, 1985.

The compliance date for pretreatment standards for existing sources (PSES) is August 23, 1988. The compliance date for new source performance standards (NSPS) and pretreatment standards for new sources (PSNS) is the date the new source begins operations.

Under Section 509(b)(1) of the Clean Water Act, judicial review of this regulation can be obtained only by filing a petition for review in the United States Court of Appeals within 90 days after the regulation is considered issued for purposes of judicial review. Under Section 509(b)(2) of the Clean Water Act, the requirements in this regulation may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

The record for the final rule will be available for public review not later than October 28, 1985.

ADDRESSES: Address questions on the final rule to Ms. Janet K. Goodwin, Industrial Technology Division (WH-552), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460; Attention: Nonferrous Metals Forming Rules (WH-552). The basis for this regulation is detailed in four major documents. See Supplementary Information (under "XIV. Availability of Technical Information") for a description of each document. Copies of technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161 (703-487-4600).

Technical information may be obtained by writing Ms. Janet K. Goodwin at the above address or by calling (202) 382-7126. Copies of the economic impact report and additional economic information may be obtained by writing Mr. Joseph Yance, Economic Analysis Staff (WH-586), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460 or by calling (202) 382-5379.

The record for the final rule will be available for public review not later than October 28, 1985 in EPA's Public Information Reference Unit, Room 2904 (Rear) (EPA Library), 401 M Street, SW., Washington, D.C. The EPA public information regulation (40 CFR Part 2) provides that a reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Ernst P. Hall, Chief, Metals Industries Branch, (202) 382-7126.

SUPPLEMENTARY INFORMATION:

Organization of This Notice

I. Legal Authority
II. Scope of This Rulemaking
III. Summary of Legal Background
IV. Methodology and Data Gathering Efforts
V. Control and Treatment Technology Options and Basis for Final Regulation
  A. Summary of the Category
  B. Control and Treatment Technology Options Considered
  C. Technology Basis for Final Regulation
VI. Economic Considerations
  A. Analysis and Reports
  B. Costs and Economic Impacts
  C. Executive Order 12291
  D. Regulatory Flexibility Analysis
  E. SBA Loans
VII. Nonwater Quality Aspects of Pollution Control
  A. Air Pollution
  B. Solid Waste
  C. Consumptive Water Loss
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VIII. Pollutants and Subcategories Not Regulated
  A. Exclusion of Pollutants
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IX. Public Participation and Response to Major Comments
X. Best Management Practices (BMP)
XI. Upset and Bypass Provisions
XII. Variances and Modifications
XIII. Implementation of Limitations and Standards
  A. Relationship to NPDES Permits
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XIV. Availability of Technical Information
XV. List of Subjects
XVI. Appendices:
  A. Abbreviations, Acronyms, and Other Terms Used in this Notice
  B. Toxic Pollutants Not Detected in Nonferrous Metals Forming Wastewater
  C. Toxic Pollutants Detected Below the Analytical Quantification Limit
  D. Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources
  E. Toxic Pollutants Detected in Amounts Too Small to be Effectively Treated
  F. Toxic Metal Pollutants Effectively Controlled by BAT, PSES, and PSNS Even Though They Are Not Specifically Regulated
  G. Subcategories Not Regulated

I. Legal Authority

EPA is promulgating this regulation under the authority of Sections 301, 304, 306, 307, 308, and 501 of the Clean Water Act (the Federal Pollution Control Act Amendments of 1972, 33 USC 1251 *et seq.*, as amended by the Clean Water Act of 1977, Pub. L. 95-217) ("the Act"). This regulation is also issued pursuant to the Court Order in *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), *modified* by orders of October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, and January 7, 1985.

II. Scope of This Rulemaking

This regulation, which was proposed on March 5, 1984 (49 FR 8112), establishes effluent limitations guidelines and standards for existing and new nonferrous metals forming facilities. Because of the diversity of the nonferrous metals industry, EPA has divided it into different segments for regulation. This regulation only covers nonferrous metals forming operations; nonferrous metals manufacturing operations are covered under separate regulations at 40 CFR Part 421 (nonferrous metals manufacturing phase I, promulgated at 49 FR 8742 on March 8, 1984 and nonferrous metals manufacturing phase II, proposed at 49 FR 26352 on June 27, 1984).

The nonferrous metals forming category is generally included within SIC 3356, 3357, 3463, and 3497 of the Standard Industrial Classification

Manual, prepared in 1972 and supplemented in 1977 by the Office of Management and Budget, Executive Office of the President. The category includes establishments engaged in the forming of 30 nonferrous metals and their alloys. As explained below, the nonferrous metals forming category employs an estimated 40,000 people with a total production estimated at 430,000 kkg (470,000 tons) per year. The Agency did not identify any other nonferrous metals (except for beryllium, aluminum, and copper, the latter two of which are already covered by other regulations, see 40 CFR Parts 467 and 468) that are subjected to forming operations.

Alloys are considered as only one metal type: the metal type of any particular alloy is defined to be the metal that is the major constituent by weight, except in the case of beryllium and precious metal alloys, as explained below. Some beryllium alloys (as well as pure beryllium) were included in the proposed regulation for nonferrous metals forming. However, EPA has decided to regulate pure beryllium and these alloys at a later date with beryllium copper alloys which were originally covered by the copper forming regulation, 40 CFR Part 468 (48 FR 36942, August 15, 1983)). In this way, forming of pure beryllium and all beryllium alloys (defined as any nonferrous metal alloy in which beryllium is present at 0.1 or greater percent by weight) will be regulated in the same category.

Forming of copper alloys is already covered by the copper forming regulation, cited above. A copper alloy is any alloy which contains copper as the major constituent by weight, except when alloyed with precious metals, where the precious metal is present at 30 or greater percent by weight. These alloys are considered precious metal alloys. This rulemaking amends the copper forming regulation to reflect this change. Likewise, the nonferrous metals forming regulation states that any alloy of a precious metal, and any other nonferrous metal, where the precious metal is present at 30 or greater percent by weight, is covered by the precious metals subcategory of this regulation. These changes were made in response to comments on the proposed nonferrous metals forming regulation indicating that plants perform similar forming operations on various copper-precious metals alloys which range up to 70 percent by weight copper in composition.

An aluminum alloy is any alloy which contains aluminum as the major constituent by weight. Forming of aluminum alloys is covered by the aluminum forming regulation, 40 CFR Part 467 (48 FR 49126, October 24, 1983). An iron and steel alloy is any alloy which contains iron as the major constituent by weight. Forming of iron and steel is covered by the iron and steel regulation, 40 CFR Part 420.

EPA studied 334 nonferrous metals forming plants distributed throughout the United States, with the majority located east of the Mississippi River. Of these plants, 158 discharge process wastewater, 37 directly to surface water (direct dischargers), and 121 to Publicly Owned Treatment Works (POTWs) (indirect dischargers). The remaining 176 plants do not discharge process wastewater. As a result of the study of nonferrous metals forming plants, EPA excluded nine of the 30 metal types in the category from national regulation under Paragraph 8 of the Settlement Agreement in *NRDC* v. *Ruckelshaus, supra.* EPA is excluding these metal types from national regulation because the forming operations performed on these metals do not use process water and therefore, do not discharge process wastewater. In addition to the pure metals, alloys of these nine metals are also excluded from regulation, when one of these metals is the largest constituent by weight.

Forming is the deformation of a metal or metal alloy into specific shapes by hot or cold working. Forming operations include rolling (both hot and cold), extruding, forging, drawing, cladding, and tube reducing. Ancillary operations performed as an integral part of the forming process are also included in the nonferrous metals forming category. These operations are casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, sawing, grinding, tumbling, burnishing, product testing, and surface coating. Wastewater streams associated with air pollution controls on nonferrous metals forming and related operations are also included in this point source category.

The nonferrous metals forming category also includes metal powder production operations which generate metal powder through mechanical means, such as milling, abrading, and atomizing; and associated ancillary operations listed above. This category includes the production of metal powders of iron, copper, and aluminum and other metals, the forming of which is covered by this regulation. This category does not include the production of metal powders by chemical means such as precipitation. The production of metal powder as the final step in refining metal is regulated under the nonferrous metals manufacturing regulation, 40 CFR Part 421.

Casting of a nonferrous metal is regulated in this category when performed as an integral part of a nonferrous metals forming process and located at the same plant site at which that metal is formed. Such casting will not be regulated under the provisions of the metal molding and casting regulation, 40 CFR Part 464.

Surface treatment of nonferrous metals is any chemical or electrochemical treatment applied to the surface of a nonferrous metal. For the purposes of this regulation, surface treatment of nonferrous metal is considered to be an integral part of nonferrous metal forming whenever it is performed at the same plant site at which nonferrous metal is formed. Surface treatment operations are not subject to regulation under the provisions of the electroplating regulation, 40 CFR Part 413, or the metal finishing regulation, 40 CFR Part 433.

III. Summary of Legal Background

The Federal Water Pollution Control Act Amendments of 1972 established a comprehensive program to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters," Section 101(a). To implement the Act, EPA was to issue effluent limitations guidelines, pretreatment standards, and new source performance standards for industrial dischargers.

The Act included a timetable for issuing these standards. However, EPA was unable to meet many of the deadlines and, as a result, in 1976, it was sued by several environmental groups. In settling this lawsuit, EPA and the plaintiffs executed a "Settlement Agreement" which was approved by the court. This Agreement required EPA to develop a program and adhere to a schedule in promulgating effluent limitations guidelines, new source performance standards, and pretreatment standards for 65 "priority" pollutants and classes of pollutants for 21 major industries. See *Natural Resources Defense Council, Inc.* v. *Train*, 8 ERC 2120 (D.D.C. 1976), *modified*, 12 ERC 1833 (D.D.C. 1979), modified by Orders dated October 26, 1982, August 2, 1983, January 6, 1984, July 5, 1984, and January 7, 1985.

Many of the basic elements of the Settlement Agreement were incorporated into the Clean Water Act of 1977. Like the Agreement, the Act stressed control of toxic pollutants, including the 65 "priority" pollutants and classes of pollutants. In addition, to strengthen the toxic control program,

Section 304(e) of the Act authorizes the Administrator to prescribe "best management practices" (BMPs) to prevent the release of toxic and hazardous pollutants in plant site runoff, spillage or leaks, sludge or waste disposal, and drainage from raw material storage associated with, or ancillary to, the manufacturing or treatment process.

Under the Act, EPA is to set a number of different kinds of effluent limitations. These are discussed in detail in the preamble to the proposed regulation and in the Development Document. They are summarized briefly below:

1. Best Practicable Control Technology (BPT)

BPT limitations are generally based on the average of the best existing performance by plants of various sizes, ages, and unit processes within the category or subcategory.

In establishing BPT limitations, EPA considers the total cost in relation to the age of equipment and facilities involved, the processes employed, process changes required, engineering aspects of the control technologies, and nonwater, quality enviromental impacts (including energy requirements). We balance the total cost of applying the technology against the effluent reduction.

2. Best Available Technology (BAT)

BAT limitations, in general, represent the best existing performance in the industrial subcategory or category. The Act establishes BAT as the principal national means of controlling the direct discharge of toxic and nonconventional pollutants to navigable waters.

In arriving at BAT, the Agency considers the age of the equipment and facilities involved, the process employed, the engineering aspects of the control technologies, process changes, the cost of achieving such effluent reduction, and nonwater quality environmental impacts. The Agency retains considerable discretion in assigning the weight to be accorded these factors.

3. Best Conventional Pollutant Control Technology (BCT)

The 1977 Amendments to the Clean Water Act added Section 301(b)(2)(E), establishing "best conventional pollutant control technology" (BCT) for discharge of conventional pollutants from existing industrial point sources. Section 304(a)(4) designated the following as conventional pollutants: biochemical oxygen demand (BOD), total suspended solids (TSS), fecal coliform, pH, and any additional pollutants defined by the Administrator as conventional. The Administrator designated oil and grease "conventional" on July 30, 1979 (44 FR 44501).

BCT is not an additional limitation but replaces BAT for the control of conventional pollutants. In addition to other factors specified in Section 304(b)(4)(b), the Act requires that BCT limitations be assessed in light of a two-part "cost-reasonableness" test. *American Paper Institute* v. *EPA*, 660 F.2d 954 (4th Cir. 1981). The first test compares the cost for private industry to reduce its conventional pollutants with the costs to publicly owned treatment works for similar levels of reduction in their discharge of these pollutants. The second test examines the cost-effectiveness of additional industrial treatment beyond BPT. EPA must find that limitations are "reasonable" under both tests before establishing them as BCT. In no case may BCT be less stringent than BPT.

EPA published its methodology for carrying out the BCT analysis on August 29, 1979 (44 FR 50732). In the case mentioned above, the Court of Appeals ordered EPA to correct data errors underlying EPA's calculation of the first test, and to apply the second cost test. (EPA had argued that a second cost test was not required.)

A revised methodology for the general development of BCT effluent limitations guidelines was proposed on October 29, 1982 (47 FR 49176). In addition, EPA published a notice of availability of new data for comment on September 20, 1984, (49 FR 37046). However, no final methodology has been promulgated. BCT effluent limitations guidelines for this industry are accordingly deferred until promulgation of the final methodology for development of BCT limitations.

4. New Source Performance Standards (NSPS)

NSPS are based on the best available demonstrated technology (BDT). New Plants have the opportunity to install the best and most efficient production processes and wastewater treatment technologies.

5. Pretreatment Standards for Existing Sources (PSES)

PSES are designed to prevent the discharge of pollutants that pass through, interfere with, or are otherwise incompatible with the operation of POTWs. They must be achieved within three years of promulgation. The Clean Water Act of 1977 requires pretreatment for toxic pollutants that pass through the POTW in amounts that would exceed direct discharger effluent limitations or interfere with the POTW's treatment process or chosen sludge disposal method. The legislative history of the 1977 Act indicates that pretreatment standards are to be technology-based, analogous to the best available technology for removal of toxic pollutants. EPA has generally determined that pollutants pass through POTW if the nationwide average percentage of pollutants removed by a well-operated POTW achieving secondary treatment is less than the percent removed by the BAT model treatment system. The General Pretreatment Regulations, which serve as the framework for the pretreatment regulations, are found at 40 CFR Part 403.

6. Pretreatment Standards for New Sources (PSNS)

Like PSES, PSNS are designed to prevent the discharge of pollutants which pass through, interfere with, or are otherwise incompatible with the operations of a POTW. PSNS are to be issued at the same time as NSPS. New indirect discharges, like new direct discharges, have the opportunity to incorporate in their plant the best available demonstrated technologies. The Agency considers the same factors in promulgating PSNS as it considers in promulgating PSES.

IV. Methodology and Data Gathering Efforts

The methodology and data gathering efforts used in developing the proposed regulation were summarized in the Preamble to the "Proposed Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards" (49 FR 8112, March 5, 1984), and described in detail in the *Proposed Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Forming and Iron and Steel/Copper/Aluminum Metal Powder Production and Powder Metallurgy Point Source Category.*

After proposal, the Agency gathered additional data to clarify the basis for response to comments on the proposal and to provide further support for the regulation. The Agency also performed additional analysis of both new and existing data. These additional data and activities were described in the "Notice of Data Availability and Request for Comment" (50 FR 4872, February 4, 1985) and are discussed briefly below. They are also described in substantial detail

in the appropriate sections of the development document. The supporting information and additional data are in the record supporting this final rule.

Since proposal, the Agency has collected a considerable amount of additional data from nonferrous metals forming plants. EPA visited and sampled nine additional nonferrous metals forming plants to characterize raw wastewaters and treatment effectiveness. Treatment effectiveness data for nonconventional metal pollutants collected from these sampled plants were evaluated to form the basis for revised treatment effectiveness values for these pollutants. These treatment effectiveness values were published in the Federal Register notice of new data (50 FR 4872, February 4, 1985).

Since proposal, under the authority of Section 308 of the Clean Water Act, the Agency also requested 49 plants to submit analytical data on specific raw waste streams. Twenty-four plants provided these data directly and 19 plants provided samples to be analyzed. Three plants responded that they were no longer forming the metal for which information was requested, or that their production schedule did not include plans to form the metal specified within the time frame of the request. Three plants reported that they did not generate the waste stream for which information was requested.

In all, the Agency received analytical data for 52 waste streams for which we previously did not have any wastewater characteristics data. (At proposal, the Agency had assumed these wastewater streams would have characteristics similar to other waste streams in the nonferrous metals forming category.) Most of these wastewater streams were relatively small volume streams, such as forming lubricants.

The Agency also requested data to support comments on the proposed regulation and notice of availability from 10 companies. In addition, we received data collection portfolios from 43 plants that either had not responded before proposal or that were identified after proposal.

Based on information and data provided after proposal and reevaluation of existing data, the Agency revised many process wastewater regulatory flow allowances. A regulatory flow is a production normalized flow that is used in conjunction with the treatment effectiveness concentration to derive mass discharge allowances. The revised flows were noticed in the February 4, 1985 notice of new data. After that date, we received updated information revising data collection portfolios from certain companies. Based on this information, we have changed the regulatory flow allowance for 11 waste streams, including the forging contact cooling water streams in the magnesium, nickel-cobalt, refractory metals, and titanum subcategories; molten salt rinse and sawing or grinding rinse in the nickel-cobalt subcategory; electrocoating rinse in the nickel-cobalt and zinc subcategories; and forging equipment cleaning water in the magnesium, nickel-cobalt, and titanium subcategories.

To supplement existing data regarding treatment-in-place and the long-term performance of that treatment, the Agency collected discharge monitoring report (DMR) data from state and EPA Regional offices for direct dischargers. DMR data are self-monitoring data supplied by permit holders to meet state or EPA permit requirements. These data were available from 16 nonferrous forming plants; however, the data vary widely in character and nature due to the dissimilar nature of the monitoring and reporting requirements placed on different nonferrous metals forming plants by the various NPDES permit issuing authorities. Therefore, these data were not used in the actual development of the final limitations. However, DMR data from eight plants that have lime and settle treatment were used to verify the achievability of the treatment effectiveness values used to establish limitations and standards for certain pollutants. The results show that the final treatment effectiveness values are being achieved consistently at these eight plants. A discussion of these DMR data and a comparison of them to the treatment effectiveness values used in this regulation are found in the administrative record for this rulemaking.

In response to comments on the proposed regulation, the Agency also extensively revised the compliance costs and the economic impact analysis. The Agency has estimated costs on a plant-by-plant basis instead of on a representative plant basis as it did in the proposal. The costing methodology used to estimate plant compliance costs is discussed in Section VIII of the Development Document. The methodology used to estimate economic impacts is discussed in Section VI of this preamble in the *Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry.*

V. Control and Treatment Technology Options and technology Basis for Final Regulations

A. Summary of Category

The various metals and forming operations covered by this regulation are described above. Nonferrous metals forming operations generate a variety of different waste streams. Lubricants consisting of neat oils, water, oil-water emulsions, or soap solutions are used for lubrication and cooling in rolling and drawing operations as well as sawing and grinding. Contact cooling water is commonly used to quench nonferrous metals products after casting, forming, or heat treatment operations. Wastewater is also generated by the discharges of baths and rinses used for cleaning or surface treating nonferrous metals products. Nonferrous metals forming plants also use wet air pollution control scrubbers to control fumes or particulates generated by nonferrous metals forming operations such as chemical surface treatment processes and metal powder production.

The most significant pollutants or pollutant parameters found in wastewater generated by nonferrous metals forming vary somewhat, depending on the metal type formed, but in general consist of:

(1) Priority pollutants—antimony, cadmium, chromium, copper, cyanide, lead, nickel, silver and zinc;

(2) Conventional pollutants—oil and grease, suspended solids, and pH; and

(3) Nonconventional pollutants—aluminum, ammonia, columbium, cobalt, fluoride, hafnium, iron, gold, magnesium, manganese, molybdenum, phosphorus, platinum, palladium, rhenium, tantalum, tin, titanium, tungsten, uranium, vanadium, and zirconium.

Toxic organics were not found in significant concentrations in nonferrous metals forming wastewater, except for tube reducing spent lubricant which was found to contain significant concentrations of N-nitrosodiphenylamine and a solvent degreasing water rinse that was found to contain significant concentrations of methylene chloride and toluene.

In developing this regulation, it was necessary to determine whether different effluent limitations guidelines and standards were appropriate for different segments (subcategories) of the industry. The major factors considered in assessing the need for subcategorization and in identifying subcategories included: Waste characteristics, raw materials, manufacturing processes, products manufactured, water use, water

pollution control technology, treatment costs, solid waste generation, size of plant, age of plant, number of employees, total energy requirements, nonwater quality characteristics, and unique plant characteristics. Section IV of the Development Document contains a detailed discussion of these factors and the rationale for subcategorization.

The one factor which has the greatest influence over the wastewater characteristics in the nonferrous metals forming category is the metal type that is formed. Therefore, EPA has subcategorized the nonferrous metals forming category based primarily on the metal type that is formed. In some subcategories, more than one metal type has been grouped together because the metals have the same metallurgical properties or tend to be formed using the same processes at the same facilities. The nonferrous metals forming subcategories are: lead-tin-bismuth, magnesium, nickel-cobalt, precious metals, refractory metals, titanium, uranium, zinc, zirconium-hafnium, and metal powders. The precious metals subcategory includes silver, gold, platinum, and palladium; the refractory metals subcategory includes columbium, molybdenum, rhenium, tantalum, tungsten, and vanadium. The metal powders subcategory includes the manufacturing and forming of iron, copper, and aluminum powders. Powder metal operations involving other types of metal are covered by the subcategory for that metal type.

Each subcategory consists of several "building blocks." There is one building block for each production process that generates wastewater. The building block approach provides a convenient basis for normalizing limitations and standards from one plant to another based on the mass of metal processed. The production normalizing parameter selected for nonferrous metals forming is the off-kilogram (off-pound) of metal removed from an operation at the end of the process cycle. This parameter was selected because the Agency found that the generation of pollutants is most closely related to the off-kilograms of metal processed. In addition, production records at nonferrous metals forming plants are usually maintained in terms of mass of metal produced, thus, this production normalizing parameter is most appropriate for industry's perspective.

Current wastewater treatment practices in the nonferrous metals forming category range from no treatment at all to treatment with chemical precipitation and sedimentation. Many plants in the nonferrous metals forming category do not discharge any process wastewater because they only use dry processes that do not generate wastewater. EPA is not promulgating allowable discharge limitations or standards for these dry processes. However, other processes used in the nonferrous metals forming industry do generate wastewater. EPA is today promulgating effluent limitations and standards for these processes. Of the 158 discharging plants, 38 use chemical precipitation and sedimentation to remove metals and suspended solids. One of the 38 plants also has equipment for multimedia filtration.

B. Control and Treatment Technology Options Considered

Prior to proposal of the nonferrous metals forming regulation, EPA considered a wide range of control and treatment technology options including both in-process changes and end-of-pipe treatment. These options are discussed in detail in the preamble to the proposed regulation. The control and treatment technologies used as the basis for the final limitations and standards are described below.

In-process controls include a variety of flow reduction techniques and process changes such as recycle and countercurrent cascade rinsing. End-of-pipe treatment technology options include chemical reduction of chromium, cyanide precipitation, and chemical emulsion breaking, where applicable; oil skimming, pH control, chemical precipitation of metal ions using hydroxides or carbonates and removal of precipitated metals by settling ("lime and settle"); and filtration. These treatment technologies are described in detail in Section VII of the Development Document.

EPA considered the following combinations of treatment and control technology options as the basis for BPT, BAT, NSPS, PSES, and PSNS for facilities within the nonferrous metals forming category.

Option 1—End-of-pipe treatment consisting of oil skimming, pH control, hydroxide precipitation (usually accomplished by adding lime) and sedimentation (lime and settle); and preliminary treatment, where necessary, consisting of cyanide precipitation, chromium reduction, ammonia steam stripping, and chemical emulsion breaking. This combination of technology reduces metal priority pollutants and conventional and nonconventional pollutants. Iron coprecipitation is included in this model treatment technology for removal of the pollutant molybdenum from wastewaters in the refractory metals and uranium subcategories. Option 1 includes flow normalization which means that the Agency has based the BPT limitations on the average production normalized flow for each building block. Aberrant flows were excluded from the mean calculations. Since the BPT limitations are based on the average water discharge, plants with greater than average discharge flows may have to reduce their flows to achieve the BPT effluent limitations.

Option 2—Option 2 is equal to Option 1 preceded by flow reduction of process wastewater through the use of countercurrent cascade rinsing, recycle through cooling towers for contact cooling water, and recycle through holding tanks for all other process wastewater subject to recycle.

Option 3—Option 3 is equal to Option 2 plus end-of-pipe polishing filtration for further reduction of metals and TSS, plus ion exchange in the precious metals subcategory to remove the pollutant gold.

The methods of determining achievable concentrations and variability factors used to compute monthly average and daily maximum concentrations for the various treatment and control technologies which comprise Options 1, 2 and 3 are discussed below.

1. *Lime and Settle Treatment Technology—a. The Combined Metals Data Base (CMDB).* In considering the performance achievable using lime and settle treatment of metals with and without polishing filtration, EPA evaluated data from nonferrous metals forming plants and plants in other categories with similar wastewater. The data base selected as the basis for lime and settle treatment without filtration is the combined metals data base (CMDB). This data base is a composite of influent and effluent concentration data for nine pollutants from wastewaters treated by lime and settle technology drawn from EPA sampling and analysis of wastewaters from the copper forming, aluminum forming, battery manufacturing, porcelain enameling, and coil coating point source categories. These wastewaters have been found to be statistically similar to nonferrous metals forming wastewater in all material respects because they contain the same dissolved metals at comparable concentrations that can be removed uniformly by precipitation and solids removal.

We regard the combined metals data base as the best available measure for establishing the concentrations for these nine pollutants which are attainable

with lime and settle treatment for the nonferrous metals forming industry. Our determination is based on an analysis which found that the untreated pollutant concentrations are generally homogeneous across subcategories within the nonferrous metals forming category and that the nonferrous metals forming untreated pollutant concentrations are generally homogeneous with the CMDB untreated pollutant concentrations pooled across categories. This homogeneity analysis appears in the record. EPA also believes the CMDB is the best available data base because of the larger number of plants in the CMDB (18 plants versus 7 nonferrous metals forming plants with available data). The larger quantity of data in the CMDB enhances the Agency's ability to estimate long-term performance and variability through statistical analysis. In addition, the CMDB has undergone extensive engineering and statistically-based evaluation in response to comments and issues raised in various other rulemakings for related metals industries where the Agency has relied on the CMDB.

We view the use of the combined metals data base as appropriate for nonferrous metals forming plants because properly operated lime and settle treatment will result in effluent concentrations that are directly related to pollutant solubilities. These effluent concentrations are referred to as the treatment effectiveness of lime and settle technology. Since the nonferrous metals forming raw wastewater matrix contains the same toxic pollutants at concentrations of the same order of magnitude as the CMDB raw wastewater and the technology is solubility-based, we believe the mean treatment process effluent and variability for nonferrous metals forming wastewater will be the same as the CMDB. We also do not believe any interfering properties (such as chelating agents) exist in nonferrous metals forming wastewater such that they would interfere with metal precipitation and so prevent attaining concentrations calculated from the combined metals data base. It is important to note that the treatment effectiveness values derived from the CMDB are only achievable when lime and settle treatment is preceded by any necessary preliminary treatment (e.g., chromium reduction, chemical emulsion breaking) which is part of the model technology as appropriate.

b. *Antimony and Silver.* We also are promulgating limits based on lime and settle technology for certain pollutants not included in the combined metals data base. Treatment effectiveness for silver and antimony were calculated from nonferrous metals manufacturing data. Since many nonferrous metals forming plants also manufacture nonferrous metals and combine the wastewater from both processes for common treatment, it is reasonable for the Agency to assume that nonferrous metals forming plants with lime and settle treatment will achieve the same effluent concentrations that are achieved for those two pollutants at nonferrous metals manufacturing plants.

c. *Fluoride.* The model treatment technology for removing fluoride is also lime and settle. The effectiveness of lime and settle treatment is derived from the electrical and electronic components (E&EC) category Phase 2. The Agency believes the E&EC Phase 2 data base closely reflects the treatability of fluoride in nonferrous metals forming wastewaters because of the source of the fluoride and the type of fluoride present. The presence of fluoride in both categories is from the use of hydrofluoric acid as a cleaning or etching agent which dissociates in water to fluoride ion, which can be readily removed from solution by lime as calcium fluoride.

2. *Filtration Technology.* The pollutant concentrations achievable with lime precipitation, sedimentation, and polishing filtration (lime, settle, and filter) are based on data from three plants with that technology in place: one nonferrous metals manufacturing plant and two porcelain enameling plants. EPA has extensive long-term data from these plants. We believe that the use of polishing filtration data from porcelain enameling plants is justified because the pollutants and pollutant concentrations in porcelain enameling and in nonferrous metals forming wastewaters are similar. We conclude this because data from porcelain enameling was included in the combined metals data base, which we have determined to be homogeneous with data from nonferrous metals forming. We also believe that use of polishing filtration data from the nonferrous metals forming manufacturing plant is justified because many plants which have nonferrous metals forming operations also have nonferrous metals manufacturing operations and combine wastewater for treatment. Therefore, it is reasonable for the Agency to assume that polishing filters treating nonferrous metals forming wastewater from lime and settle treatment and nonferrous metals manufacturing wastewaters from lime and settle treatment will achieve the same effluent concentrations.

3. *Iron Coprecipitation Technology.* Iron coprecipitation is part of the model technology for removing the pollutant molybdenum in the refractory metals forming and uranium forming subcategories. In the February 4 notice of availability, the Agency published a treatment effectiveness value for molybdenum based on data obtained from a molybdenum manufacturing plant. This value was based on the average of three days of sampling the effluent from a lime and settle treatment system. Also, in the Agency's post-proposal sampling effort, we sampled a uranium forming plant that had treatable concentrations of molybdenum in the raw wastewater. This plant treats its wastewater through iron addition, lime, and settle; the iron coprecipitates molybdenum. This plant achieved treated effluent concentrations for molybdenum which were consistent with the concentration published in the notice of new data. The data were included in the record for the notice. Therefore, EPA is basing the molybdenum limitations and standards on the basis of the data collected from this uranium forming facility which includes iron coprecipitation in its treatment system. The long-term average concentration for molybdenum from the uranium forming facility is 1.83 mg/l for lime and settle treatment.

Iron coprecipitation is a widely used treatment technology and frequently occurs unintentionally in industrial wastewater treatment situations. Whenever iron is present at a high concentration in raw wastewater, it will act as a coprecipitant in a lime and settle treatment system and aid in the removal of other metal pollutants present in the wastewater. Iron coprecipitation is demonstrated at a uranium forming plant, as described above, and is equally applicable to the refractory metals forming subcategory because the process wastewaters have similar characteristics. Further, the addition of iron for coprecipitation to aid in metals removal is considered a routine part of state-of-the-art lime and settle technology which should be implemented as required to achieve optimum removal of metals. Iron coprecipitation is discussed in more detail in Section VII of the Development Document.

4. *Ammonia Steam Stripping Technology.* Ammonia steam stripping is part of the model technology for removing ammonia from the magnesium forming, titanium forming, and zirconium-hafnium forming

subcategories. This technology is used routinely to reduce ammonia levels. To determine treatment effectiveness, EPA collected chemical analysis data of raw waste (treatment influent) and treated waste (treatment effluent) from one plant in the iron and steel category using ammonia steam stripping. These data are contained in the administrative record supporting this regulation. We believe this treatment performance can be transferred to nonferrous metals forming subcategories because the technology is solubility-related and these nonferrous metals forming subcategories do not contain interfering agents that would reduce ammonia removals.

The Agency has verified the proposed steam stripping values using steam stripping data collected at a nonferrous metals manufacturing and forming plant that has a combined wastewater treatment system. These data also appear in the record for this rulemaking. Data collected by the plant represent almost two years of daily operations, and support the long-term mean used to establish treatment effectiveness.

5. *Cyanide Precipitation.* The model technology for removing cyanide from process wastewaters in the precious metals, titanium, zinc, zirconium-hafnium, and metal powders subcategories is cyanide precipitation. This technology is frequently used in industrial applications, although no nonferrous metals forming plant reported its use. The treatment performance for cyanide precipitation technology is transferred from the coil coating category. The Agency believes that cyanide precipitation should be equally effective at removing cyanide from nonferrous metals forming wastewaters because the analysis of homogeneity has demonstrated similarity between the nonferrous metals forming data base and the CMDB, which includes data on coil coating wastewaters.

C. Technology Basis for Final Regulation

A brief summary of the technology basis for the regulation is presented below. A more detailed discussion is presented in the *Development Document for Effluent Limitations Guidelines and Standards for the Nonferrous Metals Forming and Metal Powders Point Source Category.*

BPT: EPA is promulgating BPT mass limitations based on end-of-pipe treatment, which consists of flow normalization and lime and settle with preliminary treatment of ammonia steam stripping, cyanide removal, chromium reduction, and chemical emulsion breaking where appropriate, for all subcategories except the refractory metals, and uranium forming subcategories. The end-of-pipe treatment technology basis for the promulgated BPT limitations is the same as that for the proposed BPT limitations. The model end-of-pipe technology for the refractory metals forming and uranium forming subcategories is the same technology as the other subcategories, plus iron coprecipitation to remove the pollutant molybdenum. The BPT model technology of lime and settle is demonstrated at 46 nonferrous metals forming plants. The effectiveness of lime and settle treatment, plus any necessary preliminary treatment (e.g., chromium reduction, chemical emulsion breaking), is based on the combined metals data base which the Agency has determined to be applicable to wastewaters generated by the nonferrous metals forming category.

In developing BPT limitations, the Agency considered the amount of water used per unit of production (liters per kkg or metric ton) for each wastewater stream in each subcategory. In general, the regulatory flows for BPT were based on the average of the reported water use or discharge values. The Agency has used BPT regulatory flows based on flow reduction only in those unusual cases where water flow reduction is commonly practiced throughout the building block. Based on its reevaluation of existing data and additional data it collected since proposal, the Agency has revised most of the proposed regulatory flow allowances for the category. In the notice of data availability (50 FR 4872, February 4, 1985), EPA explained the basis for revising the regulatory flow allowances and made them available for public comment. Since then, EPA has made additional changes to 11 process wastewater flows. These additional changes are the result of clarification of information provided in one company's dcp, and the discovery of an error in one entry for a nickel-cobalt waste stream. In addition, we have received additional data from two companies regarding electrocoating of nonferrous metals performed in conjunction with forming these metals. One company applies a copper or nickel coating to a nickel-based material. The coating acts as a drawing lubricant; after drawing the coating is pickled off the base material. We have added a building block to cover this process since it is clearly an integral part of the nickel-cobalt forming process. We have also added a building block to the zinc forming subcategory to cover a similar process in which copper is electrocoated onto zinc penny blanks. Making these blanks is an integral part of this plant's zinc forming operations.

The pollutants selected for regulation at BPT vary by subcategory. They are tabulated below.

Nonferrous Metals Forming Regulated Pollutants

Subcategory	AT BPT AT BAT														
	Sb	Cd	Cr	Cu	Pb	Ni	Ag	Zn	CN	NH_3	F	Mo	O&G	TSS	pH
Lead-Tin-Bismuth	X				X								X	X	X
Magnesium			X					X		X	X		X	X	X
Nickel-Cobalt			X			X					X		X	X	X
Precious Metals		X		X	X		X		X				X	X	X
Refractory Metals				X		X					X	X	X	X	X
Titanium					X			X	X	X	X		X	X	X
Uranium		X	X	X	X	X					X	X	X	X	X
Zinc			X	X				X	X				X	X	X
Zirconium-Hafnium			X			X			X	X	X		X	X	X
Metal Powders				X	X				X				X	X	X

Thirty-seven nonferrous metals forming plants are direct dischargers. The Agency estimates that BPT will result in the removal of an estimated 1580 kg (3480 pounds) of priority pollutants and 173,000 kg (381,000 pounds) of total pollutants per year from estimated current discharge levels. The estimated capital investment cost of BPT is $4.4 million and the estimated annual cost is $3.7 million, in 1982 dollars. These are the costs for wastewater treatment equipment not currently in place. We do not project any plant closures or unemployment as a result of meeting the BPT limitations. The Agency has determined that the pollutant reduction benefits associated with compliance justify the costs. More stringent technology options were not selected since they would require in-process changes or end-of-pipe technologies which are not widely practiced by plants in the category and, therefore, are more appropriately considered under BAT.

BAT: The Agency examined the technology basis for BAT on a subcategory-by-subcategory basis. The technology basis includes the BPT model technology plus in-process flow reduction and, in some subcategories, filtration as a final polishing step. In the case of the metal powders subcategory no additional flow reduction has been required. In developing BAT limitations, the Agency considered the amount of water used per unit of production (liters per metric ton or gallons per ton) for each wastewater stream. Flow reduction is based on recycle of heat treatment contact cooling water through cooling towers, recycle of air pollution control scrubber liquor, countercurrent cascade rinsing of alkaline cleaning and surface treatment rinsewater, and use of holding tanks for all other process water subject to recycle. Approximately 15 percent of the direct dischargers which have operations where flow reduction technology was considered to be technically feasible have already achieved the reduced flow that forms the basis of Options 2 and 3. As explained in Section VI below, we have concluded that the costs of achieving limitations based on the model technologies for each subcategory are reasonable and the limitations are economically achievable for each subcategory.

Lead-Tin-Bismuth. The Agency is promulgating BAT limitations for the lead-tin-bismuth subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 2). This is the same technology basis as was proposed. The Agency did not receive any comments on the proposed limitations for the lead-tin-bismuth subcategory. This BAT model technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 850 kg/yr (1860 lb/yr) of pollutants from current discharge, including 81 kg/yr (180 lb/yr) of priority pollutants. (The capital and annual costs associated with this subcategory are not

provided in order to protect information claimed confidential.) These costs are included in the confidential record supporting this regulation. EPA did not promulgate BAT based on the addition of a filter because several lead-tin-bismuth forming plants also have operations which are covered by the battery manufacturing or copper forming regulations, both of which have limitations established on the model treatment technology of flow reduction, lime, and settle. By promulgating BAT limitations for the lead-tin-bismuth subcategory based on lime and settle technology without the addition of a filter, plants with both types of operations will not need to segregate these wastewaters for treatment. Further, the addition of a filter would only remove an additional 1 kg/yr (2 lb/yr) of priority pollutants for the whole subcategory. Therefore, EPA is promulgating BAT on the basis of flow reduction, lime, and settle model technology.

Magnesium. The Agency is promulgating BAT limitations for the magnesium subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flow (Option 2). Although the Agency proposed limitations and standards based on flow reduction, lime, settle, and filter for this subcategory, we stated in the proposal that we would give equal consideration to flow reduction, lime, and settle as the model technology. This model technology is demonstrated, technically feasible, and economically achievable. We have concluded that flow reduction, lime, and settle is the appropriate BAT technology for the following reasons. The one existing direct discharge plant in the magnesium subcategory also forms aluminum, and the BAT limitations in the aluminum forming regulation are based on the same model technology, i.e., flow reduction, lime, and settle. By promulgating BAT limitations for the magnesium subcategory based on this technology, this plant will not need to segregate its wastewaters for treatment. EPA estimates that 14,795 kg/yr (32,550 lb/yr) of priority pollutants will be removed after the installation of this BAT treatment technology. The captal and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. Furthermore, the addition of a filter to the lime and settle treatment would only remove 1 kg (2 lbs) of toxic pollutants annually. Therefore, EPA is promulgating BAT on the basis of flow reduction, lime, and settle model technology.

Nickel-Cobalt. The Agency is promulgating BAT limitations for the nickel-cobalt subcategory on the basis of lime, settle, and filter end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 3). This is the same technology basis which was also the basis for the proposed BAT limitations. This technology is demonstrated, and technically feasible and economically achievable. One nickel-cobalt forming plant currently has a polishing filter in place, although it is not currently using the filter because it can meet its permit requirements without doing so. EPA has included filters in the model technology because filters will remove significant amounts of additional pollutants, and the costs of this removal are reasonable. The selected BAT model technology is estimated to remove 19,000 kg/yr (41,000 lb/yr) of pollutants from current discharge, including 1160 kg/yr (2550 lb/yr) of priority pollutants. The installation of the model BAT technology is estimated to cost $493,400 in capital investment and $242,000 annually above equipment in place (1982 dollars). EPA recognizes that some plants cotreat process wastewaters from nickel-cobalt forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are not based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations.

Precious Metals. The Agency is promulgating BAT limitations for the precious metals subcategory on the basis of lime and settle end-of-pipe treatment technology and in-process controls to reduce wastewater flows (Option 2). Although the Agency proposed limitations and standards based on flow reduction, lime, settle, and filter for this subcategory, we stated in the proposal that we would give equal consideration to flow reduction, lime, and settle as the model technology. In the February 4 notice of availability, we stated that we were also considering adding ion exchange to the model technology for this subcategory. This technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 1770 kg/yr (390 lb/yr) of pollutants from current discharges, including 33 kg/yr (73 lb/yr) of pollutants. The installation of the model BAT technology is estimated to cost $314,600 in capital investment and $127,900 annually above equipment in place (1982 dollars). The addition of a filter to the lime and settle treatment would cost $37,000 in capital investment and $22,900 annually but would only remove 2 kg (4 lb) of toxic pollutants annually. The Agency believes that given all these factors, the costs involved do not warrant selection of filtration as part of the BAT model technology. In addition, precious metals are frequently alloyed with copper, in alloys which contain mostly copper; yet these alloys are considered to be precious metals alloys by the companies that form them. Therefore, the Agency is defining a precious metal alloy as any alloy which contains precious metal at 30 percent or greater by weight. This will simplify compliance with permit requirements for companies that form precious metals, since their process wastewater will be regulated by one regulation instead of two.

Refractory Metals. The Agency is promulgating BAT limitations for the refractory metals subcategory on the basis of flow reduction, lime, settle, and filter, plus iron coprecipitation for molybdenum removal (Option 3). The Agency proposed BAT on the basis of flow reduction, lime, settle, and filter. As explained above, since proposal we have obtained additional data on the treatment effectiveness of iron addition to coprecipitate molybdenum. This technology is currently demonstrated at one nonferrous metals forming plant which has treatable concentrations of molybdenum in its raw wastewater. These data were noticed in the Federal Register notice of data availability. The Agency estimates that BPT technology will remove 24,200 kg/yr (53,200 lb/yr) of total pollutants from refractory metals wastewaters. Application of BAT technology should achieve an additional removal of 5100 kg/yr (11,200 lb/yr) which includes 80 kg/yr (180 lb/yr) of toxic pollutants. The BAT technology requires $135,400 in capital costs and $68,000 in annual costs (1982 dollars) above treatment already in place. Because of the particular processes used by existing direct dischargers, they can remove more pollutants at significantly less cost than indirect discharging plants can. (See discussion of PSES for this subcategory below.) EPA recognizes that some plants cotreat process wastewaters from refractory metals forming operations with wastewater from operations regulated under other

nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines and standards are not based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

Titanium. The Agency is promulgating BAT limitations on the basis of lime and settle end-of-pipe treatment and in-process controls to reduce wastewater flow (Option 2). Although the Agency proposed flow reduction, lime, settle, and filter as the BAT model technology basis for this subcategory, we stated in the preamble to the proposed regulation that we were also considering flow reduction, lime, and settle as the model technology. This model technology is demonstrated, technically feasible, and economically achievable. EPA estimates that 260 kg/yr (570 lb/yr) of priority pollutants will be removed by the BAT treatment technology at a cost of $2,130,000 in capital investment and $2,192,000 annually above equipment in place (1982 dollars). The addition of a filter to the lime and settle treatment system would cost $211,000 in capital investment and $121,300 annually (1982 dollars) and would remove only 18 kg (40 lbs) of priority pollutants annually, which is approximately 1.4 kg (3 lbs) of such pollutants per plant. The Agency believes that, given all these factors, the costs involved do not warrant selection of filtration as part of the model BAT treatment technology. EPA recognizes that some plants cotreat process wastewaters from titanium forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations.

Uranium. The Agency is promulgating BAT on the basis of lime, settle, and filter end-of-pipe technology with in-process controls to reduce wastewater flows (Option 3), which was also the model technology basis for the proposed effluent limitations guidelines, plus iron coprecipitation to remove the pollutant molybdenum. This technology is demonstrated, technically feasible, and economically achievable. The selected BAT model technology is estimated to remove 13,800 kg/yr (30,300 lb/yr) of pollutants from current discharge, including 38 kg/yr (84 lb/yr) of priority pollutants. The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. The Agency has determined that BAT limitations for the uranium subcategory based on flow reduction, lime, settle and filter technology are technically feasible and economically achievable.

Zinc. The Agency is promulgating BAT limitations for the zinc subcategory on the basis of lime, settle, and filter end-of-pipe treatment technology and in-process controls to reduce wastewater flow (Option 3). This same technology was the basis for the proposed effluent limitations guidelines. No comments were received on this choice of model technology. This technology is technically feasible and economically achievable. The selected BAT model technology is estimated to remove 2,525 kg/yr (5,555 lb/yr) of pollutants currently discharged, including 133 kg/yr (300 lb/yr) of priority pollutants. The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation. In addition, the application of a filter achieves an incremental removal of 50 kg/yr (110 lb/yr) of toxic pollutants.

Since proposal, EPA has obtained data and information on a process in which a copper coating is applied to zinc penny blanks. We have added a building block to the zinc forming subcategory that covers the electrocoating rinsewater generated by this process. The Agency believes this action will simplify compliance with BAT requirements for the zinc forming subcategory since all the process wastewater generated by this direct discharge zinc forming plant is covered under one regulation with the same end-of-pipe treatment requirements.

Zirconium-Hafnium. The Agency is promulgating BAT on the basis of lime and settle end-of-pipe technology with in-process controls to reduce wastewater flows (Option 2). This model technology is demonstrated, technically feasible, and economically achievable. Although the Agency proposed BAT effluent limitations based on flow reduction, lime, settle, and filter model technology, we stated in the preamble to the proposed regulation that we were also considering flow reduction, lime, and settle model technology. The Agency has decided not to include filtration as part of the model BAT treatment technology. EPA estimates the 645 kg/yr (1420 lb/yr) of priority pollutants will be removed after installation of the BAT treatment technology which is estimated to cost $567,700 in capital investment and $400,400 annually above equipment in place (1982 dollars). The addition of filters would only remove 0.2 kg/yr (0.4 lb/yr) of priority pollutants which is approximately 0.01 kg/yr (0.02 lb/yr) per plant. The incremental costs for this effluent reduction would be $117,300 in capital investment and $60,000 in annual costs (1982 dollars). The Agency believes that given all these factors, the costs involved do not warrant inclusion of filtration as part of the BAT model technology. EPA recognizes that some plants cotreat process wastewaters from zirconium-hafnium forming with operations with wastewaters from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of a filter to the lime and settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their combined wastewater flows and achieve the applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

Metal Powders. The Agency is promulgating BAT limitations for the metal powders subcategory on the basis of lime and settle end-of-pipe treatment technology (Option 1). Although the Agency proposed BAT limitations on the basis of lime and settle with additional in-process controls to reduce wastewater flows, the direct dischargers do not currently have any of the processes for which additional flow reduction is applicable and therefore, there is no additional pollutant removal with the application of additional flow reduction technologies to direct dischargers. EPA has decided to promulgate BAT limitations that are equal to BPT limitations for this subcategory. EPA recognizes that some plants cotreat process wastewaters from metal powders operations with wastewaters from operations regulated under other nonferrous metals forming subcategories and point source categories whose effluent limitations guidelines are based on the addition of flow reduction or a filter to the lime and

settle treatment system. As part of this rulemaking, EPA has considered the cost for these plants to cotreat their applicable effluent limitations. As discussed below, EPA has concluded that these promulgated BAT effluent limitations are economically achievable.

The pollutants specifically limited under BAT in each subcategory are tabulated above. In general, in each subcategory we have selected for regulation the two or three metal priority pollutants present at the highest concentrations in the raw waste, because in removing these two or three metals, the model lime and settle treatment system should also provide adequate removal of the other metals present at lower concentrations.

In each subcategory, the metal present at the highest concentration is the metal being subjected to the forming operations. In some subcategories, that metal is a priority pollutant (nickel in the nickel-cobalt forming subcategory, for example). In the other subcategories, that metal is a nonconventional pollutant (titanium in the titanium forming subcategory, for example). In general, EPA is not establishing effluent limitations guidelines and standards for nonconventional metal pollutants, even when they are the metal being formed (such as titanium in titanium forming), because in these cases, the Agency has concluded that regulation of just the metal priority pollutants will ensure that the nonconventional metal pollutants are removed. Further, establishing national regulations for only the metal priority pollutants allows plants greater flexibility in the treatment of wastewater streams which are covered by more than one point source category or subcategory, because the regulated pollutants controlled are more likely to be the same. However, for the nonconventional metal pollutants EPA is not regulating, the Agency has provided guidance to permit writers on the mass discharge attainable using the BAT model technology for each such pollutant. This guidance appears in Section VII, IX, and X of the Development Document.

EPA is regulating one nonconventional metal pollutant: molybdenum in the refractory metals and uranium subcategories. End-of-pipe technology in addition to lime and settle, or lime, settle, and filter treatment is necessary to ensure adequate removal of molybdenum from process wastewater. EPA has added iron coprecipitation to the model technology for the refractory metals and uranium subcategories to remove the pollutant molybdenum. Molybdenum is present in significant concentrations at refractory metals plants because it is one of the refractory metals being formed. It is also present in significant concentrations at uranium forming plants because it is used as a major alloying agent in depleted uranium alloys. EPA is also establishing limitations for the nonconventional pollutants fluoride and ammonia. Fluoride was found in significant concentrations in the magnesium, nickel-cobalt, refractory metals, titanium, uranium, and zirconium-hafnium subcategories. The model technology for removal of fluoride is lime and settle. Fluoride is precipitated from solution as a calcium salt. Therefore, lime is the alkali most commonly used to remove fluoride, whereas the precipitation of most metal pollutants can be accomplished with any alkali salt. Ammonia was found in significant concentrations at plants in the magnesium, titanium, and zirconium-hafnium subcategories. The model technology for removing ammonia is steam stripping.

Toxic organic pollutants were found in two nonferrous metals forming waste streams. N-nitrosodiphenylamine was found in a significant amount in a sample of tube reducing lubricant. In addition, methylene chloride and toluene were found in the rinsewater which followed a solvent cleaning bath composed of these compounds. The Agency is requiring zero discharge from these wastewater streams. Tube reducing lubricants are currently hauled, rather than discharged, by the majority of plants that generate this waste. Since they tend to be small in volume and highly concentrated, the Agency has concluded this is the most practical disposal alternative. These waste streams can be most economically handled by intercepting each such waste stream before mixing it with other process wastewaters and disposing of it as a solid waste. Treatment of the wastes with activated carbon after mixing either waste stream with other process wastewaters would be much more expensive.

Solvents are commonly used by nonferrous metals forming companies to clean oils from the surface of the metal; these processes are almost always dry. However, at one plant sampled after proposal, the Agency observed and sampled an organic solvent cleaning process that involves the generation of contaminated rinsewater. EPA is establishing a zero discharge allowance for this waste stream. Other plants perform the same process without generating any wastewater by using solvents which need not be followed by a water rinse. EPA has based the zero discharge requirement on a process change which should achieve the same product quality as a water rinse at very little expense. Instead of operating a solvent bath followed by a water rinse, this plant can convert the water rinse into a second solvent cleaning step.

The Agency found 1,1,1-trichloroethane in small amounts in the nickel-cobalt, refractory metals, zirconium-hafnium and metal powders subcategories. The Agency also found chlorodibromomethane, bis(2-ethylhexyl)phthalate and di-n-butyl phthalate in small amounts in zinc forming process wastewater. From the available data, the Agency believes these pollutants are unique to those sources and are not present as an integral part of the nonferrous forming process. Therefore, EPA is not regulating these pollutants. However, the permit writer should consider the possible presence of toxic organic pollutants in nonferrous metals forming wastewater and if found should control them under this regulation on the basis of best professional judgment.

Implementation of BAT by all the direct dischargers in the 10 subcategories will remove an additional 940 kg (2070 pounds) per year of total priority pollutants beyond BPT at an additional capital cost of $603,000 and additional annualized costs of $202,000 in 1982 dollars. The Agency estimates that implementation of BAT will remove a total of 230,000 kg/year (503,000 lbs/year) of pollutants at a total annualized cost of $3.9 million from current levels. No potential plant closures as a result of meeting these requirements are expected, based on our economic impact analysis. The Agency has therefore concluded that this level of BAT control is economically achievable.

NSPS: The Agency is promulgating NSPS for the nonferrous metals forming category based on the same technology basis as was proposed, except in the precious metals, titanium, and zirconium-hafnium subcategories. For these three subcategories, the technology basis is the same as the model BAT technology. Accordingly, the model technology basis for new sources is lime, settle, and filter with in-process controls to reduce wastewater flows for all subcategories except lead-tin-bismuth, precious metals, titanium, zirconium-hafnium, and metal powders. EPA is promulgating NSPS for these five subcategories on the basis of lime and settle with in-process controls to reduce wastewater flows. For each subcategory, these model technologies represent the best demonstrated

technology. The subcategories which have more stringent requirements for new sources than for existing sources are magnesium and metal powders.

In developing NSPS, the Agency considered the amount of water used per unit of production for each wastewater stream. Most of the new source regulatory flow allowances are equivalent to BAT allowances. The only exception is in the metal powders subcategory. As discussed above, the BAT requirements for existing sources in the metal powders subcategory do not include additional in-process controls above BPT requirements. However, opportunities to achieve further flow reduction of process wastewater do currently exist for some process waste streams that are not employed at existing direct discharge facilities and the Agency believes these processes could be used at new sources. Therefore, the new source standards for this subcategory are based on the application of additional flow reduction technologies on a number of process wastewater streams. New sources would not incur expenses associated with retrofitting these additional flow reduction technologies and would have the opportunity to install a treatment system which is designed to handle the reduced flow. The Agency therefore concludes that the metal powders subcategory new source standards will not pose a barrier to entry.

NSPS model technology for magnesium forming is based on flow reduction, lime, settle, and filter. The addition of a filter would increase the annual cost of wastewater pollution control for existing sources by about 10 percent. However, a new source is able to design a treatment system to handle the new source flow without the expense of retrofitting flow reduction and treatment equipment into the facility. The cost of a filter for new sources is expected to be only 0.05 percent of estimated revenues for a new source. Therefore, the Agency does not expect NSPS to pose a barrier to entry for new sources.

EPA is promulgating NSPS in the precious metals, titanium, and zirconium-hafnium subcategories based on lime, settle, and in-process controls to reduce wastewater flow (Option 2). These NSPS are equivalent to the BAT limitations for these subcategories. The Agency has decided not to include filters as part of the NSPS model technology (as had been proposed) for the same reasons discussed above for rejecting filters as part of the BAT model technology for these subcategories.

Since NSPS for these subcategories are equivalent to the BAT requirements, the Agency has concluded that there will be no barrier to entry for new sources in those subcategories. In fact, the new sources can design for efficient process water use and maximize wastewater reduction, thereby reducing the size (and in turn the cost) of pollution control equipment. Therefore, such equipment may actually be less costly to install and operate in comparison to retrofit at existing plants.

The NSPS model technology basis for the nickel-cobalt, refractory metals, uranium, and zinc subcategories is flow reduction, lime, settle, and filter, which is the same as the NSPS technology basis for the proposed regulation. The NSPS model technology basis for the lead-tin-bismuth subcategory is flow reduction, lime and settle, which is the same as the NSPS model technology basis in the proposed regulation. EPA's reasons for selecting these technology bases is explained under BAT, above. The pollutants selected for regulation are the same as have been selected for regulation at BAT plus oil and grease, TSS, and pH for all subcategories.

PSES. The Agency is promulgating PSES for the nonferrous forming category on the same technology basis as BAT for each subcategory except for the refactory metals, uranium, and zinc subcategories. In the nonferrous metals forming category, the Agency has concluded that the metal priority pollutants, ammonia, fluoride, and molybdenum pass through the POTW. A study of 40 well-operated POTW with biological treatment that are meeting secondary treatment criteria showed that regulated metals are typically removed at rates varying from 20 to 70 percent. Section XII of the Development Document compares the percent of pollutant remaining after treatment by a well-operated POTW with the percent removed by BAT level treatment for each pollutant regulated in this category. POTW with only primary treatment have even lower rates of removal. In contrast, BAT level treatment by nonferrous metals forming industrial facilities can achieve removals of these pollutants of approximately 90 percent. Thus it is evident that metals from this category do pass through POTWs. Many of the pollutants present in nonferrous metals forming waste streams, at sufficiently high concentrations, can also inhibit biodegradation in POTW operations. In addition, a high concentration of toxic pollutants in the sludge can limit POTW use of sludge management alternatives, including the beneficial use of sludges on agricultural lands.

EPA is excluding the uranium forming subcategory from PSES under the provisions of Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the uranium forming subcategory. In addition, EPA is not promulgating any categorical PSES for zinc forming. EPA proposed this exclusion because, on the basis of available information, it appeared that the economic impact of pretreatment standards based on any available technology option would be disproportionate for this subcategory. Since proposal, EPA has re-estimated compliance costs on a plant-by-plant basis for the entire category, and our conclusions about the economic impact for the indirect discharging zinc forming plants has not changed. Therefore, the Agency has not established categorical PSES for the zinc subcategory. Of course, these plants are still subject to the general pretreatment requirements.

The PSES promulgated today are equivalent to the BAT effluent limitations guidelines in all subcategories except the refractory metals subcategory. PSES for the refractory metals subcategory is promulgated based on the model end-of-pipe treatment technology of iron coprecipitation, lime, and settle with in-process controls to reduce wastewater flows (Option 2). As discussed above, BAT effluent limitations guidelines are based on Option 3. The Agency has decided not to include a filter in the model PSES technology for this subcategory because, based on the processes at existing refractory metal indirect dischargers, EPA estimates that 169,000 kg/yr (371,000 lb/yr) of pollutants, including 250 kg/yr (550 lb/yr) of toxic pollutants, will be removed after the installation of Option 2 technology at a cost of $1.54 million in capital investment and $0.6 million annually above equipment in place (1982 dollars). The addition of filtration would only remove an additional 9 kg/yr (20 lb/yr) of toxic pollutants (approximately 0.4 kg/yr (0.9 lb/yr) of toxic pollutants per plant), while the incremental cost of filters for refractory metal indirect dischargers is $97,500 in capital investment and $57,200 in annual cost (1982 dollars). These costs are significantly greater than the cost that will be incurred by existing direct dischargers. The Agency believes that, given these factors, the costs involved do not warrant selection of filtration as part of the PSES model technology. As discussed above, the Agency costed co-treatment for plants which treat process wastewater from refractory metals forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories

and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

PSES is promulgated on the basis of less stringent model technology than proposed in the magnesium, titanium, zirconium-hafnium, and metal powders subcategories. Under the Clean Water Act, PSES is to be generally analogous to BAT. These decisions are discussed in more detail below.

The metal powders BAT limitations are based on Option 1 (rather than Option 2 as proposed) because, as discussed above, the direct dischargers generally do not use any of the processes for which additional flow reduction is available. PSES for the metal powders subcategory is established based on Option 1 to be analogous to the BAT limitations. In addition, EPA estimates that 960 kg/yr (2,100 lb/yr) of toxic pollutants will be removed after installation of Option 1 technology at a cost of $512,000 in capital investment and $334,000 annually above equipment in place (1982 dollars). The addition of flow reduction to PSES would remove 88 kg/yr (190 lbs/yr) additional toxic pollutants which is approximately 3.3 kg/yr (7 lbs/yr) per plant. Although EPA estimates that capital investment costs for wastewater pollution control equipment will actually be less with the installation of flow reduction technology, the incremental annual costs for this removal is $101,000 (1982 dollars). For all these reasons, EPA believes that the costs involved do not warrant selection of flow reduction as part of the PSES model technology. As discussed above, the Agency estimated compliance costs for plants which cotreat process wastewater from metal powder operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The PSES for the magnesium subcategory is based on model technology of flow reduction, lime, and settle treatment (Option 2) rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its inclusion. EPA estimates that 2,100 kg/yr (4600 lb/yr) of toxic pollutants will be removed by Option 2 technology. (The capital and annual costs associated with this subcategory are not provided in order to protect information claimed confidential. These costs are included in the confidential record supporting this regulation.) This PSES is economically achievable. The addition of a filter to PSES would remove only an incremental 0.5 kg/yr (1 lb/yr) of toxic pollutants. Further, both existing indirect dischargers also form aluminum in addition to forming magnesium. Since these plants already have to comply with PSES for aluminum forming which are based on flow reduction, lime and settle treatment by promulgating PSES requirements on the same model technology basis for magnesium forming, these plants will not need to segregate process wastewaters for treatment.

The PSES for the precious metals subcategory is based on model technology of flow reduction, lime, and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimates that application of Option 2 technology to existing precious metals forming plants will remove 150 kg/yr (330 lb/yr) of priority pollutants at a cost of $749,000 in capital investment and $324,000 annually above equipment in place (1982 dollars). The costs are economically achievable. The addition of a filter to PSES would remove only 8 kg/yr (18 lb/yr) of priority pollutants (approximately equivalent to 0.3 kg/yr (0.7 lb/yr) per plant). The incremental cost of filters is estimated to be $74,600 in capital investment and $49,200 in annual costs (1982 dollars). As discussed above, the Agency has substantially reduced the degree to which precious metals forming plants will also be regulated by other nonferrous metals forming subcategories or categories (whose pretreatment standards might be based on a different technology basis), by defining a precious metal alloy to be any alloy containing 30 percent or greater by weight of precious metal.

The PSES for the titanium subcategory is based on model technology of flow reduction, lime, and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimates that application of Option 2 technology to existing titanium forming plants will remove 262 kg/yr (580 lb/yr) of priority pollutants at a cost of $757,000 in capital investment and $348,000 annually, above equipment in place (1982 dollars). The addition of a filter to PSES would remove only an incremental 8 kg/yr (18 lb/yr) of priority pollutants which is approximately equivalent to 0.4 kg/yr (0.9 lb/yr) per plant. The incremental costs of filters is estimated to be $54, 400 in capital investment, and $33,400 in annual costs (1982 dollars). As discussed above, the Agency costed treatment for plants which cotreat process wastewaters from titanium forming operations with wastewater from operations regulated under other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The PSES for the zirconium-hafnium subcategory is based on model technology of flow reduction, lime and settle (Option 2), rather than flow reduction, lime, settle, and filter (Option 3) as proposed, because as discussed above, the additional cost of filtration does not warrant its selection. EPA estimate that application of Option 2 technology to existing zirconium-hafnium forming indirect dischargers will remove 1,090 kg/yr (2400 lb/yr) of total pollutants including 1.3 kg/yr (3 lb/yr) of priority pollutants at a cost of $11,300 in capital investment and $4,000 annually, above equipment in place 1982 dollars). The addition of a filter to PSES would remove only an incremental 2 kg/yr (4.5 lb/yr) of total pollutants and 0.08 kg (0.18 lb/yr) of priority pollutants. The incremental cost of filters is estimated to be $700 in capital investment, and $300 in annual costs (1982 dollars). As discussed above, the Agency costed treatment for plants which cotreat process wastewater from zirconium-hafnium forming operations with wastewater from other nonferrous metals forming subcategories and point source categories whose pretreatment standards are based on the addition of a filter to lime and settle treatment and concluded that these PSES are economically achievable.

The Agency is promulgating PSES for the nickel-cobalt subcategory on the basis of Option 3 for the reasons discussed above under BAT. The Agency is promulgating PSES for the lead-tin-bismuth subcategory on the basis of Option 2 for the reasons discussed above under BAT. The PSES for these subcategories, which are economically achievable, are based on the same model technology as proposed.

In developing these standards, the amount of water used per unit of production was considered for each waste stream. The flow allowances established for PSES are the same as those established for BAT based on the

same flow reduction technologies. The pollutants selected for regulation are the same as those regulated at BAT.

The PSES set forth in this final rule are expressed in terms of mass per unit of production rather than concentration standards in all subcategories. Regulation on the basis of concentration is not appropriate because flow reduction is a significant part of the model pretreatment technology. Mass-based standards are necessary because flow reduction technology which is included in the model technology would not be implemented by concentration based standards.

Implementation of PSES will remove annually an estimated 24,800 kg/yr (54,600 lb/yr) of metal priority pollutants (from estimated current discharges) at a capital cost above equipment in place of $7.5 million and an annual cost of $4 million in 1982 dollars. The Agency has concluded that PSES is economically achievable.

The Agency has considered the time for compliance for PSES. Few of the indirect discharge nonferrous metals forming plants have installed and are properly operating the treatment technology for PSES. Many plants in this and other industries will be installing the treatment equipment suggested as model technologies for this regulation and this may result in delays in engineering, ordering, installing, and operating this equipment. For these reasons, the Agency has decided to establish the PSES compliance date for all facilities at three years after promulgation of this regulation.

PSNS. The Agency is promulgating PSNS for all subcategories to assure that the identified flow reduction and end-of-pipe technologies are considered in new plant designs. We are also issuing PSNS for the zinc forming and uranium forming subcategories for which BAT and NSPS, but not PSES, are established.

The technology basis for the PSNS is identical to NSPS. The flow allowances are the same as NSPS and the pollutants regulated for PSNS are the same as those for PSES. As discussed under PSES, pass through of the regulated pollutants will occur without adequate pretreatment and, therefore, pretreatment standards are required. We know of no economically feasible, demonstrated technology that removes significantly more pollutants than the technologies selected. The subcategories which have more stringent requirements for new sources than for existing sources are magnesium, refractory metals, zinc, and metal powders. We have evaluated the cost associated with PSNS for the magnesium and metal powders subcategories as discussed above, and find that these costs will not pose a barrier to entry by new sources in either of these subcategories. PSNS for the refractory metals subcategory is based on the model technology of flow reduction, lime, settle, and filter. The addition of a filter increases the annual cost of wastewater pollution control for existing sources by 15 percent. However, a new source will be able to design the treatment system to handle the new source flow without the expense of retrofitting flow reduction and treatment equipment into the facility. The cost of a filter for new sources is expected to be only 0.05 percent of estimated revenues for a new source. Therefore, the Agency does not expect PSNS to pose a barrier to entry for new sources. For the remaining seven subcategories, the limitations and standards for existing and new sources, respectively, are based on the same model technology. Therefore, we do not expect PSNS to pose a barrier to entry for new sources in these subcategories.

BCT. The Agency is not promulgating BCT effluent limitations guidelines at this time although BCT limitations were proposed. EPA will issue BCT effluent limitations guidelines after the BCT methodology has been finalized. In the interim, permit writers should establish BCT discharge allowances for the conventional pollutants on the basis of best professional judgment.

VI. Economic Considerations

A. Analysis and Reports

EPA's economic impact assessment is set forth in *Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry.* This report presents the required investment and annual compliance costs for the industry as a whole and for each subcategory covered by the regulation unless confidential. The report also assesses the probable economic impact of these compliance costs in terms of price changes, production changes, profitability changes, plant closures, employment effects, local community impacts, balance of trade effects, and industry structure changes.

EPA has also conducted an analysis of the incremental removal cost per pound-equivalent for each of the technology-based options for each subcategory. Pound-equivalents are calculated by multiplying the number of pounds of pollutant discharged by a weighting factor for that pollutant. The weighting factor is equal to the water quality criterion for a standard pollutant (copper), divided by the water quality criterion for the pollutant being evaluated. The use of pound-equivalents gives relatively more weight to removal of more toxic pollutants. Thus, for a given expenditure, the cost per pound-equivalent removed would be lower when a highly toxic pollutant is removed. This analysis is included in the record of this rulemaking, and is entitled *Cost-Effectiveness Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry.*

B. Costs and Economic Impacts

EPA has identified 334 plants that perform nonferrous metals forming operations. Of these 334 plants, 176 do not discharge process wastewater, 37 are direct dischargers, and 121 are indirect dischargers. Total investment cost to achieve BAT and PSES is estimated to be $14.3 million and annual cost is estimated to be $8.9 million beyond current costs of waste treatment. These costs are expressed in first quarter 1985 dollars. The annualized costs include depreciation and interest.

The costs of implementing the regulation were estimated on a plant-by-plant basis for 149 discharging plants, based on information on processes carried out in the plant, production rates, treatment-in-place, and model treatment technology. For the purposes of the economic impact analysis, the Agency estimated costs for cotreatment of nonferrous metals forming process wastewater flow. There are 71 discharging plants in the nonferrous metals forming category which also discharge process wastewater which is covered by another point source category regulation. The Agency first estimated the cost for a treatment system large enough to handle the entire process wastewater flow of each such plant. Then, the cost attributable to the treatment of nonferrous metals forming wastewater was apportioned on the basis of the fraction of the total flow generated by nonferrous forming operations. These costs for the 149 nonferrous metals forming plants were then extrapolated to estimate the compliance costs for an additional nine plants for which detailed information was not available.

The industry is subcategorized by the type of metal produced. The economic impact assessment began with a microeconomic model which projects the price and output behavior of each industry subcategory. The model was used, in conjunction with plant compliance cost estimates, to determine after-compliance price and production

levels for each industry subcategory and for each regulatory option.

A financial profile was developed for each of the plants based on average financial ratios for the industry subcategories in which the plant competes. The primary variables of interest in estimating the potential economic impacts of the regulation on individual plants were profitability, as measured by the after-compliance net present value (NPV); and the ability of individual plants to raise capital, as measured by the after-compliance fixed charge coverage ratio. The plant NPV represents the excess of the discounted value (i.e., present value) of the projected cash flows from operating the plant over the present value of the cash flows generated by liquidating the plant and investing the proceeds in an alternative investment. The fixed charge coverage ratio is defined as earnings before interest and taxes over interest payments.

Given the plant-specific compliance cost estimates, the subcategory-specific financial ratios, and other factors, the potential effect on industrial plants in terms of closures was projected. If a plant generates process wastewater which is regulated by more than one nonferrous metals forming subcategory with different model end-of-pipe treatment requirements, the Agency considered the potential economic impact onto the plant as a whole for each model technology option considered. The Agency recognizes that these plants may be able to comply with their permit requirements using a less costly treatment system than treatment system which will treat all process wastewater to meet the most stringent limitations, however, we have evaluated the economic impacts on the basis of using the more costly technology for all wastewaters.

Price increases resulting from the regulation are expected to be small, ranging from 0.1 percent for the lead-tin-bismuth forming subcategory to 1.9 percent for the uranium forming subcategory, and averaging 0.2 percent over the category. Two potential plant closures (both indirect dischargers) are projected as a result of the regulations EPA is promulgating; these plants form nickel, titanium, and zirconium products. The total production loss for these two plants would be in the range of 700 thousand pounds per year. The closure of these two nonferrous metals forming facilities would affect about 56 jobs. The Agency does not expect any disproportionate impact on any specific group of plants covered by this regulation. Community, industry structure, and balance of trade effects would be insignificant.

BPT: Thirty-seven plants are direct dischargers. For the purpose of estimating the cost of the regulation and evaluating the economic impacts, it was assumed that plants will install the least expensive treatment to meet the requirements of BPT. For many plants, the cost of in-process controls to reduce flows, plus the cost of end-of-pipe treatment for this reduced flow, is less than the cost of treating the larger BPT regulatory flow. Where this is the case, it was assumed that the lower costs would be incurred to meet the BPT limits and no incremental cost would be incurred in meeting the option employing flow reduction. Because of this assumption, the costs presented here are different than those shown in the technical sections of the preamble.

The BPT regulation is projected to cost $4.7 million in investment costs and $3.9 million in annual costs for these plants, including depreciation and interest (first quarter 1985 dollars). No plant closures or job losses are anticipated as a result of the BPT regulation. Price increases over current prices would range from less than 0.1 percent to 1.8 percent, averaging 0.16 percent over the category.

BAT: The BAT regulation will also affect the 37 direct dischargers in the nonferrous metals forming industry. Total investment costs above current treatment in-place are estimated to be $5.5 million, with annual costs including depreciation and interest of $4.3 million in first quarter 1985 dollars. The incremental costs over BPT are estimated to be $0.8 million in investment costs and $0.4 million in annual costs. There are no plant closures or job losses projected as a result of the BAT regulation. Price increases over current prices would range from 0.1 percent to 1.9 percent, averaging 0.2 percent over the category, about the same as the BPT increases. Thus, EPA has determined that the BAT regulation is economically achievable.

PSES: EPA identified 121 plants as indirect dischargers. The pollution control technology for the pretreatment standards is the same as the BAT treatment technology for all subcategories, with three exceptions. In the uranium forming subcategory, no PSES is being promulgated because there are no existing indirect dischargers. In the refractory metals subcategory, filters are not included in the PSES model technology, as they were for BAT, for the reasons stated in Section V above. In the case of zinc, the Agency is excluding the indirect dischargers from national PSES because the larger one of two indirect dischargers in this subcategory, which does not form any other metal covered by this regulation, is expected to close at each of the technology options considered. As explained in Section V above, EPA has determined that imposing any categorical standards on the zinc forming subcategory would result in a disproportionate impact on this segment of the industry. Therefore, PSES for the zinc forming subcategory is not economically achievable.

Two potential closures were identified in other subcategories. The major metal formed by each of these is titanium; in addition, one has some production in the zirconium-hafnium forming subcategory and the other has some production in the nickel-cobalt forming subcategory. In these cases, exclusions similar to those in zinc forming are not appropriate because smaller plants in these subcategories will be able to achieve the promulgated PSES with no significant economic impact. Size cutoffs adequate to exclude the plants projected as possible closures would leave many plants unregulated. This is unacceptable where costs are economically achievable for the subcategories as a whole.

With the PSES exclusion for the zinc forming subcategory, investment costs for the remaining 120 indirect dischargers are estimated to be $8.8 million, and annualized costs including depreciation and interests are expected to be $4.6 million, in first quarter 1985 dollars. Price increases in the various subcategories would range from 0.1 to 0.3 percent. In terms of unemployment, the two potential closures associated with PSES would affect approximately 56 employees. Total production loss in the titanium subcategory production would be less than one percent. Since the production and employment of these plants represent a very small part of the subcategory or category totals, the Agency has determined that PSES is economically achievable.

