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federal register

Friday
September 2, 1983

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

Selected Subjects

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

Rules and Regulations

Federal Register
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Friday, September 2, 1983

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 421

[Amdt. No. 1]

Cotton Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Interim rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) herewith amends the Cotton Crop Insurance Regulations, effective for the 1983 crop year, to extend the cancellation dates contained in these regulations to provide additional time for policyholders to consider changes in the insurance program. This action is promulgated under the authority of the Federal Crop Insurance Act, as amended.

DATES:

Effective date: September 2, 1983.

Comment date: Written comments, data, and opinions on this interim rule must be submitted not later than November 1, 1983, to be sure of consideration.

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

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

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

SUPPLEMENTARY INFORMATION: The Cotton Crop Insurance Regulations, published in the **Federal Register** at 47 FR 56813, on December 21, 1982, contain a cancellation date of September 30 for the following south Texas Counties: Bee, Dimmitt, Goliad, Jackson, LaSalle, live Oak, McMullen, Victoria, and all Texas Counties lying south thereof.

In accordance with the cotton crop insurance regulations, any amendments must be placed on file in the service office for the county 15 days prior to the cancellation date to be effective for the crop year. The earliest cancellation date for the cotton crop insurance program occurs in the south Texas counties referred to above on September 30. FCIC is contemplating changes in the cotton crop insurance program for the 1984 crop year, including changing the cancellation and termination for indebtedness dates to conform with the sales closing date established as February 15. There would not be sufficient time for notice and public participation comment prior to the implementation of this rule and still comply with the regulations with respect to placing this rule on file by September 15 to be effective for the 1983 crop year.

FCIC is soliciting public comment on this rule for 60 days after publication in the **Federal Register**, and this rule will be scheduled for review so that any amendments made necessary by the comments received may be published as soon as possible thereafter.

Pursuant to the administrative provisions of 5 U.S.C. 553, it is found upon good cause that notice and other public procedure with respect to this rule prior to implementation are impracticable and contrary to the public interest; however, comments are solicited for 60 days after publication of this rule and such comments made pursuant to this rule will be available for public inspection in the Office of the Manager, Federal Crop Insurance Corporation, U.S. Department of Agriculture, Washington, D.C., during regular business hours, Monday through Friday.

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

The title and number of the Federal Assistance Program to which this rule applies are: Title—Crop Insurance; Number 10.450.

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

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

It has been determined that this action does not constitute a review as to the need, currency, clarity, and effectiveness of these regulations under the provisions of Secretary's Memorandum No. 1512-1 (June 11, 1981). The sunset review date established for these regulations is October 1, 1987.

The information collection requirements of the regulations to which this action applies (7 CFR Part 421) have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Nos. 0563-0003 and 0563-0007. These control numbers will be included, for the purposes of codification, in the changes being proposed by FCIC and referred to herein.

List of Subjects in 7 CFR Part 421

Crop insurance, Cotton.

Interim Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation hereby amends the Cotton Crop Insurance Regulations (7 CFR Part 421), effective for the 1983 and succeeding crop years, as follows:

PART 421—[AMENDED]

1. The authority citation for 7 CFR Part 421 is:

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

2. Section 15(d) of the Cotton Crop Insurance Policy, found in 7 CFR 421.7(d) (**Federal Register** of December 21, 1982, at 47 FR 56819), is revised to read as follows:

§ 421.7 The application and policy.

* * * * *

Cotton—Crop Insurance Policy

* * * * *

15. * * *

d. The cancellation and termination dates are:

State and county	Cancellation date	Termination date for indebtedness
Bee, Dimmitt, Goliad, Jackson, LaSalle, Live Oak, McMullen, Victoria, Counties, Texas, and all Texas counties lying south thereof.	February 15	January 31
All other Texas counties and states.	December 31	March 31

* * * * *

Done in Washington, D.C., on August 24, 1983.

Approved by Merritt W. Sprague.

Dated: August 24, 1983.

Peter F. Cole,

Secretary, Federal Crop Insurance Corporation.

[FR Doc. 83-24086 Filed 9-1-83; 8:45 am]

BILLING CODE 3410-08-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Reg. 427]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This regulation establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 225,000 cartons during the period September 4–10, 1983. Such action is needed to provide for orderly marketing of fresh lemons for the period due to the marketing situation confronting the lemon industry.

EFFECTIVE DATE: September 4, 1983.

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

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

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

This action is consistent with the marketing policy currently in effect. The committee met publicly on August 30, 1983, at Los Angeles, California, to consider the current and prospective conditions of supply and demand and recommended a quantity of lemons deemed advisable to be handled during the specified week. The committee reports the demand for lemons is good on larger sizes and weaker on smaller sizes.

It is further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rulemaking, and postpone the effective date until 30 days after publication in the **Federal Register** (5 U.S.C. 553), because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary to effectuate the declared purposes of the Act to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of subjects in 7 CFR Part 910.

Agricultural Marketing Service, Marketing Agreements and Orders, California, Arizona, Lemons.

Section 910.727 is added as follows:

§ 910.727 Lemon regulation 427.

The quantity of lemons grown in California and Arizona which may be handled during the period September 4, 1983, through September 10, 1983, is established at 225,000 cartons.

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

Dated: September 1, 1983.

Charles R. Brader,

Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[FR Doc. 83-24365 Filed 9-1-83; 12:46 pm]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 525 and 531

[No. 83-473]

Federal Home Loan Banks; Advances

Dated: August 29, 1983

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board") is revising its regulation and statement of policy regarding Federal Home Loan Banks' ("Banks") advances to members by extending the maximum maturity for which Banks may make advances to their members. The current regulation and policy statement limit the maximum maturity to 10 years; the final rule extends the maximum maturity to 20 years.

EFFECTIVE DATE: September 7, 1983.

FOR FURTHER INFORMATION CONTACT: Susan C. Evans, (202–377–6658), Senior Financial Analyst, Office of District Banks; or Anne K. Scully (202–377–6460), Attorney, Policy and Projects Division, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552.

SUPPLEMENTARY INFORMATION: In recent years, as member institutions have sought to practice more effective asset/liability management, the Banks have increasingly made available longer-term funds to assist members in their efforts to more closely match the maturities of their assets and liabilities.

Deregulation of rates on savings deposits has increased thrift institutions' ability to compete effectively for funds, and has correspondingly de-emphasized the role of the Banks in making short-term funds available to meet the liquidity and savings withdrawal needs of such institutions. The Banks thus are able to provide longer-term advances without unduly restricting the amount of short-term money sought by members for such purposes. Furthermore, the Banks' ability to engage in cash, futures, and options hedging permits the Banks to offer longer-term advances and to issue consolidated obligations in the marketplace to fund such advances without incurring undue interest-rate risk.

Section 525.10 of the Board's Bank System Regulations (12 CFR 525.10) authorizes the Banks to make advances with maturities of up to 10 years. The Board's codified policy statement regarding Bank advances to members, 12 CFR 531.1, generally directs the Banks to offer a range of advances with maturities of up to 10 years.

Today, the Board is amending 12 CFR 525.10 and 531.1 to authorize the Banks to extend the permissible maturity of advances to 20 years. The Board believes that this authorization will afford greater flexibility to the Banks in offering additional services to their member institutions, particularly in their role of home-financing. The Board believes that providing the availability of advances greater than 10 and up to 20 years will give thrift members an additional tool with which to manage their liabilities and assets. This regulation is being implemented on a permissive basis to allow the Banks to develop credit programs that best meet their members' needs.

The Board finds that observance of the notice and comment procedures prescribed by 5 U.S.C. 553(d) and 12 CFR 508.12, 508.13, and delay of the effective date pursuant to 5 U.S.C. 553(d) and 12 CFR 508.14, is not necessary because the changes concern a matter relating to internal agency management, loans and benefits and interpretive rules and statements of policy, and result in a relieving of a prior restriction.

List of Subjects in 12 CFR Parts 525 and 531

Federal Home Loan Banks.

Accordingly, the Federal Home Loan Bank Board hereby amends Parts 525 and 531, Subchapter B, Chapter V of Title 12 of the Code of Federal Regulations, as set forth below.

SUBCHAPTER B—REGULATIONS FOR THE FEDERAL HOME LOAN BANK SYSTEM

PART 525—ADVANCES

1. Revise § 525.10 as follows:

§ 525.10 Terms of advances.

Banks may, under section 10 of the Act, make advances to members for periods of up to 20 years secured by home mortgages or obligations of the United States.

PART 531—STATEMENTS OF POLICY

2. Revise paragraph (b) of § 531.1 as follows:

§ 531.1 Policy on advances to members.

* * * * *

(b) *Terms and conditions.* The Banks generally shall offer a range of advances with maturities of up to 10 years and may offer advances with maturities of up to 20 years. Advances shall be offered within a range of rates established by the Board that is above the current replacement cost of Federal Home Loan Bank obligations of comparable maturities. Prepayment and commitment fees which protect the Banks from undue interest-rate risk generally shall be required.

* * * * *

(Sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); Secs. 402, 403, 407, 48 Stat. 1256, 1257, 1260, as amended (12 U.S.C. 1725, 1726, 1730); reorg. plan no. 3 of 1947, 12 FR 4981, 3 CFR 1943–48 comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 83-24077 Filed 9-1-83; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 83-AWA-10]

Alteration of VOR Federal Airways, Minneapolis, MN, Area; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Correction to final rule.

SUMMARY: An error was noted in the description of V-246 as published in the **Federal Register** on July 28, 1983 (48 FR 34249). The airway alignment included La Crosse, WI, VOR, when the intent of the airway description is to by-pass La Crosse and proceed direct to Nodine, MN. This action amends the description of V-246.

EFFECTIVE DATE: September 29, 1983.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace and Air Traffic Rules Branch (AAT-230), Airspace-Rules and Aeronautical Information Division, Air Traffic Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone: (202) 426-8783.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 83-20407 was published in the **Federal Register** on July 28, 1983 (48 FR 34249), that amended the description of V-246 by extending the airway to Dubuque, IA. The description included La Crosse, WI, which was an error. This eliminates La Crosse VOR from the description.

List of Subjects in 14 CFR Part 71

VOR Federal airways, Aviation safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me, **Federal Register** Document 83-20407, as published in the **Federal Register** on July 28, 1983 (48 FR 34249) is corrected as follows:

V-246 [Amended]

By removing the words "From Nodine, MN" and substituting the words "From Dubuque, IA, via Waukon, IA; Nodine, MN;"

(Secs. 307(a) and 313(a), Federal Aviation Act of 1958 (49 U.S.C. 1348(a) and 1354(a)); (49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983)); and 14 CFR 11.69)

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Issued in Washington, D.C., on August 26, 1983.

B. Keith Potts,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 83-24074 Filed 9-1-83; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 97

[Docket No. 23740; Amdt. No. 1250]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal AviationAdministration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the

commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATE: An effective date for each SIAP is specified in the amendatory provisions.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Information Center (APA–430), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, D.C. 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

FOR FURTHER INFORMATION CONTACT: Donald K. Funai, Flight Procedures and Airspace Branch (AFO–730), Aircraft Programs Division, Office of Flight Operations Federal Aviation Administration, 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 426–8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and §97.20 of the Federal Aviation Regulations (FARs) The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4 and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary.The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

List of Subjects in 14 CFR Part 97

Navigation (air), Weather, aviation safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

1. By amending § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN SIAPS identified as follows:

** * * Effective November 24, 1983*

Augusta, KS—Augusta Muni, VOR–A, Amdt. 3, Cancelled
Augusta, KS—Augusta Muni, VOR–A, Amdt. Orig.
Benton, KS—Benton, VOR–E, Amdt. Orig., Cancelled
Benton, KS—Benton, VOR–E, Amdt. Orig.
Hutchinson, KS—Hutchinson Muni, VOR RWY 3, Amdt. 17
Hutchinson, KS—Hutchinson Muni, VOR/DME RWY 21, Amdt. 4
Newton, KS—Newton-City-County, VOR/DME RWY 35, Amdt. 8, Cancelled
Newton, KS—Newton-City-County, VOR/DME–A, Amdt. Orig.
Wichita, KS—Beech North, VOR–D, Amdt. 1, Cancelled
Wichita, KS—Beech North, VOR–D, Amdt. Orig.
Wichita, KS—Colonel James Jabara, VOR–A, Amdt. 1, Cancelled
Wichita, KS—Colonel James Jabara, VOR–A, Amdt. Orig.
Winfield-Arkansas City, KS—Strother Field, VOR RWY 35, Amdt. 2

** * * Effective October 13, 1983*

Tallassee, AL—Tallassee Muni, VOR RWY 9, Amdt. 2
Tallassee, AL—Tallassee Muni, VOR RWY 27, Amdt. 1, Cancelled
Tallassee, AL—Tallassee Muni, VOR/DME RWY 27, Amdt. Orig.
Marysville, CA—Yuba County, VOR RWY 14, Amdt. 7
Marysville, CA—Yuba County, VOR RWY 32, Amdt. 8
Santa Rosa, CA—Sonoma County, VOR RWY 32, Amdt. 16
Groton (New London), CT—Groton-New London, VOR RWY 5, Amdt. 3
Groton (New London), CT—Groton-New London, VOR RWY 23, Amdt. 5
West Union, IA—George L Scott Muni, VOR/DME–A, Amdt. 1
Chanute, KS—Chanute Martin Johnson, VOR–A, Amdt. 7
Madisonville, KY—Madisonville Muni, VOR RWY 23, Amdt. 8
Chadron, NE—Chadron Muni, VOR RWY 20, Amdt. 4
Wildwood, NJ—Cape May County, VOR RWY 23, Amdt. 8
Jamestown, NY—Chautauqua County, VOR/DME RWY 7, Amdt. 2
New Philadelphia, OH—Harry Clever Field, VOR/DME–A, Amdt. 3
Norwalk, OH—Norwalk-Huron County, VOR–A, Amdt. 2
Beaver Falls, PA—Beaver County, VOR RWY 28, Amdt. 7
Toughkenamon, PA—New Garden Flying Field, VOR RWY 24, Amdt. 4
El Paso, TX—El Paso Intl, VOR RWY 26L, Amdt. 28
Spearman, TX— Spearman Muni, VOR/DME RWY 2, Amdt. Orig.
Portage, WI—Portage Muni, VOR/DME–A, Amdt. 2

** * * Effective September 29, 1983*

Sioux City, IA—Sioux City Muni, VOR/DME or TACAN RWY 13, Amdt. 17
Sioux City, IA—Sioux City Muni, VOR or TACAN RWY 31, Amdt. 25
Goodland, KS—Renner Fld (Goodland Muni), VOR RWY 30, Amdt. 5
Goodland, KS—Renner Fld (Goodland Muni), VOR/DME RWY 30, Amdt. 3
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 5 (TAC), Amdt. 16
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 23 (TAC), Amdt. 14
Battle Creek, MI—W. K. Kellogg Regional, VOR RWY 31 (TAC), Amdt. 11
Columbus, NE—Columbus Muni, VOR RWY 14, Amdt. 11
Columbus, NE—Columbus Muni, VOR RWY 32, Amdt. 11
Columbus, NE—Columbus Muni, VOR/DME RWY 32, Amdt. Orig.
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR RWY 1, Amdt. 7
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR RWY 19, Amdt. 6

** * * Effective August 17, 1983*

Reidsville, NC—Rockingham County NC Shiloh, VOR/DME–A, Amdt. 4

2. By amending § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, and SDF/DME SIAPS identified as follows:

** * * Effective November 24, 1983*

San Diego, CA—San Diego-Intl-Lindbergh Field, LOC RWY 27, Amdt. Orig.
Hutchinson, KS—Hutchinson Muni, LOC BC RWY 31, Amdt. 11

** * * Effective October 13, 1983*

Gainesville, GA—Lee Gilmer Memorial, LOC RWY 4, Amdt. 1
St. Louis, MO—Lambert-St. Louis Intl, LOC BC RWY 6, Amdt. Orig.
Greenville, NC—Pitt-Greenville, SDF RWY 19, Amdt. 4
Beaver Falls, PA—Beaver County, LOC RWY 10, Amdt. 2
El Paso, TX—El Paso Intl, LOC BC RWY 4, Amdt. 4

** * * Effective September 29, 1983*

Goodland, KS—Renner Fld (Goodland Muni), LOC RWY 30, Amdt. 3, Cancelled
Battle Creek, MI—W. K. Kellogg Regional, LOC BC RWY 5, Amdt. 13
Columbus, NE—Columbus Muni, LOC RWY 14, Amdt. 3
Akron, OH—Akron Fulton Intl, LOC RWY 25, Admt. 11

3. By amending § 97.27 NDB and NDB/DME SIAPS identified as follows:

** * * Effective November 24, 1983*

San Diego, CA—San Diego Intl-Lindbergh Field, NDB–B, Amdt. 3, Cancelled
San Diego, CA—San Diego Intl-Lindbergh Field, NDB, RWY 27, Amdt. Orig.
El Dorado, KS—El Dorado Muni, NDB RWY 4, Amdt. 1
Herington, KS—Herington Muni, NDB RWY 17, Amdt. 1
Herington, KS—Herington Muni, NDB RWY 35, Amdt. 1
Hutchinson, KS—Hutchinson Muni, NDB RWY 13 Amdt. 13
McPherson, KS—McPherson, NDB–A, Amdt. 3
Newton, KS—Newton-City-County, NDB RWY 17, Amdt. 3
Newton, KS—Newton-City-County, NDB RWY 35, Amdt. 2
Salina, KS—Salina Muna, NDB RWY 35, Amdt. 13
Wellington, KS—Wellington Muni, NDB RWY 17, Amdt. 1
Winfield-Arkansas City, KS—Strother Field, NDB RWY 35, Amdt. 1

** * * Effective October 13, 1983*

Marysville, CA—Yuba County, NDB RWY 14, Amdt. 1
Visalia, CA—Visalia Muni, NDB RWY 30, Amdt. 2
Crestview, FL—Bob Sikes, NDB RWY 17, Amdt. Orig.
Naples, FL—Naples Muni, NDB RWY 22, Amdt. 4
Gainesville, GA—Lee Gilmer Memorial, NDB RWY 4, Amdt. 1
West Union, IA—George L Scott Muni, NDB RWY 35, Amdt. 1
Boyne Falls, MI—Boyne Mountain, NDB–A, Amdt. 3
Greenville, NC—Pitt-Greenville, NDB RWY 19, Amdt. 10
Carrollton, OH—Carroll County-Tolson, NDB RWY 25, Amdt. 2
Defiance, OH—Defiance Meml, NDB RWY 12, Amdt. 7
Winchester, TN—Winchester Muni, NDB RWY 18, Amdt. 2
El Paso, TX—El Paso Intl, NDB RWY 22, Amdt. 27

** * * Effective September 29, 1983*

Sioux City, IA—Sioux City Muni, NDB RWY 13, Amdt. 15
Sioux City, IA—Sioux City Muni, NDB RWY 31, Amdt. 23
Goodland, KS—Renner Fld (Goodland Muni), NDB RWY 30, Amdt. 4
Battle Creek, MI—W. K. Kellogg Regional, NDB RWY 23, Amdt. 14
Columbus, NE—Columbus Muni, NDB RWY 14, Amdt. 10
Elizabeth City, NC—Elizabeth City CG Air Station/Muni, NDB–A, Amdt. 7
Akron, OH—Akron Fulton Intl, NDB RWY 25, Amdt. 11
Knoxville, TN—McGhee Tyson, NDB RWY 5L, Amdt. 4
Knoxville, TN—McGhee Tyson, NDB RWY 5R, Amdt. 4

The FAA published an Amendment in Docket No. 23700, Amdt. No. 1247 to Part 97 of the Federal Aviation Regulations (Vol 48 FR No. 141 Page 33249; dated July 21, 1983) under Section 97.27 effective September 29, 1983, which is hereby amended as follows:

Dallas-Fort Worth, TX—Dallas-Fort Worth Regional, NDB RWY 36L, Amdt. Orig. is rescinded

4. By amending § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME and MLS/RNAV SIAPS identified as follows:

** * * Effective November 24, 1983*

Hutchinson, KS—Hutchinson Muni, ILS RWY 13, Amdt. 13
Newton, KS—Newton-City-County, ILS RWY 17, Amdt. 2
Salina, KS—Salina Muni, ILS RWY 35, Amdt. 16
Winfield-Arkansas City, KS—Strother Field, ILS RWY 35, Amdt. 1

** * * Effective October 13, 1983*

Marysville, CA—Yuba County, ILS RWY 14, Amdt. 2
Santa Rosa, CA—Sonoma County, ILS RWY 32, Amdt. 11
Visalia, CA—Visalia Muni, ILS RWY 30, Amdt. 3
Flint, MI—Bishop, ILS RWY 9, Amdt. 17
Winston Salem, NC—Smith Reynolds, ILS RWY 33, Amdt. 20
El Paso, TX—El Paso Intl, ILS RWY 22, Amdt. 29
Houston, TX—Houston Intercontinental, ILS RWY 32R, Amdt. 6
Provo, UT—Provo Muni, ILS RWY 13, Amdt. 1
Norfolk,VA—Norfolk Intl, ILS RWY 5, Amdt. 20
Richmond, VA—Richard Evelyn Byrd Intl, ILS RWY 33, Amdt. 9

** * * Effective September 29, 1983*

La Verne, CA—Brackett Field, ILS RWY 26L, Amdt. Orig.
Sioux City, IA—Sioux City Muni, ILS RWY 13, Amdt. 1
Sioux City, IA—Sioux City Muni, ILS RWY 31, Amdt. 23
Goodland, KS—Renner Fld (Goodland Muni), ILS RWY 30, Amdt. Orig.
Battle Creek, MI—W. K. Kellogg Regional, ILS RWY 23, Amdt. 14
Knoxville, TN—McGhee Tyson, ILS RWY 5L, Amdt. 7

5. By amending § 97.31 RADAR SIAPS identified as follows:

** * * Effective October 13, 1983*

St Louis, MO—Lambert-St Louis Intl, RADAR–1, Amdt. 29, Cancelled
El Paso, TX—El Paso Intl, RADAR–1, Amdt. 12

6. By amending § 97.33 RNAV SIAPS identified as follows:

** * * Effective November 24, 1983*

Newton, KS—Newton-City-County, RNAV RWY 17, Amdt. 3, Cancelled
Newton, KS—Newton-City-County, RNAV RWY 17, Amdt. Orig.
Newton, KS—Newton-City-County, RNAV RWY 35, Amdt. 2, Cancelled
Newton, KS—Newton-City-County, RNAV RWY 35, Amdt. Orig.
Winfield-Arkansas City, KS—Strother Field, RNAV RWY 35, Amdt. 2

** * * Effective October 13, 1983*

Alton, IL—Civic Memorial, RNAV RWY 29, Amdt. 4, Cancelled
East St Louis, IL—Bi-State Parks, RNAV RWY 30, Amdt. 6, Cancelled
Springfield, IL—Capital, RNAV RWY 4, Amdt. 4, Cancelled
Springfield, IL—Capital, RNAV RWY 22, Amdt. 4, Cancelled
Boyne Falls, MI—Boyne Mountain, RNAV–B, Amdt. Orig.
St Louis, MO—Lambert-St Louis Intl, RNAV RWY 12R, Amdt. Orig.

St Louis, MO—Lambert-St Louis Intl, RNAV RWY 24, Amdt. Orig.
St Louis, MO—Lambert-St Louis Intl, RNAV RWY 30R, Amdt. Orig.
Wildwood, NJ—Cape May County, RNAV RWY 19, Amdt. 3
East Hampton, NY—East Hampton, RNAV RWY 10, Amdt. 1
Greenville, NC—Pitt-Greenville, RNAV RWY 25, Amdt. 2
Cleveland, OH—Cuyahoga County, RNAV RWY 23, Amdt. 8, Cancelled
Dayton, OH—James M. Cox-Dayton Intl, RNAV RWY 24L, Amdt. 3, Cancelled
Lorain/Elyria, OH—Lorain County Regional, RNAV RWY 7, Amdt. 5, Cancelled
Portage, WI—Portage Muni, RNAV RWY 17, Amdt. 1

* * * *Effective September 29, 1983*

Sioux City, IA—Sioux City Muni, RNAV RWY 17, Amdt. 3
Sioux City, IA—Sioux City Muni, RNAV RWY 35, Amdt. 6

(Secs. 307, 313(a), 601, and 1110, Federal Aviation Act of 1958 (49 U.S.C. 1348, 1354(a), 1421, and 1510); 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.49(b)(3))

Note.—The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Note.—The incorporation by reference in the preceding document was approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

Issued in Washington, D.C. on September 2, 1983.

Kenneth S. Hunt,

Director of Flight Operations.

[FR Doc. 83-24075 Filed 9-1-83; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 145

[Docket No. 78P-0429]

Canned Pineapple; Amendment of Standard of Identity

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the definition of the style "chunks" in the standard of identity for canned pineapple to exclude the style "large cubes." This action will promote honesty and fair dealing in the interest of consumers.

DATES: Effective July 1, 1985, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date. Voluntary compliance may begin November 1, 1983. Objections by October 3, 1983.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Leo Kauffman, Bureau of Foods (HFF-214), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-245-1164.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1982 (47 FR 55496), FDA published a proposal to amend the U.S. standard of identity for canned pineapple (21 CFR 145.180(a)) to make the style designated as "large cubes" mutually exclusive of the style designated as "chunks" by revising the definition for chunks in § 145.180(a)(2)(vii) to state that the "chunks" style does not include "large cubes." Interested persons were given until February 8, 1983, to comment on the proposal. No comments were received in response to the proposal. Therefore, the agency is issuing the proposed rule as a final rule with no changes.

List of Subjects in 21 CFR Part 145

Canned fruits, Food standards, Fruits.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10), Part 145 is amended in § 145.180 by revising paragraph (a)(2)(vii), to read as follows:

PART 145—CANNED FRUITS

§ 145.180 Canned pineapple.

(a) * * *

(2) * * *

(vii) *Chunks*—consisting of short, thick pieces cut from thick slices and/or from peeled cored pineapple and predominantly more than 13 millimeters (0.51 inch) in both thickness and width, and less than 38 millimeters (1.5 inches) in length and does not include large cubes.

* * * * *

Any person who will be adversely affected by the foregoing regulation may at any time on or before October 3, 1983, submit to the Dockets Management Branch (address above) written objections thereto and may make a written request for a public hearing on the stated objections. Each objection shall be separately numbered and each numbered objection shall specify with particularity the provision of the regulation to which objection is made. Each numbered objection on which a hearing is requested shall specifically so state; failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held; failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this regulation. Received objections may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Effective date. Except as to any provisions that may be stayed by the filing of proper objections, compliance with this final regulation, including any required labeling changes, may begin November 1, 1983, and all affected products initially introduced or initially delivered for introduction into interstate commerce on or after July 1, 1985, shall fully comply. Notice of the filing of objections or lack thereof will be published in the **Federal Register**.

(Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)))

Dated: August 29, 1983.

William R. Clark,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-24105 Filed 9-1-83; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286g

[DAVA Manual 5400.11]

Defense Audiovisual Agency Implementation of the Privacy Act of 1974

AGENCY: Defense Audiovisual Agency (DAVA), DoD.

ACTION: Final rule.

SUMMARY: The Defense Audiovisual Agency has been chartered as a Component of the Department of Defense with a primary mission of providing centrally managed production, acquisition, distribution and depository support and services for selected audiovisual products for all Department of Defense Components. This rule implements Part 286a of Title 32, CFR (DoD Directive 5400.11) "The Defense Privacy Program." Previously DAVA operated under the Privacy Act rules for the Office of the Secretary of Defense, Part 286b of Title 32, CFR (OSD Administrative Instruction 81).

DATE: Effective September 2, 1983.

ADDRESSES: Submit any comments or recommendations to the Director, Defense Audiovisual Agency, HQ DAVA–D, Norton AFB, CA 92409.

FOR FURTHER INFORMATION CONTACT: Mr. Randy Gulley, Administrative Services Division (HQ DAVA–RAP), Directorate for Administration, HQ Defense Audiovisual Agency, Norton AFB, CA 92409. Telephone: 714/382–2096.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286g

Privacy Act.

Accordingly, a new Part 286g is added to Title 32, CFR, to read as follows:

PART 286g—DEFENSE AUDIOVISUAL AGENCY IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Authority: 5 U.S.C. 552a.

§ 286g.1 Authority.

Pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the following rules of procedures are established with respect to access and amendment of records maintained by the Defense Audiovisual Agency (DAVA) by the individual subjects of the records. These procedures do not apply to current or former DAVA employees who request access to records pertaining to themselves through normal DAVA channels or by writing the Director, Defense Audiovisual Agency, HQ DAVA–D, Norton AFB, CA 92409.

§ 286g.2 Purpose.

(a) To promulgate rules providing procedures by which individuals may exercise their rights granted by the Act to: (1) Determine whether a DAVA system of records contains a record pertaining to themselves; (2) be granted access to all or portions thereof; (3) request administrative correction or amendment of such records; (4) request an accounting of disclosures from such records; (5) appeal any adverse determination for access or correction/amendment of records.

(b) To identify records subject to the provisions of these rules.

(c) To specify these systems of records for which the Director, Defense Audiovisual Agency, HQ DAVA–D, claims an exemption.

§ 286g.3 Definitions.

(a) All terms used in this part which are defined in 5 U.S.C. 552a shall have the same meaning herein.

(b) As used in this part, the term "agency" means the Defense Audiovisual Agency.

§ 286g.4 Information and procedures for requesting information.

(a) The following is a list of all systems of records maintained by DAVA.

Number	Title
102-01	DAVA Office General Personnel Files.
102-03	DAVA Office Personnel Locator Files.
102-10	DAVA Temporary Duty Travel Files.
205-03	DAVA Organizational History Files.
209-01	DAVA Privacy Act Case Files, FOIA Requests and Mandatory Declassification Review Files.
402-03	DAVA High-Level Inquiries Correspondence Files.
403-09	DAVA Biography Files.
501-03	DAVA Security Files.
609-03	DAVA Expert and Consultant Data Files.
613-02	DAVA Appeal and Grievance Files.

(b) Individuals should submit inquiries regarding all DAVA files by mail to: Headquarters Defense Audiovisual Agency, HQ DAVA–RAH, Norton AFB, CA 92409, or to the Activity Chief of the DAVA Activity (see list below) thought to maintain the record in question. Inquiries in person may be made Monday through Friday from 9:00 a.m. to 3:00 p.m. at the Headquarters or the DAVA Activities. All personal visits will require proper identification.

(c) DAVA Activities Address List:

(1) Defense Audiovisual Agency—Norton Activity, Norton AFB, CA 92409

(2) Defense Audiovisual Agency—Tobyhanna Activity, Tobyhanna, PA 18466

(3) Defense Audiovisual Agency—Washington, Activity, Bldg. 219, Washington Navy Yard, Washington, D.C. 20374

§ 286g.5 Requirements of identification.

Only upon proper identification will any individual be granted access to records which pertain to him/her. Identification is required both for accurate record identification and to avoid disclosing records to unauthorized individuals. Requesters must provide their full name; maiden name or alias, if appropriate; date and place of birth; and Social Security Number. Where requests are made by mail, the requester's signature must be notarized. Inclusion of telephone number for the requester is recommended to expedite certain matters. Requesters applying in person must provide an identification with photograph such as a driver's license, military identification card, building pass, etc.

§ 286g.6 Access by subject individuals.

(a) No individual will be allowed access to any information compiled or maintained in reasonable anticipation of civil or criminal actions or proceedings, or otherwise exempt under § 286g.14 below. Requests for pending investigations will be held in abeyance until completion of the investigation and all completion of the subsequent civil or criminal proceedings or actions.

(b) Any individual may authorize DAVA to provide a copy of his/her records to a third party. This authorization must be in writing and should be provided DAVA with the initial request.

§ 286g.7 Fees.

Requesters will be charged only for the reproduction of requested documents and postal charges, if applicable. Normally there will be no

charge for the first copy of a record provided to any individual. Thereafter, fees will be computed as set forth in appropriate DoD directives and regulations.

§ 286g.8 Request for correction or amendment.

(a) Requests to correct or amend a file shall be addressed to the system manager of the file. The request must reasonably describe the record to be amended, the items to be changed as specifically as possible, the type of amendment (e.g., deletion, correction, amendment), and the reason for amendment. Reasons should address at least one of the following categories: Accuracy, relevance, timeliness, completeness, fairness. The request should also include appropriate evidence which provides a basis for evaluating the request. Normally, all documents submitted, to include court orders, should be certified.

(b) Requirements of identification as outlined in section 5 apply to requests to correct or amend a file.

(c) Incomplete requests will not be honored, but the requester will be contacted for the additional information needed to process the request.

(d) The alteration of evidence presented to courts, boards, and other official proceedings is not permitted by this section.

§ 286g.9 DAVA review of request for amendment.

(a) A written acknowledgment of the receipt of a request for amendment of a record will be provided to the requester within 10 working days, unless final action regarding approval or denial will constitute acknowledgment.

(b) Where there is a determination to grant all or a portion of a request to amend a record, the record shall be promptly amended and the requesting individual notified. Individuals, agencies, or components shown by accounting records to have received copies of the record, or to whom disclosure has been made, will be notified of the amendment by the responsible DAVA official. Where a DoD recipient of an investigative record cannot be located, the notification will be sent to the personnel security element of the component to which the file was furnished.

(c) Where there is a determination to deny all or a portion of a request to amend a record, DAVA will promptly advise the requesting individual of the specifics of the refusal and the reasons and inform the individual the he/she may request a review of the denial(s) from the Director, DAVA, within 45 days of the denial.

§ 286g.10 Appeal of initial amendment decision.

(a) All appeals of an initial amendment decision should be addressed to the Director, Defense Audiovisual Agency, HQ DAVA–D, Norton AFB, CA 92409. The appeal should be concise and should specify the reasons the requester feels that the initial amendment action by DAVA was not satisfactory. Upon receipt of the appeal, the Director, DAVA, will review the request and make a determination to approve or deny the appeal.

(b) If the Director, DAVA, decides to amend the record, the requester, and all previous recipients of the disputed information, will be notified of the amendment. If the appeal is denied, DAVA will notify the requester of the reason for the denial, of the requester's right to file a statement of dispute disagreeing with the denial, that such statement of dispute will be retained in the file, that the statement will be provided to all future users of the file, and that the requester may file suit in a Federal District Court to contest the decision not to amend the record.

(c) The DAVA will respond to all appeals within 30 working days or will notify the requester of an estimated date of completion, if the 30-day limit cannot be met.

§ 286g.11 Disclosures of DAVA records to other than the subject.

(a) No record containing personally indentifiable information within a DAVA system of records shall be disclosed by any means to any person or agency outside the Department of Defense, except with the written consent of the individual subject of the record or as provided for in the Act and DoD Directive 5400.11.

(b) Disclosures that may be made without the request or consent of the individual are enumerated at 5 U.S.C. 552a(b) and in DoD Directive 5400.11.

§ 286g.12 Penalties.

(a) An individual may bring a civil action against the DAVA to correct or amend the record, where there is a refusal to comply with an individual request or failure to maintain any record with accuracy, relevance, timeliness, and completeness, so as to guarantee fairness, or where there is failure to comply with any other provison of the Privacy Act. The court may order correction or amendment of records. The court may enjoin the DAVA from withholding the records and order the distribution of the record.

(b) Where it is determined that the action was willful or intentional with respect to 5 U.S.C. 552a(g)(1) (C) or (D), the United States shall be liable for the actual damages sustained, but in no case less than the sum of $1,000 and the costs of the action with attorney fees.

(c) Criminal penalties may be imposed against an officer or employee of the DAVA who discloses material, who knows it is prohibited from disclosure or who willfully maintains a system of records without compliance with the notice requirements.

(d) Criminal penalties may be imposed against any person who knowingly and willfully requests or obtains any records concerning another individual from an agency under false pretenses.

(e) All of these offenses are misdemeanors with a fine not to exceed $5,000.

§ 286g.13 Referral of records.

A DAVA system of records may contain records which originated with other DoD Components or Federal Agencies who may have claimed exemptions for them under the Privacy Act of 1974. When any action is initiated on a portion of records which may be exempt, consultation with the originating agency or component will be effected and, where appropriate, such records will be referred to that component or agency for action.

§ 286g.14 General exemptions.

All systems of records maintained by the DAVA shall be exempt from the requirements of 5 U.S.C. 552a(d) pursuant to 5 U.S.C. 552a(k)(1) to the extent that such systems contain any information properly classified under Executive Order 11652, 3 CFR Part 339, and which is required by the said Executive Order to be kept secret in the interest of national defense or foreign policy. This exemption, which may be applicable to parts of all systems of records, is necessary because certain record systems not otherwise specifically designated for exemptions herein may contain isolated items of information which have been properly classified.

August 30, 1983.

M. S. Healy,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 83-23179 Filed 9-1-83; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

32 CFR Part 634

Motor Vehicles Traffic Supervision; Drunk Drivers and Driving

AGENCY: Deputy Chief of Staff for Personnel, Department of the Army, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Army proposes to revise its regulation for dealing with all drunk drivers on US Army installations, and active duty Army personnel charged with drunk driving either on or off Army installations. The change is necessary to provide guidance to commanders in implementing the revised policy. Drunk driving is incompatible with the maintenance to high standards of performance, military discipline, and readiness, and is a serious threat to the health and welfare of the Army community. Army commanders are required to ensure that all intoxicated drivers are removed from the roads of Army installations as quickly as possible, that active duty Army personnel are also discouraged from driving under the influence of alcohol or other drugs on public roads, and that appropriate sanctions against drunk drivers are expeditiously applied. These revised regulations are intended to effectively reduce the incidence of drunk driving on Army installations, and among active duty Army military personnel wherever they drive.

DATE: September 2, 1983.

ADDRESS: Send written comments to HQDA (DAPE–HRE), Washington, DC 20310.

FOR FURTHER INFORMATION CONTACT: Sergeant Major Ronald A. Tate, (202) 756–1896.

SUPPLEMENTARY INFORMATION: On June 21, 1983, the Department of the Army (DA) issued for public comment proposals to revise its regulation for dealing with all drunk drivers on U.S. Army installations, and active duty Army personnel charged with drunk driving either on or off Army installations.

Four public comments concerning the proposed rule were received. The proposed rule is being adopted in substantially the same form as proposed, with modifications reflecting the public comments that do not conflict with the intent of the rule, which is to: (1) Expeditiously remove intoxicated drivers from the roads of Army installations; (2) discourage active duty Army personnel from driving on public roads while under the influence of alcohol or other drugs; and (3) expeditiously apply appropriate sanctions against drunk drivers.

This final revision incorporates amendments that: (1) Make provisions for limited driving privileges for DA civilian employees, who work on post, who would be constructively removed from employment by a total suspension or revocation of installation driving privileges; (2) provides that notices of installation driving privilege suspension for DA civilian employees will include notice of the right to have a personnel representative present at the administrative hearing in accordance with applicable laws and regulations; and (3) reminds Army installation commanders that, under provisions of 32 CFR 210, Enforcement of State Traffic Laws on DoD Installations (December 1, 1981), all non-criminal state traffic laws are expressly adopted and make applicable to those military installations having exclusive or concurrent Federal legislative jurisdiction.

This regulation is not significant under requirements of Executive Order 12291, and a regulatory analysis is not required. The Department of the Army has also determined as required by the Regulatory Flexibility Act (Pub. L. 96–354) that the proposed rule poses no burden upon small entities.

List of Subjects in 32 CFR Part 634

Transportation, Traffic regulations, Motor vehicles, Alcohol and alcoholic beverages.

John O. Roach, II,

DA Liaison Officer with the Federal Register.

Part 634 is added to 32 CFR to read as follows:

PART 634—MOTOR VEHICLE TRAFFIC SUPERVISION

Sec.

Authority: 10 U.S.C. 3012(g); 5 U.S.C. 2951; Pub. L. 89–564; 89–670; 91–605; 93–87.

§ 634.1 General.

(a) *Purpose.* This regulation establishes policy, responsibilities, and procedures for motor vehicle traffic supervision, which includes but is not limited to the following: granting, suspending, or revoking the privilege to operate a privately owned motor vehicle on a military installation or in oversea areas where traffic operations are under military supervision; registration of motor vehicles with a military installation or department; administration of vehicle registration and driver performance records, to include driver improvement, police traffic supervision and off-installation traffic activities.

(b) *Applicability.* (1) The provisions of this regulation are applicable to individuals serving in, or employed by, the military services and the Defense Logistics Agency, and all other individuals subject to the motor vehicle registration and driver records requirements set forth in § 634.3 of this part.

(2) The terms "installation" and "installation commander," used throughout this regulation apply equally to overseas "commands" and "major oversea commanders" responsible for command motor vehicle traffic supervision programs. Commanders in oversea areas are authorized to modify policies and procedures when dictated by host-nation relationships, treaties or agreements.

(c) *General policy.* (1) The principal objective in supervising motor vehicle traffic is to assure safe and efficient movement of vehicles, material, and personnel to destinations over streets and highways. Programs and procedures will be based on National Highway Safety Program Standards (NHSPS) promulgated under the National Highway Safety Act of 1966, as amended. Subjects addressed by NHSPS and considered applicable to the military services and Defense logistics agency motor vehicle traffic supervision programs include periodic motor vehicle inspections, motorcycle and pedestrian safety, driver education, traffic codes, alcohol in relation to highway safety identification and surveillance of accident locations, traffic engineering services, police traffic services and records, and accident investigation and reporting.

(2) The goal of motor vehicle traffic supervision is to reduce traffic accidents and deaths, injuries, and property damage resulting therefrom. Traffic accidents are caused and, as such, are preventable. Motor vehicle accidents, as caused occurrences, will be examined through an assessment of the roadway and environment, the operator, the vehicle, and supervision and control

measures employed. To be fully effective, motor vehicle traffic supervision programs require total coordination and integration of installation education, engineering, and enforcement capabilities and resources.

(d) Intoxicated driving is incompatible with the maintenance of high standards of performance, military discipline, and readiness, and is a serious threat to the health and welfare of the Army community. Army commanders will insure that intoxicated drivers are removed from the roads as quickly as possible and that appropriate sanctions are expeditiously applied.

(e) *Responsibilities, Departmental.* The Deputy Chief of Staff for Personnel, DA and designated officers of the Departments of Navy and Air Force, the Marine Corps, and the Defense Supply Agency, exercise staff supervision over policy programs for motor vehicle traffic supervision applicable to their respective services or agencies and will:

(i) Develop standardized policies and procedures.

(ii) Coordinate and maintain liaison with interested staff agencies and other military departments in matters pertaining to motor vehicle traffic supervision including the establishment of working groups and committees.

(iii) Coordinate and maintain liaison with appropriate departmental safety personnel in matters pertaining to motor vehicle traffic safety and accident reporting systems.

(iv) Coordinate with national, regional, and State traffic officials and agencies, including active participation in conferences and workshops sponsored by government or private groups at the national level.

(v) Assist in the organization and monitoring of police traffic supervision training within their respective Departments.

(vi) Coordinate and maintain liaison with the Department of Transportation and other Federal departments and agencies regarding Federal Traffic Safety standards and programs which are applicable to the military services' traffic supervision programs.

(2) *Major commanders.* Major commanders of the Army, Navy, Air Force, and Marine Corps will:

(i) Manage motor vehicle traffic supervision within their commands to insure maximum compliance with the objectives of this regulation to improve the service-wide traffic safety performance of vehicle operators.

(ii) Cooperate with and support programs of State and regional highway traffic safety organizations.

(iii) Coordinate regional motor vehicle traffic supervision activities with other major military commanders within assigned geographic areas of responsibility.

(iv) Encourage establishment of agreements between installation and host-states for reciprocal reporting of moving violations and suspension and revocation of driving privileges.

(3) *Installation or activity commanders.* Installation or activity commanders will:

(i) Establish an effective motor vehicle traffic supervision program in accordance with this regulation.

(ii) Cooperate with civil police agencies and other local governmental agencies or civil traffic organizations concerned with motor vehicle traffic supervision.

(iii) Insure that all matters pertaining to motor vehicle traffic supervision are properly related to the overall installation traffic safety program.

(iv) Where possible, actively support and participate in Alcohol Safety Action Projects (ASAP) in neighboring civil communities.

(4) *Law enforcement officer.* The installation or activity law enforcement officer, while sharing the responsibility for a balanced traffic program with other staff agencies, is the officer charged with overall staff responsibility for motor vehicle traffic supervision.

(5) *Safety officer.* Within the mission, scope, and responsibility for the installation safety program, safety personnel will participate in all activities relating to the prevention of motor vehicle traffic accidents.

(6) *Facilities engineer or engineer officer (Public Works Officer at Navy installations).* The facilities engineer or engineer officer is responsible for performing that phase of engineering which is concerned with the planning, construction, and maintenance of streets, highways, and abutting lands. Additionally, he is responsibile for the procurement, construction, installation and maintenance of permanent traffic control devices for control of traffic flow and parking in coordination with the law enforcement officer. Traffic signs, signals, and pavement markings will conform to the standards established in the current Manual on Uniform Traffic Control Devices for Streets and Highways. Planning, design, construction and maintenance of streets and highways should conform to the NHSPS standards on highway design, construction, and maintenance, wherever practicable.

(7) *Traffic engineer.* The traffic engineer is responsible for conducting formal traffic engineering studies and applying traffic engineering measures and techniques, including the use of traffic control devices, to reduce the number and severity of traffic accidents. When an installation traffic engineer is not available, traffic engineering services may be requested through appropriate channels from the Commander, MTMC (§ 634.4(3)).

(8) *Alcohol and drug control officer.* The alcohol and drug control officer for Army installations, and comparable officers of other services, are responsible for providing appropriate alcohol education/treatment and/or rehabilitation services to personnel identified as having alcohol and/or drug abuse problems.

§ 634.2 Driving privileges.

(a) *Policy.* The operation of a privately owned motor vehicle on a military installation constitutes a conditional privilege extended by the installation commander. Individuals desiring the privilege will meet the following sustaining conditions:

(1) Comply with laws and regulations governing motor vehicle operation on the installation.

(2) Comply with the requirements for installation registration (§ 634.3).

(3) Possess while operating a motor vehicle and produce on demand of enforcement personnel:

(i) Proof of vehicle ownership or State registration.

(ii) A valid State driver's license.

(iii) A valid record of motor vehicle safety inspection, if required.

(4) Military personnel agree to attend remedial driver training or participate in alcohol/drug treatment or rehabilitation programs as determined by the installation commander. Civilian personnel and dependents may participate in such programs on a voluntary basis.

(5) Any person granted the privilege of operating a motor vehicle on a military installation shall be deemed to have given his or her consent to a chemical test of his or her blood, breath or urine for the purpose of determining the alcoholic content of his or her blood if lawfully stopped, apprehended, or cited for any offense allegedly committed while driving or in actual physical control of a motor vehicle on the installation under the influence of intoxicating liquor. The test shall be incidental to a lawful traffic stop, apprehension, or citation and administered at the direction of the installation law enforcement official having reasonable cause to believe such person was driving or in actual physical control of a motor vehicle upon the installation while under the influence of intoxicating liquor. Any person who is

dead, unconscious, or otherwise in a condition rendering him or her incapable of refusal shall be deemed not to have withdrawn consent and such tests may be administered whether or not such person is told that failure to submit to or complete the test will result in the suspension of the privilege to operate a motor vehicle. (See procedures for invoking implied consent in § 634.4(3)(iii) of this part.

(b) *Suspension and revocation.* The privilege of driving privately owned motor vehicles on military installations is subject to either administrative suspension or revocation for cause by an installation commander or his designated representative. Suspension and revocation actions based on commission of serious moving traffic violations and/or point assessment for other moving violations are covered in § 634.6 of this part. The termination of installation registration is inherent to revocation actions and individuals must make application for re-registration in accordance with § 634.3 of this part after the expiration of the specified period.

(1) *Suspension.* (i) The suspension of the driving privilege for a period not to exceed six months normally is applied to individuals when other measures such as counselling, remedial driver training or rehabilitation programs have failed to produce the desired driver performance. Driving privileges also may be suspended whenever an individual subject to this regulation consistently (as determined by the installation commander) violates installation traffic regulations.

(ii) Immediate suspension pending resolution of drunk driving charges is authorized for Army personnel and their dependents, DA civilian employees, and others with installation driving privileges, regardless of the geographic location of a drunk driving incident. Suspension is authorized for other civilian persons only with respect to incidents occurring on the installation or in areas subject to military traffic supervision. After a review of available evidence § 634.2(b)(4)(i) personnel will immediately have their installation driving privileges suspended pending resolution of drunk driving charges brought in the following circumstances (in such cases, personnel may request a hearing per § 634.2(b)(4) this regulation; however, driving privileges will remain suspended pending a determination at the hearing):

(A) Lawful apprehension for drunk driving.

(B) Refusal to take or complete a lawfully requested chemical test for blood alcohol content.

(C) Driving or being in physical control of a motor vehicle on post when blood alcohol content is 0.10 percent or higher, irrespective of other charges; or off post when blood alcohol content exceeds the applicable state standard, irrespective of other charges.

(2) Revocation.

(i) The revocation of installation driving privileges is a severe administrative measure to be exercised for serious moving violations or when other available corrective actions fail to produce the desired driver improvement. Revocation of the driving privilege will be for a specific period, but never less than six months.

(ii) Driving privileges are subject to revocation when an individual fails to comply with any of the conditions requisite to the granting of the privilege (see § 634.2(a) of this section).

(iii) Driving privileges will be revoked for a mandatory period of one year in the following circumstances:

(A) When the installation commander or designee has determined that the person lawfully apprehended for driving while intoxicated/drunk driving refused to submit to or complete a test to measure blood alcohol content required by the law of the jurisdiction, this regulation, or installation traffic code.

(B) When there has been a conviction, nonjudicial punishment, or an administrative determination in civilian channels (for example, suspension or revocation of driver's license) for drunk driving. Appropriate official documentation of such conviction, etc., is required as the basis for revocation.

(iv) When temporary suspensions under § 634.2(b)(1)(ii) of this section are followed by revocations, the period of revocation is computed beginning from the date the original suspension was imposed, exclusive of any period during which full driving privileges may have been restored pending resolution of charges. (Example: Privileges were initially suspended on 1 January 1983 for a charge of drunk driving with a blood alcohol content of 0.14 percent. A hearing was held, extreme family hardship was substantiated, and privileges were restored on 1 February pending resolution of the charge. On 1 March there was a conviction for drunk driving. The mandatory one-year revocation period will consist of January 1983 plus March 1983 through January 1984, for a total of twelve months with no installation driving privileges.)

(v) Administrative revocation for a period of no less than five years will be imposed against persons apprehended while driving on the installation while a suspension or revocation of their driving privileges and/or drivers license is in effect. In addition to this administrative action, separate action may also be initiated on the basis of any traffic offense committed.

(vi) For each subsequent determination within a five-year period that revocation is authorized under § 634.2(b)(2)(iii), the offender will be prohibited from obtaining or using a US Government Motor Vehicle Operator's Identification Card (SF 46) for a minimum of six months. This does not preclude a commander from imposing such prohibition for a first offense, or for a longer period of time for a first or subsequent offense, or for such other reasons as may be appropriate.

(3) *Restricted privileges.* (i) Requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges will be referred to one of the following officials for determination:

(A) General Court-Martial Convening Authority will act upon all requests for restricted driving privileges subsequent to suspension or revocation of installation driving privileges for apprehension or conviction for drunk driving/driving while intoxicated.

(B) Installation commanders will act upon other cases.

(ii) The appropriate authority may consider and grant requests for restricted driving privileges or probation to preclude adverse military mission impact, severe family hardship, or detrimental effect on ongoing or contemplated alcohol or drug treatment and rehabilitation programs involving the affected individual. Probation or restricted driving privileges will not be given to any person whose drivers license is under suspension or revocation by a state, Federal, or host country civil court or administrative agency.

(iii) The limitations of the restricted driving privilege (for example, authorization to drive to and from place of employment of duty, and/or selected installation facilities such as hospital, commissary, etc., within specified time periods) and conditions of the probation will be specified in writing and provided the individual concerned. Persons detected in violation of the restricted privilege or probation are subject to revocation action as prescribed in § 634.2(b)(2)(v) of this section. The appropriate authority may reinstate the original period of suspension or revocation for cause (for example, driver at fault in a traffic accident, or driver cited for a moving traffic violation).

(4) *Administrative due process.* Individual Services may promulgate separate regulations establishing administrative due process procedures. The following procedures apply to actions under this paragraph taken by Army commanders with respect to Army personnel and family members, and civilian personnel operating motor vehicles on Army installations.

(i) Prior to suspension actions under § 634.2(b)(1)(iii) of this section, the best evidence readily available will be presented promptly to an individual designated by the installation commander for review and authorization for immediate suspension of installation driving privileges. The reviewer should be an officer outside the installation law enforcement agency. Best readily available evidence includes material such as sworn witness statements, military or civilian police report of apprehension, chemical test results if completed, refusal to consent to chemical testing, video tapes, statements by the apprehended individual, field sobriety or preliminary breath test results, and/or other pertinent evidence. Reviews normally will be accomplished within twelve hours after assembly of evidence. When detailed and reliable evidence is not available, immediate suspension should not be authorized. For example, suspensions for off-post offenses should not be based on published lists of arrested persons, statements by parties not witnessing the apprehension, telephone conversations, or other information not supported by documented and reliable evidence. Installation commanders may authorize the Provost Marshal to conduct reviews and authorize suspension in cases where the designated reviewer is not reasonably available and, in the judgment of the Provost Marshal, such immediate action is warranted. Review by the designated officer will follow as soon as practicable in such cases. When a suspension notice is based on the Provost Marshal's review, there is no requirement for confirmation notice following subsequent review by the designated officer.

(A) For active duty military personnel, written notice of suspension will be provided without delay to the individual's unit chain of command for immediate presentation to the individual.

(B) For civilian personnel, written notice of suspension will normally be provided without delay via registered mail. If the person is employed on the installation, such notice may be forwarded through the military or civilian supervisor. When the notice of suspension is forwarded through the supervisor, the person whose privileges are suspended should be required to provide written acknowledgement of receipt of the suspension notice.

(ii) Notices of suspension will include the following:

(A) The fact that the suspension can be made a revocation under § 634.2(b)(2)(iii) of this section.

(B) The right to request, in writing, a hearing before the installation commander or designee to determine if post driving privileges will be restored pending resolution of the charge; and that such request must be made within five working days of the notice of suspension.

(C) The right of DA civilian employees to have a personal representative present at the administrative hearing in accordance with applicable laws and regulations.

(iii) If a hearing is requested, it must take place within ten working days of receipt of the request. The suspension will remain in effect until a decision has been made by the installation commander or designee, but will not exceed seven working days after the hearing while awaiting the decision. If there is no decision by that time, full driving privileges will be restored until such time as the accused is notified of a decision to continue the suspension.

(iv) Hearing on suspension actions under § 634.2(b) of this section pending resolution of charges will only cover the pertinent issue(s) of whether—

(A) The law enforcement official had reasonable grounds to believe the person was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;

(B) The apprehension was lawful;

(C) The person was lawfully requested to submit to a blood alcohol content test, and had been informed of the consequences of refusal of such test (unless incapable of refusing, as described in § 634.2(a)(5)).

(D) The person refused to submit to the blood alcohol content test, or failed to complete the test, or submitted to the test and the result was 0.10 percent or higher blood alcohol content for an on-post apprehension, or in violation of state laws for an off-post apprehension;

(E) The testing method used was valid and reliable, and the results accurately evaluated;

(v) For offenses other than those described in §§ 634.2(b)(1)(ii) and 634.2(b)(1)(iii) of this section suspension or revocation of the installation driving privilege will not become effective until the installation commander or designee notifies the affected person and offers the person an administrative hearing. Suspension or revocation will take place seven days after this written notice is received unless an application for a hearing is made by the affected person within this period. Such application will stay the pending suspension or revocation for a period of seven days. If, due to action by the Government, a hearing is not held within seven days, the suspension shall not take place until such time as the person is granted a hearing and is notified of the action of the installation commander or designee. However, if the affected person requests that the hearing be continued to a date beyond the seven-day period, the suspension or revocation shall become effective immediately on receipt of notice that request for continuance has been granted.

(A) If it is determined as the result of a hearing to suspend or revoke the affected person's driving privilege, the suspension or revocation will become effective immediately upon receipt of the written notification of such action. An individual whose driving privilege is suspended or revoked will have the right to appeal or request consideration per (B) below.

(B) If the revocation or suspension is imposed after such hearing, the person whose driving privilege has been suspended or revoked will have the right to appeal or request reconsideration. Such requests must be forwarded through channels to the installation commander within ten working days from the date the individual is notified of the suspension or revocation action or the result of the administrative hearing. The suspension or revocation will remain in effect pending a final ruling on the request. Requests for restricted privileges will be approved per § 634.2(b)(3) of this section.

(vi) For revocation actions under § 634.2(b)(2)(iii) of this section, the revocation is mandatory upon conviction or other finding that confirms the charge. Such revocations are effective upon receipt of written notice by the individual concerned, and cancel any full or restricted driving privileges that may have been restored pending resolution of charges. Requests for restoration of full driving privileges are not authorized. Requests for restricted driving privileges or probation will be expeditiously acted upon. Approval authority is the General Court-Martial Convening Authority (§ 634.2(b)(3) of this section).

(5) Restoration of Driving Privileges Upon Acquittal. The suspension or revocation of driving privileges will be vacated upon acquittal of drunk driving charges (or other determination which sets aside a finding of "guilty"), or a determination by appropriate officials not to prosecute the charge. In such cases, the affected person must make application for re-registration per § 634.2(a) and 634.3. Acquittal of drunk driving charges will not result in vacation of any suspension or revocation of driving privileges when such action was based on either:

(i) The persons refusal to submit to or complete a lawfully requested test to measure blood alcohol content, after being informed of the consequences of refusal of such test (unless incapable of refusing, as described in § 634.2(b)(5) of this section; or,

(ii) The person driving or being in physical control of a motor vehicle while a suspension or revocation was in effect under §§ 634.2(b)(1)(ii) or 634.2(b)(2)(iii) of this section.

(c) *Reciprocal States—military action.* The military services recognize the primacy of the States in matters pertaining to privately owned motor vehicle administration and driver licensing. In support of these activities and the National Highway Safety Program Standards, the following procedures will be followed at installation/command level:

(1) If statutory authority exists within the host-State for reciprocal suspension and revocation of driving privileges, installation and oversea commanders are authorized and encouraged to enter into agreements with State driver licensing authorities for reciprocal reporting of all moving violations and infractions of motor vehicle laws and regulations for which the driver has been penalized. On receipt of written notification, the receiving party may assess traffic points against individual driving records, and/or suspend or revoke driving privileges to the extent such actions could have been taken if the violation or incident had occurred within the receiving party's respective jurisdiction. (See § 634.6(c)(4) of this section for assessment of traffic points or suspension and revocation of driving privileges by State driver licensing authorities.)

(2) If statutory authority does not exist within the host-State for formal State-military reciprocity:

(i) Commanders will take appropriate action on reports of moving traffic violations, suspensions, or revocations received from State authorities. When State authority suspends or revokes an individual's drivers license, the installation or command driving privilege is automatically terminated. Administrative actions (suspension, revocation and point assessments) for moving traffic violations committed off the installation should not be less than that required for similar offenses if committed on the installation. The installation or oversea commander, when notified of State action, may also suspend or revoke the individual's U.S. Government Motor Vehicle Operator's Identification Card (SF 46). In all cases, however, authorization to drive a Government vehicle will be restricted to the limits of the installation.

(ii) When an individual's installation or command driving privilege is revoked through action initiated by military authority, commanders will transmit such information to the appropriate State licensing authority for their information and action in accordance with the laws applicable to that jurisdiction. Actions reported will include withdrawals of driving privileges because of physical or mental disqualifications, as recommended by a physician. Information furnished to the State will include a complete basis for action. Reporting action may be deferred on those persons who voluntarily submit to approved medical treatment programs for drug abuse or problem drinking, provided close supervision of the individual's activities, including safe operation of a motor vehicle, is prudently exercised.

(d) *Remedial driver training.* (Air Force activities will comply with AFR 50-24; Navy with OPNAVINST 5100.12 series; Marine Corps activities with Marine Corps Order 5100.19A.)

(1) Installation commanders will establish a remedial driver training program to instruct and correct military personnel who have been identified as problem drivers. The selection of personnel to attend remedial driver's training should be based on the information entered on the individual driver's record. The course curriculum should provide, as a minimum, 10 hours of instruction designed to improve driver performance and compliance with traffic laws. Attendance at the remedial training course may be waived in cases of drivers referred to alcohol education classes at installation alcohol and drug centers.

(2) Installation commanders may hold periodic courses of instruction when the establishment of a remedial driving school on a continuing basis is impractical. In localities where civil authorities conduct remedial driver training courses, local arrangements may be made for installation personnel to attend these courses in lieu of courses conducted on military installations.

(3) Civilian personnel employed on the installation, contractor employees, and military dependents may voluntarily attend remedial driver training or similar courses. Driving privileges which have been suspended or revoked may be withheld beyond expiration of the sanction, pending completion of an approved remedial driver training course or alcohol/drug counseling programs.

TABLE 2-1—GUIDE TO ACTIONS ON DRUNK DRIVING-RELATED OFFENSES [1]

	Drunk driving	Refuse BAC test	BAC 0.10 or more [2] irrespective of other charges/convictions
A. Actions Upon Apprehension			
1. Review evidence; suspend driving privileges.	Yes	Yes	Yes, if charged with drunk driving.
2. May request hearing for privileges after suspension [3] (installation commander is approval authority; if privileges are denied, General Court Martial Convening Authority is approval authority for restricted privileges.).	Yes	Paragraphs 2-2a(2) and 2-2d(1) and (2). Yes	Yes.
3. Refer to ADAPCP (evaluation, appropriate track) [4].	Yes	Paragraphs 2-2d(3) and 2-2d(4). Yes	Yes, regardless of charges.
4. Review service record for bar to reenlistment, administrative reduction/discharge.	Yes	Paragraphs 4-5f. Yes	Yes, regardless of charges.
B. Actions Upon Conviction/Confirmation		Paragraphs 4-5h(2).	
1. Mandatory 1-year revocation of driving privileges.	Yes	Yes	No.
2. May request restricted privileges (General Court-Martial Convening Authority is approval authority).	Yes	Paragraphs 2-2b(3). Yes	N/A.
3. General officer letter of reprimand [4]	Yes	Paragraphs 2-2c(1)(a). Yes	Yes.
		Paragraphs 4-5h(1).	

NOTES:
[1] Army personnel: offenses on or off installation. Family members/civilians: on installation.
[2] BAC 0.10 or higher, or intoxication level established by other overriding standard.
[3] Hearing must be within 7 working days of receipt of request; decision must be made within 7 working days of hearing or full privileges restored.
[4] Active duty Army only.

§ 634.3 Motor vehicle registration and driver records.

(a) *General.* This chapter prescribes general policies for motor vehicle registration and maintenance of driver records which are uniform among all military departments and the Defense Supply Agency. Specific policies and procedures for registration inspection and marking of privately owned vehicles are contained in applicable separate service directives.

(b) *Policy.* (1) Motor vehicles which are owned by a person who resides, performs duty, is employed on, or frequently uses the facilities of a military installation will be registered in accordance with this regulation as modified by separate service policies.

(2) Vehicles designed exclusively for construction and material handling, vehicles used solely off the traffic way, and bicyles with fractional housepower engines will not be registered.

(3) Commanders are authorized to grant temporary registration for a period not to exceed 30 days pending permanent registration or in other circumstances when deemed appropriate.

(4) Unless security requirements dictate otherwise, valid vehicle registration and decalcomania from other installations/activities of the same service or other services and DSA will be honored at all installations/activities.

(5) Motor vehicles driven by visitors may be issued appropriate locally produced identification media.

(c) *Registration requirements.* Systems for registration of privately owned motor vehicles on military installations will include the following requirements:

(1) Evidence of vehicle ownership and certificate of State registration as may be required by the State in which the vehicle is registered.

(2) Possession of a valid State driver's license.

(3) Certification to the continuing possession of motor vehicle liability insurance in an amount not lower than the minimum limits prescribed by the financial responsibility, or the compulsory law of the State in which the installation is located.

(4) Evidence of satisfactory completion of a safety and mechanical vehicle inspection by State or jurisdiction in which the vehicle is licensed or located. If neither State nor local jurisdiction requires a periodic safety inspection, the establishment of an installation vehicle safety inspection program will be in accordance with separate service policy.

(5) Issue of decalcomania or license plates (oversea areas only) as a means of identifying registered vehicles.

(d) *Termination of registration.* (1) Installation/activity or oversea commanders, or their designated representatives, may terminate the registration or deny initial registration whenever:

(i) The owner fails to comply with the registration requirements or conditions (§ 634.3(c) of this section).

(ii) The owner sells or otherwise disposes of the vehicle, is released from active duty, is separated from the service, is transferred to a new duty station, or terminates civilian employment with a military department.

(iii) The owner is other than active military or civilian employee and discontinues regular operation of the vehicle on the installation.

(iv) The owner's State driver's license has been suspended or revoked and/or the installation driving privilege has been revoked. Termination of installation registration in connection with the suspension or revocation of the owner's State driver's license or installation driving privileges are prerogatives of the installation/activity or oversea commanders concerned. The option of continuing registration, if the effect of termination would cause undue hardships on dependents, may be exercised provided that such action does not conflict with the laws of the State in which the installation is located.

(2) Decalcomania used for the identification of registered motor vehicles will be removed when installation registration is terminated.

(3) Installation registration may be continued in those instances where the service member (sponsor) is transferred to an oversea area and the spouse or other dependents continue to reside in the geographic area contiguous to the installation.

(e) *Driver records.* (1) Applicable service forms will be used to record chargeable motor vehicle traffic accidents, moving violations, suspension or revocation actions, and/or point assessments involving military and civilian personnel and their dependents and other personnel privileged to operate motor vehicles on a military installation.

(2) Driver records will be used as an aid in identification of drivers in need of driver improvement such as counseling and remedial driver training. Records will be forwarded to the next duty station when the service member is transferred.

§ 634.4 Police traffic supervision.

(a) *General.* The safe and efficient movement of traffic on an installation is largely dependent on the effectiveness of police traffic supervision. Principal functions of a police traffic supervision program include planning, supervision and control of motor vehicle traffic, promulgation and enforcement of traffic laws and regulations, and investigation of motor vehicle accidents.

(b) *Traffic planning.* (1) Installation commanders are responsible for the development of traffic circulation plans which provide for the maximum safe and efficient use of roadways and support systems. Circulation plans should be a major consideration in all long-range master planning at installations. Traffic circulation plans are normally developed by the installation law enforcement officer in conjunction with the installation engineer and other appropriate installation and staff agencies. Coordination also must be made with highway engineering representatives of adjacent civil communities to insure that installation traffic circulation plans are compatible with the existing or future circulation plans of the civil community. Plans developed should incorporate as a minimum the following provisions:

(i) Normal and peak load routing based on traffic control studies.

(ii) Effective control over traffic by planned and coordinated traffic direction including contingency measures for special events and adverse road or weather conditions.

(iii) Point control at congested locations by qualified law enforcement personnel and designated traffic directors or traffic wardens, including volunteer trained adults as school crossing or bus guards.

(iv) Judicious use of uniform traffic control signs and devices.

(v) Maximum efficient use of available parking facilities.

(vi) Maximum efficient use of available mass transportation facilities.

(2) The acquisition of factual data pertaining to existing roadways, traffic density and flow patterns, and points of congestion are requisite to the development of sound traffic circulation plans. Data is normally obtained through various traffic control studies conducted by the installation law enforcement officer. This data when properly collected and evaluated can materially assist in determining major and minor routes, location of traffic control devices, and conditions requiring engineering and/or enforcement services.

(3) Traffic engineering services are also available through the Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) to assist installation commanders in the solution of complex on-installation highway traffic engineering problems. These services include reconnaissance traffic engineering studies of limited areas and situations and complete traffic engineering studies of traffic operations of entire installations including long-range planning for future development of installation roads, public highways, and related facilities. Request for traffic engineering services should be submitted per paragraph 5–4, AR55–80/OPNAVINST 11210.1B/AFR 75–88/MCO 11210.2C/DLAR 4500.19 (Highways for National Defense).

(c) *Traffic codes.* (1) Installation or activity commanders will establish a vehicle code applicable to the operation of motor vehicles on the installation. The code will contain a rules of the road section and will, where possible, conform to the code of the state in which the installation is located.

In addition, the development and publication of installation traffic codes will be based on:

(i) Highway Safety Program Standards outlined in AR 385–55 (see 23 CFR 1230).

(ii) Applicable portions of the "Uniform Vehicle Code" (UVC) and "Model Traffic Ordinance" (MTO) (see 23 CFR 1204) published by the National Committee on Uniform Traffic Laws and Ordinances, 555 Clark St., P.O. Box 1401, Evanston, IL 60204.

(2) In addition to provisions contained in the Highway Safety Program Standards, and the UVC and MTO, installation traffic codes will contain provisions requiring:

(i) Motorcycles to be operated on roadways with headlights on at all times.

(ii) Operators and passengers of motorcycles to wear approved protective helmets and eye protection devices.

(iii) The wearing of restraint systems by operators and passengers of US Government vehicles, when such equipment is required by law or regulation.

(iv) The wearing of restraint systems by all Army personnel (military or civilian) driving or riding in a POV on Army installations, when such equipment is required by law or regulation (this provision only applies to vehicles manufactured after model year 1966).

(3) In states where traffic law violations are state criminal offenses, such laws are made applicable, under the provisions of 18 U.S.C. 13, to military installations having concurrent or exclusive Federal legislative jurisdiction.

(4) In those states where traffic law offenses cannot be assimilated on the installation under 18 U.S.C. 13 because such traffic law violations are not criminal offenses, such state vehicular and predestrian traffic laws are expressly adopted and made applicable to the military installation under the provisions of DOD Directive 5525.4, 2 November 1981, subject: Enforcement of State Traffic Laws on DOD Installations (32 CFR Part 210). Persons found guilty of violating the vehicular and pedestrian traffic laws made applicable on the installation under provisions of that Directive are subject to a fine of not more than $50.00 or imprisonment for not more than 30 days, or both, for each violation (40 U.S.C. 318c). In those states where state traffic laws cannot be assimilated, an extract copy of this paragraph and a copy of DOD Directive 5525.4 (32 CFR Part 210) should be posted in appropriate places on the installation concerned.

(d) *Traffic law enforcement.* (1) A primary function of traffic law enforcement is to motivate drivers to operate vehicles safely within the framework of traffic laws and regulations. Effective enforcement emphasizes voluntary compliance by drivers and is achieved, in part, by the following actions:

(i) Publishing realistic regulations which can be enforced and which are made known to all affected personnel.

(ii) Utilizing capable and qualified traffic law enforcement personnel.

(iii) Adopting standard signs, markings, and signals that conform to the Manual on Uniform Traffic Control Devices for Streets and Highways.

(iv) Insuring that enforcement personnel establish courteous personal contract with drivers.

(v) Having enforcement personnel act promptly when defects in driving behavior or the equipment of road users are detected.

(vi) Employing speed measuring devices in traffic control studies and enforcement programs, where appropriate.

(vii) Maintaining an aggressive program to detect and apprehend individuals who drive while privileges are suspended or revoked.

(2) Selective and preventive enforcement practices will be employed whenever practicable. Preventive enforcement, the presence or suggested presence of law enforcement personnel at locations where violations, congestion, or accidents frequently occur, is designed to deter traffic violations and reduce accidents. Selective enforcement defines the traffic problem in terms of high frequency violation and accident locations and areas of congestion during selected time periods and applies appropriate enforcement measures to accident-causative violations and conditions. As an enforcement practice, selective enforcement permits maximum effective utilization of law enforcement resources and is therefore endorsed by the military services.

(3) *Traffic violations.* (i) Installation commanders will establish administrative procedures for processing traffic violations. Individuals committing traffic violations on military installations will be issued either an Armed Forces Traffic Ticket (DD Form 1408) or Violation Notice (DD Form 1805) as appropriate.

(A) One copy of the traffic ticket will be forwarded through command channels to the violator's commander, to the commander of the dependent's sponsor, or to a civilian supervisor or employer. Evidence of previous traffic violations committed by the offender, including points previously assessed, will be indicated.

(B) A copy of all violation reports on military personnel and civilian employees of the Government apprehended for driving under the influence of alcohol or drugs will be provided the installation alcohol and drug center.

(C) For those violations requiring a report of action taken, the traffic ticket will be returned to the office of record through such reviewing authority as may be established by the installation commander.

(D) When the report of action taken is received by the office of record, an appropriate entry will be made on the individual's driver record.

(ii) Installation commanders will determine procedures to be used in the disposition of cases involving traffic violations through administrative or judicial action consistent with the provisions of the UCMJ and Federal law. The DD Form 1805 will be used to refer violations of state traffic laws made applicable to the military reservation (Assimilative Crimes, 18 U.S.C. 13) and other violations of Federal law to the US Magistrate in accordance with separate departmental policies.

(e) *Alcohol and drug countermeasures* (1) *Program.* Installation commanders will establish an overall program patterned after the Department of Transportation Alcohol Safety Action Projects (ASAP) to minimize the

contribution of alcohol and drugs as causative factors in traffic accidents. The program should emphasize the development and coordination of appropriate countermeasures involving public information and education, enforcement, administration of justice, and rehabilitation and treatment. The program should be evaluated periodically to determine the effectiveness of each element of the overall program.

(2) *Enforcement countermeasures.* These will include as a minimum—(i) Measures for detection, apprehension and testing of personnel who are suspected of driving while under the influence of alcohol or drugs, to include employment of special patrols during periods when driving while under-the-influence violations most frequently occur.

(ii) Training of law enforcement personnel in special enforcement techniques.

(iii) Establishment of blood-alcohol concentration standards.

(iv) Denial of installation driving privileges to personnel whose use of alcohol or other drugs demonstrably jeopardizes their capacity to operate a motor vehicle safely.

(3) *Detection, apprehension and testing.* (i) Law enforcement personnel normally detect drunk driving violators by observing unusual, abnormal, or illegal driver behavior. Drivers exhibiting such behavior will be stopped immediately to determine the cause of the behavior and/or to take appropriate enforcement action. Drivers involved in traffic accidents also should be observed for evidence of sensory impairment.

(ii) When a law enforcement officer reasonably concludes that the individual driving or in control of the vehicle might be impaired, field sobriety tests should be made of that individual. The Alcoholic Influence Report, DD Form 1920, will be utilized by law enforcement agencies in examining, interpreting and recording results of such tests. Installations with existing capabilities are encouraged to use photographs, motion pictures, or video tapes to document the demonstrated condition of individuals apprehended for driving under the influence of intoxicants. If motion picture or video tape recording procedures include voice recording capability, the provisions of paragraph 3–24, AR 190–30, must be complied with.

(iii) Voluntary breath and bodily fluid testing based on implied consent.

(A) Implied consent. Under the implied consent policy set out in § 634.2(a)(e) of this Part, any individual who has been stopped, apprehended or cited on a military installation for any offense or incident related to driving a motor vehicle while under the influence of intoxicants is deemed to have given consent to chemical tests, as described in Appendix B, of his or her blood, breath, or urine for the purpose of determining its alcoholic content.

(B) *Procedures.* The law enforcement official relying on implied consent will warn the individual that failure to voluntarily submit to or complete a requested chemical test of his or her breath or bodily fluids may result in the revocation of the privilege to operate a motor vehicle on the installation. Such persons do not have the right to have an attorney present before stating whether he or she will submit to a testing, nor during the administration of the test. Installation commanders will prescribe the type or types of chemical tests which will be administered. Testing will be conducted in accordance with policies and procedures contained in Appendix B. The results of chemical tests administered under the implied consent provisions of this regulation may be used as evidence in courts-martial, nonjudicial proceedings under the UCMJ, administrative actions and civilian courts.

(C) *Refusal.* If an individual suspected of driving while intoxicated refuses the request of an individual law enforcement official to submit to a chemical test, none will be given unless the individual was involved in an accident and the procedures set forth in § 634.4(e)(3)(iv) of this section, are followed.

(iv) Involuntary bodily fluid extraction based upon a valid search and seizure authorization.

(A) Authorization requirement and procedure. An individual who does not consent to chemical testing, as described above, may nonetheless be subjected to an involuntary blood (or other bodily fluid) extraction for such testing, only in the following circumstances and only in accordance with the following procedures:

(*1*) Any individual subject to the Uniform Code of Military Justice who was driving a motor vehicle involved in an accident resulting in *death, personal injury, or property damage*, may be subjected to a nonconsensual blood (or bodily fluid) extraction to test for the presence of intoxicants only when there is a probable cause to believe that such an individual was driving or in control of a vehicle while under the influence of an intoxicant. A search authorization by an appropriate commander or a military judge obtained pursuant to Rule 315, Military Rules of Evidence (Manual for Courts-Martial, Chapter XXVII), is required prior to such nonconsensual extraction, unless there is a clear indication that evidence of intoxication will be found, and there is good reason to believe the delay which would result if an authorization were sought could result in the destruction of such evidence. Because such "warrantless" intrusions are subject to close scrutiny by the courts obtaining an authorization is highly preferable, and a "warrantless" intrusion should be conducted generally only after attempts to obtain authorization from an appropriate official prove unsuccessful due to the unavailability of a commander or judge empowered to authorize the extraction.

(*2*) The commander of a medical facility, or his or her delegate, is empowered by Rule 315(d), Military Rules of Evidence, to authorize such extraction from an individual situated in that facility at the time the authorization is sought. In most circumstances, the medical facility commander or his or her delegate authorizing the extraction under Rule 315(d) will not be on duty as the attending physician at the facility where the extraction is to be performed; however, in such cases, the actual extraction should be accomplished by other qualified medical personnel. The authorizing official may consider his or her own observations of the individual in determining probable cause. Authorization should not, however, be sought from the commander of the medical facility, or his or her delegate, unless efforts to obtain authorization from a military judge or other appropriate commander prove unsuccessful due to the unavailability of such officials.

(B) *Role of medical personnel.* Authorization for the nonconsensual extraction of blood samples for evidentiary purposes by qualified medical personnel is independent of, and not limited by, provisions defining medical care, such as the provision for nonconsensual medical care pursuant to section IV, Medical Care, Army Regulation 600–20. Extraction of blood will be accomplished by qualified medical personnel (see Mil.R.Evid. 312(g)). In performing this duty, medical personnel are expected to use only that amount of force necessary to administer the extraction. Any force necessary to overcome an individual's resistance to the extraction normally will be provided by law enforcement personnel or by personnel acting under orders from the member's unit commander. All law enforcement and medical personnel will keep in mind the possibility that the individual may require medical

attention for possible disease or injury. Nonconsensual extractions of blood will be carried out in a manner that will not interfere with or delay proper medical attention. Medical personnel will determine the priority to be given involuntary blood extractions when other medical treatment is required.

(C) The procedures outlined herein pertain only to traffic incidents. Extractions of body fluids in furtherance of other kinds of investigations are governed by Rule 312(d) of the Military Rules of Evidence and regulatory rules concerning requesting and granting authorizations for searches.

(v) Testing at the request of the apprehended person. Any person lawfully apprehended for an offense allegedly committed while he or she was driving a motor vehicle under the influence of intoxicants may request a chemical test made of his or her blood, breath, or urine for the purposes of determining the alcoholic content of his or her blood, and, if so requested, the apprehending law enforcement officer will make arrangements for the test. A person may, at his or her own expense, have a physician, or qualified technician, chemist, registered nurse, or other qualified person of his or her own choosing, administer a state approved chemical test or tests, in addition to any administered at the direction of an installation law enforcement official. The failure or inability to obtain this additional test shall not preclude the use of the results of the test or tests taken at the direction of a law enforcement official to support actions taken under the provisions of Army regulations or the UCMJ.

(vi) Initiation of revocation procedures. Regardless of whether a nonconsensual test, as authorized in § 634.4(e)(3)(iv) to this section, is authorized and conducted, when a person suspected of driving while intoxicated refuses the request to voluntarily submit to or fails to voluntarily complete a breath or bodily fluid test, the apprehending law enforcement officer will complete a sworn statement describing the events relating to the suspected offense including the refusal to submit to chemical testing (Figure 4–1). The installation commander or his or her designee, upon receipt of the apprehending law enforcement officer's sworn statement, will take action in accordance with the procedures outlined in § 634.2(b)(4) of this Part, to revoke the individual's installation driving privileges (see Table 6–1). Mandatory revocation of the installation driving privilege for refusal to voluntarily submit to or complete a chemical test shall not be a bar to initiating judicial, nonjudicial or administrative action against an individual based on other competent evidence.

(4) *Training.* (i) As a minimum, installation law enforcement personnel will be trained to:

(A) Recognize manifestations of alcohol and drug impairment in connection with motor vehicle operation.

(B) Properly execute the DD Form 1920, Alcoholic Influence Report including the performance and evaluation of appropriate behavioral tests.

(C) Be alert to the possibility that although a person may appear to be intoxicated, he may in fact be physically or mentally ill and in need of prompt medical attention.

(D) Understand the principles of operation of as well as the techniques of using chemical breath screening devices (if employed by installations).

(ii) Each installation employing chemical breath testing devices will insure that personnel selected as operators of chemical breath testing devices possess integrity, maturity and sound judgment and meet certification requirements prescribed in the highway safety program of the state in which the installation is located. Appendix C lists those states which have formal chemical breath testing training programs and have indicated that military personnel are eligible for participation in their programs. Specific information on course dates, costs, and prerequisites for attendance may be obtained by contacting the state agency responsible for the training. Installations located in states where no formal training program exists should consider training personnel at courses offered by selected civilian institutions or by commercial manufacturers of chemical breath testing equipment. Appendix D prescribes minimum course requirements for the training and certification of chemical breath testing operators for CONUS installations and oversea commands located in States/countries not having formal chemical breath training and certification programs who elect not to participate in civilian institution and manufacturers training programs.

(5) *Blood alcohol concentration standards.* (i) As a uniform basis for administrative revocation of driving privileges and/or taking enforcement action against a driver suspected of driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor, the amount of alcohol in that person's blood at the time alleged as shown by chemical analysis of his blood, urine, breath or other bodily substance shall give rise to the following presumptions:

(A) If there was at that time 0.05 percent or less by weight of alcohol in the person's blood, it shall be presumed that the person was not under the influence of intoxicating liquor.

(B) If there was at that time in excess of 0.05 percent but less than 0.10 percent by weight of alcohol in the person's blood, such fact shall not give rise to any presumption that the person was or was not under the influence of intoxicating liquor, but such fact may be considered with other competent evidence in determining whether the person was under the influence of intoxicating liquor.

(C) If there was at that time 0.10 percent or more by weight of alcohol in the person's blood, it shall be presumed that the person was under the influence of intoxicating liquor.

(ii) Percent of weight by volume of alcohol in the blood shall be based on grams of alcohol per 100 milliliters of blood.

(iii) The above standards may be modified to coincide with blood-alcohol concentration standards established by the host-State.

(iv) The adoption of these standards does not preclude the use of other competent evidence bearing on the question whether the person was under the influence of intoxicating liquor. However, use of these standards is required except for those cases in which they specifically conflict with host-country agreements or arrangements. These standards in no way change the rules of evidence in judicial or nonjudicial proceedings under the UCMJ.

(6) Alcoholics, "problem drinkers," and drug abusers. Installation medical authorities will maintain appropriate records to identify persons who are diagnosed by competent medical personnel as alcoholics, "problem drinkers," and drug abusers. Individuals who have exhibited behavior patterns indicative of the use of alcohol or drugs, to the extent which renders them incapable of safely driving a motor vehicle, will be reported to the installation commander or designated representative for appropriate action under this regulation. Active duty Army personnel apprehended for drunk driving, on or off the installation, will be referred to the local Alcohol and Drug Abuse Prevention and Control Program (ADAPCP) for evaluation within seven working days to determine if the individual is dependent on alcohol or other drugs, and for enrollment in Track

I or other appropriate track. Results of the evaluation will be made available to the commander having jurisdiction over the case prior to adjudication. For problem drinking and alcoholism among Federal civilian employees, 42 USC 4561 authorizes Federal agencies to establish preventive treatment and rehabilitation programs. Supervisors of those civilian employees apprehended for drunk driving will advise employees of ADAPCP services available. Employees apprehended for drunk driving while on duty will be referred to the ADAPCP for evaluation in accordance with AR 600–85. Commanders will ensure that sponsors encourage family members apprehended for drunk driving to seek ADAPCP evaluation and assistance. Installation driving privileges of any person who refuses to submit to chemical testing for blood-alcohol content when apprehended for drunk driving, or convicted for other offenses described in § 632.2(b)(1)(ii) of this part, will not be reinstated unless the person successfully completes either an alcohol education and treatment program sponsored by the installation, state, county, municipality, etc., or private program evaluated as accepted by the installation ADAPCP. The person must also be evaluated by installation alcohol treatment/rehabilitation authorities as sufficiently rehabilitated to no longer pose a high safety risk on the highways. Driving privileges will not be reinstated before the expiration of a mandatory revocation period except as determined by the General Court-Martial Convening Authority.

(7) *Evaluation.* A formal evaluation will be conducted of the enforcement countermeasures program at least annually. All elements of the program will be examined; however, particular attention will be given to determining effectiveness of selective enforcement measures, suspension and revocation actions and chemical breath testing programs in reducing traffic accidents and fatalities.

(8) *Actions against drunk drivers.* Army commanders will take appropriate action against drunk drivers. These actions will include:

(i) A general officer letter of reprimand, administrative in nature, will be given active duty Army personnel in the following cases. Subsequent filing of the letter will be in accordance with the provisions of AR 600–37.

(A) Conviction of driving while intoxicated/drunk driving either on or off the installation.

(B) Refusal of a lawfully requested test to measure blood alcohol content, either on or off the installation, when there is substantial evidence of drunk driving.

(C) Driving or being in physical control of a motor vehicle on post when blood alcohol content is 0.10 percent or higher, irrespective of other charges; or off post when blood alcohol content is in violation of state laws, irrespective of other charges.

(ii) Review by commanders of the service records of active duty Army personnel apprehended for offenses described in (1) above to determine if the individuals warrant:

(A) Administrative reduction per AR 600–200;

(B) Bar to reenlistment per AR 601–280;

(C) Administrative discharge per AR 635–100 or AR 635–200, Chapter 14.

(f) *Traffic accident investigation.* (1) All traffic accidents occurring on a military installation should be investigated provided adequate trained resources are available. However, installation law enforcement personnel will perform detailed on-the-scene and follow-up investigations of the following accidents:

(i) All motor vehicle accidents involving Government vehicles or property on the installation. Whenever practicable, investigations of off-installation motor vehicle accidents involving Government vehicles will be conducted in coordination with the civil police agency having primary jurisdiction.

(ii) Fatal or nonfatal personal injury or disabling property damage accidents involving privately owned vehicles on the installation.

(2) Drivers and/or owners of motor vehicles involved in accidents described in preceding paragraph will immediately notify the installation law enforcement office. Operators of Government vehicles involved in traffic accidents off installations will also notify the police of the jurisdiction in which the accident occurred.

(3) Traffic accident investigation results will be recorded on appropriate departmental forms. Release of information from these reports will be in accordance with separate departmental policies.

(4) In privately owned vehicle accidents occurring on the installation and involving only property damage, not involving Government property and where the vehicle can be normally and safely driven away from the scene, the drivers or owners of the vehicles involved may be required to submit a written report to the installation law enforcement office within 72 hours of the accident. Information contained in these reports may not be used in any criminal proceedings against individuals submitting these reports. (See chapter 10, UVC and applicable State laws concerning duties and responsibilities for reporting of traffic accidents.) Information contained in these reports may not be used in any criminal proceedings against individuals submitting these reports. Each report so submitted will include, as a minimum, the following information relating to the accident:

(i) Location.

(ii) Time.

(iii) Identification of driver(s).

(iv) Identification of pedestrian(s), passenger(s), or pedalcyclist(s).

(v) Identification of the vehicle.

(vi) Direction of travel of each unit.

(vii) Other property involved.

(viii) Environmental conditions existing at the time of the accident, i.e., weather, visibilitiy, etc.

(ix) A narrative description of the events and circumstances leading up to the time of impact and immediately after impact.

(5) Data derived from traffic accident investigation reports should be analyzed for the purpose of determining probable causes of accidents, injuries, and deaths. High accident frequency locations should be examined in terms of type of collisions occurring (collision diagram) and physical conditions at the location (condition diagram).

(6) When warranted by accident experience, installation commanders should consider establishing traffic accident review boards comprised of law enforcement, engineer, safety, and medical (behavior and social scientists) representatives to review accidents to determine principal contributing factors to motor vehicle accidents and to recommend appropriate measures to reduce the frequency and/or severity of accidents occurring both on and off the installation.

(7) Traffic accident investigation data in addition to being used to formulate selective enforcement programs should be furnished to installation safety, legal (claims), engineer and transportation offices (if government vehicle is involved) for use in information, education, and traffic engineering activities.

(g) *Parking.* (1) As a basic principle, maximum efficient use of existing on- and off-street parking facilities should be stressed on a nonreserved (first come, first served) basis. Whenever certain reserved or assigned parking requirements are objectively justified, installation commanders are encouraged to use the following priorities as guidelines:

(i) Government motor vehicles used in direct support of installation/departmental missions.

(ii) Government motor vehicles used in general support missions, e.g., couriers, postal, cargo delivery.

(iii) Privately owned vehicles of disabled/handicapped personnel.

(iv) Privately owned vehicles of patrons (including out-patients) and visitors.

(v) Privately owned vehicles of assigned personnel and employees not otherwise accommodated, with preference given to car pools as determined by weights applied to significant factors, e.g. commuting time distances, availability of public transportation and support fringe parking, number of pool members or riders, and years of Federal service of each participant. Rank or grade may influence qualification for parking by relative weight, but should not be an absolute criterion for determining eligibility.

(2) Reserved parking facilities should be designated as "parking by permit" or numerically by category of eligible parkers. Designation of parking spaces by name, grade, rank, or title will be avoided.

(3) Illegal parking significantly contributes to congestion and impedes traffic flow on an installation. Aggressive enforcement of parking restrictions results in more efficient utilization of available parking facilities and eliminates conditions which contribute to traffic accidents. (See also abandoned property procedures in DOD Directive 4160.21 and separate service regulations or manuals.)

§ 634.5 Off-installation traffic activities.

(a) *Policy.* In areas not under military control the responsibility for maintaining law and order rests with civil authority. The enforcement of traffic laws falls within the purview of this principle. Off-duty or off-installation driving performance, however, is indicative of driving ability and safety consciousness. Accordingly, a system of coordination which facilitates the exchange of information between military and civil authorities will be established. Within the framework of Armed Forces Disciplinary Control Boards (see AR 190–24/MCO 1620.2B/AFR 125–11/COMDINST 1620.1C), major commanders should consider establishment of a central clearing house to process reports of serious traffic violations and accident reports involving persons subject to this regulation which may be received from civil law enforcement agencies.

(b) *Compliance with State laws.* (1) Installation commanders will impress on service members and civilian employees the importance of complying with State and local traffic laws when operating motor vehicles within these jurisdictions. When military necessity requires movement on public roads and highways of Government vehicles that exceed legal limitations or regulations, or that subject highway users to unusual hazards, prior coordination will be effected with the appropriate civil law enforcement agency prior to movement. Procedures for such a movement, which will require special permits to move on public roads and highways, are contained in joint service regulation AR 55–162/OPNAVIST 4600.11D/AFR 75–24/MCO 4643.5C/DLAR 4540.8.

(2) Installation commanders will conduct continuing liasion with civil enforcement agencies to encourage—

(i) Release of an official driver to military authorities, unless his offense is of such a nature as to warrant detention or his condition is such that further operation of a motor vehicle could result in injury to himself or others.

(ii) Prompt notification of military authority in all instances when military personnel or drivers of official military vehicles have been involved in traffic accidents and/or have violated civil traffic laws.

(C) *Civil-military cooperative programs.* (1) *State-Armed Forces Traffic Workshop Program.* This program represents an organized effort to coordinate military and civil traffic safety activities throughout a state or area. Installation commanders will cooperate with state and local officials in this program by providing appropriate support and participation.

(2) *Community-Installation Traffic Workshop Program.* Sound and practical traffic planning depends on the development of a balanced program of traffic enforcement, engineering, and education. Installation commanders should foster a local workshop program as a medium for coordinating the installation traffic efforts with those of local communities. Civilian and military legal and enforcement officers, traffic engineers, safety officials and information officers would normally be expected to participate in such a program.

§ 634.6 Traffic point system.

(a) *Purpose.* The traffic point system provides the military services with an impartial and uniform administrative device for evaluating driving performances of personnel under their jurisdiction. The use of this system is not to be construed as a disciplinary measure or substitute for punitive action. It is not intended to interfere in any way with the reasonable exercise of an installation commander's prerogative to issue, suspend, revoke, or deny installation driving privileges for cause without regard to point assessments made under this chapter.

(b) *Application.* The use of the point system and procedures prescribed is mandatory for the military services and the Defense Logistics Agency. This system is not subject to modification or alteration. The point system applies to military and civilian personnel operating Government vehicles on or off the installation; to military personnel operating privately owned vehicles on or off the installation; and to dependents, civilian employees and all other individuals subject to this regulation operating privately owned vehicles on the installation. Points will be assessed in instances where the individual has been found to have committed a violation by either the unit commander, the civilian supervisor, or a military or civilian court (including a U.S. Magistrate), or upon payment of fine or forfeiture. THE POINT SYSTEM WILL NOT BE USED FOR NONMOVING VIOLATIONS.

(c) *Procedures.* Subject to the foregoing provisions, reports of moving traffic violations will be processed and return endorsements required from commanders or supervisors. Normally, administrative processing and disposition of violations will be accomplished within a 21-day period, inclusive of the date on which the Armed Forces Traffic Ticket (DD Form 1408) was issued by law enforcement personnel.

(2) On receipt of a traffic ticket or other report of a moving traffic violation, the unit commander (or person otherwise designated by the installation commander) will conduct an inquiry and take appropriate disciplinary and/or administrative action. For those cases involving judicial or non-judicial actions, the report of action taken will not be forwarded until final adjudication.

(3) On receipt of the report of action taken, the installation law enforcement officer will enter the number of points assessed or indicate suspension or revocation of the driving privilege to the individual's driver record as prescribed in table 6–1. Points will not be assessed nor the driving privilege suspended or revoked if the report of action taken indicates that neither disciplinary action and/or administrative action is appropriate, and this finding is approved by the installation commander. In

appropriate cases, the commander should consult the installation Staff Judge Advocate before taking such action.

(4) When notified of a conviction or payment of a fine or forfeiture of bond for a traffic violation adjudicated by a state or Federal court, the installation law enforcement officer will assess the appropriate number of points to the individual's driver record and initiate suspension or revocation action when warranted. Points assessed by state driver licensing authorities will be reviewed to insure consistency with the assessement of traffic points in table 6–1 and to preclude duplication of traffic point assessment on the military record for the same violation. The individual concerned will be notified of point assessments by the law enforcement officer through normal channels.

(5) To maximize the effective use of driver improvement actions, installation commanders will require as a minimum the following measures:

(i) Advisory letter sent to the individual on accumulation of six traffic points within a 6-month period.

(ii) Commander counseling or driver improvement interview of the individual on accumulation of more than six but less than 12 traffic points within a 6-month period. Counseling or interview should result in recommendations designed to improve driver performance.

(iii) Referral for medical evaluation when an individual driver, based on reasonable belief, has mental or physical limitations which have had or may have an adverse effect on his driving performance.

(iv) Attendance at remedial driver training following the identification of the individual as a problem driver, or whenever a commander concludes that such treatment may improve the subject's driving performance.

(v) Referral to an alcohol/drug treatment/rehabilitation facility for appropriate counseling services when deemed appropriate. (On Army installations referral will be made in all cases involving driving while intoxicated.)

(6) Individuals whose driving privilege is suspended or revoked (including the accumulation of 12 traffic points within 12 consecutive months, or 18 traffic points within 24 consecutive months) will be notified in writing through official channels of the specific driving privilege withdrawal action as prescribed by § 634.2(b)(4). Except for the mandatory minimum or maximum suspension or revocation periods prescribed by this regulation, the determination of periods of suspension or revocation is the prerogative of the installation commander. The revocation of driving privilege based upon accumulation of traffic points shall be for a period of not less than 6 months. Ordinarily, a longer period of loss of driving privilege should be imposed on the basis of an individual's overall driving record to include frequency, flagrancy, and severity of moving violations and response to previous driver improvement measures. In any case, the individual shall be required to successfully complete a prescribed course in remedial driver training before the privilege is reinstated.

(7) Points assessed against an individual will remain in effect for point accumulation purposes for a consecutive 24-month period, or until separation from the service (not applicable in cases of immediate reenlistment, change of officer component, military retirement and continuation of vehicle registration as retiree or reemployment as a civilian), or final termination of employment, whichever is sooner. The review of driver records in connection with deletion of traffic points should be accomplished routinely as records are required to be handled, i.e., to update data, to record new offenses, to forward to new duty stations, etc. The termination of a revocation period will, of itself, warrant the mandatory removal from the driver record of all points assessed prior to the driving privilege withdrawal action.

(8) Removal of points does not, however, constitute authority to remove driver record entries for moving violations, chargeable accidents, suspensions, or revocations of driving privileges. Driver record entries will remain posted on individual driver records for periods as specified below:

(i) Chargeable nonfatal traffic accidents/moving violations—3 years.

(ii) Nonmandatory suspensions or revocations—5 years.

(iii) Mandatory revocations—7 years.

(9) Procedures will be established to assure prompt notification of the installation law enforcement officer that an individual assigned to or employed on the installation is being transferred to another installation, released from military service, or terminates employment. Where an individual being transferred to a new installation has accumulated point assessments or has other valid entries on his driver record, the driver record will be forwarded to the law enforcement officer of the gaining installation in accordance with appropriate service policies. (Does not apply for personnel being assigned to transfer points/stations immediately prior to discharge or release from active military service, in which case driver records will be destroyed.) Dependent driver records containing traffic point assessments or other entries will also be forwarded to the sponsor's gaining installation. On receipt thereof, records will be analyzed and made available temporarily to the gaining unit commander or supervisor for review. Applicable state driver licensing authorities will be notified concerning the continuation of revocation of driving privileges or restoration of driving privileges by the gaining installation. Points accumulated or entries on the driver record regarding suspensions, revocations, moving violations, or chargeable accidents will not be deleted from individual driver record except as provided in § 634.6(c)(5)(iv) (7) and (8) of this section.

Table 6–1—Suspension/Revocation of Driving Privileges/Point Assessment for Moving Traffic Violations

Part I

Violation	
Driving while drivers license or installation driving privileges are under suspension or revocation.	5 year revocation is mandatory on determination of facts by installation Cdr.
Refusal to submit to chemical tests (Implied consent).	1 year revocation is mandatory on determination of facts by installation Cdr.
Manslaughter (or negligent homicide by vehicle) resulting from the operation of a motor vehicle.	1 year revocation is mandatory on conviction.
Driving or being in actual physical control of a motor vehicle while under the influence of intoxicating liquor (0.10% or greater on DOD installations; violation of civil jurisdiction law off post).	
Driving a motor vehicle while an habitual user or under the influence of any narcotic or while under the influence of any other drug to a degree rendering person incapable of safe operation thereof.	
Any felony in the commission of which a motor vehicle is used.	
Fleeing the scene—death, or personal injury (Hit and Run).	
Perjury or making false affidavit or statement under oath to responsible officials or under law or regulations relating to the ownership or operation of motor vehicles.	
Unauthorized use of a motor vehicle belonging to another which act does not amount to a felony.	
Commission of an offense for which mandatory revocation is required on conviction.	Suspension for a period of 6 months or less or revocation for period not to exceed 1 year is discretionary.
Is incompetent to drive a motor vehicle, such as mental or physical impairment (not including alcohol or other drug use).	
Has committed an offense in another state which if committed on the installation would be grounds for suspension or revocation.	
Has permitted an unlawful or fraudulent use of an official driver license.	
Has been convicted of fleeing or attempting to elude a police officer.	
Has been convicted of racing on the highway.	

Second 1-year suspension or revocation of driving privileges within 5 years.	Loss of SF 46 for minimum of 6 months is discretionary.

Violations [2]	Points assessed
Reckless driving (willful and wanton disregard for the safety of persons or property (11-901-UVC))	6
Owner knowingly and willfully permitting another to operate his motor vehicle when physically impaired	6
Fleeing the scene (Hit & Run)—property damage	6
Driving vehicle impaired (consumption of alcohol-more than .05% and less than .10%)	6
Speed contests	6
Exceeded stated speed limit or speed too fast for conditions:	
1 to 10 miles per hour over posted speed limit	3
11 to 15 miles per hour over posted speed limit	4
Over 15 but not more than 20 miles per hour above posted speed limit	5
Over 20 miles per hour above posted speed limit	6
Speed too slow for traffic conditions	3
Following too close	4
Failure to yield right of way to emergency vehicles	4
Failure to stop for school bus or school crossing signals	4
Failure to obey traffic signals, traffic instructions of an enforcement officer or traffic warden, or any official regulatory traffic sign or device requiring a mandatory stop, yield right of way, denial of entry, or required direction of traffic	4
Improper passing	4
Failure to yield (no official sign involved)	4
Improper turning movements (no official sign involved)	3
Improper overtaking	3
Other moving violations (involving driver behavior only)	3
Operating an unsafe vehicle	2
Driver involved in accident is deemed responsible (used only as additive to points assessed for specific offense)	1

[1] No points assessable in lieu of revocation. Revocation must be based on convictions (Judicial, Nonjudicial).
[2] When two or more violations are committed on a single occasion, assessment of points will be for the one offense having the greater value.

Appendix A—Explanation of Terms as They Pertain to This Joint Service Regulation

Alcohol Safety Action Program (ASAP)—A state sponsored program in cooperation with the National Highway Traffic Safety Administration designed to reduce highway deaths, injuries and property damage resulting from motor vehicle traffic accidents in which alcohol is a major contributing factor.

Chemical Breath Testing Device—An instrument which uses photoelectric or other sophisticated physical or chemical methods to quantitatively determine blood-alcohol concentrations. Instruments in this category include but are not limited to the following devices: Alco-Analyzer Gas Chromatograph, Alco-tector, Breathalyzer, Gas Chromatograph Intoximeter, and the Photo Electric Intoximeter.

Collision Diagram—A plan of an intersection or section of roadway on which reported accidents are diagramed by means of arrows showing manner of collision. The date, time of day, and road conditions are entered on one of the arrows representing each collision.

Condition Diagram—A scaled drawing of an intersection or section of roadway showing all objects and physical conditions having a bearing on traffic movement and safety at that location.

Countermeasure—An action undertaken to reduce the incidence of motor vehicle traffic accidents.

Conviction—A final conviction, but also includes an unvacated forfeiture of bail, or collateral deposited to secure a defendant's appearance in court, a plea of nolo contendere accepted by a court, a payment of a fine, a plea of guilty or finding of guilty on a traffic violation charge, regardless of whether the penalty is rebated, suspended or probated. Includes judicial and nonjudicial actions taken under Uniform Code of Military Justice.

Disposable screening device—A device used to conduct a one-time qualitative test of blood-alcohol concentration. The device consists of a small glass tube containing either a column or multiple bands of an alcohol-sensitive reagent and a breath-volume measuring device (balloon, plastic bag or air pump).

Driver—Every person who drives or is in actual physical control of a motor vehicle. A person is considered to be in actual physical control when he is in position to control the motor vehicle, whether to regulate or restrain its operation or movement, for example, sitting in a parked car, keeping it in restraint or in position to control its movement. The term "driver" is used interchangeably with the word "operator."

Driver's license—A license to operate a motor vehicle issued under the laws of a state.

Driving privilege—The privilege extended by an installation commander to an individual permitting the operation of a privately owned motor vehicle within the limits of the installation. This privilege, once extended, is subject to administrative suspension or revocation for cause as determined by the installation commander within the standards set forth in this regulation.

High accident frequency location—A location, intersection or length of roadway not more than one-half mile in length where an excessive number of accidents have occurred.

Law enforcement personnel (officials)—Persons authorized by competent authority to direct, regulate, or control traffic or to make apprehension or arrests for violations of traffic regulations. Personnel so designated normally are identified as military police, security police, or civilian guards or police, and operate under the supervision of the installation law enforcement officer.

Motorcycle—Every motor vehicle having a seat or saddle for use of the rider and designed to travel on not more than three wheels in contact with the ground, but excluding a tractor.

Motor vehicle—Any vehicle driven or drawn by mechanical power manufacture primarily for use on public streets, roads and highways, except any vehicle operated exclusively on a rail or rails.

Motor vehicle traffic accident (crash)—An unintended event resulting in injury or damage, involving one or more motor vehicles on a highway that is publicly maintained and open to the public for vehicular travel.

Motor vehicle traffic accident classification—The classification of traffic accidents according to severity in terms of degree of injuries or property damage sustained. Major classifications include:

a. Severity according to injury.

(1) *Fatal accident*—A motor vehicle accident that results in fatal injuries (an injury that results in death within 12 months of the motor vehicle traffic accident) to one or more persons.

(2) *Incapacitating injury*—An injury, other than fatal, which prevents the injured person from walking, driving, or normally continuing the activities which he was capable of performing prior to the motor vehicle traffic accident.

Examples. Severe lacerations, broken or distorted limbs, skull fracture, crushed chest, internal injuries, unconscious when taken from the accident scene; unable to leave accident scene without assistance.

(3) *Nonincapacitating evident injury*—An injury, other than fatal and incapacitating, which is evident to any person other than the injured at the scene of the accident.

Examples. Lump on head, abrasions, minor lacerations.

(4) *Possible injury*—An injury reported or claimed which is not a fatal, incapacitating, or nonincapacitating evident injury.

Examples. Momentary unconsciousness; claim of injuries not evident; limping, complaint of pain, nausea, hysteria.

b. Severity according to damage.

(1) Disabling damage is any damage to a motor vehicle such that it cannot be driven or, in the case of trailers, towed from the scene of the accident in the usual manner by daylight after simple repairs, without further damage or hazard to itself, other traffic elements, or the roadway.

(2) Functional damage is any nondisabling damage to a motor vehicle which affects operation of the motor vehicle or its parts. Examples: Doors, windows, hood, and trunk lids which will not operate properly. Broken glass which obscures vision. Any damage which would prevent the motor vehicle from passing an official motor vehicle inspection.

(3) Other motor vehicle damage is any damage to a motor vehicle which is neither disabling nor functional damage. Such damage usually affects only the load on the motor vehicle or the appearance of the motor vehicle.

Examples. Damage to hubcaps, trim, grill, glass cracks which do not interfere with vision. Dents, scratches, body punctures. Damage to load on motor vehicle.

Motor vehicle registration—The procedures which culminate in the issuance of a registration certificate and registration plates for a motor vehicle under the laws of a State (State registration). The term also applies to the registration form and identification media issued under the provisions of this regulation for a motor vehicle authorized to operate on a military installation.

Moving violation—A violation of any traffic law, ordinance, or regulation which was promulgated primarily with the object of making use of traffic-ways safe. Moving

violations typically involve unsafe acts and/or unsafe conditions. Illegal parking is not a moving violation.

(1) *Unsafe act.* An act or omission in traffic which is hazardous.

(2) *Unsafe condition.* Causing or permitting an illegal and possibly hazardous condition of streets or highways used by traffic, vehicles used in traffic, or a pedestrian or driver in traffic.

Pedacycle—A vehicle operated solely by pedals, and propelled by human power.

Pedestrian—Any person not in or on a motor vehicle or other road vehicle.

Reciprocity—Reciprocal action between state and military authority to suspend or revoke an individual's US Government Motor Vehicle Operator's Identification Card installation driving privilege, or state driver's license based on action initiated by either jurisdiction.

Revocation of driver's license—The termination by formal action of state authority of a person's license or privilege to operate a motor vehicle on the public highways, which termination shall not be subject to renewal or restoration except that application may be presented and acted on by the state after the expiration of the applicable period of time prescribed by state law. Such action disqualifies the individual from operating a privately owned motor vehicle on a military installation since he is no longer "licensed" to drive.

Revocation of driver's privilege—Action taken by an installation commander to terminate an individual's privilege to operate a motor vehicle on a military installation. This action precludes renewal or restoration except by application and after the expiration of a specified period of time but not less than 6 months.

State—A constituent unit of the US having a definite territory and governmental organization and includes the District of Columbia, the Commonwealth of Puerto Rico and territories and possessions of the United States as defined in section 101, title 10, United States Code. The term "State" as used herein also refers to a foreign country or to an appropriate political subdivision of a foreign country.

Suspension of driver's license—The temporary withdrawal by formal action (of State authority) of a person's license or privilege to operate a motor vehicle on the public highways, which temporary withdrawal shall be for a period specifically designated. Such action disqualifies the individual from operating a privately owned motor vehicle on a military installation since he is no longer "licensed" to drive.

Suspension of driving privilege—The temporary withdrawal by an installation commander of an individual's privilege to operate a motor vehicle on a military installation for an indefinite period to a maximum of 6 months. Privileges are normally automatically restored on the day following the date the suspension is terminated.

Traffic—Pedestrians, ridden or herded animals, vehicles, streetcars and other conveyances either singly or together while using any highway for the purposes of travel.

Traffic control devices—Signs, signals, markings, lights, and devices placed or erected by an official having jurisdiction for the purposes of regulating, warning, or guiding traffic.

Traffic engineering—That phase of engineering that deals with the planning and geometric design of streets, highways, and abutting lands, and with traffic operations thereon, as their use is related to the safe, convenient, and economic transportation of persons and goods.

Traffic laws—All laws, ordinances, and regulations concerning highway traffic including regulations concerning weight, size, and type of vehicles and vehicle cargo.

US Government Motor Vehicle Operator's Identification Card (SF 46)—An authorization to operate Government-owned vehicles issued under appropriate departmental regulations.

Appendix B—Chemical Testing Policies and Procedures

B–1. General. *a.* Chemical analyses are valid under provisions of this regulation when:

(1) Tests of blood, urine or other bodily substances are performed according to methods prescribed or approved by the departmental Surgeons General or by the designated authority of the state in which the installation is located (for tests conducted outside military jurisdiction).

(2) Breath tests are performed by qualified personnel (see § 634.4(d)(4)(ii) of this part and Appendix D) using a quantitative chemical breath testing device approved by designated authorities of the state in which the installation is located in accordance with procedures established by such authority or as prescribed in paragraph B–2 below.

b. Test results of disposable breath screening devices are not considered sufficiently accurate for use as a basis for administrative or punitive action under this regulation. These devices may, however, be used as a breath screening test to determine if additional quantitative testing is required.

B–2. Chemical breath testing procedures. In the absence of specific state operating procedures for the use of chemical breath testing devices, the following procedures will apply.

a. Quantitative chemical breath testing devices.

(1) Observe person to be tested for at least 20 minutes prior to collection of the breath specimen, during which period the person must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten or smoked.

(2) Verify calibration and proper operation of the instrument by use of a control sample immediately prior to the test.

(3) Comply with operational procedures set forth in the current instructional manual of the manufacturer for the instrument in use.

(4) Perform preventive maintenance in accordance with procedures recommended in the manufacturers current instructional manual.

b. Disposable screening devices will be utilized in accordance with operating instructions issued by the manufacturer.

B–3. Chemical tests of personnel involved in fatal accidents. *a.* Installation medical authorities will immediately notify the installation law enforcement officer of the death of any person as a result of an accident involving a motor vehicle and the circumstances surrounding such accident.

b. In the case of drivers killed in motor vehicle accidents and the death of pedestrians subject to military jurisdiction, or other pedestrians 16 years or older when consent of the sponsor is obtained, medical authorities will, within 6 hours after such death, examine the body and make such tests as are necessary to determine the presence and percentage concentration of alcohol, and drugs, if feasible, in the blood or other fluids of the victim. This information shall be included in each report submitted pursuant to *a* above.

c. To the extent provided by law, and medical conditions permitting, a blood or breath sample will be obtained from any surviving operator whose motor vehicle is involved in a fatal accident.

B–4. Medical considerations. *a.* Persons afflicted with hemophilia or a heart condition requiring an anticoagulant shall not be administered a blood test to determine blood-alcohol concentration for purposes of this regulation.

b. In the event that a quantitative chemical breath test of a subject indicates a blood-alcohol concentration of .35 percent or above, a second test should be administered after a waiting period of 20 minutes. If the second test indicates a continuing rise, the subject will be immediately referred to the installation medical facility.

c. If a quantitative chemical breath test of a subject indicates blood-alcohol concentration of .05 percent or less and there is evidence of strong physical impairment, the individual should be referred for medical evaluation and treatment as appropriate.

d. If a subject is taken to the installation medical facility because of either a high or low blood-alcohol concentration (quantitative testing devices only), the results of chemical breath tests will be provided the attending physician for diagnostic purposes.

B–5. Technical assistance to civil authorities. Widespread adoption of "implied consent" chemical testing, and the establishment of Alcohol Safety Action Projects, nationwide, under the Highway Traffic Safety Program, may necessitate in the interest of public safety, technical assistance and cooperation from installation law enforcement officers to civil law enforcement agencies in certain type situations. Whenever a member of the military, an operator of a government vehicle, or resident of the military installation, is a suspect drunken driver in an off-base incident and subsequently returns or is evacuated to military control or property jurisdiction, the following action will be taken:

a. Civilian authorities will be given immediate access to the suspect drunken driver and be given the opportunity to invoke "implied consent" and conduct appropriate testing authorized under state law if medical condition of the driver permits such. If the state conducts a test military authorities will request results of such testing for

identification purposes as specified in § 634.4(e).

b. Should civilian authorities fail to request access to the suspect driver for testing purposes, military authorities should conduct testing and report the results to the installation commander or the commander's designee under the provisions of § 634.4(e)(6). Incidental to such testing, the results of such testing or a portion of the blood or urine sample may be furnished to civilian authorities upon their request. Prior to conducting tests under this subparagraph, the suspect driver will be informed that the primary purpose of this testing is to identify potential problem drivers but that the results of such testing or a portion of a sample taken may be furnished to civilian authorities on their request.

Appendix C—State Chemical Breath Testing Training Programs

The following states are reported to have formal chemical breath testing training programs and currently authorize military personnel to attend their courses of instruction.[1] Information concerning course dates, costs, prerequisites and scope of instruction may be obtained by contacting the appropriate state agency as indicated below:

State	Principal device(s) used	Contact
Alaska	Breathalyzer	Commissioner Pouch N—State Capitol Juneau, Alaska 99801
Alabama	Photo-Electric Intoximeter.	Director, Dept of Public Safety State of Alabama 500 Dexter Ave Montgomery, AL 36102
Arizona	Breathalyzer, Photo-Electric Intoximeter.	Arizona State Dept of Health 1634 W Adams Phoenix, AZ 85005
Arkansas	Breathalyzer, Intoximeter, Gas Chromatograph.	State Law Enforcement Training Academy Little Rock, AR 72203
Florida	Breathalyzer	Florida State Dept of Education Industrial Education Section Tallahassee, FL 32304
Georgia	Photo-Electric Intoximeter.	Associate Director Department of Public Health State of Georgia Atlanta, GA 30301
Hawaii	Breathalyzer	Training Division Police Department City & County of Honolulu Honolulu, Hawaii 96814
Illinois	Breathalyzer, Intoxilyer.	Director Information & Education Section Illinois State Police Armory Bldg Springfield, IL 62706
Iowa	Gas Chromatograph.	Iowa Highway Patrol Lucas Bldg Des Moines, IA 50319
Kentucky	Breathalyzer	Director Traffic Safety Institute Eastern Kentucky University Richmond, KY 40475
Maryland	Breathalyzer	Chemical Test Section Maryland State Police Pikesville, MD 21208
Massachusetts	Breathalyzer, Alco-Tector.	Department of Public Safety Massachusetts State Police Traffic Section 1010 Commonwealth Ave Boston, MA 02215
Michigan	Breathalyzer	Commanding Officer Safety and Traffic Division Dept of State Police 714 S Harrison Rd East Lansing, MI 48823
Minnesota	Breathalyzer	Project Dir of Chemical Testing Program Toxicologist, Dept of Public Safety, Bureau of Criminal Apprehension Laboratory 1246 University Ave St Paul, MN 55104
Missouri	Breathalyzer	Missouri State Highway Patrol Dir of Personnel & Training PO Box 568 Jefferson City, MO 65101
Montana	Gas Chromatograph.	Montana Law Enforcement Academy of State Univ Bozeman, MT 59715
New Jersey	Breathalyzer	Commanding Officer Dept of Law & Public Safety ATTN: Breath Test Unit PO Box 68 West Trenton, NJ 08625
New York	Breathalyzer	Superintendent of State Police State Campus Albany, NY 12226
North Carolina	Breathalyzer, Intoximeter.	Director, North Carolina Dept of Community Colleges ATTN: Law Enforcement Trng Raleigh, NC 27611
North Dakota	Breathalyzer	State Toxicologist North Dakota State Univ Fargo, ND 58102
Pennsylvania	Breathalyzer	Director, Bureau of Trng and Education Pennsylvania State Police Harrisburg, PA 17123
Rhode Island	Breathalyzer	Rhode Island Dept of Health Providence, RI 02903
South Carolina	Breathalyzer	Director, SC Law Enforcement Div South Carolina Highway Patrol Columbia, SC 29203
South Dakota	Breathalyzer, Gas Chromatograph.	Coordinator for Law Enforcement/Driver Control Programs Box 141 Huron, SD 57350
Tennessee	Gas Chromatograph.	Commanding Officer Tennessee Highway Patrol Nashville, TN 37209
Utah	Breathalyzer	Superintendent Utah Highway Patrol 317 State Office Bldg Salt Lake City, UT 84114
Vermont	Gas Chromatograph.	Commissioner, Dept of Public Safety Montpelier, VT 05602
Washington.	Breathalyzer	State Training Academy Washington State Patrol Olympia, WA 98504
Wisconsin	Breathalyzer	Wisconsin State Patrol Academy Camp McCoy, WI 54656
Wyoming	Breathalyzer, Alco-Analyzer.	Dept of Public Health Laboratory Service Section Cheyenne, WY 82001

[1] Based on DAPM survey of state chemical breath testing programs, 28 Mar 72.

Appendix D—Chemical Breath Testing, Training, and Certification Requirements

D–1. General. This appendix establishes minimum training and certification requirements for personnel selected as chemical breath testing operators to meet standards established by National Highway Traffic Safety Administration, U.S. Department of Transportation. The requirements are applicable to training programs established at CONUS installations and overseas commands located in States/countries not having a formal chemical breath testing and certification program and when training requirements can not be satisfied at courses conducted at civilian institutions or by manufacturers of chemical breath testing equipment. The requirements established herein apply to operators of quantitative chemical breath testing devices.

D–2. Training course. *a. Objectives.*

(1) Develop skill in the operation of a precision breath testing instrument and an understanding of the operational principles and design/functional features.

(2) Provide an understanding of the technical, historical and legal background surrounding chemical testing.

(3) Provide an understanding of the procedures for processing the suspect, gathering and recording of evidence, and maintaining the chain of evidence.

(4) Develop basic skills in testifying in court regarding observations of and tests performed on the suspect.

b. Course content. The course will consist of a minimum of 44 hours of classroom and laboratory training including review stations and examinations. Subjects and the number of hours allotted for each subject are as follows:

	Time (hrs.)
Group I Course Background, Suspect Processing and Court Testimony:	
1. Course overview	1
2. The drinking driver problem and related countermeasures	1
3. Basics of chemical testing	1
4. Units of measurement	1
5. Alcohol properties and production	1
6. Physiology of alcohol	1
7. Pharmacology of alcohol	1
8. Suspect processing procedures	3
9. Drinking driving statutes and related regulations	3
10. Preparation and presentation of courtroom evidence	3
Group II 11. Equipment theory and operation:	
Part I	2
Part II	3
12. Laboratory—testing known samples	2
13. Laboratory—testing unknown samples	2
14. Laboratory—testing drinking subjects (two 4-hour sessions)	8
Group III 15. Review (including quiz and review sessions and a final review session—a minimum of five 1-hour sessions)	5
16. Final written examination	2
17. Final practical examination	2

D–3. Course materials. *a.* The above course is based on the "Basic Training Program for Breath Examiner Specialists" prepared for the National Highway Traffic Safety Administration by Dunlap and Associates, Inc.

b. The basic working documents produced as a part of the course are a *Course Guide*, developed to aid in the organization and conduct of the training, the *Instructor's Lesson Plans*, prepared to assist the instructor in conducting each lesson, and the *Student Study Guide*, designed to serve as a basic reference source for the trainee. The course is designed to cover any one of the following five principal breath testing devices used by law enforcement agencies:

(1) Alco-Analyzer Gas Chromatograph (Luckey Laboratories, Inc).
(2) Alco-Tector (Decatur Electronics, Inc).
(3) Breathalyzer (Stephenson Corporation).
(4) Gas Chromatograph Intoximeter (Intoximeter, Inc).
(5) Photo-Electric Intoximeter (Intoximeter, Inc).

c. Course materials are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402:

Publication	Stock No.	Cost
Course Guide	5003-0046	$0.60
Student Study Guide	5003-0045	1.00
Instructor's Lesson Plans [1]	5003-0044	3.00

[1] When ordering Instructor Lesson Plans, requestors should indicate the type equipment being used by the installation/command.

D-4. Recertification. Refresher training consisting of classroom instruction and laboratory practical work is required every 18 months to assure that operators maintain skills and are brought up to date on the newest information relative to alcohol and chemical testing. Satisfactory completion of a written and practical examination administered as a part of the refresher training are required for recertification.

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BILLING CODE 3710-08-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations, Navigation Closing Procedures

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule.

SUMMARY: The Saint Lawrence Seaway Development Corporation and its counterpart agency, the St. Lawrence Seaway Authority of Canada, publish joint Seaway Regulations. As a result of discussions with the St. Lawrence Seaway Authority and St. Lawrence Seaway users concerning navigation closing procedures, it was determined that paragraph (b)(2) of § 401.97 needed to be revised in order to allow the flexibility in imposing operational surcharges as provided for by the St. Lawrence Seaway Tariff of Tolls. The Tariff of Tolls provides that operational surcharges may be imposed while § 401.97(b)(2) as previously written, without consideration of operation conditions, mandated the imposition of surcharges. Therefore, the Seaway Corporation has amended 33 CFR Part 401—Subpart A.

EFFECTIVE DATE: September 2, 1983.

FOR FURTHER INFORMATION CONTACT: Frederick A. Bush, General Counsel, (315) 764-3245.

SUPPLEMENTARY INFORMATION:

Background

On July 5, 1983, the Seaway Corporation published in the **Federal Register** (48 FR 30685) a proposed amendment to § 401.97(b)(2) of the Seaway Regulations. This amendment had been developed jointly with the St. Lawrence Seaway Authority.

No comments were submitted in response to the notice of proposed rulemaking.

List of Subjects in 33 CFR Part 401

Hazardous materials transportation, Navigation (water), Penalties, Radio, Reporting and recordkeeping requirements, Vessels, Waterways.

As a result of a number of discussions with the users of the Seaway, it became readily apparent that favorable operating conditions might eliminate the need for the imposition of operational surcharges and that such imposition would have a negative impact on the level of traffic, which in turn would reduce the amount of revenues accruing to both the St. Lawrence Seaway Authority of Canada and the Corporation. Therefore, in order to encourage the use of the St. Lawrence Seaway, paragraph (b)(2) of § 401.97 has been revised in order to allow the needed flexibility in determining the imposition of operational surcharges. This has been done by requiring, as a part of the closing procedures, that a vessel must comply with the provisions of the St. Lawrence Seaway Tariff of Tolls, which provides that the imposition of the operational surcharges is permissive as opposed to the mandatory imposition required by the aforementioned paragraph (b)(2) of § 401.97 of the Seaway Regulations.

This final rule involves a foreign affairs function of the United States; therefore Executive Order 12291 does not apply to this rulemaking. The Saint Lawrence Seaway Development Corporation certifies that, for the purposes of the Regulatory Flexibility Act (Pub. L. 96-354), this final rule will not have a significant impact on a substantial number of small entities. The Seaway Regulations relate to the activities of commercial users of the Seaway, the vast majority of whom are foreign vessel operators, and therefore any resulting costs will be borne primarily by foreign vessels. On the other hand, the economic benefits derived from a safe and efficiently operated St. Lawrence Seaway are considerable. Finally, the Corporation has determined that this rulemaking is not a major Federal action affecting the quality of the human environment under the National Environmental Policy Act, and therefore an environmental impact statement is not required.

PART 401—[AMENDED]

For the stated reasons, the Seaway Regulations have been amended as follows:

1. In § 401.97, paragraph (b)(2) has been revised to read as follows:

§ 401.97 Closing procedures.

* * * * *

(b) * * *

(2) It reports at the applicable calling in point referred to in paragraph (c) of this section within a period of 96 hours after the clearance date in that navigation season, it complies with the provisions of the agreement between Canada and the United States, known as the St. Lawrence Seaway Tariff of Tolls and the transit is authorized by the Corporation and the Authority.

* * * * *

(68 Stat. 93-96, 33 U.S.C. 981-990, as amended and sections 4, 5, 6, 7, 8, 12 and 13 of Sec. 2 of Pub. L. 95-474, 92 Stat. 1471)

Issued at Massena, New York on August 23, 1983.

Saint Lawrence Seaway Development Corporation.

William H. Kennedy,

Associate Administrator.

[FR Doc. 83-24102 Filed 9-1-83; 8:45 am]
BILLING CODE 4910-61-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 17

[OLCE-FRL 2330-7]

Implementation of Equal Access to Justice Act in Environmental Protection Agency Administrative Proceedings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is issuing its final rules governing the implementation of the Equal Access to Justice Act in EPA proceedings. These rules establish procedures for the submission and consideration of applications for awards of attorneys' fees and other expenses in adversary adjudications conducted by EPA under Section 5 of the Administrative Procedure Act.

DATE: This order is effective on October 3, 1983. The interim regulations will remain in effect until the effective date of this order.

FOR FURTHER INFORMATION CONTACT: James Clark, Environmental Protection Agency, Office of General Counsel (LE-132A), 401 M Street, SW., Washington, D.C. 20460, telephone (202) 382-7633.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2000-0430.

EPA received one comment from the National Audubon Society in response to the April 20, 1982 publication of its interim rules, 47 FR 16780. The Audubon Society made several suggestions, which are discussed below.

Prevailing Parties

First, the Audubon Society was concerned because the interim rule limited recovery of attorneys' fees to "prevailing parties" only, without defining the term. The comment correctly observed that other statutes have been interpreted to allow awards to parties that have not prevailed, citing *Sierra Club* v. *Gorsuch*, 672 F.2d 33 (D.C. Cir. 1982) and *Environmental Defense Fund* v. *EPA*, 672 F.2d 42 (D.C. Cir. 1982). These two cases, however, arise from statutes that do not limit recovery of attorneys' fees to prevailing parties. The *Sierra Club* case, *supra*, awarded attorneys' fees to a nonprevailing party under Section 307(f) of the Clean Air Act, which authorizes a court to award fees "whenever it determines that such an award is appropriate." 42 U.S.C. 7606(f). Similarly, the *EDF* case, *supra*, permitted recovery of attorneys' fees by a nonprevailing party under Section 19(d) of the Toxic Substances Control Act, which authorizes award of fees "if the court determines such an award is appropriate." 15 U.S.C. 2618(d).

Section 504(a)(1) of the Equal Access to Justice Act, 5 U.S.C. 504(a)(1), on the other hand, explicitly directs agencies to award fees only to a "prevailing party." When Congress limits attorneys' fee awards to prevailing parties, as it did under the Act, courts have carried out that policy. See, *e.g.*, the cases arising under the Civil Rights Attorneys' Fees Awards Act of 1976, 42 U.S.C. 1988, such as *Hanrahan* v. *Hampton*, (1980), 100 S. Ct. 1987, 446 U.S. 754, 64 L. Ed. 2d 670, rehearing denied 101 S. Ct. 33, 448 U.S. 913, 65 L. Ed. 1176, 1177 on remand 499 F. Supp. 640.

Neither these regulations nor the Act further defines "prevailing party." EPA decided not to attempt to rigorously define "prevailing party" in the rule so that the presiding officers, who are most familiar with the facts of the cases, can define the phrase on a case-by-case basis.

Substantial Justification

Second, the Audubon Society asked that these rules define "not substantially justified" and criticized the interim rule for creating "a nonparallel situation" by stating that just because EPA did not prevail does not demonstrate that the Agency's position was not substantially justified.

The rules do give some guidance about the meaning of "substantial justification," stating that no presumption arises that the agency's position was not substantially justified because the agency did not prevail. This phrase was suggested by the legislative history. The House Judiciary Committee report stated:

> The standard, however, should not be read to raise a presumption that the government position was not substantially justified, simply because it lost the case. (Report of the Committee on the Judiciary on S. 265, 96th Cong., 2nd Sess. 11 (1980) H.R. Rep. No. 1418 at 11.)

This statement does not, as the Audubon Society maintains, create a "nonparallel" situation or a "double standard." It simply calls for a two-step test, eliminating any presumption that just because a party prevails over EPA, the Agency's position was not substantially justified. To take the position that any prevailing party is automatically entitled to fees would render the statutory language requiring a finding that the Agency's position was not substantially justified mere surplusage.

EPA has decided not to define further what constitutes "substantial justification" so that the presiding officers, who are most familiar with the facts of the cases, can define it on a case-by-case basis.

The Fee Ceiling

Third, the Audubon Society commented that the $75 an hour attorney's fees limitation would be inadequate in light of prevailing rates. The Act, however, explicitly places that ceiling on hourly fees charged, 5 U.S.C. 504(b)(1)(A). EPA has received no information demonstrating that small entities cannot obtain competent representation at the $75 per hour ceiling set by Congress.

Interim Awards

Fourth, the Audubon Society urged that EPA should make awards under the Act after the final administrative determination, even when judicial review is sought of the underlying EPA determination. Such interim awards would be inappropriate for two reasons. First, the term "prevailing party" would seem to mean the party who, at the conclusion of the case, wins on the main issues. Accordingly, before the time for appeal has run, the case has not concluded and attorneys' fees should not be paid. Second, under 5 U.S.C. 504(c)(1), if a court reviews the underlying decision under 28 U.S.C. 2412(d)(3), the *court* must make the award of fees and expenses incurred in pursuing the administrative adjudication as well as the expenses incurred on the appeal. Because the final fee determination of the Agency could be reversed on appeal, EPA would be ill-advised to pay an award before the applicant has exhausted its appeals. Otherwise, if the Court reversed the EPA fee determination, the Agency could not be forced to attempt to recover awards already paid out.

Allowable Fees and Expenses

Finally, the Audubon Society suggested that EPA broaden the kinds of fees and expenses that could be recovered under the rule. Specifically, the comment urged: (1) That EPA should pay interest to a prevailing party for the period between the agency determination to award fees and completion of judicial review and (2) that EPA should pay fees and expenses incurred in pursuing the attorneys' fee claim, *i.e.*, for the time spent making the application and any time spent litigating before the agency or the courts over whether the Agency should pay fees.

Under 5 U.S.C. 504(c)(1), if a court reviews the underlying decision, the *court* is directed to make an award of fees pursuant to 28 U.S.C. 2412(d)(3) for both the adjudication on appeal and the agency proceeding. Therefore, it is up to the court and not to EPA whether to add interest to any EPA award. Similarly, the extent of any award for expenses and fees incurred while appealing the fee decision of the agency to a court would be determined by the court and not by EPA.

Finally, because nothing in the Act directs agencies to pay awards for applicants' fees and expenses incurred in applying for fees in administrative cases, these rules make no provision for awarding such fees.

Technical Changes

Because "proceeding" is defined in § 17.2(d) as an adversary adjudication, actions on applications for awards should be described so as to avoid the implication that the processing of an application is itself an independent Section 554 adjudication. Accordingly,

where "proceeding" was used in the interim rules to describe actions on the application, it has been deleted in the final rule.

Miscellaneous

This announcement does not constitute a "major" rule, as defined by Executive Order 12291, because it will not result in: (a) An effect on the economy of $100 million or more, (b) a major increase in any cost or prices, (c) adverse effects on competition, employment, investment, productivity, or innovation among American enterprises.

This regulation has been submitted to the Office of Management and Budget for review under Executive Order 12291.

Information collection requirements contained in §§ 17.11 through 17.13 of this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, 48 U.S.C. 3501 *et seq.*, and have been assigned OMB control number 2000–0430.

This regulation is specifically designed to help small entities by allowing them to recover attorneys' fees and expenses in certain circumstances when they prevail over EPA in administrative litigation. However, this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* or as defined in EPA's guidelines. Accordingly, EPA has not prepared a Regulatory Flexibility Analysis.

List of Subjects in 40 CFR Part 17

Equal access to justice, Claims, Lawyers.

The Environmental Protection Agency amends Title 40 of the Code of Federal Regulations by adopting as final Part 17, which was published as an interim rule at 47 FR 16780, April 20, 1982, and is to read as set forth below.

Dated: August 4, 1983.

William D. Ruckelshaus,

Administrator.

PART 17—IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN EPA ADMINISTRATIVE PROCEEDINGS

Subpart A—General Provisions

Subpart B—Information Required From Applicants

Subpart C—Procedures for Considering Applications

Authority: Section 504, Title 5, U.S.C., as amended by sec. 203(a)(1), Equal Access to Justice Act (Title 2 of Pub. L. 96–481, 94 Stat. 2323).

Subpart A—General Provisions

§ 17.1 Purpose of these rules.

These rules are adopted by EPA pursuant to section 504 of title 5 United States Code, as added by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96–481. Under the Act, an eligible party may receive an award for attorney's fees and other expenses when it prevails over EPA in an adversary adjudication before EPA unless EPA's position as a party to the proceeding was substantially justified or special circumstances make an award unjust. The purpose of these rules is to establish procedures for the submission and consideration of applications for awards against EPA when the underlying decision is not reviewed by a court.

§ 17.2 Definitions.

As used in this part:

(a) "The Act" means section 504 of title 5, United States Code, as amended by section 203(a)(1) of the Equal Access to Justice Act, Pub. L. No. 96–481.

(b) "Administrator" means the Administrator of the Environmental Protection Agency.

(c) "Adversary adjudication" means an adjudication required by statute to be held pursuant to 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of granting or renewing a license.

(d) "EPA" means the Environmental Protection Agency, an Agency of the United States.

(e) "Presiding officer" means the official, without regard to whether he is designated as an administrative law judge or a hearing officer or examiner, who presides at the adversary adjudication.

(f) "Proceeding" means an adversary adjudication as defined in § 17.2(b).

§ 17.3 Proceedings covered.

(a) These rules apply to adversary adjudications required by statute to be conducted by EPA under 5 U.S.C. 554. To the extent that they are adversary adjudications, the proceedings conducted by EPA to which these rules apply include:

(1) A hearing to consider the assessment of a noncompliance penalty under section 120 of the Clean Air Act as amended (42 U.S.C. 7420);

(2) A hearing to consider the termination of an individual National Pollution Discharge Elimination System permit under Section 402 of the Clean Water Act as amended (33 U.S.C. 1342);

(3) A hearing to consider the assessment of any civil penalty under section 16(a) of the Toxic Substances Control Act (15 U.S.C. 2615(a));

(4) A hearing to consider ordering a manufacturer of hazardous chemical substances or mixtures to take actions under section 6(b) of the Toxic Substances Control Act (15 U.S.C. 2605(b)), to decrease the unreasonable risk posed by a chemical substance or mixture;

(5) A hearing to consider the assessment of any civil penalty under section 14(a) of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 1361);

(6) A hearing to consider suspension of a registrant for failure to take appropriate steps in the development of registration data under Section 3(c)(2)(B) of the Federal Insecticide, Fungicide and Rodenticide Act as amended (7 U.S.C. 136a);

(7) A hearing to consider the suspension or cancellation of a registration under Section 6 of the Federal Insecticide, Fungicide, and Rodenticide Act as amended (7 U.S.C. 136d);

(8) A hearing to consider the assessment of any civil penalty or the revocation or suspension of any permit under section 105(a) or 105(f) of the Marine Protection, Research, and Sanctuaries Act as amended (33 U.S.C. 1415(a), 33 U.S.C. 1415(f));

(9) A hearing to consider the issuance of a compliance order or the assessment of any civil penalty conducted under Section 3008 of the Resource Conservation and Recovery Act as amended (42 U.S.C. 6928);

(10) A hearing to consider the issuance of a compliance order under Section 11(d) of the Noise Control Act as amended (42 U.S.C. 4910(d)).

(b) If a proceeding includes both matters covered by the Act and matters specifically excluded from coverage, any award made will include only fees and expenses related to covered issues.

§ 17.4 Applicability to EPA proceedings.

The Act applies to an adversary adjudication pending before EPA at any time between October 1, 1981 and September 30, 1984. This includes proceedings begun before October 1, 1981 if final EPA action has not been taken before that date, and proceedings pending on September 30, 1984.

§ 17.5 Eligibility of applicants.

(a) To be eligible for an award of attorney's fees and other expenses under the Act, the applicant must be a prevailing party in the adversary adjudication for which it seeks an award. The term "party" is defined in 5 U.S.C. 551(3). The applicant must show that it meets all conditions of eligibility set out in this subpart and in Subpart B.

(b) The types of eligible applicants are as follows:

(1) An individual with a net worth of not more than $1 million;

(2) The sole owner of an unincorporated business which has a net worth of not more than $5 million and not more than 500 employees;

(3) A charitable or other tax-exempt organization described in section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3)) with not more than 500 employees;

(4) a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)) with not more than 500 employees; and

(5) Any other partnership, corporation, association, or public or private organization with a net worth of not more than $5 million and not more than 500 employees.

(c) For the purpose of eligibility, the net worth and number of employees of an applicant shall be determined as of the date of adversary adjudication was initiated.

(d) An applicant who owns an unincorporated business will be considered as an "individual" rather than a "sole owner of an unincorporated business" if the issues on which the applicant prevails are related primarily to personal interests rather than to business interest.

(e) The employees of an applicant include all persons who regularly perform services for remuneration for the applicant under the applicant's direction and control. Part-time employees shall be included.

(f) The net worth and number of employees of the applicant and all of its affiliates shall be aggregated to determine eligibility. An individual or group of individuals, corporation, or other entity that directly or indirectly controls or owns a majority of the voting shares of another business board of directors, trustees, or other persons exercising similar functions, shall be considered an affiliate of that business for purposes of this Part. In addition, the Presiding Officer may determine that financial relationships of the applicant other than those described in this paragraph constitute special circumstances that would make an award unjust.

(g) An applicant is not eligible if it has participated in the proceeding on behalf of other persons or entities that are ineligible.

§ 17.6 Standards for awards.

(a) A prevailing applicant may receive an award for fees and expenses incurred in connection with a proceeding unless the position of the EPA as a party to the proceeding was substantially justified or unless special circumstances make the award sought unjust. No presumption arises that the agency's position was not substantially justified simply because the agency did not prevail.

(b) An award shall be reduced or denied if the applicant has unduly or unreasonably protracted the proceeding.

§ 17.7 Allowable fees and other expenses.

(a) The following fees and other expenses are allowable under the Act:

(1) Reasonable expenses of expert witnesses;

(2) The reasonable cost of any study, analysis, engineering report, test, or project which EPA finds necessary for the preparation of the party's case;

(3) Reasonable attorney or agent fees;

(b) The amount of fees awarded will be based upon the prevailing market rates for the kind and quality of services furnished, except that:

(1) Compensation for an expert witness will not exceed $24.09 per hour; and

(2) Attorney or agent fees will not be in excess of $75 per hour.

(c) In determining the reasonableness of the fee sought, the Presiding Officer shall consider the following:

(1) The prevailing rate for similar services in the community in which the attorney, agent, or witness ordinarily performs services;

(2) The time actually spent in the representation of the applicant;

(3) The difficulty or complexity of the issues raised by the application;

(4) Any necessary and reasonable expenses incurred;

(5) Such other factors as may bear on the value of the services performed.

§ 17.8 Delegation of authority.

The Administrator delegates to his Judicial Officer authority to take final action relating to the Equal Access to Justice Act. Nothing in this delegation shall preclude the Judicial Officer from referring any matter related to the Equal Access to Justice Act to the Administrator when the Judicial Officer determines the referral to be appropriate.

Subpart B—Information Required From Applicants

§ 17.11 Contents of application.

(a) An application for award of fees and expenses under the Act shall identify the applicant and the proceeding for which an award is sought. The application shall show that the applicant has prevailed and identify the position of EPA in the proceeding that the applicant alleges was not substantially justified.

(b) The application shall include a statement that the applicant's net worth as of the time the proceeding was initiated did not exceed $1 million if the applicant is an individual (other than a sole owner of an unincorporated business seeking an award in that capacity) or $5 million in the case of all other applicants. An applicant may omit this statement if:

(1) It attaches a copy of a ruling by the Internal Revenue Service that it qualifies as an organization described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)(3)) and is exempt from taxation under section 501(a) of the Code or, in the case of such an organization not required to obtain a ruling from the Internal Revenue Service on its exempt status, a statement that describes the basis for the applicant's belief that it qualifies under section 501(c)(3) of the Code; or

(2) It states that it is a cooperative association as defined in section 15(a) of the Agricultural Marketing Act (12 U.S.C. 114j(a)).

(c) If the applicant is a partnership, corporation, association, or organization, or a sole owner of an unincorporated business, the application shall state that the applicant did not have more than 500 employees at the time the proceeding was initiated, giving the number of its employees and describing briefly the type and purpose of its organization or business.

(d) The application shall itemize the amount of fees and expenses sought.

(e) The application may include any other matters that the applicant believes should be considered in determining whether and in what amount an award should be made.

(f) The application shall be signed by the applicant with respect to the eligibility of the applicant and by the attorney of the applicant with respect to fees and expenses sought. The application shall contain or be accompanied by a written verification under oath or affirmation or under penalty of perjury that the information provided in the application and all accompanying material is true and complete to the best of the signer's information and belief.

(OMB Control Number 2000-0403)

§ 17.12 Net worth exhibit.

(a) Each applicant except a qualified tax exempt organization or a qualified cooperative must submit with its application a detailed exhibit showing its net worth at the time the proceeding was initiated. If any individual, corporation, or other entity directly or indirectly controls or owns a majority of the voting shares or other interest of the applicant, or if the applicant directly or indirectly owns or controls a majority of the voting shares or other interest of any corporation or other entity, the exhibit must include a showing of the net worth of all such affiliates or of the applicant including the affiliates. The exhibit may be in any form that provides full disclosure of assets and liabilities of the applicant and any affiliates and is sufficient to determine whether the applicant qualifies under the standards of 5 U.S.C. 504(b)(1)(B)(i). The Presiding Officer may require an applicant to file additional information to determine the applicant's eligibility for an award.

(b) The net worth exhibit shall describe any transfers of assets from, or obligations incurred by, the applicant or any affiliate occurring in the one-year period prior to the date on which the proceeding was initiated that reduced the net worth of the applicant and its affiliates below the applicable net worth ceiling. If there were no such transactions, the applicant shall so state.

(c) The net worth exhibit shall be included in the public record of the proceeding.

(OMB Control Number 2000-0430)

§ 17.13 Documentation of fees and expenses.

(a) The application shall be accompanied by full documentation of fees and expenses, including the cost of any study, engineering report, test, or project, for which an award is sought.

(b) The documentation shall include an affidavit from any attorney, agent, or expert witness representing or appearing in behalf of the party stating the actual time expended and the rate at which fees and other expenses were computed and describing the specific services performed.

(1) The affidavit shall itemize in detail the services performed by the date, number of hours per date, and the services performed during those hours. In order to establish the hourly rate, the affidavit shall state the hourly rate which is billed and paid by the majority of clients during the relevant time periods.

(2) If no hourly rate is paid by the majority of clients because, for instance, the attorney or agent represents most clients on a contingency basis, the attorney or agent shall provide affidavits from two attorneys or agents with similar experience, who perform similar work, stating the hourly rate which they bill and are paid by the majority of their clients during a comparable time period.

(c) The documentation shall also include a description of any expenses for which reimbursement is sought and a statement of the amounts paid and payable by the applicant or by any other person or entity for the services provided.

(d) The Presiding Officer may require the applicant to provide vouchers, receipts, or other substantiation for any expenses claimed.

(OMB Control Number 2000-0430)

§ 17.14 Time for submission of application.

(a) An application must be filed no later than 30 days after final disposition of the proceeding. If agency review or reconsideration is sought or taken of a decision in which an applicant believes it has prevailed, action on the award of fees shall be stayed pending final agency disposition of the underlying controversy.

(b) Final disposition means the later of: (1) The date on which the agency decision becomes final, either through disposition by the Administrator or Judicial Officer of a pending appeal or through an initial decision becoming final due to lack of an appeal or (2) the date of final resolution of the proceeding, such as settlement or voluntary dismissal, which is not subject to a petition for rehearing or reconsideration.

(c) If judicial review is sought or taken of the final agency disposition of the underlying controversy, then agency proceedings for the award of fees will be stayed pending completion of judicial review. If, upon completion of review, the court decides what fees to award, if any, then EPA shall have no authority to award fees.

Subpart C—Procedures for Considering Applications.

§ 17.21 Filing and service of documents

An application for an award and any other pleading or document related to the application shall be filed and served on all parties to the proceeding in the same manner as other pleadings in the proceeding.

§ 17.22 Answer to application.

(a) Within 30 calendar days after service of the application, EPA counsel shall file an answer.

(b) If EPA counsel and the applicant believe that they can reach a settlement concerning the award, EPA counsel may file a statement of intent to negotiate. The filing of such a statement shall extend the time for filing an answer an additional 30 days.

(c) The answer shall explain in detail any objections to the award requested and identify the facts relied on to support the objection. If the answer is based on any alleged facts not already reflected in the record of the proceeding, EPA counsel shall include with the answer either a supporting affidavit or affidavits or request for further proceedings under § 17.25.

§ 17.23 Comments by other parties.

Any party to a proceeding other than the applicant and EPA counsel may file comments on an application within 30 calendar days after it is served or on an answer within 15 calendar days after it is served.

§ 17.24 Settlement.

A prevailing party and EPA counsel may agree on a proposed settlement of an award before final action on the application, either in connection with a settlement of the underlying proceeding or after the underlying proceeding has been concluded. If the party and EPA counsel agree on a proposed settlement of an award before an application has been filed, the application shall be filed with the proposed settlement.

§ 17.25 Extensions of time and further proceedings.

(a) The Presiding Officer may, on motion and for good cause shown, grant extensions of time, other than for filing an application for fees and expenses,

after final disposition in the adversary adjudication.

(b) Ordinarily, the determination of an award will be made on the basis of the written record of the underlying proceeding and the filings required or permitted by the foregoing sections of these rules. However, the adjudicative officer may *sua sponte* or on motion of any party to the proceedings require or permit further filings or other action, such as an informal conference, oral argument, additional written submissions, or an evidentiary hearing. Such further action shall be allowed only when necessary for full and fair resolution of the issues arising from the application and shall take place as promptly as possible. A motion for further filings or other action shall specifically identify the information sought on the disputed issues and shall explain why the further filings or other action is necessary to resolve the issues.

(c) In the event that an evidentiary hearing is required or permitted by the adjudicative officer, such hearing and any related filings or other action required or permitted shall be conducted pursuant to the procedural rules governing the underlying adversary adjudication.

§ 17.26 Decision on application.

The Presiding Officer shall issue a recommended decision on the application which shall include proposed written findings and conclusions on such of the following as are relevant to the decision: (a) The applicant's status as a prevailing party; (b) the applicant's qualification as a "party" under 5 U.S.C. 504(b)(1)(B); (c) whether EPA's position as a party to the proceeding was substantially justified; (d) whether the special cirumstances make an award unjust; (e) whether the applicant during the course of the proceedings engaged in conduct that unduly and unreasonably protracted the final resolution of the matter in controversy; and (f) the amounts, if any, awarded for fees and other expenses, explaining any difference between the amount requested and the amount awarded.

§ 17.27 Agency review.

The recommended decision of the Presiding Officer will be reviewed by EPA in accordance with EPA's procedures for the type of substantive proceeding involved.

§ 17.28 Judicial review.

Judicial review of final EPA decisions on awards may be sought as provided in 5 U.S.C. 504(c)(2).

§ 17.29 Payment of award.

An applicant seeking payment of an award shall submit a copy of the final decision granting the award to the Office of Financial Management for Processing. A statement that review of the underlying decision is not being sought in the United States courts or that the process for seeking review of the award has been completed must also be included.

[FR Doc. 83-23462 Filed 9-1-83; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6457

[OR 1294 (Wash)]

Washington; Withdrawal of Lands for the Billy Goat Recreation Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws, for 20 years, 5.8 acres of land within the Okanogan National Forest for protection of the Billy Goat Recreation Area. The land will be closed to mining, but remain open to surface entry and mineral leasing.

EFFECTIVE DATE: September 2, 1983.

FOR FURTHER INFORMATION CONTACT: Champ C. Vaughan, Jr., Oregon State Office, 503–231–6905.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 90 Stat. 2751; 43 U.S.C. 1714, it is ordered as follows:

1. Subject to valid existing rights, the following described national forest land, which is under the jurisdiction of the Secretary of Agriculture, is hereby withdrawn from location and entry under the mining laws, (30 U.S.C. Ch. 2), and reserved for the Billy Goat Recreation Area:

Willamette Meridian

Okanogan National Forest

Billy Goat Recreation Area

T. 38 N., R. 20 E., unsurveyed,
Sec. 23, two tracts of land within said sec. 23 which are more particularly described as follows:

Parcel No. 1

Beginning at land monument identified as "U.S. Forest Service, Department of Agriculture, LM 1980"; thence N. 57°20'30" E., 392.20 feet; thence N. 33°34'40" E., 496.98 feet, to Corner No. 1 of Parcel No. 1 which is the true point of beginning; thence S. 32°22'41" E., 748.22 feet to Corner No. 2; thence N. 89°03'13" W., 202.28 feet to Corner No. 3; thence N. 64°57'07" W., 522.43 feet to Corner No. 4; thence N. 33°34'40" E., 496.98 feet to Corner No.1, containing approximately 4.4 acres.

Parcel No.2

Beginning at land monument identified as "U.S. Forest Service, Department of Agriculture, LM 1980"; thence S. 62°06'51" E., 2223.40 feet, to Corner No. 1 of Parcel No. 2 which is the true point of beginning; thence S. 51°56'13" E., 425.37 feet to Corner No. 2; thence N. 03°09'47" E., 347.81 feet to Corner No. 3; thence S. 76°27'54" W., 364.17 feet to Corner No. 1, containing approximately 1.4 acres

The areas described aggregate approximately 5.8 acres in Okanogan County.

2. The withdrawal made by this order does not alter the applicability of the public land laws governing the use of the national forest lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal shall remain in effect for a period of 20 years from the effective date of this order.

Inquiries concerning the land should be addressed to the State Director, Bureau of Land Management, P.O. Box 2965, Portland, Oregon 97208.

August 24, 1983.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

[FR Doc. 83-24106 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 70-27, Notice 28]

Hydraulic Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This notice amends Standard No. 105, *Hydraulic Brake Systems*, to provide an optional test procedure for trucks, buses other than school buses, and multipurpose passenger vehicles (MPV's) with a gross vehicle weight rating (GVWR) of greater than 10,000 pounds. The standard becomes applicable to these vehicles on September 1, 1983. The amendment permits manufacturers to meet the partial failure requirements after conducting the standard's full test

sequence preceding the partial failure test instead of the abbreviated test sequence generally specified for these vehicles. Under this option, manufacturers continue to be required to meet only the requirements of those tests in the abbreviated test sequence.

DATES: Any petitions for reconsideration of this amendment must be received on or before October 3, 1983. The effective date for this amendment is September 1, 1983.

ADDRESSES: 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. 20509. The docket is open on weekdays from 8 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Duane Perrin, Crash Avoidance Division, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, D.C. 20590 (202–426–2800).

SUPPLEMENTARY INFORMATION: Standard No. 105, *Hydraulic Brake Systems*, provides that vehicles must meet a variety of performance requirements when tested according to a lengthy list of test procedures and in the sequence in which the procedures are listed by the standard. Currently, the standard is only applicable to passenger cars and school buses. However, effective September 1, 1983, the standard becomes applicable, in whole or in part, to trucks, all types of buses, and multipurpose passenger vehicles. (Final rule published in the **Federal Register** (46 FR 55) on January 2, 1981; response to petitions for reconsideration published December 21, 1981 (46 FR 61887).)

While Standard No. 105 was extended on a general basis (with some modifications) to vehicles with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, only limited requirements were made applicable to vehicles with a GVWR greater than 10,000 pounds. (The standard's full requirements already applied to all school buses, including those with a GVWR greater than 10,000 pounds.) The abbreviated test sequence applicable to heavy vehicles other than school buses is similar to the full test sequence, except that many of the tests are eliminated.

On July 14, 1983, in response to concerns raised by General Motors (GM) about an apparent anomaly in the test procedure, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register** (48 FR 32202) to provide an optional test procedure for heavy vehicles other than school buses. As explained in that notice, the agency was informed by GM that some of its heavy vehicles were having difficulties in meeting Standard No. 105's partial failure requirements under the limited test sequence. (The partial failure test ensures that a vehicle's brakes are capable of bringing the vehicle to a controlled stop in a reasonable distance if a part of the service brake system should fail.) Under the full test sequence, the partial failure test is conducted well into the test sequence, following three effectiveness tests, burnish and reburnish (i.e., break-in or conditioning) procedures, and the parking brake test. Of these various steps, only one, the burnish procedure, is included in the limited test sequence.

