VETERANS ADMINISTRATION

Veterans Administration Medical Center; Ambulatory Care Addition; Finding of No Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of an ambulatory Care Addition at the Veterans Administration Medical Center (VAMC) Omaha, Nebraska.

The Ambulatory Care Addition project proposes the construction of a two level (basement and first floor) structural addition involving approximately 71,000 gross square feet. The addition will be constructed on the north (front) side of the west end of building no. 1. This project also includes the interior renovation of approximately 20,000 gross square feet of existing space on the first floor of building no. 1.

The mitigation of the project impacts on the environment include: implementation of erosion and sedimentation controls; onsite noise abatement measures; construction traffic controls; and air quality controls. Short term impacts of dust and fumes associated with the construction of the project will be minimized.

Findings conclude the proposed actions will not cause a significant effect on the physical and human environment and, therefore, does not require the preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P. E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Administration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202–389–2526). Questions or requests for single copies of the Environmental Assessment may be addressed to the above office.

Dated: September 11, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80–28946 Filed 9–18–80; 8:45 am]

BILLING CODE 8320–01–M

Veterans Administration Medical Center; 120-Bed Nursing Home Care Unit; Finding of No. Significant Impact

The Veterans Administration (VA) has assessed the potential environmental impacts that may occur as a result of the construction of a new 120-Bed Nursing Home Care Unit (NHCU) at the Veterans Administration Medical Center (VAMC), Ann Arbor, Michigan.

The project proposes construction of a 120-Bed NHCU with a connecting bridge to the southeast corner of building no. 1 (main hospital). The nursing home will be a two-story structure of approximately 31,793 net square feet. The project will also include any changes in onsite traffic patterns as are necessitated by the new construction.

Development of the project will have minimal impacts on the human and natural environment. There will be some temporary noise, dust, fumes, and visual impacts during construction. Parking and vehicle circulation at the station will be altered.

Mitigation of project impacts include site grading, use of piles and retaining walls, soil erosion and sedimentation control, onsite noise abatement measures and control of construction dust and fumes. Alternations to the main entrance drive and construction of a new service drive will be included in the project.

Findings conclude that the proposed action will not cause significant effect on the physical and human environment and, therefore, does not require the preparation of an Environmental Impact Statement. This Environmental Assessment has been performed in accordance with the requirements of the National Environmental Policy Act Regulations, §§ 1501.3 and 1508.9, Title 40, Code of Federal Regulations. A "Finding of No Significant Impact" has been reached based on the information presented in this assessment.

The assessment is being placed for public examination at the Veterans Administration, Washington, D.C. Persons wishing to examine a copy of the document may do so at the following office: Mr. Willard Sitler, P.E., Director, Office of Environmental Affairs (003A), Room 1027A, Veterans Adminstration, 810 Vermont Avenue, N.W., Washington, D.C. 20420, (202–389–2526). Questions or requests for single copies of the Environmental assessment may be addressed to the above office.

Dated: September 11, 1980.

By direction of the Administrator.

Maury S. Cralle, Jr.,

Associate Deputy Administrator.

[FR Doc. 80–28947 Filed 9–18–80; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 45, No. 184
Friday, September 19, 1980

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

FEDERAL ENERGY REGULATORY COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 60537, September 12, 1980.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10 a.m., September 17, 1980.

CHANGE IN MEETING: The following item has been added:

Item Number, Docket Number, and Company

CAP-5: Project 2832, New York Irrigation District, Nampa-Meridian Irrigation District, Boise-Kuna Irrigation District, Wilder Irrigation District and Big Bend Irrigation District.

Kenneth F. Plumb,

Secretary.

[S-1734-80 Filed 9-17-80; 11:24 am]

BILLING CODE 6450-85-M

2

FEDERAL ENERGY REGULATORY COMMISSION.

Notice of Meeting.

September 17, 1980.

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

TIME AND DATE: 10 a.m., September 24, 1980.

PLACE: Room 9306, 825 North Capitol Street, NE., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kenneth F. Plumb, Secretary; telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however all public documents may be examined in the division of public information.

Power Agenda—463d Meeting, September 24, 1980, Regulator Meeting (10 a.m.)

CAP-1. Project No. 3177, Sacramento Municipal Utility District.
CAP-2. Docket Nos. ER78-337, ER78-338 (phase II) and ER77-464, Public Service Co. of New Mexico.
CAP-3. Docket No. ER80-112, Upper Peninsula Power Co.
CAP-4. Docket No. ER80-65, Southern Co. Services, Inc.
CAP-5. Docket No. EL80-32, City of Cuba City, Wisconsin V. Wisconsin Power & Light Co.
CAP-6. Docket No. EL78-26, Anza Electric Cooperative, Inc.
CAP-7. Docket No. ES80-66, Gulf States Utilities Co.
CAP-8. Docket No. ES80-70, El Paso Electric Co.

Miscellaneous Agenda—463d Meeting, September 24, 1980, Regular Meeting

CAM-1. Docket No. RM80-8, Bona Fide offers; right of first refusal.
CAM-2. Docket No. GP80- , State of Kansas, section 108 NGPA determination, Braden-Deem, Inc., Robbins Unit No. 1, State Docket No. NGPA-K-78-0409, JD79-14135.
CAM-3. Docket No. RA80-26, Kansas-Nebraska Natural Gas Co., Inc.

Gas Agenda—463d Meeting, September 24, 1980, Regular Meeting

CAG-1. Docket No. TA81-1-17, Texas Eastern Transmission Corp.
CAG-2. Docket No. TA81-1-31 (PGA81-1a, PGA81-1, IPR81-1 and LFUT81-1), Arkansas Louisiana Gas Co.
CAG-3. Docket No. TA81-1-32 (PGA81-1 and IPR81-1), Colorado Interstate Gas Co.
CAG-4. Docket No. TA81-1-33 (PGA81-1, IPR81-1, AP81-1, TT81-1 and LFUT81-1), El Paso Natural Gas Co.
CAG-5. Docket No. TA81-1-35 (PGA81-1), Peoples Natural Gas Co.
CAG-6. Docket Nos. RP80-134 and RP79-10, Great Lakes Gas Transmission Co.
CAG-7. Docket No. RP80-77, United Gas Pipe Line Co.
CAG-8. Docket No. RP78-68, United Gas Pipe Line Co.
CAG-9. Docket No. RP80-11, Natural Gas Pipeline Co. of America.
CAG-10. Docket No. RP80-75, Southern Natural Gas Co.
CAG-11. Docket No. RP73-113, RP75-13, RP75-113, RP76-137, RP77-62, RP80-97 and RP74-43, Tennessee Gas Pipeline Co.
CAG-12. Docket No. CP80-236, Transcontinental Gas Pipe Line Corp.
CAG-13. Docket No. CP79-70, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.; Docket No. CP80-217, Transcontinental Gas Pipe Line Corp.; Docket No. CP80-218, Transcontinental Gas Pipe Line Corp. and United Gas Pipe Line Co.
CAG-14. Docket No. CP79-150, Northwest Pipeline Corp.
CAG-15. Docket No. CP79-444, Tennessee Gas Pipeline Co. and Columbia Gas Transmission Co.
CAG-16. Docket No. CP80-428, Shenandoah Gas Co.
CAG-17. Docket No. CP80-376, Columbia Gas Transmission Corp.
CAG-18. Docket No. CP79-269, Columbia Gulf Transmission Co. and Northern Natural Gas Co., Division of Internorth, Inc.
CAG-19. Docket No. CP80-358, Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.
CAG-20. Docket No. CP80-404, Panhandle Eastern Pipe Line Co. and Trunkline Gas Co.