NSPS-PSNS: The model technologies for the effluent standards for new sources are Option 2 (flow reduction, lime, and settle) for direct and indirect dischargers in the lead-tin-bismuth, precious metals, titanium, zirconium-hafnium, and metal powders subcategories and Option 3 (flow reduction, lime, settle, and filter) for the remaining five subcategories. In some cases, the new source standards are more stringent than those for existing sources. However, new sources might incur lower costs than existing sources because they would not incur expenses

associated with retrofitting flow reduction technology and would have the opportunity to install a treatment system which is designed to handle the reduced flows. In general, the incremental costs of treatment for new sources over those for existing sources are sufficiently small that they are not expected to constitute a barrier to entry.

C. Executive Order 12291

Executive Order 12291 requires EPA and other agencies to perform regulatory impact analyses of major regulations. Major rules are those which impose a cost on the economy of $100 million a year or more or meet certain other economic impact criteria. This regulation is not a major rule because its annualized cost, as discussed above, is significantly less than $100 million and it meets none of the other criteria specified in Section 1(b) of the Executive Order. Therefore, a formal Regulatory Impact Analysis is not required.

D. Regulatory Flexibility Analysis

Public Law 96-354 requires EPA to prepare a Regulatory Flexibility Analysis for all proposed regulations that have a significant impact on a substantial number of small entities.

EPA has examined the impacts of this regulation on small business. For this purpose, small plants were defined as those forming less than 1.0 million pounds/year of nonferrous metals. According to this criterion, 55 percent of the dischargers (66 out of 119 dischargers who supplied sufficient data for this analysis) were classified as small. The economic impact analysis cited above evaluates potential impacts on small business from the standpoint of projected closures and annual compliance costs compared to revenues. The analysis concludes that this regulation will not result in a significant adverse impact on a substantial number of small businesses, and I hereby certify to this effect for the purpose of 50 U.S.C. 605(b). While this conclusion obviates the need for a formal Regulatory Flexibility Analysis, the small business analysis is included in the economic impact analysis report and supports the conclusion that the regulation is economically achievable.

E. SBA Loans

The Agency is continuing to encourage small plants to use Small Business Administration (SBA) financing as needed for pollution control equipment. The three basic programs are: (1) The Pollution Control Bond Program, (2) the Section 503 Program, and (3) the Regular Business Loan Program. Eligibility for SBA programs varies by industry. For applicants covered by this regulation, the programs require that a company be independently owned and operated and not dominant in its field and, depending on the subcategory, have a maximum workforce ranging from 500 to 1,000 employees, and maximum annual sales revenue ranging from $275,000 to $22 million.

For further information and specifics on the Pollution Control Bond Program contact: U.S. Small Business Administration, Office of Pollution Control Financing, 4040 North Fairfax Drive, Rosslyn, Virginia 22203, (703) 235-2902.

The section 503 program, as amended in July 1980, allows long-term loans to small and medium sized businesses. These loans are made by SBA-approved local development companies. These companies are authorized to issue Government-backed debentures that are bought by the Federal Financing Bank, an arm of the U.S. Treasury.

Through SBA's Regular Business Loan Program, loans are made available by commercial banks and are guaranteed by the SBA. This program has interest rates equivalent to market rates.

For additional information on the Regular Business Loan and Section 503 Programs, persons should contact their district or local SBA office. The coordinator at EPA Headquarters is Ms. Frances Desselle who may be reached at (202) 382-5373.

VII. Nonwater Quality Aspects of Pollution Control

The elimination or reduction of one form of pollution may aggravate other environmental problems. Therefore, Sections 304(b) and 306 of the Act require EPA to consider the nonwater quality environmental impacts (including energy requirements) of certain regulations. In compliance with these provisions, EPA has considered the effect of this regulation on air pollution, solid waste generation, water scarcity, and energy consumption. The various EPA offices responsible for these programs have reviewed this regulation and concur with its provisions and the assessment of anticipated effects, described below. While it is difficult to balance pollution problems against each other and against energy use, EPA believes this regulation will best serve often competing national goals.

The following are the anticipated nonwater quality environmental impacts (including energy requirements) associated with the regulation. The Administrator has determined that the impacts identified below are justified by the benefits associated with compliance with the limitations and standards.

A. Air Pollution

Imposition of BPT, BAT, NSPS, PSES, and PSNS will not create any substantial air pollution problems, because the wastewater treatment technologies required to meet these limitations and standards do not cause air pollution.

B. Solid Waste

EPA estimates that nonferrous metals forming facilities generated 3623 kkg (3985 tons) of solid wastes (wet basis) in 1981 as a result of wastewater treatment-in-place. These wastes were composed of treatment system sludges containing toxic metals, including antimony, cadmium, chromium, copper, lead, nickel, and zinc.

EPA estimates that the BPT requirements will generate an additional 1022 kkg (1124 tons) per year of solid wastes over that which is currently being generated by the nonferrous metals forming category. The BAT requirements will increase these wastes by approximately 288 kkg (317 tons) per year beyond BPT levels. In addition, PSES will increase these wastes by approximately 3886 kkg (4275 tons) per year beyond current levels. New nonferrous metals forming plants subject to PSNS or NSPS will also generate treatment system sludges. These sludges will necessarily contain additional quantities (and concentrations) of toxic metal pollutants.

If these wastes are hazardous, as defined by RCRA, they will come within the scope of RCRA's "cradle to grave" hazardous waste management program, requiring regulation from the point of generation to the point of final disposition. EPA's generator standards require generators of hazardous wastes to meet containerization, labeling, recordkeeping, and reporting requirements. In addition, if plants dispose of hazardous wastes off-site, they must prepare a manifest which tracks the movement of the wastes from the generator's premises to a permitted off-site treatment, storage, or disposal facility. See 40 CFR 262.20. The transporter regulations require transporters of hazardous wastes to comply with the manifest system to assure that the wastes are delivered to a permitted facility. See 40 CFR 263.20. Finally, RCRA regulations establish standards for hazardous waste treatment, storage, and disposal facilities allowed to receive such wastes. See 40 CFR Parts 264 and 265.

Even if these wastes are not identified as hazardous, they still must be disposed of in a manner that will not violate the open dumping prohibition in Section 4005 of RCRA. The Agency has calculated as part of the costs for wastewater treatment the cost of hauling and disposing of additional waste generated as a result of these requirements. For more details, see Section VIII of the Development Document.

Wastes generated by nonferrous metal formers are subject to regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA) if they are hazardous. However, the Agency examined solid wastes similar to those that would be generated at nonferrous metals forming plants by the suggested treatment technologies (that is, the sludges from lime and settle treatment) and believes that in most instances they will not be hazardous wastes under Section 3001 of RCRA. Only wastewater treatment sludge generated by cyanide precipitation technology is likely to be hazardous under the regulations implementing Subtitle C of RCRA; such wastes may exhibit extraction procedure (EP) toxicity. If so, these wastes must be disposed of as a hazardous waste. Wastewater treatment sludge from cyanide precipitation of a process waste stream is generated separately from lime and settle sludge and may be disposed of separately. We estimate that nonferrous metals forming plants may generate an estimated 230 kkg of potentially hazardous sludge. The total annual disposal cost for this sludge is estimated to be $77,000.

None of the other wastewater treatment sludges are specifically listed as hazardous, nor are they likely to exhibit one of the four characteristics of hazardous waste, (see 40 CFR Part 261), based on the recommended technology of lime and settle receded where necessary by hexavalent chromium reduction, chemical emulsion breaking, and ammonia stripping. By the addition of a small excess of lime during treatment, similar sludges, specifically toxic metal-bearing sludges generated by other industries such as the iron and steel industry, passed the extraction procedure (EP) toxicity test by a substantial margin and have been delisted (i.e., they are no longer specifically listed as hazardous) as a result. See, e.g., 45 FR 78544 (November 25, 1980); 46 FR 40154 (August 6, 1981); and 47 FR 52668 (November 22, 1982); and 40 CFR 261.24. See 40 CFR 261.24. Thus, the Agency believes that treatment sludges from nonferrous metals forming wastewaters will similarly not be EP toxic if the recommended technology is applied.

Although it is the Agency's view that solid wastes generated by the treatment technologies which serve as the basis for these guidelines will not be hazardous, generators of these wastes must test the waste to determine if the wastes meet any of the characteristics of hazardous waste (see 40 CFR 262.10). The Agency also may list these wastes as hazardous under 40 CFR 261.11.

The Agency is not providing any allowance for discharge of spent solvents from the solvent degreasing operations at nonferrous metals forming plants because these wastes are not wastewaters. Disposal of the spent solvent may be subject to regulation under RCRA. However, no plant is the nonferrous metals forming industry is known to currently discharge the spent solvents. Therefore, the cost of disposal of the spent solvents has not been included in estimating the incremental cost of this regulation; all plants which use solvent degreasing are already incurring those costs.

The Agency is establishing a no discharge requirement for tube-reducing spent lubricant because, based on analytical data for that wastestream at the one plant sampled, that wastestream contains treatable levels of N-nitrosodiphenylamine. Therefore, this waste stream must be disposed of as a solid waste and may be hazardous. The Agency has estimated the volume of this sludge to be 80 kkg/yr and the cost of disposal as a hazardous waste to be $20,300 per year (1982 dollars).

C. Consumptive Water Loss

Treatment and control technologies that require extensive recycling and reuse of water may require cooling mechanisms. Evaporative cooling mechanisms can cause water loss and contribute to water scarcity problems—a primary concern in arid and semi-arid regions. While this regulation assumes water reuse, the overall amount of reuse through evaporative cooling mechanisms is low and the quantity of water involved is not significant. In addition, most nonferrous metals forming plants are located east of the Mississippi where water scarcity is not a problem. We conclude that the consumptive water loss is insignificant and that the pollution reduction benefits of recycle technologies outweigh their impact on consumptive water loss.

D. Energy Requirements

EPA estimates that the achievement of proposed BPT effluent limitations will result in a net increase in electrical energy consumption of approximately 4.0 million kilowatt-hours per year. The BAT technology should not substantially increase the energy requirements over the requirements of BPT because the reduced pumping requirements, the agitation requirement for mixing wastewater, and other volume-related energy requirements associated with reducing process wastewater discharge to treatment will offset the additional pumping requirements for filtration. Therefore, the BAT limitations are assumed to require an equivalent energy consumption to that of the BPT limitations. To achieve the BPT and BAT effluent limitations, a typical direct discharger will increase total energy consumption by 110,000 kilowatt-hours per year.

The Agency estimates that PSES will result in a net increase in electrical energy consumption of approximately 6.4 million kilowatt-hours per year. To achieve PSES, a typical existing indirect discharger will increase energy consumption by 50,000 kilowatt-hours per year.

New source performance standards for direct and indirect dischargers in the nonferrous metals forming category will not significantly add to the total energy consumption of the category. This observation is based on the fact that BAT and PSES will increase energy consumption by 4.0 million and 6.4 million kilowatt-hours, respectively, and new source standards are generally equivalent to BAT and PSES.

VIII. Pollutants and Subcategories Not Regulated

The Settlement Agreement in *NRDC v. Ruckelshaus, supra,* contains provisions authorizing the exclusion from regulation, in certain instances, of toxic pollutants and industry subcategories. These provisions have been rewritten in a Revised Settlement Agreement which was approved by the District Court for the District of Columbia on March 9, 1979. See *NRDC v. Costle,* 12 ERC 1833 (D.D.C. 1979).

A. Exclusion of Pollutants

The Agency has deleted the following three pollutants from the toxic pollutant list: (49) trichlorofluoromethane and (50) dichlorofluoromethane, 46 FR 79692 (January 8, 1981); and (17) bis(chloromethyl)ether, 46 FR 10723 (February 4, 1981).

Paragraph 8(a)(iii) of the Settlement Agreement allows the Administrator to exclude from regulation toxic pollutants not detectable by Section 304(h) analytical methods or other state-of-the-art methods. The toxic pollutants not

detected and therefore excluded from regulation are listed in Appendix B to this notice.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detected in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix C to this notice lists the toxic pollutants in each subcategory which were detected in the effluent in amounts at or below the nominal limit of analytical quantification, which are too small to be effectively reduced by technologies known to the Administrator and which, therefore, are excluded from regulation.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants detectable in the effluent from only a small number of sources within the subcategory because they are uniquely related to those sources. Appendix D to this notice lists for each subcategory the toxic pollutants which were detected in the effluents of only a small number of plants, are uniquely related to those plants, and are not related to the manufacturing processes under study.

As noted above, Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants present in amounts too small to be effectively reduced by technologies known to the Administrator. Appendix E lists those toxic pollutants which are above the level of analytical quantification but not treatable using technologies considered applicable to the category.

Paragraph 8(a)(iii) also allows the Administrator to exclude from regulation toxic pollutants which will be effectively controlled by the technologies upon which are based other effluent limitations guidelines or pretreatment standards. Appendix F lists those toxic pollutants which will be effectively controlled by other regulated pollutants in BAT and NSPS, PSES, and PSNS, even though they are not specifically regulated.

B. Exclusion of Subcategories

Additionally, Paragraph 8(a)(iv) of the Settlement Agreement authorizes the exclusion of subcategories in which the amount and toxicity of each pollutant in the discharge do not justify developing national regulations. Certain nonferrous metals forming subcategories have no discharging plants and therefore, meet the requirement of Paragraph 8(a)(iv). Appendix G lists the subcategories which were not regulated for this reason.

IX. Public Participation and Response to Major Comments

Industry and government have participated during development of these effluent limitation guidelines and standards. Following the publication of the proposed rule on March 5, 1984 in the **Federal Register**, we provided the development document and the economic impact analysis supporting the proposed regulation to industry, government agencies, and the public on March 7, 1984. The public record supporting this regulation was available for public use on March 5, 1984. The comment period ended on May 4, 1984. A permit writers' workshop open to the public was held on the nonferrous metals forming proposal in Chicago, Illinois on April 10, 1984. On April 24, 1984 in Washington, D.C., a public hearing was held on the proposed pretreatment standards. A notice of data availability and a request for comment was published in the **Federal Register** on February 4, 1985 with the comment period ending on March 6, 1985.

Since proposal, 21 companies have submitted 41 comment letters on the proposed regulation. Comments were received from Inco Alloys International, Inc., Cabot Corporation, Teledyne Allvac, Carpenter Technology Corporation, Piper Industries, Inc., Special Metals Corporation, Englehard Industries Division, Reynolds Aluminum, General Electric Company, Brush Wellman, Inc., Amax, Inc., Dow Chemical, U.S.A., Keystone Carbon Company, Nuclear Metals, Inc., NRC, Inc., Timet, Aerojet Heavy Metals Company, Climax Molybdenum, Division of Amax, Inc., Teledyne Wah Chang, GTE, and the North Shore Sanitary District.

We considered all comments carefully and made appropriate changes in the regulation whenever data and information supported those changes. Six of the major issues raised by the comments are addressed in this section of the preamble. All comments and our detailed response to them are included in a document entitled *Response to Public Comments on Proposed Nonferrous Metals Forming and Metal Powders Effluent Limitations and Standards* which has been placed in the public record for this regulation. The following is a discussion of the Agency's responses to the principal comments.

1. BAT–PSES Model Technology

Comment: In the proposed regulation, the Agency specifically requested comments on the model technology for BAT–PSES. We received comments from two companies that dealt with this issue. A metal powder manufacturer commented in favor of the proposed technology of lime and settle with in-process controls for the metal powders subcategory and against promulgation of BAT–PSES on the basis of flow reduction, lime, settle, and filter. A nickel-cobalt former commented against the proposed BAT–PSES model technology, of flow reduction, lime, settle, and filter and in favor of promulgating BAT–PSES on the basis of flow reduction, lime, and settle for the nickel-cobalt subcategory.

Response: The Agency has reevaluated each of the technology options considered for BAT in terms of cost, economic impact, mass of pollutants removed. This reevaluation has led the Agency to promulgate BAT–PSES limitations on a different model technology than was proposed for six subcategories. The Agency is promulgating BAT–PSES based on the same model technology as was proposed for the remaining four subcategories. The reasons for selecting these technologies are explained in Section V, above.

2. Inadequate Data

Comment: Numerous comments were received on the proposed nonferrous metals forming data base. Several commenters noted that treatment effectiveness data for several nonconventional metal pollutants for which limitations and standards were proposed were inadequate or absent. Other commenters objected to the use of the combined metals data base (CMDB) to establish limitations and standards for certain toxic metal pollutants. Specifically, several nickel-cobalt forming companies commented that the nickel concentration in nickel-cobalt forming wastewater is dissimilar to the concentration of nickel in wastewaters included in the CMDB. Other commenters objected to using the CMDB at all, arguing instead that EPA should base limitations and standards on a subcategory-by-subcategory basis using data derived from waste streams in the nonferrous metals forming category only.

Response: The Agency proposed limitations and standards for several of the nonconventional metal pollutants based on an engineering estimate of the effectiveness of treatment. However, as discussed earlier, this final rule only regulates one nonconventional pollutant: molybdenum. None of the other nonconventional pollutants for which we proposed effluent limitations guidelines and standards are regulated under this final rule. The treatment

effectiveness of molybdenum is derived from data collected at a uranium forming plant. This plant treats its wastewater through iron coprecipitation, lime, and settle treatment.

EPA is promulgating limitations and standards for the priority metal pollutants based on the CMDB treatment effectiveness values. The Agency has evaluated the nonferrous metals forming data in terms of its similarity with the CMDB. Statistical methods were used to compare nonferrous metals forming raw wastewater and treated wastewater values with the raw and treated wastewater values in the CMDB. Overall, the results show that the data from the five categories that make up the CMDB and the data from the nonferrous metals forming category are statistically homogeneous. A comparison of the nonferrous metals forming data with data from each of the categories in the CMDB shows little significant difference among the categories. The few statistical differences that were observed are not substantial and are not an indication that the nonferrous metals forming plants will have difficulty in complying with the CMDB treatment effectiveness concentrations. This comparison is discussed in more detail in Section V of the preamble and Section VII of the Development Document.

Since proposal, the Agency has reevaluated the similarity of nickel-cobalt data with the CMDB. As part of this reevaluation, we have sampled two additional nickel-cobalt forming plants. The results of this revised comparison shows that the concentration of nickel-cobalt forming plants is not significantly different from the nickel value derived from the CMDB. Therefore, the Agency is basing limitations and standards for the pollutant nickel in the nickel-cobalt subcategory based on the CMDB.

3. Selection of Regulated Pollutants

Comment: The Agency received many comments regarding the pollutants selected for regulation at proposal.

(a) *Priority metals and cyanide.* Two commenters questioned the presence of some of the priority pollutants in process wastewater: a powder metal manufacturer questioned the presence of cyanide in process wastewater collected from its facility, and a titanium former argued that wastewaters pollutants.

(b) *Nonconventional metal pollutants.* Several commenters disagreed with the Agency's proposal to regulate various nonconventional metal pollutants. Commenters objected to the indicator pollutant approach; specifically, they objected to regulation of the refractory metals subcategory in which each of the metals formed (columbium, tantalum, tungsten, rhenium, molybdenum, and vanadium) was proposed to be regulated to ensure the removal of other metal pollutants. This commenter also argued that the pollutant molybdenum cannot be removed with lime and settle treatment, and therefore, is a poor indicator of treatment system performance.

One company commented that they form several different metals and are covered by three different nonferrous metals forming subcategories, as well as two other point source categories. This company argued that the regulation of one significant metal (e.g., a nonconventional metal pollutant) rather than only "environmentally significant" metals (e.g., chromium, lead, nickel and zinc) would result in final regulations that would be difficult to meet.

Response: (a) Priority metals and cyanide. The Agency is promulgating BAT–PSES requirements for the priority metal pollutants for which requirements were proposed. In post-proposal sampling, the Agency has confirmed the presence of priority metal pollutants (lead and zinc) in titanium forming wastewater. We are also promulgating limits for cyanide in the metal powders subcategory, since EPA has no reason to question the analytical results that indicate the presence of cyanide in treatable quantities. The Agency has found cyanide in other unexpected sources, and has confirmed its presence in these sources on more than one occasion.

(b) *Nonconventional metal pollutants.* The Agency is not promulgating requirements for most of the nonconventional metal pollutants for which it proposed limits, to alleviate problems that could arise from plants that cotreat wastewaters from different categories or subcategories. However, the Agency is providing guidance and information on the treatment effectiveness and mass allowances for these nonconventional metal pollutants in the technical Development Document.

The Agency is establishing limitations and standards for one nonconventional metal pollutant, molybdenum, because removal of this pollutant requires more extensive treatment than lime and settle. As explained earlier, molybdenum is removed by coprecipitation with iron and is being regulated in the refractory metals and uranium forming subcategories. The pollutant molybdenum is one of the metals formed in the refractory metals subcategory, and without specific controls for this pollutant, our data indicated that it will not be adequately removed. Uranium is frequently alloyed with molybdenum, thus, molybdenum is present at treatable concentrations in raw wastewater generated by uranium forming. Therefore, Agency is also controlling molybdenum in uranium forming.

4. Uranium

Comment: One uranium forming company commented on the proposed effluent requirements for the pollutant uranium. In addition, the Department of Energy (DOE) submitted a comment on the proposed regulation for nonferrous metals manufacturing Phase II questioning the Agency's authority to regulate the pollutant uranium.

Response: The Agency has considered DOE's comments and the fact that the Nuclear Regulatory Commission presently classifies uranium in any form, including depleted uranium, as a "source material" under the Atomic Energy Act. In light of the Supreme Court's holding in *Train* v. *Colorado Public Interest Research Group,* 426 U.S. 1 (1976) that "source," "special nuclear," and "by-product" materials are not pollutants within the meaning of the Clean Water Act, EPA has decided not to finalize effluent limitations guidelines for uranium under the Clean Water Act at this time. Since proposal, EPA has sampled a uranium forming plant and collected additional data on the raw wastewater characteristics of uranium forming waste streams and the effectiveness of lime and settle treatment for removal of the pollutant uranium. Revised treatment effectiveness concentrations for the pollutant uranium were published in the **Federal Register** notice of new data (50 FR 4872, February 4, 1985). Discharge allowances for uranium based on these data are included in Development Document as guidance.

5. Beryllium Forming

Comment: EPA received comments from one company, Brush Wellman, on the proposed regulation for beryllium forming. The commenter manufactures and forms pure beryllium and casts and forms beryllium copper alloys and other beryllium alloys at one facility. Brush objected to the number of regulations with which this facility would have to comply (it would be covered by four point source category regulations:

Nonferrous metals manufacturing, metal molding and casting (foundries), nonferrous metals forming, and copper forming), because each regulation could establish effluent limitations based on different model technologies or regulate different pollutants which would

severely limit this facility's flexibility regarding wastewater treatment.

Response: In settlement of litigation with Brush Wellman over the copper forming regulation, the Agency agreed to propose to amend the copper forming regulation to create a new subcategory that would apply to the forming of beryllium copper alloys. The proposed amendment was published in the Federal Register on June 24, 1985 (50 FR 26128). Brush Wellman presented data and information indicating that beryllium imparts unique properties to the beryllium copper alloy which therefore requires different processing than other copper alloys. These unique properties are also characteristic of formed pure beryllium and other formed beryllium alloys, for which EPA had proposed to regulate as part of the nonferrous metals forming category. Furthermore, most beryllium copper forming plants also form pure beryllium and other beryllium alloys. Since pure beryllium and beryllium alloys (including beryllium copper) have similar characteristics, are subject to the same type of forming processess, and tend to be formed in the same plants, EPA has decided that the forming operations should all be combined under one regulation.

Therefore, the Agency is not promulgating limits and standards for beryllium forming or any beryllium alloy forming (defined as any alloy containing 0.1 percent or greater beryllium by weight) as part of this nonferrous metals forming regulation. Instead we will issue limitations and standards for the forming of beryllium and all beryllium alloys, including beryllium copper at the same time.

6. Estimates of Compliance Costs

Comment: Several comments were received concerning the estimated compliance cost estimates for the proposed regulation. Several commenters argued that the Agency substantially underestimated the cost of compliance with the proposed regulation. One company submitted a detailed estimate of the cost required to install a treatment system for one of their nickel forming plants which was prepared for them by an engineering firm.

Response: Since proposal, the Agency has reevaluated the estimate of compliance costs for the nonferrous metals forming category on a plant-by-plant basis. These revised costs were made publicly available in the Federal Register notice of new data (50 FR 4872, February 4, 1985).

The Agency re-estimated costs for nonferrous metals forming plants by looking at the entire plant flow, not just the nonferrous metals forming portion of the wastewater flow. There are 71 discharging plants in the nonferrous metals forming category which also discharge process wastewater which is covered by another point source category regulation. The Agency estimated the cost for a treatment system which is adequate to handle the plant's entire process wastewater flow, and to meet each regulation that applies. Then the cost attributable to the nonferrous metals forming wastewater was apportioned on the basis of flow. If a plant generates process wastewater which is regulated by more than one nonferrous metals forming subcategory with different model end-of-pipe treatment requirements, the Agency considered the potential economic impact to the plant as a whole for each model technology option considered. The Agency recognizes that these plants may be able to comply with their permit requirements using a less costly treatment system than treatment system which will treat all process wastewater to meet the most stringent limitations, and standards; however, we have evaluated the economic impacts on the basis of using the most costly technology for all wastewaters.

The Agency has made a thorough evaluation of the cost estimate of a treatment system for the commenter's nickel forming facility. The Agency's estimate of compliance costs for this facility is substantially less than the estimate provided by this company's consultant. This consultant's treatment system design includes extensive back-up equipment in the event of a equipment failure, and a large retention pond to hold water in the event that there is a malfunction in the treatment system or the manufacturing process. In addition, the consultant designed and costed a treatment system to treat the entire wastewater flow currently discharged from this plant, including nonprocess wastewater (with the exception of sanitary water).

EPA's estimate of compliance costs for the nonferrous metals forming category is derived by using a model treatment system applied to the process wastewater flow at a rate which corresponds to the BPT or BAT-PSES regulatory flow for the plant. The cost model estimates costs for the complete model treatment system, then subtracts the cost for equipment already in place at the plant. Unlike the consultant's approach, the Agency's cost model does not include such extensive back-up equipment should there be a treatment system or process malfunction, nor is non-process wastewater, such as noncontact cooling water, included in the wastewater flow to be treated. However, an estimate of the cost for pipes and pumps needed to segregate this nonprocess water is included in the model. We did estimate costs on a total plant basis including costs to treat process wastewater from other categories when appropriate; the nonferrous metals forming costs were then estimated by apportioning the costs on the basis of flow. A detailed evaluation of the consultant's costing methodology appears in the response to comments document.

X. Best Management Practices (BMP)

Section 304(e) of the Clean Water Act gives the Administrator discretionary authority to prescribe "best management practices" (BMP). EPA is not proposing specific BMPs for the nonferrous met forming category at this time.

XI. Upset and Bypass Provisions

A recurring issue of concern has been whether industry limitations and standards should include provisions that authorize noncompliance during periods of "upset" or "bypass." An upset, sometimes called an "excursion," is unintentional noncompliance beyond the reasonable control of the permittee. It has been argued that an upset provision in EPA's effluent limitations guidelines is necessary because such upsets will inevitably occur, even if the control equipment is properly operated. Because technology-based limitations can require only what technology can achieve, many claim that liability for upsets is improper. When confronted with this issue, courts have been divided on whether an explicit upset or excursion exemption is necessary or whether upset or excursion incidents may be handled through EPA's enforcement discretion. Compare *Marathon Oil Co.* v. *EPA*, 564 F.2d 1253 (9th Cir. 1977) with *Weyerhaeuser* v. *Costle, supra* and *Corn Refiners Association, et al.* v. *Costle*, No. 78–1069 (8th Cir. April 2, 1979). See also *American Petroleum Institute* v. *EPA*, 540 F.2d 1023 (10th Cir. 1976); *CPC International, Inc.* v. *Train*, 540 F.2d 1320 (8th Cir. 1976); and *FMC Corp.* v. *Train*, 539 F.2d 973 (4th Cir. 1976).

An upset is an unintentional episode during which effluent limits are exceeded; a bypass, however, is an act of intentional noncompliance during which waste treatment facilities are circumvented in emergency situations. EPA has, in the past, included bypass provisions in NPDES permits.

EPA has determined that both upset and bypass provisions should be included in NPDES permits and has promulgated permit regulations that include upset and bypass permit provisions. See 40 CFR 122.41. The upset provision establishes an upset as an affirmative defense to prosecution for violation of technology-based effluent limitations. The bypass provision authorizes bypassing to prevent loss of life, personal injury, or severe property damage. Consequently, although permittees in the nonferrous metals forming industry will be entitled to upset and bypass provisions in NPDES permits, this regulation does not address these issues. Upset provisions are also contained in the General Pretreatment regulation, 40 CFR Parts 125 and 403.

XII. Variances and Modifications

Upon the promulgation of this final regulation, the appropriate effluent limitations must be applied in all Federal and State NPDES permits thereafter issued to nonferrous metals forming direct dischargers. In addition, upon promulgation, the pretreatment standards are directly applicable to indirect dischargers.

For the BPT effluent limitations, the only exception to the binding limitations is EPA's "fundamentally different factors" variance. See *E. I. duPont de Nemours and Co.* v. *Train*, 430 U.S. 112 (1977); *Weyerhaeuser Co.* v. *Costle*, *supra*. This variance recognizes factors concerning a particular discharger that are fundamentally different from the factors considered in this rulemaking. However, the economic ability of the individual operator to meet the compliance cost for BPT standards is not a consideration for granting a variance. See *National Crushed Stone Association* v. *EPA*, 449 U.S. 64 (1980). Although this variance clause was originally set forth in EPA's 1973–1976 industry regulations, it is now included in the general NPDES regulations and is cross-referenced in this regulation, as well as the other specific industry regulations. See the general NPDES regulations at 40 CFR Part 125, Subpart D.

The BAT limitations in this regulation also are subject to EPA's "fundamentally different factors" variance. In addition, BAT limitations for nonconventional pollutants are subject to modification under Sections 301(c) and 301(g) of the Act. These statutory modifications do not apply to toxic or conventional pollutants. According to Section 301(j)(1)(B), applications for these modifications must be filed within 270 days after promulgation of final effluent limitations guidelines. See 40 CFR 122.21(1)(2).

The economic modification section of the Act (Section 301(c)) gives the Administrator authority to modify BAT requirements for nonconventional pollutants for dischargers who file a permit application after July 1, 1978, upon a showing that such modified requirements will: (1) Represent the maximum use of technology within the economic capability of the owner or operator, and (2) result in reasonable further progress toward the elimination of the discharge of pollutants. The environmental modification (Section 301(g)) allows the Administrator, with the concurrence of the State, to modify BAT limitations for nonconventional pollutants from any point source upon a showing by the owner or operator of such point source satisfactory to the Administrator that:

(a) Such modified requirements will result at a minimum in compliance with BPT limitations or any more stringent limitations necessary to meet water quality standards;

(b) Such modified requirements will not result in any additional requirements on any other point or nonpoint source; and

(c) Such modification will not interfere with the attainment or maintenance of that water quality which shall assure protection of public water supplies, and the protection and propagation of a balanced population of shellfish, fish, and wildlife, and allow recreational activities, in and on the water, and such modification will not result in the discharge of pollutants in quantities which may reasonably be anticipated to pose an unacceptable risk to human health or the environment because of bioaccumulation, persistence in the environment, acute toxicity, chronic toxicity (including carcinogenicity, mutagenicity, or teratogenicity), or synergist propensities.

Section 301(j)(1)(B) of the Act requires that applications for modifications under Section 301 (c) or (g) be filed within 270 days after the promulgation of an applicable effluent limitations guideline regulation. Initial applications must be filed with the Regional Administrator and, in States with approved NPDES programs, a copy must be sent to the Director of the State program. Initial applications to comply with Section 301(j) must include the name of the permittee, the permit and outfall number, the applicable effluent limitations guideline regulation, and whether the permittee is applying for a 301(c) or 301(g) modification or both.

Indirect dischargers subject to PSES and PSNS are eligible for credits for pollutants removed by a POTW. See 40 CFR 403.7.

New sources subject to NSPS and PSNS are not eligible for any other statutory or regulatory modifications. See *E. I. duPont de Nemours & Co.* v. *Train*, *supra*.

Indirect dischargers subject to PSES are eligible for the "fundamentally different factors" variance. See 40 CFR 403.13. On September 20, 1983, the United States Court of Appeals for the Third Circuit held that "FDF variances for toxic pollutants are forbidden by the Act," and remanded Section 403.13 to EPA. *NAMF et al.* v. *EPA*, 719 F.2d 624 (3rd Cir. 1983). In response to this decision, EPA amended Section 403.13(b)(2) to suspend the availability of FDF variances for toxic pollutants covered by categorical pretreatment standards. See 49 FR 5131 (February 10, 1984). In addition, EPA sought review of this portion of the Third Circuit's decision. On February 27, 1985, the Supreme Court reversed the Third Court of Appeals and held that FDF variances for toxic pollutants are not prohibited by the Clean Water Act. *Chemical Manufacturers Assoc.* v. *Natural Resources Defense Council, 105.* S Ct. 1102 (1985). Accordingly, indirect dischargers covered by categorical pretreatment standards for existing sources may be eligible for an FDF variance. Any interested person should refer to 40 CFR 403.13 for the procedures and deadline for applying for this variance.

XIII. Implementation of Limitations and Standards

A. Relationship to NPDES Permits

The BPT and BAT limitations and NSPS in this regulation will be applied to individual nonferrous metals forming plants through NPDES permits issued by EPA or approved State agencies under Section 402 of the Act. As discussed in the preceding section of this preamble, these limitations must be applied in all Federal and State NPDES permits except to the extent that variances and modifications are expressly authorized. Other aspects of the interaction between these limitations and NPDES permits are discussed below.

One issue that warrants consideration is the effect of this regulation on the powers of NPDES permit-issuing authorities. EPA has developed the limitations and standards in this regulation to cover the typical facility in each subcategory of this point source category. However, the promulgation of

this regulation will not restrict the power of any permitting authority to act in any manner consistent with law or these or any other EPA regulations, guidelines, or policy. For example, even if this regulation does not control a particular pollutant, the permit issuer may still limit the pollutant on a case-by-case basis when such actions are necessary to carry out the purposes of the Act. In addition, to the extent that State water quality standards or other provisions of State or Federal law require limits on pollutants not covered by this regulation (or require more stringent limitations on covered pollutants), the permit-issuing authority must apply those limitations.

A second topic that warrants discussion is the operation of EPA's NDPES enforcement program, many aspects of which were considered in developing this regulation. The Agency emphasizes that although the Clean Water Act is a strict liability statute, the Agency may elect to use any of the enforcement response available under the CWA. *Sierra Club* v. *Train*, 557 F.2d 485 (5th Cir. 1977). EPA has exercised and intends to exercise its authority in a manner that recognizes and promotes good-faith compliance efforts.

B. Indirect Dischargers

For indirect dischargers, PSES and PSNS are implemented under National Pretreatment Program procedures outlined in 40 CFR 403. The table below may be of assistance in resolving questions about the operation of that program. A brief explanation of some of the submissions indicated on the table follows:

TABLE 2.—INDIRECT DISCHARGERS SCHEDULE FOR SUBMITTAL AND COMPLIANCE

Item	Applicable sources	Date or time period	Measured	Submitted to—
Request for category determination	Existing	60 days	From effective date of standard	Director.[1]
		or		
		60 days	From Federal Register development document availability.	
Request for fundamentally different factors variance.	New	Prior to commencement of discharge to POTW.		
	Existing	180 days	From effective date of standard	Director.[1]
Baseline monitoring	All	Or 30 days	From final decision on category determination.	
		180 days	From effective date of standard or final decision on category determination.	Control Authority.[2]
Report on compliance	Existing	90 days	From date for final compliance	Control Authority.[2]
	New	90 days.	From commencement of discharge to POTW.	
Periodic compliance reports	All	June and December		Control Authority.[2]

[1] Director = a) Chief Administrative Officer of a state water pollution control agency with an approved pretreatment program, or b) EPA Regional Water Division Director, if state does not have an approved pretreatment program.
[2] Control Authority = a) POTW if its pretreatment program has been approved, or b) Director of state water pollution control agency with an approved pretreatment program, or c) EPA Regional Administrator, if state does not have an approved pretreatment program.

A "request for category determination" is a written request, submitted by an indirect discharger or its POTW, for a determination of which categorical pretreatment standard applies to the indirect discharger. This assists the indirect discharger in knowing which PSES or PSNS limits it will be required to meet. See 40 CFR 403.6(a).

A "request for fundamentally different factors variance" is a mechanism by which a categorical pretreatment standard may be adjusted, making it more or less stringent, on a case-by-case basis. If an indirect discharger, a POTW, or any interested person believes that factors relating to a specific indirect discharger are fundamentally different from those factors considered during development of the relevant categorical pretreatment standard and that the existence of those factors justifies a different discharge limit from that specified in the categorical standard, then it may submit a request to EPA for such a variance approved. See 40 CFR 403.13.

A "baseline monitoring report" is the first report an indirect discharger must file following promulgation of an applicable standard. The baseline report includes: an identification of the indirect discharger, a description of its operations, a report on the flows of regulated streams and the results of sampling analyses to determine levels of regulated pollutants in those streams, a statement of the discharger's compliance or noncompliance with the standard, and a description of any additional steps required to achieve compliance. See 40 CFR 403.12(b).

A "report on compliance" is required of each indirect discharger within 90 days following the date for compliance with an applicable categorical pretreatment standard. The report must indicate the concentration of all regulated pollutants in the facility's regulated process waste streams; the average and maximum daily flows of the regulated streams; and a statement of whether compliance is consistently being achieved, and if not, what additional operation and maintenance or pretreatment is necessary to achieve compliance. See 40 CFR 403.12(d).

A "periodic compliance report" is a report on continuing compliance with all applicable categorical pretreatment standards. It is submitted twice per year (June and December) by indirect dischargers subject to the standards. The report must provide the concentrations of the regulated pollutants in its discharge to the POTW; the average and maximum daily flow rates of the facility; the methods used by the indirect discharger to sample and analyze the data; and a certification that these methods conform to the methods outlined in the regulations. See 40 CFR 403.12(e).

XIV. Availability of Technical Information

The basis for this regulation is detailed in four major documents. Analytical methods are discussed in "Sampling and Analysis Procedures for Screening of Industrial Effluents for Priority Pollutants." EPA's technical conclusions are detailed in the "Development Document for Effluent Guidelines, New Source Performance Standards, and Pretreatment Standards for the Nonferrous Metals Forming and Metal Powders Point Source Category." The Agency's economic analysis is presented in "Economic Impact Analysis of Effluent Limitations and Standards for the Nonferrous Metals Forming and Metal Powders Industry." A detailed response to the public comments received on the proposed regulation is presented in a report "Responses to Public Comments on the Proposed Nonferrous Metals Forming and Metal Powders Effluent Limitations Guidelines and Standards," which is a part of the public record for this regulation. Copies

of the technical and economic documents may be obtained from the National Technical Information Service, Springfield, Virginia 22161, (703) 487–4600. Additional information concerning the economic impact analysis may be obtained from Mr. Joseph Yance, Economic Analysis Staff (WH–586), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 382–5379. Technical information may be obtained from Ms. Janet Goodwin, Industrial Technology Division (WH–552), U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460 or by calling (202) 382–7126.

This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. This rule does not contain any information collection requirements. There are information collection requirements associated with the general pretreatment requirements and permit requirements. These information collection requirements have been cleared through OMB.

XV. List of Subjects

40 CFR Part 468

Copper forming, Waste treatment and disposal, Water pollution control.

40 CFR Part 471

Nonferrous metals forming, Water pollution control, Water treatment and disposal.

Dated: July 19, 1985.

Lee M. Thomas,

Administrator.

XVI. Appendices

A—Abbreviations, Acronyms, and Other Terms Used in This Notice

Act—The Clean Water Act.

Agency—The U.S. Environmental Protection Agency.

BAT—The best available technology economically achievable under Section 304(b)(2)(B) of the Act.

BCT—The best conventional pollutant control technology under Section 304(b)(4) of the Act.

BMP—Best management practices under Section 304(e) of the Act.

BPT—The best practicable control technology currently available under Section 304(b)(1) of the Act.

Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*), as amended by the Clean Water Act of 1977 (Pub. L. 95–217).

Direct Discharger—A facility which discharges or may discharge pollutants into waters of the United States.

Indirect Discharger—A facility which discharges or may discharge pollutants into a publicly owned treatment works.

NPDES Permit—A National Pollutant Discharge Elimination System permit issued under Section 402 of the Act.

NSPS—New source performance standards under Section 306 of the Act.

POTW—Publicly owned treatment works.

PSES—Pretreatment standards for existing sources of indirect discharges under Section 307(b) of the Act.

PSNS—Pretreatment standards for new sources of indirect dischargers under Sections 307 (b) and (c) of the Act.

RCRA—Resource Conservation and Recovery Act of 1976 (Pub. L. 94–580), as amended (42 U.S.C. 6901 *et seq.*).

B—Toxic Pollutants Not Detected in Nonferrous Metals Forming Wastewater

Lead-Tin-Bismuth Forming Subcategory (Subpart A)

001	acenaphthene
002	acrolein
003	acrylonitrile
005	benzidine
007	chlorobenzene
008	1,2,4-trichlorobenzene
009	hexachlorobenzene
010	1,2-dichloroethane
012	hexachloroethane
013	1,1-dichloroethane
014	1,1,2-trichloroethane
016	chloroethane
017	deleted
018	bis(2-chloroethyl)ether
019	2-chloroethyl vinyl ether
020	2-chloronaphthalene
021	2,4,6-trichlorophenol
024	2-chlorophenol
025	1,2-dichlorobenzene
026	1,3-dichlorobenzene
027	1,4-dichlorobenzene
028	3,3'-dichlorobenzidine
029	1,1-dichloroethylene
030	1,2-*trans*-dichloroethylene
031	2,4-dichlorophenol
032	1,2-dichloropropane
033	1,2-dichloropropylene
034	2,4-dimethylphenol
035	2,4-dinitrotoluene
036	2,6-dinitrotoluene
037	1,2-diphenylhydrazine
039	fluoranthene
040	4-chlorophenyl phenyl ether
041	4-bromophenyl phenyl ether
042	bis(2-chloroisopropyl)ether
043	bis(2-chloroethoxy)methane
044	methylene chloride
045	methyl chloride
046	methyl bromide
047	bromoform
048	dichlorobromomethane
049	deleted
050	deleted
051	chlorodibromomethane
052	hexachlorobutadiene
053	hexachlorocyclopentadiene
054	isophorone
055	naphthalene
056	nitrobenzene
057	2-nitrophenol
058	4-nitrophenol
059	2,4-dinitrophenol
060	4,6-dinitro-o-cresol
061	N-nitrosodimethylamine
062	N-nitrosodiphenylamine
063	N-nitrosodi-n-propylamine
064	pentachlorophenol
067	butyl benzyl phthalate
068	d-n-butyl phthalate
069	di-n-octyl phthalate
070	diethylphthalate
071	dimethylphthalate
072	benzo(a)anthracene
073	benzo(a)pyrene
074	3,4-benzofluoranthene
075	benzo(k)fluoranthene
076	chrysene
077	acenaphthylene
078	anthracene
079	benzo(ghi)perylene
080	fluorene
082	dibenzo(a,h)anthracene
083	indeno(1,2,3-cd)pyrene
084	pyrene
085	tetrachloroethylene
086	toluene
087	trichloroethylene
088	vinyl chloride
089	aldrin
090	dieldrin
091	chlordane
092	4,4'-DDT
093	4,4'-DDE
094	4,4'-DDD
095	alpha-endosulfan
096	beta-endosulfan
097	endosulfan sulfate
098	endrin
100	heptachlor
101	heptachlor epoxide
102	alpha-BHC
103	beta-BHC
105	delta-BHC
106	PCB-1242
107	PCB-1254
108	PCB-1221
109	PCB-1232
110	PCB-1248
111	PCB-1260
112	PCB-1016
113	toxaphene
116	asbestos
125	selenium
126	silver
127	thallium
129	2,3,7,8-tetrachlorodilbenzo-p-dioxin (TCDD)

Magnesium Forming Subcategory (Subpart B)

001	acenaphthene
002	acrolein
003	acrylonitrile
004	benzene
005	benzidine
006	carbon tetrachloride
007	chlorobenzene
008	1,2,4-trichlorobenzene
009	hexachlorobenzene
010	1,2-dichloroethane
012	hexachloroethane
013	1,1-dichloroethane
014	1,1,2-trichloroethane
015	1,1,2,2-tetrachloroethane
016	chloroethane

017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
115 arsenic
116 asbestos
118 cadmium
120 copper
124 nickel
125 selenium
127 thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Nickel-Cobalt Forming Subcategory (Subpart C)

002 acrolein
003 acrylonitrile
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
024 2-chlorophenol
025 1,2-dichlorobenzene
028 1,3-dichlorobenzene
027 1,4-dichlorobenzene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
035 2,4-dinitrotoluene
038 ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
056 nitrobenzene
059 2,4-dinitrophenol
074 3,4-benzofluoranthene
079 benzo(ghi)perylene
082 dibenzo(a,h)anthracene
085 tetrachloroethylene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Precious Metals Forming Subcategory (Subpart D)

001 acenaphthene
002 acrolein
003 acrylonitrile
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene

054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethlyphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
117 beryllium
125 selenium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Refractory Metals Forming Subcategory (Subpart E)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
006 carbontetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
014 1,1,2-trichloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
058 4-nitrophenol
059 2,4-dinitrophenol
061 N-nitrosodimethylamine
064 pentachlorophenol
071 dimethylphthalate
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
079 benzo(ghi)perylene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Titanium Forming Subcategory (Subpart F)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
011 1,1,1-trichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene

082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Uranium Forming Subcategory (Subpart G)

001 acenaphthene
002 acrolein
003 acrylonitrile
004 benzene
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
011 1,1,1-trichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
044 methylene chloride
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
067 butyl benzyl phthalate
068 d-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
086 toluene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Zinc Forming Subcategory (Subpart H)

002 acrolein
005 benzidine
006 carbon tetrachloride
009 hexachlorobenzene
011 1,1,1-trichloroethane
012 hexachloroethane
016 chloroethane
017 deleted
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzene
031 2,4-dichlorophenol
035 2,4-dinitrotoluene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
045 methyl chloride
049 deleted
050 deleted
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
069 di-n-octyl phthalate
071 dimethylphthalate
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
077 acenapthaylene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
084 pyrene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 hepthachor epoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
114 antimony
115 arsenic
116 asbestos
117 beryllium
118 cadmium
120 copper

122 lead
123 mercury
125 selenium
126 silver
127 thallium
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

Zirconium-Hafnium Forming Subcategory (Subpart I)

001 acenaphthene
003 acrylonitrile
005 benzidine
006 carbon tetrachloride
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
067 butyl benzyl phthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
079 benzo(ghi)perylene
080 fluorene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
099 endrin aldehyde
100 heptachlor
101 heptachlor epoxide
102 alpha-BHC
103 beta-BHC
104 gamma-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
129 2,3,7,8-tetrachlordibenzo-p-dioxin (TCDD)

Metal Powders (Subpart J)

001 acenaphthene
002 acrolein
003 acrylonitrile
005 benzidine
007 chlorobenzene
008 1,2,4-trichlorobenzene
009 hexachlorobenzene
010 1,2-dichloroethane
012 hexachloroethane
013 1,1-dichloroethane
014 1,1,2-trichloroethane
015 1,1,2,2-tetrachloroethane
016 chloroethane
017 deleted
018 bis(2-chloroethyl)ether
019 2-chloroethyl vinyl ether
020 2-chloronaphthalene
021 2,4,6-trichlorophenol
022 parachlorometacresol
023 chloroform
024 2-chlorophenol
025 1,2-dichlorobenzene
026 1,3-dichlorobenzene
027 1,4-dichlorobenzene
028 3,3'-dichlorobenzidine
029 1,1-dichloroethylene
030 1,2-*trans*-dichloroethylene
031 2,4-dichlorophenol
032 1,2-dichloropropane
033 1,2-dichloropropylene
034 2,4-dimethylphenol
035 2,4-dinitrotoluene
036 2,6-dinitrotoluene
037 1,2-diphenylhydrazine
038 ethylbenzene
039 fluoranthene
040 4-chlorophenyl phenyl ether
041 4-bromophenyl phenyl ether
042 bis(2-chloroisopropyl)ether
043 bis(2-chloroethoxy)methane
045 methyl chloride
046 methyl bromide
047 bromoform
048 dichlorobromomethane
049 deleted
050 deleted
051 chlorodibromomethane
052 hexachlorobutadiene
053 hexachlorocyclopentadiene
054 isophorone
055 naphthalene
056 nitrobenzene
057 2-nitrophenol
058 4-nitrophenol
059 2,4-dinitrophenol
060 4,6-dinitro-o-cresol
061 N-nitrosodimethylamine
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 di-n-butyl phthalate
069 di-n-octyl phthalate
070 diethylphthalate
071 dimethylphthalate
072 benzo(a)anthracene
073 benzo(a)pyrene
074 3,4-benzofluoranthene
075 benzo(k)fluoranthene
076 chrysene
077 acenaphthylene
078 anthracene
079 benzo(ghi)perylene
080 fluorene
081 phenanthrene
082 dibenzo(a,h)anthracene
083 indeno(1,2,3-cd)pyrene
084 pyrene
085 tetrachloroethylene
087 trichloroethylene
088 vinyl chloride
089 aldrin
090 dieldrin
091 chlordane
092 4,4'-DDT
093 4,4'-DDE
094 4,4'-DDD
095 alpha-endosulfan
096 beta-endosulfan
097 endosulfan sulfate
098 endrin
100 heptachlor
101 heptachlor expoxide
102 alpha-BHC
103 beta-BHC
105 delta-BHC
106 PCB-1242
107 PCB-1254
108 PCB-1221
109 PCB-1232
110 PCB-1248
111 PCB-1260
112 PCB-1016
113 toxaphene
116 asbestos
117 beryllium
118 cadmium
123 mercury
125 selenium
126 silver
129 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD)

C—Toxic Pollutants Detected Below the Analytical Quantification Limit

Lead-Tin-Bismuth Forming (Subpart A)

004 benzene

Refractory Metals Forming (Subpart E)

013 1,1-dichloroethane
015 1,1,2,2-tetrachloroethane
024 2-chlorophenol
029 1,1-dichloroethylene
084 pyrene
104 gamma-BHC

Zinc Forming (Subpart H)

001 acenaphthene
008 1,2,4-trichlorobenzene
010 1,2-dichloroethane
037 1,2-diphenylhydrazine
046 methyl bromide

Zirconium-Hafnium (Subpart I)

004 benzene
007 chlorobenzene
013 1,1-dichloroethane
057 2-nitrophenol
068 di-n-butyl phthalate
070 diethyl phthalate
078 anthracene
081 phenanthrene
085 tetrachloroethylene
087 trichloroethylene

D—Toxic Pollutants Detected in the Effluent From Only a Small Number of Sources

Lead-Tin-Bismuth Forming (Subpart A)

065 phenol
066 bis(2-ethylhexyl)phthalate
081 phenanthrene
119 chromium
120 copper
121 cyanide
128 zinc

Magnesium Forming (Subpart B)

117 beryllium
121 cyanide
122 lead

Nickel-Cobalt Forming (Subpart C)

001 acenaphthene
005 benzidene
011 1,1,1-trichloroethane
013 1,1-dichloroethane
022 parachlorometacresol
028 3,3'-dichlorobenzidine
034 2,4-dimethylphenol
036 2,6-dinitrotoluene
039 fluoranthene
044 methylene chloride
055 naphthalene
057 2-nitrophenol
058 4-nitrophenol
060 4,6-dinitro-o-cresol
063 N-nitrosodi-n-propylamine
064 pentachlorophenol
065 phenol
066 bis(2-ethylhexyl)phthalate
068 di-n-butyl phthalate
073 benzo(a)pyrene
080 fluorene
081 phenanthrene
084 pyrene
114 antimony
115 arsenic
121 cyanide
125 selenium
126 silver

Precious Metals Forming (Subpart D)

004 benzene
011 1,1,1-trichloroethane
044 methylene chloride
045 methyl chloride
086 toluene
087 trichloroethylene

Refractory Metals Forming (Subpart E)

011 1,1,1-trichloroethane
035 2,4-dinitrotoluene
039 fluoranthene
044 methylene chloride
055 naphthalene
057 2-nitrophenol
060 4,6-dinitro-o-cresol
062 N-nitrosodiphenylamine
063 N-nitrosodi-n-propylamine
065 phenol
066 bis(2-ethylhexyl)phthalate
067 butyl benzyl phthalate
068 di-n-butyl phthalate
069 di-n-octyl phthalate
070 diethyl phthalate
072 benzo(a)anthracene
076 chrysene
077 acenaphthylene
078 anthracene
080 fluorene
081 phenanthrene
085 tetrachloroethylene
086 toluene
118 cadmium
121 cyanide

Titanium Forming (Subpart F)

115 arsenic
118 cadmium
125 selenium

Uranium Forming (Subpart G)

022 parachlorometacresol
066 bis(2-ethylhexyl)phthalate
081 phenanthrene
117 beryllium
121 cyanide

Zinc Forming (Subpart H)

051 chlorodibromomethane
066 bis(2-ethylhexyl)phthalate
068 d-n-butyl phthalate

Zirconium-Hafnium Forming (Subpart I)

011 1,1,1-trichloroethane
022 parachlorometacresol
038 ethylbenzene
066 bis(2-ethylhexyl)phthalate
069 di-n-octyl phthalate
114 antimony
115 arsenic
118 cadmium
127 thallium

Metal Powders (Subpart J)

011 1,1,1-trichloroethane

E—Toxic Pollutants Detected in Amounts Too Small To Be Effectively Treated

Lead-Tin-Bismuth Forming (Subpart A)

006 carbon tetrachloride
011 1,1,1-trichloroethane
015 1,1,2,2-tetrachloroethane
022 parachlorometacresol
023 chloroform
038 ethylbenzene
115 arsenic
117 beryllium
118 cadmium
123 mercury
124 nickel

Magnesium Forming (Subpart B)

011 1,1,1-trichloroethane
044 methylene chloride
057 nitrophenol
065 phenol
114 antimony
123 mercury
126 silver

Nickel-Cobalt Forming (Subpart C)

004 benzene
012 hexachloroethane
023 chloroform
029 1,1-dichloroethylene
037 1,2-diphenyl hydrazine
043 bis(2-chloroethoxy)methane
061 N-nitrosodimethylamine
067 butyl benzyl phthalate
069 di-n-octyl phthalate
070 diethyl phthalate
071 dimethyl phthalate
072 benzo(a)anthracene
077 acenaphthylene
078 anthracene
083 indeno(1,2,3-cd)pyrene
086 toluene
117 beryllium
123 mercury
127 thallium

Precious Metals Forming (Subpart D)

016 chloroethane
114 antimony
115 arsenic
123 mercury
127 thallium

Refractory Metals Forming (Subpart E)

023 chloroform
034 2,4-dimethylphenol
056 nitrobenzene
114 antimony
115 arsenic
117 beryllium
123 mercury
125 selenium
127 thallium

Titanium Forming (Subpart F)

006 carbon tetrachloride
044 methylene chloride
114 antimony
117 beryllium
123 mercury
126 silver
127 thallium

Uranium Forming (Subpart G)

114 antimony
115 arsenic
123 mercury
125 selenium
126 silver
127 thallium

Zinc Forming (Subpart H)

003	acrylonitrile
004	benzene
007	chlorobenzene
013	1,1-dichloroethane
015	1,1,2,2-tetrachloroethane
018	bis(2-chloroethyl)ether
023	chloroform
029	1,1-dichloroethylene
030	1,2-*trans*-dichloroethylene
032	1,2-dichloropropane
033	1,2-dichloropropylene
034	2,4-dimethyl phenol
036	2,6-dinitrotoluene
038	ethylbenzene
043	bis(2-chloroethoxy)methane
044	methylene chloride
047	bromoform
048	dichlorobromomethane
055	naphthalene
067	butyl benzyl phthalate
072	chrysene
078	anthracene
081	phenanthrene
085	tetrachloroethylene
086	toluene
087	trichloroethylene

Zirconium-Hafnium Forming (Subpart I)

002	acrolein
023	chloroform
117	beryllium
123	mercury
125	selenium
126	silver

Metal Powders (Subpart J)

004	benzene
006	carbon tetrachloride
044	methylene chloride
086	toluene
114	antimony
115	arsenic
127	thallium

F—Toxic Pollutants Effectively Controlled by BAT, NSPS, PSES and PSNS Even Though They Are Not Specifically Regulated

Nickel-Cobalt Forming (Subpart C)

118	cadmium
120	copper
122	lead
128	zinc
062	N-nitrosodiphenylamine

Precious Metals Forming (Subpart D)

119	chromium
124	nickel
128	zinc

Refractory Metals Forming (Subpart E)

119	chromium
122	lead
126	silver
128	zinc

Titanium Forming (Subpart F)

062	N-nitrosodiphenylamine
119	chromium
120	copper
124	nickel

Uranium Forming (Subpart G)

128	zinc

Zinc Forming

124	nickel

Zirconium-Hafnium Forming (Subpart I)

044	methylene chloride
062	N-nitrosodiphenylamine
086	toluene
120	copper
122	lead
128	zinc

Metal Powders (Subpart J)

119	chromium
124	nickel
128	zinc

G—Subcategories Excluded

Paragraph 8(a)(iv) of the Settlement Agreement authorizes the Administrator to exclude from regulation subcategories in which the amount and toxicity of each pollutant in the discharge does not justify developing national regulations. Paragraph 8(b) of the Settlement Agreement authorizes the Administrator to exclude from pretreatment standards a subcategory if (i) 95 percent or more of all point sources in the subcategory introduce into POTWs only pollutants which are susceptible to treatment by the POTW and which do not interfere with, do not pass through, or are not otherwise incompatible with such treatment works; or (ii) the toxicity and amount of the incompatible pollutants introduced by such point sources into POTWs is so insignificant that developing a pretreatment regulation is not justified.

1. The following subcategories are excluded because there are no dischargers from the subcategory (Paragraph 8(a)(iv)):

Cadmium forming
Chromium forming
Gallium forming
Germanium forming
Indium forming
Lithium forming
Manganese forming
Neodymium forming
Praseodymium forming

2. The following subcategory is excluded from further national PSES regulation development under Paragraph 8(b) of the Settlement Agreement because there are no existing indirect dischargers in the subcategory:

Uranium forming

A new Part 471 is added to 40 CFR to read as follows:

PART 471—NONFERROUS METALS FORMING AND METAL POWDERS POINT SOURCE CATEGORY

General Provisions

Sec.

471.01 Applicability.
471.02 General definitions.
471.03 Compliance date for PSES.

Subpart A—Lead-Tin-Bismuth Forming Subcategory

471.10 Applicability; description of the lead-tin-bismuth forming subcategory.
471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.13 New source performance standards (NSPS).
471.14 Pretreatment standards for existing sources (PSES).
471.15 Pretreatment standards for new sources (PSNS).
471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart B—Magnesium Forming Subcategory

471.20 Applicability; description of the magnesium forming subcategory.
471.21 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.23 New source performance standards (NSPS).
471.24 Pretreatment standards for existing sources (PSES).
471.25 Pretreatment standards for new sources (PSNS).
471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart C—Nickel-Cobalt Forming Subcategory

471.30 Applicability; description of the nickel-cobalt forming subcategory.
471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.33 New source performance standards (NSPS).
471.34 Pretreatment standards for existing sources (PSES).
471.35 Pretreatment standards for new sources (PSNS).
471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart D–Precious Metals Forming Subcategory

471.40 Applicability; description of the precious metals forming subcategory.
471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.43 New source performance standards (NSPS).
471.4 Pretreatment standards for existing sources (PSES).
471.45 Pretreatment standards for new sources (PSNS).
471.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart E—Refractory Metals Forming Subcategory

471.50 Applicability; description of the refractory metals forming subcategory.
471.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.52 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.53 New source performance standards (NSPS).
471.54 Pretreatment standards for existing sources (PSES).
471.55 Pretreatment standards for new sources (PSNS).
471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart F—Titanium Forming Subcategory

471.60 Applicability; description of the titanium forming subcategory.
471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.63 New source performance standards (NSPS).
471.64 Pretreatment standards for existing sources (PSES).
471.65 Pretreatment standards for new sources (PSNS).
471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart G—Uranium Forming Subcategory

471.70 Applicability; description of the uranium forming subcategory.
471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.73 New source performance standards (NSPS).
471.74 Pretreatment standards for existing sources (PSES) [Reserved].
471.75 Pretreatment standards for new sources (PSNS).
471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart H—Zinc Forming Subcategory

471.80 Applicability; description of the zinc forming subcategory.
471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.83 New source performance standards (NSPS).
471.84 Pretreatment standards for existing sources (PSES) [Reserved].
471.85 Pretreatment standards for new sources (PSNS).
471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart I—Zirconium-Hafnium Forming Subcategory

471.90 Applicability; description of the zirconium-hafnium forming subcategory.
471.91 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.93 New source performance standards (NSPS).
471.94 Pretreatment standards for existing sources (PSES).
471.95 Pretreatment standards for new sources (PSNS).
471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart J—Metal Powders Subcategory

471.100 Applicability; description of the metal powders subcategory.
471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).
471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).
471.103 New source performance standards (NSPS).
471.104 Pretreatment standards for existing sources (PSES).
471.105 Pretreatment standards for new sources (PSNS).
471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Authority: Secs. 301, 304(b), (c), (e), and (g), 306(b) and (c), 307, 308, and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972 as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

General Provisions

§ 471.01 Applicability.

(a) This part applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from the forming of nonferrous metals (including nonferrous metal alloys), except beryllium, copper, and aluminum and their alloys. Aluminum alloys are defined as any alloy in which aluminum is the major constituent in percent by weight. Copper alloys are defined as any alloy in which copper is the major constituent in percent by weight except when copper is alloyed with precious metals. Any copper-precious metal alloy containing 30 percent or greater precious

metal is considered a precious metal alloy for the purposes of this part. Beryllium alloys are any alloy in which beryllium is present at 0.1 percent or greater. This part applies to:

(1) Forming operations, including rolling (both hot and cold), extruding, forging, drawing, swaging, cladding, and tube reducing, and

(2) Ancillary operations performed as an integral part of the forming of these metals, including casting for subsequent forming, heat treatment, surface treatment, alkaline cleaning, solvent degreasing, product testing, surface coating, sawing, grinding, tumbling, burnishing, and wet air pollution control.

(b) This part also applies to discharges of pollutants to waters of the United States and introduction of pollutants into a publicly owned treatment works from mechanical metal powder production operations, forming of parts from metal powders, and associated ancillary operations (listed in paragraph (a)(2) of this section) of:

(1) Iron, copper, and aluminum, and their alloys; and

(2) The nonferrous metals and their alloys described in paragraph (a) of this section. This part does not regulate the production of metal powders by chemical means such as precipitation. The production of metal powder as the final step in refining metal is regulated under the Nonferrous Metals Manufacturing Point Source Category regulation, 40 CFR Part 421.

(c) Surface treatment includes any chemical or electrochemical treatment applied to the surface of the metal. For the purposes of this regulation, surface treatment of metals is considered to be an integral part of the forming of metals whenever it is performed at the same plant site at which the metals are formed. Such surface treatment operations are not regulated under the Electroplating or Metal Finishing Point Source Category regulations, 40 CFR Part 413 or 433, respectively.

(d) Casting is covered by this part when it is performed as an integral part of the metal forming process and takes place at the same plant site at which metals are formed. Such casting will not be regulated under the provisions of Metal Molding and Casting Point Source Category regulations, 40 CFR Part 464.

(e) This part does not apply to the forming of the metals cadmium, chromium, gallium, germanium, indium, lithium, manganese, neodymium, or praseodymium.

§ 471.02 General definitions.

In addition to the definitions set forth in 40 CFR Part 401, the following definitions apply to this part:

(a) "Nonferrous metal" is any pure metal other than iron or any metal alloy for which a metal other than iron is its major constituent in percent by weight.

(b) "Forming" is a set of manufacturing operations in which metals and alloys are made into semifinished products by hot or cold working.

(c) "Alkaline cleaning" uses a solution (bath), usually detergent, to remove lard, oil, and other such compounds from a metal surface. Alkaline cleaning is usually followed by a water rinse. The rinse may consist of single or multiple stage rinsing. For the purposes of this part, an alkaline cleaning operation is defined as a bath followed by a rinse, regardless of the number of rinse stages. Each alkaline cleaning bath and rinse combination is entitled to a discharge allowance.

(d) "Atomization" is the process in which a stream of water or gas impinges upon a molten metal stream, breaking it into droplets which solidify as powder particles.

(e) "Burnishing" is a surface finishing process in which minute surface irregularities are displaced rather than removed.

(f) "Casting" is pouring molten metal into a mold to produce an object of desired shape.

(g) "Cladding" or "metal cladding" is the art of producing a composite metal containing two or more layers that have been metallurgically bonded together by roll bonding (co-rolling), solder application (or brazing), or explosion bonding.

(h) "Contact cooling water" is any wastewater which contacts the metal workpiece or the raw materials used in forming metals for the purpose of removing heat from the metal.

(i) "Continuous casting" is the production of sheet, rod, or other long shapes by solidifying the metal while it is being poured through an open-ended mold.

(j) "Degreasing" is the removal of oils and greases from the surface of the metal workpiece. This process can be accomplished with detergents as in alkaline cleaning or by the use of solvents.

(k) "Direct chill casting" is the pouring of molten nonferrous metal into a water-cooled mold. Contact cooling water is sprayed onto the metal as it is dropped into the mold, and the metal ingot falls into a water bath at the end of the casting process.

(l) "Drawing" is the process of pulling a metal through a die or succession of dies to reduce the metal's diameter or alter its cross-sectional shape.

(m) "Dye penetrant testing" is a nondestructive method for finding discontinuities that are open to the surface of the metal. A dye is applied to the surface of metal and the excess is rinsed off. Dye that penetrates surface discontinuities will not be rinsed away thus marking these discontinuities.

(n) "Emulsions" are stable dispersions of two immiscible liquids. In the Nonferrous Metals Forming and Metal Powders Point Source category, this is usually an oil and water mixture.

(o) "Electrocoating" is the electrodeposition of a metallic or nonmetallic coating onto the surface of a workpiece.

(p) "Extrusion" is the application of pressure to a billet of metal, forcing the metal to flow through a die orifice.

(q) "Forging" is deforming metal, usually hot, with compressive force into desired shapes, with or without dies. Where dies are used, the metal is forced to take the shape of the die.

(r) "Grinding" is the process of removing stock from a workpiece by the use of a tool consisting of abrasive grains held by a rigid or semi-rigid grinder. Grinding includes surface finishing, sanding, and slicing.

(s) "Heat treatment" is the application of heat of specified temperature and duration to change the physical properties of the metal.

(t) "Hot pressing" is forming a powder metallurgy compact at a temperature high enough to effect concurrent sintering.

(u) "Hydrotesting" is the testing of piping or tubing by filling with water and pressurizing to test for integrity.

(v) "Impregnation" is the process of filling pores of a formed powder part, usually with a liquid such as a lubricant, or mixing particles of a nonmetallic substance in a matrix of metal powder.

(w) "In-process control technology" is the conservation of chemicals and water throughout the production operations to reduce the amount of wastewater to be discharged.

(x) "Metal powder production" operations are mechanical process operations which convert metal to a finely divided form.

(y) "Milling" is the mechanical treatment of a nonferrous metal to produce powder, or to coat one component of a powder mixture with another.

(z) "Neat oil" is a pure oil with no or few impurities added. In nonferrous

metals forming, its use is mostly as a lubricant.

(aa) "Powder forming" includes forming and compressing powder into a fully dense finished shape, and is usually done within closed dies.

(bb) "Precious metals" include gold, platinum, palladium, and silver and their alloys. Any alloy containing 30 or greater percent by weight of precious metals is considered a precious metal alloy.

(cc) "Product testing" includes operations such as dye penetrant testing, hydrotesting, and ultrasonic testing.

(dd) "Refractory metals" includes the metals of columbium, tantalum, molybdenum, rhenium, tungsten and vanadium and their alloys.

(ee) "Rolling" is the reduction in thickness or diameter of a workpiece by passing it between lubricated steel rollers.

(ff) "Roll bonding" is the process by which a permanent bond is created between two metals by rolling under high pressure in a bonding mill (co-rolling).

(gg) "Sawing" is cutting a workpiece with a band, blade, or circular disc having teeth.

(hh) "Shot casting" is the production of shot by pouring molten metal in finely divided streams to form spherical particles.

(ii) "Stationary casting" is the pouring of molten metal into molds and allowing the metal to cool.

(jj) "Surface treatment" is a chemical or electrochemical treatment applied to the surface of a metal. Such treatments include pickling, etching, conversion coating, phosphating, and chromating. Surface treatment baths are usually followed by a water rinse. The rinse may consist of single or multiple stage rinsing. For the purposes of this part, a surface treatment operation is defined as a bath followed by a rinse, regardless of the number of stages. Each surface treatment bath, rinse combination is entitled to discharge allowance.

(kk) "Swaging" is a process in which a solid point is formed at the end of a tube, rod, or bar by the repeated blows of one or more pairs of opposing dies.

(ll) "Tube reducing" is an operation which reduces the diameter and wall thickness of tubing with a mandrel and a pair of rolls with tapered grooves.

(mm) "Tumbling" or "barrel finishing" is an operation in which castings, forgings, or parts pressed from metal powder are rotated in a barrel with ceramic or metal slugs or abrasives to remove scale, fins, or burrs. It may be done dry or with an aqueous solution.

(nn) "Ultrasonic testing" is a nondestructive test which applies sound, at a frequency above about 20 HJz, to metal, which has been immersed in liquid (usually water) to locate inhomogeneities or structural discontinuities.

(oo) "Wet air pollution control scrubbers" are air pollution control devices used to remove particulates and fumes from air by entraining the pollutants in a water spray.

(pp) "Grab sample" is a single sample which is collected at a time and place most representative of total discharge.

(qq) "Composite sample" is a sample composed of no less than eight grab samples taken over the compositing period.

(rr) A "flow proportional composite sample" is composed of grab samples collected continuously or discretely in proportion to the total flow at time of collection or to the total flow since collection of the previous grab sample. The grab volume or frequency of grab collection may be varied in proportion to flow.

(ss) The term "control authority" is defined as the POTW if it has an approved pretreatment program; in the absence of such a program, the NPDES State if it has an approved pretreatment program or EPA if the State does not have an approved program.

(tt) "Continuous operations" means that the industrial user introduces regulated wastewaters to the POTW throughout the operating hours of the facility, except for infrequent shutdowns for maintenance, process changes, or other similar activities.

(uu) "Intermittent operations" means the industrial users does not have a continuous operation.

(vv) The term "off-kg (off-lb)" means the mass of metal or metal alloy removed from a forming operation at the end of a process cycle for transfer to a different machine or process.

§ 471.03 Compliance date for PSES.

The compliance date for PSES under this regulation is August 23, 1988.

Subpart A—Lead-Tin-Bismuth Forming Subcategory

§ 471.10 Applicability; description of the lead-tin-bismuth forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the lead-tin-bismuth forming subcategory.

§ 471.11 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.068	0.030
Lead	0.010	0.005
Oil and grease	0.468	0.281
TSS	0.960	0.457
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Rolling spent soap solutions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pound) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.125	0.055
Lead	0.019	0.009
Oil and grease	0.860	0.520
TSS	1.80	0.840
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart A—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005
Oil and grease	0.526	0.316
TSS	1.08	0.513
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.002
Oil and grease	0.149	0.090
TSS	0.306	0.146
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds of lead-tin-bismuth heat treated	
Antimony	4.14	1.850
Lead	0.605	0.268
Oil and grease	26.80	17.30
TSS	59.10	26.10
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011
Oil and grease	1.10	0.660
TSS	2.26	1.07
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Continuous strip casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0014	0.0002
Oil and grease	0.020	0.012
TSS	0.041	0.020
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	0.065	0.038
Lead	0.013	0.006
Oil and grease	0.588	0.353
TSS	1.21	0.574
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Shot casting contact cooling water.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.017	0.048
Lead	0.016	0.008
Oil and grease	0.746	0.448
TSS	1.53	0.728
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	1.69	0.753
Lead	0.247	0.116
Oil and grease	11.8	7.06
TSS	24.1	11.5
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Alkaline cleaning spent baths.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024
Oil and grease	2.40	1.44
TSS	4.92	2.34
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Alkaline cleaning rinse.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	6.78	3.02
Lead	0.991	0.472
Oil and grease	47.2	28.4
TSS	96.8	46.0
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Swaging spent emulsions.*

SUBPART A—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0007	0.0004
Oil and grease	0.036	0.022
TSS	0.073	0.034
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Degreasing spent solvents—Subpart A—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.12 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsion	
Antimony	0.067	0.030
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009

(c) *Drawing spent neat oils—Subpart A—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.080	0.034
Lead	0.011	0.005

(e) *Drawing spent soap solutions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.002

(f) *Extrusion press and solution heat treatment contact colling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.030

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.0002

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.009	0.004
Lead	0.001	0.0006

(j) *Shot casting contact cooling water.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.048
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.169	0.076
Lead	0.025	0.102

(l) *Alkaline cleaning spent baths.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.678	0.302
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0008	0.0004

(o) *Degreasing spent solvents—Subpart A—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.13 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards. The mass of pollutants in the lead-tin-bismuth forming operations' process wastewater shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.067	0.030
Lead	0.010	0.005
Oil and grease	0.468	0.261
TSS	0.960	0.457
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Rolling spent soap solutions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009
Oil and grease	0.650	0.520
TSS	1.80	0.840
pH		(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart A—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005
Oil and grease	0.526	0.316
TSS	1.067	0.513
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.002
Oil and grease	0.149	0.090
TSS	0.306	0.146
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.030
Oil and grease	2.60	1.72
TSS	5.91	2.51
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011
Oil and grease	1.10	0.660
TSS	2.26	1.07
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Continuous strip casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.0002
Oil and grease	0.020	0.012
TSS	0.041	0.020
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	0.009	0.038
Lead	0.013	0.0006
Oil and grease	0.059	0.036
TSS	0.121	0.058
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Shot casting contact cooling water.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.048
Lead	0.016	0.008
Oil and grease	0.746	0.448
TSS	1.53	0.728
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.109	0.076
Lead	0.025	0.012
Oil and grease	1.18	0.706
TSS	2.41	1.15
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Alkaline cleaning spent baths.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024
Oil and grease	2.40	1.44
TSS	4.92	2.34
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Alkaline cleaning rinse.*

SUBPART A—NSPS

Pollutant or pollutant property	Minimum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.678	0.362
Lead	0.099	0.047
Oil and grease	4.72	2.84
TSS	9.68	4.60
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Swaging spent emulsions.*

SUBPART A—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0008	0.0004
Oil and grease	0.036	0.022
TSS	0.073	0.035
pH		[1]

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Degreasing spent solvents—Subpart A—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.14 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988, achieve the pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in lead-tin-bismuth forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.067	0.030
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009

(c) *Drawing spent neat oils—Subpart A—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005

(e) *Drawing spent soaps solutions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap olutions	
Antimony	0.022	0.010
Lead	0.003	0.002

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.029

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.158	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.00

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the semi-continuous strip method	
Antimony	0.009	0.004
Lead	0.001	0.0006

(j) *Shot casting contact cooling water.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.048
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.169	0.076
Lead	0.025	0.012

(l) *Alkaline Cleaning Spent Baths.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.678	0.302
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.002
Lead	0.0008	0.0004

(o) *Degreasing spent solvents—Subpart A—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.15 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new sources subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in lead-tin-bismuth forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with emulsions	
Antimony	0.067	0.030
Lead	0.010	0.005

(b) *Rolling spent soap solutions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth rolled with soap solutions	
Antimony	0.120	0.055
Lead	0.018	0.009

(c) *Drawing spent neat oils—Subpart A—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with emulsions	
Antimony	0.076	0.034
Lead	0.011	0.005

(e) *Drawing spent soap solutions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth drawn with soap solutions	
Antimony	0.022	0.010
Lead	0.003	0.002

(f) *Extrusion press and solution heat treatment contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth heat treated	
Antimony	0.414	0.185
Lead	0.061	0.029

(g) *Extrusion press hydraulic fluid leakage.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth extruded	
Antimony	0.156	0.071
Lead	0.023	0.011

(h) *Continuous strip casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth cast by the continuous strip method	
Antimony	0.003	0.001
Lead	0.0004	0.0002

(i) *Semi-continuous ingot casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth ingot cast by the semi-continuous method	
Antimony	0.009	0.004
Lead	0.013	0.006

(j) *Shot casting contact cooling water.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot cast	
Antimony	0.107	0.046
Lead	0.016	0.008

(k) *Shot-forming wet air pollution control scrubber blowdown.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth shot formed	
Antimony	0.189	0.076
Lead	0.025	0.012

(l) *Alkaline cleaning spent baths.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.345	0.154
Lead	0.051	0.024

(m) *Alkaline cleaning rinse.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth alkaline cleaned	
Antimony	0.679	0.302
Lead	0.099	0.047

(n) *Swaging spent emulsions.*

SUBPART A—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of lead-tin-bismuth swaged with emulsion	
Antimony	0.005	0.003
Lead	0.0008	0.0004

(o) *Degreasing spent solvents—Subpart A—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.16 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart B—Magnesium Forming Subcategory

§ 471.20 Applicability; description of the magnesium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the magnesium forming subcategory.