GM informed NHTSA that it discovered, late in its compliance testing, that certain of its heavy vehicles, as designed, were unable to meet the partial failure requirements under the limited test sequence. However, the same vehicles would meet the partial failure requirements if tested under the full test sequence.

According to GM, redesign of some of its heavy vehicle braking systems would be required to meet the partial failure requirements under the limited test sequence. That company stated that in the short run the minimum cost resulting from such redesign would be in excess of $100 per vehicle, without improving user safety. Annual production of approximately 20,000 vehicles would be affected. Given the economic consequences of this apparent anomaly related to the test procedure, GM requested that the standard be amended to correct it.

After analyzing the issues raised by GM, NHTSA agreed that the standard should be amended. The NPRM explained that the elimination of the other procedures from the limited test sequence could have the effect of increasing the stringency of the later partial failure test. The reason for this is that some brakes tend to become more effective as they are tested, because temperature conditioning improves the friction of the brake pads.

The NPRM also explained that the increased stringency of the partial failure test under the limited test sequence was neither intended nor foreseen by the agency. Indeed, the stopping distances for the partial failure test were based on the assumption that the full test sequence would be conducted. The same stopping distances are applicable to heavy school buses, but they are tested under the full test sequence.

NHTSA proposed that manufacturers be given the option of subjecting their heavy vehicles to the full test sequence preceding the partial failure test instead of the limited test sequence. The NPRM explained that manufacturers would not be required to meet performance requirements associated with the additional tests under this proposed option. However, manufacturers would be required to conduct the additional tests in accordance with the standard's specified test procedures.

Three comments were received by the agency, all of which supported adoption of the proposed amendment. GM commented that the NPRM properly described the situation as an unexpected and unintended increase in test stringency arising solely from the elimination of several test sequence steps in the interest of test efficiency and that the difficulty is only one of procedure and not one that in any way affects motor vehicle safety. That company emphasized that the brake system in question is very similar to that on its school buses of equivalent GVWR and when tested to the full sequence schedule, as is the school bus system, meets all applicable requirements.

GM also stated that proposed solution is the most logical approach to elimination of this unintended increase in stringency. That company noted that giving the manufacturer the option to choose whether its vehicles are tested to the full or abbreviated test sequence enables systems which have been developed to meet the full school bus requirements to also comply when used on trucks, without additional complication, while also allowing a manufacturer which has developed a system to comply with the abbreviated test sequence to use that system without additional testing.

Ford commented that it agrees with the agency's analysis that the elimination of certain procedures from the test sequence applicable to vehicles other than the subject heavy vehicles could the have effect of increasing the stringency of the partial failure test in the abbreviated test sequence, and that it supports the proposed amendment. Chrysler submitted a comment which stated that it concurs with the proposed amendment.

After reviewing the comments, NHTSA has determined that the amendment should be adopted as proposed. An effective date of September 1, 1983, is provided. The agency has determined that an effective date of such short notice is in the public interest given the imminence of the September 1, 1983, effective date for

Standard No. 105's applicability to these vehicles, and the optional nature of the amendment.

The agency has considered the costs and other impacts of this amendment and has determined that it is not major within the meaning of Executive Order 12291 or significant within the meaning of the Department of Transportation's regulatory procedures. Further, the agency concludes that the economic and other consequences of the amendment are so minimal as not to require preparation of a full regulatory evaluation. Due to the optional nature of the amendment, no new costs are imposed on manufacturers or consumers. The amendment will result in some cost savings to manufacturers and consumers since it eliminates the need for redesign of some brake systems. In the short run, these savings could be relatively high on a per vehicle basis. As noted above, GM indicated that short-run redesign costs would have been in excess of $100 per vehicle, had the standard remained unchanged. In the longer run, however, NHTSA believes that these savings would probably be low, since, with a long leadtime, manufacturers could likely redesign their brakes at a much lower cost to comply with the requirements under the abbreviated test sequence.

The agency has considered the effects of this proposal in relation to the Regulatory Flexibility Act. I certify that this amendment will not have a significant economic impact on a substantial number of small entities. Small businesses will be affected by the amendment only to the extent that they are sellers or purchasers of affected vehicles. Small organizations and small government jurisdictions will only be affected to the extent that they are purchasers of affected vehicles. The amendment will result in some lower vehicle prices, thereby benefitting both sellers and purchasers. However, such savings are sufficiently small relative to the purchase price of heavy vehicles, even in the short run when they are expected to be at their highest, that they are unlikely to significantly affect purchasing decisions.

Finally, the agency has analyzed this amendment for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have a significant effect on the human environment.

List of Subjects in 49 CFR 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR 571.105 is amended as set forth below.

§ 571.105 [Amended]

Section S7 is amended by revising the parenthetical after the first sentence of the paragraph to read as follows:

(For vehicles only having to meet the requirements of S5.1.2 and S5.1.3 in section S5.1, the applicable test procedures and sequence are S7.1, S7.2, S7.4, S7.9, S7.10 and S7.18. However, at the option of the manufacturer, the following test procedures and sequence may be conducted: S7.1, S7.2, S7.3, S7.4, S7.5, S7.6, S7.7, S7.8, S7.9, S7.10 and S7.18. The choice of this option shall not be construed as adding to the requirements specified in S5.1.2 and S5.1.3.)

(Secs. 103, 119, Pub. L. 89-563, 80 Stat. 718 (15 U.S.C. 1392, 1407); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on August 30, 1983.

Diane K. Steed,

Deputy Administrator.

[FR Doc. 83-24153 Filed 8-30-83; 2:14 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Deregulation of the Longjaw Cisco and the Blue Pike

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service is removing the blue pike *(Stizostedion vitreum glaucum)* and the longjaw cisco *(Coregonus alpenae)* from the U.S. List of Endangered and Threatened Wildlife. This action is based on a review of all available data that indicates these species are extinct. Blue pike populations declined in the late 1950's and never recovered, with the last confirmed specimens taken in the 1960's. Historically, this subspecies was found in Lakes Erie and Ontario, and the Niagara River. Intensive surveys by the Fish and Wildlife Service and States where the species occurred have failed to yield any additional specimens. In a 1977 survey, the Blue Pike Recovery Team contacted all Fish and Game agencies in the U.S. in an effort to determine if blue pike existed in their waters. After all responded negatively, the Blue Pike Recovery Team concluded that the blue pike was extinct and recommended removing it from the U.S. List of Endangered and Threatened Wildlife.

The longjaw cisco was one of several closely related species of ciscos that occur in the Great Lakes. It was known to occur in Lakes Michigan, Huron, and Erie. Despite the considerable effort of the Service's Great Lakes Fishery Laboratory and States around the Great Lakes, there has been no reported collection of this species in U.S. waters since 1967. Recent research has indicated that some species of ciscos in the Great Lakes may constitute hybrid populations. The Fish and Wildlife Service concludes that *Coregonus alpenae* is extinct.

DATE: This rule becomes effective on October 3, 1983.

ADDRESSES: Questions concerning this action may be addressed to the Regional Director, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111. Comments and materials relating to this rule will be available for public inspection by appointment during normal business hours by contacting the Fish and Wildlife Service, Endangered Species staff, at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. James M. Engel, Office of Endangered Species, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725-3276), or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703-235-2771).

SUPPLEMENTARY INFORMATION:

Background

Blue pike were abundant in the commercial fishery of the late 1800's but by 1915 landings began to fluctuate extensively. Production peaks in excess of 10,000 metric tons occurred in 1915, 1936, 1944, and 1949, and lows under 2,500 metric tons occurred in 1917-19, 1929, 1941, and 1946-47 before the fishery collapsed in 1958. During the past 10 years, the blue pike has been reported to be extinct by several fishery biologists.

Fishery biologist have evidence that an over-intensive fishery, which disrupted self-stabilizing mechanisms within the population, led to the extreme fluctuations and ultimate crash of the fishery. Since young-of-the-year blue pike inhabited the same areas as older members of the populations, they were vulnerable to cannibalism. It has been postulated that overfishing for adults

caused unusual numbers of young-of-the-year to escape predation. This would lead to a short population explosion followed by several years of poor recruitment due to over-predation by abundant older fish on the young. An intensive fishery would cause increased amplitude in the fluctuations because the fish would be taken even when they were scarce. In addition, competition with and predation by the newly arrived rainbow smelt, which occupied the same habitat for part of the year, were likely detrimental to this species.

The last successful year-class occurred in 1954 and there was virtually no recruitment to the fishery after that year. Production continued at high levels for another 3 years and then collapsed. As growth rates in this period increased enormously, immature fish were readily exploited which further reduced spawning potential.

The reasons for the collapse of the fishery in 1958 have not been well defined. Summer oxygen deficiencies in the hypolimnion of the central basin probably forced the blue pike into the deeper waters of the eastern basin of Lake Erie where they were more vulnerable to an extensive fishing effort. It has also been suggested that introgressive hybridization with walleye may have been responsible for the final disappearance of the remnant stock.

The longjaw cisco, originally described in 1924, was indigenous to the Great Lakes basin and occurred in Lakes Michigan, Huron, and Erie. The longjaw cisco was one of several species of deepwater ciscos utilized by the smoked fish trade and was a very important species in the fishery of the Great Lakes. It was also an important prey species for lake trout and turbot before these fishes were decimated by the sea lamprey. The longjaw cisco has not been seen in Lakes Erie and Huron since the late 1950's. The most recent collection of this species in Lake Michigan was in 1967.

The ciscos, including the longjaw cisco, supported a substantial fishery until about 1950. These fishes were caught exclusively by gillnets set in deep (100-300 feet) water. As the deep water ciscos became scarce, the smaller shallow water species entered the fishery. The cisco or chub fishery of the Great Lakes ceased to exist before 1960 and presently only one cisco, the bloater (*Coregonus hoyi*), is important in the commercial fishery.

The decline of the longjaw cisco and the cisco fishery in general is usually attributed to fishery and environmental problems. The history of the cisco fishery in the Great Lakes is one of increasing exploitation and decreasing stocks. As the ciscos decreased in abundance, there was an increase in the fishery effort along with a decrease in net mesh size. This resulted in further depletion of cisco stocks. In addition to the increased fishing pressure, predation by the sea lamprey and degradation of the habitat further reduced cisco populations. In recent years, problems resulting from hybridization between some species of cisco has contributed to this decline.

Section 4 of the Endangered Species Act of 1973, as amended, directs the Secretary of the Interior to conduct, at least once every 5 years, a review of all species included in the list of Endangered and Threatened species to determine if any such species should be removed from the list or be changed in status from Endangered to Threatened or Threatened to Endangered. The longjaw cisco was listed in 1967 and the blue pike in 1970 and an official review of their status was initiated in 1979. The lack of recent collections indicates that these species have apparently become extinct. Based on this information, the Service proposed to deregulate the longjaw cisco and blue pike.

Summary of Comments and Recommendations

In the May 25, 1982, **Federal Register**, the proposed rule to deregulate the blue pike and longjaw cisco asked all interested parties to submit their comments. All comments relating to the existence of the longjaw cisco and the blue pike were considered in the present status determination. A total of twelve comments were received that dealt specifically with the delisting proposal.

Three of the 12 comments came from concerned citizens, one of whom supported the proposal, while the other two felt that they had recently captured blue pike. One of these individuals reported catching blue pike in Kinzua Reservoir near Salamanca, New York. Personnel at the New York Department of Environmental Conservation indicated that they have checked out many reports of this type and no specimens have ever proven to be blue pike.

The Ontario Ministry of Natural Resources submitted a comment and reported that there was no evidence of blue pike in Ontario waters of Lake Erie and Lake Nipissing. Based on this report and previous reports from Canadian biologists, the blue pike is presumed extinct in Canada.

The National Wildlife Federation supported the action for blue pike but did not comment on the longjaw cisco. The Michigan United Conservation Clubs supported the action for the longjaw cisco. The Great Lakes Fishery Lab, the Michigan Department of Natural Resources (two letters), and the New York Department of Environmental Conservation supported the proposal for both species. The Illinois Department of Conservation and the Wisconsin Department of Natural Resources supported the proposal for the longjaw cisco, but did not comment on the blue pike since there are no records of this species in either state. Finally, the Ohio Department of Natural Resources supported the proposal for the blue pike, but did not comment on the longjaw cisco; there are no Ohio records for this species.

Summary of Status Findings

After a careful review and examination of all available data, the Secretary has determined that the longjaw cisco and the blue pike are extinct and no longer require protection pursuant to the Endangered Species Act of 1973, as amended. A sufficient amount of time has passed since each of these species was last captured to insure that they are extinct. If evidence to the contrary is presented at a later date, the action is reversible.

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (codified at 50 CFR Part 424; under revision to accommodate 1982 amendents) set forth the procedures for adding species to the Federal list. The Secretary of the Interior shall determine whether any species is an Endangered species or a Threatened species due to one or more of the five factors described in Section 4(a)(1) of the Act. Regulations implementing this section, 50 CFR 424.11(d), state that the factors for removing a species from the list are those in paragraph (b) of this section. The data to support such removal must be the best scientific and commercial data available to substantiate that the species is neither Endangered nor Threatened because of extinction, recovery of the species, or the original data for classification were in error. The factors in paragraph (b) of 50 CFR 424.11 and their application to the longjaw cisco and the blue pike are as follows:

Blue Pike

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* Pollution and oxygen depletion may have contributed to the decline of this species.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Selective fishing by

commercial interests may have been a factor in the disappearance of the blue pike.

C. *Disease or predation.* Predation on adults by the sea lamprey may have contributed to the decline of the species.

D. *The inadequacy of existing regulatory mechanisms.* The absence of regulations sufficient to protect the fishery may have contributed to the decline of the blue pike.

E. *Other natural or manmade factors affecting its continued existence.* Competition with rainbow smelt (*Osmerus mordax*) may have been one of the factors contributing to the decline of this species.

Although the exact cause of the disappearance of the blue pike are not known, it appears that the factors reported above are responsible for the extinction of the blue pike.

Longjaw Cisco

A. *The present or threatened destruction, modification or curtailment of its habitat or range.* The longjaw cisco was historically recorded from Lakes Michigan, Huron, and Erie. There have been no known adverse effects on the cisco from water quality degradation or habitat elimination in Lakes Huron and Michigan. Extensive industrial and municipal wastes that contributed to an overall deterioration of water quality in Lake Erie may have led to the decline in the cisco population there.

B. *Overutilization for commercial, recreational, scientific or educational purposes.* An intensive commercial fishery for large ciscos in Lakes Michigan and Huron may have contributed to the decline of the longjaw cisco in these lakes.

C. *Disease or predation.* Sea lamprey predation in Lakes Michigan and Huron may account for a portion of the longjaw cisco's decline.

D. *The inadequacy of existing regulatory mechanisms.* The absence of regulations sufficient to maintain the fishery may have contributed to the decline of this species.

E. *Other natural or manmade factors affecting its continued existence.* Competition with smaller ciscos, as well as with alewife (*Alosa pseudoharengus*) and rainbow smelt (*Osmerus mordax*), was a suspected contributory factor in the decline of the longjaw cisco. Hybridization with other cisco species may also have been a contributing factor in the species' disappearance.

The data presented here are considered the best scientific data that are available. The Service has determined that a sufficient amount of time passed since these species were last found (1967 for the longjaw cisco and the late 1960's for the blue pike) to make a determination that the species are in fact extinct and remove them from the protective measures provided by the Endangered Species Act.

Effects of the Rule

The rule removes the longjaw cisco and the blue pike from the List of Endangered and Threatened Wildlife and discontinues all protections accorded the fishes and their habitats under provisions of the Endangered Species Act of 1973, as amended.

National Environmental Policy Act

An Environmental Assessment was prepared in conjunction with this rule. It is on file in the Service's Twin Cities Regional Office, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111, and may be examined by appointment during regular business hours. This assessment is the basis for a decision that this is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500–1508).

Primary Authors

The primary authors of this rule are Robert F. Johnson, Jr., and John G. Sidle, U.S. Fish and Wildlife Service, Federal Building, Fort Snelling, Twin Cities, Minnesota 55111 (612/725–3563).

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

PART 17—[AMENDED]

Accordingly Part 17, Subchapter B of Chapter I, Title 50 of the U.S. Code of Federal Regulations, is hereby amended as set forth below:

1. The authority citation is as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

§ 17.11 [Amended]

2. Section 17.11(h) is amended by removing the longjaw cisco (*Coregonus alpenae*) and the blue pike (*Stizostedion vitreum glaucum*), under "Fishes," from the List of Endangered and Threatened Wildlife.

Dated: August 2, 1983

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-24180 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-55-M

Proposed Rules

Federal Register
Vol. 48, No. 172
Friday, September 2, 1983

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

7 CFR Part 658

Farmland Protection Policy

AGENCY: Soil Conservation Service, Agriculture (USDA).

ACTION: Proposed rule; extention of public comment period.

SUMMARY: In the **Federal Register** of July 12, 1983 [48 FR 31863], USDA proposed a rule for implementation of the Farmland Protection Policy Act, Subtitle I of Title XV of the Agriculture and Food Act of 1981, Pub. L. 97–98. USDA asked that written comments be submitted by September 12, 1983. USDA has determined that additional time should be allowed.

DATES: The deadline for submitting written public comments is hereby extended to October 1, 1983.

ADDRESS: Howard C. Tankersley, Executive Secretary, USDA Land Use Issues Working Group, Soil Conservation Service, P.O. Box 2890, Washington, D.C. 20013.

FOR FURTHER INFORMATION CONTACT: Howard C. Tankersley, telephone 202–382–1855.

John B. Crowell, Jr.,
Assistant Secretary for Natural Resources and Environment.

August 29, 1983.

[FR Doc. 83-24140 Filed 9-1-83; 8:45 am]
BILLING CODE 3410-16-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 83–474]

Financial Reporting Requirements

Dated: August 29, 1983.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice of proposed change in reporting requirements.

SUMMARY: The Board is proposing to modify its reporting requirements for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation, in order to collect the data needed for risk assessment, industry monitoring and supervision in a deregulated and rapidly changing environment, while minimizing the burden on the industry of providing this information.

DATES: Comment period: Public comments to the Board are due by September 29, 1983.

ADDRESS: Send comments to Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, D.C. 20552. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Pickering, Deputy Director, Office of Policy and Economic Research, (202–377–6770), James Smith, Financial Analyst, Office of Examinations and Supervison (202–377–6391), or George W. Hubler, System Industry Condition Report Coordinator, Information Systems Division, Administration Office, (202–377–6135), Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552

SUPPLEMENTARY INFORMATION: The current financial reporting requirements for institutions whose accounts are insured by the Federal Savings and Loan Insurance Corporation ("insured institutions") consist of a semiannual report and a monthly report required from all such institutions and a thrice-monthly report required from a smaller number of institutions. The semiannual report has the following component parts:

(A) Statements of condition, operations, scheduled items and supplementary items reported on a fiscal half-year basis (Sections A–G);

(B) A schedule of deposit balances and deposit offering rates reported as of March and September (Section K); and

(C) Schedules reporting detailed security holdings, deposits by branch office and tax information reported as of September (Sections J, L and I), and a schedule reported as of December on deposit balances by account size (Section H).

In addition to the regular monthly report required from all insured institutions, a sample of about 400 institutions provide a supplemental monthly report containing additional information on mortgage activity.

The information system was developed during a period of relatively stable interest rates, substantial statutory limitations on the investment authority of the thrift industry and comprehensive Board regulation of federally insured thrift institutions. Over the past several years, however, a variety of developments have drastically altered the nature of the thrift industry and the environment in which it operates. Among these are a broad statutory expansion in the discretionary investment authority of the thrift industry, substantially completed deregulation of deposit rates and a sharp reduction in the regulatory restrictions regarding the characteristics of mortgage loans that can be made by thrifts. Even more important, there has been a sharp increase in the magnitude of the variation in market interest rates over short periods of time, which has magnified the interest-rate risk assumed by the thrift industry operating by its traditional method of funding long-term assets with short-term liabilities.

These changes have created a need to amend the Board's reporting system in order to collect information essential for the effective performance of the Board's function of industry monitoring and supervision. Specific areas of inadequate reporting included the measurement of (a) interest-rate sensitivity (b) futures and options market participation (c) cost and characteristics of deposit flows, and (d) use of new investment powers. Moreover, the current procedure of reporting semiannually on a fiscal-year basis distorts comparison of institutions with differing fiscal years during periods of rapidly changing financial conditions.

The Board believes that in today's economic environment it is incumbent upon institutions to track carefully in their own operations the kind of information needed by the Board in its reviewing function, and that corporate management would be well-served by having available industry-wide aggregates of this information. For all of these reasons, the Board is therefore proposing to amend the reporting requirements as described below.

The most obvious method of providing the Board with the additional

information would be to add the new elements to the current semiannual/monthly reporting system. This would, however, substantially increase the reporting burden on insured institutions, even with the elimination of certain report elements no longer required in the current regulatory and financial environment. In addition, much of the information, both new and old, is needed more frequently than semiannually in a rapidly changing environment, but is not necessary on a monthly basis and would be difficult for the industry to provide in an accurate manner with such frequency. Consequently, the Board proposes to change to a system in which most insured institutions would report no more frequently than quarterly. Monthly reports would be required only from a stratified random sample of institutions designed to provide industry-wide information in order to allow the Board to monitor developments between quarterly reporting dates.

The universal reporting component of the proposed system would consist of the following information, to be reported on a uniform calendar-quarter basis by all insured institutions:

(1) Statements of condition and operations, and a supplemental schedule covering lending activity, delinquency trends and futures/options data (Sections A–F of Attachment A). These sections would provide information on the use of new investment powers, while eliminating unnecessary information currently collected in the similar schedules.

(2) A schedule of deposit activity that would modernize and expand information currently collected on the character and cost of deposit acquired (Section G of Attachment A).

(3) A schedule reporting balance and yield/cost information on assets and liabilities classified by economic risk categories and maturity. This will permit analysis of the interest-rate risk assumed by individual institutions and the industry (Section H, Parts I and II, of Attachment A).

In addition, all institutions would file three annual supplements to provide information not needed quarterly. One (Section I of Attachment A) would be filed as of December 31 of each year and provide information on the number of mortgage loans and foreclosures and certain miscellaneous data. A second (Section K of Attachment A) contains data as of the end of an institution's fiscal year, provides data on slow loans and other scheduled items and would be filed with the Quarterly Report covering the period in which the fiscal year closes. The third annual supplement would be Schedule L of the current semiannual report, which provides data on deposit balances by branch offices, in its present form, except that it would be filed as of June 30 rather than September 30. These reporting requirements would become effective for the first quarter of 1984.

The new sample reporting procedures would provide adequate information for monitoring industry developments between quarterly reports. The sample component of the proposed new reporting system would consist of three sections to be filed by a stratified random sample of about 375 institutions. These sections are:

(1) A monthly report on balances in specific categories of deposits and on the rates being offered on such deposits (See Attachment B). This report would supplement the information reported quarterly and, in part, replace the current thrice-monthly reporting by large institutions. This requirement would become effective in the fourth quarter of 1983.

(2) A monthly report providing a condensed balance sheet and information on mortgage lending and deposit activity and interest expense (See Attachment C). This would replace the current universal monthly report as of July 1984. The current monthly report would continue to be required of all institutions through June 1984 in order to ensure the availability of information during the start-up of the new quarterly reporting system.

(3) A quarterly report to be provided by institutions in the monthly report sample detailing the composition of security investments. (See Attachment D). This would replace the similar report currently filed once a year by all insured institutions.

Unaffected by this proposal are the reports and data collection required under the Home Mortgage Disclosure Act (P.L. 94–200), the Board's nondiscrimination regulations (12 CFR Parts 528 and 531), the annual financial report of wholly-owned service corporations, and the monthly report filed by a sample of about 900 associations providing information on interest rates and other characteristics of conventional home mortgage loans. In addition, Federal Home Loan Banks would be permitted to collect monthly information from insured institutions to determine regional cost of funds, where a Bank has concluded that availability of such data is necessary for institutions in its area to meet contractual obligations to make changes in adjustable-rate mortgages. Finally, the Board would continue to require special monthly reporting by institutions needing supervisory surveillance.

The Board recognizes that the implementation of any new reporting system involves a significant burden. This will be particularly the case for the new information being proposed on maturity and cost of institution assets and liabilities. It is of the opinion, however, that the long-run burden of the proposed reporting system, including the change from monthly to quarterly reporting, will be less than that of the current system. The Board is particularly sensitive to the cost impact on small institutions, and has therefore proposed an alternative which would pare information collection to the essentials needed for supervisory purposes and for all institutions' proper monitoring of their own operations.

The specific information contained in required reporting forms is not codified in the Board's regulations. *See* 12 CFR 563.18(a). Because of the magnitude of the reporting changes being considered, however, the Board is taking the opportunity to publish this proposal in order to secure the benefits of public review and comment. The public is further advised that the Board has submitted the proposal to the Office of Management and Budget for approval pursuant to 5 CFR 1320.12, pertaining to clearance of information collection requests; requests for information, including copies of the proposed information collection request and supporting documentation, are obtainable from the Board, and comments on the proposal should be directed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Federal Home Loan Bank Board. Of course, the Board is also desirous of receiving the public's comments with regard to the paperwork-burden aspects of the proposal, which are the particular concern of the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1980, and all other facets of the proposal. Because of the substantial time necessary to implement any major change in reporting requirements and the benefits that would be derived from the proposed implementation schedule, it is requested that comments submitted to the Board be filed by September 29, 1983, directed to: Director, Information Services Section, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552.

List of Subjects in 12 CFR Part 563

Reporting and recordkeeping requirements, Savings and loan association, Securities.

(Secs. 401–7, 48 Stat. 1255–62, as amended (12 U.S.C. 1724–30); Reorg. Plan No. 3 of 1947; 3 CFR, 1943–48 Comp., p. 1071)

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT

[Dollars to be reported in thousands]

Field Heading	Field No.
Section A—Assets	
Mortgage loans and contracts:	
FHA/VA and Other Federally Insured or Guaranteed Loans	010
Conventional:	
1–4 Dwelling Units	020
5 or more Dwelling Units	030
Other Improved Real Estate	040
Developed Building Lots, Acquisition and Development of Land, and Unimproved Land Loans	050
Nonconforming Loans and Contracts to Facilitate Sale of Real Estate Owned	060
Mortgage-Backed Securities:	
Insured or Guaranteed by an Agency or Instrument of the United States	070
Conventional	080
Accrued Interest Receivable	090
Advances for Borrowers' Taxes and Insurance	100
Contra-assets to mortgage loans:	
Loans in Process	110
Unearned Discounts	120
Deferred Loan Fees	130
Specific Reserves and Valuation Allowances	140
Net mortgage loans and contracts	150
Nonmortgage loans:	
Commercial Loans:	
Secured (Other than Mortgage)	160
Unsecured	170
Loans on Savings Accounts	180
Home Improvement Loans	190
Education Loans	200
Consumer Auto Loans	210
Other Closed-End Consumer Loans	220
Credit Cards, and Other Open-End Credit Extended to Consumers	230
Mobile Home Loans—Retail	240
Financing Leases:	
Consumer	250
Nonconsumer	260
Accrued Interest Receivable	270
Contra-assets to nonmortgage loans:	
Loans in Process	280
Unearned Discounts	290
Deferred Loan Fees	300
Specific Reserves and Valuation Allowances	310
Net nonmortgage loans and contracts	320
Repossessed assets:	
Foreclosed Real Estate and Real Estate in Judgment (Net)	330
Other Repossessed Assets (Net)	340
Valuation Allowance	350
Real Estate Investments:	
Held for Development/Investment/Resale (Net)	360
Valuation Allowance	370
Cash, deposits and investment securities:	
Cash and Demand Deposits	380
U.S. Government and Agency Securities	390
Other Investments	400
Accrued Interest Receivable	410
Valuation Allowance	420
Fixed assets:	
Office Building (Land and Improvements)	430
Leasehold Improvements	440
Appraisal Increment	450
Furniture, Fixtures, and Equipment	460
Depreciation Allowance	470
Valuation Allowance	480
Other assets:	
Stock in FHLBank	490

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT—Continued

[Dollars to be reported in thousands]

Field Heading	Field No.
Financial Future/Options:	
Initial Margin	500
Maintenance Margin	510
Financial Options Fees Paid	520
Prepaid Expenses	530
Service Corporations/Subsidiaries:	
Equity Investment	540
Appraisal Increment	550
Deferred Net Gains/Losses on Futures/Options Hedging Assets	560
Deferred Losses on:	
Loans Sold	570
Other Assets Sold	580
Deferred Gains on:	
Loans Sold	583
Other Assets Sold	586
Goodwill and Other Intangible Assets	590
Leased Property (Net):	
Consumer	600
Nonconsumer	610
Accounts Receivable Secured by Pledged Savings	620
Other Assets	630
Valuation Allowance	640
Total assets	800
Memo:	
Loans Secured Only by Junior Liens Included at Lines 010 thru 060	900
Amount Eligible for Regulatory Liquidity Included at Lines 070 and 380 thru 410	910
Number of Wholly-Owned Service Corporations	920
Assets Acquired For Stock:	
Real Estate (Net)	930
Other	940
Construction Loans Included at Lines 010 thru 050	950
Section B—Liabilities	
Deposits and savings accounts	010
Borrowings:	
FHLBank Advances	020
Other Borrowed Money:	
Commercial Bank Loans	030
Reverse Repurchase Agreements	040
Consumer Retail Repurchase Agreements	050
Overdrafts in Demand Deposits	060
Commercial Paper Issued	070
Mortgages on Association Assets	080
Subordinated Debentures Not Qualifying for Net Worth	090
Mortgage-Backed Bonds Issued	100
Other Borrowings	110
Accrued Interest Payable	120
Other liabilities:	
Dividends/Interest Accrued or Declared on Savings Accounts	130
Dividends Payable on Permanent, Reserve, or Guaranty Stock	140
Accrued Taxes	150
Accounts Payable	160
Advance Payments by Borrowers for Taxes/Insurance	170
Financial Options Fees Received	180
Miscellaneous Other Liabilities	190
Deferred Net Gains/Losses on Futures/Options Hedging Liabilities	200
Deferred Federal and Other Income Taxes	230
Total liabilities	800
Memo:	
Pledged Deposits and Savings included at line 010	900
Section C—Regulatory Net Worth	
Preferred Stock	010
Permanent, Reserve, or Guaranty Stock	020
Paid-In Surplus	030
Qualifying Mutual Capital Certificates	040
Qualifying Subordinated Debentures	050
Appraised Equity Capital	060
Net Worth Certificates	070
Accrued Net Worth Certificates	080
Income Capital Certificates	090
Reserves	100
Undivided Profits (Retained Earnings)	110
Net Undistributed Income	120
Total regulatory net worth	800
Total liabilities and regulatory net worth	810

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT—Continued

[Dollars to be reported in thousands]

Field Heading	Field No.
Memo:	
Cash Dividends on:	
Preferred Stock	900
Permanent Stock	910
Other Capital Instruments	920
Check if you are including in your balance sheet for the first time assets, etc., acquired as a result of merger or similar type acquisition	930
Was purchase accounting used	940
Annual Closing Date (Show month and day numerically, e.g., December 31 should be shown as 1231)	950
Section D—Income	
Operating income:	
Interest on Mortgage Loans and Contracts	010
Interest on Mortgages, Participations, or Mortgage-Backed Securities Reported at Lines 070 and 080 of Section A	020
Discounts on Mortgage Loans Purchased	030
Interest on:	
Commercial Loans (Nonmortgage)	040
Consumer Loans (Open and Closed End)	050
Interest/Dividends on Investments and Deposits	060
Income from Lease Financing	070
Mortgage Loan Fees	080
Loan Servicing Fees	090
Other Loan Fees and Charges	100
Service Charges and Fee Income from Transaction Accounts	110
Amortized Deferred Gains on:	
Futures/Options Hedging Assets	120
Futures/Options Hedging Liabilities	130
Net Income or Loss from Office Building Operations	160
Net Income or Loss from Real Estate Held for Investment	170
Net Income or Loss from REO Operations	180
Net Income or Loss from Service Corporations/Subsidiaries	190
Net Income or Loss from Leasing Operations	200
Miscellaneous Operating Income	210
Nonoperating income:	
Profit on Sale of:	
Foreclosed Real Estate (REO)	220
Other Repossessed Property	230
Real Estate Held	240
Investment Securities	250
Loans	260
Other Assets	270
Amortized Deferred Gains on:	
Loans Sold	273
Other Assets Sold	276
Miscellaneous Nonoperating Income	280
Total income	800
Memo:	
Profit on Sale of Loans and Other Assets Acquired via Pushdown/Purchase Accounting	900
Discounts on Assets Acquired via Pushdown/Purchase Accounting	910
Net Income or Loss from Assets Acquired for Stock	920
Section E—Expense	
Operating Expense:	
Directors Fees	010
Officers and Employees Compensation	020
Legal Expense	030
Directors, Officers and Employees Expense	040
Office Occupancy Expense	050
Furniture, Fixtures, Equipment and Automobile Expense	060
Advertising	070
Commissions Paid for Savings Accounts	080
Independent Audit Expense, Tax and Accounting Services	090
Supervisory Examinations	100
Consultant and Management Fees	110
Loan Servicing Fees	120
Amortization of Goodwill	130
Amortized Deferred Losses on:	
Futures/Options Hedging Assets	140
Futures/Options Hedging Liabilities	150
Other Operating Expense	160
Dividend/interest charges:	
Savings and Deposits	190
Penalties and Early Withdrawals	200

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT—Continued

[Dollars to be reported in thousands]

Field Heading	Field No.
Advance Payments by Borrowers for Taxes and Insurance	210
Advances from FHLBank	220
Subordinated Debentures	230
Mortgage-Backed Bonds	240
Other Borrowed Money	250
Capitalized Interest	260
Nonoperating expense:	
Provision for Losses and Losses on Sale of:	
Foreclosed Real Estate (REO)	270
Other Repossessed Property	280
Real Estate Held	290
Investment Securities	300
Loans	310
Other Assests	320
Amortized Deferred Losses on:	
Loans Sold	323
Other Assets Sold	326
Other Nonoperating Expenses	330
Income taxes:	
Federal	340
State, Local and Other	350
Total expense	800
Adjustments to Prior Period Income or Expense	810
Net income/loss	820
Section F—Supplemental Data	
Activity During Quarter	
Mortgage loans:	
Mortgage Loans Closed:	
Construction Loans:	
1 to 4 Family	010
5 or more Dwelling Unit Structures	020
Non-Residential	030
Permanent Loans Closed:	
1 to 4 Family	040
5 or more Dwelling Unit Structures	050
Non-Residential	060
Land Loans	070
All Other	080
Loans and Participations Purchased	090
Loans and Participations Sold	100

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT—Continued

[Dollars to be reported in thousands]

Field Heading	Field No.
Cash Repayment of Principal	110
Debits, Less Credits Other Than Repayment of Principal	120
Nonmortgage loans:	
Nonmortgage Loans Closed or Purchased:	
Commercial	130
Consumer	140
Delinquency and REO activity:	
Loans Becoming 60 Days Delinquent During the Quarter	150
Loan Balance Delinquent 60–89 Days:	
Mortgage	160
Nonmortgage	170
Loan Balance Delinquent 90–119 Days:	
Mortgage	180
Nonmortgage	190
Loan Balance Delinquent 120 Days or more:	
Mortgage	200
Nonmortgage	210
Mortgage Foreclosures During the Quarter:	
Residential	220
Non-Residential	230
Real Estate in Judgment Becoming REO (not included in lines 220 and 230)	240
Loans Returning to Performing to Performing Status During the Quarter	250
Other:	
Futures Contracts Offset during Period (Face Amount)	260
Refinancing Loans Reported at Lines 040 thru 080	270
Cash Mortgage Loan Repayments Reported at Line 110 Resulting From the Sale of Previously Occupied 1 to 4 Family Homes	275
Assets Acquired for Stock During Quarter	280
Balances at Close of Period	
Futures positions outstanding:	
Contracts to Sell: Short Term (e.g. T-bill contracts)	290
Long Term (e.g. t-bond contracts)	300

ATTACHMENT A.—LISTING OF FIELD HEADINGS AND FIELD NUMBERS FOR NEW 1984 QUARTERLY REPORT—Continued

[Dollars to be reported in thousands]

Field Heading	Field No.
Contracts to Buy:	
Short Term (e.g. T-bill contracts)	310
Long Term (e.g. T-bond contracts)	320
Net Unrecognized Gain/Loss	330
Options Positions Outstanding:	
Amount of:	
Long Put Options	340
Long Call Options	350
Short Put Options	360
Short Call Options	370
Net Unrecognized Gain/Loss:	
Short Options	380
Long Options	390
Commitments outstanding:	
To Originate Loans	400
To Purchase Loans	410
To Sell Loans	420
To Purchase Securities	430
To Sell Securities	440
Other:	
Mortgage Loans Serviced for Others	450
Mortgage Loans Serviced by Others	460
Amount of Contingency to Repurchase Loans	470
Approximate Value of Trust Assets Administered	480
Broker Originated Savings	490
Conforming Loans to Service Corporations/Subsidiaries (including Joint Ventures	500
Loans from Third Parties to Service Corporations/Subsidiaries Guaranteed by Parent	510
IRA/KEOGH Account Balances	520
Total Deposits with Balances of $100,000 or Less:	
Number	530
Amount	540
Total Deposits with Balances Greater Than $100,000:	
Number	550
Amounts:	
Negotiable Certificates with Original Maturities of 3 Months or Less	560
All Other	570
Letters of Credit Issued and Outstanding	580

[1] Detail listing of deposits and savings accounts is found in Section G.

SECTION G.—DEPOSIT ACTIVITY REPORT

[Dollars in thousands]

	New deposits received (during quarter)	Withdrawals (during quarter)	Interest credited (during quarter)	Average rate on new deposits (during quarter)	Quarter-end balances
	A	B	C	D	E
Accounts without fixed maturity:					
Transaction Accounts	110	120	130	140	150
Other	210	220	230	240	250
Accounts with fixed maturity:					
Fixed Rate:					
Original Maturity of Six Months or Less	310	320	330	340	350
Original Maturity More than Six Months through One Year	410	420	430	440	450
Original Maturity More than One Year through Three Years	510	520	530	540	550
Original Maturity More than Three Years	610	620	630	640	650
Variable Rate (All Maturities)	710	720	730	740	750
Memo:					
Quarter-End Balance in Money Market Deposit Accounts (included in 250 above)					900

SECTION H (PART I).—MATURITY AND YIELD/COST INFORMATION REMAINING TIME BEFORE THE ASSET CAN BE REPRICED OR MATURES AND RATE SENSITIVITY

[Dollars in thousands (weighted average contract interest rate)]

	6 months or less		>6 months-1 year		>1-3 years		>3-5 years		>5-10 years		>10-20 years		>20 years		Total (dollars)
	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	
Assets															
Mortgage loans and mortgage-backed securities:															
Balloon & Adjustable Rate First Mortgage Loans	021	022	023	024	025	026	027	028	029	030	031	032	033	034	040
Other first mortgages and contracts:															
Federally Insured or Guaranteed	061	062	063	064	065	066	067	068	069	070	071	072	073	074	080
Conventional Residential	101	102	103	104	105	106	107	108	109	110	111	112	113	114	120
Conventional Non-Residential	141	142	143	144	145	146	147	148	149	150	151	152	153	154	160
Second Mortgages	181	182	183	184	185	186	187	188	189	190	191	192	193	194	200
Nonmortgage loans:															
Consumer	221	222	223	224	225	226	227	228	229	230	231	232	233	234	240
Commercial	261	262	263	264	265	266	267	268	269	270	271	272	273	274	280
Investment securities:															
U.S. Government and Agency Securities	301	302	303	304	305	306	307	308	309	310	311	312	313	314	320
Other Investments	341	342	343	344	345	346	347	348	349	350	351	352	353	354	360
Total financial assets	381		383		385		387		389		391		393		400
Impact of hedging activities	421		423		425		427		429		431		433		440

SECTION H (PART II).—MATURITY AND YIELD/COST INFORMATION REMAINING TIME BEFORE THE LIABILITY CAN BE REPRICED OR MATURES AND RATE SENSITIVITY

[Dollars thousands (weighted average contract interst rate)]

	6 months or less		>6 months-1 year		>1-3 years		>3-5 years		>5-10 years		>10 years		Total (dollars)
	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	Dollars	Percent	
LIABILITIES													
Deposits, Advances, and Borrowings													
Deposits with Balances Greater than $100,000	461	462	463	464	465	466	467	468	469	470	471	472	480
Deposits with Balances of $100,000 or Less:													520
Passbook, MMDA and NOW Deposits	501	502											
Other Deposits	541	542	543	544	545	546	547	548	549	550	551	552	560
FHLB Advances	581	582	583	584	585	586	587	588	589	590	591	592	600
Other Borrowings:													
Secured	621	622	623	624	625	626	627	628	629	630	631	632	640
Unsecured	661	662	663	664	665	666	667	668	669	670	671	672	680
Total financial liabilities	701		703		705		707		709		711		720
Impact of hedging activities	741		743		745		747		749		751		760

SECTION I—ANNUAL SUPPLEMENT [1]

[Dollars to be reported in thousands]

Number of Mortgage Loans Held:	
FHA/VA and Other Federally Insured and Guaranteed Loans	010
Conventional	020
Number of Mortgages Foreclosed	030
Balances in Loans in Process on Residential Property	040
Balances in Mortgages, Participations and Mortgage-Backed Securities Secured by Residential Property	050

[1] To be filed with the December Quarterly Report only.

SECTION K.—SLOW LOANS AND OTHER SCHEDULED ITEMS

[Complete this schedule only if your annual closing occurred during this quarter. Amounts should reflect data as of your closing date. This schedule will be used to compute your compliance with I.R. 563.13(b)(4)]

		Net amount [1]
Slow mortgage loans and contracts:		
Total—FHA/VA and Other Federally Insured and Guaranteed Loans	010	
Total—Conventional	020	
Slow nonmortgage loans:		
Total—Insured	030	
Total—Commercial (Except Insured)	040	
Total—Consumer (Except Insured)	050	
Total—Financing Leases (Except Insured)	060	
Other scheduled items:		
Nonconforming Loans and Contracts	070	
Real Estate Foreclosed and Real Estate in Judgment	080	

SECTION K.—SLOW LOANS AND OTHER SCHEDULED ITEMS—Continued

[Complete this schedule only if your annual closing occurred during this quarter. Amounts should reflect data as of your closing date. This schedule will be used to compute your compliance with I.R. 563.13(b)(4)]

		Net amount [1]
Other Repossessed Assets	090	
Investment Securities Past Due and Deposits in Closed Banks	100	
Leased Property	110	
Total slow loans and other scheduled items	900	
Memo:		
Interest-Bearing Liquid Assets Maturing within One Year	900	
One-Half of Total Adjustable Rate Mortgage Loans	910	
Fixed Rate Liability Sources of Funds with Remaining Term to Maturity Exceeding Five Years	920	

[1] Dollars in thousands. Amounts as of closing date.

BILLING CODE 6720-01-M

Attachment B

MONTHLY SURVEY OF SELECTED DEPOSITS AND OTHER ACCOUNTS

As of close of business on the last day of the month of _____.

Enter in column A the dollar balance in the specified account category as of the close of business of the month specified.
Enter in column B the most common interest rate paid on the largest dollar volume of deposits and retail RPs issued during 7 days ending on the survey date. For lines 4b-4f also check F if account has a fixed rate and V if it has a variable rate.
Enter in column C the appropriate code for the frequency of interest compounding:

1 = Continuously or daily
2 = Monthly
3 = Quarterly
4 = Semiannually
5 = Annually
6 = Not compounded; simple interest paid at maturity
7 = Other (specify)

If code 6 is specified, also enter in column C the maturity of the account (in months).

Please read instructions carefully before completing this report.

ACCOUNT CATEGORIES:	A. Amount outstanding bil.	mil.	thou.	Interest Rate B. Most common interest rate percent			C. Frequency of interest compounding code	months	
Amounts reported in the following categories should include balances held in IRA and Keogh Plans:									
1. "Super NOW" accounts.....									1.
2. Money market deposit accounts (MMDAs)									2.
3. Retail RPs with balances of less than $100,000									3.
4. All interest-bearing fixed-term certificates with balances of less than $100,000 and with original maturities of:									
a. 7 through 31 days									4.a
b. 32 through 91 days				F		V			4.b
c. 92 through 182 days				F		V			4.c
d. 183 days through 1 year				F		V			4.d
e. over 1 yr but less than 2-1/2 yrs.				F		V			4.e
f. 2-1/2 years and over				F		V			4.f
All IRA and Keogh Plan accounts, including amounts reported in items 1 through 4 above									

Name of reporting institution

Person to be contacted concerning this report

District/Docket Number

Address

(Area code)telephone number and extension

FHLBB Form 1312A

BILLING CODE 6720-01-C

ATTACHMENT C.—MONTHLY REPORT

[To be completed by industry sample]

Assets	
Mortgage loans (including non-conforming loans and junior liens, but excluding contra-assets):	
Construction:	
1–4 family homes	010
Other residential property	015
Non-residential property (including land)	020
Other (permanent):	
1–4 family homes	030
Other residential property	035
Non-residential property except land and farm	040
Land except farm	045
Farm	050
Mortgage-backed securities etc. (both federally insured and conventional, but excluding contra-assets)	055
Non-mortgage loans (including finance leasing, but excluding contra-assets):	
Loans on deposits	060
Other consumer	065
Commercial (including finance leasing)	070
Cash, deposits and investment securities	075
Other assets	080
Total assets	085
Liabilities	
Deposits:	
Without fixed terms:	
Transactions	110
Other	115
With fixed terms	120
Borrowed money:	
FHLB advances	130
Retail repurchase agreements	135
Other	140
Other liabilities	150
Regulatory net worth	160
Memorandum: Negotiable certificates with original maturity of 3 months or less in denominations greater than $100,000 included above	190
Mortgage Lending	
Loans closed:	210
Construction of:	
1–4 family homes	220
Other residential property	225
Non-residential property	230
Other (including non-cash refinancing and combination construction/purchase loans where construction was completed during month) secured by:	
1–4 family homes	240
Other residential property	245
Non-residential property except land	250
Land	255
Loans and participations sold secured by:	
1–4 family homes	260
Other residential property	265
Non-residential property	270
Loans and participations purchased secured by:	
1–4 family homes	280
Other residential property	285
Non-residential property	290
Cash repayments of loan principal	295
Forward Commitments	
Made during month:	
To originate mortgages secured by:	
1–4 family homes	310
Other residential property	315
Non-residential property	320
To purchase mortgages from other lenders	325
Commitments and loans in process outstanding at end of month:	
To originate mortgages on:	
1–4 family homes	330
Other residential property	335
Non-residential property	340
To purchase mortgages	350
To sell mortgages	360
To purchase or originate non-mortgage loans and to purchase securities	370
Deposit Activity	
New deposits received less deposits withdrawn	410
Interest credited to accounts	420
Interest Charges	
Interest/dividends on deposits	510
Interest on advances and other borrowed money	520

ATTACHMENT C.—MONTHLY REPORT—Continued

[To be completed by industry sample]

Memo Item	
Check if you are including in your balance sheet for the first time assets, etc., acquired as a result of merger or similar type acquisition	610

ATTACHMENT D.—SECTION J—CASH, DEPOSIT AND INVESTMENT SECURITIES BY TYPE AND MISCELLANEOUS ITEMS

[Cash, deposits and investment securities]

All Securities and Deposits Held Subject to Repurchase Agreements	010
Other Securities Held and Not Subject to Repurchase Agreements:	
U.S. Government Obligations	020
Federal Agency Obligations	030
State and Local Government Obligations	040
Bankers' Acceptances	050
Commercial Paper	060
Corporate Debt Securities (Except bankers' acceptance and commercial paper)	070
Shares in Open-End Management Investment Companies	080
Other Investment Securities	090
Cash on Hand	100
Demand and Time Deposits in a Federal Home Loan Bank	110
Deposits at Federal Reserve Banks	120
Demand Deposits in FDIC-Insured Commercial Banks	130
Demand Deposits in All Other Institutions (Except a Federal Home Loan Bank, a Federal Reserve Bank or FDIC-Insured Commercial Bank)	140
Time and Savings Deposits in FDIC-Insured Commercial Banks	150
Time and Savings Deposits in All Other Institutions (Except a Federal Home Loan Bank, a Federal Reserve Bank or FDIC-Insured Commercial Bank	160
Loans of Unsecured Day(s) (Federal) Funds	170
Other Cash Items and Accrued Interest Receivable on Securities and Deposits	180
Total—cash, deposits and investment securities (Sum of Items 010 through 180)	800
Memo:	
Deposits in the Illinois Bank for Savings and Loan Associations (include in Items 140 and 160)	900
U.S. Government and Federal Agency Obligations Maturing Within One Year (included in Items 020 and 030)	910

[FR Doc. 83-24078 Filed 9-1-83; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 802 3165]

Estee Corp.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require a Parsippany, N.J. manufacturer and marketer of health-related food products, among other things, to cease representing that any of its products have been accepted or recommended for use by a diabetic or hypoglycemic unless it discloses the identity of the endorser and the material qualifications or limitations placed on the endorsement. If the company promotes a food as being appropriate for diabetics, it would be required to disclose that it is "not a reduced calorie food" in advertising and on package labels as required by the Food and Drug Administration regulations. Representations that a food will or will not affect blood sugar levels or that it has any health-related property or quality for diabetics of hypoglycemics would have to be substantiated as required by the terms of the order. Further, the firm would be barred from misrepresenting the existence or truthfulness of endorsements; the identity of any sweetner; that food containing fructose contains no sugar; or that a food is reduced in calories and is appropriate for weight control. The order would additionally require that the company provide to the American Diabetes Association, Inc. or to the Juvenile Diabetes Foundation the sum of $25,000 within 24 months from the effective date of the order, and to maintain files substantiating its advertising claims for a period of three years.

DATE: Comments must be received on or before November 1, 1983.

ADDRESS: Comments should be directed to: FTC/S, Office of the Secretary, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: FTC/PA, Robert C. Cheek, Washington, D.C. 20580. (202) 724–0727.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist and an explanation thereof, having been filed with and accepted, subject to final approval, by the Commision, had been placed on the public record for period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(14) of the Commission's Rules of Practice (16 CFR 4.9(b)(14)).

List of Subjects in 16 CFR Part 13

Trade practices.

In the Matter of Estee Corporation; File No. 8023165; Agreement Containing Consent Order to Cease and Desist.

The Federal Trade Commission having initiated an investigation of

certain acts and practices of Estee Corporation, a corporation, and it now appearing that Estee Corporation, a corporation, hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an order to cease and desist from the use of the acts and practices being investigated,

It is hereby agreed by and between Estee Corporation, by its duly authorized officer, and its attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Estee Corporation is a corporation organized, existing and doing business under and by virtue of the laws of the State of New Jersey, with its office and principal place of business located at 169 Lackawanna Avenue, Parsippany, New Jersey 07054.

2. Proposed respondent admits all the jurisdictional facts set forth in the draft of complaint here attached.

3. Proposed respondent waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law; and

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it together with the draft of compliant contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondent, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same maner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondent has read the proposed complaint and order contemplated hereby. It understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For the purposes of this order, the term "food" shall mean and include any article used for food or drink for humans, chewing gum, and any article used for a component of any such article.

Any provision of this order shall not cover labels if labeling is such provision is inconsistent with regulations of the Food and Drug Administration or with the statutes it enforces.

The provisions of this order shall not apply to any label or labeling printed by respondent before the date of service of this order and shipped by respondent to distributors or retailers prior to January 1, 1984 or the date of service of this order, whichever is later.

I

It is ordered that respondent Estee Corporation, a corporation, its successors and assigns, and respondent's officers, agents, representatives, and employees, directly or through any corporation, subsidiary, division or other device, in connection with the advertising, offering for sale, sale or distribution of any food in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Representing, directly or by implication, that any food is accepted or recommended by an individual or organization other than the advertiser for use by a diabetic or hypoglycemic, unless in immediate conjunction with such representation the following is disclosed with equal prominence:

1. The identity of the individual or organization, and

2. All material qualifications or material limitations, if any, placed on the acceptance or recommendation by the individual or organization.

B. Failing to clearly and prominently disclose in a nonlabel advertisement: "This food is not a reduced calorie food," when:

1. Respondent makes a representation, directly or by implication, in the advertisement that any food is an appropriate part of a diabetic's diet, and

2. A disclosure is required on the label that the food is not a reduced calorie food pursuant to regulations promulgated by the Food and Drug Administration.

Provided that, where more than one food is promoted by a single advertisement, and a label disclosure is required pursuant to regulations promulgated by the Food and Drug Administration for one or more of the advertised foods, this section shall be satisfied if the following statement is clearly and prominently disclosed in the advertising: "Some of these foods are not reduced calorie foods."

C. Making any representation, directly or by implication, about the health-related comparability of one sweetener to another sweetener, unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

D. Representing, directly or by implication, that a food:

1. Will or will not affect blood sugar levels in any manner, or

2. Has any health-related property or quality for diabetics or hypoglycemics, unless at the time of dissemination of each such representation respondent possesses and relies on a reasonable basis which substantiates each such representation, consisting of competent and reliable scientific evidence of the type and quantum appropriate for the representation made.

E. Misrepresenting, directly or by implication:

1. The existence or truthfulness of any endorsement or recommendation,

2. The indentity of any sweetener,

3. That any food which contains fructose or high fructose corn syrup does not contain any sugar, *provided that*, this provision shall not prohibit respondent from truthfully representing that a food does not contain "sucrose" or "table sugar."

4. That a food is reduced in calories compared to other foods or is appropriate for weight control.

II

It is further ordered that respondent shall, within twenty-four (24) months after the date of service of this order, provide the aggregate sum of $25,000 to the American Diabetes Association, Inc. or the Juvenile Diabetes Foundation. Said funds shall be designated as "for the purposes of research into dietary management of diabetes," *provided that*, if any of such funds are not used by the recipient organization(s) for said purposes, such funds shall revert to the general research funds of the organization(s).

III

It is further ordered that respondent shall forthwith distribute a copy of this order to each of its operating divisions.

IV

It is further ordered that respondent notify the Commission at least thirty (30) days prior to any proposed change in its corporate structure such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change in the corporation which may affect compliance obligations arising out of the order.

V

It is further ordered that respondent shall maintain files and records of all substantiation for claims made under Parts IC and ID of this order for a period of three (3) years after the dissemination of any advertisement containing such claim. Additionally, such material shall be made available to the Federal Trade Commission or its staff within fifteen (15) days of a written demand for such material.

VI

It is further ordered that respondent shall, within sixty (60) days after the date of service of this order, file with the Commission a report, in writing, setting forth in detail the manner and form of its compliance with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Estee Corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's complaint in this matter changes Estee with disseminating advertisements containing false, misleading and unsubstantiated representations about its health-related "special foods." These foods are sweetened not with ordinary table sugar (sucrose), but with the alternative sweeteners fructose, sorbitol or high fructose corn syrup (HFCS). Estee's foods are frequently advertised and sold to diabetics.

The complaint alleges that Estee made the following false claims about its food and sweeteners:

a. That the Food and Drug Administration and the American Diabetes Association have concluded that Estee's sweeteners are useful without significant qualification in diabetic when, in fact, neither has so concluded;

b. That Estee's foods are significantly reduced in calories compared with comparable foods and are useful or appropriate for weight control when, in fact, many of the foods are not;

c. That the sweetener in all of Estee's "fructose"—sweetened foods is fructose, when, in fact, in certain foods it is actually HFCS; and

d. That Estee's foods do not contain any sugar when, in fact, many of the foods contain fructose or HFCS, which are sugars.

The complaint further alleges that Estee represented its fructose—and sorbitol-sweetened foods as useful or appropriate for diabetics' diets. According to the complaints, this representation is unsubstantiated because (a) fructose-and sorbitol-sweetened foods should not be eaten in more than limited amounts by any diabetics; (b) these foods are not useful or appropriate for weight loss or weight control diets and many diabetics are on such diets; and (c) these foods are not appropriate for untreated or out-of-control diabetics.

The complaint also charges that Estee made the following additional representations for which it lacked a reasonable basis:

a. That the sweetener in Estee's cookies and other HFCS—sweetened foods has the same characteristics as fructose, including its effects on diabetics' blood sugar levels; and

b. That Estee's HFCS—sweetened foods are useful or appropriate for diabetics' diets and will not cause undersirable blood sugar elevations.

The consent order contains provisions prohibiting future, misrepresentations and unsubstantiated claims and requiring certain disclosures in future advertisements. Additionally, Estee is required to pay consumer redress in the form of money for diabetes research.

The order applies to package labels as well as media advertisements, except to the extent that Food and Drug Administration statutes or regulations conflict. Also, the order does not cover Estee's existing labels for a short period of time (until January 1, 1984 or the effective date of the order whichever is later). This provision is intended to allow Estee to use up some it its existing inventory of package labels.

Part IA of the order requires Estee to make certain disclosures whenever it advertises that any food is accepted or recommended for use by diabetics or hypoglycemics. The disclosures include the identity of the endorser and all of its material qualifications or limitations on the endorsement.

Part IB of the order requires Estee to disclose in advertisements that a food "is not a reduced calorie food" whenever it advertises that the food is appropriate for diabetics and such a disclosure is required on the package label under Food and Drug Administration regulations. The FDA requires this disclosure if the food is promoted as appropriate for diabetics, and is less than one-third reduced in calories compared to comparable foods.

Part IC requires Estee to have a reasonable basis for any claims about the health-related comparability of one sweetener to another. The reasonable basis must consist of competent and reliable scientific evidence of the type and quantum appropriate for the claim made.

Part ID provides that Estee must have a reasonable basis for any claims about the effect of any food on blood sugar levels or about the health-related properties of any food for diabetics or hypoglycemics. The reasonable basis required is the same as that for Part IC.

Part IE prohibits the following misrepresentations:

a. Of the existence or truthfulness of an endorsement;

b. Of the identity of a sweetener;

c. That HFCS or fructose are not sugars; and

d. That a food is reduced in calories or is appropriate for weight control.

Part II of the Order requires Estee to pay within two years $25,000 in consumer redress, in the form of a grant(s) to the American Diabetes Association or the Juvenile Diabetes Foundation. The purpose of the grant(s) is to fund research in the area of dietary management of diabetes. In this case, the Commission determined that providing refunds directly to injured consumers would not be a practical form of consumer redress, because of the difficulty in locating purchasers of Estee foods and because the individual redress amounts would have been very small. This provision is designed to facilitate diabetes research which will inure to the benefit of all diabetics.

Parts III–VI of the order require Estee to distribute copies of the order to its operating divisions, notify the Commission prior to any change in its corporate structure, maintain certain records for three years, and file a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Michael A. Baggage,

Acting Secretary.

[FR Doc. 83-24183 Filed 9-1-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Ch. I

[FHWA Docket No. 83-7]

Acceleration of Projects; Consolidated Rulemaking

Correction

In FR Doc. 83-23503, beginning on page 38854, in the issue of Friday, August 26, 1983, on page 38855, in the first column, in the "**DATE**" paragraph, in the second line "September 25, 1983." should read "October 25, 1983.".

BILLING CODE 1505-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

Registration Required Obligations Public Hearing on Proposed Regulations

AGENCY: Internal revenue service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations relating to the amendment of the Income Tax Regulations under sections 163, 165, and 1232 of the Internal Revenue Code.

DATES: The public hearing will be held on Thursday, November 10, 1983, beginning at 10:00 a.m. Outlines of oral comments must be delivered or mailed by Thursday, October 27, 1983.

ADDRESS: The public hearing will be held in the I.R.S. Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C. The requests to speak and outlines of oral comments should be submitted to the Commissioner of Internal Revenue, Attn: CC:LR:T (LR–151–83), Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT: Lou Ann Craner of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224, 202–566–3935, not a toll-free call.

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under sections 163, 165, and 1232 of the Internal Revenue Code of 1954. The proposed regulations appear in this issue of the **Federal Register** (See FR Doc. 83–24071).

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR Part 601) shall apply with respect to the public hearing. Persons who submit written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit, not later that Thursday, October 27, 1983, an outline of the oral comments to be presented at the hearing and the time they wish to devote to each subject.

Each speaker will be limited to 10 minutes for an oral presentation exclusive of the time consumed by questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 9:45 a.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the speakers. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue.

James J. McGovern,

Acting Director, Legislation and Regulations Division.

[FR Doc. 83-24072 Filed 9-1-83; 8:45 am]

BILLING CODE 4830-01-M

26 CFR Parts 1 and 5f

Sanctions on Issuers and Holders of Registration-Required Obligations Not in Registered Form

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document revises the proposed regulations issued on November 15, 1982 (47 FR 51414) relating to the definition of the term "registration-required obligation" with respect to obligations issued to certain foreign persons and the imposition of sanctions on issuers issuing registration-required obligations in bearer form. This document contains proposed regulations relating to the imposition of sanctions on persons holding registration-required obligations in bearer form. This document proposes to remove § 5f.163–1(c) of the temporary regulations. Changes to the applicable law were made by the Tax Equity and Fiscal Responsibility Act of 1982. The proposed regulations would affect issuers and holders of obligations and would provide them with guidance needed to comply with the law. A notice of a public hearing concerning these proposed regulations appears elsewhere in this issue of the **Federal Register.**

DATES: Written comments must be delivered or mailed by November 1, 1983. The regulations under section 163 and the removal of § 5f. 163–1(c) are proposed to be effective with respect to obligations originally issued more than 30 days after the publication of final regulations in the **Federal Register.** The regulations under section 165 and 1232 are proposed to be effective after December 31, 1982.

ADDRESS: Send comments and requests for a public hearing to: Commissioner of Internal Revenue, Attention: CC:LR:T, Washington, D.C. 20224.

FOR FURTHER INFORMATION CONTACT:
Carol T. Doran of the Legislation and Regulations Division, Office of Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T) (202–566–3289).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR Part 1) under sections 163, 165, and 1232 of the Internal Revenue Code of 1954. These amendments are proposed to conform the regulations to changes made to the Internal Revenue Code of 1954 by section 310 of the Tax Equity and Fiscal Responsibility Act of 1982 (the Act) (Pub. L. 97–248, 96 Stat. 595) and are to be issued under the authority contained in section 165 of the Code (96 Stat. 598; 26 U.S.C. 165) and section 7805 of the Code (68A Stat. 917; 26 U.S.C. 7805).

On November 15, 1982, the **Federal Register** published temporary regulations (47 FR 51361) under section 163 of the Internal Revenue Code of 1954. The proposed regulations, upon becoming final, would remove § 5f.163–1(c) of the temporary regulations. Until final regulations are effective the temporary regulations remain in effect.

Section 310 of the Act added new sections 163(f), 165(j), and 1232(c) to the Code. Section 163(f) disallows an interest deduction otherwise allowable under 163(a), or any other provision of the Code, if the interest is attributable to a registration-required obligation issued in bearer form. Section 165(j) disallows a deduction for any loss sustained on a registration-required obligation that is held in bearer form. Section 1232(c) provides that, if a registration-required obligation is held in bearer form, any gain on the sale or other disposition of such obligation shall be treated as ordinary income.

Explanation of Provisions

The proposed regulations contained in this document provide rules for determining whether an issuer may claim an interest deduction for interest paid on an obligation in bearer form, which is otherwise a registration-required obligation, because the issuer satisfies the conditions set forth in section 163(f)(2)(B). Under section 163(f)(2)(B) an obligation is not a registration-required obligation if it meets the following conditions: it is sold under arrangements reasonably designed to ensure that it is not sold to United States persons; interest on the obligation is payable only outside the United States and its possessions; and on the face of the obligation there is a statement that any person who holds the obligation will be subject to limitations under U.S. income tax laws.

Proposed regulations will be issued under section 4701 relating to the imposition of an excise tax on issuers issuing registration-required obligations in bearer form. Those regulations are anticipated to provide rules parallel to those set forth in this document, concerning the exemption from registration provided in section 163(f)(2)(B).

The proposed regulations provide rules for determining what arrangements are reasonably designed to ensure that an obligation will not be sold to United States persons. An issuer will satisfy the requirement that arrangements be reasonably designed to ensure sale to non-U.S. persons by complying with any one of the following alternatives.

First, an issuer will satisfy this requirement if the obligation need not be registered under the Securities Act of 1933 because it is intended for distribution to persons who are not United States persons. For this purpose, the term "United States person" is defined in accordance with the Securities Act of 1933.

Second, if a bearer obligation is registered under the Securities Act of 1933 or is exempt from registration under section 3 or 4 of such Act, the issuer will satisfy this requirement if it does not offer the obligation in bearer form to U.S. persons, it obtains covenants from members of the selling group that they will not sell the obligation to U.S. persons and that they will send a confirmation to the purchaser of the obligation representing that the purchaser is not a United States person, and the person entitled to delivery of the obligation presents to the issuer or member of the selling group a certificate which represents that no beneficial owner of the obligation is a United States person.

Third, an obligation issued outside the United States by a foreign person or by certain foreign branches of domestic corporations will satisfy the requirement that there be arrangements reasonably designed to ensure sale to non-United States persons if the issuer does not engage significantly in interstate commerce with respect to the issuance of the obligation. It is intended that an obligation generally will be considered to come within this third alternative if the obligation would not be required to be registered with the Securities Exchange Commission regardless of whether section 3 or 4 of the Securities Act of 1933 applies. If the issuer satisfies this third alternative with respect to an obligation, the obligation need not contain a legend concerning limitations under U.S. tax law. The regulations provide that an issuer will not satisfy the requirement that arrangements be reasonably designed to ensure sale to non-United States persons by satisfying the third alternative if 10 percent or more of the stock of the issuer is owned or considered as owned by a United States shareholder and the U.S. shareholder guarantees or otherwise assures payment of the obligation.

The proposed regulations provide definitions of the terms "interstate commerce" (§ 1.163–5(c)(2)(iii)) and "possessions" (§ 1.63–5(c)(2)(iv)).

Section 1.163–5(c)(v) of the proposed regulations provides rules for determining whether interest is paid outside of the United States and its possessions. The regulations provide that interest is payable only outside the United States and its possessions if demand for payment may only be made outside the United States and its possessions. The proposed regulations state that payment is considered to be made outside the United States and its possessions even though the payment is debited or credited to an account maintained in the United States. The proposed regulations provide that an issuer may name a United States paying agent to pay interest in the event that United States dollars become commercially unavailable outside the United States. Paragraph(c)(2)(v) also provides a rule for determining the amount of any original issue discount when an obligation is neither registered under the Securities Act of 1933 nor issued pursuant to a private placement exemption. This definition is applicable for purposes of determining whether the original issue discount, if any, is payable outside of the United States.

Section 1.163–5(c)(2)(vi) of the proposed regulations provides rules under which an obligation in registered form may be converted into bearer form. A registered obligation may only be converted into bearer form if the following conditions are satisfied: the obligation was originally issued pursuant to an offering comprised in whole or in part of obligations which satisfied the requirement that they be issued pursuant to arrangements reasonably designed to ensure sale to non-United States persons; at all times when the obligation is in bearer form it also satisfies the requirements that interest be payable outside the United States and that the obligation contain the required legend; and the issuer or transfer agent obtains a certificate from the person entitled to delivery of the

bearer obligation to the effect that no beneficial owner of the obligation is a United States person.

Section 165(j) provides that no deduction for any loss sustained on any registration-required obligation shall be allowed unless the obligation is in registered form or the issuance of the obligation was subject to tax under section 4701. Section 1232(c) provides that any gain on the sale or other disposition of a registration-required obligation that is not in registered form shall be treated as ordinary income unless the issuance of such obligation was subject to tax under section 4701. For purposes of both section 165(j) and section 1232(c), the term "registration-required obligation" has the same meaning as in section 163(f)(2) except that an obligation is not exempt from registration even though it may have been sold under arrangements reasonably designed to ensure sale to non-United States persons, interest thereon is payable only outside the United States and its possessions, and it contains a legend with respect to potential adverse tax consequences to U.S. holders. Thus, although an issuer of an obligation which satisfied these requirements would not be required to register the obligation and would not be subject to the issuer sanctions for issuing the obligation in bearer form, a person subject to U.S. tax holding such an obligation would not be permitted to take a deduction for any loss sustained on the obligation and would be required to treat any gain on the sale or other disposition of such obligation as ordinary income.

Sections 1.165–12(b) and 1.1232–5(b) of the proposed regulations provide exceptions to the rules that any loss sustained on a registration-required obligation held in bearer form is not deductible and that any gain on the disposition of such obligation is ordinary income. The following persons will be exempt from these penalties even though a registration-required obligation is held in bearer form: persons who hold such obligations for sale in the course of their trade or business and comply with certain requirements concerning the prevention of sale to United States person; financial institutions (defined in § 1.165–12(b)(2)(ii)) that comply with certain reporting requirements with respect to obligations held for their own account or for the account of their customers and which hold such obligations through an entity which is engaged in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member; and any other person that surrenders the obligation for conversion into registered form within thirty days of the date when the transferor of the bearer obligation is able to make such obligation available to such person.

Regulatory Flexibility Act and Executive Order 12291

The Secretary of the Treasury has certified that the regulations proposed herein will not have a significant economic impact on a substantial number of small entities. Accordingly, these proposed regulations do not constitute regulations subject to the Regulatory Flexibility Act (5 U.S.C. chapter 6), and a regulatory Impact Analysis is therefore not required. The Commissioner of Internal Revenue has determined that this proposed rule is not a major rule as defined in Executive Order 12291 and therefore a regulatory impact analysis is not required.

Comments and Public Hearing

Before adopting these proposed regulations, consideration will be given to any written comments that are submitted (preferably seven copies) to the Commissioner of Internal Revenue. All comments will be available for public inspection and copying. A public hearing will be held on a date announced in the notice of public hearing appearing elsewhere in this issue of the **Federal Register.**

The collection of information requirements contained in this notice of proposed rulemaking have been submitted ot the office of Management and of Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act. Comments on these requirements should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for Internal Revenue Service, New Executive Office Building, Washington, D.C. 20503. The Internal Revenue Service requests that persons submitting comments on these requirements to OMB also send copies of those comments to the Service.

Drafting Information

The principal author of these proposed regulations is Carol T. Doran of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance and style.

List of Subjects

26 CFR 1.61–1 through 1.281–4

Income taxes, taxable income, Deductions, Exemptions.

26 CFR 1.1201 through 1.1252–2

Income taxes, Capital gains and losses, Recapture.

Proposed amendments to the regulations

The proposed amendments to 26 CFR Parts 1 and 5f are as follows:

Income Tax Regulations

PART 1—[AMENDED]

Paragraph 1. Paragraph (c) of the notice of proposed rulemaking under § 1.163–5, published on November 15, 1982 (47 FR 51414) is revised to read as follows:

§ 1.163–5 Denial of interest deduction on certain obligations issued after December 31, 1982, unless issued in registered form.

* * * * *

(c) *Obligations issued to foreign persons after [Date which is 30 days after publication of final regulations in the* **Federal Register**—(1) *In general.* An obligation issued after [Date which is 30 days after publication of final regulations in the **Federal Register**] is described in this paragraph if—

(i) There are arrangements reasonably designed to ensure that such obligation will be sold (or resold in connection with its original issuance) only to a person who is not a United States person or who is a person permitted to hold obligations in bearer form under section 165(j)(3) (A), (B), or (C) and the regulations thereunder, and

(ii) In the case of an obligation which is not in registered form—

(A) Interest on such obligation is payable only outside the United States and its possessions, and

(B) Unless the obligation is described in subparagraph (2)(i)(C) of this paragraph or is a temporary global security, the following statement appears in English on the face of the obligation and on any interest coupons which may be detached therefrom: "Any United States person who holds this obligation will be subject to limitations under the United States income tax laws, including the limitations provided in sections 165(j) and 1232(c) of the Internal Revenue Code." For purposes of this paragraph, the term "temporary global security" means a security in bearer form which is held for the benefit of the purchasers of the obligations of the issuers and interests in which are exchangeable for securities in definitive registered or bearer form prior to its

stated maturity. A determination of whether an obligation satisfies each of the requirements of this paragraph (c)(1) shall be made on an obligation-by-obligation basis.

(2) *Rules for the application of this paragraph*—(i) *Arrangements reasonably designed to ensure sale to non-United States persons.* An obligation will be considered to satisfy paragraph (c)(1)(i) of this section if the conditions of (A), (B), or (C) of this subdivision (i) are met.

(A) The obligation is offered for sale outside the United States and, in connection with its original issuance, the obligation need not be registered under the Securities Act of 1933 because it is intended for distribution to persons who are not United States persons. In addition, the terms of the obligation provide that, if the obligation is either issued in or converted into registered form, it may only be converted into bearer form pursuant to the rules set forth in paragraph (c)(2)(vi) of this section. An obligation will not be considered to be required to be registered under the Securities Act of 1933 if the issuer, in reliance on the advice of independent counsel received prior to the issuance thereof, determines in good faith that the obligation need not be registered under the Securities Act of 1933 for the reason that it is intended for distribution to persons who are not United States persons. Solely for purposes of this subdivision (i)(A), the term "United States person" hs the same meaning as it has for purposes of determining whether an obligation is intended for distribution to persons that are not United States persons under the Securities Act of 1933.

(B) The obligation is registered under the Securities Act of 1933 or the obligation is exempt from registration by reason of section 3 or section 4 of such Act, and all of the following conditions are met with respect to such obligation:

(*1*) The terms of the obligation provide that, in connection with its original issuance, it may not be offered for sale in bearer form to United States persons;

(*2*) The terms of the obligation provide that if the obligation is either issued in or converted into registered form, it may only be converted into bearer form pursuant to the rules set forth in paragrph (c)(2)(vi) of this section;

(*3*) Each underwriter and each member of the selling group, if any, covenants that it will not sell the obligation in bearer form to United States persons;

(*4*) Each underwriter and each member of the selling group, if any, sends confirmations to purchasers of bearer obligations to the effect that each such purchaser represents that it is not a United States person and, if such person is a dealer, that it will send similar confirmations to purchasers from it;

(*5*) The obligation is released in definitive form to the person entitled to delivery thereof only upon presentation of a certificate signed by such person to the issuer, underwriter, or member of the selling group, which certificate states that the obligation if not being acquired by or on behalf of a United States person or, if a beneficial interest in the obligation is being acquired by a United States person, that such person is described in section 165(j)(3) (A), (B), or (C) and the regulations thereunder.

(*6*) The issuer, underwriter, or member of the selling group does not have actual knowledge that the certificate described in paragraph (c)(2)(i)(B)(5) of this section is false.

(C) The obligation is issued outside the United States by an issuer that does not significantly engage in interstate commerce with respect to the issuance of such oligation. In the case of an issuer which is a United States person, such issuer may only satisfy the test set forth in this paragraph (c)(2)(i)(C) if it issues the obligation through a foreign branch through which such United States person is engaged in the active conduct of a trade or business outside the United States.

(ii) *Special rules.* An obligation shall not be considered to be described in paragraph (c)(2)(i)(C) of this section if it is—

(A) Guaranteed by a United States shareholder of the issuer;

(B) Convertible into a debt or equity interest in a United States shareholder of the issuer; or

(C) Substantially identical to an obligation issued by a United States shareholder of the issuer.

For purposes of this paragraph (c)(2)(ii), the term United States shareholder is defined as it is defined in section 951(b) and the regulations thereunder. For purposes of paragraph (c)(2)(ii)(C), obligations are substantially identical if the face amounts, interest rates, due dates for payment, and maturity dates are substantially identical.

(iii) *Interstate commerce.* For purposes of this paragraph, the term "interstate commerce" means trade or commerce in obligations or any transportation or communication relating thereto between any foreign country and the United States or its possessions.

(iv) *Possessions.* For purposes of this section, the term "possessions" includes Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Wake Island, and the Northern Mariana Islands.

(v) *Interest payable outside of the United States.* Interest will be considered to be payable only outside the United States and its possessions if payment of such interest can be made only upon presentation of a coupon, or upon making of any other demand for payment, outside of the United States and its possessions to the issuer or a paying agent. The fact that payment is made by a draft drawn on a United States bank account, by a wire or other electronic transfer from a United States account, or by a direct transfer of funds into an account maintained by the payee in the United States does not affect this result. However, interest is considered to be paid within the United States and its possessions if a coupon is presented, or a demand for payment is otherwise made, to the issuer or a paying agent (whether a United States or foreign person) in the United States and its possessions even if the funds paid are credited to an account maintained by the payee outside the United States and is possessions. Interest will be considered payable only outside the United States and its possessions notwithstanding that such interest may become payable at the office of the issuer or its United States paying agent under the following conditions: the issuer has appointed paying agents located outside the United States and its posessions with the reasonable expectation that such paying agents will be able to pay the United States dollars; and the full amount of such payment at the offices of all such paying agents is illegal or effectively precluded because of the imposititon of exchange controls or other similar restrictions on the full payment or receipt of interest in United States dollars. A lawsuit brought by the holder of an obligation against the issuer in the United States or its possessions for payment of the obligation after default by foreign paying agents shall not be considered to be a demand for payment. For purposes of this subdivision (v), interest includes original issues discount as defined in section 1232(b). For purposes of determining the amount of original issue discount on an obligation described in paragraph (c)(2)(i) which is part of an issue that neither is registered with the Security Exchange Commission nor is part of a privately placed issue, section 1232(b) shall apply as if the obligation were registered with the Securities Exchange Commission

(vi) *Obligations in registered from: conditions under which such obligations may be converted into bearer form.* For

purposes of this paragraph (c), the term "registered form" has the meaning given that term in section 103(j)(3) and the regulations thereunder. However, an obligation which is otherwise in registered form but which by its terms is convertible into bearer form will be considered to be in registered form for purposes of this section, but only if all of the following conditions are met.

(A) The obligation was originally issued pursuant to an offering comprised in whole or in part of obligations described in paragraph (c)(2)(i) (A) or (B) of this section.

(B) At all times during which such obligation is in bearer form, it satisfies the requirements of paragraph (c)(1)(ii) (A) and (B) of this section.

(C) The obligation, by its terms, may be converted into bearer form by the issuer or its transfer agent only upon receipt by the issuer or the transfer agent of a certificate signed by the person entitled to delivery of the obligation, which certificate states that the obligation is not held by or on behalf of a United States person, or if a United States person has a beneficial interest in such obligation, that such person is described in section 165(j)(3) (A), (B), or (C) and the regulations thereunder. If the issuer or transfer agent has actual knowledge that the information contained in a certificate is false, then the issuer will be denied a deduction for interest paid on such obligation.

(vii) *Rules relating to obligations issued before [Date which is 30 days after publication of final regulations in the* **Federal Register**]. Whether an obligation originally issued before [Date which is 30 days after publication of final regulations in the **Federal Register**], is described in section 163(f)(2)(B) shall be determined under the rules provided in § 5f.163–1(c) as in effect prior to its removal. Notwithstanding the preceding sentence, if an issuer has substantially complied with the rules contained in § 1.163–5(c) with respect to an obligation issued before [Date which is 30 days after publication of final regulations in **Federal Register**], then whether such obligation is described in section 163(f)(2)(B) shall be determined under the rules provided in § 1.163–5(c).

Par. 2. A new § 1.165–12 is added immediately after § 1.165–11 to read as follows:

§ 1.165–12 Denial of deduction for losses on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (b) of this section, nothing in section 165(a) and the regulations thereunder, or in any other provision of law, shall be construed to provide a deduction for any loss sustained on any registration-required obligation held after December 31, 1982, unless the obligation is in registered form or the issuance of the obligation was subject to tax under section 4701. The term "registration-required obligation" has the meaning given to that term in section 163(f)(2), except that clause (iv) of subparagraph (A) thereof shall not apply. Therefore, although an obligation that is not in registered form is described in § 1.163–5(c)(1), the holder of such an obligation shall not be allowed a deduction for any loss sustained on such obligation unless paragraph (b) of this section applies. The term "registered form" has the meaning given that term in section 103(j)(3) and the regulations thereunder. However, an obligation which is otherwise in registered form but which by its terms is convertible into bearer form will be considered to be in registered form for purposes of this section, provided it is convertible into bearer form only upon satisfaction of the conditions prescribed in § 1.163–5(c)(2)(vi).

(b) *Registration-required obligations not in registered form which are not subject to section 165(j)(1).* Nothwithstanding the fact that an obligation is a registration-required obligation that is not in registered form, the holder will not be subject to section 165(j)(1) if the holder meets the conditions of any one of the following subparagraphs (1), (2), (3), or (4) of this paragraph (b).

(1) The holder is an underwriter, broker, dealer, or other person that holds such obligation in connection with its trade or business conducted outside the United States, or the holder is a broker-dealer (registered under Federal or State law or expressly exempted from registration by the provisions of such law) that holds such obligation in the ordinary course of its trade or business for sale to customers, and the holder does not deliver such obligation to any other person in bearer form except upon receipt of a certificate signed by such person, which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person has a beneficial interest in such obligation, that such person is described in subparagraphs (1), (2), or (3) of this paragraph (b). If a holder has actual knowledge that the information contained in a certificate is false, then the holder will be subject to section 165(j)(1).

(2)(i) The holder is a financial institution (defined in subdivision (ii) of this paragraph (b)(2)) which holds a registration-required obligation through an entity which is engaged in the business of holding such obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligations, and the holder—

(A) Reports on its Federal income tax return for the taxable year any interest payments received (including original issue discount includable in gross income for such taxable year) with respect to such obligation and gain or loss on the sale or other disposition of such obligation;

(B) Attaches to its Federal income tax return for the taxable year a statement that identifies the interest, gain or loss described in subdivision (i)(A) of this paragraph (b)(2) as being attributable to a registration-required obligation held in bearer form for its own account; and

(C) Does not deliver such obligation in bearer form to any other person except upon receipt of a certificate signed by such person which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person is acquiring a beneficial interest in such obligation, that such person is described in subparagraph (1), (2), or (3) of this paragraph (b).

If a financial institution has actual knowledge that the information contained in certificate is false, then it will be subject to section 165(j)(1).

(ii) The term "financial institution" means a person which itself is, or more than 50 percent of the total combined voting power of whose stock entitled to vote is owned by a person which is—

(A) Engaged in the conduct of a banking, financing, or similar business within the meaning of section 954(c)(3)(B) and the regulations thereunder;

(B) Engaged in business as a broker or dealer in securities;

(C) An insurance company;

(D) A person that provides pensions or other similar benefits to retired employees;

(E) Primarily engaged in the business of rendering investment advice;

(F) A regulated investment company or other mutual fund; or

(G) A finance corporation a substantial part of the business of which consists of making loans (including the acquisition of obligations under a lease which is entered into primarily as a financing transaction), acquiring accounts receivable, notes or installment obligations arising out of the sale of tangible personal property or the

performing of services, or servicing debt obligations.

(3) The holder is any person that holds a registration-required obligation through a financial institution (as defined in paragraph (b)(2)(ii) of this section), and such institution meets the conditions set forth in subdivisions (i), (ii), (iii), and (iv) of this paragraph (b)(3).

(i) The financial institution holds the registration-required obligation on behalf of the holder in an account maintained with an entity which is engaged in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(ii) The financial institution makes a return of information to the Internal Revenue Service with respect to any interest payments received, including original issue discount includable in the holder's gross income for the taxable year, on any obligation so held. Such return shall be made on a Form 1099 for the calendar year. It shall indicate the aggregate amount of the payments received, the name, address, and taxpayer identification number of the holder, and such other information as is required by the form. No return of information is required under this subdivision if the financial institution reports payment under section 6049.

(iii) The financial institution makes a return of information on Form 1099B with respect to any disposition by the holder of such obligation. The return shall show the name, address, and taxpayer identification number of the holder of the obligation, Committee on Uniform Security Information Procedures (CUSIP), gross proceeds, sale date, and such other information as may be required by the form. No return of information is required under this subdivision if such financial institution reports with respect to the disposition under section 6045.

(iv) The financial institution covenants with the holder that the financial institution will not deliver such obligation to any other person except upon recieipt of a certificate signed by such person, which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person is acquiring a beneficial interest in such obligation, that such person is described in paragraph (b) (1), (2), or (3) of this section. If a financial instituion has actual knowledge that the information contained in a certificate is false, then the holder will be subject to section 165(j)(1).

(4) The holder is not a person described in paragraph (b) (1), (2), or (3) of this section and within thirty days of the date when the seller or other transferor is reasonably able to make the bearer obligation available to the holder the holder surrenders the obligation to a transfer agent or the issuer for conversion of the obligation into registered form.

Par. 3. A new § 1.1232–5 is added immediately after § 1.1232–4 to read as follows:

§ 1.1232–5 Denial of capital gains treatment for gains on registration-required obligations not in registered form.

(a) *In general.* Except as provided in paragraph (b) of this section, any gain on the sale or other disposition of a registration-required obligation held after December 31, 1982, that is not in registered form shall be treated as ordinary income unless the issuance of the obligation was subject to tax under section 4701. The term "registration-required obligation" has the meaning given to that term in section 163 (f) (2), except that clause (iv) of subparagraph (A) thereof shall not apply. Therefore although an obligation that is not in registered form is described in § 1.163–5(c)(1), the holder of such an obligation shall be required to treat the gain on the sale or other disposition of such obligation as ordinary income. The term"registered form" has the meaning given that term in section 103(j)(3) and the regulations thereunder. However, an obligation which is otherwise in registered form but which by its terms is convertible into bearer form will be considered to be in registered form for purposes of this section, provided its is convertible into bearer form only upon satisfaction of the conditions prescribed in § 1.163–5(c)(2)(vi).

(b) *Registration-required obligations not in registered form which are not subject to section 1232(c).* Notwithstanding the fact that an obligation is a registration-required obligation that is not in registered form, the holder will not be subject to section 1232(c) if the holder meets the conditions of subparagraphs (1), (2), (3), or (4) of this paragraph (b).

(1) The holder is an underwriter, broker, dealer, or other person that holds such obligation in connection with its trade or busines conducted outside the United States, or the holder is a broker-dealer (registered under Federal or State law or expressly exempted from registration by the provisions of such low) that holds such obligation in the ordinary course of its trade or business for sale to customers, and the holder does not deliver such obligation to any other person in bearer from except upon receipt of a certificate signed by such person to the holder of the obligation, which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person has a beneficial interest in such obligation, that such person is described in subparagraphs (1), (2), or (3) of this paragraph (b). If a holder has actual knowledge that the information contained in a certificate is false, then the holder will be subject to section 1232(c).

(2)(i) The holder is a financial institution (defined in subdivision (ii) of this paragraph (b)(2)) which holds a registration-required obligation through an entity which is engaged in the business of holding such obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligations, and the holder—

(A) Reports on its Federal income tax return for the taxable year any interest payments received (including original issue discount includable in gross income for such taxable year) with respect to such obligation and any gain or loss on the sale or other disposition of such obligation;

(B) Attaches to its Federal income tax return for the taxable year a statement that identifies the interest, gain, or loss described in subdivision (i)(A) of this paragraph (b)(2) as being attributable to a registration-required obligation held in bearer form for its own account; and

(C) Does not deliver such obligation in bearer form to any other person except upon receipt of a certificate signed by such person, which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person is acquiring a beneficial interest in such obligation, that such person is described in subparagraphs (1), (2), or (3) of this paragraph (b).

If a financial institution has actual knowledge that the information contained in a certificate is false, then it will be subject to section 1232(c).

(ii) The term "financial institution" means a person which itself is, or more than 50 percent of the total combined voting power of all classes of whose stock entitled to vote is owned by a person which is—

(A) Engaged in the conduct of a banking, financing, or similar business within the meaning of section 954(c)(3)(B) and the regulations thereunder;

(B) Engaged in business as a broker or dealer in securities;

(C) An insurance company;

(D) A person that provides pensions or other similar benefis to retired employees;

(E) Primarily engaged in the business of rendering investment advice;

(F) A regulated investment company or other mutual fund; or

(G) A finance corporation a substantial part of the business of which consists of making loans (including the acquisition of obligations under a lease which is entered into primarily as a financing transaction), acquiring accounts receivable, notes or installment obligations arising out of the sale of tangible personal property or the performing of services, or servicing debt obligations.

(3) The holder is any person that holds a registration-required obligation through a financial institution (as defined in paragraph (b)(2)(ii) of this section), and such institution meets the conditions set forth in subdivisions (i), (ii), (iii), and (iv) of this paragraph (b)(3).

(i) The financial institution holds the registration-required obligation on behalf of the holder in an account maintained with an entity which is engaged in the business of holding obligations for member organizations and transferring obligations among such members by credit or debit to the account of a member without the necessity of physical delivery of the obligation.

(ii) The financial institution makes a return of information to the Internal Revenue Service with respect to any interest payments received, including original issue discount includable in the holder's gross income for the taxable year, on any obligation so held. Such return shall be made on a Form 1099 for the calendar year. It shall indicate the aggregate amount of the payments received, the name, address, and taxpayer identification number of the holder, and such other information as is required by the form. No return of information is required under this subdivision if the financial institution reports the payment under section 6049.

(iii) The financial institution makes a return of information on Form 1099B with respect to any disposition by the holder of such obligation. The return shall show the name, address, and taxpayer identification number of the holder of the obligation, Committee on Uniform Security Information Procedures (CUSIP) number of the obligation disposed of (if known), gross proceeds, sale date, and such other information as may be required by the form. No return of information is required under this subdivision if such financial institution reports with respect to the disposition under section 6045.

(iv) The financial institution covenants with the holder that the financial institution will not deliver such obligation to any other person except upon receipt of a certificate signed by such person, which states that the obligation is not being acquired by or on behalf of a United States person or, if a United States person has a beneficial interest in such obligation, that such person is described in paragraph (b), (1), (2), or (3) of this section. If a financial institution has actual knowledge that the information contained in a certificate is false, then the holder will be subject to section 1232(c).

(4) The holder is not a person described in paragraph (b) (1), (2), or (3) of this section, and within thirty days of the date when the seller or other transferor is reasonably able to make the bearer obligation available to the holder, the holder surrenders the obligation to a transfer agent or the issuer for conversion of the obligation into registered form.

Temporary Income Tax Regulations Under the Tax Equity and Fiscal Responsibility Act of 1982

PART 5f—[AMENDED]

§ 5f.163-1 [Amended]

Par. 4. Section 5f.163-1 is amended by removing paragraph (c).

(26 U.S.C. 165 and 7805)

Roscoe L. Egger, Jr.,

Commissioner of Internal Revenue.

[FR Doc. 83-24071 Filed 9-1-83; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 435 and 436

Medicaid Program; Deduction of Incurred Medical Expenses (Spend Down)

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

ACTION: Proposed rule.

SUMMARY: These proposed rules would permit States to revise the process by which medical expenses are considered in determining Medicaid eligibility. This process is commonly referred to as "spend down." Spend down applies when an individual's income level during a budget period would ordinarily preclude eligibility, except that incurred medical expenses reduce income to the eligibility level.

These proposed revisions would permit States, as allowed by law, to: (1) Consider projected institutional expenses at the Medicaid reimbursement rate as incurred medical expenses, and deduct those expenses from income in determining eligibility; (2) Combine the retroactive and prospective medically needy budget periods; (3) Except for current payments on older bills not previously deducted in any budget period, exclude from incurred medical expenses those bills for services provided more than 3 months prior to the month of application; (4) Deduct incurred medical expenses from income in the order in which the services were provided or in the order each bill is submitted to the agency; and (5) Except for health insurance premiums, deductibles and coinsurance charges, limit deductible medical expenses to services covered under the State plan.

These proposed rules are part of the Department's regulatory reform efforts designed to simplify and clarify regulations, delete requirements that are unnecessary or burdensome, and provide maximum flexibility to States while promoting patient health and safety.

DATE: To assure consideration, comments should be mailed by November 1, 1983.

ADDRESS: Address comments in writing to: Administrator, Department of Health and Human Services, Health Care Financing Administration, P.O. Box 26676, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments to Room 309-G Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, D.C., or to Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

In commenting, please refer to BPP-515-P.

Comments will be available for public inspection, as they are received, beginning approximately three weeks after today, in Room 309-G of the Department's office at 200 Independence Ave., S.W., Washington, D.C., on Monday through Friday of each week from 8:30 to 5:00 p.m. (202-245-7890).

FOR FURTHER INFORMATION, CONTACT: Marinos Svolos, (301) 594-9051.

SUPPLEMENTARY INFORMATION:

I. Background

The Medicaid program provides medical assistance to groups and categories of people who are eligible to

receive cash payments under one of the existing welfare programs established under the Social Security Act (the Act). In addition, States may provide Medicaid to the medically needy, that is, to those individuals who have sufficient income to meet basic living expenses and are ineligible for a cash assistance program, but who have insufficient income to pay for medical expenses. Sections 1902(a)(17) and 1903(f)(2) of the Act provide that, for individuals applying as medically needy, certain incurred medical expenses must be deducted from income, if income exceeds the standard set by the State. The process is commonly referred to as "spend down."

In the medically needy program, the spend down process currently operates as follows. The State selects a medically needy budget period between 1 and 6 months, and a medically needy income level, against which countable income is measured. If countable income, after certain deductions are taken, is equal to or less than the income standard (medically needy income level), the individual is eligible for Medicaid. If the income is higher than this standard, the individual may still be eligible for Medicaid if, by deducting incurred medical expenses, the individual's income equals or falls below the standard.

Section 1902(f) of the Act contains a similar provision for deduction of incurred medical expenses for aged, blind and disabled individuals in States using more restrictive eligibility criteria than those of the Supplemental Security Income (SSI) Program. In those States, section 1902(f) of the Act requires that, in determining countable income, the Medicaid agency must deduct from income: (1) Any SSI benefit received; and (2) Any additional State supplement. If, after these deductions are taken, income is equal to or less than the State set income standard, the individual is eligible for Medicaid. If income is higher than the standard, the agency must deduct incurred medical expenses from the individual's remaining countable income.

All States are currently required by section 1902(a)(34) of the Act to provide Medicaid benefits 3 months prior to the month in which an application is filed. This provision applies if the individual received covered services under the State plan at any time during that 3 month period, and would have been eligible for Medicaid at the time services were received if he or she had applied.

II. Legal Authority

We propose revisions to the medically needy spend down process under the authority of section 1902(a)(17) of the Act, 42 U.S.C. 1396a(a)(17), which authorizes the Secretary to prescribe the extent to which costs of medical care may be deducted from income. We propose to make changes to the regulations that would increase State flexibility by permitting States to use alternative methods in the spend down process. We propose to make similar changes in the 1902(f) spend down process. The legal basis for these changes is section 1902(a)(17), itself, 1902(f), and the Secretary's authority under section 1102 of the Act to publish rules and regulations not inconsistent with the Act and necessary for the efficient administration of the Medicaid program.

III. Provisions of the Regulations—Discussion

A. Consideration of Projected Institutional Expenses at the Medicaid Rate as Incurred Medical Expenses

Current policy provides that in the case of an institutionalized applicant whose income exceeds the standard (either the medically needy income level or the standard set by a 1902(f) State), the agency must deduct, in the spend down process, incurred institutional expenses at the institution's private patient payment rate. It is currently permissible for States to project anticipated institutional expenses at the private rate, and deduct those expenses from an individual's income in determining his or her Medicaid eligibility. We do not permit States to project noninstitutional expenses because they are more likely to change, while institutional expenses tend to be long term, constant, and predictable. (This policy has been upheld by the U.S. Court of Appeals in *William v. St. Clair*, 610 F. 2nd 1224 (5th Cir., 1980).) Once excess income is reduced to the standard, the individual is eligible for Medicaid. Thereafter, Medicaid reimburses the institution at the Medicaid rate. States have complained that this procedure is administratively complex and costly.

Therefore, we propose to revise regulations at 42 CFR 435.732, 435.831 and 436.831 to provide that States may count projected institutional-expenses (not subject to payment by a third party) at the Medicaid reimbursement rate instead of the private patient payment rate in calculating spend down. We believe that only recurring and predictable medical expenses may be projected under this provision. Institutional expenses that are not ongoing, such as those incurred in acute care facilities, would not be included. Therefore, under this proposal, institutional medical expenses in acute care facilities may not be projected in calculating spend down. This change would alleviate the prior administrative complexities and thus conserve Medicaid resources. We would also require that States that elect to use this method authorize Medicaid eligibility on the first day of institutionalization in any budget period if projected institutional expenses at the Medicaid rate reduce the individual's income to the income standard for that budget period. Noninstitutional expenses would be payable as of the date eligibility is established.

For example, an individual has $3,600 of countable income which is projected over a 6-month period (based on the State's hypothetical use of a 6-month budget period). The $3,600 income is measured against a State income standard of $1,200.

$3,600—income
−$1,200—standard
$2,400—excess income

The projected cost of institutional care at the Medicaid reimbursement rate over a 6 month period is $7,000. Because the projected institutional cost at the Medicaid rate exceeds the individual's excess income (both projected over the same 6 month budget period), the individual is eligible for Medicaid. (States that use a shorter budget period, such as 3 months, would base the projections on the shorter period.) If the individual in this example is admitted to a skilled nursing facility on March 1, and the date of Medicaid entitlement is March 1 (because this is the date that projected institutional costs reduce his or her income below the income standard), the State would determine the amount of income to be applied to the cost of institutional care in accordance with regulations that specify post eligibility treatment of income at 42 CFR 435.733, 435.832, and 436.832.

B. Medically Needy Budget Period

Current regulations at 42 CFR 435.831 and 436.831 specify that States having a medically needy program may set a prospective budget period of between 1 and 6 months, during which an applicant's countable income is measured. Incurred medical expenses in this period are then deducted, and when the individual's income reaches the standard, he or she becomes eligible. In addition to the prospective period, section 1902(a)(34) of the Act and regulations at 42 CFR 435.914 provide that Medicaid must be made available up to 3 months prior to the month in

which an application is filed if the individual received services covered under the State plan at any time during that period, and would have been Medicaid eligible at the time services were received if he or she had applied. However, there is no statutory requirement that the budget periods used to compute income to determine retroactive and prospective eligibility be separate, as Medicaid policy now requires them to be. States have pointed out the administrative difficulties involved in separating the budget periods and have suggested that they be permitted to combine them. States have also noted that individuals can avoid the application of budget periods of more than one month by applying monthly for retroactive eligibility.

Therefore, in the interest of allowing States to impose more flexible budget periods, we are proposing to revise regulations at 42 CFR 435.831 and 436.831 to provide that States may use a medically needy budget period of no more than 6 months that may include all or part of the 3 month retroactive period noted above.

Because current regulations governing 1902(f) States do not specify the use of a set budget period, this proposed change would not apply to medically needy individuals in groups for whom States apply criteria more restrictive than applied nationally under SSI. (For those groups, criteria under 435.732(c) apply.) Therefore, 1902(f) States may use any budget period that is not more restrictive than that used on January 1, 1972.

C. Exclude From Incurred Medical Expenses Those Bills for Services Rendered More Than Three Months Prior to a Medicaid Application

Current regulations provide that any medical bills incurred during a current eligibility period may be applied to the spend down period regardless of whether the bills have been paid or not. However, any bills incurred prior to the period for which eligibility is determined, may be applied to the spend down period only if they are unpaid, and remain a current obligation of the individual.

This procedure causes administrative difficulties for States for the following reasons: (1) States must ensure that bills are applied only once; (2) It is the State's responsibility to ascertain whether an individual remains liable for a medical bill; and (3) An incentive is created for individuals not to pay bills (because bills incurred prior to the eligibility period may be deducted from income only if they are unpaid).

We would revise regulations at 42 CFR 435.831 and 436.831 to provide that, except for current payments on older bills not previously applied to spend down, States may exclude from incurred medical expenses, those bills for services provided more than 3-months prior to the month of application or redetermination. We recognize that there may be individuals who will have incurred an excess of bills over the amount needed in one budget period to qualify for Medicaid. Some of these bills may be for services that the State has chosen not to cover under the State plan, but has chosen to permit as a deduction from income in the spend down process (as explained in item E). These bills cannot be paid by the State even if the individual is eligible for Medicaid. Therefore, we would propose that bills not deducted in one budget period must be carried over and deducted in the immediately subsequent budget period. In applying this provision, a budget period will be considered as immediately subsequent to another period only if there is no break in time between periods.

To clarify this proposed procedure, we offer the following example. An individual applies for Medicaid on February 1. On February 10, he or she is certified eligible for Medicaid for the period February 10 through July 31 (that is, by February 10, the individual has incurred enough bills to meet the spend down liability). Subsequently, the individual incurs noncovered medical expenses in March and April. The budget period immediately following is established as August through January. If the State has elected to count noncovered medical expenses toward spend down, those expenses incurred in March and April must be carried over and deducted from income in the August through January budget period.

D. Application of Incurred Medical Expenses to the Spend Down Period in Chronological Order

For States that choose to cover the medically needy, current regulations at 42 CFR 435.831(c) and 436.831(c) require that States deduct incurred medical expenses from an individual's countable income in the following order:

(i) Expenses for health insurance premiums, deductibles or coinsurance charges;

(ii) Expenses for services *not* covered in the State plan; and

(iii) Expenses for services covered in the State plan.

Many States believe this requirement is difficult to administer because States must apply incurred bills out of sequence. It also results in higher Medicaid costs because expenses for services covered in the State plan are applied last to spend down. If there are more than enough medical expenses to apply to spend down, when eligibility is authorized, the State pays all remaining covered medical expenses during the budget period.

To give States increased flexibility in this area, we propose to revise regulations to provide that, in addition to the above specified order, States may deduct incurred medical expenses from income in chronological order in either one of two ways: (1) The order in which the services are furnished; or (2) The order in which the bills are presented to the agency. This process is easier administratively and, by permitting covered services to be applied to the spend down process equally with other medical expenses instead of last in order of priority, will reduce Medicaid costs.

Because current regulations governing 1902(f) States do not require that States deduct incurred medical expenses in a specific order, this proposed change would not apply to medically needy individuals in groups for whom criteria more restrictive than that used in the SSI program apply. (For those groups, criteria under § 435.732(c) apply.)

E. Limit Deductible Medical Expenses to Services Covered Under the State Plan

As noted under item D above, current regulations governing income eligibility for States choosing the medically needy option at 42 CFR 435.831 and 436.831 require that, if an individual's countable income exceeds the income level, a State deduct from that income expenses for reasonable medical care, including services not covered under the State plan.

Many States argue that forcing them to deduct from an individual's income, bills for items and services that the State has chosen not to cover under the State plan is an indirect subsidy for those services. States point out that using this method results in earlier eligibility and higher Medicaid costs. The Department is interested in receiving comments on this provision, limiting medical expenses to services covered under the State plan.

The State's argument is convincing that, they should be allowed to limit spend down deductions to medical expenses covered under the State plan. However, it is to the States', as well as the beneficiaries', advantage to have medical insurance coverage. Therefore, while we recognize the need for States to limit spend down deductions to

medical expenses covered under the State plan, we also believe that to exclude such noncovered expenses as health insurance premiums, coinsurance payments or deductibles would serve as a disincentive for individuals to continue those payments. If individuals drop their insurance coverage, the result could be an increase in Medicaid expenditures because Medicaid pays only after all other third party payers.

Therefore, we would propose to permit States to exclude deductions for noncovered medical expenses from spend down, with the exception of health insurance premiums, deductibles and coinsurance charges.

We also recognize that some States provide limits to the amount, duration or scope of services. For example, a State might set a limit of 20 days on hospital coverge. We would, however, continue the current requirement that States include deductions for expenses that are included in the State plan, but outside the amount, duration and scope limits chosen by the State. For example, in the State that sets a limit of 20 days on hospital coverage, all hospital expenses, including those expenses incurred beyond the 20 days are deductible from income in spend down.

We would revise regulations at 42 CFR 435.831 and 436.831 to allow States to exclude services not covered in the State plan from incurred medical expenses with the exception of Medicare and other health insurance premiums, deductibles, coinsurance charges; and Medicaid deductibles, copayments or similar cost sharing charges. Under this proposal, States may deduct none, some, or all of the incurred medical expenses that are recognized under State law but not covered in the State plan. These revisions would apply only to medically needy States using eligibility criteria of the Federal SSI program. States using more restrictive criteria than SSI would not have this option because section 1902(f) of the Act provides that all "incurred expenses for medical care as recognized under State law" must be deducted from income.

IV. Impact Analysis

Executive Order 12291

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for any regulation that will have an annual effect on the economy of $100 million or more; cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; or meet other thresholds specified in section 1(b) of the Order.

Our actuaries have determined that each of the following provisions will not result in an annual economic impact of $100 million or meet other threshold criteria of section 1(b) of the Order. For the reasons indicated under each provision, we have determined that a regulatory impact analysis is not required for any of these provisions.

A. Consideration of Projected Institutional Expenses at the Medicaid Rate as Incurred Medical Expenses

This proposed change would permit States to make institutionalized medically needy individuals eligible for Medicaid as of the first day of institutionalization in any period in which their medical expenses are projected to be sufficiently high to make them eligible, instead of the day that their medical expenses actually exceed the necessary amount.

Since Medicaid rates for institutional care are generally lower than private rates, earlier Medicaid eligibility would permit medically needy individuals to purchase a greater volume of services before exhausting their resources and qualifying for Medicaid. In turn, this would mean that State Medicaid programs would pay for fewer services. Based on information on which States are likely to change their method of determining eligibility for institutionalized medically needy individuals, our actuaries estimate that this proposed regulation would reduce Federal and State Medicaid expenditues by $18 million in fiscal year 1984. As this estimate is less than the $100 million threshold, a regulatory impact analysis is not required.

Additionally, the effect of increased flexibility available under the other provision of these regulations, which could either increase or decrease the effect of this provision, creates a range of variables beyond our capacity to measure. Nevertheless, we are confident that this regulation would result in combined State and Federal savings of less than $100 million in fiscal year 1983. Thus, a regulatory impact analysis is not required.

B. Medically Needy Budget Period

We estimate that few States will implement this provision and that savings from individual cases would be negligible. Our actuaries estimate that the cumulative effect of this provision would be significantly below the $100 million threshold.

C. Exclude From Incurred Medical Expenses Those Bills for Services Provided More Than Three Months Prior to a Medicaid Application.

Our actuaries have determined that there is no administratively feasible way to determine the amount of incurred medical expenses for services provided more than 3 months prior to the month of application, the delay in establishing eligibility attributable to the proposed change, or the quantity or type or services which would ordinarily be provided during the delay. Therefore, our actuaries cannot project an exact estimate for this provision. However, it should fall far short of $100 million.

By allowing States to exclude these medical expenses, administrative difficulties will be reduced thus creating better administration of the Medicaid program.

D. Application of Incurred Medical Expenses to the Spend Down Period in Chronological Order

Our actuaries estimate that this will reduce administrative difficulties faced by States, but that the resultant effect will be significantly below the $100 million threshold.

E. Limit Deductible Medical Expenses to Services Covered Under the State Plan

States are currently permitted (in 42 CFR 435.831(c)(2) to set reasonable limits on amounts of incurred noncovered medical expenses to be deducted from income. Because few States have chosen to place limits on noncovered medical expenses, our actuaries believe that the impact of this provision will be minor. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

The Secretary certifies, under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act of 1980 (Pub. L. 96–354), that these regulations will not have a significant impact on a substantial number of small entities.

A. Projection of Institutional Expenses at the Medicaid Rate

There are 1944 SNFs and ICFs currently participating in the Medicaid program in States which are likely to change to the proposed method of determining eligibility for institutionalized medically needy individuals. We have no indication that the impact of any potential savings would fall disproportionately on any of these particular SNFs or ICFs. Thus, we assume that the impact will fall evenly

on all SNFs and ICFs in these States. Our actuaries estimate savings for fiscal 1984 of $18 million. This would result in an estimated reduction of income of $9,300 per facility. To the extent that the total savings would be reduced, the impact on each facility would be reduced. We believe that the estimated impact is not a significant one. Accordingly, a regulatory flexibility analysis is not required.

B. Provisions B Through E

Since these provisions would affect only States and individuals, and as these parties are not defined as "small entities" under the provisions of the Act, a regulatory flexibility analysis is not required.

Response to Comments

Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments and respond to them in the preamble to that rule.

List of Subjects

42 CFR Part 435

Aid to Families with Dependent Children Aliens, Categorically needy, Contracts (Agreements—State Plan), Eligibility, Grant-in-Aid program—health, Health facilities, Medicaid, Medically needy, Reporting and recordkeeping requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Categorically needy, (Agreements), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

42 CFR Parts 435 and 436 are proposed to be amended as follows:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA AND THE NORTHERN MARIANA ISLANDS

The authority citation for Part 435 reads as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

A. 42 CFR Part 435, Subpart H, is amended as set forth below:

Subpart H—Financial Requirements for the Categorically Needy

Financial Eligibility for the Aged, Blind, and Disabled in States Using More Restrictive Requirements Than SSI

1. Section 435.732 is amended by revising paragraphs (c) and (d) to read as follows:

§ 435.732 Procedures for determining income eligibility.

* * * * *

(c) *Deduction of incurred medical expenses.* (1) If countable income exceeds the income standard, the agency must deduct from income expenses incurred by the individual or financially responsible relatives for necessary medical and remedial services that are recognized under State law and are not subject to payment by a third party, including Medicare and other health insurance premiums, deductibles or coinsurance charges, and copayments or deductibles imposed under § 447.51 or § 447.53 of this subchapter.

(2) The agency may set reasonable limits on the amounts of incurred medical expenses to be deducted from income.

(3) The agency may deduct from income, projected medical institutional expenses (except for expenses in acute care facilities) not subject to payment by a third party, at the Medicaid reimbursement rate.

(d) *Eligibility based on incurred medical expenses.* (1) If, after incurred medical expenses are deducted, remaining income is equal to or less than the income standard, the individual is eligible for Medicaid.

(2) If the agency uses the method for deduction of institutional expenses under paragraph (c)(3) of this section, in any budget period in which projected institutional expenses at the Medicaid reimbursement rate reduce income to the income standard, Medicaid eligibility begins on the first day of institutionalization.

(2) Section 435.831 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), designating the second sentence of the introductory paragraph as (a) and revising it, and revising redesignated paragraphs (d) and (e). The section as amended is set forth below:

Medically Needy Income Eligibility

§ 435.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section. (a)

(a) *Budget periods.* The agency must use a budget period of not more than 6 months to compute income.

The agency may include in the budget period in which income is computed, all or part of the 3 month retroactive period specified in § 435.914. This provision applies to all medically needy individuals except in groups for whom criteria more restrictive than that used in the SSI program apply. (For those groups, criteria under §435.732(c) apply.)

(b) *Determining countable income.* The agency must deduct the following amounts from income to determine the indiviudal's countable income.

(1) For individuals under age 21 and caretaker relatives, the agency must deduct amounts that would be deducted in determining eligibility under the State's AFDC plan.

(2) For aged, blind, or disabled individuals in States covering all SSI recipients, the agency must deduct amounts that would be deducted in determing eligibility under SSI. However, the agency must also deduct the highest amounts from income that would be deducted in determining eligibility for optional State supplements if these supplements are paid to all individuals who are receiving SSI or would be eligible for SSI except for their income.

(3) For aged, blind, or disabled individuals in States using income requirements more restrictive than SSI, the agency must deduct amounts that are no more restrictive than those used under the Medicaid plan on January 1, 1972 and no more liberal than those deducted in determining elgibility under SSI or an optional State supplement. However, the amounts must be at least the same as those that would be deducted in determining eligibility, under § 435.121, of the categorically needy.

(c) *Eligibility based on countable income.* If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under § 435.814, the individual or family is eligible for Medicaid.

(d) *Deduction of incurred medical expenses.* These provisions apply to all medically needy individuals except in groups for whom criteria more restrictive than that used in the SSI program apply. (For those groups, criteria under §435.732(c) apply.)

(1) If countable income exceeds the income standard, the agency must deduct from income incurred medical expenses that are not subject to payment by a third party either:

(i) In chronological order by the date each service is furnished; or

(ii) In the following order:

(A) Medicare and other health insurance premiums, deductibles, or coinsurance charges, incurred by the individual or family or financially responsible relatives, including enrollment fees, copayments, or deductibles imposed under § 447.51 or § 447.53 of this subchapter.

(B) Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not included in the plan.

(C) Expenses incurred by the individual or family or by financially responsible relatives for necessary medical and remedial services that are included in the plan; or

(iii) In chronological order by the date each bill is submitted to the agency by the individual. If more than one bill is submitted at one time, the agency must deduct the bills from income in the order prescribed in either paragraph (d)(1) (i) or (ii) of this section.

(2) With the exception of Medicare and other health insurance premiums, deductibles, coinsurance charges, and other charges listed under (d)(1)(ii)(A) of this section, in deducting expenses from income, the agency may exclude medical expenses not included in the State plan.

(3) The agency may set reasonable limits on the amounts of incurred medical expenses to be deducted from income under paragraphs (d)(1)(ii) (A) and (B) of this section.

(4) The agency may deduct from income projected medical institutional expenses (except for expenses in acute care facilities) not subject to payment by a third party, at the Medicaid reimbursement rate.

(5) Except for current payments on older bills not previously deducted in any budget period, the agency may exclude from incurred expenses those bills for medical and remedial services furnished more than 3 months before the date of application.

(6) In every budget period, bills for services described in paragraph (d)(1)(ii) (A) and (B) of this section furnished during any part of the immediately preceding budget period, but not deducted from income during that period, must be deducted. This provision does not apply to noncovered services which are excluded under paragraph (d)(2).

(e) *Eligibility based on incurred medical expenses.* (1) Once deduction of incurred medical expenses reduces income to the income standard, the individual is eligible for Medicaid.

(2) If the agency uses the method for deduction of institutional expenses under paragraph (d)(4) of this section, in any budget period in which projected institutional expenses at the Medicaid reimbursement rate would reduce income to the income standard, Medicaid eligibility begins on the first day of institutionalization.

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

The authority citation for Part 436 reads as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

B. Section 436.831 is amended by redesignating paragraphs (a) through (d) as paragraphs (b) through (e), designating the second sentence of the introductory paragraph as (a) and revising it, and revising redesignated paragraphs (d) and (e). The section as amended is set forth below:

Medically Needy Income Eligibility and Liability for Payment of Medical Expenses

§ 436.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section. (a)

(a) *Budget periods.* The agency must use a budget period of not more than 6 months to compute income.

The agency may include in the budget period in which income is computed all or part of the 3 month retroactive period specified in § 435.914.

(b) *Determining countable income.* The agency must, to determine countable income, deduct amounts that would be deducted in determining eligibility under the State's approved plan for OAA, AFDC, AB, APTD, or AABD.

(c) *Eligibility based on countable income.* If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under § 436.814, the individual is eligible for Medicaid.

(d) *Deduction of incurred medical expenses.* Order of deduction. (1) If countable income exceeds the income standard, the agency must deduct from income incurred medical expenses that are not subject to payment by a third party either:

(i) In chronological order by the date each service is furnished; or

(ii) In the following order:

(A) Medicare and other health insurance premiums, deductibles, or coinsurance charges incurred by the individual or family or financially responsible relatives, including enrollment fees, copayments, or deductibles imposed under § 447.51 or § 447.53 of this subchapter.

(B) Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not included in the plan.

(C) Expenses incurred by the individual or family or by financially responsible relatives for necessary medical and remedial services that are included in the plan; or

(iii) In chronological order by the date each bill is submitted to the agency by the individual. If more than one bill is submitted at one time, the agency must deduct the bills from income in the order prescribed in either paragraph (d)(1) (i) or (ii) of this section.

(2) With the exception of Medicare and other health insurance premiums, deductibles, coinsurance charges and other charges listed under (d)(1)(ii)(A) of this section, in deducting expenses from income, the agency may exclude medical expenses not included in the State plan.

(3) The agency may set reasonable limits on the amounts of incurred medical expenses to be deducted from income under paragraphs (d)(1)(ii) (A) and (B) of this section.

(4) The agency may deduct from income projected medical institutional expenses (except for expenses in acute care facilities) not subject to payment by a third party, at the Medicaid reimbursement rate.

(5) Except for current payments on older bills not previously deducted in any budget period. The agency may exclude from incurred expenses those bills for medical and remedial services furnished more than 3 months before the date of application.

(6) In every budget period, bills for services described in (d)(1)(ii) (A) and (B) of this section furnished during any part of the immediately preceding budget period, but not deducted from income during that period, must be deducted. This provision does not apply to noncovered services which are excluded under paragraph (d)(2).

(e) *Eligibility based on incurred medical expenses.*—(1) Once deduction of incurred medical expenses reduces income to the income standard, the individual is eligible for Medicaid.

(2) If the agency uses the method for deduction of institutional expenses under paragraph (d)(4) of this section, in any budget period in which projected institutional expenses at the Medicaid reimbursement rate reduce income to the income standard, Medicaid

eligibility begins on the first day of institutionalization.

(Catalog of Federal Domestic Assistance Program No. 13.714, Medical Assistance Program)

Dated: March 23, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

Approved: August 5, 1983.

Margaret M. Heckler,

Secretary.

[FR Doc. 83-23991 Filed 9-1-83; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 213

[Docket No. RST-3, Notice No. 6]

Track Safety Standards; Commuter Service Amendment

AGENCY: Federal Railroad Administration (FRA), Transportation.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: FRA is proposing to amend the Track Safety Standards to make them applicable to all track that is used to provide commuter or short-haul passenger service in a metropolitan or suburban area. This action is taken in response to a requirement of the Federal Railroad Safety Authorization Act of 1982 (Pub. L. 97-468, 96 Stat. 2579), which became effective on January 14, 1983.

DATES: (1) Written comments must be received not later than October 7, 1983. Comments received after that date will be considered to the extent possible without incurring additional delay or expense.

(2) FRA will hold a public hearing on this proposal at 10 a.m. on October 4, 1983. Any person who desire to make an oral statement at the hearing should notify the Docket Clerk before September 30, 1983, by phone or mail.

ADDRESSES: (1) Written comments should be submitted to the Docket Clerk, Office of Chief Counsel, FRA, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring to be notified that their written comments have been received should submit a stamped, self-addressed postcard with their comments. The Docket Clerk will indicate on the postcard the date on which the comments were received and will return the postcard to the addressee. Written comments will be available for examination, during regular business hours in Room 5423 of the Nassif Building at the above address.

(2) The public hearing will be held in Room 4234 of the Nassif Building, 400 Seventh Street SW., Washington, D.C. Persons desiring to make oral statements at the hearing should notify the Docket Clerk by telephone (202-426-8285) or by writing to the Docket Clerk at the above address.

FOR FURTHER INFORMATION CONTACT: Philip Olekszyk, Deputy Associate Administrator for Safety, FRA, Washington, D.C. 20590. Telephone 202-426-0897.

SUPPLEMENTARY INFORMATION: A recent amendment to the Federal Railroad Safety Act of 1970 (Safety Act) (45 U.S.C. 431 *et seq.*) requires that, by January 14, 1984, FRA issue regulations to apply appropriate safety principles to track used for commuter service (Pub. L. 97-468, 96 Stat. 2579).

FRA's current track safety standards (49 CFR Part 213) apply to all standard gage track in the general railroad system of transportation, but exempt track used exclusively for commuter or other short-haul passenger service in a metropolitan or suburban area (49 CFR 213.3). These standards, adopted in 1971, establish minimum requirements for the condition of various components of the track, the relevant geometry parameters for these components, inspection procedures, and mandatory remedial actions. The standards incorporate all appropriate safety and engineering concepts that had been developed within the rail industry and this agency at the time of their promulgation and, with some minor adjustments, appear to have stood the test of time as effective regulations.

FRA has reviewed its track standards to determine whether they contain safety principles appropriate for track used exclusively for commuter service. After review of the available technical data, FRA has determined that (i) track used exclusively for commuter service poses no unique safety hazards that are not addressed by the existing regulations, and (ii) none of the provisions contained in the existing regulations is unnecessary for such track. FRA has concluded, therefore, that the existing standards provide all of the appropriate safety principles for track used exclusively for commuter service. In reaching this conclusion, FRA noted that the legislative history of the amendment does not suggest that Congress believes the existing standards are either technically deficient or technically excessive with regard to track used for commuter service.

The scope of this NPRM is limited, therefore, to assuring that the current standards are made applicable to all track used for commuter or other short-haul passenger service in a metropolitan or suburban area. FRA's task is simplified by the fact that the existing standards already apply to the vast majority of track used for commuter service.

As noted, § 213.3(b)(2) of the track standards exempts track used exclusively for rapid transit, commuter, or other short-haul passenger service in a metropolitan or suburban area. In response to the statutory mandate, FRA is proposing in this NPRM simply to eliminate that exclusion insofar as it applies to commuter or short-haul passenger service, but to retain the exclusion for track that is used solely for rapid transit service. Retention of the rapid transit exclusion is based on (i) the specific language of the amendment (section 202(i) of the Safety Act), (ii) the legislative history of the 1982 Authorization Act, which excludes from FRA's safety jurisdiction rail rapid transit systems that do not operate over the general system of rail transportation, and (iii) a court ruling that FRA does not have safety jurisdiction over rapid transit systems (*Chicago Transit Authority* v. *Flohr*, 570 F.2d 1305 (7th Cir. 1977)).

Based on a recent survey, it appears that this proposal would result in the application of the existing track standards to approximately 384 miles of track, in the vicinity of eight major cities, over which only commuter service is provided. Approximately 150 miles of this track are located in station areas, coach yards, and repair shop areas, with the remainder serving as main line trackage.

Specifically, the covered track would include: six miles of track in the Boston metropolitan area owned by the Massachusetts Bay Transportation Authority and operated by the Boston and Maine Railroad; 82 miles of track in the New York metropolitan area comprised of 21 miles owned and operated by the Long Island Railroad, two miles owned by the trustees of the Penn Central Company and operated by the Metro-North Commuter Railroad, 23 miles owned and operated by New Jersey Transit Rail Operating Authority, and 36 miles owned and operated by the Port Authority Trans Hudson Corporation; 83 miles of track in the Philadelphia metropolitan area comprised of 77 miles owned and operated by the Southeastern Pennsylvania Transportation Authority and six miles owned by the National

Railroad Passenger Corporation and operated by the Southeastern Pennsylvania Transportation Authority; two miles in the Washington metropolitan area owned and operated by the Baltimore and Ohio Railroad; 208 miles of track in the Chicago metropolitan area comprised of 31 miles owned and operated by the Burlington Northern, 18 miles owned by the Chicago, Milwaukee, St. Paul and Pacific Railroad and operated by the Northeastern Illinois Railroad Corporation, 44 miles owned and operated by the Chicago and Northwestern Transportation Company, one mile owned and operated by the Chicago, South Shore and South Bend Railroad, 92 miles owned and operated by the Illinois Central Gulf Railroad, and 23 miles owned and operated by the Northeastern Illinois Railroad Corporation; and three miles of track in the San Francisco metropolitan area owned and operated by the Southern Pacific Transportation Company.

The proposed extension of FRA's track standards to approximately 384 additional miles of track would have a relatively limited impact. First, approximately 4,800 miles of track used for commuter service and 300,000 miles of track used for freight or passenger service are already subject to these standards.

Second, as noted, the existing FRA standards establish minimum requirements for the condition of various components of the track structure. These standards already reflect the consensus opinion of the railroad industry regarding the minimum safety requirements for track structures; as such, they are generally adhered to by prudent operators.

Moreover, to the extent that those operating commuter service over unregulated track currently adhere, on a voluntary basis, to the safety principles contained in the standards, this proposal would not entail the imposition of any new burdens. FRA field observations to date indicate that virtually all of the commuter service operators voluntarily use either the FRA standards or their own more stringent rules for track maintenance. In view of the limited amount of track involved in the proposal and the current maintenance practices of the owners of that track, it does not appear that any significant new or additional costs would be imposed by adoption of this proposal.

At the same time, given the very limited nature of the proposal, it is difficult to establish a clear estimate of the associated safety benefits. FRA obtains data on all train accidents or incidents that exceed the reporting thresholds established in 49 CFR Part 225, without regard to whether an accident or incident occurred on track used exclusively for commuter or short-haul passenger service. Nevertheless, FRA has not been able to identify any accident or incident attributable to track conditions that could have been prevented by adherence to these standards. In the absence of such data FRA has been unable to establish a monetary benefit associated with adoption of this proposal.

Regulatory Impact

This NPRM has been evaluated in accordance with existing regulatory policies. It is neither a "major rule" as defined in Executive Order 12291 nor a significant rule under DOT regulatory policies and procedures. The proposed rule contains only a single technical revision to the existing standards and would have an impact only on those entities that operate commuter service over track used exclusively for that purpose.

In general, the proposed rule would not serve to increase the economic burdens of the existing regulation. It is of limited scope and applies track standards generally adhered to already by commuter service operators. FRA believes that this provision would result, at most, in only a minor increase in recordkeeping burdens and their associated costs in isolated instances. Since the NPRM contains only a limited, technically oriented proposal, which is expected to have a minimal impact, FRA has determined that further evaluation is not necessary.

The proposed rule would have a direct impact only on the railroads or commuter agencies that own the 384 miles of track used exclusively for commuter or other short-haul passenger service. It would not place any requirements or burdens on the public. Nor would it increase the budgeted expenditures for track maintenance for the track owners, because they already allocate funding for track maintenance sufficient to meet or exceed these standards. The proposed rule would not have any significant impact on any small entity, since no such entity operates over track used exclusively for commuter or other short-haul passenger service. Based on the facts set forth in this NPRM, it is certified that the rule would not have a significant economic impact on a substantial number of small entities under the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

The proposed rule indirectly contains provisions concerning the collection of information that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*, Pub. L. 96-511). These provisions involve the need to record and maintain information concerning inspection activities under the requirements of § 213.7 and § 213.241. These information collection requirements have been submitted to the Office of Management and Budget (OMB). Such requirements apply to all track owners currently subject to the regulation. The expansion of these information collection requirements for the track covered in the proposal would not become effective until approved by OMB. FRA specifically solicits comments on the potential paperwork burden imposed by this NPRM.

Such comments should be submitted both to FRA, in the manner provided for elsewhere in this notice, and to OMB. Communications to OMB should be submitted to Mr. Gary Waxman, Office of Management and Budget, Room 30001, New Executive Office Building, Washington, D.C. 20503.

Public Participation

Interested persons are invited to participate in this proceeding by submitting written data, views, or comments. Communications should identify the regulatory docket number and notice number and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, 400 Seventh Street, SW., Washington, D.C. 20590. Persons desiring that receipt of their communications be acknowledged should attach a stamped, pre-addressed postcard to the first page of their communication. Communications received before October 7, 1983, will be considered before final action is taken on the proposed rule. All comments received will be available for examination by interested persons at any time during regular business hours in Room 5423, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

In addition, FRA will hold a public hearing on this proposal in Room 4234 in the Nassif Building, located at 400 Seventh Street, SW., Washington, D.C. beginning at 10:00 on October 4, 1983. Any persons who desire to make an oral statement at the hearing should notify the Docket Clerk by telephone or by mail before September 30, 1983.

List of Subjects in 49 CFR Part 213

Railroad safety.

In consideration of the foregoing, FRA proposes to amend Part 213, Title 49, Code of Federal Regulations, as set forth below:

The Proposed Rule

PART 213—[AMENDED]

1. 49 CFR Part 213 is amended by revising § 213.3 to read as follows:

§ 213.3 Application.

(a) Except as provided in paragraph (b) of this section, this part applies to all standard gage track in the general railroad system of transportation.

(b) This part does not apply to track—

(1) Located inside an installation which is not part of the general railroad system of transportation; or

(2) Used exclusively for rapid transit service in a metropolitan or suburban area.

Authority: Section 202, 84 Stat. 971 (45 U.S.C. 431); sec. 1.49(m) of the Regulations of the Secretary of Transportation (49 CFR 1.49(m)).

Issued in Washington, D.C. on August 30, 1983.

Thomas A. Till,

Deputy Administrator.

[FR Doc. 83-24139 Filed 9-1-83; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 655

Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan; Public Hearing

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The Mid-Atlantic Fishery Management Council will hold a public hearing to allow for input on Amendment 1 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries.

DATE: The public hearing will be held September 14, 1983, at 3:00 p.m. Written comments will be accepted until September 14, 1983.

ADDRESS: Hearing to be held at Best Western Airport Inn, Philadelphia International Airport, Route 291, Philadelphia, Pennsylvania 19153 (215-365-7000).

Send comments to John C. Bryson, Executive Director of the Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, Delaware 19901.

FOR FURTHER INFORMATION CONTACT: John C. Bryson, 302-674-2331.

SUPPLEMENTARY INFORMATION: Amendment 1 changes the squid management regime to allow the Director of the Northeast Region (RD), National Marine Fisheries Service (NMFS), in consultation with the Mid-Altantic Fishery Management Council (Council), to adjust optimum yield (OY) at the beginning of the fishing year and throughout the year on the base of specified guidance. The mackerel regime is changed to reflect the changed mackerel natural mortality rate (from 0.3 to 0.2).

The rigidity of past OYs and their components has prevented timely management responsiveness necessary to address a situation such as the squid fishery. An OY with the proposed flexibility is preferable to the current system. Experience has shown that established limits must be capable of being changed rapidly to meet unforeseen circumstances.

Demand for domestic processed and joint venture amounts of squid has increased significantly during this fishing year. This increased demand requires NMFS to have greater flexibility for proper management, and for distributing available amounts of squid among the various components of the fishery, both domestic and foreign. The proposed OY mechanism meets this need. It allows for adjustments to be made due to changes in seasonal availability of squid; changes in fishing patterns or practices of U.S. fishermen fishing for more economically valuable species of fish; increases in TALFF to foreign nations providing markets for U.S. exporters; joint venture operations and changes to approved joint ventures; or for other benefits. This mechanism fosters the "fish and chips" policy, the Magnuson Fishery Conservation and Management Act (Magnuson Act), and establishes a mechanism to achieve maximum utilization of the OY for squid. The mechanism would work as follows:

Loligo Squid

The maximum OY for *Loligo* is 44,000 mt. The RD, in consultation with the Council, will determine annual specifications relating to initial optimum yield (IOY), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable level of foreign fishing (TALFF). The RD will review yearly the most recent biological data pertaining to the stock. If the RD determines that the stock cannot support a level of harvest equal to the maximum OY, he shall establish a lower allowable biological catch (ABC) for the fishing year. This level represents essentially the modification of the maximum sustainable yield (MSY) to reflect changed biological circumstances. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC shall be set at that level.

From the ABC, the RD, in consultation with the Council, will determine the IOY for the fishing year. The IOY represents a modification of ABC, based on economic factors. It is intended to provide the greatest overall benefit to the nation by incorporating all relevant factors. The IOY is composed of an initial DAH and initial TALFF. The RD will project the DAH by reviewing the data concerning past domestic landings, projected amounts of *Loligo* necessary for domestic processing and for joint ventures during the fishing year, and other data pertinent for such a projection. The JVP component of DAH shall be the portion of DAH which domestic processors either cannot or will not use. In assessing the level of IOY, the RD shall provide for a TALFF of at least a minimum bycatch of *Loligo* squid that would be harvested incidentally in other directed fisheries. This bycatch level shall be 1 percent of the allocated portion of the *Illex*, mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs. In addition, this specification of IOY will based on the application of the following factors:

(1) Total world export potential by squid-producing countries;

(2) Total world import demand by squid-consuming countries;

(3) U.S. export potential based on expected U.S. harvests, expected U.S. consumption, relative prices, exchange rates, and foreign trade barriers;

(4) Increased/decreased revenues to the United States from foreign fees;

(5) Increased/decreased revenues to U.S. harvesters (with/without joint ventures);

(6) Increased/decreased revenues to U.S. processors and exporters;

(7) Increases/decreases in U.S. harvesting productivity due to decreases/increases in foreign harvest;

(8) Increases/decreases in U.S. processing productivity; and

(9) Potential impact of increased/decreased TALFF on foreign purchases of U.S. products and services and U.S. caught fish, changes in trade barriers, technology transfer, and other considerations.

Proposed annual specifications of the ABC and IOY and its component amounts shall be published in the **Federal Register** and provide for a public comment period. At the close of the public comment period, a notice of final annual specifications with the reasons, therefore, shall be published in the **Federal Register**.

Any subsequent adjustments to the IOY shall be published in the **Federal Register** and may provide for a public comment period.

The IOY may be adjusted by the RD, in consultation with the Council, upward to the ABC at any time during the fishing year. An adjustment may be made to IOY to accommodate DAH needs, including when the application of the above factors warrants an adjustment in TALFF.

Illex Squid

The maximum OY for *Illex* is 30,000 mt. The RD, in consultation with the Council, will determine annual specifications relating to IOY, DAH, DAP, JVP, and TALFF. The RD will review yearly the most recent biological data pertaining to the stock. If the RD determines that the stock cannot support a level of harvest equal to the maximum OY, he shall establish a lower ABC for the fishing year. If the stock is able to support a harvest level equivalent to the maximum OY, the ABC shall be set at that level.

From the ABC, the RD, in consultation with the Council, will determine the IOY for the fishing year. The IOY represents a modification of ABC, based on economic factors. It is intended to provide the greatest overall benefit to the nation by incorporating all relevant factors. The IOY is composed of an initial DAH and initial TALFF. The RD will detemine the IOY and any adjustments by the same procedures and factors set out above for *Loligo*, except that it shall provide for a minimum bycatch of *Illex* squid that would be harvested incidentally in other directed fisheries. This bycatch level shall be 10 percent of the allocated portion of the *Loligo* TALFF and 1 percent of the allocated portions of the mackerel (if a directed fishery is allowed), silver hake, and red hake TALFFs.

Atlantic Mackerel

Based on the best scientific information available, the Amendment changes the spawning stock size which a directed foreign fishery will be allowed. The specification of **mackerel** OY, DAH, DAP, and TALFF is based upon the following:

C = estimated mackerel catch in Canadian waters for the upcoming fishing year.

U.S. = estimated U.S. mackerel catch for the upcoming fishing year.

S = mackerel spawning stock biomass in the year after the upcoming fishing year.

Bycatch = 2 percent of allocated portion of the silver hake TALFF and 1 percent of the allocated portions of the *Loligo*, *Illex*, and red hake TALFFs.

AC = acceptable catch in U.S. waters for the upcoming fishing year

If S − U.S. − C is less than or equal to 400,000 mt; use Case 1. If S − U.S. − C is greater than 400,000 mt; use Case 2.

Case 1:

OY is less than or equal to 30,000 mt.
AC is less than or equal to 30,000 mt.
DAH is less than or equal to 30,000 mt − By catch.
DAP is less than or equal to 30,000 mt − Bycatch.
TALFF = Bycatch.

Case 2:

AC = S − C − 400,000 mt and is less than or equal to FO.1. [A reference point on the yield curve.]
OY is less than or equal to AC.
DAH is between 30,000 mt and AC − Bycatch.
DAP is between 30,000 mt and AC − Bycatch.
TALFF is AC − DAH, but may be no less than Bycatch.
If AC − DAH is equal to or greater than 10,000 mt, one-half is initially allocated to TALFF and one-half is initially allocated to Reserve.

The 30,000 mt minimum DAH and DAP in Case 2 may only be reduced to the extent necessary to assure that AC is not exceeded and the foreign fishery receives the bycatch requirements. OY and TALFF must be adjusted to account for the minimum U.S. allocation. It must be recognized that while such an adjustment at the beginning of a fishing year may result in an initial OY less than that which is biologically acceptable (i.e., less than AC), if U.S. landings during the year, including amounts authorized for joint ventures, increase above the initial estimates, DAH and OY may be increased by similar amounts up to the point where OY = AC. TALFF would not change from its value at the beginning of a year as a result of these adjustments to DAH and OY

Alternatives to the Proposed Amendment

The alternatives to the proposed Amendment are:

1. *Take no action at this time.* This would mean that the Plan continue in effect until March 31, 1986, unless otherwise amended. The limited squid adjustment mechanism would remain intact. Atlantic mackerel specifications would continue to be based upon a natural mortality rate of 0.30, instead of the most recent scientifically determined rate of 0.20. This would not allow determination of OY on as current a basis as possible for squid and would violate National Standard 2 in the case of mackerel.

2. *Prepare a Secretarial Amendment to Amend the Council Plan.* This would amend the Plan by adopting the more flexible squid adjustment mechanism contemplated by the Council. It would provide further for the best scientific information forming the basis of the Atlantic mackerel specifications. It would grant the RD, in consultation with the Council, the authority to adjust squid OYs based upon certain biological and economic information. It would allow the annual markerel specifications to be based upon the most recent scientific assessment of natural mortality rate of 0.2. This alternative was considered because, if NMFS prepared the Secretarial Amendment, the Council staff would be able to work on other plans. However, the alternative was rejected because of timing considerations.

The hearing will be tape recorded with the tapes filed as the official document of the hearing.

(16 U.S.C. 1801 *et seq.*)

Dated: August 30, 1983.

Joe P. Clem,

Chief, Fees, Permits and Regulations Division, National Marine Fisheries Service.

[FR Doc. 83-24195 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 48, No. 172
Friday, September 2, 1983

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: September 21, 1983.
Time: 8:00 a.m.-4:00 p.m.
Place: Dean's Conference Room, University of New Hampshire, Durham, New Hampshire.
Type of meeting: Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State agricultural experiment stations.
Contact person for agenda and more information: Dr. Esteal H. Cobb, Recording Secretary, U.S. Department of Agriculture, Cooperative State Research Service, Washington, D.C. 20250; telephone: 202/447-4329.

Done at Washington, D.C., this 18th day of August, 1983.

R. L. Lovvorn,
Acting Administrator, Cooperative State Research Service.
August 18, 1983.

[FR Doc. 83-24141 Filed 9-1-83; 8:45 am]
BILLING CODE 3410-22-M

Forest Service

Land and Resource Management Plan; Boise National Forest, Ada, Boise, Elmore, Gem, Valley, and Washington Counties, Idaho; Revised Intent To Prepare an Environmental Impact Statement

This Notice revises a previously issued Notice of Intent published in the Federal Register dated June 12, 1983, page 39877.

This Notice is being issued because 36 CFR 219.17 is being revised to allow the reevaluation of roadless areas during the Forest planning process. Public participation in the reevaluation permits data collection and analysis activities to proceed pending release of the final regulations.

The results of the reevaluation of roadless areas will be included in the Environmental Impact Statement and Boise National Forest Land and Resource Management Plan.

The first steps involving initial public participation, inventory, and analysis of the management situation have been completed. The scoping for the roadless area reevaluation portion of the land management planning process will be initiated by explaining the roadless area reevaluation to all individuals interested and wanting to become involved in the planning process for the Forest. Comments are invited and will be received until November 7, 1983. Significant issues relating to reevaluation will be identified and included with those issues already identified for the Forest.

Detailed information on the roadless area and the reevaluation process will be available to individuals and organizations requesting the information.

In addition, there will be public open houses to further explain, discuss, and gather information about the roadless areas and reevaluation process. They are scheduled as follows:

Monday, October 24, McCall, Idaho. Time: 2 to 8 p.m. Joint open house with Payette National Forest
Tuesday, October 25, Forest Supervisor's Office, 1750 Front Street, Boise, Idaho. Time: 2 to 8 p.m. Joint open house with Payette National Forest
Wednesday, October 26, Caldwell Public Library, 1010 Dearborn, Caldwell, Idaho. Time: 2 to 8 p.m. Joint open house with Payette National Forest
Thursday, October 27, Mountain Home Range District Office, 2180 American Legion Boulevard, Mountain Home, Idaho. Time: 2 to 8 p.m.

The Boise National Forest Plan will select from a range of alternatives which will include at least:

(1) The "no action" alternative, which represents continuation of present levels of activity.

(2) One or more alternatives which represent levels of activity that will result in elimination of all backlogs of needed treatment for restoration or renewable resources and ensure that a major portion of planning intensive multiple-use and sustained-yield management procedures are operating on an environmentally sound basis.

(3) One or more alternatives formulated to resolve the identified major public issues and management concerns, including roadless areas.

The Draft Environmental Impact Statement and proposed Land and Resource Management plan for the Boise National Forest are scheduled for filing with the Environmental Protection Agency by February 1985. The final documents are scheduled for filing in October 1985.

During the reevaluation process, current management and protection policies and activities in the roadless areas will be continued. Wilderness values will be protected in the areas recommended in RARE II for Wilderness, and management for other uses will continue in areas recommended for non-Wilderness.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible official for the Forest Management Plan and Environmental Impact Statement. John J. Lavin, Forest Supervisor, is responsible for preparation of the Forest Plan and Environmental Impact Statement.

Written comments, suggestions, and/or requests for information during this process should be sent to John J. Lavin, Forest Supervisor, ATTN: Charles G. Nelson, Forest Planner, Boise National Forest, 1750 Front Street, Boise, Idaho 83702, phone (208) 334-1840.

Dated: August 25, 1983.

Richard K. Griswold,

Director, Planning and Budget.

[FR Doc. 83-24120 Filed 9-1-83; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan; Humboldt National Forest, Lincoln, Nye, White Pine, Humboldt, Elko, Counties, Nevada; Revised Notice of Intent To Prepare an Environmental Impact Statement

This Notice revises a previously issued Notice of Intent published in the **Federal Register** dated June 20, 1980, Volume 45, No. 121, pages 41684 and 41685.

This Notice is being issued because 36 CFR 219.17 is being revised to allow the reevaluation of roadless areas during the Forest planning process. Public participation in the reevaluation permits data collection and analysis activities to proceed pending release of the final regulations.

The results of the reevaluation of roadless areas will be included in the Environmental Impact Statement and Humboldt National Forest Land and Resource Management Plan.

The first steps involving initial public participation, inventory, and analysis of the management situation have been completed. The scoping for the roadless area reevaluation portion of the land management planning process will be initiated by explaining the roadless area reevaluation to all individuals interested and wanting to become involved in the planning process for the Forest. Comments are invited and will be received until October 30, 1983. Significant issues relating to reevaluation will be identified and included with those issues already identified for the Forest.

Detailed information on the roadless areas and reevaluation processes will be available for individuals and organizations requesting the information. In addition, there will be open houses held at Elko, Ely, Wells, Mountain City, Winnemucca, and Jarbidge, Nevada, to further explain, discuss, and gather information about the roadless areas and reevaluation process.

The Humboldt National Forest Plan will select from a range of alternatives which will include at least:

1. The "no-action" alternative, which represents continuation of present levels of activity.

2. One or more alternatives which represent levels of activity that will result in elimination of all backlogs of needed treatment for restoration of renewable resources and ensure that a major portion of planning intensive multiple-use and sustained-yield management procedures are operating on an environmentally sound basis.

3. One or more alternatives formulated to resolve the identified major public issues and management concerns, including roadless areas.

The Draft Environmental Impact Statement and proposed Land and Resource Management Plan for the Humboldt National Forest are scheduled for filing with the Environmental Protection Agency by February 1985. The final documents are scheduled for filing in September 1985.

During the reevaluation process, current management and protection policies and activities in the roadless areas will be continued. Wildness values will be protected in the areas recommended in RARE II for Wilderness, and management for other uses will continue in areas recommended for non-Wilderness.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible official for the Forest Management Plan and Environmental Impact Statement. B. J. Graves, Forest Supervisor, is responsible for preparation of the Forest Plan and Environmental Impact Statement.

Written comments, suggestions, and/or requests for information during this process should be sent to Terrence Cox, Forest Planner; Humboldt National Forest, 976 Mountain City Highway; Elko, Nevada 89801; phone (702) 738-5171.

Dated: August 25, 1983.

Richard K. Griswold,

Director, Planning and Budget.

[FR Doc. 83-24118 Filed 9-1-83; 8:45 am]

BILLING CODE 3410-11-M

Land and Resource Management Plan; Payette National Forest, Valley, Idaho, Adams, and Washington, Counties, Idaho; Revised Intent To Prepare an Environmental Impact Statement

This Notice revises a previously issued Notice of Intent published in the Federal Register dated June 13, 1980, pages 40196 and 40197.

This Notice is being issued because 36 CFR 219.17 is being revised to allow the reevaluation of roadless areas during the Forest planning process. Public participation in the reevaluation permits data collection and analysis activities to proceed pending release of the final regulations.

The results of the reevaluation of roadless areas will be included in the Environmental Impact Statement and Payette National Forest Land and Resource Management Plan.

The first steps involving initial public participation and inventory have been completed. The scoping for the roadless area reevaluation portion of the land management planning process will be initiated by explaining the roadless area reevaluation to all individuals interested and wanting to become involved in the planning process for the Forest. Comments are invited and will be received until November 7, 1983. Significant issues relating to reevaluation will be identified and included with those issues already identified for the Forest.

Detailed information on the roadless areas and reevaluation processes will be available for individuals and organizations requesting the information. In addition, the following open houses will be conducted to further explain, discuss, and gather information about the roadless areas and reevaluation process.

Date	City	Place
Oct. 24	McCall	Payette National Forest, Supervisor's Office, 106 W. Park St.
Oct. 25	Boise	Boise National Forest Supervisor's Office, 1750 Front St.
Oct. 26	Caldwell	Caldwell Public Library, 1010 Dearborn St.
Oct. 27	Council	Council High School Library

All open houses will be held from 2:00 p.m. to 8:00 p.m. The first three listed will be conducted jointly by the Boise and Payette National Forests.

The Payette National Forest Plan will select from a range of alternatives which will include at least:

(1) The "no-action" alternative, which represents continuation of present levels of activity.

(2) One or more alternatives which represent levels of activity that will result in elimination of all backlogs of needed treatment for restoration of renewable resources and ensure that a major portion of planning intensive multiple-use and sustained-yield management procedures are operating on an environmentally sound basis.

(3) One or more alternatives formulated to resolve the identified major public issues and management

concerns, including roadless areas.

The Draft Environmental Impact Statement and proposed Land and Resource Management Plan for the Payette National Forest are scheduled for a draft review by February 1985. The final documents are scheduled for filing with the Environmental Protection Agency in October 1985.

During the reevaluation process, current management and protection policies and activities in the roadless areas will be continued. Wilderness values will be protected in the areas recommended in RARE II for Wilderness, and management for other uses will continue in areas recommended for non-Wilderness.

J. S. Tixier, Regional Forester, Intermountain Region, USDA Forest Service, is the responsible offical for the Forest Management Plan and Environmental Impact Statement. Kenneth D. Weyers, Payette Forest Supervisor, is responsible for preparation of the Forest Plan and Environmental Impact Statement.

Written comments, suggestions, and/or requests for information during this process should be sent to Kenneth D. Weyers, Forest Supervisor, Attention John Skinner, Forest Planner, Payette National Forest, Box 1026, McCall, Idaho, 83638, phone 208–634–2255.

Dated: August 25, 1983.

Richard K. Griswold,

Director, Planning and Budget.

[FR Doc. 83-24119 Filed 9-1-83; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Twilight Road Critical Area Treatment RC&D Measure, Oklahoma; Environmental Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Twilight Road Critical Area Treatment RC&D Measure, LeFlore County, Oklahoma.

FOR FURTHER INFORMATION CONTACT: Roland R. Willis, State Conservationist, Soil Conservation Service, USDA Agricultural Center Building, Stillwater, Oklahoma 74074, telephone (405) 624–4360.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Roland R. Willis, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The measure concerns reducing erosion, stabilizing the right-of-way, reducing sediment flow into streams, and improving the appearance and safety of the county road and right-of-way. The planned works of improvement include shaping, filling, and topsoiling. Structural measures consist of concrete channel liners, a pipe drop, and waterways. Vegetative measures will be bermudagrass sod mulching including fertilizing.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Roland R. Willis.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(Catalog of Federal Domestic Assistance Program No. 10.901, Resource Conservation and Development Program. Office of Management and Budget Circular A–95 regarding State and local clearinghouse review of Federal and federally assisted programs and projects is applicable)

Dated: August 24, 1983.

Donald R. Vandersypen,

Assistant State Conservationist (WR).

[FR Doc. 83-24107 Filed 9-1-83; 8:45 am]

BILLING CODE 3410-16-M

CIVIL AERONAUTICS BOARD

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits

Permits filed under Subpart Q of the Board's Procedural Regulations; (See. 14 CFR 302.1701 et seq.) week ended August 26, 1983.

Subpart Q Applications

The due date for answers, conforming application, or motions to modify scope are set forth below for each application. Following the answer period the Board may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Date filed	Docket No.	Description
Sept. 26, 1983	41664	Air National Aircraft Sales and Service, Inc., c/o James M. Burger, Shaw, Pittman, Potts & Trowbridge, 1800 M Street, NW., Washington, D.C. 20036. Application of Air National Aircraft Sales and Services, Inc. pursuant to Section 401 of the Act and Subpart Q of the Board's Procedural Regulations, requests authority to provide scheduled foreign air transportation of persons, property and mail as follows: From New York, New York, on the one hand, and Amsterdam, Netherlands, Brussels, Belgium, and Athens, Greece, on the other hand. Conforming Applications, Motions to Modify Scope and Answers may be filed by September 23, 1983.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-24197 Filed 9-1-83; 8:45 am]

BILLING CODE 6320-01-M

Announcement of Proposed Collection of Information Under the Provisions of the Paperwork Reduction Act (44 U.S.C. 35)

Agency clearance officer from whom a copy of the collection of information and supporting documents is available: Robin A. Caldwell (202) 673-5922

New

Title of the Collection of Information: Information Directives Concerning Computer Reservation Systems
Agency Form Number: None
How often the Collection of Information must be filed: One-time
Who is asked or required to report: United, American, Trans World, Delta and Eastern Air Lines
Estimate of number of annual responses: 5
Estimate of number of annual hours needed to complete the collection of information: 800

Dated: August 26, 1983.

Jack Calloway,

Chief, Data Requirements Section, Information Management Division, Office of Comptroller.

[FR Doc. 83-24196 Filed 9-1-83; 8:45 am]
BILLING CODE 6320-01-M

[Docket No. 41626; Order 83-8-62]

Joint Complaint of Air Micronesia, Inc. and Continental Air Lines, Inc. Against the Government of Japan and Japan Air Lines Co., Ltd.; Order

Adopted by the Civil Aeronautics Board at its office in Washington, D.C. on the 12th day of August, 1983.

On August 3, 1983, Air Micronesia, Inc. and Continental Air Lines, Inc. jointly filed a complaint against the Government of Japan and Japan Air Lines, Co., Ltd. The complainants allege that by failing to authorize Continental/Air Micronesia to provide nonstop Guam-Tokyo service, the Government of Japan has engaged in unreasonable, discriminatory and anticompetitive practices against Air Micronesia, and that it has imposed unjustifiable and unreasonable restrictions on the access of Air Micronesia to Japanese markets.

In support of their complaint, Continental and Air Micronesia state that the U.S.-Japan Air Transport Agreement authorizes service by U.S. carriers between Guam and Tokyo; that Air Micronesia has been designated by the U.S. Government to provide that service; that Japan has refused, in violation of the Agreement, to allow Air Micronesia to operate that service; and that this refusal has caused Air Micronesia serious financial hardship and has prevented the development, by Air Micronesia, of air service vital to the economic well-being of Guam and the Micronesian area. The complainants further assert that Japan's actions run counter to section 402(f) of the Federal Aviation Act and section 2 of the International Air Transportation Fair Competitive Practices Act (IATFCPA), as well as Part 213 of the Board's Economic Regulations. Continental and Air Micronesia request that we take appropriate action against the operating rights and permit of JAL.

The International Air Transportation Competition Act of 1979 (IATCA) substantially expanded our ability to deal with allegations of unfairly restrictive and discriminatory practices by foreign governments and foreign airlines. We now possess power to respond quickly to such practices through amendments to section 402 of the Federal Aviation Act and section 2 of IATFCPA which permit us to deny, alter, amend, modify, suspend, cancel, limit or condition any foreign air carrier permit or tariff if we find such action to be in the public interest. They also enable us to act without any hearing or to dispense with oral evidentiary hearings and base our decision on written evidence and arguments submitted by interested parties in appropriate circumstances. Furthermore, to ensure that complaints filed under this legislation receive prompt attention, section 2 of the IATFCPA provides that we shall approve, deny, dismiss or set a complaint for hearing, or institute other proceedings proposing remedial action, within 60 days after receipt of the complaint. We may extend the period for taking action in increments of 30 days up to 180 days, if we conclude that it is likely that the complaint can be satisfactorily resolved through negotiations.

With these considerations in mind, we have decided to invite all interested persons to answer the complaint of Air Micronesia and Continental in this docket. Answers shall include all data, evidence, and argument upon which persons rely to support their position, and shall cover all substantive and procedural issues they wish the Board to consider. We will also provide an opportunity to reply to these answers.

Answers shall be filed no later than 20 days from the service date of this order, and replies no later than 10 days from that answer date.[1]

After receipt and consideration of these pleadings and any evidence submitted, we will issue a further order in this proceeding. As indicated above, we may either provide for further procedures, defer action for 30 days, or grant, dismiss, or deny the complaint in whole or in part.

Accordingly,

1. We invite any interested person to file and serve upon persons named in paragraph 3, below, no later than September 6, 1983, answers to the joint complaint of Air Micronesia and Continental in Docket 41626. If comments are filed, replies may be filed, and must be served as above, but no later that September 16, 1983.