Power Agenda—463d Meeting, September 24, 1980, Regular Meeting

I. Licensed Project Matters

P-1. Docket No. EL79-17, Swan Lumber Co.

II. Electric Rate Matters

ER-1. Docket No. ER80-574, Nantahala Power & Light Co.
ER-2. Docket No. ER80-567, Wisconsin Electric Power Co.
ER-3. Docket No. ER78-517, Connecticut Light & Power Co.
ER-4. Docket No. ER78-19, et al. (phase II), Flordia Power & Light Co.

Miscellaneous Agenda—463d Meeting, September 24, 1980, Regular Meeting

M-1. Docket No. RM79-54 Small Power production and cogeneration facilities—qualifying status.
M-2. Reserved.
M-3. Reserved.
M-4. Docket No. RM80-50, High-cost natural gas: Production enhancement procedures.
M-5. Docket No. RM80-33, final rules for part 270, subpart B, sections 270.201, 270.202 and 270.204.
M-6. Docket No. RM80-6, final rule governing pricing of pipeline production under the Natural Gas Act; Docket No. RM80-7, final rule governing the maximum lawful price for pipeline, distributor or affiliate production.
M-7. Docket No. RM80-75, interpretive rule amending § 282.202(a)(1) of the Commission's regulations under the Natural Gas Policy Act of 1978.
M-8. Docket No. RM79-34, transportation certificates for natural gas for the displacement of fuel oil.
M-9. Docket No. GP80- , USGS New Mexico section 108 NGPA determination; DEPCO, Inc., Hancock Well No. 6; USGS Docket No. NM 27320-79, FERC No. JD80-415.
M-10. Docket No. RA80-93, Petroleum Delivery Service, Inc.

Gas Agenda—463rd Meeting, September 24, 1980, Regular Meeting

I. Pipeline Rate Matters

RP–1. Docket No. TA80–2–31 (PGA80–2), Arkansas Lousisana Gas Co.
RP–2. Docket No. RP78–20, Columbia Gas Transmission Corp.
RP–3. Docket No. RP80–108, Gas Research Institute.

II. Producer Matters

CI–1. Docket Nos. CI77–298 and IN79–3, Tenneco Inc., et al., Docket Nos. G–3973, G–7360, G–11936, G–11943 and G–11946, Mobil Oil Corp.

III. Pipeline Certificate Matters

CP–1. Docket No. CP74–94 (phase I and phase II), United Gas Pipe line Co. v. Billy J. McCombs, R. James Stillings, d.b.a. Gatill Co. David A. Onsgard, Basin Petroleum Corp. Louis H. Haring, Jr., National Exploration Co., E.I. Du Pont de Nemours & Co., Bill Forney, Sr., and Bill Forney, Inc.
CP–2. Docket No. CP75–228, Transcontinental Gas Pipe Line Corp.
CP–3. Docket Nos. CP78–123, et al., Northwest Alaskan Pipeline Co.; Docket No. CP78–124, Northern Border Pipeline Co.; Docket No. CP79–60, Pacific Gas Transmission Co.

Kenneth F. Plumb,

Secretary.

[S–1738–80 Filed 9–17–80; 3:35 pm]

BILLING CODE 6450–85–M

3

FEDERAL MARITIME COMMISSION.

TIME AND DATE: 2:30 p.m., September 18, 1980.

PLACE: Hearing Room One, 1100 L Street NW., Washington, D.C. 20573.

STATUS: Open.

MATTER TO BE CONSIDERED: Standards of approval for section 15 agreements.

CONTACT PERSON FOR MORE INFORMATION: Joseph C. Polking, Assistant Secretary (202) 523–5725.

[S–1735–80 Filed 9–17–80; 12:31 pm]

BILLING CODE 6730–01–M

4

FEDERAL RESERVE SYSTEM.

Board of Governors.

TIME AND DATE: 10 a.m., Wednesday, September 24, 1980.

PLACE: Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED: (1) Proposed guidelines for determination of what constitutes a banker's bank under provisions of the Monetary Control Act.

Note.—This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $6 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board (202) 452–3204.

Dated: September 17, 1980.

Griffith L. Garwood,

Deputy Secretary of the Board.

[S–1733–80 Filed 9–17–80; 9:47 am]

BILLING CODE 6210–01–M

5

NUCLEAR REGULATORY COMMISSION.

DATE: Friday, September 19, 1980 (additional item).

PLACE: Commissioners conference room, 1717 H Street NW., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED: Noon:

Affirmation Session (approx 10 minutes, public meeting) (additional item).

g. Amendments of Part 20 on Disposal of Certain H–3 & C–14 Wastes.

The Morning and afternoon meetings previously announced remain as scheduled.

ADDITIONAL INFORMATION: By vote of 3–0 (Commissioner Gilinsky not present) on September 11, the Commission determined pursuant to 5 U.S.C. 552b(e)(1) and § 9.107(a) of the Commission's Rules that Commission business required that the affirmation of Delegation of Commission Review Authority in LaCrosse, held that day, be held on less than one week's notice to the public.

CONTACT PERSON FOR MORE INFORMATION: Walter Magee (202) 634–1410.

AUTOMATIC TELEPHONE ANSWERING SERVICE FOR SCHEDULED UPDATE: (202) 634–1498.

Those planning to attend a meeting should reverifty the status on the day of the meeting.

Roger M. Tweed,

Office of the Secretary.

September 12, 1980.