§ 471.21 Effluent limitations representing the degree of effluent reduction attainable - by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent emulsions.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	0.046
Ammonia	9.95	4.37
Fluoride	4.440	1.97
Oil and grease	1.49	0.895
TSS	3.06	1.46
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) *Forging spent lubricants*—Subpart B—*BPT*. There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	1.27	0.520
Zinc	4.22	1.77
Ammonia	385	176
Fluoride	172	78.3
Oil and grease	57.8	34.7
TSS	119	56.4
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) *Forging equipment cleaning wastewater.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.018	0.007
Zinc	0.059	0.025
Ammonia	5.32	2.34
Fluoride	2.38	1.06
Oil and grease	0.798	0.479
TSS	1.64	0.778
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	527	232
Fluoride	235	105
Oil and grease	79.0	47.4
TSS	162	77.1

SUBPART B—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment spent baths.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.205	0.084
Zinc	0.681	0.285
Ammonia	62.1	27.3
Fluoride	27.8	12.3
Oil and grease	9.32	5.59
TSS	19.1	9.09
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) *Surface treatment rinse.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	8.32	3.4
Zinc	27.6	11.5
Ammonia	2520	1110
Fluoride	1130	499
Oil and grease	378	227
TSS	775	369
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding spent emulsions.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.009	0.004
Zinc	0.029	0.012
Ammonia	2.60	1.15
Fluoride	1.16	0.515
Oil and grease	0.390	0.234
TSS	0.800	0.381
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Degreasing spent solvents*—*Subpart B—BPT*. There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	0.904	0.378
Ammonia	82.5	36.3
Fluoride	36.9	16.4
Oil and grease	12.4	7.40
TSS	25.4	12.1
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 471.22 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent emulsions.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	0.046
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants*—Subpart B—BAT. There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.127	0.052
Zinc	0.422	0.177
Ammonia	38.5	17.0
Fluoride	17.2	7.63

(d) *Forging equipment cleaning wastewater.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0007
Zinc	0.006	0.003
Ammonia	0.532	0.234
Fluoride	0.238	0.106

(e) *Direct chill casting contact cooling water.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	527	232
Fluoride	235	105

(f) *Surface treatment spent baths.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.205	0.084
Zinc	0.681	0.285
Ammonia	62.1	27.3
Fluoride	27.8	12.3

(g) *Surface treatment rinse.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.832	0.340
Zinc	2.76	1.16
Ammonia	252	111
Fluoride	113	49.9

(h) *Sawing or grinding spent emulsions.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.009	0.004
Zinc	0.029	0.012
Ammonia	2.60	1.15
Fluoride	1.16	0.515

(i) *Degreasing spent solvents—Subpart B—BAT.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	0.904	0.378
Ammonia	82.5	36.3
Fluoride	36.9	16.4

§ 471.23 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards. The mass of pollutants in the magnesium forming process wastewater shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.028	0.011
Zinc	0.076	0.032
Ammonia	9.95	4.37
Fluoride	4.44	1.97
Oil and grease	0.746	0.746
TSS	1.12	0.895
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Forging spent lubricants—Subpart B—NSPS.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.117	0.044
Zinc	0.295	0.122
Ammonia	38.5	17.0
Fluoride	17.2	7.63
Oil and grease	2.89	2.89
TSS	4.34	3.47
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Forging equipment cleaning wastewater.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0006
Zinc	0.004	0.002
Ammonia	0.532	0.234
Fluoride	0.238	0.106
Oil and grease	0.040	0.040
TSS	0.060	0.048
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.46	0.593
Zinc	4.03	1.65
Ammonia	527	232
Fluoride	235	105
Oil and grease	39.5	39.5
TSS	59.3	47.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment spent baths.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.173	0.070
Zinc	0.476	0.196
Ammonia	62.1	27.3
Fluoride	27.8	12.3
Oil and grease	4.66	4.66
TSS	6.99	5.60
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(g) *Surface treatment rinse.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pound pers million off-pounds) of magnesium surface treated	
Chromium	0.700	0.264
Zinc	1.93	0.794
Ammonia	252	111
Fluoride	113	49
Oil and grease	18.9	18.9
TSS	28.4	22.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times

(h) *Sawing or grinding spent emulsions.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.007	0.003
Zinc	0.020	0.008
Ammonia	2.60	1.15
Fluoride	1.16	0.575
Oil and grease	0.195	0.195
TSS	0.293	0.234
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Degreasing spent Solvents—Subpart B—NSPS.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.229	0.093
Zinc	0.632	0.260
Ammonia	82.5	36.3
Fluoride	36.9	16.4
Oil and grease	6.19	6.19
TSS	9.29	7.43
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 471.24 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in magnesium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium rolled with emulsions	
Chromium	0.033	0.014
Zinc	0.109	0.046
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants—Subpart B—PSE.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cooled with water	
Chromium	0.127	0.052
Zinc	0.422	0.177
Ammonia	38.5	17.0
Fluoride	17.2	7.63

(d) *Forging equipment cleaning wastewater.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0007
Zinc	0.006	0.003
Ammonia	0.532	0.234
Fluoride	0.238	0.106

(e) *Direct chill casting contact cooling water.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.74	0.711
Zinc	5.77	2.41
Ammonia	527	232
Fluoride	235	105

(f) *Surface treatment spent baths.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.205	0.084
Zinc	0.681	0.285
Ammonia	62.1	27.9
Fluoride	27.8	12.3

(g) *Surface treatment rinse.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.832	0.340
Zinc	2.76	1.16

SUBPART B—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	252	111
Fluoride	113	49.9

(h) *Sawing or grinding spent emulsions.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.009	0.004
Zinc	0.029	0.102
Ammonia	2.60	1.15
Fluoride	1.16	0.515

(i) *Degreasing Spent Solvents—Subpart B—PSES.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.273	0.112
Zinc	0.904	0.378
Ammonia	8.25	36.3
Fluoride	36.9	16.4

§ 471.25 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in magnesium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent emulsions.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.028	0.011
Zinc	0.076	0.032
Ammonia	9.95	4.37
Fluoride	4.44	1.97

(b) *Forging spent lubricants—Subpart B—PSNS.* There shall be no discharge of process wastewater pollutants.

(c) *Forging contact cooling water.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged magnesium cooled with water	
Chromium	0.107	0.044
Zinc	0.295	0.122
Ammonia	38.5	17.0
Fluoride	17.2	7.63

(d) *Forging equipment cleaning wastewater.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium forged	
Chromium	0.002	0.0006
Zinc	0.004	0.002
Ammonia	0.532	0.234
Fluoride	0.238	0.106

(e) *Direct chill casting contact cooling water.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium cast with direct chill methods	
Chromium	1.46	0.593
Zinc	4.03	1.66
Ammonia	527	232
Fluoride	235	105

(f) *Surface treatment spent baths.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.173	0.070
Zinc	0.476	0.196
Ammonia	62.1	27.3
Fluoride	27.6	12.3

(g) *Surface treatment rinse.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium surface treated	
Chromium	0.700	0.284
Zinc	1.93	0.794
Ammonia	252	111
Fluoride	113	49.9

(h) *Sawing or grinding spent emulsions.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sawed or ground	
Chromium	0.007	0.003
Zinc	0.020	0.008
Ammonia	2.60	1.15
Fluoride	1.16	0.515

(i) *Degreasing spent solvents—Subpart B—PSNS.* There shall be no discharge of process wastewater pollutants.

(j) *Wet air pollution control scrubber blowdown.*

SUBPART B—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of magnesium sanded and repaired or forged	
Chromium	0.229	0.093
Zinc	0.632	0.260
Ammonia	82.5	36.3
Fluoride	36.9	16.4

§ 471.26 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart C—Nickel-Cobalt Forming Subcategory

§ 471.30 Applicability; description of the nickel-cobalt forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the nickel-cobalt forming subcategory.

§ 471.31 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.075	0.031
Nickel	0.327	0.216
Fluoride	10.1	4.49
Oil and grease	3.4	2.04
TSS	6.97	3.32
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	1.66	0.679
Nickel	7.24	4.79
Fluoride	22.5	99.6
Oil and grease	75.4	45.3
TSS	155	73.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tube reducing spent lubricant—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants

(f) *Drawing spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.042	0.017
Nickel	0.183	0.121
Fluoride	5.66	2.52

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	1.91	1.15
TSS	3.91	1.86
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion spent lubricants—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt heat treated	
Chromium	0.037	0.015
Nickel	0.160	0.106
Fluoride	4.95	2.20
Oil and grease	1.67	0.999
TSS	3.41	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.102	0.042
Nickel	0.446	0.295
Fluoride	13.8	6.13
Oil and grease	4.64	2.79
TSS	9.51	4.53
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging equipment cleaning wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.018	0.007
Nickel	0.077	0.051
Fluoride	2.38	1.06
Oil and grease	0.800	0.480
TSS	1.640	0.780
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Forging contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	108	44.1
Nickel	471	311
Fluoride	14,600	6,470
Oil and grease	4,900	2,940
TSS	10,100	4,780
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.083	0.034
Nickel	0.359	0.238
Fluoride	11.2	4.94
Oil and grease	3.74	2.25
TSS	7.67	3.65
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Forging spent lubricants—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting methods	
Chromium	5.33	2.18
Nickel	23.3	15.4
Fluoride	720	320
Oil and grease	242	145
TSS	496	236
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Vacuum melting steam condensate—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	1.16	0.472
Nickel	5.03	3.33

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	156	69.2
Oil and grease	52.4	31.5
TSS	108	51.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.357	0.146
Nickel	1.56	1.03
Fluoride	48.2	21.4
Oil and grease	16.2	9.72
TSS	33.2	15.8
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Surface treatment spent baths.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.412	0.169
Nickel	1.80	1.19
Fluoride	55.7	24.7
Oil and grease	18.7	11.2
TSS	38.4	18.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Surface treatment rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	10.4	4.25
Nickel	45.3	30.0
Fluoride	1410	623
Oil and grease	472	283
TSS	968	460
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Alkaline cleaning spent baths.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.105	0.006
Nickel	0.065	0.043
Fluoride	2.02	0.895
Oil and grease	0.678	0.407
TSS	1.39	0.661
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(v) *Alkaline cleaning rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	1.03	0.420
Nickel	4.46	2.96
Fluoride	139	61.5
Oil and grease	46.6	28.0
TSS	95.6	45.5
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(w) *Molten salt rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.550	0.225
Nickel	2.40	1.59
Fluoride	74.4	33.0
Oil and grease	25.0	15.0
TSS	51.3	24.5
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(x) *Ammonia rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.007	0.003
Nickel	0.029	0.019
Fluoride	0.881	0.391
Oil and grease	0.296	0.176
TSS	0.607	0.289
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(y) *Sawing or grinding spent emulsions.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.018	0.007
Nickel	75.8	50.1
Fluoride	2,350	1,040
Oil and grease	788	472
TSS	1,620.4	769
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(z) *Sawing or grinding rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.797	0.326
Nickel	3.48	2.30
Fluoride	108	47.8
Oil and grease	36.2	21.7
TSS	74.2	35.3
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(aa) *Steam Cleaning Condensate.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.013	0.006
Nickel	0.058	0.039
Fluoride	1.79	0.795
Oil and grease	0.602	0.361
TSS	1.24	0.587
pH		(1)

(1) Within the range of 7.5 to 10.0 at all times.

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—BPT.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.004	0.019
Nickel	0.409	0.271

SUBPART C—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	12.7	5.03
Oil and grease	4.26	2.56
TSS	8.74	4.16
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(ee) *Electrocoating rinse.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.48	0.607
Nickel	6.47	4.28
Fluoride	201	89.0
Oil and grease	67.4	40.5
TSS	138	65.7
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(ff) *Miscellaneous wastewater sources.*

SUBPART C—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.108	0.044
Nickel	0.473	0.313
Fluoride	14.7	6.50
Oil and grease	4.92	2.95
TSS	10.1	4.80
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 471.32 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.063	0.026

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.094	0.063
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.026	0.011
Nickel	0.042	0.028
Fluoride	4.49	1.99

(d) *Tube reducing spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.015
Nickel	0.053	0.036
Fluoride	5.68	2.52

(g) *Extrusion spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.048	0.031
Fluoride	4.95	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.086	0.034
Nickel	0.128	0.066
Fluoride	13.8	6.13

(j) *Forging equipment cleaning wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.0006
Nickel	0.002	0.002
Fluoride	0.238	0.106

(k) *Forging contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.46	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.069	0.028
Nickel	.103	0.069
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting methods	
Chromium	0.448	0.182
Nickel	.666	.448

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	72.0	32.0

(o) *Vacuum melting steam condensate—Subpart C—BAT.* There shall be no allowance for the discharge of wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.393
Nickel	1.44	.970
Fluoride	156	69.2

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—BAT.* There shall be no allowance for the discharge of wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.122
Nickel	.446	.300
Fluoride	46.2	2.20

(s) *Surface treatment spent baths.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	0.141
Nickel	.514	.346
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.873	0.354
Nickel	1.30	873

SUBPART C—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	141	62.3

(u) *Alkaline cleaning spent baths.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.103
Fluoride	2.02	0.895

(v) *Alkaline cleaning rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.086	0.035
Nickel	0.128	0.086
Fluoride	13.9	6.15

(w) *Molten salt rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.019
Nickel	0.069	0.047
Fluoride	7.44	3.30

(x) *Ammonia rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.002
Nickel	0.019	0.008
Fluoride	0.881	0.391

(y) *Sawing or grinding spent emulsions.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.015	0.006
Nickel	0.022	0.015
Fluoride	2.35	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78

(aa) *Steam cleaning condensate.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.005
Nickel	0.017	0.011
Fluoride	1.79	0.795

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—BAT.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—BAT.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.094	0.039
Nickel	0.409	0.271
Fluoride	12.7	5.63

(ee) *Electrocoating rinse.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.25	0.506
Nickel	1.88	1.25
Fluoride	201	89.0

(ff) *Miscellaneous wastewater sources.*

SUBPART C—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.136	0.091
Fluoride	14.7	6.50

§ 471.33 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the nickel-cobalt forming process wastewater shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.063	0.028
Nickel	0.094	0.063
Fluoride	10.1	4.49
Oil and grease	1.70	1.70
TSS	2.55	2.04
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.028	0.012
Nickel	0.042	0.028
Fluoride	4.49	1.99
Oil and grease	0.754	0.754
TSS	1.13	0.905
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Tube reducing spent lubricant—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.015
Nickel	0.053	0.036
Fluoride	5.58	2.52
Oil and grease	0.954	0.954
TSS	1.43	1.15
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Extrusion spent lubricants—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.046	0.031
Fluoride	4.95	2.20
Oil and grease	0.832	0.832
TSS	1.25	0.999
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.096	0.035
Nickel	0.128	0.056
Fluoride	13.8	6.13
Oil and grease	2.32	2.32
TSS	3.48	2.79
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging equipment cleaning wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.00006
Nickel	0.002	0.002
Fluoride	0.236	0.106
Oil and grease	0.040	0.040
TSS	0.060	0.048
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Forging contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.46	0.647
Oil and grease	0.245	0.245
TSS	0.368	0.294
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.069	0.028
Nickel	0.103	0.069
Fluoride	11.2	4.94
Oil and grease	1.87	1.87
TSS	2.81	2.25
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Forging spent lubricants—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary casting methods	
Chromium	0.448	0.182
Nickel	0.666	0.448
Fluoride	72.0	32.0
Oil and grease	12.1	12.1
TSS	18.2	14.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Vacuum melting steam condensate—Subpart C—NSPS.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.393
Nickel	1.44	0.970
Fluoride	156	69.2
Oil and grease	26.2	26.2
TSS	39.3	31.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—NSPS.* There shall be no allowance for the discharge of process wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.122
Nickel	0.450	0.300
Fluoride	48.2	21.4
Oil and grease	8.1	8.1
TSS	12.2	9.72
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Surface treatment spent baths.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.348	0.141
Nickel	0.515	0.348
Fluoride	55.7	24.7
Oil and grease	9.35	9.35
TSS	14.1	11.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Surface treatment rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.874	0.354
Nickel	1.30	0.873
Fluoride	141	62.3

SUBPART C—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	23.6	23.6
TSS	35.4	26.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Alkaline cleaning spent baths.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	2.02	0.895
Oil and grease	0.339	0.339
TSS	0.509	0.407
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Alkaline cleaning rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.086	0.035
Nickel	.128	.086
Fluoride	13.9	6.15
Oil and grease	2.33	2.33
TSS	3.50	2.80
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Molten salt rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.019
Nickel	.069	.047
Fluoride	7.44	3.30
Oil and grease	1.25	1.25
TSS	1.88	1.50
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Ammonia rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.002
Nickel	.008	.006

SUBPART C—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	.881	.391
Oil and grease	.148	.148
TSS	222	178
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Sawing or grinding spent emulsions.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground	
Chromium	0.015	0.006
Nickel	.002	.015
Fluoride	2.35	1.04
Oil and grease	.394	.394
TSS	591	473
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(z) *Sawing or grinding rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.057	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78
Oil and grease	1.81	1.81
TSS	2.72	217
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(aa) *Steam cleaning condensate.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.005
Nickel	0.017	0.011
Fluoride	1.79	0.795
Oil and grease	0.301	0.301
TSS	0.452	0.361
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents.—Subpart C—NSPS.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.079	0.032
Nickel	0.117	0.079
Fluoride	12.7	5.63
Oil and grease	2.13	2.13
TSS	3.20	2.56
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ee) *Electrocoating rinse.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.25	0.506
Nickel	1.86	1.25
Fluoride	201	89.0
Oil and grease	33.7	33.7
TSS	50.6	40.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(ff) *Miscellaneous wastewater sources.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.136	0.091
Fluoride	14.7	6.50
Oil and grease	2.46	2.46
TSS	3.69	2.95
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

§ 471.34 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in nickel-cobalt forming wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.063	0.026
Nickel	0.094	0.063
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.026	0.011
Nickel	0.042	0.028
Fluoride	4.49	1.99

(d) *Tube reducing spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.014
Nickel	0.053	0.036
Fluoride	5.68	2.52

(g) *Extrusion spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.046	0.031
Fluoride	4.95	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.086	0.034
Nickel	0.128	0.086
Fluoride	10.9	6.13

(j) *Forging equipment cleaning wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.0006
Nickel	0.002	0.002
Fluoride	0.238	0.106

(k) *Forging contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.46	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.069	0.028
Nickel	0.103	0.069
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary methods	
Chromium	0.446	0.182
Nickel	0.666	0.446

SUBPART C—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	72.0	32.0

(o) *Vacuum melting steam condensate—Subpart C—PSES.* There shall be no allowance for the discharge of wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.393
Nickel	1.44	0.970
Fluoride	156	69.2

(q) *Annealing and solution heat treatment contact cooling water—Subpart C—PSES.* There shall be no allowance for the discharge of wastewater pollutants.

(r) *Wet air pollution control scrubber blowdown.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.122
Nickel	0.446	0.300
Fluoride	48.2	2.20

(s) *Surface treatment spent baths.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	0.141
Nickel	0.514	0.346
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.873	0.354
Nickel	1.30	0.873

SUBPART C—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	1.41	62.3

(u) *Alkaline cleaning spent baths.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	2.02	0.895

(v) *Alkaline cleaning rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.086	0.035
Nickel	0.128	0.086
Fluoride	13.9	6.15

(w) *Molten salt rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.019
Nickel	0.069	0.047
Fluoride	7.44	3.30

(x) *Ammonia rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.002
Nickel	0.019	0.008
Fluoride	0.881	0.391

(y) *Sawing or grinding spent emulsions.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.015	0.006
Nickel	0.022	0.015
Fluoride	2.35	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78

(aa) *Steam cleaning condensate.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.005
Nickel	0.017	0.011
Fluoride	1.79	0.795

(bb) *Hydrostatic Tube Testing and Ultrasonic Testing Wastewater—Subpart C—PSES.* There shall be no allowance for the discharge of process wastewater pollutants.

(cc) *Degreasing Spent Solvents—Subpart C—PSES.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye Penetrant Testing Wastewater.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.094	0.039
Nickel	0.409	0.271
Fluoride	12.7	5.63

(ee) *Electrocoating rinse.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.25	0.506
Nickel	1.86	1.25
Fluoride	201	89.0

(ff) *Miscellaneous wastewater sources.*

SUBPART C—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.136	0.091
Fluoride	14.7	6.50

§ 471.35 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in nickel-cobalt forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with emulsions	
Chromium	0.063	0.026
Nickel	0.094	0.063
Fluoride	10.1	4.49

(c) *Rolling contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt rolled with water	
Chromium	0.028	0.012
Nickel	0.042	0.028
Fluoride	4.49	1.99

(d) *Tube reducing spent lubricant—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Drawing spent neat oils—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(f) *Drawing spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt drawn with emulsions	
Chromium	0.036	0.015
Nickel	0.053	0.036
Fluoride	5.66	2.52

(g) *Extrusion spent lubricants—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(h) *Extrusion press or solution heat treatment contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded nickel-cobalt heat treated	
Chromium	0.031	0.013
Nickel	0.046	0.031
Fluoride	4.95	2.20

(i) *Extrusion press hydraulic fluid leakage.*

SUBPART C—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt extruded	
Chromium	0.086	0.034
Nickel	0.128	0.086
Fluoride	13.8	6.13

(j) *Forging equipment cleaning wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.002	0.0006
Nickel	0.002	0.002
Fluoride	0.238	0.106

(k) *Forging contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged nickel-cobalt cooled with water	
Chromium	0.009	0.004
Nickel	0.014	0.009
Fluoride	1.46	0.647

(l) *Forging press hydraulic fluid leakage.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt forged	
Chromium	0.069	0.028
Nickel	0.103	0.069
Fluoride	11.2	4.94

(m) *Forging spent lubricants—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(n) *Stationary casting contact cooling water.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt cast with stationary methods	
Chromium	0.448	0.182
Nickel	0.666	0.448
Fluoride	72.0	32.0

(o) *Vacuum melting steam condensate—Subpart C—PSNS.* There shall be no allowance for the discharge of process wastewater pollutants.

(p) *Metal powder production atomization wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt metal powder atomized	
Chromium	0.970	0.393
Nickel	1.44	0.970
Fluoride	156	69.2

(q) *Annealing and Solution Heat Treatment Contact Cooling Water—Subpart C—PSNS.* There shall be no allowance for the discharge of process wastewater pollutant.

(r) *Wet Air Pollution Control Scrubber Blowdown.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.300	0.122
Nickel	0.450	0.300
Fluoride	48.2	21.4

(s) *Surface treatment spent baths.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.346	0.141
Nickel	0.515	0.346
Fluoride	55.7	24.7

(t) *Surface treatment rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt surface treated	
Chromium	0.874	0.354
Nickel	1.30	0.873
Fluoride	141	62.3

(u) *Alkaline cleaning spent baths.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.013	0.005
Nickel	0.019	0.013
Fluoride	2.02	0.895

(v) *Alkaline cleaning rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt alkaline cleaned	
Chromium	0.086	0.035
Nickel	0.126	0.066
Fluoride	13.9	6.15

(w) *Molten salt rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with molten salt	
Chromium	0.047	0.019
Nickel	0.069	0.047
Fluoride	7.44	3.30

(x) *Ammonia rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt treated with ammonia solution	
Chromium	0.006	0.002
Nickel	0.008	0.006
Fluoride	0.881	0.391

(y) *Sawing or grinding spent emulsions.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt sawed or ground with emulsions	
Chromium	0.015	0.006
Nickel	0.022	0.015
Fluoride	2.35	1.04

(z) *Sawing or grinding rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground nickel-cobalt rinsed	
Chromium	0.067	0.027
Nickel	0.100	0.067
Fluoride	10.8	4.78

(aa) *Steam cleaning condensate.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt steam cleaned	
Chromium	0.011	0.005
Nickel	0.017	0.011
Fluoride	1.79	0.795

(bb) *Hydrostatic tube testing and ultrasonic testing wastewater—Subpart C—PSNS.* There shall be no allowance discharge of process wastewater pollutants.

(cc) *Degreasing spent solvents—Subpart C—PSNS.* There shall be no discharge of process wastewater pollutants.

(dd) *Dye penetrant testing wastewater.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt tested with dye penetrant method	
Chromium	0.094	0.039
Nickel	0.409	0.271
Fluoride	12.7	5.63

(ee) *Electrocoating rinse.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt electrocoated	
Chromium	1.25	0.506
Nickel	1.86	0.125
Fluoride	201	89.0

(ff) *Miscellaneous wastewater sources.*

SUBPART C—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of nickel-cobalt formed	
Chromium	0.091	0.037
Nickel	0.136	0.091
Fluoride	14.7	6.50

§ 471.36 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart D—Precious Metals Forming Subcategory

§ 471.40 Applicability; description of the precious metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the precious metals forming subcategory.

§ 471.41 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Chromium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013
Oil and grease	1.54	0.925
TSS	3.16	1.51
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008
Oil and grease	0.950	0.570
TSS	1.95	0.926
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.001	0.0006
Oil and grease	0.063	0.038
TSS	0.128	0.061

SUBPART D—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.70
Cyanide	1.94	0.802
Silver	2.70	1.14
Oil and grease	134	80.2
TSS	274	130
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Heat treatment contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded precious metals heat treated	
Cadmium	1.42	0.626
Copper	7.98	4.17
Cyanide	1.21	0.501
Silver	1.71	0.709
Oil and grease	83.4	50.1
TSS	171	81.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Semi-continuous or continuous casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	3.50	1.55
Copper	19.6	10.3
Cyanide	2.99	1.24
Silver	4.23	1.75
Oil and grease	206	124
TSS	423	209
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Stationary casting contact cooling water—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	3.67	1.62
Copper	20.5	10.8
Cyanide	3.13	1.30
Silver	4.43	1.84
Oil and grease	216	130
TSS	443	211
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot casting contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	1.25	0.551
Copper	6.96	3.67
Cyanide	1.07	0.441
Silver	1.51	0.624
Oil and grease	73.4	44.1
TSS	151	71.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Wet air pollution control scrubber blowdown—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal preesure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014
Oil and grease	1.67	1.00
TSS	3.43	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment spent baths.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017
Oil and grease	1.93	1.16
TSS	3.95	1.88

SUBPART D—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Surface treatment rinse.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.970	0.430
Copper	5.4	2.80
Cyanide	0.820	0.340
Silver	1.20	0.480
Oil and grease	57.0	34.0
TSS	120	55.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART D—BPT

Pollutant or pollutsnt property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010
Oil and grease	1.20	0.720
TSS	2.46	1.170
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	3.81	1.69
Copper	21.3	11.2
Cyanide	3.26	1.35
Silver	4.59	1.91
Oil and grease	224	13.5
TSS	459	219
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	3.95	1.74
Copper	22.1	11.6
Cyanide	3.37	1.39
Silver	4.76	1.97
Oil and grease	232	139
TSS	476	226
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling or burnishing wastewater.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	4.12	1.82
Copper	23.0	12.1
Cyanide	3.51	1.45
Silver	4.96	2.06
Oil and grease	242	145
TSS	496	236
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.094
Cyanide	0.027	0.011
Silver	0.039	0.016
Oil and grease	1.87	1.12
TSS	3.83	1.82
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Degreasing spent solvents—Subpart D—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.42 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart D—BAT.* There shall be no discharge of wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.028	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0

(c) *Drawing spent neat oils—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008

(e) *Drawing spent soap solutions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.008	0.003
Cyanide	0.0009	0.0004
Silver	0.002	0.0006

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.68
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071
Gold		

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	1.03
Cyanide	0.299	0.124
Silver	0.423	0.175

(i) *Stationary casting contact cooling water—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

Subpart D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.3676	0.162
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.698	0.367
Cyanide	0.107	0.044
Silver	0.151	0.063

(l) *Wet air pollution control scrubber blowdown—Subpart D—BAT.* There

shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal pressure bonded	
Cadmium	0.0297	0.013
Copper	0.159	0.064
Cyanide	0.0247	0.010
Silver	0.0342	0.014

(n) *Surface treatment spent baths.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.093	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105

(p) *Alkaline cleaning spent baths.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.381	0.168
Copper	2.13	1.12
Cyanide	0.325	0.135
Silver	0.459	0.191

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.210	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.300	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.0327	0.014
Copper	0.178	0.094
Cyanide	0.0277	0.011
Silver	0.0381	0.016

(v) *Degreasing spent solvents—Subpart D—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.43 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling Spent Neat Oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013
Oil and grease	1.54	0.926
TSS	3.16	1.51
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.017	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008
Oil and grease	0.950	0.570
TSS	1.95	0.927
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Drawing spent soap solutions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.009	0.0004
Silver	0.002	0.006
Oil and grease	0.063	0.035
TSS	0.128	0.061
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Metal powder production atomization wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.68
Cyanide	1.94	0.802
Silver	2.74	1.14
Oil and grease	134	80.2
TSS	274	131
pH	(1)	(1)

[1] Within the ranges of 7.5 to 10.0 at all times.

(g) *Heat treatment contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071
Oil and grease	8.34	5.01
TSS	17.1	8.13
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	1.03
Cyanide	0.299	0.124
Silver	0.423	0.175
Oil and grease	20.6	12.4
TSS	42.3	20.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Stationary casting contact cooling water—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.367	0.162
Copper	2.05	1.08

SUBPART D—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	0.313	0.130
Silver	0.443	0.184
Oil and grease	21.6	13.0
TSS	443	21.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Shot casting contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.898	0.367
Cyanide	0.107	0.044
Silver	0.151	0.063
Oil and grease	7.34	4.41
TSS	15.1	7.16
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Wet air pollution control scrubber blowdown—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014
Oil and grease	1.67	1.00
TSS	3.43	1.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment spent baths.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.028	0.012
Silver	0.040	0.017
Oil and grease	1.93	1.16
TSS	3.95	1.88
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Surface treatment rinse.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105
Oil and grease	12.3	7.39
TSS	25.3	12.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010
Oil and grease	1.20	0.720
TSS	2.46	1.17
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.381	0.166
Copper	2.13	1.112
Cyanide	0.325	0.135
Silver	0.459	0.191
Oil and grease	22.4	13.5
TSS	45.9	21.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Alkaline cleaning pre-bonding wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.21	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197
Oil and grease	23.2	13.9
TSS	47.6	22.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling or burnishing wastewater.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.30	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206
Oil and grease	24.2	14.5
TSS	49.6	23.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.094
Cyanide	0.027	0.011
Silver	0.038	0.016
Oil and grease	1.87	1.12
TSS	2.83	1.82
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Degreasing spent solvents—Subpart D—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.44 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1985 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in precious metals forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013

(c) *Drawing spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.0048
Cyanide	0.014	0.006
Silver	0.020	0.008

(e) *Drawing spent soap solutions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.002	0.0006

(f) *Metal powder production atomization wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00
Copper	12.7	6.58
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	1.03
Cyanide	0.299	0.124
Silver	0.423	0.175

(i) *Stationary casting contact cooling water—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.367	0.162
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.696	0.367
Cyanide	0.107	0.044
Silver	0.151	0.063

(l) *Wet air pollution control scrubber blowdown—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metal and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014

(n) *Surface treatment spent baths.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.028	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105

(p) *Alkaline cleaning spent baths.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.018	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.381	0.168
Copper	2.13	1.12
Cyanide	0.325	0.135

SUBPART D—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Silver	0.459	0.191

(r) *Alkaline cleaning prebonding wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.210	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.300	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—PSES.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.094
Cyanide	0.027	0.011
Silver	0.038	0.016

(v) *Degreasing spent solvents—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.45 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in precious metals forming wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals rolled with emulsions	
Cadmium	0.026	0.012
Copper	0.147	0.077
Cyanide	0.023	0.010
Silver	0.032	0.013

(c) *Drawing spent neat oils—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Drawing spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with emulsions	
Cadmium	0.016	0.007
Copper	0.091	0.048
Cyanide	0.014	0.006
Silver	0.020	0.008

(e) *Drawing spent soap solutions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals drawn with soap solutions	
Cadmium	0.001	0.0005
Copper	0.006	0.003
Cyanide	0.0009	0.0004
Silver	0.002	0.0006

(f) *Metal powder production wet atomization wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals powder wet atomized	
Cadmium	2.27	1.00

SUBPART D—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	12.7	6.68
Cyanide	1.94	0.802
Silver	2.74	1.14

(g) *Heat treatment contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extended precious metals heat treated	
Cadmium	0.142	0.063
Copper	0.793	0.417
Cyanide	0.121	0.050
Silver	0.171	0.071

(h) *Semi-continuous and continuous casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the semi-continuous or continuous method	
Cadmium	0.350	0.155
Copper	1.96	0.529
Cyanide	0.299	0.124
Silver	0.423	0.175

(i) *Stationary casting contact cooling water—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(j) *Direct chill casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals cast by the direct chill method	
Cadmium	0.367	0.162
Copper	2.05	1.08
Cyanide	0.313	0.130
Silver	0.443	0.184

(k) *Shot casting contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals shot cast	
Cadmium	0.125	0.055
Copper	0.698	0.367
Cyanide	0.107	0.044
Silver	0.151	0.0631

(l) *Wet air pollution control scrubber blowdown—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(m) *Pressure bonding contact cooling water.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal pressure bonded	
Cadmium	0.029	0.013
Copper	0.159	0.084
Cyanide	0.024	0.010
Silver	0.034	0.014

(n) *Surface treatment spent baths.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.033	0.015
Copper	0.183	0.097
Cyanide	0.026	0.012
Silver	0.040	0.017

(o) *Surface treatment rinse.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals surface treated	
Cadmium	0.210	0.093
Copper	1.17	0.616
Cyanide	0.179	0.074
Silver	0.253	0.105

(p) *Alkaline cleaning spent baths.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.021	0.009
Copper	0.114	0.060
Cyanide	0.011	0.007
Silver	0.025	0.010

(q) *Alkaline cleaning rinse.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals alkaline cleaned	
Cadmium	0.361	0.168
Copper	2.13	1.12
Cyanide	0.325	0.135
Silver	0.459	0.191

(r) *Alkaline cleaning pre-bonding wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals and base metal cleaned prior to bonding	
Cadmium	0.400	0.174
Copper	2.21	1.16
Cyanide	0.337	0.139
Silver	0.476	0.197

(s) *Tumbling or burnishing wastewater.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals tumbled or burnished	
Cadmium	0.412	0.182
Copper	2.30	1.21
Cyanide	0.351	0.145
Silver	0.496	0.206

(t) *Sawing or grinding spent neat oils—Subpart D—PSNS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART D—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of precious metals sawed or ground with emulsions	
Cadmium	0.032	0.014
Copper	0.178	0.094
Cyanide	0.027	0.011
Silver	0.038	0.016

(v) *Degreasing spent solvents—Supart D—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.46 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart E—Refractory Metals Forming Subcategory

§ 471.50 Applicability; description of the refractory metals forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the refractory metals forming subcategory.

§ 471.51 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.815	0.429
Nickel	0.824	0.545
Fluoride	25.5	11.3
Molybdenum	2.64	1.47
Oil and grease	8.58	5.15
TSS	17.6	8.37
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	2.26	1.19
Nickel	2.29	1.51
Fluoride	70.8	31.4
Molybdenum	7.87	4.07
Oil and grease	23.8	14.3
TSS	48.8	23.2
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Forging spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.614	0.323
Nickel	0.620	0.410
Fluoride	19.2	8.53
Molybdenum	2.14	1.11
Oil and grease	6.46	3.86
TSS	13.3	6.30
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Equipment cleaning wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.790	0.420
Nickel	0.800	0.530
Fluoride	25.0	11.0
Molybdenum	0.850	0.380
Oil and grease	8.30	5.00
TSS	17.0	8.10
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Metal powder production wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.534	0.261
Nickel	0.540	0.357
Fluoride	16.70	7.42
Molybdenum	6.99	4.65
Oil and grease	5.62	3.37
TSS	11.5	5.48
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Metal powder production floor wash wastewater—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.739	0.389
Nickel	0.747	0.494
Fluoride	23.2	10.3
Molybdenum	2.57	1.33
Oil and grease	7.78	4.68
TSS	18.0	7.59
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(m) *Surface treatment rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	230	121
Nickel	232	154
Fluoride	7,200	3,200
Molybdenum	800	414
Oil and grease	2,420	1,450
TSS	4,960	2,360
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(n) *Alkaline cleaning spent baths.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.635	0.334

SUBPART E—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.641	0.424
Fluoride	19.9	8.82
Molybdenum	2.21	1.14
Oil and grease	6.68	4.01
TSS	13.7	6.51
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Alkaline cleaning rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	1,550	816
Nickel	1,570	1,040
Fluoride	48,600	21,600
Molybdenum	5,400	2,790
Oil and grease	16,300	9,790
TSS	33,500	15,900
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Molten salt rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	12.1	6.33
Nickel	12.2	8.04
Fluoride	377	167
Molybdenum	41.9	2.17
Oil and grease	127	76.0
TSS	260	124
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Tumbling or burnishing wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	23.8	12.5
Nickel	24.0	15.9
Fluoride	744	330
Molybdenum	82.7	42.8
Oil and grease	25.0	150
TSS	513	244
pH	(1)	(1)

Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding spent neat oils—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.565	0.297
Nickel	0.570	0.377
Fluoride	17.7	7.84
Molybdenum	1.97	1.02
Oil and grease	5.94	3.57
TSS	12.2	5.79
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding contact cooling water.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	46.2	24.3
Nickel	46.7	30.9
Fluoride	1450	642
Molybdenum	161	83.1
Oil and grease	486	292
TSS	997	474
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Sawing or grinding rinse.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sewed or ground refractory metals rinsed	
Copper	0.257	0.135
Nickel	0.259	0.172
Fluoride	8.03	3.57
Molybdenum	0.893	0.462
Oil and grease	2.70	1.62
TSS	5.54	2.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground, surface coated or surface treated	
Copper	1.50	0.787
Nickel	1.51	1.00
Fluoride	46.8	20.8
Molybdenum	5.20	2.69
Oil and grease	15.8	9.45
TSS	32.3	15.4

SUBPART E—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Miscellaneous wastewater sources.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.28	1.18
Oil and grease	6.9	4.14
TSS	14.2	6.73
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Dye penetrant testing wastewater.*

SUBPART E—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tested	
Copper	0.150	0.078
Nickel	0.150	0.099
Fluoride	4.60	2.00
Molybdenum	0.160	0.071
Oil and grease	1.60	0.930
TSS	3.20	1.50
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart E—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.52 Effluent limitations representating the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E-BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.549	0.262
Nickel	0.236	0.157
Fluoride	25.5	11.3
Molybdenum	2.16	0.957

(c) *Drawing spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.5	0.730
Nickel	0.650	0.440
Fluoride	71.000	31.0
Molybdenum	0.820	0.360

(f) *Forging spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.020
Nickel	0.018	0.012
Fluoride	1.92	0.853
Molybdenum	0.163	0.072

(h) *Equipment cleaning wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.083
Nickel	0.075	0.051
Fluoride	8.09	3.59
Molybdenum	0.684	0.303

(i) *Metal powder production wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.360	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627

(j) *Metal powder production floor wash wastewater—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.3
Molybdenum	1.96	0.868

(m) *Surface treatment rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	7.38
Nickel	6.66	4.48
Fluoride	720	320
Molybdenum	60.9	27.0

(n) *Alkaline cleaning spent baths.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.428	0.204
Nickel	0.184	0.124
Fluoride	19.9	8.82
Molybdenum	1.68	0.745

(o) *Alkaline cleaning rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	486	216
Molybdenum	41.1	18.2

(p) *Molten salt rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.810	0.386
Nickel	0.348	0.234
Fluoride	37.7	16.7
Molybdenum	1.41	3.19

(q) *Tumbling or burnishing wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.60	0.763
Nickel	0.658	0.463
Fluoride	74.4	33.0
Molybdenum	6.29	2.79

(r) *Sawing or grinding spent neat oils—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.380	0.181
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.50	0.663

(t) *Sawing or grinding contact cooling water.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	1.48
Nickel	1.34	0.899
Fluoride	145.0	64.2
Molybdenum	12.2	5.42

(u) *Sawing or grinding rinse.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.018	0.009
Nickel	0.008	0.005
Fluoride	0.803	0.350
Molybdenum	0.068	0.030

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, surface coated or surface treated	
Copper	1.01	0.480
Nickel	0.433	0.291
Fluoride	46.8	20.8
Molybdenum	3.96	1.76

(w) *Miscellaneous wastewater sources.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.436
Fluoride	20.6	9.11
Molybderum	2.28	1.18

(x) *Dye penetrant testing wastewater.*

SUBPART E—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.010	0.005
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.018

(y) *Degreasing spent solvents—Subpart E—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.53 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.549	0.262
Nickel	0.236	0.159
Fluoride	25.5	11.3
Molybdenum	2.16	0.957
Oil and grease	4.29	4.29
TSS	6.44	5.15
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent lubricants.—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants.—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.53	0.726
Nickel	0.655	0.441
Fluorids	7.08	31.4
Molybdenum	5.99	2.66
Oil and grease	11.9	11.9
TSS	17.9	14.3
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Forging spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.320
Nickel	0.016	0.021
Fluoride	1.92	0.853
Molybdenum	0.163	0.072
Oil and grease	0.323	0.323
TSS	0.485	0.368
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Equipment cleaning wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.083
Nickel	0.075	0.051
Fluoride	8.09	3.59
Molybdenum	0.684	0.303
Oil and grease	1.36	1.36
TSS	2.04	1.63
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Metal powder production wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.360	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627
Oil and grease	2.81	2.81
TSS	4.22	3.37
pH	[1]	[1]

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Metal powder production floor wash wastewater—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.3
Molybdenum	1.96	0.868
Oil and grease	3.89	3.89
TSS	5.84	4.67
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Surface treatment rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	7.38
Nickel	6.66	4.48
Fluoride	720	320
Molybdenum	69.9	27.0
Oil and grease	121	121
TSS	182	145
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Alkaline cleaning spent baths.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.428	0.204
Nickel	.164	0.124
Fluoride	19.9	8.82
Molybdenum	1.68	0.745
Oil and grease	3.34	3.34
TSS	5.01	4.01
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Alkaline cleaning rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	486	216
Molybdenum	41.1	18.2
Oil and grease	81.6	81.6
TSS	123	97.9
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Molten salt rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.810	0.386
Nickel	0.348	0.234
Fluoride	37.7	16.7
Molybdenum	3.19	1.41
Oil and grease	6.33	6.33
TSS	9.5	7.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Tumbling or burnishing wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.60	0.763
Nickel	0.585	0.463
Fluoride	74.4	33.0
Molybdenum	6.29	2.79
Oil and grease	12.5	12.5
TSS	18.8	15.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding spent neat oils—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.380	0.181
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.5	0.663
Oil and grease	2.97	2.97
TSS	4.46	3.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding contact cooling water.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	1.48

SUBPART E—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	1.34	0.899
Fluoride	145	64.2
Molybdenum	12.2	5.42
Oil and grease	24.3	24.3
TSS	36.5	29.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(u) *Sawing or grinding rinse.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.018	0.009
Nickel	0.008	0.005
Fluoride	0.803	0.357
Molybdenum	0.068	0.030
Oil and grease	0.135	0.135
TSS	0.203	0.162
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Wet air pollution control scrubber blowdown.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, ground, surface coated or surface treated	
Copper	1.01	0.480
Nickel	0.433	0.291
Fluoride	46.8	20.8
Molybdenum	3.96	1.76
Oil and grease	7.67	7.87
TSS	11.8	9.45
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(w) *Miscellaneous wastewater sources.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.28	1.18
Oil and grease	6.9	4.14
TSS	14.2	8.73
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(x) *Dye penetrant testing wastewater.*

SUBPART E—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.010	0.005
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.018
Oil and grease	0.078	0.078
TSS	0.120	0.093
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.54 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in refractory metals forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.815	0.429
Nickel	0.824	0.545
Fluoride	25.5	11.4
Molybdenum	2.84	1.47

(c) *Drawing spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	2.26	1.19
Nickel	2.29	1.51
Fluoride	70.6	31.4
Molybdenum	7.87	4.07

(f) *Forging spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.062	0.033
Nickel	0.062	0.041
Fluoride	1.92	0.853
Molybdenum	0.214	0.111

(h) *Equipment cleaning wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.259	0.136
Nickel	0.261	0.173
Fluoride	8.09	3.59
Molybdenum	0.899	0.465

(i) *Metal powder production wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.534	0.281
Nickel	0.540	0.357
Fluoride	16.7	7.42
Molybdenum	1.86	0.961

(j) *Metal powder production floor wash wastewater—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.739	0.389
Nickel	0.747	0.494
Fluoride	23.2	10.3
Molybdenum	2.57	1.33

(m) *Surface treatment rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	23.0	12.1
Nickel	23.3	15.4
Fluoride	720	320
Molybdenum	80.0	41.4

(n) *Alkaline cleaning spent baths.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.635	0.334
Nickel	0.642	0.424
Fluoride	19.9	8.82
Molybdenum	2.21	1.14

(o) *Alkaline cleaning rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	15.5	8.16
Nickel	15.7	10.4
Fluoride	486.	216.0
Molybdenum	54.0	27.9

(p) *Molten salt rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	1.20	0.633
Nickel	1.22	0.804
Fluoride	37.7	16.7

SUBPART E—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	4.19	2.17

(q) *Tumbling or burnishing wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	2.38	1.25
Nickel	2.40	1.59
Fluoride	74.4	33.0
Molybdenum	8.27	4.28

(r) *Sawing or grinding spent neat oils—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.565	0.297
Nickel	0.570	0.377
Fluoride	17.7	7.84
Molybdenum	1.97	1.02

(t) *Sawing or grinding contact cooling water.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	4.62	2.43
Nickel	4.67	3.09
Fluoride	145.	64.2
Molybdenum	16.1	8.31

(u) *Sawing or grinding rinse.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.026	0.014

SUBPART E—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.026	0.017
Fluoride	0.804	0.357
Molybdenum	0.089	0.046

(v) *Wet air pollution control blowdown.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, surface coated or surface treated	
Copper	1.50	0.787
Nickel	1.51	1.00
Fluoride	48.9	20.8
Molybdenum	5.20	2.69

(w) *Miscellaneous wastewater sources.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.656	0.345
Nickel	0.663	0.438
Fluoride	20.6	9.11
Molybdenum	2.28	1.18

(x) *Dye penetrant testing wastewater.*

SUBPART E—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.015	0.006
Nickel	0.015	0.010
Fluoride	0.462	0.205
Molybdenum	0.052	0.027

(y) *Degreasing spent solvents—Subpart E—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.55 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in the refractory metals forming process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils and graphite based lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals rolled with emulsions	
Copper	0.549	0.262
Nickel	0.236	0.159
Fluoride	25.5	11.3
Molybdenum	2.16	0.957

(c) *Drawing spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent lubricants—Subpart E—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion press hydraulic fluid leakage.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals extruded	
Copper	1.53	0.726
Nickel	0.655	0.441
Fluoride	7.08	31.4
Molybdenum	5.99	2.66

(f) *Forging spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Forging contact cooling water.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged refractory metals cooled with water	
Copper	0.041	0.320
Nickel	0.018	0.021
Fluoride	1.92	0.853
Molybdenum	0.163	0.072

(h) *Equipment cleaning wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.174	0.083
Nickel	0.075	0.051
Fluoride	8.09	3.59
Molybdenum	0.684	0.303

(i) *Metal powder production wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals powder produced	
Copper	0.360	0.172
Nickel	0.155	0.104
Fluoride	16.7	7.42
Molybdenum	1.42	0.627

(j) *Metal powder production floor wash wastewater—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(k) *Metal powder pressing spent lubricants—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

(l) *Surface treatment spent baths.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	0.498	0.237
Nickel	0.214	0.144
Fluoride	23.2	10.3
Molybdenum	1.96	0.868

(m) *Surface treatment rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals surface treated	
Copper	15.5	7.38
Nickel	6.66	4.49
Fluoride	720	320
Molybdenum	60.9	27.0

(n) *Alkaline cleaning spent baths.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	0.428	0.204
Nickel	0.184	0.124
Fluoride	19.9	8.62
Molybdenum	1.66	0.745

(o) *Alkaline cleaning rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals alkaline cleaned	
Copper	10.5	4.98
Nickel	4.49	3.02
Fluoride	48.6	216
Molybdenum	41.1	18.2

(p) *Molten salt rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals treated with molten salt	
Copper	0.810	0.386
Nickel	0.348	0.234
Fluoride	37.7	16.7
Molybdenum	3.19	1.41

(q) *Tumbling or burnishing wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals tumbled or burnished	
Copper	1.60	0.763
Nickel	0.688	0.463
Fluoride	74.4	33.0
Molybdenum	6.29	2.79

(r) *Sawing or grinding spent neat oils—Subpart E—PSNS.* There shall be no discharge or process wastewater pollutants.

(s) *Sawing or grinding spent emulsions.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with emulsions	
Copper	0.380	0.181
Nickel	0.164	0.110
Fluoride	17.7	7.84
Molybdenum	1.50	0.663

(t) *Sawing or grinding contact cooling water.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed or ground with contact cooling water	
Copper	3.11	1.48
Nickel	1.34	0.899
Fluoride	145	64.2
Molybdenum	12.2	5.42

(u) *Sawing or grinding rinse.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground refractory metals rinsed	
Copper	0.018	0.009
Nickel	0.008	0.005
Fluoride	0.803	0.357
Molybdenum	0.068	0.030

(v) *Wet air pollution control blowdown.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals sawed, ground, surface coated or surface treated	
Copper	1.01	0.480
Nickel	0.433	0.291
Fluoride	46.8	20.8
Molybdenum	3.96	1.76

(w) *Miscellaneous wastewater source.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals formed	
Copper	0.556	0.345
Nickel	0.663	0.436
Fluoride	20.8	9.11
Molybdenum	2.28	1.16

(x) *Dye penetrant testing wastewater.*

SUBPART E—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals product tested	
Copper	0.010	0.005
Nickel	0.005	0.003
Fluoride	0.460	0.200
Molybdenum	0.039	0.018

(y) *Degreasing spend solvents—Subpart E—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.56 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart F—Titanium Forming Subcategory

§ 471.60 Applicability; description of the titanium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the titanium forming subcategory.

§ 471.61 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils.—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	1.4	0.566
Lead	2.05	0.976
Zinc	7.13	2.98
Ammonia	570	250
Fluoride	291	129
Oil and grease	97.0	58.0
TSS	200.0	95.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.074
Ammonia	37	16.0
Fluoride	4.28	1.9
Oil and grease	1.44	0.863
TSS	2.95	1.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70
Oil and grease	3.56	2.14
TSS	7.30	3.47
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Forging spent lubricants—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.560	0.240
Lead	0.840	0.400
Zinc	2.92	1.22
Ammonia	400	160
Fluoride	119	52.8
Oil and grease	40.0	24.0
TSS	82.0	39.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Forging equipment cleaning wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals forged	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.35
Fluoride	2.38	1.06
Oil and grease	0.800	0.480
TSS	1.64	0.780
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of refractory metals forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7
Oil and grease	20.2	12.1
TSS	41.4	19.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Tube reducing spent lubricants—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—BPT.* There shall be no allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.068	0.042
Zinc	0.304	0.127
Ammonia	21.0	9.40
Fluoride	12.4	5.49
Oil and grease	4.16	2.50
TSS	8.53	4.06
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	8.47	3.51
Lead	12.3	5.84
Zinc	42.7	13.0
Ammonia	3,890	1,710
Fluoride	1,740	771
Oil and grease	584	351
TSS	1,200	570
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.621	0.257
Lead	0.899	0.428
Zinc	3.13	1.31
Ammonia	285	126
Fluoride	128	56.5
Oil and grease	42.8	25.7
TSS	87.8	41.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32.0	14.1
Fluoride	14.3	6.34
Oil and grease	4.80	2.88
TSS	9.84	4.68
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.801	0.331
Lead	1.16	0.552
Zinc	4.03	1.69
Ammonia	370	160
Fluoride	164	72.9
Oil and grease	55.2	33.1
TSS	113	53.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(r) *Molten salt rinse.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	1.28	56.0
Fluoride	56.8	25.2
Oil and grease	19.1	11.5
TSS	39.2	18.6
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.229	0.095
Lead	0.332	0.158
Zinc	1.16	0.482
Ammonia	110	46
Fluoride	47.0	20.9
Oil and grease	15.8	9.48
TSS	32.4	15.4
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding of spent emulsions.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with an emulsion	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	6.60	2.90

SUBPART F—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	10.9	4.83
Oil and grease	3.66	2.20
TSS	7.51	3.57
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(v) *Sawing or grinding contact cooling water.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	1.38	0.571
Lead	2.00	0.952
Zinc	6.95	2.91
Ammonia	635	279
Fluoride	283	126
Oil and grease	95.2	57.1
TSS	195	92.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(w) *Dye penetrant testing wastewater.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested with dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	149	65.7
Fluoride	66.7	29.6
Oil and grease	22.4	13.5
TSS	45.9	21.9
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(x) *Miscellaneous wastewater sources.*

SUBPART F—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.856
Oil and grease	0.648	0.389
TSS	1.33	0.632
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart F—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.62 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30–125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.098
Zinc	0.713	0.296
Ammonia	57.0	25.0
Fluoride	29.1	12.90

(c) *Drawing spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent lubricants.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	37.0	16.0
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70

(g) *Forging spent lubricants—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.042	0.020
Zinc	0.146	0.061
Ammonia	13.3	5.86
Fluoride	5.95	2.64

(i) *Forging equipment cleaning wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged cyanide	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.35
Fluoride	2.38	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—BAT.* There shall be no discharge allowance for process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.098	0.042
Zinc	0.304	0.127
Ammonia	21.0	9.40
Fluoride	12.4	5.49

(n) *Surface treatment rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.584
Zinc	4.27	1.78
Ammonia	280	120
Fluoride	174	77.1

(o) *Wet air pollutant control scrubber blowdown.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	28.5	12.8
Fluoride	12.8	5.68

(p) *Alkaline cleaning spent baths.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32	14.1
Fluoride	14.3	6.34

(q) *Akaline cleaning rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.080	0.033
Lead	0.116	0.055
Zinc	0.403	0.169
Ammonia	36.8	16.2
Fluoride	16.4	7.29

(r) *Molten salt rinse.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115

SUBPART F—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	126	56
Fluoride	56.8	25.2

(s) *Tumbling wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.022	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	11.0	4.60
Fluoride	4.70	2.09

(t) *Sawing or grinding spent neat oils—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	6.60	2.90
Fluoride	10.9	4.63

(v) *Sawing or grinding contact cooling water.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) to titanium sawed or ground with contact cooling water	
Cyanide	0.138	0.057
Lead	0.200	0.095
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	28.3	12.6

(w) *Dye penetrant testing wastewater.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested with dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	149	65.7
Fluoride	66.7	29.6

(x) *Miscellaneous wastewater sources.*

SUBPART F—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.049	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.856

(y) *Degreasing spent solvents—Subpart F—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.63 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The discharge of wastewater pollutants from titanium process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.098
Zinc	0.713	0.298
Ammonia	65.1	28.6
Fluoride	29.1	12.9
Oil and grease	9.76	5.86
TSS	20.0	9.52
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Drawing spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.074
Ammonia	9.59	4.22
Fluoride	4.28	1.9
Oil and grease	1.44	0.863
TSS	2.95	1.40
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Extrusion press hydraulic fluid leakage*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.280	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70
Oil and grease	3.56	2.14
TSS	7.30	3.47
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) *Forging spent lubricants—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.0420	0.020
Zinc	0.146	0.061
Ammonia	13.3	5.86
Fluoride	5.95	2.64
Oil and grease	2.00	1.20
TSS	4.10	1.95
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Forging equipment cleaning wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.001	0.005
Lead	0.002	0.0008
Zinc	0.006	0.003

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	0.533	0.235
Fluoride	0.238	0.106
Oil and grease	0.060	0.048
TSS	0.164	0.078
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.46	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7
Oil and grease	20.2	12.1
TSS	41.4	19.7
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Tube reducing spent lubricants—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—NSPS.* There shall be no discharge allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.088	0.042
Zinc	0.304	0.127
Ammonia	21.0	9.40
Fluoride	12.4	5.49
Oil and grease	4.16	2.50
TSS	8.53	4.06
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Surface treatment rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.647	0.351
Lead	1.23	0.584
Zinc	3.10	1.30
Ammonia	389	171

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	174	77.1
Oil and grease	58.4	35.1
TSS	120	57.0
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	28.5	12.6
Fluoride	12.8	5.65
Oil and grease	4.28	2.57
TSS	8.78	4.16
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(p) *Alkaline cleaning spent baths.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.030
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	340	150
Fluoride	14.3	6.34
Oil and grease	4.90	2.68
TSS	9.84	4.68
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Alkaline cleaning rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.080	0.033
Lead	0.116	0.055
Zinc	0.403	0.169
Ammonia	38.8	16.2
Fluoride	16.4	7.29
Oil and grease	5.52	3.31
TSS	11.3	5.38
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Molten salt rinse.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	128	56.0
Fluoride	56.8	25.2
Oil and grease	19.1	11.5
TSS	39.2	18.6
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Tumbling wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.023	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	10.6	4.63
Fluoride	4.70	2.09
Oil and grease	1.58	0.948
TSS	3.24	1.54
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(t) *Sawing or grinding spent neat oils—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.83
Oil and grease	3.66	2.20
TSS	7.51	3.57
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(v) *Sawing or grinding contact cooling water.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.138	0.057
Lead	0.200	0.095

SUBPART F—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	28.3	12.6
Oil and grease	9.52	5.71
TSS	19.5	9.28
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(w) *Dye penetrant testing wastewater.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tested using dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.680
Ammonia	149	65.7
Fluoride	68.7	29.6
Oil and grease	22.4	13.5
TSS	45.9	21.9
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(x) *Miscellaneous wastewater sources.*

SUBPART F—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.858
Oil and grease	0.648	0.389
TSS	1.33	0.63
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(y) *Degreasing spent solvents—Subpart F—NSPS.* There shall be no discharge of process wastewater pollutant.

§ 471.64 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in titanium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.098
Zinc	0.713	0.296
Ammonia	65.1	28.6
Fluoride	29.1	12.9

(c) *Drawing spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	9.59	4.22
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.75	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70

(g) *Forging spent lubricants—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.042	0.020
Zinc	0.146	0.061
Ammonia	13.3	5.86
Fluoride	5.95	2.64

(i) *Forging equipment cleaning wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.35
Fluoride	2.38	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—PSES.* There shall be no discharge allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.088	0.042
Zinc	0.304	0.127
Ammonia	27.7	9.40
Fluoride	12.4	5.49

(n) *Surface treatment rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.584
Zinc	4.27	1.78
Ammonia	389	171
Fluoride	174	77.1

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated or forged	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	26.5	12.6
Fluoride	12.8	5.65

(p) *Alkaline cleaning spent baths.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32.0	14.1
Fluoride	14.3	6.34

(q) *Alkaline cleaning rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.080	0.033
Lead	0.116	0.055
Zinc	0.403	0.169
Ammonia	36.8	16.2
Fluoride	16.4	7.29

(r) *Molten salt rinse.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	128	56.0
Fluoride	56.8	25.2

(s) *Tumbling wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.023	0.010
Lead	0.033	0.016
Zinc	0.116	0.046
Ammonia	10.6	4.63
Fluoride	4.70	2.09

(t) *Sawing or grinding spent neat oils—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.83

(v) *Sawing or grinding contact cooling water.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.138	0.057
Lead	0.200	0.095
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	26.3	12.6

(w) *Dye pentrant testing wastewater.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated using dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.638
Ammonia	149	65.7
Fluoride	66.7	29.6

(x) *Miscellaneous wastewater sources.*

SUBPART F—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.048	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.856

(y) *Degreasing spent solvents—Subpart F—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.65 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in the titanium forming process wastewater shall not exceed the values set forth below:

(a) *Rolling spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium rolled with contact cooling water	
Cyanide	0.142	0.059
Lead	0.205	0.096
Zinc	0.713	0.296
Ammonia	65.1	28.6
Fluoride	29.1	12.9

(c) *Drawing spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Extrusion spent emulsions.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.021	0.009
Lead	0.030	0.015
Zinc	0.105	0.044
Ammonia	9.59	4.22
Fluoride	4.28	1.90

(f) *Extrusion press hydraulic fluid leakage.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium extruded	
Cyanide	0.052	0.022
Lead	0.075	0.036
Zinc	0.260	0.109
Ammonia	23.7	10.5
Fluoride	10.6	4.70

(g) *Forging spent lubricants—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(h) *Forging contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of forged titanium cooled with water	
Cyanide	0.029	0.012
Lead	0.042	0.020
Zinc	0.146	0.061
Ammonia	13.3	5.86
Fluoride	5.95	2.64

(i) *Forging equipment cleaning wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.012	0.005
Lead	0.017	0.008
Zinc	0.059	0.025
Ammonia	5.33	2.35
Fluoride	2.38	1.06

(j) *Forging press hydraulic fluid leakage.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium forged	
Cyanide	0.293	0.121
Lead	0.424	0.202
Zinc	1.48	0.616
Ammonia	135	59.2
Fluoride	60.1	26.7

(k) *Tube reducing spent lubricants—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(l) *Heat treatment contact cooling water—Subpart F—PSNS.* There shall be no discharge allowance for the discharge of process wastewater pollutants.

(m) *Surface treatment spent baths.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.061	0.025
Lead	0.088	0.042
Zinc	0.304	0.127
Ammonia	27.7	9.40
Fluoride	12.4	5.49

(n) *Surface treatment rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.847	0.351
Lead	1.23	0.584
Zinc	4.27	1.78
Ammonia	389	171
Fluoride	174	77.1

(o) *Wet air pollution control scrubber blowdown.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium surface treated	
Cyanide	0.062	0.026
Lead	0.090	0.043
Zinc	0.313	0.131
Ammonia	28.5	12.6
Fluoride	12.8	5.65

(p) *Alkaline cleaning spent baths.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.070	0.029
Lead	0.101	0.048
Zinc	0.351	0.147
Ammonia	32.0	14.1
Fluoride	14.3	6.34

(q) *Alkaline cleaning rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium alkaline cleaned	
Cyanide	0.080	0.033
Lead	0.116	0.055
Zinc	0.403	0.169
Ammonia	36.8	16.2
Fluoride	16.4	7.29

(r) *Molten salt rinse.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated with molten salt	
Cyanide	0.277	0.115
Lead	0.401	0.191
Zinc	1.40	0.583
Ammonia	128	56.0
Fluoride	56.8	25.2

(s) *Tumbling wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium tumbled	
Cyanide	0.023	0.010
Lead	0.033	0.016
Zinc	0.116	0.048
Ammonia	10.6	4.63
Fluoride	4.70	2.09

(t) *Sawing or grinding spent neat oils—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

(u) *Sawing or grinding spent emulsions.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with emulsions	
Cyanide	0.053	0.022
Lead	0.077	0.037
Zinc	0.267	0.112
Ammonia	24.4	10.7
Fluoride	10.9	4.83

(v) *Sawing or grinding contact cooling water.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium sawed or ground with contact cooling water	
Cyanide	0.139	0.057
Lead	0.200	0.095
Zinc	0.695	0.291
Ammonia	63.5	27.9
Fluoride	28.3	12.6

(w) *Dye penetrant testing wastewater.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium treated using dye penetrant methods	
Cyanide	0.325	0.135
Lead	0.471	0.224
Zinc	1.64	0.683
Ammonia	149	65.7
Fluoride	66.7	29.6

(x) *Miscellaneous wastewater sources.*

SUBPART F—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of titanium formed	
Cyanide	0.010	0.004
Lead	0.014	0.007
Zinc	0.049	0.020
Ammonia	4.32	1.90
Fluoride	1.93	0.856

(y) *Degreasing spent solvents—Subpart F—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.66 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart G—Uranium Forming Subcategory

§ 471.70 Applicability; description of the uranium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the uranium forming subcategory.

§ 471.71 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best praticable control technology currently available (BPT):

(a) *Extrusion spent lubricants—Subpart G—BPT.* There shall be no discharge process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadium	0.117	0.052
Chromium	0.152	0.062
Copper	0.854	0.344
Lead	0.145	0.069
Nickel	0.661	0.437
Fluoride	20.5	9.08
Molybdenum	2.28	1.16
Oil and grease	6.86	4.13
TSS	14.1	6.71
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Heat treatment contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadium	0.646	0.265
Chromium	0.836	0.342
Copper	3.61	1.90
Lead	0.798	0.380
Nickel	3.65	2.42
Fluoride	113	50.2
Molybdenum	12.6	6.5
Oil and grease	38	22.8
TSS	77.9	37.1
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) *Forging spent lubricants—Subpart G—BPT.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off- pounds) of uranium surface treated	
Cadmium	0.010	0.004
Chromium	0.012	0.005
Copper	0.052	0.027
Lead	0.012	0.006
Nickel	0.052	0.035
Fluoride	1.62	0.718
Molybdenum	0.180	0.093
Oil and grease	0.544	0.327
TSS	1.12	0.531
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment rinse.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.115	0.050
Chromium	0.149	0.061
Copper	0.641	0.041
Lead	0.142	0.068
Nickel	0.647	0.428
Fluoride	20.1	8.90
Molybdenum	2.23	1.16
Oil and grease	6.74	4.05
TSS	13.8	6.57
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.00	0.0006
Chromium	0.002	0.0007
Copper	0.007	0.004
Lead	0.002	0.688
Nickel	0.007	0.005
Fluoride	0.208	0.092
Molybdenum	0.023	0.012
Oil and grease	0.070	0.042
TSS	0.143	0.068
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding spent emulsions.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.002	0.0009
Chromium	0.003	0.001
Copper	0.011	0.006
Lead	0.003	0.001
Nickel	0.011	0.007
Fluoride	0.338	0.150
Molybdenum	0.036	0.020
Oil and grease	0.114	0.068
TSS	0.233	0.111
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Sawing or grinding contact cooling water.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling ater	
Cadmium	0.561	0.248
Chromium	0.726	0.297
Copper	3.14	1.65
Lead	0.693	0.330
Nickel	3.17	2.1
Fluoride	98.2	43.6
Molybdenum	10.9	5.65
Oil and grease	33.0	19.8
TSS	67.7	32.2
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Sawing or grinding rinse.*

SUPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinses	
Cadmium	0.002	0.0007
Chromium	0.002	0.0009
Copper	0.009	0.005
Lead	0.002	0.001
Nickel	0.009	0.006
Fluoride	0.277	0.123
Molybdenum	0.031	0.016
Oil and grease	0.093	0.056
TSS	0.191	0.091
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) *Area cleaning rinse.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.015	0.007
Chromium	0.019	0.008
Copper	0.082	0.043
Lead	0.018	0.009

SUBPART G—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Nickel	0.063	0.055
Fluoride	2.56	1.14
Molybdenum	0.284	0.147
Oil and grease	0.858	0.515
TSS	1.76	0.837
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(l) *Drum washwater.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.015	0.007
Chromium	0.020	0.008
Copper	0.084	0.045
Lead	0.019	0.009
Nickel	0.085	0.057
Fluoride	2.64	1.17
Molybdenum	0.293	0.152
Oil and grease	0.886	0.532
TSS	1.82	0.864
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(m) *Laundry washwater.*

SUBPART G—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.018	0.008
Chromium	.023	.010
Copper	.100	.053
Lead	.022	.011
Nickel	.101	.067
Fluoride	3.12	1.39
Molybdenum	.347	.179
Oil and grease	1.05	.629
TSS	2.15	1.02
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart G—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.72 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Extrusion spent lubricants—Subpart G—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.005
Nickel	0.019	0.013
Fluoride	2.05	0.908
Molybdenum	0.173	0.077

(c) *Heat treatment contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.006	0.003
Chromium	0.012	0.005
Copper	0.040	0.019
Lead	0.009	0.004
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070

(d) *Forging spent lubricants—Subpart G—BAT.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.006	0.002
Chromium	0.010	0.004
Copper	0.035	0.017
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.62	0.718
Molybdenum	0.137	0.061

(f) *Surface treatment rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.068	0.027
Chromium	0.125	0.051
Copper	0.432	0.260
Lead	0.095	0.044
Nickel	0.186	0.125
Fluoride	20.1	8.90
Molybdenum	1.70	0.752

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.001	0.0005
Nickel	0.002	0.001
Fluoride	0.208	0.092
Molybdenum	0.018	0.008

(h) *Sawing or grinding spent emulsions.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.001	0.0005
Chromium	0.002	0.0009
Copper	0.007	0.004
Lead	0.001	0.002
Nickel	0.003	0.002
Fluoride	0.338	0.150
Molybdenum	0.029	0.013

(i) *Sawing or grinding contact cooling water.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	9.82	4.36
Molybdenum	0.830	0.368

(j) *Sawing or grinding rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinse	
Cadmium	0.001	0.0004
Chromium	0.002	0.0007
Copper	0.006	0.003
Lead	0.002	0.0006
Nickel	0.003	0.002
Fluoride	0.277	0.123
Molybdenum	0.024	0.011

(k) *Area cleaning rinse.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.016	0.007
Copper	0.055	0.026
Lead	0.012	0.006
Nickel	0.024	0.016
Fluoride	2.56	1.14
Molybdenum	0.216	95.7

(l) *Drum, washwater.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	0.006
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	0.099

(m) *Laundry washwater.*

SUBPART G—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.005	0.002
Chromium	0.010	0.004
Copper	0.034	0.011
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.56	0.007
Molybdenum	0.130	0.059

(n) *Degreasing spent solvents—Subpart G—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.73 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the uranium forming process wastewater shall not exceed the following values:

(a) *Extrusion spent lubricants—Subpart G—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.005
Nickel	0.019	0.013
Fluoride	2.05	0.908
Molybdenum	0.173	0.077
Oil and grease	0.344	0.344
TSS	0.516	0.413
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Heat treatment contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.006	0.003
Chromium	0.012	0.005
Copper	0.040	0.019
Lead	0.009	0.004
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070
Oil and grease	0.313	0.313
TSS	0.470	0.376
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) *Forging spent lubricants—Subpart G—NSPS.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.006	0.002
Chromium	0.010	0.004
Copper	0.035	0.017
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.62	0.718
Molybdenum	0.137	0.061
Oil and grease	0.272	0.272
TSS	0.406	0.327
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Surface treatment rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.068	0.027

SUBPART G—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Chromium	0.125	0.051
Copper	0.432	0.206
Lead	0.095	0.044
Nickel	0.186	0.125
Fluoride	20.1	8.90
Molybdenum	1.70	0.752
Oil and grease	3.37	3.37
TSS	5.06	4.05
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.001	0.0005
Nickel	0.002	0.001
Fluoride	0.208	0.092
Molybdenum	0.018	0.008
Oil and grease	0.035	0.035
TSS	0.053	0.042
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding spent emulsions.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.001	0.0005
Chromium	0.002	0.0009
Copper	0.007	0.0004
Lead	0.001	0.0002
Nickel	0.003	0.002
Fluoride	0.338	0.150
Molybdenum	0.029	0.013
Oil and grease	0.057	0.057
TSS	0.085	0.068
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Sawing or grinding contact cooling water.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	9.82	4.36

SUBPART G—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Molybdenum	0.830	0.368
Oil and grease	1.65	1.65
TSS	2.48	1.98
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Sawing or grinding rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinsed	
Cadmium	0.001	0.0004
Chromium	0.002	0.0007
Copper	0.006	0.003
Lead	0.002	0.0006
Nickel	0.003	0.002
Fluoride	0.277	0.123
Molybdenum	0.024	0.011
Oil and grease	0.047	0.047
TSS	0.070	0.056
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Area cleaning rinse.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.016	0.007
Copper	0.055	0.026
Lead	0.012	0.006
Nickel	0.024	0.016
Fluoride	2.56	1.14
Molybdenum	0.216	0.096
Oil and grease	0.429	0.429
TSS	0.644	0.515
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Drum washwater.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	0.006
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	0.099
Oil and grease	0.443	0.443
TSS	0.665	0.532
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Laundry washwater.*

SUBPART G—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.005	0.002
Chromium	0.010	0.004
Copper	0.034	0.016
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.56	0.692
Molybdenum	0.132	0.059
Oil and grease	0.262	0.262
TSS	0.393	0.315
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart G—NSPS.* There shall be no discharge of process waster pollutants.