2. If timely and properly supported requests are filed, we will give consideration to the matters and issues raised by the requests before we take further action, provided that we may order further procedures within the statutorily determined time period; and

3. We are serving this order upon Air Micronesia, Inc., Continental Air Lines, Inc., Japan Air Lines Co., Ltd., the Ambassador of Japan in Washington, D.C., the representative of the United States Commonwealth of the Northern Mariana Islands in Washington, D.C., the Micronesian Liaison Office of the Federated States of Micronesia in Washington, D.C., the President of the Marshall Islands, the Speaker of the Palau Legislature, the Governors of Guam, Kusai, Ponape, Truk, and Yap, and the Departments of Interior, State and Transportation.

We shall publish this order in the **Federal Register.**

All Members concurred.

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 83-24196 Filed 9-1-83; 8:45 am]
BILLING CODE 6320-01-M

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments

The following are notices of the receipt of applications for duty-free entry of scientific instruments published pursuant to Section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897) and the regulations issued pursuant thereto (15

[1] We delegate to the Director, Bureau of International Aviation, the authority to dispose of all procedural questions arising in this proceeding, except for requests for oral evidentiary hearings, until further Board order.

CFR Part 301 as amended by 47 FR 32517).

Interested persons may present their views with respect to the question of whether an instrument or apparatus of equivalent scientific value for the purposes for which the instrument is intended to be used is being manufactured in the United States.

Comments must be filed in accordance with Subsections 301.5(a) (3) and (4) of the regulations. They are to be filed in triplicate with the Director, Statutory Import Programs Staff, U.S. Department of Commerce, Washington, D.C. 20230, within 20 calendar days after the date on which this notice of application is published in the **Federal Register**.

A copy of each application is on file in the Department of Commerce, and may be examined between 8:30 a.m. and 5:00 p.m., Monday through Friday, Room 1523, 14th and Constitution Avenue, N.w., Washington, D.C. 20230.

Docket No.: 83–282. Applicant: Louisiana State University, College of Basic Sciences, Baton Rouge, LA 70803. Instrument: MS80 Gas Chromatograph Mass Spectrometer System and Accessories. Manufacturer: Katos, United Kingdom. Intended use of instrument: The instrument is intended to be used for mass spectrometric structure analysis of high molecular weight compounds ranging from 2000 to 5000d using soft ionization methods, such that the maximum acceleration voltage and maximum sensitivity can be utilized at a mass of 2400. Collision-induced activation will be utilized to investigate the substructure of the oligomers. The objectives of these investigations will be precise structural determination of such biologically important functional compounds as oligosaccharides from glycoproteins and glycolipids, sequencing of peptides, as well as structural on organically synthesized high molecular weight oligomers such as bypyridyl condensation products. The instrument will also be used in the course Computerized Mass Spectrometry in Biochemistry to provide state of the art training in high technology chemical analysis. Application received by Commissioner of Customs: August 15, 1983.

Docket No.: 83–283. Applicant: Scripps Clinic and Reseach Foundation, 10666 North Torrey Pines Road, La Jolla, CA 92037. Instrument: Electron Microscope, Model H–600–1 and Accessories. Manufacturer: Hitachi Scientific Instruments, Japan. Intended use of instrument: The instrument is intended to be used for studies of macromolecules, cultured cells, and tissues with the goals of understanding the structural basis of complement system, coagulation process, and the structural alterations caused by viral infection and immunological dysfunction. Application received by Commissioner of Customs: August 15, 1983.

Docket No.: 83–284. Applicant: Bryn Mawr College, Department of Physics, Bryn Mawr, PA 19010. Instrument: Pulsed Nuclear Magnetic Resonance Spectrometer, CPS–2 with Accessories. Manufacturer: Spin-Lock Ltd., Canada. Intended use of instrument: The instrument is intended to be used for studies of molecular solids in order to identify the different kinds of intramolecular reorientation that are occurring. Once the reorientations have been identified, the aim is to learn over what temperature range the reorientations occur. In addition, the instrument will be used in Physics courses to teach students (at different levels for the different courses) the fundamentals of NMR and to give them valuable experience in using an NMR spectrometer. Application received by Commissioner of Customs: August 15, 1983.

Docket No.: 83–285. Applicant: Bryn Mawr College, Department of Physics, Bryn Mawr, PA 19010. Instrument: Nuclear Magnetic Resonance Continuous Wave Spectrometer, MO–100 with Accessories. Manufacturer: Spin-Lock Ltd., Canada. Intended use of instrument: The instrument is intended to be used for studies of molecular solids in order to identify the different kinds of intramolecular reorientation that are occurring. Once the reorientations have been identified, the aim is to learn over what temperature range the reorientations occur. In addition, the instrument will be used in Physics courses to teach students (at different levels for the different courses) the fundamentals of NMR and to give them valuable experience in using an NMR spectrometer. Application received by Commissioner of Customs: August 15, 1983.

Docket No.: 83–286. Applicant: University of Oklahoma, Purchasing Office, 660 Parrington Oval, Rm. 321, Norman, OK 73019. Instrument: 10 (SSD) Solid State (Micro Strip) Detectors and Accessories. Manufacturer: Micron Semiconductor, Ltd., United Kingdom. Intended use of instrument: The instrument is intended to be used in carrying out experiments on the following: (1) Lifetimes of charmed and bottomed hadron states; (2) Photoproduced charm factory; and (3) Analysis of data from the CLEO experiment. Application received by Commissioner of Customs: August 15, 1983.

Docket No.: 83–287. Applicant: Vanderbilt University Medical Center, Medical Center North, Rm. T–1206 Station 17 P.O., Nashville, TN 37232. Instrument: Bone Implant System for Jaws. Manufacturer: Bofors, Sweden. Intended use of instrument: The instrument is intended to be used for placement of implants in the jaw of patients with severely atrophic jaws. Application received by Commissioner of Customs: August 15, 1983.

(Catalog of Federal Domestic Assistance Program No. 11.105, Importation of Duty-Free Educational and Scientific Materials)

Frank W. Creel,

Acting Director, Statutory Import Programs Staff.

[FR Doc. 83-24121 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-25-M

National Oceanic and Atmospheric Administration

Emergency Striped Bass Research Study; Public Meeting

AGENCY: National Marine Fisheries Service, Commerce.

SUMMARY: The National Marine Fisheries Service and the U.S. Fish and Wildlife Service will hold a joint meeting to discuss progress on the Emergency Striped Bass Research Study as authorized by the amended Anadromous Fish Conservation Act (Pub. L. 96–118).

DATE: The meeting will convene on Thursday, September 22, 1983, at 8:00 a.m., and will adjourn at approximately noon. The meeting is open to the public; space, however, is limited.

ADDRESS: National Marine Fisheries Service, Room B–100, Page Building No. 1, 2001 Wisconsin Avenue, NW., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Austin R. Magill, Office of Fisheries Management, National Marine Fisheries Service, Washington, D.C. 20235, telephone: (202) 634–7454.

Dated: August 30, 1983.

Joe P. Clem,

Chief, Fees, Permits, and Regulations Division, National Marine Fisheries Service.

[FR Doc. 83-24165 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: Pacific Fishery Management Council, National Oceanic and

Atmospheric Administration, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council, established by Section 302 of the Magnuson fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a Groundfish Task Force which will meet to discuss current groundfish management matters. Members of the public will be permitted to submit oral and written statements regarding these matters.

DATES: September 21, 1983 at 10 a.m.

ADDRESS: The meeting will be held in the Conference Room of the Oregon Department of Fish and Wildlife, 506 S.W. Mill St., Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. Greenley, Executive Director, Pacific Fishery Management Council, 526 SW Mill Street, Portland, Oregon 97201, (503–221–6352).

SUPPLEMENTARY INFORMATION: The purpose of this meeting is to review preliminary estimates of groundfish ABCs and OYs, and to consider possible strategies for managing the fisheries in 1984. Time is scheduled for public comment at 3 p.m.

(16 U.S.C. 1801 et seq.)

Dated: August 29, 1983

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-24206 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council; Public Comments on Foreign Fishing Applications

AGENCY: National Marine Fisheries Service, Commerce.

ACTION: Opportunity for Public Comments on Foreign Fishing Applications Received by the Mid-Atlantic Fishery Management Council.

SUMMARY: The Mid-Atlantic Fishery Management Council was established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended). As required by the Act, Section 204(b)(5), the Council announces that the public may comment on any and all foreign fishing applications received by the Council by October 4, 1983. Council staff will be available between 9 a.m. and noon on October 4, to receive comments. Comments may be made in person at the Council's Headquarters Office, Room 2115, Federal Building, 300 South New Street, Dover, Delaware, between the above-stated hours. Written Comments may be mailed to be received and reviewed by October 4, 1983.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Room 2115—Federal Building, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: August 30, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc. 83-24204 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-22-M

Mid-Atlantic Fishery Management Council's Scientific and Statistical Committee; Public Meeting

AGENCY: National Marine Fisheries Service, Commerce.

SUMMARY: The Mid-Atlantic Fishery Management Council, established by Section 302 of the Magnuson Fishery Conservation and Management Act (Pub. L. 94–265, as amended), has established a Scientific and Statistical Committee which will meet to discuss data needs for fishery management plans (FMPs); discuss the Surf Clam/Ocean Quahog FMP, as well as other fishery management Matters.

DATES: The public meeting will convene on Wednesday, October 5, 1983, at approximately 10 a.m., and will adjourn at approximately 4 p.m. The meeting agenda may be rearranged or changed depending upon progress on the agenda.

ADDRESS: The meeting will take place at the Best Western Airport Inn, Philadelphia International Airport, Philadelphia, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Mid-Atlantic Fishery Management Council, Federal Building–Room 2115, 300 South New Street, Dover, Delaware 19901, Telephone: (302) 674–2331.

Dated: August 30, 1983.

Ann D. Terbush,

Acting Chief, Operations Coordination Group, National Marine Fisheries Service.

[FR Doc 83-24205 Filed 9-1-83; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Technical and licensing information on specific inventions may be obtained by writing to: Office of Government Inventions and Patents, U.S. Department of Commerce, P.O. Box 1423, Springfield, Virginia 22151.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Program Coordinator, Office of Government Inventions and Patents, National Technical Information Service, U.S. Department of Commerce.

Department of the Army

SN 4–578,938 (4, 354,192) Radio Ranging
SN 4–624,666 (4,360,812) FM–CW Fuze
SN 5–953,292 (4,369,811) Null Balancing for Fluidic Sensors and Amplifiers
SN 6–074,634 (4,357,713) Method and Apparatus for Reduction of Modal Noise in Fiber Optic Systems
SN 6–111,738 (4,373,553) Broad Band Flueric Amplifier
SN 6–133,735 (4,335,655) Method and Apparatus for Detonating Explosive in Response to Detonation of Remote Explosive
SN 6–142,548 (4,362,106) Flow Deflector for Air Driven Power Supply
SN 6–153,461 (4,350,315) Device to De-Spin Objects with Very High Spin
SN 6–158,556 (4,345,460) Multi-Caliber Projectile Soft Recovery System
SN 6–169,004 (4,341,158) Apparatus for Eliminating Power Source Rise Time Effects in a Time Fuze System
SN 6–175,543 (4,367,474) Frequency-Agile. Polarization Diverse Microstrip Antennas and Frequency Scanned Arrays
SN 6–176,319 (4,348,649) Microwave Power Pulse Generator
SN 6–198,673 (4,379,296) Selectable-Mode Microstrip Antenna and Selectable-Mode Microstrip Antenna Arrays
SN 6–216,232 (4,375,682) High Speed Rectangle Function Generator
SN 6–217,881 (4,381,002) Fluidic-Controlled Oxygen Intermittent Demand Flow Device
SN 6–230,177 (4,360,896) Write Mode Circuitry for Photovoltaic Ferroelectric Memory Cell
SN 6–276,263 (4,382,678) Measuring of Feature for Photo Interpretation
SN 6–290,138 (4,392,348) Device for Bleeding Motor Gases thru Motor Pole Piece
SN 6–311,368 (4,385,055) 2-Acetyl-and 2-Propionylpyridine Thiosemicarbazones as Antimalarials
SN 6–316,574 (4,393,048)Protective Gel Composition for Wounds
SN 6–316,575 (4,391,799) Protective Gel Composition for Treating White Phosphorus Burn Wounds
SN 6–348,538 (4,391,993) Thermolysis of Tetraalkylammonium Borohydrides to Bis (Tetraalkylammonium) Decahydrodecaboranes
SN 6–385,999 Wide Range Doppler Demodulator in FM Radar
SN 6–393,223 Method for Detecting the Presence of a Gas in an Atmosphere

SN 8–411,074 Power Supply Conditioner for Fluidic Systems
SN 8–437,607 Phase Scanned Microstrip Array Antenna
SN 8–504,117 Spin Sample Reader
SN 8–514,113 Solid Fuel Ramjet Tubular Projectile for Direct Fire Cannon

Department of Health and Human Services

SN 8–500,833 Repair of Tissue in Animals

[FR Doc. 83-24170 Filed 9-1-83; 8:45 am]
BILLING CODE 3510-04-M

National Telecommunications and Information Administration

Frequency Management Advisory Council; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), notice is hereby given that the Frequency Management Advisory Council (FMAC) will meet from 9:30 a.m. to 3:30 p.m. on September 21, 1983, in Room 4099A at the United States Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. (Public entrance to the building is on 14th Street, between Pennsylvania Avenue and Constitution Avenue.)

The Council was established on July 19, 1965. The objective of the Council is to advise the Secretary of Commerce on radio frequency spectrum allocation matters and means by which the effectiveness of Federal Government frequency management may be enhanced. The Council consists of 15 members whose knowledge of telecommunications is balanced in the functional areas of manufacturing, analysis and planning, operations, research, academia and international negotiations.

The principal agenda items for the meeting will be:

(1) Principles that should be Embodied in the Constitution and Convention of the International Telecommunication Union (ITU).

(2) High-Definition Television.

(3) Coordination between Government and Industry Relative to Incidential and Restricted Radiation Devices.

The meeting will be open to public observation; and a period will be set aside for oral comments or questions by the public which do not exceed 10 minutes each per member of the public. More extensive questions or comments should be submitted in writing before September 20, 1983. Other public statements regarding Council affairs may be submitted at any time before or after the meeting. Approximately 10 seats will be available for the public on a first-come first-served basis.

Copies of the minutes will be available on request 30 days after the meeting.

Inquires may be addressed to the Executive Secretary, FMAC, Mr. Charles L. Hutchison, National Telecommunications and Information Administration, Room 4701, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230, telephone 202–377–0805.

Dated: August 30, 1983.

Charles L. Hutchison,

Executive Secretary, FMAC, National Telecommunications and Information Administration.

[FR Doc. 83-24177 Filed 9-1-83; 8:45 am]
BILLING CODE 3510-60-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcing New Limits on Certain Man-Made Fiber Textile Products from Hong Kong

August 30, 1983.

On August 3, 1983, a notice was published in the **Federal Register** (48 FR 35158) announcing that the Government of the United States had requested consultations with the Government of Hong Kong concerning man-made fiber gloves and mittens in Category 631 under the terms of the Bilateral Agreement of June 23, 1982, as amended.

The purpose of this notice is to announce that consultations on this category were held on August 25, 1983 and a limit of 424,000 dozen pairs was established for 1983 under the terms of the bilateral agreement.

Walter C. Lenahan,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 83-24203 Filed 9-1-83; 8:45 am]
BILLING CODE 3510-25-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1983; Proposed Additions

AGENCY: Committee for Purchase From the Blind and Other Severely Handicapped.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to Procurement List 1983 services to be provided by workshops for the blind and other severely handicapped.

Comments must be received on or before: October 5, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2), 85 Stat. 77. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1983, November 18, 1982 (47 FR 52101):

SIC 0782

Grounds Maintenance, U.S. Naval Security Activity, Skaggs Island, Sonoma, California
Grounds Maintenance, DOT/FAA AFSFO, 55 Midway Avenue, Daytona Beach, Florida

C. W. Fletcher,

Executive Director.

[FR Doc. 83-24175 Filed 9-1-83; 8:45 am]
BILLING CODE 6820-33-M

Procurement List 1983; Additions and Deletions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additional to and Deletions from Procurement List.

SUMMARY: This action adds to and deletes from Procurement List 1983 commodities to be produced by and a service to be provided by workshops for the blind and other severely handicapped.

EFFECTIVE DATE: September 2, 1983.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1755 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: C. W. Fletcher, (703) 557–1145.

SUPPLEMENTARY INFORMATION: On April 29, May 27, and July 8, 1983, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (48 FR 19456, 48 FR 23880, and 48 FR 31446) of proposed

additions to and deletions from Procurement List 1983, November 18, 1982 (47 FR 52101).

Additions

After consideration of the relevant matter presented, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c, 85 Stat. 77.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1983:

Class 6530

Bag, Urine Collection
6530–00–057–0953

Class 8440

Belt, Trousers
8440–00–964–3978
8440–00–261–4965
8440–00–261–4966
8440–00–270–0535
8440–00–412–2309
8440–00–573–1666
8440–00–270–0536
8440–00–412–2312
8440–00–573–1765
8440–00–270–0537
8440–00–412–2314
8440–00–573–3727
8440–00–290–0567
8440–01–052–9738
8440–00–290–0568
8440–01–052–9739
8440–00–269–5311
8440–01–052–9740
8440–00–634–5632
8440–00–753–6363
8440–00–577–4177
8440–00–753–6364
8440–00–577–4178
8440–00–753–6365
8440–00–270–0541
8440–00–412–2326
8440–00–270–0542
8440–00–412–2341
8440–00–270–0543
8440–00–412–2342
8440–01–009–9290
8440–01–009–9292
8440–01–009–9293

Deletions

It is proposed to delete the following commodities and service from Procurement List 1983, November 18, 1982 (47 FR 52101):

Class 7105

Mirror, Glass
7105–00–260–1390

Class 8415

Gloves, Cloth, Cotton, White
8415–00–268–8354
8415–00–268–8353

Sic 7349

Janitorial Service
U.S. Federal Building and Courthouse
436 Dwight Street
Springfield, Massachusetts

C. W. Fletcher,

Executive Director.

[FR Doc. 83-24176 Filed 9-1-83; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE

Department of the Air Force

USAF Scientific Advisory Board; Meeting

August 23, 1983.

The USAF Scientific Advisory Board Sciences Panel will hold meetings on 11 October 1983, through 13 October 1983, at Kirtland Air Force Base, New Mexico.

The Group will be briefed on and review on-going projects in the field of EMP Technology.

The meeting concerns matters listed in Section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly, will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at 202-697-4811.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-24085 File 9-1-83; 8:45 am]

BILLING CODE 3910-01-M

Senior Executive Service; Performance Review Boards; List of Members

Below is a listing of Additional individuals who are eligible to serve on the Performance Review Boards for the Department of the Air Force in accordance with the Air Force Senior Executive Appraisal and Award System.

Others

Brigadier General Milford E. Davis.

Brigadier General Edward N. Giddings.

Winnibel F. Holmes,

Air Force Federal Register Liaison Officer.

[FR Doc. 83-24086 Filed 9-1-83; 8:45 am]

BILLING CODE 3910-01-M

Department of the Army

Military Traffic Management Command; Military Personal Property Symposium; Open Meeting

Announcement is made of a meeting of the Military Personal Property Symposium. This meeting will be held on 22 September 1983 at the Bolling Air Force Base Officers' Club, Washington, D.C., and will convene at 0900 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the Symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation (DOD 4500.34-R), and the handling of other matters of mutual interest relating to claims actions concerning the Department of Defense Personal Property Movement and Storage Progam.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MT-PPM, at telephone number 756–1600, between 0800–1600 hours. Topics to be discussed should be received on or before 1 September 1983.

Dated: August 30, 1983.

Nathan R. Berkley,

Colonel, GS, Director of Personal Property.

[FR Doc. 83-24082 Filed 9-1-83; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Closed Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: Tuesday and Wednesday, 20 and 21 September 1983.

Times: 0830–1700 hours, both days (Closed).

Place: The Pentagon, Washington, D.C.

Agenda: The Army Science Board Ad Hoc Subgroup on Army Utilization of Space Assets will meet for classified briefings and discussions on the capabilities of currently

available and future space assets to enhance the Army's ability to carry out its mission. This meeting will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C. App. 1, subsection 10(d). The classified and nonclassified matters to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The Army Science Board Administrative Officer, Sally A. Warner, may be contacted for further information at (202) 695-3039 or 697-9703.

Sally A. Warner,

Administrative Officer.

[FR Doc. 83-24278 Filed 9-1-83; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Chief of Naval Operations, Executive Panel Advisory Committee, Task Force on Cost Technology; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. I), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Task Force on Cost Technology will meet on September 20, 1983, from 9:00 a.m. to 5 p.m. at Northrop Corporation in Los Angeles, California. All sessions will be closed to the public.

The entire agenda for the meeting will consist of discussions of key issues related to the cost growth and cost technology of naval strategic and tactical systems and platforms and related intelligence. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact Commander R. Robinson Harris, Executive Secretary of the CNO Executive Panel Advisory Committee, 2000 North Beauregard Street, Room 392, Alexandria, Virginia 22311. Phone (202) 694-8422.

Dated: August 31, 1983.

F. N. Ottie,

Lieutenant Commander, JAGC, U.S. Navy.

[FR Doc. 83-24216 Filed 9-1-83; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP81-296-003]

Tennessee Gas Pipeline Co., a Division of Tenneco, Inc.; Intent To Adopt Portions of Tennessee/Boundary Looping Project: Final Environmental Impact Statement and Finding of No Significant Change of Environmental Impact

August 30, 1983.

Notice is hereby given that the staff of the Federal Energy Regulatory Commission (FERC) intends to adopt the portions of the *Tennessee/Boundary Looping Project: Final Environmental Impact Statement* (FEIS), issued February 7, 1983, pertaining to the facilities proposed by Tennessee Gas Pipeline Company (Tennessee) to transport gas imported to provide firm initial service (initial service) for Boundary Gas, Inc. (Boundary).

The FEIS analyzed construction and operation of 256.75 miles of 10- through 42-inch diameter pipeline loop, 36,465 horsepower of compression, including two new compressor stations, and appurtenant metering and regulating facilities. Because of its partnership in the pipeline proposed by Niagara Interstate Pipeline System (NIPS) and the reduced volumes of gas authorized for import by the Canadian National Energy Board, Tennessee has amended its facility requirements, proposing now to construct a total of 104.5 miles of 10- through 30-inch diameter pipeline loop, 16,300 horsepower of permanent compression, and appurtenant metering and regulating facilities. Since most of the applications associated with the Canadian imports proposed by Tennessee, Boundary, NIPS, and others have been consolidated under FERC Docket No. CP81-107, *et al.*, Tennessee and Boundary have, as an interim measure, proposed the initial service to provide gas to 4 of the 14 Boundary repurchasers. To transport the 40,000 Mcfd of firm initial service gas for Boundary, Tennessee has proposed to construct and operate 41.4 miles of 30-inch diameter pipeline, two temporary compressor stations of 1,000 and 3,500 horsepower, and appurtenant metering facilities.

All or portions of originally proposed loops 2, 3, 4, 5, 6, and 7 would be constructed to transport the initial service gas. Compressor Station 233, previously analyzed as a 9,000-hp. station, would now be a 3,500-hp. temporary station. Compressor Station 230, the second temporry station near East Aurora, Erie County, New York, would have one 1,000-hp. compressor unit. The White Plains and West Milford Meter and Regulator Stations, also required, would be modified to accommodate the decreased volume of gas. The two temporary compressor stations would be abandoned if the NIPS project (Docket CP83-170-001) and related facilities, as well as the remainder of Tennessee's proposed facilities, were completed. Then, NIPS could transport the total volume of gas authorized for export to Tennessee, Boundary, and the other companies.

After preparing an environmental assessment, the FERC staff has determined that construction and operation of the initial service facilities would cause no significant change in the environmental impact identified in the FEIS. Except for the site-specific effect of a 1,000-hp. temporary compressor station, the environmental impact of the facilities has been adequately described in the FEIS. Although the location of one compressor station was changed, the basic recommendations concerning compressor facilities identified in the FEIS remain the same. The staff has also determined that because of recent information submitted by Tennessee, including the results of onsite surveys in the Manor Heights and Vly Creek Reservior areas, it no longer supports Alternatives 2B or 5A. The staff finds the proposed route through Manor Heights acceptable, provided Tennessee implements specific construction and mitigation measures, and its supports Tennessee's modified Alternative 5A circumventing the water supply reservior. With those exceptions and some minor changes adapting the recommendations to the initial service facilities, and basic findings of the FEIS are still valid.

National Fuel Supply Corporation (National Fuel) and Consolidated Gas Supply Corporation (Consolidated), Texas Eastern Transmission Corporation (Texas Eastern), and Algonquin Gas Transmission Company (Algonquin) have identified alternatives which would reduce the facility requirements for the firm initial service.

National Fuel has indicated that it could provide gas to Tennessee from its domestic supply or transport the Canadian gas through an exchange arrangement with Tennessee. Either alternative would eliminate the need for the two proposed temporary compressor stations.

Consolidated, Texas Eastern, and Algonquin have jointly proposed the CONTEAL Alternative. Consolidated would provide the gas from its domestic

supply, and Texas Eastern and Algonquin would transport and deliver the gas to the four Boundary repurchasers. Texas Eastern would be required to construct four 30-inch diameter loops totalling 8.25 miles, while Algonquin would install one 30-inch diameter loop 3.5 miles long. Although at least one meter and regulator station would require modification, no additional compression would be necessary for the CONTEAL Alternative. The staff has developed a minor route deviation for Algonquin's 3.5-mile loop to avoid some 28 residences.

Other technical FERC staff have also identified three potential alternatives, one of which would use domestic gas. One of these alternatives would combine National Fuel's transport-exchange of Canadian gas with the CONTEAL Alternative facilities. Any of the staff alternatives would eliminate the two temporary compressor stations proposed by Tennessee, thus avoiding any environmental impact associated with them.

The environmental assessment concludes that the Tennessee proposal would be environmentally acceptable. Of the alternatives, the staff believes that, if technically feasible, the CONTEAL Alternative transporting either domestic or Canadian gas would be environmentally superior and would therefore be preferable. As proposed, the CONTEAL Alternative would require a total of 11.75 miles of 30-inch diameter loop instead of Tennessee's proposed 41.4 mile of 30-inch diameter loop and 4,500 horsepower of compression. Therefore, the environmental staff recommends that the CONTEAL Alternative be used to transport gas for the firm initial service.

This environmental assessment, along with applicable portions of the FEIS, will be presented for cross-examination during the environmental phase of the hearings for this docket. Anyone wishing to present evidence on environmental matters must file with the Commission a petition to intervene pursuant to Rule 214 of the Commission's Rules and Practice and procedure (18 CFR 385.214). Any direct testimony concerning environmental matters must be filed in accordance with 18 CFR 385.507–508 (Commission's Rules 507 and 508) and 18 CFR 2.82 (NEPA regulations).

Copies of the environmental assessment have been sent to all parties that received the FEIS. Any person who wishes to do so may file comments on the environmental assessment. Comments should be sent to the Office of the Secretary, FERC, 825 North Capitol Street, NW., Washington, D.C. 20426.

Additional information about this project may be obtained from Mr. James P. Daniel, Environmental Evaluation Branch, Office of Pipeline and Producer Regulation, FERC, Room 7102, 825 North Capitol Street, NW., Washington, D.C. 20426, or by telephone at (202) 357–9042.

Kenneth F. Plumb,

Secretary.

[FR Doc. 83-24137 Filed 9-1-83; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59134; TSH-FRL 2427-6]

Certain Chemicals, Premanufacture Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5(a) or (b) of the Toxic Substances Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt, are discussed in EPA's revised statement of interim policy published in the **Federal Register** of November 7, 1980 (45 FR 74378). This notice, issued under section 5(h)(6) of TSCA, announces receipt of two applications for exemptions, provides a summary, and requests comments on the appropriateness of granting each of the exemptions.

DATE: Written comments by September 19, 1983.

ADDRESS: Written comments, identified by the document control number "[OPTS-59134]" and the specific TME number should be sent to: Document Control Officer (TS-793), Management Support Division, Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-409, 401 M Street, SW, Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Margaret Stasikowski, Acting Chief, Notice Review Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. E-216, 401 M Street, SW, Washington, DC 20460.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the non-confidential version of the submission provided by the manufacturer on the TME received by EPA. The complete non-confidential document is available in the Public Reading Room E-107.

TME 83-77

Close of Review Period. October 5, 1983.

Manufacturer. Confidential.

Chemical. (G) Substituted benzocyazoleydine ethylidine.

Use/Production. (G) Industrial coating. Prod. range: Confidential.

Toxicity Data. No data submitted.

Exposure. Manufacture and processing: dermal, a total of 8 workers.

Environmental Release/Disposal. No release.

TME 83-78

Close of Review Period. October 10, 1983.

Manufacturer. Confidential.

Chemical. (G) Substituted Heterocycle.

Use/Production. Confidential. Prod. range: 500 kgs—3 months period.

Toxicity Data. Micronucleus test: Negative; Ames Test: Negative without activation; positive with activation in strain.

Exposure. Dermal and inhalation, a total of 6 workers, up to 8 hrs/da, 3 shifts/da.

Environmental Release/Disposal. No release. Disposal by incineration.

Dated: August 29, 1983.

V. Pual Fuschini,

Acting Director, Management Support Division.

[FR Doc. 83-24008 Filed 9-1-83; 8:45 am]

BILLING CODE 6560-50-M

[AMS-FRL 2428-3]

Fuels and Fuel Additives; Extension of Comment Period for Waiver Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice extends, by 21 days, the time during which comments will be accepted concerning an application for a fuel waiver submitted by the American Methyl Corporation.

DATE: Comments should be submitted on or before September 12, 1983.

ADDRESS: Copies of the non-confidential information relative to this application are available for inspection in public

docket EN–83–03 at the Central Docket Section (LE–131) of the EPA, Gallery I–West Tower, 401 M Street SW., Washington, D.C. 20460, (202) 382–7548, between the hours of 8:00 a.m. to 4:00 p.m. Any comments from interested parties should be addressed to this docket with a copy forwarded to Richard G. Kozlowski, Director, Field Operations and Support Division (EN–397), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: James W. Caldwell, Chief, Fuels Section, Field Operations and Support Division (EN–397), U.S. Environmental Protection Agency, 401 M Street SW., Washington, D.C. 20460, (202) 382–2635.

SUPPLEMENTARY INFORMATION: On May 17, 1983 the American Methyl Corporation (American Methyl) submitted an application for a waiver of the section 211(f) prohibition on certain fuels and and fuel additives set forth in the Clean Air Act (Act) for a fuel additive known as METHYL–10. See 48 FR 31083 (July 6, 1983). The public comment period established with respect to this application is scheduled to close on August 22, 1983.

The EPA has received a request from the Atlantic Richfield Company (ARCO) for an extension of the comment period in order to allow time to test and comment upon the additive. In order to provide the maximum amount of information upon which to base a decision the comment period has been extended to September 12, 1983.

The Administration's decision on this waiver application is due on or before November 14, 1983.

Dated: August 26, 1983.

Richard D. Wilson,

Acting Assistant Administrator for Air, Noise and Radiation.

[FR Doc. 83-24104 Filed 9-1-83; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-42021A; TSH-FRL 2400-1]

Antimony Metal, Antimony Trioxide, and Antimony Sulfide; Decision To Accept Negotiated Testing Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In a proposed Negotiated Testing Agreement published in the Federal Register of January 6, 1983 (48 FR 717) the Agency announced a preliminary decision not to initiate rulemaking to require chemical fate, environmental or health effects testing of antimony metal, antimony trioxide, and antimony sulfide based on the Agency's analysis of the existing data and its preliminary acceptance of a program submitted by the Antimony Oxide Industry Association (AOIA). The Agency has concluded that the testing program sponsored by the AOIA will expeditiously provide more information than initiating rulemaking and finds no reason to modify its preliminary decision. Therefore, EPA will not issue a TSCA section 4(a) rule at this time to require health, environmental effects and chemical fate testing of Sb metal, Sb_2O_3 and Sb_2S_3.

FOR FURTHER INFORMATION CONTACT: Jack P. McCarthy, Director, TSCA Assistance Office (TS–799), Environmental Protection Agency, Room E–543, 401 M Street, SW., Washington, D.C. 20460, Toll Free: (800–424–9065), in Washington, D.C. (554–1404), outside the USA (operator–202–554–1404).

SUPPLEMENTARY INFORMATION: .

I. Background

In the Fourth Report of the Interagency Testing Committee (ITC), published in the June 1, 1979, Federal Register (44 FR 31866), the ITC designated antimony metal (Sb metal), antimony trioxide (Sb_2O_3) and antimony sulfide (Sb_2S_3) for priority testing consideration and recommended that these antimony substances be considered for chemical fate as well as environmental and health effects testing. The ITC's designation of these antimony substances was based on: (1) Large production volume; (2) Anticipated occupational and consumer exposure; (3) Expected environmental release; (4) Physical and chemical characteristics; (5) Existing human and animal data on health effects; and (6) Existing chemical fate and environmental effects data. The ITC recommended that Sb metal, Sb_2O_3 and Sb_2S_3 be considered for health effects testing (carcinogenicity, mutagenicity, teratogenicity and other chronic effects, including reproductive effects), for environmental effects testing, for chemical fate testing, and for epidemiology studies.

In a Federal Register notice published on January 6, 1983 (48 FR 717), the Agency responded to the ITC, as required under section 4(e) of TSCA, by describing a Negotiated Testing Agreement developed by the EPA and AOIA and announcing EPA's preliminary decision not to initiate rulemaking under section 4(a) of TSCA to require health, environmental effects and chemical fate testing for the antimony substances. This decision was based on the Agency's analysis of the existing data and its preliminary acceptance of the program submitted by the AOIA which, in the Agency's view, appeared likely to provide adequate test data more expeditiously than a test rule and which would, in addition, provide for interim control of exposure to antimony substances while testing was being performed. The AOIA program was included in the public record (docket number OPTS–42021). The January 6, 1983, notice requested comment on the AOIA program and the Agency's rationale for not proposing to require testing by rule.

II. EPA's Response to Public Comments

The Agency received comments from the Natural Resources Defense Council (NRDC), the AOIA, and Dr. William Watt, author of one of the oncogenicity studies cited in the January 6, 1983, notice. These public comments and EPA's response to them are summarized below.

1. *NRDC's comments.* NRDC criticized EPA's policy of accepting negotiated testing agreements in lieu of rulemaking to require testing under section 4(a) of TSCA, and argued that the "plain language" of TSCA mandated that testing of section 4(e) chemicals must be accomplished by rule. In addition, NRDC contended that negotiated testing had many procedural and legal deficiencies; in its comments NRDC particularly cited the lack of enforceability of negotiated testing agreements and their failure to trigger other statutory provisions which would be triggered by a TSCA section 4(a) rule. NRDC made no chemical-specific comments about the Agency's testing rationale or the proposed AOIA testing and control program.

EPA has previously addressed NRDC's general concern about negotiated testing in a Federal Register notice published on January 5, 1982 (47 FR 335), which described the negotiated testing program for alkyl phthalates. A more detailed analysis of NRDC's arguments was prepared for inclusion in the public record of that action (docket number OPTS–42005). As was indicated in that notice, EPA believes that neither TSCA nor its legislative history support NRDC's contention that Congress established rules as the exclusive means for accomplishing testing. EPA believes that negotiated testing is consistent with the statutory purpose that adequate data on chemicals be developed expeditiously by the involved companies.

EPA agrees that negotiated testing is not legally enforceable, but as the

Agency has previously indicated in its January 5, 1982, **Federal Register** notice (47 FR 335), there are practical reasons why it expects that the involved companies will abide by their agreements in the vast majority of cases. For the agreement negotiated with the AOIA, these reasons include a commitment to schedule AOIA/EPA consultations regarding the testing programs, and a commitment to inspection of laboratory facilities in accordance with the authority and procedures outlined in section 11 of TSCA by duly designated representatives of the EPA. Furthermore, the Agency disagrees with NRDC's contention that if EPA is forced to develop a rule because of a failure of a negotiated program, the entire program will take substantially longer than if EPA had initially pursued rulemaking. Rather, EPA believes that it could conduct an expedited rulemaking which should not substantially lengthen the rulemaking process.

NRDC is correct in asserting that acceptance of a negotiated testing program will not trigger certain other statutory provisions that would be initiated if the Agency proposed, and then promulgated, a test rule for these substances. However, EPA believes that NRDC has considerably exaggerated the practical impact of this difference. Although a negotiated testing program does not trigger the obligation of a manufacturer of a new substance subject to a section 4 rule to submit test data under section 5(b)(1) and to delay manufacturing, that particular requirement only relates to EPA actions under section 4 concerning categories of chemical substances which include chemicals for which TSCA section 5 notices would be required. It would not be applicable to Sb metal, Sb_2O_3 or Sb_2S_3, which were designated by the ITC as individual chemical substances.

In addition, contrary to NRDC's claim, EPA has the same authority to disclose health and safety data generated from negotiated testing as it would if the testing were conducted under a rule. Section 14(b)(1)(A)(i) concerns data from any health and safety study on a chemical in "commercial distribution" (which should include virtually all chemicals designated by the ITC) and makes no distinction based upon how the Agency receives the data.

EPA's position that negotiated testing is a legally sufficient alternative to section 4 rulemaking was examined by the General Accounting Office (GAO) during 1982. The GAO concluded that "neither section 4(a) nor 4(e) compels the promulgation of a test rule proceeding where adequate test data may be developed pursuant to voluntary testing agreements. GAO further concludes that since voluntary agreements are consistent with significant purposes of section 4, implied authority exists for EPA to negotiate such agreements". (GAO. 1982. EPA Implementation of Selected Aspects of the Toxic Substances Control Act. General Accounting Office. December 7, 1982. GAO//RCED-83-62 pp. 15).

Based on the above, EPA continues to believe that, where appropriate testing is proposed, negotiated testing agreements are an appropriate alternative to expensive, time-consuming rulemaking under section 4 of TSCA.

2. *AOIA's comments.* In its comments, the AOIA urged final acceptance of the AOIA program by the EPA and clarified certain important issues addressed in the January 6, 1983, **Federal Register** notice (48 FR 717). The Agency has reviewed these comments and its response is provided below.

a. *Advantage of the AOIA negotiated program.* The AOIA reiterated the advantages of the negotiated program. The AOIA stated that the negotiated program will provide a "substantial" margin of safety to exposed workers pending the completion of proposed studies. The Agency believes that a determination of whether that safety margin is "substantial", as stated by the AOIA, must await the results of the testing proposed as part of the negotiated program. However, the Agency believes that the AOIA control program will increase worker protection while testing is being performed.

The AOIA suggests that it is "unclear whether EPA could mandate testing of antimony substances under section 4." The Agency believes that the existing health effects and chemical fate data indicate that exposure to antimony substances may present an unreasonable risk which could have supported rulemaking under TSCA section 4(a)(1)(A)(i) to require testing of antimony substances, and that this issue is not as "unclear" as implied by the AOIA. However, the Agency believes that the testing and control program offered by the AOIA is a more reasonable alternative than rulemaking for the antimony substances.

b. *Worker exposure to antimony substances.* The AOIA commented that "there is virtually no significant exposure to antimony metal and antimony sulfide." The Agency believes it would be difficult to quantify worker exposure as either "significant" or "non-significant" because of the difficulty in chemically distinguishing Sb metal or Sb_2S_3 from other forms of inorganic antimony in environmental and biological media. Based on production and use data, less worker exposure is likely to Sb and Sb_2S_3 than to Sb_2O_3. Furthermore, if the AOIA was using the term "significant exposure" in the context of TSCA section 4(a)(1)(B)(i), EPA finds that question to be irrelevant since EPA believes that health effects testing could be required on the basis that antimony substances "may present an unreasonable risk" as provided by section 4(a)(1)(A). The AOIA was also concerned that language in the January 6, 1983, **Federal Register** notice (48 FR 717) gave "the impression that substantial number of workers are exposed to antimony substances near the 0.1 mg/m^3 level." The Agency believes that the language in that notice provides an accurate estimate of the "maximum" number of users that would be exposed to antimony substances near those levels, because of existing data on number of users and "worst case" exposure levels for those users.

c. *No sound evidence that antimony poses an unreasonable risk.* "The AOIA does not believe that the available toxicological evidence provides a basis to conclude that, at the low levels of exposure that exist under present conditions of production and use, antimony substances present an unreasonable risk for the health of workers." The Agency did not find the antimony substances present an unreasonable risk. Rather, the Agency believes that the antimony substances "may" present an unreasonable risk of health effects, and that existing data are inadequate to reasonably determine or predict the extent of this risk. The bases for these beliefs are presented in the January 6, 1983, notice.

The AOIA reported that the ITC's concern for possible adverse health effects of antimony substances was triggered by an inhalation study in rats, the Watt study, which is discussed in the January 6, 1983, notice. However, the Watt study was submitted to the Agency after the designation of the antimony substances to the priority list by the ITC and was therefore not used to trigger the ITC's concern.

The AOIA reported that "experts who have examined the conditions under which the Watt study was conducted have expressed the opinion that the actual exposure levels experienced in the study were far in excess of the reported levels and were therefore substantially above current industrial levels." The AOIA also stated that the

MRI study, which was cited in the January 6, 1983, notice, provided "additional evidence of this deficiency." The Agency is unaware of any expert opinions related to actual levels in the Watt study being far in excess of the reported exposure levels. The reported exposure levels which induced non-neoplastic and neoplastic lesions in female rates were 1.6 ± 1.5 mg/m³ and 4.2 ± 3.2 mg/m³, respectively. The Agency recently received a copy of William Watt's doctoral dissertation which describes in detail the experimental methods that were used to quantify the exposure levels (Watt, W. D. April 1983. Chronic inhalation toxicity of antimony trioxide: validation of the threshold limit value. Doctoral Dissertation, Wayne State University, Detroit, Michigan. 136p.) The Agency has reviewed this dissertation, discussed it with the author, and finds no data to support the AOIA opinion that actual exposure levels were far in excess of the reported levels. Further, the Agency believes a determination of whether the reported levels in the Watt study are "substantially" above current industrial levels, must await the results of the workplace exposure monitoring study. Finally, the Agency believes that the major deficiency in the Watt study was the use of only one sex of rat per exposure level, not whether reported exposure levels exceeded actual exposure levels.

Because the Agency does not believe there is a deficiency between reported and actual exposure levels in the Watt study, the Agency does not believe that the MRI study provides "additional evidence of this deficiency." The Agency does believe that there were problems controlling the exposure levels during the first few weeks of the MRI study, but after these problems were resolved the exposure levels were adequately controlled. However, it should be noted that in the MRI study, with a mean Sb_2O_3 exposure level of 50 mg/m³, the "time to tumor" was 10 months compared to 17 months in the Watt study with a mean Sb_2O_3 exposure level, that induced neoplasia, of 4.2 mg/m³, indicating the biological differences between these exposure levels.

3. *Dr. Watt's comments.* Dr. William Watt supported the NTA for antimony substances, but disagreed with the statement in the January 6, 1983, notice that in his study there was a "lack of adequate control of exposure levels." The Agency provided this statement in reference to the overlap of the exposure levels in the Watt study and on the basis of information it had received prior to the receipt of Dr. Watt's dissertation; if one standard deviation is used to generate the range of exposures, then the range for the low exposure level would be 0.1–3.1 mg/m³, whereas the range for the high exposure level would be 1–7.4 mg/m³. The Agency is unable to reasonably determine the significance between these exposure levels, except that only the high exposure level induced neoplasia, suggesting that there were some toxicological differences between exposure levels.

In his comments, Dr. Watt also discussed a mutagenicity study for antimony acetate. The Agency examined this study, as well as several others, and does not believe that these data were relevant to assessing the mutagenicity of Sb metal, Sb_2O_3 and Sb_2S_3 because of differences in physical and chemical properties (including significant differences in water solubility) of organic antimony compounds and the antimony substances recommended for testing by the ITC.

Finally, Dr. Watt commented that exposure to Sb_2O_3 may arise during battery charging, during the addition of Sb_2O_3 to plastics and other materials, and during the cutting and sewing of upholstery and carpet containing Sb_2O_3. In conjunction with this comment, Dr. Watt implied that the AOIA epidemiology studies would include only male workers and suggested that epidemiology studies should include work forces outside the AOIA, with substantial number of potentially exposed females, such as the "soft trim" industry (carpet and upholstery cutting and sewing), since it appears as though Sb_2O_3 is neoplastic to female, but not male, rats.

The Agency has no data on estimated or measured levels of antimony substances that might be generated in the "soft trim" industry and to which female workers might be exposed. The Agency is concerned with the potential development of neoplasia in any worker population tht may be exposed to antimony substances. However, the Agency is also concerned with the potential development of non-neoplastic lesions and other chronic effects in any worker population that may be exposed to antimony substances. These non-neoplastic lesions have been detected at lower mean exposure levels of antimony substances in male and female rats than have neoplastic lesions. Furthermore, the Agency believes that controlling exposure to antimony substances at levels that would decrease the potential for development of non-neoplastic lesions and other chronic effects in both sexes would decrease the potential for development of neoplastic lesions in workers of either sex exposed to antimony substances. The Agency believes that the program it developed with the AOIA will provide reasonable interim control of worker exposure to antimony substances until additional toxicology data are developed, as a result of the AOIA testing program, to demonstrate a more precise relationship between antimony substances' exposure levels and development of neoplastic and non-neoplastic lesions in male and female rats and any potential adverse health effects in workers exposed to antimony substances. The Agency believes that these data, in conjunction with the AOIA-endorsed ongoing epidemiology studies and the proposed AOIA medical surveillance program, may be used to estimate the probability that antimony substances may produce adverse health effects in human worker populations.

III. AOIA Program

1. *Scheduled tests.* In a notice published in the January 6, 1983, **Federal Register** (48 FR 717), the Agency described the AOIA's proposed program. The final study plans for this program are in the public record (docket number OPTS–42021A) and include:

a. A 90-day subchronic inhalation study of Sb_2O_3, to be initiated in late 1983 and for which a final report will be submitted in late 1984 to early 1985.

b. Chronic/oncogenic inhalation study of Sb_2O_3, to be initiated in mid 1985 and for which a final report will be submitted in late 1987 to early 1988.

c. Aerobic and anaerobic biodegradation studies of Sb_2O_3, to be initiated in late 1983 and for which a final report will be submitted in late 1984.

d. Sediment sorption stuides of Sb_2O_3, to be initiated in mid to late 1983 and for which a final report will be submitted in late 1984.

In addition to submitting study plans and associated reports, the AOIA will submit to the Agency periodic staus reports on: (1) Voluntary programs to monitor and control occupational exposure to antimony substances; (2) Voluntary programs to monitor and control atmospheric release of antimony substances; and (3) A medical surveillance program and a continuation of ongoing epidemiological studies.

2. *Review and conclusions.* EPA has reviewed the study plans and has concluded that:

a. The subchronic study will provide sufficient data to: (1) Establish plumonary clearance rates of Sb_2O_3 in

rats, (2) Assess the histopathological changes that occur in the rat respiratory system and as a result of subchronic Sb_2O_3 exposure, (3) Correlate rat urinary levels of Sb_2O_3 with exposure levels, (4) Assess any hematological and clinical chemistry anomalies in the rat associated with Sb_2O_3 exposure, and (5) Establish exposure levels for the chronic/oncogenic study.

b. The chronic/oncogenic study will provide sufficient data to assess the pathogenesis and dose/response characteristics of neoplastic and non-neoplastic lesions in the rat respiratory system resulting from Sb_2O_3 exposure.

c. The biodegradation and sorption studies will provide sufficient data to determine the fate of Sb_2O_3 in sediments.

d. The voluntary programs to monitor and control occupational exposure and atmospheric release of antimony substances will provide significantly increased protection of workers and the general population in the vicinity of facilities which manufacture and process antimony substances, while the testing program is being completed.

e. The medical surveillance program and a continuation of ongoing epidemiological studies will provide relevant information to assess the occupational exposure to antimony substances and the possible adverse health effects caused by such exposures.

IV. Public Records

EPA has established a public record for this decision not to pursue testing under section 4 (docket number OPTS-42021). This record includes:

(1) **Federal Register** notice designating Sb metal, Sb_2O_3 and Sb_2S_3 to the priority list and comments received thereon.

(2) Communications with industry related to the AOIA program, consisting of letters, contact reports of telephone conversations, and meeting summaries.

(3) AOIA program.

(4) Study plans.

(5) Published and unpublished data.

(6) **Federal Register** notice of the NTA proposal requesting comments on the negotiated program and comments received in response thereto.

The record, containing the information considered by the Agency in developing this decision, is available for inspection from 8:00 a.m. to 4:00 p.m. Monday through Friday except legal holidays in the OPTS Reading Room, E-107, 401 M Street, SW., Washington, D.C. 20460. The Agency will supplement this record periodically with additional relevant information.

(Sec. 4, 90 Stat. 2003; (15 U.S.C. 2601)).

Dated: August 26, 1983.

William D. Ruskelshaus,

Administrator.

[FR Doc. 83-24181 Filed 9-1-83; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-2428-2]

Availability of Environmental Impact Statements Filed August 22 Through August 26, 1983 Pursuant to 40 CFR Part 1506-9

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 382-5075 or (202) 382-5076.

Department of the Interior:

EIS No. 830467, Draft, BLM, CA, Red Mountain WSA, Preliminary Wilderness Recommendation, Mendocino Co. Due: *Dec. 1, 1983

EIS No. 830466, Final, BLM, CA, Yokayo Grazing Management Program, Due: Oct. 3, 1983

Department of Transportation:

EIS No. 830461, Final FHW, WI, US 53 Upgrading, Rice Lake to Trego, Barron and Washburn Counties, Due: Oct. 3, 1983

EIS No. 830462, Final FHW, IL, Springfield Railroad Relocation Demonstration Project, Sangamon Co., Due: Oct. 3, 1983

EIS No. 830463, Final, FHW, NC, Fayetteville CBD Loop, Hay Street to US 301, Cumberland County, Due: Oct. 3, 1983

EIS No. 830464, Final, FHW, MI, US 12/ Michigan Avenue Improvement, Nowlin St. to Elm St., Wayne Co., Due: Oct. 3, 1983

EIS No. 830442, Final, FHW, NH, I-393 and Approach Completion, NH-106 to NH-9/ US 4, Merrimack County, Due: Oct. 3, 1983

Department of Agriculture:

EIS No. 830460, Final, AFS, SEV, SD, WY, Black Hills National Forest Land and Resource Management Plan, Due: Oct. 3, 1983

Interstate Commerce Commission:

EIS No. 830468, Draft, ICC, REG, Nationwide Coal Rate Guidelines, Due: Oct. 17, 1983

U.S. Postal Service:

EIS No. 830465, DSuppl, UPS, CT, Stamford Post Office General Mail/Vehicle Maintenance Facilities, Due: Oct. 17, 1983

Amended Notice:

EIS No. 724266, Final, SCS, NB, Winters Creek Watershed Project, Sioux, Scotts and Bluff Counties Officially withdrawn

Dated: August 30, 1983.

Pasquale A. Alberico,

Acting Director, Office of Federal Activities.

[FR Doc. 83-24182 Filed 9-1-83; 8:45 am]

BILLING CODE 6560-50-M

[W-4-FRL 2422-5]

Draft General NPDES Permit for Coal Mining Activities in the Commonwealth of Kentucky

AGENCY: Environmental Protection Agency.

ACTION: Notice of draft general NPDES permit.

SUMMARY: The U.S. Environmental Protection Agency (EPA) and the Kentucky Natural Resouces and Environmental Protection Cabinet (NREPC) are today giving joint notice of a draft general National Pollutant Discharge Elimination System (NPDES) permit for certain coal mining activities in Kentucky. The Governor of Kentucky has requested that NREPC be given approval by EPA to administer the NPDES program in Kentucky. If the Administrator of EPA grants approval before this general permit is issued, NREPC will be the permit issuing authority. The activities proposed for coverage by this general permit include active mining areas, post-mining areas, coal refuse disposal piles, and coal preparation plant associated areas. The proposed permit will not authorize discharge from facilities meeting the definition of coal preparation plant in 40 CFR 434.11(e) and "new sources" (see 40 CFR 434.11(j) and the Effluent Guidelines Settlement Agreement for coal mines; 40 CFR 122.2 for coal preparation plant associated areas). EPA will continue to issue individual NPDES permits to these categories of dischargers.

The draft general permit establishes effluent limitations, prohibitions, and other conditions based on technology and water quality considerations applicable to the types of wastewater generated by the coal mining activities. The activities involve similar types of operations, discharge the same types of wastes, and require the same effluent limitations and monitoring. For these reasons, Region IV believes that discharges from these activities are more appropriately controlled under a general permit than under individual permits.

To obtain approval to discharge under this general permit, Region IV is requiring the following application requirements:

1. For currently expired NPDES permits, the discharger is required to submit a notice of intent to be covered by the general permit to the Permit Issuing Authority.

2. Dischargers having valid NPDES permits that will expire during the five year term of the general permit are

required to submit a notice of intent to be covered within thirty (30) days of the expiration of their current permit(s).

3. Dischargers who have not previously obtained a NPDES Permit will be required to submit Form SMP-01 of the Kentucky Bureau of Surface Mining Reclamation and Enforcement to the Permit Issuing Authority in lieu of standard EPA forms. Such submittals shall be accompanied by a request to be covered by the general permit and sufficient information about the discharge(s) to allow a new source determination to be made. The applications determined to be "new dischargers" (as opposed to new sources) are not subject to the National Environmental Policy Act (NEPA) and will be considered for coverage under the general permit. If appropriate, applications that are determined to be "new sources" will be issued individual permits after completion of the environmental review and public participation requirements. Dischargers submitting new applications for NPDES permits should do so at least one-hundred and eighty (180) days before the date the discharge is to commence.

All dischargers requesting coverage under this general permit must have obtained a valid Surface Disturbance Mining Permit (Pub. L. 95-87) as described in Part III.B. of the fact sheet. The coal mining operations that are granted coverage under the general permit will be authorized to discharge upon receipt of written notification by the Permit Issuing Authority.

DATES: Comments must be received on or before October 3, 1983.

The Public Hearing for the General Permit for Coal Mining activities in the Commonwealth of Kentucky will be held October 6, 1983, at Prestonsburg Community College, Bert Combs Drive, Prestonsburg, Kentucky 41653, beginning at 7:00 p.m.

Hearing Procedures

The Hearing Panel will include representatives of EPA, Region IV and the Kentucky NREPC.

The following are policies and procedures which shall be observed at the public hearing:

1. The Presiding Officer shall conduct the hearing in a manner that permits open and full discussion of any issues involved;

2. Any person may submit written statements or documents for the record;

3. The Presiding Officer may, in his discretion, exclude oral testimony if such testimony is overly repetitious of pevious testimony or is not relevant to the decision to issue the general permit;

4. Members of the Hearing Panel may ask questions of witnesses and respond to questions and statements of witnesses;

5. The transcript taken at the hearing, together with copies of all submitted statements and documents, shall become a part of the record; and

6. The hearing record shall be left open until the deadline for receipt of comments specified at the beginning of this notice to permit any person to submit additional written statements or to present views or evidence tending to rebut testimony presented at the public hearing.

Hearing statements may be oral or written. Written copies of oral statements are urged for accuracy of the record and for use of the hearing panel and other interested persons. Statements should summarize any extensive written materials.

After consideration of all written comments and of the requirements and policies in the Act and appropriate regulations, the Permit Issuing Authority will make determinations regarding the permit issuance. If the determinations are substantially unchanged from those announced by this notice, the Permit Issuing Authority will so notify all persons submitting written comments. If the determinations are substantially changed, the Permit Issuing Authority will issue a public notice indicating the revised determinations.

Address: Public comments should be sent to: Ms. Earline Hanson, Water Management Division, U. S. Environmental Protection Agency, 345 Courtland Street, Atlanta, Georgia 30365.

For further information and copies of the draft permit and fact sheet, contact: David Peacock, Region IV at the address above or by telephone at 404-881-2156 or FTS 257-2156, or Karen Armstrong-Cummings, Kentucky DEP, Fort Boone Plaza, 18 Reilly Rd., Frankfort, Kentucky 40601, 502/564-3410.

Fact Sheet in Support of the Draft General NPDES Permit for the Coal Mining Point Source Category in Kentucky

NPDES General Permit No.: KYG040001

I. Background

A. General Permits

Section 301(a) of the Clean Water Act (the Act) provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge elimination System (NPDES) permit. Although such permits to date have generally been issued to individual dischargers, EPA's regulations authorize the issuance of "general permits" to categories of similar discharges. (See 40 CFR 122.28, 48 FR 14164, April 1, 1983.) EPA may issue a single, general permit to a category of point sources located within the same geographic area whose discharges warrant similar pollutant control measures.

The Director of an NPDES permit program is authorized to issue a general permit if there are a number of point sources operating in a geographic area that:

1. Involve the same or substantially similar types of operations;

2. Discharge the same types of wastes;

3. Require the same effluent limitations or operating conditions;

4. Require the same or similar monitoring; and

5. In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

Violation of a condition of a general permit constitutes a violation of the Clean Water act and subjects the discharger to the penalties specified in Section 309 of the Act.

Any owner or operator authorized by a general permit may be excluded from coverage of a general permit by applying for an individual permit. This request may be made by submitting an NPDES permit application, together with reasons supporting the request, no later than 180 days before the date on which the discharge is to commence, unless permission for a later date is granted by the Director. The Director may require any person authorized by a general permit to apply for and obtain an individual permit. Any interested person may petition the Director to take this action. However, individual permits will not be issued for coal mining operations covered by this general permit unless it can be clearly demonstrated that inclusion under the general permit is inappropriate. The Director may consider the issuance of individual permits when:

1. The discharge(s) is a significant contributor of pollution as determined by the factors set forth in 40 CFR 122.26(c)(2);

2. The discharge(s) is not in compliance with the terms and conditions of the general permit;

3. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

4. New or revised effluent limitation guidelines are promulgated for point sources covered by the general NPDES permit;

5. A Water Quality Management Plan containing requirements applicable to such point sources is approved; or

6. The requirements listed in 40 CFR 122.28(a) are not met by the discharger.

B. Coal Mining Activities

The Commonwealth of Kentucky has two important coal producing regions known as the Eastern and Western Kentucky Coal Fields. The western region comprises approximately 5,000 square miles in 20 counties and is situated in the southeastern tip of the physiographic province known as the Illinois Basin, where approximately 80 coal beds have been identified. The geology and physiography combine to make this area conducive to coal mining. Projections for future markets indicate an increase in coal consumption for both foreign and domestic markets. Coal production in the Western Kentucky Coal Field reached it highest level in 1975. Since then, coal mining activity has decreased because the high sulfur content of the coal has made it less competitive with low sulfur coals. Coal production for the most recently available five-year period (1975–1979) indicated that production has fallen from 55.7 million tons in 1975 to 43.2 million tons in 1979, a production decrease of approximately 22.5%. Counter to the overall coal production trends in western Kentucky, several counties have shown a general increase in 1975–1979. These production increases have been attributed to the increased mining of number 6 coal which has a lower sulfur content than most other coals found in the region. Approximately 96% of all coal production in the Western Coal Field was sold to electric utilities in 1979.

The Eastern Kentucky Coal Field comprises 38 counties and includes approximately one-fourth of the total land area of the Commonwealth. The region is located within the physiographic provinces known as the Valley and Ridge Province and the Appalachian Plateau Province. The topography of the region is primarily mountainous with elevations up to 4150 feet above sea level. Coal mines are active in 31 of the 38 counties with a 1978 reported production of 97.0 million tons. The number of coal mines in the Eastern Coal Field decreased between 1975 and 1977 with the most marked drop occurring in the number of mines producing less than 10,000 tons per year. The number of larger mines producing in excess of one-half million tons per year has increased. Coal was produced from 58 seams in eastern Kentucky during 1977 although underground mines were active in only 34 of those seams. Eastern Kentucky coal is classified as high-volatile A bituminous or high-volatile B bituminous with generally low ash and sulfur content. Approximately 59% of the coal produced in the region is consumed by electric utilities and 18% by metallurgical coking operations.

II. Description of Wastewater Sources and Effluent Characteristics

A. Wastewater Sources

Water usage in the coal mining industry is different than in other major industries for a number of reasons. First, water is not used in the mining of coal and is a hindrance to the operation of strip and underground mining machinery. Second, water usage is generally limited to dust suppression and equipment cooling. Third, coal mines often occupy hundreds of acres of land subject to a high amount of precipitation. Therefore, pollution abatement must be approached differently, with reliance on source controls as well as end-of-pipe treatment technologies.

The major sources of wastewater in the coal mining industry are:

(1) Surface runoff and groundwater discharged from the active mining area;

(2) Wastewater generated by the removal of impurities from raw coal in preparation plants;

(3) Precipitation induced runoff in preparation plant associated areas; and

(4) Runoff generated from reclamation areas and discharges from underground mines after mining ceases.

Coal mine wastewater flows are highly variable and can not be related to actual coal production. Rather, there are a number of variables which preclude such a relationship, including climatology, location of aquifers, amount of disturbed acreage, characteristics of individual watersheds, and rate of coal extraction. Data collected by EPA to support promulgation of effluent guidelines (40 CFR 434) indicate that eighty percent of flow volumes fall between 7,000 gallons per day and 4.5 million gallons per day with the median flow (50%) being 250,000 gallons per day and the mean flow approaching 1 million gallons per day.

B. Effluent Characteristics

The principal pollutants in surface water from coal mining activities include suspended and dissolved solids, pH and certain metal species. Suspended solids result from erosion of scarified areas where vegetation has been removed. The level of sediment concentration in runoff is a function of the geology and hydrology of the area being mined and may vary widely from one mine to another. Dissolved solids can result from the infiltration of precipitation that leaches through spoil and coal piles. Acid leaching of soil and coal, and ion exchange reactions of runoff and soil, also cause the formation of this pollutant. Calcium, magnesium, and sodium are the principal dissolved materials in surface runoff.

Mine drainage from coal mining operations may generally be classified as acid or alkaline. Iron sulfide, or pyrite, is a common substance formed from mineral sulfur and it is this sulfur containing compound that is a precursor to the formation of acid mine drainage. As water drains across or percolates through pyritic material in the presence of oxygen, the pyrite is oxidized to ferrous iron and sulfuric acid. As the pH of the pyritic system decreases below five, several species of bacteria become active and further oxidize the ferrous iron to the ferric state. The presence of these bacteria is generally an indication of rapid pyrite oxidation and is accompanied by waters low in pH and high in iron, manganese, and dissolved solids. The sulfuric acid formed from these reactions is an effective extraction agent causing trace elements to be leached and dissolved into solution.

Acid mine drainage resulting from strip mining operations is generally associated with the Western Kentucky Coal Field. Wastewater from coal mining activities in eastern Kentucky is normally classified as alkaline. However, acid drainage can be readily formed by rain falling on either a coal storage or refuse pile. Also, acid waters can be formed in underground mines and aquifers if sufficient oxygen is present to permit oxidation of pyritic materials in either the coal seam or adjacent strata.

After active mining has ceased and reclamation has been initiated, the wastewater resulting from post-mining discharges will also vary with the hydrogeology of the area, the type of mining (i.e. surface or underground), and the reclamation practices being employed. Runoff from surface reclamation areas directly following active mining can exhibit substantial suspended solids loadings until vegetation is well established. On the other hand, discharges from underground workings at underground mines may be similar to the wastewater encountered during active mining.

III. Scope of the General Permit

A. Covered Coal Mining Activities

The proposed general permit authorizes discharges from certain type

of facilities that engage in the mining of coal within the Commonwealth of Kentucky for a period of five (5) years beginning with the day that the final permit is published in the **Federal Register**. The following categories of coal mining activities are included:

1. Active mining areas: The areas, on and beneath land, used or disturbed in activity related to the extraction, removal, or recovery of coal from its natural deposits;

2. Post-mining areas: Reclamation areas or the underground workings of an underground coal mine after the extraction, removal, or recovery of coal from its natural deposit has ceased and prior to bond release. The term reclamation area means the surface area of a coal mine which has been returned to required contour and for which the Phase I reclamation bond release has been obtained from the State; and

3. Coal preparation plant associated areas: The coal preparation plant yards, immediate access roads, coal refuse piles, coal storage piles, and coal handling facilities (tipples). Discharges from facilities meeting this definition of coal preparation plant associated areas are included in the scope of the draft permit. Wastewater generated by such facilities is not generally the result of coal washing or cleansing but rather runoff induced by rainfall from coal storage and loading facilities. Such discharges are similar to those occurring from active mining areas and are controlled by the same technology. EPA's intention in including associated areas within the scope of this permit is to include facilities which are primarily engaged in the storage and loading of coal where no washing or cleansing is involved.

4. Coal refuse disposal pile: Any coal refuse deposited on the earth and intended as permanent disposal or long-term storage (greater than 180 days) of such material, but does not include coal refuse deposited within the active mining area or coal refuse never removed from the active mining area.

B. Coverage Requirements

The coverage of the general permit is further limited to the categories of operators listed below which file notices of intent with the Permit Issuing Authority. Application requirements for each category are also given.

1. Operators with expired NPDES permits. The coverage of the general permit includes discharges from mining areas described in the original NPDES permit application. Extension of active mining into contiguous areas is also covered by the general permit, provided such extensions do not qualify as new sources under 40 CFR 434.11(j)(ii). EPA is also requiring that operators obtain a valid Surface Disturbance Mining Permit (Interim Program Permit) as a necessary condition for coverage under the general permit.

In the case of renewals of expired new source NPDES permits, EPA is not required to subject such applications to environmental reviews under the National Environmental Policy Act (NEPA) if the mining operation has not been altered significantly to qualify as a major alteration. Therefore, renewal of expired new source coal mine permits are included within the scope of the general permit subject to the exclusion noted in paragraph II(c)(3) below.

Application Requirements. The discharger is required to submit a written notice of intent to be covered by the general permit which must contain the following information:

(1) Name and address of the operation;

(2) Applicable NPDES number(s);

(3) Identification of any new discharge locations not included in the expired NPDES permit; and

(4) Evidence that the operation has obtained a valid Interim Program Permit from the Kentucky Department of Surface Mining, Reclamation and Enforcement (DSMRE).

To encourage a rapid transition to the general permit approach during fiscal year 1984, it is recommended that all holders of expired NPDES permits file a notice of intent within 90 days of publication of the final general permit in the **Federal Register**. Submission of a notice after that time will not result in disqualification for coverage. Operators having several individual permits are also encouraged to consolidate requests for coverage into one notice of intent for all individual permits.

Previous submission of a renewal application for an individual permit does not relieve permittees desiring coverage under the general permit of the requirement to file a notice of intent.

Effective Date. Coverage under the general permit is effective upon receipt of a written notification from the Permit Issuing Authority.

2. Operators with current NPDES permits. Coverage under the general permit may include the contiguous areas as described in paragraph (1) above, and renewal of expiring new source permits subject to the exclusion noted in paragraph II(c)(3). The operator is also required to obtain a valid Surface Disturbance Mining Permit (Interim Program Permit).

Application Requirements. Dischargers having valid NPDES permits that will expire during the five year term of the general permit are required to file a notice of intent to be covered within at least thirty (30) days of the expiration of their permit(s). The request should contain the same information submitted by operators with expired permits.

It is recommended that all holders of NPDES permits file a notice of intent within 90 days of publication of the final general permit in the **Federal Register**. Submission of a notice after that time will not result in disqualification for coverage. Operators having several individual permits are also encouraged to consolidate requests for coverage into one notice of intent for all individual permits.

Effective Date. Coverage under the general permit is effective upon receipt of a written notification from the Permit Issuing Authority.

3. Operators who have not previously obtained a NPDES permit.

Application Requirements. Dischargers who have not previously obtained a valid NPDES permit are required to submit application Form SMP–01 of the Kentucky Bureau of Surface Mining Reclamation and Enforcement to the Permit Issuing Authority in lieu of standard EPA forms. The submission should be made at least one hundred and eighty (180) days before the date the discharge is to commence. Such submittals shall be accompanied by a notice of intent to be covered by the general permit and sufficient information about the discharge(s) to allow a new source determination to be made. EPA must continue to require application submittals on this category of discharger in order to comply with the environmental review requirements of NEPA. The applications determined to be new discharges (as opposed to new sources) are not subject to NEPA and will be considered for coverage under the general permit, generally within forty-five (45) days of receipt of the completed application. If appropriate, applications determined to be new sources will be issued individual permits after completion of the environmental review and public participation requirements.

The draft general permit has been developed with the recognition that the Commonwealth of Kentucky has formally applied for delegation of NPDES program responsibilities. The issuance of a NPDES permit by a State with an approved NPDES program does not constitute a major Federal action under NEPA and, therefore, the environmental review procedures specified therein are not applicable to State actions after delegation. In the

specific case of applications for new source coal mine permits which are submitted to the Commonwealth after delegation of the NPDES program, the Commonwealth will be required to issue individual permits for all such discharges. The Commonwealth does have the option of developing a separate general permit to cover the first issuance of new source permits.

Effective Date. Coverage under the general permit is effective upon the issuance of a fully effective Surface Disturbance Mining Permit (Permanent Program Permit) and receipt of a written notification by the Permit Issuing Authority.

C. Exclusions

The general permit will not authorize discharge from the following types of coal mining activities:

1. Coal preparation plants, as defined in 40 CFR 434.11(e). EPA will continue to regulate these facilities with individual NPDES permits and will require the submittal of NPDES applications for such discharges as specified in 40 CFR 122.21. Coal preparation plants are regulated more appropriately by individual permits because a large proportion of these facilities are classified as major dischargers.

2. Preparation plant associated areas, as defined in Part III.A. above, that comingle with discharges from local preparation plant water circuits, as defined in 40 CFR 434.11(g). Such discharges are more appropriately regulated via the individual permit for the preparation plant.

3. New Sources

a. Applicants for new NPDES permits which are determined by the Permit Issuing Authority to be "new sources" (see 40 CFR 434.11(j) for coal mines, 40 CFR 122.2 for coal preparation plant associated areas, and the Coal Mining Effluent Guidelines Settlement Agreement dated August 1, 1983).

EPA issuance of a NPDES permit to a discharged classified as a new source may be a major Federal action significantly affecting the quality of the human enviroment within the meaning of NEPA. Therefore, the issuance of such new source NPDES permits are subject to the environmental review provisions of NEPA as set forth in 40 CFR Part 6, Subpart F. Since the environmental review may alter the permit conditions or result in the outright denial of new source permits, Region IV believes it is inappropriate to include new source discharges within the scope of the general permit. Accordingly, EPA will continue to conduct environmental reviews and fulfill public participation requirements on all applications for new source NPDES permits.

b. Holders of current or expired NEPA permits with special conditions imposed as a result of previous new source environmental reviews under NPDES, unless the Permit Issuing Authority determines that these conidtions have been fully satisfied.

4. Discharges into water quality limited streams. The Permit Issuing Authority will screen each request for coverage under the general permit to determine if the discharge is located in a water quality limited stream segment. Although Kentucky has adopted stream use classifications and related water quality criteria, a comprehensive listing of all water quality limited stream segments is not presently available. The Commonwealth is investigating the use attainability of 22 streams which may aid in the identification of water quality limited segments. However, the principle mechanism for collecting sufficient data to accurately identify water quality limited segments. However, the principle mechanism for collecting sufficient data to accurately identify water quality limited segments is contained in the requirement for a Permanent Program Permit. Applicants for such permits are required to collect baseline water quality data for the receiving stream(s) to characterize water quality. As this data is made available, the Permit Issuing Authority can identify water quality limited segments and deny coverage under the general permit where appropriate. Dischargers denied coverage because the receiving waters are classified as water quality limited will be issued individual permits.

5. A coal operation is excluded from coverate under this general permit if it discharges to receiving waters that are classified as "Outstanding Resource Waters" in 401 KAR 5:031, Section 8.

IV Permit Conditions

A. Technology Based Effluent Limitations

EPA published effluent limitation guidelines for the coal mining point source category on October 13, 1982, which established effluent limitations for Best Practicable Control Technology (BPT), Best Available Technology (BAT) and New Source Performance Standards (NSPS) for direct discharges. The general permit is intended to be applied to those discharges located in effluent limited stream segments where the limitations described in 40 CFR 434 will allow maintenance of the designated stream use.

While EPA has not yet proposed or pormulgated a revised BCT methodology in response to the *American Paper Institute* v. *EPA* decision, EPA is proposing BCT limitations for this category. These limits would be identical to those for BPT. EPA is not proposing any more stringent limitations since we have identified no technology option which would remove significant additional amounts of conventional pollutants. As BPT is the minimal level of control required by law, no possible application of the BCT cost tests could result in BCT limitations lower than existing BPT limitations.

On August 1, 1983, the Environmental Protection Agency entered into a settlement with the Commonwealth of Pennsylvania, the National Coal Association and the West Virginia Mountain Stream Monitors which stay the effectiveness of certain provisions of the effluent limitations guidelines and standards promulgated for the coal mining point source category. The parties also agreed that preamble provisions and amendments contained in the settlement agreement would be applied to all draft NPDES permits for which public notice had not been issued prior to the date of the agreement. Provisions of the agreement covering new sources generally do not affect the draft general permit as it does not authorize discharges from new sources.

The following provisions of the draft incorporate provisions of the settlement agreement. Foremost, the alternative effluent limitations during precipitation events in Part IV.A.4 of the fact sheet and Part I.B.2 of the permit now include new limitations establishing a daily maximum for settleable solids, discharges from steep slope areas and mountain top removal operations, acid and ferruginous mine drainage from coal refuse disposal piles, and acid and ferruginous mine drainage from other types of operations. Second the settlement agreement deletes § 434.11(j)(ii) (E) and (F), acquisition of additional land or mineral rights and significant capital investment in additional equipment or additional facilities, from the criteria for major alterations in determining new sources. This change affects the determinations of new sources described in Part III.C.3 of the fact sheet. Finally, new definitions for coal refuse disposal piles, controlled surface mine discharges, and abandoned mines have been added to Part I.E. of the permit.

1. *Effluent Limitations for Active Mining Areas, Coal Refuse Disposal Piles, and Coal Preparation Plant*

Associated Areas—Existing Sources and New Dischargers.

Pollutant or pollutant property	Daily average (mg/l)	Daily maximum (mg/l)
Total suspended solids (TSS)	35	70
Iron (total)	3.5	7.0
Manganese (total)	2.0	4.0

Note.—pH must be within the range of 6 to 9 at all times. Acidity must be less than alkalinity at all times. Alkalinity must be greater than acidity at all times.

The effluent limitations for conventional pollutants (TSS and pH) represent the degree of effluent reduction attainable by the application of the best practicable control technology currently available (BPT). However, the limitations for nonconventional pollutants (iron and manganese) represent the degree of effluent reduction attainable by the application of the best available technology economically achievable (BAT) which are equivalent to those promulgated under BPT. Further, in accordance with Subpart D, the limits for manganese do not apply if mine drainage is alkaline (pH equal to or more than 6 and total iron concentration less than 10 mg/l). The limitations specified above are applicable until the Phase I reclamation bond release is obtained, and for underground mines these requirements shall continue to apply to discharges from underground workings until final bond release.

The acidity/alkalinity measures were incorporated into the effluent limitations because the pH limit does not guarantee acid control in the treated effluent due to the presence of Lewis acids of metal ions commonly found in acid drainage. The pH parameter measures hydronium ion acidity only (H_3O+). Therefore, in accordance with our best professional judgment (BPJ), EPA Region IV has included the acidity/alkalinity relationship as an additional limit in the permit to ensure an environmentally acceptable total acid content in the effluent.

2. *New Source Performance Standards for Active Mining Areas, Coal Refuse Disposal Piles, Underground Mine Drainage from Post Mining Areas, and Coal Preparation Plant Associated Areas—Renewal of Expired New Source Permits.*

Pollutant or pollutant property	Daily average (mg/l)	Daily Maximum (mg/l)
Total suspended solids (TSS)	35	70
Iron (total)	3.0	6.0
Manganese (total)	2.0	4.0

Note.—pH must be within the range of 6 to 9 at all times. Acidity must be less than alkalinity at all times. Alkalinity must be greater than acidity at all times.

The limitations for manganese do not apply if the mine drainage is alkaline (pH equal to or more than 6 and total iron concentration less than 10 mg/l). The acidity/alkalinity requirement is a BPJ determination of Region IV and is derived as previously described above.

3. *Effluent Limitation for Post-Mining Areas.* a. Reclamation areas.

Pollutant or pollutant property	Effluent limitations
Settleable solids (ml/l maximum for any 1 day	0.5 ml/l maximum for any one day.

Note.—pH must be within the range of 6 to 9 at all times. Acidity must be less than alkalinity at all times. Alkalinity must be greater than acidity at all times.

The effluent limitation for pH represents BPT while the settleable solids limitation represents BAT. The acidity/alkalinity requirement is a BPJ determination of Region IV and is derived as described previously. These limitations are applicable to all discharges from reclamation areas until the final bond release is obtained.

b. Underground mine drainage for existing sources and new discharges.

Pollutant or pollutant property	Daily average (mg/l)	Daily maximum (mg/l)
Total suspended solids (TSS)	35	70
Iron (total)	3.5	7.0
Manganese (total)	2.0	4.0

Note.—pH must be within the range of 6 to 9 at all times. Acidity must be less than alkalinity at all times. Alkalinity must be greater than acidity at all times.

The effluent limitations for the conventional pollutants (TSS and pH) represent the degree of effluent reduction attainable by the application of BPT. However, the limitations for iron and manganese represent BAT, but the limitation for manganese does not apply if the waste is classified as alkaline. These limitations are applicable to discharges from underground workings at underground mines until final bond release.

4. *Alternate Effluent Limitations During Precipitation Events.* Where waste streams from any facility covered by this General Permit are combined for treatment or discharge with waste streams from another facility, the concentration of each pollutant in the combined discharge may not exceed the most stringent limitations for that pollutant applicable to any component waste stream of the discharge.

Alternate Effluent Limitations during Precipitation Events (See Table 1 for a summary of requirements under this paragraph.)

(a)(1) The alternate limitations specified in paragraph (a)(2) of this section apply with respect to:

(i) All discharges of alkaline mine drainage except discharges from underground workings of underground mines that are not commingled with other discharges eligible for these alternate limitations;

(ii) All discharges from steep slope areas, (as defined in Section 515(d)(4) of the Surface Mining Control and Reclamation Act of 1977, as amended (SMCRA)), and from mountaintop removal operations (conducted pursuant to Section 515(c) of SMCRA); and

(iii) Discharges from preparation plant associated areas (excluding acid mine drainage from coal refuse disposal piles).

(2) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations.
Settleable solids	0.5 ml/l maximum for any one day.
pH	6.0 to 9.0 at all times.

(b) The following alternate limitations apply with respect to acid or ferruginous discharges from coal refuse disposal piles:

Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 1-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations.
Settleable solids	0.5 ml/l maximum for any one day.
pH	6.0 to 9.0 at all times.

(c) The following alternate limitations apply with respect to acid or ferruginous mine drainage, except for discharges addressed above in paragaph (a) (mountaintop removal and steep slope areas), and discharges addressed below in paragaph (d) (controlled surface mine discharges) and paragraph (f) (discharges from underground workings of underground mines):

(1) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period

less than or equal to the 2-year, 24-hour precipitation event (or snowmelt or equivalent volume) may comply with the following limitations intead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations.
Iron (total)	7.0 mg/1 maximum for any 1 day.
Settleable solids	0.5 ml/l maximum for any one day.
pH	6.0 to 9.0 at all times.

(2) Any discharge or increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 2-year, 24-hour precipitation event, but less than or equal to the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations instead of the otherwise applicable limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations.
Settleable solids	0.5 ml/l maximum for any one day.
pH	6.0 to 9.0 at all times.

(d)(1) The alternate limitations specified in paragraph (d)(2) of this section apply with respect to all discharges described in paragraphs (a), (b) and (c) of this section *and* to:

(i) Discharges of acid mine drainage from underground workings of underground mines which is commingled with other discharges eligible for these alternate limitations;

(ii) Controlled acid surface mine discharges; and

(iii) Reclamation areas.

(2) Any discharge for increase in the volume of a discharge caused by precipitation within any 24 hour period greater than the 10-year, 24-hour precipitation event (or snowmelt of equivalent volume) may comply with the following limitations:

EFFLUENT LIMITATIONS DURING PRECIPITATION

Pollutant or pollutant property	Effluent limitations.
pH	6.0 to 9.0 at all times.

(e) The operator shall have the burden of proof that the discharge or increase in discharge was caused by the applicable precipitation event described in subsections a, b, c and d. This could be in the form of precipitation data, weir flow measurements, dated photographs, or equivalent proof of record. This information shall be submitted with the Discharge Monitoring Report at the end of the quarterly monitoring period.

(f) Discharges of mine drainage from underground workings of underground mines which are not commingled with discharges eligible for alternate limitations set forth in this section shall in no event be eligible for the alternate limitations set forth in this section.

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TABLE 1
ALTERNATE STORM LIMITATIONS for Pages I-1, I-2 and I-3

ACID MINE DRAINAGE

(b) Precipitation Event

	Dry Weather (a)	1-yr, 24-hr	2-yr, 24-hr	10-yr, 24-hr
1. Discharges from underground workings of underground mines - not commingled	Manganese TSS,pH, Iron	(NO ALTERNATE LIMITATIONS)		
2. Discharges from underground workings of underground mines - commingled	TSS, pH, Iron, Manganese			pH
3. Controlled surface mine drainage (except steep slope and mountaintop removal)	TSS, pH, Iron, Manganese			pH
4. Non-controlled surface mine drainage (except steep slope and mountaintop removal)	Manganese TSS, pH, Iron	SS, pH, Iron (c)	SS,pH	pH
5. Discharges from coal refuse disposal piles	TSS, pH, Iron, Manganese		SS,pH	pH
6. Discharges from steep slope and mountaintop removal areas	Manganese TSS,pH, Iron	SS, pH		pH
7. Discharges from preparation plant associated areas (excluding coal refuse piles)	Manganese TSS, pH, Iron	SS, pH		pH
ALKALINE MINE DRAINAGE (d)	TSS, pH, Iron	SS, pH		pH
RECLAMATION AREAS		SS, pH		pH

(a) Discharge caused by precipitation
(b) Acidity/alkalinity limitation not applicable during precipitation events
(c) SS = Settleable Solids
(d) Alternate limitations not applicable to underground workings of underground mines (not commingled)

5. *Alternate Effluent Limitations for pH.* Where application of neutralization and sedimentation treatment technology results in an inability to comply with the otherwise applicable manganese limitations, the permittee may request that alternate pH limitations be approved by the Permit Issuing Authority. Such requests shall be documented in writing to the Permit Issuing Authority and shall include sufficient effluent data for pH and manganese to demonstrate the actual pH required to insure compliance with the manganese limitation.

B. State Water Quality Standards

In addition to the effluent limitations reflective of BAT and NSPS contained in the draft general permit, several other provisions have been included to ensure compliance with Kentucky Water Quality Standards (401 KAR 5:031). The specific water criteria addressed by the permit include pH, total suspended solids, iron, and the alkalinity/acidity relationship of the receiving waters.

1. pH: A provision has been included to require that the pH of all effluent discharges not be less than 6.0 standard units nor greater than 9.0 standard units and that such discharges shall not cause the receiving waters to fluctuate more than one (1) unit over a period of twenty-four (24) hours (401 KAR 5.031, Section 5(1)(b)).

2. Total Suspended Solids: The application of the general permit to a given coal mining operation is predicated on the operator having initiated action to obtain a valid Surface Disturbance Mining Permit (Permanent Program Permit). An integral part of such permit is the approved Mining and Reclamation Plan which establishes performance standards for protecting the hydrologic balance and minimizing the sediment released from mining operations. The BAT and NSPS limitations contained in the draft permit for control of suspended and settleable solids and the requirements of the Mining and Reclamation Plan are expected to satisfy the criterion that the indigenous aquatic community not be adversely affected (401 KAR 5.031, Section 5(1)(f)(2)).

3. Total Iron: A provision has been included in the general permit which requires that the permittee shall not cause the maximum allowable in-stream iron concentration of 1.0 mg/l to be violated. Consistent with 401 KAR 5.031, Section 5(1)(h), the in-stream daily average total iron concentration will be limited to 3.5 mg/l on flow streams when it can be demonstrated by the permittee that there will be no damage to the aquatic community. Further, when it can be demonstrated that the background levels of total iron exceed the applicable criteria, the permittee shall not increase the in-stream total iron concentration above background concentrations; and, as a minimum must be in compliance with the numerical effluent limitations contained in Part I (A) (1) and (2) as appropriate.

4. Alkalinity: EPA has elected to include a provision in the permit to require the available alkalinity as $CaCO_3$ to exceed the acidity at all times. This provision is anticipated to meet the criteria concerning reduction of alkalinity in receiving waters (401 KAR 5.031, Section 5(1)(a)).

C. Monitoring and Reporting Requirements

The following monitoring and reporting requirements are imposed as conditions in the general permit for coal mining activities:

1. Samples and measurements taken as required herein shall be representative of the volume and nature of the monitored discharge. All samples shall be taken at the monitoring points specified in this permit. Monitoring points shall not be changed without notification to and the approval of the Permit Issuing Authority.

2. Samples taken in compliance with the monitoring requirements specified in Part I shall be taken at the following location(s): At the farthest or last silt control structure or dam utilized for water pollution control treatment prior to discharge or mixing with the receiving waters.

3. Normal sampling shall for pages I–1 and I–2 be performed on the same two working days each month. These two sampling days shall be the second and fourth Wednesday of each month unless other days are approved by the Permit Issuing Authority subsequent to a specific written request by the discharger. However, the first time each month a precipitation event or pumpage causes a significant discharge on a workday before either of the scheduled sampling days, the sampling must be conducted within twelve (12) hours following that event and prior to cessation of discharge. Data from the precipitation event shall be submitted in lieu of the data from the next scheduled sampling day of that month. A total of two samples shall be collected each month on either the two scheduled sampling days or on the first precipitation event of the month and the subsequent scheduled sampling day. (For permittees electing to utilize the alternate limitations for precipitation events, see additional monitoring requirements in paragraph 5 below).

4. For reclamation areas, normal sampling shall be on the fourth Wednesday of each month unless another day is approved by the Permit Issuing Authority subsequent to a specific written request by the discharger. However, the first time each month a precipitation event or pumpage causes a significant discharge on a workday before the scheduled sampling day, the sampling must be conducted within twelve (12) hours following that event and prior to cessation of discharge. Data from the precipitation event shall be submitted in lieu of the data from the scheduled sampling day of that month.

5. The first time each month the precipitation exemption in Part I, B.2. is utilized, one sample must be taken for each pollutant parameter identified in Table 1 within twelve (12) hours following the precipitation event and prior to cessation of discharge. However, one additional sampling 24 to 36 hours following that precipitation event will be required for the effluent parameters identified in Part I, A.1. or A.2., as appropriate. If the sampling day occurs on a weekend or holiday (non-working day), the sampling may be delayed until the next significant rainfall event. Sampling required by this subsection shall be in addition to the sampling frequency specified in Part I, A.1. or A.2.

6. Monitoring results obtained during the previous three (3) months shall be summarized for each discharge for each month and reported on a Discharge Monitoring Report Form (EPA No. 3320-1), postmarked no later than the 28th day of the month following the completed reporting period. Signed forms as well as all other reports required herein shall be submitted to the Permit Issuing Authority or its designee with duplicate copies submitted to the Commissioner of the Department for Surface Mining, Reclamation, and Enforcement at the following addresses:

Environmental Protection Agency,
Water Management Division,
Industrial Operations Section,
345 Courtland Street, NE.,
Atlanta, Georgia 30365, and
Kentucky Department for Surface Mining, Reclamation and Enforcement,
Division of Permits,
Capital Plaza Tower,
Frankfort, Kentucky 40601.

D. Certification by the Corps of Engineers

Pursuant to 40 CFR 124.59, copies of all requests for coverage under the general permit shall be forwarded by the Permit Issuing Authority to the Corps of Engineers. The Corps will be given 30 days notice to review and coment upon requests for coverage before the Permit Issuing Authority takes final action regarding the applicability of the general permit to a given discharge. Upon written notification by the Corps, the following special condition may be imposed on certain mining activities were deemed appropriate by the Corps:

The permittee shall undertake erosion control practices which utilize proper sedimentation control measures in order to minimize resultant sedimentation in navigable waters which occur as a result of discharges from both point and non-point sources connected with the overall operations. The practices will apply to existing and future facilities and activities, and will, at a minimum, provide for the control of erosion and runoff from access and haul roads, coal handling structures, utility right-of-way easements and excavations. The permittee will also provide adequate ditching, culverts, sediment traps and ponds, and any other structures or procedures necessary to minimize sedimentation in the navigable waterway. The permit issuing authority shall have the right to inspect the sediment control measures being undertaken by the permittee and , in consultation with the U.S. Army Corps of Engineers, direct any additional measures which are necessary to comply with the requirements of this condition. Should this discharge result in sufficient deposition of solids material to create a hazard to anchorage or navigation on any navigable water, such deposits will be removed by the permittee without expense to the United States Government. Further, the time and manner of such removal, as well as the location and manner of its disposal, must receive the prior written approval by the District Engineer of the Corps of Engineers.

The Permit Issuing Authority shall notify permittees of the applicability of this condition in the written notification that coverage has been granted under the general permit.

V. *State Certification*

Section 301(b)(1)(C) of the Act requires that NPDES permits contain conditions which ensure compliance with applicable State water quality standards or limitations. Section 401 requires that States certify that Federally issued permits are in compliance with State law.

This permit is for operations within waters of the State of Kentucky. EPA is requesting State officials to review and provide appropriate certification of this draft general permit pursuant to 40 CFR 124.53.

VI. Other Legal Requirements

A. Economic Impact

EPA has reviewed the effect of Executive Order 12291 on this draft general permit and has determined that it is not a major rule under that order. This regulation was submitted to the Office of Management and Budget for review as required by Executive Order 12291. Any comments from OMB to EPA and any EPA response to those comments are available for public inspection at the U.S. Environmental Protection Agency, Facilities Performance Branch, Water Management Division, 345 Courtland Street, Atlanta, Georgia, 30365.

B. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general NPDES permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq*. The information collection requirements of the permit have already been approved by the Office of Management and Budget under submissions made for the NPDES permit program pursuant to the Clean Water Act.

C. The Regulatory Flexibility Act

After review of the facts presented in the notice of intent printed above, I hereby certify, pursuant to the provision of 5 U.S.C. 605(b), that this general permit will not have a significant impact on a substantial number of small entities. Moreover, it will reduce a significant administrative burden on regulated sources.

John A. Little,

Acting Regional Administrator.

[FR Doc. 83-24156 Filed 9-1-83; 8:45 am]

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FEDERAL RESERVE SYSTEM

Federal Open Market Committee; Domestic Policy Directive of July 12-13, 1983

In accordance with § 217.5 of its rules regarding availability of information, there is set forth below the Committee's Domestic Policy Directive issued at its meeting held on July 12-13, 1983.[1]

The rapid growth in real GNP in the second quarter and other information reviewed at this meeting suggest that the economic recovery is proceeding at a strengthened pace. Expenditures on consumption and housing expanded substantially in the second quarter and businesses apparently began to add to inventories after a period of sharp liquidation. Nonfarm payroll employment rose considerably in May and June and the civilian unemployment rate declined to 10.0 percent in June. Industrial production continued to rise markedly in May and partial data suggest a sizable gain in June. Data on new orders and shipments continued to indicate improvement in the demand for business equipment. In May housing starts increased substantially following small declines earlier and retail sales rose appreciably further. Average prices and the index of average hourly earnings have risen at a reduced pace in the first five months of 1983.

The weighted average value of the dollar against major foreign currencies rose substantially in late May and the first half of June and subsequently has fluctuated in a narrow range. Reflecting the strength of the U.S. economy and the persistent high level of the dollar, the U.S. foreign trade deficit increased sharply in April-May from its reduced first-quarter rate; exports declined and both oil and nonoil imports rose.

Strong growth in the broader aggregates in May and June raised M2 to a level somewhat above the midpoint of the Committee's range for 1983 and M3 to around the upper limit of its range. M1 grew very rapidly over both months and was well above its range for the year. Growth in debt of domestic nonfinancial sectors appears to have picked up in the second quarter. Interest rates have risen appreciablly since early May.

The Federal Open Market Committee seeks to foster monetary and financial conditions that will help to reduce inflation further, promote growth in output on a sustainable basis, and contribute to a sustainable pattern of international transactions. At its meeting in February the Committee established growth ranges for monetary and credit aggregates for 1983 in furtherance of these objectives. The Committee recognized that the relationships between such ranges and

[1] The Record of Policy Actions of the Committee for the meeting of July 12-13, 1983, is filed as part of the original document. Copies are available upon request to The Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

ultimate economic goals have been less predictable over the past year; that the impact of new deposit accounts on growth ranges of monetary aggregates cannot be determined with a high degree of confidence; and that the availability of interest on large portions of transaction accounts, declining inflation, and lower market rates of interest may be reflected in some changes in the historical trends in velocity.

In establishing growth ranges last February for the aggregates for 1983 against this background, the Committee felt that growth in M2 might be more appropriately measured after the period of highly aggressive marketing of money market deposit accounts had subsided. The Committee also felt that a somewhat wider range was appropriate for monitoring M1. With these understandings, the Committee established the following growth ranges: For the period from February–March of 1983 to the fourth quarter of 1983, 7 to 10 percent at an annual rate for M2, taking into account the probability of some residual shifting into that aggregate from non-M2 sources; and for the period from the fourth quarter of 1982 to the fourth quarter of 1983, 6½ to 9½ percent for M3, which appeared to be less distorted by the new accounts. For the same period a tentative range of 4 to 8 percent was established for M1 assuming that Super NOW accounts would draw only modest amounts of funds from sources outside M1 and assuming that the authority to pay interest on transaction balances was not extended beyond presently eligible accounts. An associated range of growth for total domestic nonfinancial debt was estimated at 8½ to 11½ percent. These ranges were reviewed at the May meeting and left unchanged, pending further review in July.

At this meeting, the Committee reaffirmed the longer-run ranges established earlier for growth in M2 and M3 for 1983. The Committee also agreed on tentative growth ranges for the period from the fourth quarter of 1983 to the fourth quarter of 1984 of 6½ to 9½ percent for M2 and 6 to 9 percent for M3. The Committee considered that growth in M1 in a range of 5 to 9 percent from the second quarter of 1983 to the fourth quarter of 1983, and in a range of 4 to 8 percent from the fourth quarter of 1983 to the fourth quarter of 1984 would be consistent with the ranges for the broader aggregates. The associated range for total domestic nonfinancial debt was reaffirmed at 8½ to 11½ percent for 1983 and tentatively set at 8 to 11 percent for 1984.

In implementing monetary policy, the Committee agreed that substantial weight would continue to be placed on the behavior of the broader monetary aggregates. The behavior of M1 and total domestic nonfinancial debt will be monitored, with the degree of weight placed on M1 over time dependent on evidence that velocity characteristics are resuming more predictable patterns. The Committee understood that policy implementation would involve continuing appraisal of the relationship between the various measures of money and credit and nominal GNP, including evaluation of conditions in domestic credit and foreign exchange markets.

The Committee seeks in the short run to increase slightly further the existing degree of reserve restraint. The action is expected to be associated with growth of M2 and M3 at annual rates of about 8½ and 8 percent respectively from June to September, consistent with the targets established for these aggregates for the year. Depending on evidence about the strength of economic recovery and other factors bearing on the business and inflation outlook, lesser restraint would be acceptable in the context of a significant shortfall in growth of the aggregates from current expectations, while somewhat greater restraint would be acceptable should the aggregates expand more rapidly. The Committee anticipates that a deceleration in M1 growth to an annual rate of around 7 percent from June to September will be consistent with its third-quarter objectives for the broader aggregates, and that expansion in total domestic nonfinancial debt would remain within the range established for the year. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that pursuit of the monetary objectives and related reserve paths during the period before the next meeting is likely to be associated with a federal funds rate persistently outside a range of 6 to 10 percent.

By order of the Federal Open Market Committee, August 29, 1983.

Stephen H. Axilrod,

Secretary.

[FR Doc. 83-24135 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Citicorp et al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President), 33 Liberty Street, New York, New York 10045:

1. *Citicorp*, New York, New York (finance company and credit-related insurance activities; Louisiana, Mississippi, Arkansas): To expand the activities and service area of an existing office of Citicorp Acceptance Company, Inc. in Baton Rouge, Louisiana. The new activity in which the office proposes to engage *de novo* is: The making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes. The proposed service area will comprise the entire states of Louisiana, Mississippi and Arkansas for the aforementioned proposed activity and a portion of the previously approved activities of Citicorp Acceptance Company, Inc., specifically: The extension of loans to dealers for the financing of inventory (floor planning) and working capital purposes; the purchasing and servicing for its own account of sales finance contracts; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required:

and the servicing, for any person, of loans and other extensions of credit. Comments on this application must be received not later than September 26, 1983.

2. *Citicorp*, New York, New York (finance company and credit-related insurance activities; Alabama, Florida, Louisiana, Mississippi): To expand the activities of an existing office of Citicorp Acceptance Company, Inc., located in Montgomery, Alabama. The new activities in which the office proposes to engage de novo are: The making or acquiring of loans and other extensions of credit, secured or unsecured, for consumer and other purposes; the sale of credit related life and accident and health insurance by licensed agents or brokers, as required; and the servicing, for any person, of loans and other extensions of credit. In addition, the office proposes to broaden its previously approved activities of the extension of loans to mobile home dealers for the financing of inventory (floor planning) and working capital purposes and the purchasing and servicing for its own account of sales finance contracts relating to mobile homes, to engage in such activities with regard to all types of dealers and all types of consumer installment paper. The proposed service area for the aforementioned activities will comprise the entire states of Alabama, Florida, Louisiana and Mississippi. Comments on this application must be received not later than September 26, 1983.

B. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *First Ohio Bancshares, Inc.*, Toledo, Ohio (investment advisory services; Ohio): To engage through its subsidiary First Ohio Investment Services, Inc., in providing portfolio investment advice to individual, institutional, and charitable clients. These activities would be conducted primarily in the state of Ohio. Comments on this application must be received not later than September 14, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Chicago Corporation*, Chicago, Illinois (trust activities; the United States): To engage, through its *de novo* subsidiary, First Chicago Investment Advisors, National Association, in performing or carrying on any one or more of the functions or activities that may be performed or carried on by a trust company (including activities of a fiduciary, agency or custodial nature). These activities will be performed from offices in Chicago, Illinois, which will serve the entire United States. Comments on this application must be received not later than September 21, 1983.

Board of Governors of the Federal Reserve System, August 29, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24130 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Shares by a Bank Holding Company; Grand Bancshares, Inc.

The company listed in this notice has applied for the Board's approval under section 3(a)(3) of the Bank Holding Company Act (12 U.S.C. 1842(a)(3)) to acquire voting shares or assets of a bank. The factors that are considered in acting on the application are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated. With respect to the application, interested persons may express their views in writing to the address indicated. Any comment on the application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Dallas** (Anthony J. Montelaro, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. *Grand Bancshares, Inc.*, Dallas, Texas; to acquire 100 percent of the voting shares of Grand Bank Airport Freeway at Highway 157, National Association, Bedford, Texas. Comments on this application must be received not later than September 28, 1983.

Board of Governors of the Federal Reserve System, August 29, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24131 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

Sherman County Management, Inc.; Proposed Retention of Skotchdopole Agency, Inc.

Sherman County Management, Inc., Loup City, Nebraska, has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.4(b)(2) of the Board's Regulation Y (12 CFR 225.4(b)(2)), for permission to retain the assets of one office of Skotchdopole Agency, Inc., Ravenna, Nebraska.

Applicant states that the proposed subsidiary engages in the activities of a general insurance agent in a community that has a population not exceeding 5,000 persons. These activities would be performed from offices of Applicant's subsidiary in Loup City, Nebraska, and the geographic area to be served is Loup City, Nebraska, and the surrounding rural area. Such activities have been specified by the Board in § 225.4(a) of Regulation Y as permissible for bank holding companies, subject to Board approval of individual proposals in accordance with the procedures of § 225.4(b).

Interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair 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.

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank of Kansas City.

Any person wishing to comment on the application should submit views in writing to the Reserve Bank to be received not later than September 27, 1983.

Board of Governors of the Federal Reserve System, August 29, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24132 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

Formation of Bank Holding Companies; United Bancorp, Inc., et al.

The companies listed in this notice have applied for the Board's approval under section 3(a)(1) of the Bank Holding Company Act (12 U.S.C. 1842(a)(1)) to become bank holding companies by acquiring voting shares or assets of a bank. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application may be inspected at the offices of the Board of Governors, or at the Federal Reserve Bank indicated for that application. With respect to each application, interested persons may express their views in writing to the address indicated for that application. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

A. **Federal Reserve Bank of Cleveland** (Lee S. Adams, Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *United Bancorp Inc.*, Martins Ferry, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The Citizens Savings Bank, Martins Ferry, Ohio. Comments on this application must be received not later than September 27, 1983.

B. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. *Hub Bancshares, Inc.*, Lafayette, Louisiana; to become a bank holding company by acquiring at least 51 percent of the voting shares of Hub City Bank and Trust Company, Lafayette, Louisiana. Comments on this application must be received not later than September 29, 1983.

C. **Federal Reserve Bank of Chicago** (Franklin D. Dreyer, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First State Bancorp of Monticello*, Monticello, Illinois; to become a bank holding company by acquiring 80 percent of the voting shares of First State Bank of Monticello, Monticello, Illinois. Comments on this application must be received not later than September 29, 1983.

2. *Guaranty Bankshares, Ltd.*, Cedar Rapids, Iowa; to become a bank holding company by acquiring 80 percent or more of the voting shares of Guaranty Bank and Trust Company, Cedar Rapids, Iowa. Comments on this application must be received not later than September 21, 1983.

3. *Logansport Bancorp, Inc.*, Logansport, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of The Farmers & Merchants State Bank, Logansport, Indiana. Comments on this application must be received not later than September 26, 1983.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Webb Bancshares, Inc.*, Highland, Kansas; to become bank holding company by acquiring 100 percent of the voting shares of The Farmers State Bank of Highland, Highland, Kansas. Comments on this application must be received not later than September 21, 1983.

E. **Board of Governors of the Federal Reserve System** (William W. Wiles, Secretary), Washington, D.C. 20551:

1. *Amoskeag Bank Shares, Inc.*, Manchester, New Hampshire; to become a bank holding company by acquiring 100 percent of the voting shares of Amoskeag Savings Bank, Manchester, New Hampshire and 42.2 percent of the voting shares of Amoskeag National Bank and Trust Co., Manchester, New Hampshire. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Boston. Comments on this application must be received not later than September 29, 1983.

Board of Governors of the Federal Reserve System, August 29, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24133 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

Bank Holding Companies; Proposed de Novo Nonbank Activities; Manufacturers Hanover Corp. et. al.

The organizations identified in this notice have applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 184(c)(8)) and § 225.4(b)(1) of the Board's Regulation Y (12 CFR 225.4(b)(1)), for permission to engage *de novo* (or continue to engage in an activity earlier commenced *de novo*), directly or indirectly, solely in the activities indicated, which have been determined by the Board of Governors to be closely related to banking.

With respect to these applications, interested persons may express their views on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any comment that requests a hearing must include a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of that proposal.

The applications may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank indicated. Comments and requests for hearing should identify clearly the specific application to which they relate, and should be submitted in writing and received by the appropriate Federal Reserve Bank not later than the date indicated.

A. **Federal Reserve Bank of New York** (A. Marshall Puckett, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Manufacturers Hanover Corporation*, New York, New York (consumer finance, sales finance, commercial finance, marine finance and credit insurance activities; Maryland): To engage through a *de novo* office of Manufacturers Hanover Financial Services of Maryland, Inc., in the activities of consumer finance, sales finances, marine finance, commercial finance; servicing such loans and other extensions of credit; and acting as agent or broker for the sale of single and joint credit life insurance and decreasing or level term (in the case of single payment loans) credit life insurance, and credit accident and health insurance directly related to extensions of credit made or acquired by Manufacturers Hanover Financial Services of Maryland, Inc. These activities will be conducted from an office in Annapolis, Maryland, which will serve the entire United States and Puerto Rico with respect to marine finance, and will serve the State of Maryland for all other activities. Comments on this application must be received not later than September 29, 1983.

B. **Federal Reserve Bank of Minneapolis** (Bruce J. Hedblom, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Norwest Corporation*, Minneapolis, Minnesota (finance, insurance and travelers checks activities; South Carolina): To continue to engage through its subsidiary, Norwest Financial South Carolina, Inc., in the activities of consumer finance and sales finance, the sale of credit life, credit accident and health and property and credit-related casualty insurance related to extensions of credit by that company (such sale of credit-related insurance being a permissible activity under Subparagraph D of Title VI of the Garn-St Germain Depository Institutions Act of 1982) and the offering for sale and selling of travelers checks at a relocated office; and, to engage *de novo* in commercial

finance activities from said office as relocated. These activities would be conducted from an office in North Charleston, South Carolina serving North Charleston, South Carolina; Charleston, South Carolina; and other nearby suburbs of Charleston, South Carolina. Comments on this application must be received not later than September 26, 1983.

Board of Governors of the Federal Reserve System August 29, 1983.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 83-24134 Filed 9-1-83; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules; Boeing Co. et al.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transaction	Waiting period terminated effective
(1) 83-0596—The Boeing Company's proposed acquisition of voting securities of Peabody Holding Company, Incorporated.	Aug. 11, 1983.
(2) 83-0605—Wallace Forman's proposed acquisition of assets of Gibraltar Industries, Incorporated, (Pope, Evans and Robbins, Incorporated, UPE).	Do.
(3) 83-0606—Aurthur Forman's proposed acquisition of assets of Gibraltar Industries, Incorporated, (Pope, Evans and Robbins, Inc., UPE).	Do.
(4) 83-0606—A. Alfred Taubman's proposed acquisition of voting securities of Sotheby Parke Bernet Group p.l.c..	Do.
(5) 83-0610—Philip F. Anschutz' proposed acquisition of voting securities of Ideal Basic Industries, Incorporated.	Do.
(6) 83-0611—Philip F. Anschutz' proposed acquisition of voting securities of Ideal Basic Industries, Incorporate.	Do.
(7) 83-0607—Chrysler Corporation's proposed acquisition of assets of the Sterling Heights Plant, (Volkswagewerk A G, UPE).	Aug. 18, 1983.
(8) 83-0622—Agway Incorporated's proposed acquisition of assets of Jack Satter Revocable, Trust, (Jack Satter, UPE).	Do.
(9) 83-0633—Super Valu Stores Incorporated's proposed acquisition of assets of Pantry Pride, Incorporated.	Do.
(10) 83-0634—Thomas G. Wyman's proposed acquisition of voting securities and assets of L. G. Balfour Company, (Bank of New England, N. A., UPE).	Do.
(11) 83-0617—A. Alfred Taubman's proposed acquisition of voting securities of Sotheby Parke Bernet Group p.l.c..	Aug. 11, 1983.
(12) 83-0642—Reliance Group Holding, Incorporated's (Saul P. Steinberg, UPE) proposed acquisition of assets of Los Angeles Hilton Joint Venture.	Aug. 18, 1983.
(13) 83-0571—The Edward W. Scripps Trust's proposed acquisition of voting securities of Southmedia Company, (Charles H. Smithgall, Jr., UPE).	Aug. 15, 1983.
(14) 83-0578—Proposed formation of a joint venture corporation between Montedison S.p.A. and Hercules, Incorporated.	Aug. 10, 1983.
(15) 83-0579—Proposed formation of a joint venture corporation between Hercules, Incorporated and Montedison S. p. A..	Do.
(16) 83-0625—American Petroleum Production, N. V.'s proposed acquisition of assets of I C I Delaware, Incorporated (Imperial Chemical Industries, PLC, UPE).	Aug. 19, 1983.
(17) 83-0599—Natural Resource Management Corporation's proposed acquisition of assets of Texas International Petroleum Corporation and Phoenix Resources Company, (Texas International Company, UPE).	Aug. 22, 1983.
(18) 83-0649—United Newspapers, Incorporated's proposed acquisition of voting securities of of Gralla Publications, Incorporated, (Lawrence Gralla, UPE).	Do.
(19) 83-0650—United Newspapers, Incorporated's proposed acquisition of voting securities of of Gralla Publications, Incorporated (Milton Gralla, UPE).	Do.
(20) Transaction Number 83-0587—Butterfield Equities' proposed acquisition of United Realty Investors, Inc..	Aug. 12, 1983.

FOR FURTHER INFORMATION CONTACT:
Patricia A. Foster, Compliance Specialist, Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, D.C. 20580, (202) 523-3894.

By direction of the Commission.

Emily H. Rock,

Secretary.

[FR Doc. 83-24087 Filed 9-1-83; 8:45 am]

BILLING CODE 6750-01-M

Senior Executive Service; Announcement of Membership of Performance Review Boards

The Federal Trade Commission has two Performance Review Boards. The members of the first Board are: Wallace S. Snyder, Richard Higgins, Winston S. Moore, and Mary L. Azcuenaga.

The members of the second Board are: James Williams, Amanda Pedersen, Ronald Bond, and Barbara Clark.

For further information, please call Stephen C. Benowitz, Director of Personnel, Federal Trade Commission, (202) 523-3986.

Stephen C. Benowitz,

Director of Personnel.

[FR Doc. 83-24084 Filed 9-1-83; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the secretary

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Department of Health and Human Services (HHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on August 26.

PUBLIC HEALTH SERVICE

Food and Drug Administration

Subject: Interim Procedures for Implementation of Orphan Drug Act—NEW

Respondents: Drug manufacturers and clinical research organizations OMB Desk Officer: Richard Eisinger

Health Resources and Services Administration

Subject: Health Resources and Services Administration Non-Competing Training Grant Application and Supplements (0915-0061)—REVISION

Respondents: Educational institutions which provide training in one or more health professions

Subject: Health Resources and Services Administration Competing Training Grant Application and Supplements (0915-0060)—REVISION

Respondents: Educational institutions which provide training in one or more health professions

OMB Desk Officer: Fay S. Iudicello

Health Care Financing Administration

Subject: State Medicaid Quality Control Sample Selection Lists (HCFA-319) EXTENSION/NO CHANGE

Respondents: State Medicaid agencies

Subject: Professional Standards Review Organizations Delegated Provider Admissions Summary (HCFA-20)—EXTENSION/NO CHANGE
Respondents: Providers with delegation to perform professional reviews
Subject: Report on Provider Participation in the Medicaid Program (HCFA-350)—EXTENSION/NO CHANGE
Respondents: State Medicaid agencies
Subject: Hospice Care-Medicare Program (HCFA-R-30)—PRELIMINARY PLAN
Respondents: Hospices participating in the Medicare program
OMB Desk Officer: Fay S. Iudicello

Office of the Secretary

Subject: Implementation of the Equal Access to Justice Act in Agency Proceeding-Subpart B—NEW
Respondents: Certain individuals, small businesses and small organizations
OMB Desk Officer: Milo Sunderhauf

Copies of the above information collection clearance packages can be obtained by calling the HHS Reports Clearance Officer on 202-245-6511.

Written comments and recommendations for the proposed information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503. Attn: (Name of OMB Desk Officer).

Dated: Aug 25, 1983.

Robert F. Sermier,

Deputy Assistant Secretary for Management Analysis and Systems.

[FR Doc. 83-23993 Filed 9-1-83; 8:45 am]

BILLING CODE 4150-04-M

President's Council on Physical Fitness and Sports; Meeting

AGENCY: Office of the Assistant Secretary for Heath, HHS.

AGENCY: Notice of Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the President's Council on Physical Fitness and Sports. This notice also describes the functions of the Council. Notice of this meeting is required under the National Advisory Committee Act.

DATE: September 19, 1983, 9:00 a.m. to 1:30 p.m.

ADDRESS: 101 West Washington Street, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Mr. C. Carson Conrad, Executive Director, President's Council on Physical Fitness and Sports, 450 5th St., N.W., Suite 7103, Washington, D.C. 20001

SUPPLEMENTARY INFORMATION: The President's Council on Physical Fitness and Sports operates under Executive Order No. 12399 dated December 31, 1982. The functions of the Council are: 1. To advise the President and the Secretary concerning progress made in carrying out the provisions of the Executive Order and recommending to the President and the Secretary, as necessary, actions to accelerate progress; 2. Advise the Secretary on matters pertaining to the ways and means of enhancing opportunities for participation in physical fitness and sports activities; 3. Advise the Secretary on State, local, and private actions to extend and improve physical activity programs and services.

The Council will hold this meeting to apprise the new Council members of the 10-point national program of physical fitness and sports; to report on on-going Council programs; and to plan for future directions.

Dated: August 29, 1983.

C. Carson Conrad,

Executive Director, President's Council on Physical Fitness and Sports.

[FR Doc. 83-24166 Filed 9-1-83; 8:45 am]

BILLING CODE 4160-17-M

Food and Drug Administration

[Docket No. 83M-0278]

Precision-Cosmet Co., Inc.; Premarket Approval of OPUS-III™ (Pentasilcon P) Contact Lenses

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration [FDA] is announcing its approval of the application for premarket approval under the Medical Device Amendments of 1976 of the OPUS-III™ (pentasilcon P) Contact Lenses, sponsored by Precision-Cosmet Co., Inc., Minnetonka, MN. After reviewing the recommendation of the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, FDA notified the sponsor that the application was approved because the device had been shown to be safe and effective for use as recommended in the submitted labeling.

DATE: Petitions for administrative review by October 3, 1983.

ADDRESS: Requests for copies of the summary of safety and effectiveness data and petitions for administrative review may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Charles H. Kyper, National Center for Devices and Radiological Health (HFK-402), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7445.

SUPPLEMENTARY INFORMATION: On October 7, 1982, Precision-Cosmet Co., Inc., Minnetonka, MN, submitted to FDA an application *for premarket approval of the OPUS-III™* (pentasilcon P) Contact Lenses. These lenses range in power from −0.25 diopter to −13.00 diopters and are indicated for daily wear by not-aphakic persons with nondiseased eyes who are nearsighted (myopic) and who have astigmatism not exceeding 2.00 diopters. The application was reviewed by the Ophthalmic Device Section of the Ophthalmic; Ear, Nose, and Throat; and Dental Devices Panel, an FDA advisory committee, which recommended approval of the application. On July 26, 1983, FDA approved the application by letter to the sponsor from the Associate Director for Device Evaluation of the Office of Medical Devices.

Before enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94-295, 90 Stat. 539-583), soft contact lenses were regulated as new drugs. Because the amendments broadened the definition of the term "device" in section 201(h) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(h)), soft contact lenses are now regulated as class III devices (premarket approval). As FDA explained in a notice published in the **Federal Register** of December 16, 1977 (42 FR 63472), the amendments provide transitional provisions to ensure continuation of premarket approval requirements for class III devices formerly regulated as new drugs. Furthermore, FDA requires, as a condition to approval, that sponsors of applications for premarket approval of soft contact lenses comply with the records and reports provisions of Subpart D of Part 310 (21 CFR Part 310), until these provisions are replaced by similar requirements under the amendments.

A summary of the safety and effectiveness data on which FDA's approval is based is on file with the Dockets Management Branch address above) and is available upon request from that office. A copy of all approved draft labeling is available for public inspection at the Office of Medical Devices—contact Charles H. Kyper

(HFK–402), address above. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

The approved labeling for the OPUS-III™ (pentasilcon P) Contact Lenses states that only the recommended chemical lens care system is to be used and that the lenses are to be disinfected using a chemical disinfection method only. The restrictive labeling informs new users that they must avoid using certain products, such as solutions intended for use with hard contact lenses only. However, the restrictive labeling needs to be updated periodically to refer to new lens solutions that FDA approves for use with approved contact lenses. A sponsor who fails to update the restrictive labeling may violate the misbranding provisions of section 502 of the act (21 U.S.C. 352) as well as the Federal Trade Commission Act (15 U.S.C. 41–58), as amended by the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act (Pub. L. 93–637). Furthermore, failure to update restrictive labeling to refer to new solutions that may be used with an approved lens may be grounds for withdrawing approval of the application for the lens under section 515(e)(1)(F) of the act (21 U.S.C. 360e(e)(1)(F)). Accordingly, whenever FDA publishes a notice in the **Federal Register** of the agency's approval of a new solution for use with an approved lens, the sponsor of the lens shall correct its labeling to refer to the new solution at the next printing or at any other time FDA prescribed by letter to the sponsor.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of FDA's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and FDA's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration of FDA's action under § 10.33(b) (21 CFR 10.33 (b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issues to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before October 3, 1983, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 26, 1983.

A. J. Beebe Jr.,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-24103 Filed 9-1-83; 8:45 am]

BILLING CODE 4160-01-M

Advisory Committee; Meeting

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also sets forth a summary of the procedures governing committee meetings and methods by which interested persons may participate in open public hearings conducted by the committees and is issued under section 10(a) (1) and (2) of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770–776 (5 U.S.C. App. I)), and FDA regulations (21 CFR Part 14) relating to advisory committees. The following advisory committee meeting is announced:

Immunology Device Section of the Immunology and Microbiology Devices Panel

Date, time and place. September 16, 1:30 p.m., Conference Rm. C, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. This meeting will be held by a conference telephone call. A speaker phone will be provided in the conference room to allow public participation during the meeting. Open public hearing, 2:00 p.m. to 2:30 p.m.; open committee discussion, 2:30 p.m. to 5 p.m.; S. K. Vadlamudi, National Center for Devices and Radiological Health (HFK–440), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301–427–7550.

General function of the committee. The committee reviews and evaluates available data on the safety and effectiveness of devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before September 1, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss requested changes in classification of Rheumatoid Factor, and Immunoglobulins A, G, M, D, and E Immunological Test Systems.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairman determines will facilitate the committee's work.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wished 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 9 a.m. and 4 p.m., Monday through Friday. The FDA regulations relating to public advisory committees may be found in 21 CFR Part 14.

Dated: August 29, 1983.

Joseph P. Hile,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 83-24104 Filed 9-1-83; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Medicare Program; Invalidation of the Wage Index in the Schedule of Limits on Hospital Per Diem Inpatient General Routine Operating Costs for Cost Reporting Periods Beginning on or After July 1, 1981 and Ending With Cost Reporting Periods Beginning on or Before September 30, 1982

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

ACTION: Notice.

SUMMARY: This notice announces the April 29, 1983 decision of the United States District Court for the District of Columbia in the case of *District of Columbia Hospital Association, et al.* v. *Heckler, et al.* (No. 82–2520 D.D.C.). In its decision, the court ordered us to publish a notice in the **Federal Register** stating that the 1981 schedule of limits on hospital per diem inpatient general routine operating costs has been declared invalid with regard to the wage index for cost reporting periods beginning on or after July 1, 1981 and ending with cost reporting periods beginning on or before September 30, 1982. The District Court held that the decision to exclude Federal government hospital wage data from the computation of the wage index used in the 1981 Medicare hospital cost limits, without providing prior notice and an opportunity for comment, was in violation of the rulemaking requirements of the Administrative Procedure Act.

The decision of the District Court does not apply to cost reporting periods beginning on or after October 1, 1982. The cost limits for periods beginning on or after October 1, 1982 are contained in the interim final notice with comment period published in the **Federal Register** on September 30, 1982 (47 FR 43296).

EFFECTIVE DATE: The cost limits specified in the District Court decision were effective July 1, 1981 and may be affected by the issuance of a proposed notice for the 1981 period.

FOR FURTHER INFORMATION CONTACT: Marilyn Koch, 301–594–9343.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1) of the Social Security Act (42 U.S.C. 1395x(v)(1)) as amended by section 223 (Limitation on Coverage of Costs) of Pub. L. 92–603 (the Social Security Amendments of 1972) authorizes the Secretary to set prospective limits on the costs that are reimbursed under Medicare. These limits may be applied to direct or indirect overall costs or to costs incurred for specific items or services furnished by a Medicare provider of health care services, and may be based on estimates of the cost necessary in the efficient delivery of needed health services. This provision of the statute is implemented under regulations at 42 CFR 405.460.

Under this authority, we have published limits on hospital costs annually beginning with 1974. On June 30, 1981, we published in the **Federal Register** (46 FR 33638) a final notice of the hospital cost limits for cost reporting periods beginning on or after July 1, 1981. The preamble to this 1981 notice stated that "in developing the revised limits, we followed the same methodology we used to develop the current limits," except for "minor technical changes in the types of data we used to calculate the wage index and the market basket values." The preamble went on to state that data from Federal Government hospitals were excluded to improve the accuracy of the wage index adjustment because Federal hospitals typically use national pay scales that do not necessarily reflect area wage levels (46 FR 33699). At that time, we determined that while this wage adjustment would negatively affect hospitals in only a relatively few standard metropolitan statistical areas (SMSAs), it would prevent an unwarranted distribution of public funds to certain hospitals. Thus, we determined that waiver of the prior notice and comment requirements of the Administrative Procedure Act (APA) was in the public interest, and that under the good cause exception of 5 U.S.C. 553(b)(B) of the APA, there appeared to be adequate justification to waive these requirements.

Subsequent to the issuance of the June 30, 1981 notice (46 FR 33638), we issued a revised schedule of limits on September 30, 1981 (46 FR 48010) to reflect changes made by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 96–499). In this revised schedule, we again published the wage index using the same methodology as was used in the June 30, 1981 notice (46 FR 33638).

On September 9, 1982, a Civil Action (No. 82–2520) was filed in the District Court for the District of Columbia by three hospitals located in the District of Columbia and the District of Columbia Hospital Association, which represents the interests of fifteen similar hospitals in the District of Columbia (the plaintiffs). This action was brought to enjoin the Secretary of HHS and the Administrator of HCFA (the defendants) from applying the 1981 schedule of Medicare hospital cost limits. The plaintiffs requested the court to enjoin the Secretary from reimbursing them under a cost limit based upon a wage index or wage index methodology different from that used in setting the 1980 cost limits, until the defendants complied with APA notice and comment procedures, that plaintiffs claimed were applicable. Plaintiffs' cost limit under the 1981 schedule was lower than it would have been if Federal hospital wage data had not been excluded from the computation of the wage index. The plaintiffs also requested the court to enjoin the Secretary from applying to plaintiff hospitals on a retroactive basis any new wage index methodology effected by defendants through subsequent notices published in the **Federal Register.**

In our response, we contended, consistent with the APA, that the June 30, 1981 **Federal Register** notice validly waived notice and comment procedures before effecting the change in the wage index computation.

On April 29, 1983, the Court: (1) Granted the plaintiffs' motion for summary judgment; (2) declared the exclusion of Federal hospital wage data without prior notice and comment to be in violation of the APA; (3) declared invalid the 1981 hospital cost limit schedule insofar as it incorporated or was formulated by using a hospital wage index that excluded Federal Government hospital data; and (4) ordered the defendants to publish a notice in the **Federal Register** stating that the 1981 schedule has been declared invalid with regard to the wage index. The Court delined, however, on the basis that it lacked subject matter jurisdiction, to enjoin the application of the limits, or to enjoin the Secretary

from retroactively applying any new schedule of limits that excludes Federal wage data.

Although the wage index appearing in the June 30, 1981 notice has been declared partially invalid by the Court, all other aspects of the cost limit methodology published in the notice remain in effect. The invalidation of the wage index is effective only for cost reporting periods beginning on or after July 1, 1981 and before October 1, 1982. It has no effect on the schedule of limits effective for cost reporting periods beginning on or after October 1, 1982 that was published in the September 30, 1982 **Federal Register** (47 FR 43296).

The Department is in the process of determining whether to issue a new notice for the 1981 period.

II. Impact Analyses

We have determined, and the Secretary certifies, that this notice does not meet any of the threshold criteria of Executive Order 12291 or the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)).

III. Paperwork Burden

This notice is being published to comply with the April 29, 1983 Court Order of the United States District Court for the District of Columbia. It contains no information collection requirements, and therefore, is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1980. (44 U.S.C. 3507).

Authority: Sections 1102, 1861(v)(1) and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x(v)(1) and 1395hh).

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

Dated: August 24, 1983.

Carolyne K. Davis,

Administrator, Health Care Financing Administration.

[FR Doc. 83-24060 Filed 8-31-83; 8:45 am]

BILLING CODE 4120-03-M

Utilization and Quality Control Peer Review Program; Solicitation of Comments on Proposed PRO Program Scope of Work

Correction

In FR Doc. 83-23522 beginning on page 39160 in the issue of Monday, August 29, 1983 please make the following correction:

Under **COMMENT DATE:**, line three, "October 11, 1983" should read "October 13, 1983".

BILLING CODE 1505-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Wyoming; Filing of Plats of Survey

Correction

In FR Doc. 83-22720, beginning on page 37534 in the issue of Thursday, August 18, 1983, make the following corrections.

On page 37535, first column:

1. In the third line "T. 15 N." should have read "T. 25 N.".

2. In the eleventh line "T. 15 N." should have read "T. 25 N.".

BILLING CODE 1505-01-M

[C-6483]

Colorado; Partial Termination of Classification

1. Recreation and Public Purposes Classification dated September 2, 1969, that classified the SE¼NE¼ of section 7, T. 1 N., R. 76 W., 6th P.M., Colorado as suitable for lease or sale to qualified state and local governments and nonprofit organizations, pursuant to the Recreation and Public Purposes Act of June 14, 1926 (44 Stat. 741, 43 U.S.C. 869), as amended, is hereby terminated, effective the date of this order, insofar as it affects the following described land:

Sixth Principal Meridian

T. 1 N., R. 76 W.,

Sec. 7, lot 5, (a portion of former SE¼NE¼)

The area described aggregates 33.79 acres in Grand County, Colorado.

2. The classification segregated the above land from all forms of appropriations under the public land laws, including location under the mining laws, except as to applications under the mineral leasing laws and application under the Recreation and Public Purposes Act.

3. The land, and mineral interests except oil and gas, are proposed to be approved for transfer to the State of Colorado under the provisions of Revised Statutes 2275, 2276 (43 U.S.C. 851, 852) (1976) and are hereby made available for that purpose. Therefore, the land will not be open to operation of the public land laws, except for selection by the State of Colorado, and the land will not be opended to the United States Mining laws.

The land has been and continues to be open to applications and offers for oil and gas leasing under the mineral leasing laws, subject to valid existing rights.

Inquiries concerning the land should be addressed to the Chief, Lands and General Mining Law Section, Branch of Lands and Minerals Operations, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202

Dated: August 22, 1983

Cecil Roberts,

Acting State Director

[FR Doc. 83-24113 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

[M 59171]

Montana; Invitation Coal Exploration License Application

Members of the public are hereby invited to participate with Western Energy Company in a program for the exploration of coal deposits owned by the United States of America in the following described lands located in Rosebud County, Montana:

T. 1 N., R. 39 E., P.M.M.,
Sec. 2: S½NW¼, S½
T. 1 N., R. 40 E., P.M.M.,
Sec. 6: Lots 1, 2, 3, 4, S½N½, S½;
Sec. 8: E½, N½NW¼
T. 2 N., R. 40 E., P.M.M.
Sec. 32: All.
2,121.00 acres.

Any party electing to participate in this exploration program shall notify, *in writing* both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107; and Western Energy Company, P.O. Box 1899, Billings, Montana 59103. Such written notice must refer to serial number M 59171 and be received no later that 30 calendar days after the last publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Forsyth Independent, whichever is later. This Notice will be published for 2 consecutive weeks.

This proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the District Mining Supervisor, Bureau of Land Management, 2525 4th Avenue North, Billings, Montana, and the Bureau of Land Management, Montana State Office, Granite Tower Building, 222 North 32nd Street, Billings, Montana. The exploration plan is available for public inspection at either of these offices at the addresses given.

Dated: August 26, 1983.

Robert T. Webb,

Chief, Branch of Solid Minerals.

[FR Doc. 83-24110 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

[M-59047]

Montana; Realty Action; Exchange of Public and Private Lands

AGENCY: Bureau of Land Management, Lewistown District Office, Interior.

ACTION: Notice of Realty Action M-59047, Exchange of public and private lands in Phillips County, Montana.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under Section 206 of the Federal Land Policy and Management act of 1976, 43 U.S.C. 1716:

Principal Meridian, Montana

T. 34 N., R. 29 E.,
Sec. 2: SE¼;
Sec. 14: NE¼.
Containing 320 acres.

In exchange for these lands, the United States Government will acquire the surface estate in the following described lands:

Principal Meridian, Montana

T. 33 N., R. 28 E.,
Sec. 5: Lots 1, 2, 3, and 4 and S½N½.
Containing 313.72 acres.

DATES: For a period of 45 days from the dates of first publication of this notice, interested parties may submit comments to the District Manager, Bureau of Land Management, Airport Road, Lewistown, Montana 59457. Any adverse comments will be evaluated by the State Director who may vacate or modify this realty action and issue a final determination. In the absence of any action by the State Director, this realty action will become the final determinatfon of this department.

FOR FURTHER INFORMATION CONTACT: Information related to this exchange including the environmental assessment and land report, is available for review at the Lewistown District Office, Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire a parcel of privately-owned land within a retention area. This land will be acquired to support a multiple use Federal program and the economy. The multiple use values include, but are not limited to recreation, wildlife habitat and livestock forage and efficiency of management.

The exchange is consistent with the Bureau's planning for the lands involved and has been discussed with State and local officials. The public interest will be well served by making the exchange. The publication of this notice segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States in accordance with 43 U.S.C. 945, for lands being transferred out of Federal ownership.

2. The reservation to the United States of oil and gas in the lands being transferred out of Federal ownership.

3. All valid existing rights (e.g. rights-of-way, easements, and leases of record).

4. Value equalization by cash payment or acreage adjustment.

5. The exchange must meet the requirements of 43 CFR 4110.4-2(b).

Dated: August 25, 1983.

Roy H. Oliver,

Acting District Manager.

[FR Doc. 83-24113 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Roseburg District Advisory Council; Meeting

Notice is hereby given that in accordance with Section 309 of the Federal Land Policy and Management Act (as amended), the Roseburg District Advisory Council will meet on October 7, 1983. The meeting will convene at 9:30 a.m. in the conference room at the Roseburg District Office, 777 N.W. Garden Valley Blvd., Roseburg, OR. Agenda items will include (1) discussion of the Record of Decision pertaining to the district's 10-year timber management plan, (2) review of the land sales scheduled for the first quarter of Fiscal Year 1984, (3) review of BLM's timber sale contract relief plan, and (4) brief discussion of FY '84 program goals.

All Council meetings are open to the public. Interested persons or organizations may make oral statements to the Council at 11:15 a.m., or they may file written statements for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager by September 30, 1983. Depending on the number of persons wishing to speak, a per person time limit may be established by the District Manager.

Summary minutes of each Council meeting will be maintained in the Roseburg District Office and will be available for public inspection and photocopying during regular business hours within 30 days following the meeting.

For additional information, contact Gary Majors, Public Information Officer, telephone (503) 672-4491.

Dated: August 25, 1983.

Melvin D. Berg,

Associate District Manager.

[FR Doc. 83-24114 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Yuma District Advisory Council; Meeting

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976 that the Yuma District Advisory Council will meet October 13, 1983, at 9:00 AM in the Parker City Council Chambers, 1314 11th, Parker, Arizona.

Agenda for the meeting will include:

1. District Manager's update.
2. Boundary designations for Wilderness Area Recommendations.
3. Long-term Visitor Fee policy.
4. Resource Management Plan update.
5. Long-term effects of high river flows on BLM.
6. Plans for future meetings.
7. Statements from the public.

The meeting is open to the public. Anyone wishing to make an oral statement must notify the District Manager at the Yuma District Office, 2450 S. Fourth Avenue, P.O. Box 5680, Yuma, Arizona 85364 by October 6, 1983. Written comments will also be accepted for consideration by the Council.

Summary minutes will be maintained in the District Office and will be available for public inspection and reproduction during regular business hours 30 days following the meeting.

Dated: August 25, 1983.

J. Darwin Snell,

District Manager.

[FR Doc. 83-24117 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Yuma District Advisory Council; Call for Nomination

Notice is hereby given in accordance with Section 309 of the Federal Land Policy and Management Act of 1976, that an opening on the Yuma District Advisory Council has occurred because of a member's inability to complete his term. The vacant position must be filled for the remainder of the term which ends December 31, 1984.

The Advisory Council is comprised of ten members who are balanced in terms of categories of interest represented. Nominees for this opening should be qualified to fill the "Non-renewable Resources" category.

DATE: Nominations should be received by the District Manager, Bureau of Land Management, P.O. Box 5680, Yuma Arizona 85364, by October 14, 1983.

DATED: August 29, 1983.

J. Darwin Snell,

District Manager.

[FR Doc. 83-24172 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Utah; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah

T. 5 S., R. 3 E.
T. 5 S., R. 4 E.
T. 6 S., R. 4 E.

These plats, in three (3) sheets, representing: (1) the dependent resurvey of a portion of the subdivisional lines and a portion of sections 37, 38, and 39, and the survey of the subdivision of certain sections and tract 40, T. 5 S., R. 3 E., Salt Lake Meridian, Utah; (2) the dependent resurvey of a portion of the First Standard Parallel South, a portion of the west boundary and a portion of the subdivision lines, and the survey of certain sections and parcels of T. 5 S., R. 4 E., Salt Lake Meridian, Utah; (3) the dependent resurvey of a portion of the subdivisional lines, and survey of certain sections and tracts of T. 6 S., R. 4 E., Salt Lake Meridian, Utah for Group 513, were accepted August 15, 1983.

These plats will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries relating to this land should be sent to the Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: August 26, 1983.

Darrell Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-24111 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Utah; Filing of Plat of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: These plats of survey of the following described land will be filed in the Utah State Office, Salt Lake City, Utah, immediately:

Salt Lake Meridian, Utah

T. 40 S., R. 21 E.
T. 40 S., R. 22 E.
T. 40 S., R. 23 E.

These plats, in three (3) sheets, representing: (1) The dependent resurvey of a portion of the Eighth Standard Parallel South, the east and north boundaries, and a portion of the subdivisional lines, and a partial subdivision of sections 25, 33, and 34, and a survey of the meander lines of the right bank of the San Juan River of T. 40 S., R. 21 E., Salt Lake Meridian, Utah; (2) the dependent resurvey of the north boundary, and a portion of the east boundary, and a portion of the subdivisional lines, and the survey of a portion of the subdivision of sections 28, 29, 30, and the meanders of the right bank of the San Juan River of T. 40 S., R. 22 E., Salt Lake Meridian, Utah; (3) the dependent resurvey of a portion of the west boundary of the Navajo Indian Reservation, and a portion of the north and east boundaries, and a portion of the subdivisional lines, and the survey of the subdivision of sections 4, 9, 10, and 11, and a portion of the meander lines of the San Juan River of T. 40 S., R. 23 E., Salt Lake Meridian, Utah for Group 592, were accepted August 15, 1983.

These pates will immediately become the basic record for describing the land for all authorized purposes. These plats have been placed in the open files and are available to the public for information only.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries relating to this land should be sent to the Utah State Office, Bureau of Land Management, 136 East South Temple, Salt Lake City, Utah 84111.

Dated: August 26, 1983.

Darrell Barnes,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 83-24112 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Colorado; Filing of Plats of Survey and Protraction Diagrams

August 23, 1983.

The plats of survey of the following described lands were officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective 10:00 a.m., August 23, 1983.

New Mexico Principal Meridian

T. 39 N., R. 9 W.

The plat representing the dependent resurvey of a portion of the First Guide Meridian West (east boundary), a portion of the west boundary and subdivisional lines and certain mineral survey claims, and the survey of the subdivision of certain sections, T. 39 N., R. 9 W., New Mexico Principal Meridian, Colorado, Group 681, was accepted August 11, 1983.

This survey was executed to meet certain administrative needs of the U.S. Forest Service.

Sixth Principal Meridian

T. 1 S., R. 84 W.

The plat representing the dependent resurvey of a portion of the Base Line through Range 84 West, portions of the south, east, and west boundaries and subdivisional lines, and the survey of the subdivision of certain sections, T. 1 S., R. 84 W., Sixth Principal Meridian, Colorado, Group 692, was accepted August 1, 1983.

New Mexico Principal Meridian

T. 49 N., R. 10 E.

The supplemental plat showing a subdivision of original Lot 9, and creating lots 13 through 18, in section 7, and showing a subdivision of original lot 13 in section 8, T. 49 N., R. 10 E., New Mexico Principal Meridian, Colorado, was accepted August 1, 1983.

This survey was executed, and the supplemental plat prepared, to meet certain administrative needs of this Bureau.

Sixth Principal Meridian

T. 9 S., R. 103 W.

The plat representing the dependent resurvey of a portion of the south, east, west, and north boundaries, and a portion of the subdivisional lines, T. 9 S., R. 103 W., Sixth Principal Meridian, Colorado, Group 741, was accepted August 11, 1983.

T. 9 S., R. 104 W.

The plat representing the dependent resurvey of a portion of the subdivisional lines, T. 9 S., R. 104 W., Sixth Principal Meridian, Colorado, Group 741, was accepted August 11, 1983.

Ute Meridian

T. 2 N., R. 3 W.

The plat representing the dependent resurvey of a portion of the west and north boundaries, subdivisional lines, and subdivision of sections 6 and 7, T. 2 N., R. 3 W., Ute Meridian, Colorado, Group 741, was accepted August 11, 1983.

These surveys were executed to meet certain administrative needs of the Bureau of Reclamation.

Protraction diagrams of the following described lands approved August 1, 1983, will be officially filed in the Colorado State Office, Bureau of Land Management, Denver, Colorado, effective October 12, 1983.

Sixth Principal Meridian

T. 1 S., R. 90 W.

Protraction Diagram No. 39, prepared to delineate the remaining unsurveyed public lands in T. 1 S., R. 90 W., Sixth Principal Meridian, Colorado, was approved August 1, 1983.

New Mexico Principal Meridian

T. 38 N., R. 3 E.

Protraction Diagram No. 40, prepared to delineate the remaining unsurveyed public lands in T. 38 N., R. 3 E., New Mexico Principal Meridian, Colorado, was approved August 1, 1983.

These diagrams were prepared to meet certain administrative needs of this Bureau.

All inquiries about these lands should be sent to the Colorado State Office, Bureau of Land Management, 1037 20th Street, Denver, Colorado 80202.

Kenneth D. Witt,

Chief Cadastral Surveyor for Colorado.

[FR Doc. 83-24167 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

[N-219]

Nevada; Notice to Partially Deny Proposed Withdrawal; Desert National Wildlife Range

Notice of the Fish and Wildlife Service application to withdraw the Desert National Wildlife Range (1,583,000 initial acres) from entry under the mining laws but not the mineral leasing laws, and to withdraw 59,621 acres from operation of the general public land laws, including the mining laws, but not the mineral leasing laws, to expand the range, was published in the **Federal Register**, FR Doc. 74-4474 on February 26, 1974, FR Doc. 74-7022 on March 27, 1974, as amended by FR Doc. 74-18501 on August 13, 1974; FR Doc. 80-10355 on April 7, 1980; FR Doc. 80-39045 on December 17, 1980. The expansion area is essential for future use as a utility transmission corridor. Therefore, the withdrawal application is denied as to the expansion area described below.

Mount Diablo Meridian, Nevada

T. 8 S., R. 61 E. (partially unsurveyed),
- Secs. 8 and 9;
- Sec. 10, W½, W½E½;
- Sec. 14, W½SW¼SW¼;
- Sec. 15, NW¼NE¼NE¼, S½NE¼NE¼, S½NE¼, NW¼NE¼, NE¼, S½;
- Secs. 16 to 22, inclusive;
- Sec. 23, W½NW¼, S½SE¼NW¼, NW¼, SE¼NW¼, SW¼;
- Sec. 25, SW¼NW¼, NW¼SW¼, S½SW¼;
- Secs. 26 to 35, inclusive;
- Sec. 36, NW¼NE¼, S½NE¼, NW¼, S½.

T. 8 S., R. 62 E.,
- Sec. 21, lots 3, 4, SE¼SW¼.

T. 9 S., R. 62 E.,
- Secs. 10, 14, 15, 22, 23, 26, 27, 34, and 35, those portions lying between the east boundary of the existing Desert National Wildlife Range (D.N.W.R.) to 1,200 feet west of the westerly line of the right-of-way of U.S. Highway 93.

T. 10 S., R. 62 E.,
- Secs. 2, 11, and 13, those portions lying between the east boundary of the existing D.N.W.R. to 1,200 feet west of the westerly line of the right-of-way of U.S. Highway 93;
- Sec. 14, NE¼, that portion lying between the east boundary of the existing D.N.W.R. to 1,200 feet west of the westerly line of the right-of-way of U.S. Highway 93, NE¼NW¼, SW¼SE¼;
- Sec. 23, SE¼NE¼, W½NE¼, E½SE¼;
- Sec. 25, SW¼SW¼;
- Sec. 36, N½, that portion lying between the east boundary of the existing D.N.W.R. to 1,200 feet west of the westerly line of the right-of-way of U.S. Highway 93.
- Sec. 36, S½, that portion lying between the east boundary of the existing D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93.

T. 11 S., R. 62 E.,
- Sec. 1, that portion lying between the east boundary of the existing D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93.

T. 11 S., R. 63 E.,
- Secs. 18, 19, 30, and 31, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93.

T. 12 S., R. 63 E.,
- Secs. 6, 7, 18, 19, 29, 30, and 32, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;
- Sec. 31.

T. 13 S., R. 63 E.,
- Secs. 5, 8, 17, 20, 28, 29, and 33, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;
- Secs. 6, 7, 18, 19, 30, 31, and 32.

T. 13½ S., R. 63 E. (unsurveyed),
- Secs. 31 and 32.
- Sec. 33, that portion lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;

T. 14 S., R. 63 E. (unsurveyed),
- Secs. 4, 9, 16, 21, 28, and 33, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;
- Secs. 5 to 8, inclusive, 17 to 20, inclusive, 29 to 32 inclusive;

T. 15 S., R. 63 E.,
- Secs. 4, 10, 15, 22, 27, and 34, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;
- Secs. 5 to 9, inclusive, 16 to 21, inclusive, and 28 to 33 inclusive.

T. 16 S., R. 63 E.,
- Secs. 4, 9, 16, 20, 29, and 32, those portions lying between the east boundary of the D.N.W.R. and the westerly line of the right-of-way of U.S. Highway 93;
- Secs. 5 to 8, inclusive, 17, 18, 19, 30, and 31;

The areas described above aggregate 59,621 acres in Clark County, Nevada.

Therefore, pursuant to regulations contained in 43 CFR 2310.2-1, at 10 a.m. on September 30, 1983, the above described lands will be relieved of the segregative effect of the above-mentioned application, as amended.

The lands have been and will remain open to the mineral leasing laws.

Inquiries concerning this action should be addressed to District Manager, Bureau of Land Management, 4765 Vegas Drive, P.O. Box 5400, Las Vegas, Nevada 89108.

Garrey E. Carruthers,

Assistant Secretary of the Interior.

August 25, 1983.

[FR Doc. 83-24152 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-84-M

Bureau of Reclamation

[INT-FES 83-44]

Industrial Water Service-Yellowtail-Boysen Reservoirs; Availability of Final Environmental Statement

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior has prepared a final environmental statement on sale of water from Boysen and Yellowtail Reservoirs. The Bureau proposed to make water service contracts for up to 300,000 acre-feet available through the year 2000 for coal-related industrial use in northeastern Wyoming and southeastern Montana.

Copies are avilable for inspection at the following locations:

Director, Office of Environmental Affairs,

Room 7622,
Bureau of Reclamation,
Washington, DC 20240,
Telephone: (202) 343-4991
Division of Management Support,
General Services, Library Section, Code 950,
Engineering and Research Center,
Denver Federal Center,
Denver, CO 80225,
Telephone: (303) 234-3019
Regional Director,
Bureau of Reclamation,
Federal Building,
316 North 26th,
Billings, MT 59103,
Telephone: (406) 657-6214

Single copies of the statement may be obtained on request to the Director, Office of Environmental Affairs, Bureau of Reclamation, or the Regional Director at the above addresses. Copies will also be available for inspection in libraries within the water marketing areas.

Dated: August 26, 1983.

Jed O. Christensen,

Acting Commissioner of Reclamation.

[FR Doc. 83-74151 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-09-M

Minerals Management Service

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Chevron U.S.A. Inc.

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the receipt of a proposed development and production plan.

SUMMARY: Notice is hereby given that Chevron U.S.A. Inc. has submitted a Development and Production Plan describing the activities it proposes to conduct on Lease OCS–G 1240, Block 51, South Timbalier Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code Federal of Regulations.

Dated: August 21, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-24109 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-MR-M

Oil and Gas and Sulphur Operations in the Outer Continental Shelf; Exxon Co., U.S.A.

AGENCY: Minerals Management Service, U.S. Department of the Interior.

ACTION: Notice of the Receipt of a Proposed Development and Production Plan.

SUMMARY: Notice is hereby given that Exxon, U.S.A. has submitted a Development and Production Plan describing the activities it proposes to conduct on Leases OCS–G 1619 and 1620, Blocks 93 and 94, South Pass Area, offshore Louisiana.

The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendment of 1978, that the Minerals Management Service is considering approval of the Plan and that it is available for public review at the Office of the Regional Manager, Gulf of Mexico OCS Region, Minerals Management Service, 3301 North Causeway Blvd., Room 147, Metairie, Louisiana 70002.

FOR FURTHER INFORMATION CONTACT: Minerals Management Service, Public Records, Room 147, open weekdays 9 a.m. to 3:30 p.m., 3301 North Causeway Blvd., Metairie, Louisiana 70002, Phone (504) 838-0519.

SUPPLEMENTARY INFORMATION: Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in Development and Production Plans available to affected States, executives of affected local governments, and other interested parties became effective December 13, 1979, (44 FR 53685). Those practices and procedures are set out in a revised § 250.34 of Title 30 of the Code Federal Regulations.

Dated: August 25, 1983.

John L. Rankin,

Regional Manager, Gulf of Mexico OCS Region.

[FR Doc. 83-24109 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service

Revised Boundary Map; Lower Saint Croix National Scenic Riverway

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of revised boundary map; Lower Saint Croix National Scenic Riverway.

The boundary of the Saint Croix National Scenic Riverway has been revised to exclude many parcels of land not visible from the Lower Saint Croix River. Several parcels of land were added to the boundary primarily by the acquisition of uneconomical remnants. This boundary revision is authorized by 16 U.S.C. 4601–9(c).

The net acreage changed as a result of the deletions, and additions to the boundary will be an overall increase of 82 acres of land.

Copies of the revised map (Map Number DSC 643–80,001) are on file and available for inspection at the following addresses:

Director, National Park Service, Department of the Interior, Washington, D.C. 20240
Regional Director, Midwest Region, National Park Service, 1709 Jackson Street, Omaha, Nebraska 68102
Superintendent, Saint Croix National Scenic Riverway and Lower Saint Croix River, P.O. Box 708, St. Croix Falls, Wisconsin 54024

Dated: June 30, 1983.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 83-24078 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-70-M

Cuyahoga Valley National Recreation Area Advisory Commission; Meeting

Notice is hereby given, in accordance with the Federal Advisory Committee Act, 86 Stat. 770, 5 U.S.C. App. 1, as amended by the Act of September 13, 1976, 90 Stat. 1247, that a meeting of the Cuyahoga Valley National Recreation Area Advisory Commission will be held beginning 8:30 a.m. (EST), on Thursday, September 22, 1983, at the Happy Days Visitor Center located on West Streetsboro Road, 1 mile west of Route 8 in Peninsula, Ohio.

The Commission was established by the Act of December 27, 1974, 88 Stat. 1788, 16 U.S.C. 460ff–4, to meet and consult with the Secretary of the Interior on matters relating to the administration and development of the Cuyahoga Valley National Recreation Area.

The members of the Commission are as follows:

Mrs. Tommie Patty (Chairperson)
Mr. John Craig
Mr. Norman A. Godwin
Mrs. William Hutchison
Mr. James S. Jackson
Mrs. George Klein
Mr. Stanley Mottershead
Mr. C. W. Eliot Paine
Mr. Melvin J. Rebholz
Mr. F. Eugene Smith
Ms. R. Robbie Stillman
Mr. Barry K. Sugden
Dr. Robert W. Teater

Matters to be discussed at this meeting include:

1. Update on Land Protection Plan
2. Draft Trail Plan

The meeting will be open to the public. It is expected that about 100 persons, in addition to members of the Commission, will be able to attend this meeting. Interested persons may submit written statements. Such statements should be submitted to the official listed below prior to the meeting.

Further information concerning this meeting may be obtained from Lewis S. Albert, Superintendent, Cuyahoga Valley National Recreation Area, 15610 Vaughn Road, Brecksville, Ohio, 44141, telephone (216) 526–5256. Minutes of the meeting will be available for public inspection 3 weeks after the meeting, at the office of Cuyahoga Valley National Recreation Area, located at 15610 Vaughn Road, Brecksville, Ohio 44141.

Dated: August 25, 1983.

Randall R. Pope,

Acting Regional Director, Midwest Region.

[FR Doc. 83-24181 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-70-M

Golden Gate National Recreation Area Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area Advisory Commission will be held at 7:30 p.m. (PDT) on Wednesday, September 14, 1983, at the Command Conference Center, Canby Street and Keyes Avenue, Presidio of San Francisco.

The Advisory Commission was established by Pub. L. 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin and San Francisco Counties.

Members of the Commission are as follows:

Mr. Frank Boerger, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Mr. Richard Bartke
Mr. Fred Blumberg
Ms. Margot Patterson Doss
Mr. Jerry Friedman
Ms. Daphne Greene
Mr. Peter Haas, Sr.
Mr. Burr Heneman
Mr. John Jacobs
Ms. Gimmy Park Li
Mr. John Mitchell
Mr. Merritt Robinson
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams

The major agenda item for this meeting will be discussion of Presidio construction plans for Fiscal Year 84.

The meetings are open to the public. Any member of the public may file with the Commission a written statement concerning the matters to be discussed.

Persons wishing to receive further information on this meeting or who wish to submit written statements may contact John H. Davis, General Superintendent of the Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123; telephone (415) 556–2920.

Minutes of this meeting will be available for public information by October 15, 1983 in the Office of the Superintendent, Golden Gate National Recreation Area, Fort Mason, San Francisco, California 94123.

Dated: August 30, 1983.

Jean C. Henderer,

Chief, Cooperative Activities Division.

[FR Doc. 83-24182 Filed 9-1-83; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the fifty-seventh meeting of the Board for International Food and Agricultural Development (BIFAD) on September 29, 1983.

The purpose of the meeting is to hear a report on the activities of the Joint Committee on Agricultural Research and Development (JCARD); discuss a report on ground rules for university graduation from Strengthening Grants and participation in Memoranda of Understanding, and a critique of regional strategic plans; and consider applications by University of Georgia and Prairie View A&M for Strengthening Grants, and applications by Western Illinois University and University of Michigan for Title XII roster status. The Board will also receive a presentation on a Farming Systems project in Swaziland, and a status report on the Joint Career Corps.

The meeting will begin at 9:00 a.m. and adjourn at 3:15 p.m., and will be held in Room 150, National Academy of Sciences Building, Washington, D.C. Enter building from C Street (between 21st and 22nd Streets, N.W.) opposite the State Department building. The meeting is open to the pubic. Any interested person may attend, may file written statements with the Board before or after the meeting, or may present oral statements in accordance with procedures established by the Board, and to the extent the time available for the meeting permits.

Dr. Erven J. Long, Coordinator, Research and University Relations, Bureau for Science and Technology, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this meeting. It is suggested that those desiring further information write to him in care of the Agency for International Development, International Development Cooperation Agency, Washington, D.C. 20523, or telephone him at (703) 235–8929.

Dated: August 29, 1983.

Erven J. Long,

A.I.D. Advisory Committee Representative, Board for International Food and Agricultural Development.

[FR Doc. 83-24194 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

President's Task Force on International Private Enterprise; Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting sponsored by the President's Task Force on International Private Enterprise which will be held September 19–20, 1983 at the U.S. State Department.

This will be the fourth meeting of the Task Force.

The meeting will be open to the public. The agenda includes an update on Task Force activities and a discussion of key issues. Outside

experts will make presentations on subjects of interest to the Task Force. Any interested person may attend, request to appear before, or file statements with the Task Force in accordance with procedures established by the Task Force. Written statements should be filed prior to the meeting and should be available in twenty-five copies.

There will be an AID representative at the meeting. It is suggested that those desiring further information contact Birge Watkins, Assistant Director, on (202) 632-3372 or by mail c/o The President's Task Force on International Private Enterprise, Agency for International Development, Room 5883, Washington, D.C. 20523.

Dated: August 26, 1983.

Edgar C. Harrell,

Acting Assistant Administrator, Bureau for Private Enterprise.

[FR Doc. 83-24169 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.130]

Redelegation of Authority Regarding Contracting Functions; Robert A. Doucette

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), I hereby redelegate to Robert A. Doucette, the authority to sign the following documents up to an amount of Five Million Dollars ($5,000,000) (or local currency equivalent) per transaction:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), cooperative agreements, interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under non-personal services contracts with individuals.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

This redelegation of authority shall be effective immediately.

Dated: August 5, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24090 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.97, Amendment No. 3]

Redelegation of Authority Administrator for Management; Robert Gibson

Pursuant to the authority delegated to me by Redelegation of Authority No. 99.1 from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), as amended, I hereby revoke Redelegation of Authority No. 99.1.97 to Robert Gibson.

This revocation is effective on the date of signature.