[S–1736–80 Filed 9–17–80; 3:30 pm]

BILLING CODE 7590–01–M

6

SECURITIES AND EXCHANGE COMMISSION.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 45 FR 61078, SEPTEMBER 15, 1980.

STATUS: Closed meeting.

PLACE: Room 825, 500 North Capitol Street, Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Thursday, September 11, 1980.

CHANGES IN THE MEETING: Additional items.

The following additional items will be considered at a closed meeting scheduled for Thursday, September 18, 1980, following the 10:00 a.m. open meeting:

Formal order of investigation.
Consideration of *amicus* participation.
Freedom of Information Act appeal.

Commissioners Loomis, Evans, and Friedman determined that Commission business required the above changes and that no earlier notice thereof was possible.

At times changed in commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Lowenstein at (202) 272–2092.

September 17, 1980.

[S–1737–80 Filed 9–17–80; 3:34 pm]

BILLING CODE 8010–01–M

federal register

Friday
September 19, 1980

Part II

Department of Labor

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor specify, in accordance with applicable law and on the basis of information available to the Department of Labor from its study of local wage conditions and from other sources, the basic hourly wage rates and fringe benefit payments which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of the character and in the localities specified therein.

The determinations in these decisions of such prevailing rates and fringe benefits have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's Orders 12–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in effective date as prescribed in that section, because the necessity to issue construction industry wage determination frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision together with any modifications issued subsequent to its publication date shall be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR, Part 5. The wage rates contained therein shall be the minimum paid under such contract by contractors and subcontractors on the work.

Modifications and Supersedeas Decisions to General Wage Determination Decisions

Modifications and supersedeas decisions to general wage determination decisions are based upon information obtained concerning changes in prevailing hourly wage rates and fringe benefit payments since the decisions were issued.

The determinations of prevailing rates and fringe benefits made in the modifications and supersedeas decisions have been made by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR 1.1 (including the statutes listed at 36 FR 306 following Secretary of Labor's Order No. 24–70) containing provisions for the payment of wages which are dependent upon determination by the Secretary of Labor under the Davis-Bacon Act; and pursuant to the provisions of part 1 of subtitle A of title 29 of Code of Federal Regulations, Procedure for Predetermination of Wage Rates (37 FR 21138) and of Secretary of Labor's orders 13–71 and 15–71 (36 FR 8755, 8756). The prevailing rates and fringe benefits determined in foregoing general wage determination decisions, as hereby modified, and/or superseded shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged in contract work of the character and in the localities described therein.

Modifications and supersedeas decisions are effective from their date of publication in the **Federal Register** without limitation as to time and are to be used in accordance with the provisions of 29 CFR Parts 1 and 5.

Any person, organization, or governmental agency having an interest in the wages determined as prevailing is encouraged to submit wage rate information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Office of Government Contract Wage Standards, Division of Government Contract Wage Determinations, Washington, D.C. 20210. The cause for not utilizing the rulemaking procedures prescribed in 5 U.S.C. 553 has been set forth in the original General Determination Decision.

New General Wage Determination Decisions

None.

Modifications to General Wage Determination Decisions

The numbers of the decisions being modified and their dates of publication in the **Federal Register** are listed with each State.

Iowa:	
IA80–4041	Aug. 1, 1980.
IA80–4042	Aug. 1, 1980.
IA80–4043	Aug. 8, 1980.
IA80–4044	Aug. 8, 1980.
IA80–4045	Aug. 8, 1980.
IA80–4046	Aug. 8, 1980.
IA80–4047	Aug. 22, 1980.
IA80–4048	Aug. 29, 1980.
IA80–4050	Aug. 8, 1980.
Kansas:	
KA80–4054	July 18, 1980.
KA80–4055	July 18, 1980.
KA80–4056	July 18, 1980.
Kentucky:	
KY80–1090	Aug. 22, 1980.
Minnesota:	
MN80–2036	June 27, 1980.
New Mexico:	
NM79–4104	Nov. 2, 1979.
New York:	
NY79–3030	Aug. 31, 1979.
NY79–3036	Dec. 21, 1979.
NY80–3009	Feb. 29, 1980.
Ohio:	
OH80–2028	Aug. 1, 1980.
OH80–2044	July 7, 1980.
OH80–2048	July 11, 1980.
OH80–2052	July 7, 1980.
Pennsylvania:	
PA78–3054	Aug. 11, 1978.
Texas:	
TX79–4035	Sept. 28, 1979.
TX79–4041	Sept. 28, 1979.
TX80–4001	Jan. 4, 1980.
TX80–4004	Jan. 4, 1980.
TX80–4006	Jan. 4, 1980.
TX80–4028	Apr. 25, 1980.
TX80–4031	June 6, 1980.
TX80–4032	June 6, 1980.
TX80–4033	May 16, 1980.
TX80–4036	June 20, 1980.
TX80–4037	May 16, 1980.

Supersedeas Decisions to General Wage Determination Decisions

The numbers of the decisions being superseded and their dates of publication in the **Federal Register** are listed with each State. Supersedeas decision numbers are in parentheses following the numbers of the decisions being superseded.

California:
CA80-5131 (CA80-5117) ..... May 23, 1980.
Indiana:
IN77-2010 (IN80-2085) ..... Feb. 11, 1977.
IN77-2007 (IN80-2085) ..... Feb. 11, 1977.
IN77-2098 (IN80-2085) ..... May 27, 1977.
Iowa:
IA78-4108 (IA80-4049) ..... Nov. 24, 1978.
Kansas:
KS79-4099 (KS80-4071) ..... Dec. 14, 1979.
Mississippi:
MS76-1074 (MS80-1104) ..... July 16, 1976.
Missouri:
MO79-4099 (MO80-4071) ..... Dec. 14, 1979.
New York:
NY79-3011 (NY80-3057) ..... May 18, 1979.
Utah:
UT79-5135 (UT80-5128) ..... Nov. 2, 1979.
Wisconsin:
WI78-2149 (WI80-2083) ..... Nov. 13, 1978.
Wyoming:
WY80-5119 (WY80-5129) ..... June 13, 1980.

Cancellation of General Wage Determination Decisions

This is to advise all interested parties that the Department of Labor intends to withdraw 14 days from the date of this notice the following general wage determinations:

IN77-2097—Madison County, Indiana, dated May 27, 1977 in 42 FR 27553—Residential Construction.

MN77-2065—Crow Wing County, Minnesota, dated April 22, 1977 in 42 FR 21026—Heavy and Highway Construction.

Signed at Washington, D.C. this 12th day of September 1980.

Dorothy P. Come,

Assistant Administrator, Wage and Hour Division.