§ 471.74 Pretreatment standards for existing sources (PSES) [Reserved].

§ 471.75 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater pollutants in uranium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Extrusion spent lubricants—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Extrusion tool contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium extruded	
Cadmium	0.007	0.003
Chromium	0.013	0.005
Copper	0.044	0.021
Lead	0.010	0.005
Nickel	0.019	0.013
Fluoride	2.05	0.908
Molybdenum	0.173	0.077

(c) *Heat treatment contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of extruded or forged uranium heat treated	
Cadmium	0.006	0.003
Chromium	0.012	0.005

SUBPART G—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Copper	0.040	0.019
Lead	0.009	0.004
Nickel	0.017	0.012
Fluoride	1.86	0.827
Molybdenum	0.158	0.070

(d) *Forging spent lubricants—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

(e) *Surface treatment spent baths.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.006	0.002
Chromium	0.010	0.004
Copper	0.035	0.017
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.62	0.718
Molybdenum	0.137	0.061

(f) *Surface treatment rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.068	0.027
Chromium	0.125	0.051
Copper	0.432	0.260
Lead	0.095	0.044
Nickel	0.186	0.125
Fluoride	20.1	8.90
Molybdenum	1.70	0.752

(g) *Wet air pollution control scrubber blowdown.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium surface treated	
Cadmium	0.0007	0.0003
Chromium	0.001	0.0005
Copper	0.005	0.002
Lead	0.010	0.005
Nickel	0.002	0.001
Fluoride	0.208	0.092
Molybdenum	0.018	0.008

(h) *Sawing or grinding spent emulsions.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with emulsions	
Cadmium	0.001	0.0005
Chromium	0.002	0.0009
Copper	0.007	0.004
Lead	0.001	0.002
Nickel	0.003	0.002
Fluoride	0.338	0.150
Molybdenum	0.029	0.013

(i) *Sawing or grinding contact cooling water.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium sawed or ground with contact cooling water	
Cadmium	0.033	0.013
Chromium	0.061	0.025
Copper	0.211	0.101
Lead	0.046	0.022
Nickel	0.091	0.061
Fluoride	9.82	4.36
Molybdenum	0.830	0.368

(j) *Sawing or grinding rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground uranium rinsed	
Cadmium	0.010	0.0004
Chromium	0.002	0.0007
Copper	0.006	0.003
Lead	0.002	0.0006
Nickel	0.003	
Fluoride	0.277	0.123
Molybdenum	0.024	0.011

(k) *Area cleaning rinse.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.016	0.007
Copper	0.055	0.026
Lead	0.012	0.006
Nickel	0.024	0.016
Fluoride	2.56	1.14
Molybdenum	0.216	0.096

(l) *Drum washwater.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of uranium formed	
Cadmium	0.009	0.004
Chromium	0.017	0.007
Copper	0.057	0.027
Lead	0.013	0.006
Nickel	0.025	0.017
Fluoride	2.64	1.17
Molybdenum	0.223	0.099

(m) *Laundry washwater.*

SUBPART G—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/employee—day	
Cadmium	0.005	0.002
Chromium	0.010	0.004
Copper	0.034	0.011
Lead	0.008	0.004
Nickel	0.015	0.010
Fluoride	1.58	0.007
Molybdenum	0.130	0.059

(n) *Degreasing spent solvents—Subpart G—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.76 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart H—Zinc Forming Subcategory

§ 471.80 Applicability; description of the zinc forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zinc forming subcategory.

§ 471.81 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0006	0.0003
Copper	0.003	0.002
Cyanide	0.0004	0.002
Zinc	0.002	0.009
Oil and grease	0.026	0.017
TSS	0.057	0.027
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.236	0.0097
Copper	1.02	0.536
Cyanide	0.156	0.065
Zinc	0.783	0.327
Oil and grease	10.7	6.43
TSS	22.0	10.5
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(d) *Drawing spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.003	0.001
Copper	0.011	0.006
Cyanide	0.002	0.0007
Zinc	0.009	0.004
Oil and grease	0.116	0.070
TSS	0.238	0.113
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.222	0.091
Copper	0.960	0.505
Cyanide	0.147	0.061
Zinc	0.738	0.308
Oil and grease	10.1	6.06
TSS	20.7	9.85
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Stationary casting contact cooling water—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.336	0.138
Copper	1.45	0.763
Cyanide	0.221	0.092
Zinc	1.12	0.466
Oil and grease	15.3	9.16
TSS	31.3	14.9
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Surface treatment spent baths.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.039	0.016
Copper	0.169	0.089
Cyanide	0.026	0.011
Zinc	0.130	0.054
Oil and grease	1.78	1.07
TSS	3.64	1.73
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	1.58	0.645
Copper	6.80	3.56
Cyanide	1.04	0.430
Zinc	5.23	2.19
Oil and grease	71.6	43.0
TSS	147	69.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.007
Copper	0.007	0.004
Cyanide	0.001	0.0004
Zinc	0.005	0.002
Oil and grease	0.071	0.043
TSS	0.146	0.069
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.744	0.304
Copper	3.21	1.69
Cyanide	0.490	0.203
Zinc	2.47	1.03
Oil and grease	33.8	20.3
TSS	69.3	33.0
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.011	0.005
Copper	0.042	0.024
Cyanide	0.007	0.003
Zinc	0.035	0.015
Oil and grease	0.476	0.286
TSS	0.976	0.464
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(m) *Electrocoating rinse.*

SUBPART H—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	1.01	0.412
Copper	4.35	2.29
Cyanide	0.664	0.275
Zinc	3.35	1.40
Oil and grease	45.8	27.5
TSS	93.9	44.7
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart H—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.82 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart H—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.002	0.0009
Cyanide	0.0003	0.0001
Zinc	0.002	0.0006

(c) *Rolling contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.009
Copper	0.069	0.033
Cyanide	0.011	0.004
Zinc	0.055	0.023

(d) *Drawing spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.0009
Copper	0.008	0.004
Cyanide	0.001	0.0005
Zinc	0.006	0.003

(e) *Direct chill casting contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.019	0.008
Copper	0.065	0.031
Cyanide	0.010	0.004
Zinc	0.052	0.021

(f) *Stationary casting contact cooling water—Subpart H—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.029	0.012
Copper	0.098	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032

(h) *Surface treatment spent baths.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.001	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.038

(i) *Surface treatment rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.133	0.054
Copper	0.457	0.219
Cyanide	0.072	0.029
Zinc	0.365	0.151

(j) *Alkaline cleaning spent baths.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0006
Copper	0.005	0.002
Cyanide	0.0007	0.0003
Zinc	0.004	0.002

(k) *Alkaline cleaning rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.254
Copper	2.17	1.03
Cyanide	0.338	0.135
Zinc	1.73	0.710

(l) *Sawing or grinding spent emulsions.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.009	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010

(m) *Electrocoating rinse.*

SUBPART H—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.085	0.035
Copper	0.293	0.140
Cyanide	0.046	0.019
Zinc	0.234	0.096

(n) *Degreasing spent solvents—Subpart H—BAT.* There shall be no discharge or process wastewater pollutants.

§ 471.83 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS):

(a) *Rolling spent neat oils—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.002	0.0009
Cyanide	0.0003	0.0001
Zinc	0.002	0.0006
Oil and grease	0.014	0.014
TSS	0.021	0.017
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Rolling contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.009
Copper	0.069	0.037
Cyanide	0.011	0.004
Zinc	0.055	0.023

SUBPART H—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	0.536	0.536
TSS	0.804	0.643
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(d) *Drawing spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.009
Copper	0.008	0.004
Cyanide	0.001	0.0005
Zinc	0.006	0.003
Oil and grease	0.058	0.058
TSS	0.087	0.070
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Direct chill casting contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any one day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.019	0.008
Copper	0.065	0.031
Cyanide	0.010	0.004
Zinc	0.052	0.021
Oil and grease	0.505	0.505
TSS	0.758	0.606
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(f) *Stationary casting contact cooling water—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.029	0.012
Copper	0.098	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032
Oil and grease	0.763	0.763
TSS	1.15	0.916
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(h) *Surface treatment spent baths.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.114	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.038
Oil and grease	0.887	0.887
TSS	1.33	1.07
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.133	0.054
Copper	0.459	0.219
Cyanide	0.072	0.029
Zinc	0.365	0.151
Oil and grease	3.58	3.58
TSS	5.37	4.30
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0008
Copper	0.005	0.002
Cyanide	0.0007	0.0003
Zinc	0.004	0.002
Oil and grease	0.036	0.036
TSS	0.054	0.043
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.259
Copper	2.17	1.03
Cyanide	0.338	0.135
Zinc	1.73	0.710
Oil and grease	16.9	16.9
TSS	23.4	20.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.009	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010
Oil and grease	0.235	0.235
TSS	0.353	0.082
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Electrocoating rinse.*

SUBPART H—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.085	0.035
Copper	0.293	0.140
Cyanide	0.046	0.019
Zinc	0.234	0.096
Oil and grease	2.29	2.29
TSS	34.4	27.5
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(n) *Degreasing spent solvents—Subpart H—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.84 Pretreatment standards for existing sources (PSES) [Reserved].

§ 471.85 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of the wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Rolling spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with emulsions	
Chromium	0.0005	0.0002
Copper	0.002	0.0009
Cyanide	0.0003	0.0001
Zinc	0.002	0.0006

(c) *Rolling contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc rolled with contact cooling water	
Chromium	0.020	0.008
Copper	0.069	0.033
Cyanide	0.011	0.004
Zinc	0.055	0.023

(d) *Drawing spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc drawn with emulsions	
Chromium	0.002	0.0009
Copper	0.008	0.004
Cyanide	0.001	0.0005
Zinc	0.006	0.003

(e) *Direct chill casting contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc cast by the direct chill method	
Chromium	0.019	0.008
Copper	0.065	0.031
Cyanide	0.010	0.004
Zinc	0.052	0.021

(f) *Stationary casting contact cooling water—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Heat treatment contact cooling water.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc heat treated	
Chromium	0.029	0.012
Copper	0.098	0.047
Cyanide	0.016	0.006
Zinc	0.078	0.032

(h) *Surface treatment spent baths.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.033	0.014
Copper	0.001	0.054
Cyanide	0.018	0.007
Zinc	0.091	0.038

(i) *Surface treatment rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc surface treated	
Chromium	0.133	0.054
Copper	0.459	0.219
Cyanide	0.072	0.029
Zinc	0.365	0.151

(j) *Alkaline cleaning spent baths.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.002	0.0006
Copper	0.005	0.002
Cyanide	0.072	0.0003
Zinc	0.004	0.002

(k) *Alkaline cleaning rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc alkaline cleaned	
Chromium	0.626	0.254
Copper	2.17	1.03
Cyanide	0.338	0.134
Zinc	1.73	0.710

(l) *Sawing or grinding spent emulsions.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc sawed or ground with emulsions	
Chromium	0.009	0.004
Copper	0.031	0.015
Cyanide	0.005	0.002
Zinc	0.025	0.010

(m) *Electrocoating rinse.*

SUBPART H—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zinc electrocoated	
Chromium	0.065	0.035
Copper	0.293	0.140
Cyanide	0.046	0.019
Zinc	0.234	0.096

(n) *Decreasing spent solvents—Subpart H—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.86 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart I—Zirconium-Hafnium Forming Subcategory

§ 471.90 Applicability; description of the zirconium-hafnium forming subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the zirconium-hafnium forming subcategory

§ 471.91 Effluent limitations repreesenting the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Rolling spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spend emulsions—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.26
Oil and grease	4.74	2.85
TSS	9.72	4.62
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(e) *Swaging spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.151	0.062
Cyanide	0.100	0.041
Nickel	0.659	0.436
Ammonia	45.7	20.1
Fluoride	20.4	9.06
Oil and grease	6.86	4.12
TSS	14.1	6.69
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(g) *Tube reducing spent lubricants—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.61
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20
Fluoride	20.3	8.98
Oil and grease	6.80	4.08
TSS	14	6.63
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	3.91	1.60
Cyanide	2.58	1.07
Nickel	17.1	11.3
Ammonia	1,190	521
Fluoride	529	235
Oil and grease	178	107
TSS	364	173
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.2	42.3
Oil and grease	32	19.2
TSS	65.6	31.2
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Alkaline cleaning rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	13.8	5.65
Cyanide	9.11	3.77
Nickel	60.3	39.9
Ammonia	4,190	1,840
Fluoride	1,870	829
Oil and grease	628	377
TSS	1,290	613
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.5
Fluoride	16.7	7.42
Oil and grease	5.62	3.37
TSS	11.5	5.46

SUBPART I—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(m) *Wet air pollution control scrubber blowdown—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—BPT.* There shall be no discharge or process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off pounds) of zirconium-hafnium treated with molten salt	
Chromium	3.33	1.360
Cyanide	2.20	0.907
Nickel	14.5	9.60
Ammonia	1,010	933
Fluoride	450	200
Oil and grease	151	90.7
TSS	310	148
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(q) *Sawing or grinding contact cooling water.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
Fluoride	19.1	8.48
Oil and grease	6.42	3.85
TSS	1.32	6.26
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(r) *Sawing on grinding rinse.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium hafnium rinsed	
Chromium	0.792	0.324
Cyanide	0.522	0.216
Nickel	3.46	2.29

SUBPART I—BPT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Ammonia	240	106
Fluoride	107	47.5
Oil and grease	36	21.6
TSS	73.8	35.1
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(s) *Sawing or grinding spent neat oils—Subpart I—BPT.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.407
Oil and grease	0.308	0.185
TSS	0.632	0.301
pH	(1)	(1)

[1] Within the range of 7.05 to 10.0 at all times.

§ 471.92 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Rolling spent neat oils—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds of zirconium-hafnium extruded	
Chromium	0.104	0.043

SUBPART I—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.26

(e) *Swaging spent neat oils.*—There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.906

(g) *Tube reducing spent lubricants.*—There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20
Fluoride	20.3	8.98

(i) *Surface treatment rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.258	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.2	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.380	0.565
Cyanide	0.911	3.377
Nickel	6.03	3.99
Ammonia	419	184
Fluoride	187	82.9

(l) *Sawing or grinding spent emulsions.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.5
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.136
Cyanide	0.220	0.091
Nickel	1.45	0.960
Ammonia	101	44.3

SUBPART I—BAT—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	45.0	20.0

(q) *Sawing or grinding contact cooling water.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	16.8
Fluoride	19.1	8.46

(r) *Sawing or grinding rinse.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.0	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—BAT.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.704

§ 471.93 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutant in the zirconium-hafnium process wastewater shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	14.1	6.26
Oil and grease	4.74	2.85
TSS	9.72	4.62
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Swaging spent neat oils—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.906
Oil and grease	0.686	0.412
TSS	1.41	0.669
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(g) *Tube reducing spent lubricants—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20.0
Fluoride	20.0	8.98
Oil and grease	6.80	4.08
TSS	14.0	6.63
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Surface treatment rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.25	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5
Oil and grease	17.8	10.7
TSS	36.4	17.3
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Alkaline cleaning spent baths.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.2	42.3
Oil and grease	32.0	19.2
TSS	65.6	31.2
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times

(k) *Alkaline cleaning rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.38	0.565
Cyanide	0.911	0.377
Nickel	6.03	3.99
Ammonia	4.9	184
Fluoride	187	82.9
Oil and grease	62.6	37.7
TSS	129	61.3
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(l) *Sawing or grinding spent emulsions.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.50
Fluoride	16.7	7.42

SUBPART I—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Oil and grease	5.62	3.37
TSS	11.5	5.48
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(m) *Wet air pollution control scrubber blowdown—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—NSPS.* There shall be no discharge of process wastewater pollutants

(p) *Molten salt rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.136
Cyanide	0.220	0.091
Nickel	0.002	0.960
Ammonia	101	44.3
Fluoride	45.0	20.0
Oil and grease	15.1	9.07
TSS	31.0	14.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(q) *Sawing or grinding contact cooling water.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.9	18.8
Fluoride	19.1	8.48
Oil and grease	6.42	3.85
TSS	13.2	6.26
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(r) *Sawing or grinding rinse.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033

SUBPART I—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.0	10.6
Fluoride	10.7	4.75
Oil and Grease	3.60	2.16
TSS	7.38	3.51
pH	(1)	(1)

(1) Within range of 7.5 to 10.0 at all times.

(s) *Sawing or grinding spent neat oils—Subpart I—NSPS.* There shall be no discharge or process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.407
Oil and grease	0.306	0.185
TSS	0.632	0.301
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

§ 471.94 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in zirconium-hafnium forming process wastewater introduced into a POTW shall not exceed the following values:

(a) *Rolling spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsion—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	41.1	6.26

(e) *Swaging spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.906

(g) *Tube reducing spent lubricants—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20.0
Fluoride	20.0	8.98

(i) *Surface treatment rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.258	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.6
Fluoride	95.2	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.38	0.565
Cyanide	0.911	0.377
Nickel	6.03	3.99
Ammonia	419	184
Fluoride	187	82.9

(l) *Sawing or grinding spent emulsions.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.50
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—PSES.* There shall be no discharge or process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium treated with molten salt	
Chromium	0.333	0.136
Cyanide	0.220	0.091
Nickel	1.45	0.960
Ammonia	101	44.3

SUBPART I—PSES—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Fluoride	45	20

(q) *Sawing or grinding contact cooling water.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
Fluoride	19.1	8.48

(r) *Sawing or grinding rinse.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—PSES.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.909
Fluoride	0.917	0.407

§ 471.95 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources (PSNS). The mass of wastewater shall not exceed the following:

(a) *Rolling spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(b) *Drawing spent lubricants—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(c) *Extrusion spent emulsions—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Extrusion press hydraulic fluid leakage.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium extruded	
Chromium	0.104	0.043
Cyanide	0.069	0.029
Nickel	0.455	0.301
Ammonia	31.6	13.9
Fluoride	41.1	6.26

(e) *Swaging spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(f) *Heat treatment contact cooling water.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium heat treated	
Chromium	0.015	0.006
Cyanide	0.010	0.004
Nickel	0.066	0.044
Ammonia	4.57	2.01
Fluoride	2.04	0.906

(g) *Tube reducing spent lubricants—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(h) *Surface treatment spent baths.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.150	0.061
Cyanide	0.099	0.041
Nickel	0.653	0.432
Ammonia	45.3	20
Fluoride	20	8.98

(i) *Surface treatment rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium surface treated	
Chromium	0.391	0.160
Cyanide	0.258	0.107
Nickel	1.71	1.13
Ammonia	119	52.1
Fluoride	52.9	23.5

(j) *Alkaline cleaning spent baths.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off/kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	0.704	0.288
Cyanide	0.464	0.192
Nickel	3.07	2.03
Ammonia	214	93.8
Fluoride	95.2	42.3

(k) *Alkaline cleaning rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium alkaline cleaned	
Chromium	1.38	0.565
Cyanide	0.911	0.377
Nickel	6.03	3.99
Ammonia	419	184
Fluoride	187	82.9

(l) *Sawing or grinding spent emulsions.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with emulsions	
Chromium	0.124	0.051
Cyanide	0.082	0.034
Nickel	0.540	0.357
Ammonia	37.5	16.50
Fluoride	16.7	7.42

(m) *Wet air pollution control scrubber blowdown—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(n) *Degreasing spent solvents—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(o) *Degreasing rinse—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(p) *Molten salt rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium rinsed following molten salt treatment	
Chromium	0.333	0.136
Cyanide	0.220	0.091
Nickel	1.45	0.960
Ammonia	101	44.3
Fluoride	45.0	20.0

(q) *Sawing or grinding contact cooling water.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium sawed or ground with contact cooling water	
Chromium	0.142	0.058
Cyanide	0.093	0.039
Nickel	0.617	0.408
Ammonia	42.8	18.8
Fluoride	19.1	8.48

(r) *Sawing or grinding rinse.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground zirconium-hafnium rinsed	
Chromium	0.079	0.033
Cyanide	0.052	0.022
Nickel	0.346	0.229
Ammonia	24.0	10.6
Fluoride	10.7	4.75

(s) *Sawing or grinding spent neat oils—Subpart I—PSNS.* There shall be no discharge of process wastewater pollutants.

(t) *Inspection and testing wastewater.*

SUBPART I—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of zirconium-hafnium tested	
Chromium	0.007	0.003
Cyanide	0.005	0.002
Nickel	0.030	0.020
Ammonia	2.06	0.903
Fluoride	0.917	0.407

§ 471.96 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

Subpart J—Metals Powders Subcategory

§ 471.100 Applicability; description of the powder metals subcategory.

This subpart applies to discharges of pollutants to waters of the United States, and introductions of pollutants into publicly owned treatment works from the process operations of the metal powders subcategory.

§ 471.101 Effluent limitations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations for the process operations representing the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT):

(a) *Metal powder production atomization wastewater.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01
Oil and grease	101	60.5
TSS	207	98.3
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(b) *Sizing spent emulsion.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003
Oil and grease	0.292	0.175
TSS	0.599	0.285
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(c) *Oil-resin impregnation wastewater—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of power metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.159
Oil and grease	15.9	9.51
TSS	32.5	15.5
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.28	0.528
Lead	1.85	0.880
Oil and grease	88.0	52.800
TSS	181	85.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Sawing or grinding spent neat oils.—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsion.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsion	
Copper	0.035	0.018
Cyanide	0.005	0.002
Lead	0.008	0.004
Oil and grease	0.362	0.217
TSS	0.742	0.353
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding contact cooling water.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with contact cooling	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.681	0.324
Oil and grease	32.4	19.5
TSS	66.4	31.6
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Hot pressing contact cooling water.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76
Oil and grease	176	106
TSS	361	172
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—BPT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	15.0	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58
Oil and grease	158	94.8
TSS	324	15.4
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(k) *Degreasing spent solvents.—Subpart J—BPT.* There shall be no discharge of process wastewater pollutants.

§ 471.102 Effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT).

Except as provided in 40 CFR 125.30 through 125.32, any existing point source subject to this subpart must achieve the following effluent limitations representing the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT):

(a) *Metal powder production atomization wastewater.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) or powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003

(c) *Oil-resin impregnation wastewater—Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.159

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) or powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8360	4400
Cyanide	1280	528
Lead	1850	880

(f) *Sawing or grinding spent neat oils. Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	34.4	18.1
Cyanide	5.25	2.17
Lead	7.60	3.62

(h) *Sawing or grinding contact cooling water.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.681	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.760

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—BAT

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	7.90
Cyanide	2.29	0.948
Lead	3.32	1.56

(k) *Degreasing spent solvents—Subpart J—BAT.* There shall be no discharge of process wastewater pollutants.

§ 471.103 New source performance standards (NSPS).

Any new source subject to this subpart must achieve the following new source performance standards (NSPS). The mass of pollutants in the metal powder process wastewater shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01
Oil and grease	101	60.5
TSS	207	98.3
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(b) *Sizing spent emulsions.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003
Oil and grease	0.292	0.175
TSS	0.599	0.285
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(c) *Oil-resin impregnation wastewater.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdwn.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.159
Oil and grease	15.9	9.51
TSS	32.5	15.5
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.28	0.528
Lead	1.85	0.880
Oil and grease	88.0	52.8

SUBPART J—NSPS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
TSS	181	85.8
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(f) *Sawing or grinding spent neat oils.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	0.035	0.010
Cyanide	0.005	0.002
Lead	0.008	0.004
Oil and grease	0.362	0.217
TSS	0.742	0.353
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(h) *Sawing or grinding contact cooling water.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling water	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.681	0.324
Oil and grease	32.4	19.5
TSS	66.4	31.6
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(i) *Hot pressing contact cooling water.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76
Oil and grease	176	106
TSS	361	172
pH	(1)	(1)

(1) Within the range of 7.5 to 10.0 at all times.

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—NSPS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	15.0	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58
Oil and grease	158	94.8
TSS	324	15.4
pH	(1)	(1)

[1] Within the range of 7.5 to 10.0 at all times.

(k) *Degreasing spent solvents.—Subpart J—NSPS.* There shall be no discharge of process wastewater pollutants.

§ 471.104 Pretreatment standards for existing sources (PSES).

Except as provided in 40 CFR 403.7 and 403.13, any existing source subject to this subpart which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and by August 23, 1988 achieve the following pretreatment standards for existing sources (PSES). The mass of wastewater pollutants in metal powders process wastewater introduced into a POTW shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.040
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002
Lead	0.006	0.003

(c) *Oil-resin impregnation wastewater.—Subpart J—PSES.*

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy part steam treated	
Copper	1.51	0.792
Cyanide	0.230	0.095
Lead	0.333	0.150

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.28	0.528
Lead	1.65	0.880

(f) *Sawing or grinding spent neat oils.—Subpart J—PSES.* There shall be no discharge of process watewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts sawed or ground with emulsions	
Copper	0.035	0.018
Cyanide	0.005	0.002
Lead	0.008	0.004

(h) *Sawing or grinding contact cooling water.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling water	
Copper	3.08	1.62
Cyanide	0.470	0.195
Lead	0.661	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.76

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—PSES

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58

(k) *Degreasing spent solvents—Subpart J—PSES.* There shall be no discharge of process wastewater pollutants.

§ 471.105 Pretreatment standards for new sources (PSNS).

Except as provided in 40 CFR 403.7, any new source subject to this subject which introduces pollutants into a publicly owned treatment works must comply with 40 CFR Part 403 and achieve the following pretreatment standards for new sources. The mass of wastewater pollutants in metal powders process wastewater introduced into a POTW shall not exceed the following values:

(a) *Metal powder production atomization wastewater.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder wet atomized	
Copper	9.58	5.04
Cyanide	1.46	0.605
Lead	2.12	1.01

(b) *Sizing spent emulsions.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sized	
Copper	0.028	0.015
Cyanide	0.004	0.002

SUBPART J—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.006	0.003

(c) *Oil-resin impregnation wastewater—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

(d) *Steam treatment wet air pollution control scrubber blowdown.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts steam treated	
Copper	1.51	0.782
Cyanide	0.230	0.095
Lead	0.333	0.159

(e) *Tumbling, burnishing and cleaning wastewater.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder metallurgy parts tumbled, burnished, or cleaned	
Copper	8.36	4.40
Cyanide	1.28	0.528
Lead	1.85	0.880

(f) *Sawing or grinding spent neat oils—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

(g) *Sawing or grinding spent emulsions.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of sawed or ground with emulsions	
Copper	0.035	0.018
Cyanide	0.005	0.002

SUBPART J—PSNS—Continued

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
Lead	0.008	0.004

(h) *Sawing or grinding contact cooling water.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder sawed or ground with contact cooling water	
Copper	3.08	1.620
Cyanide	0.470	0.195
Lead	0.681	0.324

(i) *Hot pressing contact cooling water.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder cooled after pressing	
Copper	16.7	8.80
Cyanide	2.55	1.06
Lead	3.70	1.70

(j) *Mixing wet air pollution control scrubber blowdown.*

SUBPART J—PSNS

Pollutant or pollutant property	Maximum for any 1 day	Maximum for monthly average
	mg/off-kg (pounds per million off-pounds) of powder mixed	
Copper	1.50	7.90
Cyanide	2.29	0.948
Lead	3.32	1.58

(k) *Degreasing spent solvents—Subpart J—PSNS.* There shall be no discharge of process wastewater pollutants.

§ 471.106 Effluent limitations representing the degree of effluent reduction attainable by the application of the best conventional pollutant control technology (BCT) [Reserved].

PART 468—COPPER FORMING POINT SOURCE CATEGORY

For the reasons stated above, EPA is amending 40 CFR Part 468 as follows:

1. The authority citation for Part 468 continues to read as follows:

Authority: Sections 301, 304 (b), (c), (e) and (g), 306 (b) and (c), 307 (b) and (c), 308 and 501, Clean Water Act (Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314 (b), (c), (e) and (g), 1316 (b) and (c), 1317 (b) and (c), 1318 and 1361; 86 Stat. 816, Pub. L. 92–500; 91 Stat. 1567, Pub. L. 95–217.

2. 40 CFR 468.01 is revised to read as follows:

§ 468.01 Applicability.

The provisions of this subpart are applicable to discharges resulting from the manufacture of formed copper and copper alloy products. The forming operations covered are hot rolling, cold rolling, drawing, extrusion, and forging. This part does not regulate the forming of precious metals. (See 40 CFR Part 471.) The casting of copper and copper alloys is not covered by this part. (See 40 CFR Part 451.)

3. 40 CFR 468.02 is amended by adding a new paragraph (x) to read as follows. The introductory text of the section is shown for the convenience of the reader and remains unchanged.

§ 468.02 Specialized definitions.

In addition to the definitions set forth in 40 CFR Part 401 and the chemical analysis methods in 40 CFR Part 136, the following definitions apply to this part:

* * * * *

(x) The term "precious metals" shall mean gold, platinum, palladium and silver and their alloys. Any alloy containing 30 or greater percent by weight of precious metals is considered a precious metal.

[FR Doc. 85–19248 Filed 8–22–85; 8:45 am]

BILLING CODE 6560–50–M

federal register

Friday
August 23, 1985

Part III

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions, Notice

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 5.1 (including the statutes listed at 36 FR 306 (1970) 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, 48 FR 19533 (1983) and of Secretary of Labor's Orders 9–83, 48 FR 35736 (1983), and 6–84, 49 FR 32473 (1984). 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 the effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 5.1 (including the statutes listed at 36 FR 306 (1970) 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, 48 FR 19533 (1983) and of Secretary of Labor's Orders 6–84, 49 FR 32473 (1984). 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 Program Operations, Division of Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

California:	
CA84–5022	Oct. 5, 1984.
CA84–5007	May 18, 1984.
Kansas: KS85–4007	May 10, 1985.
Minnesota:	
MN85–5006	Feb. 1, 1985.
MN84–5015	May 25, 1984.
Montana: MT83–5101	Feb. 18, 1983.
Nebraska: NE85–4033	Aug. 16, 1985.
New Jersey:	
NJ85–3031	Aug. 2, 1985.
NJ85–3032	July 19, 1985.
NJ85–3033	July 12, 1985.
Pennsylvania:	
PA84–3035	Sept. 21, 1984.
PA85–3035	July 12, 1985.
Washington: WA84–5040	Nov. 16, 1984.

Cancellation of General Wage Determination Decision

General Wage Decision Number AR84–4111, Crawford, Sebastian and Washington Counties, Arkansas is cancelled. Agencies with construction projects pending to which the cancelled decision 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 effected by this notice. Also consistent with 29 CFR, 1.6 (c)(3)(i)(A), the incorporation of the cancelled decision in contract specifications, the opening of bids for which is within ten (10) days of the notice, need not be affected.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California: CA83–5119 (CA85–5034)	Sept. 16, 1983.
Missouri: MO85–4005 (MO85–4023)	Apr. 12, 1985.
New York:	
NY83–3050 (NY85–3044)	Nov. 4, 1983.
NY81–3055 (NY85–3043)	July 17, 1981.
Oklahoma: OK83–4031 (OK85–4034)	Apr. 15, 1983.
Pennsylvania: PA84–3000 (PA85–3034)	Jan. 13, 1984.

Signed at Washington, D.C. this 16th day of August 1985.

James L. Valin,

Assistant Administrator.

BILLING CODE 4510-27-M

DECISION NO. CA84-5022 - Mod. #11 (49 FR 39416 - October 5, 1984) Alameda, Alpine, Amador, etc., Counties, CA	Basic Hourly Rates	Fringe Benefits
Omit:		
Power Equipment Operator:		
Dredging - Schedule I (Clamshell and Dipper Dredging - new construction)		
Dredging - Schedule II (Hydraulic Suction Dredging and all other Dredging)		
Add:		
Power Equipment Operator:		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 1:		
Group 1	$15.79	$9.41
Group 2	17.28	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	18.78	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	18.33	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	21.72	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	19.94	9.41
Group 5	24.84	9.41
Area 2:		
Group 1	17.26	9.41
Group 2	18.75	9.41

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 2 (Cont'd):		
Group 3:		
Clamshell and Dipper Dredging - new construction	$20.24	$9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	19.79	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	23.19	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	21.41	9.41
Group 5	25.98	9.41
Area 3:		
Group 1	17.69	9.41
Group 2	19.18	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	20.67	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	20.22	9.41

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DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
Area 3 (Cont'd):		
Group 4:		
Clamshell and Dipper Dredging - new construction	$23.62	$9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	21.84	9.41
Group 5	26.41	9.41
Area 4:		
Group 1	18.13	9.41
Group 2	19.62	9.41
Group 3:		
Clamshell and Dipper Dredging - new construction	21.11	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	20.56	9.41
Group 4:		
Clamshell and Dipper Dredging - new construction	24.06	9.41
All other Clamshell and Dipper Dredging, and Hydraulic Suction Dredging	22.28	9.41
Group 5	27.03	9.41
DEFINITION OF AREAS:		
Area 1: Area up to 20 road miles from centers listed below		

DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging; Hydraulic Suction Dredging:		
DEF. OF AREAS:		
Area 2:		
Area more than 20 road miles up to and including 30 road miles from centers listed below		
Area 3:		
Area over 30 road miles from centers listed below.		
Area 4:		
Area extending 25 miles from the shoreline of Lake Tahoe and up to and including 30 road miles from the centers listed below		
City Halls of Bodega Bay, Crescent City, Eureka, Fort Bragg and Moss Landing.		
DEFINITION OF GROUPS:		
Group 1: Barge-hand; Deck-hand; Fire-fighter; Leveehand; Oiler		
Group 2: Winch (stern winches on dredge)		
Group 3: Booster pump operator; Deck engineer; Deckmate; Welder and/or mechanic on new		

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DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Add (Cont'd):		
Power Equipment Operator (Cont'd):		
Clamshell and Dipper Dredging: Hydraulic Suction Dredging:		
DEFINITION OF AREAS (Cont'd):		
Group 3 (Cont'd): construction: Watch engineer: Welder		
Group 4: Lever: Clamshell operator (up to and including 7 cu. yds. m.r.c.) (long boom pay): Clamshell operator (over 7 cu. yds. m.r.c.) (long boom pay) (on new construction only)		
Group 5: Chief Engineer		
Change:		
Power Equipment Operator:		
Area 1:		
Group 1	$15.54	$9.60
Group 2	16.09	9.60
Group 3	16.42	9.60
Group 4	17.27	9.60
Group 5	17.60	9.60
Group 6	17.83	9.60
Group 7	18.08	9.60
Group 8	18.76	9.60
Group 9	19.10	9.60
Group 10	19.45	9.60
Group 10-A	19.64	9.60
Group 11	19.91	9.60
Group 11-A1	21.71	9.60
Group 11-B	22.14	9.60
Group 11-C	22.65	9.60
Area 2:		
Group 1	17.54	9.60
Group 2	18.09	9.60

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DECISION NO. CA84-5022 - Mod. #11 (Cont'd):	Basic Hourly Rates	Fringe Benefits
Change (Cont'd):		
Power Equipment Operator (Cont'd):		
Area 2 (Cont'd):		
Group 3	$18.42	$9.60
Group 4	19.27	9.60
Group 5	19.60	9.60
Group 6	19.83	9.60
Group 7	20.08	9.60
Group 8	20.76	9.60
Group 9	21.10	9.60
Group 10	21.45	9.60
Group 10-A	21.64	9.60
Group 11	21.91	9.60
Group 11-A	23.71	9.60
Group 11-B	24.14	9.60
Group 11-C	24.65	9.60
Piledriving:		
Group 1	15.61	9.60
Group 1-A	16.16	9.60
Group 1-B	16.47	9.60
Group 2-A	16.47	9.60
Group 2-B	17.33	9.60
Group 2-C	17.67	9.60
Group 2-D	17.91	9.60
Group 3	18.14	9.60
Group 3-A	18.83	9.60
Group 4	19.70	9.60
Group 5	19.98	9.60
Group 6	21.77	9.60
Steel Erection:		
Group 1	16.36	9.60
Group 2	16.94	9.60
Group 3	18.58	9.60
Group 4	18.79	9.60
Group 4-A	19.30	9.60
Group 5	20.09	9.60
Group 6	20.77	9.60
Group 7	21.25	9.60
Group 8	21.71	9.60
Group 9	23.37	9.60

DECISION NO. CA84-5007 - Mod. #12 (49 FR 21245 - May 18, 1984) Imperial, Inyo, Kern, etc., Counties, CA	Basic Hourly Rates	Fringe Benefits
Add:		
Plumbers: Steamfitters:		
Area 1:		
Definition of Zones:		
Zone 1: Remainder of area		
Zone 2: Camp Pendleton, Camp Roberts, Edwards Air Force Base, George Air Force Base, Vandenberg Air Force Base		
Zone 3: Fort Irwin Army Base, Marine Corps Logistic Base at Nebo, Marine Corps Logistic Base at Yermo, Nicolaus Island Naval Base, 29 Palms Marine Base		

DECISION NO. KS85-4007 MOD. # 1 (50FR19851 - May 10, 1985)	Basic Hourly Rates	Fringe Benefits
SEDGWICK County, KANSAS		
ADD:		
ELECTRICIANS	$11.50	

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DECISION NO. MN84-5015 - MOD. #7
(49 FR 22184 - May 25, 1984)
Aitkin, Becker,...Wright & Yellow Medicine Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 8	$16.61	$1.75
Area 14	15.01	1.90
Cement Masons: Plasterers:		
Area 3:		
Cement Masons	16.85	1.85
Area 12:		
Cement Masons	15.85	1.75
Electricians:		
Area 1	16.00+ 11%	21%
Area 4:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.74	13.5%+ 1.57
Area 6:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.01	13.5%+ 1.57
Area 9:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.01	13.5%+ 1.57
Pipefitters; Plumbers; & Steamfitters:		
Area 4:		
Pipefitters; Steamfitters	19.22	3.39
Plumbers	18.40	4.03+c
Area 8:		
Plumbers	15.15	7.24+c

	Basic Hourly Rates	Fringe Benefits
Omit:		
Bricklayers; Stonemasons: Area 2 Wage rates & Area Descriptions		
Electricians: Area 3 wage rates		
Add:		
Bricklayers: Stonemasons:		
Area 2	$17.15	$1.85
Area 15	17.45	1.55
Electricians:		
Area 3:		
Electricians	16.17	32¼%
Cable Splicers	16.72	32¼%
Area Descriptions:		
Bricklayers; Stonemasons:		
Area 2: Aitkin (W ½), Becker, Beltrami, Cass, Clay, Clearwater, Crow Wing, Hubbard, Lake of the Woods, Mille Lacs (N. of an E-W extension of the northern border of Isanti Co.), Otter Tail & Wadena Cos.		
Area 15: Kittson, Mahnomen, Marshall, Norman, Pennington, Polk, Red Lake & Roseau Cos.		

DECISION NO. MN85-5006 - MOD. #7
(50 FR 4837 - February 1, 1985)
Anoka, Benton, Carlton, Carver, Cook, Dakota, Hennepin, Itasca, Koochiching, Lake, Ramsey, St. Louis, Scott, Sherburne, Stearns, & Washington Counties, Minnesota

	Basic Hourly Rates	Fringe Benefits
Change:		
Bricklayers; Stonemasons:		
Area 5	$17.15	$1.85
Cement Masons (Building):		
Area 5	16.85	1.85
Electricians:		
Area 3:		
Electrical Installations over $100,000.00	16.18	13.5%+ 1.57
Electrical Installations under $100,000.00	13.74	13.5%+ 1.57
Area 4	16.00+ 11%	21%
Pipefitters; Plumbers; & Steamfitters:		
Area 1:		
Plumbers	15.15	7.24+g
Area 5:		
Pipefitters; Steamfitters	19.22	3.39
Plumbers	18.40	4.03+g
Omit:		
Electricians:		
Area 5 wage rates		

	Basic Hourly Rates	Fringe Benefits
Add:		
Electricians:		
Area 5:		
Residential up to & inclu. 6-plexes under 1 roof	$ 9.19	3%+ $1.44
All Other Work:		
Electricians	16.17	32¼%
Cable Splicers	16.72	32¼%

DECISION NO. MT83-5101 - MOD. #9
(48 FR 7370 - February 18, 1983)
Statewide, Montana

	Basic Hourly Rates	Fringe Benefits
Omit:		
LINE CONSTRUCTION:		
Area's 1 and 2:		
All Classifications and wage rates		

DECISION NO. NE85-4033 - MOD. #1
(50 FR - 8/16/85)
Lancaster Co., Nebraska

	Basic Hourly Rates	Fringe Benefits
ADD:		
Ironworkers	$ 8.60	

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3031		
MOD. NO. 2		
(50 FR 31459 - August 2, 1985)		
Bergen, Essex, Hudson, (excluding Ellis Island and Statue of Liberty Island), Hunterdon, Middlesex, Morris, Passaic, Somerset, Sussex, Union and Warren Counties, New Jersey		
CHANGE:		
Bricklayers & Stonemasons		
Zone 6	$18.07	4.19
Carpenters, Insulators and Millwrights:		
Zone 5		
Carpenters & Insulators	19.26	23.5%
Millwrights	19.76	23.5%
Zone 6		
Carpenters & Insulators	18.50	20.5%
Millwrights	19.00	20.5%
Divers & Diver Tenders:		
Zone 1:		
Divers	22.33	7.72
Divers Tenders	18.19	7.72
Dock Builders & Piledrivermen	19.66	7.72
Laborers:		
Zone 1		
Group 1	12.55	3.60
Zone 2		
Group 1	11.80	4.35
LINE CONSTRUCTION:		
Zone 3		
Lineman & Equipment Operators	21.99	1.00+28%
Groundman	20.82	1.00+28%
Sprinkler Fitters		
Zone 1	19.28	5.87

	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3032		
MOD. NO. 3		
(50 FR 29594 - July 19, 1985)		
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey		
CHANGE:		
Asbestos Workers		
Zone 1	19.61	5.42
Carpenters & Insulators		
Zone 2	19.76	20.5%
Zone 3	19.26	23.5%
Millwrights		
Zone 3	19.51	23.5%
Carpenters, Insulators & Millwrights		
Zone 4	17.81	5.94
Divers & Diver Tenders:		
Zone 1		
Divers	23.33	7.72
Diver Tenders	18.19	7.72
Dock Builders & Piledrivermen		
Zone 2	19.66	7.72
Electricians		
Zone 4	19.77	10%+ 1.89
Ironworkers		
Zone 3	18.10	5.80
Mod. No. 2 published in 50 FR -32350, dated August 9, 1985, to read Change: (Laborers Heavy & Highway Construction)		

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	Basic Hourly Rates	Fringe Benefits
DECISION NO. NJ85-3033		
MOD. NO. 1		
(50 FR 28506 - July 12, 1985)		
Bergen, Essex, Hudson and Passaic Counties, New Jersey		
CHANGE:		
Carpenters, Insulators, and Millwrights:		
Zone 2		
Carpenters & Insulators	$18.50	20.5%
Millwrights	19.00	20.5%
Zone 4		
Carpenters & Insulators	19.26	23.5%
Millwrights	19.76	23.5%
Divers & Diver Tenders:		
Divers	23.33	7.72
Divers Tenders	18.19	7.72
Dock Builders and Piledrivermen	19.66	7.72
Laborers:		
Zone 1		
Group 1	12.55	3.60
Zone 2		
Group 1	11.80	4.35
LINE CONSTRUCTION:		
Zone 3		
Linemen & Equipment Op.	21.99	1.00+28%
Groundman	20.82	1.00+28%
Sprinkler Fitters	19.28	5.87
ADD:		
Bricklayers & Stonemasons		
Zone 5	18.07	4.19

	Basic Hourly Rates	Fringe Benefits
DECISION NO. WA84-5040 - Mod#10		
(49 FR 45532 - Nov. 16, 1984)		
Statewide Washington		
CHGT:		
DESCRIPTION OF WORK: Building Projects (does not include single-family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging		
ADD:		
DESCRIPTION OF WORK: Heavy and Highway projects and Dredging		

	Basic Hourly Rates	Fringe Benefits
DECISION NO. PA84-3035		
MOD. NO. 5		
(49 FR 27243 - Sept. 21, 1984)		
Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania		
CHANGE:		
LABORERS:		
Lackawanna, Susquehanna, Wayne & Northern part of Wyoming County:		
Class 1	$12.80	3.07
Class 2	12.95	3.07
Class 3	13.20	3.07
Class 4	12.95	3.07
Southern Part of Wyoming County:		
Class 1	12.87	2.90
Class 2	13.07	2.90
Class 3	13.19	2.90
Class 4	13.27	2.90
DECISION NO. PA85-3035		
MOD. NO. 1		
(50 FR 28511 - July 12, 1985)		
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania		
CHANGE:		
Supersedeas Decision No. PA84-3012, dated May 11, 1984, in 49FR 20229, to read PA84-3013.		

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SUPERSEDEAS DECISION

STATE: California
COUNTY: San Diego
DECISION NUMBERS: CA85-5034
DATE: Date of Publication
Supersedes Decision No. CA83-5119 dated September 16, 1983; in 48 FR 41702.
DESCRIPTION OF WORK: Building Projects; Heavy Projects (excluding Water Drilling); Highway Projects; Residential Projects (including single family homes and garden-type apartments up to and including 4 stories); and Dredging

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$22.06	$5.45
BOILERMAKERS:		
Boilermakers	21.60	4.25
Boilermaker- Blacksmith (storage tank erection)	17.25	4.00
Boilermaker-Blacksmith (storage tank repair)	16.05	4.00
BRICKLAYERS; STONEMASONS	19.09	3.59
BRICK TENDERS	15.42	4.54
CARPENTERS:		
Carpenters; Shinglers Work on single family homes and apartments up to and including three stories	15.20	4.76
Piledriver	20.01	4.76
Millwrights; Pneumatic Nailer; Hardwood Floor-layers	20.36	4.76
CEMENT MASONS:		
Cement Masons	14.66	6.87
Color Work; Composition, Mastic or Epoxy; Finishing Machine; Curb Machine	14.96	6.87
DIVERS:		
Diver	43.37	4.76
Stand-by Divers	22.26	4.76
Tender	21.26	4.76
DRYWALL INSTALLERS/LATHERS:		
Drywall Installers/Lathers	19.14	3.97
Drywall Stocker, Scrapper and Clean-up	9.57	1.37
ELECTRICIANS:		
Electricians	18.00	3.90+ 3%
Cable Splicers	18.45	3.90+ 3%
Utility Technician #1	16.50	.74+ 3%
Utility Technician #2	12.50	.74+ 3%
Sound Installers	16.47	1.46+ 3%
ELEVATOR CONSTRUCTORS:		
Mechanics	23.14	3.29+a
Helpers	16.23	3.29+a
Probationary Helpers	11.57	
GLAZIERS	17.87	3.15
IRONWORKERS:		
Fence Erectors	18.01	8.93
Reinforcing; Ornamental; Structural	18.90	8.93
IRRIGATION and LAWN SPRINKLERS	15.00	39%
LINE CONSTRUCTION:		
Ground	17.41	3.65+ 4%
Line Worker	22.61	3.65+ 4%
Cable Splicers	22.91	3.65+ 4%
PAINTERS:		
Brush, Paint Burner Brush (swing stage), Spray	18.37	4.67
Paperhangers, Spray (swing stage)	18.62	4.67
Sandblaster (swing stage); Iron, steel and bridge painters (swing stage); Iron steel and bridge painters, Spray (swing stage)	18.87	4.67
Sandblaster; Iron, steel and bridge painter (groundwork); Iron, steel and bridge painters, spray (groundwork); Riggers, climbing steel; Brush, climbing steel and bridge; Spray, climbing steel and bridge	19.37	4.67
Steeplejack	19.12	4.67
Taper	20.02	4.67
Parking Lot Work and/or Highway Markers:	19.37	4.67
Traffic Delineating Device Applicator	14.83	2.00+b
Wheel Stop Installer; Striper; Sandblaster	14.30	2.00+b

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DECISION NO. CA85-5034

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	Basic Hourly Rates	Fringe Benefits
PAINTERS: (Cont'd)		
Parking Lot Work and/or Highway Markers: (Cont'd)		
Pavement Sealing, Slurry Seal, Resurfacing and Repair:		
Mixer Operator	13.95	2.00+b
Applicator Operator; Shuttle; Squeegee	12.37	2.00+b
Top	10.39	2.00+b
Traffic Control and Service	7.00	2.00+b
PLASTER TENDERS:		
Single family homes and apartments up to and including 3 stories	13.34	5.29
All others work	16.34	5.29
PLASTERERS:		
Single family homes and apartments up to and including 3 stories	14.61	4.27
All others work	17.61	4.27
PLUMBERS; PIPEFITTERS; STEAMFITTERS; AIR CONDITION, REFIGERATION:		
Camp Pendleton	23.73	8.42
Rest of County	21.48	8.42
POWER EQUIPMENT OPERATORS:		
Group 1	17.50	7.35
Group 2	17.78	7.35
Group 3	18.07	7.35
Group 4	18.21	7.35
Group 5	18.43	7.35
Group 6	18.54	7.35
Group 7	18.66	7.35
Group 8	18.83	7.35
Group 9	18.96	7.35
DREDGING: (Hydraulic Suction Dredge):		
Lever	19.10	7.35
Watch Engineer; Welder; and Deckmate	18.77	7.35
Winch Operator (Stern Winch on Dredge)	18.22	7.35
Bargehand; Deckhand; Fire-fighter; Oiler; Leveehand	17.68	7.35
CLAMSHELL DREDGES:		
Lever	19.35	7.35
Watch Engineers; Deckmate	18.77	7.35
Bargemate	18.29	7.35
Bargehand; Deckhand; Fire-fighter; Oiler	17.68	7.35
TRUCK DRIVERS:		
Group 1	16.49	5.99
Group 2	16.79	5.99
Group 3	16.99	5.99
Group 4	17.19	5.99
Group 5	17.39	5.99
Group 6	19.39	5.99
ROOFERS	$14.54	$5.16
SHEET METAL WORKERS	20.38	6.04
SOFT FLOOR LAYERS	18.45	3.94
SPRINKLER FITTERS	21.87	3.23
TILE, MARBLE AND TERRAZZO SETTERS	19.76	5.12
TILE, MARBLE AND TERRAZZO FINISHERS	14.14	3.80
LABORERS:		
Group 1	14.95	6.12
Group 2	15.25	6.12
TUNNEL LABORERS:		
Group 1	15.25	6.12
Group 2	15.45	6.12
Group 3	15.70	6.12

(12)

RIGGERS; WELDERS - Receive rate prescribed for craft performing operation to which rigging or welding is incidental.

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 6 Paid Holidays: A through F.

b. Employer contributes $.80 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $1.13 per hour to Vacation, 5 years but less than 10 years $.48 per hour to Vacation Fund, over 10 years $1.83 per hour to Vaction Fund.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

ELECTRICIANS

Utility Technicians #1: Installation of street lights and traffic signals, including electrical circuitry, programable controller, pedestal mounted electrical meter enclosures and laying of pre-assembled cable in ducts. The layout of electrical systems and communication installation including proper position of trench depths, and radius at duct banks, location for manholes, street lights, and traffic signals.

Utility Technicians #2: Distribution material of job site, installation of underground ducts for electrical, telephone, cable TV, and communication systems. The setting, leveling, grounding and racking of precast manholes, handholes and transformer pads.

LABORERS

Group 1: Laborer (general construction); Asphalt Ironer - Spreader; Boring Machine Tender; Caulker; Cesspool Digger and Installer; Chucktender (except tunnels); Concrete Curer (Impervious Membrane and Form Oiler); Concrete Water curing, Cutting Torch Operator (demolition); Driller's Tender (Caisson) including Bellowers, Dri-Pak-it Machine, Concrete Cutting Torch, Dry packing of concrete, plugging, filling of Shee Bolt Holes, Fine Grader on Highways, streets and airport paving (sewer and drainage lines when employed); Form Blower; Gas and Oil Pipeline Laborer; Guinea Chaser; Jet; Landscape Gardener and Nursery; Laser Beam in connection with Laborers work; Packing Rod Steel and Pans; Pipelayer's Backup (coating, grouting, making of joints, sealing, caulking, dispering and including Rubber Gasket Joints and pointing); Railroad work Laborer; Rigging and Signaling, Riprap Stonepaver; Sandblaster (Pot Tender); Scaler, Septic Tank Digger and Installer; Tank Scaler and Cleaner, Tool Shed Checker; Window Cleaner; Rebound (gunite industry); Housemover

LABORERS (Cont'd)

Group 2: Asphalt Raker; Buggymobile; Cement Dumper (on 1 yard or larger mixers and handling bulk cement); Concrete Saw (excluding tractor type, Roto-scraper, Chipping Hammer, Concrete Core Cutter and Concrete Grinder and Sander); Cribber - Shorer, Lagging and Trench Bracing, Hand-guided Lagging Hammer; Driller - All power Drills, including Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and all types of Mechanical Drills without regard to the form of motive power; Driller (all other where drilling is for use of explosives); Gas and Oil Pipeline Wrapper (Pot Tender and Form); Gas and Oil Pipeline Wrapper (6 inch pipe and over); Operator and Tenders of pneumatic, gas and electric tools; Concrete Pumps; Vibrating Machines; Multi-plate Impact Wrench and similar mechanical tools not separately classified herein; Pipelayer (performing all services in the laying and installation of pipe from the point of receiving pipe until completion of the operation, including any and all forms of tubular material, whether Pipe, Metallic or Non-metallic, Conduit and any other stationary type of tubular device used for the conveying of substance or element, whether water, sewage, solid, gas, air or other products what-so-ever and without regard to the nature of material from which the tubular material is fabricated; Powder; Blasters' Tenders; Prefabricated Manhole Installer; Rock Slinger; Sandblaster and Waterblaster (Nozzle operator); Scaler (using Bos'n Chair, Safety Belt); Steel Headerboard; Tree Climber, using mechanical tools; Welding in connection with Laborer's work; Gun Operator (gunite industry)

TUNNEL LABORERS

Group 1: Blasters; Drillers; Powder; Cherry Picker; Grout Gun; Kemper and other pneumatic Concrete Placer Operator; Miners in short dry tunnels under streets, highways and similar places; Miners - tunnel (hand or machine); Powder (tunnel work); Steel Form Raisers and Setters; Timber; Retimber wood or steel

Group 2: Bull Gang Muckers (Track); Chuchtender; Cabletender; Concrete Crew (includes Rodders and Spreaders); Dump; Grout Crew; Tender for Steel Form Raisers and Setters; Muckers - Tunnel (hand or machine); Nipper; Swamper (Break and Switch) on tunnel work; Vibrator; Jackhammer; Pneumatic tools (except Driller); Multi-plate Impact Wrench

Group 3: Powder - Primer House (licensed on tunnel work); Shaft and Raise Miner; Shifters; Blasters (licensed) all work of whatever type regardless of method used for such loading and placing

POWER EQUIPMENT OPERATORS

Group 1: Brake; Compressor Operator; Engineer Oiler; Generator; Pump; Signal; Switch; Ditchwitch; Elevator Operator (inside); Forklift (under 5 tons);

Group 2: Concrete Mixer (skip type); Conveyor; Firefighter; Hydrostatic Pump; Plant Operator; Generator, Pump or Compressor; Rotary Drill Tender (oilfield); Skiploader - wheel type up to 3/4 yd. without attachments; Soils Field Technician; Tar Pot Firefighter; Temporary Heating Plant; Trenching Machine Oiler; Concrete Pump Oiler (truck mounted)

Group 3: Ford Ferguson (with dragtype attachments); Helicopter Radio Operator (ground); Power Concrete Curing Machine; Power driven Jumbo Form Setter; stationary Pipe Wrapping and Cleaning Machine; Gradall Oiler; Surge Tank and Weight Master (Hot Plant); Trencher Oiler (foundations); Truck Crane Oiler

Group 4: Asphalt Plant Firefighter; Boring Machine; Chip Spreading Machine; Concrete Pump Operator; Dinkey Locomotive or Motor Operator (10 ton); Helicopter Hoist; Highline Cableway Signal; Power Sweeper; Trenching Machine (up to 6 ft.); Concrete Pump Operator, truck mounted; Helicopter Radio Operator

Group 5: A-frame Winch Truck Operator; Asphalt Plant or Concrete Batch Plant Operator (where commercial power is not used, no less than one Generator Operator is required); Asphalt Spreading Machine Operator (Spreader Bar and similar); Bit Sharpener; Box or Mixer (asphalt or concrete); Concrete Joint Machine Operator (canal and similar type); Concrete Planer Operator; Derrick (oilfield type); Drilling Machine Operator (including water wells); Equipment Greaser (Mobile and Grease Rack); Forklift Operator (over 5 ton capacity); Hydro-hammer - Aero Stomper; Hydrographic Seeder Machine Operator (straw, pulp, or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanical Finisher Operator (Concrete-Clary-Johnson-Bidwell or similar); Pavement Breaker Operator (truck mounted, oiler required); Road Oil Mixing Machine Operator; Roller Operator; Ross Carrier Operator (jobsite); Self-propelled Tar Pipelining Machine Operator; Skiploader Operator (wheel or track type over 3/4 yd. up to and including 1½ yds.); Skiploader - Ford Ferguson up to 3/4 yd. with drag attachments; Slip Form Pump Operator (power driven hydraulic lifting device for concrete forms); Screed Operator; Stinger Crane (Austin-Western or similar type); Traveling Pipe Wrapping, Cleaning and Bending Machine Operator; Truck type Loader; Tugger Hoist (1 drum)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Plant Engineer; Asphalt or Concrete Spreading Operator (tamping or finishing); Asphalt Paving Machine Operator (Barber Green or similar type); Automatic Curb Machine; Belt Splicer or Vulcanizer; BHL Lima Road Pactor; Wagner Pactor or similar Operator; Bridge Crane Operator; Bridge type Unloader and Turntable Operator; Cast-in-place Laying Machine; Combination Mixer and Compressor Operator (Gunite work); Concrete Mixer; Concrete Mixer Operator - paving (Oiler required); Crane Operator (up to and including 25 ton capacity)(Oiler required)(Long Boom Pay applicable); Crushing Plant Operator (Oiler required)(where commercial power is not used, no less than one Generator Operator is required); Deck Engine Operator; Drill Doctor; Elevating Grade Operator; Gradall Operator (Oiler required); Grade Checker; Grouting Machine Operator; Guard Rail Post Driver Operator; Heavy Duty Repair; Hoist Operator (single drum - Buck Hoist- Chicago Boom and similar type); Hoist Operator (2 or 3 drum); Kolman Belt Loader and similar type (when two or more are working together an additional employee shall be required); LeTourneau Blob Compactor or similar type; Lift Mobile Operator (Oiler required); Lift Slab Machine Operator (Vagtborg and similar types); Material Hoist Operator (1 drum); Mucking Machine Operator (1/4 yd.) (Oiler required)(rubber-tired, rail or track type); Pile Driver Operator (Oiler required); Pneumatic Concrete Placing Machine Operator (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun Operator; Polar Gantry Crane Operator; Rotary Drill Operator (excluding Caisson type)(Oiler required); Rubber-tired Earth Moving Equipment Operator (single engine - Caterpillar, Euclid, Athey Wagon - Water Pulls and similar types with any and all attachments up to 50 cu. yds. struck); Rubber-tired Scraper Operator (self-loading paddle wheel type - John Deere 104 and similar single unit); Skiploader Operator (wheel or track type, over 1½ yds. up to and including 6½ yds.); Stinger Crane (Austin-Western-Pettibone or similar type) (over 5 tons); Surface Heaters and Planer Operator; Tractor Compressor Drill Combination Operator; Tractor Operator (Bull Dozer, Tamper, Scraper, and Push Tractor, single engine); Trenching Machine Operator (over 6 ft. depth capacity - manufacturer's rating) (Oiler required); Tunnel Locomotive Operator (10 to 30 tons); Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, up to and including 1 cu. yd. M.R.C.) (Oiler required) (Long Boom Pay applicable); Welder (general)

POWER EQUIPMENT OPERATORS (Cont'd)

Group 7: Automatic Lineau Tension Machine (2 Operator required); Crane Operator (over 25 tons, up to and including 100 ton M.R.C.) (Long Boom Pay applicable) (Oiler required); Derrick Barge Operator (Oiler required, up to 100 tons) (over 100 tons, Fire Fighter or Oiler required); Dual Drum Mixer (Oiler required); Hoist Operator (2 or 3 drum with boom attachment); Hoist Operator (Stiff Leg, Guy Derrick or similar type up to 100 ton capacity) (Oiler required, Long Boom pay applicable); Loader Operator (Athey, Euclid, Sierra or similar type); Monorail Locomotive Operator (diesel, gas, or electric); Motor Patrol - Blade Operator; Multiple Engine Tractor Operator (Euclid and similar type, except Quad 9 Cat); Pre-stressed Wrapping Machine Operator (2 Operators required); Rubber-tired Earth Moving Equipment Operator (multiple engine, Euclid, Caterpillar and similar type up to 50 cu. yds. struck); Tractor Loader Operator (Crawler and wheel type over 6½ yds.); Tractor Operator (boom attachments) (over 40 ft. boom, Oiler required); Tower Crane Operator (two Operators required); Tower Crane Repair; Universal Equipment Operator (Shovel, Backhoe, Dragline, Clamshell, over 1 cu. yd. M.R.C.); Welder - certified; Welder-Heavy Duty Repair Combination; Woods Mixer Operator and other similar Pugmill Equipment

Group 8: Auto Grader Operator (one Grade Checker and one additional employee required); Automatic Slip Form Operator (Grade Checker and one additional employee required); Crane Operator (over 100 tons, two Operators required, Long Boom Pay applicable); Mass Excavator Operator (two or more Operators and Oiler required, less than 750 cu. yds.); Mechanical Finishing Machine Operator; Mobile Form Traveler Operator; Motor Patrol Operator (multi-engine); Pipe Mobile Machine Operator (two Operators required); Rubber-tired Earth Moving Equipment Operator (multi-engine, Euclid, Caterpillar, and similar type over 50 cu. yds. struck); Rubber-tired Scraper Operator (pushing one another without Push Cat, Push Pull - $.50 per hour additional to base rate); Rubber-tired Self Loading Scraper Operator (paddle wheel - Auger type Self Loading, 2 or more units); Polar Crane Operator; Tandem Equipment Operator (2 units only); Tandem Tractor Operator (Quad 9 or similar type); Tunnel Mole Boring Machine Operator

Group 9: Canal Liner or Trimmer Operators (not less than four (4) employees required - Oiler, Welder - Mechanic and Grade Checker); Helicopter Pilot; Highline Cableway Operator; Remote Controlled Earth Moving Equipment Operator (no one Operator shall operate more than two pieces of earth moving equipment at one time) ($1.00 per hour additional to base rate); Wheel Excavator Operator (over 750 cu. yds. per hour, two Operators and one Oiler and two Heavy Duty Repair required)

TRUCK DRIVERS

Group 1: Traffic Control, also Swampers and Pickups

Group 2: 2 axle Dumps; 2 axle Flatbed; Bunker; Concrete Pumping; Industrial Lift; Forklift, under 15,000 lbs.

Group 3: 3 axle Dump; 3 axle Flatbed; 2 axle Water Trucks; Erosion Control Nozzle; Dumpcrete, less than 6½ yds.; Forklift 15,000 lbs. and over; Prell; Pipeline working Truck Driver; Road Oil Spreader; Cement Distributor or Slurry Driver; Boot; Ross Carrier

Group 4: Off-road Dump, under 35 tons; 4 axle but less than 7 axle; Lowbed and Trailer; Transit Mix, under 8 yds.; 3 axle Water Trucks; Erosion Control; Grout Mixer; Dumpcrete 6½ yds. and over; Dumpsters; DW 10's, 20's and over; Fuel Truck and Dynamite; Winch, 2 axle; Truck Greaser

Group 5: Off-road Dump, 35 tons and over; 7 axle or more; Transit Mix, 8 yds. and over; A-frame or Swedish Cranes; Tire; Water Pull Tankers; Welder; Winch Truck, 3 axle or more

Group 6: Truck Repair

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii))

STATE: Missouri
DECISION NO.: MO85-4023
COUNTIES: Statewide
DATE: Date of Publication
Supersedes Decision No. MO85-4005 dated April 12, 1985 50 FR 14568.
DESCRIPTION OF WORK: Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits
CARPENTERS & PILEDRIVERMEN:		
Zone 1	17.81	3.83
Zone 1A	17.41	3.83
Zone 2	16.46	3.83
Zone 3	16.15	2.38
Zone 4	15.55	2.38
Zone 5	15.75	2.38
Zone 6	17.92	.86
Zone 6A	16.62	1.31
Zone 7	17.92	.86
Zone 7A	17.47	1.31
Zone 7B	17.92	.86
Zone 7C	17.42	1.36
Zone 7D	17.92	.86
Zone 8	16.30	2.05
Zone 9	16.05	2.67
Zone 10	17.81	3.17
CEMENT MASONS:		
Zone 1	15.895	2.38
Zone 2	15.28	1.95
Zone 3	15.87	2.38
Zone 4	12.75	
Zone 5	14.23	
Zone 6	15.85	
Zone 7	14.85	
Zone 8	14.80	2.38
Zone 9	15.35	2.60
Zone 10	14.65	2.60
Zone 11	12.95	2.95
ELECTRICIANS:		
Zone 1:		
Electrical contracts over $30,000.00	16.42	1.15+ 14.75%
Electrical contracts $30,000.00 & under	13.62	1.15+ 14.75%
Zone 2	16.18	3.01+ 10%
Zone 3:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%
ELECTRICIANS (CONT'D):		
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 4:		
Electrical contracts not to exceed 2000 man hours	15.18	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 5:		
Electrical contracts not to exceed 2000 man hours	14.58	3.01+ 10%
Electrical contracts 2000 man hours & over	16.18	3.01+ 10%
Zone 6	18.20	3.01+ 28-1/2%
Zone 7:		
Electrical contracts over $15,000.00	18.20	3.01+ 28-1/2%
Zone 8:		
Electrical contracts $15,000.00 & under	14.78	3.01+ 28-1/2%
Zone 9:		
Electrical contracts $15,000.00 & under	11.43	3.01+ 28-1/2%
Zone 10:		
Electrical contracts $15,000.00 & under	8.07	3.01+ 28-1/2%
Zone 11	14.55	1.89+ 9%
Zone 12	15.04	1.89+ 9%

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS (CONT'D):		
Zone 13	14.22	2.02 + 10%
Zone 14:		
Electricians	13.09	1.67+ 8%
Cable Splicers	13.44	1.67+ 8%
Zone 15:		
Electricians	15.71	3.47+ 10%
Cable Splicers	15.96	3.47+ 10%
IRONWORKERS:		
Zone 1	16.075	3.40
Zone 2	17.51	3.37
Zone 3	14.51	3.37
Zone 4	14.60	2.67
Zone 5	15.00	2.40
Zone 6	16.05	2.45
Zone 7	15.325	3.40
Zone 8	16.725	3.49
LABORERS:		
Group 1:		
Zone 1	12.68	3.60
Zone 2	11.53	3.35
Zone 3:		
(a)	15.60	2.30
(b)	15.10	2.80
Zone 4:		
(a)	14.65	2.30
(b)	14.15	2.80
Group 2:		
Zone 1	13.03	3.60
Zone 2	12.08	3.35
Zone 3:		
(a)	16.20	2.30
(b)	15.70	2.80
Zone 4:		
(a)	15.25	2.30
(b)	14.75	2.80
Zone 5: (Clay, Jackson, Platte & Ray Counties):		
Group 1	13.07	3.60
Group 2	13.82	3.60
Zone 6: (St. Louis City and County):		
General Laborer	15.275	2.58
Dynamiter or Powderman	15.775	2.58

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Zone 1:		
Lineman	$18.37	$1.25 + 8-1/2%
Lineman Operator	17.10	1.25 + 8-1/2%
Groundman Powderman	12.84	1.25 + 8-1/2%
Groundman	12.27	1.25 + 8-1/2%
Zone 2:		
Lineman	17.54	1.25 + 8-1/2%
Lineman Operator	16.73	1.25 + 8-1/2%
Groundman Powderman	12.77	1.25 + 8-1/2%
Groundman	11.36	1.25 + 8-1/2%
Zone 3:		
Linemen & Cable Splicer	16.53	1.25+ 23.75%
Groundman-Winch Driver	12.15	1.25+ 23.75%
Groundman-Driver	11.77	1.25+ 23.75%
Equipment Operator	14.79	1.25+ 23.75%
Groundman	11.72	1.25+ 23.75%
Zone 4:		
Lineman	17.75	.65+ 13-1/2%
Groundman Equipment Operator	15.14	.65+ 13-1/2%
Groundman - Class A	11.26	.65+ 13-1/2%
Zone 5: Railroad & Cross County Transmission Lines:		
Lineman	15.50	1.00+ 8-1/2%
Lineman Operator	14.36	1.00+ 8-1/2%
Groundman Powderman	10.79	1.00+ 8-1/2%
Groundman	10.09	1.00+ 8-1/2%

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	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Zone 5 (Cont'd):		
Pole Treating Specialist	$16.24	$1.00+ 8-1/2%
Pole Treating Truck Driver	10.79	1.00+ 8-1/2%
Pole Treating Groundman	10.09	1.00+ 8-1/2%
Zone 6: Telephone and Telegraph Railroad Communications and C.A.T.V. Work:		
Cable Splicer, Air Pressure Technician, Central Office Equipment Man and Key System Installer	10.16	.50+ 8-1/2%
Telephone Lineman, Installer, CATV Terminator and Equipment Operator (D-4 or larger Crawler, Wheel Trencher Quarter Yard Backhoe or larger)	9.73	.50+ 8-1/2%
Equipment Operator (all other small equipment)	8.50	.50+ 8-1/2%
Groundman-Winch Driver	7.61	.50+ 8-1/2%
Groundman	6.67	.50+ 8-1/2%
Zone 7: Telephone & Telegraph & CATV Work:		
Cable Splicers; Air Pressure Technician, Central Office Equipment Man	10.96	.45+3%
Telephone Lineman & Installer, Repairman, CATV Terminator, Equipment Operator (1/4 yd. Backhoe & larger & D-4 Crawler & larger)	10.39	.45+3%
Groundman-Winch Driver	7.87	.45+3%
Groundman	6.36	.45+3%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Zone 1:		
Brush & Roller	$16.04	$2.00
Spray	17.04	2.00
Bridge	16.79	2.00
Zone 2:		
Brush	11.30	1.07
Spray	12.30	1.07
Sandblasting & Waterblasting	13.10	1.07
Tower, Stacks, Walkway, Cables, Tanks, and Bridges	12.80	1.07
Bridges over 500 ft. in length	16.52	1.07
Zone 3:		
Brush	13.00	2.60
Spray, Structural Steel & Sandblasting	14.25	2.60
Zone 4:		
Brush	14.50	
Bridge	15.25	
Spray, Sandblasting Operator; Work performed on bridges 75 ft. in height	15.50	
All Structural Steel over 50 ft. in height	15.25	
Zone 5:		
Brush	14.60	1.45
Spray	15.60	1.45
Steel, storage bin & tank	15.00	1.45
Bridges, stage; Belt; Barooka	15.10	1.45
Zone 6:		
Brush, Roller	13.02	.60
Spray	13.52	.60
Zone 7:		
Brush	13.70	.45
Spray	14.20	.45
Zone 8:		
Brush	16.00	2.53
Spray	18.00	2.53
Zone 9:		
Brush	13.73	1.28
Spray, Bridgeman, Steelmen	14.23	1.28
Zone 10:		
Brush	14.00	
Spray	16.00	

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Zone 1:		
Group I	$15.30	$4.07
Group II	15.05	4.07
Group III	14.35	4.07
Group IV:		
(a)	10.33	4.07
(b)	13.35	4.07
Zone 2:		
Group I	16.32	4.04
Group II	16.32	4.04
Group III	15.02	4.04
Group III (a)	13.95	4.04
Group IV	14.57	4.04
Group IV (a)	13.49	4.04
Group V:		
(a)	17.02	4.04
(b)	17.87	4.04
(c)	18.32	4.04
(d)	19.07	4.04
Zone 3:		
Group I	16.45	3.97
Group II	16.25	3.97
Group III	16.05	3.97
Group IV	15.45	3.97
Zone 4:		
Group I	14.85	3.97
Group II	14.50	3.97
Group III	14.30	3.97
Group IV	13.45	3.97
Zone 5:		
Group I	15.10	4.05
Group II	14.85	4.05
Group III	14.15	4.05
Group IV	12.65	4.05
Zone 6:		
Group I	15.05	4.05
Group II	14.70	4.05
Group III	14.50	4.05
Group IV	12.70	4.05
Zone 7:		
Group I	15.47	2.90
Group II	15.12	2.90
Group III	14.92	2.90
Group IV	12.87	2.90
Zone 8:		
Group I	15.90	3.97
Group II	15.70	3.97
Group III	15.50	3.97
Group IV	14.90	3.97

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Zone 1:		
Group 1	$14.17	$ 4.25
Group 2	14.02	4.25
Group 3	13.65	4.25
Group 4	13.51	4.25
Group 5	13.29	4.25
Zone 2:		
Group 1	20.48	
Group 2	20.55	
Group 3	20.62	
Group 4	20.55	
Group 5	20.39	
Zone 3:		
Group 1	19.05	
Group 2	19.39	
Group 3	19.23	
Group 4	19.16	
Group 5	18.99	
Zone 4:		
Group 1	15.54	3.25
Group 2	15.69	3.25
Group 3	15.70	3.25
Group 4	15.65	3.25
Group 5	15.44	3.25
Zone 5:		
Group 1	14.33	3.25
Group 2	14.44	3.25
Group 3	14.60	3.25
Group 4	14.49	3.25
Group 5	14.27	3.25
Zone 6:		
Group 1	13.69	3.25
Group 2	13.79	3.25
Group 3	13.87	3.25
Group 4	13.76	3.25
Group 5	13.58	3.25
Zone 7:		
Group 1: Trucks or Trailers of a water level capacity of 11.99 cu. yds. or less.	15.17	55.00 +a
Group 2: Forklift Trucks; Job Site Ambulance & Pickup Trucks & Flat Bed Trucks	14.00	55.00 +a

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS (CONT'D):		
Zone 7 (Cont'd):		
Group 3: Truck or Trailers of a water level capacity of 12.0 cu. yds. up to 22.0 cu. yds. including Euclids, Speedace and similar equipment of same capacity and Compressors	$15.37	$55.00 +a
Group 4: Trucks or Trailers of a water level capacity of 22.0 cu. yds. and over including Euclids, speedace and all Floats, Flat Bed Trailers, Boom Trucks, Winch Trucks including small trailers, Farm Wagons, Tilt-top Trailers, Field Offices Tool Trailers, Concrete Pumps, Concrete Conveyors and Gasoline Tank Trailers	15.47	55.00 +a

FOOTNOTE:

a - 7 Paid Holidays also, paid vacation of 3 days of 600 hours of service in any one contract years 4 days paid vacation for 800 hours of service in any contract year; 5 days paid vacation for 1,000 hours of service in any one contract year; also .80 per hour health and welfare.