Dated: May 24, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24097 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.125, Amendment No. 1]

Delegation of Contracting Officer Authority to Gerald P. Gold

Pursuant to the authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant to the Administrator for Management, Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.125, dated August 14, 1981, (46 FR 42938 and 42939), as follows:

Delete subheads (1) through (5) in the first paragraph and substitute the following subheads (1) through (3):

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, cooperative agreements, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

Except as provided herein, this Redelegation of Authority remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: May 25, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24095 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

Redelegation of Authority No. 99.1.126

Redelegation of Authority Regarding Contracting Functions; Wesley L. Hawley

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), I hereby redelegate to Wesley L. Hawley, th authority to sign the following documents up to an amount of Five Million Dollars ($5,000,000) (or local currency equivalent) per transaction:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), cooperative agreements, interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of the authority of the Director, Office of Contract Management, to exercise any of the functions redelegated.

Ths redelegation of authority shall be effective immediately.

Dated: May 23, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24100 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.131]

Redelegation of Authority Regarding Contracting Functions; Peter J. Howley

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), I hereby redelegate to Peter J. Howley, the authority to sign the following documents up to an amount of Five Million Dollars ($5,000,000) (or local currency equivalent) per transaction:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), cooperative agreements, interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

This redelegation of authority shall be effective immediately.

Dated: August 5, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24089 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.89]

Redelegation of Authority Regarding Contracting Functions; Stanley R. Nevin

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), I hereby redelegate to Stanley R. Nevin the authority to sign the following documents up to an amount of Five Million Dollars ($5,000,000) (or local currency equivalent) per transaction:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), cooperative agreements, interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised, and is not in derogation of the authority of the Director, office of Contract Management, to exercise any of the functions herein redelegated.

Redelegation of Authority No. 99.1.89 (42 FR 40803) dated August 11, 1977, as amended, is hereby revoked.

This redelegation of authority shall be effective on the date of signature.

Dated: May 12, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24090 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.127]

Redelegation of Authority Regarding Contracting Functions; Fred E. Obey

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), I hereby redelegate to Fred E. Obey, the authority to sign the following documents up to an amount of Five Million Dollars ($5,000,000) (or local currenty equivalent) per transaction:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), cooperative agreements, interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

This redelegation of authority shall be effective immediately.

Dated: June 8, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24093 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.87, Amendment No. 4]

Delegation of Contracting Officer Authority to Raymond J. Potocki

Pursuant to the Authority delegated to me under Redelegation of Authority No. 99.1 (38 FR 12836), as amended, from the Assistant to the Administrator for Management, Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.87, dated August 3, 1977, (42 FR 39286), as follows:

Delete subheads (1) through (5) in the first paragraph and substitute the following subheads (1) through (3):

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, cooperative agreements, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

Except as provided herein, the Redelegation of Authority, as previously amended, remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: May 25, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24096 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.114, Amendment No. 2]

Delegation of Contracting Officer Authority to John Stuart

Pursuant to the Authority delegated to me under Redelegation of Authority N. 99.1 (38 FR 12836), as amended, from the Assistant to the Administrator for Managment, Agency for International Development, I hereby amend Redelegation of Authority No. 99.1.114, dated August 8, 1980, (45 FR 57604), as follows:

Delete subheads (1) through (5) in the first paragraph and substitute the following subheads (1) through (3):

(1) U.S. Government contracts, grants (other than grants to foreign government or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, cooperative agreements, and amendments thereto.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

Except as provided herein, the Redelegation of Authority, as previously amended, remains unchanged and continues in full force and effect.

This amendment is effective on the date of signature.

Dated: May 24, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24098 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.206]

Redelegation of Authority Regarding Contracting Functions; Mission Director, USAID/Egypt

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Director, USAID, Egypt, the authority to sign the following instruments:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and cooperative agreements, and amendments thereto, up to an amount of Five Million Dollars (or local currency equivalent) per transaction.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities herein delegated in (1) and (2) above may be redelegated in writing, in whole or in part, by said Mission Director as follows:

(a) Basic contracting authority up to $100,000 and authority up to $300,000 for personal services contracts may be redelegated at the Mission Director's discretion.

(b) Basic contracting authority over $100,000 and over $300,000 for personal services contracts, may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the case of a redelegation to the Mission Director's principal deputy).

The authority herein delegated in (3) above is redelegable only with prior concurrence from the Office of Contract Management.

Such redelegation shall remain in effect until revoked by the Mission Director, or upon advice from the Director, Office of Contract Management, that his concurrence in a redelegation is withdrawn, whichever shall first occur. The authority so delegated by the Mission Director may not be further redelegated.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

The authorities herein delegated to the Mission Director may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Redelegation of Authority No. 99.1.83 (42 FR 8037), dated January 28, 1977, as amended, and Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated may 26, 1978, as amended, are hereby revoked.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or susperseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority shall be effective on the date of signature.

Dated: June 13, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24092 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.205]

Redelegation of Authority Regarding Contracting Functions; Mission Director, USAID/Indonesia

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Director, USAID, Indonesia, the authority to sign the following instruments:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and cooperative agreements, and amendments thereto, up to an amount of Five Million Dollars (or local currency equivalent) per transaction.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including

those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under nonpersonal services contracts with individuals.

The authorities herein delegated in (1) and (2) above may be redelegated in writing, in whole or in part, by said Mission Director as follows:

(a) Basic contracting authority up to $100,000 and authority up to $300,000 for personal services contracts may be redelegated at the Mission Director's discretion.

(b) Basic contracting authority over $100,000 and authority over $300,000 for personal services contracts, may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the case of a redelegation to the Mission Director's principal deputy).

The authority herein delegated in (3) above is redelegable only with prior concurrence from the Office of Contract Management.

Such redelegations shall remain in effect until revoked by the Mission Director, or upon advice from the Director, Office of Contract Management, that his concurrence in a redelegation is withdrawn, whichever shall first occur. The authority so delegated by the Mission Director may not be further redelegated.

The authorities delegated herein are to be exercised in accordance with regulations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

The authorities herein delegated to the Mission Director may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Redelegation of Authority No. 99.1.105 (44 FR 2051), dated December 18, 1978, as amended, and Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated May 26, 1978, as amended, are hereby revoked.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority shall be effective on the date of signature.

Dated: July 27, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24091 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

[Redelegation of Authority No. 99.1.204]

Redelegation of Authority Regarding Contracting Functions; Mission Director, USAID/Philippines

Pursuant to the authority delegated to me as Director, Office of Contract Management, under Redelegation of Authority No. 99.1, from the Assistant to the Administrator for Management, dated May 1, 1973 (38 FR 12836), as amended, I hereby redelegate to the Mission Director, USAID, Philippines, the authority to sign the following instruments:

(1) U.S. Government contracts, grants (other than grants to foreign governments or agencies thereof), interagency service agreements (IASAs) between A.I.D. and other U.S. Government agencies, and cooperative agreements, and amendments thereto, provided that the aggregate amount of each individual contract, grant, or cooperative agreement does not exceed $300,000 or local currency equivalent.

(2) To make findings and determinations with respect to advance payments to nonprofit organizations that collect no fee for services including those financed by Federal Reserve letters of credit, and to approve the contract, cooperative agreement, and grant provisions relating to such advance payments.

(3) To approve advances under non-personal services contracts with individuals.

(4) To sign Operational Program Grants (OPGs) to U.S. private voluntary organizations (PVOs), as defined in Appendix 4B, Chapter 4, AID Handbook 3, *Project Assistance*, and in accordance with the procedures of Chapter 4, AID Handbook 13, *Grants*, on the following basis:

(a) Such OPG's shall not exceed $1,000,000 for the life of project; and

(b) Each OPG shall constitute assistance; and

(c) The post must be advised by AID/W, prior to signing the OPG that Congress has been notified and funds have been allotted.

The authorities herein delegated in (1) and (2) above may be redelegated in writing, in whole or in part, by said Mission Director as follows:

(a) Basic contracting authority up to $100,000 and authority up to $300,000 for personal services contracts may be redelegated at the Mission Director's discretion.

(b) Basic contracting authority over $100,000 may be redelegated with the prior concurrence of the Director, Office of Contract Management (except that such prior concurrence is not required in the case of a redelegation to the Mission Director's principal deputy).

The authorities herein delegated in (3) and (4) above are not redelegable.

Such redelegations shall remain in effect until revoked by the Mission Director, or upon advice from the Director, Office of Contract Management, that his concurrence in a redelegation is withdrawn, whichever shall first occur. The authority so delegated by the Mission Director may not be further redelegated.

The authorities delegated herein are to be exercised in accordance with regluations, procedures, and policies promulgated within A.I.D. and in effect at the time this authority is exercised and is not in derogation of the authority of the Director, Office of Contract Management, to exercise any of the functions herein redelegated.

The authorities herein delegated to the Mission Director may be exercised by duly authorized persons who are performing the functions of the Mission Director in an acting capacity.

Redelegation of Authority No. 99.1.74 (43 FR 1927 and 1928), dated January 13, 1975, as amended, and Redelegation of Authority No. 99.1.95 (43 FR 24927 and 24928), dated May 26, 1978, as amended, are hereby revoked.

Any official actions taken prior to the effective date hereof by officers duly authorized pursuant to delegations revoked hereunder are hereby continued in effect, according to their terms, until modified, revoked, or superseded by action of the officer to whom I have delegated relevant authority in this delegation.

This redelegation of authority shall be effective on the date of signature.

Dated: May 31, 1983.

Hugh L. Dwelley,

Director, Office of Contract Management.

[FR Doc. 83-24094 Filed 9-1-83; 8:45 am]

BILLING CODE 6116-01-M

INTERSTATE COMMERCE COMMISSION

Motor Carriers; Abbey Medical Inc. et al.; Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: American Hospital Supply Corporation, One American Plaza, Evanston, Illinois 60201.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporations:

Name of subsidiary	Jurisdiction in which incorporated
(i) Abbey Medical Inc	Delaware.
(ii) Abbey Medical/Abbey Rents, Inc	Do.
(iii) Abbey Endicott, Inc	Do.
(iv) AHS/International, Inc	Do.
(v) Airlife, Inc	California.
(vi) American Hospital Supply Corporation de Puerto Rico, S.A.	Puerto Rico.
(vii) Amo del Caribe, Inc	Delaware.
(viii) Amar-Stone del Caribe, Inc	Do.
(ix) Amar-Stone, Inc	Do.
(x) Bentley Puerto Rico, Inc	Do.
(xi) Dade Diagnostics, Inc	Do.
(xii) Edwards Laboratories, Inc	California.
(xiii) Heyer-Schulte del Caribe, Inc	Delaware.
(xiv) McGaw Laboratories, Inc	Do.
(xv) Pharmaseal Corporation	Ohio.
(xvi) Pharmaseal, Inc	Delaware.
(xvii) Pharmaseal Laboratories, Inc	Do.
(xviii) V. Mueller del Caribe, Inc	Illinois.
(xix) American Kay, Inc	Delaware.
(xx) American Pharmaseal Laboratories	California.
(xxi) American Micro-Scan, Inc	New Jersey.
(xxii) American Bentley, Inc	Delaware.
(xxiii) American Hospital Supply International Sales Corporation.	California.
(xxiv) Bio-Science Enterprises	Do.
(xxv) CLMG, Inc	Do.
(xxvi) Pathology Associates, Inc	Delaware.
(xxvii) Cirmex de Chihuahua, S.A. de C.V.	Mexico.
(xxviii) Convertors de Mexico, S.A. de C.V.	Do.
(xxix) I-M, Inc	Kentucky.
(xxx) Instranetics, Inc	California.
(xxxi) McGaw Supply Ltd.	Canada.
(xxxii) Kopp Laboratories Limited	Do.
(xxxiii) Pharmaseal de Mexico, S.A. de C.V.	Mexico.
(xxxiv) American Plastics Corporation	Colorado.
(xxxv) Productos Urologos de Mexico, S.A.	Mexico.
(xxxvi) Medi-Vac Corporation	Texas.
(xxxvii) Taylor Surgical Supply, Inc	Do.
(xxxviii) Taylor Home Health, Inc	Do.
(xxxix) Westco Leasing, Inc	Do.
(xxxx) Taylor Surgical Supply of Houston, Inc.	Do.
(xxxxi) Taylor Surgical Supply of Beaumont, Inc.	Do.
(xxxxii) Scientific Manufacturing Industries, Inc.	Delaware.

(1) Parent corporation and address of principle office: Continental Grain Company, 277 Park Avenue, New York, N.Y. 10172.

(2) Wholly owned subsidiaries which will participate in the operations, and state of incorporation:

(i) Oroweat Foods Co., 777 W. Putnam Avenue, Greenwich, CT 06830, a Delaware corporation.

(ii) BHL Transport, Inc., 777 W. Putnam Avenue, Greenwich, CT 06830, a Delaware corporation.

(iii) Continental Milling Corp., 277 Park Avenue, New York, N.Y. 10172, a Delaware corporation.

(iv) Baronet Corporation, 375 County Avenue, Secaucus, N.J. 07904, a New Jersey corporation.

(1) Parent corporation: Cross Eastern, Inc. 1080 N.W. 70th St., Ft. Lauderdale, FL 33309.

(2) Wholly owned subsidiaries: Cross Eastern Contracts, Inc.—Florida; Cross Eastern Remodeling, Inc.—Florida; Thermowood, Inc.—Florida; Thermowood West, Inc.—Florida.

1. Parent corporation and address of principal office: Etherington Industries, Inc., River and Lloyd Streets, P.O. Drawer 706, New Haven, CT 06503.

2. Wholly-owned subsidiaries which will participate in the operations, and state(s) of incorporation:

(i) The Accurate Threaded Products Company—Connecticut
(ii) The Bigelow Company—Connecticut
(iii) The Edward John Company—Connecticut
(iv) Fasteners from America, Inc.—Connecticut
(v) Harold International, Inc.—New York
(vi) I. S. Spencer, Inc.—Connecticut
(vii) Marine Fashion, Inc.—Connecticut
(viii) Northern Contractors & Industrial Supply—Connecticut
(ix) National Pipe Bending, Inc.—Connecticut
(x) Saybrook Marine Service, Inc.—Connecticut
(xi) Specialty Plastics Corporation—Connecticut
(xii) The Stanley P. Rockwell Company—Connecticut
(xiii) U.S. Prolam, Inc.—Connecticut

1. Parent corporation and address of principal office: HLB Companies Inc., 10520 Plano Road, Suite 110, Dallas, Texas 75238.

2. Wholly-owned subsidiaries which will participate in the operations, and State(s) of incorporation:

(i) CAM Audio, Inc., incorporated in the State of Texas. CAM Audio, Inc., also does business under the following assumed names, which have been registered pursuant to the Texas Assumed Business or Professional Name Act, Tex. Bus. & Comm. Code Ann. § 36.11 (Vernon Supp. 1983): Audio Video Designs and The Label Company.

(ii) Hay Van Company, incorporated in the State of Delaware.

(iii) Norman Laboratories Inc., incorporated in the State of Texas.

(iv) SJB Distributors, Inc., incorporated in the State of Texas. SJB Distributors, Inc., also does business under the following assumed names, which have been registered pursuant to the Texas Assumed Business or Professional Name Act, Tex. Bus. & Comm. Code Ann. § 36.11 (Vernon Supp. 1983): Electro Systems Engineering, Professional Computer Services, and Casual Computers.

(1) Parent corporation and address of principal office: RPM, INC., 2628 Pearl Road, P.O. Box 777, Medina, Ohio 44258.

(2) Wholly-owned subsidiaries which will participate in the operations together with states of incorporation:

I. Republic Powdered Metals, Inc.—Ohio
II. Bondex International, Inc.—Ohio
III. Tropical Industrial Coatings, Inc.—Ohio
IV. Proko Industries, Inc.—Texas
V. Mameco International, Inc.—Ohio
VI. The Dean & Barry Company, Inc.—Ohio
VII. Gates Engineering Company, Inc.—Delaware

I. Parent Corporation and Address of Principal Office: Springs Industries, Inc., 205 North White Street, Fort Mill, South Carolina 29715.

II. Wholly owned subsidiaries which will participate:

(i) Graber Industries, Inc., a Delaware Corporation.

(ii) Springs Transport, Inc., a South Carolina Corporation.

1. The parent corporation is White Cap Pine Oil Company, with its principal office located at 411 Powhatan Avenue, Lester, Pennsylvania 19113.

2. E.B. Evans Corporation, having its principal place of business located at 240 West Lippincott Street, Philadelphia, Pennsylvania 19133, is the wholly-owned subsidiary which will participate in the operations in Pennsylvania, its state of incorporation.

A. Name and address of parent corporation or organization: Worthington Industries, Inc., 1205 Dearborn Drive, Columbus, Ohio 43085.

B. Wholly-owned subsidiaries:

1. The Worthington Steel Company (a Maryland corporation)
2. The Worthington Steel Company (an Illinois corporation)
3. The Worthington Steel Company (a North Carolina corporation)
4. Worthington Cylinder Corporation.
5. Worthington Acquisition Corp. a. Subsidiary of Worthington Acquisition Corp. i. U-Brand Corporation

6. Worthington Industries of Puerto Rico, Inc. (Delaware) a. Subsidiary of Worthington Industries of Puerto Rico, Inc. i. U–Brand Corporation of Puerto Rico (Puerto Rico)
7. MowSafe Products, Inc.
8. I. H. Schlezinger & Sons, Inc.
9. Buckeye International, Inc. a. Subsidiaries of Buckeye International, Inc. i. Warren Molded Plastics, Inc. ii. B–I Sales, Inc. (Michigan) iii. Buckeye Energy Company, Inc. iv. Buckeye International Development, Inc. v. Bethandale Corporation
10. Advanced Coating Technology, Inc.

Notes.—All corporations are Ohio corporations unless otherwise noted.

Unincorporated divisions are not separately identified.

Except as follows, all subsidiaries are 100% owned. Worthington Industries owns 99.9% of Advanced Coating Technology, Inc. and has the right to acquire the remaining 0.1%.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–24144 Filed 9–1–83; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 159)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Jefferson County, AL; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 10.88-mile line of railroad between milepost 729.28 near Pratt City and milepost 740.16 near Bessemer in Jefferson County, AL. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person offered financial assistance (through subsidy purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Railroad Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–24145 Filed 9–1–83; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–6 (Sub-No. 156)]

Rail Carriers; Burlington Northern Railroad Co.; Abandonment in Lancaster and Seward Counties, NE; Findings

The Commission has issued a certificate authorizing the Burlington Northern Railroad Company to abandon its 18.90-mile rail line between milepost 6.00 near Woodlawn and milepost 24.90 near Seward, in Lancaster and Seward Counties, NE. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–24146 Filed 9–1–83; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 35)]

Rail Carriers; Missouri Pacific Railroad Company; Abandonment in Cape Girardeau County, MO; Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company to abandon its 18.4-mile rail line between Delta (milepost 149.5) and Jackson (milepost 163.5) in Cape Girardeau County, MO. A certificate will be issued authorizing this abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offererd financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB–OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–24147 Filed 9–1–83; 8:45 am]

BILLING CODE 7035–01–M

[Docket No. AB–3 (Sub-No. 37)]

Rail Carriers; Missouri Pacific Railroad Co.; Abandonment in Washington County KS; Notice of Findings

The Commission has issued a certificate authorizing the Missouri Pacific Railroad Company to abandon its 6.9-mile line of railroad between milepost 443.9 near Greenleaf and milepost 450.8 at Washington in Washington County, KS. The abandonment certificate will become effective 30 days after this publication unless the Commission also finds: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from publication of this Notice. The following notation shall be typed in bold face on the lower lefthand corner of the envelope containing the offer "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83–24148 Filed 9–1–83; 8:45 am]

BILLING CODE 7035–01–M

[Ex Parte No. 328]

Rail Carriers; Investigation of Tank Car Allowance System

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Postponement of Tank Car Allowance Update.

SUMMARY: Under authority of 49 U.S.C. 10324(b) and 5 U.S.C. 553, the Interstate Commerce Commission postpones from September 1, 1983 until December 1, 1983, the last date when any tariff resulting from the 1983 annual update of the rail tank car allowance may become effective.

DATE: This action is effective August 31, 1983.

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 2227, Interstate Commerce Commission, Washington, DC 20423, or call 289–4357 (D.C. Metropolitan area) or toll free (800) 424–5403.

Decided: August 29, 1983.

By the Commission, Chairman Taylor, Vice Chairman Sterrett, Commissioners Andre and Gradison.

Agatha L. Mergenovich,

Secretary.

[FR Doc. 83-24149 Filed 9-1-83; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 13-83]

Privacy Act of 1974; Modification of System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Rights Division, Department of Justice hereby publishes notice of changes to a system of records most recently published on November 17, 1980 in **Federal Register** Volume 45, page 75911, and identified as the Civil Rights Division Employee Travel Reporting system, JUSTICE/CRT–009.

The system notice is reprinted below to change the name of the system to "Civil Rights Division Travel Reports, JUSTICE/CRT–009" so that it more accurately describes the records therein. The categories of individuals covered by the system now include all persons who have filed official travel authorization forms or travel voucher forms with the Division. In addition to Division employees, these people include Department employees who are temporarily detailed to the Civil Rights Division, prospective prefiling experts, prospective applicants for senior Division positions, and other personnel authorized to charge travel to the Division budget. The word "employees" in the "Categories of individuals covered by the system" section of the previous notice has been replaced by the word "persons" in the same section of the notice reprinted below to reflect the expanded coverage of this system. Related changes have been made to the "Categories of records in the system," "Record source categories," and "Retrievability" sections of the notice.

In addition, the notice has been revised to reflect minor clarifying changes or factual corrections to the sections of the notice entitled "Routine uses of records * * *," "Authority for maintenance of the system," "Safeguards," "Retention and disposal," and "Record access procedures."

These system modifications have been reported to the Office of Management and Budget and the Congress.

Dated: August 10, 1983.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CRT-009

SYSTEM NAME:

Civil Rights Division Travel Reports.

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All persons who have filed travel authorization forms or travel voucher forms for official travel on behalf of the Civil Rights Divisions.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains information concerning travel expenditures which were recorded on travel authorization forms (Form OBD–1) and travel voucher forms (Forms OBD–157 and SF–1012) by Division employees or other persons authorized to travel for the Division and submitted to the Budget and Finance Branch of the Civil Rights Division from Fiscal Year 1972 to the present.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The records in this system are used to make monthly reports to the Executive Office, Civil Rights Division, and to the Budget and Finance Branch, Civil Rights Division, for use in controlling and reviewing Division expenditures. Copies of individual's reports may be disclosed to the individual when appropriate forms are not submitted following a return from travel status.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records in the system are stored on magnetic tape and on computer punch cards, and on monthly reports printed on computer. Individual vouchers and travel authorization forms are stored in file jackets.

RETRIEVABILITY:

Records in this system are retrieved by the names of those individuals identified under the caption "Categories of individuals covered by the system."

SAFEGUARDS:

Information in the system is unclassified. However, the records are protected in accordance with applicable Department security regulations for systems of records. Records are stored

in locked cabinets and access to the computer is limited to those personnel who have a need for access to perform their official duties.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When not longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition will be in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above.

RECORD ACCESS PROCEDURES:

Requests by former employees for access to records in this system may be made in writing with the envelope and letter clearly marked "Privacy Act Request". The request should clearly state the dates on which official travel was taken. The requestor should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager. Present employees may request access by contacting the System Manager directly.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reason for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information are the Civil Rights Division employees and other authorized persons who file travel authorization and travel voucher forms.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-24122 Filed 9-1-83; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 14-83]

Privacy Act of 1974; Modification of System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Rights Division (CRT), Department of Justice hereby publishes notice of modifications to the Central Civil Rights Division Index File and Associated Records system, JUSTICE/CFR-001, most recently published on November 17, 1980, in **Federal Register** Volume 45, page 75909.

Modifications to the system notice include (a) revision of the "Storage," "Retrievability," and "Safeguards" sections to reflect that JUSTICE/CRT-001 records have been automated; (b) revision of the section entitled "Categories of individuals covered by the system" to provide more specificity as to the categories of individuals covered and, in particular, to add the names of CRT employees who handle complaints and case litigation; (c) revision of the section entitled "Categories of records in the system" to provide more specificity by identifying the categories of records maintained by the respective sections of CRT; (d) minor clarifying changes and factual corrections to the sections entitled "System location," "Authority for maintenance of the system," "Routine uses of records * * *," "Retention and disposal," "System manager(s) and address," and "Record access procedures."

These system modifications have been reported to the Office of Management and Budget and the Congress.

Dated: August 10, 1983.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CRT-001

SYSTEM NAME

Central Civil Rights Division Index File and Associated Records.

SYSTEM LOCATION:

United States Department of Justice, Civil Rights Division (CRT), 10th and Constitution Avenue, NW., Washington, D.C. 20530; HOLC Building, 320 First Street, NW., Washington, D.C. 20534; and Federal Records Center, Suitland Maryland 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

These persons may include: Subjects of investigation, victims, potential witnesses, correspondents on subjects directed or referred to CRT or other persons or organizations referred to in potential or actual cases and matters of concern to CRT, and CRT employees who handle complaints, cases or matters of concern to CRT.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system consists of alphabetical indices hearing the names of those individuals identified above and the associated records to which the indices relate containing the general and particular records of all CRT correspondence, cases, matters, and memoranda, including but not limited to investigative reports, correspondence to and from the Division, memoranda, legal papers, evidence, and exhibits. The names of some individuals, e.g., witnesses, may not yet be on the central indices. Records relating to such individuals may be obtained by direct access to the file jackets. Such file jackets are located within the respective sections of CRT according to the legal subject matter assigned to each CRT section. The delegated legal duties and responsibilities of each section are described as follows:

The records related to the duties of the Criminal Section of CRT include cases or matters arising under 18 U.S.C. 241 and 242 which prohibit persons acting under color of law or in conspiracy with others to interfere with or deny the exercise of Federal constitutional rights, cases involving criminal violations of the Voting Rights Act of 1965 (42 U.S.C. 1971 through 1974), cases or matters involving criminal interference with housing rights as is prohibited by 42 U.S.C. 3631 and criminal interference with other federally protected rights as is prohibited by 18 U.S.C. 245. Other Criminal Section records include cases or matters involving 18 U.S.C. 1581 through 1588 which prohibit involuntary servitude, some cases involving maritime law, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Federal Enforcement Section of CRT include cases or matters arising under Title VI of the Civil Rights Act of 1964 and the nondiscrimination provisions of the Revenue Sharing Act, the Crime Control Act of 1973, the Comprehensive Employment Training Act of 1973, the Housing and Community Development Act of 1974, and the coordination of Title VI and Title IX implementation by the Federal grant agencies. In addition, records related to Federal Enforcement Section cases include matters arising under Title VII of the Civil Rights Act of 1964 and Executive Order No. 11246

involving equal opportunity laws against public employers, Federal contractors and contractors involved in federally financed projects, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the General Litigation Section of CRT include cases or matters arising under Federal laws requiring nondiscrimination in public education. Other General Litigation Section records include cases or matters involving the fair housing laws, Title VIII of the Fair Housing Act of 1968 (42 U.S.C. 3601 through 3618), the Equal Credit Opportunity Act (15 U.S.C 1691 through 1691(f)) as well as its implementing regulations, Regulation B (12 CFR Part 202) which prohibits discrimination in credit transactions, and such other matters as may be required to fulfill the duties mandated by Congress.

The records related to the duties of the Special Litigation Section of CRT include cases or matters arising under Title III of the Civil Rights Act of 1964 which prohibits discrimination in public facilities, and cases or matters arising under 18 U.S.C. 245(b)(2)(f) which prohibits the interference, for racial reasons, with access to a place of public accommodation. Other Special Litigation Section records include cases or matters arising under the Civil Rights of Institutionalized Persons Act of 1980 (42 U.S.C. 1997), matters involving the constitutional rights of children and the constitutional rights of mentally and physically handicapped persons of all ages including cases arising under Section 504 of the Rehabilitation Act of 1973, as amended, and such other matters as may be required to fulfill the duties mandated by Congress.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under the authority of 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES

A. Information in the system may be used by employees and officials of the Department to make decisions in the course of investigations and legal proceedings; to assist in preparing responses to correspondence from persons outside the Department to prepare budget requests, and various reports on the work product of the Civil Rights Division; and to carry out other authorized intermal functions of the Department.

B. A record maintained in this system of records may be disseminated as a routine use of such record as follows: (1) A record relating to a possible or potential violation of law, whether civil, criminal, or regulatory in nature may be disseminated to the appropriate federal, state or local agency charged with the responsibility of enforcing or implementing such law; (2) in the course of investigation or litigation of a case or matter, a record may be disseminated to a federal, state or local agency, or to an individual or organization, if there is reason to believe the such agency, individual or organization possesses information relating to the investigation, trial or hearing and the dissemination is reasonably necessary to elicit such information or to obtain the cooperation of a prospective witness or informant; (3) a record relating to a case or matter may be disseminated to an appropriate court, grand jury or administrative or regulatory proceeding in accordance with applicable law or practice; (4) a record relating to a case or matter may be disseminated to an actual or potential party to litigation or his attorney (a) for the purpose of negotiation or discussion on such matters as settlement of the case or matter, plea bargaining or (b) in formal or informal discovery proceedings; (5) a record relating to a case or matter that has been referred for investigation may be disseminated to the referring agency to notify such agency of the status of the case or matter or of any determination that has been made; (6) a record relating to a person held in custody or probation during a criminal proceeding or after conviction, may be disseminated to any agency or individual having responsibility for the maintenance, supervision or release of such person; (7) a record may be disseminated to the United States Commission on Civil Rights in response to its request and pursuant to 42 U.S.C. 1975d.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552 may be made avalilable to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is stored on index cards, in file jackets, and on computer disks or tape.

RETRIEVABILITY:

Information is retrieved through either use of an index card system or logical queries to the computer-based system. Entries are arranged alphabetically by the names of individuals or organizations that have been involved in possible civil rights violations either as the subject of investigations by the Department or as victims or complainants, or by the name of the Division personnel handling the complaint. (Complaints received from individuals which have not been investigated by the Department have not been systematically indexed and information pertaining to such individuals may or may not be retrievable.) Information on such individuals may be retrievable from the file jackets by a number assigned and appearing on the index cards.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

Records are maintained on the system while current and required for official Government use. When no longer needed on an active basis, the records are transferred to computer tape and stored in accordance with Departmental security regulations for systems of records. Final disposition is in accordance with records retirement or destruction as scheduled by NARS.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Civil Rights Division, United States Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2) and (k)(2). Address inquiries to the System Manager listed above.

RECORD ACCESS PROCEDURES:

Part of this system is exempted from this requirement under 5 U.S.C. 552a(j)(2), and (k)(2). To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received. A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), the subject of the case or matter as described under "Categories of records in the system," and any other information which is known and may be of assistance in locating the record, such as the name of the civil rights related case or matter involved. Where and when it occurred and the name of the judicial district involved. The requester will also provide a return address for transmitting the information. Access requests should be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend non-exempt information retrievable in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in this system may be any agency or person who has or offers information related to the law enforcement responsibilities of the Division.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted parts of this system from subsections (c)(3), (d), and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2) and (k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(c) and (e) and have been published in the **Federal Register**.

[FR Doc. 83-24123 Filed 9-1-83; 8:45 am]

BILLING CODE 4410-01-M

[AAG/A Order No. 15-83]

Privacy Act of 1974; Modification of System of Records

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), the Civil Rights Division, Department of Justice hereby publishes notice of changes to the system of records entitled "Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission, JUSTICE/CRT-007." This system was most recently published on December 9, 1981 in **Federal Register** Volume 46, page 60302.

The Civil Rights Division has automated those records in the system which relate to allegations of employment discrimination by public employers (filed by individual complainants) and referred by the Equal Employment Opportunity Commission (EEOC) to the Department of Justice pursuant to 42 U.S.C. 2000e-5(f)(1) or (5)(f)(2). In 60 days from the publication date of this notice, the Division proposes to further automate the system to include records relating to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred by EEOC to the Department pursuant to 42 U.S.C. 2000e-6. The "Storage" and "Retrievability," and "Safeguards" sections of the notice have been revised to reflect this modification. Further, for the public's clarification, a distinction between these two types of allegations (or charges) has been made under the section of the notice entitled "Categories of records in the system." In addition, minor editorial changes or factual corrections have been made to the sections of the notice entitled "Routine uses of records * * *," "Retention and disposal," "Record access procedures," and "Contesting record procedures."

The required report has been provided to the Office of Management and Budget and the Congress.

Dated: August 10, 1983.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CRT-007

SYSTEM NAME:

Files on Employment Civil Rights Matters Referred by the Equal Employment Opportunity Commission.

SYSTEM LOCATION:

U.S. Department of Justice: Civil Rights Division, 10th and Constitution Avenue NW.; Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons seeking employment or employed by a state or a political subdivision of a state who have filed charges alleging discrimination in employment with the Equal Employment Opportunity Commission (hereinafter EEOC) which have resulted in a determination by EEOC that there is probable cause to believe that such discrimination has occurred, and attempts by EEOC at conciliation have failed.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system may contain copies of charges filed with EEOC; copies of EEOC's "determination" letters, letters of transmittal from and to EEOC, analyses or evaluations summarizing the charge and other materials in the EEOC file, internal memoranda, attorney notes, and copies of "right to sue" letters issued by the Civil Rights Division. Charges relate to allegations of employment discrimination by public employers filed by individual complainants which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-5(f)(1) or 5(f)(2), or to allegations of a pattern or practice of violations of the Equal Employment Opportunity Act by a public employer which have been referred to the Department of Justice by EEOC pursuant to 42 U.S.C. 2000e-6.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system of records are kept under authority of 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The system is used by employees and officials of the Department to make decisions regarding prosecution of alleged instances of employment discrimination, to issue right to sue letters on behalf of individuals; to make policy and planning determinations; to prepare annual budget requests and justifications; to prepare statistical reports on the work product of the Federal Enforcement and General Litigation Sections and to carry out other authorized internal functions of the Department. If the Department has determined to initiate an investigation or litigate a matter referred by EEOC the records pertaining to that matter are not contained in this system. Such records and their routine uses are described under the notice for the system named: Central Civil Rights Division Index File and Associated Records.

Release of information to the news media: Information permitted to be released to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

Release of information to Members of Congress. Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service: A record from a system of records may be disclosed as a routine use to the National Archives and Records Service (NARS) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in the system is stored on index cards, in file jackets, and in computer disks which are maintained by the Federal Enforcement Section, Civil Rights Division. If the charge relates to a public educational agency or institution and was filed before September 1977, such information may be maintained by the General Litigation Section, Civil Rights Division.

RETRIEVABILITY:

Information is retrieved primarily by using the appropriate Department of Justice file number, or the name of the charging party, or the state in which the alleged discrimination occurred or through other logical queries to the computer based system.

SAFEGUARDS:

Information in manual and computer form is safeguarded and protected in accordance with applicable Departmental security regulations for systems of records. Only a limited number of staff members who are assigned a specific identification code will be able to use the computer or to access the stored information.

RETENTION AND DISPOSAL:

If the Department determines not to prosecute a matter referred by the EEOC, the records transmitted with the referral are returned to the EEOC. Other records in the system are kept for routine use by the Department and when no longer needed are sent to the Federal Records Center or are destroyed in accordance with records retention and disposal schedules as established by the National Archives and Records Service.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Attorney General, Civil Rights Division, U.S. Department of Justice, Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Same as the above

RECORD ACCESS PROCEDURE:

A request for access to a record from this system shall be made in writing with the envelope and letter clearly marked "Privacy Access Request." The request should indicate the state where the alleged employment discrimination took place and the employer to which the charge was related. The requester should also provide the full name of the individual involved, his or her current address, date and place of birth, notarized signature (28 CFR 16.41(b)), any other known information which may be of assistance in locating the record, and a return address for transmitting the information. Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought. Disclosure of part of the materials in this system may be prohibited by *42 U.S.C. 2000e-5(b)*, 42 U.S.C2000e-8(e) and 44 U.S.C. 3510(b). Part of this system is exempted from access and contest under 5 U.S.C. 552a(k)(2).

RECORD SOURCE CATEGORIES:

Sources of information in this system are charging parties, information compiled and maintained by EEOC,and employees and officials of the Department of Justice responsible for the disposition of the referral request.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted the system from subsection (d) of the Privacy Act pursuant to 5 U.S.C. 552(k)(2). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553 (b), (c) and (e) and have been published in the **Federal Register.**

[FR Doc. 83-24124 Filed 9-1-83; 8:45 am]
BILLING CODE 4410-01-M

[AAG/A Order No. 16-83]

Privacy Act of 1974; New System

Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the Department of Justice Civil Rights Division is adding a new system of records entitled "Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT-003."

The Civil Rights Case Load Evaluation System—Time Reporting System, JUSTICE/CRT-003, is a new system of records for which no public notice consistent with the provisions of 5 U.S.C. 552a(e)(4) has been published in the **Federal Register.**

5 U.S.C. 552a(e)(4) and (11) provide that the public be given a 30-day period in which to comment on the routine uses of the system; the Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires 60 days to review the system. While the system has been put in place, "routine uses," as defined by the Privacy Act, have not been implemented; i.e., no external dissemination has been made of any personnally identifiable information. Further, no such information will be disseminated for at least 60 days from the date of publication of this notice.

The public, OMB, and the Congress are invited to submit written comments on this system. Comments should be addressed to Vincent A. Lobisco, Assistant Director, Administrative Services Staff, Justice Management Division, Room 6314, Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530. If no comments are received from either the public, OMB, or the Congress within 60 days of publication of this notice, the system will be fully implememted without further notice in the **Federal Register.**

A report on this system has been provided to OMB and the Congress.

Dated: August 10, 1983.

Kevin D. Rooney,

Assistant Attorney General for Administration.

JUSTICE/CRT-003

SYSTEM NAME:

Civil Rights Case Load Evaluation System—Time Reporting System

SYSTEM LOCATION:

United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Attorneys and paralegals of the Civil Rights Division of the United States Department of Justice.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the names of Division attorneys and paralegals and their assignments and allocation of work time.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The records in this system are kept under the authority of 44 U.S.C. 3101.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Civil Rights Division personnel use this system of records to keep track of resources, i.e., to determine Civil Rights Division allocations of resources and professional time to individual assignments of cases and broad categories of cases (e.g., voting, criminal, enforcement), and to assist in preparing budget requests and other reports which may be submitted to the Attorney General or the Congress.

Release of information to Members of Congress: Information contained in systems of records maintained by the Department of Justice, not otherwise required to be released pursuant to 5 U.S.C. 552, may be made available to a member of Congress or staff acting upon the member's behalf when the member of staff requests the information on behalf of and at the request of the individual who is the subject of the record.

Release of information to the National Archives and Records Service. A record from the system of records may be disclosed to the National Archives and Records Service for records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on computer disks.

RETRIEVABILITY:

Information is retrieved by the names of attorneys or paralegals.

SAFEGUARDS:

Information contained in the system is unclassified. It is safeguarded and protected in accordance with Departmental security regulations for systems of records. Access to the records is limited to those employees whose official duties require such access.

RETENTION AND DISPOSAL:

Information contained in the record system remains on the computer disks indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Officer, Civil Rights Division, United States Department of Justice, 10th and Constitution Avenue, NW., Washington, D.C. 20530.

NOTIFICATION PROCEDURE:

Address inquiries to the system manager listed above.

RECORDS ACCESS PROCEDURES:

A request for access to a record retrievable in this system shall be made in writing, with the envelope and letter clearly marked "Privacy Access Request." Include in the request the full name of the individual involved, his or her current address, date and place of birth, and notarized signature (28 CFR 16.41(b)), and any other information which is known and may be of assistance in locating the record. The requester should also provide a return address for transmitting the information. Access to requests should be directed to the system manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend their records should direct their request to the system manager listed above, stating clearly and concisely what information is being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Information on time allocation is provided by Civil Rights Division attorneys and paralegals.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 83-24125 Filed 9-1-83; 9:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Office of the Secretary

Hearing

In the matter of State of Connecticut Labor Department, State of Illinois Department of Labor, State of Kentucky Department for Social Insurance, State of Massachusetts Division of Employment Security, State of Michigan Employment Security Commission, State of Ohio Bureau of Employment Services, State of Oklahoma Employment Security Commission, State of Pennsylvania Department of Labor and Industry, and State of Wyoming Employment Security Commission.

This notice announces an opportunity for a hearing for the unemployment compensation agencies of the States of Connecticut, Illinois, Kentucky, Massachusetts, Michigan, Ohio, Oklahoma, Pennsylvania, and Wyoming (the "nine States"), pursuant to the last sentence of Section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c), and 20 CFR 601.5, to be held at 9:30 o'clock in the morning on September 14, 1983, in Courtroom A, Vanguard Building, 1111 20th Street, NW., Washington, D.C. Each State shall have the opportunity to make a record.

The hearing will be on the following issues:

Issues: Whether, with respect to the certification of the States of October 31, 1983, under Section 3304(c) of the Internal Revenue Code of 1954, 26 U.S.C. 3304(c), the unemployment compensation laws of the nine States have been amended with respect to weeks of unemployment beginning after September 3, 1982,

(1) So as to extend the provisions of clause (ii) of Section 3304(a)(6)(A) of such Code to employees performing specified services for institutions of higher education on the same basis as to employees performing such services for educational institutions other than institutions of higher education, as provided by subclause (I) of such clause (ii); and

(2) So as to provide that, if any individual performing such services in an institution of higher education in a particular academic year or term is not offered the opportunity to perform such services for the educational institution in the following academic year or term.

such individual shall be entitled to retroactive payment of unemployment compensation, as provided by subclause (II) of such clause (ii); or

(3) So as to repeal the provisions corresponding to such clause (ii), prior to its amendment.

Basis of Issues: Section 3304(a)(6)(A) of the Code provides that unemployment compensation shall be payable under a State law on the basis of service to which Section 3309(a)(1) applies, that is, service in the employ of a governmental entity or nonprofit organization described in paragraphs (7) and (8) of Section 3306(c) of the Code, 26 U.S.C. 3306(c), in the same amount, on the same terms, and subject to the same conditions as unemployment compensation is payable on the basis of other service subject to the State law. Clause (ii) of Section 3304(a)(6)(A), an exception to this "equal treatment" requirement, permitted States, at their option, to deny unemployment compensation between academic years or terms to "nonprofessional" employees of educational institutions other than institutions of higher education. Section 193 of Pub. L. 97–248 amended clause (ii), effective for weeks of unemployment beginning after September 3, 1982, to provide:

(ii) With respect to services in any other capacity for an educational institution to which section 3309(a)(1) applies—

(I) Compensation payable on the basis of such services may be denied to any individual for any week which commences during a period between two successive academic years or terms if such individual performs such services in the first of such academic years or terms and there is a reasoanble assurance that such individual will perform such services in the second of such academic years or terms, except that

(II) If compensation is denied to such individual for any week under subclause (I) and such individual was not offered an opportunity to perform such services for the educational institution for the second of such academic years or terms, such individual shall be entitled to a retroactive payment of the compensation for each week for which the individual filed a timely claim for compensation and for which compensation was denied solely by reason of subclause (I).

Section 193(b) of Pub. L. 97–248 provides that the provisions of subclause (II) are applicable to employees of institutions of higher education for weeks of unemployment beginning after September 3, 1982. After that date, a provision of State law denying unemployment compensation between academic years and terms must apply to nonprofessional services performed for all educational institutions or to none. If applied to all such services, the State law must also provide for the retroactive payment of unemployment compensation (after September 3, 1982, in the case of employees of institutions of higher education) in accordance with the provisions of subclause (II) quoted above.

The respective State unemployment compensation laws of the nine States appear not to be in conformity with the provisions of Section 3304(a)(6)(A)(ii) of the Code, as amended by Section 193 of Pub. L. 97–248. The last sentence of Section 3304(c) of the Code is therefore applicable to conformity proceedings on this issue.

Following the hearing a decision will be made as to each State. Such decision will have a bearing on whether each State is certifiable on October 31, 1983, with respect to normal and additional tax credits allowable to the State's employers pursuant to subsections (a) and (b) of 26 U.S.C. 3302 for the taxable year 1983, and will also have a bearing on other benefits to the State under the Federal-State unemployment compensation program.

The proceedings in this matter shall be in accordance with the Rules of Procedure as set out below.

For purposes of this hearing, all motions, briefs, and other papers shall be filed, pursuant to the above referenced Rules of Procedure, with the presiding Administrative Law Judge, U.S. Department of Labor, Suite 700, Vanguard Building, 1111 20th Street, N.W., Washington, D.C. 20036, who will be deisgnated in accordance with the Rules of Procedure.

Counsel for each State unemployment compensation agency shall enter an appearance with the presiding Administrative Law Judge no later than September 9, 1983; a copy shall be provided to William H. DuRoss III, Associate Solicitor for Employment and Training, 200 Constitution Ave., N.W., Washington, D.C. 20210, as expeditiously as possible.

Counsel for the U.S. Department of Labor shall enter an appearance with the presiding Administrative Law Judge no later than September 7, 1983; a copy shall be provided to each State agency as expeditiously as possible.

Signed at Washington, D.C., on August 31, 1983.

Raymond J. Donovan,

Secretary of Labor.

Rules of Procedure

1. An Administrative Law Judge will be designated by the Chief Administrative Law Judge, United States Department of Labor, to preside over the hearing and perform the functions required by these Rules.

2. The parties of record shall be the State agency (or State agencies as defined in 26 U.S.C. 3306(e)) named in the Notice of Hearing and the U.S. Department of Labor.

3. Any non-party State agency, individual worker, employer, or organization, association of workers or employers, or member of the public, asserting an interest in the proceedings, may be permitted by the presiding Administrative Law Judge, upon motion granted, to participate in the hearing as amicus curiae only. Participation by any such amicus curiae shall be limited to the submittal of such briefs as may be directed by the presiding Administrative Law Judge. A motion of an amicus curiae to participate in the oral argument will be granted only for extraordinary reasons. All motions contemplated by this Rule shall be filed with the presiding Administrative Law Judge no later than two (2) days prior to the scheduled hearing, and shall be served upon and received by each party prior to the hearing. The presiding Administrative Law Judge shall rule on all such motions and inform the applicants and the parties of the rulings prior to the hearing or at the beginning of the hearing.

4. The presiding Administrative Law Judge may issue an appropriate prehearing order governing all issues to be raised in the proceedings, discovery, and designation of evidence to be offered at the hearing.

5. (a) The hearing will be conducted in an informal but orderly and expeditious manner. The presiding Administrative Law Judge will regulate all matters pertaining to the course and conduct of the proceedings, and, subject to the limitation expressed in Rule 5(b) below, may grant extensions of time regarding the submission of briefs and other papers, and may reschedule the hearing for another time or date for good cause shown.

(b) The annual October 31 certification date under the Federal Unemployment Tax Act imposes time constraints for the issuance of the Administrative Law Judge's recommended decision, and requires

that the granting of extensions of time, inclusive of continuances, be limited to the extent necessary to insure that the recommended decision is forwarded to the Secretary of Labor no later than 15 days prior to the October 21 certification date.

6. Upon the commencement of the hearing, the U.S. Department of Labor will be offered an opportunity to make an opening statement as to the nature of the hearing and the matter(s) in issue. Each other party to the proceedings shall then be offered a similar opportunity to make an opening statement.

7. The order of the presentation of evidence will be as follows:

(a) The U.S. Department of Labor will proceed first by presenting any evidence it may wish to offer which is relevant to the issue(s) specified in the Notice of Hearing.

(b) Each other party will proceed next to present any evidence it may wish to offer which is relevant to the issue(s) referred to in Rule 7(a) above, followed by any evidence relevant to any additional issue, except that evidence regarding any issue other than the issue(s) referred to in the Notice of Hearing may be admitted only if the party offering such evidence has provided notice of such issue and a summary of such evidence, including a copy of any document to be offered, to each other party of record, prior to the hearing.

(c) The U.S. Department of Labor may next present relevant evidence in rebuttal to any issue, and the trial record shall thereafter be closed, except as provided for by Rule 9 below.

8. Technical rules of evidence shall not apply to the hearing. The presiding Administrative Law Judge will rule upon offers of proof and the admissibility of evidence, and may exclude irrelevant, immaterial, or unduly repetitious evidence or any other evidence excludable under these Rules, and may examine witnesses. All writings, charts, tabulations, and similar data offered in evidence at the hearing shall, upon a statisfactory showing of their authenticity, relevancy, materiality, and admissibility under these Rules, be received in evidence.

9. During the hearing, the presiding Administrative Law Judge may require the production and introduction of further evidence upon any relevant matter, and may provide for the later receipt of such evidence or any other evidence for the record.

10. The proceedings at the hearing shall be recorded verbatim. The original and one copy of the transcript of the record of the hearing shall be furnished to the presiding Administrative Law Judge. The parties of record and any amicus curiae shall be entitled to secure a copy of the transcript from the reporter upon such terms as the party or amicus may arrange.

11. When any document is offered in evidence, one additional copy thereof shall be furnished to the presiding Administrative Law Judge and, unless previously provided, a copy shall be furnished to each party or record.

12(a) At the conclusion of the receipt of evidence, the presiding Administrative Law Judge shall hear oral arguments presented by the parties of record and any amicus curiae authorized to present oral argument.

(b) Oral arguments shall be in the following order: Opening argument for the U.S. Department of Labor, unless waived; opening argument for every other party unless waived; argument of any amicus curiae authorized to present oral argument; closing argument of each of the State agency parties, unless waived; and closing argument for the U.S. Department of Labor, unless waived.

13(a) As soon as possible, but in no event later than 15 days prior to the October 31 certification date, the presiding Administrative Law Judge shall: (1) Prepare a recommended decision on the basis of the record containing his recommended findings of fact and conclusions of law; (2) certify to the Secretary of Labor such recommended decision and the entire record of the proceedings; and (3) forward a copy of the recommended decision to each party of record and amicus curiae.

(b) In the event that evidence is admitted which is relevant to any issue cognizable under these Rules, findings of fact with respect to such evidence shall be made. No conclusions of law regarding either the constitutionality of any Federal statute or the constitutionality of interpretation thereof shall be made.

14. Any party of record may file with the Secretary of Labor a Statement of Exceptions, with proof of service on the other parties of record, setting forth any exceptions they may have to the recommended decision, within seven (7) days after the date of the recommended decision.

15(a) Any brief intended to be filed of record with the presiding Administrative Law Judge in the proceedings shall be mailed or otherwise delivered to the Office of the Presiding Administrative Law Judge. Unless otherwise ordered, any brief shall be deemed to be filed on the date it is post-marked if transmitted by the United States Postal Service, and shall be deemed to be filed on the date received in the Office of the Chief Administrative Law Judge if transmitted by any other means.

(b) An original and one copy of any brief shall be filed with the presiding Administrative Law Judge and shall be accepted subject to timely filing with proof of sufficient service upon the parties.

(c) If the last day of a time limit prescribed by these Rules or established by the presiding Administrative Law Judge falls on a Saturday, Sunday, or a federal holiday, the time limit shall be extended to the next official business day.

16. Following the certification in accordance with Rule 13(a)(2) above, and consideration of any Statement of Exceptions filed and served in accordance with Rule 14, the Secretary of Labor shall render a decision in the matter, in writing, and shall forward the decision together with the record to the Chief Administrative Law Judge, and shall forward a copy of his decision to each party of record and to any amicus curiae authorized to participate in the proceedings.

[FR Doc. 83-24294 Filed 9-1-83; 8:45 am]
BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-14,482]

Adjustment Assistance; Brunswick Manufacturing Co., Brunswick, Georgia; Amended Certification Regarding Eligibility

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 17, 1983 applicable to all workers of Brunswick Manufacturing Company, Brunswick, Georgia.

The intent of the certification is to cover all workers at Brunswick Manufacturing Company, Brunswick, Georgia who were adversely affected by increases in imports during 1982. The certification for workers at Brunswick Manufacturing Company, Brunswick, Georgia, conforms with the investigation and is amended by changing the October 1, 1982 impact date to February 18, 1982 with a termination date of November 30, 1982.

The certification applicable to TA-W-14,482 is hereby amended and issued as follows:

"All workers of Brunswick Manufacturing Company, Brunswick,

Georgia, who became totally or partially separated from employment on or after February 18, 1982 and before November 30, 1982 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 25th day of August 1983.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 83-24186 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,554]

Adjustment Assistance; Island Creek Coal Co., #10 Elk Creek Mine, Emmett, West Virginia; Negative Determination Regarding Application for Reconsideration

By an application dated August 12, 1983, the United Mine Workers of America requested administrative reconsideration of the Department of Labor's Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance in the case of former workers at #10 Elk Creek Mine of the Island Creek Coal Company, Emmett, West Virginia. The determination was published in the Federal Register on July 19, 1983 (48 FR 32889).

Pursuant to CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts previously considered; or

(3) If, in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that the Department uses a double standard in that it certified workers for adjustment assistance at the Wheeling Pittsburgh Coal Company (WPCC) and denied adjustment assistance for workers at the Island Creek Coal Company. The union alleges that steel is directly competitive with coal for certification purposes.

The Department's review showed that the Island Creek Coal Company and its parent firm, Lexington Minerals, were independent coal producing companies not affiliated with any steel producing firms. The review further showed that U.S. imports of coal and coke, which may be considered in determining import injury to workers mining coal, declined absolutely and relative to domestic production in 1981 compared to 1980 and in 1982 compared to 1981. U.S. imports of coal and coke are negligible. Neither Island Creek nor Lexington Minerals imported coal.

The union's claim that a double standard was used by the Department in certifying workers at WPCC, a subsidiary of Wheeling Pittsburgh Steel while denying workers at the Island Creek Coal Company which is not affiliated with any steel producing firm cannot be substantiated within the context of the Trade Act of 1974. The certification of workers at WPCC on July 1, 1983 (TA-W-14,195) rests on the integrated production of its coal production for Wheeling Pittsburgh Steel whose workers met the group certification requirements of the Act—a relationship that workers at Island Creek cannot share in since Island Creek was an independent company which produced coal.

Further, the union's allegation that steel is directly competitive with coal for purposes of certification under the Trade Act is not supported by the Trade Act nor case law. Although, coal is used in the steelmaking process increased imports of steel and steel products would not be a basis for certification. Section 222(3) of the Act which prescribes the group eligibility requirements states that there must be increased imports of the articles like or directly competitive with those produced by the workers' firm or appropriate subdivision. Since only metallurgical coal was produced at Island Creek—an independent firm not controlled or substantially beneficially owned by a steel producing firm whose workers independently met the Act's group eligibility criteria—there is no basis to certify workers based on increased imports of steel.

Conclusion

After review of the application and the investigative file, I conclude that there has been no error or misinterpretation of the law which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the publication is denied.

Signed at Washington, D.C. this 26th day of August 1983.

Harold A. Bratt,

Deputy Director, Office of Program Management, UIS.

[FR Doc. 83-24189 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

Adjustment Assistance; Bessemer & Lake Erie Railroad Co., et al.; Investigations Regarding Certifications of Eligibility

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 12, 1983.

Interested person are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than September 12, 1983.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, D.C. 20213.

Signed at Washington, D.C. this 29th day of August 1983.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner: Union/workers or former workers of—	Location	Date received	Date of petition	Petition No.	Articles produced
Bessemer & Lake Erie Railroad Co. (BRAC)	Monroeville, PA	8/22/83	8/19/83	TA-W-14,942	Office workers.
Chafin Coal Co. (workers)	Logan, WV	8/23/83	8/19/83	TA-W-14,943	Preparation Plant and selling of coal.
Elgin, Joliet & Eastern Railway Co. (BRAC)	Joliet, IL	8/22/83	8/19/83	TA-W-14,944	Office workers.
H.H. Brown Shoe Co., Inc. (ACTWU Footwear Div.)	Worcester, MA	8/22/83	8/15/83	TA-W-14,945	Work boots and shoes.
Jo-Je Manufacturing Co., Inc. (ILGWU)	Summit Hill, PA	6/30/83	6/21/83	TA-W-14,946	Jr's blouses.
Kanawha Coal Co., Madison Mine (UMWA)	Ashford, WV	7/29/83	7/22/83	TA-W-14,947	Metallurgical coal mining.
Lee Ann Coal Co. (Workers)	Madison, WV	8/22/83	8/17/83	TA-W-14,948	Metallurgical coal mining.
Outfooter's of Battle Creek MI. (workers)	Coldwater, MI	8/19/83	8/15/83	TA-W-14,949	Retail shoe store.
Sewell Coal Co., Sewell # 4 Mine (workers)	Nettie, WV	8/22/83	8/16/83	TA-W-14,950	Metallurgical coal mining.
U-Brand Corp., Distribution Center (IAM)	Shelby, OH	8/22/83	8/20/83	TA-W-14,951	Distributes malleable and cast iron pipe fittings to customers.
U-Brand Corp. (IAM)	Ashland, OH	8/22/83	8/20/83	TA-W-14,952	Malleable and cast iron pipe fittings.
Air Products & Chemicals, Inc. (USWA)	Sparrows Point, MD	8/19/83	8/16/83	TA-W-14,953	Oxygen gases.
Amherst Coal Co., Paragon Mine #1 (workers)	Rum Creek, WV	8/25/83	8/18/83	TA-W-14,954	Metallurgical coal mining.
David Peyser Sportswear, Inc. (company)	Bay Shore, NY	8/24/83	8/5/83	TA-W-14,955	Ski jackets, warm-up jackets, unlined jackets.
Easton Corp., Transmission Div. (AIW)	Kalamazoo, MI	8/19/83	8/15/83	TA-W-14,956	Transmissions for heavy duty trucks.
General Electric Co., Bellevue Lamp Plant (IAMAW)	Bellevue, OH	8/19/83	8/10/83	TA-W-14,957	Specialty lighting items.
Litton Industrial Products, Inc., Lucas Machine Div. (UAW)	Cleveland, OH	8/25/83	8/23/83	TA-W-14,958	Horizontal milling, drilling and boring machines.
The Timkin Company (workers)	Columbus, OH	8/24/83	8/19/83	TA-W-14,959	Tapered roller bearings.

[FR Doc. 83-24190 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-14,387]

Adjustment Assistance; Playland Industries, New York, New York; Amended Certification Regarding Eligibility

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on August 17, 1983 applicable to all workers of Playland Industries, New York, New York.

The intent of the certification is to cover all workers at Playland Industries, New York, New York who were adversely affected by increases in imports during 1982. The certification for workers at Playland Industries, New York, New York, conforms with the investigation and is therefore amended by changing the October 1, 1982 impact date to January 15, 1982 with a termination date of June 30, 1983.

The certification applicable to TA-W-14,387 is hereby amended and issued as follows:

All workers of Playland Industries, New York, New York who became totally or partially separated from employment on or after January 15, 1982 and before June 30, 1983 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of August 1983.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS

[FR Doc. 83-24187 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-13,904]

Adjustment Assistance; Putnam Manufacturing Co.; North Grosvenordale, Connecticut; Amended Certification Regarding Eligibility

In accordance with Section 223 of the Trade Act of 1974 the Department of Labor issued a Certifcation of Eligibility to Apply for Worker Adjustment Assistance on August 17, 1983 applicable to all workers of Putnam Manufacturing Company, North Grosvenordale, Connecticut.

The intent of the certification is to cover all workers at Putnam Manufacturing Company, North Grosvenordale, Connecticut who were adversely affected by increases in imports during 1982. The certification for workers at Putnam Manufacturing Company, North Grosvenordale, Connecticut conforms with the investigation and is therefore, amended by changing the October 1, 1982 impact date to January 1, 1982 with a termination date of November 30, 1982.

The certification applicable to TA-W-13,904 is hereby amended and issued as follows:

All workes of Putnam Manufacturing Company, North Grosvenordale, Connecticut who became totally or partially separated from employment on or after January 1, 1982 and before November 30, 1982 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 25th day of August 1983.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 83-24188 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

Adjustment Assistance; Renola Sportswear, Inc.; Determinations Regarding Eligibility

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period August 22, 1983–August 26, 1983.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm of appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-14,166; Renola Sportswear, Inc., New York, NY

TA-W-14,193; Lewiston Lustre, Inc., Lewiston, MI

TA-W-14,465; U.S. Steel Mining Co., Inc., Jefferson City, TN

TA-W-14,494; Maidel Fashions, Inc., North Babylon, Long Island, NY

In the following cases the investigation revealed that criterion (3) has not been met. Increased imports did not contribute importantly to workers separations at the firm.

TA-W-13,980; Republic Steel Corp., General Offices, Cleveland, OH

TA-W-14,399; Republic Steel Corp., Research Center, Independence, OH

TA-W-14,423; Republic Steel Corp., District Sales Office, Pittsburgh, PA

In the following case the investigation revealed that criterion (3) has not been met for the reasons specified.

TA-W-14,214; North American Refractories Co., Bonne Terre, MO

Aggregate U.S. imports of dolomite are negligible.

Affirmative Determinations

TA-W-14,440; Kaiser Aluminum & Chemical Corp., Chalmette, LA

A certification was issued covering all workers separated on or after July 1, 1982.

TA-W-13,916; Melville Footwear Manufacturing, Blue Ridge Shoe Co., Robersonville, NC

A certification was issued covering all workers separated on or after October 22, 1982.

TA-W-14,206; T & W Manufacturing Co., Santa Rosa, CA

A certification was issued covering all workers separated on or after November 21, 1981

TA-W-14,418; Just Sew, Inc., Rockaway, NJ

A certification was issued covering all workers separated on or after January 21, 1982 and before November 30, 1982.

TA-W-14,473; Buffalo China, Inc., Buffalo, NY

A certification was issued covering all workers separated on or after January 1, 1983.

TA-W-14,473A; Buffalo China, Inc., Clarendon, PA

A certification was issued covering all workers separated on or after January 1, 1983.

TA-W-14,618; U.S. Steel Mining Co., Inc., Mt Braddock Mine, Fayette County, PA

A certification was issued covering all workers separated on or after April 20, 1982.

TA-W-14,619; U.S. Steel Mining Co., Inc., Dilworth Mine, Green County, PA

A certification was issued covering all workers separated on or after April 20, 1982.

TA-W-14,620; U.S. Steel Mining Co., Inc., Robena Mine & Preparation Plant, Green County, PA

A certification was issued covering all workers separated on or after April 20, 1982.

I hereby certify that the aforementioned determinations were issued during the period August 22, 1983–August 26, 1983. Copies of these determinations are available for inspection in Room 9120, U.S. Department of Labor, 601 D Street, N.W., Washington, D.C. 20213 during normal business hours or will be mailed to persons who write to the above address.

Dated: August 30, 1983.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 83-24191 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

High Unemployment Area Classifications Under Pub. L. 98-8; Additions to List of High Unemployment Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the list are effective on September 1, 1983.

SUMMARY: The purpose of this notice is to announce the addition of 2 civil jurisdictions to the list of high unemployment areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, U.S. Employment Service (Attention: TEEPA), 601 D Street, NW., Washington, D.C. 20213 Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: Section 101(a)(3) of Pub. L. 98-8 Stat. 13 (March 24, 1983) (the "Act") requires the Assistant Secretary for Employment and Training, U.S. Department of Labor, to classify civil jurisdictions as having high unemployment and to publish a list of these jurisdictions together with descriptions thereof no later than 30 days after enactment of the Act. That list was published on April 22, 1983 (48 FR 17456).

The Act also requires that the list of high unemployment areas be updated on a monthly basis thereafter, by adding civil jurisdictions that the Assistant Secretary deems to meet the criteria necessary for classification. The areas described below have been classified by the Assistant Secretary as high unemployment areas and added to the list of high unemployment areas, effective September 1, 1983.

Signed at Washington, D.C. on August 23, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

ADDITIONS TO THE LIST OF HIGH UNEMPLOYMENT AREAS

[September 1, 1983]

High unemployment area		Civil jurisdiction included
Pennsylvania: Township.	Bensalem	Bensalem Township in Bucks County.
West Virginia: City.	Charleston	Charleston City in Kanawha County.

[FR Doc. 83-24192 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-30-M

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Additions to Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATE: The additions to the annual list are effective on September 1, 1983.

SUMMARY: The purpose of this notice is to announce changes to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: James W. Higgins, United States Employment Service (Attention: TEEPA) 601 D Street, NW., Washington, D.C. 20213. Telephone: 202-376-6700.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Procurement Regulations Temporary Regulation 57 (41 CFR Chapter 1, Appendix), issued by the General Services Administration on January 15, 1981 (46 FR 3519), implements Executive Order 12260. Executive agencies should refer to Temporary Regulation 57 in procurements involving foreign

businesses or products in order to assess its impact on the particular procurements.

The Department of Labor's regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on June 4, 1982 (47 FR 24474).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area clasified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The areas described below have been classified by the Assistant Secretary of Labor as labor surplus areas pursuant to 20 CFR 654.5(b) (48 FR 15615, April 12, 1983) and are added to the annual list of labor surplus areas, effective September 1, 1983. The following additions to the annual list of labor surplus areas are published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, D.C. on August 23, 1983.

Albert Angrisani,

Assistant Secretary of Labor.

ADDITIONS TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[September 1, 1983]

Labor surplus area	Civil jurisdiction included
Georgia: Elbert County	Elbert County.
Pennsylvania:	
Bensalem Township	Bensalem Township in Bucks County.
Centre County	Centre County.
Indiana County	Indiana County.
Balance of Lehigh County.	Balance of Lehigh County (County less Allentown City and Bethlehem City).
McKean County	McKean County.
Penn Hills Township	Penn Hills Township in Allegheny County.
Scranton City	Scranton City in Lackawanna County.
Warren County	Warren County.
West Virginia:	
Boone County	Boone County.
Charleston City	Charleston City in Kanawha County.
Balance of Kanawha County.	Balance of Kanawha County (County less Charleston City).
Monroe County	Monroe County.

[FR Doc. 83-24193 Filed 9-1-83; 9:45 am]

BILLING CODE 4510-30-M

Secretary's Reporting Requirements

SUMMARY: Section 106 of the Job Training Partnership Act (JTPA) requires the Secretary of Labor to prescribe performance standards for Title II–A and Title III programs. Section 165 of JTPA authorizes the Secretary to require each recipient to maintain records and submit reports regarding the performance of the programs. The Secretary's instructions for implementing the reporting provisions developed in response to Section 165 of JTPA are set forth below. This information was submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. Changes to the original JTPA Annual Status Report (JASR) are based on comments received from the public notice of April 26, 1983 (48 FR 18924), on the "Proposed Secretary's Performance Standards and Reporting Requirements" and discussions within the Executive Branch pursuant to the Paperwork Reduction Act of 1980.

The Department will issue national standards and associated parameters for Program Year 1984 (July 1, 1984–June 30, 1985) administratively prior to January 31, 1984. The adjustment methodology described in the April 26 public notice will be made available to the Governors for Program Year 1984 for use at their discretion. The use of this methodology will be optional. Governors will be allowed to use the nationally developed adjustment methodology or they may develop their own methodology to adjust the performance standards to take into consideration local conditions and circumstances; when an alternative approach is adopted, the Governor will describe this alternative in the State Coordination and Special Services Plan, pursuant to Section 121(b) of the Act.

FOR FURTHER INFORMATION CONTACT: Ms. Kay Albright, Telephone (202) 376–6620.

SUPPLEMENTARY INFORMATION:

A. Summary of Changes

The following will summarize the changes made on the JASR as a result of the Department's discussions with OMB. A copy of the approved JASR format and instructions are included at the appendix.

Section I—Participation and Termination Summary

1. Total Terminations.

a. "Age 14–15 Completed Program Objective" will be reflected in the overall Youth Employability Enhancement Termination total.

b. In response to numerous comments received, the definition for "Completed Major Level of Education" was revised to give credit to participants who were not in school, at time of entry in the program, and who completed a major level of education.

Section II—Terminees Performance Measures Information

1. Characteristics.

a. A few reporting categories were combined.

b. Two reporting categories were deleted.

2. Wage and Welfare Data.

a. This section was deleted, with the exception of one reporting category, in response to the comments received.

Section IV—Followup Information

This section was deleted in its entirety in response to the comments received.

B. Effective Date of JTPA Annual Status Report (JASR)

In addition to the previously approved Quarterly Status Report, the Department will require an annual status report to be submitted to the national office no later than 45 days after the end of each program year. Each reporting period begins on the start date of each JTPA program year, as stated in Section 161 of the Act. The first JASR will cover the period October 1, 1983—June 30, 1984.

A single JASR for Title III programs (Column D) only will be submitted to the national office by the Governor on a Statewide basis. Also, the Governor will submit to the national office a separate JASR for Title II–A programs (Columns A–C) only for *each* designated Service Delivery Area (SDA). No Statewide summary of these SDA data should be submitted by the Governor.

Signed this 29th day of August 1983.

Albert Angrisani,

Assistant Secretary of Labor.

Appendix on the JTPA Annual Status Report Format and Instructions.

JTPA Annual Status Report (JASR)

1. *Purpose.* The JASR Annual Status Report (JTPA) displays cumulative data on participation , termination, performance measures and the socio-economic characteristics of all terminees on an annual basis. The information will be used to determine levels of program service and performance measures. Selected information will be aggregated to provide quantitative program accomplishments on a local, State, and national basis.

2. *General Instructions.* A single JASR for Title III (Column D) programs only will be submitted by the Governor on a Statewide basis. Also, the Governor will submit a separate JASR for Title II–A (Colums A–C) programs only for *each* designated Service Delivery Area (SDA). (No Statewide summary of these SDA data should be submitted by the Governor.)

Note.—*Exclude* information for Title II–B, Summer Youth Employment and Training Program (SYETP), from the JASR. Also, exclude participants in Title I, Sections 123 and 124 from the JASR.

Each reporting period begins on the start date of each JTPA program year, as stated in Section 161 of the act. Reports are due in the national office no later than 45 days after the end of each program year. Three copies of the JASR are to be provided to: Employment and Training Administration, U.S. Department of Labor, Attn: TSVR, 601 D Street, NW., Washington, D.C. 20213.

An additional copy of the JASR is to be provided to the appropriate Regional Administrator for Employment and Training in the DOL regional office that includes the State in which the JTPA recipient is located.

3. *Facsimile of Form.* See the following page.

BILLING CODE 4510-30-M

OMB Approval No. 1205-0211

U.S. DEPARTMENT OF LABOR Employment and Training Administration JTPA ANNUAL STATUS REPORT	a. STATE/SDA NAME AND ADDRESS	b. REPORT PERIOD From To

I. PARTICIPATION AND TERMINATION SUMMARY	TOTAL ADULTS (A)	ADULTS (WELFARE) (B)	YOUTH (C)	DISLOCATED WORKERS (D)
A. TOTAL PARTICIPANTS				
B. TOTAL TERMINATIONS				
1. Entered Unsubsidized Employment				
a. Entered Registered Apprenticeship Program				
b. Entered Armed Forces				
2. Youth Employability Enhancement Terminations				
a. Entered Non-Title II Training				
b. Returned to Full-Time School				
c. Completed Major Level of Education				
3. All Other Terminations				

LINE NO.	II. TERMINEES PERFORMANCE MEASURES INFORMATION		TOTAL ADULTS (A)	ADULTS (WELFARE) (B)	YOUTH (C)	DISLOCATED WORKERS (D)
1	SEX	Male				
2		Female				
3	AGE	14 - 15				
4		16 - 21				
5		22 - 54				
6		55 and Over				
7	EDUCATION STATUS	School Dropout				
8		Student *(High School or Less)*				
9		High School Graduate, or Equivalent, and Above				

c. SIGNATURE AND TITLE	d. DATE SIGNED	e. TELE. NO.

ETA 8580 (Aug. 1983)

a. STATE/SDA NAME AND ADDRESS	b. REPORT PERIOD From	To

LINE NO.	II. TERMINEES PERFORMANCE MEASURES INFORMATION – *Continued*		TOTAL ADULTS (A)	ADULTS (WELFARE) (B)	YOUTH (C)	DISLOCATED WORKERS (D)
10	FAM. STAT.	Single Head of Household with Dependent Children				
11	RACE/ETHNIC GROUP	White *(Not Hispanic)*				
12		Black *(Not Hispanic)*				
13		Hispanic				
14		American Indian or Alaskan Native				
15		Asian or Pacific Islander				
16	OTHER BARRIERS TO EMPLOY.	Limited English Language Proficiency				
17		Handicapped				
18	U.C. STAT	Unemployment Compensation Claimant				
19	LAB. FORCE STAT.	Unemployed				
20	Youth Welfare Recipient					
21	Average Weeks Participated					
22	Average Hourly Wage at Termination					
23	Total Program Costs *(Federal Funds)*					

REMARKS

ETA 8580 (Aug. 1983)

BILLING CODE 4510-30-C

4. *Instructions for Completing the JTPA Annual Status Report (JASR).*

a. *State/SDA Name and Address.* Inter the name and address of the state agency which will administer the grant recipient's program (Title III reports). Enter the name and address of the designated SDA subrecipient, as appropriate, (Title II–A reports).

b. *Reporting Period.* Enter in "From" the beginning date of the designated JTPA program year and enter in "To" the ending date of that program year.

c. *Signature and Title* (at bottom of the page). The authorized official signs here and enters his or her title.

d. *Date Signed.* Enter the date the report was signed by the authorized official.

e. *Telephone Number.* Enter the area code and telephone number of the authorized official.

5. *General Information.* The column breakouts are based strictly on age rather than on program strategy. For purposes of the JASR, the adult and adult welfare columns will include terminees age 22 years and older. The youth column will include terminees who were age 14–21 at the time of eligibility determination. The dislocated workers column may include adults and youth, as applicable.

Data reported should be based on information collected at the time of intake except for outcomes at termination, and Lines 21, 22 and 23.

Characteristics Information Obtained on an Individual at the Time of Eligibility Determination for the Recipient's JTPA Program Should *Not* Be Updated When the Individual Terminates From the JTPA Program

Column Headings

Column A *Total Adults.* This column will contain an entry for each appropriate item for *all* adult participants in Title II–A only.

Column B *Adults (Welfare).* This column will contain an entry for each appropriate item for adult participants in Title II–A who were welfare recipients or whose family received cash payment under AFDC (SSA Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (PL 96–212) at the time of JTPA eligibility determination. For performance standards purposes, *exclude* recipients of SSI (SSA Title XVI) from entries in Column B.

Note.—Column B is a sub-breakout of Column A; therefore, Column B should be less than or equal to Column A.

Column C *Youth.* This column will contain an entry for each appropriate item for *all* youth participants in Title II–A only.

Column D *Dislocated Workers.* This column will contain an entry for each appropriate item for *all* participants in Title III who were determined to be eligible dislocated workers.

Note.—Columns A, B, and C apply to Title II–A only. Column D applies to Title III only. All information regarding a given participant must be entered in the same column, e.g., Column C for a youth in Title II–A.

The sum of the entries in Columns A and C, Item I.A., of the JASR should equal the entry in Column A. Item II.A. of the JQSR, for the same recipient, for the final quarter of the same program year. The entry in Column D, Item I.A of the JASR should equal the entry in Column C, Item II.A of the JQSR for the same recipient, for the final quarter of the same program year.

Section I—Participation and Termination Summary

Section I displays the program's accomplishments in terms of the total cumulative number of actual participants in the program and the number and types of terminations from the program, as of the end of the reporting period.

Entries for I.A. and I.B are cumulative from the beginning of the program year through the end of the reporting period.

Item I.A. *Total Participants.* Enter the total number of participants who are or were in the program through the end of the reporting period, including both those on board at the beginning of the designated program year and those who have entered during the program year.

"Participant" means any individual who has: (1) Been determined eligible for participation upon intake; and (2) Started receiving subsidized employment, training, or services (except post-termination services) funded under the Act, following intake, except for an individual who receives only outreach and-or intaleka nd assessment services.

Item I.B. *Total Terminations.* Enter the total number of participants terminated from the program for any reason from the beginning of the program year through the end of the reporting period. This item is the sum of Items I.B.1 through I.B.3.

"Termination" means the separation of a participant from a given title of the Act who is no longer receiving employment, training or services (except post-termination services) funded under that title. NOTE: Individuals may continue to be considered as participants for a period of 90 days after last receipt of employment or training funded under a given title.

Item I.B.1. *Entered Unsubidized Employment.* Enter the cumulative number of all terminees who entered (through the efforts of the subrecipient or otherwise) full- or part-time unsubsidized employment through the end of the reporting period. Unsubsidized employment means employment not financed from funds provided under the Act. (For JTPA reporting purposes, this term includes entry into the Armed Forces, entry into employment in a registered apprenticeship program, and terminees who became self-employed.)

Item I.B.1.a *Entered Registered Apprenticeship Program.* Enter the cumulative number of youth terminees only who entered registered apprenticeship programs following termination from the program. This item is a sub-breakout of Item I.B.1.

Item I.B.1.b *Entered Armed Forces.* Enter the cumulative number of youth terminees only who enterd the Armed Forces following termination from the program. This item is a sub-breakout of Item I.B.1.

Item I.B.2. *Youth Employability Enhancement Terminations.* Enter the cumulative number of youth participants who were terminated under one of the Youth Employability Enhancements through the end of the report period. "Youth Employability Enhancement" means an outcome for youth, other than entered unsubsidized employment, which is recognized as enhncing long-term employability and contributing to the potential for a long-term increase in earnings and employment. Outcomes which meet this requirement shall be restricted to the following: (1) Entered Non-Title II Training; (2) Returned to Full-Time School; (3) Age 14–15 Completed Program Objectives; or (4) Completed Major Level of Education. NOTE: For reporting purposes, a youth shall *not* be counted in this item, if he/she entered unsubsidized employment, and shall be counted in only *one* of these categories, even though more than one may have been achieved. Even though included in Item I.B.2., no separate sub-breakout is required, below, for outcome (3) Age 14–15 Completed Program Objectives.

Item I.B.2.a. *Entered Non-Title II Training.* Enter the cumulative number of youth trainees who entered an employment/training program not funded under Title II of the JTPA. This item is a sub-breakout of Item I.B.2.

Item I.B.2.b *Returned to Full-Time School.* Enter the cumulative number of terminees who retunred to full-time school if, at the time of eligibility determination, the participant was *not*

attending school and had *not* obtained a high school diploma or equivalent. This item is a sub-breakout of Item I.B.2.

Item I.B.2.c. *Completed Major Level of Education.* Enter the cumulative number of terminees who completed, during enrollment, a level of eudcational achievement which had not been reached at the time of entry. Levels of educational attainment are elementary, secondary, and post-secondary. This item is a sub-breakout of Item I.B.2.

Note.—The sum of Items I.B.2.a. through I.B.2.c. in Column C should be equal to or less than Item I.B.2., Youth Employability Enhancement Terminations, in that column.

Item I.B.3. *All Other Terminations.* Enter the cumulative number of participants who were terminated for reasons other than those in Item I.B.1. and I.B.2.—both successful and negative—through the end of the reporting period.

Section II—Terminees Performance Measures Information

Section II displays performance measures/parameters information. As indicated previously, characteristics information for terminated participants is as of the time of eligibility determination for the recipient's JTPA program. Other information is as specified.

References to items in the Participant Record are to the individual recordkeeping document provided by DOL in a Technical Assistance Guide (TAG). Governors have the option of using the record, as outlined in the TAG, or may develop any other record which meets the requirements of Section 629.35(c) and (d) of the JTPA Regulations.

Line Item Definitions and Instructions

Sex

Line 1 Male
Line 2 Female

Distribute the terminees according to Sex. (Item A.20. of the Participant Record). The sum of Lines 1 and 2 in each column should be equal Item I.B. in that column.

Line 3 14–15
Line 4 16–21
Line 5 22–54
Line 6 55 and over

Distribute the terminees according to Age. (Item A.6. of the Participant Record). The sum of Lines 3 through 6 in each column should equal Item I.B. in that column.

Education Status

Line 7 School Dropout
Line 8 Student (High School or Less)
Line 9 High School Grad., or Equiv., and Above

Distribute the terminees according to Education Status. (Item A.21. of the Participant Record). The sum of Lines 7 through 9 in each column should equal Item I.B. in that column.

Family Status

Line 10 Single Head of Household with Dependent Children

Enter the terminees, by column, if the above Family Status classification applies.

Race/Ethnic Group

Line 11 White (Not Hispanic)
Line 12 Black (Not Hispanic)
Line 13 Hispanic
Line 14 American Indian or Alaskan Native
Line 15 Asian or Pacific Islander

Distribute the terminees according to the Race/Ethnic Groups listed above. For purposes of this report, Hawaiian Natives are to be recorded as "Asian or Pacific Islander" (Item A.22. of the Participant Record). The sum of Lines 11 through 15 in each column should equal Item I.B. in that column.

Other Barriers to Employment

Line 16 Limited English-Language Proficiency
Line 17 Handicapped

Enter the terminees, by column, for as many of the above Barriers to Employment in Lines 16 through 17 as apply (Item A.23. of the Participant Record).

Unemployment Compensation Status

Line 18 Unemployment Compensation Claimant

Enter the terminees, by column, if the above Unemployment Compensation status classification applies (Item A.16. of the Participant Record).

Labor Force Status

Line 19 Unemployed

Enter the terminees, by column, if the above Labor Force Status classification applies.

Line 20 Youth Welfare Recipient.

Enter the number of youth terminees who were welfare recipients or whose family received cash payments under AFDC (SSA Title IV), General Assistance (State or local government), or the Refugee Assistance Act of 1980 (Pub. L. 96–212) at the time of JTPA eligibility determination. For performance standards purposes, *exclude* recipients of SSI (SSA Title XVI) from entries for Line 20.

Line 21 Average Weeks Participated

Enter the average number of weeks of participation in the program for all terminees.

To calculate this entry: Count the number of days participated for each terminee, including weekends, from his/her date of entry into the program until his/her termination date. Divide this result by 7. This will give the number of weeks participated for that terminee. Sum all the terminees' weeks of participation and divide the result by the number of terminees, as entered (by column) in Item I.B.

Line 22 Average Hourly Wage at Termination

Enter the average hourly wage at termination for the total number of terminees in Item I.B.1, in Section I, above (by column).

To calculate this entry: Sum the hourly wage at termination for all the terminees shown in Item I.B.1 above (by column). Divide the result by the number of terminees shown in Item I.B.1 above (by column).

Line 23 Total Program Costs (Federal Funds)

Enter the total accrued expenditures, through the end of the reporting period, of the funds allocated to SDA's under Section 202(a) of the Act or otherwise distributed by the Governor to SDA's under Section 202(b)(3)—performance incentives—for the Title II–A program in Columns A and C, as appropriate, for *all* participants served. Enter the total accrued expenditures, through the end of the reporting period, of Title III funds received by the Governor under Section 301 of the Act in Column D only, for *all* participants served. Include expenditures of formula and discretionary Federal funds only.

Note.—Entries will be made to the nearest dollar. The JASR program cost data will be compiled on an accrual basis. If the recipient's accounting records are not normally maintained on an accrual basis, the accrual information should be developed through an analysis of the records on hand or on the basis of best estimates.

Definitions of Terms Necessary for Completion of Reports

Education Status

School dropout—An individual who is not attending any school and has not received a high school diploma or a GED Certificate.

Student (high school or less)—An individual who is enrolled in an elementary or secondary school (including elementary, junior and senior high school or equivalent) or is between school terms and intends to return to school.

High school graduate, or equivalent, and above—An individual who has received a high school diploma or GED Certificate, or who has attended any post-secondary, vocational, technical, or academic school.

Handicapped individual—Refer to Sec. 4(10) of the Act. Any individual who has a physical or mental disability which for such individual constitutes or results in a substantial handicap to employ.

Note.—This definition will be used for performance standards purposes, but not for program eligibility determination (Sec. 4(8)(E)).

Unemployed—An individual who did not work during the 7 consecutive days prior to application to a JTPA program, who made specific efforts to find a job within the past 4 weeks prior to application, and who was available for work during the 7 consecutive days prior to application (except for temporary illness). Source: DOL/BLS

Limited English language proficiency—Inability of an applicant, whose native language is not English, to communicate in English, resulting in a job handicap.

Race ethnic group

White (not hispanic)—A person having origins in any of the original people of Europe, North Africa, or the Middle East.

Black (not hispanic)—A person having origins in any of the black racial groups of Africa.

Hispanic—A person of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin (including Spain), regardless of race.

Note.—Among persons from Central and South American countries, only those who are of Spanish origin, descent, or culture should be included in the Hispanic category. Persons from Brazil, Guiana, and Trinidad, for example, would be classified according to their race, and would not necessarily be included in the Hispanic category. Also, the Portuguese should be excluded from the Hispanic category and should be classified according to their race.

American Indian or Alaskan Native—A person having origins in any of the original peoples of North America, and who maintains cultural identification through tribal affiliation or community recognition.

Asian or Pacific Islander—A person having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent (e.g., India, Pakistan, Bangladesh, Sri Lanka, Nepal, Sikkim, and Bhutan), or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa. Hawaiian natives are to be recorded as Asian or Pacific Islanders.

Single head of household—A single, abandoned, separated, divorced or widowed individual who has responsibility for one or more dependent children under age 18.

UC claimant—Any individual who has filed a claim and has been determined monetarily eligible for benefit payments under one or more State or Federal unemployment compensation programs, and who has not exhausted benefit rights or whose benefit year has not ended.

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BILLING CODE 4510-30-M

Office of Pension and Welfare Benefit Programs

[Application No. D-4271]

Proposed Exemptions; Landauer Fund I (the Fund), New York, N.Y.

AGENCY: Pension and Welfare Benefit Programs, Department of 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 exemption, 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 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.

Landauer Fund I (the Fund) Located in New York, New York

[Application No. D-4271]

Proposed Exemption

Based on the facts and representations set forth in the application, the Department is considering granting the requested exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975).

Section I. Exemption for Certain Transactions Involving the Fund

(a) Effective upon the date of publication in the **Federal Register** of the grant of this exemption (hereinafter, the Effective Date), the restrictions of sections 406(a), 406(b)(2) and 407(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 transactions described below if the applicable conditions set forth in Section II are met.

(1) *Acquisitions, Sales or Holdings of Employer Real Property.*

(A) Except as provided in subsection (B) of this section (1), and acquisition, sale or holding of employer real property by the Fund if no commission is paid to Landauer Advisors, Inc. (LAI), or to the employer or to any affiliate of LAI or the employer in connection with the acquisition, sale or lease of employer real property; and

(i) Each parcel of employer real property and the improvements thereon held by the Fund are suitable (or adaptable without excessive cost) for use by different tenants, and

(ii) The property of the Fund that is leased or held for lease to others, in the aggregate, is dispersed geographically.

(B) In the case of an employee benefit plan which has subscribed to interests in the Fund (Unitholders) that is not an eligible individual account plan (as defined in section 407(d)(3) of the Act), the exemption provided in subsection (A) of this section (1) shall be available only if, immediately after the acquisition of the real property, the aggregate fair market value of employer real property held by the Fund does not exceed 10 percent of the fair market value of the Unitholder's interest in the Fund.

(C) For purposes of the exemption contained in subsection (A) of this section (1), the term "employer real property" shall include real property leased to a person who is a party-in-interest with respect to a Unitholder by reason of a relationship to the employer described in section 3(14) (E), (G), (H) or (I) of the Act.

(b) Effective upon the Effective Date, the restrictions of section 406(a)(1) (A) through (D) and section 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 transactions described below, if the conditions of Section II are met.

(1) *Transactions with Persons Who Are Parties in Interest With Respect to a Unitholder Solely by Virtue of Being Certain Service Providers or Certain Affiliates of Service Providers.*

Any transaction between the Fund and a person who is a party-in-interest with respect to a Unitholder if—

(A) The person is a party-in-interest (including a fiduciary) solely by reason of providing services to the Unitholder, or solely by reason of a relationship to a service provider described in section 3(14) (F), (G), (H) or (I) of the Act, or both, and the person neither exercised nor has any discretionary authority, control, responsibility or influence with respect to the investment of the Unitholder's assets in, or held by, the Fund, and

(B) The person is not an affiliate of LAI.

(2) *Certain Leases and Goods.*

The furnishing of goods to the Fund by a party-in-interest with respect to a Unitholder or the leasing of real property owned by the Fund to such party-in-interest and the incidental furnishing of goods to such party-in-interest by the Fund, if—

(A) In the case of goods, they are furnished to or by the Fund in connection with real property owned by the Fund;

(B) The party-in-interest is not LAI or any affiliate of LAI; and

(C) The amount involved in the furnishing of goods or leasing of real property in any calendar year (including the amount under any other lease or arrangement for the furnishing of goods in connection with the real property investments of the Fund with the same party-in-interest, or any affiliate thereof) does not exceed the greater of $25,000 or 0.5 percent of the fair market value of the assets of the Fund on the most recent valuation date of the Fund prior to the transaction.

(3) *Management of Real Property.*

Any services provided to the Fund by LAI or by an affiliate of LAI in connection with the management of the real property owned by the Fund, if the compensation paid to LAI or its affiliate does not exceed the cost of the services to LAI or its affiliate.

(4) *Transactions Involving Places of Public Accommodation.*

The furnishing of services, facilities and any goods incidental to such services and facilities by a place of public accommodation owned by the Fund to a party-in-interest with respect to a Unitholder, if the services, facilities and incidental goods are furnished on a comparable basis to the general public.

Section II—General Conditions

(a) At the time the transaction is entered into, and at the time of any subsequent renewal thereof that requires the consent of LAI or its affiliate, the terms of the transaction are not less favorable to the Fund than the terms generally available in arm's-length transactions between unrelated parties.

(b) LAI or its affiliates maintain for a period of six years from the date of the transaction the records necessary to enable the persons described in paragraph (c) of this Section II to determine whether the conditions of this exemption have been met, except that: (1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of LAI or its affiliates the records are lost or destroyed prior to the end to the six-year period, and (2) no party in interest shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (c) below.

(c)(1) Except as provided in section 2 of this paragraph (c) and notwithstanding any provisions of subsections (a)(2) and (b) of section of 504 of the Act, the records referred to in paragraph (b) of this Section II are unconditionally available at their customary location for examination during normal business hours by: (A) Any duly authorized employee or representative of the Department or the Internal Revenue Service,

(B) Any fiduciary of the Unitholder who has authority to acquire or dispose of the interests in the Fund of the Unitholder or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer to any Unitholder or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Unitholder or any duly authorized employee or representative of such participant or beneficiary.

(2) None of the persons described in subparagraphs (B) through (D) of this paragraph (c) shall be authorized to examine the trade secrets of LAI or any of its affiliates, or commercial or financial information which is privileged or confidential.

Section III—Definitions and General Rules

For the purposes of this exemption,

(a) An "affiliate" of a person includes—

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person,

(2) Any officer, director, employee, relative of, or partner in any such person, and

(3) Any corporation or partnership of which such person is an officer, director, partner or employee.

(b) The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

(c) The term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a

brother, a sister, or a spouse of a brother or sister.

(d) The time as of which any transaction, acquisition or holding occurs is the date upon which the transaction is entered into, the acquisition is made or the holding commences. In addition, in the case of a transaction that is continuing, the transaction shall be deemed to occur until it is terminated. If any transaction is entered into, or an acquisition is made, on or after the effective date of this exemption, or a renewal that requires the consent of the Fund occurs on or after the effective date of this exemption, and the requirements of this exemption are satisfied at the time the transaction is entered into or renewed, respectively, or at the time the acquisition is made, the requirements will continue to be satisfied thereafter with respect to the transaction or acquisition and the exemption shall apply thereafter to the continued holding of the property so acquired. Nothing in this paragraph (d) shall be construed as exempting a transaction entered into by the Fund which becomes a transaction described in section 406 of the Act or section 4975 of the Code while the transaction is continuing, unless the conditions of the exemption were met either at the time the transaction was entered into or at the time the transaction would have become prohibited but for this exemption.

(e) Each Unitholder shall be considered to own the same proportionate undivided interest in each asset of the Fund as its proportionate interest in the total assets of the Fund as calculated on the most recent preceding valuation date of the Fund.

Preamble

On July 25, 1980, the Department published a class exemption, Prohibited Transaction Exemption 80-51 (PTE 90-51, 45 FR 49709), which permits collective investment funds that are maintained by banks and in which employee benefit plans particulate to engage in certain transactions provided that specified conditions are met. The transactions for which the applicants have requested relief are those which, in part, are the subject of PTE 80-51.

The Department stated in PTE 80-51 that a comment had been received to the proposed class exemption requesting that it be amended to apply to collective investment funds that are not maintained by banks. Relief was granted for bank collective investment funds because, among other reasons, such funds are regulated by other governmental agencies and constitute a well-defined class of funds. In the case of collective investment funds that are not maintained by banks, the Department found that the record was insufficient to determine the nature of the funds and the entities managing the funds that would comprise the class covered by such broad relief. As a result, the Department stated that it could not make the required statutory findings for such relief, and that relief for non-bank maintained collective investment funds should be dealt with on an individual rather than a class basis.

On December 21, 1982 (47 FR 56945), the Department proposed a class exemption for plan asset transactions managed by independent qualified professional asset managers (QPAMs). The proposed class exemption would permit, among other things, various parties who are related to employee benefit plans to engage in transactions involving plan assets if such assets are managed by QPAMs. The class exemption states, at 47 FR 56947, that exemptive relief will be available for, among other entities, collective trust funds and pooled separate accounts maintained for a number of plans who may not qualify for relief under, respectively, PTE 80-51 or Prohibited Transaction Exemption 78-19, (43 FR 59915, December 22, 1978). Part V of the proposed class exemption provides that QPAMs must meet certain financial and net worth requirements. The applicant represents herein that LAI does not qualify as a QPAM as defined in Part V of the proposed class exemption, and therefore requests individual exemptive relief for the subject transactions.

Summary of Facts and Representations

1. The Fund is a qualified group trust for investment by qualified pension and profit sharing plans. The Fund forms a part of the qualified plans pursuant to Revenue Ruling 81-100, 1981-1 C.B. 326. The Internal Revenue Service has ruled that the Fund is qualified under section 401(a) of the Code and is exempt from Federal income tax under section 501(a) of the Code.

2. As of January 1, 1983, interests in the Fund had been subscribed to a total of $35,000,000. These interests are divided among the four Unitholders as follows: $10,000,000 to General Motors Co. Pension Plans; $10,000,000 to Honeywell Co. Master Trust Fund; $8,000,000 to Monsanto Company Master Trust; and $7,000,000 to the General Tire and Rubber Co. Pension Plans. The trustees of the Fund, Messrs. John R. White, Patrick J. Callan, John B. Bailey and James L. Mooney (the Trustees), each of whom (except Mr. Mooney) serves as officers and directors of Landauer Associates, Inc. (Landauer), have determined that no additional investors will participate in the Fund.

3. The Fund will have a term until December 31, 1992, unless extended by Unitholders holding not less than 60% the outstanding interests in the Fund for a two year extension, or unless terminated by a vote of the holders of interests in the Fund holding not less than 60% of the Fund's outstanding interests. Unitholders desiring to liquidate on December 31, 1992, regardless of the extension, may do so at 100% of the value of their interest in the Fund as of that date. If a Unitholder's interest is either voluntarily or involuntarily liquidated, the Unitholder will receive as soon as practicable 80% of the net asset value of such interest. The remaining 20% of such net asset value will be paid into a special account which will be paid to the liquidated or disqualified Unitholder on December 31, 1992, to the extent provided in the Fund's trust agreement. The interests in the Fund will not be registered under the Securities Act of 1933 or state securities laws, and must therefore be acquired for investment and not with a view for resale.

4. Pursuant to a management agreement (the Agreement) between the Fund and LAI, LAI serves as the investment manager of the Fund. Pursuant to the Agreement, the Trustees have delegated to LAI full discretion to manage and invest the assets of the Fund, and monitor and dispose of its investments. LAI is a 100% owned subsidiary of Landauer, and is a registered investment adviser under the Investment Advisers Act of 1940.

5. Landauer has been responsible for the investment on behalf of domestic and foreign pension funds, institutions, and substantial investors, for real estate properties totalling in excess of $500 million. Landauer also represents several major pension funds on a separate account basis, acting as an acquisition manager in the purchase of properties, and supervisory manager in the ongoing management of the acquired real estate portfolio.

6. As mentioned, LAI will maintain full discretion over the management of the Fund, and will identify and analyze suitable properties for investment. Specifically, it will locate properties through contacts with property owners and real estate brokers, surveys of local real estate markets, and the placement of advertisements. LAI will conduct an investment analysis of each property offering which warrants detailed analysis, including review of the leases, current and likely future expenses, the

local real estate market, and the quality of and potential for increasing the property's revenue. LAI will be responsible for the overall management of the properties in which the Fund has invested. Its duties in this regard will include establishing leasing policies and engaging and supervising local property managers. Local property managers will be required to submit to LAI monthly reports and an annual budget for the properties which they manage. In addition, LAI will be responsible for the preparation and filing of all necessary tax returns for the Fund and its wholly-owned subsidiary corporations holding title to the properties acquired by or for the Fund.

LAI will receive a management fee as part of the subscription price paid by investors purchasing interests in the Fund. Thereafter, LAI will receive from the Fund a management fee at a specified rate pr annum based upon the aggregate price of interests purchased, payable monthly. LAI will pay all expenses in connection with the offering and the organization of the Fund. Except for the receipt of the management fee neither Landauer nor LAI nor any of their affiliates, employees, officers or directors will receive compensation in connection with the business of the Fund (except as officers, directors or employees of Landauer or LAI), including without limitation, sales or leasing commissions, termination fees or mortgage fees.

8. Pursuant to the Fund's operating documents, the Fund will not enter into any transaction of any kind with any Trustee or with LAI, Landauer or any subsidiaries thereof, or any officers, directors, or employees of any such entities, provided that LAI may contract to provide management services at cost to the Fund.

9. Interests have been offered in the Fund pursuant to a complete investment package which includes a detailed private placement memorandum describing the Fund, copies of the Agreement, the Fund's trust agreements, and an adoption agreement. The adoption agreement causes the governing instrument of each Unitholder to be amended to incorporate the Fund's trust agreement. Neither the sponsor-employers of such Unitholders, nor any of the trustees, administrators, officers or investment advisers of such sponsor-employer or its Plans have any right or power to control or in any way participate in the operation or management of the Fund.

10. The fiduciaries of each Unitholder, who are independent of the Fund, will maintain complete discretion with respect to the investment in or redemption of their interests in the Fund. The applicant represents that each Unitholder is a large plan with sophisticated, experienced fiduciaries.

11. Because each Unitholder will incorporate as part of such Plan the terms, provisions, and conditions of the Fund's trust agreement, the Fund will occupy a position equivalent to the trust created by such Unitholder. Accordingly, pursuant to Rev. Rul. 81–100, a "party in interest" or "disqualified person" as defined in the Act [1] with respect to a Unitholder may be viewed as a party in interest with respect to the Fund. Accordingly, a transaction between such party and the Fund may be viewed as a prohibited transaction as described in section 406 of the Act, section 4975(c) of the Code, or both. The applicants represent that if the Fund is unable to enter into transactions with certain persons because such persons are parties in interest with respect to Unitholders, the Fund's ability to prudently make its investments and conduct its operations solely for the benefit of the Unitholders will be unduly restricted. The applicants represent that such transactions, because of the nature of the Fund, are difficult to identify and control, but if entered into would be in the interests of the Fund, the Unitholders and their participants and beneficiaries.

12. The applicants request prospective exemptive relief for transactions between the Fund and parties in interest who maintain no formal authority over the management and investments of the Fund, when such transactions are necessary for the Fund to prudently make its investments and conduct its operations. The applicants request prospective exemptive relief for certain classes of transactions between the Fund and certain parties in interest which were afforded exemptive relief in PTE 80–51. The applicants propose that such classes of transactions be subject to the identical conditions, limitations, and restrictions as those delineated with respect to the transactions afforded exemptive relief in PTE 80–51.

13. The applicants represent that because the Fund is a closed-end fund fully invested in which no Unitholder has less than 5 percent of the total assets in the Fund, the exemptive relief provided general transactions between parties in interest and the Fund as contained in Section I(a)(1) of PTE 80–51 is not applicable. Additionally, because no Unitholder is a multiemployer plan, the exemptive relief provided such plans in Section I(a)(2) of PTE 80–51 is not necessary. The applicant is not requesting, and the Department is not proposing exemptive relief for these above-described transactions.

14. The Fund supplies holders of Interests with quarterly reports and annual audited reports which will include financial statements of the Fund, and a schedule and description of investments held by the Fund. Specifically, within 120 days after the end of each calendar year of the Fund, and within 60 days after the end of each quarter (except the last quarter), the Trustees will cause to be prepared and distributed to each Unitholder a report containing the Fund's balance sheet as of the end of the period, a profit and loss statement for such calendar year, and a statement of changes in the Fund's financial position for such calendar year audited and reported upon by independent certified public accountants. In addition, the report will include a statement of all fees paid to LAI. Within 60 days after the end of each quarter the Trustees will also cause to be prepared a schedule and description of all real property acquired or sold by the Fund during such quarter. The Trustees will also supply other information which is reasonably requested by a Unitholder.

15. Price Waterhouse & Co. (Price) serves as the independent auditor of the Fund. Its duties include, but are not limited to, testing for the existence of party in interest transactions, the inspection of purchase agreements, warranty deeds, mortgage notes and other legal documents pertaining to properties acquired by the Fund, testing in order to calculate LAI's management fees, reviews and confirmation of leases, reviews of payments of property taxes and adequacy of insurance coverage, and reviews of internal accounting controls. All examinations by Price will be made in accordance with generally accepted audited standards.

16. In summary, the applicants represent that the proposed exemption for certain transactions between the Fund and certain parties in interest satisfies the criteria of section 408(a) of the Act because: (a) The proposed exemption would allow the Fund to enter into transactions which, although prohibited, are necessary for the Fund to prudently make its investments and conduct its operations solely for the benefit of its Unitholders and their participants and beneficiaries; (b) the proposed exemption would only apply to certain classes of prohibited transactions which were afforded relief in PTE 80–51 and would be subject to

[1] For purposes of this exemption the term "party in interest" shall include a disqualified person as defined in section 4975(e)(2) of the Code.

the identical conditions, limitations, and restrictions as those delineated with respect to those transactions afforded exemptive relief in PTE 80–51; (c) independent fiduciaries, unrelated to the Fund, the Trustees, LAI, or any other related party maintain complete discretion with respect to investment in or redemption of Unitholders' assets from the Fund; and (d) such fiduciaries are knowledgeable and experienced investors acting on behalf of large Plans and are provided with detailed information on the Fund.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523–8881. (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 30th day of August, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83-24199 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 83-126; Exemption Application No. D-3597 et al.]

Grant of Individual Exemptions; Stanley S. Moles, M.D., P.A. Profit Sharing Plan; Largo Fla. et al.

AGENCY: Pension and Welfare Benefit Programs, Department of Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) 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).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, D.C. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Stanley S. Moles, M.D., P.A., Profit Sharing Plan (the Plan), Located in Largo, Florida

[Exemption Application No. D-3597, Prohibited Transaction Exemption 83-126]

Exemption

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 of $460,000 by the Plan to Med Bay West (the Partnership), a partnership comprised of stockholders of Stanley S. Moles, M.D., P.A. (the Plan Sponsor) for a period of five years, and the guarantee of the repayment of the loan by the Partnership and the Plan Sponsor, provided that the terms of the loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party on the date of the consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 21, 1983 at 48 FR 28366.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Hamilton of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Employees Retirement Plan of Strachan Shipping Company (the Plan) Located in Savannah, Georgia

[Exemption Application No. D-3752; Prohibited Transaction Exemption 83-127]

Exemption

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 of $1,800,000 by the Plan to Strachan

Shipping Company, provided that the terms of the loan are not less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated party on the date of the consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 1, 1983 at 48 FR 30477.

For Further Information Contact: Ms. Linda M. Hamilton of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Pickering Industries, Inc. Profit Sharing Plan and Trust (the Plan) Located in Tacoma, Washington

[Exemption Application No. D-3828; Prohibited Transaction Exemption 83-128]

Exemption

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 sale of certain real property (the Real Property) by the Plan to Pickering Industries, Inc. (Industries) for $163,500 in cash, provided the amount paid for the Real Property is not less than its fair market value at the time the sale is consummated.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 1, 1983 at 48 FR 30479.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Aladdin Industries, Incorporated Retirement, Plan for Salaried Employees (the Plan) Located in Nashville, Tennessee

[Exemption Application No. D-3952; Prohibited Transaction Exemption 83-129]

Exemption

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 sale to the Plan of land and a ground lease with respect to the land by Metro Center Properties, provided that the terms and conditions of sale were at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party at the time of consummation of the transaction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 1, 1983 at 48 FR 30480.

Effective Date: The exemption will be effective April 29, 1983.

For Further Information Contact: Alan H. Levitas of the Department, telephone (202) 523-8971. (This is not a toll-free number.)

Polar Employee Stock Ownership Trust (the Plan) Located in Billings, Montana

[Exemption Application No. D-3962; Prohibited Transaction Exemption 83-130]

Exemption

The restrictions of section 406(a), 406(b) (1) and (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: (1) The transfer by the Plan to Polar Industries, Inc. (the Employer), the Plan sponsor, of 70,523 shares of Centura Energy Corporation (Centura), the former parent of the Employer; and (2) the receipt by the Plan from the Employer in consideration of such transfer of 74,857 shares of Employer stock, provided that the fair market value of the Employer stock received by the Plan is at least equal to the fair market value of its Centura stock.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on June 14, 1983 at 48 FR 27320.

For Further Information Contact: Mr. Robert Sandler of the Department, telephone (202) 523-8195. (This is not a toll-free number.)

Stanford Sanoff, A Law Corporation, Profit Sharing Plan (the Plan) Located in Encino, California

[Exemption Application No. D-4034; Prohibited Transaction Exemption 83-131]

Exemption

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 sale by the Plan of a certain parcel of real estate, located at 18530 E. Mayall Street, Northridge, California, to Stanford Sanoff (Mr. Sanoff), a party in interest with respect to the Plan, and the concurrent extension of credit by the Plan to Mr. Sanoff, provided the terms of the transaction are no less favorable to the Plan than those obtainable in an arm's length transaction with an unrelated third party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 5, 1983 at 48 FR 30796.

For Further Information Contact: Horace C. Green of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Fenix & Scisson, Inc. Employees' Profit Sharing Plan (the Plan) Located in Tulsa, Oklahoma

[Exemption Application No. D-4122; Prohibited Transaction Exemption 83-132]

Exemption

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 purchase by the Plan of 16.35 acres of improved real property (the Property) from Fenix & Scisson, Inc., the sponsor of the Plan, for $140,000 provided that this amount does not exceed the fair market value of the Property on the date of purchase.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 1, 1983 at 48 FR 30481.

For Further Information Contact: Mr. David Stander of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Sandy Valley Professionals, Inc., Money Purchase Pension Plan (the Plan) Located in East Sparta, Ohio

[Exemption Application No. D-4161; Prohibited Transaction Exemption 83-133]

Exemption

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 cash sale for $180,000, of certain real property (the Real Property) by the Plan to Francesco Nicoletti, M.D. (Dr. Nicoletti), provided the amount paid for the Real Property is not less than its fair market value at the time the transaction is consummated.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption refer to the notice of proposed exemption published on June 21, 1983 at 48 FR 28368.

For further information contact: Ms. Jan D. Broady of the Department, telephone (202) 523–8971. (This is not a toll-free number.)

The Ohio Convenient Food Mart Employees, Defined Benefit Pension Plan (the Plan) Located in Painesville, Ohio

[Exemption Application No. D–4165; Prohibited Transaction Exemption 83–134]

Exemption

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: (1) The proposed purchase by the Plan of two parcels of property (the Properties) from Lockie-Lee Builders, a party in interest with respect to the Plan; and (2) the proposed leasing of the Properties as franchised retail stores of the Ohio Convenient Food Mart, Inc., the sponsor of the Plan, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those which the Plan could receive in similar transactions with an unrelated Party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 5, 1983 at 48 FR 30798.

For Further Information Contact: Richard Small of the Department, telephone (202) 523–7222. (This is not a toll-free number.)

The Eleanor Z. Rabin & Associates, Inc., Employees' Pension Trust (the Plan) Located in Miami, Florida

[Exemption Application No. D–4270; Prohibited Transaction Exemption 83–135]

Exemption

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 sale of an office condominium located at 9012 SW 152nd Street, Miami, Fla. (the Property) by the Plan to Mrs. Eleanor Z. Rabin (Mrs. Rabin) for $192,000 in cash, provided such amount is not less than the fair market value of the Property at the time of the sale.[1]

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on July 19, 1983 at 48 FR 32898.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (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) These exemptions are 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.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, D.C., this 30th day of August, 1983.

Alan D. Lebowitz,

Assistant Administrator for Fiduciary Standards, Pension and Welfare Benefit Programs, Labor-Management Services Administration, U.S. Department of Labor.

[FR Doc. 83–24200 Filed 9–1–83; 8:45 am]

BILLING CODE 4510–29–M

[1] Since Mrs. Rabin is the only participant in the Plan and the sole stockholder of EZR Properties, Inc., the employer maintaining the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2501.3–3(b). However, there is jurisidiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL CREDIT UNION ADMINISTRATION

Agency Forms Submitted to the Office of Management and Budget for Clearance

The following are those packages submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Subject: Semiannual Financial and Statistical Report, NCUA 5300.

Respondents: Federally Insured Credit Unions.

Subject: 701.13 Financial and Statistical and Other Reports—The regulation requires each Federal credit union to submit a completed Financial and Statistical Report, NCUA 5300, twice each year, as of June 30 and December 31, to the Administration.

Respondents: Federally Insured Credit Unions.

OMB Desk Officer: Judith McIntosh.

Copies of the above information collection clearance packages can be obtained by calling the National Credit Union Administration, Special Projects Officer, on 202–357–1080.

Written comments and recommendations for the listed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, D.C. 20503, Attn: Judith McIntosh.

Dated: August 29, 1983.

Rosemary Brady,

Secretary of the NCUA Board.

[FR Doc. 83–24201 Filed 9–1–83; 8:45 am]

BILLING CODE 7535–01–M

NATIONAL ENDOWMENT ON THE ARTS AND THE HUMANITIES

Music Advisory Panel (Chamber Music Section), Meeting

Pursuant to section 10 (a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music Section) to the National Council on the Arts will be held on September 19–22, 1983, from 9:00 a.m.–6:00 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

A portion of this meeting will be open to the public on September 22 from 10:00 a.m.–1:00 p.m. to discuss Guidelines Review and Policy.

The remaining sessions of this meeting on September 19–21 from 9:00 a.m.–6:00 p.m. and on September 22 from 9:00 a.m.–10:00 a.m. and 1:00 p.m.–6:00 p.m. are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 26, 1983.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 83-24173 Filed 9-1-83; 8:45 am]

BILLING CODE 7537-01-M

Music Advisory Panel (Joint New Music Performance/Chamber Music Section); Meeting

Pursuant to Section 10(a) (2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Joint New Music Performance/Chamber Music Section) to the National Council on the Arts will be held on September 23, 1983, from 9:00 a.m.—5:30 p.m. in Room 714 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, N.W., Washington, D.C.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c) (4), (6) and 9 (b) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Mr. John H. Clark, Advisory Committee Management Officer, National Endowment for the Arts, Washington, D.C. 20506, or call (202) 682–5433.

Dated: August 26, 1983.

John H. Clark,

Director, Office of Council and Panel Operations National Endowment for the Arts.

[FR Doc. 83-24174 Filed 9-1-83; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 70–8]

Battelle Columbus Laboratories; Receipt and Availability of Application for Amendment to Special Nuclear Material License No. SNM–7

The U.S. Nuclear Regulatory Commission (The Commission) has received a request dated August 15, 1983 for issuance of an amendment to Special Nuclear Material License No. SNM–7 for Battelle Columbus Laboratories' research and development activities involving special nuclear material, byproduct material and source material at Columbus and West Jefferson, Ohio.

If granted, the amendment would authorize Battelle to use licensed materials to conduct a five-year program to demonstrate the safety, technical effectiveness and cost effectiveness of incineration as a method for low-level radioactive waste management. The incinerator facility would be installed at Battelle's West Jefferson site and would process a diversity of low-level wastes from medical facilities, industries and nuclear power plants.

In consideration of the request for license amendment, the Commission intends to perform a safety evaluation and an environmental assessment of the proposed activity. Prior to issuance of any amendment, the Commission will have to determine that the application meets the requirements of the Atomic Energy Act of 1954, as amended and of the Commission's regulations.

The application is available for public inspection at the Commission's Public Document Room, 1717 H Street NW., Washington, D.C.

Dated at Silver Spring, Maryland this 25th day of August, 1983.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Advanced Fuel and Spent Fuel Licensing Branch, Division of Fuel Cycle and Material Safety, NMSS.

[FR Doc. 83-24213 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50–293]

Boston Edison Co. (Pilgrim Nuclear Power Station); IGSCC Inspection Order Confirming Shutdown

I

The Boston Edison Company (the licensee), is the holder of Facility Operating License No. DPR–35, which authorizes the licensee to operate the Pilgrim Nuclear Power Station (the facility), at power levels not in excess of 1998 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Plymouth County, Massachusetts.

II

As a result of inspections conducted at 18 operating Boiling Water Reactors (BWRs) in conformance to recent IE Bulletins (IE Bulletin No. 82–03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large-Diameter, Stainless Steel, Recirculation System Piping at BWR Plants," and IE Bulletin No. 83–02, "Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants"), a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletins requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds.

Results of these and other inspections pursuant to IE Bulletins 82–03 and 83–02 have revealed extensive cracking in large-diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has occurred, there is a significant potential for IGSCC to exist in this facility and this facility may not fully satisfy all applicable 10 CFR Part 50 General Design Criteria. Therefore inspection is required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

By letter dated July 21, 1983, the staff, pursuant to 10 CFR 50.54(f), requested the licensee to provide a justification for continued operation of the facility prior to completing the inspections of IE Bulletin 83–02. The licensee responded by letters dated August 4, 10, and 22, 1983. The licensee also attended a public meeting held in Bethesda, Maryland on August 8, 1983. In the correspondence and meetings, the following issues were

discussed with the licensee: (1) costs and impacts of accelerating the inspection schedule; (2) an augmented leakage monitoring program; (3) visual inspection for leakage during shutdown; and (4) informing the reactor operators of the concern about pipe cracks and the greater potential need to implement LOCA emergency procedures and leak detection procedures.

The following information was provided by the licensee. Ultrasonic examinations of selected pipe welds in the Recirculation and Residual Heat Removal (RHR) systems were conducted during the refueling outages which commenced in 1980 and 1981 and, according to BECo, satisfied the sensitivity requirements of IE Bulletin 83-02.

The inspection firm that conducted the examinations during both refueling outages has subsequently validated three examination teams in accordance with IE Bulletin 83-02, and one team in accordance with IE Bulletin 82-03.

The procedures used during the 1981 outage were discussed with the NRC staff prior to utilization.

It should also be noted that of the personnel who had been validated to either IE Bulletin 83-02 or IE Bulletin 82-03, six took part in the 1980 and 1981 examinations.

As of this time, 23 recirculation system piping welds have been examined during two outages, using the modified equipment, technique and procedure criteria.

It is therefore BECo's position that inspections capable of detecting IGSCC have been performed since 1980 and that the scope of these inspections was comparable to that required by IE Bulletin 83-02. The 1980 and 1981 examination results revealed no unacceptable indications.

In April 1982, BECo conducted the ten year hydrostatic pressure test of the Class I piping systems in Pilgrim Station. The hydrostatic pressure tests were conducted in accordance with the requirements of ASME Section XI, 1977 edition, winter 1978 addenda. No unacceptable leakage was observed during the hydrostatic pressure test of the Class I systems.

In June 1983, Pilgrim Station was twice voluntarily removed from service to investigate the source of drywell leakage. During these investigations, BECo personnel visually examined the recirculation system for any evidence of leakage. Both investigations determined the source of the leakage to be from mechanical joints. An inspection of this type was also conducted in late July 1983. In attempting to be responsive to concerns regarding IGSCC, BECo changed their procedures to instruct operating personnel to be in a shutdown condition within 24 hours of an increase in unidentified leakage in excess of 2 gallons per minute occurs within a period of 24 hours or less. This procedure augments the Technical Specification that unidentified leakage shall not exceed 5 gallons per minute. Regarding performing some of the IEB 83-02 inspections during an unscheduled outage of undefined length, BECo considered inspecting some welds between now and their scheduled refueling outage using Ultrasonic Test (UT) techniques of detection and discrimination if they incur an outage that is predicted from the beginnning to be 10 days or more in cold shutdown. The number of welds to be inspected would be established so that inspection activities would not be on the critical path for the shutdown.

In response to concerns regarding leak rate measurement capability, BECo proposed a more restrictive administrative limit. The present Technical Specifications permit power operation for seven days after the sump sampling system is made or found inoperable. The new limit would require that the sump sampling system be returned to operable status within three days, or a shutdown shall be initiated and the reactor shall be in cold shutdown within 24 hours.

In view of the previously observed cracking at other similar operating facilities, the public health, safety and interest requires that: (1) The licensee's earliest practicable date for conducting UT inspections be confirmed, (2) the proposed compensatory measures be modified as provided in Section III, and (3) prior to startup the scope of the inspections be expanded as provided in Section III of this Order and appropriate remedial actions be taken.

Accordingly, I have determined that the public health, safety and interest require that these actions should be implemented by an immediately effective Order, and that the required compensatory measures required provide reasonable assurance that the facility can operate safely prior to conducting the inspections.

III

Accordingly, pursuant to sections 103, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility and during the interim period prior to the conduct of the inspection discussed in III.C below, the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage within any 24 hour period (leakage shall be monitored and recorded once every 4 hours). Should this leakage limit be exceeded, the unit shall immediately start an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

2. The primary containment sump collection and flow monitoring system shall be operable. With the primary containment sump collection and flow monitoring system inoperable, restore the inoperable system to operable status within 24 hours or immediately initiate an orderly shutdown and be in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

3. A visual examination for leakage of the reactor coolant piping shall be performed during each plant outage anticipated to be 48 hours or more. The examination shall be performed consistent with the requirements of IWA-5241 and IWA-5242 of the 1980 Edition of Section XI of the ASME Boiler and Pressure Vessel Code. The system boundary subject to the examination shall be in accordance with IWA-5221.

4. All systems/subsystems of the ECCS shall be operable as defined in the plant Technical Specifications. With any one system/subsystem of the ECCS inoperable, restore the inoperable system/subsystem to operable status within 72 hours or immediately initiate an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

5. Within 24 hours of receipt of this Order, the licensee shall initiate refresher training on leak monitoring and LOCA mitigation to all licensed personnel who would be expected to manipulate reactor controls or supervise control room activities.

B. The licensee shall shutdown the facility to conduct UT examinations of reactor coolant system piping as soon as practicable but no later than December 10, 1983.

C. The facility shall remain in cold shutdown until the Director, Office of Nuclear Reactor Regulation, finds that the licensee has satisfactorily completed the following actions or has provided adequate justification for not completing a given action.

1. To the extent practicable, the licensee shall conduct an ultrasonic

examination of 100%, but in no case less than the number specified in Attachment A to the July 21, 1983 50.54(f) letters, of the welds involving 304 stainless steel piping of greater than or equal to 4" in the following systems or portions thereof:

a. Recirculation System
b. ASME Code Class 1 Portion of the Residual Heat Removal System
c. ASME Code Class 1 Portion of the Core Spray System external to the Reactor Vessel
d. ASME Code Class 1 Portion of the Reactor Cleanup System

2. Within 10 days of the date of this Order or prior to the commencement of the inspections required by this Order, whichever is later, the licensee shall provide to the Director, Office of Nuclear Reactor Regulation, a list of the welds specified above that it does not intend to inspect during this current outage together with a suitable technical justification for not conducting such inspections at this time. This list should identify each weld not being inspected by system, location and size.

3. All UT personnel conducting these inspections shall have received appropriate training in IGSCC inspection using cracked thick-wall pipe specimens. All Level II and III UT operators shall have successfully completed the performance demonstration tests described in IEB 83-02. The footnote on page 4 of IEB 83-02, which allowed qualification under IEB 82-03, Revision 1, is no longer applicable.

4. Based on the results of the inspections, the licensee shall take appropriate corrective actions.

5. The licensee shall provide a report of the results of the inspection and the corrective actions taken. This report should also include the susceptibility matrix for welds examined (e.g., stress rule index and carbon content). The written report shall be submitted to the Director, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, under oath or affirmation, under provisions of Section 182a, Atomic Energy Act of 1954, as amended, with copies to the appropriate Regional Administrator and the Director, Office of Inspection and Enforcement. Other reports generated, such as may be required by Technical Specifications, shall also be provided.

D. The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee shoud comply with the requirements set forth in Section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland this 26th day of August, 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-24200 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-324]

Carolina Power and Light Co. (Brunswick Station, Unit 2); IGSCC Inspection Order Confirming Shutdown

I

The Carolina Power and Light Company, (the licensee), is the holder of Facility Operating License No. DPR-62, which authorizes the licensee to operate the Brunswick Station, Unit 2 (the facility), at power levels not in excess of 2436 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Brunswick County, North Carolina.

II

As a result of inspections conducted at 18 operating Boiling Water Reactors (BWRs) in conformance to recent IE Bulletins (IE Bulletin No. 82-03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large-Diameter, Stainless Steel, Recirculation System Piping at BWR Plants," and IE Bulletin No. 83-02, "Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants"), a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletins requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds.

Results of these and other inspections pursuant to IE Bulletins 82-03 and 83-02 have revealed extensive cracking in large-diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has occurred, there is a significant potential for IGSCC to exist in this facility and this facility may not fully satisfy all applicable General Design Criteria. Therefore inspection is required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

By letter dated July 21, 1983, the staff, pursuant to 10 CFR 50.54(f), requested the licensee to provide a justification for continued operation of the facility prior to completing the inspections of IE Bulletin 83-02. The licensee responded by letters dated July 28 and August 12, 1983. The licensee also attended a public meeting held in Bethesda, Maryland on August 8, 1983. In the correspondence and meetings, the following issues were discussed with the licensee: (1) costs and impacts of accelerating the inspection schedule; (2) augmented leakage monitoring program; (3) a visual inspection for leakage during shutdown; and (4) informing the reactor operators of the concern about pipe cracks and the greater potential need to implement LOCA emergency procedures and leak detection procedures.

The following information was provided by the licensee. The ultrasonic testing inspection and a system leak test performed on Brunswick-2 in February 1983 and the relatively minor findings on Brunswick-1 indicate that there is no immediate concern on Brunswick-2 which justifies an immediate shutdown. Therefore, CP&L believes that the continued operation of Brunswick-2 until the November 1983 maintenance outage is justified.

CP&L has upgraded their current surveillance measures for monitoring drywell leakage to exceed their existing Technical Specification requirements. The drywell sumps are monitored every 4 hours, and the unit will be shut down if an increse in unidentified leakage exceeds 2 gallons per minute (gpm) for a 24 hour period. The On-Site Nuclear Safety group will review the drywell leakage data on a daily bais until the

inspections required by IEB 83-02 are complete. A channel check of the primary containment atmospheric particulate activity monitoring system is performed every shift (8 hours) to verify operability; the frequency given in the Technical Specifications is once per 12 hours. Should the system become inoperable, grab samples of the containment atmosphere will be obtained at least once per 8 hours.

CP&L has committed to instituting an administrative limit of three days for the Sump Flow Integrating System to be inoperable, after which the unit will be placed in at least hot shutdown within 12 hours and in cold shutdown within the following 24 hours. The current operability requirement is that any one leak detection system may be inoperable for up to 31 days. This limit will apply only until the inspections required by IEB 83-02 are complete.

CP&L committed to the following action plan to perform inspections of large diameter recirculation pipe welds during unscheduled outages on Brunswick Unit No. 2. Should an unscheduled outage occur, the duration will be estimated based on the cause of the shutdown; if this duration is ten days or longer, three recirculation welds will be ultrasonically inspected. If the initial outage duration is estimated to be less than ten days, but is subsequently extended, the inspections will be performed if at any time the estimated remaining duration is ten days or longer. If any of the joints inspected requires repair by the criteria as stated in CP&L's August 12, 1983 letter, an additional three large diameter (> 12") weld joints will be inspected. If any joints in the second group require repair, an additional three joints will be inspected.

In view of the previously observed cracking at other operating facilities and the results of the licensee's testing to date, the public health, safety and interest requires that: (1) The licensee's schedule for conducting UT inspections be confirmed, (2) the proposed compensatory measures be modified as provided in Section III, and (3) prior to startup the scope of the inspections be expanded as provided in Section III and appropriate remedial actions be taken.

Accordingly, I have determined that the public health, safety and interest require that these actions should be implemented by an immediately effective Order, and that the compensatory measures required provide reasonable assurance that the facility can operate safely prior to conducting the inspections.

III

Accordingly, pursuant to sections 103, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility and during the interim period prior to the conduct of the inspection discussed in III.C below, the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage within any 24 hour period (leakage shall be monitored and recorded once every 4 hours). Should this leakage limit be exceeded, the unit shall immediately start an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

2. At least one primary containment sump collection and flow monitoring system shall be operable. With the primary containment sump collection and flow monitoring system inoperable, restore the inoperable system to operable status within 24 hours or immediately initiate an orderly shutdown and be in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

3. A visual examination for leakage of the reactor coolant piping shall be performed during each plant outage anticipated to be 48 hours or more. The examination shall be performed consistent with the requirements of IWA-5241 and IWA-5242 of the 1980 Edition of Section XI of the ASME Boiler and Pressure Vessel Code. The system boundary subject to the examination shall be in accordance with IWA-5221.

4. All systems/subsystems of the ECCS shall be operable as defined in the plant Technical Specifications. With any one system/subsystem of the ECCS inoperable, restore the inoperable system/subsystem to operable status within 72 hours or immediately initiate an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

5. Within 24 hours of receipt of this Order, the licensee shall initiate refresher training on leak monitoring and LOCA mitigation to all licensed personnel who would be expected to manipulate reactor controls or supervise control room activities.

B. The licensee shall shutdown the facility to conduct UT examinations of reactor coolant system piping as soon as practicable but no later than November 1, 1983.

C. The facility shall remain in cold shutdown until the Director, Office of Nuclear Reactor Regulation, finds that the licensee has satisfactorily completed the following actions or has provided adequate justification for not completing a given action.

1. To the extent practicable, the licensee shall conduct an ultrasonic examination of 100%, but in no cases less than the number specified in Attachment A to the July 21, 1983 50.54(f) letters, of the welds involving 304 stainless steel piping of greater than or equal to 4" in the following systems or portions thereof:

a. Recirculation System
b. ASME Code Class 1 Portion of the Residual Heat Removal System
c. ASME Code Class 1 Portion of the Core Spray System external to the Reactor Vessel
d. ASME Code Class 1 Portion of the Reactor Cleanup System

2. Within 10 days of the date of this Order or prior to the commencement of the inspections required by this Order, whichever is later, the licensee shall provide to the Director, Office of Nuclear Reactor Regulation, a list of the welds specified above that it does not intend to inspect during this current outage together with a suitable technical justification for not conducting such inspections at this time. This list should identify each weld not being inspected by system, location and size.

3. All UT personnel conducting these inspections shall have received appropriate training in IGSCC inspection using cracked thick-wall pipe specimens. All Level II and III UT operators shall have successfully completed the performance demonstration tests described in IEB 83-02. The footnote on page 4 of IEB 83-02, which allowed qualification under IEB 82-03, Revision 1, is no longer applicable.

4. Based on the results of the inspections, the licensee shall take appropriate corrective actions.

5. The licensee shall provide a report of the results of the inspection and the corrective actions taken. This report should also include the susceptibility matrix for welds selected and examined (e.g., stress rule index, carbon content, high stressed welds examined for the RHR system). The written report shall be submitted to the Director, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, under oath or affirmation, under provisions of Section

182a, Atomic Energy Act of 1954, as amended, with copies to the appropriate Regional Administrator and the Director, Office of Inspection and Enforcement. Other reports generated, such as may be required by Technical Specifications, shall also be provided.

D. The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee should comply with the requirements set forth in Section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland this 26th day of August, 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-24209 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-249]

Commonwealth Edison Co. (Dresden Nuclear Power Station, Unit No. 3); IGSCC Inspection Order Confirming Shutdown

I

The Commonwealth Edison Company, (the licensee), is the holder of Facility Operating License No. DPR-25, which authorizes the licensee to operate the Dresden Nuclear Power Station, Unit 3, (the facility), at power levels not in excess of 2527 megawatts thermal. The facility is a boiling water reactor located at the licensee's site in Grundy County, Illinois.

II

As a result of inspections conducted at 18 operating Boiling Water Reactors (BWRs) in conformance to recent IE Bulletins (IE Bulletin No. 82-03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large-Diameter, Stainless Steel, Recirculation System Piping at BWR Plants," and IE Bulletin No. 83-02, "Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants"), a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletins requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds. Results of these and other inspections pursuant to IE Bulletins 82-03 and 83-02 have revealed extensive cracking in large-diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has occurred, there is a significant potential for IGSCC to exist in this facility and this facility may not fully satisfy all applicable 10 CFR Part 50 General Design Criteria. Therefore inspection is required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

By letter dated July 21, 1983, the staff, pursuant to 10 CFR 50.54(f), requested the licensee to provide a justification for continued operation of the facility prior to completing the inspections of IE Bulletin 83-02. The licensee responded by letter dated August 1, 1983. The licensee also attended a public meeting held in Bethesda, Maryland on August 9, 1983. In the correspondence and meetings, the following issues were discussed with the licensee: (1) Costs and impacts of accelerating the inspection schedule; (2) an augmented leakage monitoring program; (3) visual inspection for leakage during shutdown; and (4) informing the reactor operators of the concern about pipe cracks and the greater potential need to implement LOCA emergency procedures and leak detection procedures.

By letters dated July 21, August 1 and August 13, 1983, the licensee committed to: (1) Accelerate the schedule for conduct of the inspections, (2) adopt tighter leak monitoring requirements, (3) reduce permissible outage time for leak detection systems, (4) perform visual leak inspection, (5) defer planned maintenance outages on ECCS, and (6) implement refresher training to all licensed operating personnel.

The staff also considers it significant that the inspections conducted on Dresden 2, a unit similar in design, construction and operation to Dresden 3, revealed that the occurrence of IGSCC was not as extensive as that found at several other plants. In addition Dresden 3 is operating at a reduced power level as the unit approaches the end of cycle.

As a result of meetings and review of information provided by the licensee, the schedule for conduct of these inspections has been accelerated to the maximum extent practicable. In view of the previously observed cracking at other operating facilities and the results of the licensee's testing to date, the public health, safety and interest requires that: (1) The licensee's schedule for conducting UT inspections be confirmed, (2) the proposed compensatory measures be modified as provided in Section III of this Order, and (3) prior to startup the scope of the inspections be expanded as provided in Section III and appropriate remedial actions be taken.

Accordingly, I have determined that the public health, safety and interest require that these actions should be implemented by an immediately effective Order, and that the compensatory measures required provide reasonable assurance that the facility can operate safely prior to conducting the inspections.

III

Accordingly, pursuant to sections 103, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility and during the interim period prior to the conduct of the inspection discussed in III.C below, the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage within any 24 hour period (leakage shall be monitored and recorded once every 4 hours). Should this leakage limit be exceeded, the unit shall immediately start an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

2. At least one primary containment sump collection and flow monitoring system shall be operable. With the

primary containment sump collection and flow monitoring system inoperable, restore the inoperable system to operable status within 24 hours or immediately initiate an orderly shutdown and be in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

3. A visual examination for leakage of the reactor coolant piping shall be performed during each plant outage anticipated to be 48 hours or more. The examination shall be performed consistent with the requirements of IWA-5241 and IWA-5242 of the 1980 Edition of Section XI of the ASME Boiler and Pressure Vessel Code. The system boundary subject to this examination shall be in accordance with IWA-5221.

4. All systems/subsystems of the Emergency Core Cooling System (ECCS) shall be operable as defined in the plant Technical Specifications. With any one system/subsystem of the ECCS inoperable, restore the inoperable system/subsystem to operable status within 72 hours or immediately initiate an orderly shutdown. The unit shall be placed in at least hot shutdown within the next 12 hours and in cold shutdown within the following 24 hours.

5. Within 24 hours of receipt of this Order, the licensee shall initiate refresher training on leak monitoring and LOCA mitigation to all licensed personnel who would be expected to manipulate reactor controls or supervise control room activities.

B. The licensee shall shutdown the facility to conduct UT examinations of reactor coolant system piping as soon as practicable but no later than September 30, 1983.

C. The facility shall remain in cold shutdown until the Director, Office of Nuclear Reactor Regulation, finds that the licensee has satisfactorily completed the following actions or has provided adequate justification for not completing a given action.

1. To the extent practicable, the licensee shall conduct an ultrasonic examination of 100%, but in no case less than the number specified in Attachment A to the July 21, 1983 50.54(f) letters, of the welds involving 304 stainless steel piping of greater than or equal to 4" in the following systems or portions thereof:

a. Recirculation System
b. ASME Code Class 1 Portion of the Residual Heat Removal System
c. ASME Code Class 1 Portion of the Core Spray System external to the Reactor Vessel
d. ASME Code Class 1 Portion of the Reactor Cleanup System

2. Within 10 days of the date of this Order or prior to the commencement of the inspections required by this Order, whichever is later, the licensee shall provide to the Director, Office of Nuclear Reactor Regulation, a list of the welds specified above that it does not intend to inspect during this current outage together with a suitable technical justification for not conducting such inspections at this time. This list should identify each weld not being inspected by system, location and size.

3. All UT personnel conducting these inspections shall have received appropriate training in IGSCC inspection using cracked thick-wall pipe specimens. All Level II and III UT operators shall have successfully completed the performance demonstration tests described in IEB 83-02. The footnote on page 4 of IEB 83-02, which allowed qualification under IEB 82-03, Revision 1, is no longer applicable.

4. Based on the results of the inspections, the licensee shall take appropriate corrective actions.

5. The licensee shall provide a report of the results of the inspection and the corrective actions taken. This report should also include the susceptability matrix for the welds examined (e.g., stress rule index and carbon content). The written report shall be submitted to the Director, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, under oath or affirmation, under provisions of Section 182a, Atomic Energy Act of 1954, as amended, with copies to the appropriate Regional Administrator and the Director, Office of Inspection and Enforcement. Other reports generated, such as may be required by Technical Specifications, shall also be provided.

D. The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee should comply with the requirements set forth in Section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland this 26 day of August, 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 83-24210 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-265]

Commonwealth Edison Company (Quad Cities Nuclear Power Station, Unit No. 2); IGSCC Inspection Order Confirming Shutdown

I

The Commonwealth Edison Company, (the licensee), is the holder of Facility Operating License No. DPR-30, which authorizes the licensee to operate the Quad Cities Nuclear Power Station, Unit 2, (the facility), at power levels not in excess of 2511 megawatts thermal (rated power). The facility is a boiling water reactor located at the licensee's site in Rock Island County, Illinois.

II

As a result of inspections conducted at 18 operating Boiling Water Reactors (BWRs) in conformance to recent IE Bulletins (IE Bulletin No. 82-03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large-Diameter, Stainless Steel, Recirculation System Piping at BWR Plants," and IE Bulletin No. 83-02, "Stress Corrosion Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants"), a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletins requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds.

Results of these and other inspections pursuant to IE Bulletins 82-03 and 83-02 have revealed extensive cracking in large-diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has

occurred, there is a significant potential for IGSCC to exist in this facility and this facility may not fully satisfy all applicable 10 CFR Part 50 General Design Criteria. Therefore inspection is required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

By letter dated July 21, 1983, the staff, pursuant to 10 CFR 50.54(f), requested the licensee to provide a justification for continued operation of the facility prior to completing the inspections of IE Bulletin 83-02. The licensee responded by letter dated August 1, 1983. The licensee also attended a public meeting held in Bethesda, Maryland on August 9, 1983. In the correspondence and meetings, the following issues were discussed with the licensee: (1) Costs and impacts of accelerating the inspection schedule; (2) an augmented leakage monitoring program; (3) visual inspection for leakage during shutdown; and (4) informing the reactor operators of the concern about pipe cracks and the greater potential need to implement LOCA emergency procedures and leak detection procedures.

By letters dated July 21, August 1 and August 15, 1983, the licensee committed to: (1) Adopt tighter leak monitoring requirements, (2) reduce permissible outage time for leak detection systems, (3) perform visual leak inspection, (4) defer planned maintenance outages on ECCS, and (5) implement refresher training to all licensed operating personnel.

The staff also considers it significant that the inspections conducted according to IEB 82-03 at Quad Cities 1, a unit similar in design, construction and operation to Quad Cities 2, did not detect any IGSCC. In addition, Quad Cities 2 will be operating at a reduced power level as the unit approaches the end of cycle.

As a result of meetings and review of information provided by the licensee, the schedule for conduct of these inspections has been accelerated to the maximum extent practicable. In view of the previously observed cracking at other operating facilities, the public health, safety and interest requires that the licensee's schedule for conducting these inspections and the compensatory measures proposed by the licensee be confirmed and that prior to startup the scope of the inspections be expanded as provided in Section III of this Order and appropriate remedial actions be taken.

In view of the foregoing, I have determined that the public health, safety and interest require that these actions should be implemented by an immediately effective Order, and that the compensatory measures required provide reasonable assurance that the facility can operate safely prior to conducting the inspections.

III

Accordingly, pursuant to sections 103, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility and during the interim period prior to the conduct of the inspection discussed in III.C below, the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage within any 24 hour period or a total of 4 gpm (leakage shall be monitored once every 4 hours when the reactor is at operating pressure). If unidentified floor drain leakage increases by 1 gpm during any 4 hour period, or equals 3 gpm total, action will be taken to identify the source of the leakage. Should these leakage limits be exceeded, and if leakage is identified as coming from a cracked pipe, shut down the plant for further investigation and repair.

2. In the event of an unplanned outage where the unit is expected to be in cold shutdown greater than 72 hours, perform a visual inspection of the recirculation system without insulation being removed.

3. Reduce to three days the unidentified sump monitoring system outage time from the existing limit of seven days.

4. Defer all planned maintenance outages on the emergency core cooling systems which would make the equipment inoperable.

5. Improve operator awareness by implementing some refresher training to all licensed personnel who would be expected to manipulate reactor controls or supervise control room activities.

B. The licensee shall shutdown the facility to conduct UT examinations of the reactor coolant system piping as soon as practicable but no later than September 4, 1983.

C. The facility shall remain in cold shutdown until the Director, Office of Nuclear Reactor Regulation, finds that the licensee has satisfactorily completed the following actions or has provided adequate justification for not completing a given action.

1. To the extent practicable, the licensee shall conduct an ultrasonic examination of 100%, but in no case less than the number specified in Attachment A to the July 21, 1983 50.54(f) letters, of the welds involving 304 stainless steel piping of greater than or equal to 4" in the following systems or portions thereof:

a. Recirculation System
b. ASME Code Class 1 Portion of the Residual Heat Removal System
c. ASME Class 1 Portion of the Core Spray System external to the reactor vessel
d. ASME Code Class 1 Portion of the Reactor Water Cleanup System

2. Within 10 days of the date of this Order or prior to the commencement of the inspections required by this Order, whichever is later, the licensee shall provided to the Director, Office of Nuclear Reactor Regulation, a list of the welds specified above that it does not intend to inspect during this current outage together with a suitable technical justification for not conducting such inspections at this time. This list should identify each weld not being inspected by system, location and size.

3. All UT personnel conducting these inspections shall have received appropriate training in IGSCC inspection using cracked thick-wall pipe specimens. All Level II and III UT operators shall have successfully completed the performance demonstration tests described in IEB 83-02. The footnote on page 4 of IEB 83-02, which allowed qualification under IEB 82-03, Revision 1, is no longer applicable.

4. Based on the results of the inspections, the licensee shall take appropriate corrective actions.

5. The licensee shall provide a report of the results of the inspection and the corrective actions taken. This report should also include the susceptibility matrix for the welds examined (e.g., stress rule index and carbon content). The written report shall be submitted to the Director, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, under oath or affirmation, under provisions of Section 182a, Atomic Energy Act of 1954, as amended, with copies to the appropriate Regional Administator and the Director, Office of Inspection and Enforcement. Other reports generated, such as may be required by Technical Specifications, shall also be provided.

D. The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing on this Order within 20 days of the date of

publication of this Order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a haring is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee should comply with the requirements set forth in Section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland this 26th day of August, 1983.

For the Nuclear Regulatory Commission.

Harold R. Denton,

Director, Office of Nuclear Reactor Regulation.

[FR. Doc. 83-24211 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-296

Tennessee Valley Authority (Browns Ferry Nuclear Plant, Unit 3); IGSCC Inspection Order Confirming Shutdown

I

The Tennessee Valley Authority, (the licensee), is the holder of Facility Operating License No. DPR-68, which authorizes the licensee to operate the Browns Ferry Nuclear Plant, Unit 3, (the facility), at power levels not in excess of 3293 megawatts thermal (rated power). The facility is a boiling water reactor located at the licensee's site in Limestone Country, Alabama.

II

As a result of inpsections conducted at 18 operating Boiling Water Reactors (BWRs) in conformance to recent IE Bulletins (IE Bulletin No. 82-03, Revision 1, "Stress Corrosion Cracking in Thick-Wall, Large/Diameter Stainless Steel Recirculation System Piping at BWR Plants"), and IE Bulletin No. 83-02, "Stress Corrosin Cracking in Large-Diameter Stainless Steel Recirculation System Piping at BWR Plants",) a potential safety concern regarding intergranular stress corrosion cracking (IGSCC) in primary system piping was identified. These bulletin requested selected licensees to perform a number of actions regarding inspection and testing of pipe welds.

Results of these and other inspections pursuant to IE Bulletin 82-03 and 83-02 have revealed extensive cracking in large-Diameter recirculation and residual heat removal system piping. In almost every case, where inspections were performed, IGSCC was discovered and, in many cases, repairs, analysis, and additional surveillance conditions were required. In view of the foregoing and the fact that the facility is similar in design to plants where IGSCC has occurred, there is a significant potential for IGSCC to exist in this facility and this facility may not fully satisfy all applicable General Design Criteria. Therefore inspection is required to determine the extent of IGSCC and to ascertain, if necessary, the degree of remedial action.

By letter dated July 21, 1983, the staff, pursuant to 10 CFR 50.54(f), requested the licensee to provide a justification for continued operation of the facility prior to completing the inspections of IE Bulletin 83-02. The licensee responded by letter dated August 4, 1983. The licensee also attended a public meeting held in Bethesda, Maryland on August 9, 1983. In the correspondence and meeting, the following issues were discussed with the licensee: (1) Costs and impacts of accelerating the inspection scheulde; (2) augmented leakage monitoring program; (3) a visual inspection for leakage during shutdown; and (4) informing the reactor operators of the concern about pipe cracks and the greater potential need to implement LOCA emergency procedures and leak detection procedures.

Several areas of substantial concern exist regarding IGSCC at Browns Ferry 3. The licensee stated that they had conducted inspections for 11 welds and found no IGSCC; however, in their letter of August 4, 1983 the licensee reported that, "No previously inspected welds appear to meet the sensitivity for detection criteria specified in IEBs 83-02 or 82-03". When Browns Ferry 3 is compared to Browns Ferry 1, which has been inspected and found to have a significant IGSCC problem, major concern develops regarding the severity of IGSCC at Browns Ferry 3. (Of note, for Browns Ferry 1, all stainless steel and bimetallic welds were inspected for the primary system. In total, approximately 50 cracks were found to date, of which about 36 are being repaired by weld overlay). This issue was discussed with the licensee and they expected that extensive IGSCC would be found in Unit 3. The piping found in all three Browns Ferry Units was supplied by the same pipe fabricator.

The licensee responded to issues raised at the meeting of August 9, 1983, in their letter dated August 12, 1983. In their August 19, 1983 letter, the licensee documented their voluntary decision to commence "an orderly shutdown of Unit 3 no later than September 6, 1983 for the purpose of inspecting piping for possible cracking as a result of Intergranular Stress Corrosion Cracking (IGSCC)".

As a result of meetings and review of information provided by the licensee, and their voluntary commitment to an early shutdown date of September 6, 1983, the schedule for conduct of these inspections has been accelerated to the maximum extent practicable. In view of the previously observed cracking at other operating facilities, the public health, safety and interest requires that the licensee's schedule for conducting these inspections and the compensatory measures proposed by the licensee by confirmed and that prior to startup the scope of the inspections be expanded as provided in Section III and appropriate remedial actions be taken.

in view of the foregoing, I have determined that the public health, safety and interest require that these actions should be implemented by an immediately effective Order, and that the compensatory measures required provide reasonable assurance that the facility can operate safely prior to conducting the inspections.

III

Accordingly, pursuant to sections 103, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR Parts 2 and 50, it is hereby ordered effective immediately that:

A. Notwithstanding the current Technical Specifications for the facility and during the interim period prior to conduct of the inspection discussed in III.C below, the following compensatory measures shall be implemented:

1. The reactor coolant system leakage shall be limited to a 2 gpm increase in unidentified leakage into the drywell in any 24 hour period (leakage shall be monitored once every 8 hours). Should this leakage limit be exceeded, the unit shall immediately start an orderly shutdown. The unit shall be in cold shutdown within 24 hours. This requirement is only in effect in the run mode and is exempted during the first 24 hours in the run mode following a startup.

2. Reduce to three days the sump pump monitoring system out of service

time from the present Technical Specification 3.6.0.2 limit of seven days.

3. In the event of a planned outage of greater than 72 hours duration, perform a visual sample inspection of IGSCC-susceptible piping (without insulation removal).

4. Defer all planned maintenance activities on ECCS equipment which will make that equipment inoperable except as required by Technical Specifications. For unplanned maintenance activities which will make ECCS equipment inoperable, limit the inoperable time by performing the required maintenance on a 24 hour basis. In addition, reduce the LCOs for ECCS equipment from seven days to three days for the following Technical Specifications: 3.5.A.2; 3.5.B.3; 3.5.B.6; 3.5.C.2; 3.5.E.2; and 3.5.F.2.

5. To improve operator awareness and response to IGSCC LOCA events, provide, as soon as possible, refresher training to all of the operators on the IGSCC phenomenon, expected system reponse, and required operator actions.

B. The licensee shall shutdown the facility to conduct UT examinations of the reactor coolant system piping as soon as practicable but no later than September 6, 1983.

C. The facility shall remain in cold shutdown until the Director, office of Nuclear Regulation, finds that the licensee has satisfactorily completed the following actions or has provided adequate justification for not completing a given action.

1. To the extent practicable, the licensee shall conduct an ultrasonic examination of 100%, but in no case less than the number specified in Attachment A to the July 21, 1983 50.54(f) letters, of the welds involving 304 stainless steel piping of greater than or equal to 4" in the following systems or portions thereof:

a. Recirculation System
b. ASME Code Class 1 Portion of the Residual Heat Removal System
c. ASME Code Class 1 Portion of the Core Spray System external to the reactor vessel
d. ASME Code Class 1 Portion of the Reactor Cleanup System

2. Within 10 days of the date of this Order or prior to the commencement of the inspections required by this Order, whichever is later, the licensee shall provide to the Director, Office of Nuclear Reactor Regulation, a list of the welds specified above that it does not intend to inspect during this current outage together with a suitable technical justification for not conducting such inspections at this time. This list should identify each weld not being inspected by system, location and size.

3. All UT personnel conducting these inspections shall have received appropriate training in IGSCC inspection using cracked thick-wall pipe speciments. All Level II and III UT operators shall have successfully completed the performance demonstration tests described in IEB 83-02. The footnote on page 4 of IEB 83-02, which allowed qualification under IEB 82-03, Revision 1, is no longer applicable.

4. Based on the results of the inspections, the licensee shall take appropriate corrective actions.

5. The licensee shall provide a report of the results of the inspection and the corrective actions taken. This report should also include the susceptibility matrix for the welds examined (e.g., stress rule index, and carbon content). The written report shall be submitted to the Director, Office of Nuclear Reactor Regulation, Washington, D.C. 20555, under oath or affirmation, under provisions of Section 182a, Atomic Energy Act of 1954, as amended, with copies to the appropriate Regional Administrator and the Director of the Office of Inspection and Enforcement. Other reports generated, such as may be required by Technical Specifications, shall also be provided.

D. The Director, Office of Nuclear Reactor Regulation, may relax or rescind any of the above conditions in writing for good cause shown by the licensee.

IV

The licensee may request a hearing on this Order within 20 days of the date of publication of this order in the **Federal Register**. Any request for a hearing shall be addressed to the Director, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. A copy shall also be sent to the Executive Legal Director at the same address. A request for hearing shall not stay the immediate effectiveness of this order.

If a hearing is to be held, the Commission will issue an Order designating the time and place of any such hearing.

If a hearing is held concerning this Order, the issue to be considered at the hearing shall be whether, on the basis of the matters set forth in Section II of the Order, the licensee should comply with the requirements set forth in section III of this Order. This Order is effective upon issuance.

Dated at Bethesda, Maryland this 26th day of August, 1983.

For the Nuclear regulatory Commission.

Harold R. Denton,

Director, Office of nuclear Regulation.

[FR Doc. 83-24212 Filed 9-1-83; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-142 OL; ASLBP 30-444-05-LA]

The Regents of the University of California (UCLA Research Reactor); Resumption of Evidentiary Hearing on Proposed Renewal of Facility License

August 19, 1983.

Before the Administrative Judges: John H. Frye, III, Chairman, Glen O. Bright, Emmeth A. Luebke.

Please take notice that the evidentiary hearing in the above captioned matter will resume on Tuesday, October 11, 1983, at 1:30 p.m. local time at the Los Angeles Hilton, Mission Room, 930 Wilshire Boulevard, Los Angeles, California 90017, and continue at the same location through Saturday, October 15, 1983. On Wednesday through Saturday the hearing will commence at 9:30 a.m.

Bethesda, Maryland, August 29, 1983.

For the Atomic Safety and Licensing Board.

John H. Frye, III,

Chairman, Administrative Judge.

[FR Doc. 83-24214 Filed 9-1-83; 8:45 am]
BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Systematic Evaluation Program; Meeting

The ACRS Subcommittee on the Systematic Evaluation Program will hold a meeting on September 20 and 21, 1983, at the Park Place Hotel, 300 East State Street, Traverse City, MI.

In accordance with the procedures outlined in the **Federal Register** on October 1, 1982 (47 FR 43474), oral or written statements may be presented by members of the public, recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the Designated Federal Employee as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Tuesday, September 20, 1983—8:30 a.m. until 12 Noon
Wednesday, September 21, 1983—8:30 a.m. until 1:00 p.m.

The Subcommittee will discuss the results of the Systematic Evaluation Program and other outstanding regulatory issues pertinent to Big Rock Point with representatives of Consumers Power Company and the NRC Staff.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, will exchange preliminary views regarding matters to be considered during the balance of the meeting.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Subcommittee Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant Designated Federal Employee, Mr. Herman Alderman, or Mr. Charles A. McClain, Staff Engineer (telephone 202/634–1414) between 8:15 a.m. and 5:00 p.m., EDT.

Dated: August 19, 1983.

Samuel J. Chilk,

Secretary to the Commission.

[FR Doc. 83-24207 Filed 9-1-83; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

White House Science Council (WHSC); Meeting

The White House Science Council, the purpose of which is to advise the Director, Office of Science and Technology Policy (OSTP), will meet on September 15 and 16, 1983, in Room 5026, New Executive Office Building, Washington, D.C. The meeting will begin at 6:00 p.m. on September 15, recess and reconvene at September 16. Following is the proposed agenda for the meeting:

(1) Briefing of the Council, by the Assistant Director of OSTP, on the current activities of OSTP.
(2) Briefing of the Council by OSTP personnel and personnel of other agencies on proposed, ongoing, and completed panel studies.
(3) Discussion of Composition of panels to conduct studies.

The September 15 session and a portion of the September 16 session will be closed the public.

The briefing on some of the current activities of OSTP necessarily will involve discussion of material that is formally classified in the interest of national defense or for foreign policy reasons. This is also true for a portion of the briefing on panel studies. As well, a portion of both of these briefings will require discussion of internal personnel procedures of the Executive Office of the President and information which, if prematurely disclosed, would significantly frustrate the implementation of decisions made requiring agency action. These portions of the meeting will be closed to the public pursuant to 5 U.S.C. 552 b (c) (1), (2), and 9 (B).

A portion of the discussion of panel composition will necessitate the disclosure of information of a personal nature, the disclosure of which would constitute a clearly unwarrented invasion of personal privacy. Accordaingly, this portion of the meeting will also be closed to the public, pursuant to 5 U.S.C. 552 b (c) (6).

The portion of the meeting open to the public will begin at 10:00 a.m. Because of the security in the New Executive Office Building, persons wishing to attend the open portion of the meeting should contact Annie L. Boyd, Secretary, White House Science Council at (202) 456–7740, prior to 3:00 p.m. on September 14. Ms. Boyd is also available to provide further information regarding this meeting.

Dated: August 30, 1983.

Jerry D. Jennings,

Executive Director, Office of Science and Technology Policy.

[FR Doc. 83-24218 Filed 9-1-83; 10:22 am]

BILLING CODE 3170-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Quota for U.S. Imports of Coffee From Nonmembers of the International Coffee Agreement

The International Coffee Organization (ICO) has advised that the U.S. non-member import quota on coffee imported into the United States from non-ICO members for the period October 1, 1983, to September 30, 1984, is 109,150 bags of 60 kilos each. The Commissioner of Customs has been directed to implement the U.S. non-member import limitation as provided for in section 2 of the International Coffee Agreement Act of 1980 (19 U.S.C. 1356k) and Executive Order 12297 of March 12, 1981.