BILLING CODE 4510-27-M

MODIFICATION PAGE 1

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA80-4041-Mod. #1 (45 FR 51408-August 1, 1980) Building Black Hawk Co., Ia.					
CHANGE:					
Boilermakers	$13.87	1.375	1.10		.05
Elevator Constructors	13.10	1.195	.95	a	.035
Elevator Constructors' Helpers	70%JR	1.195	.95	a	.035
Ironworkers	13.50	.58	.75		.06
Laborers					
Group 1	9.52	.65	.45		.05
Group 2	9.67	.65	.45		.05
Group 3	9.87	.65	.45		.05
Decision #IA80-4042-Mod. #1 (45 FR 51409-August 1, 1980) Building Cerro Gordo Co., Ia.					
CHANGE:					
Boilermakers	13.87	1.375	1.10		.05
Bricklayers	11.87		.95		.02
Carpenters:					
Carpenters	10.91	.65	.50		
Millwrights; Piledrivermen	11.16	.65	.50		
Sheet Metal Workers	12.43	1.00	.72		.14
Soft Floor Layers	10.91	.65	.50		
Decision #IA80-4043-Mod. #1 (45 FR 53042-August 8,1980) Building Clinton Co., Iowa					
CHANGE:					
Boilermakers	13.87	1.375	1.10		.05
Carpenters:					
Carpenters	11.88	.65	1.00		.06
Piledrivermen	12.38	.65	1.00		.06
Cement Masons	10.75		.75		
Plumbers & Steamfitters	13.55	.71	1.14		.15
Roofers	14.30	.70	.80		

MODIFICATION PAGE 2

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA80-4044-Mod. #1 (45 FR 53044-August 8, 1980) Building Des Moines Co., Ia.					
CHANGE:					
Boilermakers	$13.87	1.375	1.10		.05
Decision #IA80-4045-Mod. #1 (45 FR 53046-August 8, 1980) Building Dubuque Co., Iowa					
CHANGE:					
Boilermakers	13.87	1.375	1.10		.05
Bricklayers & Stonemasons	10.84		.95		.02
Electricians	13.55	.75	3% +.50		3/4%
Elevator Constructors	13.10	1.195	.95	a	.035
Elevator Constructors' Helpers	70%JR	1.195	.95	a	.035
Ironworkers:					
Southeast portion	13.87	.75	.375		.07
Remainder of County	13.50	.58	.75		.06
Marble Setters	10.59		.95		.02
Terrazzo Workers	10.59		.95		.02
Tile Setters	10.59		.95		.02
Decision #IA80-4046-Mod. #2 (45 FR 53047-August 8,1980) Building Johnson Co., Iowa					
CHANGE:					
Boilermakers	13.87	1.375	1.10		.05
Elevator Constructors	13.10	1.195	.95	a	.035
Elevator Constructors' Helpers	70%JR	1.195	.95	a	.035
Ironworkers	13.50	.58	.75		.06
Painters:					
Brush & rollers	12.82				.03
Paperhangers	13.07				.03
Sandblasting	13.82				.03
Spray	13.47				.03
Plasterers	13.77				
Plumbers & Steamfitters	14.35	.60	.70		.13
Tile Setters	12.98		.55		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Decision #IA80-4047-Mod. #1 (45 FR 56273-August 22,1980) Building Linn Co., Iowa					
CHANGE:					
Elevator Constructors	$13.10	1.195	.95	a	.035
Elevator Constructors' Helpers	70%JR	1.195	.95	a	.035
Painters:					
Brush & rollers	12.82				.03
Paperhangers	13.07				.03
Sandblasting	13.82				.03
Spraying	13.47				.03
Decision #IA80-4048-Mod. #1 (45 FR 57917-August 29,1980) Building Polk Co., Iowa					
CHANGE:					
Bricklayers & Stonemasons	12.76	.90	1.25		.02
Marble Setters	14.20				
Sheet Metal Workers	13.21	1.00	1.20		.14
Terrazzo Workers	14.20				
Tile Setters	14.20				
Decision #IA80-4050-Mod. #1 (45 FR 53049-August 8, 1980) Building Scott Co., Iowa					
CHANGE:					
Boilermakers	13.87	1.375	1.10		.05
Bricklayers & Stonemasons	13.56	.65	1.30		.06
Carpenters:	13.31	.65	1.15		.08
Elevator Constructors	13.64	1.195	.95	a	.035
Painters:					
Brush, roller, sign	12.37	.60	1.25		.22
Spray, sandblasting, tapers, struc. steel	12.87	.60	1.25		.22
Piledrivermen	13.81	.65	1.15		.08
Plasterers	15.40				
Plumbers & Steamfitters	13.55	.71	1.14		.15
Roofers	14.30	.70	.80		
Soft Floor Layers	13.31	.65	1.15		.08

Decision No. KS80-4054, Mod. #2 (45 FR 48409, July 18, 1980) Shawneee County, KANSAS Building Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Electricians	$14.50	.75	3%+.70		.10
Cable Splicers	15.95	.75	3%+.70		.10
Plumbers: pipefitters	13.93	.80	1.000		.04
Sheet metal workers	11.91	3%+.75	1.50		.07
POWER EQUIPMENT OPERATORS Building Construction					
Master Mechanic	14.45	.75	1.00		.10
Cranes with lifting ring	13.45	.75	1.00		.10
Cranes and shovels - 100 ft. of boom or over including jib or 30 tons or over or 2 yds. capacity, three (3) drum hoist	12.70	.75	1.00		.10
Cranes and shovels - booms over 200 ft. and over four (4) drum hoist, Frankie-type pile driving machines and tower cranes and derricks	12.95	.75	1.00		.10
Group I	12.45	.75	1.00		.10
Group II	12.05	.75	1.00		.10
Group III					
Class A	10.25	.75	1.00		.10
Class B	10.50	.75	1.00		.10
Group IV					
Class A	9.70	.75	1.00		.10
Class B	9.95	.75	1.00		.10
POWER EQUIPMENT OPERATORS Site Preparation and Grading					
Group 1	$10.70	.75	1.00		.10
Group 2	10.45	.75	1.00		.10
Group 3	10.20	.75	1.00		.10
Group 4	9.85	.75	1.00		.10
Group 5	9.95	.75	1.00		.10
Group 6	10.95	.75	1.00		.10