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREAS COVERED BY CARPENTERS AND PILEDRIVERMEN ZONES

Zone 1 - Franklin, Jefferson, St. Charles Counties
Zone 1A - Lincoln, Warren Counties
Zone 2 - Pike, St. Francois, Washington Counties
Zone 3 - Cass, Lafayette, Buchanan, Clinton and Johnson Counties
Zone 4 - Atchison, Andrew, Barry, Barton, Bates, Caldwell, Camden, Carroll, Cedar, Christian, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Nodaway, Ozark, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Worth & Wright Counties
Zone 5 - Crawford, Dent, Gasconade, Iron, Madison, Maries, Montgomery, Phelps, Pulaski, Reynolds, Shannon & Texas Counties
Zone 6 - Boone, Cooper and Howard Counties
Zone 6A - Pettis, Benton and Morgan Counties
Zone 7 - Lewis, Marion and Ralls Counties
Zone 7A - Callaway, Cole, Miller, Moniteau and Osage Counties
Zone 7B - Adair, Putnam, Sahuyler, Knox and Sullivan Counties
Zone 7C - Audrain and Monroe Counties
Zone 7D - Randalph, Chariton, Linn, Macon and Shelby Counties
Zone 8 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Howell, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Ste. Genevieve, Scott, Stoddard and Wayne Counties
Zone 9 - Clay, Jackson, Platte and Ray Counties
Zone 10 - St. Louis County and City

AREAS COVERED BY CEMENT MASONS ZONES

Zone 1 - Bates, Carroll, Cass & Lafayette Counties
Zone 2 - Dent, Phelps, Pike, Pulaski, Texas, Marion, Ralls and Shannon Counties
Zone 3 - Clay, Jackson, Platte & Ray Counties
Zone 4 - Cedar, Christian, Dade, Dallas, Douglas, Greene, Howell, Laclede, Ozark, Polk, Stone, Taney, Webster & Wright Counties
Zone 5 - Benton, Henry, Hickory, Johnson, Morgan, Pettis, Saline & St. Clair Counties
Zone 6 - Adair, Audrain, Boone, Charlton, Cooper, Howard, Linn, Macon, Moniteau, Monroe, Randolph, Shelby, Schuyler, Sullivan & Putnam Counties
Zone 7 - Callaway, Camden, Cole, Gasconade, Maries, Miller, Montgomery, & Osage Counties
Zone 8 - Andrew, Atchison, Buchanan, Caldwell, Clinton, Daviess, DeKalb, Gentry, Grundy, Harrison, Holt, Livingston, Mercer, Nodaway & Worth Counties
Zone 9 - St. Louis City & County, Jefferson & St. Charles Counties
Zone 10 - Franklin, Lincoln, Warren, Iron, St. Francois, Ste. Genevieve, Washington, Reynolds & Madison Counties
Zone 11 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Mississippi, New Madrid, Oregon, Pemiscot, Perry, Ripley, Scott, Stoddard and Wayne Counties

AREAS COVERED BY ELECTRICIAN ZONES

Zone 1 - Adair, Audrain (that part of east of Highway 19), Clark, Knox, Lewis Linn, Macon, Marion, Monroe, Montgomery, Pike, Putnam, Ralls, Schuyler, Scotland, Shelby and Sullivan Counties
Zone 2 - Area bounded on the North by State Highway 92 in Platte & Clay Counties; east bya straight line from Intersection of State Highway 92 & 33 in Clay County Intersection of U.S. Highway 24 & State Highway 7 in Jackson County, south on Highway 7 to Pleasant Hill; South from Pleasant Hill due West to the Missouri - Kansas State Line; West by the Missouri - Kansas State Line. Towns of Pleasant Hill & Blue Springs are excluded
Zone 3 - Portion of Cass, Clay, Jackson and Platte Counties not included in Zone 2
Zone 4 - Bates, Benton, Henry, Johnson, Lafayette & Pettis Counties
Zone 5 - Carroll, Cooper, Morgan, Ray and Saline Counties
Zone 6 - St. Charles County, St. Louis County and City
Zone 7 - Bollinger, Butler, Cape Girardeau, Carter, Dunklin, Franklin, Iron, Jefferson, Lincoln, Madison, Mississippi, New Madrid, Pemiscot, Perry, Reynolds, Ripley, Scott, St. Francois, Ste. Genevieve, Stoddard, Warren, Washington and Wayne Counties
Zone 8 - Franklin, Jefferson, Lincoln & Warren Counties
Zone 9 - Bollinger, Cape Girardeau, Perry, Scott, St. Francois and Ste. Genevieve Counties
Zone 10 - Butler, Carter, Dunklin, Iron, Madison, Mississippi, New Madrid, Pemiscot, Ripley, Reynolds, Stoddard, Washington and Wayne Counties
Zone 11 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Laclede, Oregon, Ozark, Polk, Shannon, Stone, Taney, Texas, Webster and Wright Counties
Zone 12 - Pulaski County
Zone 13 - Andrew, Buchanan, Clinton, DeKalb, Atchison, Holt, Mercer, Gentry, Harrison, Daviess, Grundy, Worth, Livingston, Nodaway, Caldwell Counties
Zone 14 - Barty, Barton, Cedar, Dade, Jasper, McDonald, Newton, St. Clair, Vernon and Lawrence Counties
Zone 15 - Audrain (except Cuivre Township), Boone, Callaway, Camden, Charlton, Cole, Crawford, Dent, Gasconade, Howard, Maries, Miller, Moniteau, Osage Phelps and Randolph Counties

AREAS COVERED BY IRONWORKERS ZONES

Zone 1 - Audrain, Boone, Callaway, Cole, Crawford, Dent, Gasconade, Maries, Montgomery, Osage, Phelps, Pike, Pulaski and Shannon Counties
Zone 2 - Buchanan, Cass, Clay, Jackson, Lafayette, Platte and Ray Counties
Zone 3 - Andrew, Atchison, Barton, Bates, Benton, Caldwell, Carroll, Cedar, Charlton, Christian, Clinton, Cooper, Dade, Dallas, Daviess, DeKalb, Gentry, Greene, Grundy, Harrison, Henry, Hickory, Holt, Howard, Johnson, Laclede, Linn, Livingston, Mercer, Moniteau, Morgan, Nodaway, Pettis, Ozark Polk, Randolph, St. Clair, Saline, Sullivan, Vernon, Webster, Taney, Wright and Worth Counties
Zone 4 - Barry, Jasper, Lawrence, McDonlad, Newton and Stone Counties
Zone 5 - Adair, Clark, Knox, Lewis, Macon, Marion, Schuyler, Scotland, Ralls, Monroe and Shelby Counties

AREAS COVERED BY IRONWORKERS ZONES - (CONT'D)

Zone 6 - Butler, Cape, Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Ripley, Scott, Stoddard and Wayne Counties
Zone 7 - Camden, Douglas, Howell, Miller, Oregon Texas Counties.
Zone 8 - City & County of St. Louis, St. Charles, Jefferson, Franklin, Lincoln, Warren, Washington, St. Francois, Iron, Ste. Genevieve, Reynolds, Madison, Bollinger, Carter and Wayne Counties

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 1 AND 2

GROUP 1 - GeneralLaborers - Carpenter tenders; salamander tenders; loading trucks under bins; hopper & conveyors; track men; all other general laborers; air tool operator;cement handler, bulk or sack; dump man on earth fill; georgie buggie man; material batch hopper man; material mixer man (except on manholes); coffer dams; riprap pavers - rock, block or brick; scaffolds over ten feet notself-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator, all work in connection with hydraulic or general dredging operations; puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 feet where compressed air is not used; abutment and pier hole men working six (6) feet or more below ground; men working in coffer dams for bridge piers and footings in the river; ditchliners; pressure groutmen; caulker and chain or concrete saw; cliffscalers working from scaffolds, bosuns' chairs or platforms on dams or power plants over (10) feet above ground; mortarmen on brick or block manholes.
GROUP 2 - Skilled Laborers - Head pipe layer on sewer work; laser beam man; Jackson on any other similar tamp; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters; hot mastic kettleman; hot tar applicator; sandblasting and gunite nozzlemen; air tool operator in tunnels; screed man on asphalt machine; asphalt raker; barco tamper; churn drills; air track drills and all similar drills; vibrator man; stringline man for electronic grade control; manhole builders--brick or block; dynamite and powder men; welder; grade checker on cuts and fills

LABORERS CLASSIFICATIONS DEFINITIONS ZONES 3 AND 4

GROUP 1 - General Labor-Carpenter tenders; salamander tenders; dump man; ticket takers; loading trucks under bins, hoppers, and conveyors; track man; cement handler; dump man on earth fill; georgie buggie man; material batch hopper man; spreader on asphalt machine; material mixer man (except on manholes); coffer dams; riprap pavers-rock, block or brick; scaffolds over ten feet not self-supported from ground up; skipman on concrete paving; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil,drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setters, puddlers (paving only); straw blower nozzleman; asphalt plant platform man; chuck tender; crusher feeder; men handling creosote ties or creosote materials; men working with and handlingepoxy material; topper of standing trees; feeder man on wood pulverizers, board and willow mat weavers and cable tiers on river work; deck hands; pile dike and revetment work; all laborers working on underground tunnels less than 25 ft. where compressed air is not used; abutment and pier hole men working six (6) ft. or more below ground; men working in coffer dams for bridge piers and footings in the river; barco tamper; jackson or any other similar tamp; cutting torch man; liners, curb, gutters, ditch liners; hot mastic kettleman; hot tar applicator; hand blade operator; mortar men on brick or block manholes; rubbing concrete, air tool operator under 65 lbs.; caulker and lead man; chain or concrete saw under 15 h.p.

GROUP 2 - Skilled Laborers - Vibrator man; asphalt raker; head pipe layer on sewer work; batterboard man on pipe and ditch work; cliff scalers working from bosun's chairs; scaffolds or platforms on dams or power plants over 10 ft. high; air tool operator over 65 lbs.; stringline man on concrete paving; sandblast man; laser beam man; wagon drill; churn drill; air track drill and all other similar type drills,gunite nozzle man; pressure grout man; screed man on asphalt; concrete saw 15 h.p. and over; grade checker; stringline man on electronic grade control; manhole builder; dynamite man; powder man; welder; tunnel man

AREAS COVERED BY LABORERS

Zone 1 - Buchanan, Cass and Lafayette Counties
Zone 2 - Andrew, Atchison, Barry, Barton, Bates, Benton, Caldwell, Camden, Carroll, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Greene,Gentry, Grundy, Harrison, Henry, Hickory, Holt, Jasper, Johnson, Laclede, Lawrence, Livingston, McDonald, Mercer, Morgan, Newton, Nodaway, Ozark, Pettis, Polk, St. Clair, Saline, Stone, Taney, Vernon, Webster, Wright and Worth Counties.
Zone 3:
a - Franklin and Jefferson Counties
b - St. Charles County
Zone 4:
a - Adair, Audrain, Bollinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Dunklin, Gasconade, Howard, Howell, Iron, Knox, Lewis, Linn, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam,Ralls, Randolph, Reynolds, Ripley, St.Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Sullivan, Texas, Washington and Wayne Counties

AREAS COVERED BY LABORERS - (CONT'D)

Zone 4 (Cont'd):
b - Lincoln, Montgomery and Warren Counties

LABORER CLASSIFICATION DEFINITIONS - ZONE 5 - CLAY, JACKSON PLATTE AND RAY COUNTIES

Group 1 - General laborer - Carpenter tenders, salamander tenders; loading trucks under bins, hoppers and conveyors; track men and all other general laborers; air tool operator; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checkers on cuts and fills; georgia buggies man; material batch hopper man; scale man; material mixer man (except on manholes); coffer dams; abutments and pier hole men working below ground); riprap pavers rock, block or brick; signal man; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gas, gasoline, oil, drainage pipe, conduit pipe, tile & duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; puddlers (paving only); crusher feeder; men handling creosote ties on creosote materials; men working with and handling epoxy material or materials (where specialprotection is required); topper of standing trees; batter board man on pipe & ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working on under ground tunnels where compressed air is not used
Group 2 - Skilled Laborers - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any other similar tamp; wagon driller, churn drills, air trackdrills and all other similar drills; cutting torch man; form setters; liners and stringline men on concrete paving, curb, gutters and (etc.); hot mastic kettleman; hot tar applicator; hand blade operators; mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels; head pipe layer on sewer work; manhole builder (brick or block); dynamite and powder men; welder

AREA COVERED BY LINE CONSTRUCTION

Zone 1 - Bates, Benton, Carroll, Cass, Clay, Henry, Johnson, Jackson, Lafayette, Pettis, Platte, Ray and Saline Counties
Zone 2 - Andrew, Atchinson, Barry, Barton, Buchanan, Caldwell, Cedar, Christian, Clinton, Dade, Dallas, Daviess, DeKalb, Douglas, Gentry, Greene, Grundy, Harrison, Hickory, Holt, Jasper, Laclede, Lawrence, Livingston, McDonald, Mercer, Newton, Modaway, Ozark, Polk, St. Clair, Stone, Taney, Vernon, Webster, Worth and Wright Counties
Zone 3 - Crawford, Franklin, Iron, Jefferson,Reynolds, St. Charles, St. Francois, St. Louis and City, Washington, Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Dent, Gasconade, Howard, Howell, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Ripley, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas and Warren Counties

AREA COVERED BY LINE CONSTRUCTION (CONT'D)

Zone 4 - Bollinger, Butler, Cape Girardeau, Dunklin, Madison, Mississippi, New Madrid, Pemiscot, Scott, Stoddard and Wayne Counties
Zone 5 - Atchison, Nodaway, Worth, Harrison, Mercer, Holt, Andrew DeKalb, Davies, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Vernon, Benton, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark and Gentry Counties
ZONE 6 - Adair, Audrain, Boone, Callaway, Camden, Carter, Chariton, Clark, Cole, Cooper, Crawford, Dent, Franklin, Gasconade, Howard, Howell, Iron, Jefferson, Knox, Lewis, Lincoln, Linn, Macon, Maries, Marion, Miller, Moniteau, Monroe, Montgomery, Morgan, Oregon, Osage, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Charles, St. Francois, St. Louis and City, Ste. Genevieve, Schuyler, Scotland, Shannon, Shelby, Sullivan, Texas, Warren and Washington Counties
ZONE 7 - Atchison, Nodawsy, Worth, Harrison, Mercer, Holt, Andrew, DeKalb, Daviess, Grundy, Buchanan, Clinton, Caldwell, Livingston, Platte, Clay, Ray, Carroll, Jackson, Lafayette, Saline, Cass, Johnson, Pettis, Bates, Henry, Benton, Vernon, St. Clair, Hickory, Barton, Cedar, Polk, Dallas, Laclede, Jasper, Dade, Lawrence, Greene, Webster, Wright, Newton, McDonald, Barry, Stone, Christian, Douglas, Taney, Ozark, Gentry Counties

AREA COVERED BY PAINTERS

Zone 1 - Bates, Caldwell, Carroll, Clinton, Cass, Clay, Daviess, Grundy, Linn Henry, Harrison, Jackson, Johnson (excluding Whiteman Air Force Base, Lafayette, Livingston, Mercer, Platte and Ray Counties
Zone 2 - Bollinger, Cape Girardeau, Dunklin, Mississippi, New Madrid, Pemiscot, Scott, Stoddard, Reynolds, Iron, Butler, Carter, Shannon, Wayne, Oregon, Ripley, Ste. Genevieve, St. Francois, Perry, Washington, & Madison Counties
Zone 3 - Camden, Crawford, Dent Laclede, Maries, Miller, Phelps, Pulaski and Texas Counties
Zone 4 - Benton, Cooper, Moniteau, Morgan, Pettis and Saline Counties
Zone 5 - Andrew, Atchinson, Buchanan, DeKalb, Gentry, Holt, Nodaway, Worth Counties
Zone 6 - Barry, Barton, Cedar, Dade, Jasper, Lawrence, McDonald, Newton, St. Clair and Vernon Counties
Zone 7 - Adair, Audrain, Boone, Callaway, Chariton, Cole, Gasconade, Howard, Monroe, Montgomery, Linn, Osage Scotland and Randolph Counties
Zone 8 - Jefferson, St. Charles, St. Louis & City, Warren, Lincoln, Pike and Franklin Counties
Zone 9 - Christian, Dallas, Douglas, Greene, Hickory, Howell, Ozark, Polk, Stone, Taney, Webster and Wright Counties
Zone 10 - Clark, Lewis, Marion, and Ralls Counties.

CLASSIFICATION DEFINITIONS

Power Equipment Operators Zone 1

Group I - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, alltypes; boilers-2; boring machine (truck or crane mounted); bulldozer operator; clamshell operator; compressor maintenance operator-2; concrete plant operator, central mix; concrete mixer paver; crane operator, derrick or derrick-trucks; ditching machine; dragline operator; dredge engineman; dredge operator; drill-cat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader-fork lift; hoisting engineer-2 active drums; locomotive operator, standard guage; mechanics and welders, field; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump-2; pushcat operators; quad-trac; scoop operator- all types; scoops in tandem; self-propelled rotary drill (leroy or equal-not air trac); shovel operator; side discharge spreader; sideboom cats; skimmer scoop operator; slipform paver (CMI, REX or Equal); throttle man; truck crane; welding machine maintenance operator-2
Group II - "A" frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; backfiller operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator; elevating grader operator; greaser; hoisting engine-1 drum; LaTourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydra-hammer or similar type; power shield; pub mill operator; stump cutting machine; towboat operator; tractor operator-over 50 HP
Group III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyoroperator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; subgrading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 HP or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1
Group IV:
(a) Oilers
(b) Oiler driver, (all types)

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE $.35) ABOVE GROUP I RATE
Clamshells - 3 yd. capacity or over - crane or rigs, 80 ft. boom or over (including jib) - draglines, 3 yd. capacity or over - piledrivers, 80 ft. of boom or over (including jib) - shovels & backhoes, 3 yd. capacity or over

Power Equipment Operators Zone 2

Group I - Backhoe; cableway; crane, crawler or truck; crane, hydraulic-truck or cruiser mounted - 16 tons & over; crane locomotive; derrick, steam; derrick car & derrick boat; dragline; dredge; gradall, crawler or tire mounted; locomotive, gas, steam & other powers; pile driver, land or floating; scoop, skimmer; shovel, power (steam, gas, electric, or other powers); switch boat; whirley

Group II - air tuggerw/air compressor; anchor-placing barge; asphalt spreader; athey force feeder loader (self-propelled); backfilling machine; boat operator-push boat or tow boat (jobsite); boiler, high pressure breaking in period; boom truck, placing or erecting; boring machine, footing foundation; bullfloat; cherry picker; combination concrete hoist & mixer (such as mixermobile); compressors, two, not more than 50 ft. apart; compressor (when operator runs throttle); compressor-generator combination, compressor-pump combination; generators, two 30 KW or over, or any number developing over 30 KW; generator-pump combination; compressor-welder combination; concrete breaker (truck or tractor mounted); concrete pump, such as pump-crete machine; concrete spreader; conveyor, large (not self-propelled), hoisting or moving brick and concrete into, or into and on floor level, one or both; crane, hydraulic-rough terrain, self-propelled; crane hydraulic-truck or cruiser mounted-under 16 tons; drilling machines,self-powered, used for earth or rock drilling or boring (wagon drills and any hand drills obtaining power from other sources including concrete breakers,jackhammers and barco equipment - no engineer required); elevating grader; engineman, dredge; excavator or powerbelt machine; finishing machine, self-propelled oscillating screed; forklift; grader, road with power blade; highlift; hoist; concrete and brick (brick cages or concrete skips operating in or on tower, towermobile, or similar equipment); hoist; stack; hydro-hammer; lad-a-vator, hoisting brick or concrete; loading machine (such as barber-greene); mechanic, on job site; mixer, paving; mixer-mobile; mucking machine; pipe cleaning machine; pipe wrapping machines; plant asphalt; plant, concrete producing or ready-mix job site; plant heating-job site; plant mixing-job site; plant power, generating-job site; pumps, two self-powered over 2" through 6"; pumps, electric submersible, one through three, over 4"; quad-track; roller, asphalt, top or sub-grade; scoop, tractor drawn; spreader box; sub-grader; tie tamper; tractor-crawler, or wheel type with or without power unit, power take-offs, and attachments regardless of size; trenching machine; tunnel boring machine; vibrating machine automatic, automatic propelled; welding machines (gasoline or diesel) more than one but not over four (regardless of size); well drilling machine

Group III - Conveyor, large (not self-propelled); conveyor, large (not self-propelled) moving brick and concrete (distributing) on floor level; mixer two or more mixers of one bag capacityor less, air tugger w/plant air; boiler, for power or heating on construction projects; boiler, temporary; compressor, air-one; compressor air (mounted on truck; concrete saw, self-propelled;curb finishing machine; ditch paving machine; elevator (building construction or alteration); endless chain hoist; form grader; generator, one over 30 KW or any number developing over 30 KW; greaser; hoist; one drum regardless of size (except brick or concrete); lad-a-vator, other hoisting; manlift; mixer, asphalt, over 8 cu. ft. capacity, mixer, if two or more mixers of one bag capacity or less are

Group III - (Cont'd):
used by one employer on job an operator is required; mixer, with outside loader, 2 bag capacity or more; mixer, with side loader,regardless of size, not paver; oiler on dredge; oiler on truck crane pug mill operator; pump, sump-self-powered, automatic controlled over 2" during use in connection with construction work; sweeper, street; welding machine, one over 400 amp.; winch operating from truck; scissor lift (used for hoisting); tractor, small wheel type 50 h.p. & under with grader blade & similar equipment

Group III(a) - Truck crane and dredge

Group IV - Boat operator-outboard motor (job site); conveyor (such as con-vay-it) regardlessof how used; oiler; sweeper, floor

Group IV(a) - Crawler type

Group V - (a) Air pressure, oiler engineer, operating under ten pounds (b) air pressure, oiler engineer operating over ten pounds (c) air pressure engineer operating under ten pounds (d) air pressure engineer operating over ten pounds (e) crane-piledriving and extracting; crane using rock socket tool; dragline - 7 cu. yds. & over; shovel, power - 7 cu. yds. and over; crane, climbing such as Linden); derrick, diesel, gas or electric hoisting material and erecting steel - 150' or more above ground; hoists, three or more drums; scoop,tandem; tractor, tandem crawler

Crane with boom (including jib), over 100' from pin to pin (add 1¢ per foot to maximum of $2.00) above basic rate for crane

Work in tunnel or tunnel shaft, .50c above base rate

Power Equipment Operators Zones 3, 4 and 8

Group I - Asphalt finishing machine & trench widening spreader, asphalt plant console operator; autograder; automatic slipform paver; back hoe; blade operator - all types; boat operator - tow; boiler - 2; central mix concrete plant operator; clam shell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline opr.; dredge booster pump ;dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch-hammer wheel; locomotive operator- standard guage; mechanics and welders; mucking machine; piledriver operator; pitman crane operator; push cat operator; quad-trac; scoop operator; sideboom cats; skimmer scoop operator; trenching machine operator; truck crane, shovel operator

Group II - A-Frame; asphalt hot-mix silo; asphalt roller operator; asphalt plant fireman (drum or boiler); asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridge & dams); chip spreader; concrete mixer operator -- skip loader; concrete plant operator; concrete pump operator; dredge oiler; elevating grader operator; fork lift; grease fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor; pavement breaker; powerbroom-self-propelled; power shield; rooter; slip-form finishing machine; stumpcutter machine; side discharge concrete spreader; throttleman; tractor operator (over 50 hp); winch truck; asphalt roller operator; crusher operator

Group III - Spreader box operator, self-propelled (not asphalt; tractor operator (50 h.p. or less); boilers - 1; chip spreader (front man); churn drill operator; compressor over 105 CFM 2 - 3 pumps 4" & over; 2-½ light plant 7.5 KWA or any combination thereof; clef plane opr.; compressor maintenance operator 2 or 3; concrete saw operator (self-propelled); curb finishingmachine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; tank car heater (combination boiler & booster); ulmac, ulric or similar spreader; vibrating machine operator; hydrobroom
Group IV - Oiler; grout machine; oiler-driver; compressor over 105 CFM-1; conveyor operator - 1; maintenance operator; pump - 4" & over - 1

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
Crane with 3 yds. & over buckets; dragline operator - 3 yds. & over; shovel - 3 yds. & over; piledrivers - all types; clamshell - 3 yds. & over; hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATION SHALL RECEIVE ($.50) ABOVE GROUP I RATE
Tandem scoop operator

Crane, rigs over 100 feet (incl. jib) - 1c per foot

Power Equipment Operators Zones 5, 6 & 7

Group I - Asphalt finishing machine & trench widening spreader; asphalt plant console operator; automatic slipform paver; autograder; backhoe; blade operator, - all types; boat operator - tow; boilers - 2; central mix concrete plant operator; clamshell operator; concrete mixer paver; crane operator; derrick or derrick trucks; ditching machine; dozer operator; dragline operator; dredge booster pump; dredge engineman; dredge operator; drill cat with compressor mounted on cat; drilling or boring machine rotary self-propelled; highloader; hoisting engine - 2 active drums; launch hammer wheel; locomotive operator; - standard guage; mechanics and welder; mucking machine; piledriver operator; sideboom cats; skimmer scoop operators; trenching machine operator; truck crane; scoop operators - all types

Group II - A-frame; asphalt hot mix silo; asphalt plant fireman (drum or boiler); asphalt roller operator; asphalt plant man; asphalt plant mixer operator; backfiller operator; barber-greene loader; boat operator (bridges and dams); chip spreader; concrete mixer operator - skip loader; concrete plant operator; concrete pump operator; crusher operator; dredge oiler; elevating grader operator; fork lift; greaser-fleet; hoisting engine - 1; locomotive operator - narrow guage; multiple compactor, pavement breaker; power - broom - self-propelled; power shield; rooter; slip form finishing machine; stumpcutter machine; side discharge concrete spreader; throttle man; tractor operator (over 50 hp); winch truck

POWER EQUIPMENT OPERATORS - ZONES 5,6, & 7 (CONT'D)

GROUP III - Boilers - 1; chip spreader (front man); churn drill operator; clef plane operator; concrete saw operator (self-propelled); curb finishing machine; distributor operator; finishing machine operator; flex plane operator; float operator; form grader operator; pugmill operator; roller operator, other than high type asphalt; screening & washing plant operator; siphons & jets; subgrading machine operator; spreader box operator, self-propelled (not asphalt); tank car heater operator; (combination boiler & booster); ulmac, ulric, or similar spreader; vibrating machine operator, not hands; tractor operator (50 hp or less)
GROUP IV - Oiler; oiler driver

FOOTNOTE:
HOURLY PREMIUMS
FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.25) ABOVE GROUP I RATE
DRAGLINE operator - 3 yds. & over; shovel - 3 yds. & over; clamshell - 3 yds. & over; crane, rigs or piledrivers, 100' of boom or over (incl. jib.), hoists - each additional active drum over 2 drums

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.50) ABOVE GROUP I RATE
Tandem scoop operator; crane, rigs or piledrivers 150' to 200' of boom (incl. jib.)

FOLLOWING CLASSIFICATIONS SHALL RECEIVE ($.75) ABOVE GROUP I RATE
Crane rigs, or piledrivers 200 ft. of boom or over (incl. jib.)

AREAS COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE 1 - Clay, Jackson, Platte and Ray Counties
ZONE 2 - St. Louis City and County
ZONE 3 - Franklin, Jefferson, St. Charles Counties
ZONE 4 - Adair, Audrain, Boillinger, Boone, Butler, Callaway, Cape Girardeau, Carter, Clark, Cole, Crawford, Dent, Dunklin, Gasconade, Howell, Iron, Knox, Lewis, Macon, Madison, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgan, New Madrid, Oregon, Osage, Pemiscot, Perry, Phelps, Pike, Pulaski, Putnam, Ralls, Randolph, Reynolds, Ripley, St. Francois, Ste. Genevieve, Schuyler, Scotland, Scott, Shannon, Shelby, Stoddard, Texas, Washington, and Wayne Counties
ZONE 5 - Buchanan, Cass, Clinton and Lafayette Counties
ZONE 6 - Andrew, Atchinson, Bates, Benton, Caldwell, Carroll, Charlton, Cooper, Daviess, DeKalb, Gentry, Grundy, Harrison, Henry, Holt, Howard, Johnson, Linn, Livingston, Mercer, Nodaway, Pettis, Saline, Sullivan and Worth Counties
ZONE 7 - Christian, Greene, Jasper, Lawrence, Taney, Barry, Barton, Camden, Cedar, Dade, Dallas, Douglas, Hickory, Laclede, McDonald, Newton, Ozark, Polk, St. Clair, Stone, Vernon, Webster and Wright Counties
ZONE 8 - Lincoln and Warren Counties

TRUCK DRIVER CLASSIFICATION DEFINITIONS

ZONE 1

Group 1 - Mechanics & Welders-field
Group 2 - A-frame low boy-boom truck driver

Group 3 - Insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and similar excavating equipment material trucks, tandem two teams; semi-trailers; winch-truck-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers, tandem or semi
Group 4 - One team; station wagons; pickup truck; material trucks, single axle, tank wagon drivers, single axle
Group 5 - Oilers and greasers-field

ZONES 2, 3, 4, 5 & 6

Group 1 - Flat bed trucks - single axle; station wagon; pickup trucks; material trucks - single axle; tank wagon - single axle
Group 2 - Flat bed trucks - tandem axle; material trucks, tandem axle; tank wagon - tandem axle
Group 3 - Semi and/or pole trailers; winch fork and steel trucks; Insley wagons, dumpsters, half tracks, speedace, euclids, and other similar equipment, a-frame and derrick trucks, float or low boy distributor drivers and operators, tank wagon, semi-trailer
Group 4 - Agitator and transit mix truck
Group 5 - Warehousemen

AREA COVERED BY TRUCK DRIVER ZONES

ZONE 1 - Clay, Jackson, Platte & Ray Counties
ZONE 2 - Franklin, Jefferson and St. Charles Counties
ZONE 3 - Lincoln and Warren Counties
ZONE 4 - Buchanan, Cass, Johnson and Lafayette Counties
ZONE 5 - Andrew, Audrain, Barton, Bates, Benton, Bollinger, Boone, Caldwell, Callaway, Camden, Cape Girardeau, Carroll, Carter, Cedar, Chariton, Christian, Clinton, Cole, Cooper, Crawford, Dade, Dallas, Daviess, DeKalb, Dent, Douglas, Gasconade, Greene, Henry, Hickory, Howard, Iron, Jasper, Laclede, Lawrence, Linn, Livingston, Macon, Maidson, Maries, Marion, Miller, Mississippi, Moniteau, Monroe, Montgomery, Morgran, New Madrid, Newton, Osage, Pemiscot, Perry, Pettis, Phelps, Pike, Polk, Pulaski, Ralls, Randolph, Reynolds, St. Clair, St. Francois, Ste. Genevieve, Saline, Scott, Shannon, Shelby, Stoddard, Texas, Vernon, Washington, Wayne, Webster and Wright Counties
ZONE 6 - Adair, Atchinson, Perry, Butler, Clark, Dunklin, Gentry, Grundy, Harrison, Holt, Howell, Knox, Lewis, McDonald, Mercer, Nodaway, Oregon, Ozark, Putnam, Ripley, Schuyler, Scotland, Stone, Sullivan, Taney and Worth Counties
ZONE 7 - St. Louis City and County

SUPERSEDEAS DECISION

STATE: NEW YORK
DECISION NO. NY85-3044
Supersedes Decision No. NY83-3050, dated November 4, 1983 in 48 FR 50990.
DESCRIPTION OF WORK: Building Construction (does not include single family homes and apartments up to and including 4 stories), heavy (except water well drilling) & Highway Construction Projects.

COUNTY: CHEMUNG
DATE: Date of Publication

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	18.70	3.41
BOILERMAKERS	18.93	1.875+ 10%
BRICKLAYERS, CEMENT MASONS, MARBLE SETTERS, PLASTERERS, STONE MASONS, TERRAZZO WORKERS, & TILE SETTERS	12.45	1.35
CARPENTERS:		
All of the area west of a straight line from the intersection of Southport Twp. line and Clark Hallow Road to Route 17E to Winter Street, Big Flats, then in a straight line north to the Schuyler County line:		
Carpenters	12.30	3.08
Millwrights & Piledrivers	12.20	3.08
Heavy & Highway	14.11	3.035+ a
Remainder of County:		
Carpenters	12.82	1.83
Millwrights & Piledrivers	13.17	1.83
Heavy & Highway	15.35	1.795 +a
CEMENT MASONS (Heavy & Highway)	13.81	3.60
ELECTRICIANS	17.00	3.15+b +3%
ELEVATORS CONSTRUCTORS	14.48	2.69+ b+c
HELPERS	10.14	"
HELPERS (PROB.)	7.24	none
GLAZIERS	10.92	1.68
IRONWORKERS	14.40	3.10
LABORERS:		
Building	10.87	1.15
Heavy and Highway:		
Class A	13.39	1.50+d
Class B	13.59	1.50+d
Class C	13.79	1.50+d
Class D	13.99	1.50+d

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Substation and switching structures: Pipe type cable installation and maintenance jobs or projects: Railroad catenary installation and maintenance: Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable Splicer	19.525	4.35+e +6.25%
Groundman Digging Machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+e +6.25%
Mobile equipment operator; groundman truck drivers; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technican	16.83	4.35+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

DECISION NO. NY85-3044

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (CONT'D):		
Overhead transmission line work where other work is or has been involved):		
Lineman; Technician	19.41	4.35+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	15.688	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
PAINTERS:		
Brush	11.20	2.20
Toothpick staging over 25'; structural Scaffold over 35'	10.30	1.45
Paperhangers; Vinyl Hangers	10.40	1.45
Swing Chair, Swing Scaffold; Power Grinder with Respirator	10.55	1.45
Epoxy - Brush and Roll	10.60	1.45
Stilts	10.80	1.45
Spray	10.90	1.45
Structural Steel: Steeplejack (over 100'); Sandblasting; Steamcleaning (acid or hi-pressure water)	11.05	1.45
Spray - Epoxy	11.30	1.45
PLUMBERS & STEAMFITTERS	15.80	3.40
POWER EQUIPMENT OPERATORS:		
BUILDING CONSTRUCTION		
GROUP I:		
I-A	16.36	3.40+f
I-B	16.69	3.40+f
I-C	17.01	3.40+f
I-D	17.34	3.40+f
I-E	17.99	3.40+f
I-F	19.64	3.40+f
I-G	19.28	3.40+f
I-H	19.93	3.40+f
GROUP II	16.04	3.40+f
GROUP III	16.13	3.40+f
GROUP IV	14.71	3.40+f
GROUP V	12.13	3.40+f
GROUP VI	16.92	3.40+f

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
HEAVY & HIGHWAY CONSTRUCTION		
GROUP I	15.81	3.55+d
GROUP II	15.27	3.55+d
GROUP III	13.74	3.55+d
GROUP IV	12.39	3.55+d
ROOFERS	13.14	2.99
SHEET METAL WORKERS	14.95	2.55+ 3%
SPRINKLER FITTERS	16.92	3.13
TRUCK DRIVERS:		
(HEAVY & HIGHWAY):		
Class 1	13.49	2.45+d
Class 2	13.54	2.45+d
Class 3	13.59	2.45+d
Class 4	13.74	2.45+d
Class 5	13.69	2.45+d

WELDERS - Rate for craft to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. NY85-3044

FOOTNOTES:

PAID HOLIDAYS: A-New Year's Day; B--Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving; F-Christmas Day.

a. Paid Holidays: C & D, provided employee works his scheduled work day before and his scheduled work day after the holiday and is on the payroll in the payroll week in which the holiday falls.

b. Paid Holiday: A through F, and the Friday after Thanksgiving.

c. 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.

d. Paid Holidays: A through F, provided the employee works the working day before and the working day after the holiday.

e. Paid Holidays: A through F, Washington's Birthday, Good Friday, 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 the holiday.

f. Paid Holidays: A through F, provided the employee works either the work day immediately preceding the holiday or the scheduled work day immediately following the holiday.

CLASSIFICATION DESCRIPTIONS

LABORERS (HEAVY AND HIGHWAY CONSTRUCTION):

CLASS A: Laborers, drill tenders, outboard and hand boats.

CLASS B: Bull float, chain saw, concrete aggregate, bin concrete bootman, gin buggy, hand or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or crew op. on asphalt paver, water pump op. (1½" and single diaphram), nozzle (asphalt, gunnite, seeding, and sandblasting), laborers on chain link fence erection, rock splitter and power unit, pusher type concrete saw and all other gas, electric, oil and air tool operators, wrecking laborer.

CLASS C: All rock or drill machine operators (except quarry master and similar type), acetylene torch op., asphalt raker, powderman.

CLASS D: Blasters, form setter, stone or granite curb setters.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):

GROUP I: Cranes (cable and hydraulic climbing and tower)
I-A: 121 ft. and under
I-B: Between 121 ft. and 151 ft.
I-C: Between 151 ft. and 201 ft.
I-D: Between 201 ft. and 251 ft.
I-E: Between 251 ft. and 301 ft.
I-F: Between 301 ft. and 351 ft.
I-G: Between 351 ft. and 401 ft.
I-H: Between 401 ft. and 451 ft.

GROUP II: Air tugger; derrick; dredge; big generator plant; cableway, backhoe, clamshell, dragline, shovel and similar machines over 3/8 cubic yards capacity (factory rating); bridge crane (all types); caisson auger and similar type machine; forklift (with factory rating of 15 ft. or more of lift); hoist (on steel erection); mucking machines; Ross carrier (and similar types); three drum hoist (when all three drums are in use).

GROUP III: A-frame truck; backfilling machine; hoist (1 or 2 drums); Barber Green and similar type machines; maintenance engineer (mechanic); mechanical slurry machines (all kinds); belt crete and similar type machine; bituminous spreading machines; post hole digger; bulldozer; carry-all type scraper; core drill; pumps (regardless of motive power) no more than (4) in number not to exceed 20 inches in total capacity); fine grade and finish rollers, side boom tractor; stone crusher; compressors (4 not to exceed 200 CFM combined capacity, or 3 or less with more than 1200 CFM, but not to exceed 2000 CFM); concrete mixer; concrete pumps, Tournadozer and similar types; crane hoe shovel 3/8 yds. capacity or less (factory rating); Tournapull and similar types; dinky locomitives (all types), tower-mobile and similar types; elevating grader; elevator; trenching machines; fine grade macines (all kinds); welder; front end loader; forklift, with factory rating of less than 15 feet of lift; well drill; well point system; high pressure boiler.

CLASSIFICATION DESCRIPTIONS (CONT'D)

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION): (CONT'D)

GROUP III (CONT'D): concrete pumps, Tournadozer and similar types; crane hoe shovel 3/8 yds. capacity or less (factory rating); tournapull and similar types; dinky locomotives (all types), tower-mobile and similar types; elevating grader; elevator; trenching machines; fine grade machines (all kinds); welder; front end loader; forklift, with factory rating of less than 15 feet of lift; well drill; well point system; high pressure boiler.

GROUP IV: Any combination (not to exceed 3 pieces of equipment); welding; machine or mechanical conveyor (over 12 ft. in length); fireman; belt crete generator; mechanical heater; roller (fill & grade); pumps (regardless of motive power) no more than (3) in number, not to exceed twelve inches total capacity); rubber tired tractor; compressor 3 or less, not to exceed 1200 CFM combined capacity; longitudinal float.

GROUP V: Truck Crane.

GROUP VI: Master Mechanic.

POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY CONSTRUCTION):

GROUP I: Automated concrete spreader (CMI); automatic fine grade; backhoe (except tractor mounted, rubber tired); belt placer (CMI type); blacktop plant (automated); cableway, caisson auger, central mix concrete plant (automated), cherry picker (over 5 tons capacity); concrete pump (8" or over); crane, cranes & derricks (steel erection); dragline; dredge; dual drum paver; excavator (all purpose-hydraulically operated) (gradall or similar); fork lift (factory rated 15 ft. and over); front end loader 4 c.y. and over); head tower (sauerman or equal); hoist (2 or 3 drum), mine hoist, mucking machine or mole, over head crane (gantry or straddle type); piledriver; power grader; quad 9; quarry master (or equivalent); scraper; shovel; sideboom; slip form paver; tractor,drawn belt type loader; truck cranes; truck or trailer mounted log chipper (self-feeder); tug operator (except manned rented equipment); tunnel shovel.

GROUP II: Backhoe (tractor mounted, rubber tired); bituminous spreader and mixer; blacktop plant (non-automated), blast or rotary drill (truck or tractor mounted); boring machine; cage-hoist; central mix plant (non-automated and all concrete batching plants; cherry picker (5 tons capacity and under); compressors (4 or less) exceeding 2000 C.F.M. combined capacity; concrete paver (over 16S); concrete pump (under 8"); crusher; diesel power unit; drill rigs (tractor mounted); front end loader (under 4 c.y.); hi-pressure boiler (15 lbs. and over); hoist (one drum); Kolman plant loader and similar type loaders; L.C.M. work boat operator; locomotive; maintenance/engineer/greaseman/welder; mixer (for stabilized base self-propelled); monorail machine; plant engineer; pump crete; ready mix concrete plant; refrigeration equipment (for soil stabilization); road widener; roller (all above sub-grade); sea mule; tractor with dozer and/or pusher; trencher; tugger-hoist; winch; winch cat.

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CLASSIFICATION DESCRIPTIONS (CONT'D)

POWER EQUIPMENT OPERATORS (HEAVY AND HIGHWAY CONSTRUCTION): CONT'D)

GROUP III: A-frame truck; compressors, dust collectors, generators, pumps, welding machines; light plants (4 of any type of combination); concrete pavement spreaders and finishers; conveyor; drill-core; drill-well; electric pumps used in conjunction with well point system; farm tractor with accessories; fine grade machine; fork lift (under 15 feet); grout pump; gunnite machine; hammers (hydraulic-self-propelled); hydra-spiker (ride-on); hydro blaster (water); post hole digger and post driver; power sweeper; roller (grade and fill); submersible electric pump (when used in lieu of well point system); tractor with towed accessories; vibratory compactor; vibro tamp; well point.

GROUP IV: Aggregate plant; boiler (used in conjunction with production; cement and bin operator; compressors, dust collectors, generator pumps, welding machines, light plants (3 or less of any type or combination; concrete paver or mixer (16S and under), concrete saw (self-propelled); fireman; form tamper; hydraulic pump (jacking system); mulching machine; oiler; papapet concrete or pavement grinder; power broom (towed), power heaterman; Revinus widener; shell winder; steam cleaner; tractor.

TRUCK DRIVERS (HEAVY & HIGHWAY CONSTRUCTION):

CLASS 1: Warehouseman, yardmen, pickups, panel trucks, flatboy material trucks (straight jobs), single axle dump trucks, dumpsters, material checkers and receivers, greasers, truck tiremen, mechanic helpers and parts chaser.

CLASS 2: Tandems, batch trucks, mechanics and dispatcher.

CLASS 3: Semi-trailers, low-boy trucks asphalt distributor trucks, agitator,

CLASS 4: Specialized earth moving equipment - Euclid type or similar off-highway equipment where not self-loaded, straddle (Ross) carrier and self-contained concrete mobile unit.

CLASS 5: Off-highway tandem back-dump, twin engine equipment and double hitched equipment where not self loaded.

STATE: NEW YORK COUNTY: NIAGARA
DECISION NO. NY85-3043 DATE: DATE OF PUBLICATION
Supersedes Decision No. NY81-3055 dated July 17, 1981 in 46 FR 37204.
DESCRIPTION OF WORK: Building (excluding single family homes and apartments up to and including 4 stories), Heavy (except water well drilling) & Highway Construction Projects.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	17.35	4.16
BOILERMAKERS	18.50	4.79
BRICKLAYERS		
North Tonawanda		
Bricklayers & Stone Masons	16.66	5.00
Terrazzo Workers & Tile Setters	16.28	5.00
Marble Setters	16.375	5.00
Remainder of County		
Bricklayers & Stone Masons	15.00	2.95
Marble Masons, Terrazzo Workers & Tile Setters	14.75	2.95
CARPENTERS		
North Tonawanda		
Carpenters, Millwrights Piledrivermen & Soft Floor Layers	16.93	4.60
Remainder of County		
Carpenters & Soft Floor Layers	15.23	5.375
Millwrights	15.33	5.375
Carpenters & Piledrivermen (Heavy & Highway)	11.765	5.33+a
CEMENT MASONS	14.99	4.60
ELECTRICIANS		
Electricians	18.58	3.50+ 3 1/4%
Cable Splicers	20.44	3.50+ 3 1/4%
ELEVATOR CONSTRUCTORS	18.62	3.29+ b+c
ELEVATOR CONSTRUCTORS' HELPERS	13.03	3.29+ b+c
ELEVATORS CONSTRUCTORS HELPERS(PROBATIONARY)	9.31	
GLAZIERS	15.98	4.71
IRONWORKERS:		
Jobs on which the total project cost is $3 million or less	15.01	2.62
Jobs on which the total project cost is over $3 million	16.68	2.62
Pre-engineered buildings	11.50	2.62
LABORERS (North Tonawanda)		
BUILDING CONSTRUCTION:		
Class I	13.745	4.21
Class II	13.845	4.21
Class III	13.895	4.21
Class IV	13.945	4.21
Class V	13.995	4.21
Class VI	13.745	4.21
HEAVY & HIGHWAY		
Class I	13.445	4.21
Class II	13.695	4.21
Class III	14.195	4.21
Class IV	14.295	4.21
Class V	14.695	4.21
Class VI	14.945	4.21
FREE AIR TUNNEL:		
Class I	12.945	4.21
Class II	13.145	4.21
Class III	13.345	4.21
Class IV	13.545	4.21
LABORERS (Remainder of County): BUILDING, HEAVY & HIGHWAY CONSTRUCTION:		
Group I	13.66	5.30
Group II	14.16	5.30
Group III	13.86	5.30
Group IV	14.93	5.30
LABORERS: ROCK TUNNEL FREE AIR CONSTRUCTION NIAGARA COUNTY: EXCEPT NORTH TONAWANDA		
Group I	9.61	1.75
Group II	9.51	1.75
Group III	10.46	1.75
Group IV	9.76	1.75
Group V	9.86	1.75
Group VI	10.26	1.75
Group VII	9.76	1.75

DECISION NO. NY85-3043

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Substations and switching structures; Pipe type cable installation and maintenance jobs or projects; Railroad catenary installation and maintenance; Bonding of rails:		
Lineman; Technician	17.75	4.35+e +6.25%
Cable splicer	19.525	4.35+e +6.25%
Groundman digging machine operator; dynamite man	15.975	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	15.088	4.35+e +6.25%
Mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where no other work is or has been involved; Overhead & underground distribution work:		
Lineman; Technician	16.83	4.35+e +6.25%
Groundman digging machine operator; groundman dynamite man	15.147	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	14.306	4.35+e +6.25%
Groundman mobile equipment operator; groundman truck driver; mechanic	13.464	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%
Overhead transmission line work (where other work is or has been involved):		
Lineman; Technician	19.61	4.35+e +6.25%
Groundman digging machine operator; dynamite man	17.649	4.35+e +6.25%
Groundman truck driver (tractor trailer unit)	16.669	4.35+e +6.25%
Mobile equipment operator; Groundman truck driver; mechanic	15.688	4.35+e +6.25%
Groundman	10.098	4.35+e +6.25%

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Twns. of Somerset, Hartland, Royalton, New Fane, Lockport, Pendleton and the eastern half of Cambria and Wilson		
Brush	15.65	3.94
Cranes, Steel, Tanks, Towers, Stacks, Bridges, Flag Poles, Radio & TV Towers	16.40	3.94
Sandblasting, Swing Stages, Scaffold, Epoxy, Spray, Boson Chair	15.90	3.94
Bridges 35' high or in depth of 35' from road level	17.565	3.94
Remainder of County	14.46	5.35
Repaint (except bridges and tanks)	13.46	4.86
Brush & Roll	14.96	4.86
Papers	15.21	4.86
Spray; spraying mastics; vinyl or paperhangers; sandblasting and waterblasting; swinging scaffold or boatswain chair; stage or chair on building over 25 ft. from ground level; steeplejack used painting steel tanks, smokestacks and church steeples; steel painting	15.96	4.86
Domeshaper tanks on legs or stilts over 50 ft. from ground	16.955	4.96
Bridges	16.955	4.86
PLUMBERS & STEAMFITTERS	19.00	3.25
POWER EQUIPMENT OPERATORS:		
(BUILDING CONSTRUCTION)		
Group I	16.70	4.05+f
Group II	15.49	4.05+f
Group III	11.96	4.05+f
Group IV	13.46	4.05+f
Group V	11.70	4.05+f
Group VI	17.92	4.05+f
Group VII	17.20	4.05+f
(HEAVY & HIGHWAY)		
Group I	17.45	4.05+f
Group II	16.13	4.05+f
Group III	12.51	4.05+f
Group IV	14.15	4.05+f
Group V	11.98	4.05+f
Group VI	18.79	4.05

DECISION NO NY85-3043

	Basic Hourly Rates	Fringe Benefits
ROOFERS		
Composition, Damp Waterproofers, Sprayers, Asphalt Mastic, Wood Block Floor Workers, Steep Roofers & Siders	16.86	2.71
Slate, Tile Asbestos & Precast Tile	17.01	2.71
SHEET METAL WORKERS	17.68	5.36
SPRINKLER FITTERS	16.49	3.23

WELDERS _ Rate for craft to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Paid Holidays B & D

b. Paid Holidays: A through F

c. Employer contributes 8% of the basic hourly rate for 5 years or more of service and 6% of the basic hourly rate for 6 months to 5 years of service as vacation pay credit.

d. A through F, provided the employee works the scheduled working day before and the scheduled working day after the holiday.

e. Paid Holidays: A through F, Washington's Birthday, Good Friday, 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 the holiday.

f. Holidays A through F, provided employee works the day before and the day after the holiday.

CLASSIFICATIONS DESCRIPTIONS

LABORERS (North Tonawanda)

BUILDING CONSTRUCTION:

Class I: Laborers

Class II: Foundation laborers (over 8' in depth); hod carriers; plasterer tender; plasterer scaffold builders; pneumatic, gas, electric tool operator (including all forms of busters, jackhammers and chipping guns); steel burners.

Class III: Mortar mixer

Class IV: Tool operator over 8' in depth; swing scaffold; blaster; plumbing laborers; wagon drill operator.

Class V: Bottom man (caisson & cofferdam).

Class VI: Top man; wreckers

HEAVY & HIGHWAY CONSTRUCTION:

Class I: Laborers, drill helpers, outboard and hand boats.

Class II: Bull float, chain saw, concrete aggregate bin, concrete bootman, gin buggy, and or machine vibrator, jackhammer, mason tender, mortar mixer, pavement breaker, handlers of all steel mesh, small generators for laborers' tools, installation of bridge drainage pipe, pipelayers, vibrator type rollers, tamper, drill doctor, tail or screw operator on asphalt paver, water pump operator (1 1/2" and single diaphram), nozzle (asphalt, gunnite, seeding and sandblasting), laborers on chain link fence erection rock splitter and power unit, pusher-type concrete saw and all other gas electric, oil and air tool operators, wrecking laborer.

Class III: All rock or drill machine opertors (except quarry master and similar type), acetylene torch operator, asphalt raker, powderman.

Class IV: Blasters, form setter, stone or granite curb setters.

FREE AIR TUNNEL:

Class I: Laborers; mole nippers; top laborers.

Class II: Top bell

Class III: Side or roofbolt driller; conveyor men; block layers; caulkers; track men; nippers; burners; derail men; electrical cablemen; hosemen;

Class IV: Powder monkey

Class V: Blasters; cement finishers; ironmen; miners.

Class VI: Steel erectors; piledrivers; riggers.

LABORERS (Remainder of County)

BUILDING, HEAVY & HIGHWAY CONSTRUCTION

GROUP I: Laborers

GROUP II: Form setter; wagon drill operators; road finishers; gunnite nozzlemen; sandblaster; burning torch; concrete saw operators.

GROUP III: Potman; pipelayers; pavement breakers or busters; jackhammer operators; barco rammers; chain saw; powder monkey; black top rakers; scalers; drill tenders; mortar mixers; men working from swinging scaffold bosun chair; suspended cate or bucket; work in caisson below 8 feet; concrete motor buggy; all other operators of mechanical tools, including vibrators regardless of type of power.

GROUP IV: Blasters

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

GROUP I: Finish blacktop rollers, crane work, shovels, dericks, steel erection, overhead or bridge cranes and clam buckets, all excavating machines, backfillers, cableways, draglines, backhoes, piledriving rigs, tunnel mucking machines, all tractors used in connection with scraper wagon, snowloader, all repair work or maintenance work under the supervison of a master mechanics, lubrication engineers, bulldozers, graders, blacktop spreaders, front and back loaders (except small types), power driver stone spreaders, portable stone crushers, crawler or rubber tire tractor with blade or bucket and crane boom or hoe boom or shovel boom attached (except farm type crawler or rubber tire tractor unless used with hydraulic backhoe), compressor with paving breaker attached, graders with bull-dozer blades, multiple drum hoist with air compressor when used simultaneously for more than one purpose and single drum hoist when used to hoist steel, portable concrete batching machine, automatic batch plant op., concrete spreader op., finishing machine op., form puller, scraper (either double or single bowl), CMI grading machine, truck mounted concrete pumps, self-propelled riding vibrators, kolman loaders, mechanic, welder, euclid type belt loader, mechanical and hydraulic pipe pushing machine, scoopmobiles, forklifts and hoist which lift higher than 25 feet, trenchers when excavation over 6 feet in depth, post drivers (except truck mounted, postdrivers), concrete mixers 1 yard and over, concrete planers.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION) CONT'D

GROUP II: Elevators, material hoist, road rollers except finish blacktop roller, tractors, pavement busters, pumps over 4 inches, concrete blowers, compressors when used in banks of (2) and not over (3) within a 50 foot radius if such is possible, but at least within 50 foot radius, and if fuel is stored it will be stored within the same radius, gunite machines, locomotives, scoop-mobiles (when used as a stationary hoist or one which does not lift over twenty five feet, concrete pumps, conveyors, gas or diesel driven temporary lighting and power systems of 25 kilowatt capacity or over), stone crushers and winch hoist mounted on trucks, all earth drills, le tourneau turnstrailers, highlift hoist which does not lift over 25 feet, gasoline heaters used in banks of (2) and not over (3) within an area of 100 foot radius, and for (2) but not over (3) gasoline or diesel drive welding machines, trenchers on the back of a jeep, truck mounted post drivers, snow-go, small front and back loaders, small type crawler or rubber tire tractor with blade or bucket not to exceed ½ yd. capacity, single drum hoist for hoisting materials other than steel, pug machine, self propelled rollers not on finish blacktop and under 7 tons, bobcat loader or forklift which does not lift over twenty five feet, trenchers, winch tractors, trenchers excavating up to 6 feet in depth, air compressors over 165 cu. ft.

GROUP III: Oilers on shovels, cranes, draglines, backhoe (over 3/4 cu. yds.) dredges, derrick boats, pavers (excluding stationary set-ups), trenching machines, pile drivers, quarry master (or its equivalent), hydrocranes, automated batch plants (wet or dry mix plants), compressors (165 cu. ft. per minute or under), pumps up to and including 4 inches.

GROUP IV: Truck crane oiler

GROUP V: Steam boiler operator.

GROUP VI: Master Mechanic.

GROUP VII: Cranes carrying over 100 feet of main boom.

POWER EQUIPMENT OPERATORS (HEAVY & HIGHWAY CONSTRUCTION)

GROUP I: Finish blacktop rollers, crane work, shovels, derricks, steel erection, overhead or bridge cranes and clam buckets, all excavating machines, backfillers, cableways, draglines, backhoes, piledriving rigs, tunnel mucking machines, all tractors used in connection with scraper wagon, snowloader, wagons, snowloader, all repair work or maintenance work under the supervision of a master mechanic, lubrication engineers, bulldozers, graders, blacktop spreaders, front and back loaders (except small types), power driver stone spreaders, portable stone crushers, crawler or rubber tire tractor with blade or bucket and crane boom or hoe boom or shovel boom attached (except farm type crawler or rubber tire tractor unless used with hydraulic backhoe), compressor with paving breaker attached, graders with bulldozer blades, multiple drum hoist with air compressor when used simultaneously for more than one purpose and single drum hoist when used to hoist steel, portable concrete batching machine, automatic batch plant op., concrete spreader op., finishing machine op., form puller, self propelled rollers if on blacktop, scraper, either double or single bowl, CMI grading machine, truck mounted concrete pumps, self-propelled riding vibrators, Holman loaders, mechanic, welder, euclid type belt loader, mechanical and hydraulic pipe pushing machine, scoopmobiles, fork-lifts and hoist which lift higher than 25 feet.

GROUP II: Elevators, material hoist, road rollers except finish blacktop roller, tractors, pavement busters, pumps over 4 inches, concrete blowers, compressors when used in banks of (2) and not over (3) within a 50 foot radius if such is possible, but at least within 50 foot radius, and if fuel is stored it will be stored within the same radius, gunite machines, locomotives, scoop-mobiles (when used as a stationary hoist or one which does not lift over twenty five feet, concrete pumps, conveyors, gas or diesel driven temporary lighting and power systems of 25 kilowatt capacity or over), stone crushers and winch hoist mounted on trucks, all earth drills, le tourneau turnstrailers, highlift hoist which does not lift over 25 feet, gasoline heaters used in banks of (2) and not over (3) within an area of 100 foot radius, and for (2) but not over (3) gasoline or diesel driven welding machines, trenchers on the back of a jeep, truck mounted post drivers, snow-go, small front and back loaders, small type crawler or rubber tire tractor with blade or bucket not to exceed ½ yd. capacity, single drum hoist for hoisting materials other than steel, pug machine, self propelled rollers not on finish blacktop and under 7 tons, bobcat loader or forklift which does not lift over twenty five feet, trenchers, winch tractors, trenchers excavating up to 6 feet in depth, air compressors over 165 cu. ft.

GROUP III: Oilers on shovels, cranes, draglines, backhoe (over 3/4 cu. yds.) dredges, derrick boats, pavers (excluding stationary set-ups), trenching machines, pile drivers, quarry master (or its equivalent), hydrocranes, automated batch plants (wet or dry mix plants), compressors (165 cu. ft. per minute or under), pumps up to and including 4 inches.

GROUP IV: Truck crane oiler

GROUP V: Steam boiler operator.

GROUP VI: Master Mechanic.

GROUP VII: Cranes carrying over 100 feet of main boom.

SUPERSEDEAS DECISION

STATE: Oklahoma
DECISION NO. OK85-4035
SUPERSEDEAS DECISION NO. OK83-4031 dated April 15, 1983 in FR 16420
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, highways, runways, erosion control structures, and water and sewer utilities (but does not include building structures on highway rest areas).

COUNTY: RURAL COUNTIES (see below*)
DATE: Date of Publication

*All counties except heavy construction within the city of Muskogee, Canadian, Comanche, Creek, Garfield, Logan, McClain, Oklahoma, Osage, Rogers, Tulsa, Wagoner, and Washington Counties, Oklahoma

	Basic hourly Rates	Fringe Benefits
Carpenters	$7.52	
Carpenters helper	6.38	
Concrete finishers	7.69	
Concrete finisher helper	6.00	
Form builder	6.75	
IRONWORKERS:		
Reinforcing steel	7.90	
LABORERS:		
Common laborers	5.71	
Air tool man	6.05	
Asphalt raker	7.11	
Asphalt shoveler	5.71	
Form setter	7.17	
Mechanic	8.51	
Mechanic helper	7.10	
POWER EQUIPMENT OPERATORS:		
Asphalt distributor	7.22	
Asphalt laydown machine	7.74	
Asphalt paving machine	7.85	
Asphalt plant operator	7.86	
Backhoe operator	8.11	
Blade operator	8.60	
Bulldozer operator	7.93	
Concrete paving machine	7.53	
Concrete saw operator	7.00	
Crane operator	7.50	
POWER EQUIP. OP. (CONt'D):		
FRONT END LOADERS:		
1 CY and less	$7.48	
Over 1 CY	7.63	
Motor grader operator	8.18	
Oiler	7.83	
Power broom operator	6.64	
Roller operator	7.46	
Roller pneumatic	6.06	
Roller steel wheel	7.26	
Scrapers	7.54	
Traffic signal installer	8.72	
Tractor operator	7.09	
TRUCK DRIVERS:		
Over 2 tons	6.44	
2 tons and under	6.20	
Tandem axle & semi-trailer	6.77	
Traveling mixer	7.13	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Oklahoma
DECISION NO. OK85-4034
SUPERSEDEAS DECISION NO. OK83-4031 dated April 15, 1983 in FR 16420
DESCRIPTION OF WORK: Construction, alteration, and/or repair of streets, and highways, runways, erosion control structures, and water and sewer utilities (but does not include building structures on highway rest areas).

COUNTY: METROPOLITIAN COS. (see below*)
DATE: Date of publication

*Canadian, Comanche, Creek, Garfield, Logan, McClain, Oklahoma, Osage, Rogers, Tulsa, Wagoner and Washington Counties, Oklahoma

	Basic hourly Rates	Fringe Benefits
Carpenters	$7.52	
Carpenters helper	6.38	
Concrete finishers	7.69	
Concrete finisher helper	6.00	
Form builder	6.75	
IRONWORKERS:		
Reinforcing steel	7.90	
LABORERS:		
Common laborers	5.71	
Air tool man	6.05	
Asphalt raker	7.11	
Asphalt shoveler	5.71	
Form setter	7.17	
Mechanic	8.51	
Mechanic helper	7.10	
POWER EQUIPMENT-OPERATORS:		
Asphalt distributor	7.22	
Asphalt laydown machine	7.74	
Asphalt paving machine	7.85	
Asphalt plant operator	7.86	
Backhoe operator	8.11	
Blade operator	8.60	
Bulldozer operator	7.93	
Concrete paving machine	7.53	
Concrete saw operator	7.00	
Crane operator	7.50	
POWER EQUIP. OP. (CONt'D):		
FRONT END LOADERS:		
1 CY and less	$7.48	
Over 1 CY	7.63	
Motor grader operator	8.18	
Oiler	7.83	
Power broom operator	6.64	
Roller operator	7.46	
Roller pneumatic	6.06	
Roller steel wheel	7.26	
Scrapers	7.54	
Traffic signal installer	8.72	
Tractor operator	7.09	
TRUCK DRIVERS:		
Over 2 tons	6.44	
2 tons and under	6.20	
Tandem axle & semi-trailer	6.77	
Traveling mixer	7.13	

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: PENNSYLVANIA

COUNTIES: Allegheny, Armstrong, Beaver, Bedford, Blair, Butler, Cambria, Cameron, Centre, Clarion, Clearfield, Clinton, Crawford, Elk, Erie, Fayette, Forest, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Lawrence, McKean, Mercer, Mifflin, Potter, Somerset, Venango, Warren, Washington, Westmoreland.

DECISION NUMBER: PA85-3034

DATE: Date of Publication

Supersedes Decision No. PA84-3000 dated January 13, 1984, in 49 FR 1851.

DESCRIPTION OF WORK: Heavy and Highway Construction, excluding Sewage and Water Treatment Plant Projects.

	Basic Hourly Rates	Fringe Benefits
CARPENTERS		
Zone I	14.58	31%
Zone II	14.39	31%
CARPENTER - WELDER		
Zone I	14.96	31%
Zone II	14.77	31%
CARPENTER - BURNER		
Zone I	14.77	31%
Zone II	14.58	31%
CEMENT MASONS	14.86	31%
PILEDRIVERMEN	15.53	30%
PILEDRIVERMEN - WELDER	15.76	30%
IRONWORKERS		
Reinforcing		
Zone I	11.31	3.50%
Structural, Ornamental & Reinforcing		
Zone 2	17.515	4.75
Zone 3	16.37	6.50
Zone 4	14.59	5.38
LABORERS		
Class I		
Zone I	12.44	24%
Zone II	12.32	24%
Class II		
Zone I	12.59	24%
Zone II	12.49	24%
Class III		
Zone I	13.00	24%
Zone II	13.00	24%
Class IV		
Zone I	13.92	24%
Zone II	13.92	24%
LANDSCAPING		
Zone 1		
Class 1	10.77	26%
Class 2	11.19	26%
Zone 2		
Class 1	12.60	23%

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION		
Class I		
Zone 1	18.61	.80+3 3/8%
Zone 2	15.56	.80+3 3/8%
Class 2		
Zone 1	13.03	.80+3 3/8%
Zone 2	10.89	.80+3 3/8%
Class 3		
Zone 1	12.10	.80+3 3/8%
Zone 2	10.11	.80+3 3/8%
Class 4		
Zone 1	11.17	.80+3 3/8%
Zone 2	9.34	.80+3 3/8%
Zone 3		
Class 1	16.04	.08+3 3/8%
Class 2	11.34	.80+3 3/8%
Class 3	11.12	.80+3 3/8%
Class 4	10.05	.80+3 3/8%
LINE CONSTRUCTION (Railroad Only)		
Zone 1		
Class 1	12.34	.60+ 6%+a
Class 2	12.34	.60+ 6%+a
Class 3	10.78	.60+ 6%+a

DECISION NO. PA85-3034

	Basic Hourly Rates	Fringe Benefits
PLUMBERS (Bridge - Drain Pipe)		
Zone 1	16.65	4.69
POWER EQUIPMENT OPERATORS		
Class I		
Zone I	16.42	23.17%
Zone II	16.18	23.17%
Class II		
Zone I	16.20	23.17%
Zone II	15.95	23.17%
Class III		
Zone I	13.23	23.17%
Zone II	13.00	23.17%
Class IV		
Zone I	12.87	23.17%
Zone II	12.60	23.17%
Class V		
Zone I	12.26	23.17%
Zone II	12.43	23.17%
TRUCK DRIVERS:		
Class 1	9.00b	19%
Class 2	11.00b	19%
Class 3	12.00b	19%
Class 4	13.48b	19%
Class 5		
See Area Description		
Class 6		
See Area Description		

WELDERS - Rate for craft to which welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

FOOTNOTE:

a. Paid Holidays: New Year's Day; Declaration Day; Independence Day; Labor Day; Thanksgiving Day; Christmas Day and Good Friday.

b. Travel, with vehicle, to and from project site and company's offices or yard will be at the federally established minimum wage rate of $3.35 per hour when a full eight hours of job site work is scheduled. (First trip in and last trip out daily, to a maximum of one hour each trip per day). Fringe benefit payments for this work will be based upon project site rate for similar vehicle.

AREA COVERED BY CARPENTERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Butler, Erie, Fayette, Greene, Lawrence, Mercer, Washington and Westmoreland
ZONE II - Bedford, Blair, Cambria, Cameron, Centre, Clarion, Clinton, Clearfield, Crawford, Elk, Forest, Franklin, Fulton, Huntingdon, Indiana, Jefferson, McKean, Mifflin, Potter, Seomerset, Venango and Warren

AREA COVERED BY IRONWORKERS ZONES

ZONE 1 - Butler, Cambria, Erie, Fayette, Mercer, Washington, Westmoreland, Lawrence, Somerset, Allegheny, Beaver, Armstrong, Blair, Cameron, Centre, Clarion, Clearfield, Crawford, Forest, Greene, Indiana, McKean, Venango, Warren, Bedford, Jefferson, Clinton, Elk, Fulton and Potter Counties

ZONE 2 - Franklin, Huntingdon and Mifflin Counties

ZONE 3 - Allegheny, Armstrong, Beaver, Butler, Cambria, Clarion, Fayette, Indiana, Washington & Westmoreland Counties

ZONE 4 - Clearfield, Blair, Cameron, Centre, Elk, Jefferson, Mckean, Clinton & Potter.

AREA COVERED BY LABORERS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Clearfield, Elk, Erie, Fayette, Greene, Indiana, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington, Westmoreland

ZONE II - Bedford, Cameron, Centre, Clinton, Crawford, Forest, Franklin, Fulton, Huntingdon, Jefferson, Mifflin, Potter

AREA COVERED BY LANDSCAPE LABORERS ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Butler, Clarion, Crawford, Fayette, Greene, Indiana, Jefferson, Lawrence, Mercer, Venango, Washington, Westmoreland, Bedford, Blair, Cambria, Centre, Clearfield, Clinton, Erie, Franklin, Fulton, Huntingdon, Mifflin, Somerset

ZONE 2 - Cameron, Elk, Forest, McKean, Potter, Warren

AREA COVERED BY LINE CONSTRUCTION ZONES

ZONE 1 - Allegheny, Armstrong, Beaver, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Fulton, Greene, Huntingdon, Indiana, Jefferson, Somerset, Washington & Westmoreland Counties

ZONE 2 - Franklin & Mifflin Counties

ZONE 3 - Butler, Cameron, Clinton, Crawford, Elk, Erie, Forest, Lawrence, McKean, Mercer, Venango, Warren & Potter Counties

AREA COVERD BY LINE CONSTRUCTION (Railroad Only)

ZONE 1 - Armstrong, Bedford, Blair, Cambria, Centre, Clarion, Clearfield, Fayette, Franklin, Fulton, Greene, Huntingdon, Indiana, Jefferson, Indiana, Jefferson, Somerset, Washington, Westmoreland Counties:

AREA COVERD BY PLUMBERS (Bridge - Drain Pipe)

ZONE 1 - Allegheny, Washington, Greene, Armstrong Counties.

AREA COVERED BY POWER EQUIPMENT OPERATORS ZONES

ZONE I - Allegheny, Armstrong, Beaver, Blair, Butler, Cambria, Clarion, Centre, Clearfield, Crawford, Erie, Elk, Fayette, Greene, Indiana, Jefferson, Lawrence, McKean, Mercer, Somerset, Venango, Warren, Washington & Westmoreland Counties

ZONE II - Bedford, Cameron, Clinton, Forest, Franklin, Fulton, Huntingdon, Mifflin, Potter

LABORERS CLASSIFICATION DEFINITIONS

CLASS I - Heavy & Highway Construction Laborers (Including Craft Tenders, handling Salamanders L. P. Gas Heaters or similar etc.); Asphalt Curb Sealer; Asphalt Tamper; Batchman (weigh); Blaster's Helper; Boatman; Brakeman; Change House Attendant; Coffer Dam; Concrete Curing Pitman; Puddler; Drill Runner's Helper, (Including Drill Mounted on Truck, Track, or similar and Davey Drill - Spots-clean-up & Helps to maintain); Electric Brush and or Grinder; Fence Construction (including Fence Machine Operator); Form Stripper and Mover; Gabion (Erectors and Placers); Hydro Jet Claster Hozzlemen; Manually moved Emulsion Sprayer; Radio Actuated Traffic Control Operator; Rip Rap Work, Scaffolds and Runways; Sheeters and Shorers; Structural Concrete Top Surfacer; Walk Behind Street Sweeper; Welder's Helper (pipeline); Wood Chipper, reinforcing steel placers (bending aligning and securing and cadweld)

CLASS II - Air Tool Operator (all types); Asphalt, Batch & Concrete Plant Operator (manually operated) asphalt Rakers; Burner; Caisson Men (open air); Carryable Pumps; Chain Saw Operator (Including attachments); Cribbing (Concrete or steel); Curb Machine Operator (asphalt or concrete - walk behind); Diamond Head Core Driller; Drill Runner's Helper (Tunnel); Fork Lift (walk behind); Form Setter (Road Forms Line Man); Highway Slab Reinforcement Placers (Including Joint and Basket Setters); Hydraulic Pipe Pusher; Liner Plates (Tile or Vitrified Clay); Mechanical Compacting Equipment Operators; Mechanical Joint Sealer, Dope Pot and Tar Kettle; Mortar Mixer (hand or machine); Muckers, Brakemen & All Other Labor (Includes installation of Utility Lines); Pipe Layers (Regardless of material); Portable Single Unit Conveyor; Post Hole Auger (2 or 4 cycle-hand operated); Power Wheelbarrows and Buggies; Rail Porter or Similar; Sand Blaster; Vibrator Operator, All Rail Road Track Work to Include The Following: Adzing Machine, Ballast Router; Bolting Machine; Power Jacks; Rail Drill; Railroad Brakeman; Rail Saw; Spike Drivers (Manually or handheld tool); Spike Pullers; Tamping Machine; Thermitweld

CLASS III - Blacksmith, blaster, brick stone and block pavers and block cutters (wood, belgian and asphalt), cement mortar lining car pusher, cement mortar mixer (pipe relining), cement mortar pipe reliners, concrete saw operator (walk behind), curb cutters and setters, elevated roadway drainage construction, form setter (road forms-lead man), grout machine operator, gunite or dry pack gun (nozzle and machine man), manhole or catch basin (brick, block, concrete or any prefabrication), Miners and drillers (including lining, supporting and form workmen, setting of shields, miscellaneous equipment and jumbos), multi-plate pipe (aligning and securing), placing wire mesh on gunite projects, wagon drill operators (air track or sililar), walk behind ditching machine (trencher or similar), welder

CLASS IV - Welder (pipeline); High Burner (any burning not done from deck)

LANDSCAPE LABORERS CLASSIFICATIONS DEFINITIONS

CLASS 1 - Landscape laborer to include general landscaping work and the driving of trucks for the distribution of materials on the job site but not to include dump trucks used to transport supplies to the job

CLASS 2 - 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

LINE CONSTRUCTION CLASSIFICATIONS DEFINITIONS

ZONE 1 & 2
CLASS 1 - Linemen
Class 2 - Winch truck operators
Class 3 - Truck Driver
Class 4 - Groundman
ZONE 3
Class 1 - Lineman, Dynamite man, Heavy Equipment Operator
Class 2 - Winch truck operator
Class 3 - Truck Driver
Class 4 - Groundman

CLASSIFICATION DEFINITIONS FOR LINE CONSTRUCTION (RAILROAD ONLY)

ZONE 1
CLASS 1 - Lineman

CLASS 2:

A* Equipment Operators:

1. Hoisting equipment - when erecting complete towers, erecting framed structures, erecting steel transmission poles, erecting railroad pole extensions and crossbeams and when operating personnel lift baskets.