William E. Brock,

United States Trade Representative.

[FR Doc. 83-24202 Filed 9-1-83; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 13468; 812-5601]

Banque Indosuez, et al.; Filing of Application

August 26, 1983.

Notice is hereby given that Banque Indosuez ("Indosuez"), a French commercial bank, and Indosuez North America, Inc. ("IndoNA"), c/o Robert J. Levine, Esq., Davis Polk & Wardwell, 1 Chase Manhattan Plaza, New York, New York 10005, its wholly-owned subsidiary and a Delaware corporation (collectively "Applicants"), filed an application on July 14, 1983, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 ("Act"), exempting Applicants from all provisions of the Act. 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 text of the Act for the various provisions thereof, including Section 6(c), pertinent to a consideration of the application.

The application states that Indosuez is the 4th largest commercial bank in France and the 66th largest commercial bank in the world. It is represented that at December 31, 1982, its consolidated assets were approximately 183 billion French francs, and shareholders equity was approximately 3.3 billion French francs. Since February 17, 1982, all of the stock of Indosuez's parent company, Compagnie Financiere de Suez, has been owned by the French government. It is further represented that the business of Indosuez, and thus its asset and liability structure, is generally similar to that of the largest United States banks, and that its principal business consists of making loans and receiving deposits. Loans, advances and deposits at other banks represent approximately 89% of assets and 103% of deposits and provide more than 92% of revenues. Indosuez represents that deposits, which include demand, savings and time deposits, represent 86% of total liabilities. Indosuez is also engaged in underwriting and selling securities outside the United States, which activities provide less than 2.8% of Indosuez's revenues. The application

states that Indosuez is subject to regulation by French banking authorities under a structure which is generally comparable to that applicable to United States banks.

IndoNA was organized under the laws of Delaware on June 22, 1983, and all of its outstanding shares of capital stock will be owned by Indosuez. It is asserted that, under the International Banking Act of 1978, Indosuez, as a foreign bank having U.S. branches, is subject to most of the provisions of the Bank Holding Company Act of 1956. Indosuez and IndoNA are also required to furnish the Federal Reserve Board with certain information which the Federal Reserve Board may request.

According to the application, IndoNA proposes to issue and sell prime quality commercial paper notes ("notes"), unconditionally guaranteed by Indosuez, in minimum denominations of $100,000 through United States commercial paper dealers. Applicants represent that they will secure an undertaking from each such dealer that the notes will be sold to institutional investors and other entities and individuals who ordinarily purchase commercial paper notes. The application states that the proceeds of the sale of the notes generally would be placed on short-term deposit with, or loaned to, Indosuez and thus made available to it for current transactions.

Applicants state that they plan to sell the notes without registration under the Securities Act of 1933 (the "1933 Act"), in reliance upon an opinion of their special counsel in the United States that the offering will qualify for an exemption from the registration requirements of the 1933 Act provided for certain short-term commercial paper by Section 3(a)(3) thereof. Applicants do not request Commission review or approval of such opinion letter, and the Commission expresses no opinion as to the availability of any such exemption. Applicants further represent that the presently proposed issue of notes and any future issue of debt securities issued by IndoNA or issued or guaranteed by Indosuez in the United States (other than deposit taking or other ordinary commercial banking activities of Indosuez's branches in the United States) shall have received, prior to issuance, one of the three highest investment grade ratings from a least one of the nationally recognized investment rating organizations, and that their special United States counsel shall have received certificates that such rating has been received; provided, however, that no such rating shall be required to be obtained, if, in the opinion of special United States counsel for Applicants, such counsel having taken into account for the purposes thereof the doctrine of "integration" referred to in various releases and no-action letters made public by the Commission, an exemption from registration is available with respect to such issue under Section 4(2) of the 1933 Act. Applicants represent that the guaranty of Indosuez will rank *pari passu* with all other unsecured unsubordinated indebtedness of Indosuez, including its deposit liabilities, and superior to rights of shareholders.

Applicants undertake to insure that each commercial paper dealer through whom the notes are sold will provide each offeree of the notes with a memorandum d escribing the businesses of Applicants and containing the most recently available audited financial statements of Indosuez, audited in accordance with French auditing practices. Applicants state that the offering memorandum will include a paragraph highlighting the material differences between French accounting standards applicable to French banks and generally accepted accounting principles employed by United States banks. Applicants represent that such memoranda will be at least as comprehensive as those customarily used in offering commercial paper in the United States and will be updated periodically to reflect material changes in the businesses or financial status of Applicants.

The application states that either Indosuez or IndoNA may, from time to time in the future, offer and sell debt secruities other than the short-term notes which, in the case of any such securities issued by IndoNA, will be unconditionally guaranteed by Indosuez by means of a guaranty, keep-well arrangement, back-to-back loan or otherwise. No such securities shall be offered or sold unless (a) they are registered under the 1933 Act or (b) in the opinion of special United States counsel for the Applicants an exemption from registration is available with respect to such offer and sale or (c) the staff of the Commission states that they would not recommend that the Commission take any action under the 1933 Act if such securities are not registered. Applicants repesent that any such future offerings of their debt securities in the United States will be done on the basis of disclosure documents which contain the financial statements of Indosuez and which are at least as comprehensive in their description of such Applicant and its business, and in the case of any securities issued by IndoNA, in their description of Indosuez and its business, as those customarily used in United States offerings of such securities. Applicants undertake to ensure that such a disclosure document will be provided to each offeree who has indicated an interest in such debt securities in the United States. Applicants consent to having any order granting the relief requested under Section 6(c) of the Act expressly conditioned upon Applicants' compliance with the foregoing undertakings concerning disclosure documents.

Applicants represent that they will appoint a bank or trust company, or a corporation with an office in New York City engaged in providing corporate services for lawyers as agent, to accept service of process in any suit, action, or proceeding brought on the notes or the guaranty or with respect to the offer and sale of the notes by means of the offering memorandum and instituted in any state or federal court by the holder of any of the notes. The application represents that Applicants will expressly submit to the jurisdiction of state or federal courts in the City and State of New York in respect of any such suit, action or proceeding. Applicants will also be subject to suit in any other court in the United States which would have jurisdiction because of the manner of the offering of the notes or otherwise. The application further represents that such appointments of an agent to accept service of process and such consents to jurisdiction shall be irrevocable until all amounts due and to become due in respect of the notes have been paid. The application also states that Applicants will similarly consent to jurisdiction and appoint an agent for service of process in any such suit, action or proceeding arising from any future offerings of debt securites that they may make in the United States.

In support of the exemptive relief requested, Applicants assert, among other things, that Indosuez carries on the business of a commercial bank and that IndoNA will carry on the business of a financing subsidiary of a foreign commercial bank whose only significant assets will be deposits with, or loans to Indosuez of the proceeds of the sale of commercial paper and, in the future, other debt and its paid-in capital. Accordingly, Applicants contend that they should not be treated as "investment companies" within the meaning of the Act. Because of the uncertainty that has been expressed as to whether foreign commercial banks and, by logical extension, their financing subsidiaries organized in the United

States are "investment companies" under the Act, however, Applicants seek an exemptive order pursuant to Section 6(c) of the Act.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 19, 1983, 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 Applicants at the address stated above. Proof of service (by affidavit or, in the case of an attorney-at-law, by certificate) shall be filed 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.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-24127 Filed 9-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 13467; 812-5521]

Colonial Penn Series Trust; Filing of Application

August 26, 1983.

Notice is hereby given that Colonial Penn Series Trust ("Applicant"), 5 Penn Center Plaza, Philadelphia, PA 19181, a business trust organized under the laws of the Commonwealth of Massachusetts and registered as an open-end, diversified, management investment company under the Investment Company Act of 1940 ("Act"), filed an application on April 14, 1983, with an amendment thereto on July 28, 1983, requesting an order of the Commission pursuant to Section 6(c) of the Act exempting Applicant from the provisions of Section 17(f) of the Act to the extent necessary to permit Applicant to maintain in book entry form the investments in time deposits of its CP Money Market Portfolio ("Money Market Portfolio") and of the Liquidity Division of its CP Equity Generator Portfolio ("Liquidity Division"). 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 rules thereunder for the text of the applicable provisions.

Applicant states that it currently comprises five separate portfolios, including CP Money Market Portfolio and CP Equity Generator Portfolio, which is composed of a liquidity Division and an Equity Division. Colonial Penn Investment Advisors Corp. ("Adviser"), a wholly-owned subsidiary of Colonial Penn Group, Inc., serves as investment adviser for all of Applicant's separate portfolios. Investors Fiduciary Trust Company of Kansas City, Missouri ("Custodian") acts as custodian of Applicant's assets, and as Applicant's transfer agent and divided disbursing agent.

Applicant's Money Market Portfolio and Liquidity Division will be investing in, *inter alia*, certificates of deposit of United States regulated banks. Applicants state that on September 9, 1982, the Federal Reserve Board amended its Regulation Q to permit such certificates of deposit to be issued in book entry format. Applicant contends that safekeeping of the certificates of deposit does not depend upon a certificate being issued to the Money Market Portfolio and would, in fact, result in unnecessary expenses. Applicant requests an exemption from the provisions of Section 17(f) of the Act, and in connection therewith has consented to the following conditions to any order granting that exemption:

1. The Money Market Portfolio and the Liquidity Division will adopt a system that is reasonable designed to prevent unauthorized officer's instructions and which will provide, at a minimum, for the form, content, and means of giving, recording, and reviewing the instructions. The definition of "officer's instructions" will be the same as for Rule 17f-4(c)(1) of the Act.

2. The instruments to be held in book entry form will only be bought from banks eligible to be a trustee or custodian pursuant to Section 26(a)(1) of the Act.

3. The financial institution will send confirmations, receipts or notices to either the Custodian or the Applicant and simultaneously a copy of the confirmation, receipt or notice to the other.

4. A representative of the Adviser will negotiate a purchase of a certificate of deposit from a financial institution. This will be done over the telephone. The representative will request that the financial institution send a confirmation or notice of the purchase to the Custodian. This confirmation or notice will be: (i) Physically delivered to the Custodian; (ii) transmitted via the Federal Funds Wire System; or (iii) transmitted by a telex. The representative of the Adviser will also inform the Custodian of the details of the transaction and that a request will be coming in. These oral instructions to the Custodian will be confirmed in writing with the Custodian through an over-the-phone lines service or otherwise. The Custodian will not transfer funds until it receives the transaction request from the financial institution. When it does receive the request, and if the request is in accord with the instructions it has received from the Adviser, it will then transfer funds via the Federal Wire System.

5. The transaction will be recorded in a book entry form in the name of the Custodian for Applicant. The financial institution, upon maturity of the instrument, will pay the Custodian for the Applicant.

6. Applicant by resolution of its board of trustees has approved the procedures discussed herein, and the board of trustees will review and approve the procedures at least annually.

Notice is further given that any interested person wishing to request a hearing on the application may, not later than September 21, 1983, 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.

George A. Fitzsimmons,

Secretary.

[FR Doc. 83-24126 Filed 9-1-83; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 20125; File Nos. SR-CBOE-83-16, SR-CBOE-83-28]

Chicago Board Options Exchange, Inc.; Filing of Proposed Rule Change and Amendment to Proposed Rule Change; Order Granting Accelerated Approval of Proposed Rule Changes

I. Introduction

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15

U.S.C. 78s(b)(1), (the "Act"), LaSalle and Jackson, Chicago, Illinois 60604, and Rule 19b–4 thereunder, the Chicago Board Options Exchange, Incorporated ("CBOE"), on June 9, 1983, filed with Commission a proposed rule change to permit CBOE to list and trade standardized options on the Oil (Integrated International) Industry Index (File No. SR–CBOE–83–16) a "narrow-based" or "industry" index.[1] On June 30 and July 14, 1983, CBOE submitted amendments to this filing.[2] On August 24, 1983, CBOE submitted Amendment No. 3 to this filing containing a description of the composition and economic uses of options on narrow-based indices, and the contract specifications for the Oil (Integrated International) Industry Index. Notice of Amendment No. 3 is being given by publication of this release. On August 24, 1983, CBOE filed with the Commission a proposed rule change (File No. SR–CBOE–83–28) that would add to CBOE's rules margin, position and exercise limits and trading halt provisions relating specifically to options on industry indices, including the option on the Oil (Integrated International) Industry Index. Notice of this proposed rule change is also being given by publication of this release. The discussion below describes in detail these proposed rule changes and amendments.

The proposed rule changes relating to narrow-based stock index option were filed with the Commission after its approval of CBOE's general rules relating to options on indices.[3]

[1] On the same date, CBOE submitted separate proposed rule changes relating to four other proposed narrow-based indices, File Nos. SR-CBOE-83-15, 17, 18 and 19. Because CBOE does not seek to trade options on these other four indices the other four proposed rule changes are not subjects of this release.

[2] Notice of the proposed rule change, as revised by Amendment Nos. 1 and 2, was given in Securities Exchange Act Release No. 20008, July 26, 1983, 48 FR 35221.

[3] *See* Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 53981 (November 30, 1982) in which the Commission approved the general rules proposed by CBOE, as well as similar rules proposed by the American Stock Exchange, Inc. ("Amex") and the New York Stock Exchange, Inc. ("NYSE") to trade options on stock indices and, in addition, approved specific indices with respect to which the exchanges could commence index options trading. *See also* File Nos. SR–CBOE–82–11, SR–Amex–82–8 and SR–NYSE–82–2. Subsequently CBOE commenced trading in two "broad-based" market indices: Standard & Poor's 100 (S&P 100), composed of the common stocks of 100 diverse listed companies that underlie options traded on the CBOE (originally designated the "CBOE 100"), on March 11, 1983; and the S&P 500 (composed of the common stock of 500 diverse companies), on July 1, 1983.

II. Description of the CBOE Proposed Narrow-Based Index Options

A. Description of the Index

The Oil (Integrated International) Industry Index is a market weighted [4] index containing six stocks.[5] Each of the component stocks is actively traded and currently is the subject of individual options trading.[6] Given Exxon's leading position in the international oil industry, Exxon is also the dominant stock in the index, comprising 34.7% of the total weighting of the index. That dominance, however, is counterbalanced in part by the fact that the total number of stocks in the index is small and the share of the remaining weighting of the index is fairly evenly divided among the five other companies in the index.[7]

The index is a Standard and Poor's (S&P) industry index.[8] Construction of the S&P 500 Stock Price Index proceeds from individual stocks to industry groups to sector groups to the whole. Thus, each of the stocks in S&P's various industry indices, such as the Oil (Integrated International) Industry Index, is included among the component stocks in the S&P 500 Stock Price Index. According to the CBOE, S&P has established standards for selecting stocks to be included in each industry index. Under these standards each underlying stock must represent a viable enterprise and must be representative of the industry index to which it is assigned. In addition, market price movements of index stocks must in general be responsive to changes in industry affairs. The aggregate market value of the stock and its trading activity are also important considerations in S&P's selection process. Judgments as to the investment appeal of the stocks do not enter into S&P's selection process. S&P has a committee that is responsible for all decisions affecting its indices, and establishes the guidelines for adding and deleting a company from an index. At this time, CBOE does not have any independent standards for making adjustments to the index; nor does it commit itself to adhering to whatever changes S&P might make. CBOE Rule 24.2, however, effectively requires that each change to the index be submitted to the Commission pursuant to Rule 19b–4 under the Act for the Commission's approval. In addition CBOE states in its filing (SR–CBOE–83–16, Amendment No. 3) that it intends shortly to submit such standards to the Commission pursuant to Rule 19b–4 under the Act.[9]

[4] A market weighted index is calculated by (1) multiplying the price of one share of stock by the number of shares outstanding for each issuer in the index; (2) adding these values; and (3) multiplying that sum by a pre-established divisor, which reflects the value of the index at a fixed historical point in time.

[5] As of March 31, 1983 the total index capitalization for this index was $76.6 billion.

[6] Options exchanges provide that only stocks meeting certain standards, including a liquidity test, may be the subject of options trading. For example, the underlying security must have a public float of 6,000,000 shares owned by a minimum 10,000 public shareholders, and the trading volume for each of the two previous calendar years must be at least 2,000,000 shares. *See e.g.*, Amex Rule 9.5 and CBOE Rule 5.3. While all the stocks comprising the index underlying the options contract approved today are options stocks, CBOE has not submitted as part of its rule proposals any standards for adding or deleting stocks to and from industry indices. *See* discussion below.

[7] Following Exxon, the other companies and their share of the total capitalization of the index are: Standard Oil of California (17.1%); Mobil Oil (15.4%); Royal Dutch Petroleum (14.2%); Texaco, Inc. (11.2%) and Gulf Oil (7.3%). These figures are as of March 31, 1983.

[8] The index will be licensed from the Standard and Poor's Corporation to CBOE for securities options trading.

B. Contract Specifications

CBOE proposes the following contract specifications for the index options: an index multiplier of $100.00; an expiration cycle of March–June–September–December; and exercise price intervals of five points for securities trading under 100 and 10 points for securities trading above 100.

C. Margin

CBOE proposes that its narrow-based index options be subject to the same margin requirements currently applicable to options of individual stocks.[10] Thus, no margin would be allowed in the purchase on an index option and the minimum margin on any index option, put or call, sold or "carried short" would be 30 percent of the product of the current industry index value times the index multiplier.[11]

[9] In seeking to trade options on narrow-based indices, Amex has included in its rules several critieria pertaining to the inclusion of stocks in indices that underlie Amex options contracts. Amex Rule 901C, for example, specifies that an underlying index must be comprised of 10 or more stocks, and provides that if an index consists of less than 25 stocks each of these stocks must meet Amex standards for trading options in individual securities.

[10] Amex also applies individual stock option margin requirements to its recently approved narrow-based index options. *See* Securities Exchange Act Release No. 20075, August 12, 1975 (the Amex Release).

[11] CBOE Proposed Rule 24.11(b)(ii). Thus, if the current level of the index were 100, each contract would have a value of $10,000 (100 times the $100 index multiplier) and the minimum margin for writing an option would be $3,000.00.

Further, like margin on stock options, the margin on short positions on index options is (i) for index calls, increased by any unrealized loss or reduced

D. Position and Exercise Limits

CBOE proposes to establish position and exercise limits with respect to narrow-based index options that reflect the unique characteristics of each index option.[12] The proposed rule change would establish a three-tiered position limit structure of 4,000, 6,000 and 8,000 contracts. The lowest limit, 4,000 contracts, would be applicable to options on any index that may be dominated by a single component stock and the highest limit, 8,000 contracts, is applicable to options in indices that are the least affected by any particular stock or group of stocks.[13] Under these standards, persons holding positions in options on the Oil (Integrated International) Industry Index would be subject to the 4,000 contract limit. These limits would compare to the recently approved position and exercise limits of 4,000 contracts for the higher tier (more active) individual stock options.[14]

E. Trading Halts

Proposed amendments to CBOE Rule 24.7 provide that trading in the index option will be halted if trading has been halted in tahe primary market for any combination of underlying stocks accounting for 10 percent or more of the current index value.[15] Thus, based on the current composition of the Oil (Integrated International) Industry Index, trading generally must be halted in the options contract if any one of the stocks in the index (except Gulf Oil) has been halted.

F. Economic Uses of Narrow-Based Index Options

In its initial filing with respect to index options, CBOE asserted that such options serve a number of important exonomic functions.[16] It noted that index options, like individual stock options, enable an investor to achieve leverage, limit risk or hedge a securities position. In particular, it noted that index options (at least broad-based index options) can be used to manage market (or "systematic") risk. Index options can be used to hedge the systematic risk of a broad portfolio of securities, to make short term adjustments to a portfolio without incurring the transaction costs involved in actively trading the securities in the portfolio, and to hedge (or filter out) the market risk component of an investment in a single stock. CBOE and the other exchanges proposing to trade index options indicated that such options could be used by investors or investment advisors holding or managing stock portfolios. In addition, underwriters and other persons sensitive to changes in stock prices, particularly short-term changes, could benefit from the use of stock index options.

In the instant submission, CBOE indicates that it believes options on narrow-based indices will enable investors to separate the total risk associated with an investment in individual securities into three components: market risk, industry risk and firm specific risk. CBOE stated, for example, that an investor could hedge against the industry component of risk of an international oil stock by buying put option on that industry group. In addition, CBOE stated that options on narrow based indices give investors the opportunity to profit from expectations of price movements of industry indices or the stock market as a whole. Finally, CBOE asserted in its submission that under generally accepted schemes of classification in the securities industry, oil companies are divided into international and domestic groups; that brokers' research reports and recommendations generally follow this classification; and that, accordingly, CBOE believes that options on an international oil company index will be useful to investors.

III. Solicitation of Comments

As indicated above, the proposed rule change contained in SR–CBOE–83–28 and Amendment No. 3 to File No. SR–CBOE–83–16 have not previously been published for comment. Interested persons are invited to submit written data, views and arguments concerning the contents of Amendment No. 3 to SR–CBOE–83–16 and concerning SR–CBOE–83–28 within 21 days after the date of publication in the **Federal Register**. Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 5th Street, NW., Washington, D.C. 20549. Reference should be made to File Nos. SR–CBOE–83–16 and SR–CBOE–83–28.

IV. Comments Received

The Amex sent the only comment letter received regarding the proposed rule change.[17] In its comment letter, the Amex suggested that the CBOE proposal was deficient in that it failed to contain any standards for the selection of stocks to be included in an index or for adjustments to the index composition through time. In particular, the Amex suggested that in the absence of standards an index might be or become dominated by one particular stock; might include an over-the-counter stock for which there is no official closing price; or might contain so few stocks that the index would be susceptible to being used as a surrogate for the options on the individual stocks making up the index. In addition, Amex questioned whether there is any economic use for options on two separate oil industry indexes, as originally proposed by CBOE. Finally, Amex suggested that the Commission limit each exchange proposing to trade stock index options to two such options for a pilot period.[18]

V. Discussion

On August 24, 1983, the Commission approved options on two narrow-based or industry indices proposed by Amex.[19] The two indices for which options trading was approved differ from the Oil

by any excess of the aggregate exercise price of the option over the product of the current index value times the index multiplier or (ii) for index puts, increased by the amount that the product of the current index value times the index multiplier is less than the aggregated exercise price of the option. In addition, margin on any industry option, like a stock option cannot be reduced below an absolute minimum of $250.00.

[13] As with CBOE's proposed margin rules, its proposed position and exercise limit rules are identical to Amex's position and exercise limits for its narrow-based index options. *See* the Amex Release.

[14] Proposed CBOE Rule 24.4(b). Specifically an index option contract is subject to a 4,000 contract limit if any single stock accounts, on an average of a thirty-day period fixed by the rule, for 30 percent or more of the value of the index. A 6,000 contract limit is applicable when any single stock accounts for 20 percent or more of the index, or any five stocks account for 50 percent of the index, but no single stock accounts for more than 30 percent of the index value. A limit of 8,000 contracts applies to all narrow-based index options not subject to the two lesser tiers.

[15] CBOE rules will not require aggregation of positions in industry index options with positions in options on the individual stocks comprising the indices. The Commission believes, however, that the fact that the proposed index option is settled in cash, combined with the substantial trading activity in the stocks in the index that dominate the indices, makes the potential of successful joint manipulations of this index option and individual options extremely low. The Commission intends to monitor the experience in this area, however, to determine if aggregation would be appropriate.

[16] This portion of CBOE's proposals is also identical to Amex's rules regarding its narrow-based index options.

[17] *See* File No. SR–CBOE–82–11.

[18] See letter dated July 8, 1983, from Robert J. Birnbaum, President, Amex, to George A. Fitzsimmons, Secretary, SEC.

[19] With respect to Amex's suggestion of a pilot program in stock index options, the Commission notes that it has published for comment a proposal that, if adopted, would implement a pilot program similar but not identical to that proposed by Amex. *See* Securities Exchange Act Release No. 20076, August 12, 1983.

[20] *See* The Amex Release.

(Integrated International) Industry Index proposed by CBOE principally in that the total number of stocks included in the CBOE index is smaller [20] and in that the CBOE index is not so clearly dominated by any one stock, as is the Amex's Computer Technology Index.[21]

The Commission does not believe that these differences in the two indices raise any new regulatory concerns that were not discussed and decided in the Amex release. For example, in the Amex release the Commission noted the potential for options on indices comprised of a smaller number of stocks to act as surrogate investments for individual stocks, or options on those stocks, and noted its concern that the trading of such derivative index instruments not undermine the system of regulation for individual stocks and options. It is possible that the smaller size of the CBOE idex could make it somewhat more susceptible to use as a surrogate for trading in the individual stocks underlying the index, or in options on such stocks. CBOE, however, like Amex, proposes to apply the same regulatory framwork (such as margin requirements and position and exercise limits) to is industry index options that it applies to individual stock options. As a result, the Commission does not believe that the existence of the CBOE narow-based index options contract will undermine Commission regulation of the stocks included in the index, or options on those stocks, or that there will be substantial utilization of the index options contract as a surrogate investment. In this regard, the fact that the CBOE index is not clearly dominated by one stock further reduces the likelihood that option will act as a surrogate for trading in a particular stock or stock option. In addition, the Commission does not believe there are any manipulation, surveillance or related issues raised by the CBOE filing not previously addressed in connection with the Amex narrow-based index option proposals.[22]

In sum, the Commission finds nothing in the option on the index as proposed that distinguishes it significantly in terms of the regulatory concerns it raises from the two Amex narrow-based index options the Commission has previously approved. The commission does note with concern, however, the failure of CBOE to propose its own standards for making adjustments to the index. While the Commission feels that its review of each change to the index, as will be required by CBOE's own rules, will serve as an position of the index, the Commission also feels that standards controlling adjustments to the index must soon be put in place by CBOE. As indicated above, CBOE states in its filing that it shortly will submit such standards.

VI. *Findings and Conclusion*

Under Section 19(b)(2 of the Act, the Commission must approve the foregoing rule change if it determines that the proposed rule change is consistent with the requirements of the Act and the rules thereunder applicable to national securities exchanges. The Commission has reviewed carefully the rules proposed by CBOE to accommodate the listing and trading of options on industry stock indices and the specific characteristics of the CBOE Oil (Intergrated international) Industry Index. For the reasons set forth above, the Commission has concluded that the rules provide for adequate and proper regulation of the proposed options. Accordingly, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, the requirements of Section 6 and the rules and regulations thereunder.

As it did in the Amex release, the Commission is conditioning its approval order on agreement by CBOE to delay the start-up of trading of either of its index options by at least two-weeks following its announcement of the date for start-up of trading. During this period, the Commission expects that CBOE will take the necessary steps to educate member firms about the indices. As noted above, prior to the commencement of trading CBOE also is required to submit a satisfactory surveillance agreement to the Commission.

The Commission finds good cause for approving both the proposed rule changes, as amended, prior to the thirtieth day after the date of publication of notice of filing thereof in that the basic CBOE proposal to trade options on narrow-based indices, including the Oil (Intergrated international) industry index, was published for comment 21 days ago; comments on that basic proposal have been received and considered by the Commission; the portions of the proposal noticed today are either technical in nature or are identical to Amex rule changes previously approved by the Commission which were the subject of an extensive notice and comment process; and the entire proposal raises no significant issues that were not previously addressed by the Commission in either its November 22, 1982 release on the intial Amex, CBOE and NYSE index options filing or the August 12, 1983 Amex release.

It is therefore oredered, pursuant to Section 19(b)(2) of the Act, that the above-mentioned proposed rule changes, as amended, be, and hereby is, approved, effective August 12, 1983

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-24130 Filed 9-1-83; 8:45 am]

BILLING CODE 8010-01-M

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[20] The two indices approved for options trading in the Amex Release were the Computer Technology Index, consisting of 30 stocks, and the Oil and Gas Index, consisting also of 30 stocks. As described above, the CBOE Oil (integrated International) Industry Index consists of six stocks.

[21] As of April 26, 1983, International Business Machine comprised 54 percent of Amex's Computer Technology Index, and the next four largest companies reflected only an additional 20.5 percent of the index capitalization. As described above, the largest stock in CBOE's proposed index comprises 34.7 percent of the total index capitalization and the remaining capitalization of the index is fairly evently divided among the five other companies in the index.

[22] The Commission notes, however, that concerns were raised in connection with the Amex filing with respect to the need to develop surveillance systems to monitor the trading of index options. In this regard, while the Commmission indicated its belief that Amex was developing an appropriate surveillance program, the Commission nevertheless conditioned its approval order on the submission by Amex of a satisfactory surveillance program. The Commission is similarly conditioning the start-up of trading in the proposed CBOE index options contract.

[Release No. 20123; File No. SR-NSCC-80-35]

National Securities Clearing Corporation ("NSCC"); Order Approving Proposed Rule Change

August 26, 1983.

I. Description of Proposed Rule Change

On December 19, 1980, NSCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, a proposed rule change which, as amended, revises NSCC's hearing procedures and modifies certain other rules. Notice of the proposed rule change, together with its terms of substance was given by publication of Securities Exchange Act Release No. 17492 (January 28, 1981), 46 FR 10889 (February 4, 1981).[1] NSCC subsequently

[1] The proposal, as amended, included financial responsibility and operational capability requirements for broker-dealer and bank

filed two technical amendments to the proposal.[2]

The proposed rule change, as amended, codifies reasons for which NSCC may make an issue of securities ineligible for clearance services [3] and reorganizes and clarifies portions of NSCC's rules. In addition, the proposed rule change would make significant changes to NSCC's rules governing hearing procedures.

NSCC's current hearing rules, in general, provide that a Settling Member or an applicant to become a Settling Member (collectively, the "Interested Person")[4] may appeal to a committee of NSCC's board of directors, certain actions or proposed actions that adversely affect, or would adversely affect, the Interested Person.[5] After reviewing these rules, the Commission staff expressed to NSCC a concern that certain portions of NSCC's hearing procedures might be inconsistent with the requirements of the Act.[6] For example, NSCC's current rules do not provide a participant with a hearing opportunity before NSCC may impose a fine, nor do the rules require that all fines may be appealed within NSCC.[7]

The proposal grants an Interested Person the right to a hearing before NSCC may impose any sanction; limit access to services; deny, suspend, or revoke participation; or take any similar action with respect to that person.[8] The proposal, however, would permit NSCC summarily to suspend a Settling Member or summarily to prohibit or limit a Settling Member's access to services provided that the Settling Member subsequently may obtain a hearing reviewing that action.

The proposal provides that hearings would be held before a panel of participant directors [9] drawn from the membership committee of NSCC's board of directors.[10] The number of panel members would be determined by the nature of the action or proposed action at issue. In no event, however, could any panel member have been responsible at NSCC for recommending or implementing the action or proposed action to which the Interested Person objects. Interested Persons would have the right "to be heard", *i.e.*, to present evidence, and to be represented by counsel.[11]

The panel would be required to render a decision within ten business days after the hearing. If the panel decided adversely to the Interested Person, the panel would be required to provide a written statement explaining the basis for its decision.[12] This decision would be final under NSCC's rules, although NSCC's board of directors would have the discretion to reduce a sanction or modify the decision.[13]

In addition, the proposal includes, among other procedural details, various provisions specifying how and when Interested Persons may request hearings and how and when NSCC will notify Interested Persons and other participants of proposed actions.

II. Discussion

The Commission has reviewed the proposed rule change and believes that it is consistent with the requirements of the Act. The Commission believes that the expanded list of reasons for which NSCC may cease clearing an issue of securities is consistent with the Act and, in particular, with Section 17A(b)(3)(F) of the Act which provides that the rules of the clearing agency, among other things, must assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible. The Commission further finds that the clarifying and non-substantive amendments to NSCC's rules are consistent with the requirements of the Act.

The Commission also has reviewed NSCC's proposed amendments to its hearing procedures and has determined that they are consistent with the requirements of the Act and, in particular, with section 17A(b)(3)(H), (b)(4)(B), and (b)(5) of the Act. Together, these sections require that Interested Persons receive a fair hearing at an appropriate juncture before the clearing agency may take final action adversely affecting that person. The proposal insures that an Interested Person will be afforded such a hearing before NSCC finally may deny admission, limit access to services, or expel or sanction the interested person. The proposal, however, permits NSCC summarily to suspend and close-out participants whenever the clearing agency must act expeditiously to protect itself, its participants, other creditors, or investors. In such a case, the suspended participant, nonetheless, is entitled to a hearing subsequently to contest the suspension, pursuant to Section 17A(b)(5)(C) of the Act.

The Commission believes that the proposal would insure that the panels adjudicating disputes between NSCC and its participants would be impartial. As noted, proposed NSCC actions (other than summary actions) are reviewed by the panel before they are implemented; the panels would be drawn exclusively from participant members of NSCC's board of directors; and all panel members must be free from responsibility for the disciplinary recommendations or proposed sanction. Accordingly, the Commission believes that panels will be composed of disinterested participant directors who will hear cases on a timely basis and under circumstances that encourage

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participants. NSCC requested withdrawal of these portions of the proposal and refiled them as separate proposed rule changes. The Commission approved these proposals in Securities Exchange Act Release No. 18744 (May 17, 1982), 47 FR 22265 (May 21, 1982) (broker-dealer standards) and Securities Exchange Act Release No. 19191 (October 29, 1982), 47 FR 50597 (November 8, 1982) bank standards).

[2] In a letter to the staff dated March 4, 1983, NSCC amended the proposal to conform it with other proposed rule changes previously approved by the Commission. In a letter to the staff dated July 26, 1983, NSCC amended the proposal to provide that only participant directors may serve on hearing panels and to modify portions of the proposal relating to summary suspension of bank participants.

[3] For example, the proposal would make explicit NSCC's authority to cease clearing an issue of securities if any other self-regulatory organization properly suspends trading in that security. NSCC Proposed Rule 3 § 1(a).

[4] A Settling Member is defined in NSCC Rule 1 as a Member or a Non-Clearing member of NSCC.

[5] NSCC Proposed Rule 37 § 2.

[6] Section 17A(b)(1) of the Act requires all clearing agencies to be registered with the Commission. Section 17A(b)(3)(H) of the Act provides that a clearing agency may not be registered unless, among other things, its rules provide a fair procedure with respect to the disciplining of participants, the denial of participation to any person seeking participation therein, and the prohibition or limitation by the clearing agency of any person with respect to access to services offered by the clearing agency. *See also* Sections 17A(b)(3)(G), (b)(4), and (b)(5) of the Act and Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980) (Division of Market Regulation's Standards for the Registration of Clearing Agencies).

[7] NSCC Proposed Rule 37 § 1.

[8] NSCC Proposed Rule 48 §§ 1 and 2. (disciplinary proceedings); NSCC Proposed Rule 2 § 4 (applicant for membership); NSCC Proposed Rule 3 § 3 (applicant for non-clearing membership); NSCC Proposed Rule 46 § 2 (suspension, prohibition, or limitation on access of Settling Member); NSCC Proposed Rule 45 § 5 (notice and hearing requirements).

[9] NSCC amended the proposal to provide that only participant directors, and not shareholder directors or the management director, could serve on hearing panels.

[10] If the Interested Person has requested the hearing because he objects to the action or proposed action of the membership committee, the hearing panel would be drawn from participant directors serving on the board's executive committee. NSCC Proposed Rule 37 § 2.

[11] NSCC Proposed Rule 37 § 2.

[12] *Id.* at § 5.

[13] *Id.* At §§ 5, 6. Section 19(d) of the Act provides, among other things, that the appropriate regulatory agency for the Interested Person may review a decision by any clearing agency imposing any final disciplinary sanction on any participant, denying participation to any applicant, or prohibiting or limiting that Interested Person's access to services.

objective and impartial adjudication.[14] Therefore, the Commission believes that the proposal satisfies the requirements of the Act, and in particular, of Section 17A of the Act.

It is therefore ordered, pursuant to Section 19(b) of the Act, that the proposed rule change (SR-OCC-80-35) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-24128 Filed 9-1-83; 8:45 am]

BILLING CODE 8010-01-M

[14] *See also in re Charles H. Ross, Inc.*, Securities Exchange Act Release No. 16230 (October 1, 1979), 18 SEC Docket 557 (October 16, 1979) and Securities Exchange Act Release No. 18771 (May 28, 1982), 47 FR 24877 (June 7, 1982) approving File No. SR-OCC-80-5 (amending the Options Clearing Corporation's hearing procedures).

[Release No. 20124; File No. SR-NSCC-83-3]

National Securities Clearing Corporation ("NSCC"); Order Approving Proposed Rule Change

August 26, 1983.

On March 24, 1983, NSCC filed with the Commission, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1) (the "Act"), and Rule 19b-4 thereunder, a proposed rule change that: (i) Grants certain hearing rights to participants adversely affected by specified actions taken by NSCC; (ii) requires NSCC to provide specified financial reports to participants; (iii) requires NSCC to notify other clearing agencies when it files proposed rule changes with the Commission; and (iv) authorizes NSCC's board of directors to interpret NSCC's rules. Notice of the proposed rule change, together with the terms of substance of the proposed rule change, was given by publication of Securities Exchange Act Release No. 19649 (April 4, 1983), 48 FR 15358 (April 8, 1983). No letters of comment were received.

I. Background

Section 17A(b)(1) of the Act requires all clearing agencies to be registered with the Commission. The Act further provides that the Commission shall not grant registration to a clearing agency unless the Commission determines that the clearing agency satisfies the requirements specified in Sections 17A(b)(3)(A)-(I) of the Act. To assist the Commission in making these determinations, the Commission has published Standards to be used by the Division of Market Regulation in connection with the Registration of Clearing Agencies (the "Standards").[1]

In 1976, NSCC applied for temporary registration, pursuant to Rule 17Ab2-1(c)(1) (17 CFR § 240.17Ab2-1(c)(1)), by filing Form CA-1 (17 CFR § 249b.200) with the Commission. After reviewing NSCC's application for registration, the Commission granted NSCC temporary registration.[2] On June 24, 1980, NSCC filed with the Commission its amended Form CA-1.

During the past several years, NSCC and the Commission staff have reviewed NSCC's rules and procedures and determined that certain of them needed amendments to comply fully with the requirements of the Act and with the Standards. Accordingly, over time, NSCC has filed, and the Commission has approved, several proposed rule changes that cured many of these deficiencies and that improved generally NSCC's rules.[3] This proposal concerns certain residual items needed to comply with the Act and the Standards including: (i) Amendments to NSCC's rules incorporated in NSCC's Form CA-1 but not previously submitted to the Commission, pursuant to Rule 19b-4; and (ii) several technical amendments.

II. Description of the Proposed Rule Change

As noted above, the proposal would amend several different portions of NSCC's rules:

1. Due Process Requirements—the proposal would amend two portions of NSCC's rules to require that NSCC hold hearings in certain proceedings before limiting a participant's access to services.

First, NSCC's current Rule 29 provides that each NSCC participant must also be a participant in a Qualified Securities Depository ("QSD") and that NSCC *shall* cease to act for a participant who is no longer a participant in a QSD.[4] The proposal would amend Rule 29 to provide that NSCC *may* cease to act for a participant who is no longer a participant in a QSD. The proposal would require NSCC to hold a hearing before ceasing to act for such a participant, unless NSCC had independent grounds summarily to suspend that participant, pursuant to Rule 46. Because the participant would be unable to settle his securities obligations through the QSD, the proposal would require the participant to settle securities obligations by delivery of physical securities or, in NSCC's discretion, through an NSCC-sponsored account at DTC.

Second, NSCC proposes to amend NSCC Rule 43 provide that a participant may not be denied access to the Dividend Settlement Service until the participant has received a hearing, pursuant to NSCC Rule 46.

NSCC believes that these proposed amendments are consistent with the Act and, in particular, with section 17A(b)(3)(H) of the Act, which requires that the rules of the clearing agency provide a fair procedure when, among other things, prohibiting or limiting access by any person to services offered by the clearing agency.

2. Financial Reports—The proposal would amend NSCC Rule 35 to require NSCC to provide its participants, within sixty days after the close of the year, with an annual financial statement audited and covered by a report prepared by NSCC's independent public accountants. The proposal would further amend NSCC Rule 35 to require NSCC to make available to its participants an unaudited financial statement within thirty day after the close of each fiscal quarter. This amendment addresses a requirement included in the Standards.

3. Proposed Rule Changes—The proposal would amend NSCC Rule 36 to require NSCC to provide copies or summaries to all other registered clearing agencies of any proposed rule change filed with the Commission. This amendment adresses a requirement included in the Standards.

4. Authority of NSCC's Board of Directors to Interpret NSCC's Rules—The proposal contains new NSCC Rule 47, which will provide that NSCC's board of directors, or an appropriate board committee, has the authority to interpret NSCC's rules. This proposal expressly states the implicit authority of the board of directors.

III. Discussion

The proposed amendments to Rule 29 (Membership in a QSD) and Rule 43 (Divided Settlement Service) would provide NSCC participants with an opportunity for a hearing before NSCC may limit access to certain of NSCC's services. These amendments relate to an earlier filing, SR-NSCC-35,[5] approved

[1] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 (June 23, 1980).

[2] Securities Exchange Act Release No. 13163 (January 13, 1977), 42 FR 3918 (January 21, 1977). *See also* Securities Exchange Act Release No. 19705 (April 28, 1983), 48 FR 20189 (May 4, 1983) for a discussion of the history of NSCC's registration.

[3] *See, e.g.*, SR-NSCC-80-35, approved in Securities Exchange Act Release No. 20123 (August 26, 1983) published elsewhere in this issue.

[4] Currently, the only QSD is the Depository Trust Company ("DTC"). *See also* NSCC Procedures VIII at B (sponsored accounts).

[5] *See* note 3 *supra*.

by the Commission which set forth comprehensive amendments to, among other things, NSCC's rules for disciplining, expelling, or limiting access to services to participants. The instant filing extends the hearing opportunity to participants in two additional circumstances. Because the Commission has recently reviewed NSCC's hearing procedures in considerable detail and has determined that they are consistent with the Act, the Commission believes that this further refinement affords affected participants with a fair procedure that is consistent with the requirements of the Act, and in particular, with Section 17A(b)(3)(H) of the Act.

The remainder of NSCC's proposal would (i) amend Rules 35 and 36 to incorporate certain requirements specified in the Standards;[6] and (ii) add new Rule 47, which codifies NSCC's necessary existing policy by stating that the board of directors, or one of its committees, is authorized to interpret NSCC's rules. The Commission believes that these amendments are consistent with, and in furtherance of the Act and, in particular, with Section 17A of the Act.[7]

It is therefore oredered, pursuant to Section 19(b) of the Act, that the proposed rule change be, and hereby is, approved.

By the Division of Market Regulation, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 83-24129 Filed 9-1-83; 9:45 am]

BILLING CODE 8010-01-M

SELECTIVE SERVICE SYSTEM

Registration Information and Management System Manual

AGENCY: Selective Service System.

ACTION: Announcement of Availability of Manual for Purchase.

Announcement is made of the publication and availability for purchase of all but three chapters of *Registration Information and Management System (RIMS) Manual*. The RIMS Manual is the directive guidance for the processing of registrants including registration, examination and induction; the processing of claims for postponement and reclassification; the administration of area offices, local and appeal boards, and the administration of the Alternative Service Program.

Chapter 8—Registration Processing in Foreign Countries, Chapter 15—Alternative Service, and Chapter 17—Health Care Personnel are being developed and, after they are completed, will be published and made available for purchase.

Chapters that have been published may be purchased for $8.33, chapter dividers for $2.25 and a distinctive three-ring binder for $5.38.

Orders accompanied by a check or money order in the appropriate amount payable to the Selective Service System should be sent to Selective Service System, ATTN: Records Manager, Washington, D.C. 20435.

FOR FURTHER INFORMATION CONTACT: Clarence E. Boston, Records Manager, Selective Service System, Washington, D.C. 20435. Telephone (202) 724-0828.

Thomas K. Turnage,

Director of Selective Service.

August 30, 1983.

[FR Doc. 83-24154 Filed 9-1-83; 8:45 am]

BILLING CODE 8015-01-M

SMALL BUSINESS ADMINISTRATION

[License Application No. 03/03-5168]

Lippo Finance and Investment, Inc.; Application for a License to Operate as a Small Business Investment Company

Notice is hereby given that an application has been filed with the Small Business Administration pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1983)), under the name of Lippo Finance and Investment, Inc., Suite 500, 1101 Connecticut Avenue, NW., Washington, D.C 20036, for a license to operate as a small business investment company (SBIC) under the provisions of the Small Business Investment Act of 1958, as amended (the Act) (15 U.S.C. 661 *et seq.*), and the Rules and Regulations promulgated thereunder.

The proposed officers, directors and shareholders of the Applicant are as follows:

George H. Davis, #7 Sunset Drive, Little Rock, AR 72207, Chairman of the Board, Director

A. Vernon Weaver, Jr., Apt. 1103 N. Watergate East, 2519 Virginia Avenue NW., Washington, D.C. 20037, President, CEO, Treasurer, Director

Thomas V Beard III, 9915 Old Spring Rd., Kensington, MD 20895, Vice President, General Manager

Mochtar Riady, Jalan Madiun 15, Jakarta–Indonesia, Director

Stephens Finance Ltd. (1), Fu House 1st Floor, 7 Ice House Street, Honkkong, 50 percent

Lippo Holding Ltd. (2), Fu House 1st Floor, 7 Ice House Street, Hongkong, 50 percent

(1) Stephens Finance Ltd. is owned 50 percent each by Lippo Holding Ltd. and Stephens, Inc. (Little Rock, AR). Stephens, Inc. is owned 50 percent each by W. R. Stephens and Jackson T. Stephens.

(2) Lippo Holding Ltd. is owned as follows:

Mochtar Riady, 30 percent
Lydia Suryawati, 10 percent
Andrew T. Riady, 20 percent
James T. Riady, 20 percent
Stephen T. Riady, 20 percent

Lippo Finance and Investment, Inc. (Applicant), a California corporation, will begin operations with $3,010,000 of private capital derived from the sale of one million shares of common stock, all of the common stock authorized. There are also four million shares of preferred stock authorized.

Applicant intends to provide assistance to qualified socially or economically disadvantaged concerns.

As a small business investment company under Section 301(d) of the Act, the Applicant has been organized and chartered solely for the purpose of performing the functions and conducting the activities contemplated under the Act, as amended from time to time, and will provide assistance solely to small business concerns which will contribute to a well-balanced national economy by facilitating ownership in such concerns by persons whose participation in the free enterprise system is hampered because of social or economic disadvantages.

Matters involved in SBA's consideration of the Applicant include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the Applicant under this management, including adequate profitability and financial soundness, in accordance with the Act and the SBA Rules and Regulations.

Notice is hereby given that any person may, not later than 15 days from the date of publication of this notice, submit to SBA written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Adminstrator for

[6] Standards at 45 FR 41926-7 (financial reports) and 45 FR 41923-4 (notice of proposed rule changes to other clearing agencies).

[7] Of course interpretations made pursuant to exercise of NSCC's authority under new Rule 47 may constitute rule changes that must be filed with the Commission. As in the past, NSCC will need to review interpretive decisions in light of the filing requirements of Section 19(b) of the Act and Rule 19b-4 thereunder

Investment, Small Business Administration, 1441 "L" Street, NW., Washington, D.C. 20416.

A copy of this notice shall be published in a newspaper of general circulation in Washington, D.C.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: August 25, 1983.

Robert G. Lineberry,

Deputy Associate Administrator for Investment.

[FR Doc. 83-24215 Filed 9-1-83; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice CM-8/660]

Shipping Coordinating Committee, Working Group on Ship Design and Equipment, Subcommittee on Safety of Life at Sea; Two Meetings

The U.S. Safety of Life at Sea (SOLAS) Subcommittee Working Group on Ship Design and Equipment will conduct an open meeting on September 20, 1983 at 9:30 a.m., in Room 1303 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of this meeting will be to discuss the results of the Twenty-Sixth Session of the Ship Design and Equipment Subcommittee meeting of the International Maritime Organization (IMP) which was held from February 28 to March 4, 1983. In addition, assistance in preparing the U.S. positions for the Twenty-Seventh Session of the Subcommittee will be solicited.

The agenda for this meeting includes the following discussion items:

a. Requirements for machinery and electrical installations;

b. Safety measures for special purpose ships;

c. Maneuverability of ships;

d. Safety measures for diving systems;

e. Helicpoter facilities for all types of ships; and

f. Revised standards for Mobile Offshore Drilling Units.

Members of the public may attend up to the seating capacity of the room.

For further information contact Captain A. E. Henn, U.S. Coast Guard (G-MTH/12), Washington, D.C. 20593. Telephone: (202) 426-2167.

Working Group on Safety of Navigation

The U.S. Safety of Life at Sea (SOLAS) Subcommittee Working Group on Safety of Navigation will conduct an open meeting on September 29, 1983 at 9:30 a.m., in Room 6319 at Coast Guard Headquarters, 2100 Second Street, SW., Washington, D.C. 20593.

The purpose of the meeting will be to prepare the U.S. position relating to the below listed agenda items to be considered at the 28th Session of the Subcommittee on Safety of Navigation of the International Maritime Organization to be held in London October 17-21, 1983.

—Routing of Ships
—1972 Collision Regulations
—Search and Rescue
—Ship reporting systems
—Navigational aids and related equipment
—Navigational bridge visibility

Members of the public may attend up to the seating capacity of the room.

For further information contact Mr. T. J. Falvey, U.S. Coast Guard (G-WWM), Washington, D.C. 20593, Telephone: (202) 426-4958.

Dated: August 31, 1983.

Samuel V. Smith,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 83-24307 Filed 9-1-83; 8:45 am]

BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Missoula County, Montana

AGENCY: Federal Highway Administration (FHWA), DOT.

SUMMARY: The FHWA is issuing this notice to advise that an environmental impact statement will be prepared for a proposed highway project in Missoula County, Montana.

FOR FURTHER INFORMATION CONTACT: Mr. Gerald L. Eller, Project Development Engineer, Federal Highway Administration, Federal Office Building, 301 S. Park, Drawer 10056, Helena, Montana 59626, Telephone (406) 449-5310; or Mr. Steve Kologi, Chief, Preconstruction Section, Montana Department of Highways, 2701 Prospect Street, Helena, Montana 59620, Telephone (406) 449-2495.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the Montana Department of Highways will prepare an environmental impact statement (EIS) for proposed improvements to Reserve Street from U.S. 93 to South Third Street in Missoula, Montana. These studies will be conducted by a private engineering firm that has been retained by the MDOH for this project.

Reseve Street is a major north-south arterial located on the west side of Missoula which extends from Thirty-Ninth Street at the south end to Interstate 90 at the north end. The portion of Reserve Street that will be addressed in this project is from U.S. 93 to South Third Street.

The Reserve Streeet project originally covered the length of Reserve Street from U.S. 93 to Mullan Road and was later extended northward to Interstate 90. In 1968, the two-mile section from Mullan Road to I-90 was completed with a two-lane roadway. This section includes a railroad grade separation and an interchange at Broadway, and an interchange at I-90. Right-of-way for a future four-lane for this section of Reserve Street was purchased at that time.

The section of Reserve Street from South Third to Mullan Road was improved to a two-lane roadway in several sections between 1975 and 1978. This section included a bridge over the main Clark Fork River, a bridge over an overflow channel of the river, and a railroad grade separation. Right-of-way for a future four-lane for this section was also purchased at that time.

The remaining section of Reserve Street, which this project covers, extends from U.S. 93 to South Third, a distance of about two miles. This section has been in design status for a number of years and the road plans and right-of-way plans for an 88-foot roadway are essentially complete, although no right-of-way has been purchased. Controversy surrounding this project has increased in the last few years, especially in regard to the need for the wide section, noise impacts, air quality, etc. An EIS will be prepared to arrive at an informed decision regarding these questions.

The first step in conducting these studies is to hold a scoping meeting near the project location to discuss significant issues. This meeting will be advertised and held in the near future. In addition, meetings will be held on the alternatives to be considered. These meetings will be held approximately two months after the scoping meeting.

Issued on August 26, 1983.

Charles R. Duncan,

Structural and Research Engineer, Helena, Montana.

[FR Doc. 83-24110 Filed 9-1-83; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

FRA Waiver Petition Docket Numbers HS-83-8 and HS-83-10 Through HS-83-16]

Petitions for Exemption From the Hours of Service Act

In accordance with 49 CFR 211.41 and 211.9, notice is hereby given that eight railroads have petitioned the Federal Railroad Administration (FRA) for an exemption from the Hours of Service Act (83 Stat. 464, Pub. L. 91-169, 45 U.S.C. 64a(e)). Each petition requests that the individual railroad be granted authority to permit certain employees to remain on duty for in excess of twelve hours.

The Hours of Service Act currently makes it unlawful for a railroad to require or permit specified employees to remain on duty for a period in excess of twelve hours. However, the Hours of Service Act contains a provision that permits a railroad, which employs no more than fifteen employees who are subject to the statute, to seek an exemption from this twelve hour limitation.

Each railroad seeks this exemption so that it can permit certain employees to remain on duty not more that sixteen hours in any twenty four hour period. Each petitioner indicates that granting this exemption is in the public interest and will not adversely affect safety. Additionally, each petitioner asserts that it employs no more than fifteen employees and has demonstrated good cause for granting this exemption. The railroads seeking this exemption are as follows:

South Branch Valley Railroad, Docket Number HS-83-8
Eastern Shore Railroad, Inc., Docket Number HS-83-10
Pioneer Valley Railroad Company, Inc., Docket Number HS-83-11
St. Maries River Railroad Company, Docket Number HS-83-12
Arkansas & Louisiana Railway Company, Docket Number HS-83-13
Bay Colony Railroad Corporation, Docket Number HS-83-14
Green Mountain Railroad Corporation, Docket Number HS-83-15
Natchez Trace Railroad, Docket Number HS-83-16

Interested persons are invited to participate in these proceedings by submitting written views and comments. FRA has not scheduled an opportunity for oral comment since the facts do not appear to warrant it. Communications concerning these proceedings should identify the appropriate Docket Number (e.g., Docket Number HS-83-8) and must be submitted in triplicate to the Docket Clerk, Office of the Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

Communications received before October 3, 1983, will be considered by FRA before final action is taken. Comments received after that will be considered as far as practicable. All comments received will be available for examination both before and after the closing date for comments, during regular business hours in Room 7330, Nassif Building, 400 Seventh Street, SW., Washington, D.C. 20590.

(Sec. 5 of the Hours of Service Act of 1969 (45 U.S.C. 64(a), 1.49(d) of the regulations of the Office of the Secretary, 49 CFR 1.49(d))

Issued in Washington, D.C. on August 29, 1983.

Joseph W. Walsh,

Associate Administrator for Safety.

[FR Doc. 83-24138 Filed 9-1-83; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF THE TREASURY

Bureau of the Mint

Use of Metal Tokens; Policy Change

AGENCY: Bureau of the Mint, Treasury.

ACTION: *General Notice on Proposed Change in Treasury Policy Regarding the Use of Metal Tokens.*

SUMMARY: The Bureau of the Mint, U.S. Department of the Treasury, proposes a change to its current policy regarding the use of metal tokens. The Mint, with certain exceptions has been generally opposed to the production and use of metal tokens. The exceptions have included the use of metal tokens by gambling casinos and have developed on a cases by case basis.

In order to insure that a uniform policy exists in this area, the Mint proposes to no longer oppose the production and use of metal tokens subject to the criteria listed below.

DATE: Interested members of the public are invited to furnish written comments on the proposed policy. Comments must be received on or before October 3, 1983.

ADDRESS: Send comments to Kenneth B. Gubin, Legal Counsel, Bureau of the Mint, Room 1032 Warner Building, 501 E Street, NW., Washington, D.C. 20220.

FOR FURTHER INFORMATION CONTACT: Kenneth B. Gubin (address above) (202) 376-0564.

SUPPLEMENTARY INFORMATION: Generally, the Department has been opposed to the production and use of metal tokens because of its concern that widespread use of the tokens would lead to their circulation in the community as coinage in violation of certain provisions of the criminal code. These provisions, sections 486, 489, and 491 of title 18, United States Code, provide essentially that the manufacture, use or passing of tokens as current money is prohibited. Nonetheless, the Department has recently, on a case by case basis, not opposed individual requests by gambling casinos to use tokens for gaming purposes. In light of the considerable demand for the use of such tokens, and in order to maintain a uniform policy in this area, the Department has decided that it will not oppose the manufacture and use of tokens which meet the criteria set forth below.

The ultimate responsibility for the enforcement of the above statute rests with the Department of Justice. While each situation must of necessity be evaluated in light of the particular facts presented, the Department is of the view that compliance with the restrictions noted below will minimize the possibility of a violation.

1. Tokens must be clearly identified with the name and location of the establishment from which they originate on at least one side.

2. Tokens must contain language which limits their redemption to the issuing establishment.

3. Tokens must meet the following specifications:

(a) Weight—Tokens shall weight no less than two grams.

(b) Diameter—Tokens must be outside the following ranges in diameter (inches):

0.680–0.775
0.810–0.860
0.930–0.980
1.018–1.068
1.180–1.230
1.475–1.525

(c) Thickness—No token shall be less than 0.050 inch thick.

(d) Reeded edges—Reeded or serrated edges are not allowed for tokens which are less than 1.475 inches in diameter. Tokens which are equal to or greater than 1.475 inches in diameter may have reeded edges. Such tokens shall have fewer than 90 or more than 200 reeds.

(e) Token shall not be manufactured from a three layered material consisting of a copper-nickel alloy clad on both sides of a pure copper core, nor from a copper based alloy except if the total zinc, nickel, aluminum, magnesium and other alloying metals exceeds twenty-five percent of the token's weight.

4. Establishments using these tokens shall prominently and conspicuously post signs on their premises notifying patrons that federal law prohibits the

use of such tokens outside the premises for any monetary purpose whatever.

5. The issuing establishment shall not accept tokens as payment for any goods or services offered by such establishment with the exception of the specific use for which the tokens were designed.

6. The design on the token shall not resemble any current or past foreign or U.S. coinage.

The Department of the Treasury anticipates that the publication of the foregoing restrictions will obviate the necessity of examining individual tokens for compliance. Should a novel question be presented with regard to a token's design or specifications, the Department will be willing to review the matter.

Roy G. Hale,

Treasurer of the United States (Acting).

[FR Doc. 83-24082 Filed 9-1-83; 8:45 am]

BILLING CODE 4810-37-M

Customs Service

[T.D. 83-179]

Recordation of Trade Name; "Players & Spectators a Drinking and Gaming Establishment"

AGENCY: U.S. Customs Service, Treasury.

ACTION: Notice of recordation.

SUMMARY: On May 17, 1983, a notice of application for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124, of the trade name "PLAYERS & SPECTATORS A DRINKING AND GAMING ESTABLISHMENT," was published in the **Federal Register** (48 FR 22252). The notice advised that before final action on the application, consideration would be given to relevant data, views, or arguments submitted in opposition to the recordation and received not later than July 18, 1983. No responses were received in opposition to the application.

Accordingly, as provided in § 133.14, Customs Regulations (19 CFR 133.14), the trade name "PLAYERS & SPECTATORS A DRINKING AND GAMING ESTABLISHMENT" is recorded as the trade name used by Players & Spectators, Inc., a corporation organized under the laws of the State of Washington, located at East 27 Augusta, Spokane, Washington 99207. The trade name is used in connection with a combined restaurant, tavern and amusement game services and franchise business.

DATE: September 2, 1983.

FOR FURTHER INFORMATION CONTACT: Harriet Lane, Entry, Licensing and Restricted Merchandise Branch, U.S. Customs Service, 1301 Constitution Avenue, NW., Washington, D.C. 20229 (202-566-5765).

Dated: August 25, 1983.

Donald W. Lewis,

Director, Entry Procedures and Penalties Division.

[FR Doc. 83-24155 Filed 9-1-83; 8:45 am]

BILLING CODE 4820-02-M

VETERANS ADMINISTRATION

Station Committee on Educational Allowances; Notice of Meeting

Notice is hereby given pursuant to Section V, Review Procedure and Hearing Rules, Station Committee on Educational Allowances that on Thursday, September 22, 1983 at 10:00 a.m., the Phoenix, Arizona Regional Office Station Committee on Educational Allowances shall at Room 605, 3225 N. Central Avenue, Phoenix, Arizona, conduct a hearing to determine whether the Veterans Administration benefits to all eligible persons enrolled in Venture Aviation, Chandler, Arizona should be discontinued, as provided in 38 C.F.R. 21.4134, because a requirement of law is not being met or a provision of the law has been violated. All interested persons shall be permitted to attend, appear before, or file statements with the committee at that time and place.

Dated: August 23, 1983.

Roger W. Brickey,

Director, VA Regional Office.

[FR Doc. 83-24171 Filed 9-1-83; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 48, No. 172
Friday, September 2, 1983

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL DEPOSIT INSURANCE CORPORATION

Change in Subject Matter of Agency Meeting

Pursuant to the provisions of subsection (e)(2) of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at its open meeting held at 2 p.m. on Tuesday, August 30, 1983, the Corporation's Board of Directors determined, on motion of Chairman William M. Isaac, seconded by Director Irvine H. Sprague (Appointive), concurred in by Director C. T. Conover Comptroller of the Currency), that Corporation business required the addition to the agenda for consideration at the meeting, on less than seven days' notice to the public, of the following matter:

Recommendation regarding the liquidation of a bank's assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:
Case No. 45,764-L: Pan American National Bank, Union City, New Jersey

By the same majority vote, the Board further determined that no earlier notice of this change in the subject matter of the meeting was practicable.

Dated: August 30, 1983.

Federal Deposit Insurance Corporation.

Noyle L. Robinson,

Executive Secretary.

[S-1245-83 Filed 8-31-83; 11:55 am]

BILLING CODE 6714-01-M

2

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, September 7, 1983.

PLACE: Board Room, Seventh floor, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Review of Central Liquidity Facility Lending Rate.
3. Semi-annual Agenda of Regulations.
4. Request for comments on Part 701.12 of NCUA Rules and Regulations regarding supervisory committee and annual audits of Federal credit unions.
5. Request for comments on proposed deletion of Parts 706, conversion from Federal to State credit union and 707, conversion from State to Federal credit union, from NCUA Rules and Regulations.
6. Request for comments on Part 704, Corporate Central Federal Credit Unions.
7. Interpretive Ruling and Policy Statement, Federal credit union services for retired persons.
8. Proposed amendment to Part 703 of NCUA's Rules and Regulations, Investments and Deposits.
9. Proposed Regional Realignment.
10. Appeal of charter amendment request disapproved by regional director under delegated authority: Fort Eustis Federal Credit Union No. 7448.
11. Proposed expansion of field of membership: Hope-Coronado Federal Credit Union No. 19520.

RECESS; 10:30 a.m.

TIME AND DATE: 10:45 a.m., Wednesday, September 7, 1983.

PLACE: Board Room, Seventh floor, 1776 G Street NW., Washington, D.C. 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Requests from Federally insured credit unions for special assistance under Section 208(a)(1) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
3. Proposed Merger under Section 204(a) of the Federal Credit Union Act. Closed pursuant to exemptions (8) and (9)(A)(ii).
4. Personnel Actions. Closed pursuant to exemptions (2) and (6).
5. Agency Budget for FY 1984. Closed pursuant to exemptions (2) and (9)(B).

FOR MORE INFORMATION CONTACT:
Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-1243-83 Filed 8-30-83; 5:01 pm]

BILLING CODE 7535-01-M

3

NATIONAL CREDIT UNION ADMINISTRATION

Changes in Time and Subject of Meeting

The previously announced closed meeting of the National Credit Union Administration scheduled for 3 p.m., Tuesday, July 26, 1983 was changed to 2:20 p.m.

The National Credit Union Administration Board also determined that its business required that the previously announced closed meeting on Tuesday, July 26, 1983 include the following additional items, which were closed to public observation:

Payment of fees. Closed pursuant to exemption (9)(B).
Issuance of subpoena. Closed pursuant to exemption (10).

The Board voted unanimously to add these items to the closed agenda.

The previously announced items were:

1. Approval of Minutes of Previous Closed Meetings.
2. Budget Authorization for fiscal year 1984. Closed pursuant to exemptions (2) and (9)(B).
3. Personnel Actions. Closed pursuant to exemptions (2) and (6).

The meeting was held at 2:20 p.m., National Credit Union Administration, Regional Office, Region IV (Chicago), 230 South Dearborn, Suite 3346, Chicago, Illinois 60604.

For More Information Contact: Rosemary Brady, Secretary of the Board, telephone (202) 357-1100.

[S-1244-83 Filed 8-30-83; 5:01 pm]

BILLING CODE 7535-01-M

4

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1317]

TIME AND DATE: 10:15 a.m. (e.d.t.), Wednesday, September 7, 1983.

PLACE: TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA ITEM: Approval of minutes of meetings held on August 24 and August 29, 1983.

B—Purchase Awards
B1. Proposal 33-938930—Feedwater heaters for Cumberland Fossil Plant.
*B2. Requisition 99-941389—Lease of 260-ton depressed-center flat car APWX 1004

for use in movement of 500-kV power transformer from Cordova, Tennessee, to Muncie, Indiana.

B3. Certificates of Insurance Under Contract 79P66-164512 with American Nuclear Insurers and Mutual Atomic Energy Liability Underwriters for secondary financial protection level of nuclear liability insurance for Watts Bar Nuclear Plant; and ratification of previous action with respect to certificate of insurance for secondary financial protection for Browns Ferry and Sequoyah Nuclear Plants.

C—Power Items

C1. Contract No. TV—2313A with the State of Alabama for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

C2. Contract No. TV—2311A with Tennessee Emergency Management Agency for cooperation in the development and implementation of radiological emergency plans as required by the Nuclear Regulatory Commission and the Federal Emergency Management Agency.

D—Personnel Actions

D1. Amendment to personal services contract with CDI Corporation, Philadelphia, Pennsylvania, for engineering support services, requested by the Office of Engineering Design and Construction.

D2. Amendment to personal services contract with Consultants & Designers Incorporated, New York, New York, for engineering support services, requested by the Office of Engineering Design and Construction.

D3. Renewal of personal services contracts with various contractors for architectural, engineering, and design services. (Burns and Roe, Incorporated., Oradell, New Jersey; Gibbs & Hill, Incorporated, New York, New York; Gilbert Associates, Incorporated, Reading, Pennsylvania; Sargent & Lundy, Chicago, Illinois; and United Engineers & Constructors, Incorporated., Philadelphia, Pennsylvania).

F—Unclassified

F1. Contract No. TV—2000A among the Mississippi Industrial Development Board, the Tombigbee River Valley Water Management District, the Yellow Creek State Inland Port Authority, and TVA for cooperation in the planning and development of an inland port and attendant industrial properties.

F2. Supplement to Contract No. TV—5148A with Town of Jonesboro, Tennessee, for additional activities in the development and implementation of a flood control project.

*F3. Supplement to Contract No. TV—0001A between TVA and the Agency for International Development (AID) providing for AID funding for TVA assistance in medium-sized cities in underdeveloped countries committed to conserving energy and natural resources.

F4. Interagency agreement with the Environmental Protection Agency providing for TVA's assistance in studying the water quality of streams in the Southern Blue Ridge Province.

F5. Payment from net power proceeds for fiscal year 1983 to the Treasury of the United States.

*Items approved by individual Board members. This would give formal ratification to the Board's Action.

CONTACT PERSON FOR MORE INFORMATION: Craven H. Crowell, Jr., Director of Information, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 245-0101.

Dated: August 31, 1983.

[S-1246-83 Filed 8-31-83; 1:18 pm]

BILLING CODE 8120-01-M

federal register

Friday
September 2, 1983

Part II

Department of Labor

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

Supersedeas Decision 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 decision being superseded.

Alabama:	
AL82-1047	Sept. 17, 1982.
AL83-1001	Jan. 21, 1983.
AL83-1007	Feb. 18, 1983.
Connecticut: CT83-3021	June 3, 1983.
Florida: FL83-1029	Apr. 22, 1983.
Hawaii: HI83-5104	Mar. 18, 1983.
Illinois: IL83-2053	Aug. 5, 1983.
Kansas: KS83-4009; KS83-4013; KS83-4014; KS83-4015.	Feb. 4, 1983.
Massachusetts: MA81-3054	Sept. 4, 1981.
New Jersey: NJ83-3016	June 17, 1983.
New York:	
NY80-3054	Sept. 5, 1980.
NY81-3062	Sept. 11, 1981.
NY83-3027	July 22, 1983.
NY83-3032	July 29, 1983.
Oregon: OR83-5100	Feb. 18, 1983.
Pennsylvania:	
PA82-3017	Mar. 26, 1982.
PA83-3001	Aug. 19, 1983.
Utah: UT83-5108	Mar. 25, 1983.
Washington: WA83-5110	June 3, 1983.

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.

Indiana:	
IN83-2033 (IN83-2067)	Apr. 29, 1983.
IN83-2026 (IN83-2069)	Mar. 25, 1983.
IN83-2030 (IN83-2070)	May 6, 1983.
IN83-2032 (IN83-2072)	May 13, 1983.
Kansas:	
KS83-4013 (KS83-4063)	Feb. 4, 1983.
KS83-4014 (KS83-4064)	Do.
KS83-4009 (KS83-4065)	Do.
Maine: ME81-3057 (ME83-3041)	Aug. 28, 1981.
Nebraska: NE83-4023 (NE83-4062)	Mar. 18, 1983.
Wisconsin: WI82-2023 (WI83-2068)	Apr. 9, 1982.

Signed at Washington, D.C., this 26th day of August 1983.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

DECISION NO. AL82-1047 - MOD. # 3	Basic Hourly Rates	Fringe Benefits
(September 17, 1982 - 47 FR 41249)		
LAWRENCE, LIMESTONE, & MORGAN COUNTIES, ALABAMA BUILDING CONSTRUCTION		
CHANGE:		
CARPENTERS:		
Carpenters	$ 10.55	1.59
Millwrights	11.20	1.59
ELECTRICIANS	14.15	2.25+ 4%
PLUMBERS & PIPEFITTERS	14.99	2.44

DECISION NO. AL83-1001 - MOD. # 2	Basic Hourly Rates	Fringe Benefits
(January 21, 1983 - 47 FR 2929)		
COLBERT & LAUDERDALE COUNTIES, ALABAMA BUILDING CONSTRUCTION		
CHANGE:		
ASBESTOS WORKERS	$ 15.66	2.26
BRICKLAYERS:		
Bricklayers, Blocklayers, & Stonemasons	13.92	
Saw Operators	14.17	
ELECTRICIANS:		
Electricians	14.15	2.25+ 4%
Cable Splicers	14.40	2.25+ 4%
LABORERS:		
Unskilled, etc.	8.16	1.00
Air Tool Operators & Pipelayers	8.36	1.00
PAINTERS:		
Commercial	11.80	.75
Industrial	12.50	.75
ROOFERS	11.45	.60

DECISION NO. AL83-1007 - MOD. # 1	Basic Hourly Rates	Fringe Benefits
(February 18, 1983 - 47 FR 7367)		
MADISON COUNTY, ALABAMA BUILDING CONSTRUCTION		
CHANGE:		
ASBESTOS WORKERS	$15.66	2.26
CARPENTERS	10.55	1.59
ELECTRICIANS	14.15	2.25+ 4%
LABORERS	7.22	1.00
MILLWRIGHTS	11.20	1.59

DECISION NO. CT83-3021 - MOD. #4 (48 FR 25090 - June 3, 1983)	Basic Hourly Rates	Fringe Benefits
STATEWIDE		
CHANGE:		
IRONWORKERS	18.00	5.18+a
CARPENTERS		
HEAVY & HIGHWAY CONSTRUCTION		
AREAS 1&2	14.45	1.65+d
AREA 3	14.95	1.80+c +d
AREA 4	14.90	1.90+d
AREA 5	14.45	2.40+d
AREA 6	15.20	1.58+d

DECISION NO. FL83-1029 - MOD. # 3	Basic Hourly Rates	Fringe Benefits
(April 22, 1983 - 48 FR 17500)		
VOLUSIA (except Cape Kennedy Space Center & Cape Canaveral Air Force Station) COUNTY, FLORIDA BUILDING CONSTRUCTION		
CHANGE:		
ELECTRICIANS:		
a. Zone --		
Electricians	$ 12.33	3%+ 1.55
Cable Splicers	12.58	3% + 1.55
b. Zone I --		
Electricians	14.60	3% + 1.55
Cable Splicers	14.85	3% + 1.55
MARBLE SETTERS	9.10	.93
MILLWRIGHTS	14.55	2.72
TILE & TERRAZZO WORKERS	9.10	.93

Decision No. IL83-2053 Mod. # 1 (48 FR 35826 - August 5, 1983)	Basic Hourly Rates	Fringe Benefits
Alexander, Champaign,..., Williamson Cos., Illinois		
CLASSIFICATION DEFINITIONS		
LABORERS		
AREAS 2,3,4,6,7,8, & 9		
Group 1		
OMIT - Rod & Chainmen		

DECISION NO. HI83-5104 - Mod. #3 (48 FR 11610 - March 18, 1983) Statewide, Hawaii	Basic Hourly Rates	Fringe Benefits
Change:		
Carpenters:		
Carpenters; Hardwood Floorlayers; Patent Scaffold Erectors; Pneumatic Nailer; Shinglers	$15.40	$5.55
Drywall	16.65	5.49
Lathers	16.40	5.45
Millwrights	16.65	5.55
Power Saw Operator (2 HP and over)	16.55	5.55
Electricians:		
Electricians; Linemen	15.50	4.07+ 26.6%
Technicians	15.97	4.07+ 26.6%
Cable Splicers	17.05	4.07+ 26.6%
Line Construction:		
Electricians; Linemen	15.50	4.07+ 26.6%
Technicians	15.97	4.07+ 26.6%
Heavy Equipment Operators	13.95	4.07+ 26.6%
Groundman	11.63	4.07+ 26.6%
Cable Splicers	17.08	4.07+ 26.6%
Plumbers; Steamfitters	16.00	6.27
Sheet Metal Workers	15.50	7.77
Soft Floor Layers	15.95	5.55

DECISION NO. UT83-5108 - Mod. #9
(48 FR 12651 - March 25, 1983)
Statewide, Utah

Omit:
Area and Zone Descriptions for:
Carpenters and Cement Masons - Heavy and Highway Construction as originally issued

Add:
Carpenters and Cement Masons to same Zone Descriptions as Operating Engineers, Laborers, and Truck Drivers - Heavy and Highway Construction

MODIFICATION P. 3

DECISION #KS83-4009-Mod. #5 (48 FR 5438-February 4, 1983)	Basic Hourly Rates	Fringe Benefits
Leavenworth Co., Kansas		
CHANGE:		
Electricians Zone 2 (Remainder of County)	$15.55	3-1/2% +.65
Sprinkler Fitters	16.47	$3.23

DECISION #KS83-4013-Mod. #5 (48 FR 5446-February 4, 1983)	Basic Hourly Rates	Fringe Benefits
Shawnee County, Kansas		
CHANGE:		
Electricians (Building)	$15.55	3-1/2% +.65
Cable Splicers (Building)	17.11	3-1/2% +.65
Sprinkler Fitters	16.47	3.23

DECISION #KS83-4014-Mod. #5 (48 FR 5441-February 4, 1983	Basic Hourly Rates	Fringe Benefits
Sedgwick County, Kansas		
CHANGE:		
Sprinkler Fitters	$16.47	$3.23

DECISION #KS83-4015-Mod.#4 (48 FR 5443-February 4, 1983)	Basic Hourly Rates	Fringe Benefits
Douglas, Jefferson, Shawnee, Miami, and Leavenworth Cos., KS		
CHANGE:		
Laborers:		
ZONE 1 (Jefferson Co.)		
Group 1	$7.65	$2.30
Group 2	7.80	2.30
Group 3	7.90	2.30
Group 4	8.05	2.30
Laborers		
ZONE 2 (Douglas and Shawnee Cos.)		
Group 1	$8.45	$2.30
Group 2	8.60	2.30
Group 3	8.70	2.30
Group 4	8.85	2.30
Truck Drivers		
ZONE 1 (Leavenworth and Miami Cos.)		
Group 1	12.76	3.75
Group 2	12.96	3.75
Group 3	13.27	3.75
Group 4	13.42	3.75
Group 5	12.54	3.75
ZONE 2 (Douglas, Shawnee and Jefferson Cos.)		
Group 1	9.40	1.75
Group 2	9.50	1.75
Group 3	9.65	1.75

DECISION NO. OR83-5100 - Mod #8 (48 FR 7379 - Feb. 18, 1983) Statewide Oregon	Basic Hourly Rates	Fringe Benefits
CHANGE:		
ELECTRICIANS:		
Area 2:		
Electricians	$20.87	4.80+3%
Cable Splicers	21.91	4.80+3%
PLUMBERS:		
Area 4	20.48	3.70
SHEET METAL WORKERS:		
Area 1	18.39	3.54
SPRINKLER FITTERS	17.92	3.23

MODIFICATION P. 4

DECISION NO. NY80-3054 -

MOD. #5
(45 FR 59104 - Sept. 5, 1980)
Jefferson County, New York

CHANGE:

LINE CONSTRUCTION Electrical Overhead & Underground Distribution Work & Signal Work For RR And For R.E.A. Where No Other Trade Is Or Has Been Involved	Basic Hourly Rates	Fringe Benefits
Journeyman Lineman & Technician	14.20	5%+3.95 +a
Cable Splicer	18.92	5%+3.95 +a
Groundman Digging Machine Operator, Groundman Dynamite Man	12.78	5%+3.95 +a
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	11.36	5%+3.95 +a
Groundman Truck Driver (Tractor Trailer)	12.07	5%+3.95 +a
Driver Mechanic, Groundman - Experienced	10.65	5%+3.95 +a
All Overhead Transmission Line Work and Lighting for Athletic Fields		
Journeyman Lineman & Technician	16.32	5%+3.95 +a
Groundman Digging Machine Operator, Groundman Dynamite Man	14.688	5%+3.95 +a
Groundman Mobile Equipment Operator, Mechanic First Class Groundman Truck Driver	13.056	5%+3.95 +a
Groundman Truck Driver (Tractor Trailer Unit)	13.872	5%+3.95 +a
Driver Mechanic Groundman	12.24	5%+3.95 +a

Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems Where Other Trades Involved	Basic Hourly Rates	Fringe Benefits
Journeyman Lineman & Technician	17.20	5%+3.95 +a
Cable Splicer	18.92	5%+3.95 +a
Groundman Digging Machine Operator, Groundman Dynamite Man	15.48	5%+3.95 +a
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	13.76	5%+3.95 +a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	5%+3.95 +a
Driver Mechanic, Groundman	12.90	5%+3.95 +a
All Pipe type Cable Installations Maintenance Jobs or Projects		
Journeyman Lineman	17.20	5%+3.95 +a
Certified Lineman Welder	18.06	5%+3.95 +a
Cable Splicer	18.92	5%+3.95 +a
Groundman Equipment Operator	17.20	5%+3.95 +a
Groundman Truck Driver (Tractor Trailer Unit)	14.62	5%+3.95 +a
Groundman Truck Drivers	13.76	5%+3.95 +a
Groundman	12.90	5%+3.95 +a

FOOTNOTE:
a. Paid holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday.

MODIFICATION P. 5

DECISION NO. NY83-3032 - MOD. #2
(48 FR 34629 - July 29, 1983)
Brox, Kings, New York, Queens, Richmond Counties, New York

	Basic Hourly Rates	Fringe Benefits
OMIT:		
Lathers, Metallic	10.79	4.09+g
Terrazzo Workers Helpers	9.84	2.71
ADD:		
Metallic Lathers & Reinfrocing Iron Workers	19.83	4.87+g
Terrazzo & Mosaic Finishers	15.48	2.71
CHANGE:		
MARBLE SETTERS		
Cutters & Setters	13.93	4.19+h
Carvers	14.48	4.19+h
Polishers	14.89	2.19+h
Crane Operators; Derrickmen	12.91	4.34+h
Marble Finishers (Helpers)	12.91	2.19+h
TILE SETTERS	15.28	4.335
TILE FINISHERS	13.84	3.17
OMIT:		
Plugmen Classification from Laborers Heavy & Highway		

DECISION NO. NJ83-3016 - MOD. #6
(48 FR 28003 - June 17, 1983)
Atlantic, Burlington, Camden, Cape May, Cumberland, Gloucester, Mercer, Monmouth, Ocean, and Salem Counties, New Jersey

	Basic Hourly Rates	Fringe Benefits
Change:		
Mod. #1 dated 7-6-83, 48FR 31531; Mod. #2 dated 7-15-83, 48 FR 32443; Mod. #3 dated 7-22-83, 48 FR 33618 Mod. #4 dated 7-29-83 48FR 34596; and Mod. #5 dated 8-12-83 48 FR 36773, to include the counties of Cape May and Monmouth counties New Jersey.		

DECISION NO. NY83-3027 - MOD. #1
(48 FR 33622 - July 22, 1983)
Nassau, Suffolk Counties, New York

	Basic Hourly Rates	Fringe Benefits
ADD:		
Metallic Lathers & Reinforcing Iron Workers	19.53	4.87
CHANGE:		
MARBLE SETTERS:		
Cutters & Setters	13.93	4.19+e
Carvers	14.48	4.19+e
Polishers	14.89	2.90+e
Crane Operators; Derrickmen	12.91	4.34+e
Marble Finishers (Helpers)	12.91	2.90+e
TERRAZZO WORKERS	17.93	3.12
TERRAZZO & MOSAIC FINISHERS	15.48	2.71
TILE SETTERS	15.28	4.335
TILE FINISHERS	13.84	3.17

DECISION NO. NY81-3062 - MOD. #7
(46 FR 45530 - Sept. 11, 1981)
Westchester County, New York

	Basic Hourly Rates	Fringe Benefits
ADD:		
Metallic Lathers & Reinforcing Iron Workers	19.53	4.87
CHANGE:		
MARBLE SETTERS:		
Cutters & Setters	13.93	4.19+e
Carvers	14.48	4.19+e
Polishers	14.89	2.90+e
Crane Operators; Derrickmen	12.91	4.34+e
Marble Finishers (Helpers)	12.91	2.90+e
TERRAZZO WORKERS	17.93	3.12
TERRAZZO & MOSAIC FINISHERS	15.48	2.71
TILE SETTERS	15.28	4.335
TILE FINISHERS	13.84	3.17

MODIFICATION P. 6

DECISION NO. PA83-3001- Mod. # 1
(48 FR 37805-August 19, 1983)
Adams, Berks, Bradford, Carbon, Columbia, Cumberland, Dauphin, Juniata, Lackawanna Lancaster, Lebanon, Lehigh, Luzerne, Lycoming, Monroe, Montour, Northampton, Northumberland, Perry, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Tioga, Union, Wayne, Wyoming, and York Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
IRONWORKERS: Structural, Ornamental, & Reinforcing: Adams, Cumberland, Dauphin, Lancaster, Lebanon, Lycoming Montour, Northumberland, Juniata, Perry, Snyder, Union & York Counties	$17.265	3.745

DECISION NO. MA81-3054 - MOD. #17
(46 FR 44631 - Sept. 4, 1981)
BARNSTABLE, BRISTOL, DUKES, ESSEX, MIDDLESEX, NANTUCKET, NORFOLK, PLYMOUTH AND SUFFOLK COUNTIES, MASS.

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
PLUMBERS & PIPEFITTERS: PLYMOUTH (Remainder of Co.); BRISTOL (Remainder of Co.); NORFOLK (Avon, Bolbrook, Randplph, Stoughton)	17.96	2.79

DECISION NO. PA82-3017 - MOD. NO. 5
(47 FR 13108 - March 26, 1982)
Lackawanna, Susquehanna, Wayne & Wyoming Counties, Pennsylvania

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
POWER EQUIPMENT OPERATORS:		
Group 1	$16.24	22.6% + a
Group 2	15.95	"
Group 3	15.07	"
Group 4	14.30	"
Group 5	13.82	"
Group 6	12.90	"
Group 7	16.49	"
Group 7-A	16.74	"
Group 7-B	16.99	"

DECISION NO. WA83-3110 - Mod #4
(48 FR 25108 - June 3, 1983)
Statewide Washington

	Basic Hourly Rates	Fringe Benefits
CHANGE:		
BRICKLAYERS; MARBLE SETTERS: Area 4	$18.25	$3.18
LATHERS: Area 1	17.77	3.05
PAINTERS: Area 3:		
General Painters	16.74	2.52
Drywall Tapers	17.78	2.52
Industrial Painters	17.14	2.52
ROOFERS: Area 4:		
Roofers; Waterproofers	16.50	3.04
Slate and Tile Roofers	16.75	3.04
SPRINKLER FITTERS: Area 1	20.14	4.26
Area 2	17.92	3.23
TILE, MARBLE, AND TERRAZZO FINISHERS: Area 1	14.77	2.22

SUPERSEDEAS DECISION

STATE: INDIANA
DECISION NUMBER: IN83-2067
COUNTIES: *See Below
DATE: Date of Publication
Supersedes Decision No. IN83-2033 dated April 29, 1983 in 48 FR 19564
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

*BROWN, CLARK, CRAWFORD, DEARBORN, DECATUR, FAYETTE, FLOYD, FRANKLIN, HARRISON, HENRY, JACKSON, JEFFERSON, JENNINGS, LAWRENCE, OHIO, ORANGE, RANDOLPH, RIPLEY, RUSH, SCOTT, SWITZERLAND, UNION, WASHINGTON & WAYNE COUNTIES

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	17.75	2.07
Area 2	18.76	2.48
Area 3	18.32	4.06
Area 4	17.19	2.45
BOILERMAKERS:		
Area 1	18.05	3.115
Area 2	16.35	4.815
Area 3	18.655	3.58
BRICKLAYERS, CAULKERS, Pointer, Cleaners & Stonemasons:		
Area 1	14.85	2.56
Area 2	16.68	2.58
Area 3	13.84	1.51
Area 4	14.80	1.77
CARPENTERS:		
Area 1:		
Carpenter & Soft Floor Layers	14.97	2.00
Piledrivermen	15.22	2.00
Millwrights	17.79	2.10
Area 2:		
Carpenter & Soft Floor Layers	15.20	2.36
Millwrights	15.80	2.36
Piledrivermen	15.60	2.36
Area 3:		
Carpenter, Soft Floor Layers & Lathers	13.35	1.98
Millwright	14.85	2.60
Piledrivermen	13.60	1.88
Area 4:		
Carpenter & Soft Floor Layer	13.63	2.47
Millwrights	13.93	2.47
Piledrivermen	13.83	2.47
Area 5:		
Carpenter & Soft Floor Layers	13.86	2.00
Millwrights	14.61	2.00
Piledrivermen	14.36	2.00
CEMENT MASONS:		
Area 1	14.85	2.10
Area 2	13.14	3.02
Area 3	13.70	1.85
Area 4	12.45	1.80
Area 5	14.16	2.58
Area 6	14.70	

	Basic Hourly Rates	Fringe Benefits
ELECTRICIANS:		
Area 1	17.30	1.86 +3%
Area 2	18.355	.85+ 9.5%
Area 3:		
to 18 miles from Hamilton Co. Ohio Courthouse	17.75	2.55 +3¾%
18-21 miles	18.05	2.55 +3¾%
21-25 Miles	18.15	2.55 +3¾%
Over 25 miles	18.30	2.55 +3¾%
Area 4	17.50	16.5%
Area 5	16.30	2.20 +3.2%
Area 6	16.14	1.25+ 13.5%
ELEVATOR CONSTRUCTORS:		
Area 1	17.265	2.69+ a&b
Area 2	15.65	2.33+ a&b
Area 3	16.585	2.69+ a&b
ELEVATOR CONSTRUCTORS HELPERS		
Area 1	70%JR	2.69 +a&b
Area 2	70%JR	2.33 a&b
Area 3	70%JR	2.69+ a&b
ELEVATOR CONSTRUCTION HELPERS (PROB.):		
Areas 1-2-3	50%JR	
GLAZIERS:		
Area 1	19.45	
Area 2	16.36	1.51
Area 3	13.44	2.00
Area 4	14.735	2.41
IRONWORKERS:		
Area 1	17.05	3.60 +1%
Area 2	14.25	4.72

DECISION NUMBER IN83-2067

	Basic Hourly Rates	Fringe Benefits
IRONWORKERS (CONT'D)		
Area 3:		
Structural & Ornamental	16.28	3.18
Reinforcing	16.58	3.62
Area 4	17.01	2.95
Area 5	15.25	4.60
Area 6	15.00	6.11
MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS:		
Area 1:		
Tile Setters	14.60	2.56
Area 2	15.80	2.20
Area 3	14.80	1.77
MARBLE, TILE & TERRAZZO FINISHERS:		
Area 1	15.98	
Area 2	11.25	
Area 3:		
Marble & Tile Finishers	14.86	
Terrazzo Finishers	12.60	
PAINTERS:		
Area 1:		
Brush	8.90	.30
Structural Steel	9.65	.30
Spray	9.90	.30
Area 2:		
Brush, Drywall Tapers & Finishers, Roller	15.30	1.40
Spray & Sandblasting	16.30	1.40
Area 3:		
Brush, Drywall Tapers & Finishers, Roller	15.80	
Spray & Sandblast	16.80	
Area 4:		
Brush, Drywall Tapers & Finishers, Roller	16.00	
Spray	17.00	
Sandblast	16.50	
Area 5:		
Brush	11.65	1.75
Spray & Sandblasting	12.65	1.75
Area 6:		
New Construction:		
Brush, Roller, Drywall Taping	11.07c	1.18
Spray	11.52c	1.18
Sandblast	11.42c	1.18
Repaint:		
Brush, Roller, Drywall Taping	10.32c	1.18
Spray	10.77c	1.18
Sandblast	10.67c	1.18

	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Area 1	15.60	.77
Area 2	13.40	.86
Area 3	13.48	2.50
Area 4	13.65	1.33
Area 5	14.70	
PLUMBERS & STEAMFITTERS:		
Area 1	18.11	2.05
Area 2:		
Plumbers	16.32	3.42
Steamfitters	17.51	3.86
Area 3	17.95	2.65
Area 4	19.92	2.20
ROOFERS:		
Area 1	17.52	1.53
Area 2:		
Composition	15.32	2.00
Slate & Tile	15.57	2.00
Area 3	13.10	1.35
Area 4:		
Composition	15.08	2.40
Slate, Tile Gypsum, Plank & Concrete Slab	15.83	2.40
Area 5:		
Roofers	12.00	1.75
Slate, Tile & Precast Slab	12.45	1.75
SHEET METAL WORKERS:		
Area 1	18.29	3%+ 2.75
Area 2	16.84	3%+ 3.07
Area 3	17.22	3.68
Area 4	17.61	3%+ 2.62
SPRINKLER FITTERS	16.67	3.23
LABORERS:		
Area 1:		
Group 1	11.23	1.94
Group 2	11.43	1.94
Group 3	11.53	1.94
Group 4	12.23	1.94
Area 2:		
Group 1	11.58	1.94
Group 2	11.78	1.94
Group 3	11.88	1.94
Group 4	12.58	1.94
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	16.75	2.20
Group 2	15.80	2.20
Group 3	12.80	2.20
Group 4	11.30	2.20
Area 2:		
Group 1	15.68	2.20
Group 2	14.39	2.20
Group 3	13.55	2.20

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits
Area 1:		
Group 1	13.255	1.10+e
Group 2	13.375	1.10+e
Group 3	13.485	1.10+e
Group 4	13.565	1.10+e
Group 5	13.69	1.10+e
Group 6	13.31	1.10+e
Group 7	13.435	1.10+e
Group 8	13.075	1.10+e
Area 2:		
Group 1	12.95	d
Group 2	13.00	d
Group 3	13.10	d
Group 4	13.15	d
Group 5	13.20	d
Group 6	13.30	d
Group 7	13.40	d
Group 8	13.45	d
Group 9	13.60	d
Group 10	13.05	d

Basic Hourly Rates	Fringe Benefits

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:

a. Seven paid holidays: A Thru F and day after Thanksgiving
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 yrs.; Employer contributes 6% of regular hourly rate to vacation pay credit for employee who has worked in business less than 5 years
c. All work outside a 35 mile radius of Jefferson Co., Kentucky Courthouse - Add $.35 per hour to Basic Hourly Rate for all classifications
d. 76.50 per week, per employee; 1 year service - 1 week paid vacation, 3 years - 2 weeks, 10 years - 3 weeks
e. $55.00 per week, per employee

AREA DESCRIPTIONS

ASBESTOS WORKERS:

Area 1 - Brown, Decatur, Henry, & Rush Counties
Area 2 - Randolph & Wayne Counties
Area 3 - Dearborn, Fayette, Franklin, Ohio, Ripley, Switzerland, and Union Counties
Area 4 - Remainder of Counties

BOILERMAKERS

Area 1 - Clark, Floyd, Harrison, Jefferson, Scott, & Washington Counties
Area 2 - Dearborn & Switzerland Counties
Area 3 - Remainder of Counties

BRICKLAYERS; Caulkers, Pointers, Cleaners & Stonemasons

Area 1 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.
Area 2 - Crawford County
Area 3 - Clark, Floyd, and Harrison Counties
Area 4 - Remainder of Counties

CARPENTERS

Area 1 - Crawford County
Area 2 - Lawrence & Orange Counites
Area 3 - Clark, Floyd, Harrison & Washington Counties
Area 4 - Fayette, Henry, Randolph, Rush (Carthage & N. thereof), Union & Wayne Counties
Area 5 - Remainder of Counties

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CEMENT MASONS

Area 1 - Crawford County
Area 2 - Clark, Floyd & Harrison Counties
Area 3 - Randolph County
Area 4 - Decatur, Fayette, Franklin (N½ Brookville & N. thereof) Rush, Union & Wayne Counties
Area 5 - Henry County
Area 6 - Remainder of Counties

ELECTRICIANS

Area 1 - Brown County
Area 2 - Crawford, Lawrence & Orange Counties
Area 3 - Dearborn, Ohio & Switzerland Counties
Area 4 - Decatur, Jennings, Ripley & Rush Counties
Area 5 - Fayette, Franklin, Henry, Randolph, Union & Wayne Counties
Area 6 - Clark, Floyd, Harrison, Jackson, Jefferson, Scott & Washington Counties

ELEVATOR CONSTRUCTORS

Area 1 - Brown, Decatur, Henry & Rush Counties
Area 2 - Dearborn, Fayette, Franklin, Randolph, Ripley, Ohio, Switzerland, Union & Wayne Counties
Area 3 - Remainder of Counties

GLAZIERS

Area 1 - Brown, Decatur (NW 3/4), Fayette (NW 3/4), Henry, Jackson (N ½), Jennings (NW Corner), Randolph (W 2/3), Rush, Union (NW Corner), Wayne (W 2/3), & Lawrence (NE Corner)
Area 2 - Dearborn, Ripley, Ohio, Switzerland &Franklin Cos.
Area 3 - Clark, Crawford (E½), Floyd, Harrison, Jackson (S½), Jefferson, Jennings (SW Corner) Lawrence (Rem. of Co.), Orange (NE 2/3), Washington & Scott Cos.
Area 4 - Crawford (Rem. of Co.), Orange (Rem. of Co.)

IRONWORKERS

Area 1 - Brown, Decatur (W 3/4), Fayette (W½), Franklin (NW TIP), Henry, Jackson (N Part including Freetown), Jennings (NW Tip), Lawrence (NE Corner excluding Oolitic), Randolph (S.W. Tip) & Rush Counties
Area 2 - Clark, Crawford, Floyd, Harrison, Jackson (Remainder of Co.), Jefferson (W 3/4), Jennings (S 2/3) Lawrence (S 2/3), Orange, Scott, Switzerland (SW Tip), Washington, & Ripley (SW Tip) Cos.
Area 3 - Dearborn, Decatur (Remainder of Co.), Fayette (SE Corner), Franklin (S 3/4), Jefferson (Remainder of Co.), Ohio, Ripley (Remainder of Co.), Switzerland (Remainder of Co.) Jennings (NE Tip)
Area 4 - Fayette (Remainder of Co.), Randolph (S. Part of Co. excluding Winchester but including Union City), Union, Franklin (NE Tip), Wayne Co.
Area 5 - Lawrence (NW ¼)
Area 6 - Randolph (Remainder of Co.)

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AREA DESCRIPTION (CONT'D)

MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS

Area 1 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Crawford County
Area 3 - Brown, Dearborn, Decatur, Jackson, Jefferson, Jennings, Lawrence, Ohio, Orange, Ripley, Scott, Switzerland, & Washington Counties

MARBLE, TILE & TERRAZZO FINISHERS

Area 1 - Dearborn County
Area 2 - Clark, Floyd & Harrison Counties
Area 3 - Remainder of Counties (Crawford Cos. - Terrazzo Finishers only)

PAINTERS

Area 1 - Brown County
Area 2 - Lawrence & Orange Counties
Area 3 - Decatur, Jackson & Jennings Counties
Area 4 - Dearborn, Ripley, Ohio & Switzerland Counties
Area 5 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Counties
Area 6 - Clark, Crawford, Floyd, Harrison, Jefferson, Scott & Washington Counties

PLASTERERS

Area 1 - Clark, Floyd & Harrison Counties
Area 2 - Randolph County
Area 3 - Henry county
Area 4 - Decatur, Fayette, Franklin (N ½ including Brookville), Rush, Union & Wayne Cos.
Area 5 - Remainder of Counties

PLUMBERS AND STEAMFITTERS

Area 1 - Decatur & Jennings Counties
Area 2 - Dearborn, Ohio & Ripley Counties
Area 3 - Fayette, Franklin, Henry, Randolph, Rush, Union & Wayne Cos.
Area 4 - Remainder of Counties

ROOFERS

Area 1 - Dearborn, Ohio & Ripley Counties
Area 2 - Brown, Decatur, Fayette, Franklin, Jackson, Jennings, Lawrence, Rush, Union & Wayne Counties
Area 3 - Henry & Randolph Counties
Area 4 - Crawford & Orange Counties
Area 5 - Remainder of Counties

AREA DESCRIPTIONS (CONT'D)

SHEET METAL WORKERS

Area 1 - Dearborn & Ohio Counties
Area 2 - Randolph & Wayne Counties
Area 3 - Clark, Crawford, Floyd, Harrison, Jefferson, Scott & Switzerland Counties
Area 4 - Remainder of Counties

LABORERS

Area 1 - Fayette, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Remainder of Counties

POWER EQUIPMENT OPERATORS

Area 1 - Fayette, Henry, Randolph, Rush, Union & Wayne Counties
Area 2 - Remainder of Counties

TRUCK DRIVERS

Area 1 - Crawford County
Area 2 - Remainder of Counties

CLASSIFICATION DEFINITIONS

LABORERS

Group 1 - Building and Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Water Boys and Tool Housemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers; Cement Finishers Tenders; Carpenter Tenders; Portable Water Pumps with discharge up to 3 inches

Group 2 - Waterproofing; Handling of creosote lumber or like treated material (ex railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operator; Pneumatic Tool Operator; Air & Electric Vibrators and Chipping Hammer Operator; Earth Compactors; Jackmen and Sheetmen in Ditches more than 6 feet deep; Laborers in Ditches 6' deep or deeper; Assembly at unicrete pump; Tile Layers (sewer or field); Sewer Pipe Layers; Motor Driven Wheelbarrows and Concrete Buggies; Hyster Op.; Pump Crete Assemblers; Core Drill Operator; Cement, Lime or Silica Clay Handlers; Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Operator; Water Maine & Cable Ducking; Screed Man or Screw Operator on Asphalt Paver; Chain Saw & Demolition Saw Operator; Concrete Conveyor Assembler

Group 3 - Plaster Tenders; Mason Tenders; Motor Mixers; Welders; Cutting Torch or Burner; Cement Nozzle Laborers, Cement Gun Operators; Scaffold Builders for Plasterers; Scaffold Builders for Mason; Water Blast Machine Operator.

CLASSIFICATION DEFINITIONS (CONT'D)

LABORERS (CONT'D)

Group 4 - Dynamite Men; Drillers-Air Track or Wagon Drilling for Explosives

POWER EQUIPMENT OPERATORS

AREA 1

Group 1 - Air Compressor (pressurizing shafts, tunnels & divers); Air Tugger; Auto Patrol; Back Filler; Back Hoe; Boom Cat; Boring Machine; Bull Dozer; Caisson Drilling Machine; Cherry Picker; Compactor (with dozer blade); Concrete Mixer (dual drum); Concrete Plant; Concrete Pump; Crane with all attachments; Crane - Electric Overhead; Derrick; Ditching Machine (18" and over) Dredge; Elevators (when hoisting material or tools); Fork Lift (Machinery); Formless Paver; Generator (power for welders or compressors); Gradall; Helicopter; Helicpter Winch Operator; High Lift - Front End Loader; Hoist - Material and/or personnel over 3 floors; Locomtive; Mechanic on Job Site; Mucking Machine; Panel Board Concrete Plant; Pile Driver; Push Cat; Scoop & Tractor; Scraper - Rubber Tired; Spreader - Tractor Mounted; Straddle Carrier - Ross Type; Sub Base Finish Machine (C.M.I. or similar); Tower Crane; Tractor with Backhoe (over ½ yd.); Welder (Craft)

Group 2 - A-Frame Truck; Batcher Plant (automatic dry batch); Bending Machine - Power Driven; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Boatman; Bull Float; Compactor or Tamper - Self Propelled; Concrete Mixer (21 cu. ft. or over); Concrete Spreader - Power Driven; Dinkey Engine; Ditching Machine (less than 18"); Drilling Machine; Finish Machine & Bull Float; Finishing Machine; Fireman - Pile Driving and Boilers; Fork Lift - Masonry & Material; Gunite Machine; Head Greaser; Hoist-Material and/or personnel 3 floors and under; Mechanic in Shop; Mesh Depresser - Mesh Placer; P.C.C. Concrete Belt Placer; Roller - Asphalt, Stone & Sub Base; Sheepsfoot Roller - Self Propelled; Shop Mule; Spreader or Base Paver - Self Propelled; Sub Grader; Throttle Valve with Air Compressor or Boiler; Tractor with Backhoe (½ yd. & under); Tractor - High Lift - Farm Type; Tractor-Industrial Type; Tractor with Winch; Well Points; Winch Truck

Group 3 - Air Compressor (210 cu. ft. & over); Pituminous Distributor; Chair Cart; Concrete Curing Machine; Concrete Saw; Dope Pot - Power Agitated; Flex Plane; Form Grader; Hydrohammer; Jacks-Hydraulic Power Driven; Minor Equipment Opr. 3,4, or 5; Paving Joint Machine; Post Hole Digger; Roller - Earth; Throttle Valve; Track Jack - Power Driven; Tractor - Farm Type; Truck Crane Driver

Group 4 - Air Compressor (less than 210 cu. ft.); Concrete Mixer (under 21 cu. ft.); Conveyor; Generator; Mechanical Heater; Oiler; Operator - 2 peices of minor equipment; Power Broom; Pump; Welding Machine

DECISION NO. IN83-2067

CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS AREA 2

GROUP 1 - A-Frame Winch Truck, Air Compressors over 600 cu. ft., Air Tugger, Autograde (CMI), Auto Patrol, Backhoe, Ballast Regulator (RR), Batcher Plant (electricial control concrete), Bending Machine (pipe), Bituminous Plant (engineer), Bituminous Plant, Bituminous Mixer Travel Plant, Bituminous Paver, Bituminous Roller, Buck Hoist, Bull Dozer, Cable Way, Chicago Boom, Clamshell, Concrete Mixer (21 cu. ft. or over), Concrete Paver, Concrete Pump (crete), Crane, Craneman, Crusher Plant, Derrick, Derrick Boat, Dinkey, Dope Pots (pipeline), Dragline, Dredge Operator, Dredge Engineer, Drill Operator, Elevating Grader, Elevator, Ford Hoe (or similar type equipment), Forklift, Formless Paver, Gantry Crane, Gradall, Grademan, Grout Pump, Helicopter Crew, Hetherington Paver, High-Lift, Hoist, Hopto, Hough Loader (or similar type), Hydro Crane, Hydro Hammer, Locomotive Crane, Locomotive, Mechanic, Mobile Mixer, Motor Crane, Mucking Machine, Multiple Tamping Machine (RR), Overhead Crane, Pile Driver, Pulls, Push Dozer, Push Boats, Roller (sheep foot), Ross Carrier, Scoop, Shovel, Side Boom, Swing Crane, Tail Boom, Tar Machine (pipeline), Throttle Valve, Tower Crane, Trench Machine, Welder (heavy duty), Truck Mounted Concrete Pump, Truck-Mounted Drill, Well Point, Whirleys

Group 2 - Air Compressor (up to 600 cu. ft.), Brakeman, Bull Float, Concrete Mixer (over 10S and under 21S), Concrete Spreader or Puddler, Deck Engine, Drill Helper, Electic Vibrator Kompactor (earth or rock), Finishing Machine, Fireman, Greaser (on grease facilities servicing heavy equipment), Material Pump, Motor Boats, Motor Crane Oiler, Portable Loader, Post Hole Digger, Power Broom, Rock Roller, Roller-Wobble Wheel (earth and rock), Spike Machine (RR) Seaman Tiller, Spreader Rock, Sub Grader, Tamping Machine, Truck Mounted Drill Oiler, Welding Machine, Widener (Apsco or similar type)

Group 3 - Air Compressor (under 200 cu. ft. per min), Bituminous Distributor, Cement Gun, Concrete Saw, Conveyor, Deck Hand Oiler, Earth Roller, Form Grader, Generator, Guardrail Driver, Heater, Oiler, Paving Joint Machine, Power Traffic Signals, Steam Jenny, Vibrator, Water Pump, "JLG" Lifts and "Scissor" Lift or similar machine

DECISION NO. IN83-2067

CLASSIFICATIONS DEFINITIONS (CONT'D)

TRUCK DRIVERS

AREA 1

Group 1 - Single Axle Straight Trucks; Batch Trucks, Wet or Dry- 3 (34E) Batches or less

Group 2 - Tandem Trucks or Dog Legs; Trucks over 15 ton payload; Single Axle Semi-Trucks (3 axle Unit); Low Boys, Single Axle (3 Axle Unit); Winch Trucks or A-Frames when transporting material; Batch Trucks, Wet or Dry- over 3 (34E) Batches

Group 3 - Tandem Axle Semi - Trucks (4 Axle unit); Equipment not Self-Loaded or Pusher Loaded, such as Koehring or Similar Dumpsters, Track Trucks, Euclid Bottom Dump & Hug Bottom Dump, TournaTrailers, TournaRockers or Similar Equip. 12 cu. yds. & under, Low-Boys, Tandem Axle (4-Axle unit), Pavement Breakers

Group 4 - Tandem - Tandem Semi- Trucks (5 axle Unit); Lowboys, Tandem - Tandem or (5 Axle Unit)

Group 5 - Equipment not Self Loaded or Pusher Loader, such as Koehring or Similar Dumpster, Track Trucks, Euclid Bottom Dump & Hug Bottom Dump, Tournatrailers, Tournarockers or similar equip. over 12 cu. yds.; Truck Mechanic; Mixer Truck, All Types

Group 6 - Bituminous Distributors Two-Man

Group 7 - Bituminous Distributors One-Man

Group 8 - Pickup Trucks (except used by a Superintendent or a Foreman for own Transportation or the use by Mechanic for trans. of self or tools)

AREA 2

Group 1 - Single Axle Trucks, Low Boy Helper, Air Compressor & Welding Machines including those pulled by Cars, Pick-up Trucks, Tractors, Fork Lifts, Hi- Lo's, Multi-Purpose Fork Lifts, Dumpsters & Val Truck when used for the Specific Purpose of Transporting Materials on the Job-Site; All Pick-up Trucks (Except used to Transport Superintendent, Foremen or Mechanics' Transportation or to Haul Mechanics' Tools or Repair Parts)

Group 2 - Mixer Truck 2 Yards

Group 3 - Batch Trucks, Wet or Dry- 3 Batches or under

Group 4 - Tandem Axle Trucks (Including Dog-Legs), Oil Distributors, Mixer Trucks-3 yards, Winch Trucks (used for Transportation of Materials)

DECISION NO. IN83-2067

CLASSIFICATION DEFINITIONS (CONT'D)

TRUCK DRIVERS AREA 2 (CONT'D)

Group 5 - Single Axle Semi - Trucks, Batch Trucks, Wet or Dry over 3 Batches, Pavement Breakers

Group 6 - Tandam Axle Trucks, Trac-O-Trucks, Euclids, Tourna-Pull when Pulling other than Self-Loading Equip. Up to & Incl. 10 yards, Mixer Trucks-4 yds., Mechanics.

Group 7 - Low Boy, Tandem - Tandem Axle Semi-Trucks

Group 8 - Trac-o-Trucks, Euclids, Tourn-a-pull when pulling other than Self-Loading Equip. 11 yds to and inclu. 16 yds., Mixer Trucks Above 4 yds.

Group 9 - Trac-o-Trucks, Euclids, Tourn-a-pull when pulling other than Self-Loading Equip. over 16 yds., Working Foreman

Group 10 - Mechanics Helpers & Greasers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a) (1) (ii)).

SUPERSEDEAS DECISION

STATE: Indiana

COUNTIES: Clay, Daviess, Gibson, Greene, Knox, Martin, Owen, Parke, Pike, Posey, Putnam, Sullivan, Vanderburgh, Vermillion, Vigo, and Warrick

DECISION NUMBER: IN83-2069 DATE: Date of Publication

Supersedes Decision No. IN83-2026 dated March 25, 1983 in 48 FR 12642

DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$17.75	$2.70
Area 2	17.45	2.42
BOILERMAKERS	18.655	3.58
BRICKLAYERS; CAULKERS; POINTERS; CLEANERS and STONEMASONS:		
Area 1	16.68	2.58
Area 2	14.80	1.77
Area 3	16.53	2.55
CARPENTERS:		
Area 1:		
Carpenters and Soft Floor Layers	15.35	2.16
Piledrivermen	15.85	2.16
Area 2:		
Carpenters and Soft Floor Layers	15.20	2.36
Piledrivermen	15.60	2.36
Area 3:		
Carpenters and Soft Floor Layers	15.75	2.34
Piledrivermen	16.00	2.34
Area 4:		
Carpenters	15.78	3.25
Area 5:		
Carpenters	14.97	2.00
Piledrivermen	15.22	2.00
Area 6:		
Carpenters	13.90	2.15
Piledrivermen	14.15	2.15
CEMENT MASONS:		
Area 1	13.05	1.05
Area 2	13.77	2.08
Area 3	15.93	2.55
Area 4	14.85	2.10
Area 5	13.50	
ELECTRICIANS:		
Area 1	17.30	1.86+ 3%
Area 2	18.355	0.85+ 9.5%
Area 3	17.50	16.5%
Area 4	17.37	1.35+ 3-1/4%
ELEVATOR CONSTRUCTORS:		
Mechanics:		
Area 1	$17.265	$2.69+ a&b
Area 2	17.81	2.69+ a&b
Helpers:		
Area 1	70%JR	2.69+ a&b
Area 2	70%JR	2.69+ a&b
Probationary Helpers	50%JR	
GLAZIERS:		
Area 1	19.45	
Area 2	13.44	2.00
Area 3	14.735	2.41
IRONWORKERS:		
Area 1	17.85	2.21
Area 2	17.05	3.60+ 1%
Area 3	14.79	4.22
Area 4	14.25	4.72
Area 5	15.25	4.60
MARBLE SETTERS; TILE SETTERS and TERRAZZO WORKERS:		
Area 1	15.80	2.20
Area 2	14.80	1.77
Area 3	16.13	2.55
MARBLE, TILE and TERRAZZO FINISHERS:		
Area 1:		
Tile and Terrazzo Finishers	15.50	
Marble Finishers	15.70	
Area 2:		
Marble and Tile Finishers	14.86	
Terrazzo Finishers	12.60	
MILLWRIGHTS:		
Area 1	15.78	3.25
Area 2	16.50	2.34
Area 3	15.80	2.36
Area 4	17.79	2.10

	Basic Hourly Rates	Fringe Benefits
PAINTERS:		
Area 1:		
Brush, Roller, Drywall Tapers and Finishers	$15.30	$1:40
Spray and Sandblasting	16.30	1.40
Area 2:		
Brush, Roller, Drywall (without tools)	13.75	2.02
Spray	14.75	2.02
Sandblast	15.75	2.02
Area 3:		
Brush, Paperhangers, Rollers and Drywall	11.67	
Spray and Sandblast	12.67	
Structural Steel	12.42	
Area 4:		
Brush and Roller	14.30	1.90
Spray; Sandblast	15.30	1.90
Drywall Tapers	14.55	1.90
PLASTERERS:		
Area 1	13.77	2.08
Area 2	16.53	2.55
Area 3	16.38	
Area 4	13.95	1.20
PLUMBERS and STEAMFITTERS:		
Area 1	18.40	2.60
Area 2	17.95	2.16
Area 3	19.92	2.20
ROOFERS:		
Area 1	15.00	1.50
Area 2:		
Composition	15.57	2.00
Slate and Tile	15.22	2.00
Area 3:		
Composition	15.08	2.40
Slate, Tile, Concrete Slab and Gypsum Plank	15.83	2.40
SHEET METAL WORKERS:		
Area 1	17.68	2.75
Area 2	17.25	2.65+ 3%
SPRINKLER FITTERS	16.67	2.83
LABORERS:		
Area 1:		
Group 1	11.63	1.94
Group 2	11.83	1.94
Group 3	11.93	1.94
Group 4	12.63	1.94

	Basic Hourly Rates	Fringe Benefits
LABORERS: (Cont'd)		
Area 2:		
Group 1	$11.58	$1.94
Group 2	11.78	1.94
Group 3	11.88	1.94
Group 4	12.58	1.94
Area 3:		
Group 1	12.65	1.94
Group 2	12.85	1.94
Group 3	12.95	1.94
Group 4	13.65	1.94
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	15.68	2.20
Group 2	14.39	2.20
Group 3	13.55	2.20
Area 2:		
Group 1	13.60	1.58
Group 2	13.40	1.58
Group 3	8.55	1.58
TRUCK DRIVERS:		
Area 1:		
Group 1	12.95	c
Group 2	13.00	c
Group 3	13.10	c
Group 4	13.15	c
Group 5	13.20	c
Group 6	13.30	c
Group 7	13.40	c
Group 8	13.45	c
Group 9	13.60	c
Group 10	13.05	c
Area 2:		
Group 1	13.255	d+1.10
Group 2	13.375	d+1.10
Group 3	13.485	d+1.10
Group 4	13.565	d+1.10
Group 5	13.60	d+1.10
Group 6	13.31	d+1.10
Group 7	13.435	d+1.10
Group 8	13.075	d+1.10

WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. 7 Paid Holidays: A through F and Day after Thanksgiving
b. Employer contrubutes 8% of Regular Hourly Rate to Vacation Pay Credit for employee who has worked in business more than 5 years. 6% for employee who has worked in business less than 5 years
c. $76.50 per week, per employee. 1 year service - 1 week paid vacation; 3 years - 2 weeks; 10 years - 3 weeks
c. $55.00 per week, per employee

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Clay, Greene, Owen, Parke, Putnam, Vermillion and Vigo Counties
Area 2: Remainder of Counties

BRICKLAYERS; CAULKERS; POINTERS; CLEANERS; and STONEMASONS:
Area 1: Posey, Vanderburgh, and Warrick Counties
Area 2: Owen County
Area 3: Remainder of Counties

CARPENTERS:
Area 1: Clay (North of Highway 246 including Brazil), Owen (North of Spencer), Parke (except East of Townships of Jessup, Carbondale, Rosedale, and Portland), Vermillion (South of Summit Grove) and Vigo Counties
Area 2: Clay (Remainder of County), Daviess, Gibson, Greene (excluding Townships of Beech, Center and Jackson), Knox, Martin, Owen (LaFayette, Jefferson and Franklin Townships), Pike (Jefferson and Washington Townships), and Sullivan Counties
Area 3: Greene (Remainder of County), Owen (Remainder of County)
Area 4: Parke (Remainder of County), Vermillion (Remainder of County), and Putnam County
Area 5: Pike (Remainder of County), Warrick County
Area 6: Posey and Vanderburgh Counties

CEMENT MASONS:
Area 1: Clay, Owen (West of line running North and South from West County Line dividing Clay and Owen Counties), Parke, Putnam, Vermillion and Vigo Counties
Area 2: Daviess, Gibson, Knox, Martin and Pike Counties
Area 3: Greene and Sullivan Counties
Area 4: Posey, Vanderburgh, and Warrick Counties
Area 5: Owen (Remainder of County)

AREA DESCRIPTIONS (Cont'd)

ELECTRICIANS:
Area 1: Clay, Greene, Knox, Owen, Parke, Sullivan, and Vigo Counties
Area 2: Daviess, Gibson, Martin, Pike, Posey, Vanderbrugh, and Warrick Counties
Area 3: Putnam County
Area 4: Vermillion County

ELEVATOR CONSTRUCTORS:
Area 1: Clay, Greene, Owen, Parke, Putnam, and Vermillion Counties
Area 2: Remainder of Counties

GLAZIERS:
Area 1: Clay, Greene (Northern half), Owen, Parke, Putnam, Sullivan (Northeastern third), Vermillion and Vigo Counties
Area 2: Daviess (Northeastern tip), Greene (Southwestern fourth (1/4)), Martin (Northern half) Counties
Area 3: Remainder of Counties

IRONWORKERS:
Area 1: Daviess (Southern half), Gibson, Knox (Southern half), Martin (Northwestern fourth (1/4)), Pike, Posey, Vanderburgh and Warrick Counties
Area 2: Putnam (Northeastern third (1/3)), Owen (Northeastern tip) Counties
Area 3: Parke County (Northeastern tip)
Area 4: Martin County (Southwestern corner)
Area 5: Remainder of Counties

MARBLE SETTERS; TILE SETTERS and TERRAZZO WORKERS:
Area 1: Posey, Vanderburgh and Warrick Counties
Area 2: Owen County
Area 3: Remainder of Counties

MARBLE, TILE and TERRAZZO FINISHERS:
Area 1: Gibson, Pike, Posey, Vanderburgh, and Warrick Counties
Area 2: Remainder of Counties

MILLWRIGHTS:
Area 1: Clay (North of Route 246), Owen (excluding Clay, Washington, LaFayette, Franklin and Jefferson Townships), Parke, Putnam, Vermillion and Vigo Counties
Area 2: Owen (Clay and Washington Townships), Greene (Jackson, Center and Beech Townships) Counties
Area 3: Clay (Remainder of County), Daviess, Gibson, Greene (Remainder of County), Knox, Martin, Owen (Remainder of County), and Sullivan Counties
Area 4: Pike, Posey, Vanderburgh and Warrick Counties

PAINTERS:
Area 1: Clay, Martin, Putnam Counties
Area 2: Greene, Parke, Sullivan, Vigo, and Vermillion Counties
Area 3: Owen County
Area 4: Remainder of Counties

AREA DESCRIPTIONS (Cont'd)

PLASTERERS:
Area 1: Daviess, Gibson, Knox, and Martin Counties
Area 2: Greene and Sullivan Counties
Area 3: Pike, Posey, Vanderburgh, and Warrick Counties
Area 4: Clay, Owen (extreme western part), Parke, Putnam, Vigo, and Vermillion Counties

PLUMBERS:
Area 1: Clay, Greene, Knox (North of Highway 50), Parke, Putnam, (Western half), Sullivan, Vermillion and Vigo Counties
Area 2: Putnam County (East of Road 43 except Territory on a east mile radius from the Court House)
Area 3: Remainder of Counties

ROOFERS:
Area 1: Clay, Greene, Owen, Parks, Sullivan, Vermillion and Vigo Counties
Area 2: Putnam Counties
Area 3: Remainder of Counties

SHEET METAL WORKERS:
Area 1: Clay, Greene, Owen, Parke, Putnam, Sullivan, Vermillion and Vigo Counties
Area 2: Remainder of Counties

LABORERS:
Area 1: Clay, Greene, Owen, Parke, Putnam, Sullivan, Vermillion and Vigo Counties
Area 2: Martin County
Area 3: Remainder of Counties

POWER EQUIPMENT OPERATORS:
Area 1: Gibson, Martin, Pike, Posey, Vanderburgh, and Warrick Counties
Area 2: Remainder of Counties

TRUCK DRIVERS:
Area 1: Martin and Owen Counties
Area 2: Gibson, Pike, Posey, Vanderburgh and Warrick Counties

LABORERS CLASSIFICATIONS

AREAS 1 and 2

Group 1: Building and Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Water Boys and Tool Housemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers; Cement Finishers Tenders; Carpenter Tenders; Portable Water Pumps with discharge up to 3 inches

LABORERS CLASSIFICATIONS (Cont'd)

AREAS 1 and 2 (Cont'd)

Group 2: Waterproofing; Hauling of Creosote Lumber or like treated material (excluding railroad material); Asphalt Rakers and Lutemen; Kettlemen; Air Tool Operator; Pneumatic Tool Operator; Air and Electric Vibrators and Chipping Hammer Operator; Earth Compactors; Jackman and Sheetmen in Ditches more than 6' deep; Laborers in ditches 6' deep or deeper; Assembly of Unicrete Pump; Tile Layers (sewer or field); Sewer Pipe Layers; Motor Driven Wheelbarrows and Concrete Buggies; Hyster Operator; Pump Crete Assemblers; Core Drill Operator; Cement; Lime or Silica Clay Handlers; Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine and Winch Operator; Water Main and Cable Ducking; Screed Man or Screw Operator, on Asphalt Paver; Chain Saw and Demolition Saw Operator; Concrete Conveyor Assembler

Group 3: Plaster Tenders; Mason Tenders; Mortar Mixers; Welders; Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders for Plasterers; Scaffold Builders for Mason; Water Blast Machine Operator

Group 4: Dynamite Men; Drillers - Air Track or Wagon Drilling for explosives

AREA 3

Group 1: Building and Construction Laborers; Scaffold Builders (other than for Mason or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Waterboys and Toolhousemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers (interior and exterior); Cement Finisher Tenders; Carpenter Tenders; All Portable Water Pumps with discharge up to three (3) inches

Group 2: Waterproofing; Handling of Creosote Lumber or like treated material (excluding railroad material); Asphalt Rakers and Lutemen; Kettlemen; Air Tool Operators and all Pneumatic Tool Operators, Air and Electric Vibrators and Chipping Hammer Operators; Earth Compactors; Jackmen and Sheetmen working Ditches deeper than six (6) ft. in depth; Laborers working in ditches (6) ft. in depth or deeper; Assembly of Unicrete Pump; Tile Layers (sewer or field) and Sewer Pipe Layers (metallic or non-metallic); Motordriven Wheelbarrows and Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Core Drill Operators; Cement Lime or Silica Clay Handlers (bulk or bag) Handling of Toxic Materials damaging to Clothing; Pneumatic Spikers; Deck Engine and Winches Operators; Water Main and Cable Ducking (metallic and non-metallic) Chain Saw Operators

LABORERS CLASSIFICATIONS (Cont'd)

AREA 3 (Cont'd)

Group 3: Plaster Tender; Mason Tender; Mortar Mixers; Welders (Acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when working for Plasterers; Scaffold Builders when working for Masons

Group 4: Dynamite Men

POWER EQUIPMENT OPERATORS

AREA 1

Group 1: A-Frame Winch Truck; Air Compressors over 600 cu. ft.; Air Tugger; Autograde (CMI); Auto Patrol; Backhoe; Ballast Regulator (RR); Batcher Plant (electrical control concrete); Bending Machine (pipe); Bituminous Plant (Engineer); Bituminous Mixer Travel Plant; Bituminous Paver; Bituminous Roller; Buck Hoist; Bull Dozer; Cable way; Chicago Boom; Clamshell; Concrete Mixer (21 cu. ft. or over); Concrete Paver; Concrete Pump (Crete); Crane; Craneman; Crusher Plant; Derrick; Derrick Boat; Dinkey; Dope Pots (Pipeline); Dragline; Dredge Operator; Dredge Operator; Dredge Engineer; Drill Operator; Elevating Grader; Elevator; Fork Boe (or similar type equipment); Forklift; Formless Paver; Gantry Crane; Gradeall; Grademan; Grout Pump; Helicopter Crew; Hetherington Paver; High-lift; Hoist; Hopto; Hough Loader (or similar type); Hydro Crane; Hydro Hammer; Locomotive Crane; Locomotive; Mechanic; Mobile; Mixer; Motor Crane; Mucking Machine; Multiple Tamping Machine (RR); Overhead Crane; Pile Driver; Pulls; Push Dozer; Push Boats; Roller (Sheep Foot); Ross Carrier; Scoop; Shovel; Side Boom; Swing Crane; Tail Boom; Tar Machine (pipeline); Throttle Valve; Tower Crane; Trench Machine; Welder (heavy duty); Truck mounted Concrete Pump; Truck-mounted Drill; Well Point; Whirleys

Group 2: Compressor (up to 600 cu. ft.); Brakeman; Bull Float; Concrete Mixer (over 10S and under 21S); Concrete Spreader, or Puddler; Deck Engine; Drill Helper; Electric Vibrator Kompactor (earth or rock); Finishing Machine; Fireman; Greaser (on grease facilities servicing heavy equipment); Material Pump; Motor Boats; Motor Crane Oiler; Portable Loader; Post Hole Digger; Power Broom; Rock Roller; Roller-Wobble Wheel (earth and rock); Spike Machine (RR); Seaman Tiller; Spreader Rock; Sub Grader; Tamping Machine; Truck mounted Drill Oiler; Welding Machine; Widener (Apsco or similar type)

Group 3: Air Compressor (under 200 cu. ft. per minute); Bituminous Distributor; Cement Gun; Concrete Saw; Conveyor; Deck Hand Oiler; Earth Roller; Form Grader; Guardrail Driver; Heater; Oiler; Paving Joint Machine; Power Traffic Signals; Steam Jenny; Vibrator; Water Pump "JLG" Lifts and "Scissor" Lift or similar Machine

POWER EQUIPMENT OPERATORS (Cont'd)

AREA 2

Group 1: Utility Operator

Group 2: Power Cranes; Draglines; Derricks; Electric Overhead Cranes; Shovels; Gradall; Mechanics; Repair and Maintenance of all Equipment; Tractor Highlift; Fork Lifts; Tournadozer; Mixer over 14S capacity; Tournamixer; Two Drum Machine or Two Cage Hoists; Cableways; Tower Machines; Motor Patrol; Boom Tractor; Boom or Winch Truck; Truck Crane; Tournapull; Tractor Operating Scoops; Bulldozer; Push Tractor; Finishing Machine on Asphalt Large Rollers and Rollers on Asphalt, Gravel, Macadam and Brick Surface; Ross Carrier or similar Machine; Gravel Processing Machine; Asphalt Plant Engineer or Pug Mill; Two Air Compressor; Hetherington Paver Operator; Farm Tractor with half yard Bucket and or Back Hoe Attachment; Trench Machines cutting over 24"; Dredging Equipment; Central Mix Plant Engineer; CMI or similar type Machine; Concrete Spreader; Cherry Picker; Standard or Dinkey Locomotives; Scoopmobiles; Euclid Loader; Soil Cement Machines; Back Piller; Elevating Machine; Power Blade; Asphalt Plant Engineer; Well Drilling Machines; Paint Machines; Pipe Cleaning Machine; Pipe Wrapping Machine; Pipe Bending Machine; Apsco Paver; Boring Machine; Tractors without Winch; Head Equipment Greasers; Barber Green Loaders; Formless Paver; Well Point System; Hydra Ax; Resco Concrete Saw; Marine; Scoops; Brush; Mulcher; Brush Burner; Mesh Placer; Tree Mover; Helicopter Crew (3); Pile Driver Skid or Crawler; Stump Remover; Root Rake; Tug Boat Operator; Refrigerating Machine; Freezing Operator; Chair Cart - self-propelled; Hydra Seeder; Straw Blower; Concrete Mixers with Skip; All one Drum Hoists with Tower or Boom; Dredge Engineer; Dredge Engineer; Dredge Operator; Rock Spreader; Truck or Skid mounted Tower Crane; Engine or Rock Crusher Plant; Boiler Operator; Concrete Plant Engineer; Loader; Hydra Crane; Caissons; Shaft or any similar type Drilling Machine; Concrete Curb Machine - Self-propelled Winch Hydraulic Boom truck

Group 3: Mixers 14S capacity or less; Trench Machine cutting 24" and under; Farm Tractor with less than half yard Bucket and other attachments except Back Hoe; Truck Crane Oiler; Power Subgrader; Bull Float; Form Grader; Finishing Machine; Pavement Breaker; Rock Crushers; One Drum Machine; One Air Compressor; Concrete Pump; Gunite Machine; Air Tugger; Truck Crane Drivers; House Elevator when used for hoisting Material; Two to four Generators or Welding Machine; Mechanized Heaters irrespective of Motor power when used for temporary beat; Small Rollers on earth; Engine Tenders; Fireman; Wagon Drill; Flex-plane; Conveyor; Two or four Water Pumps; Siphon and Pulsometer; Switchman; Fireman on Paint Pots; Fireman on Asphalt Plants; Distributor Operator on Trucks; Tampers; Power Broom; Post Hole Diggers; Self-propelled Concrete Saw; Striping Machine (motor driven); Form Tamper; Seaman Tiller; Bulk Cement Plant Equipment Greaser; Track Jack; Mude Jack; Operators to do Winter Repair work in shop between November 1st and March 1st; Concrete Buggies Motor Driven Oilers; Barrel type Mixer; One Welding Machine or One Water Pump; Air Valves or Steam Valves from Plant; Concrete Mixers without Skip; Curing Machine Concrete and Blacktop Curb Machine; Deck Hands

TRUCK DRIVERS

AREA 1

Group 1: Single Axle Trucks; Low Boy Helper; Air Compressor and Welding Machines including those pulled by Cars, Pick-up Trucks; Tractors, Fork Lifts, Hi-Lo's; Multi-purpose Fork Lifts; Dumpsters and Val-truck when used for the specific purpose of transporting materials on the job-site; All Pick-up Trucks (except used to transport Superintendent, Foremen or Mechanics' transportation or to haul Mechanics' tools or repair parts)

Group 2: Mixer Trucks, 2 yards

Group 3: Batch Trucks wet or dry, 3 batches or under

Group 4: Tandem Axle Trucks (including Dog-legs); Oil Distributors; Mixer Trucks, 3 yards; Winch Trucks (used for transportation of materials)

Group 5: Single Axle Semi-Trucks; Batch Trucks wet or dry over 3 batches; Pavement Breakers

Group 6: Tandem Axle Semi Trucks; Trac-O-Trucks; Euclids; Tourn-A Pull when pulling other than self-loading equipment up to and including 10 yards; Mixer Trucks, 4 yards; Mechanics

Group 7: Low Boy; Tandem - Tandem Axle Semi-Trucks

Group 8: Trac-O-Trucks; Euclids; Tourn-A-Pull when pulling other than self-loading equipment, 11 yards to and including 16 yards; Mixer Trucks above 4 yards

Group 9: Trac-O-Trucks; Euclid; Tourn-A-Pull when pulling other than self-loading equipment over 16 yard; Working Foreman

Group 10: Mechanics Helpers and Greasers

TRUCK DRIVERS (Cont'd)

AREA 2

Group 1: Single Axle Straight Trucks; Batch Trucks, wet or dry 3(34E) Batches or less

Group 2: Tandem Trucks or Dog Legs; Trucks over 15 ton payload; Single Axle Semi-trucks (3-axle unit); Low Boys, single axle (3-axle unit); Winch Trucks or A-Frame when transporting Material; Batch Trucks, wet or dry, over 3(34E) Batches

Group 3: Tandem Axle Semi-trucks (4-axle unit); Equipment not self-loaded or Pusher loaded, such as Koehring or similar Dumpsters; Track Trucks; Euclid Bottom Dump and Hug Bottom Dump; Tournatrailers; Tournarockers or similar equipment, 12 cu. yds. and under; Low-boys, Tandem Axle (4-axle unit); Pavement Breakers

Group 4: Tandem-Tandem Semi-trucks (5-axle unit; Low-boys, Tandem-Tandem (5-axle unit)

Group 5: Equipment not self-loaded or Pusher Loader, such as Koehring or similar Dumpsters; Track Trucks; Euclid Bottom Dump and Hug Bottom Dump; Tournatrailers; Tournarockers or similar equipment over 12 cu. yds.; Truck Mechanic; Mixer Trucks, all types

Group 6: Bituminous Distributor, two-man

Group 7: Bituminous Distributors, one-man

Group 8: Pickup Trucks (except used by a Superintendent or a Foreman for own transportation or the use a Mechanic for transportation of self or tools)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Indiana
DECISION NO. IN83-2070
Supersedes Decision No. IN83-2030 dated May 6, 1983 in 48 FR 20606
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to & including 4 stories)

COUNTIES: *See Below
DATE: Date of Publication

*Elkhart, Jasper, Kosciusko, LaGrange, Marshall, Newton, Pulaski, & Starke

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	17.20	2.32
Area 2	18.00	3.28
Area 3	17.46	2.88
BOILERMAKERS	18.655	3.58
BRICKLAYERS, STONEMASONS, CAULKERS, POINTERS & CLEANERS:		
Area 1	15.47	3.62
Area 2	15.97	1.68
Area 3	17.05	3.35
CARPENTERS:		
Area 1:		
Carpenters & soft Floor Layers	14.30	2.48
Millwrights & Pile-drivermen	14.55	2.48
Area 2:		
Carpenters & Soft Floor Layers	13.40	2.52
Millwrights & Pile-drivermen	13.80	2.52
Area 3:		
Carpenters, Piledrivermen & Soft Floor Layers	17.10	3.57
Millwrights	17.20	3.57
Area 4:		
Carpenters & Soft Floor Layers	14.68	2.02
Millwrights	15.43	2.02
Piledrivermen	14.88	2.02
CEMENT MASONS:		
Area 1	15.12	1.58
Area 2	14.73	3.54
Area 3	18.00	2.16
Area 4	17.37	3.13
Area 5	17.36	2.93
ELECTRICIANS:		
Area 1	17.70	1.83 +3%
Area 2	17.40	14.3%
Area 3	18.46	12.5%
Area 4	17.55	17.188%
ELEVATOR CONSTRUCTORS:		
Area 1	16.95	2.69 +a&b
Area 2	18.81	2.69 +a&b
Area 3	16.32	2.69 +a&b
ELEVATOR CONSTRUCTORS' HELPERS		70%JR 2.69 +a&b
ELEVATOR CONSTRUCTORS' HELPERS (Prob.)		50%JR
GLAZIERS:		
Area 1	16.55	1.65
Area 2	15.44	1.14c
Area 3	13.97	.01+ 16%
IRONWORKERS:		
Area 1	14.90	5.06
Area 2	17.80	3.87
Area 3	14.79	4.22
Area 4	15.00	6.11
MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS:		
Area 1	13.00	3.57
Area 2:		
Tile & Terrazzo Workers	13.15	3.08
Area 3:		
Marble Setters & Terrazzo Workers	17.05	3.35
Tile Setters	16.95	3.35
MARBLE SETTERS' FINISHERS, TILE SETTERS' FINISHERS & TERRAZZO WORKERS FINISHERS:		
Area 1	11.00	
Area 2:		
Marble Tile Finishers	14.05	c&d
Terrazzo Finishers	14.18	c&d
PAINTERS:		
Area 1:		
Brush, Roller, Taper & Paperhanger	12.75	2.17
Spray & Sandblasting	13.75	2.17
Area 2:		
Painter, Drywall Tapers & Finishers	12.56	2.03
Area 3:		
Brush	14.85	2.37
Drywall Tapers	15.05	2.37
Paperhangers	15.10	2.37
Spray & Sandblast	15.80	2.37
Area 4:		
Brush & Tapers	14.70	2.49

DECISION NO. IN83-2070

	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Area 1	14.59	3.08
Area 2	14.59	3.54
Area 3	18.00	2.16
Area 4	15.35	2.93
Area 5	15.26	2.93
PLUMBERS & STEAMFITTERS:		
Area 1	17.68	2.87
Area 2	16.18	2.45
Area 3	16.15	3.35
Area 4	16.73	3.81
ROOFERS:		
Area 1	15.00	.50
Area 2	16.91	2.65
Area 3:		
Composition	14.60	2.55
Slate & Tile	15.10	2.55
SHEET METAL WORKERS:		
Area 1	17.66	2.46 +3%
Area 2	16.46	2.16
Area 3	17.15	3.44
SPRINKLER FITTERS	16.67	3.23
LABORERS:		
Area 1:		
Group 1	13.23	1.89
Group 2	13.43	1.89
Group 3	13.53	1.89
Group 4	14.23	1.89
Area 2:		
Group 1	12.98	1.89
Group 2	13.18	1.89
Group 3	13.28	1.89
Group 4	13.98	1.89
Area 3:		
Group 1	11.48	1.94
Group 2	11.68	1.94
Group 3	11.78	1.94
Group 4	12.48	1.94
Area 4:		
Group 1	11.68	1.94
Group 2	11.88	1.94
Group 3	11.98	1.94
Group 4	12.68	1.94
POWER EQUIPMENT OPERATORS:		
Area 1:		
Group 1	17.65	3.70
Group 2	17.15	3.70
Group 3	15.20	3.70
Group 4	14.00	3.70
Area 2:		
Group 1	16.20	4.15
Group 2	15.30	4.15
Group 3	14.85	4.15
Group 4	14.05	4.15
Group 5	13.25	4.15

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
Area 1:		
Group 1	11.16	e
Group 2	11.26	e
Group 3	11.46	e
Group 4	11.31	e
Group 5	11.01	e
Group 6	11.11	e
Group 7	11.46	e
Area 2:		
Group 1	11.505	f
Group 2	11.715	f
Group 3	11.825	f
Group 4	11.875	f
Group 5	11.925	f

DECISION NO. IN83-2070

PAID HOLDIAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. 7 paid holidays: A through F, and Day after Thanksgiving Day
b. Employer contributes 8% of regular hourly rate to vacation pay credit for employee who has worked in business more than 5 years; 6% for employee who has worked in business less than 5 years
c. 6 paid holidays: A through F
d. Health Insurance: Single Plan - $.92; Family Plan-$1.12
e. $81.00 per week, per employee; Paid Vacation - 1 year - 1 week, 3 yrs. - 2 weeks, 10 years - 3 weeks (must have 1000 hours during previous 12 mos. to qualify)
f. $65.50 per week, per employee; Paid Vacation - 1 year service - 1 week, 10 years - 2 weeks; 15 years - 3 weeks (1350 hours per calendar year qualify)

AREA DESCRIPTION

ASBESTOS WORKERS

Area 1 - LaGrange County
Area 2 - Newton County
Area 3 - Remaining Counties

BRICKLAYERS

Area 1 - Marshall, Pulaski Counties
Area 2 - Elkhart, LaGrange & Kosciusko Counties
Area 3 - Jasper, Newton, & Starke Counties

CARPENTERS

Area 1 - Elkhart County
Area 2 - LaGrange County
Area 3 - Jasper, Newton & Starke Counties
Area 4 - Kosciusko, Marshall & Pulaski Counties

CEMENT MASONS

Area 1 - Elkhart, LaGrange & Kosciusko Counties
Area 2 - Marshall, & Pulaski (S ½) Counties
Area 3 - Jasper (E 1/3 - W to but not including Wheatfield) and Starke Counties
Area 4 - Newton County
Area 5 - Jasper (Remainder of Co.)

ELECTRICIANS

Area 1 - LaGrange Counties
Area 2 - Elkhart, Kosciusko & Marshall Counties
Area 3 - Jasper, Pulaski & Starke Counties
Area 4 - Newton County

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AREA DESCRIPTION (CONT'D)

ELEVATOR CONSTRUCTORS

Area 1 - LaGrange County
Area 2 - Newton County
Area 3 - Remainder of Counties

GLAZIERS

Area 1 - Jasper, Newton (E 2/3), Pulaski (W 1/3), Starke (S. W. Corner)

Area 2 - Kosciusko (S.E. ¼), LaGrange (S. E. ¼)
Area 3 - Remainder of Counties

IRONWORKERS

Area 1 - Elkhart, Kosciusko (NW ¼ excl. Warsaw), LaGrange (N ½ excl. city of LaGrange), Marshall, Pulaski (N. E. 2/3) & Starke(Excl. W. Tip) Counties
Area 2 - Jasper (N ½), Newton (N ½) Starke (W. Tip), Pulaski N. W. Tip)
Area 3 - Jasper (S½), Newton (S ½), Pulaski (Rem. of Co.)
Area 4 - Remainder of Counties

MARBLE SETTERS, TILE SETTERS & TERRAZZO WORKERS

Area 1 - Marshall & Pulaski Cos.
Area 2 - Elkhart, LaGrange & Kosciusko Counties
Area 3 - Jasper, Newton, & Starke Counties

MARBLE SETTERS FINISHERS, TILE SETTERS FINSIHERS & TERRAZZO WORKERS FINISHERS

Area 1 - Kosciusko & LaGrange Counties
Area 2 - Remaining Counties

PAINTERS

Area 1 - LaGrange County
Area 2 - Elkhart, Kosciusko & Marshall Counties
Area 3 - Pulaski & Starke Counties
Area 4 - Jasper & Newton Counties

PLASTERERS

Area 1 - Elkhart, Kosciusko & LaGrange Counties
Area 2 - Marshall Co. & S. ½ of Pulaski County
Area 3 - Jasper (E 1/3, W to but not incl. Wheatfield), Pulaski (N ½) and Starke Counties
Area 4 - Remainder of Jasper Counties
Area 5 - Newton (N½)

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AREA DEFINITIONS (CONT'D)

PLUMBERS

Area 1 - Elkhart, Kosciusko & LaGrange Counties
Area 2 - Jasper (S. of the N. Side of the City of Rensselear), Marshall, Pulaski, & Starke Counties
Area 3 - Newton County
Area 4 - Jasper (Rem. of County)

ROOFERS

Area 1 - LaGrange County
Area 2 - Jasper & Newton Counties
Area 3 - Remainder of Counties

SHEET METAL WORKERS

Area 1 - LaGrange County
Area 2 - Elkhart, Kosciusko & Marshall Counties
Area 3 - Remainder of Counties

LABORERS

Area 1 - Jasper & Newton Counties
Area 2 - Starke County
Area 3 - Pulaski County
Area 4 - Remainder of Counties

POWER EQUIPMENT OPERATORS

Area 1 - Jasper, Newton, Pulaski & Starke Counties
Area 2 - Remainder of Counties

TRUCK DRIVERS

Area 1 - Jasper & Newton Cos.
Area 2 - Elkhart, Kosciusko, LaGrange & Marshall Counties

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CLASSIFICATION DEFINITIONS

LABORERS

AREAS 1 - 2 - 3

Group 1 - Building and Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Water Boys and Tool Housemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers; Cement Finishers Tenders; Carpenter Tenders; Mason Tenders in Area 1 and 2; Portable Water Pumps with Discharge up to 3 inches

Group 2 - Waterproofing; Hauling of Creosote Lumber or like treated material (ex railroad material); Asphalt Rakers and Lutemen; Kettlemen; Air Tool Op.; Pneumatic Tool Op.; Air & Electric Vibrators and Chipping Hammer Op.; Earth Compactors; Jackman & Sheetmen in Ditches more than 6 feet Deep; Laborers in ditches 6' deep or deeper; Assembly of Unicrete Pump; Tile Layer (sewer or field); Sewer Pipe Layers; Motor Driven Wheelbarrows and Concrete Buggies; Hyster Op.; Pump crete Assemblers; Core Drills Op.; Cement, Lime or Silica Clay Handlers; Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winch Op.; Water Main & Cable Ducking; Screed Man or Screw Op. on Asphalt Paver; Chain Saw & Demolition Saw Op.; Concrete Conveyor Assembler

Group 3 - Plaster Tenders; Mason Tenders ex in Area 1 and 2; Motor Mixers; Welders; Cutting Torch or Burner; Cement Nozzle Laborer; Cement Gun Operators; Scaffold Builders for Plasterers; Scaffold Builders for Mason ex area 1 and 2 Water Blast Mach. Op.