MODIFICATION PAGE 5

DECISION KS80-4055 MOD. #2
(45 FR 48411, July 18, 1980)
Shawnee County, KANSAS
Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Painters	$ 7.92	.60			.03
Plumbers, pipefitters	13.93	.80	1.00		.04
Sheet metal workers	11.91	.75+3%	1.89		.07
POWER EQUIPMENT OPERATORS:					
Building Construction					
Master Mechanic	14.45	.75	1.00		.10
Cranes with lifting ring	13.45	.75	1.00		.10
Cranes and shovels-100 ft. of boom or over including jib or 30 tons or over or 2yds. capacity, there (3) drum hoist	12.70	.75	1.00		.10
Cranes and shovels - booms over 200 ft. and over four (4) drum hoist, Frankie-type piledriving machines and tower cranes and derricks	12.95	.75	1.00		.10
Group I	12.45	.75	1.00		.10
Group II	12.05	.75	1.00		.10
Group III					
Class A	10.25	.75	1.00		.10
Class B	10.50	.75	1.00		.10
Group IV					
Class A	9.70	.75	1.00		.10
Class B	9.95	.75	1.00		.10
POWER EQUIPMENT OPERATORS					
Site Preparation & Grading					
Group 1	$10.70	.75	1.00		.10
Group 2	10.45	.75	1.00		.10
Group 3	10.20	.75	1.00		.10
Group 4	9.85	.75	1.00		.10
Group 5	9.95	.75	1.00		.10
Group 6	10.95	.75	1.00		.10

MODIFICATION PAGE 6

DECISION KS80-4056, Mod. #1
(45 FR 48414, July 18, 1980)
Sedgwick County, Kansas
Building Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Boilermakers	$13.87	1.375	1.10		.05
Power Equipment Operators					
Building Construction					
Master Mechanic	13.95	.75	1.00		.10
Cranes with lifting ring	12.95	.75	1.00		.10
Cranes with Shovels- 100 ft. of boom or over including jib or over 30 tons or over or 2 yds. capacity, three (3) drum hoist	12.20	.75	1.00		.10
Cranes with shovels- 200 ft. or over four (4) drum hoist, Frankie type pile driving machines and tower cranes and trucks	12.45	.75	1.00		.10
Group I	11.95	.75	1.00		.10
Group II	11.55	.75	1.00		.10
Group III					
Class A	9.90	.75	1.00		.10
Class B	10.15	.75	1.00		.10
Group IV					
Class A	9.35	.75	1.00		.10
Class B	9.60	.75	1.00		.10
POWER EQUIPMENT OPERATORS					
Site Preparation and Grading					
Group 1	$10.70	.75	1.00		.10
Group 2	10.45	.75	1.00		.10
Group 3	10.20	.75	1.00		.10
Group 4	9.85	.75	1.00		.10
Group 5	9.95	.75	1.00		.10
Group 6	10.95	.75	1.00		.10

Decision #KY80-1090-Mod. #1 (45FR-56280-56283-August 22, 1980) Hardin, Jefferson and Meade counties, Kentucky	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
CARPENTERS	11.60	.70	.65		.05
LATHERS	11.60	.70	.6		.05
LINE CONSTRUCTION:					
Linemen, line truck operators & hole diggers	15.10	.75	3%+1.25		½ of 1%
Groundmen	9.36	.75	3%+1.25		½ of 1%
SOFT FLOOR LAYERS	11.60	.70	.65		.05
POWER EQUIPMENT OPERATORS					
CLASS A	12.60	.50	.80		.05
CLASS B	9.86	.50	.80		.05
CLASS C	9.09	.50	.80		.05
LABORERS					
GROUP 1	8.35	.40	.70		
GROUP 2	9.05	.40	.70		
GROUP 3	9.25	.40	.70		
GROUP 4	9.40	.40	.70		
GROUP 5	9.55	.40	.70		
GROUP 6	10.25	.40	.70		

Decision No. KY80-1090(Cont'd)

LABORERS CLASSIFICATIONS

GROUP I

Flagman, Traffic

GROUP II

Laborers, General (tool room checkers when required; concrete forms stripping and wrecking in accordance with the October 3, 1949 Memorandum of Understanding between the carpenters and Laborers; Carpenter Tenders; Cement Finisher Tenders; Placing of concrete; wrecking on building by laborers; hand digging and hand backfilling of ditches where the signaroty Employer controls the work assignments; hand clearing or rights of way and building sites; curing of concrete and application of hardener; handling of chemically treated lumber; installing of wood sheeting and shoring; signal Laborers concrete bucket and masonry work; cleaning and moving of general purpose materials in accordance with the October 3, 1949 Memorandum of Understnding between the Carpenters and Laborers; and general clean-up of all scrap and debris).

Mobile Sweeper

GROUP III

Power Driven Georgia Buggy, Chain Saw, Vibrator Operator, Mesh Handler, Power Tools, (Air Diesel, Electric, Gasoline) Wagon Drill, Pipe Layer, Wall Man, Treatment of Exposed Concrete (Chip, Bush Hammer, and Rub) Concrete Saw, Gasoline Tamper Machine, Walk Behind Trenching Machine, Burner Man, Joint Maker, Asphalt Raker

GROUP IV

Air Track Driller, Mason Tender, Side Rail Setter (metal), Stackman, Fork Lift) Operators-Masonry and Plastering Contractors Only

GROUP V

Powderman, Introflax Burning Rod, Gunnite Nozzle Man Operator, Sewer, Tunnel Laborers (Free Air), Sand Hog or Mucker (Free Air)

GROUP VI

Holeman Drilled Piers, Augured Caissons, Sand Miner (Tunnel Free Air), Caisson Workers

MODIFICATION PAGE 9

DECISION NO. MN80-2036 - MOD. #1 (45 FR 43581 - June 27, 1980)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Aitkin, Anoka, Benton, Blue Earth, Carlton, Carver, Chisago, Cook, Dakota, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Hennepin, Houston, Itasca, Kanabec, Koochiching, Lake, LeSueur, Mille Lacs, Morrison, Mower, Nichollet, Olmsted, Ramsey, Rice, Scott, Sherburne, Sibley, Stearns, Steel, St. Louis, Wabasha, Waseca, Washington, Winona, Wright Counties, Minnesota					
OMIT:					
The Following Counties: Aitkin, Itasca, Kanabec, Koochiching, Mille Lacs, and Morrison Counties					
Omit From Class 1 of All Laborers Schedules: Classifications of Landscape Gardner, Sodlayer, and Nurseryman.					
ADD:					
Laborers: Landscape and Sodlayers	$ 6.35	.50	.15		
CHANGE:					
IRONWORKERS: Counties of Carlton, Cook, Lake, St. Louis Counties	12.30	.50	.90	1.00	.02