2. Tension pulling equipment under energized conditions - paralled with other energized circuits or above energized circuits on the same structure, not to include crossovers. Bunled consuctor stringing, including static conductors on bundled conductor lines.

3. Excavating augures 36" inches in diameter or larger, 5/8 cubic yard backhoe and larger, trencher over four feet in depth, bulldozer D-6 (caterpillar) or larger, and blade on finish grade work

CLASS 3:

"B" Equipment Operators:
Operators of all other equipment

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

CLASS I - Autograde (C.M.I. & similar); Backfiller; Backhoe - 360° Swing; Cableway; Caisson Drill (similar to Hugh Williams); Central Mix Plant; Cooling Plant; Concrete Paving Mixer; Concrete Pump (self-propelled); Cranes; Cranes (Boom or mast 101 ft. or over up to & including 150 ft. inclusive of job + $.25; Boom or mast over 150 ft. up to & including 200 ft. inclusive of jib + $.50; Boom or mast over 200 ft. inclusive of jib + $.75; Tower-Stationary-Climbing Tower Crane); Derrick; Derrick Boat; Dozer (D-6 & over); Dragline; Dredge; Dredge Hydraulic; Elevating Grader; Franki Pile Machine; Gradall (Remote control or other-wise); Grader (Power-Fine Grade); Helicopter; Hilift (4 cy. and over); Hoist 2 Drums or more (in one unit); Hydraulic Boom TRuck (with pivotal cab) (single motor-Pitman or similar); Kocal; Locomotive (std. Gauge); Metro-chip Harvester or similar; Milling Machine (Roto Mill or Similar); Mix Mobile; Mucking Machine (Tunnel); Pile Driver Machine; Pipe Extrusion Machine; Presplite; Drill (Self contained); Refrigeration Plant (Soil Stabilization) Rough Terrain Crane; Scrapers; Shovel-Power; Slip Form Paver (C.M.I. and similar); Trenching Machine; Tunnel Machine (Mark XXI Jarva or similar) ; Whitley

CLASS II - Asphalt paving machines (spreader), asphalt plant operator, auger (tractor mtd.), auger (truck mtd.), backhoe (rear pivotal swing) (180 swing), belt loader (euclid or similar), boring machine, cable placer or layer, compactor with blade, concrete batch plant (electronically synchronized), concrete belt placer (C.M.I. and similar), concrete finishing machine and spreader concrete mixer (over 1 cy.), concrete pump (stationary), core drill (truck or skid mtd. - similar to Pen drill), dozer (under D-6), force feedloader, fork lift (lull or similar), grader - power, grease unit operator (head), guard rail post driver (truck mounted), guard rail post driver (skid type), hi-lift (under 4 cy.) hydraulic boom truck (Non-Pivotal cab), job work boat (powered) when assistance is required it shall be a deckhand), jumbo operator, locomotive (narrow guage), mechanic, minor equipment operator (accumulative four units), mucking machine, multi-head saw (groover), overhead crane, roller - power-asphalt, ross carrier, side boom or tractor mounted boom, stone cursher, (screening-washing plants), stone spreader (self-propelled) truck mounted drill (davey or similar), welder and repairman, well point pump operator

POWER EQUIPMENT OPERATORS (CONTINUED)

CLASS III - Broom Finisher (C.M.I. or similar); Compactors/Rollers (Static or Vibratory (Self-propelled); Curb Builder; Minor Equipment Operator (two to three units); Multi-head Tie Tamper, Pavement Breaker (Self-Propelled or ridden); Soil Stabilizer Machine; Tire Repairman; Tractor (Snaking and hauling); Well Driller and Horizontal; Winch or "A" Frame Truck (when hoisting and lowering)

CLASS IV - Ballast Regulator, Compressor, Concrete Mixer (1 cy. & under with skip), Concrete Saw (Ridden or self-propelled), Conveyor, Elevator (Material hauling only), Fork-lift (Ridden or self-propelled), Form Line Machine, Generator, Groute Pump, Heater (Mechanical), Hoist (Single Drum), Ledavator Light Plant, Mulching Machine, Spray Cure Machine (powered Driven), Subgrader, Tie Puller, Tugger and welding Machine (Gas or Diesel)

CLASS V - Deck Hand, Farm Tractor; Fireman on Boiler; Mechanic's Helper; Oiler, Power Broom, Side Delivery Shoulder Spreader

TRUCK DRIVERS CLASSIFICATIONS DEFINITIONS

CLASS I - Pickup Farm Tractor (When pulling or Hauldine, Helpers, Warehouseman

CLASS II - Single Axle, Forklift

CLASS III - Tri-axle, Tandem Axle & Tractor pulled Trailers

CLASS IV - Specialty Vehicles Off Road (45T-++), Distributor, Lo-Boy

CLASS V - Partsmen will be paid on basis of Behicle utilized

CLASS VI - Dual purpose Truck, when load has been, loaded or unloaded with truck winch loading, hauldine & unloading) will, be paid accordine, to the axle

[FR Doc. 85-19982 Filed 8-22-85; 8:45 am]

BILLING CODE 4510-27-C

federal register

Friday
August 23, 1985

Part IV

Department of Transportation

Office of the Secretary
Research and Special Programs Administration

14 CFR Part 241

Aviation Regulations; Uniform System of Accounts and Reports for Large Certificated Air Carriers; Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Research and Special Programs Administration

14 CFR Part 241

[Docket No. 43351; Notice No. 85-11]

Aviation Regulations; Uniform System of Accounts and Reports for Large Certificated Air Carriers

AGENCY: Research and Special Programs Administration, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule requests comments on the need for and use of the financial and operating statistics reported by large certificated air carriers on RSPA Form 41 (formerly CAB Form 41). The Department proposes to reduce air carrier reporting burdens by more closely aligning the data collected with the data needed to fulfill its aviation responsibilities under the Federal Aviation Act of 1958, as amended.

DATE: Comments on the proposed rule must be received on or before October 22, 1985.

ADDRESS: Comments should be directed to the Docket Clerk, Docket 43351, Room 4107, Office of the Secretary, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Jack M. Calloway or M. Clay Moritz, Jr., Office of Aviation Information Management, Data Requirements and Public Reports Division, DAI-10, Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 426-7372.

SUPPLEMENTARY INFORMATION:

Executive Order 12291, Regulatory Flexibility Act, and Paperwork Reduction Act of 1980

This proposed action has been reviewed under Executive Order 12291, and it has been determined that this is not a major rule. It will not result in an annual effect on the economy of $100 million or more. There will be no increased in production costs or prices for consumers, individual industries, Federal, State or local governments, agencies or geographic regions. Furthermore, this proposed rule would not adversely affect competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. These proposed regulations would result in a reduction in reporting burden for large certificated air carriers. Accordingly, a regulatory impact analysis is not required.

This proposed regulation is significant under the Department's Regulatory Policies and Procedures, dated February 26, 1979, because it involves important Departmental policies. Its economic impact should be minimal and a full regulatory evaluation is not required.

I certify that this rule will not have a significant economic impact on a substantial number of small entities.[1] The proposed amendments would affect only large certificated air carriers.

The collection of information requirements in this proposal are subject to the Paperwork Reduction Act, Pub. L. 96-511, 44 U.S.C. Chapter 35. These requirements will be submitted to the Office of Management and Budget (OMB) for review and comment. Persons may submit comments on the collection-of-information requirements to OMB. Comments should be directed to Sam Fairchild, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. It would be appreciated if a copy of any comments sent to OMB is also sent to the DOT rules docket.

Comments Invited

Interested persons are invited to participate in this rulemaking action by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions. Communications should identify the regulatory docket number and be submitted in duplicate to the address listed above. Commenters wishing the Department to acknowledge receipt of their comments must submit with those comments a self-addressed stamped postcard on which the following statement is made: Comments on Docket No. 43351. The postcard will be date/time stamped and returned to the commenter. All communications received between the specified opening and closing dates for comments will be considered by the Administrator before taking action on any further rulemaking. Also, this proposal may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with DOT personnel concerned with this rulemaking will be filed in the docket.

Background

The Airline Deregulation Act (Pub. L. No. 95-504, October 24, 1978 ("ADA"), as amended by the Civil Aeronautics Board Sunset Act of 1984, Pub. L. No. 98-443, October 4, 1984) revised section 329(b)(1) of Title 49 of the United States Code to require the Secretary of Transportation to collect and disseminate information on civil aeronautics and continue certain data collection activities of the former Civil Aeronautics Board (CAB) under section 407(a) of the Federal Aviation Act of 1958, as amended (Act).[2] Included in the transfer of CAB data systems to DOT was CAB Form 41 "Report of Financial and Operating Statistics for Large Certificated Air Carriers."[3] This data collection form has been redesignated as RSPA Form 41 and is administered by the Office of Aviation Information Management (OAIM) of the Department's Research and Special Programs Administration (RSPA).

The Form 41 report consists of the following twenty-eight schedules.

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[1] For purposes of its aviation economic regulations, Departmental policy categorizes certificated air carriers operating small aircraft (60 seats or less or 18,000 pounds maximum payload or less) in strictly domestic service as small entities for purposes of the Regulatory Flexibility Act.

[2] Section 407(a) authorizes the Secretary, DOT, to require recurrent and special reports from any air carrier when the information is needed for regulatory purposes.

[3] "Large certificated air carriers" include all section 401 carriers that either: (1) Operate aircraft designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds; or (2) conduct operations where one or both terminals of a flight stage are outside the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico and the United States Virgin Islands.

LIST OF SCHEDULES IN RSPA FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B-1	Balance Sheet	Q	(1)	X	X
B-1.1	Balance Sheet	S-A	(2)		
B-7	Airframes and Aircraft Engines Acquired	Q		X	X
B-8	Flight Equipment Retired	Q		X	X
B-12	Statement of Changes in Financial Position	Q	(1)	X	X
B-43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P-1.1	Statement of Operations	S-A	(2)		
P-1.2	Statement of Operations	Q	(1)	X	X
P-1(a)	Interim Operations Report	M	X	X	X
P-2	Notes to RSPA Form 41 Report	Q	(1)	X	X
P-5.1	Aircraft Operating Expenses	Q(1)/S-A(2)	X		
P-5.2	Aircraft Operating Expenses	Q		X	X
P-6	Maintenance, Passenger Service and General Administrative Expense Functions	Q	(1)	X	X
P-7	Aircraft and Traffic Servicing, and Promotion and Sales Expense Functions—Group II and Group III Air Carriers.	Q		X	X
P-8	Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers	Q			X
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Entity	M	(2)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	(3)	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services	M		X	X
T-2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft	Q	X	X	X
T-3(a)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T-8	Report of All-Cargo Operations	A	(3)	(3)	(3)
T-9	Nonstop Market Report	M	X	X	
G-41	Persons Holding More Than 5 Per Centum of Respondent's Capital Stock or Capital	A	(1)	X	X

NOTE: M = Monthly; Q = Quarterly; S-A = Semiannually; A = Annually; and X = All Carriers.
(1) Applicable to Group I air carriers with annual operating revenues of $10 million or more.
(2) Applicable to Group I air carriers with annual operating revenues below $10 million.
(3) Applicable to carriers conducting Section 418 all-cargo operations.
NOTE: Group I carriers are those with $0 to $75,000,000 in total annual operating revenues, Group II includes carriers with $75,000,001 to $200,000,000, and Group III includes all carriers with over $200,000,000.

As can be seen by the above listing, the extent of carrier reporting is based on a carrier's size or level of operations as measured by its total annual operating revenues.

During 1984, the CAB instituted a rulemaking proceeding to reduce the Form 41 reporting to the level needed to support the effective administration of Federal programs, including those CAB aviation programs transferring to DOT at sunset, as well as on-going DOT and other Federal programs. On November 28, 1984, the CAB adopted Economic Regulation ER-1401 (50 FR 232, January 3, 1985), which eliminated fourteen Form 41 schedules and culminated a 54 percent reduction in the number of Form 41 schedules from 61, at the enactment of the ADA, to the current level of 28.

The Department participated in accomplishing the reporting reductions realized by ER-1401 and had a close working relationship with CAB staff in identifying the Form 41 schedules no longer needed by DOT. Nevertheless, the Department also recognizes the degree of burden that still remains and seeks to explore the possibility of further reductions. To this end, the Department is instituting this rulemaking proceeding on the need for and use of Form 41 data.[4]

Review of DOT Data Needs

In developing this notice of proposed rulemaking, the Department, recognizing its role as the central government source for aviation data, conducted a zero base review of the air carrier information currently reported on RSPA Form 41 schedules in order to determine what data elements [5] the Department needs to administer its various aviation responsibilities, including air carrier safety, airport development and planning, fitness, international fares and routes, subsidy, and forecasting. The review was conducted by RSPA's Office of Aviation Information Management (OAIM) whose staff members met with the senior aviation program managers in DOT's Office of the Secretary and Federal Aviation Administration (FAA) in order to determine: (1) What Form 41 data elements are relied on for decisionmaking in aviation related matters; (2) what DOT programs are benefitted; (3) what is the frequency of data use; (4) what data are needed by entity;[6] (5) what domestic entity data are needed; and (6) what alternative sources of data are available for meeting DOT information requirements.

The results of OAIM's Form 41 data element review is included in Exhibit A, which contains the twenty-eight schedules currently comprising RSPA Form 41. On the face of each schedule is indicated whether the specific data element being reported is: (1) Needed by DOT, (2) needed for ICAO (International Civil Aviation Organization) reporting, (3) needed for mathematical verification purposes, or (4) not needed by DOT.

As can be seen by reviewing Exhibit A, the Department proposes to retain the majority of the data elements now being reported since they are still needed to support the Department's aviation programs. It should be noted, however, that the significant reporting reductions achieved by ER-1401 were only a few months old before being subjected to the current zero base review. Despite this, the zero base review did reveal two significant areas where further reductions can be made. Schedule G-41 on stock ownership reporting is no longer needed on a recurrent basis, and the reporting of air carrier operating expense data can be simplified. While ER-1401 resulted in a reporting burden

[4] Prior to the adoption of ER-1401, the Office of Management and Budget had directed the CAB to issue a rulemaking proposal to consider reductions in Form 41 reporting. The CAB, with the full support of DOT, issued, on December 28, 1984, a notice of intent (50 FR 101, January 2, 1985) to institute a rulemaking proceeding to solicit comments on Form 41.

[5] Data element is a distinct or single piece of information such as name, amounts, terms, number, abbreviation, symbol, etc.

[6] The word "entity" means a distinct geographical area. The entities are domestic and international, with international being further broken down into Atlantic, Pacific and Latin America for scheduled operations.

reduction on the air carriers of 8,300 hours or 16 percent, it is estimated that the revisions to Form 41 proposed by this rulemaking notice would result in an additional reduction of 3,300 burden hours or 8 percent for a total decrease of 23 percent. The 3,300 burden hours represents the elimination of 334 data elements out of the total currently reported of 1,011, or a 33 percent reduction.

Form 41 Schedule G–41 "Persons Holding More Than 5 Per Centum of Respondent's Capital Stock or Capital" was intended to collect the annual air carrier stock ownership data that was mandated by section 407(b) of the Act. This section was eliminated by the ADA. Therefore, the Department is proposing to eliminate Schedule G–41.

The staff review of the reporting of air carrier operating expense revealed that the current highly detailed level of expense reporting is no longer needed, even though the Department does extensively use operating cost by aircraft type in exercising its decisionmaking responsibilities. In order to relieve the carriers from having to file more detailed cost data than are necessary, the staff has developed a proposed set of simplified cost schedules that would reduce by 77 percent the number of data elements now reported by the largest (Group III) air carriers. Under this proposal, Schedule P–5.2 "Aircraft Operating Expenses" would be revised by consolidating some accounts, while Schedules P–6, "Maintenance, Passenger Service and General Administrative Expense Functions," P–7, "Aircraft and Traffic Servicing and Promotion and Sales Expense Functions—Group II and Group III Air Carriers," and P–8, "Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions—Group III Air Carriers," would be replaced by a simplified Schedule P–6, "Operating Expenses by Objective Groupings," and P–7, "Operating Expenses by Functional Groupings."

In comparing the current and proposed reporting, Group I air carriers, with annual operating revenues of $10 million or more, would file the simplified Schedule P–6 in lieu of the current Schedule P–6; Group II carriers would file the revised Schedule P–6 in lieu of the current Schedules P–6 and P–7; and Group III air carriers would file the revised Schedules P–6 and P–7 in lieu of current Schedules P–6, P–7 and P–8. For comparative purposes, the formats of the current schedules are included in Exhibit A and the formats for the proposed schedules are provided as Exhibit B.

The Department is considering a petition by United Air Lines, Inc. (Docket 42883) on February 20, 1985, requesting the elimination of the gallonage consumption of aircraft fuel and oil on Schedule T–2 "Traffic, Capacity, Aircraft Operations, and Miscellaneous Statistics by Type of Aircraft." United is concerned that the public disclosure of fuel data tends to stabilize fuel prices by eliminating supplier incentives to negotiate price discounts. While this notice of proposed rulemaking details DOT needs for Schedule T–2 data, the Department will respond to United's petition for eliminating the above data elements under Docket 42883.

The Department proposes to continue collecting carrier expense data by entity of operation, including domestic operations data. As to balance sheet and cash flow information, the Department uses such data for the total carrier entity in monitoring the continuing fitness of each air carrier as required by section 401(r) of the Federal Aviation Act, as amended. Income statement data are also used in reviewing continuing fitness as well as computing carrier yields by entity for use in balance of benefits analyses of international aviation agreements. The FAA uses these basic financial reports to monitor individual carrier financial status in allocating its safety inspection program resources.[7]

Cost, traffic, and capacity data by entity are used in negotiating and monitoring the effects of international agreements. Domestic entity data are reviewed to monitor the effects of carrier cost allocations between entities on reported international data. Such allocations can materially effect an international entity's operating cost levels which the Department reviews in granting international route authority and evaluating international fare and rate proposals. Domestic data are also used for calculating fare and rate levels for Canadian transborder operations since such operations are reported in the domestic entity. Cost data by aircraft type and entity, including domestic, are utilized to estimate foreign carrier operating costs in calculating the balance of benefits under air transport agreements. Carrier selection cases for international route awards, and carrier certification proceedings also use reported carrier data, by aircraft type, to evaluate the reasonableness of proposed operating plans.

FAA airport programs allocate Federal monies to domestic airports based on airport activity data for both domestic and foreign operations.

While the above discussion highlights the Department's need for entity data, including domestic, further discussion of the need for entity reporting is contained in the following discussion of DOT's various aviation programs.

Air Carrier Safety

FAA is responsible for monitoring the safety levels and regulatory compliance disposition of individual air carriers. The financial and traffic results of all carriers are analyzed at least quarterly, and the FAA Administrator is kept informed of the financial and operational health of the carriers. Financial information is one of the factors used by the FAA in allocating its safety inspection program resources to the various inspection sites.

When warranted, monthly financial and traffic data are used to closely monitor a carrier's revenue, traffic, and financial trends. Currently, FAA is studying the relationship between carrier financial results and safety to identify specific financial indicators or ratios that can be used to better allocate the Department's aviation safety inspection resources.

Passengers enplaned by point, and transported by service segment are used by FAA to determine population exposure levels when reviewing exemption requests to the regulations for the transportation of hazardous materials by air. Enplanement data are also used to identify hub airports that require a more detailed review of operational errors and incidents. Finally, enplanement and departure data by aircraft type by airport are used in identifying airport needs for instrument landing systems.

Carrier financial and statistical data are used to evaluate the prospective impact of proposed regulatory actions on the affected segment(s) of the air transportation industry. Cost/benefit analyses are perfomed to ensure that the costs of implementing a contemplated regulatory change do not outweigh the expected derivation of benefits.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(b), T–2, T–3(a), T–3(b), T–3(c), T–8 and T–9.

[7] In recognition of carrier reporting burden, balance sheet and fund flow reports have never been required on an entity basis; however, revenue, expense, traffic, and capacity data, by entity, are heavily utilized in administering Federal aviation programs.

International Negotiations

Air services between the United States and most foreign countries are governed by bilateral aviation agreements. Evaluations of existing bilateral agreements and proposed changes to such agreements are based on a determination of the "balance of benefits" between the United States and foreign carrjers.

The United States and foreign carrier benefits are computed and then adjusted for any proposed changes. Among the information used to determine the balance of benefits is traffic volume, aircraft seating density, available cargo capacity, load factors, traffic yields and unit costs, including cost per mile by length of haul and aircraft type. For comparative purposes, yield data are computed by carrier and by industry average. Estimations of foreign carriers' costs are computed using U.S. carrier data that may represent similar operating characteristics (aircraft type, length of haul, etc.).

Questions also arise in negotiations with foreign governments over employee productivity and excess baggage revenue estimates. Consequently, data are needed on the number of employees by labor category, allocated by entity, and on the amount of revenues collected for transporting excess baggage.

Operating cost data including costs by aircraft type and breakeven load factors are used to support fare proposals and monifor carriers serving particular markets. In the multilateral pricing negotiations with the European Civil Aviation Conference (ECAC), the aviation organization which represents most European countries, costs of service must be computed every three months. Over the past several years, the ECAC negotiations have been the mechanism for the establishment of acceptable fare levels for the United States-Europe markets over the North Atlantic.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(b), T–2 and T–9.

International Fares and Rates

Mail

The Department is responsible for establishing international and intra-Alaska mail rates. Separate international mail rates are set for each of the Atlantic, Latin America, and Pacific entities. Mail rates are also individually set for priority and nonpriority mail. It should be noted that carrier data reported for the domestic entity are used to set rates for Canadian transborder mail.

A carrier's investment base is calculated during the ratemaking process to ensure a reasonable return on investment. This process requires the segregation of operating and nonoperating property and equipment, along with the applicable depreciation and amortization expenses. Cost data for aircraft type by entity are also used in ratemaking. Domestic entity cost data are used to review the reasonableness of the allocation of costs between entities.

Recurrent carrier cost data and current fuel costs are used to review the established mail rates every three or six months, depending on factors such as overall inflation and fluctuations in fuel costs. These reviews are conducted to ensure that carriers are being adequately compensated for their costs.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–2, T–3(a), T–3(c) and T–9. If a mail rate investigation occurs, Schedules B–7, B–8, B–12 and B–43 are also used.

Passenger and Cargo

In addition to mail rates, the Department is also charged with establishing benchmarks for international fares and rates for passenger and cargo traffic, respectively. Passenger fares are reflected by the Standard Foreign Fare Level (SFFL) and cargo rates by the Standard Foreign Rate Level (SFRL). The SFFL and SFRL establish levels below which fare and rate applications are automatically approved. Separate passenger fare levels are calculated for the Canadian, Atlantic, Latin America, and Pacific areas. Cargo rate levels are calculated for each operating region: Atlantic, Western Hemisphere, and Pacific.

SFFL, by law,[8] must be adjusted at least every 60 days for fuel costs and every 180 days for all other costs. Section 399.41(f)(4) of the Department's Policy Regulations (14 CFR 399.41(f)(4)) requires SFRL adjustments to be performed on April 1 and October 1 of each year, or more frequently if warranted. The SFFL indices are based on actual operating costs per available seat-mile, and the SFRL indices are founded on average operating costs per available ton-mile. Historical cost trends are developed and projected to arrive at the revised fare and rate levels.

The domestic Standard Industry Fare Level (SIFL) is computed at least semiannually for domestic air transportation. It is used internally to review the reasonableness of existing or proposed fares in essential air service markets. Some of the domestic data are also used to calculate the SFFL for Canadian operations.

The SFFL/SFRL/SIFL mechanisms, with their periodic adjustment, permit carriers to react quickly to changing market conditions, as well as changes in input costs, such as fuel, without having to go through a lengthy administrative process. Using these indices enables carriers to recover costs with minimum regulatory lag, and set fares in accordance with current and projected cost levels.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–1(b) and T–2.

International Routes

In carrier selection cases for international routes, the carriers submit an operating plan containing proposed pricing and detailed costs. Current and historical cost data are examined for applicants and other carriers with the same aircraft type, type of service, and length of haul and are used to validate the proposed operating plan. This review provides evidence concerning the reliability of management forecasts, including an evaluation of whether the proposed fare levels are credible.

When evaluating the operating plan, the Department examines the carrier's revenue generation estimates by analyzing historical fare levels and traffic patterns (seasonality). Also examined are a carrier's balance sheet and cash flow statements, direct operating costs, indirect costs, operating profit, and net profit. Operating expenses are grouped by functional categories and analyzed based on the historical cost of units of production such as block hours, available seat-miles, revenue passenger-miles, departures, enplanements and passenger revenue. Forecasts of revenues and expenses are developed to assess the impact of the proposed service on a carrier's total operations. For example, aircraft overhaul expenses are examined in evaluating carrier cost estimates, since the direct expensing of overhauls can affect an operating plan's estimated costs. Fuel cost data by aircraft type are also examined closely in evaluating projected expenses due to the significance of fuel cost to total operating cost.

Historical operating costs are examined not only for the entity affected by the proposed change in operations, but for all remaining operating entities of the carrier as well.

[8] Section 24(a)(9) "International Air Transportation Competition Act of 1979," Pub. L. 96-192, February 15, 1980.

This enables the Department to review a carrier's cost allocations between entities, which can materially affect the operating plan expenses forecast as well as the reasonableness of a carrier's fare proposals. Cost analysis also involves comparing the proposed cost projections against the historical cost trends of several similarly sized carriers operating the same or similar equipment and length of haul.

Airport activity data are also used to resolve allegations regarding airport dominance by specific carriers. In these instances, the airport data that are available for all carriers serving the particular airport would be examined. Nonstop market data provide the Department with the information needed to evaluate traffic projections by analzying load factors by market.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–1(b), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Applications for Permits by Foreign Carriers

Foreign carrier applications include a forecast of the total traffic and financial results of the proposed services for the first full year of normal operations as well as the supporting data employed to calculate the financial forecast. Data reported by certificated U.S. carriers with the same or similar aircraft type and characteristics such as fare levels, class of service, length of haul, etc. are used to analyze the validity of the foreign carrier's data submission.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a), T–1(a), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Air Carrier Fitness

New Authority or Substantial Changes

Fitness determinations are made for applicants for certificate authority that are not currently certificated and established air carriers proposing a substantial change in operations.

Noncertificated applicants are required under 14 CFR Part 204 to file with the Department a balance sheet and income statement for their three most recent calendar or fiscal years. Also required are data on aircraft inventory and aircraft purchase plans. Filing requirements also include an illustrative service proposal, a twelve month forecasted balance sheet and income statement, which includes estimated revenue block hours (or airborne hours for charter operators) and revenue miles by type of aircraft, number of passengers and number of tons of mail and cargo carried, transport revenues, and the estimated traffic that would be generated in each market receiving the proposed service. These descriptive operating statements also include an explanation of the derivation of unit costs used in estimating operating expenses, and a description of the manner in which costs and revenues are allocated.

The data submitted by the applicants are compared to the revenue, expense, and operating data for a carrier or carriers with the same aircraft type and similar operating characteristics. This comparative review of the proposed operating plan supports the reliability of the submitted forecasts and, at the same time, provides additional evidence concerning the competency of management.

Certificated air carriers that seek to substantially change their operations must also undergo a fitness determination. Section 204.2 of DOT's Economic Regulations defines "substantial change in operations" as including, but not limited to, changes in operations from charter to scheduled service, cargo to passenger service, short-haul service to long-haul service, or a large increase in the number of markets served. Air carriers falling within this category are required under Section 204.4(g) to provide a description of their current aircraft fleet and plans, including financing arrangements, for purchasing or leasing additional aircraft.

Section 204.4(f) provides for the submission of an income statement forecast for the first normalized year of proposed operations, including estimated revenue block hours (or airborne hours for charter operations) and revenue miles by aircraft type, number of passengers and number of tons of mail and cargo carried, transport revenues, and an estimate of the traffic which would be generated in each market receiving the proposed service. As with new entrants, the statements filed must also include an explanation of the derivation of unit costs used in estimating operating expenses and a description of the manner in which costs and revenues are allocated.

As with noncertificated carriers undergoing a fitness determination, the data submitted by carriers proposing a significant change in operations are also compared to reported data by other carriers operating the same aircraft type and having similar operating characteristics.

It should be noted that the Department's regulations on the data to be filed in fitness determinations are formulated so as to minimize the data collection burden on both certificated and already established carriers by stating that if the required data have been previously filed with the Department, or another Federal agency from which they are available to the Department, the affected carrier need only identify the data and provide a citation for the date and place of filing.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, T–1(a), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Continuing Fitness

Section 401(r) of the Act mandates that "the requirement that each applicant for a certificate or any other authority under this title must be found fit, willing, and able to perform properly the transportation covered by its application, and to conform to the provisions of this Act and the rules, regulations, and requirements of the Board under this Act, shall be a continuing requirement applicable to each such air carrier with respect to the transportation authorized by the Board."[9]

As indicated above, the continuing fitness requirement applies to all operating certificated air carriers. In evaluating an operating carrier's fitness to perform its authorized levels of transportation, the Department requires certain basic financial data such as provided by a balance sheet, an income statement, and a statement of the source and application of funds (funds flow). Data comparisons are made between current and past periods in order to assess the current financial position of the carrier. Financial trend lines are extended into the future to analyze the continued viability of the air transportation enterprise. Operating costs by aircraft type are reviewed to determine the representativeness of costs to the expenses being incurred by carriers of similar size and operating characteristics. Operating statistics are also reviewed to analyze a carrier's levels of traffic and capacity. Load factors (passenger and cargo) are compared to those of carriers with similar operating characteristics, and used to assess trends in the level of operations.

Certificated air carriers that have not begun operating within two years of certification are also subject to a continuing fitness review before starting service.

[9] "Title" refers to Title IV "Air Carrier Economic Regulation" of the Federal Aviation Act of 1958, as amended. The authority of "Board" to determine continuing fitness transferred to the Secretary, DOT, on January 1, 1985, under the provisions of the Civil Aeronautics Board Sunset Act of 1984.

Form 41 schedules used: B–1, B–1.1, B–12, P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, P–6, P–7, P–8 and T–1(a).

Airport Programs

The Department uses carrier data for: (1) Allocating Federal funds for airport development, (2) assessing the current level of airport security personnel and equipment and forecasting future requirements in this area, (3) projecting the anticipated level of activity for individual airports to forecast future requirements for airport facilities and staffing levels, and (4) assessing the level and frequency of service at individual airports in order to determine the environmental noise impact or carrier operations.

The Airport and Airway Improvement Act of 1982 (Pub. L. 97–248) specifies that fifty percent of the Federal funds allocated shall be distributed to primary airports on the basis of revenue passengers enplaned each calendar year immediately preceding the fiscal year in which the funds are appropriated. Revenue passenger enplanements by airport, which are reported by certificated air carriers, are used to both calculate the initial allocation of funds to the affected airports and resolve questions that may arise during the calendar year as to the level of enplanements used to disburse the Federal monies. It is critical that a reliable, certified source of data be available for computing fund allocations, since serious disruptions in individual airport planning, development, and funding commitments could occur should funds be misallocated and the Department be forced to seek recovery.

Revenue passenger enplanement data by airport are also used in airport planning under the Airport and Airway Improvement Act of 1982, which calls for establishing a National Plan of Integrated Airport Systems. Under this plan, forecasts of activity levels by airport are developed to ascertain the future development needs for each airport in the Plan.

Commercial air cargo carrier activity data are used in airport planning and development as well. Since several airports in the national system are heavily involved in air freight, all-cargo traffic and capacity data such as revenue tons enplaned and departures are used to plan for the future needs of those airports.

The FAA's Office of Aviation Policy and Plans, Forecast Branch, prepares air carrier traffic and operational forecasts in support of decisions on budget and staffing plans, facility and equipment funding, environmental impact, and policy analyses. Among the data used in its forcasts are passenger, mail, and freight yields. Fuel cost and consumption data by aircraft type are used to obtain an average per gallon cost for jet fuel, which is one of the inputs to the yield model. Yield data are also needed to develop the aviation trust fund revenue projections that the FAA is required to provide to the U.S. Treasury Department and the Office of Management and Budget twice a year.

Aircraft departure data by airport are used to compute the index level of crash, fire and rescue equipment needed for safe operations. Scheduled aircraft departures by aircraft type by airport are used in determining the practical annual capacity (PANCAP) at airports as prescribed in FAA Advisory Circular "Airport Capacity Critera Used in Preparing the National Airport Plan." PANCAP is a safety-related benchmark measure of the annual capacity or level of operations at an airport. It is a predictive measure which indicates when airport management should be concerned about capacity problems, delays, and possible needed airport expansion or runway construction. If the level of operations at an airport exceeds the PANCAP significantly, the frequency and length of delays will increase; so too, will the risk of accidents. The forecasts of operations show those years in which the level of operations will exceed PANCAP, and the relationship between total operations and PANCAP during the forecast or planning horizon. Operations by equipment type are also used in determining the proper classification of operations when air carriers/commuters use common codes.

Air carrier direct operating costs by aircraft type for flight crew, fuel and oil, and maintenance are used to estimate the cost of airport operating delays. The cost of operating delays is then compared to the cost of acquiring new FAA equipment and/or implementing new procedures designed to alleviate delays so as to assess the costs and benefits of delay avoidance alternatives.

Form 41 schedules used: P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–10, P–12(a), T–1(a), T–1(b), T–1(c), T–2, T–3(a), T–3(b), T–3(c), T–8 and T–9.

Air Carrier Acquisitions and Mergers

Air carrier acquisition and merger proposals are reviewed to determine if there are any potential anti-competitive effects. In determining potential anti-competitive or anti-trust implications, the degree of competition in the markets served by the affected carriers is analyzed. This analysis includes a review of the volume of traffic handled by each carrier at those airports and in those markets which would be affected by the proposed acquisition or merger.

Form 41 schedules used: T–3(a), T–3(c) and T–9.

War Air Service Program (WASP)

The mandate of the Civil Aeronautics Board under WASP (Executive Order 11490, as amended) for emergency preparedness planning in the event of war or national emergency transferred to the Secretary, Department of Transportation on January 1, 1985. To fulfill its mobilization responsibilities for airlift in the event of a national emergency, the Department needs timely aircraft inventory data. Data elements used in assessing total available airlift capacity include, for each aircraft operator, the number of aircraft by type, the airframe license number, the air capacity (passenger and/or cargo), and whether or not the aircraft is approved for overwater operation. Revenue aircraft miles, revenue aircraft hours (airborne), aircraft fuels issued (gallons), aircraft days assigned to service and aircraft hours (ramp-to-ramp) are also needed for each reported aircraft type.

Form 41 schedules used: B–7, B–8, B–43, and T–2.

Aircraft Loan Guarantee Program

Once a loan has been guaranteed by the U.S. government, the guaranteed carriers' financial data are continuously monitored to protect the government's interests over the repayment period. The data are used to project a carrier's ability to continue to meet its loan repayment obligations.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–12, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7 and P–8.

Essential Air Service (EAS)

The Airline Deregulation Act of 1978 requires periodic reassessments of service level determinations at essential points. Historical passenger enplanement data by airport, and passengers transported by market are analyzed in setting essential air service levels.

Air carrier financial data are used to validate the reasonableness of carrier bids for providing subsidized EAS service. In addition, carrier aircraft operating and other cost data are used as a guide for setting initial rates for carriers that are forced to continue providing EAS service pending selection of a replacement. Such data are also used in setting subsidy rates for service to certain Alaskan points, where the CAB Sunset Act of 1984 stipulates the continuance of jet service.

Form 41 schedules used: B–1, B–1.1, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–12(a) and T–9.

International Civil Aviation Organization (ICAO)

Under Article 67 of the 1944 Chicago Convention, the United States is obligated to supply certain individual U.S. air carrier data to ICAO. The frequency and type of data established by ICAO are dependent on the nature of the air carrier operations. The required reports include monthly, quarterly, and annual traffic data; annual traffic flow data; and annual reports, including balance sheet, profit and loss, aircraft inventory, aircraft operating and utilization statistics; and employee data including number and salaries by general category. ICAO reports rely upon approximately 45 percent of current Form 41 data elements. It should be noted that the Department extracts carrier Form 41 data and prepares the applicable ICAO reports, where possible, in order to save carriers the burden of duplicative reporting.

Form 41 schedules used: B–1, B–1.1, B–7, B–8, B–43, P–1.1, P–1.2, P–2, P–5.1, P–5.2, P–6, P–7, P–8, P–10, P–12(a), T–1(a), T–1(c), T–2, T–3(a), T–3(b), T–3(c) and T–9.

Employee Protection Program

In reviewing Employee Protection Program petitions, the staff must make a finding as to whether employee layoffs were due to deregulation or caused by other factors. Among the factors reviewed in making such a determination are employment level trends and the financial statistics for a particular airline in comparison with the industry and its own historical trend. At the present time, the program is in litigation. However, none of the data elements proposed for retention are exclusive to this program.

Form 41 schedules used: P–1.1, P–1.2, P–1(a), P–2, P–5.1, P–5.2, and P–10.

Program Impact if Form 41 Data Were Not Available

The elimination of Form 41 could result in the air transportation industry having to meet a myriad of reporting requirements that would be generated by DOT and other Federal, State and local agencies to meet program data needs that now rely on the Department's data collection.

As to the Department's aviation programs, the following list highlights the aviation program impacts that the Department believes would result from the elimination of Form 41:

- Individual carrier financial data would not be available for identifying those carriers that are in financial difficulty and determining the need for augmented safety analysis inspections.
- International negotiations on the level of service would be significantly disadvantaged due to the lack of carrier data that are needed for evaluating the United States' position in the market.
- Carrier selections to serve international routes would be inordinately delayed due to the lack of comparable industry data for evaluating carrier operating plan proposals.
- U.S. carrier data would not be available for use in evaluating foreign air carrier applications and service proposals.
- Individual carrier traffic data by airport and market would not be available for use in evaluating the potential competitive harm from carrier merger proposals.
- Carrier fitness reviews would be delayed due to the lack of comparable carrier or industry data that are used to assess carrier operations.
- Airport enplanement data would not be available for allocating, under the Congressionally prescribed method, Federal funds under the Airport Development Aid Program.
- Traffic data by airport would not be available for forecasing airport facility and safety requirements.
- Without adequate aircraft inventory and capacity data, the Department would be unable to fulfill its responsibilities under the War Air Service Program.
- The elimination of Form 41 data would require the Department to establish an alternative data collection system to ensure the continued availability of the Form 41 data elements it must submit to the International Civil Aviation Organization in compliance with a U.S. treaty obligation.
- Market data would not be available to determine the proper level of air service needed at an essential point.
- Essential air service subsidy determinations would be delayed due to the lack of comparable carrier financial data for analyzing proposed subsidy rates. The lack of timely data would pose a hardship for the community seeking air service as well as the carrier needing the cost reimbursement. Lack of data could also cause the setting of subsidy levels that may be too high.

Data Collection Alternatives

As can be seen from the above discussion, the Department needs certain air carrier data in order to fulfill its legislated responsibilities, including those originally vested in DOT and those inherited from the Civil Aeronautics Board. The Department needs: Basic financial information such as the balance sheet, income statement, and funds flow statement; aircraft inventory data; revenue and expense data by entity of operation; costing data by aircraft type; fuel cost data; employment data; traffic and capacity data; airport activity data, including enplanement and departure data (by aircraft type); and nonstop market data.

While the Department is concerned about the level of carrier reporting burden and seeks to eliminate the reporting of data that are no longer necessary in the current deregulatory environment, it also recognizes that the need still exists for data to support the maintenance of a safe and reliable national air transportation system. Congress recognized the Department's need for aviation data to administer both its own and recently assumed CAB programs by transferring the CAB's data collection authority to the Department of sunset.

In reviewing the need for air transportation data, the Department reviewed each Form 41 schedule, data element by data element, and also analyzed how often or at what frequency the required data elements are needed. Data collection frequency was reviewed in order to determine if *ad hoc* reporting would enable the Department to effectively perform its air transportation responsibilities. Interviews of program data users have confirmed the need for retaining the current data collection frequencies. The nature of its data requirements generally precludes the Department from using *ad hoc* reporting. For example, historical cost trends by entity are used in analyzing the balance of benefits for each bilateral agreement. Data reported in the domestic entity are used to review the allocation of costs between entities and to review the total air carrier operation. U.S. carrier data, including domestic entity data, are also used to estimate foreign carrier costs in international route cases and bilateral negotiations.

An important advantage to maintaining a historical data base is that it gives the Department greater ability to use show cause orders in granting new or revised operating authority. Without the availability of historical industry-wide carrier data, show cause orders would not be feasible in many cases and the Department would have to hold formal hearings for many grants of new or revised authority. This process would be costly and time consuming for both the carriers and the Federal government. Moreover, the use

of show cause orders provides for freer market entry which further promotes competition in the air transportation industry.

The Department has also attempted to identify and review alternative sources of air carrier data that could be used to satisfy the Department's data requirements. No viable alternative source could be found, including private sector and other Federal data collections.

In the Federal sector, several data systems were considered, including the air carrier quarterly 10Q and annual 10K filings with the Securities and Exchange Commission (SEC). The Department has reviewed the SEC reports and found five critical flaws, which are highlighted below, in using SEC data for Departmental program decision-making.

First, reporting periods are not standard since the SEC reports are based on the carrier fiscal accounting year. Any comparisons between carriers or groups of carriers, and any total industry comparisons are precluded.

Second, filings are made for the holding company on a consolidated basis, which may include nonaviation operations such as hotels, rental cars, etc. along with the air transportation operation. The purpose of the Form 41 report is to account for, or measure, the airline operations. It would be very difficult to perform any meaningful economic analysis concerning air transportation when the figures include other economic pursuits.

Third, SEC reports do not disclose revenue and expense data by entity of operation, which, as previously discussed, are used in a number of DOT programs.

Fourth, revenue and expense data are reported in broad categories. For example, all passenger revenue may be grouped as "passenger" without disclosing the source—charter or scheduled passenger. These broad SEC categories do not permit any detailed economic analysis. One of the major faults of this broad approach is that aircraft costs, major ingredients in the carrier selection process, are not identifiable.

Fifth, only publicly held carriers are required to file with the SEC. In July 1984, an analysis of the SEC filings disclosed that only 40 percent of the carriers reporting Form 41 data also file with the SEC, leaving 47 carriers not filing with the SEC.

Moreover, the Department uses industry totals and averages, by entity, extensively in connection with its international negotiation analyses and its calculations of the Standard Foreign Fare Level, the Standard Foreign Rate Level and international mail rates.

Other data collection alternatives that were reviewed included statistical sampling strategies, and voluntary reporting to private sector groups.

The staff considered statistically sampling the air transportation industry for three calendar quarters by collecting randomly selected schedules from randomly selected carriers. In the fourth quarter, full industry reports would be collected. Statistical sampling was rejected since sampling is used to work with an entire population or universe, and the Department's most frequent use of Form 41 data is on an individual carrier and not a total industry basis. For example, the Department uses: (1) Recurrent individual carrier financial data for continuous individual fitness monitoring, including carrier safety; (2) a continuous *total* aircraft inventory by carrier for the War Air Service Program; and (3) recurrent airport activity data from each certificated carrier. It should also be noted that statistical sampling would be difficult to apply even to the large certificated industry population, since the universe of carriers is constantly changing with carriers starting, suspending, or changing their operations.

Voluntary reporting through trade associations or data utility firms such as the Air Transport Association, I.P. Sharp, or STSC has been tentatively rejected due to the problems that have been experienced in the past with carrier compliance under voluntary systems. The CAB previously attempted to use a private sector firm for collecting small air carrier financial data for fitness determinations. The program had to be dropped due to a very low participation rate. As to large certificated air carriers, the Passenger Origin-Destination Survey was for years a voluntary system between the participating carriers and the Federal government, until the advent of deregulation and freer market entry. New entrants balked or refused to participate in the survey, with the participating carriers threatening to drop out if the newly certificated carriers did not join. Consequently, the CAB made the system mandatory. Carriers have also expressed a preference for reporting directly to a government agency due to their concern over the confidentiality of their data in private sector hands.

Despite tentatively rejecting these alternate collection methods for meeting DOT's aviation data needs, the Department remains concerned over carrier reporting burden. Evidence of this concern is the Department's (1) Support of the ER-1401 reporting reductions, (2) zero-based data element review of the post ER-1401 reporting level and (3) efforts within the ICAO organizational framework to ensure that carrier reporting burden is kept to the minimum level needed to meet the reporting objectives. In the future, the Department plans to explore other avenues of potential burden reduction. One possibility is using carrier service segment/Schedule T-9 data to generate the summary traffic data schedules needed by the Department.

Other Federal Users of Form 41 Data

While this rulemaking notice identifies only DOT's need for air carrier data, the Department recognizes that other Federal agencies have come to rely on former CAB, now DOT, data collections to administer various Federal programs that utilize air transportation data. A list of those agencies that have expressed a need for Form 41 data, along with their affected programs, follows.

Department of the Air Force—Military Airlift Command

- Ratemaking for Civil Reserve Air Fleet Program

Department of Commerce—Bureau of Economic Analysis

- Estimation of Gross National Product
- Analysis of International Transactions Accounts
- Compilation of Input-Output Tables of the United States

Department of Labor

- Labor Statistical Program
- Employee Protection Program

National Transportation Safety Board

- Analysis of Safety Levels in Commercial Aviation

Department of Energy

- Monitoring of Industry Fuel Consumption for Emergency Preparedness Planning

Securities and Exchange Commission

- Review of Airline Registration Statements

The Department invites all Federal agencies, especially those listed above, to carefully review the proposed changes to RSPA Form 41, as shown in Exhibits A and B. These changes are based on RSPA's zero-based data element review of DOT's need for large certificated air carrier data. The Department would appreciate knowing whether the proposed aviation data collection changes would adversely affect their program administration. Conversely, we also seek comments reaffirming other Federal agency requirements for those data elements that are also needed for DOT programs.

Editorial Changes

While the actual Form 41 reporting schedules (see Exhibit A) have been revised and reprinted as RSPA Form 41, Part 241 still contains references to the "CAB Form 41 Report." Some of the proposed amendatory language in this notice of proposed rulemaking would still refer to RSPA Form 41 under its former CAB designation. The Department plans to issue in the future a single comprehensive rulemaking notice that would update at one time all of the Part 241 references to the Civil Aeronautics Board and its components.

This rulemaking notice does propose an editorial change to the reporting instructions for Form 41 Schedule P-5.1 "Aircraft Operating Expenses" to reflect the fact Group I air carriers with annual operating revenues of over $10 million do not have to report the indirect expense data on Schedule P-5.2, since these carriers already report such data on Schedule P-6 "Maintenance, Passenger Service, and General Services and Administration Expense Functions."

OMB Comments

The Office of Management and Budget believes that a need for the aviation data on the domestic operations of large certificated air carriers that are currently reported on RSPA Form 41 no longer exists in a deregulated environment. The Department solicits public comments on the need for Form 41 data.

List of Subjects in 14 CFR Part 241

Air carriers, Uniform system of accounts and reports.

Proposed Rule

PART 241—[AMENDED]

Accordingly, the Department of Transportation proposes to amend 14 CFR Part 241, *Uniform System of Accounts and Reports for Large Certificated Air Carriers* as follows:

1. The authority citation for Part 241 continues to read as follows:

Authority: Sections 204, 401, 407, 416, 417, 901, 902, 1002 of the Federal Aviation Act of 1958, as amended; 49 U.S.C. 106, 1324, 1371, 1377, 1386, 1387, 1471, 1472 and 1482.

2. The Table of Contents of the *Uniformed System of Accounts and Reports for Large Certificated Air Carriers* would be amended by:

A. Revising the center heading, *Traffic and Corporate Reporting Requirements,* to read as follows:

Traffic Reporting Requirements

B. Removing Section 26, *General Corporate Elements.*

3. Section 21 would be amended by revising paragraphs (b), (d) and (l) to read as follows:

Section 21 Introduction to Systems of Reports

* * * * *

(b) The system prescribed provides for the submission by each air carrier of five classes of financial and operating statistics, on individual schedules of the CAB Form 41 Report, grouped as follows:

A. Certification.
B. Balance Sheet Elements.
P. Profit and Loss Elements.
T. Traffic and Capacity Elements.

* * * * *

(d) Each schedule of the prescribed CAB Form 41 Report has been assigned a specific code. The prefix alphabetical codes A, B, P and T, respectively, have been employed to denote certification, balance sheet, profit and loss, and traffic and capacity. The digits immediately following the alphabetical prefix designate the particular schedule.

* * * * *

(l) When and as required in the national interest, any air carrier which performs nonscheduled transport services for the Department of Defense shall, when directed by the Department, make separate reports for such services as if they were conducted by a physically separate transport entity, such reports shall consist of Schedules P-1 through P-7, T-1, and T-2. The letter "D" shall be inserted on such reports, following the schedule number of each P and T schedule. When a carrier has more than one reporting entity, nonscheduled transport and nonscheduled Defense services shall be assigned to the reporting entity to which more closely related.

4. Section 22 would be amended by revising the List of Schedules in CAB Form 41 Report and the Due Dates of Schedules in CAB Form 41 Report in paragraph (a), by revising subparagraph (1) of paragraph (b) to read as follows:

Section 22 General Reporting Instructions

(a) * * *

LIST OF SCHEDULES IN CAB FORM 41 REPORT

Schedule No.	Title	Filing frequency	Applicability by carrier group		
			I	II	III
A	Certification	Q	(1)	X	X
B-1	Balance Sheet	Q	(1)	X	X
B-1.1	Balance Sheet	S-A	(2)		
B-7	Airframes and Aircraft Engines Acquired	Q		X	X
B-8	Flight Equipment Retired	Q		X	X
B-12	Statement of Changes in Financial Position	Q	(1)	X	X
B-43	Inventory of Airframes and Aircraft Engines	A	X	X	X
P-1.1	Statement of Operations	S-A	(2)		
P-1.2	Statement of Operations	Q	(1)	X	X
P-1(a)	Interim Operations Report	M	X	X	X
P-2	Notes to CAB Form 41 Report	Q	(1)	X	X
P-5.1	Aircraft Operating Expenses	Q(1)/S-A(2)	X		
P-5.2	Aircraft Operating Expenses	Q		X	X
P-6	Operating Expenses by Objective Groupings	Q	(1)	X	X
P-7	Operating Expenses by Functional Groupings—Group III Air Carriers	Q			X
P-10	Employment Statistics by Labor Category	A	(1)	X	X
P-12(a)	Fuel Consumption by Type of Service and Entity	M	(1)	X	X
T-1(a)	Traffic and Capacity Statistics by Class of Service	M	X	X	X
T-1(b)	Traffic and Capacity Statistics by Class of Service-Scheduled Services	M		X	X
T-1(c)	Traffic and Capacity Statistics by Class of Service-Nonscheduled Services	M		X	X
T-2	Traffic, Capacity, Aircraft Operations and Miscellaneous Statistics by Type of Aircraft	Q	X	X	X
T-3(a)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(b)	Airport Activity Statistics—Scheduled Revenue Service	Q	X	X	X
T-3(c)	Airport Activity Statistics—Nonscheduled Revenue Service	Q	X	X	X
T-8	Report of All-Cargo Operations	A	(3)	(3)	(3)
T-9	Nonstop Market Report	M	X	X	

[1] Applicable to Group I air carriers with annual operating revenues of $10 million or more.
[2] Applicable to Group I air carriers with annual operating revenues below $10 million.
[3] Applicable to carriers conducting section 418 all-cargo operations.
NOTE: M=Monthly; Q=Quarterly; S-A=Semiannually; A=Annually; and X=All Carriers.

DUE DATES OF SCHEDULES IN CAB FORM 41 REPORT

Due dates [1]	Schedule No.
Jan. 20	P-12(a).
Jan. 30	P-1(a), T-1, T-2, T-3, T-9.
Feb. 10 [2]	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7, P-10.
Feb. 20	P-12(a).
Mar. 1	P-1(a), T-1, T-9.
Mar. 20	P-12(a).
Mar. 30	B-43, P-1(a), T-1, T-8, T-9.
Apr. 20	P-12(a).
Apr. 30	P-1(a), T-1, T-2, T-3, T-9.
May 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
May 20	P-12(a).
May 30	P-1(a), T-1, T-9.
June 20	P-12(a).
June 30	P-1(a), T-1, T-9.
July 20	P-12(a).
July 30	P-1(a), T-1, T-2, T-3, T-9.
Aug. 10	A, B-1, B-1.1, B-7, B-8, B-12, P-1.1, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
Aug. 20	P-12(a).
Aug. 30	P-1(a), T-1, T-9.
Sept. 20	P-12(a).
Sept. 30	P-1(a), T-1, T-9.
Oct. 20	P-12(a).
Oct. 30	P-1(a), T-1, T-2, T-3, T-9.
Nov. 10	A, B-1, B-7, B-8, B-12, P-1.2, P-2, P-5.1, P-5.2, P-6, P-7.
Nov. 20	P-12(a).
Nov. 30	P-1(a), T-1, T-9.
Dec. 20	P-12(a).
Dec. 30	P-1(a), T-1, T-9.

[1] Due dates falling on a Saturday, Sunday or national holiday will become effective the first following work day.
[2] B and P reporting due dates are extended to March 30 if preliminary schedules are filed at DOT by February 10.

5. Section 23, *Certification and Balance Sheet Elements*, would be amended by removing and reserving paragraph (e) from the reporting instructions for Schedule B-7, *Airframes and Aircraft Engines Acquired.*

6. Section 24, *Profit and Loss Elements*, would be amended by:

A. Revising paragraphs (a) of the reporting instructions for Schedule P-5.1 to read as follows:

Schedule P-5.1—Aircraft Operating Expenses

(a) This schedule shall be filed by all Group I air carriers. Group I air carriers that have annual operating revenues of $10 million or more shall file this schedule quarterly and only report direct operating expense data (lines 1 thru 9). Group I air carriers that have annual operating revenues below $10 million shall file this schedule semiannually and report both direct and indirect operating expense data (lines 1 thru 16).

* * * * *

B. Removing and reserving paragraph (f) and revising paragraph (h) of the reporting instructions for Schedule P-5.2 to read as follows:

Schedule P-5.2—Aircraft Operating Expenses

* * * * *

(f) (Reserved).

* * * * *

(h) The total of function 5100 "Flying Operations" reported on this schedule shall agree with corresponding amounts reported on Schedule P-1.2.

C. Revising the title and reporting instructions for Schedule P-6, *Maintenance, Passenger Service and General Services and Administration Expense Functions*, to read as follows:

Schedule P-6—Operating Expenses by Objective Groupings

(a) This schedule shall be filed by all Group II and Group III air carriers and Group I air carriers that have annual operating revenues of $10 million or more.

(b) Route and charter air carriers shall file this schedule for each separate operating entity.

(c) Line 36 "Total Operating Expenses" shall agree with the corresponding amount reported on Schedule P-1.

D. Revising the title and reporting instructions for Schedule P-7, *Aircraft and Traffic Servicing, Promotion and Sales, and General and Administrative Expense Functions*, to read as follows:

Schedule P-7—Operating Expenses by Functional Groupings—Group III Air Carriers

(a) This schedule shall be filed by all Group III air carriers.

(b) Route and charter air carriers shall file this schedule for each operating entity of the air carrier.

(c) Line 38 "Total Operating Expenses" shall agree with the corresponding amount reported on Schedule P-1.2.

E. Removing the title and reporting instructions of Schedule P-8, *Aircraft and Traffic Servicing, and Promotion and Sales Expense Subfunctions.*

7. The title and contents of Section 26, *General Corporate Elements*, would be removed.

8. RSPA Form 41 Report would be revised as shown in Exhibits A and B attached. (Form 41 Report will not appear in the Code of Federal Regulations.)

Issued in Washington, DC, on August 15, 1985.

M. Cynthia Douglass,

Administrator, Research and Special Programs Administration, DOT.

BILLING CODE 4910-62-M

Exhibit A
Page 1 of 28

Approved by OMB
OMB No. 2138-0013
Expires: 6-30-85

U.S. Department of Transportation
Research and Special Programs Administration

REPORT OF FINANCIAL AND OPERATING STATISTICS FOR LARGE CERTIFICATED AIR CARRIERS

Period ended _____, 19___

_____
(Full name of reporting company)

CERTIFICATION*

I, the undersigned _____
(Title of officer in charge of accounts)

of the _____
(Full name of reporting company)

do certify that this report and all schedules and supporting documents which are submitted herewith or have been submitted heretofore as parts of this report filed for the above indicated period have been prepared under my direction; that I have carefully examined them and declare that they correctly reflect the accounts and records of the company, and to the best of my knowledge and belief are a complete and accurate statement, after adjustments to reflect full accruals, of the operating revenues and expenses, income items, assets, liabilities, capital, surplus, and operating statistics for the periods reported in the several schedules; that the various items herein reported were determined in accordance with the Uniform System of Accounts and Reports for Large Certificated Air Carriers prescribed by the Department of Transportation; and that the data contained herein are reported on a basis consistent with that of the preceding report except as specifically noted in explanations accompanying the financial and statistical statements.

NEED DOT	ICAO	MV*	NO DOT NEED
X	X		

_____
(Signature)

_____
(Air Courier Post Office Address)

Dated _____, 19___

*Title 18 U.S.C. Sec. 1001, Crimes and Criminal Procedure, makes it a criminal offense subject to a maximum fine of $10,000 or imprisonment for not more than 5 years, or both, to knowingly and willfully make or cause to be made any false or fraudulent statements or representations in any matter within jurisdiction of any agency of the United States.

RSPA Form 41 Schedule A (1-85)
Formerly CAB Form 41 Schedule A

BALANCE SHEET

BALANCE SHEET

AS AT: Air Carrier:

ASSETS	Account	NEED DOT	NEED ICAO	NEED MV**	NO DOT NEED
CURRENT ASSETS:					
Cash	1010	X			
Short-term investments	1100	X			
Notes receivable	1200	X			
Accounts receivable	1270	X			
Less: Allowance for uncollectible accounts	1290	X			
Notes and accounts receivable—net	1299	X			
Spare parts and supplies—net	1399	X			
Prepaid items	1410	X			
Other current assets	1420	X			
Total current assets	1499		X	X	
INVESTMENTS AND SPECIAL FUNDS:					
Investments in associated companies	1510	X	X		
Other investments and receivables	1530	X			
Special funds	1550	X	X		
Total investments and special funds	1599			X	
OPERATING PROPERTY AND EQUIPMENT:					
Flight equipment	1609	X	X		
Ground property and equipment	1649	X	X		
Less: Allowances for depreciation	1668	X	X		
Property and equipment—net	1675	X			
Land	1679	X	X		
Equipment purchase deposits and advance payments	1685	X	X		
Construction work in progress	1689	X	X		
Leased property under capital leases	1695	X	X		
Leased property under capital leases—accumulated amortization	1696	X	X		
Total operating property and equipment	1699			X	
NON-OPERATING PROPERTY AND EQUIPMENT:	1791	X			
Less: Allowance for depreciation/accumulated amortization	1792	X			
Nonoperating property and equipment	1799		X	X	
OTHER ASSETS:					
Long-term prepayments	1820	X	X		
Unamortized development and preoperating costs	1830	X	X		
Other assets and deferred charges	1890	X	X		
Total other assets	1895	X			
TOTAL ASSETS	1899		X	X	

LIABILITIES AND STOCKHOLDERS' EQUITY	Account No.	NEED DOT	NEED ICAO	NEED MV**	NO DOT NEED
CURRENT LIABILITIES:					
Current maturities of long-term debt	2000	X			
Notes Payable—Banks	2005	X			
Notes Payable—Others	2015	X			
Trade accounts payable	2021	X			
Accounts payable—Others	2025	X			
Current obligations under capital leases	2080	X			
Accrued salaries, wages	2110	X			
Accrued vacation liability	2120	X			
Accrued interest	2125	X			
Accrued taxes	2130	X			
Dividends declared	2140	X			
Air traffic liability	2160	X	X		
Other current liabilities	2190	X			
Total current liabilities	2199		X	X	
NONCURRENT LIABILITIES:					
Long-term debt	2210	X	X		
Advances from associated companies	2240	X	X		
Pension liability	2250	X	X		
Noncurrent obligations under capital leases	2280	X	X		
Other noncurrent liabilities	2290	X	X		
Total noncurrent liabilities	2299			X	
DEFERRED CREDITS:					
Deferred income taxes	2340	X			
Deferred investment tax credits	2345	X			
Other deferred credits	2390	X			
Total deferred credits	2399		X	X	
STOCKHOLDERS' EQUITY:					
Capital stock:					
Preferred shares issued _____	2820	X			
Common shares issued _____	2840	X			
Subscribed and unissued	2860	X			
Total capital stock	2869		X	X	
Additional capital invested	2890	X	X		
Total paid-in capital	2899			X	
Retained earnings	2900	X	X		
Total stockholders' equity	2959			X	
Less: Treasury stock shares _____	2990	X	X		
Net stockholders' equity	2995	X			
TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY	2999		X	X	

*Denotes inverse amount

RSPA Form 41 Schedule B-1 (1-85)
Formerly CAB Form 41 Schedule B-1

**MV - Data element used for mathematical verification

Exhibit A
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Exhibit A
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Approved by OMB
OMB No. 2138-0013
Expires: 6-30-85

U.S. Department of Transportation
Research and Special Programs Administration

BALANCE SHEET

(OAG Code) _____

Air Carrier (Corporate Name) _____ (Carrier code) _____

As at _____

		NEED DOT	NEED ICAO	NO DOT NEED MV**
ASSETS				
Current assets:				
Cash and equivalents	1	X		
Notes and accounts receivable-net	2	X		
Other current assets	3	X		
Total current assets	4		X	X
Property and equipment:				
Owned property and equipment	5	X	X	
Less accumulated depreciation	6	X	X	
Property and equipment obtained under capital leases	7	X	X	
Less accumulated amortization	8	X	X	
Total property and equipment	9		X	X
Other assets	10	X	X	
Total assets	11		X	X
LIABILITIES AND STOCKHOLDERS' EQUITY				
Current liabilities:				
Notes and accounts payable	12	X		
Accrued taxes	13	X		
Other current liabilities	14	X		
Total current liabilities	15		X	X
Long-term debt	16	X	X	
Other liabilities	17	X	X	
Deferred credits	18	X	X	
Stockholders' equity:				
Capital stock				
Preferred _____ shares outstanding	19	X	X	
Common _____ shares outstanding	20	X	X	
Other paid-in capital	21	X	X	
Retained earnings	22	X	X	
Total stockholders equity	23			X
Less: Treasury stock	24	X	X	
Net stockholders' equity	25			X
Total liabilities and stockholders' equity	26		X	X

I, the undersigned, (Title) _____ of the above-named air carrier certify that the above report and the attached Financial Schedules and Statements of Operations and Traffic and Capacity Statistics have been examined by me and to the best of my knowledge and belief are true, correct and complete reports for the period stated.

Date: _____ Signature: _____

Name (Please Type or Print): _____

* Denotes inverse amount.

RSPA Form 41 Schedule B-1.1 (1-85)
Formerly CAB Form 41 Schedule B-1.1

**MV - Data element used for mathematical verification

AIRFRAMES AND AIRCRAFT ENGINES ACQUIRED

Air Carrier _____

Quarter Ended _____, 19 ____

Line No.	Date Acquired (1)	Date Placed in Transport Service (Airframes) (2)	Airframe License No. (3)	New or Used (4)	Number of Aircraft Engines Acquired (5)	Account No. (6)	Type, Model, and Cabin, Design (7)	Max. Seat Capacity (8)	Cost (9)	Acquired From (10)	Line No.
1											1
2											2
3											3
4	X		X		X		X	X	X	X	4
5											5
6	X						X	X			6
7											7
8											8
9											9
10		X		X		X					10
11											11
12											12
13											13
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41											41
42											42
43											43
44											44
45											45
46											46
47											47
48											48
49											49
50											50

DOT NEED

ICAO NEED

MV**

NO DOT NEED

*Denotes inverse amount.

RSPA Form 41 Schedule B-7 (1-85)
Formerly CAB Form 41 Schedule B-7

**MV - Data element used for mathematical verification

Exhibit A
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Research and Special Programs Administration

FLIGHT EQUIPMENT RETIRED

Air Carrier _____

Quarter Ended _____, 19 ____

		Date Retired (1)	Date Acquired (Airframes) (2)	Airframe License No. (3)	Number of Aircraft Engines Retired (4)	Account (5)	Type and Model (6)	Cost (7)	Amortized or Depreciated Cost (8)	Realization (9)	Disposition (10)	
	1											1
	2											2
DOT NEED	3	X	X	X	X		X	X	X	X	X	3
	4											4
ICAO NEED	5	X					X					5
	6											6
MV**	7											7
	8											8
NO DOT NEED	9					X						9
	10											10
	11											11
	12											12
	13											13
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	41											41
	42											42
	43											43
	44											44
	45											45
	46											46
	47											47
	48											48
	49											49
	50											50

*Denotes inverse relationship.

RSPA Form 41 Schedule B-6 (1-85)
Formerly CAB Form 41 Schedule B-6

**MV - Data element used for mathematical verification

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

STATEMENT OF CHANGES IN FINANCIAL POSITION

	NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED	
Sources of working capital:					
Operations					
Net income			X		1
Add expenses not requiring working capital in the current period:					
Depreciation			X		2
Amortization			X		3
Deferred Federal income taxes			X		4
Deferred investment tax credits			X		5
Other			X		6
Total from operations			X		7
Retirement of property and equipment			X		8
Investments and special funds			X		9
Long-term debt incurred			X		10
Capital stock issued			X		11
Other sources			X		12
Total sources of working capital			X		13
Applications of working capital:					
Acquisition of property and equipment			X		14
Investment and special funds			X		15
Repayment or reacquisition of long-term debt			X		16
Dividends declared (other than stock dividends)			X		17
Other applications			X		18
Total application of working capital			X		19
Increase (decrease) in working capital			X		20
Summary of changes in working capital:					
Increases (decreases) in current assets:					
Cash			X		21
Short-term investments			X		22
Notes and accounts receivable (net)			X		23
Inventories			X		24
Prepaid items			X		25
Other			X		26
Net increase (decrease)			X		27
Increases (decreases) in current liabilities:					
Current maturities of long-term debt			X		28
Notes and accounts payable			X		29
Accrued expenses			X		30
Accrued taxes			X		31
Dividends declared			X		32
Air traffic liability			X		33
Other			X		34
Net increase (decrease)			X		35
Increase (decrease) in working capital			X		36

RSPA Form 41 Schedule B-12 (1-85)
Formerly CAB Form 41 Schedule B-12

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

INVENTORY OF AIRFRAMES AND AIRCRAFT ENGINES

Air Carrier (Corporate Name)_____

_____ (OAG Code)

_____ (Carrier Code)

Year Ended December 31, 19 _____

	LINE NO.	Airframe License Number*	Date Placed in Service Month/Day/Year	Usual Seat Configuration	Number of Aircraft Engines (By Type)	Manufacturer	Type, Model and Cabin Design	Available Capacity (Weight)	Acquired Cost or Capitalized Value	Allowance for Depreciation or Amortization	Depreciated Cost or Amortized Value	Estimated Residual Value	Estimated Depreciable or Amortizable Life (Months)
		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)
	1												
DOT NEED	2	X	X	X	X	X	X	X	X	X	X	X	X
	3												
ICAO NEED	4			X		X	X						
	5												
MV**	6												
	7												
NO DOT NEED	8												
	9												
	10												
	11												
	12												
	13												
	14												
	15												
	16												
	17												
	18												
	19												
	20												

*Denotes airframe currently equipped under FAA Regulation Part 121 for operation over water.

RSPA Form 41 Schedule B-43 (1-85)
Formerly CAB Form 41 Schedule B-43

**MV - Data element used for mathematical verification

Exhibit A
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Air Carrier _____ Date Y Y M M

Month Ended _____ Carrier Code _____

INTERIM OPERATIONS REPORT

	Financial	NEED DOT	NEED ICAO	MV*	NO DOT NEED
(1)	Total Operating Revenues	4999	X		
(2)	Total Operating Expenses	7199	X		
(3)	Operating Profit or Loss	7999		X	
(4)	Net Income	9899	X		
(5)	Passenger Revenues – Scheduled Service	3901	X		
(6)	Public Service Revenues (Subsidy)	4808	X		
	Other				
(7)	Number of Full-Time Employees		X		
(8)	Number of Part-Time Employees		X		

RSPA Form 41 Schedule P-1(a) (1-85)
Formerly CAB Form 41 Schedule P-1(a)

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

STATEMENT OF OPERATIONS

OAG Code

Air Carrier (Corporate Name) _____ (Carrier code)

Six Months Ended _____

		NEED DOT	NEED ICAO	MV**	NO DOT NEED
Operating Revenue					
Transport Revenue					
Scheduled Service					
Passenger	1	X	X		
Other	2	X	X		
Nonscheduled Service	3	X	X		
Transport Related Revenue					
Public Service Revenue	4	X	X		
Other	5	X	X		
Total Operating Revenue	6		X	X	
Operating Expense					
Flying Operations	7	X	X		
Maintenance	8	X	X		
General and Administrative	9	X	X		
Depreciation and Amortization					
Owned Property and Equipment	10	X	X		
Leased Property and Equipment	11	X	X		
Transport Related Expense	12	X	X		
Total Operating Expense	13		X	X	
Operating Profit	14		X	X	
Non-operating Income and Expense:					
Interest Expense	15	X	X		
Other Nonoperating (Net)	16	X	X		
Income Tax	17	X	X		
Discontinued operations, extraordinary items or Accounting changes	18	X	X		
Net Income	19		X	X	

* Denotes inverse amount; on lines 16 and 18 denotes a debit amount.

RSPA Form 41 Schedule P-1.1 (1-85)
Formerly CAB Form 41 Schedule P-1.1

**MV - Data element used for mathematical verification

Exhibit A
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U.S. Department of Transportation
Research and Special Programs Administration

Air Carrier _____
Operation _____

STATEMENT OF OPERATIONS

	Account No.	12 Months Ended NEED DOT ICAO	MV**	NO NEED DOT
OPERATING REVENUES				
Passenger-First Class	3901.1	X X		X
Passenger-Coach	3901.2	X X		X
Mail	3905	X X		X
Property-Freight	3906.1	X X		X
Property-Excess Passenger Baggage	3906.2	X X		X
Charter-Passenger	3907.1	X X		X
Charter-Property	3907.2	X X		X
Reservation Cancellation Fees	3919.1	X X		X
Miscellaneous Operating Revenues	3919.2	X X		X
Public service revenues (Subsidy)	4808	X X		X
Transport related revenues	4898	X X		X
Total Operating Revenues	4999	X	X	X
OPERATING EXPENSES				
Flying operations	5100	X X		X
Maintenance	5400	X X		X
Passenger service •	5500	X X		X
Aircraft and traffic servicing •	6400	X X		X
Promotion and sales •	6700	X X		X
General and administrative •	6800	X X		X
General and administrative +	6900	X X		X
Depreciation and amortization	7000	X X		X
Transport related expenses	7100	X X		X
Total Operating Expenses	7199	X	X	X
Operating profit or loss	7999	X	X	X
NONOPERATING INCOME AND EXPENSE				
Interest on Long-Term Debt and Capital Leases	8181	X X		X
Other Interest Expense	8182	X X		X
Foreign Exchange Gains and Losses	8185	X X		X
Capital Gains and Losses	8188.5 8188.6	X X		X
Other Income and Expenses-Net	8189	X X		X
Nonoperating Income and Expense	8199	X X		X
Income before Income Taxes	8999	X	X	X
INCOME TAXES FOR CURRENT PERIOD	9100	X X		X
Income before discontinued operations, extraordinary items and accounting changes	9199	X	X	X
DISCONTINUED OPERATIONS	9600	X X		X
EXTRAORDINARY ITEMS	9796	X X		X
Income taxes applicable to extraordinary items	9797	X X		X
ACCOUNTING CHANGES	9800	X X		X
Net income	9899	X	X	X

* Denotes inverse amount; in accounts 8100, 9600, 9700, and 9800 denotes debit amount.

\+ Group I Air Carriers Only

• Group II and Group III Air Carriers Only

**MV - Data element used for mathematical verification

RSPA Form 41 Schedule P-1.2 (1-85)
Formerly CAB Form 41 Schedule P-1.2

US Department of Transportation
Research and Special Programs Administration

Air Carrier _____

Operation _____

Period Ended _____

NOTES TO RSPA FORM 41 REPORT

NEED DOT	NEED ICAO	MV*	NO DOT NEED
X	X		

RSPA Form 41 Schedule P-2 (1-85)
Formerly CAB Form 41 Schedule P-2

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

AIRCRAFT OPERATING EXPENSES—GROUP I AIR CARRIERS

Air Carrier (Corporate name including DBA) _____

Quarter ☐ Six Months ☐ Ended _____

Line No.		NEED DOT	NEED ICAO	MV*	NO DOT NEED	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE	AIRCRAFT TYPE / CODE
1	Direct Expense:								
2	Flying Operations (Less Rentals):								
3	Pilot and Copilot[1]	X	X						
4	Aircraft Fuel and Oil	X	X						
5	Other	X	X						
6	Total Flying Operations (Less Rentals)			X	X				
7	Maintenance-Flight Equipment	X	X						
8	Depreciation & Rental-Flight Equipment	X	X						
9	Total Direct Expense			X					
10	Indirect Expense:								
11	Flight Attendant Expense[1]	X	X						
12	Traffic Related Expense	X	X						
13	Departure Related Expense (Station)	X	X						
14	Capacity Related Expense	X	X						
15	Total Indirect Expense			X	X				
16	Total Operating Expense[2]			X	X				

[1]Includes Salaries and Fringe Benefits.
[2]Excludes Transport Related Expenses.