Group 4 - Dynamite Men; Drillers - Air Track or Wagon Drilling for Explosives

AREA 4

Group 1 - Building & Construction Laborers; Scaffold Builders (other than for Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers & Cleaners; Waterboys & Toolhousemen; Roofer's Tenders; Railroad Workers; Masonry Wall Washers (interior & exterior); cement Finisher Tenders; Carpenter Tenders; All Portable Water Pumps with discharge up to three (3) inches; Plaster Tenders

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CLASSIFICATION DEFINITIONS (CONT'D)

LABORERS - AREA 4 (CONT'D)

Group 2 - Waterproofing; Hauling of Creosote Lumber of like treated material; (excluding railroad material); Asphalt Rakers & Lutemen; Kettlemen; Air Tool Operators and all Pneumatic Tool Operators, Air and Electric Vibrators and Chipping Hammer Operators; Earth Compactors; Jackmen & Sheetmen working Ditches deeper than six (6) feet in depth; Laborers working in ditches (6) feet in depth or deeper; Assembly of Unicrete Pump; Tile Layers (sewer or field) & Sewer Pipe Layer (metallic or non-metallic); Motor Driven Wheelbarrows and Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Handlers (bulk or bag) Handling of Toxic Materials Damaging to Clothing; Pneumatic Spikers; Deck Engine & Winches Operators; Water Maine & Cable Ducking (metallic and non-metallic); Screed Man on Screw Operator on Asphalt Paver; Chain and Demolition Saw Operators; Concrete Conveyor Assemblers

Group 3 - Water Blast Machine Operator; Mortar Mixers; Welders (acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when working for Plasterers

Group 4 - Dynamite Men; Drillers-Air Track or Wagon Drilling for explosives

POWER EQUIPMENT OPERATORS

AREA 1

Group 1 - Mechanic, Asphalt Plant, Autograde, Batch Plant, Benoto (Requires 2 Engineers), Boiler and Throttle Valve, Boring Machine (Mining Machine), Caisson Rigs, Central Redi-Mix Plant, Combination Backhoe (Endloader with Backhoe Bucket over ½ cu. yd.), Combination Tugger Hoist & Air Tugger, Compressor and Throttle, Concrete Breaker (Truck Mounted), Concrete Conveyor, Concrete Paver over 27E cu. ft., Concrete Paver 27E cu. ft. & under, Concrete Pump with boom (Truck Mounted), Concrete Tower, Cranes-All, Cranes-Hammerhead Tower, Creter Crane, Derricks-All, Derricks-Traveling, Forklift-Lull Type, Fork Lift-10 ton & over, Hoists-1,2, & 3 Drum, Hoist-2 Tugger one Floor, Hydraulic Boom Truck, Locomotive-All, Motor Patrol, Mucking Machines, Pile Driving & Skid Rig, Pit Machines, Pre-Stress Machines, Pump Cretes & Similar Types, Rock Drill (Self-Propelled), Rock Drill (Truck Mounted), Slip Form Paver, Straddle Buggies, Tractor with Boom & Side Boom, Trenching Machine, Winch Tractors

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CLASSIFICATION DEFINITIONS (CONT'D)

POWER EQUIPMENT OPERATORS - AREA 1 (CONT'D)

Group 2 - Asphalt Spreader, Boilers, Bulldozers, Combination Backhoe (Endloader with Backhoe bucket ½ cu. yd. & under), Engineer acting as Conductor in charge of crew, Grader-Elevating, Greaser Engineer, Grouting Machines, Highlift Shovels or Front Endloader, Hoists-Automatic, Corboy Drilling Machines, Hoists-All Elevators, Hoists-Tugger Single Drum, Post Hole Digger, Roller-All, Scoops-Tractor Drawn, Stone Crushers, Tournapull, Winch Trucks

Group 3 - Concrete Mixer (two bag & over), Conveyor-Portable, Steam Generators, Tractors-Farm & Similar Type, Air Compressor-small 150 and under (1 to 5 not to exceed a total of 300 feet), Air Compressor - large over 150, Combination - Small Equipment Operator, Forklift - under 10 ton, Generator, Pumps (1 to 3 not to exceed a total of 300 feet), Pump-Well Points, Welding Machines (2 thru 5), Winches-4, Electric Drill Winches

Group 4 - Heaters-Mechanical (1 to 5), Oiler Switchmen

AREA 2

Group 1 - Mechanic, Asphalt Plant, Asphalt Spreader, Autograde, Batch Plant, Benoto (requires two Engineers), Boiler and Throttle Valve), Boring Machine (Road), Caisson Rigs, Central Redi-Mix Plant, Concrete Conveyor Systems, Concrete Power over 27E cu. ft., Concrete Paver 27E cu. ft. and under, Concrete Placer, Concrete Pumps (truck mounted), Concrete Tower, Cranes-All, Cranes-Hammerhead, Creter Cranes, Derrick-All, Forklift capable of hoisting and mechanically moving forks horizontally, Grader-Elevating, Highlfit Shovels or Front End Loader, Hoists-Two or more drums, Locomotives-All, Motor Patrol, Pile Drivers and Skid Rig, Pre-stress Machine, Rock Drill (Self-propelled), Rock Drill (truck mounted) Scoops - Tractor drawn, Slip-Form Paver, Torunapull, Tractor with Boom and Side Boom, Trenching Machines 12 or more inches in width

Group 2 - Combination Backhoe Front End Loader Machine with Backhoe Bucket or with attachments

Group 3 - Air Compressor 600 cu. ft. and over, Bobcat (over 3/4 cu. yd.), Boilers, Broom-All Powered Propelled, Bull Dozers, Compressor and Throttle Valve, Concrete Breaker (truck mounted), Concrete Mixer of more than 21 cu. ft. capacity, Forklift with a fixed or tilt mast Greaser Engineer, Hoists-One Drum, Hydraulic Boom Truck, Post-Hole Digger (vehicle mounted), Pump Cretes- (Squeeze Crete Type Pumps, Gypsum Bulker and Pump), Roller-All, Steam Generators, Stone Crushers, Straddle Buggies, Tractors, Winch Truck with "A" frame

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CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS - AREA 2 (CONT'D)

Group 4 - Buck Hoists, Combination - Small Equipment Operator, Conveyor-Portable, Grouting Machines, Hoist Elevators Mat'l & Personnel, Hydraulic Power Units Grouting and Pile Driving, Stud Welder, Trenching Machine less than 12 inches in width, Welding Machines 8 through 15

Group 5 - Bobcat (up to and including 3/4 cu. yd.), Compressor over 210 cu. ft. and less than 600 cu. ft., Generators - over 50 KW, Heaters-Mechanical, Hoists-All Elevator (perm. installation), Hoist-Automatic, Hoist Tugger Single Drum, Oilers, Pumps-Well Points and Electric Submersibles, Small Rubber Tired End Loaders ¾ cu. yd. and under, Tractors-Farm Type, Welding Machines (2 through 8)

TRUCK DRIVERS

AREA 1

Group 1 - Single Axle, & Straight Trucks
Group 2 - Tandem Axle & Dogleg Straight Trucks
Group 3 - Tri-Axle & Semi Trucks
Group 4 - Bituminous Distributors
Group 5 - Pick-up Trucks
Group 6 - Helper, Greasers & Tiremen
Group 7 - Mechanic

AREA 2

Group 1 - Pick-up Truck
Group 2 - Single Axle Trucks
Group 3 - Tandem or Fuel Trucks
Group 4 - Tri-Axle Trucks
Group 5 - Semi-Trailer

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Indiana

COUNTIES: Lake, LaPorte, Porter, and St. Joseph

DECISION NUMBER: IN83-2072

DATE: Date of Publication

Supersedes Decision No. IN83-2032 dated May 13, 1983, in 48 FR 21776

DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Construction

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS:		
Area 1	$18.00	$3.28
Area 2	17.46	2.88
BOILERMAKERS	18.655	3.58
BRICKLAYERS; STONEMASONS, CAULKERS, POINTERS, and CLEANERS:		
Area 1	17.05	3.35
Area 2	15.47	3.62
CARPENTERS:		
Building Construction:		
Area 1:		
Carpenters and Piledrivermen	17.10	3.77
Millwrights	17.20	3.57
Area 2:		
Carpenters, Millwrights, and Piledrivermen	15.65	2.93
Heavy and Highway Construction:		
Area 1	14.76	2.65
CEMENT MASONS:		
Building Construction:		
Area 1	17.36	2.93
Area 2	17.37	3.13
Area 3	14.73	3.54
Area 4	18.00	2.16
Heavy and Highway Construction:		
Area 1	17.00	2.93
Area 2	17.00	2.93
Area 3	14.21	3.54
Area 4	17.06	2.56
ELECTRICIANS:		
Area 1	17.55	17.188%
Area 2	18.46	12-1/2%
Area 3	17.40	14.3%
ELEVATOR CONSTRUCTORS:		
Mechanics:		
Area 1	18.81	2.69+ a
Area 2	16.32	2.69+ a
ELEVATOR CONSTRUCTORS: (Cont'd)		
Mechanic Helpers:		
Area 1	70%JR	$2.69+ a
Area 2	70%JR	2.69+ a
Probationary Helpers	50%JR	
GLAZIERS:		
Area 1	16.55	1.65
Area 2	13.97	.01+ 16%
IRONWORKERS:		
Area 1	17.80	3.87
Area 2	14.90	5.06
MARBLE SETTERS; TILE SETTERS and TERRAZZO WORKERS:		
Area 1:		
Marble Setters and Terrazzo Workers	17.05	3.35
Tile Setters	16.95	3.35
Area 2	13.00	3.57
MARBLE SETTERS'; TILE SETTERS'; and TERRAZZO WORKERS' FINISHERS:		
Marble and Tile Finishers	14.05	b
Terrazzo Finishers	14.18	b
PAINTERS:		
Area 1:		
Brush	14.70	2.49
Spray and Sandblast	15.45	2.49
Drywall Taper	15.75	2.49
Area 2:		
Brush	14.85	2.37
Drywall Tapers	15.05	2.37
Paperhangers	15.10	2.37
Spray and Sandblast	15.80	2.37
Area 3:		
Brush	13.00	
Spray	14.00	
Area 4	12.56	2.03

	Basic Hourly Rates	Fringe Benefits
PLASTERERS:		
Area 1	$15.26	$2.93
Area 2	14.59	3.54
Area 3	18.00	2.16
Area 4	15.35	2.93
PLUMBERS; PIPEFITTERS:		
Area 1	16.15	3.35
Area 2	16.73	3.81
Area 3	16.18	2.45
ROOFERS:		
Area 1	16.91	2.65
Area 2:		
Composition	14.60	2.55
Slate and Tile	15.10	2.55
SHEET METAL WORKERS:		
Area 1	17.15	3.44
Area 2	16.46	2.16
SPRINKLER FITTERS	16.67	3.23
LINE CONSTRUCTION:		
Area 1:		
Linemen, Groundman, Equipment Operator, Crawler type Equipment larger than D-4	18.74	.65+ 8.5%
Groundman Truck Driver (w/Winch and Crawler type Equipment, D-4 and smaller)	15.73	.65+ 8.5%
Groundman Truck Driver without Winch	14.93	.65+ 8.5%
Groundman	14.33	.65+ 8.5%
Area 2:		
Linemen, Equipment Operator, Crawler type Equipment larger than D-4	17.25	.65+ 8.5%
Groundman Truck Driver (w/Winch and Crawler type Equipment, D-4 and smaller)	14.21	.65+ 8.5%
Groundman Truck Driver without Winch	13.38	.65+ 8.5%
Groundman	12.78	.65+ 8.5%

	Basic Hourly Rates	Fringe Benefits
LABORERS:		
Building Construction:		
Area 1:		
Group 1	$13.23	$1.89
Group 2	13.43	1.89
Group 3	13.53	1.89
Group 4	14.23	1.89
Area 2:		
Group 1	12.98	1.89
Group 2	13.18	1.89
Group 3	13.28	1.89
Group 4	13.98	1.89
Area 3:		
Group 1	11.68	1.94
Group 2	11.88	1.94
Group 3	11.98	1.94
Group 4	12.68	1.94
Heavy and Highway Construction:		
Area 1:		
Group 1	12.48	1.94
Group 2	12.55	1.94
Group 3	12.60	1.94
Group 4	12.70	1.94
Group 5	13.25	1.94
Area 2:		
Group 1	10.98	1.94
Group 2	11.13	1.94
Group 3	11.18	1.94
Group 4	11.28	1.94
Group 5	11.83	1.94
POWER EQUIPMENT OPERATORS:		
Building Construction:		
Area 1:		
Group 1	17.65	3.70
Group 2	17.15	3.70
Group 3	15.20	3.70
Group 4	14.00	3.70
Area 2:		
Group 1	16.20	4.15
Group 2	15.30	4.15
Group 3	14.85	4.15
Group 4	14.05	4.15
Group 5	13.25	4.15

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	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS: (Cont'd)		
Heavy and Highway Construction:		
Areas 1 and 2:		
Group 1	$16.85	$3.85
Group 2	16.40	3.85
Group 3	15.95	3.85
Group 4	14.75	3.85
Group 5	13.70	3.85
Underground, Sewer and Water Construction:		
Area 1:		
Group 1	17.65	3.85
Group 2	17.15	3.85
Group 3	15.20	3.85
Group 4	14.00	3.85
TRUCK DRIVERS:		
Building Construction:		
Area 1:		
Group 1	11.505	65.50 +c&e
Group 2	11.715	65.50 +c&e
Group 3	11.825	65.50 +c&e
Group 4	11.875	65.50 +c&e
Group 5	11.925	65.50 +c&e

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS: (Cont'd)		
Heavy and Highway Construction:		
Area 1:		
Group 1	$12.81	$96.50 +c
Group 2	12.76	96.50 +c
Group 3	12.71	96.50 +c
Group 4	12.66	96.50 +c
Group 5	12.61	96.50 +c
Group 6	12.56	96.50 +c
Group 7	12.51	96.50 +c
Group 8	12.46	96.50 +c
Group 9	12.41	96.50 +c
Group 10	12.36	96.50 +c
Group 11	12.31	96.50 +c
Group 12	12.21	96.50 +c
Building, Heavy and Highway Construction:		
Area 2:		
Group 1	12.35	2.35
Group 2	12.55	2.35
Group 3	12.75	2.35
Group 4	12.95	2.35
Group 5	12.95 +d	2.35

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WELDERS: Receive rate prescribed for craft performing operation to which welding is incidental

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Seven Paid Holidays: A through F plus Day after Thanksgiving; Employer contributes 8% of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years; Employer contributes 6% of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years
b. Six Paid Holidays: A through F; Health Insurance: Single Plan $0.92 per hour; Family Plan $1.12 per hour
c. Per Week, Per Employee
d. Plus $0.20 per axle for each axle over six (6)
e. Paid Vacation: for 1 year service - 1 week Vacation; 10 years - 2 weeks; 15 years - 3 weeks (1350 hours per calander year to qualify)

AREA DESCRIPTIONS

ASBESTOS WORKERS:
Area 1: Lake and Porter Counties
Area 2: LaPorte and St. Joseph Counties

BRICKLAYERS; STONEMASONS; CAULKERS; POINTERS and CLEANERS:
Building Construction:
Area 1: Lake, LaPorte, and Porter Counties
Area 2: St. Joseph County
Heavy and Highway Construction:
Area 1: St. Joseph County

CARPENTERS:
Area 1: Lake, LaPorte, and Porter Counties
Area 2: St. Joseph County

CEMENT MASONS:
Area 1: Lake County (Gary Area) and Porter County (Western 2/3 including Valparaiso)
Area 2: Remainder of Lake County
Area 3: St. Joseph County
Area 4: LaPorte County and Remainder of Porter County

ELECTRICIANS:
Area 1: Lake County
Area 2: LaPorte and Porter Counties
Area 3: St. Joseph County

ELEVATOR CONSTRUCTORS:
Area 1: Lake and Porter Counties
Area 2: LaPorte and St. Joseph Counties

AREA DESCRIPTIONS (Cont'd)

GLAZIERS:
Area 1: Lake (Eastern 3/4), LaPorte (Western 1/4), and Porter Counties
Area 2: LaPorte (Remainder of County), and St. Joseph County

IRONWORKERS:
Area 1: Lake, Porter, and LaPorte (West of a line 3 miles East of Route 421 parallel to Route 421) Counties
Area 2: St. Joseph and LaPorte (Remainder of County) Counties

MARBLE SETTERS, TILE SETTERS and TERRAZZO WORKERS:
Area 1: Lake, LaPorte and Porter Counties
Area 2: St. Joseph County

PAINTERS:
Area 1: Western half of Lake County
Area 2: Eastern half of Lake County, LaPorte County (West of Highway 39 excluding Michigan City), Porter County (Southern part to Route 6 including City of Chesterfield)
Area 3: LaPorte County (Michigan City only), Remainder of Porter County
Area 4: St. Joseph County and LaPorte County (East of Highway 39)

PLASTERERS:
Area 1: Lake County (except Northeastern section, North of Crown Point and East of Griffith)
Area 2: St. Joseph County
Area 3: LaPorte County, Porter County (Eastern portion, West to but not including Chesterton and including Kouts)
Area 4: Remainders of Lake and Porter Counties

PLUMBERS; PIPEFITTERS:
Area 1: Lake County (North, St. Johns, Hanover, West Creek and Cedar Creek Townships and City of Hammond)
Area 2: Lake (Remainder of County), LaPorte (excluding City of LaPorte) and Porter Counties
Area 3: LaPorte County (City of LaPorte) and St. Joseph County

ROOFERS:
Area 1: Lake and Porter Counties
Area 2: LaPorte and St. Joseph Counties

SHEET METAL WORKERS:
Area 1: Lake, LaPorte, and Porter Counties
Area 2: St. Joseph County

LINE CONSTRUCTION:
Area 1: Lake County
Area 2: LaPorte, Porter and St. Joseph Counties

AREA DESCRIPTIONS (Cont'd)

LABORERS:
Building Construction:
Area 1: Lake County, Porter County (North of U.S. Highway 20)
Area 2: LaPorte County, Porter County (South of U.S. Highway 20)
Area 3: St. Joseph County
Heavy and Highway Construction:
Area 1: Lake County
Area 2: LaPorte, Porter and St. Joseph Counties

POWER EQUIPMENT OPERATORS:
Building, Heavy and Highway Construction:
Area 1: Lake, LaPorte and Porter Counties
Area 2: St. Joseph County
Underground Sewer and Water Construction:
Area 1: Lake, LaPorte and Porter Counties

TRUCK DRIVERS:
Building, Heavy and Highway Construction:
Area 1: St. Joseph County
Area 2: Lake and Porter Counties

LABORERS
BUILDING CONSTRUCTION

AREAS 1 and 2

Group 1: Building and Construction Laborers; Scaffold Builders (other than for Masons or Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Water Boys and Tool Housemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers; Cement Finishers Tenders; Carpenter Tenders; Mason Tenders; Portable Water Pumps with discharge up to 3 inches

Group 2: Waterproofing; Hauling of Creosote Lumber or like treated material (excluding railroad material); Asphalt Rakers and Lutemen; Kettlemen; Air Tool Operator; Pneumatic Tool Operator; Air and Electric Vibrators and Chipping Hammer Operator; Earth Compactors; Jackman and Sheetmen in Ditches more than 6 ft. deep; Laborers in ditches 6' deep or deeper; Assembly of Unicrete Pump; Tile Layers (sewer or field); Sewer Pipe Layers; Motor driven Wheelbarrows and Concrete Buggies; Hyster Operator; Pump Crete Assemblers; Core Drill Operator; Cement, Lime or Silica Clay Handlers; Handling of Toxic Materials damaging to clothing; Pneumatic Spikers; Deck Engine and Winch Operator; Water Main and Cable Ducking; Screed Man or Screw Operator, on Asphalt Paver; Chain Saw and Demolition Saw Operator; Concrete Conveyor Assembler

Group 3: Plaster Tenders; Mortar Mixers; Welders; Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders for Plasterers; Water Blast Machine Operator

Group 4: Dynamite Men; Drillers, Air Track or Wagon Drilling for explosives

LABORERS (Cont'd)
BUILDING CONSTRUCTION (Cont'd)

AREA 3

Group 1: Building and Construction Laborers; Scaffold Builders (other than for Plasterers); Ironworker Tenders; Mechanic Tenders; Window Washers and Cleaners; Waterboys and Toolhousemen; Roofers Tenders; Railroad Workers; Masonry Wall Washers (interior and exterior); Cement Finisher Tenders; Carpenter Tenders; All Portable Water Pumps with discharge up to (3) inches; Plaster Tenders; Mason Tenders

Group 2: Waterproofing; Handling of Creosote Lumber or like treated material (excluding railroad material); Asphalt Rakers and Lutemen; Kettlemen; Air Tool Operators and all Pneumatic Tool Operators; Air and Electric Vibrators and Chipping Hammer Operators; Earth Compactors; Jackmen and Sheetmen working Ditches deeper than (6) ft. in depth; Laborers working in ditches (6) ft. in depth or deeper; Assembly of Unicrete Pump; Tile Layers (sewer or field) and Sewer Pipe Layer (metallic or non-metallic); Motor driven Wheelbarrows and Concrete Buggies; Hyster Operators; Pump Crete Assemblers; Core Drill Operators; Cement, Lime or Silica Clay Bandlers (bulk or bag); Handling of Toxic Materials damaging to clothing; Pneumatic Spikers; Deck Engine and Winch Operators; Water Main and Cable Ducking (metallic and non-metallic); Screed Man or Screw Operator on Asphalt Paver; Chain and Demolition Saw Operators; Concrete Conveyor Assemblers

Group 3: Water Blast Machine Operator; Mortar Mixers; Welders (Acetylene or electric); Cutting Torch or Burner; Cement Nozzle Laborers; Cement Gun Operators; Scaffold Builders when working for Plasterers

Group 4: Dynamite Men; Drillers - Air Track or Wagon Drilling for explosives

HEAVY And HIGHWAY CONSTRUCTION

Group 1: Construction Laborer; Carpenter Tender; Fence Erector; Grade Checker; Guard Rail Erector; Continuous Steel Rod or Mat Installer; Wire Mesh Layer; Joint Man (Mortar, Mastic, and all other types); Lighting Installer (permanent or temporary); Lineman for Automatic Grade Maker on Paving Machines; Mortar Man; Multi-plant Erector; Rip-rap Installer (all products and materials); Road Marking and Delineation Laborer; Setting and Placing of all Precast Concrete Products; Sign Installation including supporting structure; Spraying of all Epoxy, Curing Compound, or like material

Group 2: Air Tool, Power Tool, and Power Equipment Operator; Asphalt Lute Man; Asphalt Raker Man; Batch Truck Dumper; Bridge Hand Rail Erector; Handler (bulk or bag cement); Chain Saw Man; Concrete Puddler; Concrete Rubber; Concrete Saw Operator; Core Drill Operator, eye level; Hand Blade Operator; Hydro Seeder Man; Motor driven Georgia Buggy Operator; Power driven Compactor or Tamper Operator; Power Saw Operator; Pumpcrete Assembly Man; Screed Man or Screw Man on Asphalt Paver; Rebar Installer; Sandblaster Man; Sealer Applicator for Asphalt (toxic); Setting and Placing Prestressed on Precast Concrete Structural Members; Side Rail Setters (for sidewalks, side ditches, Radii, and pavement); Spreader Box Tender (manual or power driven); Straw Blower Man; Subsurface Drain and Culvert Pipe Layer; Transverse and Longitudinal Hand Bull Float Man; Concrete Conveyor Assembly Man

LABORERS (Cont'd)
HEAVY And HIGHWAY CONSTRUCTION (Cont'd)
AREA 3 (Cont'd)

Group 3: Horizontal Boring and Jacking Man; Jackman and Sheetman; Pipe Grade Man; Winch and Windlass Operator

Group 4: Conduit Installer; Cutting Torch Burner; Laser Beam; Aligner; Manhole Erector; Sewer Pipe Layer; Water Line Installer, temporary or permanent; Welders (electric or Oxy-Acetylene)

Group 5: Air Track and Wagon Drillman; Concrete Finisher; Dynamite and Powder Man

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

AREA 1

Group 1: Mechanic; Asphalt Plant; Autograde; Batch Plant; Benoto (requires 2 Engineers); Boiler and Throttle Valve; Boring Machine (Mining Machine); Caisson Rigs; Central Redi-mix Plant; Combination Backhoe-Endloader with Backhoe Bucket over 1/2 cu. yd.; Combination Tugger Hoist and Air Compressor; Compressor and Throttle; Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft. and under; Concrete Pump with Boom (truck mounted); Concrete Tower; Cranes, all; Cranes, Hammerhead Tower; Crete Crane; Derricks, all; Derricks, traveling; Forklift, Lull type; Forklift, 10 ton and over; Hoists, 1,2, and 3 drum; Hoist, 2 Tugger-one floor; Hydraulic Boom Truck; Locomotives, all; Motor Patrol; Mucking Machine; Pile Driving and Skid Rig; Pit Machines; Pre-stress Machines; Pump Cretes and similar types; Rock Drill (self-propelled); Rock Drill (truck mounted); Slip Form Paver; Straddle Buggies; Tractor with Boom and Side Boom; Trenching Machine; Winch Tractors

Group 2: Asphalt Spreader; Boilers; Bulldozers; Combination Backhoe-Endloader with Backhoe bucket 1/2 cu. yd. and under; Engineer acting as Conductor in charge of crew; Grader -Elevating; Greaser Engineer; Grouting Machines; Highlift Shovels or Front Endloader; Hoists, automatic; Corboy Drilling Machines; Hoists, all Elevators; Hoists, Tugger, single drum; Post Hole Digger; Rollers, all; Scoops, tractor drawn; Stone Crushers; Tournapull; Winch Trucks

Group 3: Concrete Mixer (2 bag and over); Conveyor, portable; Steam Generators; Tractors, farm and similar type; Air Compressor, small 150 and under - 1 to 5 not to exceed a total of 300 ft.; Air Compressor, large over 150; Combination, Small Equipment Operator; Forklift, under 10 ton; Generator; Pumps, 1 to 3 not to exceed a total of 300 ft.; Pumps, Well Points; Welding Machines, 2 through 5; Winches, 4 Electric Drill Winches

Group 4: Heaters, Mechanical (1 to 5); Oiler; Switchmen

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POWER EQUIPMENT OPERATORS (Cont'd)
BUILDING CONSTRUCTION (Con'td)

AREA 2

Group 1: Mechanic; Asphalt Plant; Asphalt Spreader; Autograde; Batch Plant; Benoto (requires two Engineers); Boiler and Throttle Valve; Boring Machine (road); Caisson Rigs; Central Redi-mix Plant Concrete Conveyor Systems; Concrete Power over 27E cu. ft.; Concrete Paver 27E cu. ft. and under; Concrete Placer; Concrete Pumps (truck mounted); Concrete Tower; Cranes, all; Cranes, Hammerhead; Creter Cranes; Derricks, all; Forklift capable of hoisting and mechanically moving Forks horizontally; Grader, Elevating; Highlift Shovels or Front End Loader; Hoists, two or more drums; Locomotives, all; Motor Patrol; Pile Drivers and Skid Rig; Pre-stress Machine; Rock Drill (self-propelled); Rock Drill (truck mounted) Scoops, tractor drawn; Slip-form Paver; Tournapull; Tractor with Boom and Side Boom; Trenching Machines 12 or more inches in width

Group 2: Combination Backhoe Front End Loader Machine with Backhoe bucket or with attachments

Group 3: Air Compressor 600 cu. ft. and over; Bobcat (over 3/4 cu. yd.); Boilers; Broom, all powered propelled; Bull Dozers; Compressor and Throttle Valve; Concrete Breaker (truck mounted); Concrete Mixer of more than 21 cu. ft. capacity; Forklift with a fixed or tilt Mast; Greaser Engineer; Hoists, one drum; Hydraulic Boom Truck; Post Hole Digger (vehicle mounted); Pump Cretes (Squeeze Crete type Pumps, Gypsum Bulker and Pump); Rollers, all; Steam Generators; Stone Crushers; Straddle Buggies; Tractors; Winch Truck with "A" Frame

Group 4: Buck Hoists; Combination - small equipment Operator; Conveyor-portable; Grouting Machines; Hoist Elevators Material and personnel; Hydraulic Power Units Grouting and Pile Driving; Stud Welder; Trenching Machines less than 12 inches in width; Welding Machines 8 through 15

Group 5: Bobcat (up to and including 3/4 cu. yd.); Compressor over 210 cu. ft. and less than 600 cu. ft.; Generators, over 50 KW; Heaters, Mechanical; Hoists, all Elevator (permanent installation); Hoist, Automatic; Hoist, Tugger single Drum; Oilers; Pumps, Well Points and electric Submersibles; Small Rubber Tired End Loaders, 1/4 cu. yd. and under; Tractors, Farm type; Welding Machines, 2 through 8

POWER EQUIPMENT OPERATORS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION
AREAS 1 and 2

Group 1: Auto Patrol, Maintainer; Automatic Dry Batch Plant; Automated Concrete Placer; Automated Sub-grader; Automated Slip form Paver; Automated Finish Machine; Combination Backhoe; Front End-loader Machine (1/2 cu. yd. Backhoe bucket or over or with attachment); Combination Backhoe (1 cu. yd. Backhoe bucket or over or with attachments); Ballast Regulator (RR); Belt Loader, stationary; Boring Machine (road); Bulldozer; Concrete Mixer, 27 cu. ft. or over; Concrete Pump; Concrete Pump, truck mounted; Concrete Breaker, truck mounted; Concrete Breaker, self-propelled; Core Drilling Machines; Cranes and Backhoes, all attachments; Cranes, Hammerhead; Creter Crane; Derricks; Derricks, traveling; Dredge Engineer; Dredge Operator; Formless Curb and Gutter Machine, 36 inches and over; Formless Curb and Gutter Machine under 36 inches; Gradall and Machines of a like nature; Guard Rail Post Driver, truck mounted; Lead Greaser; Helicopter; Highlift Shovel, 3 yds. and over; Hoist, 1 drum; Hoist 2 and 3 drum; Hydraulic Power Units (Grouting, Pile Driving and Extracting); Locomotive Operator; Mechanic, Welder; Mucking Machine; Panelboard Concrete Plant (Central Mix type); Paver, Hetherington; Pile Driver, Skid or Crawler; Road Paving Mixer; Rock Drill Crawler or Skid Rig; Rock Drill, truck mounted; Ross Carrier; Roto Mill Grinder 36" and over; Roto Mill Grinder, less than 36"; Throttle Valve and Compressor or Clever Brooks type Combination; Throttle Valve and Fireman Combination or Horizontal or Upright Boiler; Tournapull or similar type equipment; Tractor, Boom; Tractor drawn Belt Loader; Tractor drawn Belt Loader with attached Pusher (requires two Engineers); Trench Machine; Tug Boat Operator; Wheel Excavator; Winch Truck with "A" Frame; Scoops; Tournapulls or similar types Machine used in Tandem (add $1.00 to Class 1 hourly rate for each Machine attached thereto)

Group 2: Combination Backhoe Front End Loader Machine with less than 1/2 cu. yd. Backhoe bucket or with attachment; Bituminous Mixer; Bituminous Paver; Bituminous Plant Engineer; Bridge Deck Finisher; Concrete Mixer, less than 27 cu. ft.; Greaser; Highlift Shovel, under 3 cu. yds.; Jersey Spreader or Base Paver; Pavement Bump Grinder (self-propelled); Roller (Asphalt, Waterbound, Macadam, Bituminous Macadam, Brick Surface); Sheepfoot Roller (self-propelled with blade); Surface Heater and Planer; Tamper (Multiple Vibrating, Asphalt Waterbound Macadam, Bituminous Macadam, Brick Surface); Tractor, Push; Tractor with Scoop; Widener, Apsco or similar type

Group 3: Assistant Plant Engineer; Back Filler; Bituminous Distributor; Broom and Belt Machine; Bull Float; Concrete Finishing Maching; Concrete Spreader, power driven; Digger, Post Hole (power driven); Finishing Machine and Bull Float; Forklift; Form Grader; Form Tamper (motor driven); Multiple Tamping Machine; Paving Breaker; Roller (earth and subbase material); Roller Sheepfoot (self-propelled); Sub-Grader; Tamper, Multiple Vibrating, earth and subbase material; Tractaire; Tractaire with Drill; Tractor (with all drawn attachments except Backhoe and including Highlift; Endloader of 1 cu. yd. capacity and less

POWER EQUIPMENT OPERATORS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION (Cont'd)
AREAS 1 and 2 (Cont'd)

Group 4: Air Compressor; Conveyor, all; Fireman on Boiler; Generator; Assistant Mechanic; Power Curing Spraying Machine, self-propelled; Broom, self-propelled; Seaman Tiller; Spike Machine (RR); Striping Machine (paint, self-propelled); Throttle Valve; Welding Machine; Well Points Systems

Group 5: Assistant Greaser; Deck Hand; Hetherington Driver; Mechanical Heater (1 to 5); Outboard or Inboard Motor Boat; Oiler; Power Saw, Concrete, power driven; Truck Crane Oiler, Driver; Water Pump; Helper on C.M.I. and similar type equipment; Grasscutter

UNDERGROUND, SEWER and WATER CONSTRUCTION

AREA 1

Group 1: Mechanic; Asphalt Plant; Autograde; Batch Plant; Benoto (requires 2 Engineers); Boiler and Throttle Valve; Boring Machine (Mining Machine); Caisson Rigs; Central Redi-mix Plant; Combination Backhoe-Endloader with Backhoe Bucket over 1/2 cu. yd.; Combination Tugger Hoist and Air Compressor; Compresor and Throttle; Concrete Breaker (truck mounted); Concrete Conveyor; Concrete Paver over 27E cu. ft.; Concrete Paver 27E cu. ft. and under; Concrete Pump with Boom (truck mounted); Concrete Tower; Cranes and Backhoes, all attachments; Cranes, Hammerhead Tower; Creter Cranes; Derricks, all; Derrick, traveling; Forklift, Lull type; Forklift, 10 tons and over; Hoists, 1, 2, and 3 drum; Hoist, 2 Tugger-one floor; Hydraulic Boom Truck; Locomotives, all; Motor Patrol; Mucking Machine; Pile Driving and Skid Rig; Pit Machines; Pre-stress Machines; Pump Cretes and similar types; Rock Drill (self propelled); Rock Drill (truck mounted); Slip-form Paver; Straddle Buggies; Tractor with Boom and Side Boom; Trenching Machine; Winch Tractors

Group 2: Asphalt Spreader; Boilers; Bulldozer; Combination Backhoe, Endloader with Backhoe Bucket 1/2 cu. yd. and under; Engineer acting as Conductor in charge of crew; Grader, Elevating; Greaser Engineer; Grouting Machines; Highlift Shovels or Front Endloader; Hoists, automatic; Corboy Drilling Machines; Hoists, all Elevators; Hoists, Tugger single drum; Post Hole Digger; Roller, all; Scoops, tractor drawn; Stone Crushers; Tournapull; Winch Trucks

Group 3: Concrete Mixer (2 bag or over); Conveyor, portable; Steam Generators; Tractor, farm and similar type; Air Compressor, small 150 and under, 1 to 5 not to exceed a total of 300 ft.; Air Compressor, large over 150; Combination, small equipment Operator; Forklift, under 10 ton; Generator; Pumps, 1 to 3 not to exceed a total of 325 ft.; Pumps, Well Points; Welding Machines (2 through 5); Winches, 4 Electric Drill Winches

Group 4: Heaters, Mechanical (1 to 5); Oilers; Switchmen

TRUCK DRIVERS
BUILDING CONSTRUCTION
AREA 1

Group 1: Pickup Trucks

Group 2: Single Axle Trucks

Group 3: Tandem or Fuel Trucks

Group 4: Triaxle Trucks

Group 5: Semi Trailer Trucks

HEAVY and HIGHWAY CONSTRUCTION

Group 1: Acetylene Wagons over 3 buckets

Group 2: Acetylene Wagons to and including 3 buckets

Group 3: Tandem-Tandem Semi-Trucks; Trucks Mechanics and Welders; Heavy Equipment type Water Wagon over 5,000 gallons; Tri-axle Trucks pulling Tilt-top Trailers; Low Boys; Tandem-Tandem Axle

Group 4: Tri-axle Trucks; Tandem Axle Trucks; Equipment not self loaded or Pusher loaded such as Koehring or similar Dumpster; Track Truck; Euclid Bottom Dump and Hug Bottom Dump; Tournatrailers; Tournarockers; Athey Wagons, or similar equipment over 12 cu. yds.; Tandem Axle Trucks pulling Tilt-top Trailers; Low Boys; Tandem Axle; Tri-Axle Batch

Group 5: Tandem "Dog-Legs"; Semi-Water Trucks; Sprinkler Trucks; Heavy Equipment type Water Wagons 5,000 gallons and under

Group 6: Truck mounted Pavement Breakers; Tandem Trucks over 15 ton payload; Single axle Semi-trucks; Farm Tractors hauling material; Equipment not self loaded or Pusher loaded such as Koehring or similar Dumpster; Track Truck; Euclid Bottom Dump and Hug Bottom Dump; Tournatrailers; Tournarockers; Athey Wagons or similar equipment 12 cu. yds. and under; Mixer Trucks, all types; Single Axle Trucks pulling Tilt-top Trailer; Lowboys, single axle

Group 7: Tandem Axle Fuel Trucks; Tandem Axle Water Trucks; Bituminous Distributor (one Man)

Group 8: Single Axle Dog-Legs; Tandem Trucks or Dog Legs; Winch Trucks or A Frames used for transportation; Batch Trucks wet or dry over 3(34E) Batches; Grease and Maintenance Truck Servicing Tandem Axle Trucks

Group 9: Single Axle Fuel Trucks; Single Axle Water Trucks; Bituminous Distributors (two Man)

TRUCK DRIVERS (Cont'd)
HEAVY and HIGHWAY CONSTRUCTION (Cont'd)

AREA 1 (Cont'd)

Group 10: Single Axle Straight Trucks; Wet or Dry 3 (34E) Batches or less; Grease and Maintenance Trucks Servicing Single Axle Trucks

Group 11: Tenders; Greasers; Tire Men; Batch Board Tenders

Group 12: Pick-up Trucks

BUILDING, HEAVY, And HIGHWAY CONSTRUCTION

AREA 2

Group 1: 2 and 3 Axle

Group 2: 4 Axle

Group 3: 5 Axle

Group 4: 6 Axle

Group 5: Over 6 Axles

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Kansas
DECISION NO.: KS83- 4063
COUNTY: Shawnee
DATE: Date of Publication
Supersedes Decision No. KS83-4013, dated February 4, 1983 in 48 FR 5446
DESCRIPTION OF WORK: Building Construction Projects (including Residential)

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.29	4.26
BOILERMAKERS	17.345	3.00
BRICKLAYERS, STONEMASONS	15.79	.95
CARPENTERS (Building):		
Carpenters, Lathers	12.45	1.80
Millwrights	13.45	1.80
Piledrivermen	12.825	1.80
Carpenters - Residential	8.715	1.80
CEMENT MASONS	12.60	1.05
ELECTRICIANS (Building):		
Electricians	15.55	3%+2.13
Cable Splicers	17.11	3%+2.13
Electricians - Residential	11.55	3%+1.35
ELEVATOR CONSTRUCTORS	12.21	a+2.33
GLAZIERS (Building)	12.83	5.54
IRONWORKERS	16.25	4.25
LABORERS (Building & Residential):		
Group 1		
General Laborers	9.30	2.30
Group 2		
Power Tool Operators, Compactors, Concrete Breakers, Chipping Tools, Drilling Tools, Concrete Saws, mechanically operated Georgia Buggy	9.50	2.30
Group 3		
Mason Tenders, Plaster Tenders, Mortar Mixers for Masons & Cement Finishers, All stocking Scaffold, clean up for Masons (Building & Wrecking)	9.60	2.30
Group 4		
Sand & Concrete Gun Nozzleman & Powderman	9.70	2.30
LABORERS (Site Preparation & Grading: (Building & Residential):		
Group 1	8.45	2.30
Group 2	8.60	2.30
Group 3	8.70	2.30
Group 4	8.85	2.30
LATHERS (Building)	12.50	1.50

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Lineman	$15.97	3-1/2% +.65
Cable Splicers	16.77	3-1/2% +.65
Groundman	9.67	3-1/2% +.65
Powderman	13.19	3-1/2% +.65
Line Truck Equipment Operators	13.19	3-1/2% +.65
PAINTERS (Building):		
Brush, drywall, tapers	13.25	.98
Spray & Sandblast	13.75	.98
PAINTERS (Residential)	10.00	.98
PLASTERERS	15.70	.01
PIPEFITTERS; PLUMBERS	15.83	2.34
ROOFERS:		
Roofers	14.66	b+.60
Pitch	15.76	b+.60
SHEET METAL WORKERS	13.68	3%+ 3.93
SOFT FLOOR LAYERS	11.00	10%+ 1.76
SPRINKLER FITTERS	16.47	2.83
TILE, TERRAZZO & MARBLE SETTERS	15.00	
POWER EQUIPMENT OPERATORS		
BUILDING CONSTRUCTION:		
Cranes with lifting ring	14.75	3.77
Cranes and Shovels 100 ft. of boom or over including jib or 30 tons or over or 2 yd. capacity, three (3) drum hoist	14.00	3.77
Cranes & Shovels booms 200 ft. & over four (4) Drum Hoist, Frankie-Type Pile Driving Machines, & Tower Cranes & Derricks	14.25	3.77
Group I	13.75	3.77
Group II	13.35	3.77
Group III:		
Class A	11.55	3.77
Class B	11.80	3.77

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS BUILDING CONSTRUCTION (Cont'd):		
Group IV:		
Class A	$11.00	3.77
Class B	11.25	3.77
POWER EQUIPMENT OPERATORS Site Preparation & Grading (Building & Residential Construction		
Group 1	12.87	2.70
Group 2	12.62	2.70
Group 3	12.37	2.70
Group 4	12.02	2.70
Group 4A	12.12	2.70
TRUCK DRIVERS - BUILDING & RESIDENTIAL CONSTRUCTION:		
TRUCK DRIVERS: Class 1 - Light Station Wagons, Pickups	11.32	1.20
TRUCK DRIVERS: Class 2 - Medium Flatbeds and Dump Five ton or less, Warehousemen & Partsmen	11.42	1.20
TRUCK DRIVERS: Class 3 - Heavy, Over 5 ton, Semi-Trailers, Fork Lifts, Industrial Tractors as used in Teamsters jurisdiction, Straddle Trucks, A-frame & Winch Trucks when used as such	11.67	1.20
Class 4 Mechanics & Dispatchers	11.82	1.20
TRUCK DRIVERS (Site Preparation & Grading) Building & Residential Construction:		
Group 1	9.40	1.20
Group 2	9.50	1.20
Group 3	9.65	1.20

	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION DEFINITIONS

LABORERS (Site Preparation & Grading) Building & Residential:
Group 1 - Board mat weavers and cable tiers; Georgia Buggy (manually operated); mixerman - no skip; lift; nailers, salamander tenders; track men; tractor swamper; truck dumper, wire mesh setter, water pump up to 4 inches; all other general laborer
Group 2 - Air tool operators, cement handlers (bulk), chain saw; georgia buggy (mechanically, operated); grade man, hot mastic kettlemen, crusher feeder, joint man, jute man; mason tenders; material batch hopper and scale man, mixer man; pier hole man working 10 ft. deep; pipelayer-drainage (concrete and/or corrugated metal); signal man (crane); truck dumper-dry batch; vibrator operator; wagon and churn drill operator
Group 3 - Asphalt raker, barco tamper; concrete saw; creosote material-handling and applying; nozzle burner (cutting torch and burning bar)
Group 4 - Conduit pipe; tile and duct line setter; form setter and liner on concrete paving; powderman; sandblasting and gunite nozzleman; sanitary sewer pipe layer; steel plate structure erectors; water and gas distribution
POWER EQUIPMENT OPERATORS - Building Construction:
Group 1 - Boiler (2), boom cat, boring machine, ditching machine, concrete ready-mix plant, crane, truck crane, clamshell dragline, dozer scrapper, all types, patrol, fireman (when operating steam or air valve), gradall, hi-loaders (over one yard), hoist, two drum, mechanic or welder, mixer-mobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concrete or other material, locomotive
Group 2 - A-frame truck, bob cat/hi-loaders (1yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small - elevator operator, fireman, forklift, hoist, or active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment
Group 3 - Class A - Farm tractor (without attachments)
Class B - Farm tractor (with attachments)
Group 4 - Class A - Oiler
Class B - Motor crane oiler
POWER EQUIPMENT OPERATORS Site Preparation & Grading - Building & Residential Construction:
Group 1 - Asphalt paver and spreader, backhoe; boring machine, blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader, all types, mechanic or welder; mixer-mobile; track; scoop operator, all types; side boom cat-cherry picker; skimmer scoop operator; pushcat operator

POWER EQUIPMENT OPERATORS Site Preparation & Grading - Building & Residential Construction: (Cont'd)
Group 2 - Asphalt plant operator; elevating grader operator
Group 3 - A-frame truck; asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber greene loader; boiler other than asphalt; bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator; distributor operator; finish machine operator- concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist 1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredge; screening and wash plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphon and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operators; vibrating machine operator, not hand
Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; Harrow, disc seeder; oiler; tractor operator, 50 h.p. or less without attachments
Group 4A - Oiler, motor crane
TRUCK DRIVERS (Site Preparation & Grading) Building & Residential Construction:
Group 1 - Pickups; panel trucks; station wagons; flat beds; dumps and batch trucks (single axle)
Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen
Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors; and similar off-road equipment and mechanics on such equipment

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years of service and 6% of basic hourly rate for 6 months to 5 years service as Vacation Pay Credit. Also 7 paid holidays.
b. After 6 months of employment $.26; after 5 years $.52

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Sedgwick
DECISION NO.: KS83-4064 DATE: Date of Publication
Supersedes Decision NO. KS83-4014, dated February 4, 1983, in 48 FR 5541.
DESCRIPTION OF WORK: Building Construction Projects (excluding single family homes and apartments up to and including four stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.28	2.10
BOILERMAKERS	17.345	3.00
BRICKLAYERS,STONEMASONS	13.33	1.78
CARPENTERS:		
Carpenters	12.50	1.08
Millwrights,Piledrivermen	12.80	1.08
CEMENT MASONS	11.10	
ELECTRICIANS	15.00	4%+ 1.85
Cable Splicer	15.25	4%+ 1.85
ELEVATOR CONSTRUCTORS	14.11	a+2.69
ELEVATOR CONSTRUCTOR HELPERS	9.88	a+2.69
GLAZIERS	12.90	4.53
IRONWORKERS	14.29	2.14
LABORERS (BUILDING CONSTRUCTION):		
Group 1 - Common laborers	9.10	1.55
Group 2 - Power Tool Operator,Compactors, Concrete Breaker Chipping Tools,Drilling Tools,Concrete Saws,Mechanically Operated Georgia Buggy,Mason Tenders, Plaster Tenders,Mortar Mixers for Plasterers, Mason & Cement Finishers,all Stocking Scaffold,Clean up for Masons (building & wrecking),Sand & Concrete Gun Nozzleman, Powderman	9.30	1.55
LABORERS (SITE PREPARATION AND GRADING):		
Group 1	6.05	2.30
Group 2	6.20	2.30
Group 3	6.30	2.30
Group 4	6.45	2.30

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION:		
Linemen	$15.97	3-1/2% +.65
Cable Splicers	16.77	3-1/2% +.65
Groundman	9.67	3-1/2% +.65
Powderman	13.19	3-1/2% +.65
Line Truck & Equipment Operator	13.19	3-1/2% +.65
PAINTERS:		
Brush	12.14	.70
Spray	12.84	.70
PLASTERERS	11.00	
PIPEFITTERS,PLUMBERS	15.30	2.48
POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION):		
Cranes with lifting ring	14.55	3.57
Cranes with shovels-100 ft. of boom or over including jib or 30 tons or over or 2 yard capacity,three (3) drum hoist	13.80	3.57
Cranes & shovels - boom 200 ft. & over four (4) drum hoist, frankie-type pile driving machines, & tower cranes & derricks	14.05	3.57
GROUP 1	13.55	3.57
GROUP 2	13.15	3.57
GROUP 3:		
Class A	11.50	3.57
Class B	11.75	3.57
GROUP 4:		
Class A	10.95	3.57
Class B	11.20	3.57

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS (Site Preparation & Grading)		
GROUP 1	$12.87	2.70
GROUP 2	12.62	2.70
GROUP 3	12.37	2.70
GROUP 4	12.02	2.70
GROUP 4A	12.12	2.70
ROOFERS	11.35	1.27
KETTLEMEN	11.50	1.27
SHEET METAL WORKERS	14.51	3%+ 2.66
SPRINKLER FITTERS	16.47	3.23
TILE, MARBLE & TERRAZZO SETTERS	12.75	
TRUCK DRIVERS (BUILDING CONSTRUCTION):		
Group 1 - Pickups, station wagons, flat beds 12,000 & under GVW license capacity	8.90	.85
Group 2 - Flat beds - 16,000 GVW license capacity	8.975	.85
Group 3 - Flat beds - 20,000 over GVW license capacity, dump, batch & water truck, single axle	9.05	.85
Group 4 - Lowboys, semitrailers dumpsters, A-frame tandems winch truck when used as such & transit mix	9.15	.85
TRUCK DRIVERS (SITE PREPARATION & GRADING):		
Group 1	9.40	1.20
Group 2	9.50	1.20
Group 3	9.65	1.20

	Basic Hourly Rates	Fringe Benefits

CLASSIFICATION DEFINITIONS - LABORERS (SITE PREPARATION & GRADING)

Group 1 - Board mat weayers & cable tiers, georgia buggy (manually operated) mixerman-no skip, lift, salamander tenders, track men, tractor swamper, truck dumper, wire mesh setter, water pump up to 4 inches, & all other general laborers.

Group 2 - Air tool operators, cement handlers (bulk), chain saw, georgia buggy (mechanically operated), grade man, hot mastic kettlemen, crusher feeder, joint man, jute man, mason tenders, material batch hopper & scale man, mixer man, pier hole man working 10 ft. deep, pipelayer-drainage (concrete and/or corrugated metal), signal man (crane), truck dumper-dry batch, vibrator operator, wagon and churn drill operator.

Group 3 - Asphalt raker, barco tamper, concrete saw, creosote material--handling & applying, nozzle burner (cutting torch and burning bar).

Group 4 - Conduit pipe, tile & duct line setter, form setter & liner on concrete paving, powderman, sand-blasting & gunnite nozzleman, sanitary sewer layer, steel plate structure erectors, water and gas distribution lines.

POWER EQUIPMENT OPERATORS (BUILDING CONSTRUCTION)

Group 1 - Boiler (2), boom cat, boring machine, ditching machine, concrete ready mix plant, crane, truck crane, clamshell dragline, dozer, scraper, all types, patrol, firemen (when operating steam or air valve), gradall, hi-loaders (over 1 yard), hoist two drum, mechanic or welder, mixermobile, paver, or any other machine with power swing, piledriver operator, power shovel, pump, concerte or other material, locomotive.

Group 2 -A-frame truck, bob cat/hi-loaders (1 yard or under), barber-greene loader or similar type, boiler (1), ditching machine - small, elevator operator, fireman, forklift, hoist, one active drum, hydra hammer jeep ditcher, mixer, other than paver, power broom, pump 4" or larger, small machine engineer, welding machine (1), greaser equipment.

Group 3:
CLASS A - Farm tractor (without attachments).
CLASS B - Farm tractor (with attachments).

Group 4:
CLASS A - Oiler
CLASS B - Motor crane oiler.

CLASSIFICATION DEFINITIONS - POWER EQUIPMENT OPERATORS (SITE PREPARATION & GRADING)

Group 1 - Asphalt paver and spreader; backhoe, boring machine; blades, all types; clamshell; concrete mixer paver operator; concrete central plant operator (automatic); crane, truck crane, pitman crane, hydro crane, or any machine with power swing; derrick or derrick trucks; dragline operator; dredge operator; dozer; ditching machine; euclid loader; hoist - 2 active drums; loader; all types; mechanic or welder; mixer-mobile; multi-unit scrapper; pile driver operator; power shovel operator scoop operator, all types; side boom-cherry picker; skimmer scoop operator; pushcat operator; quad track.

Group 2 - Asphalt plant operator; elevating grader operator.

Group 3 - A-frame truck, asphalt roller operator; asphalt plant boiler fireman; backfiller operator; barber-greene loader; boiler other than asphalt bull float operator; churn drill operator; compressor operator (1); concrete central plant operator; concrete mixer operator skip; concrete pump operator; crusher operator, distributor operator; finish machine operator - concrete; fireman other than asphalt; flex plane operator, fork lift; form grader operator; greaser; hoist-1 drum; jeep ditching machine; pavement breakers, self-propelled (of the hydra hammer or similar type); pump operator, 4" or over, two; pump operator, other than dredege; screening and gas plant operator; small machine operator; spreader box operator, self-propelled; tractor operator over 50 h.p.; self-propelled roller operator, other than asphalt; siphons and jets; subgrading machine operator; tank car heater operator, combination booster and boiler; towboat operator; vibrator machine operator, not hand.

Group 4 - Concrete gang saw, self-propelled (con-cut); conveyor operator; harrow, disc, seeder; oiler; tractor operator, 50 h.p. or less without attachments.

Group 4A - Oiler, motor crane

TRUCK DRIVER (SITE PREPARATION & GRADING)

Group 1 - Pickups; panel trucks; station wagons; flat beds; dump and batch trucks (single axle)

Group 2 - Tandem trucks, warehousemen or partsmen; mechanic helpers and servicemen.

Group 3 - Lowboys; semi-trailers, all transit mixer trucks (single or tandem axle); A-frame and winch trucks when used as such; euclid, end and bottom dump; tournarockers; atheys; dumptors and similar off-road equipment and mechanics on such equipment.

SUPERSEDEAS DECISION

STATE: Kansas COUNTY: Leavenworth
DECISION NO.: KS83-4065 DATE: Date of Publication
Supersedes Decision No. KS83-4009 dated February 4, 1983, in 48 FR 5438.
DESCRIPTION OF WORK: Building Construction Projects (does not include single family homes and apartments up to and including 4 stories).

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.29	4.26
BOILERMAKERS	17.345	3.00
BRICKLAYERS, STONEMASONS	15.94	2.45
CARPENTERS:		
Carpenters	16.05	2.67
Piledrivermen & Millwrights	16.05	2.67
CEMENT MASONS	15.075	1.95
ELECTRICIANS:		
Zone 1:		
Delaware, Kickapoo, High Prairie & Leavenworth Townships	16.18	10%+ 2.51
Zone 2:		
Remainder of County	15.55	3%+ 2.13
ELEVATOR CONSTRUCTORS	16.53	a+ 2.465
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	a+ 2.465
GLAZIERS	14.72	17.14% +2.44
IRONWORKERS	16.25	4.25
LATHERS	16.05	2.67
LINE CONSTRUCTION:		
Zone 1:		
Southwest 2/3 of Leavenworth County:		
Linemen	15.97	3-1/2% +.65
Cable Splicers	16.77	3-1/2% +.65
Groundmen	9.67	3-1/2% +.65
Powdermen	13.19	3-1/2% +.65
Line Truck & Equipment Operators	13.19	3-1/2% +.65

	Basic Hourly Rates	Fringe Benefits
LINE CONSTRUCTION (Cont'd):		
Zone 2:		
Remainder of Leavenworth County:		
Linemen	$18.28	3-1/2% +1.06
Linemen Operators	17.02	3-1/2% +1.06
Groundmen Powdermen	12.68	3-1/2% +1.06
Groundmen	12.05	3-1/2% +1.06
MARBLE & TILE SETTERS	16.55	10%
PAINTERS:		
Brush, Roller, Tapers	16.49	1.55
Spray	17.49	1.55
PLASTERERS	17.25	
PIPEFITTERS	17.56	3.32
PLUMBERS	17.96	2.70
ROOFERS	15.68	2.71
SHEET METAL WORKERS	16.65	2.67
SOFT FLOOR LAYERS	11.26	1%+ 2.60
SPRINKLER FITTERS	16.47	3.23
TERRAZZO WORKERS	15.31	10%
WELDERS: Receive rate prescribed for craft performing operation to which the welding is incidental.		

FOOTNOTE:
a-Employer contributes 8% of basic hourly rate for over 5 years' service and 6% basic hourly rate for 6 months' to 5 years' service as Vacation Pay Credit. Also 7 paid holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, the day after Thanksgiving Day, & Christmas Day.

	Basic Hourly Rates	Fringe Benefits
LABORERS (Building Construction):		
General Laborers	$ 9.50	2.05
Power Tool Operators; Compactors; Concrete Breakers; Chipping Tools; Drilling Tools; Concrete Saws; Mechanically Operated Georgia Buggy	9.70	2.05
Mason Tenders; Plaster Tenders; Mortar Mixers for Plasterers, Masons & Cement Finishers; All Stocking Scaffold; Clean up for Masons (Building & Wrecking)	9.80	2.05
Sand and Concrete Gun Nozzlemen Powdermen	9.90	2.05
LABORERS (Site Preparation and Grading):		
Group 1	8.85	2.25
Group 2	9.00	2.25
Group 3	9.10	2.25
Group 4	9.25	2.25
POWER EQUIPMENT OPERATORS (Building Construction):		
Group 1	15.46	3.90
Group 2	15.11	3.90
Group 3		
a	12.71	3.90
b	13.21	3.90
c	13.21	3.90
d	13.46	3.90
Group 4	15.71	3.90
Group 5	15.36	3.90
Group 6	15.96	3.90
Group 7		
a	15.21	3.90
b	14.96	3.90
c	12.96	3.90
Group 8	16.46	3.90
Group 9	15.96	3.90
Site Preparation & Grading:		
Group 1	14.00	3.57
Group 2	13.75	3.57
Group 3	13.05	3.57
Group 4		
a	9.03	3.57
b	12.05	3.57

	Basic Hourly Rates	Fringe Benefits
TRUCK DRIVERS:		
BUILDING CONSTRUCTION		
Group 1	$14.085	2.75
Group 2	14.135	2.75
Group 3	14.21	2.75
Group 4	14.335	2.75
Group 5	14.235	2.75
Group 6	14.435	2.75
Group 7	14.285	2.75
Group 8	14.185	2.75
Site Preparation & Grading:		
Group 1	12.76	3.75
Group 2	12.96	3.75
Group 3	13.27	3.75
Group 4	13.42	3.75
Group 5	12.54	3.75

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LABORERS (Site Preparation & Grading) - Classifications:

Group 1: Board Mat Weavers and Cable Tiers; Georgia Buggy, Manually Operated; Mixermen - No Skip Lift; Salamander Tenders; Track Men; Tractor Swampers; Truck Dumpers; Wire Mesh Setters; Water Pump up to 4 inches; and all other General Laborers.

Group 2: Air Tool Operators; Cement Handlers (Bulk); Chain Saw; Georgia Buggy (Mechanically Operated); Grade Men; Hot Mastic Kettlemen; Crusher Feeders; Joint Men; Jute Men; Mason Tenders; Material Batch Hopper and Scale Men; Mixer Men; Pier Hole Men Working 10 ft. deep; Pipelayer - Drainage (Concrete and/or Corrugated Metal); Signal Men (Crane); Truck Dumper--Dry Batch; Vibrator Operator; Wagon & Churn Drill Operator.

Group 3: Asphalt Raker; Barco Tamper; Concrete Saw, Creosote Material--Handling and Applying; Nozzle Burner (Cutting Torch and Burning Bar).

Group 4: Conduit Pipe; Tile and Duct Line Setter; Form Setter and Liner on Concrete Paving; Powderman; Sandblasting and Gunnite Nozzleman; Sanitary Sewer Pipe Layer; Steel Plate Structure Erectors; Water and Gas Distribution Lines.

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION

Group 1: Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe; barber-greene loader; blade-power; boats-power; boilers (2); boring machines; cableways; cherry pickers; chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derrick cars (power operated); ditching machines; dozers; dredges - any type power; grade-all - similar type; hoist, endless chain-power operated with power travel; loaders; mechanic and welder; mucking machine; orange peels; pumps - material; push cats; scoops; self-propelled rotary drill; shovel, power; side boom; skimmer scoop; testhole machine; throttle man

Group 2: Boilers (1); Brooms - power operated; chip spreader (front man); clef plane operator; compressors (1) 125' or over; concrete saws, self-propelled; crab - power operated; curb finishing machine; firemen on rigs; flex plane; floating machine, form grader; greaser; hoist, endless chain - power operated; hopper - power operated; hydra hammer; lad-a-vator - similar type; rollers; sipbons, jets, and jennies, sub-grader; tractors over 50 h.p.; compressors (2) 125" ft. or over not more than 20' apart; compressors-tandem; compressors sigle, truck mounted; elevator; finishing machine

POWER EQUIPMENT OPERATORS - BUILDING CONSTRUCTION (Cont'd)

Group 3
(a) Oilers
(b) Fork lift masonry
(c) Oiler driver
(d) A-frame trucks; fork lift-all types (except masonry); mixers (w/side loaders); pumps (w/well points) dewatering systems, test or pressure pumps; tractors (except when hauling material) less than 50 h.p.

Group 4
Clamshells, 80 ft. of boom or over (incl. jib); crane or rigs, 80 ft. of boom or over (incl. jib); draglines, 80 ft. of boom or over (incl. jib); pile drivers, 80 ft., of boom or over (incl. jib)

Group 5
Hoists-each additional drum over 1 drum

Group 6
Crane or rigs, over 200 ft. of boom

Group 7
Ready Mixed Concrete Plants;
(a) Crane operator
(b) Loader operator & plant man
(c) Conveyor Operator

Group 8
Master Mechanic

Group 9
Crane-tower or climbing

POWER EQUIPMENT OPERATORS - SITE PREPARATION & GRADING

Group 1 - Asphalt paver and spreader; asphalt plant console operator; auto grader; backhoe; blade operator, all types; boilers - 2; booster pump on dredge; 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; drillcat with compressor mounted on cat; drilling or boring machine, rotary, self-propelled; high loader - fork lift; hoistline engine - 2 active drums; locomotive operator, standard gauge; mechanics and welders; maintenance operator; mucking machine; pile driver operator; pitman crane operator; pump - 2; push cat op.; quad-track; 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; slip - form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator - 2

Group 2 - A-frame truck, asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator;

POWER EQUIPMENT OPERATORS - SITE PREPARATION & GRADING (Cont'd)

Group 2 (Cont'd)

chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; chusher operator; elevating grader; greaser; hoisting engine - 1 drum; latourneau rooter; multiple compactor; pavement breaker, self-propelled, of the hydrahammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p.

Group 3 - Boilers - 1; chip spreader (front man); churn drill operator; compressor maintenance operator - 1; concrete saws, self-propelled; conveyor operator; disbributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator - combination boiler and booster; tractor, 50 h.p. or less, without attachnents; vibrating machine operator, not hand; welding machine maintenance operator - 1

Group 4 -
(a) Oilers
(b) Oiler driver, all types

TRUCK DRIVERS - BUILDING CONSTRUCTION

Group 1 - Warehousemen and stock man

Group 2 - Flat beds; pick-ups; drum trucks, under 10 yds.

Group 3 - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers

Group 4 -Straddle trucks, steel tractors (when used for towing); hydro lift trucks, hydraulically operated serial lifts; heavy hauling, a-frame winch and fork lifts; heavy excavating (dumpter, euclid, etc.); double bottom units (20 tons capacity and over)

Group 5 - Distributor truck drivers and operators; oilers, greasers and mechanics' helpers

Group 6 - Mechanics

Group 7 - Transit mix, 5 yds. and over

Group 8 - Transit mix, under 5 yds.

TRUCK DRIVERS - Site Preparation & Grading

Group 1 - One Team; Station Wagons; Pickup Trucks; Material trucks, single axle, Tank Wagon Drivers, single axle

Group 2 - Material trucks, tandem; Two teams; Semi-trailer; Winch Truck, Fork Trucks; Distributor Drivers and Operators; Agitator and Transit Mix; Tank Wagon Drivers; single axle; Tank Wagon Drivers, Tandem or Semi-Trailers; Insley Wagon; Dump Trucks; excavating, 5 cu. yds. and over, Dumpster, Half-trucks, Speedace, Euclids and other similar excavating equipment

TRUCK DRIVERS - Site Preparation & Grading (Cont'd)
Group 3 - A-Frame, Low Boy, and Boom Truck Drivers
Group 4 - Mechanics and Welders
Group 5 - Oilers and Greasers

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses, (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: Maine COUNTIES: Statewide
DECISION NUMBER: ME83-3041 DATE: Date of Publication
Supersedes Decision No. ME81-3057 dated August 28, 1981, in 46 FR 43620
DESCRIPTION OF WORK: Highway Construction Projects excluding major bridges (for example, bascule, suspension and spandrel arch bridges; those bridging waters presently navigable or to be made navigable; and those involving marine construction in any degree); tunnels, building structures in rest area projects and railroad construction

ANDROSCOGGIN COUNTY	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$6.11	
CEMENT MASONS	6.44	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	5.43	
Structural	7.71	
LABORERS:		
Laborers	4.75	
Asphalt Raker/Wheelman	6.39	
Chain Saw Operator	6.00	
Drillers, Wagon Drill	6.50	
Landscape Worker	6.00	
Pipelayers	5.59	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.30	
Backhoe	7.90	
Bulldozer	7.45	
Crane/Dragline	7.81	
Crusher Screening Plant Operator	7.05	
Front End Loader	7.40	
Gradall	7.90	
Grader	8.38	
Hydro Seeder	6.25	
Mechanic	6.16	
roller, embankment	5.84	
Roller, pavement	6.00	
Special Earth Moving Equipment	7.15	
TRUCK DRIVERS:		
2 axle	4.50	
3 axle	5.67	

AROOSTOOK COUNTY	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$6.06	
CEMENT MASONS	6.84	
CEMENT FINISHERS	6.50	
ELECTRICIANS	8.35	
IRONWORKERS:		
Reinforcing	5.00	
Structural; Ornamental	5.93	
LABORERS:		
Laborers	4.74	
Asphalt Raker/Wheelman	6.26	
Driller, Wagon Drill	6.38	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.07	
Backhoe	7.00	
Bulldozer	7.00	
Crane/Dragline	7.83	
Crusher Screening Plant Operator	6.74	
Front End Loader	6.36	
Gradall	7.96	
Grader	8.49	
Hydro Seeder	6.25	
Mechanic	7.75	
Mulcher	5.25	
Post Driving Machine Operator	5.33	
Roller, embankment	5.97	
Roller, pavement	6.81	
Scraper	6.76	
Special Earth Moving Equipment	6.11	
TRUCK DRIVERS:		
2 axle	5.20	
3 axle	5.37	
Trailer Driver	5.50	

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	Basic Hourly Rates	Fringe Benefits
CUMBERLAND COUNTY		
CARPENTERS	$6.00	
CEMENT MASONS	6.66	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	6.03	
Structural; Ornamental	7.02	
LABORERS:		
Laborers	5.00	
Asphalt Raker/Wheelman	6.79	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.73	
Backhoe	7.05	
Bulldozer	7.80	
Crane/Dragline	7.39	
Front End Loader	7.37	
Gradall	7.96	
Grader	8.45	
Roller, embankment	5.55	
Roller, pavement	6.28	
TRUCK DRIVERS:		
2 axle	5.47	
3 axle	5.78	
FRANKLIN COUNTY		
CARPENTERS	5.71	
CEMENT MASONS	6.38	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	5.43	
Structural; Ornamental	7.71	
PAINTERS	5.75	
LABORERS:		
Laborers	4.82	
Asphalt Raker/Wheelman	6.24	
Chain Saw Operator	5.57	
Drillers, Wagon Drill	6.06	
Landscape Workers	6.00	
Pipelayers	5.59	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.39	
Asphalt Plant Operator	7.00	
Backhoe	7.68	
Bulldozer	7.72	

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	Basic Hourly Rates	Fringe Benefits
FRANKLIN COUNTY (Cont'd)		
POWER EQUIPMENT OPERATORS: (Cont'd):		
Crane/Dragline	$7.51	
Crusher Screening Plant Operator	7.79	
Front End Loader	6.99	
Gradall	7.96	
Grader	8.43	
Hydro Seeder	6.25	
Mechanic	7.49	
Mulcher	5.38	
Post Hole Auger Operator	5.00	
Roller, embankment	5.98	
Roller, pavement	6.51	
Special Earth Moving Equipment	7.15	
TRUCK DRIVERS:		
2 axle	4.50	
3 axle	5.25	
HANCOCK COUNTY		
CARPENTERS	6.58	
CEMENT MASONS	5.94	
LABORERS:		
Laborers	4.67	
Asphalt Raker/Wheelman	5.91	
Chain Saw Operator	5.54	
Drillers, Wagon Drill	5.86	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.29	
Backhoe	7.80	
Bulldozer	7.81	
Crane/Dragline	7.27	
Crusher Screening Plant Operator	6.54	
Front End Loader	7.61	
Gradall	7.54	
Grader	8.85	
Mechanic	7.48	
Post Driving Machine Operator	5.75	
Roller, embankment	5.54	
Roller, pavement	6.81	
Special Earth Moving Equipment	6.25	

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	Basic Hourly Rates	Fringe Benefits
HANCOCK COUNTY (Cont'd)		
TRUCK DRIVERS:		
2 axle	$5.20	
3 axle	5.69	
KENNEBEC COUNTY		
CARPENTERS	5.95	
CEMENT MASONS	6.35	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	5.75	
Structural; Ornamental	6.48	
PAINTERS	5.75	
LABORERS:		
Laborers	4.90	
Asphalt Raker/Wheelman	5.71	
POWER EQUIPMENT OPERATORS:		
Asphalt Pavers	6.00	
Asphalt Plant	7.00	
Crane/Dragline	8.00	
Crusher Screening Plant	6.54	
Front End Loader	6.02	
Gradall	6.(0	
Grader	8.11	
Hydro Seeder	6.25	
Mechanic	7.25	
Mulcher	5.38	
Roller, embankment	5.46	
Roller, pavement	6.00	
Special Earth Moving Equipment	7.15	
TRUCK DRIVERS:		
2 axle	5.(5	
3 axle	5.16	
KNOX COUNTY		
CARPENTERS	6.65	
ELECTRICIANS	7.63	

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	Basic Hourly Rates	Fringe Benefits
KNOX COUNTY (Cont'd)		
LABORERS:		
Laborers	$4.53	
Asphalt Raker/Wheelman	5.57	
Chain Saw Operator	4.83	
Driller, Wagon Drill	5.50	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.06	
Backhoe	7.42	
Bulldozer	6.48	
Crane/Dragline	7.56	
Front End Loader	5.25	
Roller, pavement	6.00	
TRUCK DRIVERS:		
2 axle	4.67	
3 axle	5.00	
Trailer Driver	5.50	
LINCOLN COUNTY		
CARPENTERS	6.65	
ELECTRICIANS	7.63	
LABORERS:		
Laborers	4.53	
Asphalt Raker/Wheelman	5.57	
Chain Saw Operator	4.83	
Driller, Wagon Drill	5.50	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.06	
Backhoe	7.42	
Bulldozer	6.48	
Crane/Dragline	7.56	
Front End Loader	5.25	
Roller, pavement	6.00	
TRUCK DRIVERS:		
2 axle	4.68	
3 axle	5.00	
Trailer Driver	5.50	

DECISION NO. ME83-3041

	Basic Hourly Rates	Fringe Benefits
OXFORD COUNTY		
CARPENTERS	$6.00	
ELECTRICIANS	7.79	
LABORERS:		
Laborers	4.67	
Chain Saw Operator	5.50	
Drillers, Wagon Drill	5.92	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.50	
Backhoe	7.68	
Bulldozer	6.91	
Crane/Dragline	7.83	
Front End Loader	7.38	
Gradall	7.58	
Grader	7.85	
Hydro Seeder	5.50	
Mechanic	7.20	
Roller, embankment	6.13	
Roller, pavement	7.10	
TRUCK DRIVERS:		
2 axle	5.21	
3 axle	4.80	
PENOBSCOT COUNTY		
CARPENTERS	6.58	
CEMENT MASONS	5.94	
LABORERS:		
Laborers	4.10	
Asphalt Raker/Wheelman	5.50	
Chain Saw Operator	5.93	
Drillers, Wagon Drill	5.86	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.07	
Backhoe	7.68	
Bulldozer	6.97	
Crane/Dragline	7.45	
Crusher Screening Plant Operator	6.54	
Front End Loader	6.40	
Gradall	6.74	
Grader	8.45	
Hydro Seeder	5.23	
Mechanic	6.84	
Mulcher	5.00	
Roller, embankment	6.30	
Roller, pavement	7.39	

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	Basic Hourly Rates	Fringe Benefits
PENOBSCOT COUNTY (Cont'd)		
TRUCK DRIVERS:		
2 axle	$5.06	
3 axle	5.38	
PISCATAQUIS COUNTY		
CARPENTERS	6.22	
CEMENT MASONS	5.94	
CEMENT FINISHERS	6.50	
ELECTRICIANS	8.35	
IRONWORKERS:		
Structural; Ornamental	5.64	
Reinforcing	5.00	
PAINTERS	5.75	
LABORERS:		
Laborers	4.57	
Power Tool Operator	5.06	
Chain Saw Operator	5.50	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.07	
Asphalt Plant	7.00	
Backhoe	7.25	
Bulldozer	7.17	
Crane/Dragline	7.99	
Crusher Screening Plant	7.78	
Front End Loader	6.62	
Gradall	7.68	
Grader	8.55	
Hydro Seeder	6.57	
Mechanic	7.72	
Mulcher	6.85	
Post Driving Machine	5.25	
Roller, embankment	5.97	
Roller, pavement	6.81	
Scraper	6.76	
Special Earth Moving Equipment	7.00	
TRUCK DRIVERS:		
2 axle	5.31	
3 axle	5.37	
SAGADAHOC COUNTY		
CARPENTERS	6.86	
CEMENT MASONS	6.60	
ELECTRICIANS	7.58	

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	Basic Hourly Rates	Fringe Benefits
SAGADAHOC COUNTY (Cont'd)		
IRONWORKERS:		
Reinforcing	$5.95	
Structural; Ornamental	7.86	
LABORERS:		
Laborers	4.86	
Asphalt Raker/Wheelman	6.32	
Chain Saw Operator	5.41	
Driller, Wagon Drill	6.03	
Landscape Worker	5.43	
Pipelayers	5.59	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.47	
Asphalt Plant	7.00	
Backhoe	7.55	
Bulldozer	7.67	
Crane/Dragline	7.66	
Crusher Screening Plant Operator	6.54	
Front End Loader	6.94	
Gradall	7.96	
Grader	8.26	
Hydro Seeder	5.38	
Mechanic	7.50	
Mulcher	5.25	
Post Driving Machine Operator	5.19	
Roller, embankment	5.99	
Roller, pavement	6.43	
Special Earth Moving Equipment	7.15	
TRUCK DRIVERS:		
2 axle	4.88	
3 axle	5.35	
Trailer Driver	5.50	
SOMERSET COUNTY		
CARPENTERS	6.17	
CEMENT MASONS	6.35	
CEMENT FINISHERS	6.86	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	5.18	
Structural; Ornamental	6.24	
PAINTERS	5.75	

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	Basic Hourly Rates	Fringe Benefits
SOMERSET COUNTY (Cont'd)		
LABORERS:		
Laborers	$4.76	
Power Tool Operator	5.08	
Asphalt Raker/Wheelman	5.83	
Chain Saw Operator	5.43	
Driller, Wagon Drill	5.91	
Landscape Worker	6.50	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.32	
Asphalt Plant Operator	7.00	
Backhoe	7.40	
Bulldozer	7.30	
Crane/Dragline	7.83	
Crusher Screening Plant Operator	7.59	
Front End Loader	6.58	
Gradall	7.68	
Grader	8.39	
Hydro Seeder	6.89	
Mechanic	7.57	
Mulcher	5.96	
Roller, embankment	5.70	
Roller, pavement	6.00	
Scraper	6.76	
Special Earth Moving Equipment	6.15	
TRUCK DRIVERS:		
2 axle	5.20	
3 axle	5.37	
Trailer Driver	5.50	
WALDO COUNTY		
CARPENTERS	5.90	
CEMENT MASONS	6.25	
ELECTRICIANS	7.67	
IRONWORKERS:		
Reinforcing	5.46	
Structural; Ornamental	6.58	
PAINTERS	5.75	
LABORERS:		
Laborers	4.74	
Power Tool Operator	4.84	
Asphalt Raker/Wheelman	5.78	
Chain Saw Operator	5.54	
Drillers, Wagon Drill	6.07	
Landscape Worker	5.70	

DECISION NO. NE83-3041

WALDO COUNTY (Cont'd)	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	$6.63	
Asphalt Plant	7.00	
Backhoe	7.01	
Bulldozer	7.60	
Crane/Dragline	7.41	
Crusher Screening Plant	7.75	
Front End Loader	6.89	
Gradall	6.74	
Grader	8.67	
Hydro Seeder	5.22	
Mechanic	7.02	
Post Driving Machine	5.52	
Roller, embankment	5.39	
Roller, pavement	6.49	
TRUCK DRIVERS:		
2 axle	4.79	
3 axle	5.27	
Trailer Driver	5.50	
WASHINGTON COUNTY		
LABORERS:		
Laborers	4.45	
Asphalt Raker/Wheelman	5.64	
Power Tool Operator	5.91	
Chain Saw Operator	4.85	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	7.07	
Backhoe	7.02	
Bulldozer	6.46	
Crane/Dragline	6.90	
Crusher Screening Plant	7.05	
Front End Loader	6.59	
Gradall	7.00	
Grader	8.45	
Mechanic	7.60	
Roller, embankment	5.97	
Roller, pavement	6.81	
Special Earth Moving Equipment	6.75	
TRUCK DRIVERS:		
2 Axle	5.20	
3 axle	5.24	

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YORK COUNTY	Basic Hourly Rates	Fringe Benefits
CARPENTERS	$6.50	
CEMENT MASONS	6.50	
CEMENT FINISHERS	6.50	
ELECTRICIANS	7.58	
IRONWORKERS:		
Reinforcing	5.29	
Structural; Ornamental	7.73	
LABORERS:		
Laborers	5.27	
Asphalt Raker/Wheelman	6.67	
Chain Saw Operator	5.50	
POWER EQUIPMENT OPERATORS:		
Asphalt Paver	6.80	
Backhoe	8.44	
Bulldozer	9.00	
Crane/Dragline	8.15	
Crusher Screening Plant	7.05	
Front End Loader	7.37	
Gradall	7.96	
Grader	8.64	
Hydro Seeder	6.25	
Mechanic	8.48	
Mulcher	5.25	
Roller, embankment	5.16	
Roller, pavement	6.34	
TRUCK DRIVERS:		
2 axle	5.61	
3 axle	5.54	

WELDER: Rate for craft for which the welding is incidental

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii))

SUPERSEDEAS DECISION

STATE: Nebraska

COUNTIES: Cass, Douglas, Sarpy, Washington, and that portion of Saunders Co. East of Highway #109

DECISION NO.: NE83-4062 DATE: Date of Publication

Supersedes Decision NO. NE83-4023, dated March 18, 1983 in 48 FR 11627.

DESCRIPTION OF WORK: Heavy in all (excluding Washington County) and Highway Construction (excluding bridges across navigable waterways).

	Basic Hourly Rates	Fringe Benefits
CARPENTERS:		
Carpenters	$14.33	2.10
Sawmen & Piledriver	14.455	2.10
Creosote	14.58	2.10
CEMENT MASONS:		
Douglas & Sarpy Cos. (only)	12.17	2.45
IRONWORKERS:		
Reinforcing & Structural	14.10	2.90
LABORERS:		
Class 1 -General Laborers	10.19	1.90
Class 2 -Towboats & Dredge Deckhands	10.31	1.90
Class 3 -Rakers & Screedman on Asphalt;Mortar Mixers;Chain Saw Operators	10.54	1.90
Class 4 -Pipelayers;Concrete Saw Operator	10.48	1.90
Class 5 -Form Setters & Precast Manhole Setter, Inlet Builders & Manhole Setters	10.92	1.90
LINE CONSTRUCTION:		
Linemen	15.37	3-1/2% +.65
Cable Splicers	16.51	3-1/2% +.65
Equipment Operator	13.83	3-1/2% +.65
Truck Driver	11.10	3-1/2% +.65
Groundmen	10.83	3-1/2% +.65
TRUCK DRIVERS:		
Douglas & Sarpy Cos. (only):		
Single Axle,Jack & Spreader,Tandem Axle Euclid Trucks,Power Lift Form Trucks & Jack & Spreader Trucks, Lowboys, Tractor Trailer Water Pulls, Tandem Dump w/auxiliary End, Dump Trailer	10.27	1.75
Water Pulls	10.62	1.75
Lumber Carrier	10.82	1.75

	Basic Hourly Rates	Fringe Benefits
POWER EQUIPMENT OPERATORS:		
Group 1:		
Oilers, Greasers	$ 8.31	2.00
Group 2:		
Oiler, Driver	8.40	2.00
Group 3:		
Tractors under 35 h.p., Air Compressors,Pumps, Welding Machine,Spray Machine,Form Trenchers, Belt Machine	10.69	1.40
Group 4:		
Concrete Mixer,Forklift Operator,Hydro-hammer	11.13	1.40
Group 5:		
Spreader Oiler	12.17	1.40
Group 6:		
Concrete Spreader,Concrete Finishing Machine,Concrete Pump Operator,Bulldozer, Roller,Traxcavator, 1 Drum Hoist,Oiler Distributor,Asphalt Roller,1 Drum Winch Truck	12.42	1.40
Group 7:		
Blade (Patrol),Scraper	12.82	1.35
Group 8:		
Hoist,2 Drums;Trenching Machine; Paving Mixer;Piledriver;Heavy Duty Mechanic & Welder;Shovel;Dragline; Clamshell;Orange Peel;Backhoe; Derrick;Crane;Locomotive;Fireman on Boiler;Laydown Machine;Two Drum Winch Truck;Side Boom Cat;Pug Mill Operator on Asphalt Plant;Leverman on Dredge;Engineer on Dredge;Tugboat Operator;Gradall Operator;Rotary Well Drilling Operator;Hydrocrane; Cleveland Type Backfiller;Self-Propelled Spreader Vibrator;Slip Form Paver.	13.01	1.35

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

SUPERSEDEAS DECISION

STATE: WISCONSIN
DECISION NO: WI83-2068
COUNTIES: SEE BELOW
DATE: DATE of PUBLICATION
Supercedes Decision No. WI82-2023 dated April 9, 1982 in 47 FR 15510
DESCRIPTION OF WORK: Building Construction (Including Residential Construction)

*Milwaukee, Ozaukee, Waukesha, and Washington Counties, Wisconsin.

	Basic Hourly Rates	Fringe Benefits
ASBESTOS WORKERS	$17.10	2.93
BOILERMAKERS	16.12	2.825
BRICKLAYERS	15.18	3.95
CARPENTERS	14.65	4.03
Millwrights	16.79	4.29
Piledrivermen	15.82	4.16
CEMENT MASONS	13.82	3.86
ELECTRICIANS	15.02	2.04+ 14%
ELEVATOR MECHANIC	17.09	2.69
Helpers	11.96	2.69
Prob. Helpers	8.545	
GLAZIERS	14.73	2.98
IRONWORKERS:		
Structural, Ornamental & Reinforcing	14.81	5.55
LATHERS		
LINE CONSTRUCTION:		
Lineman	15.47	.65+ 10-½%
Heavy Equipment Operator	13.92	.65+ 10-½%
Light Equipment Operator	12.38	.65+ 10-½%
Heavy Groundman, Truck Driver	10.83	.65+ 10-½%
Light Groundman, Truck Driver	10.06	.65+ 10-½%
Groundman	8.51	.65+ 10-½%
PAINTERS:		
Brush	13.10	3.76
Structural Steel	13.45	3.76
Spray	13.60	3.76
Plasterers	14.00	4.03
Plumbers	16.06	4.14
Steamfitters	16.40	3.35
Roofers	14.00	3.44
Sheet Metal Workers	15.18	4.66
Sprinkler Fitters	17.12	2.79
Terrazzo Mechanic	14.60	3.88
Tile Setters	13.55	3.30

	Basic Hourly Rates	Fringe Benefits
Truck Drivers:		
Building Material 2 axle	$11.92	98.50 per wk
Building Material 3 axle	11.97	98.50 per wk
POWER EQUIPMENT OPERATORS		
Group I	15.67	3.20
Group II	15.40	3.20
Group III	14.65	3.20
Group IV	14.52	3.20
Group V	13.61	3.20
Group VI	13.19	3.20
LABORERS:		
Group 1. General Laborers	12.17	3.49
Group 2. Air & Electric Equipment & Power Buggies, Mortar Mixers, Fork Lift Operator, Scaffold Builder etc.	12.28	3.49
Group 3. Barco Tamper, Jackhammer Operator Gunite Machinemen	12.39	3.49
Group 4. Caisson Worker Topman	12.48	3.49
Group 5. Nozzleman	12.68	3.49
Group 6. Scaffold Builder & Erector between 75' & 100	12.78	3.49
Group 7. Caisson Work	12.83	3.49
Group 8. Scaffold Builder & Erector on Swing Stages over 100'	13.03	3.49

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Dredge Operator and Traveling Cranes (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoists, Tractor or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 tons or under). Manhoist, Tractor (over 40 H.P.), Bulldozer, Endloader (over 40 H.P.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (wheel type or chain type having over 8-inch bucket), Elevator

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete Auto Breaker (large), Concrete finishing (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Gypsum Pumps, Tractor, Bulldozer, Endloader (under 40 H.P.), Pumps (well points), Trencher (chain type having bucket 8-inch and under), Industrial Locomotives, Roller (under 5 tons) and Firemen (pile drivers and derricks)

GROUP IV - Hoists (automatic), Forklift (12' to 25'); Tampers Compactors riding type), Assistant Engineer, "A" Frame and Winch Trucks, Concrete-Auto Breaker, Hydro-Hammer (small), Booms and Sweeper, Hoists (tuggers) Stump Chipper (large), Boats, Safety, Work, Barges and Launches)

GROUP V - Shouldering Machine Operator, Screed Operator, Farm or Industrial Tractor Mounted Equipment, Post Hole Diggers, Stone Crushers and Screening Plants, Firemen (Asphalt) Plants), Air Compressor (300 CFM or over)

GROUP VI - Generators over 150 KW, Pumps over 3", Augers (vertical and horizontal), Combination Small Equipment Operator; Air Electric Hydraulic Jacks (Slip Form), Compressor(under 300 CFM); Generators (under 150 KWO, Pumps (3" and under); Winches (small electric), Oiler and Greaser, Boiler Operators (Temporary Heat), Rotary Drill Helpers, Conveyors, Forklift (12' and under)

[FR Doc. 83-23931 Filed 9-1-83; 8:45 am]

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federal register

Friday
September 2, 1983

Part III

Environmental Protection Agency

Underground Injection Control Program: Federally Administered Programs; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 124, 144 146 and 147

[OW-FRL 2391-1]

Underground Injection Control Program: Federally Administered Programs

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Safe Drinking Water Act (SDWA) requires the Environmental Protection Agency (EPA) to prescribe an Underground Injection Control (UIC) Program for a State if the State has not submitted an application or if the State program either has been disapproved or no longer meets the requirements of the Act. The UIC Programs are designed to prevent underground injections through wells which endanger drinking water sources. In some cases EPA must promulgate a full program for the State; in others, where a State program has been approved in part covering only some classes of wells, the federal program will cover only the remaining classes. Accordingly, the Agency is proposing regulations to establish UIC Programs in each of the 23 jurisdictions listed in alphabetical order, in Table 1 (See "Supplementary Information").

Today's proposal consists of two parts: (1) Amendments to Part 144, which specify supplemental requirements for all federally prescribed programs; and (2) the establishment of a new Part 147, which for each EPA-administered State program incorporates Parts 124, 144, and 146 and proposes certain State-specific requirements. Part 147 also codifies EPA's approval of certain State-administered UIC programs.

In today's notice, EPA also proposes several options for implementing programs on Indian lands in States with approved State-administered programs. EPA also gives notice that the original proposals for regulating certain Class IV wells are still under active consideration at the Agency. Finally, this notice describes certain technical amendments to the existing UIC regulations in Part 144 that EPA intends to make when it promulgates the federally-implemented programs proposed today.

DATE: EPA will accept public comment on the proposed regulations until November 1, 1983, either in writing or at the informal public hearings to be held at the time and place listed in Table 2 in "Supplementary Information." However, EPA intends to forego any hearing in which sufficient public interest is not expressed.

ADDRESS: Written public comments regarding this proposal should be sent either to the Comment Clerk in the appropriate EPA Regional Office listed in Table 2 in "Supplementary Information," or to the Comment Clerk, Ground Water Protection Branch, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Gerald F. Kotas, Ground Water Protection Branch, Environmental Protection Agency (202)-382-7595.

SUPPLEMENTARY INFORMATION:

Table 1—Jurisdictions in Which EPA Proposes To Administer the UIC Program

(The proposed program covers all classes of wells unless otherwise noted).

Alaska
Arizona
Arkansas (Class II (oil and gas) wells only)
California (Class I, III, IV and V wells only)
Colorado
District of Columbia
Idaho
Indiana
Iowa
Kentucky
Michigan
Minnesota
Missouri (Class I, III, IV and V wells only)
Montana
Nebraska (Class I, III, IV and V wells only)
Nevada
New York
Pennsylvania
Tennessee
Virginia
American Samoa
Northern Mariana Islands
Trust Territory of the Pacific Islands

TABLE 2

States/Territories	Comments and questions should be directed to	Location of proposed public hearing [1]	Date of public hearing
National Hearing	Gerald F. Kotas, U.S. EPA (WH-550), 401 M Street, SW., Washington, DC 20460.	EPA Headquarters, Rm. S535, 401 M Street, SW., Washington, DC 20460.	Oct. 13, 1983: 9 p.m.-5 p.m.
Region II: New York	Walter Andrews, Chief, WSB, US EPA, Region II, 26 Federal Plaza, New York City, NY 10278.	Jacob F. Javitz, Federal Bldg. Rm. 238, 26 Federal Plaza, New York City, NY 10278.	Oct. 26, 1983: 1 p.m.-4 p.m.; 7 p.m.-10 p.m. These hearings include all Indian lands in the State of New York.
Region III:			
District of Columbia	Robert Blanco, Chief, WSB (3WM42) EPA, Region III, 6th & Walnut Streets, Philadelphia, PA 19106.	EPA headquarters, Rm. S353, 401 M Street, SW., Washington, DC 20460.	Oct. 13, 1983: 2 p.m.-5 p.m.
Pennsylvania	do	Old Chapel, Clarion U., Wood Street, Clarion, Pa 16214	Oct. 5, 1983: 3 p.m.-5 p.m.; 6:30 p.m.-9 p.m.
	do	Strawberry Square, 4th & Walnut Sts., Rm. 625, Harrisburg, PA 17127.	Oct. 6, 1983: 2 p.m.-5 p.m.
Virginia	do	Brd. Sprvsrs. Mtg. Rm., Parham and Hungary, Springs Road, Richmond, VA 27032.	Oct. 14, 1983: 7 p.m.-9 p.m.
Region IV:			
Kentucky	Don Guinyard, Chief, WSB (4WM-WS) EPA, Region IV, 345 Courtland St., NE, Atlanta, GA 30365.	Executive Inn, 1 Executive Boulevard, Owensburg, KY	Oct 18, 1983: 10 a.m. and 7:30 p.m.
	do	Sheraton South, 5523 Athens One, Boonesboro Road, Lexington, Ky.	Oct 20, 1983: 10 a.m. and 7:30 p.m.
Tennessee	do	Sheraton Nashville, 920 Broad Way, Nashville, TN 37203	Oct. 11, 1983: 7:30 p.m.; Oct. 12, 1983: 1 p.m.
	do	Quality Inn, 401 Summit Hill Dr., Knoxville, TN	Oct. 13, 1983: 1 p.m. and 7:30 p.m.
Region V:			
Indiana	Robert Hilton, Chief, GWS (SWD-12) US EPA, 230 S. Dearborn Street, Chicago IL 60604.	Holiday Inn Downtown, 500 W. Washington St., Indianapolis, IN 46204.	Oct. 25, 1983: 9 a.m.
Michigan	do	Delta Township Admin., Building, 7710 W. Saginaw Hwy., Lansing, MI 48917.	Oct. 27, 1983: 9 a.m.
Minnesota	do	Bloomington Marriott Hotel, 1919 E. 78th Street, Bloomington, MN 55420.	Sept. 28, 1983: 9 a.m.
Wisconsin (Indian Lands only).	do	Wausau Howard Johnsons, 2001 N. Mountain Rd., Wausau, WI 54401.	Sept. 22, 1983: 9 a.m.
Region VI:			
Arkansas	Adelle V. Mitchell, Chief, WSB, US EPA, 1201 Elm Street, Dallas, TX 75270.	Kings Inn Motel, Convention Center, 1920 Junction City Rd., El Dorado, AR.	Oct. 27, 1983: 10 a.m.

TABLE 2—Continued

States/Territories	Comments and questions should be directed to	Location of proposed public hearing [1]	Date of public hearing
Louisiana (Indian Lands only)	....do	Louisiana Office of Conservation, Hearing Rm., 625 N. 4th Street, Baton Rouge, LA.	Oct. 6, 1983: 10 a.m.
New Mexico (Indian Lands only).	....do	Morgan Hall, State Land Office Building, 310 Old Sante Fe Trail, Sante Fe, NM.	Oct. 25,1983: 10 a.m.
Oklahoma (Indian Lands only).	....do	Sequoyah Auditorium, State Capitol Complex, Oklahoma City, OK.	Oct. 14, 1983: 10 a.m.
Region VII:			
Iowa	Harold Owens, DWB, US EPA, 324 E. 11th Street, Kansas City, MO 64106.	Federal Bldg. Rm. 113, 210 Walnut Street, Des Moines, IA 50309.	Oct. 12, 1983: 1 p.m.
Kansas (Indian Lands only)	....do	Kickapoo Reservation, Tribal Council Bldg., Horton, KS 66439.	Oct. 19, 1983: 10 a.m.
Missouri	....do	Hearing Rm. 4th Flr. 324 E. 11th Street, Kansas City, MO	Oct. 11, 1983: 1 p.m.
Nebraska	....do	Federal Bldg. Rm. 225, 100 Centennial Mall North, Lincoln, NB 68508.	Oct. 20, 1983: 10 a.m.
Region VIII:			
Colorado	Max Dodson, Director, WMD, EPA, Region VIII, 1860 Lincoln Street, Denver, CO 80295.	Federal Office Bldg., 1961 Stout St., Rm 239, Denver, CO	Oct. 17, 1983: 10 a.m.
Montana	....do	Billings Sheraton Motel, 27 N. 27th Street, Billings, MT 59101.	Oct. 12, 1983: 10 a.m.
North Dakota (Indian Lands only).	....do	Four Bears Motor Lodge, New Town, ND 58763	Oct. 14, 1983.
Utah (Indian Lands only)	....do	Green Well Motel and Restaurant, 665 East Main Street, Price, UT 84501.	Oct. 19, 1983: 10 a.m.
Wyoming (Indian Lands only)	....do	Riverton Holiday Inn, N. Federal at Sunset, Riverton, WY 82002.	Oct. 21, 1983: 10 a.m.
Region IX:			
Arizona	William Thurston, Chief, Water Supply Section (W-2), US EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.	Phoenix Hilton, Navaho B Rm., Central & Adams, Phoenix, AZ.	Oct. 11, 1983: 2 sessions, 1:30 p.m. and 7:30 p.m.
California	....do	Hearing Room, 6th flr., 215 Fremont Street, San Francisco, CA 94105.	Oct. 17, 1983: 9 a.m.
Nevada	....do	Washoe Cty. Dist. Hlth. Office, S. Auditorium, 1001 E. 9th Street, Reno, NV.	Oct. 14, 1983: 9:30 a.m.
American Samoa	....do	Hearing Rm., 6th flr., 215 Fremont Street, San Francisco, CA 94105.	Oct. 18, 1983: 9:30 a.m.
Commonwealth of the Northern Mariana Islands.	....do	....do	Oct. 18, 1983: 9:30 a.m.
Trust Territory of the Pacific Islands.	....do	....do	Oct. 18, 1983: 9:30 a.m.
Region X:			
Alaska	William A. Mullen, Chief, Drinking Water Programs Branch, US EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101.	Old Federal Bldg., Court Rm. No. 2, 605 W. 4th Avenue, Anchorage, AK 99501.	Oct. 20, 1983: 7 p.m.
Idaho	....do	East & West Conf. Rm., 1st Floor Hall of Mirrors, 700 W. State Street, Boise, ID 83720.	Oct. 25, 1983: 7 p.m.

[1] Unless otherwise noted, hearing covers both non-Indian and Indian lands.

I. Background

These regulations are being proposed under the authority of Part C of the Safe Drinking Water Act (SDWA) (42 U.S.C. 300f to 300j–9) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. 6901 et seq.). The SDWA is designed to protect the quality of drinking water in the United States, and Part C of the SDWA specifically mandates regulation of underground injection of fluids through wells. A summary of the relevant sections of Part C follows:

A. Section 1421: Minimum Requirements for State Programs

Section 1421 requires EPA to propose and promulgate regulations specifying "minimum requirements" for State programs to prevent underground injections through wells which endanger drinking water sources. EPA promulgated these regulations in 40 CFR Part 144 (formerly Part 122, permitting and general program requirements); Part 145 (formerly Part 123, requirements for State program applications); Part 146 (technical criteria and standards); and Part 124 (public participation and procedural requirements).

B. Section 1422(a): List of States

Section 1422(a) requires EPA to list in the **Federal Register** each State for which an underground injection control program "may be necessary" to ensure that underground injections will not endanger drinking water sources. EPA has listed all 50 States, the District of Columbia, and the Territories and Possessions of the United States (43 FR 43420 (Sept.25, 1978); 44 FR 35288 (June 19, 1979); 45 FR 17632 (March 19, 1980)).

C. Section 1422(b)–(d): Development of Underground Injection Control Programs

Section 1422 provides also for each State to apply to EPA for primary enforcement responsibility to administer the UIC program in that State. EPA will approve a State's program that is adopted after reasonable notice and public hearings, and meets the minimum requirements promulgated under Section 1421. If a State fails to adopt and submit a UIC program in a timely fashion, or if EPA finds that a State's UIC program fails in whole or in part to meet the minimum requirements, EPA is required to prescribe by regulation a UIC program for that State.

Under this statutory scheme, the UIC regulations promulgated by EPA pursuant to Section 1421 serve only as minimum requirements for effective State programs. They do not currently impose requirements directly on owners and operators. In the case of a State-administered program, these UIC requirements become applicable to owners and operators in the form of State laws, regulations, and other program elements that have been determined by EPA to meet the minimum requirements and have therefore been approved as the UIC program for that State. In the case of EPA-administered programs, UIC requirements become binding on owners and operators in a State when EPA promulgates a regulatory program that specifically applies requirements to that State. Today's action proposes such a regulatory program for each of 23 jurisdictions.

II. Overview of Direct Implementation

A. Contents of Federally-Administered programs

When implementing UIC programs, EPA will rely, to the maximum extent possible, on the existing minimum requirements contained in 40 CFR Parts 124, and 146. The Agency believes that the minimum requirements provide the flexibility necessary to strike the appropriate balance between the mandate of the Act to take into consideration the varying historical, geological, and hydrologic conditions in each State, and yet protect underground sources of drinking water.

The UIC minimum requirements achieve this flexibility by specifying certain requirements as performance standards and affording the Director of a program (the Regional Administrator in the case of federally-prescribed UIC programs) considerable discretion in determining how a particular requirement is to be met. In the case of permitted facilities, the permit can be used to enumerate the specific requirements applicable to an owner or operator. For wells authorized by rule, however, the rule itself must establish the requirements applicable to a class of injection activities. In approved State-administered programs, State laws and regulations serve to provide this specificity. For federally-implemented programs, EPA must propose and promulgate such requirements. Much of today's proposed rulemaking is intended to supplement or clarify requirements to make authorizations by rule workable in EPA-administered programs.

EPA-determined that the requirements needed to implement a program are best handled in either of two distinct ways. Some of the requirements (both more specific and supplemental) should be uniform for all the EPA-implemented programs. For example, since EPA does not now have extensive files on individual injection wells, all EPA-administered programs need to have the authority to gather additional inventory and other information. On the other hand, requirements such as maximum operating pressures should reflect differences in local geology, and thus are best established on a State-by-State basis. Accordingly, the Agency has adopted the following scheme to propose federally-prescribed State programs:

(1) Requirements necessary to supplement or clarify all EPA-administered programs are proposed as amendments to Part 144.

(2) Each State program is entirely contained in a distinct subpart of new Part 147.

(3) Each subpart of Part 147, for each EPA-administered State program:

(a) incorporates by reference and makes applicable the UIC minimum requirements, 40 CFR Parts 124, 144, and 146; and

(b) proposes additional State-specific requirements.

B. Jurisdictions Covered

(1) *States.* EPA is proposing a federally-implemented UIC program for each State that has indicated to EPA that it has no interest in assuming primary enforcement authority. The Agency is also proposing programs for certain other States, even though they may have made some efforts toward assuming primary enforcement authority, where the Agency has determined that serious impediments to program approval exist, such as inadequate statutory authority. However, if a State determines in the future that it is, in fact, interested in assuming primary enforcement authority, or if existing impediments to approval of a State-administered program are remedied, the State is encouraged to submit an application. EPA will approve such an application that meets the statutory and regulatory requirements, and transfer primary authority to the State, even where EPA has already proposed or implemented an EPA-administered program.

For certain other States, which have not yet received primary enforcement authority, EPA is not proposing federally-administered programs at this time. In light of the intent of the SDWA that States be encouraged to administer programs wherever possible, EPA has not proposed programs for States that appear to be making substantial progress toward achieving program approval. If, however, it becomes evident that these program applications cannot be approved, EPA will move to implement federally-administered programs as expeditiously as possible.

2. *Indian Lands.* In order to deal with certain jurisdictional questions that arise with respect to the UIC program on Indian lands in States whose programs have been approved, and in the interest of being sensitive to Indian concerns regarding implementation of the UIC program on Indian lands, EPA is taking the following approach to proposing programs on Indian lands.

Indian Lands in EPA-Administered States. Some of the twenty-three States in which EPA is proposing to implement federally-administered UIC programs contain Indian lands within their boundaries. EPA intends that the proposed program in a given State apply to Indian lands in that State as well as to non-Indian lands. In requesting comment on the proposal to implement these programs, EPA especially invites Indians on affected Indian lands to submit comments on the appropriateness of the proposed programs for those lands. In addition, EPA will make a special effort to contact all affected tribal and other Indian organizations to solicit their comments. Although EPA would prefer to maintain consistency in the federally implemented program throughout a given State, the Agency is willing to consider variations to the program as it applies to Indian lands if necessary to accommodate Indian concerns.

Indian Lands in States With Approved Programs. Where a State has demonstrated jurisdictional authority over Indian lands within its boundaries, the approved UIC program in that State applies to those Indian lands. In many cases, however, States cannot make such a demonstration. EPA therefore has the obligation to prescribe a UIC program for all Indian lands in approved States over which the States have not demonstrated authority. Various considerations affect the type of program EPA prescribes for these Indian lands.

One of these is the interest in national uniformity of all programs administered by EPA. As explained above, the programs for the twenty-three States that will be implemented by EPA consist in great part of the same body of regulations, with small variations among programs. This encourages efficient administration by EPA, facilitates understanding by members of the regulated community who conduct injection operations in more than one federally-implemented jurisdiction, and provides EPA enforcement personnel with essentially a single set of regulations to enforce when necessary.

A second consideration, however, is the interest in consistency between programs of neighboring jurisdictions. State programs approved by EPA must meet EPA's minimum requirements, but they frequently do not contain requirements identical to, or organized in the same fashion as, the federal regulations. Differences between approved State and federal programs may be particularly significant in Class II (oil and gas) programs, since under SDWA Section 1425 State programs need not meet the specific minimum requirements of EPA regulations, but only the general statutory standards of the SDWA. For Indian lands in States with programs approved pursuant to Section 1425 of the SDWA, the interest in consistency may advise tailoring the

federal program to match the approved program within that State. Such an approach would provide a uniform set of requirements throughout the State, rather than requiring an operator to comply with differing sets of requirements for operations depending on whether the operation was on Indian or non-Indian lands.

A third key consideration is the interest in adhering to the wishes of the tribal governments responsible for the affected Indian lands. It is important to respect the interest of tribal governments in maintaining control over activities affecting the health and welfare of their people, and therefore to give their concerns considerable weight when designing a regulatory program to be implemented on those lands. With respect to the UIC program, tribal governments may, of course, prefer one of the first two approaches outlined above. In addition, they may present arguments, based on conditions or circumstances peculiar to the particular Indian lands, in support of requirements different from or in addition to those contained in either of the first two approaches.

EPA's authority to take any of these considerations into account in designing a program for Indian lands is substantial. Although EPA has taken the position that federally-implemented programs should meet the UIC minimum requirements (40 CFR Parts 124, 144, and 146), such programs need not be *identical* to the existing minimum requirements regulations, just as a State-administered program need not be identical. With respect to Class II (oil and gas) Indian lands programs, EPA also has the authority to adopt federal programs that depart from the minimum requirements of the federal regulations. EPA implemented this flexibility by regulation, 40 CFR 144.2, that allows departure from the minimum regulatory requirements for Class II programs as long as EPA considers Indian concerns, consistency with adjoining programs, and such other factors as appropriate to carry out the SDWA. Of course, compliance with all general *statutory* standards of the SDWA must always be maintained.

Proposal. In light of the foregoing considerations, EPA proposes and requests comment on the following options for implementing programs on all Indian lands not under State jurisdiction in States where a State-administered UIC program has been approved by EPA.

(1) EPA would implement a program consisting of the current UIC minimum requirements (40 CFR Parts 124, 144, and 146), with perhaps a few requirements tailored to the specific jurisdiction. This is the same approach taken in the twenty-tree federally-implemented State programs EPA is also proposing today.

(2) EPA would implement a program essentially consisting of the requirements currently in place in the State-administered program approved by EPA for the State in which the Indian lands are located (as long as such requirements do not conflict with or go beyond EPA authority under the SDWA or other Federal law). Commentors should contact the EPA regional offices for information as to precisely what requirements are contained in the approved State programs.

(3) EPA would implement a program consisting of a combination of requirements from the federal UIC regulations and requirements of the approved program of the State in which the Indian lands are located.

(4) EPA would implement a program, different in some respects from both the federal UIC regulations and the approved State program, containing requirements that respond to concerns and wishes of the affected tribal government. In such case, if the program to be implemented on Indian lands is substantially different from both the approved State program and the federal regulations, a supplemental proposal will be published.

This proposal does not cover Indian lands in States that currently are seeking primary enforcement authority but whose programs have not yet been approved by EPA. No final determinations as to State jurisdiction over Indian lands have been made in these States, so that it is uncertain on what Indian lands EPA will be required to implement a program. In addition, one of the proposed options described above would pattern the federally-administered Indian lands program after the approved program in the rest of the State, and cannot adequately be considered if the State program in not yet approved. When such a State program is approved the Agency will propose a program for the Indian lands in that State as necessary.

EPA specifically requests tribal governments and Indian organizations to submit comments regarding which of the proposed four options in most appropriate for a given area. In addition to this **Federal Register** notice, EPA will make a particular effort to consult with affected tribal governments and Indian groups. It should be noted that EPA has already done considerable work in cooperation with the Osage Tribal Council, on the Class II program for Osage County, Oklahoma, pursuant to option 4 above. A separate proposal for a Class II program for Osage County is forthcoming in the near future.

One Indian lands situation on which EPA particularly requests comment is where a single reservation crosses the boundaries of two or more States. A notable example of this situation is the Navajo reservation in the Southwestern United States, which falls within the State boundaries of Arizona, New Mexico, and Utah. EPA recognizes that in such a situation it may be desirable to implement a uniform program throughout the reservation, rather than to have differing sets of requirements according to the States in which each portion of the reservation is located. EPA would like to make clear that the options proposed above include the possibility of such a uniform program. The Agency therefore, requests comment on whether such a uniform program is preferable is such situations, and, if so, what set of requirements such a program should include.

See Table 2 for the location, date and time of public hearings for the proposed UIC programs on Indian lands in primacy States.

C. Regulation of Class IV Wells

EPA's minimum requirements for State UIC programs require Class IV wells injecting into underground sources of drinking water to be prohibited, but reserve requirements for all other Class IV wells. Several alternative proposals for regulating these remaining Class IV wells are presented in detail in the preambles to the UIC permitting requirements promulgated on May 19, 1980 (45 FR 33331–33) and the technical requirements promulgated on June 24, 1980 (45 FR 42486–87). EPA is still considering these options.

One such alternative is to ban all of these Class IV injections. Since the initial proposal of this option, the great majority of States applying for primary enforcement authority of the UIC program have chosen to go beyond current EPA requirements and ban *all* Class IV injections. In addition, EPA's most recent inventory information indicates that there are fewer than one hundred such wells nationally, far fewer than original estimates. Therefore, it is EPA's intention to promulgate a ban on Class IV wells. The other options present various regulatory mechanisms for allowing some Class IV injections to occur. While it is our intent to promulgate a ban, EPA considers the proposal of all these alternatives to be still pending, and solicits further comment on them. Based on the information accumulated since the proposal, and any further comments

received as a result of today's solicitation, EPA may promulgate final regulations applicable to these Class IV wells. This renewed notice of the proposal of Class IV requirements for minimum requirements for State programs should also be considered a proposal of such requirements to apply in each EPA-administered jurisdiction. Any such regulations would apply in each EPA-administered program by reference, in each respective subpart of Part 147, to Parts 144 and 146.

D. Scope of Comment

EPA is soliciting comments, on the proposed amendments to 40 CFR Part 144 and the proposed State-specific standards to be established in 40 CFR Part 147.

The Agency is not, however, taking further comments on the portions of these programs that consist of the current minimum requirements in 40 CFR Parts 124, 144, and 146. These minimum requirements have been proposed and extensively commented on; they have been promulgated as final regulations; they have been litigated and subsequently amended; and in the promulgation of both 40 CFR 144 (promulgated as 122) and 40 CFR 146, the preambles clearly stated that these requirements would apply in federally-implemented programs.

E. Coordination With RCRA

Owners and operators of wells which inject hazardous waste should be aware that, until authorized by a permit or rule under an approved UIC program they are subject to requirements specified in 40 CFR Part 265 and § 122.26 of the same part. These requirements may be administered either by the State (if they are approved for phase I implementation) or by EPA, in the event the injection well is in a state which has not received authorization pursuant to Section 3006 of RCRA. Owners and operators should determine whether the program is administered by EPA or the State, since the requirements may vary in some State programs.

III. Amendments of Part 144: Common Elements and Technical Amendments

This section discusses proposed amendments and related issues that apply to all federally-administered programs. EPA has drafted these proposed amendments to apply *only* to federally-administered programs, except where the amendments are merely technical, clarifying current language. This is accomplished by including in each amendment the phrase "for EPA-administered programs only," a form that is already used in various parts of the promulgated Part 144 requirements.

Limiting these amendments to federally-administered programs is appropriate because, for the most part, the amendments simply provide specification or a particular mode of implementation within the scope of the more general standards of the existing minimum requirements of Part 144. While EPA is proposing particular methods or procedures to implement federally-administered programs, the Agency generally believes it to be appropriate not to impose such particular methods and procedures in the States, but to maintain the current flexibility for States to satisfy the current minimum requirements by whatever particular mechanisms a State deems appropriate. In addition, the promulgation of new minimum requirements applicable to State programs would disrupt the process for approval of State programs requiring approved States to revise their approved programs and other States to revise their program applications.

In considering the program elements appropriate for implementing federal programs, EPA determined that in a few instances the existing regulations already include the appropriate requirements, but that they need clarification or reorganization. Therefore, among the proposed amendments published today are a few changes that EPA will make as technical amendments to the existing regulations. Since these changes are merely technical, and are therefore simply restatements of requirements already included in the existing regulations, these changes will apply to *all* programs, whether administered by EPA or the States. EPA is not under an obligation to propose technical changes for public comment. In order to keep the direct implementation rulemaking intact, however, EPA is delaying the effective date of these technical amendments until final promulgation of the new amendments being proposed today. These technical changes are specifically identified in the discussion below.

Applicability of the UIC Regulations (§ 144.1). EPA is proposing to amend § 144.1, "Purpose and Scope of Part 144," it include a description of the status of Part 144 and its relationship to the other components of the UIC regulations. As amended, the section explains that Part 144 is part of the minimum requirements for all UIC programs, and also applies directly to owners and operators when incorporated into a federally-implemented State program in Part 147.

Reference to Requirements for Wells Authorized by Rule (§§ 144.21 and 144.22). As described below in the discussion or "Requirements for Class I, II, and III Wells Authorized by Rule," EPA will reorganize the requirements that apply to Class I, II, and III wells authorized by rule to place them in a single section, § 144.28. Consequently, the Agency by technical amendment must change the references in § 144.21 and § 144.22 to reflect this reorganization.

Duration of Authorization by Rule (§ 144.21(a)(3)(i)(B)). EPA is proposing to amend § 144.21 to specify the duration of the authorization by rule of existing Class I and III wells in EPA-administered programs as one year. This change would require owners or operators of these wells to submit permit applications within the first year of the program. The original UIC regulations allowed these authorizations by rule to extend up to five years from program approval or promulgation in order to afford States with a large number of these wells sufficient time to bring all wells under permit. The time period necessary for these few States was appropriate as a national regulation, but the clear intent of the UIC program is that these wells be brought under permit as soon as is practicable in a given State. EPA has determined that for each of the twenty-three States proposed today it is practicable to authorize by permit all these wells within the first year of the program. The agency is therefore proposing to specify this time period by regulation, to put the regulated community on notice as to how quickly EPA intends to implement the permitting program for these existing wells.

Plugging and Abandonment Requirements for Class IV Wells (§ 144.23). Current regulations provide that Class IV wells injecting directly into underground sources of drinking water are prohibited six months after promulgation of the UIC program in a State, and reserve requirements for other Class IV wells until a future rulemaking. Therefore, the regulations currently include no technical requirements applicable to Class IV wells. However, EPA believes that in order to administer effective programs, it is appropriate to impose certain requirements for one aspect of injection operations, regarding plugging and abandonment, or other appropriate closure, of Class IV wells.

When the prohibition of Class IV wells injecting into USDWs goes into effect, any existing wells in this category will be forced to shut down. In addition,

owners and operators of other Class IV wells, even though these wells are not subject to construction or operation requirements under the UIC program, may be required by the Regional Administrator to shut down a well if it is violating the standard against endangerment of drinking water in § 144.12, or may choose to shut down a well for other reasons. In either of these situations, it is important to ensure that the well is closed in a way that contains the injected material as much as possible and prevents its movement into underground sources of drinking water.

Therefore, EPA is proposing to adopt requirements for plugging and abandonment of Class IV wells, analogous to the requirements that already apply to plugging and abandonment of other wells. The amendment first would establish the basic requirement that all wells must be plugged or otherwise properly closed prior to abandonment in a manner acceptable to the Regional Administrator. To help assure that this will be done properly, the proposed amendment would also require the owner or operator of each well to submit a plan for plugging and abandonment, or other appropriate closure, within sixty days after promulgation of the program. Although this time limit is shorter than that provided for other wells authorized by rule, it is justified for Class IV wells because of the greater risk posed by wells injecting hazardous waste, and because one category of these wells *must* be closed within six months after promulgation. Finally, the amendment would require notice to the Regional Administrator at least thirty days prior to abandonment, to allow EPA to consult with the owner or operator and plan to witness the plugging or other closure operations if appropriate.

Requiring a Well Authorized by Rule To Obtain a Permit (§ 144.25). The UIC regulations in Part 144 currently provide that the Director may require the owner or operator of a well authorized by rule to apply for a permit. The amendments to § 144.25 will clarify two issues, regarding when a permit may be required and the effect on the authorization by rule that results from requiring a permit.

The current UIC regulations provide for authorization by rule of existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells only until authorized by permit, and require in § 144.31(c) that all wells apply for permits "as expeditiously as practicable but no later than 4 years from the approval or promulgation of the UIC program." The four-year time period was provided chiefly for the administrative convenience of the State or EPA Region administering the program, because of the difficulty of considering and issuing permits for all existing wells immediately upon promulgation of the UIC program. Consequently, inherent in this scheme is the principle that the program Director may establish a schedule for authorizing by permit all these wells within the four years, and may require any such well owner or operator to submit a permit application at any time during that period according to such a schedule.

EPA is clarifying this authority by adding paragraph (4) to § 144.25(a), articulating this as another case where permits may be required of wells authorized by rule. As described below, EPA is also planning to amend § 144.31, the section setting forth when owners or operators must submit applications, to refer to such schedules for permitting existing wells.

For federally-administered programs, the schedules for permitting will be established by the appropriate EPA regional office. These schedules will be included in EPA's program description for each federally-administered program, an informal document prepared by EPA for administrative purposes and available to the public upon request. EPA's policy will be to require all Class I, II (except enhanced recovery or hydrocarbon storage) and III wells to be authorized by permit as soon after program promulgation as administratively feasible. Among these classes of wells, permitting of Class I hazardous waste wells will be given the highest priority.

The logical consequence of requiring a well authorized by rule to obtain a permit is that a permit is necessary and the authorization by rule no longer appropriate. EPA, by technical amendment, is clarifying the effect of requiring a permit by explicitly stating in § 144.25(b) that the authorization by rule expires if the owner or operator fails to submit a permit application in a timely manner when required by the Regional Administrator.

Inventory Requirements (§ 144.26). EPA regulations currently require owners or operators of all wells authorized by rule to submit inventory information, including name, location, legal contact, ownership, type of well, and operating status. For most types of wells this information is sufficient, because most are required eventually to obtain permits and will submit more detailed information with permit applications. However, for Class II enhanced recovery wells, which are authorized by rule for life, and for Class IV and V wells, for which EPA has reserved requirements, the inventory is EPA's principal source of information regarding these wells. In considering the necessary elements of a federally-implemented program, EPA determined that in most cases more information is necessary and appropriate to assess the current status of these wells and to ensure that none of them will threaten underground sources of drinking water as prohibited in § 144.12.

Therefore, in § 144.26(b) EPA is proposing to require owners or operators of Class II enhanced recovery wells, and certain Class V wells, to submit additional information with the required inventory. The specific types of Class V wells for which this additional information is required are those that appear to have the greatest potential for endangering underground sources of drinking water.

With respect to wells that will be authorized by permit, EPA recognizes that inventory information would only be duplicative if a permit application has been submitted. Therefore, EPA is also proposing, in § 144.26(d), to eliminate the inventory requirement for those wells for which complete permit applications are submitted within the first year of this program.

EPA is also proposing to shorten the time within which the owner or operator of a Class IV well must submit inventory information, from the one year applicable to other wells to 60 days in light of the greater threat to underground sources of drinking water posed by these hazardous waste wells. An additional justification is that one category of these wells—those injecting directly into a USDW—must be closed within six months of program promulgation, so that if the inventory information is to be of any use of EPA in identifying and monitoring the activities of these wells, it must be submitted before that time.

Requiring Other Information (§ 144.27). EPA is proposing to create a new section for federally-implemented programs, § 144.27, that would allow the Regional Administrator to require the owner or operator of any well authorized by rule to submit information regarding the well. This provision would be applicable in addition to the inventory requirements that apply to all wells, where EPA needs more information to determine whether a well is in compliance with § 144.12 (the general provision that no well may endanger underground sources of drinking water). Additional information would be required under § 144.27 only

on a selective, well-by-well basis, and only upon written notice to the owner or operator.

Although the mechanism established under this section may be used for any well authorized by rule, it is especially appropriate for Class IV and V wells. These classes of wells are subject to no specific technical requirements until EPA determines what regulatory treatment is appropriate and promulgates further regulations. However, although no technical requirements have yet been established for these wells, EPA remains under the statutory obligation to ensure that no injection endangers any underground source of drinking water, and owners and operators are prohibited from allowing such endangerment by § 144.12. In order to fulfill these requirements of the SDWA and ensure compliance with § 144.12, EPA may in some cases need more information than would routinely be supplied by owners or operators of wells authorized by rule.

For Class I, II, and III wells, current regulations impose monitoring and reporting requirements requiring submittal of such information, and impose technical requirements designed to prevent endangerment of drinking water. For most of these wells, therefore, EPA will have sufficient information to ensure that statutory and regulatory requirements are met, although further information may be necessary in unusual circumstances. For Class IV and V wells, however, the inventory is EPA's sole source of information under the current regulations. While the inventory generally identifies and describes the injection activity, it may be insufficient in particular cases to determine precisely whether a threat to drinking water sources exists. To fulfill the requirements of the SDWA, therefore, EPA needs the mechanism established in § 144.27 for requiring additional information.

Requests for information under § 144.27 may be potentially quite broad in scope. In some cases such requests might include, for example, the requirement that the owner or operator perform groundwater monitoring and submit periodic results to EPA. In other cases, the necessary information might be quite minimal and readily available. When requesting information under this section, EPA will attempt to require the least burdensome type of information that will yield sufficiently informative data regarding the aspect of the operation in question.

EPA recognizes that under a scheme for authorization by rule, requirements ordinarily are imposed by a definite regulatory requirement of standard applicable to all activities subject to the rule. With respect to this category of additional information necessary to ensure statutory and regulatory compliance, however, EPA has chosen the case-by-case mechanism of § 144.27 as a much less burdensome alternative to imposing such requirements uniformly on all such wells or requiring all wells to obtain permits. EPA can use this mechanism to obtain specific information on suspected problems at individual wells, or to obtain specific information on wells of a particular type where EPA currently lacks any information, without requiring such information from all wells authorized by rule. Among wells for which EPA does request information, EPA may vary the nature or extent of the request from well to well, rather than impose a dull range of information requirements on all wells.

The proposal of § 144.27 is not intended to constitute a determination as to the appropriate regulatory treatment of either Class IV or Class V wells. The proposal is intended solely to address EPA's need for information to ensure compliance with an existing general regulatory standard (§ 144.12). If the requested information indicates non-compliance, EPA's formal remedy would be to institute enforcement proceedings. EPA continues to reserve requirements for Class V wells and some Class IV wells (those not injecting directly into a USDW) until a future rulemaking. Requirements for the Class IV wells have already been proposed and are still being considered, as discussed above.

Reorganization of Requirements for Wells Authorized by Rule (§ 144.28) (technical amendment). Sections 144.21 and 144.22 of the current regulations apply certain requirements to Class I, II, and III wells authorized by rule, by referencing other regulatory provisions in Parts 144 and 146. EPA has found this method of presentation somewhat awkward for a variety of reasons.

First, the referenced provisions are scattered throughout the UIC regulations, which requires a reader constantly to flip back and forth through the regulations to determine the applicable requirements. Second, the referenced requirements use language and concepts designed as standards directed at wells to be authorized by permit rather than by rule, sometimes referring to the discretion of the Director in writing a permit. As a result of this permit-oriented language, some referenced requirements are either ambiguous or irrelevant for wells authorized by rule. Finally, this manner of presentation would make it awkward to add amendments particularly applicable to wells authorized by rule in federally-implemented programs.

Consequently, EPA plans to reorganize the presentation of these requirements by creating a new § 144.28 by technical amendment, which will apply to both State- and federally-implemented programs. Rather than referencing other sections of the regulations, § 144.28 will restate all applicable requirements in a single section, adjusting language to refer directly to wells authorized by rule and eliminating aspects of the originally referenced requirements that could only apply to wells under permit. Sections 144.21 and 144.22 will reference only § 144.28, which will contain all applicable requirements common to all these wells. This organization will result in no change whatsoever in the substantive requirements of the current regulations. Any additions or amendments to these requirements that are common to all federally-implemented programs are being proposed as amendments to the new § 144.28.

Submission of Plugging and Abandonment Plans (§ 144.28(c)). EPA regulations regulations require owners or operators of all Class I, II and III wells, whether authorized by permit or by rule, to prepare plans indicating how plugging and abandonment will be conducted. For wells authorized by permit, these plans must be submitted with the permit application (§ 144.52(a)(6)). For wells authorized by rule, regulations currently require each owner or operator to prepare and maintain a plan acceptable to the Director, but do not specify a time for the plan to be submitted to or reviewed by the Director. In considering how federally-implemented programs should be administered, EPA has determined that these plans should be submitted to the Regional Administrator, and is therefore proposing to amend the regulations to require such submittal within one year of promulgation of the program. The amendment would also require any proposed revision to the plan to be submitted no later than 45 days prior to actual plugging and abandonment. This proposed amendment will impose little, if any, additional burden, since the existing regulations already require preparation of such a plan and require that the plan must be acceptable to the Director.

EPA is also proposing in § 144.28(c)(2)(ii) to clarify for EPA-administered programs that for wells authorized by rule the plugging and abandonment plan must include an

estimate of the cost of plugging the well. Under the existing regulations this information obviously is necessary, to determine whether the required demonstration of financial responsibility is adequate. It seems appropriate that such cost information be included in the plan that describes the proposed procedures for plugging. EPA did not consider it necessary to specify this requirement for wells authorized by permit, since there is more likely to be an ongoing dialogue between the applicant and the permitting authority than there would be in the case of wells authorized by rule. In addition, since there is no authorization until the permit is issued (unlike wells authorized by rule), the permitting authority can ensure that the necessary cost information is included in the application before the injection activity is authorized.

Finally, EPA is proposing to amend the regulations to provide some interpretation on when, in EPA-administerd programs, a well is to be considered abandoned, and hence when an owner or operator would be required to plug the well in accordance with the plan. Existing EPA regulations provide that "temporary intermittent cessation of injection operations is not abandonment" (§§ 144.28(c)(1) and 144.52(a)(6)). EPA's proposal would provide that any cessation of operations for longer than two years would not be considered temporary or intermittent, unless the owner or operator demonstrates to the Regional Administrator that the well will indeed be used at some time in the future. The proposal would apply both to wells authorized by rule (§ 144.28(c)(2)(iii)) and wells authorized by permit (§144.52(a)(6)).

This general interpretation is designed to prevent owners or operators from avoiding plugging requirements by unfounded claims that operations are only temporarily suspended, while recognizing that in some cases operations may be suspended for long periods with legitimate expectations of resuming operation. In the latter instance, while the Regional Administrator may accept a demonstration that this is the case, the owner or operator should also demonstrate that all necessary precautions are being taken during the suspension of operations to prevent any migration of fluids into underground sources of drinking water.

Financial Responsibility (§§ 144.28(d) and 144.52(f)). EPA regulations currently require that each owner or operator of Class I, II, or III wells, whether authorized by permit or by rule, maintain the financial resources to close, plug, and abandon the well and submit evidence of such financial responsibility to the Director. For EPA-administered programs EPA is proposing to add a few more specific requirements necessary for implementing these financial responsibility requirements.

For wells to be authorized by permit, EPA regulations already require the evidence of financial responsibility to be submitted as a part of the permit application, since the particular financial responsibility elements become conditions of the permit. For wells authorized by rule, it is unclear when such evidence is to be submitted. For federally-implemented programs EPA is proposing in § 144.28(d)(2)(i) to require that owners or operators submit such evidence within one year of promulgation of the program.

In considering the long-term implementation of the federally-administered program, EPA is concerned that for wells authorized for long periods of time the original estimate of the costs of plugging a well may after time not accurately reflect current costs because of inflation. Therefore, to ensure that financial responsibility remains adequate, EPA is proposing to authorize the Regional Administrator to require owners or operators to submit a revised estimate of the resources necessary to plug and abandon the well if he believes the original estimate may no longer be accurate. If the estimate significantly exceeds the demonstration of financial responsibility previously made, the owner or operator would be required to revise the demonstration. This proposed amendment would apply to wells authorized by rule and to wells authorized by lifetime permits (§ 144.52(f)).

In developing this proposal, the Agency also considered what criteria the Agency should use to determine whether financial responsibility is adequate. Current regulations simply provide that the demonstration of financial responsibility must be acceptable to the program Director, and that it may be demonstrated in a variety of ways, such as by a surety bond, or financial statements.

Submission of a performance bond, sufficient to cover the estimated cost of plugging, would appear to be the most simple and readily approvable type of demonstration. EPA would therefore like to encourage owners or operators to employ this means of demonstration whenever possible. At the same time, EPA recognizes that for some companies other types of demonstrations may be feasible or appropriate, and intends to retain the flexibility to consider such alternative demonstrations.

This raises the question, however, of what criteria to employ when judging the adequacy of such alternative demonstrations. EPA has already addressed this issue with respect to the Hazardous Waste Management program under RCRA, and has promulgated regulations concerning financial responsibility under that program. The function to be served by financial responsibility criteria under the UIC program, at least for Class I hazardous waste wells, appears sufficiently similar to that served by the promulgated RCRA regulations that it may be appropriate to adopt these or similar requirements for EPA-administered UIC programs. Class II or III wells may present a somewhat different situation, but existing RCRA standards may still serve as an appropriate point of departure for developing appropriate standards. The Agency therefore proposes for comment at this time adopting the RCRA financial responsibility criteria, at 40 CFR Part 264 (G) and (H), for EPA-administered UIC programs.

Operating Requirements—Annulus Fluid and Pressure for Class I Wells (§ 144.28(f)(2)). EPA regulations for Class I wells authorized by rule currently require that "the annulus between tubing and the long string of casings shall be filled with a fluid approved by the Director, and a pressure, also approved by the Director, shall be maintained on the annulus." In order to implement this requirement for these wells authorized by rule, it is necessary to exercise the discretion granted by this section, by specifying the types of fluids and pressures that will be considered adequate for EPA-administered programs. EPA therefore proposes that the fluid shall be a non-corrosive fluid, and that the pressure be a positive pressure. It should be remembered that all Class I wells authorized by rule must eventually obtain permits, and that EPA is proposing for EPA-administered programs that applications must be submitted for these wells within the first year. These requirements would therefore apply only in those few instances where EPA receives applications but does not make the final permit decision until after the first year of the program. In light of this, even though the fluid and pressure requirements proposed here are still fairly general, EPA believes that they will provide sufficient protection for the short period of time they would apply.

Monitoring Requirements—Analytical Methods (§§ 144.28(g) and 144.52(a)(5)).

EPA regulations currently impose requirements for monitoring the nature of injected fluids. To ensure that such monitoring is done in accordance with approved techniques, and for consistency with analogous requirements throughout EPA regulations, EPA believes it important for the program to specify what types of techniques will be considered adequate. Where EPA is administering the program, therefore, the Agency is proposing to require that where appropriate such monitoring be done is accordance with analytical methods approved by EPA and referenced in certain tables and appendices of the Code of Federal Regulations.

Monitoring Requirements—Frequency of Monitoring of Injected Fluids (§ 144.28(g)(1), (2), and (3)). Current regulations require owners or operators of Class I, II, and III wells authorized by rule to monitor the nature of injected fluids with sufficient frequency to yield representative data on its characteristics. This requirement parallels the requirements in Part 146 for wells to be authorized by permit, for which specific monitoring frequencies will be established as permit conditions. For wells authorized by rule, however, some frequency should be specified in the implementing program.

For Class I and II wells, the proposal would clarify that "sufficient frequency" would require monitoring at least once within the first year of authorization, and thereafter when changes are made to the injected fluids.

For Class III wells authorized by rule, EPA will clarify the general type of analysis to be performed when monitoring, and the general circumstances that would trigger the requirement § 144.28(g)(3)(i) to monitor with sufficient frequency to yield representative data on its characteristics. EPA has drawn this requirement from current regulations, in §§ 146.33(b)(1) and 146.34(a)(7)(iii). Although EPA believes these standards to be applicable to all Class III wells whether authorized by permit or by rule, the applicability to wells authorized by rule is not clearly presented in the current regulations, and will be clarified by the amendment. These standards require that monitoring be performed in a manner that yields qualitative analysis and ranges in concentration of the constituents of the injected fluids, and that this monitoring and analysis be performed whenever the injection fluid is modified so that the previous analysis becomes inaccurate or incomplete.

It should be noted that EPA is proposing to require all Class I and III wells in EPA-administered programs to submit permit applications within the first year of the program, as discussed above. EPA expects that these applications will be processed and permits issued within the first year or as soon thereafter as possible. The requirements just discussed for monitoring of injected fluids of Class I and III wells, therefore, will apply only to those few wells, if any, for which EPA is not able to process permit applications within the first year, and only until a permit decision is made.

Monitoring Requirements—Mechanical Intergrity Testing (§§ 144.28(g)(2)(iv) and 144.51(p)). EPA plans to clarify that the Regional Administrator may specify a schedule for performing these mechanical integrity tests. Current regulations at §§ 144.13(b)(3), 146.23(b)(3), and 146.33(b)(3) for wells authorized by permit, and at § 144.22(a)(9) (which will become § 144.28(g)(2)(iv)(A)) for enhanced recovery and hydrocarbon storage wells authorized by rule require the owner or operator of a well to demonstrate its mechanical integrity (as defined in § 146.8) at least once every five years. Under § 144.28(g)(2)(iv)(B) owners or operators of enhanced recovery or hydrocarbon storage wells, if contacted in writing by the Regional Administrator, will be required to perform mechanical integrity tests in accordance with a schedule specified by him. Similarly, § 144.51(p) would require inclusion in each permit of a standard condition allowing the Regional Administrator, as necessary after permit issuance, to specify in writing a schedule for conducting mechanical integrity tests with which owners or operators of wells authorized by permit must comply.

The Agency is specifying this requirement for several reasons. First, enabling the Regional Administrator to specify a schedule allows the Agency to require the most critical types of wells—for example, older wells, wells handling hazardous wastes, or wells close to water supplies—to be tested earliest. Second, scheduling mechanical integrity testing will permit the Agency to witness tests in a more efficient manner. Finally, this requirement imposes no additional burden on operators, who must in any case conduct the test within the time frames specified in 40 CFR Part 146.

Typically, a schedule specified by EPA will require the testing for a particular well to be performed by a particular date, while the precise date of the test would in most cases be chosen by the owner or operator. In order to enable the Agency to witness selected mechanical integrity tests under this type of arrangement, EPA is also proposing § 144.28(g)(2)(iv)(C) to require the owner or operator to notify the Regional Administrator at least thirty days in advance of the test. The Regional Administrator may allow a shorter time period as long as the period is sufficient to allow EPA to witness the testing if it chooses.

It should be noted that the demonstration of mechanical integrity is a well-by-well demonstration. Thus, when applying the requirements of § 146.8(b)(3) for monitoring of flow rate and injection pressure, the Agency intends at this time to require wells to be metered individually. Available evidence indicates that the sensitivity of a manifold system, while adequate for routine operational monitoring, is not sufficiently sensitive to provide the level of information required in § 146.8. As a practical matter, even when operators are operating off a manifold, the operators will have to have the capability of testing the individual wells to comply with the requirements of § 146.8. An observed change in the flow vs. pressure rate in a group of wells even if monitored off a manifold would have to be further examined on a well by well basis to isolate the well or wells causing the change.

Notice of Plugging and Abandonment (§ 144.28(j)(2)). In § 144.28(j)(2) the Agency is proposing a clarification for EPA-implemented programs that requires owners or operators to notify the Regional Administrator at least 45 days before conversion or abandonment of a well. This change merely specifies a time period which for State programs is left to the discretion of the State. EPA believes that in order for this requirement to be effectively implemented, and in order to provide the regulated community with a clear statement of how EPA intended to administer this requirement, it is necessary to specify the time period.

Plugging and Abandonment Report (§§ 144.28(k) and 144.51(o)). The Agency is proposing that for EPA-administered programs owners or operators who abandon and plug a well submit a report to the Regional Administrator. The section lists specific information to be provided, including materials used to plug, the location of plugs, volumes of mud and cement used, records of tests made, and certification that the plugging was performed as described.

Verfication that the well was abandoned consistent with the plan submitted under § 144.28(c) is a logical extension of requiring the plan in the first place. Observation of all plugging activities in obviously not feasible for

this Agency. The requirements specified in § 144.28(k) represent a reasonable approach to assuring proper abandonment, without imposing undue burden on either operator or the Agency.

Notice of Change of Ownership (§144.28(1)). Section 144.28(1) proposes to require owners or operators of wells authorized by rule to inform the Regional Administrator within 30 days of transfer of ownership. Under § 144.38 such notification is required of owners or operators of wells authorized by permit; however, there is no such requirement for rule-authorized wells. In view of the fact that some wells may be authorized by rule for the life of the well and others for up to 5 years, the Agency believed this requirement to be necessary to effectively administer the program.

Notice to Surrounding Landowners (§ 144.31(e)(9)). Under existing regulations, the administration authority (the State or EPA) must provide notice to the local public when a draft permit has been prepared and a permit decision is being considered. For many of the State programs that will be administered by EPA, wells are located primarily in very sparsely populated areas, which may not regularly be served by a single newspaper appropriate for publishing notice. For EPA-administered programs, therefore, the Agency is proposing § 144.31(e)(9) to improve the effectiveness of notice for such situations. This section would require, in addition to existing notice requirements, that the applicant for a permit give notice of intent to apply for a permit to all landowners and tenants within ¼ mile of the well, and to submit their names and addresses to EPA with the permit application. In addition to providing preliminary notice to these parties, this will provide EPA with a list of people to whom to send notice of the draft permit.

Section 144.31(e)(9) provides the Regional Administrator with an additional method of notice, e.g. separate notice to each landowner and tenant within ¼ mile of the well(s) where the owner or operator intends to file for a permit. Of course, the Agency is aware that imposing this requirement on an owner or operator in a urban area could be burdensome. Where a well is located in a populous area, therefore, the Regional Administrator has the authority to waive this requirement.

Retention of Records (§ 144.28(i) and 144.51(j)(2)(ii)). EPA regulations currently require that owners or operators retain records of the nature and composition on injected fluids for at least three years after plugging and abandoning the well, and provide that the Director may require the owner or operator to deliver the records to him at the end of that time. In considering how this issue should be administered in programs implemented by EPA, the Agency has determined that it may be preferable to ensure that EPA have the opportunity to screen information when the three-year retention period expires, to ensure that useful records will not be lost. Because records of injected fluids are critical to determining the source of fluids that migrate into underground sources of drinking water, and since many years may pass before any such migration is detected, EPA may want the records retained for much longer than the three-year period. Therefore, EPA has proposed to require that if the owner or operator does not choose to retain the records after the three-year period, he must notify the Regional Administrator, who can then decide whether the records should be delivered to EPA or can be discarded. This does not increase the recordkeeping burden on the regulated commumity; it only serves to ensure that potentially important records will not be discarded without approval by EPA. EPA is proposing to apply this requirement to both wells authorized by rule (§ 144.28(i)) and wells authorized by permit (§ 144.51(j)(2)(ii)).

Emergency Permits (§ 144.34(a)) (technical amendment.) The emergency permit provision in § 144.34 was designed for emergency situations where it may be appropriate to allow noncompliance with certain requirements of a rule or permit, or to allow an injection not otherwise authorized, as long as migration of fluids into an underground source of drinking water will not result. Section 144.34(a) of the existing regulations, however, includes language that could be interpreted to indicate that emergency permits may be available only for wells not otherwise authorized by rule or permit. This interpretation would be inconsistent with other EPA regulation, and was not EPA's intent when the Agency promulgated the regulation.

Both § 144.28(a) (formerly §§ 144.21(c)(1) and 144.22(a)(1)) with respect to wells authorized by rule, and § 144.51(a) for wells authorized by permit, provide that the owner or operation need not comply with the provisions of the rule permit to the extent the noncompliance is authorized by an emergency permit. These section expressly assume, therefore, that emergency permits may be granted to wells authorized by rule or permit, which was EPA's intent.

Nevertheless, to eliminate any possible confusion, therefore, EPA will make a technical amendment to §144.34(a) to eliminate this language, making clear that an emergency permit may be granted to a well even if that well is otherwise authorized by rule or by permit.

IV. State Specific Requirements

Introduction

Part 147, being proposed today, contains requirements which supplement or specify those found in 40 CFR Parts 124, 144, and 146. These are requirements which—due to geologic, historical or hydrologic conditions—differ from State-to-State and region to region. In addition, this part states more specifically requirements that in the minimum standards are only general and afford a broad range of discretion to the Director.

Often, the technical basis for the program being proposed today requires the application of different numerical standards and the use of different approaches to satisfying certain requirements. The SDWA provides for such variations in Section 1422(c), which requires that the Agency consider the varying hydrologic, geologic, and historical conditions in a State and not disrupt existing State programs unnecessarily. Indeed, it is for this reason that the Agency originally built flexibility into the UIC program. Thus, while the minimum standards reflect the goals of the Act, it is necessary to supplement and specify the regulations in certain instances. For these reasons, the Agency is proposing specific regulations that implement existing requirements.

A discussion of permitting schedules, mechanical integrity testing schedules, and other administrative considerations can be found in the program description for each of the State programs proposed today. Program descriptions are available at the appropriate Regional Office and at EPA Headquarters.

Exempted Aquifer

An exempted aquifer is an aquifer or portion of an aquifer which would otherwise meet the standard for a USDW, but which has been designated as "exempted" by the Director, consistent with requirements in § 146.4. The exemption of an aquifer may allow owners or operators of a Class or Classes of wells to inject into what would otherwise be a USDW. The absence of nearby USDWs may also result in lesser requirements being applied to the owner or operator. Section 144.7 allows the Director to exempt aquifers or portions of aquifers if they do not now serve as a source of

drinking water, and will not in the future serve as a USDW because they are:

(1) mineral, hydrocarbon, or geothermal energy producing; or are expected to bear the above in producible quantities;

(2) Situated at a depth or location that would make recovery of water for drinking water economically or technically impractical;

(3) So contaminated that it would be economically or technologically impractical to render them fit for human consumption; or

(4) Located over a Class III mining area subject to subsidence or catastrophic collapse.

In addition, aquifers or their portions that contain between 3,000 and 10,000 mg/l TDS and that do not now serve as a source of drinking water may be exempted if they are not reasonably expected to serve as a supply to a public water system.

The way in which aquifer exemptions are proposed in the various State proposals, depends on a number of State-specific factors including the well population and EPA's knowledge of injection activity into aquifers of less than 10,000 mg/l TDS. It should be noted that injections into aquifers which qualify as USDWs are illegal. EPA-administered programs approach aquifer exemptions in one of the following four ways:

(1) Where the Agency has complete and accurate data on where injections are occurring in aquifers that meet the definition of an USDW, the programs propose to exempt specific portions of the aquifers provided they qualify under § 146.4.

(2) When the Agency only has information on a well-by-well basis that may not include all injections, it is proposing to exempt known sections where appropriate and is seeking information from the regulated community on whether they wish to seek additional exemptions. These may be granted, if the requests are consistent with § 146.4.

(3) Where the Agency lacks information of any injection activity which would require an exemption, but where the data are not complete, the Agency is asking any operator who is injecting into an aquifer that meets the definition of an USDW, to immediately request an exemption if he believes the aquifer qualifies for one, as such an operation would be illegal at the time of the program promulgation without one; and

(4) Where the Agency believes there are no wells in a State that would require an exemption, and the data are considered reliable, it is proposing no exemptions.

In addition to the aquifers that are being proposed for exemption in this proposal, EPA recognizes that in some cases additional aquifer exemptions may become appropriate after program promulgation. The nature of this approval process is circumscribed by various existing regulatory and statutory requirements, within which the Agency has a certain degree of administrative discretion. Consequently, EPA is not proposing any more specific procedures for the aquifer exemption process in these regulations.

For State-administered programs, the existing regulations in § 144.7 contemplate that, generally, aquifer exemptions made after a State program is approved are program revisions. For revisions that are "substantial", the program revision process described in § 145.32, involves the rulemaking procedures of public notice, opportunity for comment and publication in the **Federal Register**. For "non-substantial" revisions, a less formal process is sufficient; however, in the case of requests for aquifer exemptions, the State must provide public notice and opportunity for a hearing before submitting the request to EPA for approval. EPA's preliminary experience with State-administered programs indicates that some aquifer exemptions are properly considered "substantial", while others may be "non-substantial." Although the program revision concept in § 144.7 does not apply directly to federally-administered programs, EPA believes that a similar approach should be taken in the latter case as well. This is also consistent with the SDWA, which requires in Section 1422 that EPA make any revisions to a federally-administered program "by regulation." While EPA does not believe that Congress intended that every minor revision to a program be done by regulation, this provision clearly requires major or substantial revisions to follow rulemaking procedures.

For procedural purposes, to reflect the distinctions between substantial and non-substantial revisions described above, EPA therefore will distinguish between "major" and "minor" exemptions. Major exemptions will be made by rulemaking procedures. Minor exemptions would ordinarily be made by EPA without publication in the **Federal Register**, although public notice and opportunity for a hearing will be provided in all cases. Where the effect of a proposed exemption that ordinarily would be considered minor appears particularly significant and far-reaching, EPA may choose to use the same rulemaking procedures normally reserved for "major" exemptions. A complete list of all aquifer exemptions will be maintained in the appropriate Regional office.

Currently, EPA's plans for defining major and minor exemptions are as follows. Major exemptions would be defined as any exemption of an aquifer containing less than 3,000 mg/l total dissolved solids that is (a) Related to any Class I or IV well; or (b) not related to action on a permit.

All exemptions not defined as major would be considered minor. Minor exemptions would therefore include all exemptions considered as part of a single permitting action. When considered as part of a single permitting action, the permitting process will provide public notice and opportunity for comment and for a hearing, the exemption will be limited to a defined area around the well or facility, and the effect of the exemption will be limited to the activities authorized under the permit. Also considered minor exemptions will be those approved because the aquifer contains more than 3,000 mg/l total dissolved solids and "is not reasonably expected to supply a public water system." See § 146.4(c). This is consistent with the procedures for EPA approval of these exemptions under approved State-administered programs, where § 144.7 places a 45-day time limit on EPA approval or disapproval of the exemption. If any exemptions proposed under this criterion are not associated with a particular permit application, EPA will still provide notice in the affected area and an opportunity for comment and a hearing, just as normally provided in the permitting process.

Pressure Limitation

The current UIC minimum requirements obligate the Director to establish limits on injection pressure. For wells authorized by permit the Director may determine an appropriate pressure on a case-by-case basis. For wells authorized by rule, a general standard must be proposed. The limits, as outlined in 146 specify that for Class I and III wells, such limits should assure that operations do not initiate or propagate fractures in the injection zone (except during stimulation) and the confining zones. For Class II wells, however,the limits should be adequate to prevent fracturing in the confining zones.

Both theoretical and empirical studies indicate that fracture gradients vary geographically, since they are dependent on lithology and other locally

influenced factors. Accordingly, in establishing programs, the Agency is attempting to allow for these variations by proposing appropriate standards in the State-specific regulations.

Although these standards may vary between programs, the Agency is proposing to apply a common technique to all State programs that uses a relatively simple formula that will allow pressures to be monitored at the wellhead, and considers the additional pressure from a standing column of fluid (a function of the density of the fluid and the depth of the injection well). The formula is: Pm = (× − .433 Sg) d. Briefly, the formula starts from an assumed fracture gradient (x) (measured in psi/ft), which has been theoretically or empirically established for a particular State or area.

The additional pressure caused by the fluid in the tubing, which is 0.433 times the specific gravity of the fluid, Sg, is subtracted from the assumed fracture gradient and this value is multiplied by the depth, d, in feet. The resulting figure, Pm, read at the wellhead, is the maximum allowable operating pressure. The calculated value of Pm tends to be a conservative value because the friction loss (from injected fluid against tubing) is not included in the calculation and therefore provides a safety factor. Where appropriate, the State-specific preambles contain a discussion of why specific fracture gradient values were selected.

In specifying maximum operating pressures for wells authorized by rule, the Agency has proposed conservative values. Owners or operators who believe the specified pressure to be too low have the option of applying for a permit which may specify a higher operating pressure. It should be noted, however, that the specified injection pressures will be used as guidance for those requesting a permit. Operators who wish to receive authorization to inject at higher pressures will bear the burden of proving that the pressures are consistent with requirements in §§ 146.13, 146.23 and 146.33.

Commenting and Casing Requirements

The current regulations specify cementing and casing requirements for the various classes of wells that are essentially performance requirements: "cemented and cased to prevent the movement of fluids into or between strata . . . ." The determination of what constitutes an adequate cementing requirement is subject to local conditions, such as the geology, historical construction practices, hydrology and the geochemistry of the area. Accordingly, the Agency is proposing State-specific casing and cementing requirements where appropriate. Among the factors being specified are methods of placing cement, appropriate volumes and compositions of cement, placement of packers and similar construction requirements. The rationale for selecting these requirements is detailed in the State-specific sections of the preamble. In defining appropriate volumes of cement, the regulations use terms such as "calculated volume". This value can be arrived at through existing industry guidelines, or by calculating the volume of a column equal in height and radius to the section to be cemented (allowing of course for any volume filled by casing).

Mechanical Integrity

Section 146.8 defines mechanical integrity and specifies tests which verify well integrity. The section also allows the use of alternative tests to demonstrate well integrity after approval by the Administrator. There are two aspects to mechanical integrity. First, a well must be free of significant leaks in the tubing, casing, and packer(s), and cement, and second, it must not allow significant movement of fluids in the well bore.

In several instances, existing well construction, prevailing operating practices, and other factors make if difficult to apply the specified tests, or make other demonstrations more practical. For these cases, the Agency is seeking comment on alternative tests.

Area of Review

The minimum requirements in § 146.6 specified two methods for determining an area of review, within which the operator must identify wells which penetrate the injection formation and perform corrective action where appropriate. The Director of a program has the option of requesting a fixed radius, or a radius calculated by an appropriate formula.

In promulgating this rule, the agency recognized that both the appropriate fixed radius and the appropriate formula or formulae are subject to local conditions. Indeed, the regulations specified criteria to be considered in applying this requirement in order to assist Directors in establishing an appropriate standard.

Several of the programs being proposed today allow only the use of a fixed radius for defining the Area of Review. The Agency is proposing this approach for several reasons. First, the mathematical models that reliably illustrate particular hydrogeologic conditions may not be established for particular areas. Second, use of a model could slow implementation of the program by requiring evaluation of many equations for specific hydrogeologic formations. Finally, in some cases the use of a fixed radius reflects existing State practice.

Plugging and Abandonment

As with cementing and casing requirements, the minimum standards specify a performance standard for plugging and abandonment. Section 146.10 lists appropriate methods of plugging. Several programs being proposed today supplement this section by specifying amounts of cement, grade of cement, and placement of plugs relative to the injection zone and to USDWs.

The most detailed plugging requirements are contained in the program being proposed for Arkansas. Based on historical experience these requirements have been shown to be effective in protecting USDWs. The Agency is considering promulgating requirements similar to those being proposed for Arkansas in § 147.206(a) in all Federally prescribed programs. Accordingly we are soliciting comment on the appropriateness of those requirements for the various State programs being proposed.

V. Discussion of Requirements Applied to Specific States

Subpart C—Alaska

Subpart C proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Alaska UIC program appropriate and amenable to the combination of historic practices and geology unique to Alaska.

Exempted Aquifers

The Kenai Peninsula contains portions of aquifers being considered for exemption under § 144.7 and §146.4, for Class II injection activities for the following reasons:

(1) The portions of aquifers do not currently serve as sources of drinking water; and

(2) The total dissolved solids levels are more than 3,000 mg/1 but less than 10,000 mg/1 and are not reasonably expected to serve as a public water supply.

The portions of aquifers beneath the Cook Inlet (Granite Point Field, McArthur River Field, Middle Ground Shoal Field and Trading Bay Field) are

proposed for exemption for the following reasons:

(1) The portions of aquifers below Cook Inlet do not currently serve as sources of drinking water; and

(2) These portions of aquifers cannot now and will not in the future serve as sources of drinking water because they are situated below the bottom of Cook Inlet which makes the recovery of water for drinking water purposes economically impractical.

Maximum Injection Pressure

EPA is proposing for all Federally implemented programs, the use of a simple formula that will prescribe an injection pressure to be measured at the well head. The formula is discussed in detail in the introduction to the State-specific preambles. The 0.733 psi/ft fracture gradient proposed for Alaska was determined from Warner and Lehr (1977, EPA–600/2–77–240, page 117) which proposed a range of values from 0.5 to 1.0 psi per foot of depth.

The Agency is proposing a fracture gradient falling in the middle of this range because it is seeking a value that adequately protects USDWs but is not overly restrictive. Comment on the appropriateness of this limit for owners or operators of wells authorized by rule is solicited and will be considered in final rulemaking.

It should be noted that this pressure limitation applies to wells authorized under rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate § 144.28(f)(3).

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water which may cause a significant risk to the health of persons.

The requirements proposed today in § 147.104(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22 (c), (d), and (e) which made it possible to relieve operators of wells in existing fields from the requirements specified in § 146.22(b), provided that the operator will not allow movement of fluids.

The Agency believes that the proposed requirements are appropriate for wells in Alaska when a workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and § 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that well or wells may not be in compliance. If such a determination is made he may impose requirements consistent with § 147.104(b) or require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone, as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of sufficient quantity and quality to accomplish these goals in the environment in which it is used.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for all classes of wells in Alaska. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to the approach used for Arkansas in § 147.204. A more detailed discussion of both of these requirements can be found in the preamble to the Arkansas program.

Subpart D—Arizona

Subpart D proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144 and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Arizona UIC program appropriate and amenable to the combination of historic practices and geology unique to Arizona.

Exempted Aquifers

Upon the effective date of this program facilities which are injecting into an underground source of drinking water cannot legally operate unless that aquifer or a portion is exempted. However, EPA is not aware of any injections into a USDW and, therefore, is not proposing to exempt any aquifers at this time. Owners or operators should determine whether their facilities are injecting into a USDW as defined in § 146.3. Should an owner or operator find that he is injecting into a USDW, he may request an exemption consistent with criteria and procedures in 40 CFR 144.7 and § 146.4.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for Arizona. A more detailed discussion of these plugging and abandonment requirements can be found in the preamble to the Arkansas program.

Subpart E—Arkansas

Subpart E proposes to require all owners and operators of Class II wells to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Arkansas UIC program appropriate and amenable to the combination of historic practices and geology unique to Arkansas.

The UIC program for Class I, III, IV, and V wells submitted by the 'Arkansas Department of Pollution Control and Ecology was approved on July 6, 1982. EPA's proposed program for Arkansas is limited to Class II wells.

Aquifer Exemptions

In accordance with the provisions of 40 CFR 144.7 and 146.4, EPA proposes to exempt those portions of aquifers which are currently producing hydrocarbons. The exempted area would be limited to the hydrocarbon-producing portions of the formations as described in the Arkansas program description. This exemption would allow continuance of enhanced recovery operations in fresh water production zones. Such an exemption would allow Class II injection only. EPA is aware of no current or projected use of the proposed exempted areas for drinking water.

Maximum Injection Pressure

The proposed maximum injection pressure (§§ 147.203 and 147.204) for wells authorized by rule is set to ensure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zones. There are numerous articles on and methods for determining fracture gradients in technical petroleum journals (e.g., "Fracture Gradient Prediction and its Application in Oil Field Operations" by B. A. Eaton; "Mechanics of Hydraulic Fracturing" by

M. K. Hubbert and D. G. Willis; "How to predict Formation Pressure and Fracture Gradients" by W. R. Matthews and J. Kelly; "Prediction of Fracture Gradients from Log-Derived Elasti Moduli" by L. A. MacPherson and L. N. Berry). The fracture gradient in Arkansas can range from as low as 0.465 psi/ft of depth (in pressure-depleted reservoirs) to about 1.0 psi/ft of depth. (These pressures represent the pressures at the injection zone depth.) The Agency is proposing to vary the value of the fracture gradient used to calculate the maximum allowable injection pressure at the wellhead with the depth of the well. Such an approach is appropriate for Arkansas for several reasons. First, this requirement is consistent with the Arkansas Oil and Gas Commission injection pressure requirements. Second, variation is appropriate in Arkansas because Class II injection wells in the State may vary in depth from less than 1,000 feet to more than 6,000 feet. More generally, such an approach is justified since, as stated in the preamble to 40 CFR Part 146, 45 FR 42483, the Agency's primary concern is that, "between a USDW to be protected and the injection zone, there be a relatively impermeable barrier." Obviously the deeper the well, the more likely that such a barrier will not be breached by a given injection pressure. Finally, geology/lithology varies with depth. Limiting the injection pressure sufficiently to prevent fracturing in shallow formations would prohibit injection into deeper formations, thus impeding oil production. Likewise, a maximum allowable pressure that would allow injection into deeper zones would cause fracturing of shallow formations. Both situations are unacceptable. Therefore, a maximum allowable injection pressure is directly related to well depth. (Note: tubing friction loss is not included in the calculation because of the variations due to pipe size and rate of injections. This will be considered a safety factor.)

It should be noted that this pressure limitation applies to wells authorized under rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate § 144.28(f)(3).

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water which may cause a significant risk to the health of persons.

The requirements proposed today in § 147.204(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of Part 146, the Agency outlined requirements in § 146.22 (c), (d), (e) which make it possible to relieve operators of wells in existing fields from the requirements specified in § 146.22(b) provided that the operator will not allow movement of fluids.

The Agency believes that the proposed requirements are appropriate for wells in Arkansas when a workover is necessary to bring an existing well into compliance with requirements of 40 CFR 144.28(e) and 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone, as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of sufficient quantity and quality to accomplish these goals in the environment in which it is used.

Cement is placed behind the casing immediately above the injection zone to ensure that injected fluids do not migrate from the injection zone along the well bore into geologic strata other than the permitted injection zone. Only a few tens of feet of completely cemented interval are usually sufficient to prevent fluid movement. However, cementing operations may leave channels in the cement behind the casing where cement has bypassed drilling mud, where casing is not centered in the hole, or where cement is not bonded to the formation or casing. Also, corrosive injected fluids can affect cement integrity immediately above the injection zone. Because of these uncertainties, a significant factor of safety is needed. The Arkansas Oil and Gas Commission adopted a requirement in 1972 that the operator place a minimum of 250 feet of cement immediately above the injection zone. The State has found that this sufficiently prevents fluid movement from the injection zone. Therefore, § 147.204 incorporates this requirement.

Plugging and abandonment

Section 146.10(a) requires that all wells be plugged, upon abandonment, to prevent fluid movement into or between underground sources of drinking water. We are proposing in § 147.206(a) standards which EPA considers appropriate in Arkansas to accomplish this goal. The Regional Administrator may approve an alternative plugging method on a case-by-case basis (§ 147.206(a)(7)) if such an alternative method will provide the same degree of protection to USDWs. Following is a discussion of the plugging requirements being proposed, together with the rationale for selecting the approach. Two 100-foot cement plugs are required: one at the surface casing shoe and another immediately above the injection zone. The plug placed above the injection zone ensures that injected fluids are permanently confined to the injection zone. The plug at the surface casing shoe is needed to prevent fluid movement into or between USDWs. Historically, 100-foot cement plugs have been found to adequately protect USDWs by both the oil and gas industry. For wells which are cased and cemented from below the lowermost USDW to the surface, the Agency is proposing to require that the 100-foot cement plug be centered at the surface casing shoe.

If the well to be plugged is not cased and cemented consistent with § 147.204(b)(1)(i), a plug must extend from 50 feet below the lowest USDW to 50 feet above the surface casing shoe or where other casing is cemented to protect USDWs. Cement through this interval is necessary to ensure that fluid does not move into USDWs.

A 10-foot plug must be placed at the top of the surface casing to prevent surface contaminants from entering the abandoned well.

Where a cement plug is placed inside uncemented casing, the casing must be perforated, ripped, or otherwise opened to allow cement to be placed behind the casing. This is done to prevent fluid movement through the well bore around the plug.

Drilling mud must be left between plugs to stabilize the hole and prevent significant fluid movement along the well bore. Mud weight 9.5 pounds per gallon generally provides sufficient pressure to contain fluids in normally pressured aquifers.

The requirement that all plugs be tagged is included so EPA can be sure that plugs are properly placed. Many

times plugs may slide down hole during emplacement. Tagging locates the plug top and demonstrates that the plug is secure in the hole.

Mechanical Integrity Tests

Section 146.8 allows mechanical integrity tests other than those listed. The Agency is proposing to allow the use of radioactive tracer surveys and cement bond logs, pursuant to §147.206(b), to demonstrate mechanical integrity of Class II wells in Arkansas, because some of these wells are not amenable to pressure testing or annulus monitoring. The radioactive tracer survey has been proven to be useful for identifying where injected fluid is leaving the well. It can be used to locate leaks in casing, tubing, or packer and evaluate which geologic formation receives the injected fluid. If fluid is entering the permitted zone, the radioactive tracer survey can be used to determine whether fluids are confined to that zone or are migrating up hole behind the casing. The cement bond log can be used to evaluate the cement condition behind the casing. This log indicates areas where cement is absent or where channels exist. Any channels represent a potential route for fluid movement.

Construction Requirements for New Wells

EPA is proposing that all newly constructed Class II injection wells in Arkansas be equipped with tubing and packer (§ 147.205(c)). Historically, tubing and packer have proved effective in preventing corrosion of the well casing (which could allow contamination of a USDW). Such construction also facilitates mechanical integrity testing of the well, by allowing the tubing-casing annulus to be monitored. Furthermore, wells constructed with tubing and packer can be brought into compliance more easily and less expensively than many other constructions. EPA recognizes that requiring tubing and packer for existing injection wells may not be possible in all cases due to past well construction practices. Therefore, EPA does not propose to require tubing and packer for all existing wells.

Area of Review

EPA is proposing to limit the method of determining the area of review to the option listed in § 146.6(b), use of a fixed radius of ¼ mile. Currently, the State requires information on a considerably larger fixed radius, and therefore EPA does not believe the ¼ mile radius is burdensome.

Subpart F—California

Subpart F proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the California UIC program appropriate and amenable to the combination of historic practices and geology unique to California.

A Class II program administered by the California Division of Oil and Gas has already been approved. Therefore, EPA is not proposing a Class II program.

Exempted Aquifers

Upon the effective date of this program, facilities which are injecting into an underground source of drinking water cannot legally operate unless that aquifer or a portion is exempted. However, EPA is not aware of any injections into a USDW and, therefore, is not proposing to exempt any aquifers at this time. Owners or operators should determine whether their facilities are injecting into a USDW as defined in 40 CFR Part 146.3. Should an owner or operator find that he is injecting into a USDW, he may request an exemption consistent with criteria and procedures in 40 CFR Part 144.7 and 146.4.