MODIFICATION PAGE 10

DECISION NO. MN80-2036 - MOD. #1 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINEMEN:					
Counties of Carlton, Cook, Lake, that portion of Goodhue Township South of a line West from the S.W. of T-55 R-23; St. Louis Co.; that portion South of Ault, Ellsburg, Lavell, T-55 R-14, T-55 R-15, T-55 R-18, & T-55 R-21 Townships	$12.95	.45	6%	11%	.5%
Remainder of St. Louis Co.	14.38	.45	6%	11%	.5%
LABORERS: County of St. Louis North of T-55					
CLASS I	10.23	.50	.15	.25	
CLASS II	10.33	.50	.15	.25	
CLASS III	10.48	.50	.15	.25	
CLASS IV	10.53	.50	.15	.25	
CLASS V	10.58	.50	.15	.25	
CLASS VI	10.63	.50	.15	.25	
CLASS VII	10.73	.50	.15	.25	
CLASS VIII	10.83	.50	.15	.25	
LABORERS: Counties of Blue Earth, Dodge, Fairbault, Fillmore, Freeborn, Goodhue, Houston, LeSueur, Mower, Nicollet, Olmsted, Rice, Steele, Wabasha, Waseca, & Winona					
CLASS I	9.90	.50	.15		
CLASS II	10.00	.50	.15		
CLASS III	10.05	.50	.15		
CLASS IV	10.15	.50	.15		
CLASS V	10.30	.50	.15		
CLASS VI	10.35	.50	.15		
CLASS VII	10.40	.50	.15		

DECISION NO. MN80-2036 - MOD. #1 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: Counties of Benton, and Stearns					
CLASS I	9.35	.55	.50	.40	
CLASS II	9.40	.55	.50	.40	
CLASS III	9.45	.55	.50	.40	
CLASS IV	9.50	.55	.50	.40	
CLASS V	9.60	.55	.50	.40	
CLASS VI	9.70	.55	.50	.40	
CLASS VII	9.75	.55	.50	.40	
CLASS VIII	9.80	.55	.50	.40	
LABORERS: Sibley County					
CLASS I	8.70	.50	.15		
CLASS II	8.80	.50	.15		
CLASS III	8.85	.50	.15		
CLASS IV	8.95	.50	.15		
CLASS V	9.05	.50	.15		
CLASS VI	9.10	.50	.15		
CLASS VII	9.15	.50	.15		
CLASS VIII	9.20	.50	.15		

DECISION NO. MN80- 2036 - MOD. #1 (Cont'd)	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS: Counties of Carlton, Cook, Lake, & St. Louis - South of T-55					
CLASS I	$ 9.68	.50	.45	.50	
CLASS II	9.78	.50	.45	.50	
CLASS III	9.93	.50	.45	.50	
CLASS IV	9.98	.50	.45	.50	
CLASS V	10.03	.50	.45	.50	
CLASS VI	10.08	.50	.45	.50	
CLASS VII	10.18	.50	.45	.50	
CLASS VIII	10.28	.50	.45	.50	
ADD:					
POWER EQUIPMENT OPERATORS:					
ZONE 2:					
Cass County South of the Northern Right of Way of U.S. Highway 2 and East of the Western Right of Way of U.S. Highway 371; That Part of Crow Wing Co. East of Western Right of Way of U.S. Highway 371					

MODIFICATION PAGE 13

DECISION NO. NM79-4104 - Mod. #5

44 FR 63456 - November 2, 1979
Statewide, New Mexico

CHANGE DESCTIPTION OF WORK TO READ "Street, highway, utility and light engineering construction shall include the construction, alteration, repair and demolition of roads, streets, highways, alleys, sidewalks, curbs, gutters, guard rails, fences, parkways, parking areas, airports (other than buildings thereon), bridle paths, athlitic fields; highway bridges, median channels and grade separations involving highways; parks; golf courses, viaducts; uncovered reservoirs and uncovered sewage and water treatment facilities; canals, ditches and channels (including linings other than concrete linings); earth dams under one million (1,000,000) cubic yards; well drilling, telephone and electrical transmission lines and site preparations which are part of street, highway, utility and light engineering projects; and shall include construction, alteration, repair, and demolition of utilities such as sanitary sewers, storm sewers, water lines, gas lines, including appurtenances thereto such as lift stations, inlets, manholes, sewer lagoons, septic tanks and service outlets (stub-outs), providing such utility construction is outside the property line or more than five (5) feet from a building or heavy engineering structure, including the Navajo Indian Reservation.

MODIFICATION PAGE 14

DECISION NO. NY79-3030 - Mod. #2
(44 FR 51481 August 31, 1979)
Steuben County, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Edvcation and/or Appr. Tr.
Asbestos Workers	13.92	1.40	1.05		.01
Boilermakers	13.70	1.275	1.775		.03
Bricklayers, Cement Masons, Marble Masons, Plasters, Tile and Terrazzo Workers	11.65		1.00		
Cement Masons, Heavy & Highway	12.00		.50		
Electricians	13.80	1.00	3%+1.00		.05
Glaizers	9.97	.45	.65		.03
Ironworkers					
Twps. of Allantic and South Dansville:					
Structural, Ornamental, Reinforcing, Machinery Movers, Riggers, Rodmen, Fence Erectors and Stone Derrickmen	13.05	1.00	1.05		.10
Sheeter	13.30	1.00	1.05		.10
Sheeter, Bucker-up	13.175	1.00	1.05		.10
Remainder of County					
Structural, Ornamental, Reinforcing, Machinery Movers, Riggers, Rodmen, Fence Erectors and Stone Derrickmen	12.55	.85	1.05		.05
Sheeter	12.80	.85	1.05		.05
Sheeter, Bucker-up	12.67	.85	1.05		.05
Laborers, Building					
Common Laborers	8.32	.50	.30		
Painters					
Remainder of County					
Brush	12.205	1.375	.40		.11
Swing Stage, Sandblasting, Spray, Scaffold Work, Bosun Chair & Epoxy or Similar	12.455	1.375	.40		.11
35' from road level	13.87	1.375	.40		.11
Plumbers and Steamfitters:					
Twps. of Avaca, Canisteo, Cohocton, Dansville, Femont, West Union, Greenwood, Hartsville, Hornellville, Howard, Wheeler, Jasper, Prattsburg, Pultney, Troupsburg, Wayland, Woodhall, Cameron, Rathbone and Tuscarora	14.38	2.485	1.22		.20
Roofers	11.00	.99	1.19		