RSPA Form 41 Schedule P-5.1 (1-85)
Formerly CAB Form 41 Schedule P-5.1

*MV - Data element used for mathematical verification

Exhibit A
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See Note Below

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AIRCRAFT OPERATING EXPENSES Group II and Group III Air Carriers	Air Carrier _____ Operation _____ Total—All Aircraft Types Quarter Ended _____ 19__		Aircraft Type _____ Aircraft Code _____		Aircraft Type _____ Aircraft Code _____		Aircraft Type _____ Aircraft Code _____	
FLYING OPERATIONS	5100		5100		5100		5100	
Pilots and copilots	23		23		23		23	
Other flight personnel	24		24		24		24	
Trainees and instructors	28.1		28.1		28.1		28.1	
Personnel expenses	36		36		36		36	
Professional and technical fees and expenses	41		41		41		41	
Aircraft interchange charges—ass. co's	42.7		42.7		42.7		42.7	
Aircraft interchange charges—outside	43.7		43.7		43.7		43.7	
Aircraft Fuels	45.1		45.1		45.1		45.1	
Aircraft oils	45.2		45.2		45.2		45.2	
Rentals	47		47		47		47	
Other supplies	53		53		53		53	
Insurance purchased—general	55.1		55.1		55.1		55.1	
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Taxes—payroll	68		68		68		68	
Taxes—other than payroll	69		69		69		69	
Other expenses	71		71		71		71	
Total flying operations (per sch. P-1)	5199		5199		5199		5199	
DIRECT MAINTENANCE—FLIGHT EQUIP.	5200		5200		5200		5200	
Labor—airframes	25.1		25.1		25.1		25.1	
Labor—aircraft engines	25.2		25.2		25.2		25.2	
Airframe repairs—associated companies	42.1		42.1		42.1		42.1	
Aircraft engine repairs—associated co's	42.2		42.2		42.2		42.2	
Aircraft inter. charges—associated co's	42.7		42.7		42.7		42.7	
Airframe repairs—outside	43.1		43.1		43.1		43.1	
Aircraft engine repairs—outside	43.2		43.2		43.2		43.2	
Aircraft interchange charges—outside	43.7		43.7		43.7		43.7	
Maintenance materials—airframes	46.1		46.1		46.1		46.1	
Maintenance materials—aircraft engines	46.2		46.2		46.2		46.2	
Airworth. allow. provs.—airframes	72.1		72.1		72.1		72.1	
Airframe overhauls def. (cr.)	72.3		72.3		72.3		72.3	
Airworth. allow. provs.—aircr. eng.	72.6		72.6		72.6		72.6	
Aircraft eng. overhauls def. (cr)	72.8		72.8		72.8		72.8	
Total dir. maint.—flt. equip. (to sch. P-6)	78		78		78		78	
AP. MT. BURDEN—FLT. EQP. (per sch P-6)	79.6		79.6		79.6		79.6	
Total flight equip. maintenance (Memo)	5299		5299		5299		5299	
OSBOL. & DETERIOR'N.—EXP. PARTS	7073		7073		7073		7073	
Net obsol. & deterior'n.—exp. parts	7073.9		7073.9		7073.9		7073.9	
DEPRECIATION—FLIGHT EQUIPMENT	7000		7000		7000		7000	
Depreciation—airframes	75.1		75.1		75.1		75.1	
Depreciation—aircraft engines	75.2		75.2		75.2		75.2	
Depreciation—airframe parts	75.3		75.3		75.3		75.3	
Depreciation—aircraft engine parts	75.4		75.4		75.4		75.4	
Depreciation—other flight equipment	75.5		75.5		75.5		75.5	
Total depr.-flight equip.	75.6		75.6		75.6		75.6	
Amortization Expense—Capital Leases-Flt. Eqp.	76.1		76.1		76.1		76.1	
EXP. OF INTERCHANGE AIRCRAFT								
Flying operations	98.1	x x x x x x x x	98.1		98.1		98.1	
Maintenance	98.2	x x x x x x x x	98.2		98.2		98.2	
TOTAL AIRCRAFT OP. EXPENSES	7098.9		7098.9		7098.9		7098.9	

OTHER DEPRECIATION AND AMORTIZATION	7000	
Amortization—developmental and preop. exp.	74.1	
Amortization—other intangibles	74.2	
Depreciation—maint. equip. and hangars	75.8	
Depreciation—general ground property	75.9	
Amortization—capital leases	76.2	

*Denotes inverse amount

RSPA Form 41 Schedule P-5.2 (1-85)
Formerly CAB Form 41 Schedule P-5.2

Note: To be revised as shown in Exhibit B page 1 of 10

Exhibit A
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See Note Below

MAINTENANCE, PASSENGER SERVICE AND GENERAL SERVICES AND ADMINISTRATION EXPENSE FUNCTIONS All Air Carrier Groups	Air Carrier _____ Operation _____ Name: Direct Maintenance (5200) Quarter Ended _____, 19 _____		Name: Maintenance Burden (5300)		Name: Passenger Service (5500)		Name: Gen. Serv. Admin. (6900)	
General management personnel			21		21		21	
Other flight personnel					24		24	
Labor-ground property and equipment	25.9		25.9					
Aircraft and traffic handling personnel								
Trainees and instructors							26	
Unallocated shop labor			28.1		28.1		28.1	
Communications personnel			28.2					
Recordkeeping and statistical personnel			30		30		30	
Lawyers and law clerks			31		31		31	
Traffic solicitors							32	
Purchasing personnel							33	
Other personnel			34				34	
Personnel expenses			35		35		35	
Communications purchased			36		36		36	
Light, heat, power, and water			37		37		37	
Traffic commissions			38		38		38	
Legal fees and expenses							39	
Professional and technical fees and expenses							40	
General interchange serv. charges-asso. cos.	42.8		41		41		41	
Other services-associated companies	42.9				42.8		42.8	
General interchange service charges-outside	43.8		42.9		42.9		42.9	
Other services-outside	43.9				43.8		43.8	
Landing fees			43.9		43.9		43.9	
Maint. materials-ground prop. and equip.	46.9						44	
Rentals			46.9					
Shop and servicing supplies			47		47		47	
Stationery, printing, and office supplies			49				49	
Passenger food expense			50		50		50	
Other supplies					51		51	
Inventory adjustments			53		53		53	
Insurance purchased-general			54		54		54	
Insurance-traffic liability			55.1				55.1	
Employee benefits and pensions					56		56	
Injuries, loss and damage			57		57		57	
Tariffs, schedules and timetables			58		58		58	
Advertising							59	
Foreign exchange gains and losses							60	
Other promotional and publicity expenses							61	
Interrupted trips expense							62	
Memberships					63		63	
Corporate and fiscal expenses			64		64		64	
Uncollectible accounts							65	
Clearance, customs and duties							66	
Taxes-payroll							67	
Taxes-other than payroll			68		68		68	
Other expenses							69	
Airworth.allow.provs.-airframes			71		71		71	
Airworth.allow.chgs.-airframes (cr.)			72.1					
Airframe overhauls deferred (cr.)			72.2					
Amort. of airframe overhauls			72.3					
Airworth.allow.provs.-aircr.engs.			72.4					
Airworth.allow.chgs.-aircr.engs.(cr.)			72.6					
Aircraft eng. overhauls deferred (cr.)			72.7					
Amort. of engine overhauls			72.8					
Uncleared interchange expense credits			72.9					
Other uncleared expense credits			77.8		77.8		77.8	
Dir. maint.-flight equip. (per sch. P-5)			77.9		77.9		77.9	
Totals	78							
App. Maint. burden-flt. equipment (to sch. P-5)	99		99		99		99	
Appl. maint. burden-general ground property			79.6					
Over or under applied burden			79.8					
			79.9					

RSPA Form 41 Schedule P-6 (1-86)
Formerly CAB Form 41 Schedule P-6

*Denotes inverse amount

Note: To be revised as shown in Exhibit B page 2 of 10

See Note Below

AIRCRAFT AND TRAFFIC SERVICING, PROMOTION AND SALES, AND GENERAL AND ADMINISTRATIVE EXPENSE FUNCTIONS Group II and Group III Air Carriers	Air Carrier _____ Operation _____ Name: Aircraft and Traffic Servicing (5400) Quarter Ended _____, 19__ Group II Air Carriers Only		Operation _____ Name: Promotion and Sales (6700) Group II Air Carriers Only		Operation _____ Name: General and Administrative (5800)		Operation _____ Name: Aircraft Servicing (6100) Group III Air Carriers Only	
General management personnel	21		21		21		21	
General aircraft and traffic handling personnel	26.1		26.1				26.1	
Aircraft control personnel	26.2						26.2	
Passenger handling personnel	26.3		26.3					
Cargo handling personnel	26.4		26.4					
Trainees and instructors	28.1		28.1		28.1		28.1	
Communications personnel	30		30		30		30	
Record keeping and statistical personnel	31		31		31		31	
Lawyers and law clerks					32			
Traffic solicitors			33					
Purchasing personnel					34			
Other personnel	35		35		35		35	
Personnel expenses	36		36		36		36	
Communications purchased	37		37		37		37	
Light, heat, power and water	38		38		38		38	
Commissions—passenger			39.1					
Commissions—property			39.2					
Legal fees and expenses					40			
Professional and technical fees and expenses	41		41		41		41	
General interchange service charges—asso. cos.	42.8		42.8		42.8		42.8	
Other services—associated companies	42.9		42.9		42.9		42.9	
General interchange service charges—outside	43.8		43.8		43.8		43.8	
Other services—outside	43.9		43.9		43.9		43.9	
Landing fees	44						44	
Rentals	47		47		47		47	
Shop and servicing supplies	49						49	
Stationery, printing and office supplies	50		50		50		50	
Other supplies	53		53		53		53	
Insurance purchased—general					55.1			
Insurance—traffic liability	56							
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Tariffs, schedules and timetables			59					
Advertising			60					
Foreign exchange gains and losses					61			
Other promotional and publicity expenses			62					
Interrupted trips expense			63					
Memberships	64		64		64		64	
Corporate and fiscal expenses					65			
Uncollectible accounts					66			
Clearance, customs and duties	67						67	
Taxes—payroll	68		68		68		68	
Taxes—other than payroll					69			
Other expenses	71		71		71		71	
Uncleared interchange expense credits	77.8		77.8		77.8		77.8	
Other uncleared expense credits	77.9		77.9		77.9		77.9	
Totals—Quarter	99		99		99		99	

NSPA Form 41 Schedule P-7 (1-68)
Formerly CAB Form 41 Schedule P-7

*Denotes inverse amount

Note: To be revised as shown in Exhibit B page 6 of 10

Exhibit A
Page 16 of 28

See Note Below

AIRCRAFT AND TRAFFIC SERVICING, AND PROMOTION AND SALES, EXPENSE SUBFUNCTIONS Group III Air Carriers	Air Carrier Opcation Name: Traffic Servicing (6200) Quarter Ended 19		Name: Servicing Administration (6300)		Name: Reservations and Sales (6500)		Name: Advertising and Publicity (6600)	
General management personnel	21		21		21		21	
General aircraft and traffic handling personnel	26.1		26.1		26.1			
Passenger handling personnel	26.3				26.3			
Cargo handling personnel	26.4				26.4			
Trainees and instructors	28.1		28.1		28.1		28.1	
Communications personnel	30		30		30		30	
Record keeping and statistical personnel	31		31		31		31	
Traffic solicitors					33			
Other personnel	35		35		35		35	
Personnel expenses	36		36		36		36	
Communications purchased	37		37		37		37	
Light, heat, power and water	38		38		38		38	
Commissions—passenger					39.1			
Commissions—property					39.2			
Professional and technical fees and expenses	41		41		41		41	
General interchange service charges—asso. cos.	42.8		42.8		42.8		42.8	
Other services—associated companies	42.9		42.9		42.9		42.9	
General interchange service charges—outside	43.8		43.8		43.8		43.8	
Other services—outside	43.9		43.9		43.9		43.9	
Rentals	47		47		47		47	
Stationery, printing and office supplies	50		50		50		50	
Other supplies	53		53		53		53	
Insurance—traffic liability	56							
Employee benefits and pensions	57		57		57		57	
Injuries, loss and damage	58		58		58		58	
Tariffs, schedules and timetables					59		59	
Advertising							60	
Other promotional and publicity expenses							62	
Interrupted trips expense					63			
Memberships	64		64		64		64	
Clearance, customs and duties	67							
Taxes—payroll	68		68		68		68	
Othe expenses	71		71		71		71	
Uncleared interchange expense credits	77.8		77.8		77.8		77.8	
Other uncleared expense credits	77.9		77.9		77.9		77.9	
Totals—Quarter	99		99		99		99	

RSPA Form 41 Schedule P-8 (1-85)
Formerly CAB Form 41 Schedule P-8

*Denotes inverse amount

Note: To be revised as shown in Exhibit B page 6 of 10

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

EMPLOYMENT STATISTICS BY LABOR CATEGORY

Aircraft Carrier _____
Operation _____
Calendar Year Ended _____

Account No.	Description	NEED DOT	NEED ICAO	MV*	NO NEED DOT
21	General management personnel	X	X		
23	Pilots and copilots	X	X		
24	Other flight personnel:	X	X		
5124	Flying operations	X	X		
5524	Passenger service	X	X		
6924	General services and administration[1]	X	X		
25	Maintenance labor[4]	X	X		
26	Aircraft and traffic handling personnel[1]	X	X		
26.1	General aircraft and traffic handling personnel:	X	X		
6126.1	Aircraft servicing[3]	X	X		
6226.1	Traffic servicing[3]	X	X		
6326.1	Servicing administration[3]	X	X		
6426.1	Aircraft and traffic servicing[2]	X	X		
6526.1	Reservations and sales[3]	X	X		
6726.1	Promotion and sales[2]	X	X		
26.2	Aircraft control personnel:	X	X		
6126.2	Aircraft servicing[3]	X	X		
6426.2	Aircraft and traffic servicing[2]	X	X		
26.3	Passenger handling personnel:	X	X		
6226.3	Traffic servicing[3]	X	X		
6426.3	Aircraft and traffic servicing[2]	X	X		
6526.3	Reservations and sales[3]	X	X		
6726.3	Promotion and sales[2]	X	X		
26.4	Cargo handling personnel:	X	X		
6226.4	Traffic servicing[3]	X	X		
6426.4	Aircraft and traffic servicing[2]	X	X		
6526.4	Reservations and sales[3]	X	X		
6726.4	Promotion and sales[2]	X	X		
28.1	Trainees and instructors	X	X		
31	Record keeping and statistical personnel	X	X		
33	Traffic solicitors	X	X		
	Other personnel	X	X		
	Transport-related	X	X		
	Total		X	X	

1 Group I air carriers.
2 Group II air carriers.
3 Group III air carriers.
4 Include unallocated maintenance shop labor.

RSPA Form 41 Schedule P-10 (1-85)
Formerly CAB Form 41 Schedule P-10

*MV - Data element used for mathematical verification

Exhibit A
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FUEL CONSUMPTION BY TYPE OF SERVICE AND ENTITY

Air Carrier _____

Month Ended _____, 19 ____

Service/Entity	Gallons				Cost			
	NEED DOT	NEED ICAO	MV*	NO DOT NEED	NEED DOT	NEED ICAO	MV*	NO DOT NEED
Scheduled Service								
Domestic								
Intra-Alaska	X				X			
Domestic (excluding Intra-Alaska)	X				X			
Domestic Subtotal			X				X	
International								
Atlantic	X				X			
Pacific	X				X			
Latin America	X				X			
International Subtotal			X				X	
Total Scheduled Service			X				X	
Nonscheduled Service								
Domestic								
Intra-Alaska	X				X			
Domestic (excluding Intra-Alaska)	X				X			
MAC Operations	X				X			
Domestic Subtotal			X				X	
International								
Atlantic	X				X			
Pacific	X				X			
Latin America	X				X			
MAC Operations	X				X			
International Subtotal			X				X	
Total Nonscheduled Service			X				X	

RSPA Form 41 Schedule P-12(a) (1-85)
Formerly CAB Form 41 Schedule P-12(a)

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE

Air Carrier _____

Operating Entity _____

Month Ended _____

TRAFFIC ON REVENUE FLIGHTS		Total—All Services					Total—Scheduled Services					Total—Nonscheduled Services				
		NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED			NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED			NEED DOT	NEED ICAO	NEED MV*	NO DOT NEED	
Revenue passengers enplaned	Z110			X		K110	X	X			V110	X	X			
Revenue passenger-miles (000)	Z140			X		K140	X	X			V140	X	X			
First class	Z141				xxxxx	K141	X				xxxx				xxxxx	
Coach	Z142				xxxxx	K142	X				xxxx				xxxxx	
Nonrevenue passenger-miles (000)	Z160			X		K160	X				V160	X				
Revenue ton-miles	Z240			X		K240	X	X			V240	X	X			
Passenger	Z241			X		K241	X	X			V241	X	X			
U.S. mail-priority	Z243			X		K243	X	X			V243	X	X			
U.S. mail-nonpriority	Z244			X		K244	X	X			V244	X	X			
Foreign mail	Z245			X		K245	X	X			V245	X	X			
Freight	Z247			X		K247	X	X			V247	X	X			
Nonrevenue ton-miles	Z260			X		K260	X				V260	X				
AIRCRAFT CAPACITY OPERATED																
Available seat-miles (000)	Z320			X		K320	X	X			V320	X	X			
First class	Z321				xxxxx	K321	X				xxxx				xxxxx	
Coach	Z322				xxxxx	K322	X				xxxx				xxxxx	
Available ton-miles	Z280			X		K280	X	X			V280	X	X			
Revenue aircraft miles flown	Z410			X		K410	X	X			V410	X	X			
Revenue aircraft miles scheduled	Z430			X		K430	X				xxxx				xxxxx	
Scheduled aircraft miles completed	Z431			X		K431	X				xxxx				xxxxx	
Revenue aircraft departures performed	Z510			X		K510	X	X			V510	X	X			
Revenue aircraft hours (airborne)	Z610			X		K610	X	X			V610	X	X			
Nonrevenue aircraft hours (airborne)	Z620	X	X			xxxx				xxxxx	xxxx				xxxxx	

RSPA Form 41 Schedule T-1(a) (1-85)
Formerly CAB Form 41 Schedule T-1(a)

*MV - Data element used for mathematical verification

US Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE
SCHEDULED SERVICES

Air Carrier _____
Operating Entity _____
Month Ended _____

TRAFFIC ON REVENUE FLIGHTS		First Class Pass.—Cargo Service					Couch Pass.—Cargo Service					Mixed Pass.—Cargo Service					Cargo Service				
		NEED				NO DOT NEED		NEED			NO DOT NEED		NEED			NO DOT NEED		NEED			NO DOT NEED
		DOT	ICAO	MV*				DOT	ICAO	MV*			DOT	ICAO	MV*			DOT	ICAO	MV*	
Revenue passengers enplaned	A110	X					C110	X					E110	X				G110	X			
Revenue passenger-miles (000)	A140	X					C140	X					E140	X				G140	X			
First class	A141	X					XXXX				XXXXX		E141	X				G141	X			
Coach	XXXX				XXXXX		C142	X					E142	X				G142	X			
Nonrevenue passenger-miles (000)	A160	X					C160	X					E160	X				G160	X			
Revenue ton-miles	A240	X					C240	X					E240	X				G240	X	X		
Passenger	A241	X					C241	X					E241	X				G241	X	X		
U.S. mail-priority	A243	X					C243	X					E243	X				G243	X	X		
U.S. mail-nonpriority	A244	X					C244	X					E244	X				G244	X	X		
Foreign mail	A245	X					C245	X					E245	X				G245	X	X		
Freight	A247	X					C247	X					E247	X				G247	X	X		
Nonrevenue ton-miles	A260	X					C260	X					E260	X				G260				
AIRCRAFT CAPACITY OPERATED																						
Available seat-miles (000)	A320	X					C320	X					E320	X				G320	X	X		
First class	A321	X					XXXX				XXXXX		E321	X				G321	X			
Coach	XXXX				XXXXX		C322	X					E322	X				G322	X			
Available ton-miles	A280	X					C280	X					E280	X				G280	X			
Revenue aircraft miles flown	A410	X					C410	X					E410	X				G410	X	X		
Revenue aircraft miles scheduled	A430	X					C430	X					E430	X				G430	X			
Scheduled aircraft miles completed	A431	X					C431	X					E431	X				G431	X			
Revenue aircraft departures performed	A510	X					C510	X					E510	X				G510	X	X		
Revenue aircraft hours (airborne)	A610	X					C610	X					E610	X				G810	X	X		
Nonrevenue aircraft hours (airborne)	XXXX				XXXXX		XXXX				XXXXX		XXXX			XXXXX		XXXX				XXXXX

RSPA Form 41 Schedule T-10(i) (1-85)
Formerly CAB Form 41 Schedule T-10(i)

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC AND CAPACITY STATISTICS BY CLASS OF SERVICE
NONSCHEDULED SERVICES

Air Carrier _____

Operating Entity _____

Month Ended _____

		Civilian Pass.—Cargo Service All Aircraft Types					Military Pass.—Cargo Service					Civilian Cargo Service					Military Cargo Service				
		NEED				NO DOT NEED	NEED				NO DOT NEED	NEED				NO DOT NEED	NEED				NO DOT NEED
TRAFFIC ON REVENUE FLIGHTS		DOT	ICAO	MV*	NEED		DOT	ICAO	MV*	NEED		DOT	ICAO	MV*	NEED		DOT	ICAO	MV*	NEED	
Revenue passengers enplaned	L110	X					N110	X				P110	X				R110	X			
Revenue passenger-miles (000)	L140	X					N140	X				P140	X				R140	X			
First class	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Coach	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Nonrevenue passenger-miles (000)	L160	X					N160	X				P160	X				R160	X			
Revenue ton-miles	L240	X					N240	X				P240	X	X			R240	X	X		
Passenger	L241	X					N241	X				P241	X	X			R241	X	X		
U.S. mail-priority	L243	X					N243	X				P243	X	X			R243	X	X		
U.S. mail-nonpriority	L244	X					N244	X				P244	X	X			R244	X	X		
Foreign mail	L245	X					N245	X				P245	X	X			R245	X	X		
Freight	L247	X					N247	X				P247	X	X			R247	X	X		
Nonrevenue ton-miles	L260	X					N260	X				P260	X				R260	X			
AIRCRAFT CAPACITY OPERATED																					
Available seat-miles (000)	L320	X					N320	X				P320	X				R320	X			
First class	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Coach	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Available ton-miles	L280	X					N280	X				P280	X				R280	X			
Revenue aircraft miles flown	L410	X					N410	X				P410	X	X			R410	X	X		
Revenue aircraft miles scheduled	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Scheduled aircraft miles completed	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Revenue aircraft departures performed	L510	X					N510	X				P510	X	X			R510	X	X		
Revenue aircraft hours (airborne)	L610	X					N610	X				P610	X	X			R610	X	X		
Nonrevenue aircraft hours (airborne)	xxxx			xxxxx			xxxx			xxxxx		xxxx			xxxxx		xxxx			xxxxx	
Revenue aircraft hours (ramp to ramp)	xxxx			xxxxx				X				xxxx			xxxxx		xxxx	X			

RSPA Form 41 Schedule T-1(c) (1-85)
Formerly CAB Form 41 Schedule T-1(c)

*MV - Data element used for mathematical verification

U.S. Department of Transportation
Research and Special Programs Administration

TRAFFIC, CAPACITY, AIRCRAFT OPERATIONS, AND MISCELLANEOUS STATISTICS BY TYPE OF AIRCRAFT

Air Carrier _____
Operating Entity _____
Quarter Ended _____

		ALL Types NEED DOT / ICAO / MV* / NO DOT NEED	Type: Code:	Type: Code:	Type: Code:	Type: Code:
SCHEDULED SERVICES						
Revenue passengers-miles (000)						
First Class/Mixed Passenger-Cargo	A140, E141	X				
Coach/Mixed Passenger-Cargo	C140, E142	X				
Cargo	G140	X				
Total	K140	X				
Available seat-miles (000)						
First Class/Mixed Passenger-Cargo	A320, E321	X				
Coach/Mixed Passenger-Cargo	C320, E322	X				
Cargo	G320	X				
Total	K320	X				
Revenue ton-miles	K240	X				
Available ton-miles	K280	X				
Revenue aircraft miles flown:						
Passenger-cargo	A, C410	X				
Cargo	G410	X				
Total	K410	X				
ALL SERVICES						
Revenue passengers-miles (000)	Z140	X				
Available seat-miles (000)	Z320	X				
Revenue ton-miles	Z240	X				
Available ton-miles	Z280	X				
Revenue aircraft miles flown	Z410	X				
AIRCRAFT HOURS FLOWN						
Revenue aircraft hours (airborne)	Z610	X X				
Nonrevenue aircraft hours (airborne)	Z620	X X				
Total aircraft hours (airborne)	Z650	X X				
MISCELLANEOUS OPERATING FACTORS						
Aircraft days assigned to service-carrier's equipment	Z810	X				
Aircraft days assigned to service-carrier's routes	Z820	X				
Nonrevenue aircraft miles flown	Z420	X				
Carrier's interchange equipment:						
Hours on others (airborne)	Z830	X				
Aircraft hours (ramp-to-ramp)	Z630	X				
Aircraft fuels issued (gallons)	Z921	X				
Aircraft oils issued (gallons)	Z922	X				

RSPA Form 41 Schedule T-2 (1-85)
Formerly CAB Form 41 Schedule T-2(a) & (b)

*MV - Data element used for mathematical verification

Exhibit A
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US Department of Transportation
Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
SCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

Airport	Code	Departures Scheduled K520	Scheduled Departures Completed K521	Scheduled & Extra Section Departures Performed Total K510	Enplaned Passengers K110	Enplaned Revenue Cargo (Tons)			
						U.S. Mail		Foreign Mail	Freight
						Priority K213	Nonpriority K214	K215	K217
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
DOT NEED	X	X	X	X	X	X	X	X	X
ICAO NEED									X
MV*									
NO DOT NEED									

BSPA Form 41 Schedule T-3(a) (1-85)
Formerly CAB Form 41 Schedule T-3(a)

*MV - Data element used for mathematical verification

Exhibit A
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Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
SCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

Airport	Code	Scheduled and Extra Section Departures Performed by Aircraft Type/Aircraft Code											
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
DOT NEED													
X	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED													
		X	X	X	X	X	X	X	X	X	X	X	X
MV*													
NO DOT NEED													

RSPA Form 41 Schedule T-3(b) (1-85)
Formerly CAB Form 41 Schedule T-3(b)

*MV - Data element used for mathematical verification

Exhibit A
Page 24 of 28

US Department of Transportation
Research and Special Programs Administration

AIRPORT ACTIVITY STATISTICS
NONSCHEDULED REVENUE SERVICE

Air Carrier _____
Operating Entity _____
Quarter Ended _____

Airport	Code	Enplaned Passengers V110	Enplaned Revenue Cargo (Tons)				Departures Performed by Aircraft Type/Aircraft Code						
			US Mail Priority V213	US Mail Nonpriority V214	Foreign Mail V215	Freight V217	Total V510						
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)
DOT NEED	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED						X	X	X	X	X	X	X	X
MV*													
NO DOT NEED													

RSPA Form 41 Schedule T-3(c) (1-85)
Formerly CAB Form 41 Schedule T-3(c)

*MV - Data element used for mathematical verification

Exhibit A
Page 26 of 28

U.S. Department of Transportation
Research and Special Programs Administration

REPORT OF ALL-CARGO OPERATIONS

Air Carrier		All-Cargo Operations	
Year Ended December 31, 19____		Domestic (418)	Other Than Section 418
		NEED DOT ICAO MV* / NO DOT NEED	(B)
Operating Revenues and Expenses			
Transport Revenue:			
Property	1	X	
Mail	2	X	
Transport Related Revenue	3	X	
Total Operating Revenue	4	X	
Total Operating Expense	5	X	
Operating Profit or (Loss)	6	X	
Traffic and Capacity Statistics			
Total Revenue Ton-Miles:			
Property	7	X	
Mail	8	X	
Revenue Tons Enplaned	9	X	
Available Ton Miles	10	X	
Aircraft Miles Flown	11	X	
Aircraft Departures Performed	12	X	
Aircraft Hours (Airborne)	13	X	

RSPA Form 41 Schedule T-6 (1-85)
Formerly CAB Form 41 Schedule T-6

*MV - Data element used for mathematical verification

NONSTOP MARKET REPORT

CARRIER NAME _____ DATE Y Y M M (1–4)

OPERATION _____

MONTH _____ CARRIER CODE _____ (5–8)

LINE NUMBER	AIRPORT		AIRCRAFT TYPE	INTER-AIRPORT DISTANCE (501)	REVENUE AIRCRAFT DEPARTURES PERFORMED (510)	SEATS AVAILABLE		MINUTES (RAMP TO RAMP*) (62)	TONS AVAILABLE (LBS.) (270)	REVENUE PASSENGERS TRANSPORTED		REVENUE TONS TRANSPORTED (LBS.) (250)	REVENUE PASSENGERS ENPLANED		REVENUE CARGO TONS ENPLANED (LBS.) (210)
	TAKEOFF	LANDING				FIRST CLASS (111)	COACH (112)			FIRST CLASS (131)	COACH (132)		FIRST CLASS (111)	COACH (112)	
1 (10-12)	2 (13-15)	3 (16-18)	4 (19-22)	5 (23-26)	6 (27-30)	7 (33-34)	8 (35-36)	9 (40-42)	10 (48-50)	11 (57-60)	12 (61-65)	13 (66-73)	14 (74-77)	15 (78-82)	16 (83-87)
DOT NEED	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
ICAO NEED	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
MV*															
NO DOT NEED															

KDFA Form 41 Schedule T-6 (1-85)
Formerly CAB Form 41 Schedule T-6

*MV - Data element used for mathematical verification

Exhibit A
Page 28 of 28

Schedule Q-41

CAB Form 41

*MV - Data element used for mathematical verification

PERSONS HOLDING MORE THAN 5 PER CENT OF RESPONDENT'S CAPITAL STOCK OR CAPITAL

(Pursuant to Section 407(b) of the Federal Aviation Act)

Air Carrier _____

As at December 31, 19__

LINE NO.	NAME (1)	ADDRESS (2)	HELD FOR OWN ACCOUNT (Yes or No) (3)	CAPITAL STOCK OR INVESTED CAPITAL				
				CLASS(ES) OF SHARES (4)	MAXIMUM HELD DURING THE YEAR		HELD AT YEAR END	
					NUMBER OF SHARES OR AMOUNT OF CAPITAL (5)	PERCENT OF TOTAL OUTSTANDING CAPITAL (6)	NUMBER OF SHARES OR AMOUNT OF CAPITAL (7)	
1								
2								
3								
4								
5								
6								
7								
8	X	X						
9			X	X	X	X	X	
10								
11								
12								
13								
14								
15								
16								
17								
18								
19								
20								
21								
22								
23								
24								
25								
26								

Persons for whose account stock is held if answer in column 3 above is "No"

1	
2	
3	
4	
5	
6	

DOT NEED

ICAO NEED

MV*

NO DOT NEED

Exhibit B
Page 1 of 10

AIRCRAFT OPERATING EXPENSES -- GROUP II AND GROUP III AIR CARRIERS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

	Account Number	Total-All Aircraft Types	Aircraft Type	Aircraft Type
Flying Operation	5100			
Pilots and copilots		23 + allocation from a/c 57		
Aircraft fuels		45.1 + allocation from a/c 69		
Aircraft oils		45.2 + allocation from a/c 69		
Rentals		47		
Other expenses		71 + a/c 24, 28.1, 36, 41, 42.7, 43.7, 53, 55.1, 57, 58, 68 and 69		
Total flying operations (per Sch. P-1)				
Direct Maintenance-Flight Equipment	5200			
Labor-airframes		25.1		
Labor-aircraft engines		25.2		
Airframe repairs		42.1 + 43.1		
Aircraft engine repairs		42.2 + 43.2		
Aircraft interchange charges		42.7 + 43.7		
Maintenance materials-airframes		46.1		
Maintenance materials-aircraft engines		46.2		
Airworth. allow. provs.-airframes		72.1		
Airframe overhauls deferred (cr.)		72.3		
Airworth. allow. provs.-aircraft engines		72.6		
Aircraft eng. overhauls def. (cr.)		72.8		
Total dir. main.-flt. equip.		78		
Applied Main. Burden-Flt. Equip.		79.6		
Total flight equip. main. (MEMO)	5299			
Net obsol. & deterior.-exp. parts	7073.9			
Depreciation-Flight Equipment	7000			
Depreciation-airframes		75.1		
Depreciation-aircraft engines		75.2		
Depreciation-airframe parts		75.3		
Depreciation-aircraft engine parts		75.4		
Total depr.-flight equipment		75.6		
Amortization Expense-Capital Leases-Flight Equipment		76.1		
Expense of Interchange Aircraft				
Flying operations		98.1	----	
Maintenance		98.2	----	
Total Aircraft Operating Expenses	7098.9			
Other Depreciation and Amortization	7000			
Amortization-developmental and preop. exp.		74.1		
Amortization-other intangibles		74.2		
Depreciation-maint. equip. and hangars		75.8		
Depreciation-general ground property		75.9		
Amortization-capital leases		76.2		

RSPA Form 41

Schedule P-5.2

Exhibit B
Page 2 of 10

OPERATING EXPENSES BY OBJECTIVE GROUPINGS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

Line 1	SALARIES AND RELATED FRINGE BENEFITS:	
Line 2	SALARIES:	
Line 3	General management personnel	XX
Line 4	Flight personnel	XX
Line 5	Maintenance labor	XX
Line 6	Aircraft and traffic handling personnel	XX
Line 7	Other personnel	XX
Line 8	Total Salaries	XXX
Line 9	RELATED FRINGE BENEFITS:	
Line 10	Personnel expense	XX
Line 11	Employee benefits and pensions	XX
Line 12	Payroll taxes	XX
Line 13	Total Related Fringe Benefits	XXX
Line 14	Total Salaries and Related Fringe Benefits	XXX
Line 15	MATERIALS PURCHASED:	
Line 16	Aircraft fuel and oil	XX
Line 17	Maintenance material	XX
Line 18	Passenger food	XX
Line 19	Other materials	XX
Line 20	Total Materials	XXX
Line 21	SERVICES PURCHASED:	
Line 22	Advertising and other promotion	XX
Line 23	Communications	XX
Line 24	Insurance	XX
Line 25	Outside flight equipment maintenance	XX
Line 26	Traffic commissions - Passenger	XX
Line 27	Traffic commissions - Cargo	XX
Line 28	Other services	XX
Line 29	Total Services	XXX
Line 30	LANDING FEES	XXX
Line 31	RENTALS	XXX
Line 32	DEPRECIATION	XXX
Line 33	AMORTIZATION	XXX
Line 34	OTHER	XXX
Line 35	TRANSPORT RELATED EXPENSE	XXX
Line 36	TOTAL OPERATING EXPENSES	XXX

INSTRUCTIONS FOR
PROPOSED SCHEDULE P-6

Line 1 Salaries and related fringe benefits shall be reported in the following categories:

Line 2 Salaries shall be subdivided as follows:

Line 3 General Management Personnel = Sum of objective Account 21 for all functions

Line 4 Flight Personnel = Sum of objective Accounts 23 and 24 for all functions

Line 5 Maintenance Labor = Sum of objective Accounts 25.1 + 25.2 + 25.3 + 25.6 + 25.9 + 28.2 for all functions + proration for Line 5 (See footnote 2/)

Line 6 Aircraft and Traffic Handling Personnel = Sum of objective Accounts 26 + 26.1 + 26.2 + 26.3 + 26.4 for all functions

Line 7 Other Personnel = Sum of objective Accounts 28.1 + 30 + 31 + 32 + 33 + 34 + 35 for all functions

Line 8 Total Salaries = Sum of Line 3 + 4 + 5 + 6 + 7

Line 9 Related fringe benefits shall be subdivided as follows:

Line 10 Personnel Expense = Sum of objective Account 36 for all functions

Line 11 Employee Benefits and Pensions = Sum of objective Account 57 for all functions

Line 12 Payroll Taxes = Sum of objective Account 68 for all functions

Line 13 Total Related Fringe Benefits = Sum of Lines 10 + 11 + 12

Line 14 Total Salaries and Related Fringe Benefits = Sum of Lines 8 + 13

Line 15 Materials purchased shall be reported in the following categories:

Line 16 Aircraft Fuel and Oil = Sum of objective Accounts 45 + 45.1 + 45.2 for all functions + objective Account 69 for 5100 function only

Line 17 Maintenance Material = Sum of objective Accounts 46.1 + 46.2 + 46.3 + 46.6 + 46.9 + 49 + 54 for all functions + proration for Line 17 (See footnote 2/)

Line 18 Passenger Food = Sum of objective Account 51 for all functions

Line 19 Other Materials = Sum of objective Accounts 38 + 50 + 53 for all functions

Line 20 Total Materials = Sum of Lines 16 + 17 + 18 + 19

Line 21 Services purchased shall be reported in the following categories:

Line 22 Advertising and Other Promotion = Sum of objective Accounts 59 + 60 + 62 for all functions

Line 23 Communications = Sum of objective Account 37 for all functions

Line 24 Insurance = Sum of objective Accounts 55 + 56 for all functions

Line 25 Outside Flight Equipment Maintenance = Sum of objective Accounts 42.1 + 42.2 + 42.3 + 42.6 + 42.7 + 42.8 + 42.9 + 43.1 + 43.2 + 43.3 + 43.6 + 43.7 + 43.8 + 43.9 for 5200 function only + proration for Line 25 (See footnote 2/)

Line 26 Traffic Commissions - Passenger = Sum of objective Accounts 39 (See footnote 1/) + 39.1 for all functions

Line 27 Traffic Commissions - Cargo = Sum of objective Accounts 39 (See footnote 1/) + 39.2 for all functions

Line 28 Other Services = Sum of objective Accounts 40 + 41 for all functions + objective Accounts 42.7 + 42.8 + 42.9 + 43.7 + 43.8 + 43.9 for all functions except 5200

Line 29 Total Services = Sum of Lines 22 + 23 + 24 + 25 + 26 + 27 + 28

Line 30 Landing Fees = Sum of objective Account 44 for all functions

Line 31 Rentals = Sum of objective Account 47 for all functions

Line 32 Depreciation = Sum of objective Accounts 73.1 + 73.2 + 75.6 + 75.8 + 75.9 for 7000 function

Line 33 Amortization = Sum of objective Accounts 74.1 + 74.2 + 76 for 7000 function

Line 34 Other = Sum of objective Accounts 58 + 61 + 63 + 64 + 65 + 66 + 67 + 71 + 77.8 + 77.9 for all functions + 69 for all functions except 5100

Line 35 Transport Related Expenses = Total of 7100 function

Line 36 Total Operating Expenses = Sum of Lines 14 + 20 + 29 + 30 + 31 + 32 + 33 + 34 + 35

FOOTNOTES

1/ Under this Schedule P-6, Group I carriers would be required to report a separate amount for Traffic Commissions - Passenger (6939.1) and Traffic Commissions - Cargo (6939.2). Previously, this group reported only Total Traffic Commissions (6939).

2/ For all groups, proration for Lines 5 and 17 and 25.

Step 1:	Net of accounts	5272.1	5372.1
		5272.2	5372.2
		5272.3	5372.3
		5272.4	5372.4
		5272.6	5372.6
		5272.7	5372.7
		5272.8	5372.8
		5272.9	5372.9
	Net		

Step 2: Sum of Lines 5 + 17 + 25 before proration of amount in Step 1.

For proration applicable to Line 5

Step 3: Line 5 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4: Proration = Net (Step 1) X Ratio (Step 3)

For proration applicable to Line 17

Step 3A: Line 17 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4A: Proration = Net (Step 1) X Ratio (Step 3A)

For proration applicable to Line 25

Step 3B: Line 25 before proration - Sum of Lines 5 + 17 + 25 before proration

Step 4B: Proration = Net (Step 1) X Ratio (Step 3B)

Exhibit B
Page 6 of 10

OPERATING EXPENSES BY FUNCTIONAL GROUPINGS

CARRIER: _____ OPERATION: _____

QUARTER ENDING: _____

Line 1	AIRCRAFT OPERATING EXPENSES (DIRECT OPERATING COSTS):	
Line 2	Total *	XXX
Line 3	SERVICING, SALES AND GENERAL OPERATING EXPENSES (INDIRECT OPERATING COSTS):	
Line 4	PASSENGER SERVICE EXPENSE:	
Line 5	Flight attendant expense	XX
Line 6	Food expense	XX
Line 7	Other in-flight expense	XX
Line 8	Total Passenger Service Expense	XXX
Line 9	AIRCRAFT SERVICING EXPENSE:	
Line 10	Line servicing expense	XX
Line 11	Control expense	XX
Line 12	Landing fees	XX
Line 13	Total Aircraft Servicing Expense	XXX
Line 14	TRAFFIC SERVICING EXPENSE:	
Line 15	Directly assignable to passenger	XX
Line 16	Directly assignable to baggage and cargo	XX
Line 17	Not directly assignable	XX
Line 18	Total Traffic Servicing Expense	XXX
Line 19	RESERVATION AND SALES EXPENSE:	
Line 20	Directly assignable to passenger	XX
Line 21	Directly assignable to cargo	XX
Line 22	Not directly assignable	XX
Line 23	Total Reservation and Sales Expense	XXX
Line 24	ADVERTISING AND PUBLICITY EXPENSE:	
Line 25	Directly assignable to passenger	XX
Line 26	Directly assignable to cargo	XX
Line 27	Institutional advertising expense	XX
Line 28	Total Advertising and Publicity Expense	XXX
Line 29	GENERAL AND ADMINISTRATIVE EXPENSE	XXX
Line 30	MAINTENANCE AND DEPRECIATION--GROUND PROPERTY AND EQUIPMENT:	
Line 31	Maintenance	XX
Line 32	Depreciation	XX
Line 33	Total Maintenance and Depreciation--Ground Property and Equipment	XXX
Line 34	DEPRECIATION EXPENSE--MAINTENANCE EQUIPMENT	XXX
Line 35	AMORTIZATION (OTHER THAN FLIGHT EQUIPMENT)	XXX
Line 36	TOTAL SERVICING, SALES AND GENERAL OPERATING EXPENSES	XXX
Line 37	TRANSPORT RELATED EXPENSES	XXX
Line 38	TOTAL OPERATING EXPENSES	XXX

* Detail by aircraft type on Schedule P-5.

INSTRUCTIONS FOR
PROPOSED SCHEDULE P-7

(GROUP III CARRIERS ONLY)

Line 1 Aircraft operating expenses (direct operating costs) shall be reported as follows:

Line 2 Total = Account 7098.9 for total all aircraft types from Schedule P-5.2

Line 3 Servicing, sales and general operating expenses (indirect operating costs) shall be reported in the following categories:

Line 4 Passenger service expense shall be subdivided as follows:

Line 5 Flight Attendant Expense = Sum of Accounts 5524 + 5528.1 + 5530 + 5531 + 5535 + 5536 + 5557 + 5568

Line 6 Food Expense = Account 5551

Line 7 Other In-flight Expense = Account 5599 - (Line 5 + Line 6)

Line 8 Total Passenger Service Expense = Sum of Lines 5 + 6 + 7

Line 9 Aircraft servicing expense shall be subdivided as follows:

Line 10 Line Servicing Expense = Account 6126.1

PLUS an allocation of the balance in the aircraft servicing expense function (Account 6100) after the following accounts have been excluded: Accounts 6126.1, 6126.2, 6130, 6137 and 6144. This allocation to Line 10 is based on the ratio of Account 6126.1 to the total of Accounts 6126.1 + 6126.2 + 6130.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 10 (both directly assigned and allocated as above) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 11 Control Expense = Accounts 6126.2 + 6130 + 6137

PLUS an allocation of the balance in the aircraft servicing expense function (Account 6100) after the following accounts have been excluded: Accounts 6126.1, 6126.2, 6130, 6137 and 6144. This allocation to Line 11 is based on the ratio of the total of Accounts 6126.2 + 6130 to the total of Accounts 6126.1 + 6126.2 + 6130.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 11 (both directly assigned and allocated as above) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 12 Landing Fees = Account 6144

Line 13 Total Aircraft Servicing Expense = Sum of Lines 10 + 11 + 12

Line 14 Traffic servicing expense shall be subdivided as follows:

Line 15 Directly Assignable to Passenger = Account 6226.3

PLUS all other expenses in the traffic servicing expense function (Account 6200) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

PLUS allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 15 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 16 Directly Assignable to Baggage and Cargo = Accounts 6226.4 + 6256

PLUS all other expenses in the traffic servicing expense function (Account 6200) that can be directly assigned or is directly attributable to baggage and/or cargo service based on the carrier's own detailed system of accounts.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses incuded in Line 16 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6200).

Line 17 Not Directly Assignable =

The total of the traffic servicing expense function (Account 6200) less all 6200 related amounts in Lines 15 and 16.

PLUS an allocation of the servicing administration expense function (Account 6300), based on the ratio of total salary expenses included in Line 17 (before allocation) to total salary expenses in both the aircraft servicing expense function (Account 6100) and the traffic servicing expense function (Account 6200).

Line 18 Total Traffic Servicing Expense = Sum of Lines 15 + 16 + 17

Line 19 Reservation and sales expense shall be subdivided as follows:

Line 20 Directly Assignable to Passenger = Accounts 6526.3 + 6539.1 + 6563

PLUS all other expenses in the reservations and sales expense function (Account 6500) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

Line 21 Directly Assignable to Cargo = Accounts 6526.4 + 6539.2

PLUS all other expenses in the reservations and sales expense function (Account 6500) that can be directly assigned or is directly attributable to cargo service based on the carrier's own detailed system of accounts.

Line 22 Not Directly Assignable =

The total of the reservations and sales expense function (Account 6500) less Lines 20 + 21.

Line 23 Total Reservation and Sales Expense = Sum of Lines 20 + 21 + 22

Line 24 Advertising and publicity expense shall be subdivided as follows:

Line 25 Directly Assignable to Passenger =

All expenses in the advertising and publicity expense function (Account 6600) that can be directly assigned or is directly attributable to passenger service based on the carrier's own detailed system of accounts.

Line 26 Directly Assignable to Cargo =

All expenses in the advertising and publicity expense function (Account 6600) that can be directly assigned or is directly attributable to cargo service based on the carrier's own detailed system of accounts.

Line 27 Institutional Advertising Expense =

The total of the advertising and publicity expense function (Account 6600) less Lines 26 + 27.

Line 28 Total Advertising and Publicity Expense = Sum of Lines 25 + 26 + 27

Line 29 General and Administrative Expense = Total of 6800 function

Line 30 Maintenance and depreciation--ground property and equipment shall be subdivided as follows:

Line 31 Maintenance = The total of the maintenance expense function (Account 5400) less Account 5299 for total all aircraft types from Schedule P-5.2.

Line 32 Depreciation = Account 7075.9

Line 33 Total Maintenance and Depreciation--Ground Property and Equipment= Sum of Lines 31 + 32

Line 34 Depreciation Expense--Maintenance Equipment - Account 7075.8

Line 35 Amortization (other than flight equipment) = Accounts 7074.1 + 7074.2 + 7076 (less Account 7076 for total all aircraft types from Schedules P-5.2).

Line 36 Total Servicing, Sales and General Operating Expenses = Sum of Lines 8 + 13 + 18 + 23 + 28 + 29 + 33 + 34 + 35

Line 37 Transport Related Expenses = Total of 7100 function

Line 38 Total Operating Expenses = Sum of Lines 2 + 36 + 37

[FR Doc. 85-19997 Filed 8-22-85; 8:45 am]
BILLING CODE 4910-62-C

federal register

Friday
August 23, 1985

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 57
Health Professions Student Loan Program; Final Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program. These amendments impose more detailed requirements concerning the exercise of due diligence by schools in loan collections, specify a penalty for failure to comply with reporting requirements, address the requirements for proper execution and safeguarding of promissory notes, and clarify the write-off provision.

EFFECTIVE DATE: These regulations are effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: On September 6, 1984, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (49 FR 35324) a Notice of Proposed Rulemaking (NPRM) for the HPSL program which proposed to specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement in the collection of loans. The September 6 NPRM also proposed to clarify the requirements relating to proper execution and safeguarding of promissory notes, the penalty for failure to comply with reporting requirements, and the provisions applicable to the write-off of uncollectible loans.

The Secretary invited interested persons to submit comments on the proposed rule on or before October 22, 1984. In response, the Department received 22 comments from health professions school officials and professional associations. A discussion of the comments, the Department's responses, and the regulatory changes follows.

Discussion of Comments, Responses, and Regulatory Changes

Section 57.208 Health professions student loan promissory note.

Three of four respondents supported the proposed amendment to § 57.208, which would require that, where State law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. One respondent opposed the language of this provision because he felt that the operational burden associated with obtaining security could be overwhelming for an educational institution. The respondent therefore recommended that the Department eliminate the reference to security.

The Department recognizes the respondent's concern for keeping operational burdens to a minimum, but believes that schools should have flexibility where possible in complying with regulatory requirements. Therefore, since the proposed language gives a school the option of obtaining either security or endorsement, and would not preclude an institution from requiring endorsement in these cases, the Department has adopted the provision as proposed.

Section 57.210 Repayment and collection of health professions student loans.

Section 57.210(b)(1)(i): Eight respondents opposed § 57.210(b)(1)(i), which would require the school to conduct and document an entrance interview with the borrower. These respondents stated that most schools would find it difficult if not impossible to have an entrance interview with each loan recipient due to staff and time requirements, and that it was unnecessary, since carrying out all the other due diligence steps should result in timely repayment of student loans. Individual respondents also questioned the cost-effectiveness of this requirement, suggesting that its only value lay in educating students who drop out with no warning and indicating that this is an unusual occurrence among HPSL borrowers. They also doubted that there would be significant retention of entrance interview information by the borrowers and disagreed with the Department's statement that conducting entrance interviews is a common practice among institutions.

As alternatives to the proposed entrance interview requirement, these respondents recommended one or more of the following: (1) That the promissory note be regarded as sufficient notification to the borrower of his or her repayment responsibilities; (2) that the Department require the award letter to identify HPSL funds as a loan and explain the repayment terms, and that this replace the entrance interview requirement; (3) that the Department permit group entrance interviews, with verified attendance as sufficient documentation; (4) that the Department permit schools to conduct the entrance interview by mail; (5) that the language in the National Direct Student Loan (NDSL) regulations (34 CFR 674.16), which specifies information which the borrower must receive and permits the school to mail the information to borrowers, be adopted in place of this requirement; and (6) that the entrance interview be suggested but not required, with emphasis instead on the exit interview. Respondents also requested that, if implemented, the requirement be explained in greater detail, and phased in over 2 years to allow schools time to allocate sufficient money and personnel for its implementation.

In developing this provision, the Department purposely chose language that did not specify the manner in which the entrance interview must be conducted so that each institution could develop entrance interview procedures that are practical, given its level of staff and financial resources. The Department views the term "entrance interview" to mean a meeting (individually or in groups) during which the school informs the borrower of the rights and responsibilities associated with the loan and obtains personal information from the borrower that would assist in the loan collection process.

Since the public comments expressed both opposition and uncertainty regarding the proposed requirement of an entrance interview, the Department has modified the provision. The provision as modified requires that before disbursing HPSL funds to a borrower in a given academic year, the school must have documentation which indicated that the borrower is aware of the rights and responsibilities associated with HPSL funds, and must obtain personal information that would assist in locating the borrower, if he or she fails to keep the school informed of his or her current address. Although not required by this provision, the Department also strongly encourages schools to use the entrance interview as an opportunity to provide borrowers with comprehensive debt management counseling in order to prevent delinquency. The Department recommends that entrance interviews be conducted in person (individually or in

groups); however, the provision as implemented will permit a school to satisfy this requirement through an exchange of information by mail when the school determines that a face-to-face meeting is impracticable.

Section 57.210(b)(1)(ii): Two respondents opposed § 57.210(b)(1)(ii), which would require schools to conduct and document exit interviews with borrowers. Both requested that the Department clarify the information that schools must collect during the exit interview so that schools could be assured that they are in compliance with this requirement. In response to these comments, the Department has modified this provision to require that, during the exit interview, the school must inform each borrower of the terms of repayment, remind the borrower of his or her rights and responsibilities, and update the personal information collected during the entrance interview which would assist in locating the borrower if he or she fails to notify the school of an address change.

One respondent also suggested that the exit interview be required to address all of the student's educational loans, noting that a comprehensive overview of his or her debt would help the student to manage all obligations more easily. Although the Department agrees that the exit interview could be used for comprehensive debt counseling, debts other than HPSL loans are beyond the scope of these regulations.

Section 57.210(b)(1)(iii), (iv), and (v): Two respondents opposed as regulatory requirements § 57.210(b)(1)(iii), (iv), and (v), which would require that the school notify the borrower in writing of the impending repayment obligation at least twice during the grace period and once prior to the end of an approved period of deferment, and perform regular billing. Both opponents agreed that these were excellent guidelines for schools to follow, but objected to them as requirements which, if not met, would automatically result in denial of a write-off request (regardless of the extensiveness of a school's collection efforts as a whole) for loans covered by these regulations.

The Department developed these proposals because over time many schools have requested a series of specific regulatory procedures that would clarify the due diligence requirement for purposes of requesting the write-off of uncollectible loans. In the absence of additional opposition from respondents, the Department continues to believe that most schools still favor more specific regulatory due diligence provisions, and further notes that the two respondents did not object to the provisions themselves. Therefore, the Department has implemented them as proposed, except that the time frame during which the notification to a borrower in deferment must occur has been changed to 1 to 3 months prior to the expiration of the approved deferment period to provide schools with more flexibility in complying with this requirement.

Section 57.210(b)(1)(vi): Eight respondents opposed § 57.210(b)(1)(vi), which would require at least five attempts to contact past due borrowers prior to their payments becoming 120 days past due. These respondents indicated that five written contacts were excessive, and that this proposal as written would not assist in promoting collections. Two respondents felt that contacts at intervals more frequent than 30 days would be cumbersome and expensive, would not provide sufficient time to process checks or deferments, and could cause misunderstanding and frustration when letters demanding payment crossed in the mail with payments from borrowers. One respondent also noted there are no data to show that the cost-benefit ratio of five contacts is greater than that of three or four contacts.

Two respondents suggested that since regular billing will continue during this time, three notices in addition to the regular billing should suffice. Three suggested that this provision of the HPSL regulations should be consistent with the Department of Education's (ED) proposed modification to the NDSL regulations, which would require three written notices within 60 days of delinquency. One recommended that the provision allow for two of the five contacts to be made by phone, rather than in writing, citing several advantages of telephone collections. Another recommended that four written contacts would be more appropriate, and requested that the Department demonstrate the utility of the fifth letter before requiring it.

In response to these comments, the Department has modified this provision to require a minimum of four documented and reasonably spaced contacts, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower. These revisions will permit each school to use follow-up procedures for collecting HPSL funds which are consistent with its NDSL collection procedures and will provide the option of using personal or telephone contacts as part of its follow-up procedures. Personal or telephone contacts, if used, must be documented as to the date of contact, the person(s) contacted, and a short summary of the substance of the conversation. The requirement that the contacts be reasonably spaced will permit each school to establish intervals which will be most effective in its collection efforts but will also assure that a school does not make four contacts in a single week and claim to be in compliance with this provision. Further, the revised provision makes allowance for those cases in which a school does not have a current address for the borrower and thus cannot make four contacts in the 120-day period following the payment due date. The Department reminds schools that this provision sets forth minimum requirements, and strongly encourages schools to include additional written, telephone, or personal contacts in their follow-up procedures as necessary to maximize the effectiveness of their loan collection efforts.

Section 57.210(b)(1)(viii): One respondent commented on the requirement to use collection agents, requesting that the Department allow the costs of in-house collection agents to be charged to the fund. The Department notes that § 57.205(a)(3) of the existing regulations permits schools to charge to the fund, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of health professions student loans. Based on this regulatory provision, departmental policy permits schools to charge the costs of a collection agent (commercial or in-house) to the HPSL fund as long as the school is exercising due diligence in its collection efforts. Further guidance regarding the actual in-house collection agent costs that can be charged to the fund is provided in program policy documents.

Section 57.210(b)(1)(ix): Five respondents opposed § 57.210(b)(1)(ix), which would require that schools institute litigation to collect delinquent loans after all other collection efforts have failed, provided that litigation is appropriate. The opposition focused on the lack of criteria to be followed in determining whether to litigate. Respondents requested that the Department either leave the determination of when to litigate solely at the discretion of the institution or define specific criteria for schools to follow, so that the Department could not deny a write-off request if it disagreed with the school's criteria for deciding when to litigate. Others suggested that the Department incorporate into this provision the NDSL regulations which

specify when to litigate delinquent NDSL accounts or define "appropriate" in terms of cost-effectiveness. It was also requested that the language of the litigation provision be flexible enough so that State schools would not be bound by requirements that conflict with State litigation procedures.

In response to these comments, the Department clarifies that a school should not litigate a delinquent loan when such action would not be cost-effective, but considers litigation an essential part of sound due diligence procedures in all other cases. Accordingly, the Department has modified this provision to require litigation unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective.

Section 57.210(b)(1)(x): Three respondents opposed § 57.210(b)(1)(x), which would require schools to report borrowers who are more than 120 days past due to credit bureaus, when appropriate. Two respondents stated that the Department should grant schools discretion in determining when to use credit bureaus and should not require the use of credit bureaus until all other collection efforts have proven unsuccessful. They were concerned that this requirement could preclude a delinquent borrower from securing a commercial loan to repay the HPSL loan, and thus would inhibit rather than aid the collections process.

Although there could be occasional instances where disclosure of a borrower's delinquent status to a credit bureau would make it more difficult for the borrower to repay, many schools have indicated that reporting to a credit bureau is more often a valuable and effective collection tool which augments rather than impedes their collection efforts. Therefore, the Department has maintained this provision and has clarifies it by deleting the reference to "when appropriate." This revision will require that a school apply the credit bureau provision uniformly. The Department also clarified that if a school encounters situations in which it believes that a credit bureau should not be used, it may request an exception as permitted under § 57.210(b)(1).

One respondent felt that this requirement would be costly and burdensome and could result in schools that are unfamiliar with credit bureau laws becoming involved in lawsuits for failure to comply with the laws governing the use of credit bureaus. The Department notes that § 57.205(a)(3) of the HPSL regulations permits schools to charge to the HPSL fund the costs associated with membership in credit bureaus, which would include the cost of reporting delinquent accounts to a credit bureau. Further, in addition to the Department's guidance for complying with the credit bureau requirement, schools should be able to obtain information on credit bureau laws from their professional associations, credit bureaus, or their institutional legal counsel to assist them in establishing routine procedures for using credit bureaus which comply with credit bureau laws and are not overly burdensome.

Section 57.210(b)(1): Two respondents opposed the last sentence of § 57.210(b)(1), which would permit schools to substitute other collection techniques in place of those outlined in the regulations, provided that they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary. Both respondents were concerned that the requirement to demonstrate the effectiveness of a technique would be burdensome and would inhibit innovation in collection efforts. One recommended that the Department establish "Criteria for Acceptable Methods of Due Diligence," to be used in auditing the school's compliance with the regulations.

The Department included this provision because it recognized that schools may have specific reasons for deviating from the prescribed procedures and that such deviations would not necessarily result in a lack of due diligence. The Department, therefore, wishes to permit alternative procedures to be used; however, the Department must determine that the regulatory requirement to exercise due diligence is still met. Accordingly, the Department has made no change in this provision.

Section 57.210(b)(4): Eight respondents opposed § 57.210(b)(4), which would clarify the write-off procedures. One respondent felt that this provision would fail to encourage the use of the write-off process by requiring schools to reimburse the fund for loans that are disapproved. The Department reminds schools that although they are responsible for reimbursing the fund for disapprovals, there is no required time-frame within which such reimbursement must occur. Accordingly, if the Department disapproves a write-off request, the school has the option of reimbursing the fund out of institutional moneys at its convenience or of carrying they loan on its books as a delinquent account until the distribution of assets.

Respondents also suggested that the Department replace write-off with an assignment process so that it could use Federal expertise and resources to attempt to collect these loans and return any money collected to the schools' loan funds. Since section 741(h) of the existing HPSL legislation prohibits assignment the Department cannot accept this recommendation. Schools should note that an assignment process would involve a legal transfer of the defaulted notes to the Federal Government and thus would not allow for a return of collections to the schools' HPSL funds. However, Congress has considered in recent legislative proposals a referral provision, which would permit the Federal Government to assist the schools in collecting delinquent loans and return a portion of any loans collected the schools' HPSL funds.

Two respondents were concerned that the Department would apply the due diligence procedures in § 57.210(b)(1)(i) through (x) retroactively, rather than prospectively, in reviewing write-off requests.

The Department clarifies that the series of procedures outlined in (i) through (vii) are required steps of the due diligence process as of the effective date of these regulatory amendments. These steps are in addition to the procedures outlined in (viii) through (x), which were already in effect under previously existing regulations. For any loan made on or after the effective date of these regulatory amendments, the Department requires that a school follow each of the steps (i) through (x) (unless they have requested and received written approval of alternate techniques) in order to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of these regulatory amendments, the Department requires that a school apply the new due diligence requirements prospectively to the extent that it is possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the effective date of these amendments must be in conformance with "generally accepted collection practices," as required by previously existing regulations, and the procedures followed after the effective date of the amended regulations must include all steps of the new requirement that can be followed prospectively (unless the Department has approved alternate techniques).

One respondent suggested that schools be given authority to write off loans of $500 or less and that loans greater than $500 should be accepted by the Department without undergoing a

case-by-case review, provided that the biennial audit confirms that the school is in compliance with the requirement to exercise due diligence. Since the Department must assure that the revolving loan funds do not absorb losses that occur because of improper management by the schools, it is necessary to continue to review write-off requests on a case-by-case basis.

Another respondent felt that the issue in reviewing a write-off request should be whether the institution's inaction contributed to a loan's uncollectibility, not whether the institution can document that it completed each step of the due diligence procedures. The Department believes that failure to perform any of these steps (or approved alternative procedures, if applicable) would be an important factor contributing to the uncollectibility of a loan and therefore would be proper grounds for denying write-off.

One respondent recommended that for loans delinquent prior to the effective date of these regulations, the Department should ignore past inadequacies in the school's due diligence procedures and require that a school pursue any collection efforts currently possible to be eligible for write-off approval. Two respondents noted that this approach would be consistent with the S. 2574 conference report language, which stated that schools should not be penalized for past administrative inadequacies.

As indicated previously, the purpose of the write-off review process is to assure that the revolving loan funds are not diminished by losses which occur because a school failed to comply with the longstanding requirement to exercise due diligence in the collection of HPSL funds. The Department continues to believe that it would be poor stewardship of Federal monies to grant write-off approval in cases where schools are unable to show that they complied with the regulatory due diligence requirement in their past collection efforts.

One respondent expressed concern that the regulations fail to specify in detail the documentation necessary for write-off approval. This respondent noted that an institution can perform the steps outlined in these proposed regulations and still be denied write-off for failure to maintain and submit such records as copies of bills or other specific proof of regular billing. The Department clarifies that the types of documentation necessary for receiving write-off approval should be available as part of the records that a school maintains in keeping with its standard accounting and fiscal management procedures. Since the actual format of this documentation may vary from one institution to another, the Department believes it is to the schools' benefit not to outline more specific documentation requirements in the regulations and has, therefore, retained the provision as proposed. However, recent policy memoranda have provided clarification regarding the types of documentation necessary for receiving write-off approval. Because there continues to be concern among schools that existing documentation requirements are burdensome and unreasonable, the Department will notify the schools through future policy memoranda if it determines that changes in documentation requirements are possible.

Section 57.215 Records, reports, inspection, and audit.

Six respondents opposed § 57.215, which would require schools to submit required reports within 45 days of the close of the reporting period and specify penalties for failure to comply with the reporting requirements. Two respondents stated that a 45-day deadline for submission of annual reports may necessitate that the data be prepared manually, causing an unjustified increase in the workload and expense of completing the report, and may result in less accurate data. As alternatives, one respondent suggested that the mandatory time frame be eliminated, and two others suggested that schools be given 60 days to complete the annual report to allow schools more time at the close of their fiscal year to resolve ledger discrepancies before constructing the data base needed for completing the annual report.

The 45-day reporting deadline is critical for assuring that the Department can conduct Federal monitoring activities, such as reviewing schools' delinquency rates and complying with Federal reporting requirements, on a timely basis. Therefore, no change has been made in this requirement.

Respondents also suggested that the Department permit schools to collect an administrative allowance from their HPSL funds. The Department notes that the HPSL legislation does not permit the HPSL fund to be used for general administrative costs.

Three respondents commented on the penalties for failure to comply with the reporting requirements. While they recognized that the Department needs to penalize schools that blatantly disregard program regulations, they viewed suspension as an unnecessary and unwarranted penalty which hurts future loan recipients and is too severe as a first corrective action, and felt that the Department should not impose termination without giving the school an opportunity to appeal. To improve this provision, they suggested that the Department: (1) send each school a notification confirming receipt of its report, or indicating nonreceipt and reminding it of the due date prior to suspension, and (2) notify suspended institutions of the exact date that such status becomes effective rather than placing the responsibility of ensuring receipt on the school.

In response to these comments, the Department reminds schools that the instructions accompanying the reports do indicate both the due date and the date upon which a school will enter suspended status if its report has not been received on time. Following the due date, the Department mails a follow-up letter to schools which have not submitted their reports, reminding them that they are in suspended status. To send the suspension letter any earlier would create unnecessary confusion, since many reports are received just before or on the due date.

One respondent commented on the requirement that a school in suspended status place its HPSL funds in an insured interest-bearing account, and questioned whether the Federal Government can require a State to pay interest to the fund. The Department notes that Federal regulations preempt State law, and that the terms of agreement for participating in the HPSL program require that any earnings of the fund be returned to the fund.

The Department has also included a paragraph (e) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

Regulatory Flexibility Act and Executive Order 12291

One respondent felt that the burden of 46.6 hours per school in the proposed

rule is not realistic and that schools have incurred many more hours of work to implement the ten steps proposed. The Department clarifies that the 48.6 hour average burden per school was based on the time required to comply with the reporting and recordkeeping requirements imposed by these regulations, but does not address time required to carry out activities of these regulations apart from the reporting or recordkeeping requirements. This figure has been updated below.

As the proposed rule stated, there are two areas of potential impact resulting from this regulation. First, the new requirements may impose some administrative costs on schools. These costs will be minor because for the most part the regulations merely codify existing due diligence practices. A few schools may be required, as a result of these rules, to expand their due diligence practices. However, these schools are likely to improve the administration of their loan programs, so that any added administrative costs would be offset by increased loan collections. Further, although there are new recordkeeping and reporting requirements, they are minor, imposing an average burden of 51.4 hours on each school.

Second, the rules will have some effect on each school's loan fund. We expect that most schools will comply with the new due diligence requirements and as a result their loan collections should increase. A few schools may not comply with the new requirements, in which case they would be required to reimburse the fund for the unpaid balance of any loan to which these requirements apply.

For the reasons described above, the Secretary certifies that this proposed regulation does not have a significant economic impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. Further the rule does not meet the criteria for a major rule under Executive Order 12291 and therefore does not require a regulatory impact analysis and review.

Paperwork Reduction Act

These final regulations contain the following recordkeeping, reporting, and disclosure/notification requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96-511): § 57.208, approval number 0915-0094 (promissory note); § 57.210, approval number 0915-0094 (entrance interview, exit interview, borrower notifications, credit bureau notification); § 57.215, approval number 0915-0094 (reporting requirements).

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs-education, Grant programs-health, Health facilities, Health professions, Loan programs-health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, the Department of Health and Human Services amends Subpart C of 42 CFR Part 57 as follows:

Dated: June 20, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(Catalog of Federal Domestic Assistance, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Subpart C—Health Professions Student Loans

1. The authority citation for Part 57 continues to read as follows:

Authority: Sec. 215, Public Health Service Act, 58 Stat. 690, as amended, 63 Stat. 35 (42 U.S.C. 216); secs. 740-744, Public Health Service Act, 77 Stat. 170-173, 90 Stat. 2266-2268, 91 Stat. 390-391, 95 Stat. 920 (42 U.S.C. 294m-q).

2. Section 57.208 is amended by revising paragraph (a) introductory text and paragraph (b) and adding the OMB control number at the end of the section to read as follows:

§ 57.208 Health professions student loan promissory note.

(a) *Promissory note form.* Each health professions student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

* * * * *

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915-0094)

3. Section 57.210 is amended by revising paragraph (b)(1), adding paragraph (b)(4), and adding the OMB control number at the end of the section to read as follows:

§ 57.210 Repayment and collection of health professions student loans.

* * * * *

(b)(1) Each school at which a fund is established must exercise due diligence in the collection of health professions student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing HPSL funds in an academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with HPSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirements of this subparagraph may be met by correspondence, if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with HPSL funds, and update the personal information collected prior to disbursing HPSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

* * * * *

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under contol number 0915-0094.)

4. Section 57.215 is amended by revising paragraph (a), adding paragraph (e), and adding the OMB control number at the end of the section to read as follows:

§57.215 Records, reports, inspection, and audit.

(a) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its health professions student loan funds as the Secretary may find necessary to carry out the purposes of the Act and these regulations. A school must submit required reports to the Secretary within 45 days of the close of the reporting period. A school which fails to submit a required report for its Federal capital contribution fund within 45 days of the close of the reporting period:

(1) Shall be prohibited from receiving new Federal capital contributions;

(2) Must place the revolving fund and all subsequent collections into an insured interest-bearing account; and

(3) May make no new loan disbursements.

The above restrictions apply until the Secretary determines that the school is in compliance with the reporting requirement. A school that fails to submit a complete report within 6 months of the close of the reporting period will be terminated from participation in the program and will be required to return the Federal share of the revolving fund to the Department. A school terminated for this reason may reapply for participation in the program once it has submitted the overdue report. The school must also comply with the requirements of 45 CFR Part 74 and section 705 of the Act concerning recordkeeping, audit, and inspection.

* * * * *

(e) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915-0094.)

[FR Doc. 85-20125 Filed 8-22-85; 8:45 am]

BILLING CODE 4160-15-M

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42 CFR Part 57

Health Professions Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Health Professions Student Loan (HPSL) program. This amendment modifies the procedures for determining whether or not a school is in compliance with the 5 percent performance standard.

EFFECTIVE DATE: The amendments made by this rule are effective on June 30, 1986.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301-443-4540.

SUPPLEMENTARY INFORMATION: On June 3, 1983, the Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, published in the **Federal Register** (48 FR 25071) A Notice of Proposed Rulemaking (NPRM) for the HPSL program which addressed the formula for calculating a school's delinquency rate for purposes of determining compliance with the 5 percent performance standard set forth in 42 CFR 57.216a of the HPSL regulations. The June 3, 1983 NPRM proposed a change the HPSL regulations published on the same day in the **Federal Register** (48 FR 25064), which required that each school participating in the program maintain a delinquency rate of not more than 5 percent based upon either the number of delinquent borrowers (borrower delinquency rate) or the amount of unpaid principal on delinquent loans (dollar delinquency rate). The NPRM proposed to eliminate a school's option to use either the borrower or the dollar delinquency rate to meet the 5 percent performance standard, and instead proposed that only the dollar delinquency rate be used to determine compliance.

The Secretary invited interested persons to submit comments to the proposed rule on or before July 5, 1983. In response to the proposed rule, the Department received 38 comments from school officials and professional associations. A discussion of the comments, the Department's responses, and the regulatory changes follow:

Thirty-six respondents opposed the proposal to eliminate the option of using the borrower delinquency rate to determine compliance with the performance standard. Of these, 13 considered the Department's rationale inadequate, noting that the Department provided no evidence that the use of the dollar delinquency rate would produce the best management of the HPSL program. Five indicated that this proposed change would not increase the amount of dollars collected because the incentive to maximize collections already exists. Four stated that schools need to emphasize small accounts as well as large ones because they are easier to collect and yield significant dollars. In addition, four mentioned that

the concept of concentrating collection efforts on large delinquent accounts is in sharp contrast with the concept of due diligence, which requires that maximum effort be used to collect each loan regardless of its size. They also indicated that the best program management occurs when the school has systematic collection procedures that treat all delinquent loans with equal aggressiveness.

The Department agrees that a school must aggressively pursue the collection of each loan, regardless of size, in order to comply with the requirement to exercise due diligence in the collection of HPSL funds. Nevertheless, eliminating the borrower delinquency rate option will help to assure that, in any collection efforts that go beyond routine activities, a school does not focus undue attention on its smaller delinquent accounts (with the intent of reducing the borrower rate), and thereby devote less effort towards collecting its larger delinquent accounts.

Twelve respondents felt that the 5 percent performance standard is so stringent that achievement of the standard using either the borrower or dollar delinquency rate should be acceptable. In response, the Department notes that although the 5 percent standard may seem stringent, the characteristics of HPSL borrowers (e.g., level of education, employability, and income potential) set them apart from the types of borrowers assisted under other Federal student loan programs which focus primarily on undergraduate students in non-specialized training. In view of these differences, the Department believes it is reasonable to require schools to attain a 5 percent standard for the HPSL program using the dollar delinquent rate. The fact that most HPSL schools have been able to meet this standard, and that borrower delinquency has been a factor in only a few instances of meeting the standard, underscores this point.

Eleven respondents pointed out that because the Department of Education (ED) loan programs differ from the HPSL program in many respects (e.g., the performance standard, delinquency rate formula, definition of delinquent account), it was inappropriate to eliminate the borrower delinquency rate in order to make this one area of program administration consistent with ED. The Department acknowledges that there are many provisions in ED's loan programs which differ from the HPSL program, and that consistency with ED is not in itself an adequate reason for eliminating the borrower delinquency rate option. However, the fact that ED uses a dollar delinquency rate, when considered in conjunction with other reasons which favor eliminating the borrower delinquency rate option, further indicates that the dollar rate is a preferred method for measuring levels of delinquency.

Eleven respondents felt that the proposal unfairly penalizes schools with only a few borrowers in repayment status and may also penalize a substantial number of future students because of the delinquency of a few individuals with high levels of indebtedness. Seven pointed out that normally, before schools can resolve large delinquent accounts, they must devote considerable effort, and that in the interim, for them, the borrower option may be necessary to be able to comply with the performance standard. One suggested that the Department develop a more sensitive system that is responsive to the unique features of different institutions, especially for newer schools.