Maximum Injection Pressure

For the State of California, the value of the fracture gradient to be used in the maximum injection pressure equation is proposed to be 0.60. EPA is proposing this value after reviewing published materials and consulting with the State of California Division of Oil and Gas, and the California State Water Resources Control Board. These investigations established that while fracture pressures may vary from one formation to the next and one depth to the next, the maximum pressure calculated using this gradient will provide adequate protection against formation fracturing and resulting migration of fluids into or between USDWs. EPA requests comments from the regulated community on the proposed value, as well as comments on the appropriatenes of a variable rate which recognizes the geologic differences between various regions of the State.

Subpart G—Colorado

Subpart G proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144 and 146. In addition, this subpart contains regulations that supplement the UIC regulations where disretion is allowed in order to make the Colorado UIC program appropriate and amenable to the combination of historic practices and geology unique to the State of Colorado.

Aquifer Exemption

EPA regulations allow the Administrator of EPA to exempt specific aquifers if the aquifer meets the criteria established in § 146.4.

EPA proposes to exempt those portions of aquifers into which listed Class II wells are injecting as discussed in § 147.302. A complete listing of the proposed aquifer exemptions and their location is available for review at the EPA Regional Office in Denver. The exemptions will apply to the injection formation only and well be applicable for a specific Class of well only. These limited portions of aquifers meet the criteria established in §146.4.

The aquifers associated with Class II wells cannot now and will not in the forseeable future serve as a source of drinking water because they are hydrocarbon producing. The portions of aquifers proposed for exemption do not serve as sources of drinking water.

Commentors should note that EPA is proposing to exempt that portion of the aquifer into which wells or projects are currently injecting. If well owners or operators wish to have EPA exempt additional portions of the aquifers that meet the exemption criteria, they should prepare a justification for such an exemption and submit it to EPA. Upon the effective date of this porgram such facilities cannot legally operate unless that aquifer or a portion is exempted.

Maximum Injection Pressure

EPA is proposing for all Federally implemented programs the use of a simple formula that will prescribe an injection pressure to be measured at the well head. The formula is discussed in detail in the introduction to the State-specific preambles. The 0.733 psi/ft fracture gradient proposed for Colorado was determined from the publications listed below. It should be noted that this pressure limitation applies to wells authorized under rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate §144.28(f)(3).

The chocie of 0.733 as an appropriate fracture gradient was developed after reviewing industry fracturing literature ("Stimulation Fluid Friction Pressure Handbook" by the Western Company of North America and "Fracturing Fluids: Engineering Data" by the Dowell Division of Dow Chemical, journal

articles including "Step-Rate Tests Determine Safe Injection Pressures in Floods" By Martin Felsethal, published October 28, 1974, in the "The Oil and Gas Journal", "Determining Fracture Pressure Gradients from Well Logs," by Anderson, Ingram and Zanier, November 1973, and "Interpretation of Fracturing Pressures" by Kenneth G. Nolte and Michael B. Smith, September 1981, published in the "Journal of Petroleum Technology.")

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §144.28(e) and §146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in §147.304(b) recongnize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in §146.22(c), (d), and (e) which made it possible to relieve operators of wells in existing fields from the requirements specified in §146.22(b), provided that the operator will not allow movement of fluids which could pose a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Colorado when a workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and § 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirments. If such a determination is made, he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone, as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of sufficient quantity and quality to accomplish these goals in the environment in which it is used.

In order to provide more specific requirements for casing and cementing of newly constructed or converted wells, a literature review was conducted to establish effective practices for casing and cementing. The literature included "Cementing" by Dwight K. Smith, Cementing Coordinator, Halliburton Services, Society of Petroleum Engineers of AIME, 1971; "Cementing Handbook Including Casing Handling Procedures" by George O. Suman, Jr. and Richard C. Ellis, World Oil, 1977; "Technical Position Paper #WM 8102", Uranium Recovery Licensing Branch, U.S. Nuclear Regulatory Commission, December 1981; "An Introduction to the Technology of Subsurface Wastewater Injection" EPA 600/2-77-240, December 1977; and "Injection Well Construction Practices and Technology," prepared by Geraghty and Miller Inc., Booze, Allen and Hamilton, Inc., October 1982.

Area of Review

EPA is proposing that the area of review be established at a fixed radius of one-quarter mile from the well head. The Theis equation and other formulas are not presented as alternatives.

Equations are valid only in those cases where a series of assumptions can be validated. It is the opinion of EPA that in the State of Colorado, where formations are frequently fractured, folded or othewise not continuous, the validation of the assumptions would present an unnecessary burden on the applicant and on EPA.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for Colorado. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to the approach used for Arkansas in § 147.204. A more detailed discussion of these requirements can be found in the preamble to the Arkansas program.

Subpart J—District of Columbia

Subpart DDD—American Samoa

Subpart EEE—Commonwealth of the Northern Mariana Islands

Subpart FFF—Trust Territory of the Pacific Islands

These jurisdictions have not submitted a UIC program for any class of wells in the State or Territory. Therefore, EPA must propose a program for all classes of wells. Because EPA is not aware of any existing Class I, II, III, or IV wells in these States or Territories, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action beyond the requirements of 40 CFR Parts 144 and 146 are proposed at this time. EPA has determined that the minimum program requirements set forth in 40 CFR Parts 124, 144, and 146 are appropriate for these jurisdictions and proposes to require all owners and operators to comply with these UIC regulations.

Applicants who seek a Federal UIC permit in these jurisdictions should be aware that these jurisdictions may prohibit construction and operation of injection wells. As provided in section 1423(c) of the SDWA, the Federal UIC program does not supersede any State or local prohibitions against underground injections.

Subpart N—Idaho

Subpart N proposes to require all owners or operators to comply with the UIC regulations at 40 CFR Parts 124, 144 and 146.

Because EPA is not aware of any existing Class I, II, III, or IV wells in Idaho, it is not proposing any further specific provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting or other regulatory action is proposed at this time.

All new Class I, II, and III wells in Idaho are required to apply for permits prior to initiation of construction.

The State of Idaho has submitted a complete application for primary enforcement responsibility over all classes of wells. If this program is approved, the Federally administered program will be rescinded.

Subpart P—Indiana

Subpart P proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144 and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Indiana UIC program appropriate and amenable to the combination of historic practices and geology unique to Indiana.

Exempted Aquifers

Upon the effective date of this program facilities which are injecting into an underground source or drinking water cannot legally operate unless that aquifer or a portion is exempted. However, EPA is not aware of any injections into a USDW and, therefore, is not proposing to exempt any aquifers at this time. Owners or operators should determine whether their facilities are injecting into a USDW, as defined in § 146.3. Should an owner or operator find that he is injecting into a USDW, he

may request an exemption consistent with criteria and procedures in 40 CFR 144.7 and § 146.4.

Maximum Injection Pressure

EPA is proposing, for all Federally implemented programs, the use of a simple formula that will enable injection pressures to be measured at the well head. The formula is discussed in detail in the Introduction to the State-specific section of the preamble.

The 0.8 psi/ft fracture gradient in the formula for Indiana was determined after reviewing Warner and Lehr (1977, EPA–600/277–240). This report suggests a value between 0.5 and 1.0 psi/ft of depth and suggest that regional experience be used as a criterion in establishing a limit.

Agency inquiry indicated that fracture gradients in Indiana range from 0.8 to 1.2 psi/ft. EPA is proposing a conservative fracture gradient of 0.8 psi/ft. Owners or operators may apply for and receive permission to operate at pressures greater than the pressure being proposed here for rule-authorized operators, by applying for a permit and demonstrating that the pressure described is consistent with requirements in 40 CFR part 146.

Cosing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in § 147.754(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of contruction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22(c), (d), and (e) which made it possible to relieve operators of wells in existing fields from the requirements specified in § 146.22(b) provided that the operation will not allow movement of fluids which could pose a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Indiana when workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to ensure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

The Agency is proposing the injection of salt water into a well must be done through tubing and packer. Experience in this Region has shown that salt water has the ability to corrode casings in a very short period of time, and the most effective way to protect casings from corrosion is to use tubing set on a packer. Use of tubing and packer will also give the operator and EPA the ability to monitor pressures in the tubing-casing annulus to detect any leaks. Owners or operators have one year from the effective date of this program to comply with this requirement. Since tubing and packer are already required by the States of Michigan, Illinois, and Ohio and the Agency believes they are generally used in Indiana, this requirement is not considered burdensome to well operators in Indiana.

Area of Review

The Agency is proposing to limit the options for establishing the Area of Review for Class II wells to a fixed radius as described in § 146.6(b). The Agency is proposing this approach due in part to the potentially large number of wells involved, and the considerable delay in program implementation caused by processing requests based on many formulae.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all Federally implemented programs and is seeking comment for such an approach from interested parties in the State of Indiana. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to the approach specified for Arkansas in § 147.204. A more complete discussion of these requirements can be found in the Arkansas preamble.

Subpart Q—Iowa

Subpart Q proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed, in order to make the Iowa UIC program appropriate and amenable to the combination of historic practices and geology unique to Iowa.

Because EPA is not aware of any existing Class I, II, III or IV wells in Iowa, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action is proposed at this time.

All new Class I, Class II and Class III wells in Iowa are required to apply for permits prior to initiation of construction. However, applicants who seek a Federal UIC permit in Iowa should be aware that the State prohibits the disposal of any pollutant other than heat into wells. As provided in § 1423(c) of the SDWA, the Federal UIC program does not supersede any State or local prohibitions against underground injection.

Subpart S—Kentucky

Subpart S proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations specific to Kentucky, where discretion is allowed, in order to make the Kentucky UIC program appropriate and amenable to the combination of historic practices and geology unique to the Commonwealth.

Aquifer Exemptions

Upon the effective date of this program, facilities which are injecting into an underground source of drinking water cannot legally operate unless that aquifer or portion, thereof, is exempted. However, EPA is not aware of any injections into a USDW and, therefore, is not proposing to exempt any aquifers at this time. Owners or operators should determine whether their facilities are injecting into a USDW as defined in § 146.3. Should an owner or operator find that he is injecting into a USDW, he may request an exemption consistent with criteria and procedures in CFR 146.4.

Maximum Injection Pressure

EPA is proposing for all Federally implemented programs, the use of a simple formula that will prescribe an injection pressure to be measured at the wellhead. The formula is discussed in detail in the introduction to the State-specific preambles. The 0.733 psi/ft

fracture gradient proposed for Kentucky was determined from Warner and Lehr (1977, EPA-600-2-77-240, page 117) which proposed a range of values from 0.5 to 1.0 psi per of depth.

The Agency is proposing a fracture gradient falling in the middle of this range because it is seeking a value that adequately protects USDWs but is not overly restrictive. Comment on the appropriateness of this limit for owners or operators of wells authorized by rule is solicited and will be considered in final rulemaking.

It should be noted that this pressure limitation applies to wells authorized under rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operation will not violate § 144.28(f)(3).

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in § 147.904(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of Part 146, the Agency outlined requirements in § 146.22 (c), (d), and (e) which were intended to relieve operators of wells in existing fields from the requirements specified in § 146.22(b) provided, that the operation will not allow movement of fluids which could pose a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Kentucky when a workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(a) and § 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to ensure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

Area of Review

The Agency is proposing to limit the options for establishing the Area of Review for Class II wells to fixed radius as described in § 146.6(b). The Agency is proposing this approach due in part to the potentially large number of wells involved, and the considerable delay in program implementation caused by processing requests based on many formulae.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-Administered programs and is soliciting comments on such an approach for Kentucky. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to the approach specified for Arkansas in § 147.204. A more detailed discussion of these requirements can be found in the preamble for the Arkansas program.

Subpart X—Michigan

Subpart X proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Michigan UIC program appropriate and amenable to the combination of historic practices and geology unique to Michigan.

Aquifer Exemptions

Upon the effective date of this program, facilities which are injecting into an underground source of drinking water cannot legally operate unless that aquifer portion is exempted. However, EPA is not aware of any such facilities and, therefore, is not proposing to exempt any aquifer at this time, as this is the most environmentally protective course to take. Owners or operators should determine whether their facilities are injecting into a USDW as defined in § 146.3. Should an owner or operator find that he is injecting into a USDW, he may request an exemption consistent with criteria and procedures in 40 CFR 144.7 and § 146.4.

Maximum Injection Pressure

EPA is proposing for all federally implemented programs, the use of a simple formula that will enable injection pressures to be measured at the wellhead. The formula is discussed in detail in the introduction to the State-specific section of the preamble.

An appropriate fracture gradient for Michigan is 0.8 psi/ft according to the Michigan Department of Natural Resources. This number is also in accordance with the range suggested by Warner and Lehr, and is therefore, being proposed for use in Michigan. EPA recognizes that this may be a conservative figure for some areas, but since operators may receive permission to operate at pressures greater than the pressure being proposed here by applying for a permit, the Agency believes the figure is consistent with the Safe Drinking Water Act, without being unduly restrictive to operators.

Casing and Cementing

The agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28 (e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in §147.1154(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980 promulgation of Part 146, the Agency outlined requirements in § 146.22 (c), (d), and (e) which were intended to relieve operators of wells in existing fields from the requirements specified in §146.22(b) provided that the operation will not allow movement of fluids which could cause a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Michigan when a workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and §146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements indentify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to ensure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement

used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

The Agency is proposing that injection of salt water in a well be done through tubing and packer. Experience within the region has shown that salt water has the ability to corrode most casings in a very short period of time and the most effective way to protect casings from corrosion is to use tubing set on a packer. Use of tubing and packer will also give the operator and EPA the ability to monitor pressures in the tubing-casing annulus to detect any leaks. Owners or operators have one year from the effective date of this program to comply with this requirement. Since tubing and packer are already required by Michigan, as well as Ohio and Illinois, the proposed requirement is not considered burdensome to the regulated community in Michigan.

Area or Review

The Agency is proposing to limit the options for establishing the Area of Review for Class II wells to a fixed radius as described in §146.6 (b). The Agency is proposing this approach due in part to the potentially large number of wells involved, and the considerable delay in program implementation caused my processing requests based on many formulae.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in §147.206 for all EPA-administered programs and is soliciting comment for such an approach for the State of Michigan. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to the approach specified in Arkansas in 40 CFR 147.204. A more detailed discussion of these requirements can be found in the preamble to the Arkansas program.

Subpart Y—Minnesota

Subpart Y proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed, in order to make the Minnesota UIC program appropriate and amenable to the combination of historic practices and geology unique to Minnesota.

Because EPA is not aware of any existing Class I, II, III or IV wells in Minnesota, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action is proposed at this time.

All new Class I, Class II, and Class III wells in Minnesota are required to apply for permits prior to initiation of construction.

Subpart AA—Missouri

Subpart AA proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed, in order to make the Missouri UIC program appropriate and amenable to the combination of historic practices and geology unique to Missouri.

These rules apply to Classes I, III IV, and V wells in Missouri. Missouri has submitted a program for Class II wells which is currently under review. Therefore, the Agency is not proposing a Class II program at this time. Because EPA is not aware of any existing Class I, III, or IV wells in Missouri, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried, but no permitting or other regulatory action is proposed at this time.

Subpart BB—Montana

Subpart BB proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed, in order to make the Montana UIC program appropriate and amenable to the combination of historic practices and geology unique to Montana.

Exempted Aquifers

EPA regulations allow the Administrator of EPA to exempt specific aquifers if the aquifer meets the criteria established in § 146.4.

The Montana Board of Oil and Gas Conservation requires that all salt water disposal wells inject either back into the producing formation or into some other salt water bearing strata.

From aquifer maps and well appropriation inventories provided by the Montana Bureau of Mines and Geology, EPA has found that many of the strata contain water with a total dissolved solids content between 4,000 and 7,000 mg/1 TDS. None has been found to be less than 3,000 mg/1 and none is currently being used as a source of drinking water.

EPA is proposing to exempt those portions of aquifers (within one-quarter mile of the well) into which all existing Class II wells are injecting. Commentors should note that EPA is proposing to exempt that portion of the aquifer into which wells are currently injecting. If a well owner wishes to exempt an entire field, he or she should submit a justification for such an exemption and submit the information to EPA within 45 days of publication of this proposal.

A complete listing of the proposed aquifer exemptions and their location is available for review at the EPA Regional Office in Denver as well as in the EPA office in Helena, Montana. The exemptions will apply to the injection formation only and will be applicable for Class II purposes only (all known wells are Class II wells). These limited portions of aquifers meet the criteria established in § 146.4. The vast majority of the aquifers in Montana are at a great depth (average depth of approximately 5,000 feet) and are not used now, and are not expected to be used in the future or are in a location which would economically or technologically preclude their use as a source of drinking water.

Maximum Injection Pressure

EPA is proposing for all Federally implemented programs, the use of a simple formula that will prescribe an injection pressure to be measured at the wellhead. The formula is discussed in detail in the introduction to the State-specific preambles. The 0.733 psi/ft fracture gradient proposed for Montana was from the publications listed below.

EPA is proposing this standard after reviewing industry fracturing literature ("Stimulation Fluid Friction Pressure Handbook" by the Western Company of North America, and "Fracturing Fluids: Engineering Data" by the Dowell Division of Dow Chemical), journal articles including "Step-Rate Tests Determine Safe Injection Pressures in Floods" by Martin Falsenthal, published October 28, 1974, in "The Oil and Gas Journal", "Determining Fracture Pressure Gradients from Well Logs," November 1973 by Anderson, Ingram and Zanier, and "Interpretation of Fracturing Pressures" by Kenneth G. Nolte and Michael B. Smith, September 1981, published in the "Journal of Petroleum Technology.")

It should be noted that this pressure limitation applies to wells authorized by rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate § 144.28(f)(3).

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in § 147.1354(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22(d), (c), and (e) which were intended to relieve operators of wells in existing fields from the requirements specified in § 146.22(b), provided that the operator will not allow movement of fluids which could cause a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Montana when a workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and § 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone, as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of sufficient quantity and quality to accomplish these goals in the environment in which it is used.

The rules recognize the geologic differences between the eastern and western regions of the State. The eastern region is generally uniform geologically. The proposed regulations would require an operator to run surface casing to the nearest major shale formation and circulate cement to the surface of seal off the overlying USDWs. If the surface casing failed to reach the underlying major shale formation, the owner or operator would be required to cement the long string of casing from the surface to the major shale formation. For instance, in the Miles City area, the geologic sections listed in order of increasing depth are as follows:

(a) Ft. Union Formation—interbedded clays, sandstones, coals (a major USDW with TDS ranges from 500 to 5,000 mg/liter).

(b) Hell Creek Formation—sandstones, shaley mudstones, coal (a USDW with TDS ranges from 500 to 1,100 mg/l).

(c) Fox Hills Sandstone—shaley sandstone (a major USDW considered as part of the Hell Creek).

(d) Bearpaw Shale—thick shale and bentonite beds; does not contain significant amounts of water.

(e) Judith River Formation—interbedded sandstones, siltstones and sandy shales with some lignite—a USDW near recharge areas but TDS can range up to 27,000 mg/l.

(f) Claggett Formation—thick shale with localized sandstone lenses and thick bentonite at the base.

(g) Eagle Sandstone—sandstones and shaley sandstones with some lignite (a USDW with TDS generally less than 1,500 mg/l).

(h) Other underlying formations.

Wells located in the Miles City area shall be cased and cemented from the surface at least 50 feet into the Bearpaw Shale, which is a thick section of clay and shale underlying several major underground sources of drinking water.

For a well located in the Glasgow area, north of Miles City, the owner or operator would be required to case and/or cement from the surface at least 50 feet into the Claggett formation, which is the first major shale formation below the Judith River formation which is the uppermost USDW in that area.

The western portion of the State is extremely complex geologically. The western portion has some intense faulting and overthrusting as well as some major folds. In addition, there are several intermountain basins, which are structures produced by faulting which have been filled in with unconsolidated and semi-consolidated material which are apparently saturated.

For the western portion of the State, EPA is proposing that cement be set from the surface through the lowermost USDW used for drinking water, or to a depth of 1,000 feet, whichever is greater. The Regional Administrator may authorize an owner or operator to cement to a point other than the lowermost USDW in use, if an owner or operator can demonstrate that the use of such construction will not adversely allow the injection activities to affect the USDW.

Area of Review

EPA is proposing to limit the method of determining the area of review to the option listed in subsection § 146.6(b), use of a fixed radius of ¼ mile. The Theis equation and other formulas are not presented as alternatives.

Equations are valid only in those cases where a series of assumptions can be validated. It is the opinion of EPA that in a State such as Montana, where formations are frequently fractured, folded or otherwise not continuous the validation of such assumptions would present an enormous burden on the applicant and EPA.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in 147.206 for all EPA-administered programs and is soliciting comment on such an approach for the State of Montana. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to those specified for Arkansas in § 147.04. A more detailed discussion of these requirements can be found in the preamble to the Arkansas program.

Subpart CC—Nebraska

Subpart CC proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed, in order to make the Nebraska UIC program appropriate and amenable to the combination of historic practices and geology unique to Nebraska.

A Class II program administered by the Nebraska Oil and Gas Commission has already been approved. Therefore, EPA is not proposing a Class II program.

Because EPA is not aware of any existing Class I, III, or IV wells in Nebraska, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried withing one year of promulgation of the program, but no permitting or other regulatory action beyond those in 40 CFR Parts 124, 144, and 146 is proposed at this time.

Subpart DD—Nevada

Subpart DD proposes to reguire all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Nevada UIC program appropriate and amenable to the combination of historic practices and geology unique to Nevada.

Exempted Aquifers

EPA is proposing to exempt portions of the Railroad Valley aquifer. Exemption is proposed under 40 CFR 146.4 because: (1) The aquifer does not currently serve as a source of drinking water; and (2) it cannot now and will not in the future serve as a source of drinking water because it is hydrocarbon energy producing. The program description, available from EPA Region IX in San Francisco, contains a more complete delineation of the proposed exemptions.

Maximum Injection Pressure

The maximum allowable operating pressure for any injection well in Nevada is determined by a formula common to all of the EPA-administered programs. The formula is discussed in the introduction to the State-specific preambles. The 0.733 psi/foot fracture pressure gradient proposed for Nevada was determined from Warner and Lehr (1977, EPA–600/2–77–240, page 117), which proposed a range of values from 0.5 to 1.0 psi/foot of depth.

The Agency is proposing a fracture gradient falling in the middle of this range, because it is seeking a value that adequately protects USDWs but is not overly restrictive. Comment on the appropriateness of this limit for owners or operators of wells authorized by rule is solicited and will be considered in final rulemaking.

It should be noted that this pressure limitation applies to wells authorized under rule. Operators my request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate § 144.28(f)(3).

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for the State of Nevada. In addition, the Agency is considering promulgating requirements for maximum operating pressures that are similar to those specified for Arkansas in 40 CFR 147. 204. A more detailed discussion of these requirements can be found in the preamble to the Arkansas program.

Subpart HH—New York

Suppart HH proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations, where discretion is allowed, in order to make the New York UIC program appropriate and amenable to the combination of historic practices and geology unique to New York.

Aquifer Exemptions

Section 147.1652 provides a listing of aquifers with total dissolved solids (TDS) levels of less than 10,000 mg/l that EPA proposes to exempt in accordance with §146.4. These aquifers do not serve as sources of drinking water, according to current EPA records. They cannot now and will not in the future serve as drinking water sources because they are hydrocarbon producing. At this time the list of exempted aquifers consists of those oil-bearing formations which, due to many years of Class II enhanced recovery water flooding with fresh water, have experienced TDS content reductions from in excess of 10,000 mg/l to less than 10,000 mg/l, thereby qualifying them as USDWs. This proposed exemption will apply only to Class II enhanced recovery wells because EPA does not want to compromise the hydrocarbon producibility or these oil-bearing aquifers by making this exemption applicable to all classes of wells. EPA is currently conducting a detailed analysis of New York's oil bearing aquifers. Detailed documentations of TDS levels, commercial producibility and locations, in support of these exemptions are available for inspection in the UIC program docket, maintained at EPA Region II offices in New York City, New York.

Maximum Injection Pressure

The maximum allowable operating pressure for any injection well in New York is determined by a formula common to all of the EPA-administered programs. This formula, which is discussed in more detail in the introduction to the State-specific preambles, applies a common approach, but still allows fracture gradients unique to particular States to be considered. The 0.733 psi/foot fracture pressure gradient proposed for New York was determined from Warner and Lehr (1977, EPA–600/2–77–240, page 117) which proposed a range of values from 0.5 to 1.0 psi/foot of depth. Reported values of a limited sampling of wells in New York varied between 0.56 and 1.2 psi/foot, thus approximately confirming the Warner and Lehr range of values. In the absence of more comprehensive field data, the value of 0.733 is being proposed. EPA solicits comments on the applicability of this fracture gradient for New York.

It should be noted that this pressure limitation applies to wells authorized under rule. Operators may request permission to inject at higher pressures by applying for a permit and demonstrating in the application that such operations will not violate § 144.28(f)(3).

Casing and Cementing

For any type of Class I well, the requirements in § 147.1655(a) reflect criteria designed to give the fullest level of protection to USDWs. An effective way to protect USDWs is to provide cemented surface casing from the surface to a point at least 50 feet below the base of the lowest USDW. The Agency is proposing that Class I wells have long string casing over the total depth of the wall, because the generally toxic nature of the wastes and their caustic characteristics warrant such requirements.

Long string casing is required to be cemented from the injection zone back at least 50 feet above the base of the surface casing or any intermediate strings of casing, where used. Any such intermediate strings of casing must be similarly cemented back 50 feet into the next largest casing. These provisions constitute a most important protective measure in that such arrangements provide a continuous cement barrier which will protect the casing from external corrosion and will prevent fluid movement outside the casing. These requirements also represent a more cost-effective approach than cementing all of the annular space back to the surface, while maintaining the appropriate environmental safeguards.

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in § 147.1654(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22(c), (d), and (e) which were intended to relieve operators of wells in existing fields from the requirements specified in § 146.22(b), provided that the operation will not allow movement of fluids which could pose a significant threat to the health of persons.

The Agency believes that the roposed requirements are appropriate for wells

in New York when workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and 146.22. The requirements proposed here dictate that the Regional administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requiements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

For new Class II wells authorized by permit, the requirements in § 147.1655(b)(4) reflect a level of design necessary to provide sufficient protection to USDWs is to provide surface casing all the way from the surface to a point well below the base of the lowest USDW. The option of placing cement equal to a minimum of 120% of the calculated annualar volume in lieu of recirculation to the surface, (as required for Class I wells) is allowed due to the nature of the injected fluid and is considered adequate to protect USDWs.

For enhanced recovery wells a choice of tubing or long string casing is provided. Long string casing is preferable and is consistent with existing industry practices over much of the rest of the country. The option of injection tubing without long string casing is provided because of the highly competent nature of the rock which compromises the confining strata in the oil and gas producing areas of the State.

The Agency is also proposing casing requirements for newly constructed Class II disposal wells which the Agency believes necessary and appropriate to protect USDWs. This more stringent requirement is long string casing and tubing is appropriate due to the nature of the injected fluid.

For all of the aforementioned well types, EPA has prescribed a basic level of protection for USDWs by setting the casing and cementing requirements specified above. Section 147.1655(c) does, however, provide relief for any owner or operator who cannot comply with the prescribed cementing and casing requirements for a particular well type. In such instances, the Regional Administrator may approve alternative casing and cementing provisions on a case-by-case basis in a permit, providing that similar levels of protection are afforded to the USDW.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for New York. A more detailed discussion of these plugging and abandonment requirements can be found in the preamble to the Arkansas program.

Mechanical Integrity Testing

EPA is considering several alternate tests for possible approval under §146.8(d) for Class II wells only. The Agency is considering alternatives for the following reasons.

(1) The historic and on-going industry-wide use of two inch injection tubing has severely limited the availability of cost-effective down-hole instruments for either the emplacement of temporary plugs for pressure testing or well logging.

(2) The historic and on-going industry-wide technique of completing wells without long string casting due to the competent nature of the rock into which these wells are completed has precluded the use of annulus pressure monitoring since there is no cased annulus.

(3) Monitoring records which would establish a historical baseline of the pressure-flow rate relationship are rarely existent.

(4) Cementing records are generally uanavailable.

On February 3, 1983, EPA promulgated amendments to § 146.8 at § 146.8(b)(3), to allow an alternate demonstration to the mechanical integrity tests specified in § 146.8. This alternative demonstration was developed, in part, in response to assertions from industry that the existing tests were inappropriate for wells constructed with two inch tubing as described above. The alternative required that the owner or operator provide records of monitoring showing the absence of significant changes in the relationship between pressure and flow rates, inspect the annulus, and conduct ground water monitoring to confirm the absence of significant fluid movement into a USDW. EPA believes this alternative to be appropriate. However, it has come to the attention of the Agency that, for many operators in New York, establishing ground water monitoring systems adequate to confirm the absence of fluid movement may be costly. Moreover, industry contends that there are alternatives which would be as environmentally protective, but which would impose less burden on owners or operators. EPA is currently examining these alternatives, as well as others, for wells constructed as described in § 146.8(b)(3)(ii). Public comment is requested on the applicability of existing and any alternative tests for such wells.

Subpart NN—Pennsylvania

Subpart NN proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Pennsylvania UIC program appropriate and amenable to the combination of historic practices and geology unique to Pennsylvania.

Aquifer Exemptions

Section 147.1952 provides a listing of aquifers with total dissolved solids (TDS) levels of less than 10,000 mg/l that EPA proposes to exempt in accordance with § 146.4. These aquifers do not serve as sources of drinking water according to current EPA records. They cannot now and will not in the future serve as drinking water sources because they are hydrocarbon producing. At this time the list of exempted aquifers consists of those oil-bearing formations which, due to many years of Class II enhanced recovery water flooding with fresh water, have experienced TDS content reductions from in excess of 10,000 mg/l to less than 10,000 mg/l thereby qualifying them as USDWs. This proposed exemption will apply only to Class II enhanced recovery wells because EPA does not want to compromise the hydrocarbon producibility of these oil-bearing aquifers by making this exemption applicable to all classes of wells. EPA is currently conducting a detailed analysis of Pennsylvania's oil-bearing aquifers. Detailed documentation of TDS levels, commercial producibility and maps in support of these exemptions are available for inspection in the UIC program docket for Pennsylvania, maintained at EPA's Region III office in Philadelphia. Any owner or operator who believes that he is injecting into a USDW should determine whether the injection formation is being exempted, and if not, request an exemption if the portion of the aquifer meets the exemption criteria, before the effective date of this program.

Maximum Injection Pressure

The maximum allowable operating pressure for any injection well in Pennsylvania is determined by a formula common to all of the EPA-administered programs. This formula, which is discussed in more detail in the introduction to the State-specific preambles, applies a common approach but still allows fracture gradients unique to particular States to be considered. The 0.733 psi/foot fracture pressure gradient proposed for Pennsylvania was determined from Warner and Lehr (1977, EPA–600/2–77–240, page 117) which proposed a similarly cemented back 50 feet into the next largest casing. These provisions constitute a most important protective measure in that such arrangements provide a continuous cement barrier and will protect the casing from external corrosion because of the presence of cement. These requirements also represent a more cost-effective approach than cementing all of the annular space back to the surface, while maintaining the appropriate environmental safeguards.

The Agency is also proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells authorized by rule which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water. The requirements proposed today in § 147.1954(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22 (c), (d), and (e), which were intended to relieve operators of Class II wells in existing fields from the requirements specified in § 146.22(b) provided that the operation will not allow movement of fluids which could pose a significant risk to the health of persons.

The Agency believes that these proposed requirements are appropriate for wells in Pennsylvania, when workover is necessary to bring an existing well into compliance with the requirements of 40 CFR Parts 144.28(e) and 146.22. The requirements proposed here require that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made, he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to ensure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

For new Class II wells authorized by permit, the requirements in § 147.1955(b) reflect a level of design necessary to provide sufficient protection to USDWs from injected fluids. An effective way to protect USDWs is to provide cemented surface casing all the way from the surface to a point well below the base of the lowest USDW. The option of placing cement equal to a minimum of 120% of the calculated annular volume in lieu of recirculation to the surface, (as required for Class I wells) is allowed due to the nature of the injected fluid and is considered adequate to protect USDWs.

For enhanced recovery wells a choice of tubing or long string casing is provided. Long string casing is preferable and is consistent with existing industry practice over much of the rest of the country. The option of injection tubing without longstring casing is provided because of the highly competent nature of the rock which compromises the confining strata in the oil and gas producing areas of the State.

The Agency is also proposing casing requirements for newly constructed Class II wells which are necessary and appropriate to protect USDWs. The newly proposed requirements are consistent with existing industry practice over much of the rest of the country.

For all the aforementioned well types, EPA has prescribed a basic level of protection for USDWs by setting the casing and cementing requirements specified above. Section 147.1955(c) does, however, provide relief for any owner or operator who cannot comply with the prescribed casing and cementing requirements for a particular well type. In such instances, the Regional Administrator may approve alternate casing and cementing provisions on a case-by-case basis in a permit, provided that similar levels of protection are afforded the USDW.

Other Alternatives Being Considered

In addition, the Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for Pennsylvania. A more detailed discussion of these plugging and abandonment requirements can be found in the introduction to the preamble to the Arkansas program.

Mechanical Integrity Testing

EPA is considering several alternate tests for possible approval under § 146.8(d) for Class II wells only. The Agency is considering alternatives for the following reasons.

(1) The historic and on-going industry-wide use of two-inch injection tubing has severely limited the availability of cost-effective down-hole instruments for either the emplacement of temporary plugs for pressure testing or well logging.

(2) The historic and on-going industry-wide technique of completing wells without long string casting due to the competent nature of the rock into which these wells are completed has precluded the use of annulus pressure monitoring since there is no cased annulus.

(3) Monitoring records, which would establish a historic baseline of the pressure-flow rate relationship, are rarely existent.

(4) Cementing records are generally unavailable.

On February 3, 1983, EPA promulgated amendments to §146.8 at §146.8 (b)(3) to allow an alternate demonstration to the mechanical integrity tests specified in §146.8 This alternative demonstration was developed, in part, in response to assertions from industry that the existing tests were inappropritae for wells constructed with two-inch tubing as described above. The alternative required that the owner or operator provide records of monitoring showing the absence of significant changes in the relationship between pressure and flow rates, inspect the annulus, and conduct ground water monitoring to confirm the absence of significant fluid movement into a USDW. EPA believes this alternative to be appropriate. However, it has come to the attention of the agency that for many operators in Pennsylvania, establishing ground water monitoring systems adequate to confirm the absence of fluid movement may be costly. Moreover, industry contends that there are alternatives which would be as environmentally protective, but which would impose less burden on owners or operators. EPA is currently examining these alternatives, as well as others, for wells constructed as described in §146.8 (b) (3) (ii). Public comment is requested on the applicability of existing and alternative tests for such wells.

Subpart RR—State of Tennessee

Subpart RR proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations specific to Tennessee where discretion is allowed, in order to make the Tennessee UIC program appropriate and amenable to the combination of historic practices and geology unique to Tennessee.

Aquifer Exemptions

Upon the effective date of this program, facilities which are injecting into an underground source of drinking water cannot legally operate unless that aquifer or portion, thereof, is exempted. However, EPA is not aware of any injections into a USDW and, therefore, is not proposing to exempt any aquifers at this time. Owners or operators should determine whether their facilities are injecting into a USDW as defined in §146.3. Should an owner or operator find that he is injecting into a USDW, he may request an exemption consistent with criteria and procedures in 40 CFR 146.4.

Maximum Injection Pressure

For the State of Tennessee, the value of the fracture gradient to be used in the maximum injection pressure equation is proposed to be 0.60. EPA is proposing this value after reviewing articles, published EPA manuals and consultation with the State of Tennessee Departmentof Public Health.These investigations established that while fracture pressures may vary from one formation to the next and one depth to the next, the maximum pressure calculated using this gradient will provide adequate protection against formation fracturing and resulting migration of fluids into or between USDWs. EPA requests comments from the regulated community on the proposed value, as well as comments on the apropriateness of a variable rate which recognizes the geologic differences between various regions of the State and individual fields.

Casing and Cementing

The Agency is proposing cementing requirements for existing enhanced recovery and hydrocarbon storage wells which may not be in compliance with §§ 144.28(e) and 146.22. These sections require existing wells to be cased and cemented to prevent the movement of fluids into or between underground sources of drinking water.

The requirements proposed today in § 147.2154(b) recognize that it is at best difficult to bring existing wells into compliance with a new set of construction requirements. In the June 24, 1980, promulgation of 40 CFR Part 146, the Agency outlined requirements in § 146.22 (c), (d) and (e) which made it possible to relieve operators of wells in existing fields from the requirements specified in § 146.22(b) provided that the operation will not allow movement of fluids which could pose a significant risk to the health of persons.

The Agency believes that the proposed requirements are appropriate for wells in Tennessee when workover is necessary to bring an existing well into compliance with the requirements of 40 CFR 144.28(e) and 146.22. The requirements proposed here dictate that the Regional Administrator make a determination that the wells may not be in compliance with the above requirements. If such a determination is made he may impose requirements consistent with those proposed here, or he may require the owner or operator to apply for a permit. In general, these requirements identify the placement of cement relative to the USDWs and the injection zone as well as the quantity and quality of cement to be used. The purpose of the requirements is to insure that USDWs are effectively cemented off, that injection fluids are isolated in the injection zone, and that the cement used in these activities is of a sufficient quantity and quality to accomplish these goals in the environment in which it is used.

Other Alternatives Being Considered

The Agency is considering applying plugging and abandonment requirements similar to those being proposed for Arkansas in § 147.206 for all EPA-administered programs and is soliciting comment on such an approach for the State of Tennessee. A more detailed discussion of these plugging and abandonment requirements can be found in the preamble to the Arkansas program.

Subpart VV—Virginia

Subpart VV proposes to require all owners and operators to comply with the UIC regulations at 40 CFR Parts 124, 144, and 146. In addition, this subpart contains regulations that supplement the UIC regulations where discretion is allowed in order to make the Virginia UIC program appropriate and amenable to the combination of historic practices and geology unique to Virginia.

Because EPA is not aware of any existing Class I, II, III, or IV wells in Virginia, it is not proposing any specific provisions for existing wells authorized by rule. Class V wells will be inventoried but no permitting or other regulatory action is proposed at this time.

All new Classes I, II, and III wells in Virginia are required to apply for permits prior to initiation of construction. However, applicants who seek a Federal UIC permit in Virginia should be aware that the State has a prohibition against underground injection and that section 1423(c) of the Safe Drinking Water Act provides that "nothing in this title shall diminish any authority of a State or political subdivision to adopt or enforce any law or regulation respecting underground injection."

VI. Executive Order 12291

Under Executive Order 12291, EPA must judge whether the Amendments to the regulations are major and therefore subject to the requirement of a regulatory impact analysis. A separate study of costs and burden associated with these regulations has been carried out by the Agency. The conclusion is that this regulation is not major, since it will not result in an annual effect on the economy or increase in costs or prices to industry of $100 million or more. There will be no adverse impact on the ability of the U.S. based enterprises to compete with foreign-based enterprises in domestic or export markets. The major effect of these regulations will simply make effective in particular States the UIC regulations promulgated as 40 CFR 122, 123, and 146.

VII. Paperwork Burden

The proposed regulations will result in additional paperwork burden on owners and operators by increasing the inventory and information requirements. Althought the amout of time needed to prepare and submit the information is uncertain, previous economic studies provide some data on the amount of time needed to prepare similar types of reports. Based on these studies, EPA used a unit time factor of 0.25 burden hours per injection well to prepare and submit this information. Since 13,200 injection wells will be affected in direct implementation States, owners and operators may have an additional 3,300 hours of paperwork burden. The reporting or information provisions in this proposed rule were submitted for approval to the Office of Management and Budget (OMB) under Section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Comments should be sent to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for EPA. Any final rule will explain how its reporting or information collection

provisions respond to any OMB or public comments.

VIII. Regulatory Flexibility Act

Today's proposal included some amendments to previous regulations. However, the Agency's analysis indicates that they will not have a significant economic impact on a substantial number of small entities. All of the programs proposed today were contemplated in the original economic analysis of the UIC program, and there has been no major change in the estimates of the burden of the program.

List of Subjects

40 CFR Part 124

Administrative practice and procedure, Air pollution control, Hazardous materials, Waste treatment and disposal, Water pollution control, Water supply, Indians—lands.

40 CFR Part 144

Administrative practice and procedure, Reporting and recordkeeping requirements, Confidential business information, Water supply.

40 CFR Part 146

Hazardous materials, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply.

40 CFR Part 147

Admininistrative practice and procedure, Reporting and recordkeeping requirements, Intergovernmental relations, Penalties, Confidential business information, Water supply.

Authority: Safe Drinking Water Act, 42 U.S.C. 300h.

Dated: Aug 23, 1983.

William D. Ruckelshaus,

Administrator.

It is proposed to amend 40 CFR as follows:

1. 40 CFR is amended by adding a new Part 147 to read as follows:

PART 147—APPROVAL AND PROMULGATION OF UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—General Provisions

Sec.
147.1 Purpose and scope.
147.2 Severability of provisions.

Subpart B—Alabama

147.50 State administered program.

Subpart C—Alaska

147.100 State administered programs [Reserved]
147.101 General requirements.
147.102 Aquifer exemptions.
Sec.
147.103 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.
147.104 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

Subpart D—Arizona

147.150 State administered programs [Reserved]
147.151 General Requirements.
147.152 Aquifer exemptions [Reserved]

Subpart E—Arkansas

147.200 State administered program.
147.201 General requirements.
147.202 Aquifer exemptions.
147.203 Existing Class II (except enhanced recovery and hydrocarbon storage) and wells authorized by rule.
147.204 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.
147.205 Requirements for class II wells authorized by permit.

Subpart F—California

147.250 State administered program.
147.251 General Requirements.
147.252 Aquifer exemptions [Reserved]
147.253 Requirements for wells authorized by rule.

Subpart G—Colorado

147.300 State administered program [Reserved]
147.301 General requirements.
147.302 Aquifer exemptions.
147.303 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.
147.304 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.
147.305 Requirements for wells authorized by permit.
147.306 Requirements for all wells.

Subpart H—Connecticut

147.350–147.359 [Reserved]

Subpart I—Delaware

147.400–147.449 [Reserved]

Subpart J—District of Columbia

147.450 State administered program [Reserved]
147.451 General requirements.
147.452 Aquifer exemptions [Reserved]

Subpart K—Florida

147.500 State administered program.

Subpart L—Georgia

147.550–147.559 [Reserved]

Subpart M—Hawaii

147.600–147.649 [Reserved]

Subpart N—Idaho

147.650 State administered program [Reserved]
147.651 General requirements.
147.652 Aquifer exemptions [Reserved]

Subpart O—Illinois

147.700–147.749 [Reserved]

Subpart P—Indiana

Sec.
147.750 State administered programs [Reserved]
147.751 General requirements.
147.752 Aquifer exemptions [Reserved]
147.753 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.
147.754 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.
147.755 Requirements for all wells.

Subpart Q—Iowa

147.800 State administered program [Reserved]
147.801 General Requirements.
147.802 Aquifer exemptions [Reserved]

Subpart R—Kansas

147.850–147.859 [Reserved]

Subpart S—Kentucky

147.900 State administered program [Reserved]
147.901 General Requirements.
147.902 Aquifer exemptions [Reserved]
147.903 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.
147.904 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.
147.905 Requirements for all wells.

Subpart T—Louisiana

147.950 State administered program.

Subpart U—Maine

147.1000–147.1049 [Reserved]

Subpart V—Maryland

147.1050–147.1099 [Reserved]

Subpart W—Massachusetts

147.1100 State administered program.

Subpart X—Michigan

147.1150 State administered program [Reserved]
147.1151 General Requirements.
147.1152 Aquifer exemptions [Reserved]
147.1153 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.
147.1154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.
147.1155 Requirements for all wells.

Subpart Y—Minnesota

147.1200 State administered program [Reserved]
147.1201 General Requirements.
147.1202 Aquifer exemption [Reserved]

Subpart Z—Mississippi

147.1250–147.1259 [Reserved]

Subpart AA—Missouri

147.1300 State administered program [Reserved]
147.1301 General Requirements.
147.1302 Aquifer exemption [Reserved]

Authority: Safe Drinking Act, 42 USC 300h.

Subpart A—General Provisions

§ 147.1 Purpose and scope.

(a) This part sets forth the Administrator's approval of State underground injection control programs and the Administrator's promulgation of such programs where the State has made no submissions or the program submitted by the State has not been approved. Approval of a State program is based upon a determination by the Administrator that the program meets the requirements of section 1422 or section 1425 of the Safe Drinking Water Act and the applicable provisions of Parts 124, 144 and 146 of this chapter.

(b) The approved State program or the promulgated program constitutes the applicable program for purposes of the SDWA.

(c) All approved regulatory provisions of each program are incorporated in this part. Regulatory provisions of a program approved or promulgated by the Administrator, and all permit conditions or permit denials issued pursuant to approved or promulgated regulations are enforceable by the administrator pursuant to Section 1423 of the SDWA.

(d) Each State program is covered in a separate subpart. Where a State program has been approved, it is identified by reference to State statutes, regulations, Memorandum of Agreement and Program Description. Where the State program has been promulgated by EPA, the provisions of Parts 124, 144 and 146 are incorporated in each State program and additional requirements pertinent to the State are provided.

(e) Substantial revisions to State programs will be included in this part when approved or promulgated by the Administrator.

§ 147.2 Severability of provisions.

The provisions in this part and the various applications thereof are distinct and severable. If any provision of this part or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

Subpart B—Alabama

§ 147.50 State administered program.

The UIC program for Class II wells in the State of Alabama is the State administered program approved by EPA, pursuant to SDWA Section 1425, on August 2, 1982 (47 FR 33268). This program consists of the following

elements, as submitted to EPA in the State's program application:

(a) Code of Alabama 1975, § 9–17–1 *et seq.*, as amended

(b) State Oil and Gas Board's General Order Prescribing Rules and Regulations Governing the Conservation of Oil and Gas in Alabama (Order No. 76–100)

(c) The Memorandum of Agreement between EPA Region IV and the Alabama Oil and Gas Board, signed by the EPA Regional Administrator on June 15, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart C—Alaska

§ 147.100 State administered program. [Reserved.]

§ 147.101 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Alaska.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Alaska.

(b) *Effective date.* The effective date of the UIC program for Alaska is: (30 days after publication of final rule).

§ 147.102 Aquifer exemptions.

The following aquifers in the Kenai Peninsula and Cook Inlet, Alaska, are exempted in accordance with the provisions of § 144.7(b) and § 146.4 of this chapter for Class II injection activities only:

(a) The portions of aquifers in the Kenai Peninsula more than 1700 feet below the ground surface and described by an area ¼ mile beyond and lying directly below the following oil and gas producing fields:

(1) Swanson River Field; and

(2) Beaver Creek Field.

(b) The portion of aquifers described by a ¼ mile area beyond and underlying the Granite Point, McArthur River, Middle Ground Shoal and Trading Bay Fields beneath the Cook Inlet.

Note:—This section contains any aquifers exempted at the time of program promulgation. An updated list of exemptions will be maintained in the Regional Office.

§ 147.103 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of §144.28(f)(3)(i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

§ 147.104 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of §144.28(f)(e)(ii) of this chapter the owner or operator shall use an injection pressure at the wellhead on greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

(b) *Casing and Cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone

(4) The Regional Administrator may impose other requirements as necessary to protect USDWs.

Subpart D—Arizona

§ 147.150 State administered programs. [Reserved.]

§ 147.151 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Arizona.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, 146 of this chapter are hereby incorporated and made a part of the UIC program for Arizona.

(b) *Effective date.* The effective date of the UIC program for Arizona is: (30 days after publication of final rule).

§ 147.152 Aquifer exemptions. [Reserved.]

Subpart E—Arkansas

§ 147.200 State administered program.

The UIC program for Class I, III, IV, V wells in the State of Arkansas is the State administered program approved by EPA, pursuant to SDWA Section 1422, on July 6, 1982 (47 FR 29236). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Arkansas Water and Air Pollution Control Act (Act 472 of 1949, as amended; *Arkansas Stat. Ann.* Section 82–1901 *et seq.*)

(b) Arkansas Underground Injection Control Code

(c) The Memorandum of Agreement between EPA Region VI and the Arkansas Department of Pollution Control and Ecology, signed by the EPA Regional Administrator on May 25, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

§ 147.201 General requirements.

This subpart set forth the requirements of the Federally administered UIC program for Class II wells in the State of Arkansas.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this chapter are hereby incorporated and made a part of the UIC program for Class II wells in Arkansas.

(b) *Effective date.* The effective date of the Class II UIC program for Arkansas is: (30 days after publication of final rule).

§ 147.202 Aquifer exemptions.

Hydrocarbon producing portions of the Trinity, Tokio, Nacatoch, and Carrizo-Wilcox aquifers in Nevada, Ouachita, Calhoun, Bradley, Miller, Lafayette, Columbia, and Union counties are exempted within ¼ mile of the fields in accordance with the provisions of

§§ 144.7(b) and 146.4 of this chapter for Class II purposes only.

Note.—This section contains any aquifers exempted at the time of program promulgation. An updated list of exemptions will be maintained in the Regional Office.

§ 147.203 Existing Class II (except enhanced recovery and hydrocarbon storage) wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3) (i) and (ii) of this chapter the owner or operator shall use an injection the pressure at the wellhead no greater than pressure calculated using the following formula:

$Pm = (X - 0.433\ Sg)\ d$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet
X = pressure gradient (in psi per ft) determined from the following table:

X	Depth to the top of the injection zone (feet)
0.465	Less than 1,000.
0.565	1,000 to 2,999.
0.665	3,000 to 5,999.
0.765	6,000 to 9,999.
0.865	10,000 or greater.

§ 147.204 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the requirements established in § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than maximum injection pressure calculated in accordance with the requirements of § 147.203.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore: and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as necessary to protect USDWs.

§147.205 Requirements for Class II wells authorized by permit.

(a) To meet the requirements in § 144.28(g)(3) of this chapter the casing and cementing requirements of § 147.204(b)(1)–(3) apply to wells authorized by permit.

(b) The Regional Administrator may approve alternate casing and cementing practices provided that the owner or operator demonstrates that such practices will adequately protect USDWs.

(c) *Tubing and packer.* All new injection wells shall inject fluid through tubing and packer. Packers shall be run on the tubing and set inside the casing within 100-ft. of the top of the injection interval.

§ 147.206 Requirements for all Class II wells.

(a) *Plugging requirements.* The owner or operator of a Class II injection well shall:

(1) Isolate the injection zone by placing a 100-ft. cement plug immediately above the injection zone.

(2) Isolate USDWs by:

(i) Centering a 100-ft. cement plug on the surface casing shoe when the well is constructed with surface casing extending below the lowermost USDW and cemented to the surface; or

(ii) For wells that are not constructed as described in paragraph (a)(2)(i) of this section, placing a plug extending from 50 feet below the base of the lowermost USDW to:

(A) 50 feet into a zone where casing is cemented to the surface, or

(B) The surface.

(3) Place a 10-ft. cement plug at the top of the surface casing.

(4) If any plug is placed in an uncemented interval of casing the owner or operator shall also squeeze the cement behind the casing through the plugged interval to prevent the movement of fluid.

(5) The owner or operator shall use drill string to tag the locations of all plugs.

(6) The owner or operator shall fill any interval between plugs with at least 9.5 pounds per gallon drilling mud.

(7) The Regional Administrator may approve an alternative plugging method provided that such method will prevent the movement of fluids into or between USDWs.

(b) *Mechanical integrity.* The Regional Administrator may allow the use of radioactive tracer surveys and cement bond logs for alternative demonstrations of mechanical integrity.

(c) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

Subpart F—California

§ 147.250 State administered program.

The UIC program for Class II wells in the State of California is the State administered program approved by EPA, pursuant to SDWA Section 1425, on February 11, 1983 (48 FR 6336). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Division 3 of the California Public Resources Code.

(b) Chapter 4 of Division 2 of Title 14 of the California Administrative Code.

(c) The Memorandum of Agreement between EPA Region IX and the California Division of Oil and Gas, signed by the EPA Regional Administrator on September 29, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

§ 147.251 General requirements.

This subpart sets forth the requirements of the UIC program for the State of California.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144 and 146 of this chapter are hereby incorporated and made part of the applicable UIC program for Californa.

(b) *Effective date.* The effective date of the UIC program for California is: (30 days after publication of final rule).

§ 147.252 Aquifer exemptions. [Reserved]

§ 147.253 Requirements for wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(i) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$Pm = (0.6–0.433\ Sg)\ d$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet

Subpart G—Colorado

§ 147.300 State administered program. [Reserved.]

§ 147.301 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Colorado.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144 and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Colorado.

(b) *Effective date.* The effective date of the UIC program for Colorado is: (30 days after publication of final rule).

§ 147.302 Aquifer exemptions.

The Agency is exempting those portions of aquifers within ¼ mile of existing Class II wells for the purpose of Class II injection activities only.

Note.—A complete listing of the proposed exempted portions of aquifers and their locations is available for review in the EPA Regional Office, 1860 Lincoln Street, Denver, Colorado. An updated list of exemptions will be maintained in the Regional Office.

§ 147.303 Existing class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3) (i) and (ii) of this chapter the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.304 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements established in § 144.28(f)(3)(ii), the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration form formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as necessary to protect USDWs.

§ 147.305 Requirements for wells authorized by permit.

(a) The owner or operator converting an existing well to an injection well shall check the condition of the casing with one of the following logging tools:

(1) A Pipe analysis log; or

(2) A Caliper log.

(b) The owner or operator of a new injection well cased with plastic (PVC, ABS, and others) casings shall:

(1) Not construct a well deeper than 500 feet;

(2) Use cement and additives compatible with such casing material;

(3) Cement the annular space above the injection interval from the bottom of the blank casing to the surface.

(c) The owner of operator of a newly drilled well shall install centralizers as directed by the Regional Administrator.

(d) The owner or operator shall as required by the Regional Administrator:

(1) Protect USDWs by:

(i) Setting surface casing 50 feet below the base of the lowermost USDW;

(ii) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(iii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may approve alternate casing and cementing practices provided that the owner of operator demonstrates that such practices will adequately protect USDWs.

§ 147.306 Requirements for all wells

Area of Review. Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

Subpart H—Connecticut

§§ 147.350–147.359 [Reserved]

Subpart I—Delaware

§§ 147.400–147.449 [Reserved]

Subpart J—District of Columbia

§ 147.450 State administered program. [Reserved.]

§ 147.451 General requirements.

This subpart sets forth the requirements of the UIC program for the District of Columbia.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this chapter are hereby incorporated and made a part of the applicable UIC program for the District of Columbia.

(b) *Effective date.* The effective date of the UIC program for the District of Columbia is: (30 days after publication of final rule).

§ 147.452 Aquifer exemptions. [Reserved.]

Subpart K—Florida

§ 147.500 State administered program.

The UIC program for Class I, III, IV, V wells in the State of Florida is the State administered program approved by EPA, pursuant to SDWA Section 1422, on February 7, 1983 (48 FR 5556). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Florida Air and Water Pollution Control Act, 67-436, Laws of Florida (1967).

(b) Chapter 17-18, Florida Administrative Code Rules, Underground Injection Control.

(c) The Memorandum of Agreement between EPA Region IV and the Florida Department of Environmental Regulation, signed by the EPA Regional Administrator on March 31, 1983.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart L—Georgia

§§ 147.550-147.559 [Reserved]

Subpart M—Hawaii

§§ 147.600-147.649 [Reserved]

Subpart N—Idaho

§ 147.650 State administered program. [Reserved.]

§ 147.651 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Idaho.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this chapter are hereby incorporated and made a part of the applicable UIC program for Idaho.

(b) *Effective date.* The effective date of the UIC program for Idaho is: (30 days after publication of final rule).

§ 147.652 Aquifer exemptions. [Reserved.]

Subpart O—Illinois

§§ 147.700-147.749 [Reserved]

Subpart P—Indiana

§ 147.750 State administered program. [Reserved.]

§ 147.751 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Indiana.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Indiana.

(b) *Effective date.* The effective date of the UIC program for Indiana is: (30 days after publication of final rule).

§ 147.752 Aquifer exemptions. [Reserved.]

§ 147.753 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3) (i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$$Pm = (0.800 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.754 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.800 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolate all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as needed to protect USDWs.

§ 147.755 Requirements for all wells.

(a) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review for Class II wells shall be a fixed radius as described in § 146.6(b) of this chapter.

(b) *Tubing and packer.* The owner or operator of an injection well injecting salt water shall inject through tubing and packer. The owner or operator of an existing well must comply with this requirement within one year of the effective date of this program.

Subpart Q—Iowa

§ 147.800 State administered program. [Reserved.]

§ 147.801 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Iowa.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this chapter are hereby incorporated and made a part of the UIC program for Iowa.

(b) *Effective date.* The effective date of the UIC program for Iowa is: (30 days after publication of final rule).

§ 147.802 Aquifer exemptions [Reserved.]

Subpart R—Kansas

§§ 147.850—147.859 [Reserved]

Subpart S—Kentucky

§ 147.900 State administered program. [Reserved.]

§ 147.901 General requirements.

This subpart sets forth the requirements of the UIC program for the Commonwealth of Kentucky.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144 and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Kentucky.

(b) *Effective date.* The effective date of the UIC program for Kentucky is: (30 days after publication of final rule.)

§ 147.902 Aquifer exemptions. [Reserved.]

§ 147.903 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3) (i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

§ 147.904 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$Pm = (0.733 - 0.433\ Sg)\ d$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as necessary to protect USDWs.

§ 147.905 Requirements for all wells.

Area of review. Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.6(b) of this chapter.

Subpart T—Louisiana

§ 149.950 State administered program.

The UIC program for Class I, II, III, IV, V wells in the State of Louisiana is the State administered program approved by EPA pursuant to SDWA Section 1422, and 1425 on April 23, 1982 (47 FR 17487). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Title 30 of the Louisiana Revised Statutes of 1950, Sections 30:1 D, 4C(16), and 4.1.

(b) Statewide Order No. 29–N–1–La. R.S. 30:1131 *et seq.*, Chapter 11, Part VII, Hazardous Waste Control Law of the Environmental Affairs Act, Louisiana Drinking Water Regulations, Louisiana Radiation Regulations, Statewide Order No. 29–B.

(c) The Memorandum of Agreement between EPA Region VI and the Louisiana Department of Natural Resources, signed by the EPA Regional Administrator on March 17, 1982.

(d) The Program Description and any other materials submitted as part of the application or a supplements thereto.

Subpart U—Maine

§§ 147.1000–147.1049 [Reserved]

Subpart V—Maryland–R36–

§§ 147.1050–147.1099 [Reserved]

Subpart W—Massachusetts

§ 147.1100 State administered program.

The UIC program for Class I, II, III, IV, V wells in the State of Massachusetts is the State administered program approved by EPA, pursuant to SDWA Section 1422, on November 23, 1982 (47 FR 52705). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Massachusetts General Law Chapter III, Section 159 and Chapter 21, Section 27.

(b) Underground Water Source Protection (Groundwater Protection Regulation. 310 CMR 27.00)

(c) The Memorandum of Agreement between EPA Region I and the Massachusetts Department of Environmental Quality Engineering, signed by the EPA Regional Administrator on August 18, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart X—Michigan

§ 147.1150 State administered program. [Reserved.]

§ 147.1151 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Michigan.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Michigan.

(b) *Effective date.* The effective date of the UIC program for Michigan is: (30 days after publication of final rule).

§ 147.1152 Aquifer exemptions. [Reserved.]

§ 147.1153 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of §144.28(f)(3) (i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$Pm = (0.800 - 0.433\ Sg)\ d$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.1154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of §144.28(f)(3) (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$Pm = (0.800 - 0.433\ Sg)\ d$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as necessary to protect USDWs.

§ 147.1155 Requirements for all wells.

(a) *Area of review.* Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review for Class II wells shall be a fixed radius as described in §146.6(b) of this chapter.

(b) *Tubing and packer.* The owner or operator of an injection well injecting salt water shall inject through tubing and packer. The owner or operator of an existing well must comply with this requirement within one year of the effective date of this program.

Subpart Y—Minnesota

§ 147.1200 State administered program [Reserved.]

§ 147.1201 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Minnesota.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Minnesota.

(b) *Effective date.* The effective date of the UIC program for Minnesota: (30 days after promulgation of final rule).

§ 147.1202 Aquifer exemptions. [Reserved.]

Subpart Z—Mississippi

§§ 147.1250–147.1259 [Reserved]

Subpart AA—Missouri

§ 147.1300 State administered program. [Reserved.]

§ 147.1301 General requirements.

This subpart sets forth the requirements of the UIC program for Class I, III, IV and V wells for the State of Missouri.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter for Class I, III, IV and V wells are hereby incorporated and made a part of the UIC program for Missouri.

(b) *Effective date.* The effective date of the UIC program for Missouri is: (30 days after publication of final rule).

§ 147.1302 Aquifer exemptions. [Reserved].

Subpart BB—Montana

§ 147.1350 State administered program. [Reserved.]

§ 147.1351 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Montana.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Montana.

(b) *Effective date.* The effective date of the UIC program for Montana is: (30 days after publication of final rule).

§ 147.1352 Aquifer exemptions.

Those portions of aquifers within one-quarter mile of existing Class II wells are exempted for the purpose of Class II injection activities only.

Note.—A complete listing of the exemptions and their location is available for review in the EPA Regional Office, 1860 Lincoln Street, Denver, Colorado. An updated list of exemptions will be maintained in the Regional Office.

§ 147.1353 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3) (i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

§ 147.1354 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall when required by the Regional Administrator:

(1) Isolate all USDWs by placing cement between the outermost casing and the well bore;

(i) If the injection well is east of the 108th meridian, cement the outermost casing from a point 50 feet into a major shale formation underlying the uppermost USDW to the surface;

Note.—For the purpose of § 147.1354(b)(4), major shale formations are defined as the Bearpaw, Clagget, and Colorado formations.

(ii) If the injection well is west of the 108th meridian, cement the outermost casing to a depth of 1,000 feet, or to the base of the lowermost USDW in use as a source of drinking water whichever is deeper. The Regional Administrator may allow an owner or operator to cement to a lesser depth if he can demonstrate to the satisfaction of the Regional Administrator that no USDW will be affected by the injection activities.

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

§ 147.1355 Requirements for all wells.

Area of Review. Notwithstanding the alternatives presented in § 146.6 of this chapter, the area of review shall be a fixed radius as described in § 146.06(b) of this chapter.

Subpart CC—Nebraska

§ 147.1400 State adminstered program.

The UIC program for Class II wells in the State of Nebraska is the State administered program approved by EPA, pursuant to SDWA Section 1425, on February 3, 1983 (48 FR 4777). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Nebraska Revised Statutes, Sections 77–27, 149, 81–1505, 81–1506, and 81–1508.

(b) UICR, Nebraska Department of Environmental Control Ground Water Protection Standards.

(c) The Memorandum of Agreement between EPA Region VII and the Nebraska Oil and Gas Conservation Commission, signed by the EPA Regional Administrator on July 12, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

§ 147.1401 General requirements.

This subpart sets forth the requirements of the UIC program for Class I, III, IV, and V wells for the State of Nebraska.

(a) *Incorporation statement.* The requirements set forth for Class I, III, IV, and V wells in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Nebraska.

(b) *Effective date.* The effective date of the UIC program for Nebraska is: (30 days after publication of final rules.)

§ 147.1402 Aquifer exemptions. [Reserved.]

Subpart DD—Nevada

§ 147.1451 State administered program. [Reserved.]

§ 147.1451 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Nevada.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144 and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Nevada.

(b) *Effective date.* The effective date of the UIC program for Nevada is: (30 days after publication of final rule).

§ 147.1452 Aquifer exemptions.

The following portions of the Railroad Valley aquifer in Nye County, Nevada are exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter, for Class II injection activities only.

(a) One-quarter mile radius around the following wells in the Eagle Springs Field.

(1) John Lyddon #1, S35, T9N, R57E.

(2) Draycutt Corporation #45, S36, T9N, R57#.

(b) One-quarter mile radius around the following wells in the Trap Spring Field.

(1) Northwest Exploration Co., Trap Spring #13, S26, T9N, R56E.

(2) Northwest Exploration Co., Trap Spring #20X, S22, T9N, R56E.

(3) Chadco Munson Ranch, #24–1, S24, T9N, R56E.

Note.—This section contains any aquifers exempted at the time of program promulgation. An updated list of exemptions will be maintained in the Regional Office.

§ 147.1453 Requirements for wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28 of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

Subpart EE—New Hampshire

§ 147.1500 State administered program.

The UIC program for Class I, II, III, IV, V wells in the State of New Hampshire is the State administered program approved by EPA, pursuant to SDWA Section 1422, on September 21, 1982 (47 FR 41561). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) New Hampshire RSA 149:8, III (a)

(b) Ground Water Permit Regulations WS 410.1 through WS 410.16.

(c) The Memorandum of Agreement between EPA Region I and the New Hampshire Water Supply and Pollution Control Commission, signed by the EPA Regional Administrator on August 23, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart FF—New Jersey

§§ 147.1550–147.1599 [Reserved]

Subpart GG—New Mexico

§147.1600 State administered program.

The UIC Program for Class II wells in the State of New Mexico is the State administered program approved by EPA, pursuant to SDWA Section 1425, on February 5, 1982 (47 FR 5412). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Oil and Gas Act, Section 70–2–1–36, NMSA, 1978.

(b) Oil Conservation Division Rules and Regulations.

(c) The Memorandum of Agreement between EPA Regional VI and the New Mexico Oil Conservation Division, signed by the EPA Regional Administrator on December 10, 1981.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart HH—New York

§ 147.1650 State administered program. [Reserved]

§ 147.1651 General requirements.

This subpart sets forth the requirements of the UIC program for the State of New York.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for New York.

(b) *Effective date.* The effective date of the UIC program for New York is: (30 days after publication of final rule).

§ 147.1652 Aquifer exemptions.

The following portions of aquifers are exempted, in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter, for Class II enhanced recovery injection activities only.

(a) The Bradford First, Second, and Third Sand Members and the Kane Sand Member in the Bradford Field in Cattaraugus County.

(b) The Glade, Chipmunk, Harrisburg Run and Humphrey Oil Fields in Cattaraugus County.

(c) The Scio, Penny, Richburg, and Waugh and Porter Oil Fields in Allegany County.

(d) The Penny, Fulmer Valley, and Waugh and Porter Oil Fields in Steuben County.

Note.—This section contains any aquifers exempted at the time of program promulgation. An updated list of exemptions will be maintained in the Regional Office.

§ 147.1653 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch

Sg = specific gravity of injected fluid (unitless)

d = injection depth in feet.

§ 147.1654 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than

the pressure calculated by using the folowing formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) *Casing and cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b) (1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; or

(iii) For wells as described in §146.08(b)(3)(ii), installing a smaller diameter pipe inside the existing injection tubing and setting it on an appropriate packer; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated volume between the casing or tubing and the well bore to a point 50 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity to fill no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as needed to protect USDWs.

§ 147.1655 Requirements for wells authorized by permit.

(a) The owner or operator of a Class I well authorized by permit shall install or shall ensure that the well has:

(1) Surface casing present

(i) Extending from the surface to a depth at least 50 feet below the base of the lowermost USDW; and

(ii) Cemented back to the surface by recirculating the cement; and

(2) Long string casing and tubing;

(i) Extending to the injection zone; and

(ii) Cemented back to 50 feet above the base of the next largest casing string.

(b) The owner or operator of a new Class II well authorized by permit shall:

(1) Install surface casing from the surface to at least 50 feet below the base of the lowermost USDW.

(2) Cement the casing by recirculating to the surface or by using no less than 120% of the calculated annular volume.

(3) For new enhanced recovery wells, install tubing or long string casing extending to the injection zone.

(4) For new salt water disposal wells, install long string casing and tubing extending to the injection zone.

(5) Isolate any injection zone by placing sufficient cement to fill the calculated volume to a point 50 feet above the injection zone.

(c) The Regional Administrator may specify casing and cementing requirements other than those listed in (a) and (b) of this section on a case by case basis as conditions of the permit.

Subpart II—North Carolina

§§ 147.1700–147.1749 [Reserved]

Subpart JJ—North Dakota

§§ 147.1750–147.1799 [Reserved]

Subpart KK—Ohio

§§ 147.1800–147.1849 [Reserved]

Subpart LL—Oklahoma

§ 147.1850 State administered program.

(a) *Requirements for Class I, III, IV and V wells.* The UIC program for Class I, III, IV, and V wells in the State of Oklahoma is the State administered program approved by EPA, pursuant to SDWA Section 1422, on June 24, 1982 (47 FR 27273). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Oklahoma Public Health code (Title 63) and Mining Lands Reclamation Act.

(ii) Rules and Regulations for Industrial Waste Management, Rules and Regulations for Industrial Waste Management as amended.

(iii) The Memorandum of Agreement between EPA Region VI and the Oklahoma State Department of Health, signed by the EPA Regional Administrator on April 13, 1982.

(iv) The Program Description and any other materials submitted as part of the application or a supplements thereto.

(b) *Requirements for Class II wells.* The UIC program for Class II wells in the State of Oklahoma is the State administered program approved by EPA, pursuant to SDWA Section 1425, on December 2, 1981 (46 FR 58488). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Oklahoma Statutes 1971, Title 52, Sections 139–153, Oklahoma Statutes Supplement 1980, Title 29, Section 7–401.

(ii) OCC–OGR Rules No. 1–101–3–303.

(iii) The Memorandum of Agreement between EPA Region VI and the Oklahoma Corporation Commission, signed by the EPA Regional Administrator on April 13, 1981.

(iv) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart MM—Oregon

§§ 147.1900–147.1949 [Reserved]

Subpart NN—Pennsylvania

§ 147.1950 State administered program. [Reserved.]

§ 147.1951 General requirements.

This subpart sets forth the requirements of the UIC program for the State of Pennsylvania.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this chapter are hereby incorporated and made a part of the UIC program for Pennsylvania.

(b) *Effective date.* The effective date of the UIC program for Pennsylvania is: (30 days after publication of final rule).

§ 147.1952 Aquifer exemptions.

Those portions of the following oil bearing aquifers which would otherwise meet the definition of a USDW, are exempted in accordance with the provisions of §§ 144.7(b) and 146.4 of this chapter, for Class II enhanced recovery injection activities only.

(a) The Elk and Kane oil producing sands of the Sackett Field in Elk County and the Kane Field in McKean County.

(b) The Bradford Third and Haskell oil producing sands in the Guffey Field in McKean County.

(c) The Bradford First, Second and Third sand series, and the associated Chipmunk, Watsonville, Glade, Dewdrop, Silverdale, Harrisburg Run, Cooper, Cooper Stray, Lewis Run and Haskell oil producing sands in the Bradford Field in McKean County.

(d) The Bradford series of oil producing sands in the Shinglehouse Field in McKean and Potter Counties.

(e) The Venango group of oil producing sands in the Foster-Reno Field, Seneca Pool, in Venango County.

(f) The Big Injun, Squaw, One-Hundred Foot, Gordon, Fourth and Fifth oil producing sands in the Washington-Taylorstown Field in Washington County.

(g) The Glade and Cherry Grove oil producing sands in the Youngsville Field in Warren County.

(h) The Glade and Clarendon oil producing sands in the Warren Field, Still Run Pool, in Warren County.

Note.—This section contains any aquifers exempted at the time of program promulgation. An updated list of exemptions will be maintained in the Regional Office.

§ 147.1953 Existing Class I, II (except enhanced recovery and hydrocarbon storage), and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of §§ 144.28(f)(3) (i) and (ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.1954 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.733 - 0.433\ Sq)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet

(b) *Casing and Cementing.* Where the Regional Administrator determines that the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator.

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; or

(iii) For wells as described in § 146.8(b)(3)(ii), installing a smaller diameter pipe inside the existing injection tubing and setting it on an appropriate packer; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated volume between the casing or tubing and the well bore to a point 50 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure; or

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity to fill no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as needed to protect USDWs.

§ 147.1955 Requirements for wells authorized by permit.

(a) The owner or operator of a Class I well authorized by permit shall install or ensure that the well has:

(1) Surface casing present

(i) Extending from the surface to a depth at least 50 feet below the base of the lowermost USDW; and

(ii) Cemented back to the surface by recirculating the cement.

(2) Long string casing and tubing;

(i) Extending to the injection zone; and

(ii) For long string casing it shall be cemented back to 50 feet above the base of the next largest casing string.

(b) The owner or operator of a new Class II well authorized by permit shall:

(1) Install surface casing from the surface to at least 50 feet below the base of the lowermost USDW.

(2) Cement the casing by recirculating to the surface or by using no less than 120% of the calculated annual volume.

(3) For new enhanced recovery wells, install tubing or long string casing extending to the injection zone.

(4) For new salt water disposal wells, install long string casing and tubing extending to the injection zone.

(5) Isolate any injection zone by placing sufficient cement to fill the calculated volume to a point 50 feet above the injection zone.

(c) The Regional Administrator may specify casing and cementing requirements other than those listed in (a) and (b) of this section on a case by case basis as conditions of the permit.

Subpart OO—Rhode Island

§§ 147.2000–147.2049 [Reserved]

Subpart PP—South Carolina

§§ 147.2050–147.2099 [Reserved]

Subpart QQ—South Dakota

§§ 147.2100–147.2149 [Reserved]

Subpart RR—Tennessee

§§ 147.2150 State administered program. [Reserved]

§§ 147.2151 General requirements.

This Subpart sets forth the requirements of the UIC Program for the State of Tennessee.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144 and 146 of this chapter are hereby incorporated and made a part of the UIC program for Tennessee.

(b) *Effective date.* The effective date of the UIC program for Tennessee is: (30 days after publication of final rule).

§ 147.2152 Aquifer exemptions. [Reserved.]

§ 147.2153 Existing Class I, II (except enhanced recovery and liquid hydrocarbon storage) and III wells authorized by rule.

Maximum injection pressure. To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.600 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

§ 147.2154 Existing Class II enhanced recovery and hydrocarbon storage wells authorized by rule.

(a) *Maximum injection pressure.* To meet the operating requirements of § 144.28(f)(3)(ii) of this chapter, the owner or operator shall use an injection pressure at the wellhead no greater than the pressure calculated by using the following formula:

$$Pm = (0.600 - 0.433\ Sg)\ d$$

where:

Pm = injection pressure at the wellhead in pounds per square inch
Sg = specific gravity of injected fluid (unitless)
d = injection depth in feet.

(b) Casing and cementing. Where the Regional Administrator determines that

the owner or operator of an existing enhanced recovery or hydrocarbon storage well may not be in compliance with the requirements of §§ 144.28(e) and 146.22, the owner or operator shall comply with paragraphs (b)(1) through (4) of this section, when required by the Regional Administrator:

(1) Protect USDWs by:

(i) Cementing surface casing by recirculating the cement to the surface from a point 50 feet below the lowermost USDW; or

(ii) Isolating all USDWs by placing cement between the outermost casing and the well bore; and

(2) Isolate any injection zones by placing sufficient cement to fill the calculated space between the casing and the well bore to a point 250 feet above the injection zone; and

(3) Use cement:

(i) Of sufficient quantity and quality to withstand the maximum operating pressure;

(ii) Which is resistant to deterioration from formation and injection fluids; and

(iii) In a quantity no less than 120% of the calculated volume necessary to cement off a zone.

(4) The Regional Administrator may impose other requirements as needed to protect USDWs.

Subpart SS—Texas

§ 147.2200 State administered program.

(a) *Requirements for Class I, III, IV, and V wells.* The UIC program for Class I, III, IV, and V wells in the State of Texas is the State administered program approved by EPA, pursuant to SDWA Section 1422, on January 6, 1982 (47 FR 618). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Texas Water Code Sections 5.131, 5.262, 27.019, 27.003, Injection Well Act.

(ii) Rules of Texas Department of Water Resources, Chapter 27, Rules of Texas Water Development Board, Chapter 22.

(III) The Memorandum of Agreement between EPA Region VI and the Texas Department of Water Resources, signed by the EPA Regional Administrator on October 11, 1981.

(iv) The Program Description and any other materials submitted as part of the application or as supplements thereto.

(b) *Requirements for Class II wells.* The UIC program for Class II wells in the State of Texas is the State administered program approved by EPA, pursuant to SDWA Section 1425, on April 23, 1982 (47 FR 17488). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Section 27.031 of the Injection Well Act, Chapter 27 of the Texas Water Code, Title 3 of the Natural Resources Code, and Texas Revised Civil Statutes.

(ii) General Rules of Practice and Procedure, Subchapters A–J, November 1975, Railroad Commission of Texas Rules 1–80, Revised 12/22/81.

(iii) The Memorandum of Agreement between EPA Region VI and the Texas Railroad Commission, signed by the EPA Regional Administrator on March 24, 1982.

(iv) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart TT—Utah

§ 147.2250 State administered program.

(a) *Requirements for Class I, III, IV, and V wells.* The UIC program for Class I, III, IV, and V wells in the State of Utah is the State administered program approved by EPA, pursuant to SDWA Section 1422, on January 9, 1983 (48 FR 2321). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Utah Code, Parts 26–11–1 through 26–11–20; Utah Water Pollution Control Act.

(ii) Part VII, Utah Wastewater Disposal Regulations

(iii) The Memorandum of Agreement between EPA Region VIII and the Utah Department of Health, Division of Environmental Health, signed by the EPA Regional Administrator on August 16, 1982.

(iv) The Program Description and any other materials submitted as part of the application or as supplements thereto.

(b) *Requirements for Class II wells.* The UIC program for Class II wells in the State of Utah is the State administered program approved by EPA, pursuant to SDWA Section 1425, on October 8, 1982 (47 FR 44561). This program consists of the following elements, as submitted to EPA in the State's program application:

(i) Oil and Gas Conservation Act, Title 40–6, 1953

(ii) Section 40–6–4 Utah Code Annotated 1953; Underground Injection Control Class II Wells, Case No. 190–4

(iii) The Memorandum of Agreement between EPA Region VIII and the Utah Division of Oil, Gas, and Mining, signed by the EPA Regional Administrator on July 19, 1983.

(iv) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart UU—Vermont

§§ 147.2300–147.2349 [Reserved]

Subpart VV—Virginia

§ 147.2350 State administered program. [Reserved.]

§ 1347.2351 General requirements.

This subpart sets forth the requirements of the UIC program for the Commonwealth of Virginia.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for Virginia.

(b) *Effective date.* The effective date of the UIC program for Virginia is: (30 days after publication of final rule).

Subpart XX—West Virginia

§§ 147.2450–147.2499 [Reserved]

Subpart YY—Wisconsin

§§ 147.2500–147.2549 [Reserved]

§ 147.2352 Aquifer exemptions. [Reserved.]

Subpart WW—Washington

§§ 147.2400–147.2449 [Reserved]

Subpart ZZ—Wyoming

§ 147.2550 State administered program.

The UIC program for Class II wells in the State of Wyoming is the State administered program approved by EPA, pursuant to SDWA Section 1425, on November 23, 1982 (47 FR 52434). This program consists of the following elements, as submitted to EPA in the State's program application:

(a) Wyoming Statutes Annotated.

(b) Wyoming Oil and Gas Commission Rules and Regulations, revised January 15, 1982.

(c) The Memorandum of Agreement between EPA Region VIII and the Wyoming Oil and Conservation Commission, signed by the EPA Regional Administrator on December 22, 1982.

(d) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart AAA—Guam

§ 147.2600 State administered program.

The UIC program for Class I, II, III, IV, V wells in the territory of Guam is the State administered program approved by EPA, pursuant to SDWA Section 1422, on May 2, 1983 (48 FR 19717). This program consists of the following

elements, as submitted to EPA in the State's program application:

(a)(i) Administration Adjudication Law, Chapters I–III, Title XXV, Government Code of Guam.

(ii) Guam Environmental Protection Agency Act, Public Law 11–911, Chapter I, Title LXI, Government Code of Guam.

(iii) Safe Drinking Water Act, Public Law 14–70, Chapter XII, Title LXI, Government Code of Guam.

(iv) Solid Waste Management and Litter Control Act, Public Law 14–37, Chapter VIII, Title LXI, Government Code of Guam.

(b)(i) Underground Injection Control Regulations for the Territory of Guam, Chapters I–IX.

(ii) Guam Environmental Protection Agency, Water Quality Standards, Sections I–IV, November 16, 1981.

(c) The Memorandum of Agreement between EPA Region IX, and the Guam Environmental Protection Agency, signed by the EPA Regional Administrator on January 14, 1983.

(d) The Statement of Legal Authority signed by the Guam Attorney General on May 12, 1982.

(e) The Program Description and any other materials submitted as part of the application or as supplements thereto.

Subpart BBB—Puerto Rico

§§ 147.2650–147.2699 [Reserved]

Subpart CCC—Virgin Islands

§§ 147.2700–147.2749 [Reserved]

Subpart DDD—American Samoa

§ 147.2750 State administered program. [Reserved.]

§ 147.2751 General requirements.

This subpart sets forth the requirements of the UIC program for American Samoa.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for American Samoa.

(b) *Effective date.* The effective date of the UIC program for American Samoa is: (30 days after publication of final rule).

§ 147.2752 Aquifer exemptions. [Reserved].

Subpart EEE—Commonwealth of the Northern Mariana Islands

§ 147.2800 State administered program. [Reserved.]

§ 147.2801 General requirements.

This subpart sets forth the requirements of the UIC program for the Commonwealth of the Northern Mariana Islands.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for the Commonwealth of the Northern Mariana Islands.

(b) *Effective date.* The effective date of the UIC program for the Commonwealth of the Northern Mariana Islands is: (30 days after publication of final rule).

§ 147.2802 Aquifer exemptions. [Reserved.]

Subpart FFF—Trust Territory of the Pacific Islands

§ 147.2850 State administered program. [Reserved.]

§ 147.2851 General requirements.

This subpart sets forth the requirements of the UIC program for the Trust Territory of the Pacific Islands.

(a) *Incorporation statement.* The requirements set forth in Parts 124, 144, and 146 of this Chapter are hereby incorporated and made a part of the UIC program for the Trust Territory of the Pacific Islands.

(b) *Effective date.* The effective date of the UIC program for the Trust Territory of the Pacific Islands is: (30 days after publication of final rule).

§ 147.2852 Aquifer exemptions. [Reserved.]

40 CFR Part 144 is amended as follows:

PART 144—UNDERGROUND INJECTION CONTROL PROGRAM

Subpart A—General Provisions

1. In § 144.1 paragraph (a) is revised, paragraphs (b) through (e) are redesignated as (c) through (f), and a new paragraph (b) is added to read as follows:

§ 144.1 Purpose and scope of Part 144.

(a) *Contents of Part 144.* The regulations in this Part set forth requirements for the Underground Injection Control (UIC) Program promulgated under Part C of the Safe Drinking Water Act (SDWA) (Pub. L. 95–523, as amended by Pub. L. 96–502, 42 U.S.C. 300f et seq.) and, to the extent that they deal with hazardous waste, the Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 as amended by Pub. L. 95–609, Pub. L. 96–510, 42 U.S.C. 6901 et seq.).

(b) *Applicability.*

(1) The regulations in this part establish minimum requirements for UIC programs. To the extent set forth in Part 145, each State must meet these requirements in order to obtain primary enforcement authority for the UIC program in that State.

(2) In addition to serving as minimum requirements for UIC programs, the regulations in this Part constitute a part of the UIC program for States listed in Part 147 to be administered directly by EPA.

* * * * *

Subpart C—Authorization of Underground Injection by Rule

2. In §144.21 paragraph (a) (3) and paragraph (c) are revised to read as follows:

§ 144.21 Existing Class I, II (except enhanced recovery and hydrocarbon storage) and III wells.

* * * * *

(a) * * *

(3)(i) For Class I and III wells.

(A) In approved State programs, five years after approval or promulgation of the UIC program unless a complete permit application is pending; or

(B) In EPA administered programs, one year after promulgation of the UIC program unless a complete permit application is pending.

(ii) For Class II wells except enhanced recovery and hydrocabron storage, five years after approval or promulgation of the UIC program unless a complete permit application is pending.

* * * * *

(c) *Requirements.* The owner or operator of a well authorized under this section shall comply with the applicable requirements of §144.28 and Part 147 of this chapter no later than one year after authorization.

4. Section 144.22 is revised to read as follows:

§ 144.22 Existing Class II enhanced recovery and hydrocarbon storage wells.

(a) Injection into existing Class II enhanced recovery and hydrocarbon storage wells is authorized for the life or the well or project.

(b) *Requirements.* The owner or operator of a well authorized under this section shall comply with the applicable requirements of § 144.28 and Part of this chapter. Such owner or operator shall comply with the construction requirements no later than 3 years and other requirements no later than 1 year after authorization.

5. In § 144.23 a new paragraph (c) is added to read as follows:

§ 144.23 Class IV Wells.

* * * * *

(c) *Closure.* For EPA administered programs only,

(1) Prior to abandoning any Class IV well, the owner or operator shall plug or otherwise close the well in a manner acceptable to the Regional Administrator.

(2) Within 60 days after promulgation of the UIC program in the State, any owner or operator of a Class IV well shall submit to the Regional Administrator for approval a plan for plugging or otherwise closing and abandoning the well.

(3) Any owner or operator of a Class IV well must notify the Regional Administrator of intent to abandon the well at least thirty days prior to abandonment.

6. In § 144.25 a new paragraph (a)(4) is added and paragraph (b) is revised to read as follows:

§ 144.25 Requiring a permit.

(a) * * *

(4) When the injection well is a Class I, II (except enhanced recovery and hydrocarbon storage) or III well, in accordance with a schedule established by the Director pursuant to § 144.31(c).

(b) For EPA administered programs, the Regional Administrator may require an owner or operator authorized by a rule to apply for an individual or area UIC permit under this paragraph only if the owner or operator has been notified in writing that a permit application is required. The injection activities are no longer authorized by rule upon the effective date of a permit or a permit denial, or upon failure by the owner or operator to submit an application in a timely manner as specified in the notice. The notice shall include: a brief statement of the reasons for requiring a permit; an application form; a statement setting a time for the owner or operator to file the application; and a statement of the consequences of denial or issuance of the permit, or failure to submit an application, as described in this paragraph.

* * * * *

7. In § 144.26 paragraphs (b) and (c) are redesignated as paragraphs (c) and (d), a new paragraph (b) is added, and newly redesignated paragraph (d) is revised to read as follows:

§ 144.26 Inventory requirements.

* * * * *

(b) *Additional contents.* For EPA administered programs only the owner or operator of a well listed in paragraph (b)(1) of this section shall provide the information listed in paragraph (b)(2) of this section.

(1) This section applies to owners or operators of the following wells:

(i) Class II enhanced recovery wells;

(ii) Class IV wells;

(iii) The following Class V wells:

(A) Sand or other backfill wells [§ 146.5(e)(8)];

(B) Radioactive waste disposal wells [§ 146.5(e)(11)];

(C) Geothermal energy recovery wells [§ 146.5(e)(12)];

(D) Brine return flow wells [§ 146.5(e)(14)];

(E) Wells used in experimental technologies [§ 146.5(e)(15)];

(F) Municipal and industrial disposal wells other than Class I;

(G) Other Class V wells at the discretion of the Regional Administrator.

(2) The owners or operators of wells listed in paragraph (b)(1) shall provide a listing of all wells owned or operated setting forth the following information for each well. A single description of wells at a single facility with substantially the same characteristics is acceptable.

(i) For Class II only, the field name(s),

(ii) Location of each well or project given by Township, Range, Section, and Quarter-Section, or by latitude and longitude to the nearest second, according to the conventional practice in the State;

(iii) Date of completion of each well;

(iv) Identification and depth of the formation(s) into which each well is injecting;

(v) Total depth of each well;

(vi) Casing and cementing record, tubing size, and depth of packer;

(vii) Nature of the injected fluids;

(viii) Average and maximum injection pressure at the wellhead;

(ix) Average and maximum injection rate; and

(x) Date of the last mechanical integrity test, if any.

(d) *Deadlines.*

(1) Owners or operators of injection wells must submit inventory information no later than one year after the authorization by rule. The Director need not require inventory information from any facility with interim status under RCRA.

(2) For EPA administered programs, the information need not be submitted if a complete permit application is submitted within one year of the effective date of the UIC program. Owners or operators of Class IV wells must submit inventory information no later than 60 days after the authorization by rule.

8. A new § 144.27 is added to read as follows:

§ 144.27 Requiring other information.

(a) For EPA administered programs only, in addition to the inventory requirements of § 144.26, the Regional Administrator may require the owner or operator of any well authorized by rule under this subpart to submit information as deemed necessary by the Regional Administrator to determine whether a well may be endangering an underground source of drinking water in violation of § 144.12 of this Part.

(b) Such information requirements may include, but are not limited to:

(1) Performance of ground-water monitoring and the periodic submission of reports of such monitoring;

(2) An analysis of injected fluids, including periodic submission of such analyses; and

(3) A description of the geologic strata through and into which injection is taking place.

(c) Any request for information under this section shall be made in writing, and include a brief statement of the reasons for requiring the information. An owner or operator shall submit the information within the time period(s) provided in the notice.

(d) Any authorization by rule under this subpart automatically terminates for any owner or operator who fails to comply with a request for information under this section.

9. A new § 144.28 is added to read as follows:

§ 144.28 Requirements for Class I, II, and III wells authorized by rule.

The following requirements apply to Class I, II, and III wells authorized by rule, as provided by §§ 144.21(c) and 144.22(b).

(a) The owner or operator must comply with all applicable requirements of this Subpart and Subpart B of this part. Any noncompliance with these requirements constitutes a violation of the Safe Drinking Water Act and is grounds for enforcement action, except that the owner or operator need not comply with these requirements to the extent and for the duration such noncompliance is authorized by an emergency permit under § 144.34.

(b) *Twenty-four hour reporting.* The owner or operator shall report any noncompliance which may endanger health or the environment, including:

(1) Any monitoring or other information which indicates that any contaminant may cause an endangerment to a USDW; or

(2) Any noncompliance or malfunction of the injection system which may cause fluid migration into or between USDWs.

Any information shall be provided orally within 24 hours from the time the owner or operator becomes aware of the circumstances. A written submission shall also be provided within five days of the time the owner or operator becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause, the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance.

(c) *Plugging and abandonment plan.*

(1) The owner or operator must prepare, maintain, and comply with a plan for plugging and abandonment of the well or project that meets the requirements of § 146.10 of this chapter and is acceptable to the Director. For purposes of this paragraph, temporary intermittent cessation of injection operations is not abandonment.

(2) For EPA administered programs:

(i) The owner or operator shall submit the plan to the Regional Administrator no later than one year after promulgation of the UIC program in the State, and must submit any proposed revision to the plan no later than 45 days prior to plugging the abandonment.

(ii) The plan shall include an estimate of the cost of plugging the well or wells.

(iii) Any cessation of operations for a period longer than two years shall be considered not to be temporary or intermittent, and the owner or operator shall plug the well in accordance with the plan, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that the well will be used in the future and that appropriate steps have been taken to prevent endangerment of USDWs.

(d) *Financial responsibility.*

(1) The owner or operator is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. The owner or operator must show evidence of financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as a financial statement.

(2) For EPA administered programs the owner or operator shall submit such evidence no later than one year after the effective date of the UIC program in the State.

(3) For EPA administered programs the Regional Administrator may periodically require the owner or operator to revise the estimate of the resources needed to plug and abandon the well to reflect inflation of such costs, and to submit a demonstration of financial responsibility revised accordingly.

(e) *Casing and cementing requirements.* For enhanced recovery and hydrocarbon storage wells:

(1) All wells shall be cased and cemented to prevent movement of fluids into or between underground sources of drinking water. In determining and specifying casing and cementing requirements, the following factors shall be considered.

(i) Depth to the injection zone;

(ii) Depth to the bottom of all USDWs; and

(iii) Estimated maximum and average injection pressures.

(2) In addition, in determining and specifying casing and cementing requirements the Director may consider information on:

(i) Nature of formation fluids;

(ii) Lithology of injection and confining zones;

(iii) External pressure, internal pressure, and axial Loading;

(iv) Hole size;

(v) Size and grade of all casing strings; and

(vi) Class of cement.

(3) The requirements in paragraphs (e)(1) and (2) of this section need not apply if:

(i) Regulatory controls for casing and cementing existed at the time of drilling of the well and the well is in compliance with those controls; and

(ii) Well injection will not result in the movement of fluids into an underground source of drinking water so as to create a significant risk to the health of persons.

(4) When a State did not have regulatory controls for casing and cementing prior to the time of the submission of the State program to the Administrator, the Director need not apply the casing and cementing requirements in paragraph (e)(1) of this section if he submits as a part of his application for primacy, an appropriate plan for casing and cementing of existing, newly converted, and newly drilled wells in existing fields, and the Administrator approves the plan.

(f) *Operating requirements.*

(1) Injection between the outermost casing protecting underground sources of drinking water and the well bore is prohibited.

(2) For Class I wells, unless an alternative to a packer has been approved under § 146.12(c) of this chapter the annulus between the tubing and the long string of casings shall be filled with a fluid approved by the Director, and a pressure, also approved by the Director, shall be maintained on the annulus. For EPA administered programs, the fluid shall be a noncorrosive fluid, and the pressure on the annulus shall be a positive pressure.

(3) Injection pressure.

(i) For Class I and III wells:

(A) Except during stimulation, injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the injection zone; and

(B) In no case shall injection pressure initiate fractures in the confining zone or cause the movement of injection of formation fluids into an underground source of drinking water.

(ii) For Class II wells:

(A) Injection pressure at the wellhead shall not exceed a maximum which shall be calculated so as to assure that the pressure during injection does not initiate new fractures or propagate existing fractures in the confining zone adjacent to the USDWs; and

(B) In no case shall injection pressure cause the movement of injection or formation fluids into an underground source of drinking water.

(g) *Monitoring requirements.* The owner or operator shall perform the monitoring as described in this paragraph. For EPA administered programs, monitoring of the nature of the injected fluids shall comply with applicable analytical methods cited and described in Table I of 40 CFR 136.3 or in Appendix III of 40 CFR Part 261 or in certain circumstances by other methods that have been approved by the Regional Administrator.

(1) For Class I wells:

(i) Analyze the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics. For EPA administered programs, this frequency shall be at least once within the first year of authorization and thereafter when changes are made to the fluid.

(ii) Install and use continuous recording devices to monitor injection pressure, flow rate and volume, and the pressure on the annulus between the tubing and the long string of casing;

(iii) Install and use monitoring wells within the area of review, to monitor any migration of fluids into and pressure in the underground sources of drinking water. The type, number and location of the wells, the parameters to be measured, and the frequency of monitoring must be approved by the Director.

(2) For Class II wells:

(i) Monitor the nature of the injected fluids with sufficient frequency to yield data representative of their characteristics. For EPA administered programs, at least once within the first year of the authorization and thereafter when changes are made to the fluid.

(ii) Observe the injection pressure, flow rate, and cumulative volume at least with the following frequencies:

(A) Weekly for produced fluid disposal operations;

(B) Monthly for enhanced recovery operations;

(C) Daily during the injection of liquid hydrocarbons and injection for withdrawal of stored hydrocarbons; and

(D) Daily during the injection phase of cyclic steam operations;

(iii) Record one observation of injection pressure, flow rate and cumulative volume at reasonable intervals no greater than thirty days.

(iv) For enhanced recovery and hydrocarbon storage wells:

(A) Demonstrate mechanical integrity pursuant to § 146.8 of this chapter at least once every five years during the life of the injection well.

(B) For EPA administered programs, the Regional Administrator by written notice may require the owner or operator to comply with a schedule describing when such demonstrations shall be made.

(c) For EPA administered programs, the owner or operator of any well required to be tested for mechanical integrity shall notify the Regional Administrator at least 30 days prior to any required mechanical integrity test. The Regional Administrator may allow a shorter time period if it would be sufficient to enable EPA to witness the mechanical integrity testing if it chose. Notification may be in the form of a yearly or quarterly schedule of planned mechanical integrity tests, or it may be on an individual basis.

(v) Hydrocarbon storage and enhanced recovery wells may be monitored on a field or project basis rather than on an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates to the Director the manifold monitoring is comparable to individual well monitoring.

(3) For Class III wells:

(i) Provide a qualitative analysis and ranges in concentrations of all constituents of injected fluids at least once within the first year of authorization and thereafter whenever the injection fluid is modified to the extent that the initial data are incorrect or incomplete. The owner or operator may request Federal confidentiality as specified in 40 CFR Part 2. If the information is proprietary the owner or operator may in lieu of the ranges in concentrations choose to submit maximum concentrations which shall not be exceeded. In such a case the owner or operator shall retain records of the undisclosed concentrations and provide them upon request to the Regional Administrator as part of any enforcement investigation;

(ii) Monitor injection pressure and either flow rate or volume semi-monthly, or meter and record daily injected and produced fluid volumes as appropriate;

(iii) Monitor the fluid level in the injection zone semi-monthly, where appropriate;

(iv) All Class III wells may be monitored on a field or project basis rather than an individual well basis by manifold monitoring. Manifold monitoring may be used in cases of facilities consisting of more than one injection well, operating with a common manifold. Separate monitoring systems for each well are not required provided the owner or operator demonstrates to the Director that manifold monitoring is comparable to individual well monitoring.

(h) *Reporting requirements.* The owner or operator shall submit reports to the Director as follows:

(1) For Class I wells, quarterly reports on:

(i) The Physical, Chemical, and other relevant characteristics of the injection fluids;

(ii) Monthly average, maximum, and minimum values for injection pressure, flow rate and volume, and angular pressure;

(iii) The results from ground-water monitoring wells prescribed in paragraph (g)(1)(iii) of this section;

(iv) The results of any test of the injection well conducted by the owner of operator during the reported quarter if required by the Director; and

(v) Any well work over performed during the reported quarter.

(2) For Class II wells:

(i) An annual report to the Director summarizing the results of all monitoring, as required in paragraph (g)(2) of this section. Such summary shall include monthly records of injected fluids, and any major changes in characteristics or sources of injected fluids. Previously submitted information may be included by reference.

(ii) Owners or operators of hydrocarbon storage and enhanced recovery projects may report on a field or project basis rather than on an individual well basis where manifold monitoring is used.

(3) For Class III wells:

(i) Quarterly reporting on all monitoring, as required in paragraph (g)(3) of this section;

(ii) Quarterly reporting of the results of any periodic tests required by the Director that are performed during the reported quarter;

(iii) Monitoring may be reported on a project or field basis rather than an individual well basis where manifold monitoring is used.

(i) *Retention of records.* The owner or operator shall retain records of all monitoring information, including the following:

(1) Calibration and maintenance records and all orignial strip chart recordings for continuous monitoring instrumentation, and copies of all reports required by this section, for a period of at least three years from the date of the sample, measurement, or report. This period may be extended by request of the Director at any time; and

(2) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(1)(6). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

(j) *Notice of abandonment.*

(1) The owner or operator shall notify the Director, according to a time period required by the Director, before conversion or abandonment of the well.

(2) For EPA administered programs, this time period shall be at least 45 days before plugging and abandonment. The Regional Administrator may allow a shorter notice period if it would be sufficient to enable EPA to witness the plugging if it chose.

(k) *Plugging and abandonment report.* For EPA administered programs, after plugging a well, the owner or operator shall within fifteen days submit to the Regional Administrator a report of plugging and abandonment. The report shall describe how the plugging and abandonment plan required by § 144.28(c) was carried out, including:

(1) The nature and quantity of materials used in plugging;

(2) The location and extent (by depth) of the plugs;

(3) Records of any tests or measures made;

(4) The amount, size, and location (by depth) of casing left in the well;

(5) The volume of mud used;

(6) If an attempt was made to part any casing, a complete report of the method used and the results obtained; and

(7) A certification from the person who has performed the plugging operation verifying the accuracy of the report.

(l) *Change of ownership.* For EPA administered programs, the owner or operator must notify the Regional Administrator of a transfer of ownership of the well within 30 days of such transfer.

(m) *Requirements for Class I Hazardous Waste Wells.* The owner or operator of any Class I well injecting hazardous waste shall comply with § 144.14(c).

Subpart D—Authorization by Permit

11. In § 144.31 paragraph (c)(1) is revised and new paragraph (e)(9) is added to read as follows:

§ 144.31 Application for a permit.

* * * * *

(c) *Time to apply* * * *

(1) For existing wells, as expeditiously as practicable and in accordance with the schedule in any program description under § 145.23(f) and (for EPA administered programs) on a schedule established by the Regional Administrator, but no later than 4 years from the approval or promulation of the UIC program, or as required under § 144.14(b) for wells injecting hazardous waste. For EPA administered programs owners or operators of Class I and III wells must submit a complete permit application no later than 1 year after the effective date of the program.

* * * * *

(e) *Information requirements* * * *

(9) For EPA administered programs, the applicant must give separate notice of intent to apply for a permit to each owner or tenant of the land within one-quarter mile of the site. The addresses of those to whom notice are given, and a description of how notice was given, shall be submitted with the permit application. The notice shall include:

(i) Name and address of applicant;

(ii) A brief description of the planned injection activities, including well location, name and depth of the injection zone, maximum injection pressure and volume, and fluid to be injected;

(iii) EPA contact person; and

(iv) A statement that opportunity to comment will be announced after EPA prepares a draft permit.

This requirement may be waived by the Regional Administrator where the site is located in a populous area and individual notice to all land owners and tenants would be impracticable.

12. In § 144.34 the introductory text of paragraph (a) is revised to read:

§ 144.34 Emergency permits.

(a) *Coverage.* Notwithstanding any other provision of this Part or Part 124, the Director may temporarily permit a specific underground injection if:

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13. In § 144.51 paragraph (j)(2)(ii) is revised and new paragraphs o and p are added to read as follows:

§ 144.51 Conditions applicable to all permits.

* * * * *

(j) *Monitoring and records*

* * * * *

(2) * * *

(ii) The nature and composition of all injected fluids until three years after the completion of any plugging and abandonment procedures specified under § 144.52(a)(6). The Director may require the owner or operator to deliver the records to the Director at the conclusion of the retention period. For EPA administered programs, the owner or operator shall continue to retain the records after the three-year retention period unless he delivers the records to the Regional Administrator or obtains written approval from the Regional Administrator to discard the records.

* * * * *

(o) *Plugging and abandonment report.* For EPA administered programs, after plugging a well, the permitted shall within fifteen days submit to the Director a report of plugging and abandonment. The report shall describe how the plugging and abandonment plan required by § 144.52(6) was carried out including:

(1) The nature and quantity of materials used in plugging;

(2) The location and extent (by depth) of the plugs;

(3) Records of any tests or measures made;

(4) The amount, size, and location (by depth) of casing left in the well;

(5) The volume of mud used;

(6) If an attempt was made to part any casing, a complete report of the method used and the results obtained; and

(7) A certification from the person who has performed the plugging operation verifying the accuracy of the report.

(p) *Mechanical integrity demonstrations.* For EPA administered programs, the Regional Administrator by written notice may require the owner or operator to comply with a schedule describing when such demonstrations shall be made.

14. In § 144.52 paragraphs (a)(5), (a)(6) and (a)(7) are revised to read as follows:

§ 144.52 Establishing permit conditions.

(a) * * *

(5) Monitoring and reporting requirements as set forth in 40 CFR Part 146. The permittee shall be required to identify types of tests and methods used to generate the monitoring data. For EPA administered programs, monitoring of the nature of injected fluids shall comply with applicable analytical methods cited and described in Table I of 40 CFR 136.3 or in Appendix III of 40 CFR Part 261 or in certain circumstances by other methods that have been approved by the Regional Administrator.

(6) Any cessation of operations for a period longer than two years shall be considered not to be temporary or intermittent, and the owner or operator shall plug the well in accordance with the plan, unless the owner or operator demonstrates to the satisfaction of the Regional Administrator that the well will be used in the future and that appropriate steps have been taken to prevent endangerment of USDWs.

(7) *Financial responsibility.* The permittee is required to maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the Director. The permittee must show evidence of financial responsibility to the Director by the submission of a surety bond, or other adequate assurance, such as financial statements or other materials acceptable to the Director. For EPA administered programs the Regional Administrator may on a periodic basis require the holder of a lifetime permit to submit an estimate of the resources needed to plug and abandon the well revised to reflect inflation of such costs, and a revised demonstration of financial responsibility if necessary.

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Part IV

Department of the Interior

Office of Surface Mining Reclamation and Enforcement

Revegetation of Regraded Areas and Other Lands Disturbed By Surface Coal Mining Operations; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 816, and 817

Surface Coal Mining and Reclamation Operations, Permanent Regulatory Program; Revegetation

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is adopting final rules for the revegetation of regraded areas and all other lands disturbed by surface coal mining operations. These final rules are needed to clarify existing rules, minimize duplication, and provide internal consistency. The rules revise requirements for reestablished plant species, planting times, mulching, and revegetation success standards. These changes will facilitate the successful revegetation of mined lands.

EFFECTIVE DATE: October 3, 1983.

FOR FURTHER INFORMATION CONTACT: Arlo Dalrymple, Biological Scientist, Division of Engineering Analysis, Office of Surface Mining, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, D.C. 20240; 202–343–3198.

SUPPLEMENTARY INFORMATION:

I. Background

On March 23, 1982 (47 FR 12596), OSM published a notice of proposed rulemaking to amend 30 CFR Parts 816 and 817 relating to revegetation of surface coal mining and reclamation operations. Public hearings were scheduled for April 16, 1982, in Washington, D.C.; Pittsburgh, Pa.; and Denver, Colo. The Pittsburgh public hearing date was changed to April 20, 1982 (47 FR 13535). No one requested to testify at these hearings. The comment period closed on April 22, 1982. On May 13, 1982, the comment period was reopened for an indefinite period (47 FR 20631), and was closed on August 25, 1982 (47 FR 30266). The comment period was again reopened, on September 7, 1982, and extended through September 10, 1982 (47 FR 30266). During these periods, OSM received written comments from more than 45 commenters representing Federal and State agencies, coal companies, trade associations, environmental groups, and interested citizens.

The provisions of the Surface Mining Control and Reclamation Act of 1977 (the Act), 30 U.S.C. 1201 *et seq.*, which are especially relevant to the rules adopted in this rulemaking are found in Sections 515(b)(2), 515(b)(19), 515(b)(20), and 516(b)(6). Section 515(b)(2) requires the operator, as a minimum, to restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is a reasonable likelihood.

Section 515(b)(19) of the Act requires the operator to establish, on all affected lands, a "diverse, effective, and permanent vegetative cover of the same seasonal variety native to the area of land to be affected and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the area." Section 516(b)(6) imposes a similar requirement for the surface effects of underground mining. Section 515(b)(19) also permits the use of introduced species where desirable and necessary to achieve the approved postmining land use. Section 515(b)(20) of the Act requires the operator to assume responsibility for successful revegetation for either 5 or 10 full years after the last year of augmented seeding, fertilizing, irrigation, or other work to assure compliance with Section 515(b)(19). The 5-year period of responsibility is applicable to areas or regions receiving an annual average precipitation greater than 26 inches, and the 10-year period is applicable to areas or regions where the annual average precipitation is 26 inches or less. An additional pertinent provision, in Section 515(b)(4), requires mine operators to "stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation to effectively control erosion and attendent air and water pollution."

The rules adopted today govern revegetation to reclaim areas disturbed by surface mining activities, §§ 816.111–816.116, and to reclaim areas disturbed by underground mining activities, §§ 817.111–817.116. The final revegetation rules are identical for surface and underground mining activities. Accordingly, in this preamble Part 816 will be discussed with the understanding that the discussion also applies to Part 817. Specific comments on Part 817 will be addressed separately from those of Part 816. In preparing the final rules and the responses to commenters, OSM has relied upon the Act, the legislative history of the Act, judicial rulings, technical literature, and regulatory operating experience gained under the initial regulatory program.

II. Discussion of Rules Adopted and Responses to Comments

A. General Comments

The comments received on the proposed rules represented a diversity of viewpoints and experiences. Many commenters supported the Department of the Interior's effort to remove what were perceived to be burdensome and redundant rules. These commenters generally thought that the proposed amendments would provide the flexibility necessary to allow result-oriented, cost-effective revegetation, and they supported proposed rules emphasizing performance rather than design criteria. In this regard, a State believed that there are circumstances under which specific design criteria developed at the State level may be beneficial for operators and regulators.

Other commenters expressed concern that the proposed rule changes were a substantial weakening of the previous rules and would undermine the revegetation requirements of the Act and increase the likelihood of revegetation failures. Some of these commenters stated that the proposed rules would leave individual States without guidance when determining minimum acceptable standards for revegetation success.

A commenter said the problems with the proposed rules fell into two categories—a weakening of rules that ensure revegetation success and a weakening of rules that require operator responsibility for success. The commenter added that the environmental risks of the proposed rules far exceeded any minor cost benefits that might result from the proposed changes. Another commenter thought it a mistake to relax the standards for revegetation prior to any long—term demonstration of whether the previous performance standards are adequate. OSM was urged to withdraw the proposed rule.

This rulemaking reaffirms OSM's position that the primary responsibility for regulating surface mining and reclamation operations should rest with the States. Federal rules must be capable of nationwide application. The absence of detail in the Federal rules is not a weakening of revegetation requirements but reflects that the rules are dessigned to account for regional diversity in terrain, climate, soils, and other conditions under which mining occurs. Additional response to these general comments is found in the

discussion of the specific comments which follow. Further discussion of the general approach to making the rules more flexible and of replacing design criteria with performance standards is contained in OSM's "Final Environmental Impact Statement OSM EIS-1: Supplement," (FEIS) Volume I, Chapters II and IV.

B. Specific Comments

Section 816.111 Revegetation: General requirements

The general requirements for revegetation and the use of introduced species were set forth in previous §§ 816.111 and 816.112. OSM is amending these sections by combining the requirements under § 816.111 and deleting § 816.112. The purpose of this restructuring is to emphasize the statutory criteria contained in Section 515(b)(19) of the Act and to clarify rules that were perceived to be awkward and confusing.

Proposed § 816.111 established general requirements for vegetative cover and the use of plant species in mined-land reclamation. It also granted exceptions to these general requirements where the species were necessary to achieve quick-growing, temporary, stabilizing cover, and where cropland was an approved postmining land use. The proposed rule differed from previous §§ 816.111 and 816.112 in that it did not explicitly require the use of field trials to demonstrate that introduced species are desirable and necessary to achieve the approved postmining land use. It also did not explicitly require the vegetative cover to be capable of stabilizing the soil surface from erosion. The reasons for these proposed changes and other changes of lesser significance were given in the preamble to the proposed rules (47 FR 12596, March 23, 1982).

Final § 816.111 is essentially the same as proposed § 816.111, with the exception that provisions relating to surface soil erosion and poisonous or noxious species have been added. An explanation of these changes and a section-by-section discussion of all the comments received follows.

Section 816.111(a)

Proposed § 816.111(a) required the operator to establish on all affected land, in accordance with the approved permit and reclamation plan, a vegetative cover that is diverse, effective, permanent, and comprised of species native to the area, or of introduced species where approved by the regulatory authority. The proposed rule also required that reestablished vegetation must be at least equal in extent of cover to the natural vegetation of the area and capable of achieving a productivity level compatible with the approved postmining land use.

One commenter contended that it is inappropriate to mix the procedural aspects of approval of a reclamation plan and the basic performance standards of the Act in one rule. This commenter recommended that the phrase "in accordance with the approved permit and reclamation plan" be deleted from § 816.111(a) and that new language be added to the rule which would require all revegetation to be in compliance with the approved reclamation plan and the revegetation performance standards. The new language was believed to be needed to make it clear that if the regulatory authority approves a reclamation plan that violates the Act or rules, the operator is not absolved of the responsibility for complying with the revegetation performance standards.

The intent of the phrase in question is to require the operator to follow the revegetation procedures in the permit and reclamation plan that has been previously approved by the State regulatory authority. Generally, an operator's compliance with the permit and reclamation plan would indicate compliance with the Act and the regulatory program. However, if the regulatory authority errs and approves a permit and reclamation plan that violates the Act or rules, the operator is still legally required to comply with the Act and rules. Since § 816.111(a) is consistent with the result that the commenter seeks, no change has been made in the final rule.

A second commenter asserted that the proposed term "affected land" was not appropriate because it could be concluded that operators would be required to seed temporary topsoil stockpiles, road embankments, and other similarly affected lands. The commenter suggested that the revegetation rules should apply only to the revegetation of areas that have been prepared for *permanent* revegetation pursuant to previous §§ 816.24 and 816.25 requiring the redistribution of topsoil.

OSM agrees and has substituted the phrase "on regraded areas and on all other disturbed areas" for the phrase "all affected land," to more closely parallel Section 515(b)(19) of the Act, which requires the establishment of vegetation "on the regraded areas, and all other lands affected * * *." However, OSM has adopted the term "disturbed areas" in the final rule, rather than "lands affected." The term "disturbed area" is defined in 30 CFR 701.5 as an area from which vegetation, topsoil or overburden is removed or upon which topsoil, spoil, or waste of various types is placed and is consistent with the term "lands affected" in Section 515(b)(19) of the Act. This new language and that in § 816.113, which requires planting of disturbed areas after replacement of the plant-growth medium, should be sufficient indication that a permanent vegetative cover need not be established until a disturbed area has been graded and topsoil or topsoil substitutes redistributed under final § 816.22.

However, operators will often find it necessary to establish a temporary cover of annual and perennial species when there is an extended period between the initial soil-surface disturbance and final grading and replacement of the plant-growth medium. For example, sedimentation ponds and roads may be constructed and used for several years before removal and final reclamation. During this period, sedimentation pond outslopes and road embankments must be protected and stabilized to control erosion effectively as required in § 816.95(a). The establishment of a temporary vegetative cover is one means of achieving the necessary stabilization of the soil surface.

One commenter stated that the proposed rules were appropriately based upon the Act, which calls for "diverse, effective, and permanent vegetative cover." He added that the explanation of the term "diversity" in the premable should be expanded to explain that "diversity" does not necessarily mean that every species and variety of premining grass, shrub, or tree be reestablished or that they be reestablished in identical numbers and ratios after mining.

OSM agrees with the commenter's statement, which is consistent with the definition and explanation of "diversity" contained in the preamble to the proposed rules (47 FR 12597, March 23, 1982).

Furthermore, opportunities may exist for improving plant communities by changing the species composition as, for example, establishment of species that change a range site from fair to good condition or that change a noncommercial forest to one that has market potential. In both examples, the new plant community may not contain all the species represented in the original plant community. However, the new plant community is expected to contain species not found, or not found in identical numbers, on the site prior to

mining. This interpretation of diversity is consistent with the statutory objective of restoring affected lands to higher and better postmining land uses.

Proposed § 816.111(a)(2) required the established vegetative cover to be comprised of species native to the area or of introduced species where approved by the regulatory authority. One commenter contended that it was unnecessary to require approval by the regulatory authority since this was implied by the need to establish vegetative cover in accordance with the approved permit and reclamation plan as required by § 816.111(a) and in compliance with the species provisions in § 816.111(b).

The use of introduced species in surface mine reclamation presents special problems and risks. The requirement for regulatory authority approval may overlap the provisions identified by the commenter; however, it is retained in the final rules to emphasize the critical evaluation which regulatory authorities will need to make before approving an introduced species that has not been previously field tested for use in mined-land reclamation. A phrase has been added to § 816.111(a)(2) to make it clear that the regulatory authority may approve the use of the introduced species only where it is desirable and necessary to achieve the postmining land use. This is consistent with Section 515(b)(19) of the Act.

A second commenter believed that Stae regulatory authorities should be required to consult with wildlife agencies when approving the use of introduced species, to ensure that the species are compatible with resident wildlife populations. The commenter suggested adding language to proposed § 816.111(a)(2) that would require field-trial demonstrations to document suitability for the porposed postmining land use where there was not sufficient past experience with the species under similar growing conditions.

It is not necessary to require State regulatory authorities to consult with wildlife agencies when approving the use of introduced species. State regulatory authorities may find such consultation beneficial, but it should be left to the discretion of the regulatory authority to determine whether consultation is actually needed. The need for field trials should also be determined by the regulatory authority rather than be required under a Federal rule. Further discussion of introduced species and the use of field trials is found under § 816.111(b).

Final § 816.111(a)(3) requires a vegetative cover at least equal in extent to the natural vegetation of the area. A commenter was concerned that the proposed rules were not responsive to situations where forestry is the postmining land use because cover requirements in proposed § 816.11(a)(3) could be deleterious to maximizing forest growth. The commenter added that if § 816.111(a)(3) were interpreted in the context of proposed § 816.111(a)(4), which would have required the achievement of productivity levels compatible with the postmining land use, his concerns would be adequately addressed.

OSM recognizes that extensive ground cover may be incompatible with maximum tree survival and growth since trees and herbaceous plants compete for moisture, nutrients, and light. In situations where the long-term vegtative cover is forest, a light herbaceous cover would be acceptable if it was adequate to protect the soil surface from erosion.

Productivity: Proposed § 816.111(a)(4) would have required that the reestablished vegetative cover be capable of achieving productivity levels compatible with the approved postmining land use. Two commenters asserted that this provision should be deleted because they could not find any statutory requirement or other justification for the rule. Two state regulatory authorities also commented on proposed § 816.111(a)(4). Both desired the retention of a productivity provision, but they felt that the phrase "capable of achieving productivity levels" resulted in an ambiguous, imprecise, and poorly demarcated goal which is difficult to measure in the field. One of these commenters maintained that in order for OSM to fully implement the intent of Section 515 (b)(2) and (b)(19) of the Act, the final rules must focus on premining productivity levels (measured in the field by some actual means) as a primary reclamation standard.

Support for including a productivity requirement in the rules is found in the use of the word "effective" in Section 515(b)(19) of the Act. As Congress stated, effective means "both the productivity of the planted species concerning its utility to the intended postmining land use (e.g., nutritional value for livestock) as well as its capability of stabilizing the soil surface with respect to reducing siltation to normal premining background levels." (H. Rept. No. 95–218, 95th Cong., 1st Sess., p. 106, (1977).)

However, OSM agrees with the commenters in their conclusion that proposed § 816.111(a)(4) was ambiguous and provided an uncertain standard that may be misleading or redundant of other requirements. For this reason, proposed § 816.111(a)(4), which was a standard for success, has not been included in the final rule. Final § 816.116 requires the success of revegetation to be judged on the effectiveness of the vegetation for the approved postmining land use. Whether productivity is included as a measure to ensure that the requirements of §§ 816.116 and 816.111(a)(1) are met depends upon the postmining land use and particular success standard established.

OSM rejects the suggestion that the rule focus on premining productivity levels. OSM agrees that Congress intended that mined land be reclaimed to an equal or better condition than existed prior to mining. In establishing the standards for success of that reclamation, the Act specifically focuses on the extent of the cover of the natural vegetation in the general area and not on premining productivity levels of the specific mined areas. It is anticipated, however, that if the general standards for revegetation are met, the land affected will be returned to a form and productivity at least equal to that of its premining condition.

Erosion control: Proposed § 816.111 would have deleted the provision of previous § 816.111(b)(2), which required the vegetative cover to be capable of stabilizing the soil surface from erosion. OSM proposed this deletion because Section 515(b) (19) and (20) of the Act did not explicitly address erosion. Furthermore, rules governing redistribution of topsoil and erosion control appeared to satisfy Section 515(b)(4) of the Act, which requires operators to "stabilize and protect all surface areas including spoil piles affected by the surface coal mining and reclamation operation to effectively control erosion." OSM also pointed out that proposed § 816.111(a)(3) would require the operator to achieve a ground cover that is equal to or greater than the ground cover that existed prior to mining and that this requirement would in effect provide the reclaimed soils with protection from erosion equal to the protection provided prior to disturbance of the site.

Deletion of the erosion-control requirement was supported by one commenter who said that erosion control was adequately addressed in other sections of the rules, such as previous § 816.24(b)(3), regarding topsoil redistribution, and previous § 816.23(b), regarding topsoil storage. Other commenters disagreed and provided comments seeking to retain erosion control provisions in the revegetation rules.

A commenter argued that, in the Southwest, ground-cover standards could be achieved by the establishment of coarse grasses or other plants which do not have erosion-control characteristics equal to the original ground cover. This difference was said to be crucial because most rainfall occurs in violent summer thunderstorms. A commenter noted that there are situations in arid and semiarid areas where the approved postmining land use has slopes steeper than the original slopes and that the restoration of the original extent of plant cover may result in a landscape that is more susceptible to erosion. A third commenter disagreed with OSM's contention that Section 515 (b)(19) and (b)(20) of the Act did not specifically reference erosion control. The commenter noted that these sections require a "diverse, effective, and permanent vegetative cover" and that the word "effective" is defined in House Report 95-218 (95th Cong., 1st Sess., p. 106 (1977)) to mean "both the productivity of the planted species * * * as well as its capability of stabilizing the soil surface with respect to reducing siltation to normal background levels." In the commenter's opinion, this appeared to be a clear directive from Congress that revegetation should at least control erosion to the extent that siltation of surface-water supplies is minimized.

A commenter disagreed with OSM's rationale for deletion of § 816.111(b)(2) as presented in the preamble to the proposed rules (47 FR 12597). No reason for disagreement was provided. The commenter recommended that OSM adopt a new subsection (§ 816.111(b)(5)) that would require vegetative cover capable of significantly minimizing erosion from the soil surface.

The arguments presented by the commenters who sought to retain a provision requiring the vegetative cover to be capable of controlling erosion have merit. OSM acknowledges that an important function of vegetative cover is erosion control and that Section 515(b)(4) of the Act requires operators to stabilize the surface of the soil so as to effectively control erosion. In response to the comments, OSM has adopted a provision in § 816.111(a)(4) which will require the establishment of a vegetative cover that is capable of stabilizing the soil surface from erosion. Furthermore, a related provision in § 816.95 (Stabilization of Surface Areas) has also been adopted to address rills and gullies and air and water pollution attendant to erosion (48 FR 1163, January 10, 1983). These rules adequately provide the environmental protection from erosion called for by the Act.

Section 816.111(b)

Proposed § 816.111(b) would have required operators to use introduced or native plant species that are desirable and necessary to achieve the approved postmining land use, have the same seasonal characteristics of growth as the original vegetation, and are capable of self-regeneration and plant succession. Also, the reestablished plant species had to be compatible with the plant and animal species of the area and meet applicable State and Federal statutes regulating seed and introduced species. The final rule is essentially the same as proposed, except for the additional requirement that reestablished species must meet statutes regulating noxious and poisonous plants, and that the plant species must be compatible with the approved postmining land use rather than being desirable and necessary to achieve the postmining land use, since some land uses may not depend upon the revegetative cover.

Use of introduced species: Final § 816.111(b) contains the essential criteria for regulatory authorities to determine whether a species of plant is suitable for surface mine reclamation. These criteria are applicable to both native and introduced species. Regulatory authorities should decide when field trials or other types of documentation are needed to determine if a species meets the requirements of § 816.111(b). Under this reorganization of the rule, previous § 816.112 (Revegetation: Use of introduced species) is no longer necessary and has been deleted.

Previous § 816.112 provided for regulatory authority approval of introduced species when field trials demonstrated that they were desirable and necessary to achieve the postmining land use or that they were needed to achieve a quick-growing, temporary, stabilizing cover and measures to establish permanent vegetation were in an approved reclamation plan. It required that introduced species be compatible with animal and plant species of the area and meet the requirements of applicable State and Federal seed laws and not be poisonous or noxious.

Several commenters were against the adoption of proposed § 816.111(b) and the related deletion of previous § 816.112. One commenter believed the restructuring of the wording to give introduced species the same emphasis as species native to the area may result in less effective regeneration. The commenter further explained that the proposed rule change would result in less cover diversity than under the previous rule and a significant shift from forest to open-land uses. He surmised that there would probably be more grasses sown and fewer trees and shrubs planted. This, the commenter argued, would result in less effective reclamation because a combination of woody plants and ground cover was thought necessary to assure long-term erosion control and the stability of steep slopes common to Appalachia. The commenter also believed that herbaceous cover by itself would deteriorate without supplemental fertilization and reseeding.

OSM appreciates the commenter's concerns. However, the commenter has erred in assuming that regulatory authorities will approve the use of introduced species in a manner that would lead to the conditions which he described. Section 816.111(a)(1) requires the establishment of a diverse and permanent cover. Diversity could be achieved by planting a mixture of grasses and legumes. Under final § 816.111(a)(2), introduced species may be approved only where desirable and necessary to achieve the approved postmining land use. The species comprising the vegetative cover, whether native or introduced, will have to be capable of self-regeneration and plant succession. Thus, if the performance standards are met, the objective of Section 515(b)(19) of the Act will be achieved.

Another commenter felt that it was a serious mistake to mix revegetation standards for native species with those for introduced species and recommended retaining § 816.112 in its entirety. The commenter reasoned that the use of introduced species requires more intensive long-term management than native species and as a consequence special care must be used in determining whether to allow the use of introduced species in mined-land reclamation. OSM agrees with the commenter that introduced species must be carefully evaluated before being used in reclamation. Section 816.111(a)(2) specifically requires approval by the regulatory authority of all introduced species that are used in reclamation. Such usage must be consistent with the attainment of the requirements in §§ 816.111(b)–816.111(d).

One commenter said that the proposed rules, while maintaining restrictions on the use of introduced species as required by the Act, eliminated the native-species preference implied by the Act by placing both native and introduced species on the

same footing. The commenter added that introduced species were selected in the past for use in reclamation if they were desirable in achieving the postmining land use, and that necessity, though often considered, was not a prerequisite for native species. The revised rules retain the "implied preference" for native species by requiring specific regulatory authority approval of introduced species in § 816.111(a)(2) to be based upon such species being desirable and necessary to achieve the approved postmining land use.

A commenter contended that deletion of previous § 816.112 in its entirety could substantially alter the results which reclamation achieves for wildlife. It was argued that, through evolutionary processes, assurance is provided that native plant species are compatible with resident wildlife populations. The compatibility of introduced species was thought to be impossible to document. This commenter strongly recommended retention of § 816.112 (b), (c), and (d) of the previous rules which set conditions under which State regulatory authorities could approve the use of introduced species.

Regulatory authorities should be aware of the plant species that have been documented as being suitable for wildlife habitat and will have access to technical groups capable of supplying such information. The regulatory authority may, if necessary, consult State and Federal fish and wildlife services, State universities, and the U.S. Department of Agriculture, Soil Conservation Service Plant Materials Centers to determine whether a species is compatible with resident wildlife. Furthermore, the basic requirements of previous § 816.112 (b), (c), and (d) are found in § 816.111 (b)(4) and (b)(5) and (c).

Another commenter felt that the elimination of previous § 816.112 could lead to the planting of nuisance exotics which tend to squeeze out native species. Multiflora rose was cited as an example of an introduced species that is detrimental. As noted earlier § 816.111(a)(2) specifically requires regulatory approval of the use of all introduced species included in a mining and reclamation plan. Additionally, § 816.111 (b)(4) and (b)(5) require that the reestablished plant species be compatible with the plant and animal species of the area and that State and Federal statutes governing the use of poisonous and noxious plants be met. These requirements provide an adequate safeguard against the planting of nuisance exotics.

In a similar vein, several commenters opposed deletion of the field-trial requirements of previous § 816.112(a). Without giving any justification, one commenter said States should have no discretion to dispense with the requirement of field tests for introduced species. Another commenter contended that the deletion of previous § 816.112(a) subverts the intent of Section 515(b)(19) of the Act and that the proposed rule was an open invitation for abuse of native-species requirements by coal operators and State regulatory authorities. The commenter stated that actual field trials over a long period of time are necessary before introduced species can be adopted for general use in establishing permanent cover. The commenter asserted that introduced species have several drawbacks: A generally low level of plant diversity in areas where they are planted, potential for early stand stagnation, and possible poor long-term adaptation to fluctuations in climate, such as sustained periods of drought.

Conversely, other commenters argued that State regulatory authorities are certainly able to approve the use of introduced species without field trials when revegetation success has already been successfully demonstrated and the species are desirable and necessary to achieve the postmining land use. One commenter noted that unnecessary compliance burdens would be avoided under the new language.

A commenter pointed out that many introduced species have become naturalized and that regulatory authorities are in a position to approve the use of desirable and proven species without the necessity of field trials, but thought that field trials should still be required on unproven species. Another commenter recommended that introduced species be field tested under the experimental practice provisions in 30 CFR 785.13.

Field trails are generally appropriate before unproven species can be used for surface mine reclamation. Other species that have been previously demonstrated, under similar biotic conditions, to be successful in achieving the specified postmining use generally do not require additional tests. Publications by Vogel (1981) and Thornburg (1982) are examples of documents that can be used by regulatory authorities to identify native and introduced species that have been successfully used to revegetate mined lands. In addition, unproven species could be tested for suitability under the experimental practice rules if the requirements of § 785.13 are satisfied.

A commenter suggested deletion of the reference to native species in proposed § 816.111(b). The commenter believed OSM was trying to impose the same restrictions on native and introduced plant species and that it was not necessary to justify the use of native species.

As previously stated, paragraph (b) is equally applicable to native and introduced species. Some native species, as well as introduced species, may be unsuitable for reclamation because they take excessively long periods of time to establish and are not compatible with certain postmining land uses. In final § 816.111(b), the proposed phrase "whether introduced or native" has not been adopted since the provision applies to all reestablished plant species unless specifically limited.

Water areas and road surfaces: The proposed rules did not include an exemption of revegetation requirements for water areas and road surfaces approved as part of the postmining land use. This exemption was found in previous § 816.111(b)(1) and has been retained in the final rule as part of the introductory language in revised § 816.111(a).

One commenter said that the proposal to delete the water area and road-surface exemption indicated OSM's appreciation of unneeded and overly restrictive requirements. Another commenter opposed the deletion because he believed that compacted dirt and gravel haul roads would not be adequately reclaimed and the areas affected would become permanently useless for any productive purpose.

The commenter may have misunderstood the exemption and its proposed deletion. The exemption applies only to water areas and road surfaces that are approved as part of the postmining land use. Temporary roads and water areas that are reclaimed must be regraded, covered with topsoil or topsoil substitutes, and planted to an approved vegetative cover which meets the requirements of §§ 816.111–816.116. As the preamble to the proposed rules pointed out, this change would merely have deleted language perceived to be unnecessary (47 FR 12597). In light of the commenters' confusion concerning the proposed deletion, OSM has decided to retain the specific language to clarify that the exemption continues. The final rule language will not change operator responsibility with respect to areas covered by water and road surfaces.

Desirable and necessary: Proposed § 816.111(b)(1) required the reestablished plant species to be desirable and necessary to achieve the

approved postmining land use. Final § 816.111(b)(1) requires that all species used to reestablish vegetation be compatible with the postmining land use.

One commenter suggested changing the wording of the proposed requirement to "desirable or necessary" instead of "desirable and necessary." The commenter explained that there is a strong possibility introduced species may be highly desirable but not absolutely necessary for the approved postmining land use.

Section 515(b)(19) of the Act requires introduced species to be both desirable *and* necessary to achieve the approved postmining land use plan. OSM has retained this statutory language. Proposed § 816.111(b)(1) would have extended application of the "desirable and necessary" standard to native species. The requirement that all species used be desirable and necessary for the postmining land use has not been adopted, since some land uses may not depend upon the vegetative cover. The requirement that introduced species be "desirable and necessary" for the approved postmining land use has been retained and included in final § 816.0111(a)(2). OSM interprets "desirable and necessary" in this context to mean that revegetation is a necessary component of the postmining land use and that the use of the proposed introduced species is desirable and necessary in achieving that end use. The introduced species need not, however, be the only species capable of achieving the postmining land use.

Seasonal characteristics of growth: Proposed § 816.111(b)(2) required the reestablished plant species to have the same seasonal characteristics of growth as the original vegetation. One commenter said that the proposed rule conflicted with proposed § 816.111(b)(1), which required the reestablished plant species to be desirable and necessary to achieve the approved postmining land use. It was argued that when the postmining land use is cropland or forage, the species chosen to achieve those uses should not be limited to those with the same characteristics as the original vegetation, which could have been, for instance, sagebrush and blue grama grass. The commenter recommended that the term "seasonal utility" be substituted for "seasonal characteristics of growth."

Final § 816.111(d) provides the desired exception sought by the commenter when the postmining land use is cropland. Where range and grazing land are the postmining land use, situations will exist where the range condition can be improved by changing the proportion of cool- and warm-season grasses as well as the proportion of forbs and shrubs. Thus, seasonal characteristics overall could be essentially the same as those in the premining plant community, but the proportion of total cover represented by each species may change. For these reasons, OSM has adopted the rule as it was proposed.

One commenter contended that previous § 816.111 (b)(3) and (b)(4) should be retained. Previous § 816.111(b)(3) defined seasonal variety and previous § 816.111(b)(4) exempted cropland from the requirement to establish a permanent cover when operators planetd crops normally grown. Previous § 816.111(b)(4) was thought to be needed to prove productivity and a return to premining capability.

Seasonal characteristics of growth are more appropriate to describe species requirements than seasonal variety, for the reasons given in the preamble to the proposed rules (47 FR 12597). Furthermore, final § 816.111(d) exempts cropland from permanent-cover requirements, and final § 816.111 (a)(1) and (b)(1) require an effective cover that is compatible with the approved postmining land use. These rules result in essentially the same outcome as the previous rules which the commenter sought to retain. As for the need to return to premining capability, the success standard for cropland is treated under § 816.116(b).

Self-regeneration and plant succession: Final § 816.111(b)(3) requires reestablished plant species to be capable of self-regeneration and plant succession. One commenter contended that under intensive forest management the "self-regeneration" requirement of proposed § 816.111(b)(3) becomes a moot issue when select varieties of proven plant species are reestablished with each regeneration sequence.

OSM recognizes that in commercial forestry the clearcutting and planting method of stand regeneration is a common silvicultural practice. Such land use becomes similar to cropland with the exception that the production cycle is much longer. The determination of the extent to which self-regeneration must be considered will rest upon such factors as whether there is a forest-management plan for the permit area that provides for replanting, and the surface owner's commitment to long-term wood fiber production.

Another commenter felt the reference to self-regeneration and plant succession was a good addition to the rules, but not entirely applicable to introduced species because many such species are not capable of self-regeneration and must be cultivated to maintain their productivity. This commenter advised retaining previous § 816.111(b) and adding a requirement that the reestablished species be capable of self-regeneration and plant succession.

The legislative history of the Act supports OSM's conclusion that both species native to the area and introduced species used in revegetation should be capable of self-regeneration. (H. Rept. No. 95–218, 95th Cong., 1st Sess., 1977.) Hence, OSM has retained the requirement that the reestablished vegetation must be capable of self-regeneration and plant succession. This can be accomplished through the use of perennials capable of self-regeneration from roots, crowns, or seeds.

Compatibility: Final § 816.111(b)(4) requires the reestablished plant species to be compatible with the plant and animal species of the area. One commenter suggested deletion of proposed § 816.111(b)(4) in its entirety because it was believed to be in conflict with § 816.111(a)(2), which permits the use of introduced species upon approval of the regulatory authority.

Any species approved for use in reclamation must be compatible with the plant and animal species of the area. Hence, § 816.111(b)(4) is one of the criteria that the regulatory authority will use in determining whether to approve or disapprove any plant species proposed for planting in disturbed areas.

Poisonous and noxious plants: Proposed § 816.111(b)(5) required reestablished plant species to meet applicable State and Federal statutes regulating seed and introduced species. The proposed rule was essentially the same as previous § 816.112(d); however, the phrase "and are not poisonous or noxious" was proposed to be deleted. OSM asserted that compliance with applicable State and Federal statutes and the provision in § 816.111(b)(1) which required all species to be "desirable and necessary" would effectively prohibit the use of species that were poisonous and noxious.

Several commenters opposed the proposed deletion. One commenter said that there is a substantial difference between an absolute prohibition as required by previous § 816.112(d) and a "limitation of the use" as implied in the March 23, 1982, preamble (47 FR 12598). The commenter added that the political realities are such that discretion afforded to State regulatory authorities to allow operators to use noxious weeds would result in their use more often than is desirable. Another commenter asked what purpose is served by the deletions and whether it was really

counterproductive, burdensome, and duplicative to prohibit poisonous and noxious plants from use in reclamation. Without explanation, other commenters also opposed the change.

As indicated by the comments, there was much confusion resulting from the proposed deletion. In order to clarify the intent of the rule, OSM has added language that will require reestablished plant species to meet the requirements of State and Federal statutes regulating poisonous and noxious plants. The final rule deviates from the previous rule in that the prohibited plant species must be restricted by State or Federal laws or regulations. Many species, such as oak, hemlock, chokecherry, and millet, can be poisonous to livestock and humans under certain conditions. Normally these species are not a problem, and they possess traits that are desirable for achieving specific land uses. Therefore, OSM has limited the restriction on the use of poisonous and noxious plants to those plants that have been identified as poisonous or noxious under State or Federal laws or regulations.

One commenter maintained that the permittee should not be responsible for the natural invasion of undesirable, nonnoxious plant species on mined areas. A change in the language of § 816.111(b) was proposed to limit operator liability.

The permittee is responsible for the establishment of vegetation that supports the postmining land use. In the event a "natural invasion" of undersirable plant species does occur, the operator is expected to use normal husbandry practices to eliminate the undesirable species while retaining or reestablishing, when necessary, the species that will achieve the approved postmining vegetative community.

Section 816.111(c)

Proposed § 816.111(c) provided an exception to § 816.111 (b)(2) and (b)(3) when the species were necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan. The final rule is adopted as proposed. One commenter approved the proposed language because it would allow the use of temporary cover species. This was considered to be both practical and beneficial to the environment since soil erosion would be prevented by the early stabilization of disturbed areas.

Section 816.111(d)

Proposed § 816.111(d) provided an exemption to cover and species requirements found in Paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of the general requirements where the postmining land use was cropland. It also identified 30 CFR Part 823 as applying to areas designated as prime farmlands. The rule is adopted as proposed.

One commenter supported proposed § 816.111(d) because it provided an exception to certain requirements that would be inappropriate and impractical for cropland. Another commenter was in basic agreement with the rule, but thought that a proviso should be added that would require a conservation plan for indicating how the operator planned to limit erosion to tolerable limits.

Part of the information the commenter is seeking in the conservation plan would already be required as part of the reclamation plan. Furthermore, operators will be required by § 816.111(a)(4) to stabilize the soil surface from erosion. Cropland is not exempt from erosion-control standards. Erosion on cropland should be held to levels that would normally occur on similar unmined croplands.

One commenter suggested deleting the last sentence in the proposed rule which states that Part 823 applies to areas designated as prime farmland. OSM has included this informational note in the final rule to avoid any possible misunderstanding with respect to the requirements applicable to prime farmlands.

Section 816.113 Revegetation: Timing

Final § 816.113 requires the planting of disturbed areas to be conducted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for planting is defined as the planting time generally accepted locally for the type of plant materials selected. This is similar to the proposal.

Proposed § 816.113 contained a provision that allowed the seeding and planting of temporary cover or the use of other measures to control erosion until a permanent vegetative cover was adequately established. In the final rule, the provision concerning the use of temporary cover has not been adopted because it is redundant of § 816.111(c), which allows the use of a quick-growing, temporary, stabilizing cover, and § 816.114, which requires the use of soil-stabilizing practices.

One commenter contended that the term "disturbed area" had too broad a meaning and its use in the rule could be interpreted as requiring operators to establish permanent vegetation on areas that have not been prepared for permanent vegetation. The words "subject to § 816.24 and § 816.25" were suggested as an addition to the rule in order to prevent any misinterpretation. By requiring planting to occur after replacement of the plant-growth medium, it is clear under the final rule that the operator is required to establish permanent vegetation only on disturbed areas where topsoil or topsoil substitutes have been redistributed. Hence, no changes have been made as a result of this comment.

A commenter stated that the proposed words "seeded and planted" were redundant. OSM agrees and has used only the word "planted" in the final rule. Several commenters approved OSM's substitution of the proposed phrase "after replacement of the plant growth medium" for the phrase "after final preparation" which was contained in the previous rule. Other changes in the structure of the first sentence of the rule were adopted for clarity and will not affect the timing of revegetation.

A State regulatory authority argued that the last sentence of proposed § 816.113, allowing temporary cover, was permissive rather than mandatory and thus was of no value. The commenter believed that topsoil must be protected from time of placement until permanent vegetation is established. Other rules, such as the proposed topsoil rules, were thought to be inadequate in providing for the needed protection. New language was suggested that would make the provision mandatory. This same commenter also recommended that the rule require temporary plant cover to be seeded as contemporaneously as practical with backfilling and grading. Other commenters sought to have the word "may" in the rule changed to "shall", thus making the planting of temporary cover mandatory.

Different opinions were expressed by two other commenters. One said that the control of erosion is adequately provided for in previous § 816.24(b)(3) and § 816.23(b), which pertain to topsoil storage and redistribution. The other felt the term "effectively control erosion" was too vague, ambiguous, and open to differing interpretations which could result in an impossible burden for operators. New language was suggested which would retain the permissive character of the rule but remove the reference to erosion control.

After considering these comments, OSM has decided not to adopt the last sentence of proposed § 816.113, which would have allowed for the use of temporary vegetative cover and other measures to control erosion until a permanent cover was adequately established. This action is taken because the required protection is

effectively provided in the following rules. In addition to the relevant portions of §§ 816.111 and 816.114, § 816.22(d)(1)(iii) requires that topsoil and all other segregated materials be redistributed in a manner that protects the material from wind and water erosion before and after it is seeded and planted; § 816.95 requires stabilization of surface areas; and final § 816.100 requires that reclamation efforts, including revegetation, occur as contemporaneously as practical with mining operations. Also, under § 816.100, the regulatory authority may establish schedules that define contemporaneous reclamation. These are broad, all-encompassing requirements that should effectively achieve the purpose of the language in the proposed rule. OSM anticipates that most operators will find that the planting of quick-growing annuals will be the easiest and most economical means for achieving compliance.

Section 816.114 Revegetation: Mulching and Other Soil Stabilizing Practices

Proposed § 816.114 would have allowed the regulatory authority to require the application of suitable mulch or use of other soil stabilizing practices where deemed necessary. In the previous rule, the use of mulch and other soil stabilizing practices was mandatory on all regraded and topsoiled areas except where the permittee could demonstrate that alternative reclamation procedures would achieve successful revegetation and not cause or contribute to air or water pollution. Suspension of the requirement was possible only on a case-by-case basis.

The final rule, which is derived from previous § 816.114(a), requires the use of suitable mulch and other soil stabilizing practices on all areas that have been regraded and topsoiled or covered by topsoil substitutes. Compliance may be achieved through the application of crop residues, hay, nontoxic industrial wastes, processed wood fibers, and chemical soil binders or through the planting of annual grains, grasses, or other covers which serve as living mulches. The regulatory authority may waive this requirement when seasonal, soil, or slope factors result in a condition where such practices, as determined by the regulatory authority, are not necessary to control erosion and to promptly establish an effective vegetative cover.

In adopting this final rule, OSM intends to impose the requirement to use mulch and other soil stabilization practices when and where they are needed. Congress recognized, when it passed the Act, that "the use of mulch, fertilizer, and soil stabilizers will probably be common, if not universal, in revegetation activities." (H. Rept. No. 95–218, 95th Cong., 1st Sess., 108 (1977)). In a similar fashion, the final rule also recognizes that mulching and other soil stabilization practices should be a standard practice in surface mine reclamation. However, such practices may not be needed during brief periods in the spring when seed germination and plant-growth conditions are optimum, where regrading results in gradual slopes, and where soils, because of their physical properties, are not easily eroded. In recognition of these and other situations where the use of mulch and soil stabilization practices may not be necessary, OSM has provided an opportunity for regulatory authorities to waive the requirement for their use.

The previous rule allowed for a suspension of the requirement by the regulatory authority on a case-by-case basis after the operator demonstrated that alternative procedures would achieve the requirements of § 816.116 and would not cause or contribute to air and water pollution. In the final rule, waiver of the requirement may be handled on an individual basis or may be incorporated as part of the regulatory program and apply to all or parts of operations that meet the conditions of the waiver. Any waiver must be based upon the regulatory authority's past experience and any technical documentation that is available. In certain instances, a programmatic waiver could provide the necessary environmental protection while relieving operators of burdens entailed in case-by-case demonstrations.

Two States urged OSM to retain the previous rule. One contended that loss of topsoil by erosion was one of the more serious long-term effects of surface mining. The previous rule was thought to result in more protection of this valuable resource than the proposed rule. One of these States also argued that the burden of demonstrating that mulch is not needed should be placed with the permittee rather than requiring the regulatory authority to determine when mulch is necessary. This viewpoint was supported by similar comments from a third State and one additional commenter. In contrast, another State supported the proposed rule as being especially reasonable and desirable.

One commenter suggested that Sections 515(b)(2), 515(b)(4), and 515(b)(16) were sufficient statutory justification to retain the previous rule. This commenter felt that mulch, in one form or another, was almost always beneficial in controlling erosion and promoting a rapid and effective vegetative cover even on level terrain, as evidenced by the reclamation literature and field observations. A similar position was taken by another commenter who believed that failure to use mulch in any region would significantly increase the likelihood of erosion before establishment of vegetation and that such erosion would reduce the productive potential of the soil. The preamble to the previous rule and literature in the administrative record were cited as ample reason for a mulching requirement. A commenter who supported the proposed rule noted that mulching played a different role in the Midwest than it did in Appalachia. A soil conservation organization from the same State argued that the proposed rule would contribute to increased erosion.

OSM finds that mulching is an accepted reclamation practice in most, but not all, cases. Two recent handbooks summarize current thinking on the use of mulch in surface mine reclamation. In his guide for revegetation of coal minesoils in the Eastern United States, Vogel (1981) states:

> Mulches aid revegetation by reducing surface or sheet erosion, conserving soil moisture, and protecting seeds and seedlings during the initial establishment of vegetative cover, and modify extremes in the soil's surface temperature. Mulches aid vegetation establishment, especially under conditions of environmental stress and on minesoils that have physical and chemical characteristics that hinder establishment and growth of plants.

Thornburg (1982) reports the following conclusion in his handbook on the use of plant materials on surface-mined lands in arid and semiarid regions:

> Mulches are often necessary and are generally beneficial in the arid and semiarid areas, especially on south and west facing slopes or alkaline areas.

One commenter opposed the optional nature of the proposed rule because he believed the coal industry would almost always be able to push a State into the least stringent regulatory posture. Minimal standards were believed necessary to prevent this from happening. Similarly, another commenter felt that the proposed rule would probably result in State regulatory programs that do not require mulching or soil stabilization in any form. It also was argued that the proposed rule allowed too much discretion on the part of the regulatory authority and that the word "may" in the proposed rule should be changed to

"shall." Another commenter, who objected to the proposed rule, felt that it was contradictory because the regulatory authority might not require mulch where deemed necessary. This commenter believed that, if mulch was deemed necessary by the regulatory authority, then it should be required, not optional. Sensitive environmental conditions were cited by still another commenter as reason for having mandatory mulching requirements.

There was disagreement on the economic implications of the proposed rule. One commenter said that the elimination of the mandatory mulching requirement would be of economic and practical benefit to operators in those areas which would not require mulching for stabilization or growth enhancement, while another commenter argued that the adverse impacts of not using mulch could far outweigh any cost savings.

The reasons OSM is adopting the final rule are described in the preceding paragraphs. OSM recognizes that in these situations where the regulatory authority concludes that mulching is not necessary, operators may obtain an accompanying economic benefit. However, any waiver of the requirements of § 816.114 must be based on the finding set forth in that section.

Finally two commenters suggested language changes in the proposed rule. One recommended adding the phrase "for erosion control and plant establishment" to the end of the rule in order to identify the objectives of using mulch and soil stabilization practices. The other commenter noted that the provisions of the section applied to both mulch and other soil stabilization practices and, to be consistent, that the title of the section should refer to both. OSM agrees with the latter comment and has changed the section title in response to the commenter's suggestion.

Section 816.115 Revegetation: Grazing

Previous § 816.115 required livestock grazing for the last two years of the responsibility period when the approved postmining land use is range or pasture land. This requirement was intended to assure that the vegetation would support about the same number of livestock that would be supported had the area not been mined. OSM suspended previous § 816.115 on August 4, 1980 (45 FR 51549), in response to a U.S. District Court ruling that section 515(b)(19) of the Act does not require lands with a postmining use of pasture or grazing to be actually subjected to grazing activities. *In re: Permanent Surface Mining Regulation Litigation*, No. 79–1144 (D.D.C., February 26, 1980.) The final rule, which removes the special success standard of previous § 816.115, does not require or restrict livestock grazing on mined lands. The success standard for grazing lands in these revised rules is contained in final § 816.116(b)(1).

Five commenters discussed the proposed removal of § 816.115. One commenter believed the proposed action by OSM was reasonable and desirable, while the other four sought to retain the grazing requirements of the previous rule.

One commenter alleged that OSM had side-stepped the issue of requiring grazing of reclaimed land, and that Judge Flannery had erred in his conclusion that restoration of premining productivity could be determined by making a soil survey. The commenter felt that § 816.115 should be reinstated because new technical support for the grazing requirement, which was not available to the court, had been developed. The commenter cited a National Academy of Science report (National Research Council, 1981) as evidence that a soil survey is not adequate to measure the productive potential of reclaimed soils and that productivity on lands reclaimed for grazing must be based on the results of actual grazing.

OSM recognizes that the National Academy of Science study did conclude that a soil survey alone is insufficient to measure the productive potential of reclaimed soils and that grazing is one means of showing that productivity had been restored. However, in light of the court's decision, there is still an insufficient basis for OSM to promulgate a rule requiring grazing on all reclaimed pasture and grazing lands. Use of a reference area or other appropriate standard is also possible. OSM's adoption of this position is not meant to preclude States from either allowing or requiring grazing of reclaimed pasture and range land.

Other commenters also thought that the grazing requirements of previous § 816.115 should be retained, especially for determining the success of revegetation on western range lands. One organization asserted that the only way to determine whether or not the carrying capacity of reclaimed mine soil was equal to that which existed prior to mining would be to graze livestock on it using the same management techniques that were used prior to mining.

The determination of range land productivity should consider the pounds of beef (or equivalent) that may be produced per unit of area. This is dependent upon the quality as well as the quantity of forage available. Hence, equal quantities of forage are not always a true reflection of range or grazing land productivity, and measures of revegetation success should take into account the nutritional value of the forage when determining whether productivity has been restored. However, OSM is not requiring that actual grazing must occur in each instance.

Section 816.116 Revegetation: Standards of Success

Final § 816.116 is divided into three paragraphs. Paragraph (a) describes, in a general manner, how the success of revegetation shall be determined; Paragraph (b) identifies minimum conditions that must be satisfied for specific land uses; and Paragraph (c) sets provisions relating to the period of operator responsibility for revegetation success.

The final rules differ in several important respects from those which were proposed. Language has been added in § 816.116(a)(2) to set a benchmark which all revegetation success standards used by regulatory authorities must equal or exceed. This should not encumber a regulatory authority's ability to develop standards that reflect the capability of local soils and climatic conditions. Furthermore, the 90 percent equivalency provision contained in the previous rule, but not included in the proposal, has been retained. Also, the use of cultural practices during the period of responsibility is more restricted than was proposed. The following portion of the preamble discusses these and other changes and the comments that were received.

A few commenters offered remarks about their general impression of the proposed rule changes for § 816.116. One said that the overall effect of the proposed rule changes was a weakening of the previous rules that would result in a failure to restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining. Another commenter believed that, under the proposed rules, regulatory authorities could arbitrarily set success standards which might be less stringent than those required by the Act and recommended that more specific guidelines be established by OSM.

OSM has, in selected sections, added more specific requirements. However, specific and detailed rules or criteria would remove flexibility that is needed by the regulatory authorities to develop rules which reflect differences in climate, soil, topography, and other conditions. This effort by OSM to

provide greater flexibility in achieving revegetation success standards should not be construed as a weakening of those standards or a lesser commitment to the environmental protection provisions of the Act. OSM's rules provide a framework for individual regulatory programs. These standards are expected to be supplemented, where necessary, by regulatory authorities.

Section 816.116(a)

Proposed § 816.116(a) identified general criteria on which the success of revegetation should be judged. These included the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 816.111. The final rule is the same as the proposed rule, with some minor changes in wording for clarity.

One commenter recommended that in addition to extent of cover, species diversity should be specified as one of the general criteria for judging the success of revegetation. The commenter said that this was needed to minimize the potential for the establishment of monocultures or "species-poor" habitats detrimental to the premining natural diversity of wildlife populations. Another commenter asked the significance of the language "and other general requirements of § 816.111" and whether it meant that a diversity success standard would be applied.

The purpose of § 816.116(a) is to set a general basis for determining revegetation success. This statement includes the effectiveness of the vegetation for the approved postmining land use, extent of cover, and other requirements of § 816.111. Diversity of vegetative cover is therefore a success standard since it is required by § 816.111(a)(1).

One commenter thought that productivity and diversity should be given equal weight to cover as a parameter for determining the success of revegetation. This was believed to be necessary in order to fully implement Section 515(b)(19) of the Act. OSM disagrees that a general premise can be established assigning weights to the factors to be considered in judging vegetation success. Section 515(b)(19) prescribes ground cover as a parameter for determining success of revegetation. The vegetative cover must be diverse, effective and permanent. As previously indicated, productivity may be included as a measure of the *effectiveness* of the permanent cover.

Another commenter noted that the word "judged" had been substituted in the proposed rule for the word "measured" in previous § 816.116(a). The commenter thought that this substitution implied that OSM would use qualitative rather than quantitative analysis for determining successful revegetation. The commenter added that techniques and standards for quantitative measurement should be maintained.