DECISION NO. NY79-3030 - (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sheet Metal Workers	12.42	3%+.60	.80		.11
Sprinkler Fitters	14.52	.85	1.20		.08
Laborers,Heavy & Highway Contruction					
Class A	9.79	.65	.50	a	
Class B	9.99	.65	.50	a	
Class C	10.19	.65	.50	a	
Class D	10.39	.65	.50	a	
LINE CONSTRUCTION:					
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.35	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.215	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.08	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.6475	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.5121	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.00	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.70	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class					
Groundman Truck Driver	10.40	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.05	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	9.75	1.40	3%+1.00	a	

DECISION NO. NY79-3030 -(Cont'd)

LINE CONSTRUCTION (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.70	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.33	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.96	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Driver Mechanic, Groundman-Experienced	10.275	1.40	3%+1.00	a	
All Pipe type Cable Installations Maintenance Jobs or Projects					
Journeyman Lineman	13.70	1.40	3%+1.00	a	
Certified Lineman Welder	14.385	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Equipment Operator	13.70	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Groundman Truck Drivers	10.96	1.40	3%+1.00	a	
Groundman	10.275	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

DECISION NO. NY79-3036 - Mod #3
(44 FR 56402 - December 21, 1979)
Oneida County, New York

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Change:					
Asbestos Workers	13.83	.90	.93		.06
Boilermakers	13.50	1.175	10%		.03
Bricklayers, Cement Masons, Pointers, Caulkers, Cleaners, Plasterers and Stonemasons (Building)	11.85	.70	1.04		
Cement Masons (Heavy & Highway)	11.00	.60	.90		
Carpenters (Building)					
Carpenters & Soft Floor Layers	10.97	.70	.65	a	.03
Piledrivermen & Millwrights	11.22	.70	.65	a	.03
Electricians					
Verona and Vienna Twps. West of State Highway 13:					
Electricians	14.00	.87	3%+1.10		.07
Cable Splicers	15.00	.87	3%+1.10		.07
Remainder of County:					
Electricians	13.05	.80	3%+.60		.07
Cable Splicers	14.25	.80	3%+.60		.07
Glaziers:					
Twps. of Florence, Camden, Vienna, Annsville, Verona, Vernon, Augusta, Lee, Rome City, Ava, Western, Floyd, Boonville and Steuben	11.50	.80			.01
Ironworkers:					
Structural, Ornamental, Rodman, Machinery Mover & Rigger, Fence Erector, Reinforcing, Stone Derrickman & Welders	12.17	1.11	1.02		.04
Sheeter	12.42	1.11	1.02		.04
Sheeter Bucker-up	12.295	1.11	1.02		.04
Laborers, Building					
Twps. of Forestport, Remsen, Trention, Marcy, Deerfield, Whitestown, New Hartford, Kirkland, Marshall, Paris, Sangerfield, Bridgewater and the city of Utica					
Laborers	9.02	.90	.95	d	
Pipelayers, Mortar Mixers (hand or machine), Motor buggy Op. (walk behind), power high lift	9.17	.90	.95	d	
Blasters, Form Setters and Motor Buggy Rider Type	9.52	.90	.95	d	
Wagon Drill Operator	9.42	.90	.95	d	

DECISION NO. NY79-3036 - (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Building					
Remainder of County					
Laborers, Common	9.905	.65	.75	e	
All rock drilling equipment Operators	10.350	.65	.75	e	
Blasters	10.505	.65	.75	e	
Vibrator Op., Chain Saw Op., Air or Electric Tool Op., Gas Buggy Op., Acetylene Torch Op. on demolition work, Pipelayers, Scaffold Builders, Mortar Mixer, Pavement Breaker Op.	10.105	.65	.75	e	
Marble Setters, Terrazzo Workers and Tile Setters	10.44	.70	1.04		
Painters					
Remainder of County					
Brush	11.31				
Spary	11.91				
Sandblasting	13.44				
Paper and Vinyl Hangers, Epoxy, Steel, Taping, Swing Stage, Bosun Chair and Monkey Suit	11.56				
Roofers	13.15	1.00	2.00		
Sprinkler Fitters	14.52	.85	1.20		.08
LINE CONSTRUCTION:					
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.35	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.215	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.08	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.6475	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.5121	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.00	1.40	3%+1.00	a	

DECISION NO. NY79-3036 - Cont'd)

LINE CONSTRUCTION (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Groundman Digging Machine Operator, Groundman Dynamite Man	11.70	1.40	3%+1.00	a	
Groundman Mobile Equ pment Operator, Mechanic First Class, Groundman Truck Driver	10.40	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.05	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	9.75	1.40	3%+1.00	a	
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.70	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.33	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechinic First Class, Groundman Truck Driver	10.96	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.275	1.40	3%+1.00	a	
All Pipe type Cable Installations Maintenance Jobs or Projects					
Journeyman Lineman	13.70	1.40	3%+1.00	a	
Certified Lineman Welder	14.385	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Equipment Operator	13.70	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Groundman Truck Drivers	10.96	1.40	3%+1.00	a	
Groundman	10.275	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before or the day after a holiday

DECISION NO. NY80-3009 - Mod. #2
(45 FR 13604 - February 29, 1980)
Cattaraugus, Chautaugua, & Erie Counties, New York

Change:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Asbestos Workers	12.85	1.32	1.40		.07
Boilermakers	13.70	1.275	1.775		.03
Bricklayers, Area 1:					
Bricklayers, Stone Masons, Pointers, Caulkers, & Cleaners	13.83	.80	1.90		
Marble Masons	13.545	.80	1.90		
Terrazzo Workers & Tile Setters	13.45	.80	1.90		
Bricklayers, Area 2:					
Bricklayers, Cement Masons (Building), Plasterers, Stone Masons, Tile and Terrazzo Workers	12.00	.80	1.30		.08
Carpenters, Areas 1 and 4:					
Carpenters, Millwrights, Piledrivermen Dockbuilders and Soft Floor Layers	12.73	1.80	1.85		
Carpenters, Area 2:					
Carpenters, Building	11.20	.80	1.35	b	.02
Millwrights & Piledrivermen	11.45	.80	1.35	b	.02
Carpenters, Heavy & Highway	10.53	.80	1.35	b	.025
Carpenters, Area 3:					
Carpenters, Building	10.80	1.69	1.65		.025
Millwrights	10.90	1.69	1.65		.025
Carpenters & Piledrivers (Heavy & Highway)	9.34	1.69	1.65		.025
Cement Masons, Erie County:					
Cement Masons	14.18		2.00		
Machine Operator	14.35		2.00		
Swing Scaffold	14.45		2.00		
Machine Operator on Swing Scaffold	14.60		2.00		
Cement Masons, Heavy & Highway Cattaragus (excluding the twp. of Perrysburg and the Village of Gonawanda), Chautaugua	10.32	.80	1.30		.08
Electricians Chautaugua, Cattaraugus (twp. of Allegany, Carrolton, Cold Spring, Conewango, Dayton, Elko, Great Valley, Hinsdale, Humphrey, Iskhua, Leon, Little Valley, Napoli, Olean, Portville, Red House, Randolph, Salamanca, South Valley)	13.17	.95	3%+1.20		½%