In response to these comments, the Department notes that although schools with a small number of borrowers in repayment status or several large delinquent accounts could have higher delinquency rates than other schools, the performance standard provision should provide enough leeway to allow these schools to comply, even in the absence of the borrower delinquency rate option. The provision requires a review for compliance with the performance standard on an annual basis, and provides a 6-month probationary period for schools that do not meet the standard at the time of the annual review. This 6-month probationary period, along with the aggressive collection procedures that have been recommended during recent years, should make it possible for a school to reduce its dollar delinquency rate to an acceptable level before penalties would be imposed.

Eleven respondents felt that the proposal unfairly penalizes schools with large numbers of disadvantaged students, and ten commented that it discriminates against disadvantaged students by making them the primary focus of any collection efforts. These comments were founded on the belief that students with large loan amounts may have been the most disadvantaged and may not have completed the degree program, and thus may have the most difficulty repaying. The Department notes that when a school has documentation of circumstances that make it impossible for a borrower to comply with the repayment schedule, the school may renegotiate the schedule or grant forbearance (so long as the period of time does not exceed the original 10-year repayment period), and in doing so may remove the account from delinquent status. In addition, the school can request approval to write off uncollectible loans. When the Department grants write-off approval, the dollar amount of the loan written off is removed from the delinquency rate formula.

Seven respondents insisted that the borrower delinquency rate option is necessary because the formula for calculating the dollar delinquency rate is too stringent. Two noted that including in the numerator the total unpaid principal balance on delinquent loans, rather than just the past due installments, results in an inflated dollar delinquency rate that does not accurately reflect the effectiveness of the school's collection efforts. One commented that the denominator should include the total amount loaned to all borrowers. The Department clarifies that the denominator includes only loans currently in repayment because the formula is designed to measure the effectiveness of a school's current collection efforts. Further, the Department believes that the outstanding principal balance of any loan that becomes more than 60 days past due must be viewed as a potential loss to the fund; thus, an accurate measure of delinquent dollars requires that the school include in the numerator the total unpaid principal balance on these loans.

Nine respondents noted that during the 2-year period before the proposed rule was published schools achieved a substantial reduction in their deliquency rates, and suggested that the Department first determine the extent to which these efforts had been successful before making additional changes in the regulations. The Department agreed that changes in this regulatory provision were inadvisable until there was a better indication of the effectiveness and reasonableness of the existing provision. Accordingly, the Department delayed publication of changes in this provision for 24 months to provide further time to study the impact of the existing regulations.

Data as of December 31, 1984, indicates that 290 of the 313 schools participating in the HPSL program have succeeded in either complying with the 5 percent standard or making the necessary reductions to avoid being placed in suspended status. Further, only 17 schools have needed the borrower delinquency rate to comply with the performance standard provision, and in all but one case, the

dollar delinquency rates for these schools have been within a few percentage points of 5 percent. Therefore, since the majority of health professions schools have succeeded in complying with the performance standard, and the number of schools that have needed the borrower delinquency rate to comply with the 5 percent standard has been small, the Department is implementing its proposal to require that schools use the dollar delinquency rate to comply with the performance standard, effective June 30, 1986.

Regulatory Flexibility Act and Executive Order 12291

One respondent noted that the Department did not adequately explain why a regulatory flexibility analysis was not required. The following statement addresses that concern.

The Department certifies that these regulations will not have a significant economic impact on a substantial number of small entities and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980. These regulations implement modified procedures for determining compliance with the 5 percent performance standard. The small entities affected are health professions schools. The effect of the modified procedures will be to eliminate the borrower delinquency rate formula, an option for measuring a schools' HPSL delinquency rate which, as indicated by the data set forth above, has been of little significance under the existing regulations. Therefore, the regulations will not have an adverse economic impact on these institutions.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that these regulations are not major regulations because they do not meet the criteria for major regulations established in the order and, therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

The Department has determined that this amendment to the regulations does not affect the existing reporting and recordkeeping requirements of the program approved by OMB (numbers 0915–0044, 0915–0046, and 0915–0047) under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Grant programs—education, Grant programs—health, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Student aid.

Accordingly, Subpart C of 42 CFR Part 57 is amended as set forth below.

Dated: June 5, 1985.

James F. Dickson

Acting Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.342, Health Professions Student Loan Program)

PART 57—[AMENDED]

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); secs. 740–744 of the Public Health Service Act, 77 Stat. 170–173, 90 Stat. 2266–2268, 91 Stat. 390–391, 95 Stat. 920 (42 U.S.C. 294m-q).

Subpart C—Health Professions Student Loans

1. The authority citation for Part 57 continues to read as follows:

27. Effective on June 30, 1986, § 57.216a of Title 42, CFR, is revised to read as follows:

§ 57.216a Performance Standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated under paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30 of any year will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new HPSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent. A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its HPSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan account to the Department. Any school which has been terminated must continue to pursue collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

[FR Doc. 85–20127 Filed 8–22–85; 8:45 am]

BILLING CODE 4160–15–M

federal register

Friday
August 23, 1985

Part VI

Department of Health and Human Services

Public Health Service

42 CFR Part 57

Nursing Student Loan Program; Final Regulations

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 57

Nursing Student Loan Program

AGENCY: Public Health Service, HHS.

ACTION: Final regulations.

SUMMARY: This rule amends existing regulations governing the Nursing Student Loan (NSL) program set forth in Subpart D of 42 CFR Part 57. These revisions: (1) Reflect legislative amendments made to sections 835–841 of the Public Health Service Act (the Act) since the existing regulations were published in the **Federal Register** on May 9, 1974; (2) simplify the existing regulations so that they are written in clear, concise language; (3) strengthen the regulations regarding recordkeeping and collection procedures; (4) impose more detailed requirements concerning the exercise of due diligence by schools in loan collections; and (5) establish a performance standard against which a nursing school's delinquency rate will be measured.

EFFECTIVE DATE: These regulations are effective September 23, 1985.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy Washburn, Chief, Program Development Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8–48, 5600 Fishers Lane, Rockville, Maryland 20857; telephone number: 301 443–4540.

SUPPLEMENTARY INFORMATION: In response to concerns expressed about the manner in which schools and the Federal Government administer the NSL program, the Department published in the **Federal Register** of June 3, 1983 (48 FR 25072) and September 6, 1984 (49 FR 35328), two Notices of Proposed Rulemaking (NPRMs). These proposed rules were designed to strengthen the regulations regarding recordkeeping and collection procedures, specify procedures that a school must follow prospectively in order to satisfy the due diligence requirement in the collection of loans, and establish a performance standard against which a nursing school's delinquency rate would be measured.

The proposed regulations of June 3, 1983, also incorporated legislative amendments made to sections 835–841 of the Act since the existing regulations were published in the **Federal Register** on May 9, 1974. Even though these legislative amendments have not been reflected in published regulations until now, they have been applicable to the administration of the NSL program as of their statutory effective dates. The amendments are as follows:

(1) The Nurse Training Act of 1975, Pub. L. 94–63, enacted on July 29, 1975, repealed the Federal Capital Loan (FCL) Fund except to honor existing commitments and added training to be a nurse anesthetist as an eligible deferment activity;

(2) The Nurse Training Amendments of 1979, Pub. L. 96–76, enacted on September 29, 1979, repealed the cancellation benefits for loans made on or after September 29, 1979; and

(3) The Omnibus Budget Reconciliation Act of 1981, Pub. L. 97–35, enacted on August 13, 1981, repealed the prohibition against the receipt of concurrent National Direct Student Loan (NDSL) funds and NSL funds and increased the NSL interest rate from 3 to 6 percent per year.

Other changes proposed in the June 3, 1983 NPRM were intended to simplify the existing regulations so that they are written in clear, concise language, revise the index to reflect these changes, and incorporate minor technical and editorial changes.

The Secretary invited interested persons to submit comments on the proposed rules and received 117 comments from students, school officials, and professional and student organizations. A discussion of the comments, the Department's responses, and the regulatory changes follows.

Discussion of Comments, Responses and Regulatory Changes

Section 57.305 Nursing student loan funds.

Seven respondents supported the proposed amendment to § 57.305(a)(1)(iii), which would allow schools to charge to the NSL fund the costs associated with membership in credit bureaus. Accordingly; the Department has implemented this provision as proposed.

Section 57.306 Eligibility and selection of nursing student loan applicants.

Section 57.306(a)(2): Thirteen of 15 respondents supported § 57.306(a)(2), which would require NSL applicants who previously have attended an institution of higher education to submit a financial aid transcript. Two respondents objected to the requirement to collect information on prior grants as part ot the financial aid transcript. They were concerned that this would conflict with Department of Education (ED) requirements, require a separate financial aid transcript form, and create unnecessary paperwork. One suggested that the Department coordinate with ED so that a single form would satisfy all Federal loan programs.

In response to these comments, the Department believes that information on a debtor's previous financial aid and indebtedness, including refunds owed on grants, would be useful in the administration of the NSL program, and has therefore retained the provision as proposed. The financial aid transcript provision does not preclude schools from using the same form that is currently used for ED programs since information on grants can be collected on this form.

One respondent suggested that the Department limit the financial aid transcript requirement to those borrowers who have attended other educational institutions within 5 years prior to application. Another was concerned that information would not be available if the record retention period had lapsed. The Department does not believe that a time limit is necessary or advisable since a borrower who has been away from school for more than 5 years could still have delinquent loans. If the record retention period has lapsed, this requirement would be satisfied by certification of that fact by the institution which the borrower previously attended.

One respondent encouraged the Department to allow schools flexibility in awarding funds if the financial aid transcript was not readily forthcoming. Specifically, it was suggested that the cutoff date for submission should be the time of disbursement of loan funds rather than the time of application. The Department has made no change since the regulations do not specify a cutoff date for submission of the transcript. Because the regulations are silent regarding this issue, each school will be responsible for determining the date by which an NSL applicant who previously attended an institution of higher education must submit a financial aid transcript.

Section 57.306(b)(2)(i): Eleven respondents supported § 57.306(b)(2)(i), which would require schools to use one of the national needs analysis systems or any other procedure approved by the Secretary of Education set forth in 34 CFR 674.13 for use in determining the financial needs of an applicant. Accordingly, the Department has implemented this provision as proposed.

Section 57.308 Nursing student loan promissory note.

Section 57.308(a): One respondent objected to the proposed amendment to

§ 57.308(a), which would require that the promissory note be in a form approved by the Secretary, and suggested that the promissory note form be subject to State requirements rather than Federal regulations. The Department clarifies that the existing regulations require the Secretary's approval of the promissory note to assure that the note contains those terms and conditions required by the NSL statute and regulations. However, State requirements would apply to any promissory note provisions which are not addressed in the NSL statute or regulations.

Section 57.308(a)(2): Thirteen respondents supported § 57.308(a)(2), which would require that promissory notes contain a clause permitting the acceleration of delinquent loans at the school's option. However, five respondents were concerned that the Department not impose the acceleration clause retroactively on existing signed promissory notes. The Department notes that the acceleration clause will be required as part of any promissory note signed on or after the effective date of these regulations, but cannot be added to notes signed prior to that date without the borrower's agreement.

One respondent suggested that acceleration only be exercised as a last resort. The Department has made no change since the provision as proposed allows the school to determine when to accelerate a loan. The Department expects that school officials will use their professional judgment to determine when acceleration is appropriate.

One respondent suggested that the language of the acceleration clause should be similiar to the NDSL program language. The Department will be using the language from the Health Professions Student Loan (HPSL) promissory note, which is similar to the NDSL language.

Section 57.308(b): Four respondents supported the amendment to § 57.308(b), which would require that, where State law permits individuals to void contracts entered during minority, schools must obtain security or endorsement on promissory notes with minors. Since there was no opposition the Department has implemented this provision as proposed.

Section 57.310 Repayment and collection of nursing student loans.

Section 57.310(a)(2): Nine respondents opposed § 57.310(a)(2), which would require that any borrower whose repayment becomes more than 60 days past due must establish a monthly repayment schedule with the school. Six noted that this provision would be burdensome for institutions which do not use outside billing agents and have limited staff. They also felt that the cost would exceed the benefit of revising the schedule and that the time required to comply with this requirement would detract from time that could be devoted to other collection activities, resulting in less effective due diligence procedures. Three suggested that placing delinquent borrowers on monthly schedules be optional rather than required. Others were concerned that this requirement was overly stringent, arbitrary, and unwarranted, was not in the best interests of the program, and did not allow enough time to exercise due diligence prior to revising the schedule.

In response to these comments, the Department has retained this provision because placing delinquent borrowers on monthly schedules will assure frequent contact and more management payment amounts. The Department also expects that as borrowers become aware of this requirement it will serve to prevent delinquencies and thus will not create a substantial amount of additional work for loan collection staff.

Several respondents were concerned that this requirement would violate State law and therefore suggested that the new provision be applied only to borrowers who graduate or receive loans after the amended regulations take effect. The Department notes that borrowers who become delinquent forfeit their rights to any previously established repayment agreement. Accordingly, it is legally supportable to impose this requirement on any borrowers who are delinquent on or after the effective date of these regulations, regardless of when they graduated or received their loans.

One respondent suggested that the Department require monthly payments for all borrowers (non-delinquent as well as delinquent) and automatically accelerate loans in default. The Department has not adopted this suggestion because requiring monthly payments for all borrowers may not be warranted. Further, since acceleration of defaulted loans is not always appropriate, school officials are expected to use their professional judgment to determine when the option to accelerate a delinquent loan should be exercised.

One respondent was concerned that the language of this provision should be changed to clarify that it is the school's responsibility to bill delinquent borrowers on a monthly basis rather than the borrower's responsibility to establish a monthly schedule with the school. In response, the Department has revised § 57.310(a)(2) to state that the school must place delinquent borrowers on monthly repayment schedules.

Section 57.310(a)(3): Sixteen of 18 respondents supported § 57.310(a)(3), which would permit schools to grant forbearance when extraordinary circumstances such as unemployment, poor health, or other personal problems affect the borrower's ability to make payments. Two expressed concern that the regulations did not provide sufficient guidance regarding the length of forbearance periods or criteria for granting forbearance and anticipated that this provision could allow schools to artificially reduce their delinquency rates. Another felt that borrowers with high indebtedness and low incomes should qualify for forbearance.

In response to these comments, the Department has not changed the language of the forbearance provision since including more specific criteria in the regulations may unduly restrict schools in granting forbearance. The provision as implemented will allow school officials to use their professional judgment to determine when a borrower's situation warrants a temporary suspension of his or her scheduled payments.

Section 57.310(b)(1)(i): Seven respondents opposed § 57.310(b)(1)(i) which would require the school to conduct and document an entrance interview with the borrower. These respondents stated that most schools would find it difficult if not impossible to have an entrance interview with each loan recipient due to staff and time and that it was unnecessary, since carrying out all of the other due diligence steps should result in timely repayment of student loans. Four respondents disagreed with the Department's statement that conducting entrance interviews is a common practice among institutions.

As alternatives to the proposed entrance interview requirement, these respondents recommended the following: (1) That the promissory note be regarded as sufficient notification to the borrower of his or her repayment responsibilities; (2) that the Department permit group entrance interviews; (3) that the Department permit schools to conduct the entrance interview by mail; (4) that the language in the NDSL regulations (34 CFR Part 674.16), which specifies information which the borrower must receive and permits the school to mail the information to borrowers, be adopted in place of this requirement; and (5) that the entrance interview be suggested but not required. Four respondents also requested that, if implemented, the requirement be

explained in greater detail and phased in over 2 years to allow schools time to allocate sufficient money and personnel for its implementation.

In developing the proposed entrance interview provision, the Department purposely chose language that did not specify the manner in which the entrance interview must be conducted so that each institution would have the flexibility to develop entrance interview procedures that are practical, given its level of staff and financial resources. The Department views the term "entrance interview" to mean a meeting (individually or in groups) during which the school informs the borrower of the rights and responsibilities associated with the loan and obtains personal information from the borrower that would assist in the loan collection process.

Since the public comments expressed both opposition and uncertainty regarding the proposed requirement of an entrance interview, the Department has modified the provision. The provision as modified requires that before disbursing NSL funds to a borrower in a given academic year, the school must have documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds, and must obtain personal information that would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. Although the Department would prefer that entrance interviews be conducted in person (individually or in groups), it is possible for the requirements of the provision, as modified, to be met through an exchange of information by mail when a face-to-face meeting is impracticable. However, the Department encourages schools to use the entrance interview as an opportunity to provide borrowers with comprehensive debt management counseling in order to prevent delinquency.

Section 57.310(b)(1)(ii): Six of eight respondents supported § 57.310(b)(1)(ii), which would require schools to conduct and document exit interviews with borrowers. Both opponents requested that the Department clarify the information that schools must collect during the exit interview so that schools could be assured that they are in compliance with this requirement. In response to these comments, the Department has modified the provision to require that, during the exit interview, the school must inform each borrower of the terms of repayment, remind the borrower of his or her rights and responsibilities, and update the personal information collected during the entrance interview which would assist in locating the borrower if he or she fails to notify the school of an address change.

Sections 57.310(b)(1) (iii) and (iv): Four of six respondents supported §§ 57.310(b)(1) (iii) and (iv), which would require that the school notify the borrower in writing of the impending repayment obligation at least twice during the grace period and once prior to the end of an approved period of deferment. One opponent indicated that these provisions were unnecessarily restrictive and suggested that the specific requirements (e.g., two grace period notifications) be removed to provide greater flexibility. The other opponent stated that these were excellent guidelines but objected to them as requirements which, if not met, would automatically result in denial of a write-off request (regardless of the extensiveness of a school's collection efforts as a whole) for loans covered by these regulations.

The Department developed these proposals in response to schools' requests for a series of specific regulatory procedures that would clarify the due diligence requirement for purposes of requesting approval to write off uncollectable loans. Therefore, the Department has implemented them as proposed, except that the time frame during which the notification to a borrower in deferment must occur has been changed to 1 to 3 months prior to the expiration of the approved deferment period to provide schools with more flexibility in complying with this provision.

Section 57.310(b)(1)(v): Four of seven respondents supported § 57.310(b)(1)(v), which would require that schools perform regular billing. Opposition to this requirement was based on its being unnecessarily restrictive, and acceptable as a guideline but not as a requirement. One respondent noted that during the past 4 years his school has adopted all of the Department's other suggestions and has succeeded in reducing its delinquency rate from 37.7 percent to less than 10 percent without performing regular billing. He explained that borrowers are given a repayment schedule and that the school has a strict follow-up plan for past due payments. Based on the cost estimates for implementing a regular billing practice, as compared with the total dollars collected annually, he felt that the additional expense for regular billing could not be justified. Since the school's decreased delinquency rate indicated that existing collection practices were working, the respondent felt that this requirement was unfair and would result in increased administrative costs that would have to be passed on to the students.

In response to this comment, the Department believes that regular billing is an essential part of normal due diligence practices, but also notes that the statement at the end of § 57.310(b)(1) allowing alternative practices with departmental approval would provide for consideration of unusual circumstances such as the one described above. Therefore, this provision has been implemented as proposed.

Section 57.310(b)(1)(vi): Nine respondents opposed § 57.310(b)(1)(vi), which would require at least five attempts to contact past due borrowers prior to their payments becoming 120 days past due. These respondents indicated that five written contacts were excessive, costly, and unnecessarily restrictive, and could cause confusion when letters demanding payment crossed in the mail with payments from borrowers. One respondent also noted there are no data to show that the cost-benefit ratio of five contacts is greater than that of three or four contacts, two felt that the return was not commensurate with the cost of a fifth letter, and one felt that the burden of implementing this requirement would be greater than 18.4 hours.

One respondent suggested that since regular billing will continue during this time, three notices in addition to the regular billing should suffice. Two suggested that this provision of the NSL regulations should be consistent with the Department of Education's (ED) proposed modification to the NDSL regulations, which would require three written notices within 60 days of deliquency. Others recommended that three contacts should be adequate, that 30-day intervals between contacts would be more cost-effective, and the greater flexibility was necessary. One suggested that this provision be recommended but not required.

In response to these comments, the Department has modified this provision to require a minimum of four documented and reasonably spaced contacts, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower. These revisions will permit each school to use follow-up procedures for collecting NSL funds which are consistent with its NDSL collection procedures and will provide the option of using personal or telephone contacts

as part of its follow-up procedures. Personal of telephone contacts, if used, must be documented as to the date of contact, the person(s) contacted, and a short summary of the substance of the conversation. The requirement that the contacts be reasonably spaced will permit each school to establish intervals which will be most effective in its collection efforts but will also assure that a school does not make four contacts in a single week and claim to be in compliance with the provision. Further, the revised provision makes allowance for those cases in which a school does not have a current address for the borrower and thus cannot make four contacts in the 120-day period following the payment due date. The Department reminds schools that this provision sets forth minimum requirements, and strongly encourages schools to include additional written, telephone, or personal contacts in their follow-up procedures as necessary to maximize the effectiveness of their loan collection efforts.

Section 57.310(b)(1)(vii): Four of five respondents supported § 57.310(b)(1)(vii), which would require schools to perform address searches when necessary. One respondent objected that the regulations do not specify when an address search would be necessary and indicated that this requirement could be more time consuming, costly, and burdensome to loan officers than the Department intended, as described under the regulatory impact section.

The Department clarifies that an address search would be necessary when the school's current address for the borrower is not correct. Although address searches may be time consuming and costly in some cases, this requirement is an essential part of sound due diligence procedures, and thus has been implemented as proposed.

Section 57.310(b)(1)(viii): Ten of 13 respondents supported § 57.310(b)(1)(viii), which would require the use of collection agents as part of the due diligence procedures. Two respondents felt that the use of collection agents should be at the discretion of the institution and one questioned how a school using an internal collection agent can be assured that its efforts meet this requirement. The Department clarifies that as long as the internal collection agent is performing basically the same functions as an external collection agent the school would be in compliance with this requirement. Since this is an essential part of normal due diligence procedures, the Department has implemented the provision as proposed.

One respondent requested that the Department allow the costs of in-house collection agents to be charged to the fund. The Department notes that § 57.305(a)(1) of these regulations permits schools to charge to the fund, to the extent specifically approved by the Secretary, other collection costs that are in excess of the usual expenses incurred in the collection of NSL funds. Under this provision, the Secretary permits schools to charge the costs of a collection agent (commercial or in-house) to the NSL fund as long as the school is exercising due diligence in its collection efforts. Further guidance regarding the actual in-house collection agent costs that can be charged to the fund is provided in program policy documents.

Section 57.310(b)(1)(ix): Six of 11 respondents supported § 57.310(b)(1)(ix), which would require that schools institute litigation to collect delinquent loans after all other collection efforts have failed, provided that litigation is appropriate. The opposition focused on the lack of criteria to be followed in determining whether to litigate. There was concern that litigation might present a financial problem for nursing schools, and that if the cost of litigation exceeded the balance of the loan litigation might be appropriate but would not be in the best interest of the school. The respondents requested that determinations of when to litigate either be left solely to the discretion of the institution or be specifically defined by the Department so that a write-off request could not be denied if the Department disagreed with the school's criteria for deciding when to litigate. One suggested that litigation be optional.

In response to these comments, the Department clarifies that a school should not litigate a delinquent loan when such action would not be cost-effective, but considers litigation an essential part of sound due diligence procedures in any other cases. Accordingly, the Department has modified this provision to require litigation unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective.

Section 57.310(b)(1)(x): Fourteen of 27 respondents supported § 57.310(b)(1)(x), which would require each school to become a member of a credit bureau and notify the credit bureau of accounts overdue more than 120 days, when appropriate.

Five respondents felt that the use of credit bureaus should be optional. Others considered this an unreasonable, time-consuming, and costly administrative burden for schools that were effectively collecting their loans without using credit bureaus. Several questioned its effectiveness for improving loan collections and one suggested that schools with delinquency rates under 5 percent not be required to bear the expense of using a credit bureau.

The Department considers credit bureaus to be valuable collection tools, regardless of a school's delinquency rate, that warrant the additional burden associated with their use. Since most borrowers are interested in maintaining a good credit rating, the Department expects that this requirement will serve primarily to prevent loans from becoming seriously delinquent, and thus the administrative burden should be minimal. Also, schools may charge the costs associated with membership in a credit bureau to the loan fund since those costs may reasonably be considered "costs of collection" within the meaning of section 835(b)(3) of the Act.

Two respondents suggested that schools not be required to use credit bureaus until all other collection efforts have proven unsuccessful, and one commented that the requirement to report loans 120 days past due could preclude a delinquent borrower from securing a commercial loan to repay the NSL loan and would thus inhibit rather than aid the collection process. Two also requested that the Department clarify those circumstances when it would be inappropriate for schools to use a credit bureau.

The Department expects that this provision, by requiring schools to report only those loans more than 120 days past due to credit bureaus, will provide schools with adequate opportunity to exhaust less stringent collection efforts before having to take this step. Although there could be occasional instances where disclosure of a borrower's delinquent status to a credit bureau would make it more difficult for the borrower to repay, many schools have indicated that reporting to a credit bureau is more often an effective collection technique which augments rather than impedes their collection efforts. Therefore, the Department has maintained the provision and has clarified it by deleting the reference to "when appropriate." This revision will require that a school apply the credit bureau provision uniformly. The Department also clarifies that if a school

encounters situations in which it believes that a credit bureau should not be used, it may request an exception as permitted under § 57.210(b)(1).

One respondent stated that this provision would be of little or no value for selecting borrowers. The Department clarifies that this requirement does not pertain to the selection of borrowers but rather to the school's efforts to collect from delinquent borrowers.

Five respondents commented that the Department should not apply the requirements to use collection agents, litigation, and credit bureaus retroactively. The Department will require these three steps as part of each school's due diligence procedures as of the effective date of these regulations. Henceforth, schools will have to apply these requirements in the collection of any delinquent loans since it is reasonable for a school to use these procedures regardless of when the loan was awarded.

Section 57.310(b)(1): Three of five respondents supported the last sentence of § 57.310(b)(1), which would permit schools to substitute other collection techniques in place of those outlined in the regulations, provided that they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary. One respondent commented that the requirement to demonstrate the effectiveness of a technique would be burdensome. In response to this comment, the Department believes it can permit the substitution of an alternative procedure only if it is clear that the regulatory due diligence requirement is still met.

One respondent suggested that the Department amend the provision to specify that when the Secretary grants written approval of alternative practices the school would be notified that the ten provisions for due diligence no longer apply to that institution. The Department clarifies that the Secretary's written approval of alternative practices would state that the school no longer would be required to comply with whichever of the ten steps would be affected by the alternative practice, but that the school still would be required to comply with any of the steps which would not be so affected.

Section 57.310(b)(4): Nine respondents opposed § 57.310(b)(4), which would clarify the write-off procedures. Four respondents objected to the requirement that a school must reimburse the NSL fund for uncollectible loans on which it failed to exercise due diligence and felt that this provision should not apply to old loans. The Department points out that there has been a longstanding regulatory requirement to exercise due diligence in the collection of NSL funds, and that the means by which that requirement has been enforced has been to require reimbursement of the fund for uncollectible loans for which there is insufficient evidence of due diligence. This enforcement tool is necessary to assure proper stewardship of Federal funds and to maintain the solvency of the NSL funds; therefore, it will continue to apply to all loans.

One respondent felt that this provision would discourage the use of the write-off process since it requires schools to reimburse the fund for loans that are disapproved. The Department clarifies that although schools are responsible for reimbursing the NSL fund for disapproved write-off requests there is no required time frame within which reimbursement must occur. Accordingly, if a write-off request is disapproved, the school may reimburse the fund out of institutional monies at any time prior to the distribution of assets.

Another respondent felt that the issue in reviewing a write-off request should be whether the institution's inaction contributed to a loan's uncollectibility, not whether the institution can document that it completed each step of the due diligence procedure. The Department believes that failure to perform any of these steps would be an important factor in contributing to the uncollectibility of a loan and therefore would be proper grounds for denying write-off.

Two respondents were concerned that the Department would apply the due diligence procedures in § 57.310(b)(1) (i) through (x) retroactively, rather than prospectively, in reviewing write-off requests. The Department clarifies that the series of procedures outlined in (i) through (x) are required steps of the due diligence process as of the effective date of these regulations. For any loan made on or after that date a school must follow each of the steps (i) through (x) (unless it has requested and received written approval of alternate techniques) to be in compliance with the due diligence requirement.

For any loan made prior to the effective date of these regulations, a school must apply the new due diligence requirements prospectively to the extent that it is possible to do so. Thus, in order to be in compliance with the due diligence requirement for such a loan, the procedures that a school followed prior to the effective date of these regulations must be in conformance with "generally accepted collection practices," as required by the previously existing regulations, and the procedures followed after the effective date of these regulations must include any steps of the new requirements that can be followed prospectively (unless alternate techniques have been approved).

Section 57.313a Loan cancellation reimbursement.

Two respondents commented on the provision for reimbursing schools for their share of loans canceled for service, death, or disability in the event insufficient funds are available to pay all schools in a given fiscal year. One respondent felt that this would encourage schools to refuse cancellation requests. The Department notes that a school cannot deny cancellation benefits to borrowers who are eligible for cancellation and who notify the school of their eligibility in a timely manner.

One respondent stated that the Federal Government was obligated to fulfill this contractual obligation on time and that failure to do so would deprive new students of NSL funds. The Department notes that although section 836(c) of the Act provides for the reimbursement of canceled loans, it does not indicate when such reimbursement should occur. Further, cancellation reimbursements are institutional funds and do not go back into the NSL fund unless the school chooses to deposit them in the fund as part of the institutional contribution.

Section 57.315 Records, reports, inspection, and audit.

Section 57.315(a)(1): Three respondents opposed § 57.315(a)(1), which would state that required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Two suggested that the time frame be changed to 60 days after the close of the reporting period, believing that 45 days did not allow sufficient time to conduct a complete reconciliation and prepare an auditable document. Another suggested that schools be granted 90 days to complete and submit required reports. The Department has not changed this provision since the 45-day reporting deadline is critical for assuring that Federal monitoring activities, such as reviewing school's delinquency rates and complying with Federal reporting requirements, can be conducted on a timely basis.

Two respondents opposed the requirement that schools submit quarterly reports. Since the performance standard provision requires a biannual review of those schools with delinquency rates greater than 5 percent,

the respondents felt that it would be more appropriate to implement semiannual reports and require the December 31 report only from schools with delinquency rates greater than 5 percent. The Department notes that § 57.315(a)(1) does not specify the frequency of required reports and thus does not preclude the possibility of less frequent reporting requirements in the future if the Department finds that such a change is possible. Currently, however, the quarterly report is necessary for complying with Federal reporting requirements and for monitoring cash balances and other indicators of proper program management.

Section 57.315(a)(3): One respondent opposed § 57.315(a)(3), which would require that repayment records be retained for 5 years after a loan has been repaid, and suggested that this proposal be amended to allow for disposal of these records sooner if an audit has been performed. The Department has not changed this provision since it considers the retention of records for this period to be essential for monitoring purposes.

Section 57.315(b)(2): Two of three respondents supported § 57.315(b)(2), which would require that an institution receiving NSL funds must have itself audited by non-Federal independent auditors every 2 years. One expressed concern that there was no mention of startup dates or required time frames and suggested that schools be allowed to have the NSL audit performed in conjunction with the audit of the campus-based programs. The need for an audit guide also was mentioned. The Department does not consider it appropriate to include audit dates or time frames in the regulations but will issue guidance in policy documents after publication of these regulations. In addition, the Department notes that the *Student Financial Aid Guidelines* contain an audit section which is to be used in conjunction with ED's audit guide for the campus-based programs in performing the NSL audit. The Department will notify schools of any changes in audit procedures through future policy memoranda.

Section 57.315(c): The Department has also included a paragraph (c) in this section to state that institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations. This language is being added to clarify the role of the HHS Office of Inspector General in investigating actual or suspected acts of fraud, as well as to inform individuals who are party to financial transactions involving these funds of their responsibility to report information regarding such acts to the appropriate Regional Inspector General for Investigations.

Section 57.316a Performance standard.

Maximum Level of Delinquency: Seventy-three respondents opposed the 5 percent performance standard. Of these, 48 felt that it was unreasonable and overly restrictive for nursing schools. Thirty-one objected to the Department's use of delinquency statistics from commercial lending institutions in developing the 5 percent performance standard, feeling that there were too many differences between commercial loans and nursing student loans to make this an appropriate comparison. Nineteen noted that commercial lending institutions consider employment history, income level, and creditworthiness in determining a borrower's eligibility for funds, factors which are not considered in making NSL awards. In addition, they noted that nursing student loans are unsecured and have a different level of risk than commercial loans since borrowers have to demonstrate financial need in order to receive NSL funds. Others mentioned differences in the length and timing of the repayment period, the level of collection experience of the lending institutions, and the borrowers' understanding of repayment responsibilities.

The Department is aware of the different criteria used for granting a commercial loan as compared with a nursing student loan. However, the Department used the delinquency rates for professionals who borrow from commercial lending institutions as a basis for the NSL performance standard because of the similarities between professionals with commercial loans and NSL borrowers at the time of repayment.

Seventeen respondents objected to the adoption of a 5 percent performance standard based on a comparison of NSL and HPSL borrowers, noting that NSL borrowers have lower incomes, less earning power, lower employment rates, different job opportunities, different economic backgrounds, and higher rates of attrition. Five respondents considered the comparison between NSL borrowers and other professionals with loans inappropriate since the income level of nurses does not approach the income level of other professionals. Twelve indicated that NSL borrowers are often unable to repay because of their high indebtedness and other financial responsibilities which cannot be managed adequately on their low starting salaries. They felt that the 5 percent performance standard failed to recognize the economic situation of most NSL borrowers. Four stated that a standardized measure was not equitable because of regional economic problems that affect the ability of borrowers to repay.

In response to these comments, the Department notes that although NSL borrowers generally have a different income level than HPSL borrowers, those who graduate do have a marketable skill which should make it possible to obtain employment and thus repay their loans. Further, in any situation where economic hardship is preventing the borrower from making his or her scheduled payments, the school may renegotiate the repayment schedule or grant forbearance (as long as the 10-year repayment period is not exceeded), and in doing so may remove the borrower from delinquent status.

Eight respondents indicated that the proposed performance standard is racially discriminatory and penalizes schools which actively recruit low-income and disadvantaged students, since it would force these schools to terminate their participation in the program, and thereby preclude many of the neediest students from receiving NSL funds. The Department expects that the implementation date for the performance standard, as indicated below, along with the methods available for reducing delinquency rates (e.g., write-off, renegotiation, forbearance, and tools for aggressively pursuing delinquent borrowers), should make it possible for all schools, including those with a high percentage of low-income and disadvantaged students, to comply with these regulations.

Twenty-eight respondents suggested that a 10 percent standard would be more realistic. Six suggested that the Department adopt the NDSL criteria, which allows a school to continue using collections regardless of its delinquency rate but uses the delinquency rate to determine eligibility for new Federal capital contributions. Three respondents wanted the Department to consider the effectiveness of each institution in reducing its delinquency rate and recognize good faith efforts made by an institution regardless of its delinquency rate. Two other respondents suggested that the Department determine an acceptable delinquency rate for each school based on the socioeconomic

composition of its student population. Other suggestions included changing the performance standard to 15 percent, lowering the standards for write-off, applying the 5 percent performance standard only to loans made since the recent emphasis on debt collection, establishing an appeals process, and delaying implementation until Congress enacts legislation allowing the use of the Internal Revenue Service (IRS) for skip-tracing. One respondent stated that it was inappropriate to impose a 5 percent performance standard for the NSL program on the basis of a 3.2 percent delinquency rate among professionals who have loans since the delinquency rate formula used by the American Bankers' Association (ABA) is more lenient than the formula proposed by the Department.

In response to these numerous comments, and in order to determine the most appropriate performance standard for the NSL program, the Department considered the following: (1) The improvements in debt management that have occurred at nursing schools since December 1981; (2) the current delinquency rates in the NSL program; (3) a comparison of the average delinquency rates for the HPSL and NSL programs; (4) a comparison of the HPSL and NSL delinquency rates at institutions that participate in both the HPSL and NSL programs; and (5) legislative and programmatic similarities and differences between the HPSL and NSL programs. Based on the above considerations, and because the Department believes that the 5 percent performance standard level provides the most effective way of encouraging schools to reduce their delinquency rates and thereby maximize the level of dollars in their revolving NSL funds, the Department has implemented the provision as proposed.

Definition of delinquent account: Twenty-seven respondents opposed the provision to define as delinquent any loan more than 60 days past due. Fourteen noted that the majority of loans 60–120 days past due do not represent bad debts but eventually return to current status and are paid in full. The proposed definition of a delinquent account was therefore considered unreasonable, unrealistic, and unjustified. Nine felt that this was inconsistent with the due diligence procedures since it does not allow adequate time to perform the suggested steps before a loan has to be considered delinquent. Others noted that this contrasts with prior departmental policy and is at variance with the NDSL program, which uses 120 days as the cutoff point for delinquent accounts.

In response to these comments, the Department clarifies that the 60-day definition of delinquency was proposed to assure that the delinquency rate accurately reflects those accounts which are collection problems for the school. Although borrowers 60-120 days past due may eventually repay in full, collecting their accounts requires extra effort by the school and therefore, the Department believes that they should be reflected as delinquent accounts until they are made current.

Delinquency rate formula: Forty-one opposed the formula for calculating a school's delinquency rate. Of these, sixteen indicated that there was no justification for considering the entire outstanding principal balance of a delinquent loan as uncollectible, and nine proposed that the formula include in the numerator only the past due amount on delinquent loans. Others suggested that the Department exclude from the numerator principal not yet due for accounts 60-90 days past due. As indicated above, the Department considers accounts more than 60 days past due to be collection problems for the school which represent potential losses to the fund. Therefore, the Department believes it is appropriate to include in the numerator the principal outstanding on loans more than 60 days past due.

Eleven respondents felt that the denominator should include retired loans. Others suggested that the denominator should include accounts in deferment, and that the formula should exclude accounts in default and accounts on which the school can take no further action. The Department considers it inappropriate to include retired loans or loans in deferment in the denominator since the purpose of the delinquency rate calculation is to measure a school's effectiveness in collecting those loans on which borrowers currently should be making payments. The Department reminds schools that in addition to excluding loans that have been fully repaid by borrowers, the formula also does exclude uncollectible loans that have been written off or reimbursed by the school. When a school has exercised due diligence, uncollectible accounts normally should become eligible for write-off before other accounts that entered repayment status at the same time have been fully repaid by the borrower; thus, the exclusion of fully retired loans should be offset by the exclusion of uncollectible loans.

Six respondents stated that a standard delinquency rate formula cannot provide an accurate assessment of a school's due diligence procedures, and five considered the formula unrealistic and inaccurate. Four noted that the proposed formula was inconsistent with the NDSL formula and two suggested that the Department adopt the NDSL formula. Four others objected to the formula because it fails to consider the level of risk associated with the student population at each institution. One respondent noted that the ABA formula used to calculate the delinquency statistics cited by the Department in the June 3, 1983 NPRM includes in the numerator only the past due amount rather than the total principal outstanding on delinquent loans.

In response to these comments, the Department recognizes that delinquency formulas do vary significantly from one organization to another depending upon what they are designed to measure; therefore, the formula used by one agency or organization is not necessarily appropriate for another agency. After considering these comments and evaluating various alternatives to the proposed formula, the Department has determined that the delinquency formula should not be modified since it provides a conservative measure of the effectiveness of a school's current collection efforts, and thereby assures responsible fiscal management of public funds.

Respondents also suggested that the Department allow any account more than 2 years past due to be written off automatically and thus be excluded from the delinquency rate. The Department has not adopted this suggestion since it would be poor stewardship of Federal funds to permit write-off approval if a school had not exercised due diligence in its collection efforts.

Five respondents suggested that for accounts on which borrowers are making partial payments the Department should include only the amount in arrears in the numerator and five others thought that the Department should consider any accounts with regular payment patterns as current. The Department clarifies that any loan on which the borrower is making partial payments on a regular basis may be eligible for a renegotiated repayment schedule, in which case the borrower would no longer be delinquent if he or she makes payments as required by the revised schedule.

Two respondents stated that the Department should exclude dropouts and accounts in litigation from the delinquency formula. The Department notes that dropouts who are unable to make payments due to financial hardship may be eligible for forbearance in which case they are not included in the delinquency calculation. However, the Department does not exclude loans in litigation from the delinquency calculation since these loans are still delinquent and the school can continue to make efforts to collect them during the litigation proceedings.

Implementation date and phase-in procedures: Thirty respondents opposed the proposed implementation date and phase-in procedures for the performance standard. Nineteen considered these procedures unrealistic, unreasonable, and illogical. Three felt that December was a bad time of year for determining compliance with the performance standard since it could prohibit schools from fulfilling award commitments made at the beginning of the academic year and is typically a time when mail is slow and many of the borrowers and institutional staff are on vocation. Two noted that a 6-month period for reducing the delinquency rate by 50 percent did not provide adequate time to exhaust the more complex due diligence steps of collection agents and litigation and also request write-off approval. Others stated that these procedures would penalize schools which have been working hard to improve their collection efforts during the past 2 years and are now faced with their more difficult accounts. Several suggested alternative proposals such as allowing schools more time (ranging up to 3 years) to meet the performance standard, reviewing schools annually rather than semiannually, recognizing good faith efforts, reviewing schools for compliance with due diligence rather than compliance with a performance standard, and establishing performance checkpoints based on reductions of 25–33 percent rather than 50 percent.

In response to these comments, the Department has established the implementation date of the performance standard as June 30, 1986. This should provide nursing schools with adequate time to exhaust the more complex due diligence steps for accounts that are currently delinquent and request write-off approval for uncollectible loans before the performance standard is implemented.

Penalty for noncompliance: Thirty-four respondents opposed the penalty for noncompliance with the performance standard. Twenty-one felt that it was inappropriate, would have a harsh impact on needy students, and would deny the opportunity for a nursing education to low-income and disadvantaged individuals. Eight stated that it would result in the termination of the NSL program at most schools. Five felt that it unduly penalizes schools which are exercising due diligence but are unable to meet the performance standard, four considered it inconsistent with the intent of the NSL legislation, and two indicated that it would reduce incentive to continue collections.

Six respondents suggested that the Department should be required to show direct proof of improper program administration before terminating a school's participation in the NSL program. Four suggested that the Department help schools resolve their old accounts before imposing such a penalty; two wanted the Department to allow all schools to continue participation regardless of their delinquency rates; two thought that suspension of new funding would be more appropriate than termination; and two suggested using the NDSL penalty, which reduces the level of new funds awarded to schools with delinquency rates between 10 and 25 percent, and suspends new funding for schools with delinquency rates over 25 percent, but allows any school to continue using its collections, regardless of its delinquency rate.

In response to these comments, the Department expects that implementing the performance standard provision on June 30, 1986, should provide schools with adequate time to reduce their delinquency rates to the required level, and that schools unable to comply with requirements of the provision after that date should not be permitted to continue loaning NSL funds. Therefore, the Department has implemented the penalty for noncompliance as proposed.

Additional Comments

Many respondents suggested other changes that would require legislative amendments, including the following: (1) an amendment to allow the use of the IRS skip-tracing service; (2) a provision for assigning uncollectible loans to the Federal Government for further collection efforts; (3) elimination of the set-aside fund; (4) a procedure for withholding the tax refunds of delinquent borrowers; (5) a requirement that all borrowers have a cosigner; (6) a provision to allow cancellation for service in a low-income area; (7) a reduction in the interest rate; (8) modifications to the deferment provisions; (9) authority to extend the repayment period beyond 10 years; (10) an administrative allowance to be paid from the NSL fund; (11) changes in the minimum monthly payment provisions; and (12) an amendment to make the loan repayment provision for failure to complete studies (§ 57.314) an entitlement. The Department cannot implement any of these suggestions since it lacks statutory authority to do so.

Regulatory Flexibility Act and Executive Order 12291

Three respondents believed that these regulations would have a significant economic impact since they expected that the majority of schools would face termination as a result of their implementation as proposed. Some also felt that the response burden was grossly understated by the Department.

One respondent commented that the burden of 18.4 hours per school indicated in the September 6, 1984 NPRM is not realistic, and stated that schools have incurred many more hours of work, including evening time, to implement the ten steps proposed in the NPRM. The Department clarifies that the 18.4 hour average burden per school was determined based on the time required to comply with the reporting and recordkeeping requirements included in that NPRM, but did not address the time required to carry out activities of the proposal apart from the reporting or recordkeeping requirements.

In response to the other comments, the Department expects that the modifications that have been made to the proposed rules will assure that these regulations do not have a significant economic impact on a substantial number of small entities. These regulations prescribe procedures for improving loan collections and a performance standard against which schools' delinquency rates will be measured.

The small entities affected are nursing schools. The amendments to the regulations strengthen loan collections and may result in the termination of some nursing schools' participation in the NSL program. However, each school with an unacceptable level of delinquency will have several opportunities to reduce its delinquency rate prior to termination, and thus will have adequate time to prepare for the loss of funds which will occur as a result of termination. These schools will also be able to resume the use of future collections once they are able to meet the performance standard. Therefore, the regulations will not have a significant economic impact on a substantial number of small entities.

These regulations have been reviewed in accordance with Executive Order 12291. The Department has determined that this rule is not a "major rule" under Executive Order 12291 because it does not meet the criteria for major regulations established in the Order; therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act

These final regulations contain the following recordkeeping and reporting requirements which have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (Pub. L. 96–511): Section 57.306, approval number 0915–0048 (Financial Aid Transcript, Educational Costs); § 57.308, approval number 0915–0095 (Promissory Note); § 57.310, approval number 0915–0095 (Entrance Interview, Exit Interview, Borrower Notifications, Credit Bureau Notification); § 57.312, approval number 0915–0048 (Reporting of Loans for Loan Repayment); and § 57.315, approval number 0915–0047 (Reporting Requirements, Student Records, Repayment Records).

List of Subjects in 42 CFR Part 57

Dental health, Education of disadvantaged, Educational facilities, Educational study programs, Emergency medical services, Health facilities, Health professions, Loan programs—health, Medical and dental schools, Scholarships and fellowships, Grant programs—education, Grant programs—health, Student aid.

42 CFR Part 57, Subpart D is amended as set forth below.

Dated: June 20, 1985.

James O. Mason,

Assistant Secretary for Health.

Approved: August 2, 1985.

Margaret M. Heckler,

Secretary.

(*Catalog of Federal Domestic Assistance*, No. 13.364, Nursing Student Loan Program)

PART 57—[AMENDED]

Subpart D of 42 CFR Part 57 is revised to read as follows:

Subpart D—Nursing Student Loans

Sec.

57.301 Applicability.
57.302 Definitions.
57.303 Application by school.
57.304 Payment of Federal capital contributions.
57.305 Nursing student loan funds.
57.306 Eligibility and selection of nursing student loan applicants.
57.307 Maximum amount of nursing student loans.
57.308 Nursing student loan promissory note.
57.309 Payment of nursing student loans.
57.310 Repayment and collection of nursing student loans.
57.311 Cancellation of nursing student loans for disability or death.
57.312 Repayment of loans for service in a shortage area.
57.313 Loan cancellation for full-time employment as a registered nurse.
57.313a Loan cancellation reimbursement.
57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.
57.315 Records, reports, inspection, and audit.
57.316 Nondiscrimination.
57.316a Performance standard.
57.317 Additional conditions.
57.318 Noncompliance.

Authority: Sec. 215 Public Health Service Act, 58 Stat. 690, 67 Stat. 631, (42 U.S.C. 216); sections 835–841 Public Health Service Act, 78 Stat. 913–916, as amended (42 U.S.C 297a–h).

Subpart D—Nursing Student Loans

§ 57.301 Applicability.

The regulations in this subpart apply to the Federal capital contributions made by the Secretary to public or other nonprofit schools of nursing for the establishment of nursing student loan funds and to loans made to students from these funds.

§ 57.302 Definitions.

As used in this subpart:

"Academic year" means the traditional, approximately 9-month September to June annual session. For the purpose of computing academic year equivalents for students who, during a 12-month period, attend for a longer period than the traditional academic year, the academic year will be considered to be of 9 months' duration.

"Act" means the Public Health Service Act, as amended.

"Date upon which a student ceases to be a full-time or half-time student" means the first day of the month which is nearest to the date upon which an individual ceases to be a full-time or half-time student, as defined in this section.

"Federal capital loan" means a loan made by the Secretary to a school under section 827(a) of the Act, as in effect prior to July 29, 1975, the proceeds of which are to be returned to the Secretary.

"Full-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Good standing" means the eligibility of a student to continue in attendance at the school where he or she is enrolled as a student in accordance with the school's standards and practices.

"Half-time student" means a student who is enrolled in a school and pursuing a course of study which constitutes at least one-half of a full-time academic workload but less than a full-time academic workload, as determined by the school, leading to a diploma in nursing, an associate degree in nursing or an equivalent degree, a baccalaureate degree in nursing or an equivalent degree, or a graduate degree in nursing.

"Institutional capital contribution" means the money provided by a school, in an amount not less than one-ninth of the Federal capital contribution, and deposited in a nursing student loan fund.

"National of the United States" means: (1) A citizen of the United States, or (2) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.

"Nursing student loan" means the amount of money advanced to a student by a school from a nursing student loan fund under a properly executed promissory note.

"Registered nurse" means an individual who has been licensed by a State Board of Nursing to practice professional nursing in accordance with State licensing laws requiring as a minimum one of the degrees or diplomas specified in this section.

"School" means a public or other nonprofit school of nursing, as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee to whom the authority involved has been delegated.

"State" means, in addition to the several States, the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

§ 57.303 Application by school.

(a) Each school seeking a Federal capital contribution must submit an application at the time and in the form and manner that the Secretary may require.[1] The application must be signed

[1] Applications and instructions are available from the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, Room 8–44, Rockville, Maryland 20857.

by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the statute, the regulations of this subpart, and the terms and conditions of the award.

(b) Each application will be reviewed to determine eligibility and the reasonableness of the amount of Federal support requested. The Secretary may require the applicant to submit additional data for this purpose.

(c) An application will not be approved unless an agreement between the Secretary and the applicant school for a Federal capital contribution under section 835 of the Act is reached.

§ 57.304 Payment of Federal capital contributions.

(a) *Annual payment.* The Secretary will make payments at a time determined by him or her, to each school with which he or she has entered into an agreement under the Act.

(1) For any fiscal year for which "set-aside" funds are available, the Secretary will first make payments in the manner described in (a)(2) of this section of not less than $1,000,000 of the amount of Federal funds determined by the Secretary at the time of payment to be available for making loans under this subpart. These funds will be paid to schools submitting an application for "set-aside" funds to be used only for the purpose of making loans to individuals qualified to receive loans under this subpart who, on the date they receive the loan, have not been employed on a full-time basis or been enrolled in any educational institution on a full-time basis for at least 7 years. An individual may not receive a loan under this subparagraph that exceeds $500 for any academic year.

(2) If the total of the amounts requested for any fiscal year by all schools for Federal capital contributions minus the amount received under paragraph (a)(1) of this section exceeds the amount of Federal funds determined by the Secretary at the time of payment to be available for this purpose, the payment to each school will be reduced to whichever is smaller: (i) The amount requested in the application, or (ii) an amount which bears the same ratio to the total amount of Federal funds determined by the Secretary at the time of payment to be available for that fiscal year for the Nursing Student Loan program as the number of full-time students estimated by the Secretary to be enrolled in that school bears to the estimated total number of full-time students in all participating schools during that year.

(3) Amounts remaining after these payments are made will be distributed in accordance with this paragraph among schools whose applications requested more than the amount paid to them, but with whatever adjustments that may be necessary to prevent the total paid to any school from exceeding the total requested by it.

(b) *Method of payment.* The payment of Federal capital contributions to a school will be paid in a manner that avoids unnecessary accumulations of money in any nursing student loan fund.

§ 57.305 Nursing student loan funds.

(a) *Funds established with Federal capital contributions.* Any fund established by a school with Federal capital contributions will be deposited and carried in a special account of the school. At all times the fund must contain moneys representing the institutional capital contribution.

(1) Except for funds transferred under paragraph (a)(2) of this section, this fund is to be used by the school only for: (i) Nursing student loans to full-time and half-time students; (ii) capital distribution as provided in section 839 of the Act or as agreed to by the school and the Secretary; and (iii) costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

(2) An amount not to exceed 20 percent of the amount paid to a school from the appropriation for any fiscal year for Federal capital contributions may be transferred by the school to be used for scholarship awards under section 845 of the Act. However, if the Secretary finds in a particular case that a school has demonstrated an unusual need for scholarship funds, he or she may approve the transfer of any amount in excess of 20 percent to be used for scholarship awards. In the case of any transfer under this subparagraph, the proportionate amount of the institutional capital contribution (i.e., one-ninth of the amount so transferred) may be withdrawn by the school from the fund.

(b) *Funds established with Federal capital loans.* (1) Each Federal capital loan is subject to the terms of the promissory note executed by an authorized official on behalf of the borrowing school.

(2) The Federal capital loans must be carried in a special account of the school, to be used by the school only for: (i) Repayments of principal and interest on Federal capital loans; and (ii) costs of litigation, costs associated with membership in credit bureaus, and, to the extent specifically approved by the Secretary, other collection costs that exceed the usual expenses incurred in the collection of nursing student loans.

§ 57.306 Eligibility and selection of nursing student loan applicants.

(a) *Determination of eligibility.* (1) Applicants are eligible for consideration for a nursing student loan if they are:

(i) Citizens, nationals, or lawful permanent residents of the United States, permanent residents of the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, or American Samoa, or lawful permanent residents of the Commonwealth of Puerto Rico, the Virgin Islands or Guam;

(ii) Enrolled, or accepted for enrollment in the school as full-time or half-time students;

(iii) In need of the amount of the loan to pursue the course of study at the school; and

(iv) Capable, in the opinion of the school, of maintaining good standing in the course of study.

(2) An applicant who has previously attended an institution of higher education must submit a financial aid transcript which includes at least the following data:

(i) Applicant's name and social security number;

(ii) Amounts and sources of loans and grants previously received by the applicant for study at an institution of higher education;

(iii) Whether the applicant is in default on any of these loans, or owes a refund on any grants;

(iv) Certification from each institution previously attended by the applicant that the applicant has received no financial aid, if applicable; and

(v) From each institution previously attended, the signature of an official authorized by the institution to sign such transcripts on behalf of the institution.

(b) *Selection of nursing student loan applicants and determinations of need.* The school will select qualified applicants, make reasonable determinations of need, and determine the amount of student loans.

(1) In selecting nursing student loan applicants the school will give preference to licensed practical nurses.

(2) In determining whether a student is in need of a nursing student loan to pursue a full-time or half-time course of study at the school, the school will take into consideration:

(i) The financial resources available to the student by using one of the national need analysis systems or any other procedure approved by the Secretary of

Education and published under 34 CFR 674.13 in combination with other information which the school has regarding the student's financial status; and

(ii) The costs reasonably necessary for the student's attendance at the school, including any special needs and obligations which directly affect the student's financial ability to attend the school on a full-time or half-time basis. The school must document the criteria used for determining these costs.

(Approved by the Office of Management and Budget under control number 0915–0048.)

§ 57.307 Maximum amount of nursing student loans.

The total of the nursing student loans made from the fund to any student for an academic year may not exceed $2,500. The maximum amount loaned during a 12-month period to any student enrolled in a school which provides a course of study longer than the 9–month academic year may be proportionately increased. The total of all nursing student loans to any student may not exceed $10,000.

§57.308 Nursing student loan promissory note.

(a) *Promissory note form.* Each nursing student loan must be evidenced by a properly executed promissory note in a form approved by the Secretary. The school must safeguard the promissory note against fire, theft, and tampering.

(1) Each promissory note must state that the loan will bear interest on the unpaid balance computed only for periods during which repayment of the loan is required, at the rate of 6 percent per year.

(2) Each promissory note must contain an acceleration clause provided by the Secretary, which will permit the acceleration of delinquent loans at the school's option.

(3) A copy of each executed note must be supplied by the school to the student borrower.

(b) *Security.* A school must require security or endorsement if the borrower is a minor and if, under the applicable State law, the note signed by him or her would not create a binding obligation. The school may not require security or endorsement in any other circumstances.

(Approved by the Office of Management and Budget under control number 0915–0095.)

§ 57.309 Payment of nursing student loans.

(a) Nursing student loans from any fund may be paid to or on behalf of student borrowers in installments considered appropriate by the school except that a school may not pay to or on behalf of any borrower more during any given installment period (e.g., semester, term, or quarter) than the school determines the student needs for that period.

(b) No payment may be made from a fund to or on behalf of any student borrower if at the time of the payment the borrower is not a full-time or half-time student.

§ 57.310 Repayment and collection of nursing student loans.

(a) Each nursing student loan, including accrued interest, will be repayable in equal or graduated periodic installments in amounts calculated on the basis of a 10-year repayment period. Repayment of a loan must begin 9 months after the student ceases to be a full-time or half-time student, except that if a borrower reenters the same or another school as a full-time or half-time student within the 9-month period, the date upon which interest will accrue and the repayment period will begin will be determined by the date upon which the student last ceases to be a full-time or half-time student at that school.

(1) The following periods will be excluded from the 10-year repayment period: (a) All periods up to a total of 3 years of active duty performed by the borrower as a member of the Army, Navy, Air Force, Marine Corps, Coast Guard, National Oceanic and Atmospheric Administration Corps or the U.S. Public Health Service Commissioned Corps; (ii) all periods up to a total of 3 years of service as a volunteer under the Peace Corps Act; and (iii) all periods up to a total of 5 years during which the borrower is pursuing a full-time course of study at a school leading to a baccalaureate degree in nursing or an equivalent degree, or to a graduate degree in nursing, or is otherwise pursuing advanced professional training in nursing (or training to be a nurse anesthetist). For purposes of this paragraph, "otherwise pursuing advanced professional training in nursing" shall include only full-time training, beyond the first diploma or degree in nursing received by the particular borrower, of at least 1 academic year which will advance the borrower's knowledge of and strengthen his or her skills in the provision of nursing services.[2]

(2) Subject to the provisions of paragraph (b)(3) of this section, a borrower must establish a repayment schedule with the school providing for payments not less often than quarterly. Any borrower whose repayment becomes more than 60 days past due must be placed on a monthly repayment schedule by the school. A borrower may at his or her option and without penalty, prepay all or part of the principal and accrued interest at any time.

(3) A school may grant forbearance whenever extraordinary circumstances such as unemployment, poor health or other personal problems temporarily affect the borrower's ability to make scheduled loan repayments.

(b) *Collection of nursing student loans.* (1) Each school at which a fund is established must exercise due diligence in the collection of nursing student loans due the fund. In the exercise of due diligence, a school must follow procedures which are at least as extensive and effective as those used in the collection of other student loan accounts due the school, and must use the steps outlined below in accordance with collection practices which are generally accepted among institutions of higher education:

(i) Conduct and document an entrance interview (individually or in groups) with the borrower prior to disbursing NSL funds in any academic year. During the entrance interview the school must obtain documentation which indicates that the borrower is aware of the rights and responsibilities associated with NSL funds and personal information which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. The requirement of this subparagraph may be met by correspondence if the school determines that a face-to-face meeting (individually or in groups) is impracticable.

(ii) Conduct and document an exit interview (individually or in groups) with the borrower. During the exit interview, the school must provide each borrower with information necessary to carry out the terms of repayment, remind the borrower of the rights and responsibilities associated with NSL funds, and update the personal information collected prior to disbursing NSL funds which would assist in locating the borrower if he or she fails to keep the school informed of his or her current address. If the borrower terminates studies without advance notice, the school must document

[2] Individuals who received nursing student loans prior to July 1, 1969, remain subject to the repayment provisions of 42 CFR 57.314(a)(3)(1976) as adopted on February 4, 1974. These provisions can be found at 39 FR 16473 (May 9, 1974), and a copy can be obtained by writing the Division of Student Assistance, Bureau of Health Professions, 5600 Fishers Lane, Parklawn Building, Room 8–48, Rockville, Maryland 20857.

attempts to inform the borrower of the substance of the exit interview and to secure exit interview information from the borrower by mail.

(iii) Notify the borrower in writing of the impending repayment obligation at least twice during the grace period;

(iv) Notify a borrower who is in deferment status in writing of the impending repayment obligation 1 to 3 months prior to the expiration of the approved period of deferment;

(v) Perform regular billing;

(vi) Follow up past due payments with a series of at least four documented and reasonably spaced attempts to contact the borrower, at least three of which must be in writing at not more than 30-day intervals, prior to the loan becoming 120 days past due, provided that the school has a current address for the borrower;

(vii) Perform address searches when necessary;

(viii) Use collection agents, which may include the use of an internal collection agent;

(ix) Institute legal proceedings against borrowers after all other attempts at collection have failed, unless the school determines, subject to the approval of the Secretary, that such litigation would not be cost-effective; and

(x) Become a member of a credit bureau and notify the credit bureau of accounts past due by more than 120 days.

In place of one or more of the procedures outlined above schools may substitute collection techniques that are equally or more effective, but only after they have demonstrated the effectiveness of the techniques and obtained written approval from the Secretary.

(2) With respect to any nursing student loan made after June 30, 1969, the school may fix a charge for failure of the borrower to pay all or any part of an installment when it is due, and in the case of a borrower who is entitled to a deferment under section 836(b)(2) of the Act, or cancellation or repayment under section 836(b)(3) of the Act, for any failure to file timely and satisfactory evidence of the entitlement. The amount of the charge may not exceed $1 for the first month or part of a month by which the installment or evidence is late and $2 for each succeeding month or part of a month. The school may elect to add the amount of this charge to the principal amount of the loan as of the day after the day on which the installment or evidence was due, or to make the amount of the charge payable to the school no later than the due date of the next installment following receipt of the notice of the charge by the borrower.

(3) With respect to any nursing student loan made after June 30, 1969, the school may require the borrower to make payments of at least $15 per month on all outstanding nursing student loans during the repayment period.

(4) A school may request permission to write off uncollectible loans. In any instance where the Secretary determines that a school has failed to exercise due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the school will be required to place in the fund an amount equal to the full amount of principal and interest that remains uncollected on that loan. If the Secretary determines that a school has exercised due diligence in the collection of a loan, in accordance with the applicable regulatory requirements, the Federal Government will absorb the Federal share of the loss by permitting the school to reduce the accounts receivable by the full amount of principal and interest that remains uncollected on that loan.

(Approved by the Office of Management and Budget under control number 0915–0095.)

§ 57.311 Cancellation of nursing students loans for disability or death.

(a) *Permanent and total disability.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act if the borrower is found to be permanently and totally disabled on recommendation of the school and as supported by whatever medical certification the Secretary may require. A borrower is totally and permanently disabled if he or she is unable to engage in any substantial gainful activity because of a medically determinable impairment, which the Secretary expects to continue for a long time or to result in death.

(b) *Death.* The Secretary will cancel a borrower's indebtedness in accordance with section 836(b)(4) of the Act upon the death of the borrower. The school to which the borrower was indebted must secure a certification of death or whatever official proof is conclusive under State law.

§ 57.312 Repayment of loans for service in a shortage area.[3]

(a) *Service in a shortage area.* Subject to the availability of funds, a person who: (1) Has obtained a degree as specified in section 836(h)(1)(A) of the Act; (2) has obtained one or more nursing student loans or any other loans necessary for costs (including tuition, books, fees, equipment, living and other expenses which the Secretary determines were necessary) of attending a school of nursing; and (3) enters into an agreement with the Secretary to serve as a full-time registered nurse for at least 2 consecutive years in a shortage area determined by the Secretary, is entitled to have a portion of these loans repaid by the Secretary in accordance with paragraph (b) of this section. Prior to entering an agreement for repayment of loans, other than nursing student loans, the Secretary will require an individual to provide evidence satisfactory to the Secretary of the existence and reasonableness of the education loans, including a copy of the written loan agreement establishing the loan, and a notarized statement that the copy is a true copy of the loan agreement.

(b) *Repayment.* Loan repayment will be made by the Secretary to persons who meet the conditions set forth in paragraph (a) of this section. Payment will be as follows:

(1) Upon completion by the borrower of the first year of service as specified in the agreement, the Secretary will pay 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(2) Upon completion by the borrower of the second year of service, the Secretary will pay another 30 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service;

(3) Upon completion by the borrower of a third year of service, the Secretary will pay another 25 percent of the principal of, and the interest on, each loan which was unpaid as of the date the borrower began his or her service; and

(4) No more than 85 percent of the principal of any loan will be paid under this section.

(Approved by the Office of Management and Budget under control number 0915–0048.)

§ 57.313 Loan cancellation for full-time employment as a registered nurse.

(a) *For loans made after November 18, 1971, and before September 29, 1979.* A person who: (1) Received one or more nursing student loans after November 18, 1971, and before September 29, 1979; (2) is in compliance with the requirements of Title VIII of the Act and

[3] Effective November 22, 1982, the Secretary stopped accepting applications under § 57.312 because Federal funds are not available for this provision.

these regulations; and (3) engages in full-time employment as a registered nurse (including teaching in any of the fields of nurse training or service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers) is entitled to have a portion of these nursing student loans canceled as follows: 15 percent of the total amount of the loans plus accrued interest on the loan which is unpaid on the first day of his or her service, for each of the first, second, and third year of service; and 20 percent of the total amount of the loan plus accrued interest on the loan for each complete fourth and fifth year of service thereafter, up to 85 percent of the total of the loans, plus accrued interest.

(b) *Continuation of provisions for cancellation of loans made prior to November 18, 1971.* A person who received one or more nursing student loans prior to November 18, 1971, may still receive cancellation of these loans for service under section 836(i) of the Act. The regulations set forth in 42 CFR 57.316 (a) and (b)(6) (1976), as adopted on February 4, 1974, remain applicable to cancellation on this basis. The provisions can be found at 39 FR 16473 (May 9, 1974) and a copy can be obtained by writing to the Division of Student Assistance, Bureau of Health Professions, Room 8–48, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

(c) The determination of whether a person is entitled to have any portion of his or her nursing student loan canceled for full-time employment as a registered nurse will be made by the institution to whose fund his or her loan is payable, upon receipt and evaluation of an application for cancellation from that person.

§ 57.313a Loan cancellation reimbursement.

In the event that insufficient funds are available to the Secretary in any fiscal year to enable him or her to pay to all schools their proportionate shares of all loans and interest canceled under this subpart for full-time employment as a nurse, death, or disability:

(a) Each school will be paid an amount bearing the same ratio to the total of the funds available for that purpose as the principal of loans canceled by that school in that fiscal year bears to the total principal of loans canceled by all schools in that year; and

(b) Any additional amounts to which a school is entitled will be paid by the Secretary at the time of distribution of the assets of the school's fund under section 839 of the Act.

§ 57.314 Repayment of loans made after November 17, 1971, for failure to complete a program of study.[4]

In the event that the Secretary undertakes to repay educational loans under section 836(j) of the Act, he or she will use the following criteria to make a determination as to each applicant's eligibility:

(a) An applicant will be considered to have failed to complete the course of study in nursing for which an eligible education loan was made upon certification by a school of nursing that the individual ceased to be enrolled in the school subsequent to November 17, 1971;

(b) An applicant will be considered to be in exceptionally needy circumstances if, upon comparison of the income and other financial resources of the applicant with his or her expenses and financial obligations, the Secretary determines that repayment of the loan would constitute a serious economic burden on the applicant. In making this determination, the Secretary will take into consideration the applicant's net financial assets, his or her potential earning capacity, and the relationship of the income available to the applicant to the low-income levels published annually by the Secretary under paragraph (c) of this section;

(c) An applicant will be considered to be from a low-income family if the applicant comes from a family with an annual income below a level based on low-income thresholds according to family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in this program, and the family has no substantial net financial assets. Income levels as adjusted will be published annually by the Secretary in the Federal Register;

(d) An applicant will be considered to be from a disadvantaged family if the individual comes from a family in which the annual income minus unusual expenses which contribute to the economic burdens borne by the family does not exceed the low-income levels published by the Secretary under paragraph (c) of this section and the family has no substantial net financial assets;

(e) An applicant will be considered as not having resumed his or her nursing studies within 2 years following the date the individual ceased to be a student upon certification so stating from the applicant; and

(f) An applicant will be considered as not reasonably expected to resume his or her nursing studies within 2 years following the date upon which he or she terminated these studies, based upon consideration of the reasons for the applicant's failure to complete these studies, taking into account such factors as academic, medical, or financial difficulties. The Secretary will only repay education loans made after November 17, 1971.

§ 57.315 Records, reports, inspection, and audit.

(a) *Records and reports.* (1) Each Federal capital contribution and Federal capital loan is subject to the condition that the school must maintain those records and file with the Secretary those reports relating to the operation of its nursing student loan fund that the Secretary may find necessary to carry out the purposes of the Act and these regulations. All required reports must be submitted to the Secretary within 45 days of the close of the reporting period. Any such school which fails to submit any completed required report within 45 days of the close of the reporting period must place the revolving fund and all subsequent collections into an interest bearing account and make no new loans until the Secretary determines that the school is in compliance with the requirement. Any school that remains in noncompliance under this provision for more than 6 months will be terminated from participation in the program and will be required to return all funds to the Department.

(2) The following student records must be retained by the school for 5 years after the individual student ceases to be a full-time or half-time student:

(i) Approved student applications for nursing student loans;

(ii) Documentation of the financial need of applicants; and

(iii) Copy of financial aid transcripts.

(3) The following repayment records for each individual borrower must be retained for at least 5 years from the date of retirement of a loan:

(i) The amount and date of each loan;

(ii) The amount and date of each payment or cancellation;

(iii) Records of periods of deferment;

(iv) Date, nature, and result of each contract with the borrower or proper endorser in the collection of an overdue loan;

(v) Copies of all correspondence to or from the borrower and endorser;

[4] Effective November 26, 1984, the Secretary stopped accepting applications under § 57.314 because Federal funds are not available for this provision.

(vi) Copies of all correspondence with a collection agency related to the individual borrower;

(vii) Copies of all correspondence with a credit bureau related to an individual borrower; and

(viii) Copies of all correspondence relating to uncollectible loans which have been written off by the Federal Government or repaid by the school.

(4) The school must also retain other records as the Secretary may prescribe. In all cases where questions have arisen as a result of a Federal audit, the records must be retained until resolution of all questions.

(b) *Inspection and audit.* (1) Any application for a Federal capital contribution will constitute the consent of the applicant school to inspection and fiscal audit, by the Secretary and the Comptroller General of the United States or any of their duly authorized representatives, of the fiscal and other records of the applicant school which relate to the Federal capital contribution or Federal capital loan.

(2) The school must comply with the audit requirements of the Department of Health and Human Services' Administration of Grants regulations which are set forth in 45 CFR Part 74.

(c) Institutional officials who have information which indicates the potential or actual commission of fraud or other offenses against the United States, involving these loan funds, should promptly provide this information to the appropriate Regional Office of Inspector General for Investigations.

(Approved by the Office of Management and Budget under control number 0915-0047.)

§ 57.316 Nondiscrimination.

Participating schools are advised that in addition to complying with the terms and conditions of these regulations, the following laws and regulations apply:

(a) Section 855 of the Act (42 U.S.C. 298b-2) and its implementing regulations, 45 CFR Part 83 (prohibiting discrimination on the basis of sex in the admission of individuals to training programs);

(b) Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.) and its implementing regulations, 45 CFR Part 80 (prohibiting discrimination in federally assisted programs on the grounds of race, color, or national origin);

(c) Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.) and its implementing regulations, 45 CFR Part 86 (prohibiting discrimination on the basis of sex in federally assisted education programs);

(d) Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and its implementing regulations, 45 CFR Part 84 (prohibiting discrimination in federally assisted programs on the basis of handicap); and

(e) The Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.) and its implementing regulations, 45 CFR Part 90.

§ 57.316a Performance standard.

On June 30, 1986, and on each June 30 thereafter, except as provided in paragraph (b) of this section, each school must have a delinquency rate (as calculated in paragraph (a) of this section) of not more than 5 percent. All accounts overdue by more than 60 days must be considered delinquent.

(a) The delinquency rate for each school must be calculated by dividing the sum of the total amount of principal outstanding on all loans delinquent by the total principal amount loaned for all loans in repayment status.

(b) Any school that has a delinquency rate greater than 5 percent on June 30, 1986, or on June 30 of any year thereafter will be required to:

(1) Reduce its delinquency rate by 50 percent (or a school with a delinquency rate below 10 percent must reduce its rate to 5 percent) by the close of the following 6-month period; and

(2) By the end of each succeeding 6-month period, reduce its delinquency rate to 50 percent of the required rate for the previous 6-month period, until it reaches 5 percent.

(c) Any school subject to the provisions of paragraph (b) of this section which fails to comply with those requirements will receive no new NSL funds and will be required to:

(1) Place the revolving fund monies and all subsequent collections into an insured interest-bearing account;

(2) Make no loan disbursements; and

(3) By the end of the succeeding 6-month period, reduce its delinquency rate to 50 percent of the rate it failed to achieve under paragraph (b) of this section, or 5 percent.

A school that meets the requirements of subparagraph (c)(3) of this section will be permitted to resume the use of its NSL funds, but must continue to comply with the requirements of subparagraph (b)(2) of this section if its delinquency rate is still greater than 5 percent.

(d) Any school subject to the provisions of subparagraph (c)(3) of this section which fails to comply with those requirements will be terminated from the program and must return all Federal funds in the loan account to the Department. Any school which has been terminated must continue to purse collections and may reapply for participation in the program only when it has attained a delinquency rate of 5 percent or less.

§ 57.317 Additional conditions.

The Secretary may, with respect to any agreement entered into with any school under § 57.305, impose additional conditions prior to or at the time of any award when in his or her judgment the conditions are necessary to assure or protect advancement of the purposes of the agreement, the interest of the public health, or the conservation of funds awarded.

§ 57.318 Noncompliance.

Whenever the Secretary finds that a participating school has failed to comply with the applicable provisions of the Act or the regulations of this subpart he or she may, on reasonable notice to the school, withhold further payments of Federal capital contributions and take other action, including the termination of any agreement, as he or she finds necessary to enforce the Act and regulations. In such case no further expenditures shall be made from the nursing student loan fund or funds involved until the Secretary determines that there is no longer any failure of compliance.

[FR Doc. 85-20126 Filed 8-22-85; 8:45 am]
BILLING CODE 4160-15-M

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Friday, August 23, 1985

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