OSM has retained the proposed wording because the proposed rule and the previous rule used these words in a different context. Final § 816.116(a) describes the substantive areas that will be ued to evaluate success; final § 816.116(a)(1) discusses measurement. Previous § 816.116(a) was concerned with techniques for measuring success. Also, some requirements such as same seasonal characteristics of growth and capability of self-revegetation may not require a numerical evaluation.

One commenter suggested deleting the phrase "the extent of cover compared to the cover occurring in natural vegetation" from proposed § 816.116(a) in order to clarify and improve the rule. As justification for the deletion, the commenter explained that this concept was repeated in proposed § 816.116(b) and that its presence in § 816.116(a) might limit regulatory authorities to using only reference areas for determining revegetation success.

The commenter may have confused the general requirement of achieving cover equal to the cover of the natural vegetation of the area in proposed § 816.116(a) with approaches or methods of demonstrating that cover requirements have been satisfied. Reference areas are one of several possible means of demonstrating that an operator is in compliance with § 816.116(a). Retention of the question wording does not limit the regulatory authority to using reference areas.

Section 816.116(a)(1)

Proposed § 816.116(a)(1) would have required success standards and sampling techniques for measuring success to be selected by the regulatory authority after consultation with appropriate State and Federal agencies. These standards were to be specified in an approved regulatory program. The final rule adopts the proposal with one change. It does not require consultation with other agencies.

Two commenters recommended deleting proposed § 816.116 (a)(1) and (a)(2) and substituting new language for § 816.116(a). The new language suggested by the commenters would require success to be measured by techniques approved by the regulatory authority utilizing recognized and practical evaluation techniques appropriate for the various subregions of the United States and accepted by recognized scientific and professional groups. As justification for the recommended changes, the commenters argued that there is no statutory language which supports reference areas or technical guidance procedures as the only methods to compare premining and postmining vegetation. OSM was said to have failed to demonstrate and substantiate the statistical validity of the reference area method that it required for testing revegetation success. Furthermore, the commenters argued that proposed § 816.116 (a)(1) and (a)(2) should be deleted because they were not applicable throughout the country.

OSM has not adopted the suggested changes. Neither the Act nor the proposed rules mandate the use of reference areas for evaluating revegetation success in every situation. However, reference areas may be required when deemed appropriate by the regulatory authority. The rules also allow other standards for success, such as fixed standards (number of trees and shrubs per acre) and variable standards (average county yield by soil type), to be developed and applied by regulatory authorities when these standards are appropriate and approved as part of the regulatory program.

The final rules allowing the use of reference areas have ample technical support. The National Academy of Sciences (National Research Council, 1981) suggests two basic approaches that may be used for measuring revegetation success. The first is to specify levels of biomass production—amount of ground cover and kind of plant species to be established—based on the capacity of soils to support vegetation or to grow crops. The second approach to evaluating reclaimed land is to set aside an undisturbed reference area near the reclaimed site, with a pattern of soils similar to that of the premining soils. The productivity, cover, diversity, or other applicable measurement of the reclaimed area can be compared with the reference area when determining the success of revegetation.

One commenter asked three questions concerning the provisions of proposed § 816.116(a)(1).

1. What is meant by the term "standards for success"?

2. Will sampling techniques acceptable to the regulatory authority be spelled out in regulations, rather than guideline form?

3. Are current approved regulatory programs to be revised accordingly?

Standards for success are approved models or measures by which the properties of vegetation on reclaimed areas are compared for the purpose of determining the degree of success. The applicable properties to be tested will depend upon the postmining land use and the method of evaluation. Inherent in this concept is a statement of the minimum level or value that is acceptable for ending the period of operator responsibility and release of performance bonds.

Sampling techniques acceptable to the regulatory authority must be included in all regulatory programs. They may appear as a rule or may be in a guideline form that is incorporated into the regulatory program. These sampling techniques are subject to review and public comment. The literature cited in this preamble may be used by States as technical references on vegetation sampling. Previously approved regulatory programs need not be revised if they include success standards or sampling techniques for measuring success which are consistent with these final rules.

One commenter suggested that the statistical expertise require to enforce the proposed rules will be greater than that of the typical inspector and many regulatory authority staffs. OSM does not agree. State regulatory authorities usually have a group of experienced inspectors to perform bond release inspections. Many of these States had elaborate sampling and statistical testing requirements prior to the Act. Other have increased their staff capabilities with the development of permanent regulatory programs for their States. Statistical expertise required under these final rules is not that different from that required under the previous rules. In any case, guidelines developed to supplement the requirements of the rules could simplify inspector responsibilities and minimize the burden on the regulatory staff.

One commenter sought to substitute the words "ecologically sound" or "scientifically acceptable" for the words "statistically valid" which describe the techniques for measuring revegetation success in final § 816.116(a)(1). The commenter expressed concern that unless the language was changed it would be difficult to obtain statistically valid sampling in some sparsely vegetated communites on Western lands.

A second commenter also concerned with the application of statistics contended that sampling methods generally used to obtain vegetative cover data do not seem to have adequate repeatability to support their use. The commenter recommended that OSM reconsider the proposed rule in light of what is statistically achievable and the burden such rules place upon operators.

OSM has reviewed the requirements of the proposed rule and decided to retain them in the final rule. Under this rule, the method of sampling vegetation could vary depending upon the precise standard for success included in the State program. In this manner, both an "ecologically sound" and "scientifically acceptable" technique for measuring the success of revegetation can be developed. On sparsely vegetated lands, sampling may be limited to gathering data for estimates of total vegetative ground cover. There also may be circumstances where, with the approval of the regulatory authority, historical data collected for the same cover type within the region can be used, rather than reference-area data. In the East, 100 randomly located point-frequency observations will usually provide an acceptable sample size for the estimation of vegetative ground cover. Small sample sizes are associated with large statistical error which can make a test for revegetation success meaningless. OSM has not stated a level of sampling precision in the final rules but will instead evaluate on a case-by-case basis the adequacy of predetermined sample sizes or methods of sample size selection proposed for use in State programs.

Four commenters suggested changes to the proposed language which would have required the regulatory authority to consult with appropriate State and Federal agencies when selecting standards for success and sampling techniques for measuring success. Two commenters wanted language that would require consultation with Federal agencies only when Federal land is involved. A third commenter suggested substituting the words "organizations and individuals" for "State and Federal agencies" because the Act does not specifically require coordination with government agencies. Another commenter wanted to modify the proposed language by stating that Federal agencies include the U.S. Department of Agriculture (USDA). The USDA was cited as having recognized expertise in revegetation.

OSM has reviewed these comments and decided to delete the consultation requirement. State regulatory authorities are capable of determining which organization or individuals can provide them with the best technical assistance in developing success standards or whether such assistance is needed. This deletion will not preclude OSM from using the expertise of other agencies when evaluating success standards proposed by the States.

In support of proposed § 816.116(a)(1), one commenter wrote that the setting of standards for measuring success is properly left up to the State regulatory authorities because of the diverse environmental conditions throughout the U.S. The commenter added that States should not have to refer to technical guidance procedures published by the USDA or U.S. Department of the Interior (USDI) as was required by the previous rule.

OSM agrees and has adopted this aspect of the proposed rule because the Act does not limit success standards to those published by USDA or USDI. Also, universities, professional societies, State agencies, and conservation organizations often have the necessary expertise to develop valid standards, and OSM does not want to limit or exclude the use of such outside assistance.

Section 816.116(a)(2)

Proposed § 816.116(a)(2) required standards for success to include criteria to evaluate ground cover, production, or stocking. These parameters were considered to be equal to the approved success standard when they were "equivalent" with 90-percent statistical confidence. Instead of an absolute equivalence, the final rule contains the provision found in previous § 816.116(b)(3), which allows 90 percent of a standard to be considered equal to the standard for the purpose of determining revegetation success.

Sample estimates are subject to variation. How much they vary depends primarily on the inherent variability of the population and on the size of the sample and population. The statistical way of indicating reliability of a true population parameter is to establish a confidence interval. A confidence interval can be defined as the range within which a sample estimate can vary and not be significantly different than the population parameter at a given level of statistical confidence. The final rule clarifies that the proposed phrase "90-percent statistical confidence" was intended to require a 90-percent statistical confidence interval to be used when measuring revegetation success. The desired level of statistical confidence associated with an interval is usually referred to as the "alpha" error. A 90-percent confidence interval has a 0.10 alpha error.

Two commenters proposed changing the 90-percent statistical confidence interval that was specified in the proposed rules. One suggested using a 95-percent confidence interval because that level of confidence is comparable to that used in most agricultural experiments. Another commenter desired to retain the 80-percent statistical confidence interval for shrublands which was specified in previous § 816.116(b)(3). As justification, the commenter stated that unless confidence intervals are tailored to different community types, it may discourage operators from establishing diverse plant communities since diversity increases the statistical variability of the measured parameters.

OSM has retained the 90-percent statistical confidence interval in the final rule. Adoption of a 95-percent confidence interval as suggested by the commenter would increase the probability of a "Type II" error. An error of this nature occurs when the permit area lacks sufficient vegetative growth to meet the designated standard but would be declared to have been successfully revegetated on the basis of evidence derived from sample data. The Wider 95-percent confidence interval would allow a greater acceptance of samples from the lower end of the predicted range of revegetation sample values than would the 90-percent confidence interval. In light of the environmental consequences of arriving at an incorrect conclusion (i.e., release of a performance bond when revegetation is inadequate), a 90-percent confidence interval is more appropriate for regulatory purposes than a 95-percent confidence interval.

An 80-percent confidence interval for shrublands would be a more stringent test of revegetation success than would be used for other vegetative cover types. This is because an 80-percent confidence interval (*i.e.*, the range of acceptable sample values) is narrower than a 90-percent confidence interval. Thus, it would be statistically more difficult to establish revegetation success on shrublands because there is a smaller range of acceptable values. The 90-percent confidence interval is adequate to assume that operators who establish shrubland plant communities will attain revegetation success.

Four commenter noted that the proposed rule omitted the equivalency provision found in the previous rule. This provision stated that ground cover, productivity, and stocking will be considered equal to the success standard when they are equal to 90 percent of the standard. Two commenters said that the omission would "tighten" the rule. Another commenter argued that the provision should be retained for the reason given in the preamble to the previous rule (44 FR 15237, March 13, 1979). In that preamble, OSM stated that the use of 90 percent was justified to allow for climatic variations that may affect productivity during the two consecutive growing seasons that production is measured to determine revegetation success.

The same preamble also stated (44 FR 15238) that "the 90-percent requirement for ground cover and production is an equivalent measure of success since there has to be a basic assumption that productivity will continue to improve with time when the land has been restored to the original productive capacity." The last commenter also advocated keeping the 90-percent equivalency provision and explained that the extreme annual and spatial variability of vegetation cover and production, particularly in the western United States, justified its retention. OSM agrees with the commenters' reasoning and has included the 90-percent equivalency provision in the final rule.

A commenter believed that proposed § 816.116(a)(2) did not comply with the statutory requirements of Section 102 of the Act. The commenter stated that the proposed language contained no clear threshold below which a standard could be considered unacceptable by OSM. The following language was suggested: "In no event shall the chosen standard be lower than ground cover, productivity, or tree stocking standards that would be normal for the premine soils in the area being reclaimed. Where available, the standards should be based on the county average yield, per soil type in the areas being reclaimed under equivalent levels of management." The commenter added that the proposed language should prevent disparity from developing between the use of revegetation standards and reference areas and should provide a necessary minimum criterion by which acceptability of a proposed standard can be judged.

OSM agrees that there should be a certain degree of uniformity among the vegetation success standards developed by the States. Such a standard is provided generally in §§ 816.111(a) and 816.116(a). These requirements are in accord with Section 515(b)(19) of the Act. As previously indicated, Paragraphs (a)(1) and (a)(2) provide standards for the measure of success and do not include a success threshold. However, in response to the comment, final § 816.116(a)(2) clarifies that the criteria selected for the success standard must be representative of unmined lands in the area being reclaimed. This should prevent potential disparity between the use of reference areas and the use of other standards as the measure of success. The commenter's suggestion requiring use of county average yield as the standard when available is rejected because it would unnecessarily have limited the type of success standards that could be used by regulatory authorities.

One commenter believed that OSM had misread Section 515(b)(19) of the Act when drafting proposed § 816.116 (a)(2) and (b). It was pointed out that this section requires that vegetative cover be "*capable* of self-regeneration and plant succession at least equal in cover to the natural vegetation of the area—*not* that the former level of cover actually be present."

OSM disagrees. The use of the term "capable" in Section 515(b)(19) establishes the requirements for "self-regeneration" and "plant succession," not the requirement pertaining to ground cover. Thus, the extent of postmining cover must equal the cover of the natural vegetation of the area and not merely be capable of doing so. As stated earlier, under final § 816.116(a)(2), "equal" means 90 percent of the premining cover with 90-percent statistical confidence.

One commenter suggested changing the language of proposed § 816.116(a)(2) by including both shrubs and trees to describe the type of stocking to be evaluated. OSM has not adopted the proposed word "tree" in the final rule to avoid the implication that stocking applies only to trees.

One commenter suggested specifying "species diversity" as one of the vegetation parameters in § 816.116(a)(2). This was proposed to minimize the potential for the establishment of monocultures or species-poor habitats detrimental to wildlife. OSM has not accepted the commenter's suggestion because § 816.116(a)(2) applies to only those parameters that will require testing. The evaluation of species diversity, regenerative capacity, and seasonal characteristics of growth required under § 816.116(a) by the reference to § 816.111 may not involve sampling and statistical testing. The regulatory authority will select appropriate methods to evaluate these parameters.

One commenter suggested changing the second sentence in proposed § 816.116(a)(2) to indicate that statistical

tests are to be used to demonstrate that reclaimed areas are in less than the desired condition. As justification, the commenter noted that statistical tests are designed to prove that population parameters of data are unequal, never that they are equal. OSM has adopted the suggested change in wording of the rule because it more accurately identifies the manner in which statistical tests will be used. In statistical tests, the null hypothesis usually states that there is no difference between the true value of the population parameter and that which is being hypothesized. The null hypothesis is a proposition which is considered valid unless evidence throws doubt on it. This means it is assumed that the mine operator has achieved the required degree of revegetation success unless evidence as provided by the sample data indicates that the standard has not been attained.

One commenter suggested the following language as the first sentence in § 816.116(a)(2): "Standards for success of revegetation are to include criteria to evaluate those vegetation parameters appropriate for the approved postmining land use." The commenter reasoned that, aside from the specific requirement for cover, the Act does not require anything more than the achievement of the approved postmining use.

This commenter failed to recognize that Section 515(b)(19) of the Act requires that the reestablished vegetation be diverse, self-regenerating, effective, and of the same seasonal variety.

Section 816.116(b)

Final § 816.116(b) provides for the application of success standards in accordance with the approved postmining land use and sets minimum conditions for specific land uses. These conditions identify certain vegetation parameters that must be evaluated when determining the success of revegetation for grazing land or pasture land, cropland, fish and wildlife habitat, recreation areas, forest, industrial, commercial or residential land uses, and previously mined areas. The final rule differs from the proposed rule in that it does not require concurrence from the Federal land management agency on minimum stocking levels and planting arrangement when Federal lands are involved, since the responsibilities of the Federal land management agency are covered by 30 CFR 740.4 in the Federal lands program (48 FR 6936, February 16, 1983). Also, the provisions of previous § 816.116(b)(3)(ii), regarding land to be used for industrial, commercial, or residential use, has been retained; ground cover for areas previously disturbed by mining must be adequate to stabilize the soil surface from erosion as was specified in previous § 816.116(b)(3)(i), but there is no description of the soil to be used.

Commenters suggested deleting all of proposed § 816.116(b). One reasoned that this section provided too much of a "cookbook" approach. Another commenter said that the revegetation standards were general in nature and would be difficult to address across all mining regions of the United States.

The provisions of § 816.116(b) are general to allow regulatory authorities the flexibility to develop success standards that are tailored to conditions that exist within their States. OSM does not consider this a "cookbook" approach. The rule does set criteria that must be examined to determine success, but it is the States' obligation to identify the particular procedures which will be followed.

One commenter suggested substituting the word "approved" for the word "selected" in § 816.116 (b)(1) and (b)(2). The commenter reasoned that the mine operator clearly has responsibility for selecting reference areas where required and that success standards may be selected or required by State or other agencies to be consistent with local conditions and rules. In these instances, the word "approved" more appropriately describes the regulatory authority role.

OSM agrees and has changed "selected" to "approved" in the final rule. It is the responsibility of the mine operator to select reference areas to be approved by the regulatory authority when this method of measuring success is contained in the regulatory program as a means of determining the success of revegetation.

Cropland: Final § 816.116(b)(2) requires that for areas developed for use as cropland, crop production on the mined land must be at least equal to that of a reference area or other success standard approved by the regulatory authority.

One commenter wanted to require that all crops which are part of a normal production cycle be grown to demonstrate success of revegetation on cropland. The commenter explained that each crop responds differently on reclaimed land and cited as evidence soybean and corn yields on a demonstration mine in Iowa.

Although OSM agrees with the commenter's contention that each crop will respond differently to postmining soil conditions, it is not necessary to require all crops in the rotation be grown to demonstrate revegetation success. The proposed rule was written in a broad manner to allow States the flexibility to determine which crop or group of crops needs to be grown to satisfy the productivity requirement. Furthermore, States should recognize that crops in a rotation may respond differently on reclaimed sites and therefore should develop their standards to accommodate such conditions.

Forest, wildlife habitat, and recreation areas: For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, final § 816.116(b)(3) requires vegetation success to be determined on the basis of tree and shrub stocking and vegetative ground cover. Final § 816.116(b)(3)(i) requires minimum stocking and planting arrangements to be specified by the regulatory authority on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs. Final § 816.116(b)(3)(ii) requires that trees and shrubs used in determining the success of stocking and the adequacy of plant arrangement must have utility for the approved postmining land use. Such trees and shrubs must be healthy at the time of bond release and must be in place for at least two growing seasons to be counted in determining stocking adequacy. An additional requirement that 80 percent of the trees and shrubs used in determining revegetation success must be in place for at least 3 or 8 growing seasons is described below.

One commenter objected to what was believed to be the lack of a minimum success standard for ground cover. The commenter thought it to be foolhardy to relax the standards for revegetation prior to any long-term demonstration of whether the previous performance standards were adequate.

Final § 816.116(b)(3)(iii) requires the vegetative ground cover not to be less than required to achieve the postmining land use. This, in effect, is a minimum standard for ground cover where the postmining land use is forest, wildlife habitat, shelter belts, and recreation. The rule must be written in a general form because of the variation in natural ground cover conditions throughout the States. Thus, a specific percentage of ground cover is not required. Each State will find it necessary either to require the use of reference areas, to specify minimum levels of ground cover as a percentage of surface area, or to adopt some other acceptable standard.

One commenter suggested adding herbaceous production as an additional

parameter for determining revegetation success for wildlife habitat, recreation, and shelter belts. No reason was given by the commenter for suggesting this change.

Herbaceous production is not a primary measure of revegetation success where the postmining land use is recreation or shelter belts. It is important where the postmining land use is wildlife habitat for grazing animals. In such situations, the regulatory authority may find it desirable to use the productivity of herbaceous cover as a determinant of revegetation success.

Two commenters sought to have OSM reinstate minimum tree and shrub stocking requirements. The first commenter argued that a Federal standard was needed to avoid environmental "bargaining" and varying interpretation that made the Act necessary. The second commenter proposed a new subparagraph (b)(3)(iv) that required a minimum stocking of 450 trees or shrubs per acre with no less than 75 percent being of commercial value. This proposal tracks the requirements of the previous rule. As justification for the proposal, the commenter cited the preamble to the previous rule (44 FR 15241).

OSM disagrees with these commenters and believes that a minimum stocking level need not be established in the Federal rules. However, States may find it appropriate to set minimum stocking levels in their programs. Such minimum levels must be determined on the basis of local and regional conditions and in no event be lower than would be expected or is commonly found on similar unmined lands in the area. Furthermore, it is not necessary to make a distinction in the Federal rules between commercial and noncommercial forest land; however, some States may find such a classification advantageous when setting tree stocking success standards.

One commenter advocated requiring regulatory authorities not only to consult with State forestry and wildlife agencies but to receive the approval of these agencies when determining minimum stocking levels and planting arrangements. The commenter explained that these agencies were most competent to judge the adequacy of standards for shrub and tree stocking and planting arrangement.

Approval by such agencies is not needed. OSM acknowledges that these State agencies are authoritative sources of forestry and wildlife management information and that State regulatory agencies should strongly consider their recommendations when setting minimum tree and shrub stocking levels in State regulatory programs. However, the responsibility under the Act rests with the regulatory authority.

Two commenters felt that the reference to Federal lands should be deleted from proposed § 816.116(b)(3)(i), which required State regulatory authorities to obtain concurrence from Federal land management agencies when setting minimum stocking levels and planting arrangements for Federal lands. The commenter suggested that references to Federal lands should be limited to the Federal lands program in 30 CFR Chapter VII, Subchapter D, and to Federal-State cooperative agreements.

OSM agrees with the commenters and has not adopted the requirement in the final rule. Final 30 CFR 740.13(c)(5) requires the regulatory authority to consult with the Federal land management agency and include any comments in the record of the permit decision (48 FR 6937, February 16, 1983). This requirement in the Federal lands rules is believed to be adequate to allow Federal land management agencies a voice in determining stocking levels and planting arrangement on Federal lands.

One commenter wanted to know how the utility of trees and shrubs for the postmining land use would be determined and who would do it. It was noted by the commenter that some species, such as European black alder and autumn olive, are nitrogen-fixing and therefore contribute to the growth of the permanent timber stand but may not have utility for the postmining land use.

The utility of trees and shrubs for the postmining land use will be determined by the regulatory authority. Section 816.116(b)(3)(ii) should be interpreted as a general requirement. For example, if the postmining land use is commercial forestry, then an adequate number of the trees that are planted must be species with commercial value. If the postmining land use is wildlife habitat, the species planted and counted for meeting the stocking requirement should be recognized for their value in providing food, cover, or other needs of wildlife. Similarly, regulatory authorities can develop standards that reflect more than one intended use, such as a combination of forestry and wildlife habitat.

Commenters objected to the proposed provision that would allow trees and shrubs to count toward the success standard if they had been in place a minimum of two growing seasons. One charged that the "two growing seasons" standard may seriously compromise the general revegetation requirement of achieving a permanent vegetative cover that is capable of self-regeneration. The commenter added that the planting of woody species as few as 2 years prior to bond release exceeds the reasonable limits of non-augmentative practices that can be expected to continue as part of the postmining land use. Also, the period of extended responsibility for husbandry practices used on trees and shrubs should be equivalent to, and be triggered by the same standards applied to herbaceous components of the plant community.

Another commenter believed that the proposed rule could result in the failure to recognize the impact of deeper rooting zones which, after 2 years of growth, may cause the trees to become stunted and die. Another commenter proposed additional language to make allowance for selective replanting of trees to ensure full stocking, but retained the basic requirement that reforestation success be based on survival of the majority of the trees in the initial planting.

These arguments have merit and OSM has adopted new language similar to that suggested by the third commenter. This new language calls for at least 80 percent of the trees and shrubs to have been in place three or more growing seasons in areas where the period of responsibility is 5 years. In areas where the period of responsibility is 10 years, at least 80 percent of the trees and shrubs must be in place eight or more growing seasons. Furthermore, no tree or shrub shall be counted when determining success if it has not been in place for at least two growing seasons. This is believed to be a reasonable compromise that will allow normal replanting if approved as a husbandry practice under final § 816.116(c)(4) (described below) and still demonstrate successful revegetation.

One commenter wanted to know if herbicides could be used to control herbaceous cover around tree seedlings and whether such cover with spots or bands of dead grasses would be acceptable. The commenter also wanted to know what value ground cover would have where the postmining land use is forest.

The use of herbicides to control herbaceous vegetation is an effective method for assisting in the establishment of trees and shrubs. Either spot or band application is acceptable so long as the area affected is not larger than necessary to allow the trees and shrubs to become established and the soil is protected from excessive erosion. Erosion control is the main value of ground cover where the postmining land use is forest. The

grasses and legumes stabilize the land until tree-crown and root closure occurs.

Industrial, commercial, and residential use: Final § 816.116(b)(4) sets minimum conditions for the reclamation of areas to be developed for industrial, commercial, and residential use. The proposed rule required sufficient ground cover to control erosion. Under the proposal, in the event the approved postmining land use was not achieved within 5 years, the general success standards of Paragraph (a) of § 816.116 would have applied.

A commenter felt the proposed language was reasonable but could be improved by adding additional language that would make it clear that the period of responsibility will begin anew when failure to achieve industrial, commercial, and residential uses results in augmented seedings, fertilization, or other work to meet revegetation success standards. Another commenter urged deletion of § 816.116(b)(4). The commenter contended that the section conflicted with previous 30 CFR 805.13(f), which stated that the permittee is obliged to complete the reclamation plan in such a manner that the land will be capable of supporting the approved postmining land use. The commenter also believed that the permittee cannot be held responsible for the action of third parties.

OSM has reconsidered the proposed rule in light of the second commenter's objections. Although OSM cannot require third parties to develop the reclaimed land for an industrial, commercial, or residential use, the operator is responsible for the success of reclamation, including the possible achievement of different revegetation standards under a permit revision based on a postmining land use different from the one originally approved. For this reason, OSM has decided not to adopt the proposed language and to retain the language of previous § 816.116(b)(3)(ii). Thus, in the final rule, OSM has retained the standard which provides that, for areas to be developed as industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

Remined areas: Proposed § 816.116(b)(5) required that remined areas not initially reclaimed to the permanent program performance standards (816 or 817) must have, as a minimum, vegetative ground cover not less than can be supported by the best available soil material in the redisturbed area and not less than the ground cover that existed before redisturbance. The final rule contains the added requirement that the vegetative ground cover must be sufficient to stabilize the soil surface from erosion but does not adopt the requirement that ground cover be measured on the basis of what could be supported by the best available soil material.

One commenter felt that the changes that OSM had proposed in § 816.116(b)(5) were minor changes which were acceptable. Other commenters wanted to retain in the final rule a provision of previous § 816.116(b)(3)(i), which required the vegetative cover on remined areas to be adequate to control erosion. One State argued that the vegetative ground cover existing prior to redisturbance is often very sparse and inadequate to control offsite damages. The commenter felt the proposed rule would perpetuate this condition unless language were added that would require the cover to be adequate to control erosion. A second commenter also urged the adoption of an erosion control requirement by explaining that operators would not be able to meet effluent and water quality standards required for bond release on the basis of physical manipulation alone. The establishment of a vegetative cover that is adequate to control erosion was thought necessary to improve the operator's probability of meeting the bond release requirements of Section 519(c) of the Act. Another commenter believed Section 515 (b)(2), (b)(4), and (b)(16) of the Act clearly indicated statutory support for an erosion control requirment. A final commenter thought an erosion control requirement was necessary but was unclear in his statement of the reason why.

OSM has reconsidered its proposal and agrees that the arguments presented by these commenters are valid. The cover of some mined areas is sparse or even completely absent. These areas may continue to erode and cause offsite damage. The proposed rule could have allowed such conditions to continue to occur after remining even though the operator used the best soil materials available and reestablished the same degree of cover that existed on the disturbed site. An extra step, such as the use of sewage sludge, paper mill sludge, fly ash, or other soil amendments, may be necessary to establish sufficient vegetative cover to control erosion and effectively stabilize the site. The final rule requires the vegetative ground cover to be adequate to control erosion.

One State regulatory authority contended that the provision in the proposed rule which required the ground cover not to be less than the cover that can be supported by the best available topsoil or other suitable material in the redisturbed area was not an objective, measurable standard that could be applied by a regulatory authority. The State pointed out that it is difficult to determine the degree of ground cover that the best soil material can support. As an alternative, the State suggested language that would require the ground cover to be adequate to prevent the formation of rills and gullies caused by erosion.

OSM agrees that it would be difficult to actually apply such a provision without greenhouse tests or experimental field plots, which would place an unnecessary burden on the operator and the regulatory authority. For this reason, and the fact that the final rule contains other more easily enforceable cover requirements, OSM has not adopted that portion of the provision. In any event, operators must salvage and redistribute the best available soil material for the plant growth medium as required by § 816.22. The suggested alternative, to require cover sufficient to prevent the formation of rills and gullies, was not accepted because § 816.95(b) adequately addresses the problem of rills and gullies.

Another State supported the proposed rule by expressing its belief that, for remined areas not previously reclaimed properly, the vegetative cover should be at least equal to that which existed before mining. It was also suggested that reclamation plans should include measures by which the most desirable strata for use as a growth medium must be recovered. The topsoil rules in § 816.22 address operators' responsibilities concerning soil materials to be redistributed after remining. The operator must submit as part of the general reclamation plan his or her plans to remove, store, and redistribute topsoil, subsoil, and other material as required by § 780.18(b)(4). The revegetation rules need not repeat these requirements.

Another State contended that the proposed rule limited itself to only those areas that are remined and did not adequately address redisturbances resulting from the construction of haul roads, sedimentation ponds, and other miscellaneous uses associated with coal mining. This State felt that the remining rules should cover redisturbance of any kind since there are no other revegetation performance standards that address these situations. Language was suggested which would correct this perceived omission. OSM has adopted language to clarify that § 816.116(b)(5) applies to a redisturbance of a previously mined area resulting from any surface coal mining operation.

including roads and other uses. This was intended by the proposal.

Section 816.116(c)

Final § 816.116(c) describes the period of extended responsibility for successful revegetation under Section 515(b)(20) of the Act to which performance bond release is tied under Section 519(c) of the Act and under 30 CFR Part 800. This provision also implements the requirement imposed by the U.S. District Court in *In re: Permanent Surface Mining Regulatory Litigation, supra*, slip op., p. 61, which had been implemented in part by the suspension of a portion of previous § 816.116(b) on August 4, 1980 (45 FR 51549). A new Paragraph (c)(4) is added describing the husbandry practices that may occur during the period of extended responsibility. The new paragrap is derived from previous § 805.13(b)(3).

Section 816.116(c)(1)

Proposed § 816.116(c)(1) would have required the period of responsibility for revegetation success to begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding tree and shrub planting, maintenance work, and husbandry practices that could be expected to continue as part of the postmining land use. The final rule is the same as the proposed rule with the exception that tree and shrub planting and maintenance work are not generally permitted during the responsibility period without starting the period anew. As described below, allowable husbandry practices are tied to a specific requirement that they can be expected to continue as part of the postmining land use.

A commenter stated that excluding tree and shrub planting and maintenance work from augmentative practices and allowing interseeding and supplemental fertilization during the first 5 years of the responsibility period in the West, and supplemental irrigation during the first 2 years of the responsibility period, all have significant potential for abuse and increase the likelihood that there will be vegetation failures after the bond is released. Similar concerns were expressed by a second commenter who thought the proposed rules were inconsistent with Section 515 (b)(19) and (b)(20) of the Act by effectively reducing the responsibility period for bonding by one-half for western mined lands. Another commenter was concerned that the responsibility period was shortened for success of revegetation and expressed the view that bond should not be released until a suitable time has elapsed to be sure the revegetation will be successful.

Other commenters supported the proposed rules. One individual urged the adoption of proposed § 816.116(c) and was pleased that revegetation management and husbandry practices were finally recognized by OSM and would not act as a penalty for operators who used them. A State regulatory authority was specifically pleased with proposed § 816.116(c)(1). Another commenter thought that the use of cultural practices, including irrigation, has merit, especially since it would not involve a restarting of the responsibility period.

The final rules do not reduce the responsibility period. While the use of certain cultural practices, such as interseeding and tree and shrub planting, could be beneficial in establishing diverse plant communities if allowed during the period of responsibility, the Act is clear that any practice that consititutes augmented seeding, fertilizing, or irrigation must be completed prior to the extended period of responsibility. The final rule has been modified accordingly. These changes and a more complete discussion of the comments received are presented below.

Start of responsibility period: A commenter supported the proposed changes in § 816.116(c) regarding the start of the responsibility period for reclaimed areas. In contrast, a second commenter felt that the starting of the responsibility period for bond release after the last year of augmented seeding and fertilization rather than at the time vegetation had met the standards for success was unacceptable, especially in the arid West.

In the February 26, 1980, district court decision, cited *supra*, it was noted that Congress stated that, for areas where precipitation is less than 26 inches per year, "the length of time necessary to reestablish vegetation on mining spoil varies considerably * * * [and] ranges from ten years upward. Thus, the ten year standard of the bill represents a minimum time under the most favorable conditions." (H. Rept. No. 95–218, 95th Cong., 1st Sess. 109, 1977). In the court's opinion, the Act focused not on attaching a 5- or 10-year liability period after successful revegetation occurs, but directed a 5- or 10-year period to enable the coal operator to achieve successful revegetation. The court, therefore, remanded these rules and suggested that the 5- or 10-year liability period begin "after the last year of augmented seeding, fertilizing, [and] irrigation."

In response, OSM suspended the provisions of §§ 816.116(b) and 817.116(b) that started the period of responsibility at the point when the operator met the vegetation success standard (45 FR 51548, August 4, 1980). States were advised that they could permit the period of liability to begin from the point at which the operator completes seeding and fertilizing and that the period of liability would begin again whenever augmented seeding, fertilizing, irrigation, or other work was required or conducted on the site prior to bond release. The final rule is in agreement with the court's decision.

A commenter suggested adding language to proposed § 816.116(c)(1) in order to clarify that the responsibility period is not restarted by supplemental fertilization and interseeding in areas of less than 26.0 inches average annual precipitation. Proposed § 816.116(c)(3) would have allowed these practices during the first 5 years of the responsibility period without starting the period anew. As stated elsewhere in this preamble, Section 515(b)(20) of the Act limits OSM in this regard. Thus, the final rule does not allow such practices during the period of responsibility.

Third party responsibility: A commenter suggested adding language to proposed § 816.116(c)(1) to allow responsibility during the 5- or 10-year responsibility period to be transferred to any party, such as the landowner, so long as the bonding requirements of Subchapter J are met. This commenter reasoned that some operator-landowner leases entered into before the enactment of the Act or establishment of OSM rules lack provisions establishing a time frame when landowners are to take over their property following mining and reclamation. In these cases, operators have no legal mechanism for preventing the landowner from reentering his or her property for farming or grazing prior to achievement of the revegetation standards. OSM was urged to consider a modification which would shift the burden of taking action against the landowner from the operator to the regulatory authority in situations where the landowner may use the land in a manner that jeopardizes bond release.

The Act and rules include provisions for the transfer, sale, and assignment of responsibilities under a permit. These provisions may be used to transfer responsibility if certain conditions are met and the transfer is approved by the regulatory authority. Without such an approved transfer, the operator remains responsible for revegetation success and other reclamation requirements.

Section 816.116(c)(2)

Proposed § 816.116(c)(2) required the period of responsibility to continue 5 full years where the average annual precipitation is more than 26.0 inches. Vegetation parameters were to equal the approved success standard during the growing season of the last year or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period. The final rule is the same as the proposed rule except for some minor changes in wording for clarity.

Two State regulatory authorities proposed that additional wording be included in § 816.116 (c)(2) and (c)(3) to indicate that the period of responsibility must be "not less than" the appropriate 5 or 10 years. One of these States also recommended that the words "or exceed" be added to allow the permittee to be in compliance not only when the success standard is equalled, but also when it is exceeded. OSM has adopted these suggestions in the final rules because they appropriately convey the intent of the Act and remove possible differences in interpretation.

One- or two-year test of success: A commenter felt that proposed § 816.116(c)(2) should be changed to allow the regulatory authority to accept yield and productivity documentation on either the fourth year or the fifth year in areas of more than 26 inches average annual precipitation since adverse climatic conditions, such as areawide drought, may prevent the operators from meeting success standards during the fifth year.

Section 515(b)(20) of the Act requires operators to assume responsibility for successful revegetation for a period of 5 years. Acceptance of data for proof of reclamation success solely from the fourth year would in effect shorten the responsibility period and be inconsistent with the Act. Furthermore, data from the fourth year is more apt to reflect a carryover effect from fertilization and other practices used to initially establish the vegetative cover. Hence, the rule has been adopted as proposed.

A commenter argued that there is no statutory basis for allowing the regulatory authority the option of requiring that vegetation equal or exceed the success standard for the last 2 years of the responsibility period. The commenter alleged that the statutory obligation has been met if the operator meets the standard in the last year of the period. Another commenter thought the proposal allowing 1 year, unless the regulatory authority requires 2 years, was more practical and less burdensome than the previous rule both for regulators and operators. Two additional commenters asserted that 2 years should always be required for proof of revegetation success. One of these commenters stated that under normal circumstances there should not be any serious difficulty in attaining a vegetation standard by the fourth year and maintaining it through the fifth. The other commenter asserted that 2 years is necessary, especially where lime is used. Lime was believed to have a superficial neutralizing effect that could result in the recurrence of acid soil.

Ample justification exists for requiring 2 consecutive years of proof of revegetation success in States with pronounced year-to-year variability in climatic conditions and where success is based on crop yields or other parameters that are highly sensitive to such conditions. The decision to require 1 or 2 year's proof of performance should rest with the regulatory authorities in those States where the annual average precipitation exceeds 26 inches. The 2-year provision may be applied selectively according to postmining land use or particular area within a State. In all instances, the last year of responsibility should be part of the 1- or 2-year test period.

A commenter was concerned that failure to meet the required standard during the last year of the responsibility period would be reason to start the responsibility period anew or for forfeiture of bond. Regulatory authorities should understand that the responsibility period continues on a year-to-year basis until the standards are satisfied. Additional language in the rule is not needed to make this clear. However, it should be pointed out that in the event augmented seeding, fertilizing, irrigation, or other work is required to obtain success, the responsibility period will start anew.

A State regulatory authority wanted additional language inserted in § 816.116(c)(2) which would require the operator to supply the regulatory authority with documentation of revegetation success. The State felt this addition would relieve the regulatory authority from measuring every plot and allow the regulatory authority to concentrate on verifying the techniques used by the operator and the operator's results. Regulatory authorities already have the power to require operators to submit documentation of revegetation success in an application for bond release. There is no need to repeat this in the Federal revegetation rules.

Section 816.116(c)(3)

Proposed § 816.116(c)(3) required the period of responsibility to continue for 10 full years where the average annual precipitation is equal to or less than 26 inches. Interseeding and supplemental fertilizing would have been allowed during the first 5 years of the responsibility period, and supplemental irrigation would have been allowed during the first 2 years of the responsibility period when needed to establish a diverse, effective, and permanent vegetative cover. Also, vegetation parameters had to equal the approved success standard for at least the last 2 consecutive years of the responsibility period.

A commenter alleged that the Act clearly states that any reseeding or refertilizing automatically restarts the liability period. The commenter pointed out that the proposed rules could result in seeding and fertilization taking place throughout the performance period, with subsequent failure of the vegetation after bond is released.

In proposing to allow tree and shrub planting during the initial portion of the responsibility period, OSM felt it important to provide operators ample time to obtain and plant the desired species and to utilize the best technology available without extending the responsibility period. However, OSM is constrained by Section 515(b)(20) of the Act to require the responsibility period to restart if augmented planting occurs. Thus in the final rule, the use of augmented seeding, fertilizing, or irrigation is not allowed during the responsibility period.

§ 816.116(c)(4)

Rather than interspersing in § 816.116 (c)(2) and (c)(3) activities that an operator may engage in during the responsibility period, as was proposed, a new § 816.116(c)(4) allows the use of certain husbandry practices during the responsibility period if approved by the regulatory authority. The purpose of this provision is to help assure revegetation success within the constraints prescribed by the Act. In essence, this is a retention of previous § 805.13(b)(3), with a few modifications. Previous § 805.13(b)(3) required a demonstration that discontinuance of the husbandry practices after the responsibility period expired would not reduce the probability of permanent revegetation success. Under the final rule, husbandry practices may also be approved if such practices can be expected to continue as part of the postmining land use. Such practices cannot include augmented seeding, fertilization, or irrigation without extending the period of revegetation success and bond liability.

The approved measures must be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area. This requirement is taken directly from previous § 805.13(b)(3). The final rule also enumerates examples of practices that may be approved. These include disease, pest, and vermin control; and pruning, reseeding and/or transplanting specifically necessitated by such actions. Disease control was not included in previous § 805.13(b)(3), but is included in the final rule since such actions are commonly associated with normal husbandry. The final rule deletes the reference to rills and gullies from previous § 805.13(b)(3) since this reference could be misleading. Revised § 816.95 (48 FR 1160, January 10, 1983) provides that rills and gullies that would either: (1) Disrupt the approved postmining land use or reestablishment of the vegetative cover, or (2) cause or contribute to a violation of water quality standards for receiving streams, must be filled, regraded or otherwise stabilized; topsoil replaced; and the areas reseeded or replanted. Such rills and gullies may be indicative of a failure in the revegetation, depending on local and site-specific conditions; and may require augmented seeding to ensure revegetation success. For this reason, specific reference to regrading of rills and gullies has been deleted as an example of normal conservation practices under final Paragraph (c)(4). Under the final rule, the regulatory authority could allow repair of rills and gullies as a husbandry practice without restarting the liability period only if the general standards of this section are met after consideration of normal conservation practices within the region.

A number of comments were received on the related provisions in proposed § 816.116(c) that would have allowed particular activities during the responsibility period. These comments are discussed below.

Tree and shrub planting and maintenance work: Several commenters expressed the belief that tree and shrub planting and maintenance work should be restricted to the beginning of the responsibility period or identified as activities that would restart the period of responsibility. A State pointed out that the proposed rules required trees and shrubs to be in place only two growing seasons at the time of bond release. This allowed 8 years to complete the planting of trees and shrubs in arid areas and 3 years in areas of heavy rainfall. The commenter thought such periods to be excessive and stated that 2 years was sufficient time to obtain planting stock and to plant it during the proper season. Another commenter, who also felt the time period provided for tree and shrub planting was excessive, argued that 2 years was inadequate to determine the effect of unfavorable soil conditions which might be present. Older trees with more extensive root systems might come in contact with toxic materials at lower depths and become stunted or die after the release of operator responsibility. The commenter concluded that the Act clearly requires the responsibility period to start over when additional trees are planted and that OSM's rules must not conflict with the Act.

A State regulatory authority felt the replanting of trees and shrubs is not a normal practice where the postmining land use is unmanaged forest, nor is filling and seeding of rills and gullies. It was contended that these practices are augmentative and such work should cause the period of responsibility to begin anew. In contrast, another commenter favored allowing normal husbandry practices for trees and shrubs on reclaimed sites. It was argued that normal husbandry or management practices, including control of competing vegetation, are acceptable in unmined areas and should be available to the reclamation specialist.

To the extent operators are provided the opportunity to do limited replanting without starting the responsibility period anew under § 816.116(c)(4), § 816.116(b)(3)(ii) requires 80 percent of the planting stock to be in place for 3 or 8 years depending on the average annual precipitation and the remaining stock used in determining success to be in place for at least two growing seasons. Thus, this rule will, in effect, limit replanting to a maximum of 20 percent to the required stocking before restarting the responsibility period. Revegetation success will therefore be based on trees and shrubs that are in place an adequate time.

OSM also received several comments concerning the allowance for maintenance work during the responsibility period as provided for in the proposed rules. One commenter said that this had tremendous potential for abuse and should be deleted from § 816.116(c)(1) unless very strict limits were set on the area over which such work could be done. As safeguards, the commenter suggested requiring operators to keep careful records of these practices and limiting the cumulative area treated to 5 percent or less of the total permit area. Where the treated area exceed 5 percent, the responsibility period should start again for the whole area or the problem area should start again for the whole area or the problem area should be separated from the rest of the permit area for bonding purposes. A State suggested limiting the filling of rills and gullies and reseeding of small spots where vegetation has failed to the first 5 years of the 10-year period of responsibility. This would allow adequate time for the permittee to stabilize and revegetate the area and leave 5 years for the vegetation to develop.

OSM agrees that allowing unlimited areas to be reseeded following the repair of rills and gullies without restarting the period of responsibility could lead to abuse of the revegetation success standards because any failure of revegetation could be accompanied by the creation of rills and gullies requiring repair. To limit the potential abuse, under final § 816.116(c)(4), the repair of rills and gullies including reseeding or transplanting, can occur without extending the period of responsibility for revegetation success only if it is a normal conservation practice in the region, and such actions can be expected to continue as part of the postmining land use or if discontinuance will not reduce the probability of permanent revegetation success. OSM has not adopted the 5 percent standard since any nationwide numerical standard would be unrelated to the normal conservation practices in the different regions of the country.

A commenter asserted that allowing maintenance work throughout the responsibility period defeats the intent of the responsibility period. The provision allowing maintenance work contained in the proposed rule has not been included in the final rule. The proposed term "maintenance work" was too broad in meaning and its use in the rules could have resulted in conflicting interpretations, some of which could be prohibited by the Act. By allowing husbandry practices that can be expected to continue as part of the postmining land use, operators will have sufficient latitude to assure vegetation success.

A State regulatory authority suggested adding language to § 816.116(c)(1) to allow the regulatory authority to determine which husbandry practices are normally practiced in the region for the postmining land use. Under the final rule, the regulatory authority must decide which husbandry practices are acceptable. The rule provides the basis upon which such decision must be made. In the event the husbandry practice cannot be reasonably expected

to continue after bond release or if its discontinuance following bond release will reduce the probability of permanent revegetation success, the regulatory authority must deny approval or restart the period of responsibility for the operator.

A commenter said good husbandry practices would be acceptable if reseeding, refertilizing, and irrigation were clearly excluded. The final rules exclude augmented refertilizing and irrigation, and reseeding is allowed only under limited circumstances.

Previous Section 816.116(c)

OSM has removed previous §816.116(c), which required operators to maintain necessary fences, use proper management practices, and conduct periodic measurements of vegetation, soils, and water as prescribed or approved by the regulatory authority for identifying conditions during the period of responsibility.

A commenter felt that the requirements of previous § 816.116(c) should be maintained. Similarly, other commenters contended that requiring the maintenance of fences and the use of proper management practices is appropriate and necessary for ensuring the success of revegetation and that the requirement to monitor vegetation, soils, and water is necessary to make sure that adequate progress is made toward meeting success standards.

Another commenter argued that fence maintenance and proper management practices are needed to ensure that standards generated from reference areas are valid. This commenter viewed the monitoring provisions of previous § 816.116(c)(2) as absolutely essential. This commenter also contended that, since reclamation is more of an art than a science, monitoring is usually the only means of verifying and refining the reclamation plan.

As previously stated in the preamble to the proposed rules (47 FR 12599), these provisions are not specifically required by the Act and can be provided for by the regulatory authority, if appropriate, according to the local conditions. Operators must take the actions necessary to achieve successful reclamation, including the possible maintenance of fences and performance of management practices. That is, if fencing is necessary to avoid destructive grazing or indiscriminate use of recreation vehicles on the revegetated area, then the operator is expected to construct and maintain a fence. If a regulatory authority approves the use of reference areas, then it should include provisions in its rules that address fencing and the use of proper management practices necessary to assure that reference-area data are valid and appropriate for determining the success of revegetation.

Similarly, regulatory authorities are not precluded from requiring the monitoring of revegetation efforts to assure that the reclamation plan is being followed and that the revegetation effort is progressing in a satisfactory manner. Likewise, operators may do so on their own.

Previous Sections 816.116(b)(2) and 816.116(d)

Previous § 816.116(b)(2) listed data sources and specific procedures for determining average annual precipitation. OSM proposed the removal of this section because it was primarily a listing of information sources and not deemed necessary to understanding the regulatory requirement. No specific comments were received on this proposed deletion. Therefore, OSM has omitted these provisions from the final rules.

Previous § 816.116(d) provided an alternative fixed standard for determining the success of revegetation when permit areas are 40 acres or less in size and in locations with an average annual precipitation of more than 26 inches. OSM proposed deleting this section because it believed the flexibility generally provided to regulatory authorities by proposed § 816.116(a) obviated the need for a specific fixed standard for small permit areas. No comments were received on the basic proposal for removing the section; however, one commenter noted the deletion would also remove previous § 816.116(d)(3), which contained the only definition in the rules for ground cover. Ground cover was defined as the area of ground covered by the combined aerial parts of vegetation and litter that is produced naturally onsite, expressed as a percentage of the total area of measurement. This definition is retained in the final rules, but is moved to 30 CFR 701.5, Definitions.

Previous Section 816.117 Revegetation: Tree and Shrub Stocking for Forest Land

OSM proposed to remove § 816.117, which established requirements for tree and shrub stocking on forest land. OSM stated that a separate section with revegetation success standards for forest postmining land uses was unnecessary and that the essential requirements of previous § 816.117 could be incorporated into § 816.116, Revegetation: Standards of success. This was proposed in §816.116(b)(3). No comments were received that either supported or opposed this reorganization of the rules. Therefore, the final rule removes § 816.117 and transfers the essential requirements for tree and shrub stocking to § 816.116(b)(3). Comments received on the proposed language were previously discussed under the heading "Forest, Wildlife Habitat, and Recreation areas."

Sections 817.111–817.116 Revegetation Performance Standards—Underground Mining

Proposed §§ 817.111–817.116 establishing revegetation performance standards for underground mining activities. With the exception of § 817.111, these sections were identical to the corresponding sections proposed in Part 816. Proposed §817.111 reflected differences in the statutory language of Section 515(b)(19) of the Act for surface mining activities and Section 516(b)(6) is essentially the same as Section 515(b)(19). However, Section 516(b)(6) does not use the term "effective" in describing the vegetative cover requirements. Also, there is no statutory language restricting the use of introduced species and requiring vegetation of the same seasonal variety.

A State regulatory authority pointed out that proposed § 817.111(a)(1) did not contain the term "effective" and said the word should not be eliminated from the performance standards for underground mining activities. This proposed deletion was also noted by a second commenter who appeared to seek its inclusion in the final rule. Specific reasons were not given for the position taken by the commenters.

A State regulatory authority also noted that the proposed changes to §§ 817.111 (a) and (b) would eliminate the emphasis given in previous § 817.111(b)(1) to native plants of the same seasonal variety. The commenter contended that the use of native, locally adapted plant species was vital to successful revegetation, particularly under arid and semiarid conditions. Accordingly, the commenter believed that this requirement should not be eliminated from the rules.

In considering these comments, OSM has reviewed the Act and its legislative history to determine if the differences in Sections 515(b)(19) and 516(b)(6) were intended to reflect actual or perceived differences in surface and underground mining activities. OSM has not identified any differences that support adopting revegetation rules for surface mining activities that differ from rules adopted for underground mining activities. Therefore, in the final rules

the revegetation performance standards in Part 816 and Part 817 are identical.

C. References

Technical literature used to develop these final rules was cited in the March 23, 1982, issue of the **Federal Register** (47 FR 12601). The following technical literature, not previously cited, was also used in the preparation of these final rules. All of the reports are on file in OSM's Administrative Record.

Bonham, C. D., Larson, L. L., and Morrison, A., 1980. A survey of techniques for measurement of herbaceous and shrub production, cover, and diversity in the West: Unpublished, report prepared for the Office of Surface Mining, 79 pp.

Farmer, R. E., Jr., Rennie, J. C., Scanlon, D. H., III, and Zarger, T. G., 1981, Technical guides on use of reference areas and technical standards for evaluating surface mine vegetation in OSM Regions I and II. Prepared by the Tennessee Valley Authority for the Office of Surface Mining. Contract J5701442, 82 pp.

Gilley, J. E., Gee, G. W., Bauer, A., Willis, W. O., and Young, R. A., 1977, Runoff and erosion characteristics of surface mined sites in western North Dakota: Trans., ASAE 20(4): 697–700, 704.

Larson, L. L., 1980, A statistical evaluation of revegetation success on coal lands in the West: Unpublished, report prepared for the Office of Surface Mining, 19 pp.

National Research Council, 1981, Surface mining: Soil, coal, and society: National Academy Press, Washington, D.C.

Oleson, A. L., 1981, Methods for measuring percent ground cover: U.S. Department of Agriculture, Soil Conservation Service, Northeast Technical Service Center, Technical Note, Agronomy No. 17, 4 pp.

Raelson, J. V., and McKee, G. W., 1982, Measurement of plant cover to evaluate revegetation success: The Pennsylvania State University, Dept. of Agronomy, Agronomy Series 67, 45 pp.

Slick, B. M., N. D., (in press), A guide for the use of organic materials as mulches in reclamation of coal minesoils in the Eastern United States: U.S. Department of Agriculture, Forest Service, General Technical Report, 351 pp.

Thornburg, A. A., 1982, Plant materials for use on surface mined lands in arid and semiarid regions: U.S. Department of Agriculture, Soil Conservation Service, SCS–TP–157.

U.S. Department of Agriculture, 1963, Sixteen plants poisonous to livestock in the Western States: Farmers' Bulletin 2106.

U.S. Department of Agriculture, 1959, Techniques and methods of measuring understory vegetation: Proceedings of a symposium at Tifton, Georgia, October 1958, 174 pp.

U.S. Forest Service, 1937, Range plant handbook: U.S. Department of Agriculture.

Vogel, W. G., 1981, A guide for revegetating coal minesoils in the Eastern United States, U.S. Department of Agriculture, Forest Service, General Technical Report NE–68.

III. Procedural Matters

Executive Order 12291 and the Regulatory Flexibility Act

The Department of the Interior (DOI) has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. Also, DOI certifies that this rule will not have a significant economic effect on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis under Pub. L. 95–354. These rules, by emphasizing performance standards instead of design criteria, will allow small coal operators increased flexibility and should especially ease the regulatory burden on small coal operators in Appalachia.

Paperwork Reduction Act

OSM has received approval from the Office of Management and Budget under 44 U.S.C. 3507 for the information collection requirements in Parts, 816 and 817 and have been assigned clearances Nos. 1029–0047 and 1029–0048. These approvals have been codified under §§ 816.10 and 817.10. However, there are no information collection requirements in the revegetation rules, §§ 816.111–816.116 and 817.111–817.116.

National Environmental Policy Act

OSM has analyzed the impacts of these final rules in its "Final Environmental Impact Statement OSM–EIS–1: Supplement" (FEIS) according to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4332(2)(C)). The FEIS is available in OSM's Administrative Record, Room 5315, 1100 L Street, NW., Washington, D.C., or by mail request to Mark Boster, Chief, Branch of Environmental Analysis, Office of Surface Mining, Department of the Interior, Room 134, Interior South Building, U.S., 1951 Constitution Ave., NW., Washington, D.C. 20240. This preamble serves as the record of decision under NEPA. The final rules are different from those contained in Volume III of the FEIS in the following respects:

1. Final §§ 816.111(a) and 817.111(a) apply to "disturbed areas" rather than "affected lands." For the reasons described earlier in this preample, this change does not affect the FEIS analysis.

2. Final §§ 816.116(c) and 817.117(c) do not allow tree and shrub planting during the first 2 years of the period of responsibility in areas of more than 26 inches average annual precipitation and do not allow interseeding, tree and shrub planting, fertilizing, or irrigation during the first 2 years of the period of responsibility in areas of 26 inches or less average annual precipitation. In this respect, the final rules are consistent with the no action/minimum action Alternative B in the FEIS.

3. The final rules add a provision allowing regulatory approval of certain husbandry practices. These would have been allowed under draft final § 816.116(c)(1) and thus are considered within the FEIS analysis.

Agency Approval

Section 516(a) of the Act requires that, with regard to rules directed toward the surface effects of underground mining, OSM must obtain written concurrence from the head of the department which administers the Federal Mine Safety and Health Act of 1977, the successor to the Federal Coal Mine Health and Safety Act of 1969. OSM has obtained the written concurrence of the Assistant Secretary for Mine Safety and Health, U.S. Department of Labor.

List of Subjects

30 CFR Part 701

Coal mining, Law enforcement, Surface mining, Underground mining.

30 CFR Part 816

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Surface mining.

30 CFR Part 817

Coal mining, Environmental protection, Reporting and recordkeeping requirements, Underground mining.

Accordingly, 30 CFR Parts 701, 816, and 817 are amended as set forth herein

Dated: August 29, 1983.

William P. Pendley,

Deputy Assistant Secretary, Energy and Minerals.

PART 701—PERMANENT REGULATORY PROGRAM

1. Section 701.5 is amended by adding a definition of "ground cover" in alphabetical order to read as follows:

§ 701.5 Definitions.

* * * * *

Ground cover means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally onsite, expressed as a percentage of the total area of measurement.

* * * * *

PART 816—PERMANENT PROGRAM PERFORMANCE STANDARDS—SURFACE MINING ACTIVITIES

2. Section 816.111 is revised to read as follows:

§ 816.111 Revegetation: General requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, a vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of Paragraphs (b)(2) and (b)(3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exception to the requirements of Paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of Part 823 of this chapter apply to areas identified as prime farmland.

§ 816.112 [Removed]

3. Section 816.112 is removed.

4. Section 816.113 is revised to read as follows:

§ 816.113 Revegetation: Timing

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

5. Section 816.114 is revised to read as follows:

§ 816.114 Revegetation: Mulching and other soil stabilizing practices.

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

§ 816.115 [Removed]

6. Section 816.115 is removed.

7. Section 816.116 is revised to read as follows:

§ 816.116 Revegetation: Standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the exent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 816.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters or ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at leat 80 percent shall have been in place for a least three growing seasons in areas with a 5-year period of responsibility and at least eight growing seasons in areas with a 10-year period of responsibility. No trees and shrubs in place for less than two growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than 5 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing season of the last year of the responsibility period

or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

§ 816.117 [Removed]

8. Section 816.117 is removed.

PART 817—PERMANENT PROGRAM PERFORMANCE STANDARDS—UNDERGROUND MINING ACTIVITIES

9. Section 817.111 is revised to read as follows:

§ 817.111 Revegetation: General requirements.

(a) The permittee shall establish on regraded areas and on all other disturbed areas except water areas and surface areas of roads that are approved as part of the postmining land use, as vegetative cover that is in accordance with the approved permit and reclamation plan and that is—

(1) Diverse, effective, and permanent;

(2) Comprised of species native to the area, or of introduced species where desirable and necessary to achieve the approved postmining land use and approved by the regulatory authority;

(3) At least equal in extent of cover to the natural vegetation of the area; and

(4) Capable of stabilizing the soil surface from erosion.

(b) The reestablished plant species shall—

(1) Be compatible with the approved postmining land use;

(2) Have the same seasonal characteristics of growth as the original vegetation;

(3) Be capable of self-regeneration and plant succession;

(4) Be compatible with the plant and animal species of the area; and

(5) Meet the requirements of applicable State and Federal seed, poisonous and noxious plant, and introduced species laws or regulations.

(c) The regulatory authority may grant exception to the requirements of paragraphs (b)(2) and (b)(3) of this section when the species are necessary to achieve a quick-growing, temporary, stabilizing cover, and measures to establish permanent vegetation are included in the approved permit and reclamation plan.

(d) When the regulatory authority approves a cropland postmining land use, the regulatory authority may grant exceptions to the requirements of paragraphs (a)(1), (a)(3), (b)(2), and (b)(3) of this section. The requirements of Part 823 of this chapter apply to areas identified as prime farmland.

§ 817.112 [Removed]

10. Section 817.112 is removed.

11. Section 817.113 is revised to read as follows:

§ 817.113 Revegetation: Timing.

Disturbed areas shall be planted during the first normal period for favorable planting conditions after replacement of the plant-growth medium. The normal period for favorable planting is that planting time generally accepted locally for the type of plant materials selected.

12. Section 817.114 is revised to read as follows:

§ 817.114 Revegetation: Mulching and other soil stabilizing practices.

Suitable mulch and other soil stabilizing practices shall be used on all areas that have been regraded and covered by topsoil or topsoil substitutes. The regulatory authority may waive this requirement if seasonal, soil, or slope factors result in a condition where mulch and other soil stabilizing practices are not necessary to control erosion and to promptly establish an effective vegetative cover.

§ 817.115 [Removed]

13. Section 817.115 is removed.

14. Section 817.116 is revised to read as follows:

§ 817.116 Revegetation: Standards for success.

(a) Success of revegetation shall be judged on the effectiveness of the vegetation for the approved postmining land use, the extent of cover compared to the cover occurring in natural vegetation of the area, and the general requirements of § 817.111.

(1) Standards for success and statistically valid sampling techniques for measuring success shall be selected by the regulatory authority and included in an approved regulatory program.

(2) Standards for success shall include criteria representative of unmined lands in the area being reclaimed to evaluate the appropriate vegetation parameters of ground cover, production, or stocking. Ground cover, production, or stocking shall be considered equal to the approved success standard when they are not less than 90 percent of the success standard. The sampling techniques for measuring success shall use a 90-percent statistical confidence interval (i.e., a one-sided test with a 0.10 alpha error).

(b) Standards for success shall be applied in accordance with the approved postmining land use and, at a minimum, the following conditions:

(1) For areas developed for use as grazing land or pasture land, the ground cover and production of living plants on the revegetated area shall be at least equal to that of a reference area or such other success standards approved by the regulatory authority.

(2) For areas developed for use as cropland, crop production on the revegetated area shall be at least equal to that of a reference areas or such other success standards approved by the regulatory authority.

(3) For areas to be developed for fish and wildlife habitat, recreation, shelter belts, or forest products, success of vegetation, shall be determined on the basis of tree and shrub stocking and vegetative ground cover. Such parameters are described as follows:

(i) Minimum stocking and planting arrangements shall be specified by the regulatory authority on the basis of local and regional conditions and after consultation with the State agencies responsible for the administration of forestry and wildlife programs.

(ii) Trees and shrubs that will be used in determining the success of stocking and the adequacy of plant arrangement shall have utility for the approved postmining land use. At the time of bond release, such trees and shrubs shall be healthy, and at least 80 percent shall have been in place for at least three growing seasons in areas with a 5-year period of responsibility and at least eight growing seasons in areas with a 10-year period of responsibility. No trees and shrubs in place for less than two

growing seasons shall be counted in determining stocking adequacy.

(iii) Vegetative ground cover shall not be less than that required to achieve the approved postmining land use.

(4) For areas to be developed for industrial, commercial, or residential use less than 2 years after regrading is completed, the vegetative ground cover shall not be less than that required to control erosion.

(5) For areas previously disturbed by mining that were not reclaimed to the requirements of this subchapter and that are remined or otherwise redisturbed by surface coal mining operations, as a minimum, the vegetative ground cover shall be not less than the ground cover existing before redisturbance and shall be adequate to control erosion.

(c)(1) The period of extended responsibility for successful revegetation shall begin after the last year of augmented seeding, fertilizing, irrigation, or other work, excluding husbandry practices that are approved by the regulatory authority in accordance with paragraph (c)(4) of this section.

(2) In areas of more than 26.0 inches average annual precipitation, the period of responsibility shall continue for a period of not less than 5 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard during the growing season of the last year of the responsibility period or, if required by the regulatory authority, during the growing seasons of the last 2 years of the responsibility period.

(3) In areas of 26.0 inches or less average annual precipitation, the period of responsibility shall continue for a period of not less than 10 full years. Vegetation parameters identified in paragraph (b) of this section shall equal or exceed the approved success standard for at least the last 2 consecutive years of the responsibility period.

(4) The regulatory authority may approve selective husbandry practices, excluding augmented seeding, fertilization, or irrigation, without extending the period of responsibility for revegetation success and bond liability, if such practices can be expected to continue as part of the postmining land use or if discontinuance of the practices after the liability period expires will not reduce the probability of permanent revegetation success. Approved practices shall be normal conservation practices within the region for unmined lands having land uses similar to the approved postmining land use of the disturbed area, including such practices as disease, pest, and vermin control; and any pruning, reseeding and/or transplanting specifically necessitated by such actions.

§ 817.117 [Removed]

15. Section 817.117 is removed.

(Pub. L. 95–87, 30 U.S.C. 1201 *et seq.*)

[FR Doc. 83–24079 Filed 9–1–83; 8:45 am]

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federal register

Friday
September 2, 1983

Part V

Department of Labor

Mine Safety and Health Administration

Safety Standards for Underground Coal Mines; Roof, Face and Rib Support; Availability of Preproposal Draft and Schedule of Public Conferences

DEPARTMENT OF LABOR

Mine Safety and Health Administration

30 CFR Part 75

Safety Standards for Underground Coal Mines; Roof, Face and Rib Support

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice of Availability of Preproposal Draft and Schedule of Public Conferences.

SUMMARY: The Mine Safety and Health Administration (MSHA) has developed a preproposal draft of revisions to existing standards for roof, face and rib support at underground coal mines. MSHA seeks written comments on this preproposal draft from all interested parties. In addition, MSHA will conduct public conferences in Salt Lake City, Utah, and Charleston, West Virginia, to discuss the preproposal draft. The Agency is reviewing the standards to eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevant standards, simplify and consolidate existing standards, update standards to conform to state-of-the-art technology, and clarify and reorganize standards, where necessary.

DATES: *Comments:* Written comments on the preproposal draft must be received on or before November 18, 1983.

Conferences: The conferences will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

October 25, 1983: Salt Lake City, Utah
October 27, 1983: Charleston, West Virginia

ADDRESSES: *Comments:* Send written comments on the preproposal draft to the Office of Standards, Regulations, and Variances; MSHA; Room 631, Ballston Tower #3, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Conferences: The conferences will be held at the following locations on the dates indicated, beginning at 9:00 a.m.:

October 25, 1983: Salt Palace Center, Room 220, 100 South West Temple, Salt Lake City, Utah, Utah 84101
October 27, 1983: The University of Charleston, Geary Student Union Building, Maroon and Gold Room, Second Floor, 2300 MacCorkle Avenue, S.E., Charleston, West Virginia 25304

Persons planning to speak at a public conference should notify the Office of Standards, Regulations and Variances at least five days prior to the conference date.

FOR FURTHER INFORMATION CONTACT: Patricia W. Silvey, Director, Office of Standards, Regulations and Variances, MSHA (703) 235–1910.

SUPPLEMENTARY INFORMATION:

Preproposal Draft

On July 9, 1982, MSHA published an Advanced Notice of Proposed Rulemaking (ANPRM) in the **Federal Register** (47 FR 30025) announcing a comprehensive review of the underground coal mining standards in 30 CFR Part 75. The Agency is reviewing the standards to eliminate unnecessary reporting and recordkeeping requirements, minimize conflicting provisions, delete irrelevant standards, simplify and consolidate existing standards, update standards to conform to state-of-the-art technology, and clarify and reorganize standards, where necessary.

This review is consistent with the goals of Executive Order 12291, the Regulatory Flexibility Act, the Paperwork Reduction Act, and Department of Labor's initiatives with respect to improving regulations. MSHA considers early public participation in this standards review process to be particularly important.

MSHA has now completed development of preproposal draft safety standards for roof, face and rib support. The Agency requests comments on the substance of the preproposal standards, as well as on the reorganization of the standards. In addition, the Agency is interested in economic data and other regulatory impact information.

Copies of the preproposal draft have been mailed to persons and organizations known to be interested. All other interested persons and organizations may obtain a copy of the draft by submitting a request to the address provided above. The document contains the Agency's intended revisions, a comparison with existing provisions, and brief explanations of the draft changes.

Public Conferences

The purpose of the public conferences is to provide a forum for the free and open exchange of ideas in an informal setting. Each conference will begin at 9:00 a.m. All persons making timely, written requests to speak will have time allotted to them for their presentations. The request should identify the person and organization, the amount of time requested for the presentation and the location where the presentation will be made. Although written statements are not required, participants are encouraged to submit written materials in support of their views.

Other persons wishing to speak should register prior to each conference at the beginning of the public session. If time is limited, priority will be given to those who have requested time in advance. Interested persons may request that speakers clarify their comments or provide additional information during the conferences.

A formal transcript of these conferences will not be made. Following the conferences, MSHA welcomes additional written comments relevant to issues concerning the preproposal drafts. Following the public conferences, MSHA will develop revised standards which will be published as proposed rules in the **Federal Register**. The proposals will be followed by a comment period and public hearings. In issuing its final rules, MSHA will make every effort to be responsive to the concerns of the underground coal mining community and to advance the goals of regulatory relief and improving miner safety and health.

List of Subjects in 30 CFR Part 75

Communications equipment, Electric power, Emergency medical services, Explosives, Fire prevention, Mine safety, and health, Reporting and recordkeeping requirements.

Dated: August 30, 1983.

Thomas J. Shepich,

Deputy Assistant Secretary for Mine Safety and Health.

[FR Doc. 83-24183 Filed 9-1-83; 8:45 am]

BILLING CODE 4510-43-M

federal register

Friday
September 2, 1983

Part VI

Department of Labor

Employment and Training Administration

Labor Certification Process for the Temporary Employment of Aliens in Agriculture; Adverse Effect Wage Rate Methodology; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 655

Labor Certification Process for the Temporary Employment of Aliens in Agriculture: Adverse Effect Wage Rate Methodology

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule.

SUMMARY: The Department of Labor (DOL) is amending its regulations for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. The rule amends the regulations to establish a methodology for setting 1983 agricultural adverse effect wage rates (AEWRs), that is, the minimum wage rates which DOL has determined must be offered and paid by the employers proposing to employ nonimmigrant alien agricultural workers temporarily in the United States. The rule also revises the regulation dealing with adjustments to agricultural piece rates.

EFFECTIVE DATE: September 2, 1983. The ground for making the rule effective upon publication in the **Federal Register** are set forth in the "**SUPPLEMENTARY INFORMATION**" section below.

FOR FURTHER INFORMATION CONTACT: Mr. Charles I. Carter, Telephone: 202–376–6292.

SUPPLEMENTARY INFORMATION:

I. Introduction

In the **Federal Register** of July 22, 1983 (48 FR 33684), the Department of Labor (DOL) published a notice of proposed rulemaking to revise the Employment and Training Administration (ETA) regulations at 20 CFR 655.207 (b) and (c) regarding adverse effect wage rates and piece rates for the temporary alien agricultural certification program. Interested persons were requested to submit written comments, to be received on or before August 5, 1983. That comment period later was extended through August 22, 1983. 48 FR 35667 (August 5, 1983).

The Order of the United States District Court for the District of Columbia, in *NAACP, Jefferson County Branch* v. *Donovan*, Civil Action No. 82–2315 (D.D.C. June 28, 1983), required DOL to establish a methodology for setting hourly agricultural adverse effect wage rates (AEWRs) for the 1983 harvest season. The rulemaking herein is published in compliance with that Order.

DOL also is revising the regulation to reinstitute its earlier interpretation dealing with the appropriate adjustment of agricultural piece rates. The U.S. District Court for the District of Columbia, in two of its Orders in *NAACP, Jefferson County Branch* v. *Donovan*, found that DOL's interpretation of DOL's existing regulation on piece rates was incorrect. *NAACP, Jefferson County Branch* v. *Donovan, supra*, and 558 F. Supp. 218 (D.D.C. 1982). The rule revises the regulation to reinstate and to reflect accurately the agency's original intent in promulgating it, and the actual application since it was established. The United States District Court for the Western District of Virginia has ordered DOL to promulgate in final form no later than September 1, 1983, DOL's "clarifying interpretation of the piece rate adjustment requirements * * *." *Kent Barley, Inc.*, v. *Donovan*, Civil Action No. 83–0079 (W.D. Va. Order, August 18, 1983).

II. Temporary Alien Labor Certification Process and Adverse Effect Wage Rates

1. Background

Whether to grant or deny an employer's petition to import a nonimmigrant alien to the United States for the purpose of temporary employment is solely the decision of the Attorney General and his designee, the Immigration and Naturalization Service (INS). 8 U.S.C. 1101(a)(15)(H)(ii) and 1184 (a) and (c). Pursuant to the requirement that the Attorney General consult with appropriate agencies of the government concerning the importation of nonimmigrant (so-called "H–2") workers, INS has determined that prior to granting or denying such petitions it first will request DOL to advise INS on the availability of qualified U.S. workers for the jobs offered to the H–2 aliens, and whether the wages and working conditions attached to such job offers will adversely affect similarly employed United States workers. 8 U.S.C. 1184(c); 8 CFR 214.2(h)(3)(i).

Pursuant to the INS regulations, ETA has published regulations at 20 CFR Part 655, Subpart C, for the certification of nonimmigrant aliens for temporary employment in agriculture and logging in the United States. DOL has determined that similarly employed United States workers had been adversely affected by the importation and employment of nonimmigrant aliens in agricultural employment. It has been determined further that employment of those aliens in a number of States at wages below specially computed adverse effect wage rates (AEWRs) would adversely affect the wages of similarly employed United States workers. 20 CFR 655.202(b)(9) and 655.207.

Since 1968, these special AEWRs had been computed by adjusting the previous year's AEWR for a State by the same percentage as the change in annual average wage rates for field and livestock workers, as surveyed by the United States Department of Agriculture (USDA). See 41 FR 25018 (June 22, 1976). The USDA farm survey covered cash wages paid during one week in each calendar quarter. However, in 1981 USDA substantially reduced its number of surveys and ceased compiling annual average wage rates. Consequently, the methodology established in 1968 for computing AEWRs was no longer adequate. AEWRs for 1981 were able to be published under the then-existing methodology, but, due to the diminished USDA data, for 1982 it was determined by DOL to be necessary to extend the 1981 AEWRs for another year. This action was reported by DOL in the **Federal Register**, 47 FR 37980 (August 27, 1982).

Farmworkers in three States objected to the extension of 1981 AEWRs into 1982, and brought suit in the U.S. District Court for the District of Columbia. The Order in *Bragg* v. *Donovan*, Civil Action No. 82–2361 (D.D.C. August 24, 1982), required DOL to establish a methodology and set 1982 AEWRs for those States. After a notice and comment period, DOL established by regulation new AEWRs for those three States (Florida sugar cane, Vermont, and Maine), and for West Virgina, the State whose farmworkers were the original plaintiffs in *NAACP, Jefferson County Branch* v. *Donovan, supra*. See 20 CFR 655.207(b) (1983); 48 FR 235 (January 4, 1983). The methodology set the AEWRs beginning in 1982 by comparing the historic relationship between the more limited USDA data and the available data USDA had collected before 1981.

Pursuant to the District of Columbia federal court's various Orders referenced above, these AEWRs were to be paid retroactively for work performed in the 1982 harvest season. Had the 1982 AEWR in West Virginia been increased using the same data series as was used for the three States in the *Bragg* case, covered employers in that State would have had to pay retroactively a 17.2% increase in wages for that season. Therefore, in the rule published on January 4, 1983, DOL determined to spread West Virginia's AEWR increase over two years. The 1982 AEWR increase would have been 10%, to prevent economic harm to the

small agricultural employers in that State who utilize nonimmigrant alien workers. See 48 FR 235 (January 4, 1983). The AEWR for West Virginia in 1983 was to rise another 7.2% over the 1981 AEWR. The June 28, 1983, *NAACP, Jefferson County Branch* v. *Donovan* Order overturned DOL's determination, and required the agency to increase the AEWR for West Virginia a full 17.2% over the 1981 rate—to $4.24 per hour—and to require that it be paid retroactively for work in the 1982 harvest.

2. Proposed Rule and Comments

On July 22, 1983, DOL published in the Federal Register at 48 FR 33684, a proposed rule to amend 20 CFR 655.207 (b) and (c), to revise the AEWR methodology for 1983 as required by the court, to reinstitute DOL's procedure for determining the adequacy of piece rates, to add Florida to the list of States for which AEWRs are computed (the separate rate for Florida sugar cane work would continue), and to grant the Director, U.S. Employment Service, discretion in choosing the dates for annually announcing AEWRs.

The majority of the comments received on the proposed rule dealt with the AEWR methodology. While all of the comments are carefully considered DOL, many of the comments were duplicative. For that reason, this document will not address each commenter separately. However, the discussion below responds to each significant issue raised by the comments. Those comments outside the scope of the rulemaking, such as DOL's general authority to set AEWRs, are not discussed. *See Florida Sugar Cane League* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976).

a. AEWR Methodolgy (§ 655.207(b)(1))

Rather than depending on data supplied by USDA to determine wage movements, the proposed rule stated that DOL would rely on data received by DOL's Bureau of Labor Statistics (BLS) through the Employment and Wages Program (the "ES–202 Program").

The ES–202 Program is a cooperative activity of BLS and the State employment security (unemployment compensation and job service) agencies. Annual changes in the AEWR for each State would be directly proportional to the changes in average weekly wages for similarly employed workers covered by unemployment insurance (UI) in the State. The AEWR would not be set at the level of average weekly wages in the ES–202 data, but would follow the movement of average weekly wages in that data series.

Since 1978, agricultural labor has been covered broadly under all the States' UI laws. See 26 U.S.C. 3306(a)(2) and (c)(1); and §§ 111 and 114 of Pub. L. 94–566. At minimum, employees of agricultural firms employing at least 10 workers in 20 weeks or having a $20,000 quarterly payroll are covered by UI. Some State UI laws have broader coverage of agricultural labor.

As part of their UI programs, the State employment security agencies receive from each UI-covered employer quarterly reports showing: the number of workers on the payroll, total wages, taxable wages, and UI contributions (State UI taxes). The State agencies, in turn, report this information to BLS showing the number of UI-covered establishments, employment during the mid-week of each month, and total wages paid during the quarter. Wages are reported by Standard Industrial Classification (SIC) code, including various categories of agricultural crop producers. The proposed rule announced that DOL planned to use ES–202 data on agricultural wage movements in SIC Code Nos. 013, 016, 017, 019, 071, and 072, since these categories include the employers using the bulk of the imported nonimmigrant alien agricultural labor.

Using these data, it is possible to prepare estimates of average weekly wages by year, using the best available information, from the ES–202, on wage trends in agricultural and other industries. Using the data in the ES–202 report, the AEWR would be adjusted annually by the year-to-year change in the total weekly wages for agriculture (in the above-referenced SIC codes) in the State.

Previously, when AEWR wage movements were keyed to USDA-surveyed wage movements, the AEWRs in the six New England States moved as a unit (*i.e.*, by the same percentages), although the AEWRs in each State differed, due to the variations in the base. The proposed rule recommended continuing that unitary movement. However, the final rule recognizes that New England has a relatively small universe of reporting units, and it is believed that a wider regionwide movement would more accurately reflect actual wage movements in the region. The agricultural activity utilizing nonimmigrant alien farmworkers in New York adjoins and closely parallels similar activity in adjoining New England agricultural areas. Therefore, the final rule includes ES–202 movements in New England and New York as a single unit. Similarly, the proposed rule, and the final rule herein, treats Maryland, Virginia, and West Virginia as a unit for wage movements, although their AEWRs would differ due to variations in the AEWR base.

The coverage, continuity, and currency of the ES–202 program make its data one of the most useful data bases for determining wage movements in all United States industries. Some other uses being made of the data series are described below:

(i) The series is used by the Department of Commerce as part of the wage and salary component, to determine gross national product and personal income.

(ii) The Social Security Administration uses ES–202 data in updating economic assumptions and forecasting trends in the taxable wage base.

(iii) These data in the reports have been used by BLS to develop a series for the Department of Health and Human Services to adjust Medicare payments to hospitals to reflect changes in labor costs.

(iv) ETA has used ES–202 wage data to determine allowable wage supplementation for public service employees in the Countercyclical Public Service Employment Program under Title VI of the Comprehensive Employment and Training Act (CETA). Congress endorsed the use of such wage data. See section 609(2) of CETA; 29 U.S.C. 969(2) (1978).

(v) State and federal UI agencies use the data for a myriad of purposes in administering the cooperative system of federal and State UI laws. The data show the extent of UI coverage, records revenues and disbursements, measures unemployment, allows actuarial studies, and determines maximum UI benefit levels, experience ratings, and areas needing federal assistance. The data also help ensure the solvency of the UI Funds.

(vi) Public and private research organizations use the ES–202 report as one of their sources of detailed employment and wage statistics.

The ES–202 reporting system is carefully reviewed by State and Federal labor statisticians. The data are recognized by competent statistical authorities as being valid and form a basis for the BLS *Employment and Wages* series. The data can be used in a methodology for the AEWR determination that is fair, reasonable, and cost effective.

The ES–202 Program, including its coverage and uses, is described more fully in Chapter 5, "Employment and Wages Covered by Unemployment Insurance," of the *BLS Handbook of Methods*, Vol. 1, BLS Bulletin No. 2134–1

(December 1982). A reproduction of Chapter 5 was published with the proposed rule as an appendix.

Use of the ES–202 report has the additional advantage that the wage survey does not include the wages of nonimmigrant alien workers, who are excluded by statute from unemployment compensation coverage. 26 U.S.C. 3306(c)(1)(B). Further, although UI coverage of agricultural labor is not universal, there is significant coverage in States where the temporary alien agricultural labor certification program operates.

Under the proposed rule, and the rule adopted herein, the 1983 AEWRs, in general, would be determined using the 1981 AEWRs as the base. The 1981 AEWRs were the last set using the historically used USDA data series and were the most reliable of the wage rates set thus far in the 1981–83 period. In the final rule, unless the 1982 AEWR were higher, the 1983 AEWR would be the State's 1981 AEWR changed by the same percentage as the two-year change in total weekly wages for agricultural crop activities (SIC Code Nos. 013, 016, 017, 019, 071, and 072) for the applicable ES–202 reporting area. In the final rule set forth herein, the two-year reference period would be 1980–82. The proposed rule would have used the two-year reference period of 1979–81, but in response to comments discussed later in this document, that reference period was determined to be inappropriate.

The proposed methodology stated that after 1983 the one-year wage movement from the beginning of the third year previous to the end of the second year previous would be used to set the movement from the prior year's AEWR to the current year's AEWR. For example, under the proposed rule, the 1984 AEWR would be set by applying to the 1983 AEWR the percentage change in the applicable ES–202 data for 1981–82.

The final rule would retain this one-year movement, but would use the one-year wage movement from the beginning of the second year previous to the end of the first year previous to set the movement from the prior year's AEWR to the current year's AEWR. For example, under the final rule, the 1984 AEWR would be set by applying to the 1983 AEWR the percentage change in the applicable ES–202 data for 1982–83.

Absent a future change in the AEWR methodology, the AEWR thereafter would be adjusted annually only by the year-to-year change in the applicable ES–202 average weekly agricultural wages. In those States in which the 1981 or 1982 AEWRs, set by interim methodology or Order of the court was higher than that computed by the applicable percentage increase in ES–202 data, the highest of the AEWRs would apply, until such time (if any) as the AEWR computed using the ES–202 data exceeds the prior AEWR.

Under the methodology set forth in the rule, the 1983 AEWRs are set forth in the list below.

In West Virginia, the 1982 AEWR was $4.24, as ordered by the court in *NAACP, Jefferson County Branch* v. *Donovan*, and therefore that prior year's rate of $4.24 will be continued in 1983. The final rule published on January 4, 1983, had announced that the 1983 AEWR for West Virginia would continue to be $4.24. 48 FR 235.

The best available ES–202 data for 1982 now available for Colorado include estimates for that State. DOL has determined that there are not yet available data sufficient to set an AEWR for that State. When such data are available, the Director, U.S. Employment Service will announce that 1983 Colorado in the **Federal Register.** It should be noted, however, that there currently is no agricultural activity in Colorado for which nonimmigrant alien employment pursuant to an AEWR needs to be certified. Any certifications granted for such agricultural employment in Colorado prior to the publication of an 1983 AEWR for Colorado will be conditioned on the employer's assurance that it will pay that AEWR for all work performed in the season.

State	1983 AEWR
Arizona	$4.22
Colorado	[1]
Connecticut	4.05
Florida (sugar cane only)	5.37
Florida (except sugar cane)	4.34
Maine	4.15
Maryland	4.38
Massachusetts	4.05
New Hampshire	4.34
New York	4.20
Rhode Island	4.05
Texas	4.16
Vermont	4.28
Virginia	4.39
West Virginia	4.24

[1] Not yet available.

b. *Comments and Responses on Proposed AEWR Methodology*

(1) Commenters representing United States farmworkers generally approved of the proposed rule on AEWRs. Those commenters stated that the ES–202 data base provides the most realistic measure of general farm wage trends. One such worker-commenter accepted the proposed rule, but also stated a preference for an alternative system, resulting in higher AEWRs than the proposal, whereby AEWRs would be determined on a crop activity basis in each area of employment. In part, the wage would have to equal the highest wage offered for the crop activity in that area and wage rates would be increased in proportion to the penetration of the market by nonimmigrant alien workers. DOL has considered alternatives similar to this in the past. However, the escalation of AEWRs caused by such an approach would result in "attractive" wage rates. Under the Immigration and Nationality Act and the Immigration Regulations, DOL is asked for advice to protect U.S. workers' wages from adverse effect, not to require wages high enough to attract U.S. workers to the aliens' jobs. *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976); see 20 CFR 655.0(e).

(2) Employer commenters objected to the use of ES–202 data series in determining changes in AEWRs. They commented that it is inappropriate to adjust AEWRs, which are minimum hourly wage rates, by changes in the ES–202 data, which are average weekly earnings. However, adjustment of AEWRs by changes in average earnings is the historical practice of this program. The quarterly USDA samples formerly used determined the cash wages earned by both hourly and piece-rate-paid field and livestock workers. The USDA data represented hourly earnings. As some employer-commenters acknowledged, studies of weekly and hourly earnings show that hourly earnings increase and decrease annually and the magnitude of their year-to-year changes is erratic. Average hourly earnings cited by some employers in fact increased by greater percentage than average weekly earnings. Using their suggestion of adjusting hourly AEWRs by the same percentage as changes in average hourly earnings would result in greater increases in AEWRs. The growers also cite factors other than wage rate changes which can affect earnings from year-to-year. However, it is anticipated that these factors would cancel each other out, that poor crop years would be followed by better crop years, and that over time productivity and earnings would change at a steady rate.

(3) The agricultural employers' comments also question the use of ES–202 data on agricultural earnings by other agencies. While the agricultural portion of the ES–202 data series has not yet attained as wide currency as other portions of the data series, this is, in part, due to the relatively recent unemployment compensation coverage of agricultural workers. As cited by the commenters, various portions of the ES–202 data series are used for differing programmatic purposes in a number of

federal programs. This demonstrates the versatility of the data series. When unemployment compensation coverage of agricultural workers will be in place for more years, it is expected that the use of ES–202 data on their earnings will achieve greater utilization for governmental and private statistical purposes.

(4) Employer commenters suggest that the universe of agricultural workers covered by unemployment compensation comprise a "biased sample." The ES–202 data on agricultural workers, however, represents, under BLS estimates, 40 percent of workers in agriculture. At the time such workers first were covered by unemployment compensation, in 1978, the ES–202 data reported an aggregate payroll of reporting units coded agricultural which, according to a comenter, was 58 percent of the agricultural payroll reported by the U.S. Census of Agriculture. Data on earnings paid to such a large portion of workers on agricultural payrolls is not insignificant. DOL has determined that it represents the best data available at this time on wage movements in agriculture.

(5) As noted by a number of employer-commenters, the ES–202 data is listed by the SIC code of the employer. As such, the data includes the agricultural employer's production workers, as well as some nonproduction workers, such as supervisors, office workers, and drivers. The commenters state that these workers are not "similarly employed" to U.S. agricultural workers (see 8 CFR 214.2(h)(3)(i)), and that their cash wages should not be used to adjust AEWRs for agricultural workers. DOL acknowledges that there are some nonproduction workers included in the ES–202 agricultural data series. However, the actual earnings of workers included in the ES–202 program are not being used as the AEWRs. Instead, the AEWRs will be adjusted, upward or downward, by the same percentage as the appropriate portion of the ES–202 data series. DOL has not been persuaded that the wages of nonproduction workers in agriculture rise or fall at any significantly different rate than the wages of production workers in agriculture. Similarly, DOL has not been persuaded that the wages of workers covered by unemployment compensation (and the ES–202 program) rise or fall at any significantly different rate than the wages of workers not covered.

(6) The employer-commenters also alleged there to be a lack of "statistical quality control" of the ES–202 program. The commenters state that the data often are delinquent, and that the SIC classification of some employers is not current. Any delay in the collection and dissemination of the data has been considered in the rule. The rule uses the best available year-to-year changes in the ES–202 data. With respect to SIC classification, there is no reason to believe that the classification of agricultural employers is less than current, given the relatively recent inclusion of those employers in the unemployment compensation and ES–202 programs.

(7) The ES–202 program studies employment in only one week in each month. Employer-commenters stated that year-to-year changes in agricultural activity, due to climatic or other changes can affect this survey. This point is more applicable to USDA's abolished quarterly survey and annual survey, formerly used for adjusting AEWRs. Those surveys measured agricultural employment for one week in each calendar quarter, or for one week in July. Climatic or other shifts in harvest activity could result in a complete lack of data for a particular agricultural activity under those surveys. Under the monthly ES–202 survey, it is likely that two or more survey weeks will occur during even the shortest activity. For example, a comment from an employer organization included an employment profile of an apple grower in Pennsylvania. The apple grower employed seasonal workers with picking employment only for eleven weeks in 1980. Nevertheless, even with a shift of the season by one or more weeks, there would be at least two ES–202 reference weeks. Unlike the USDA data, a moderately shortened season would be surveyed.

(8) Employer-commenters observed that not all the data that should have been included was included in the tabulations for the AEWRs set forth in the proposed rule. BLS' ES–202 data tabulations showed average weekly earnings for each 3-digit SIC code for each State covered by the proposed rule. Due to BLS' disclosure rules, the tabulations contained some empty (nondisclosable) data cells. The commenters suggested that DOL recompute the SEWRs, using aggregate data tabulations covering all six SIC codes. This comment suggests a reasonable method for including the nondisclosable data cells, and therefore DOL is adopting the comment in the final rule.

(9) The proposed rule would have computed the 1983 AEWRs by adjusting the 1981 AEWRs by the same percentage as the change in the appropriate ES–202 data during 1979–81. Since the AEWRs for two years have been kept at 1981 levels in most covered States, it was determined that a two-year yardstick with 1981 as the base be used to adjust the rates for 1983. Some employer-commenters objected to this computation, since the 1981 AEWRs had been determined using the changes in the USDA data for 1979–80. They suggested that this resulted in "double-counting" wage inflation for 1979–80.

This comment is valid, and DOL therefore has modified the language in the final rule to use changes in the best available ES–202 data for 1980–82 as the reference to determine the 1983 AEWRs. This avoids the "double-counting" of wage inflation existent in the proposed rule. The AEWRs under the final rule are set forth in the table above. In the future, only the 12-month change for a one year period would be used.

(10) Both employer and worker commenters objected to the inclusion and exclusion of various SIC codes in the ES–202 data used for the methodology. The employers objected to the inclusion of SIC Codes Nos. 071—"Soil Preparation Services," and 072—"Crop Services," in the average weekly earnings statistic used to adjust the AEWRs. Use of the six three-digit SIC code groups set forth in the rule represents groups including workers for which temporary alien agricultural labor certifications have been granted in the past. It does not include the entire universe of farmworkers covered by unemployment compensation. For the purposes of the Job Service Regulations, including the rule herein, agricultural workers include most workers in SIC Codes 01–07 (except 027, 074, 0752, and 078). Nevertheless, as stated above, DOL has not been persuaded that the inclusion of nonproduction agricultural workers in these data series significantly affects the outcome of the methodology.

Employer and worker comments questioned the exclusion of SIC Code No. 0761 from the list of ES–202 groups. SIC Code No. 0761 includes employment with farm labor contractors and crew leaders. As correctly pointed out by all such commenters, these employers make their unemployment compensation wage reports in their labor supply base States, not necessarily in the State in which the agricultural activity occurred. Since it thereby could distort the earnings changes in the labor supply and labor user States, DOL has determined to exlude this SIC code from the list of SIC code groups used in the AEWRs methodology.

(11) USDA submitted comments on the proposed rule, suggesting an alternative methodology by which AEWRs would be adjusted proportionately to changes in a USDA wage survey planned to begin in 1984. While the new USDA the survey data would be available in 1985, the USDA survey would consist of estimates of wage information. The USDA proposal does not contain a proposal for measuring year-to-year in 1985 and future years. Since 1984 would be the first survey year, no data on changes in wages and/or earnings actually would be available until 1986.

For 1983 and 1984, USDA suggested use of their one week per year wage survey. A number of employer-commenters submitted similar comments.

As stated above, the USDA annual survey of agricultural wages in one week per year provides a less adequate basis to gauge movements and trends in wages. Most of the crop activities for which temporary labor certification is granted do not occur during the annual USDA July survey. As pointed out by many commenters, a shift in an agricultural season, due to other than wage-related factors, can result in erratic movements in the collected data. The ES–202 data, for one week in each month, are much less likely to be affected by such shifts than data collected one week per year or even one week per calendar quarter, as was previously done by USDA. USDA itself has pointed out to DOL the flaws in using data from the UDSA's one week per year farm labor survey as a basis for measuring trends in agricultural wages.

With respect to 1985 and future years, DOL expects to work closely with USDA to determine the appropriateness of the farm labor survey USDA proposes to begin in 1984. If the survey produces a more accurate indication of movements in farm wages, and would better achieve the purposes of the Immigration and Nationality Act and the regulations adopted thereunder, DOL may choose to utilize that survey in determining AEWRs. However, since DOL has been directed by court Order to produce a methodology for determining the 1983 AEWR, it is outside the scope of this rulemaking to determine what methodology may be adopted for 1985 and future years. At this time, the results of the proposed 1984 USDA survey are speculative.

(12) Some employer-commenters suggested alternative methodologies for determining AEWRs considered in this rulemaking and in other recent DOL rulemakings on AEWRs.

Setting a single nationwide AEWR at the Fair Labor Standards Act (FLSA) (29 U.S.C. 206(a)(1)) minimum wage of $3.35/hour, or some multiple thereof, has been considered in this and previous rulemakings. 48 FR 232 (1983); 47 FR 52198, 542199 (1982); 45 FR 15914 (1980); 44 FR 59890 (1979); 43 FR 10312 (1978); 42 FR 4670 (1977). However, use of the FLSA minimum wage rate could make nonimmigrant alien labor more economically attractive to employers than U.S. workers. Based upon currently available data, use of the FLSA minimum wage plus a percentage thereof, or other methodologies such as those comparing the wages of agricultural sector workers with manufacturing sector workers are speculative in their protection against adverse effect, and not fully reflective of wage trends, to the extent that they might not meet the adverse effect protection standards required by the immigration law and regulations.

The proposed rule and the rule adopted herein also are preferred because they are the most readily understandable, reasonable, and consistent with the AEWR adjustment methodology used since 1968. Only the data series by which the AEWR will be adjusted has been changed, due to the unavailability of the previously used USDA data series.

(13) A comment was received from a State employment security agency in a temporary agricultural worker "user State." The agency objected to the combination of Maryland, Virginia, and West Virginia into one unit for gauging changes in the applicable ES–202 data series. The agency believed that the data for each of the three States would be considered equally, with a one-third weight to each. That approach was not suggested in the proposed rule and is not being taken in the final rule. The three-State area will be treated as one unit for gauging wage movements, and therefore the number of workers covered under the ES–202 program in each State will be considered proportionately. If, for example, 60 percent of the covered workforce is in one State, that State will have a 60 percent weight in the computation.

The State agency also questioned the use of a survey including both field and tree crops, stating that the workers are not "similarly employed." That issue has been discussed in slightly different form above. In addition, DOL has determined over the years that in the low-skilled and unskilled crop activities involved in this program, workers can move from crop to crop with a minimal amount of experience and training. Further, as stated above, the earnings set forth in the ES–202 data are not going to be the AEWRs. Rather, the movement of the ES–202 data, upward or downward from year-to year, will be used to determine increases or decreases in the AEWR. DOL has not been persuaded that, over time, earnings of production and nonproducton workers in agriculture, or crop or field workers, rise or fall generally at significantly different rates.

c. *Piece Rates Rule (§ 655.207(c))*

Historically, DOL has determined that workers should not be required to increase their level of productivity in order to earn, at minimum, the hourly AEWR. Conversely, if the employer's piece rate for a particular crop activity allowed the average worker to receive earnings at or above the AEWR, that piece rate has been acceptable. Thus, if average hourly earnings for the average worker in the preceding year equalled or exceeded the applicable AEWR, the piece rate for that crop activity did not need to be raised. See 20 CFR 655.207(c). This interpretation of DOL's regulation on piece rates was reflected in its issuances to ETA regional offices and to State job service agencies. See § A.6.a(3) of Attachment 1 to ETA General Administration Letter (GAL) No. 46-81.

In the two *NAACP, Jefferson County Branch* v. *Donovan* Orders described above, the court held that DOL's interpretation of its own regulation is invalid and ordered that the piece rates be increased each time the AEWRs increase, based upon the productivity in that crop activity in 1977. The 1977 productivity rate is determined by dividing the 1977 AEWR by the piece rate for that crop activity. Under the court's Orders, the current piece rate would be equal to the current AEWR divided by the 1977 productivity rate.

The result of the court's interpretation would have been to guarantee workers earnings at levels above that determined by DOL as the adverse effect level. Employers who paid a higher than average piece rate in 1977, and whose workers received, at that time, earnings far above the adverse effect level, would have been bound to maintain their workers at levels of earnings above the hourly AEWR required by 20 CFR 655.207(b).

While the rule set forth in this document would restore DOL's interpretation of its regulation, as set forth in GAL No. 46–81, described above, the goals of DOL and the plaintiffs in *NAACP, Jefferson County Branch* v. *Donovan* are much the same. Workers should not be required to increase productivity to earn the

applicable AEWR. However, the AEWR is meant to be a minimum, not an escalator to maintain earnings (or to set "attractive" wages) above the adverse effect level.

d. *Comments and Responses on Proposed Piece Rate Rule*

(1) Those employer-commenters which discussed the proposed piece rate rule uniformly preferred the proposed rule over the current court-imposed interpretation of the existing rule. One New York apple grower stated that the court-ordered interpretation of the current rule, based upon 1977 productivity, would result in required hourly earnings of $7.00–$9.00 per worker in its orchard, considerably above the New York AEWR. That grower did suggest the elimination of a piece rate adjustment regulation entirely, allowing growers to take into account the type of picking available due to climatic and other non-wage factors. As stated above in the explanation of the proposed rule, DOL has considered such an alternative, but has determined that the piece rate rule is necessary to avoid requiring workers to increase productivity when there is an increase in the AEWR.

(2) Commenters representing workers, including the plaintiffs in *NAACP, Jefferson County Branch* v. *Donovan*, opposed the proposed amendment of § 655.207(c). They suggested that the judicial interpretation of the current rule be retained, resulting in maintenance of earnings at a level above the AEWR.

As discussed above, the purpose of the AEWR and the piece rate adjustment is to protect U.S. workers' wages from the adverse effect of temporary employment of nonimmigrant aliens. That protection is effected by establishing an adverse effect floor. Employers are free to pay more and workers are free to seek more wages, but the labor certification program is not the appropriate means to escalate agricultural earnings above the adverse effect level or to set an "attractive" wage.

Although the court in the above-referenced matter expressed its interpretation of 20 CFR 655.207(c), that interpretation is not the policy historically and uniformly held by DOL. While the commenters submitted copies of internal DOL policy statements supporting their position, DOL has issued other policy statements, such as the GAL No. 46–81 cited above, which express the policy set forth in the proposed rule. Applying the best light to the comments, DOL's policy on adjustments to piece rates has been unclear. The purpose of this rulemaking is to clearly define that policy.

In 1976, the U.S. Court of Appeals for the Fifth Circuit had before it the question of whether it is proper for piece rates to be permitted at a level that earns the applicable AEWR. The court considered and approved of DOL's piece rate adjustments, which maintain the AEWR as a floor rather than an earnings escalator, noting that "(n)owhere is there a requirement that piece rates be in *excess* of the adverse effect minimum wage." *Williams* v. *Usery, supra*, 531 F. 2d at 308; see 20 CFR 655.0(e) (1983); and 20 CFR 602.10b(a)(2) (1976).

As historical justification, the commenters also referred to DOL's rulemaking, terminated in 1981, which would have made the commenters' suggestion the Department's policy. See 45 FR 15914, 15918 (March 11, 1980); 46 FR 4568, 4573, and 4578–79 (January 16, 1981). Upon further consideration of the issues, that rule was withdrawn before its effective date. 46 FR 32437 (June 23, 1981). The commenters suggest that the withdrawn rule expressed DOL's historical policy on piece rate adjustments. The fact that the rule was withdrawn at least equally indicates DOL's ultimate rejection of such an earnings escalation approach as the agency's piece rate policy. In any event, as the court noted in *NAACP, Jefferson County Branch* v. *Donovan*, there are "potential dangers of relying for authority upon the morals of legislation and regulations that have *not* been passed." 558 F. Supp. 218, n. 8 (D.D.C. 1982).

(3) Worker-commenters questioned the use of the term "average worker" in the piece rate regulation. They stated that since the statute is designed to protect the wages and working conditions of U.S. workers, average worker productivity should be limited to average U.S. workers. This was the intent of DOL in the proposed rule. Nevertheless, for clarification purposes the final rule adds "U.S." before the word "average" where it appears in § 655.207(c).

(4) Worker-commenters question the use of average worker productivity, stating that U.S. workers may be terminated from the employment for failing to achieve this average. DOL has also considered these comments separately, and as balanced against the comments submitted by employer-commenters in previous rulemakings on piece rates, in which the employers state that the average worker concept causes piece rates to rise. DOL has determined that the piece rates must be adjusted as necessary to avoid requiring workers to increase productivity to earn, at minimum, the AEWR. Any other forces which might apply to increase productivity are outside the scope of this rulemaking. DOL is not persuaded that U.S. workers are any less capable agricultural workers than imported aliens. Further, any productivity or termination standard which applies to U.S. workers must be applied equally to their employers alien workers. 20 CFR 655.202(a) (1983).

e. *Publication of a Separate AEWR for Other than Sugar Cane Work in Florida (§ 655.207(b)(2))*

The rule would establish an AEWR for agricultural employment in Florida. A separate AEWR would continue to be set for Florida sugar cane work. Nonimmigrant aliens were admitted in 1982 for lettuce picking in Florida. To avoid the adverse effect which employment of such aliens would have on the wages of similarly employed United States workers, it has been DOL's practice in the past to establish computed AEWRs when there has been employment of such aliens in a State. An unpublished AEWR for Florida (other than sugar cane) has been computed, using USDA data, for many years. The 1981 AEWR computed by that earlier methodology would be the base for Florida, and the 1983 AEWR would be set according to the same ES–202-based methodology set forth in the rule below.

No comments were received with respect to this proposed rule and has been adopted in the final rule.

f. *Technical Amendments*

Other technical amendments, such as establishing the date by which AEWRs annually must be announced and published, are necessitated by the second Order in *NAACP, Jefferson County Branch* v. *Donovan*, and are set forth in the rule below. No comments were received with respect to these technical amendments and they are being adopted in the final rule.

3. AEWR Methodologies in the Future

This rulemaking meets the critical need, created by the recent Orders in *NAACP, Jefferson County Branch* v. *Donovan*, and the impending 1983 harvest season, to set AEWRs for 1983 and does not foreclose a determination by DOL to institute in later years other changes in the AEWR regulations.

III. Discretion in Setting AEWRs

Section 214(c) of the Immigration and Nationality Act gives the Attorney

General (and his designee INS) broad discretion in the admission of nonimmigrant aliens to the United States. 8 U.S.C. 1184(c). With respect to determinations under the immigration laws on the availability of United States workers for jobs offered to nonimmigrant alien workers, and the adverse effect those aliens' employment may have on the wages and working conditions of similarly employed United States workers, the Secretary of Labor and DOL have been given broad discretion. See, *e.g.*, 8 CFR 214.2(h)(3)(i). This broad discretion, particularly with respect to methodologies for setting AEWRs under the immigration laws, has been recognized in the federal appellate and district courts. *Rowland* v. *Marshall*, 650 F. 2d 28 (4th Cir. 1981); *Williams* v. *Usery*, 531 F. 2d 305 (5th Cir. 1976), *cert. denied*, 429 U.S. 1000; *Florida Sugar Cane League* v. *Usery* 531 F. 2d 299 (5th Cir. 1976); and *Limoneira C.* v. *Wirtz*, 327 F. 2d 499 (9th Cir. 1964), *aff'g* 225 F. Supp. 961 (S.D. Cal. 1963); *see also Elton Orchards, Inc.* v. *Brennan*, 508 F. 2d 493 (1st Cir. 1974); and *Flecha* v. *Quiros*, 567 F. 2d 1154 (1st Cir. 1974). These decisions acknowledge DOL's discretion in the area of AEWRs and form the basis for construction of DOL's temporary alien labor certification regulations. *See* 20 CFR 655.0(e).

Since this is an area in which DOL has great "discretion to reach a number of different results rather than an area of pure statutory interpretation as to which there is in theory only a single answer", DOL is adopting the rule below. *See Building & Construction Trades' Department, AFL–CIO* v. *Donovan*, No. 83–1118, —— F. 2d —— (D. C. Cir. July 5, 1983), Slip Op. at 15.

While the rule would change the data series by which wage movements are charted and applied to AEWRs, it is within DOL's discretion to make such a change. Similarly, the revision of the piece rate regulation to reflect the original intent of DOL, and to protect U.S. workers' wages, at minimum, at an adverse effect level, is well within DOL's statutory and regulatory discretion. As the D.C. Circuit stated in *Building & Construction Trades' Department, AFL–CIO* v. *Donovan*, *supra*, "prior administrative practice carries much less weight when reviewing an action taken in the area of discretion, when little more than a clear statement is needed, than when reviewing an action in the field of interpretation, where it is thought that the agency's contemporaneous and consistent interpretation of one of its enabling statutes is reliable evidence of what Congress intended." Slip Op. at 15–16.

IV. Effective Date

Both the revision of § 655.207(b) and the revision of § 655.207(c) are effective on the date they are published in the **Federal Register**. After full consideration of all the relevant factors, and for good cause found, DOL has determined that it would be impracticable, unnecessary, and contrary to the public interest to delay the effective date of either revision. See 5 U.S.C. 553(d)(3).

With respect to § 655.207(b), on June 28, 1983, DOL was enjoined by the United States District Court for the District of Columbia from granting temporary alien labor certifications for 1983 agricultural employment to any employer which did not agree to pay the 1983 AEWR for all work performed in the 1983 harvest season. All employers whose certifications have been granted after that date have agreed to pay that AEWR, whenever set, for all 1983 work. Since the AEWR would be both retroactive and prospective, the actual date when the revision of the AEWR regulation (§ 655.207(b)) occurs is procedurally immaterial. Practically, however, the great bulk of the 1983 harvest activity is fast approaching. To avoid, to the greatest extent possible, retroactive application of wage rates, it is in the public interest to make the rule effective upon publication.

Retroactive application of wage rates can have adverse impacts on both employers and workers. Employers must go through the time and expense of recomputing back pay, and of locating workers who have left the employment (a more troubling issue if wages are set after the season). Workers who have left the employment may lose wages if they cannot be located by the employer, and all covered workers lose the use of the wages for the back pay period.

With respect to the regulation governing piece rates, 20 CFR 655.207(c), DOL also has found there to be good cause to make the revised regulations effective upon publication in the **Federal Register**. The United States District Court for the Western District of Virginia has ordered DOL to "immediately, but in no event later than September 1, 1983, promulgate in final form in the **Federal Register**, its clarifying interpretation of the piece rate adjustment requirements * * * proposed in the **Federal Register** on June (*sic*) 22, 1983 and identified therein as proposed section 20 CFR 655.207(c)." Given the explicit language of that Order, DOL finds it impracticable, unnecessary, and contrary to the public interest as expressed by the court to delay the effect of the proposed revision.

Further, the great majority of the 1983 harvest activities are fast approaching. To avoid, to the greatest extent possible, changes in piece rates paid to workers, it is necessary that the revised rule be in place immediately. To do otherwise would permit discriminatory treatment of agricultural employers. With a delayed effective date, those growers whose harvest seasons occur early would be required at first to pay piece rates under a different methodology than that required of growers whose seasons occur later. Balancing the economic interests of the growers and the workers, as required by law, DOL has determined that the most practicable course is to make the revised regulation effective upon publication. See *Rogers* v. *Larsen*, 563 F. 2d 617, 626 (3rd Cir. 1977); *Flecha* v. *Quiros*, 567 F. 2d 1154, 1156–57 (1st Cir. 1977).

Development of Final Rule

This final rule was developed under the direction and control of Mr. Richard C. Gilliland, Director, United States Employment Service, Room 8000—Patrick Henry Building, 601 D Street, NW., Washington, D.C. 20213.

Regulatory Impact

The rule affects only those employers using nonimmigrant alien workers in temporary agricultural jobs in fourteen States. It does not have the financial or other impact to make it a major rule, and, therefore, the preparation of a regulatory impact analysis is not necessary. See Executive Order No. 12291 (February 17, 1981).

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act. It will not necessitate increased labor costs for employers whose workers now earn above the 1983 AEWR due to their productivity. Further, it applies only to the small number of employers who employ nonimmigrant aliens in agricultural jobs in the fourteen States.

Catalogue of Federal Domestic Assistance Number

This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.202, "Certification of Foreign Workers for Agricultural and Logging Employment".

List of Subjects in 20 CFR Part 655

Administrative practice and procedure, Agriculture, Aliens, Employment, Forests and forest products, Guam, Labor, Migrant labor, Wages.

Promulgation of Final Rule

PART 655—[AMENDED]

Accordingly, Part 655 of Chapter V of Title 20, Code of Federal Regulations, is amended by revising paragraphs (b) and (c) of § 655.207 thereof, to read as follows:

§ 655.207 Adverse effect rates.

* * * * *

(b)(1) For agricultural employment (except sheepherding) in the States listed in paragraph (b)(2) of this section, and for Florida sugar cane work, the adverse effect rate for each year shall be computed by adjusting the prior year's adverse effect rate by the percentage change (from the second year previous to the year previous) in the ES–202 report's aggregate average weekly wage rates for the appropriate group of agricultural workers. The appropriate group of workers shall be those U.S. agricultural workers employed by establishments in Standard Industrial Classification (SIC) Code Nos. 013, 016, 017, 019, 071, and 072 within that State (except that for purposes of wage movement, but not actual adverse effect rates, New York, Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont shall be considered as one State, and Maryland, Virginia, and West Virginia shall be considered as one State). The Administrator shall publish, in each calendar year, on a date he shall determine, adverse effect rates calculated pursuant to this paragraph (b) as a notice in the **Federal Register.**

(2) *List of States.* Arizona, Colorado, Connecticut, Florida (other than sugar cane work), Maine, Maryland, Massachusetts, New Hamsphire, New York, Rhode Island, Texas, Vermont, Virginia, and West Virginia. Other States may be added as appropriate.

(3) *Transition.* Notwithstanding paragraph (b) (1) and (2) of this section, the 1983 adverse effect rate shall be computed by adjusting the 1981 adverse effect rate by the percentage change in appropriate ES–202 average weekly wages from 1980 to 1982. The adverse effect rate for a State, set by this paragraph (b), shall be the highest of the rate computed by this methodology in paragraph (b) or the rate applied in the State in 1981 or 1982. Pursuant to the Order in *NAACP, Jefferson County Branch* v. *Donovan,* Civil Action No. 82–2315 (D.D.C. June 28, 1983), the 1982 adverse effect rate for West Virginia was $4.24.

(c) *Piece rate adjustments.* In any year in which the applicable adverse effect rate increases to the point where the employer's previous year's piece rate in a crop activity will not enable the average U.S. worker's hourly earnings to equal or exceed the new applicable adverse effect rate without requiring the average U.S. worker to increase productivity over the previous year, the employer shall increase the piece rate to a level at which the average U.S. worker would earn at least the adverse effect rate. If, at the employer's previous year's piece rate for that crop activity, the average U.S. worker's hourly earnings equalled or exceeded the adverse effect rate, no adjustment to that piece rate would be required. The Regional Administrator shall determine the average U.S. worker's hourly earnings by obtaining from employers in the area of intended employment information as to the piece rates, earnings, hours worked, and productivity of U.S. workers, in a manner to be determined by the Administrator.

* * * * *

Authority: Secs. 101(a)(15)(H)(ii) and 214(c) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(H)(ii) and 1184(c)); 8 CFR 214.2(h)(3)(i).

Signed at Washington, D.C., this 31st day of August 1983.

Raymond J. Donovan,

Secretary of Labor.

[FR Doc. 83-24258 Filed 9-1-83; 8:45 am]

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federal register

Friday
September 2, 1983

Part VII

Department of the Interior

Fish and Wildlife Service

Determination of Endangered Status and Critical Habitats for Two Fish Species; Ash Meadows, Nevada; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Critical Habitats for Two Fish Species in Ash Meadows, Nevada

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines the Ash Meadows speckled dace and the Ash Meadows Amargosa pupfish to be Endangered species and designates their Critical Habitats. This action is being taken because these species are restricted to the Ash Meadows region and ground water basin in Nye County, Nevada, where they are facing intensifying threats. Imminent land development for housing subdivisions, clearing of land for road construction and agricultural purposes, pumping of ground water, and diversion of surface flows threaten the integrity of the species' habitat and therefore their survival. This action will result in the permanent placement of protective measures imposed by the January 5, 1982, emergency listing of these species as Endangered.

DATES: This action is effective on September 2, 1982. This early effective date is necessary because the emergency rule expires on September 2, 1983.

ADDRESSES: Questions concerning this action may be addressed to the Regional Director, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Mr. Sanford R. Wilbur, U.S. Fish and Wildlife Service, Lloyd 500 Building, Suite 1692, 500 NE. Multnomah Street, Portland, Oregon 97232 (503/231–6131) or Mr. John L. Spinks, Jr., Chief, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–2771).

SUPPLEMENTARY INFORMATION:

Background

The Ash Meadows Amargosa pupfish *(Cyprinodon nevadensis mionectes)* and the Ash Meadows speckled dace *(Rhinichthys osculus nevadensis)* are found only in the Ash Meadows basin and require the integrity of its physical environment and maintenance of spring, surface, and subsurface flows for their survival. The Ash Meadows speckled dace was described as a full species *(Rhinichthys nevadensis)* by Gilbert (1983) based on material collected in 1891 (La Rivers, 1962). It was later designated a subspecies of *Rhinichthys osculus* by Hubbs and Miller (1948). *Cyprinodon nevadensis mionectes* was described by Miller (1948) based on specimens collected in 1937 and 1942.

An emergency rule published in the **Federal Register** (47 FR 19995) on May 10, 1982, listed these fishes as Endangered for a period lasting 240 days, expiring on January 5, 1983. A second emergency listing and a proposal of Endangered status and Critical Habitats for these two fish species under normal listing procedures were published concurrently on January 5, 1983 (48 FR 608). Development of the proposal was delayed as a result of uncertainties concerning changes in listing procedures specified by the 1982 Amendments to the Endangered Species Act.

Public hearings on the proposal to list and to designate Critical Habitats for the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace were held in Las Vegas, Nevada, on February 11, 1983, and in Amargosa, Nevada, on May 26, 1983. The testimony recorded at those hearings and all written comments received by June 2, 1983, are part of the public record and have been carefully considered in the drafting of this final rule.

The Ash Meadows region is a unique and diverse desert wetland located east of the Amargosa River. These wetlands are maintained by flow from several dozen springs and seeps that are fed by an extensive ground water system extending more than 167 km (104 miles) northeast of Ash Meadows. Hundreds of plant and animal species, many of them endemic, are associated with these wetlands and depend upon them for survival.

The Ash Meadows Amargosa pupfish and Ash Meadows speckled dace are restricted to the large warmwater springs and related outflows of Ash Meadows. The pupfish inhabits the pools and outflows of Fairbanks, Rogers, Longstreet, Jack Rabbit, Big, and Point of Rocks Springs; Crystal Pool; three unnamed springs just southeast of Longstreet Spring; and the two westernmost springs of the Bradford Springs group. These springs are at elevations ranging from 655 to 700 m (2149 to 2297 feet) and are generally oriented along an imaginary line running 16 km (10 miles) from Fairbanks Spring to Big Spring. Water temperatures of the springs are consistently 24° to 30°C (75° to 86°F). Flowing water of spring outflows is preferred by the speckled dace. Although formerly inhabiting much of the interconnected surface drainage in Ash Meadows, dace populations have been severely reduced and are now restricted to springs and outflows of Jack Rabbit Spring, Big Spring, and the two westernmost springs of the Bradford Springs group. A number of exotic species, such as mosquitofish and black mollies, have been introduced to these springs and compete with the native fishes.

Many other plant and animal species that are candidates for listing as Endangered or Threatened are endemic to Ash Meadows. The Service proposed the Ash Meadows turban snail (*Fluminicola erythropoma*) as Threatened on April 28, 1976 (41 FR 17742). That proposal was withdrawn on December 10, 1979 (44 FR 70796), as a result of the 1978 amendments to the Endangered Species Act. Current evidence indicates that this species, as proposed, actually comprised more than one species. The springs and streams in Ash Meadows have an extraordinarily diverse freshwater mollusk fauna, which is currently being studied by Dr. Dwight Taylor of Tiburon, California. Of special interest is the presence of two species flocks or complexes of snails that are found within a 5-mile radius in Ash Meadows and give Ash Meadows the highest concentration of endemic species in the United States. Most of the mollusk species have not been scientifically described and named.

Two endemic Ash Meadows fishes, the Devil's Hole pupfish (*Cyprinodon diabolis*) and the Warm Springs pupfish (*Cyprinodon nevadensis pectoralis*), are already listed as Endangered. The Devil's Hole pupfish's natural distribution is restricted to Devil's Hole, a disjunct portion of Death Valley National Monument. The Warm Springs pupfish occurs only in small nearby springs at an elevation of about 710 m (2330 feet).

The Point of Rocks Springs naucorid (*Ambrysus amargosus*) is an insect that has been recorded living only in Point of Rocks Springs.

A general notice of review on candidate plants in the December 15, 1980, **Federal Register** (45 FR 82479) included seven plant taxa that are restricted to Ash Meadows. These taxa and their edaphic associations are as follows: The spring-loving centaury (*Centaurium namophilum* var. *namophilum*) and Ash Meadows vesia (*Ivesia eremica*) are restricted to wet clay soils of spring areas ivesia and stream banks; the Amargosa niterwort (*Nitrophila mohavensis*) is found only on undisturbed, salt-encrusted, heavy

alkaline mud flats in the Carson Slough area in Inyo County, California; the Ash Meadows gum plant (*Grindelia fraxinopratensis*) occurs in small populations in relatively undistributed moist to wet clay soils of spring areas and stream banks, and is often associated with the spring-loving centaury; the Ash Meadows blazing star (*Mentzelia leucophylla*) is associated with desert washes in coarse-grained, water-sorted, alkaline soils; the Ash Meadows milk-vetch (*Astragalus phoenix*) occurs in washes and on flats and low knolls in fine-grained, clay-like soils; and corrugated sunray (*Enceliopsis nudicaulis* var. *corrugatum*) occupies strongly alkaline and often poorly drained soils in several localities. An additional species in that review, the tecopa birds-beak (*Cordylanthus tecopensis*), has a wider but still restricted distribution that includes Ash Meadows.

Early homesteaders attempted to farm Ash Meadows using the free-flowing water from the springs for irrigation. These efforts failed because the salty, clay soils were not suitable for crops.

Agricultural practices in the late 1960's and early 1970's resulted in large tracts of land being plowed and the installation of ground water pumps and diversion ditches to support a cattle-feed operation. These practices resulted in the destruction of many populations of plants and animals and their wetland habitats by alteration of the land surface and lowering of the water table. In 1976, the Supreme Court limited the amount of ground water pumping in Ash Meadows to ensure sufficient water levels in the only known habitat of the Endangered Devil's Hole pupfish. The agricultural interests in Ash Meadows sold approximately 36 square km (14 square miles) of land to a real estate developer, Preferred Equities Corporation (PEC), in 1977.

While the Bureau of Land Management (BLM) is the principal landowner in Ash Meadows, PEC owns most of the surface water rights, which are currently designated for municipal use. Ground water pumping would be required to develop and support municipal and agricultural activities.

The initial phase of construction, when completed, would result in the destruction of Crystal Pool, Point of Rocks and Jack Rabbit Springs, and would possibly lower the level of other springs by ground water pumping. PEC's activities have already substantially altered surface flows and spring hole morphometry at these sites. The amount of land that would be altered for housing is unknown. PEC has recently constructed a multi-land road connecting Ash Meadows at Point of Rocks Spring with Pahrump Valley, a connecting section of road (2 miles long and 80 feet wide) north of Jack Rabbit Spring, and a new road (1.5 miles long and 30 feet wide) east of Crystal Pool. In addition, approximately 1,000 acres of cotton have been planted west of Point of Rocks Spring.

Summary of Comments and Recommendations

Comments received through June 2, 1983, on the proposed listing of these 2 fishes are summarized below. Comments were received from 50 parties, including individuals, organizations, and government agencies. Twelve of these parties presented comments for the record at the first public hearing, and 13 parties submitted comments at the second public hearing. Comments by 8 individuals on the first emergency listing that also addressed final listing are included in this summary of comments.

The Nevada Legislature Federal Regulation Review Committee expressed concern about private property rights in Ash Meadows and that the proposed listings would create a *de facto* wildlife refuge and preclude development of adjacent private lands. The Service responds that Critical Habitat designation does not establish a *de facto* wildlife refuge or mandate wilderness-like management restrictions. Many activities can take place within Critical Habitat areas without being consistent with the conservation of Endangered species. Moreover, Critical Habitat designations are required, in most cases, to accompany the listing of species under the Act and serve as official notification to Federal agencies that their responsibilities under Section 7 of the Act are applicable in a certain area.

The Nevada Department of Wildlife supported the proposed rule on the two fishes and submitted status reports based on their recent field surveys of these species. These reports verify the distributional data and general assessment of threats and population decline presented in the proposed rule on these species. The reports also recommend that these species' status as "protected" under State law be changed to "endangered." The report on the Ash Meadows speckled dace includes populations outside Ash Meadows in the subspecies *Rhynichthys osculus nevadensis*. The Service, however, follows the treatment of this species published in the scientific literature which recognizes only those populations within Ash Meadows as belonging to that subspecies. The reports also emphasize the potential of Ash Meadows as habitat for migratory waterfowl and upland game.

The Nye County Department of Planning presented extensive comments on the proposed rule that will be addressed individually. First, the Department commented that PEC's lands are privately owned and that they are not under Federal jurisdiction. The Service reponds that the Endangered Species Act of 1973, as amended, only precludes Federal agencies from authorizing, funding, or carrying out activities that are likely to jeopardize the continued existence of a listed species or adversely modify its Critical Habitat. Unless a proposed private action requires such Federal approval or funding, it would not be precluded by Section 7 of the Act. The taking prohibitions in Section 9, however, are not so limited as to require a Federal nexus, and could apply to purely private actions that result in the taking of an Endangered species.

The Nye County Department of Planning and one individual cited the abundance of pupfish in some springs and questioned the designation as Endangered of a species existing in such numbers. Section 3 of the Act defines "Endangered species" as "any species which is in danger of extinction throughout all or a significant portion of its range." The Ash Meadows Amargosa pupfish is in danger of extinction throughout a significant portion of its range, which is very small. Its overall population numbers are small as well.

The Nye County Department of Planning and Mr. Jack Soules, President of PEC, commented that the Service had not completed an economic analysis of the proposed listing and Critical Habitat designation for the two fishes. Mr. R. Trent McAuliffe of American Borate Company requested that a study of the economic impacts of the listings be made. The Service replies that the 1982 amendments to the Act require that determinations to list species as Threatened or Endangered be based solely on the best available scientific and commercial information on the species. Economic impacts are not allowed to be considered in making a listing determination. The Act specifies, however, that the economic impact of designating a particular area as Critical Habitat must be considered. The Service accordingly has prepared an economic analysis of the areas determined in this rule to be Critical Habitat.

The Nye County Department of Planning also questioned whether some engineering solution might provide sufficient water for fish habitat and, at

the same time, provide sufficient water flow for PEC's development. The Service recognizes that in many cases engineering modifications can reduce the impact of construction projects on wild plant and animal populations. The Service, however, believes that the water demand that would be created by PEC's proposed development would place far greater stress on native fish populations than could be alleviated by engineering procedures.

The Nye County Department of Planning commented that the Service had not substantiated the threat of PEC's planned development to the two fishes. In a related comment, Mr. Jack Soules stated that in no instance do PEC's water permits exceed free spring flows. The Service responds that its evaluation of these threats is based on modifications of springs and outflows observed by Service personnel. The Service's assessment of future threats if development were to proceed is based on PEC's published brochures and the projected water demands of a development of the magnitude indicated by PEC's plans.

The Nye County Department of Planning further commented that past human practices have increased fish habitat in some areas in Ash Meadows as well as reduced it. The Service responds that the *net* severe loss of habitat for the two fishes has been well documented by Service, State, and university biologists.

The Nye County Department of Planning questioned the Service's statement in the proposed rule that Ash Meadows' terrestrial habitats were as fragile as its aquatic habitats. The Service responds that this statement was included in background information on other species in Ash Meadows that are candidates for listing and did not necessarily refer to the fishes then proposed as Endangered. The Service notes that desert habitats in general are fragile and that all the candidate plants in Ash Meadows are dependent on ground water flows that would be disrupted a development of the magnitude proposed by PEC.

The Nye County Department of Planning commented that the Service was incorrect in its assertion that PEC's plans call for direct modification of spring habitat because in most cases these springs are scheduled for inclusion in park or open areas. The Service responds that these springs and outflows would still be modified, and that it cannot be assured that inclusion of these modified springs in park areas would be adequate to ensure that these areas persist as appropriate habitat for the two fishes.

The Nye County Department of Planning also questioned the Service's statements on the nature of the Ash Meadows ground water system and the effect of pumping on ground water levels. The Service has based its evaluation of these matters on Geological Professional Paper 927: "Effect of Groundwater Pumping on Desert Pupfish Habitats in Ash Meadow, Nye County, Nevada" (Dudley and Larson, 1976).

In addition, the Nye County Department of Planning and Mr. Jack Soules questioned the Service's statement that a portion of PEC's planned development is already precluded by the extent of PEC's water ownership. The Service responds that this statement is based on a comparison of projections of water needed by PEC's planned development with the amount of water rights currently held by PEC.

The Nye County Department of Planning commented that the Service's stated intention to use, if necessary, the protective provisions of Section 9 of the Act to protect these fishes constituted a lack of responsiveness on the part of the Service to a mediated solution. The Service replies that the stated applicability of Section 9 was necessary to inform the public about potential liability under the Endangered Species Act that may result from ongoing activities modifying spring and stream habitat. The Service is required by law to enforce the provisions of the Act and that statement in the proposed rule merely reflected that obligation.

The Nye County Department of Planning commented that the Service has not coordinated to a significant extent with other Federal agencies and local and private interests. The Service replies that it has solicited input from other Federal agencies, State and local governments, and private interests through the holding of two public hearings and associated comment periods on the proposed rule. Moreover, the Service has had extensive discussions with the Bureau of Land Management regarding conservation alternatives for the two fish.

The Nye County Department of Planning and several other parties commented on a possible land exchange as a means of bringing Ash Meadows under public ownership and protection. The Service notes that such an exchange is an issue separate from the determination of Endangered status and Critical Habitats for the two fishes. Designation of Endangered or Threatened species must be based on the best available information concerning the threats to their existence. To date, extensive efforts to reach agreement on an exchange have failed, so the Service is warranted in considering the significant threats to the habitat of these two fishes.

The Nye County Board of Commissioners requested the Service to lift its "240-day moratorium in place at Ash Meadows." The Service assumes that the Commissioners refer to the 240 days duration of the emergency rule that listed the two fishes and designated their Critical Habitats. That rule does not constitute a moratorium on all development in Ash Meadows. Many actions that would not result in the taking of these species could take place without violation of the Act.

Mr. Jack Soules of PEC commented that the Nevada Water Resources Division ordered flumes installed at the springs on which PEC held water permits. He further stated that the construction required to install these devices did not appear to harm pupfish populations. The Service notes that these disturbing activities harm native fish populations by making the habitat more suitable for their exotic competitors and by forming barriers to recruitment of individuals from downstream habitats into the spring pools. The Service also observes that the extent of habitat damage to the spring pools was greater than that required to install the measuring devices.

Mr. Soules commented that PEC had sustained monetary loss and loss of use of its property as a result from the emergency listings of the fishes. While acknowledging that some economic loss may occur, the Service responds that these listings prohibit only those activities that would result in the taking of any of the two fishes. The Service offered PEC some alternatives that would have allowed initial phases of construction to proceed without causing further taking of any of the two fishes. These alternatives included boundary zones of specified dimensions around spring and stream habitat and stipulations that water not be removed from springs or streams to an extent that would detrimentally affect the two fishes. Mr. Soules further commented that economic effect should be a serious consideration in these listings. The Service responds that the 1982 amendments to the Act clearly state that listings should be based solely on the best available scientific and commercial information and that economic considerations should not affect listing decisions. Economic impacts, however, must be considered when Critical Habitat is designated. The Service has prepared an economic analysis of the

designation of the two fishes' Critical Habitats, as mentioned earlier in this summary of comments.

Mr. Soules stated that he opposed the listing as proposed and that the listing of Endangered species in Ash Meadows should be limited to populations on public land. The Service responds that the provisions of the Act apply to private as well as public lands and that, in the case of the two fishes covered by this rule, the vast majority of their habitat is located on private lands. Protecting only those populations on public land would not be sufficient to ensure the survival of these species and thus would not be consistent with the requirements of the Act.

Comments in support of the listing of the two fishes were submitted by 15 organizations. These organizations are the Desert Fishes Council, the American Society of Ichthyologists and Herpetologists, Friends of Wildlife, the Toiyabe Chapter of the Sierra Club, the Las Vegas Group of the Sierra Club, Nevada Endangered and Threatened Plant Workshop, Elsa Wild Animal Appeal, Defenders of Wildlife, Northern Nevada Native Plant Society, Ecology Center of Southern California, Western Division of the American Fisheries Society, Nevada Wildlife Federation, National Wildlife Federation, and Citizen Alert. The comment from the Elsa Wild Animal Appeal indicated that the organization had collected over 500 signatures in support of the listing. The comments from the Desert Fishes Council noted that its members had witnessed the continuing decline of Ash Meadows' native fishes.

Thirty-two comments in favor of the listing were submitted by individuals. One of these comments included the names of 46 additional individuals who were reported to support the listing.

Several organizations and individuals commented that the proposed Critical Habitats were not large enough to conserve the fishes. These comments were mainly based on the influence that ground water withdrawal in the aquifer may have on the fishes. The Service recognizes the need for stable ground water levels in the aquifer, but finds that a large area cannot be designated as Critical Habitat within the qualifications set by the Act. The Service notes, however, that the protective provisions provided by the Act also apply to activities taking place outside of the Critical Habitat if those activities result in the taking of a listed fish, or, in the case of Section 7, if Federal activities may affect a listed fish.

Several comments pointed out the existence and need for protection of other unique species and habitats in Ash Meadows besides the two fishes. The Service is aware of these endemic plant, insect, and mollusk species and is currently preparing documents to propose Endangered or Threatened status for them.

The Defenders of Wildlife urged the Service to require the Bureau of Land Management to consult with the Service with regard to a land exchange with PEC. The Service responds that it cannot force consultation on a Federal agency if the agency does not request it. Moreover, it would be premature to initiate consultation at this time since there is not a concrete proposal that has developed regarding a land exchange that could be the focus of consultation.

One individual commented that careful management will be required to save the two fishes and that PEC's development will, if completed, cause the fishes' extinction. That individual also noted that these fishes are of exceptional value to technology because of their abilities to exist in extreme conditions of temperature and salinity.

One individual commented that the observed effect of ground water pumping on Devil's Hole in the past demonstrates the effect that renewed pumping will have on the spring habitat of the two fishes.

Two individuals commented that water supplies would not be adequate to ensure the future of the two fishes if PEC's planned development were built.

One individual commented that one Ash Meadows native fish, the Ash Meadows killifish, is already extinct and that the two fishes that are subjects of this rule have declined greatly in distribution and abundance. This individual also commented that the Ash Meadows speckled dace is difficult to census because of its nocturnal habits and therefore local extinctions might occur before conservation measures can be taken.

Two individuals commented that they had witnessed private development in Ash Meadows and the resulting destruction of habitat and decline in native fish populations.

Mr. Trent McAuliffe of American Borate Company requested that there be a 30- to 60-day extension of the public comment period on the proposal and that a public workshop be held on the proposal. Two additional individuals commented that the public was allowed little opportunity for input on the proposal, and one of these individuals requested an extension of the comment period. The Service responds that a public hearing, if requested within 45 days of the date of the proposal, and a 60-day comment period on a listing proposal are required by the Act. In the case of the proposal on the two fishes, the Service has exceeded these requirements by holding two public hearings and accepting public comments for periods exceeding 145 days.

Mr. McAuliffe also requested that areas outside of the Critical Habitats that will require management considerations be described. The Service responds that only those activities that result in the taking of any of the two fishes would be prohibited under Section 9 of the Act. Such proscribed activities could include the physical destruction of the fishes' spring habitats and their associated riparian vegetation as well as pumping of ground water to an extent that spring levels are drawn down or their flows reduced, and such reduction results in the death or actual injury of a listed species.

Two individuals questioned why the two fishes, which are recognized as subspecies, should be protected when the ranges of the biological species of which they are members are large. The Service responds that the Act requires Federal agencies to seek to conserve Endangered and Threatened species, and that the Act's definition of "species" includes subspecies and vertebrate populations.

One individual commented at the second public hearing that some interested persons could not attend the hearing. The Service notes that written comments were accepted at the public hearing and that the proposal and hearing notice identified the comment periods and the office to which written comments could be submitted.

One individual suggested that listings be based on a vote by local residents. The Service responds that the Act requires that listings be based on the best available scientific and commercial information and that responsibility for listing determinations on freshwater fishes has been assigned to the Service.

One individual suggested that the Department of the Interior use the power of eminent domain to condemn and purchase PEC's holdings in Ash Meadows. The Service responds that it prefers not to employ these powers while alternative means exist for preserving these fishes and their habitat.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act of 1973, as amended, provides for a review of the five factors below when listing (or reclassifying or delisting) a species:

A. The present or threatened destruction, modification, or curtailment of its habitat or range;

B. Overutilization for commercial, recreational, scientific, or educational purposes;

C. Disease or predation;

D. Inadequacy of existing regulatory mechanisms; and

E. Other natural or manmade factors affecting its continued existence.

On January 5, 1983 (48 FR 617–625), the Fish and Wildlife Service proposed that the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace be listed as Endangered species. The proposal included a summary of the factors thought to be contributing to the likelihood that these species are Endangered, specified the prohibitions that would be applicable if such a determination were made, and solicited comments, suggestions, objections, and factual information from any interested person. Based upon careful analysis of all public comments, testimony at the public hearings, and all other available pertinent information, the Service believes that summary remains valid, as reprinted below:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace are endemic to the Ash Meadows basin and depend upon the integrity of this fragile ecosystem for their survival. These species require undisturbed flows from the extensive Ash Meadows basin aquifer. The imminent threat to their existence is the proposed development of Ash Meadows by PEC into a residential, recreational, industrial, and agricultural community. Construction activities would clear essential habitat, directly extirpate populations of these fishes, and alter surface drainage patterns. Human habitation would require great quantities of potable water. Utilization of surface outflows from springs and pumping of the aquifer would reduce or eliminate surface flows, lower the water table, and interfere with ground water recharge, which would destroy down-gradient wetlands.

Diversion of spring outflows and pumping of spring holes and ground water to provide water for the proposed development would destroy essential habitat of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish. Since all springs in this aquifer are intricately connected, drawdown at one location would affect levels of many other springs. In addition, such alteration of surface flows would prevent migration to other suitable habitats and therefore prevent natural expansion of range or recolonization by these species. To date, the outflow channels of Crystal Pool and King Pool (Point of Rocks Spring) have been modified to increase flows, resulting in the lowering of pool levels 1–1.5 feet and consequently decreasing riparian habitat. A significant area of land has already been altered by road construction in the vicinity of Crystal Pool and Point of Rocks and Jack Rabbit Springs.

Initial construction activities in late spring and summer of 1981 severely altered the watercourses of two springs (Point of Rocks and Bradford) and related spring hole morphometry; these activities severely reduced the populations of the Ash Meadows speckled dace and Ash Meadows Amargosa pupfish in Bradford Springs. Recent excavation of Fairbanks Spring by heavy equipment has apparently eliminated all but one pupfish.

Recent construction activities in Ash Meadows have continued the destruction of fish habitat that began with early agricultural activities. The Ash Meadows Amargosa pupfish has been extirpated in Bole, Deep, and Forest Springs. The Ash Meadows speckled dace has been extirpated from Forest, Fairbanks, Rogers, Longstreet, Tubbs, and Point of Rocks Springs, the easternmost spring of the Bradford Springs group, and Crystal Pool. The ranges of both the pupfish and the dace have been reduced from 1 mile to about 200 yards in the Bradford Springs outflow and from 3 miles to .5 mile in the Big Springs outflow. The range of the pupfish has been reduced from 6 miles to .5 mile of the Point of Rocks Springs outflow and from 2,000 acres to about .5 acre in the area of Fairbanks, Rogers, and Longstreet Springs. Dace and pupfish populations were temporarily extirpated from Jack Rabbit Spring when the spring pool was pumped dry. Both the dace and pupfish populations are much reduced in most of the limited habitat that they still occupy. Both the pupfish and the dace have been eliminated from Carson Slough where draining, plowing, and mining have eliminated the fish habitat.

PEC's long-term development plans call for direct alteration of many of these springs with construction to progress in three phases in the following areas: Phase I—Crystal Pool; Phase II—Point of Rocks Spring; Phase III—Fairbanks Spring complex. The Nye County Commission has already approved Phases I and II, and work has begun. Further, PEC, as principal owner of water rights, has made application to the State of Nevada to divert water from many of the other Ash Meadows springs, which will destroy more riparian habitat. Ground water pumping may seriously deplete water levels (directly and indirectly) upon which the fish species depend. In the past, pumping of ground water from nearby wells for agriculture has lowered the water level in Devil's Hole in Ash Meadows, which caused a severe decline in the population of the Endangered Devil's Hole pupfish; continued pumping could have caused the extinction of the species. In 1976, the U.S. Supreme Court ruled (*United States vs. Cappaert et al.*) that a minimum water level must be maintained to protect the Devil's Hole pupfish. Devil's Hole is the most sensitive spring in Ash Meadows, but all of the springs appear to be interconnected. The impact of ground water pumping from wells south of Devil's Hole appears to be greater than from those located in the north. Because agricultural and municipal activities require large volumes of water, and pumping of ground water from the northern areas may be necessary to supplement flows from the south, it is expected that the proposed development by PEC will create a demand for water throughout Ash Meadows.

Introduction of exotic fishes and other aquatic species that compete with or prey upon native species have caused the extinction of the Ash Meadows killifish (*Empetrichthys merriami*) and reduced or extirpated other native fish populations. Continued modification of habitat by construction activity can only exacerbate this problem.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Not applicable to these species.

C. *Disease or predation.* Numerous exotic organisms have been introduced into springs in Ash Meadows. Some of these exotics, including largemouth bass (*Micropterus salmoides*), crayfish (*Procambarus clarki*), and bullfrogs (*Rana catesbeiana*) prey on the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace. Largemouth bass have been introduced into Crystal Reservoir and have subsequently gained access to Crystal Pool and its outflow. Crayfish and bullfrogs are common inhabitants in many springs and have significantly contributed to the decline of the Ash Meadows pupfish (La Rivers, 1962; Miller, 1948).

D. *The inadequacy of existing regulatory mechanisms.* No permanent regulations exist to protect the two species of fish included in this rule. The existing emergency regulations would have expired on September 2, 1983, if the present action had not been taken. The present status of the species under

Nevada State law is not felt to be adequate to counter the threats set out above to the species and their habitats.

E. *Other natural or manmade factors affecting its continued existence.* The extremely small range and specialized habitats of these species make them especially vulnerable to all of the factors that adversely affect them. Vandalism has been reported at a number of springs. Future acts of vandalism could cause the extinction of local populations of the fishes.

The Mexican mollie (*Poecilia mexicana*) and the mosquito fish (*Gambusia affinis*) have been introduced into several Ash Meadows spring systems including Point of Rocks, Jack Rabbit, Big, Bradford Springs, and Crystal Pool. These exotic fishes have replaced the pupfish and dace as the dominant species in the affected springs (Deacon *et al.*, 1964). Exotic snails have also become established in several springs, where they compete with native fishes for food.

Critical Habitat

50 CFR Part 424 defines "Critical Habitat" to include areas within the geographical area occupied by the species at the time the species is listed which are essential to the conservation of the species and which may require special management considerations or protection and specific areas outside the geographic area occupied by the species, upon a determination by the Secretary that such areas are essential for the conservation of the species.

Critical Habitat for the Ash Meadows speckled dace is as follows:

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from the springs and outflows:

Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflows flowing southwest to the boundary between Section 24 in T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

Critical Habitat for the Ash Meadows Amargosa pupfish is as follows:

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from these springs and outflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T17S, R50E.

Rogers Spring and its outflow to the boundary between Sections 15 and 16, T17S, R50E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T17S, R50E.

Three unnamed springs in the northwest corner of Section 23, T17S, R50E and each of their outflows for a distance of 75 meters (246 feet) from the springs.

Crystal Pool and its outflow for a distance of 400 meters (1,312 feet) from the pool.

Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24, T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

Point of Rocks Springs and their entire outflows within Section 7, T18S, R51E.

These Critical Habitats include the springs and associated outflows that are the sole remaining habitat for these fishes. The Critical Habitats also include land areas immediately surrounding these aquatic areas. These land areas are essential to the conservation of the fishes because they provide vegetative cover that contributes to providing the uniform water conditions preferred by the pupfish and dace and provide habitat for insects and other invertebrates that constitute a substantial portion of their diet.

Activities that may adversely affect Critical Habitat include the activities carried out and planned by PEC that would modify the springs and their outflows, disturb the land areas immediately surrounding these habitats, or draw down the water table to the extent that spring flows are reduced and the fishes are harmed.

Listing these species as Endangered and designating their Critical Habitat does not specifically preclude in their entirety housing, commercial, intensive agricultural, or industrial development in Ash Meadows. Full protection of the two fish species may, however, preclude a portion of the proposed PEC development, and may result in the modification of PEC's construction activities. The Service notes that much of PEC's proposed development may already be precluded by the water requirements of two previously listed Endangered species, the Devil's Hole pupfish and the Warm Springs pupfish. The exact extent of possible water conflict is presently unknown.

The designated Critical Habitats include a total area of approximately 200 acres. Based on the best scientific and commercial data available, designation of smaller Critical Habitats might result in the extinction of the species. The Bureau of Land Management (BLM) has jurisdiction over two springs (Big and Jack Rabbit) that are included in these Critical Habitats. Present BLM activities are consistent with the conservation of these fishes and therefore will not be affected by this action.

Available Conservation Measures

Endangered species regulations already published in Title 50, Section 17.21 of the U.S. Code of Federal Regulations set forth a series of general prohibitions and exceptions that apply to all Endangered species. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the U.S. to take, import or export, ship in interstate commerce in the course of a commercial activity, or sell or offer for sale these species in interestate or foreign commerce. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife which was illegally taken. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving Endangered species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, for enhancement of the propagation or survival of the species, or, in certain circumstances, for incidental taking of Endangered species. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available.

This rule, by extending the protection provided by the emergency listing, could subject the construction activities of PEC to enforcement actions undertaken pursuant to Section 9 of the Endangered Species Act or a civil injunction should such development result in the taking of any of the fishes.

This rule requires Federal agencies not only to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the Ash Meadows Amargosa pupfish and the Ash Meadows speckled dace, but also requires them to ensure that their actions do not result in the destruction or adverse modification of Critical Habitats. Provisions for Interagency Cooperation are codified at 50 CFR Part 402.

National Environmental Policy Act

An Environmental Assessment has been prepared in conjunction with this final rule. Based on this Environmental Assessment, a determination has been made that this is not a major Federal action that would significantly affect the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 implemented at 40 CFR Parts 1500–1508.

Author

The primary author of this rule is Steven M. Chambers, Office of Endangered Species, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/235–1975).

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List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Regulations Promulgation

PART 17—[AMENDED]

Accordingly, Part 17, Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended as set forth below.

1. The authority citation for Part 17 reads as follows:

Authority: Pub. L. 93–205, 87 Stat. 884; Pub. L. 95–632, 92 Stat. 3751; Pub. L. 96–159, 93 Stat. 1225; and Pub. L. 97–304, 96 Stat. 1411 (16 U.S.C. 1531, *et seq.*).

2. Section 17.11(h), Subchapter B of Chapter I, Title 50 of the Code of Federal Regulations, is amended by adding the following two entries alphabetically to the table under the heading "Fishes" as set forth below.

§ 17.11 [Amended]

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rule
Common name	Scientific name						
Fishes							
Dace, Ash Meadows speckled	*Rhinichthys osculus nevadensis*	U.S.A. (NV)	Entire	E		17.95(e)	NA
Pupfish, Ash Meadows Amargosa	*Cyprinodon nevadensis mionectes*	U.S.A. (NV)	Entire	E		17.95(e)	NA

3. It is further determined that § 17.95(e), Fishes, be amended by adding Critical Habitat of the Ash Meadows speckled dace after that of the spotfin chub as follows:

§ 17.95 [Amended]

* * * * *

Ash Meadows speckled dace

(*Rhinichthys osculus nevadensis*)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from these springs and outflows:

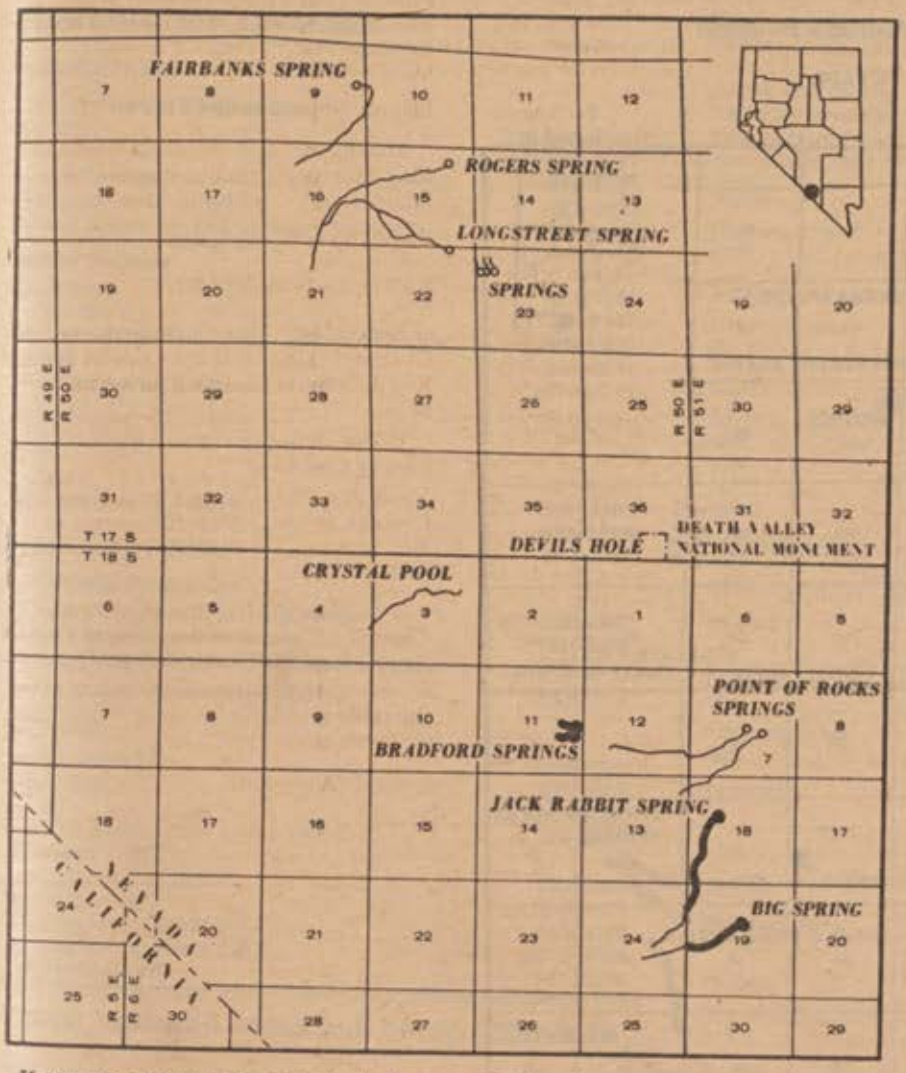
Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflow flowing southwest to the boundary between Section 24 in T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

ASH MEADOWS SPECKLED DACE

Nye County, NEVADA



Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which the species feeds.

* * * * *

4. It is further determined that § 17.95(e), Fishes, be amended by adding Critical Habitat of the Ash Meadows Amargosa pupfish after that of the leopard darter as follows:

* * * * *

Ash Meadows Amargosa pupfish (*Cyprinodon nevadensis mionectes*)

Nevada, Nye County: Each of the following springs and outflows plus surrounding land areas for a distance of 50 meters (164 feet) from these springs and ouflows:

Fairbanks Spring and its outflow to the boundary between Sections 9 and 10, T17S, R50E.

Rogers Spring and its outflows to the boundary between Sections 15 and 16, T17S, R50E.

Longstreet Spring and its outflow to the boundary between Sections 15 and 22, T17S, R50E.

Three unnamed springs in the northwest corner of Section 23, T17S, R50E, and each of their outflows for a distance of 75 meters (246 feet) from the spring.

Crystal Pool and its outflow for a distance of 400 meters (1,312 feet) from the pool.

Bradford Springs in Section 11, T18S, R50E, and their outflows for a distance of 300 meters (984 feet) from the springs.

Jack Rabbit Spring and its outflow

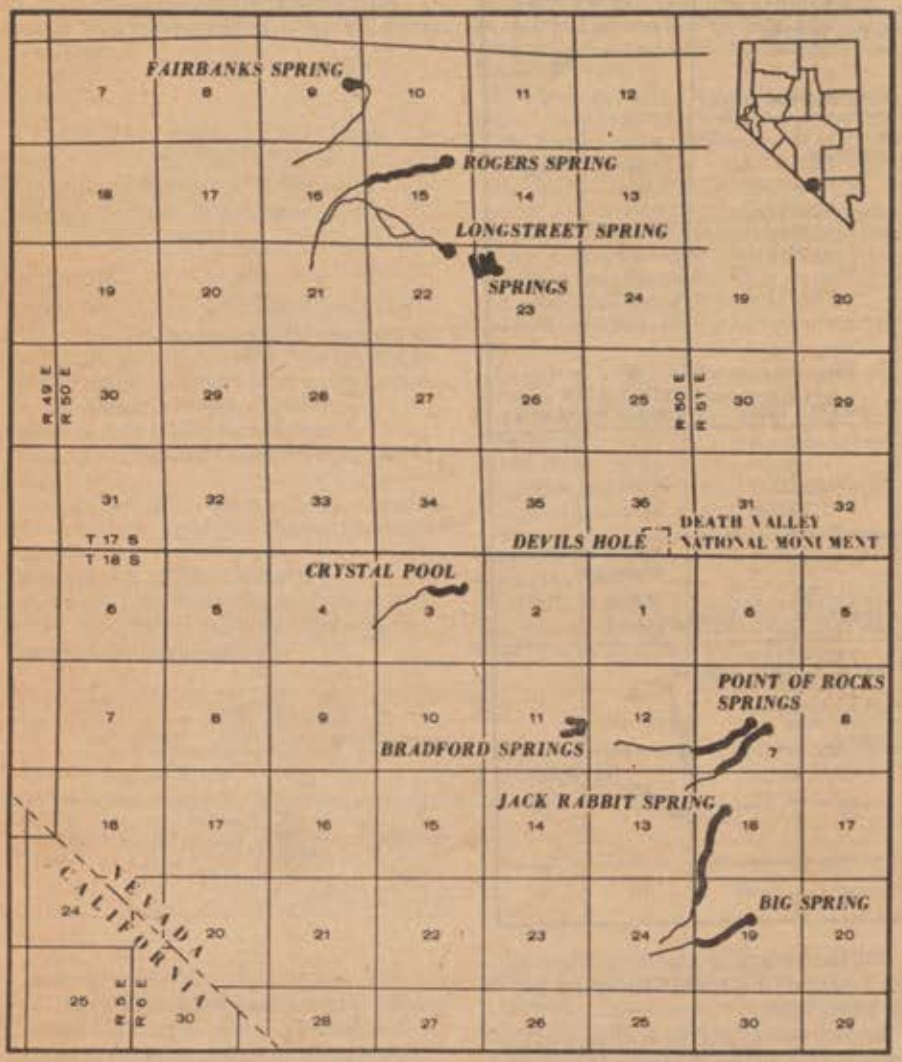
flowing southwest to the boundary between Section 24, T18S, R50E and Section 19, T18S, R51E.

Big Spring and its outflow to the boundary between Section 19, T18S, R51E and Section 24, T18S, R50E.

Point of Rocks Springs and their entire outflows within Section 7, T18S, R51E.

ASH MEADOWS AMARGOSA PUPFISH

Nye County, NEVADA



Known constituent elements include warm-water springs and their outflows and surrounding land areas that provide vegetation for cover and habitat for insects and other invertebrates on which this species feeds.

* * * * *

Dated: August 29, 1983.

G. Ray Arnett,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 83-24273 Filed 8-31-83; 3:21 pm]

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