MODIFICATION PAGE 21

DECISION NO. NY80-3009 -(Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Electricians					
Erie, Cattaraugus (Remainder of County)					
Electricians	14.54	1.10	3%+2.10		.05
Cable Splicers	15.04	1.10	3%+2.10		.05
Glaziers	12.04	1.70	1.00		.30
Ironworkers					
Chautaugua (Twps. of Stockton, Gerry, Poland, Carrol, Busti, Ellicott, Harmony, Ellery, Clymer, Sherman, Chautaugua, French Creek, Mina, Ripley, Westfield, North Harmony, Kiantone and that portion of Portland west of a line from the southeast township corner extending through the village of Brockton to Lake Erie					
Structural, Ornamental, Reinforcing, Machinery Movers, Rodmen, Riggers, Fence Erectors, and Stone Derrickmen	15.40	1.86	1.01		.15
Sheeter	16.15	1.86	1.01		.15
Erie (Northern half of Grand Island)					
Structural, Ornamental, Reinforcing, Fence Erectors, Rodmen, Machinery Movers, Riggers, Stone Derrickmen	12.96	1.07	1.02		
Sheeter	14.27	1.07	1.02		
Marble, Tile & Terrazzo Workers' Finishers	11.66	1.65	.40		
Painters:					
Cattaraugus (Twps. of Perrysburg, Persia, Otto, Dayton, East Otto, Ashford, Yorkshire & Machias), Chautaugua (Twps. of Dunkirk, Portland, Pomfret, Sheridan, Arkwright, Hanover, and Villanova), and Erie (excluding north of White Haven Rd. on Grand Island)					
Basic Rate	12.205	1.375	.40		.11

MODIFICATION PAGE 22

DECISION NO. NY80-3009 - (Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Painters, Cont'd:					
Epoxy or Similar, Spray, Sandblasting, Bosun Chair, Swing and Scaffold, Taping, Hangers	12.455	1.375	.40		.11
Bridges 35' in depth or 35' from road level	13.87	1.375	.40		.11
Skeleton Steel, Radio-TV Towers, Flagpoles, Water Towers, Stacks	12.705	1.375	.40		.11
Erie County (North of White Haven Road on Grand Island):					
Brush	11.09	1.27	1.65		.01
Spray, Steel, Steeplejacks, Stage Chair, & Sandblasting	11.84	1.27	1.65		.01
Bridges, Crossing the Niagara River	12.755	1.27	1.65		.01
Plumbers					
Erie, Cattaraugus (Twps. of Perrysburg, Dayton, Persia, Otto, Leon, & Albion), Chautaugua (twps. of Hanover, Sheridan, Dunkirk, Pomfret, Arkwright, Villanova, Portland, Stockton, Charlotte, Ripley, Westfield, and Cherry Creek)	13.81	1.03	1.63		.08
Plumbers & Steamfitters					
Cattaragus (Remainder of County)	13.30	.60	1.29	.25	
Chautaugua (Remainder of County)	13.15	.77	.55	.289	
Roofers					
Cattaraugus & Chautaugua	10.95	.65	.45		.15
Erie					
Composition, Damp Waterproofers, Sprayers, Asphalt Mastic, Wood block Floor Workers, Steep Roofers and Siders	12.86	.99	1.50		.02
Slate, Precast Tile Roofers, Tile Asbestos	13.01	.99	1.50		.02
Sprinkler Fitters					
Cattaraugus & Chautaugua	14.52	.85	1.20		.08

MODIFICATION PAGE 23

DECISION NO. NY80-3009 -(Cont'd):

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers, Building					
Cattaraugus (excluding Twp. of Perrysburg and the village of Gonawanda) and Chautaugua					
Common Laborers & Flagmen	9.20	.80	1.00	b	
Blasterers, Nozzlemen (gunite, seeding, sandblasting), Curb and Form Setters (steel stone and granite)	9.45	.80	1.00	b	
Work 40' and over	9.35	.80	1.00	b	
LINE CONSTRUCTION:					
Electrical Overhead & Underground Distribution Work					
Journeyman Lineman & Technician	11.35	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Ground Truck Driver	9.08	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	10.215	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer)	9.6475	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	8.5121	1.40	3%+1.00	a	
All Overhead Transmission Line Work and Lighting for Athletic Fields					
Journeyman Lineman & Technician	13.00	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	11.70	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.40	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.05	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	9.75	1.40	3%+1.00	a	

MODIFICATION PAGE 24

DECISION NO. NY80-3009 (Cont'd):

LINE CONSTRUCTION (Cont'd):	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Sub-Station, Switching Structures (when not part of the line), Electrical, Telephone or CATV Commercial Work, Street Lighting & Signal Systems					
Journeyman Lineman & Technician	13.70	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Digging Machine Operator, Groundman Dynamite Man	12.33	1.40	3%+1.00	a	
Groundman Mobile Equipment Operator, Mechanic First Class, Groundman Truck Driver	10.96	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Driver Mechanic, Groundman - Experienced	10.275	1.40	3%+1.00	a	
All Pipe type Cable Installations, Maintenance Jobs or Projects					
Journeyman Lineman	13.70	1.40	3%+1.00	a	
Certified Lineman Welder	14.385	1.40	3%+1.00	a	
Cable Splicer	15.07	1.40	3%+1.00	a	
Groundman Equipment Operator	13.70	1.40	3%+1.00	a	
Groundman Truck Driver (Tractor Trailer Unit)	11.645	1.40	3%+1.00	a	
Groundman Truck Drivers	10.96	1.40	3%+1.00	a	
Groundman	10.275	1.40	3%+1.00	a	

FOOTNOTE:

a. Paid Holidays: New Year's Day, Washington's Birthday, Good Friday, Decoration Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, and Election Day for the President of the United States and Election Day for the Governor of New York State, provided the employee works the day before ar the day after a holiday

DECISION NO. OH80-2028 - Mod. #2
(45 FR 51416 - August 1, 1980)
Ashtabula, Cuyahoga, Lake, Lorain, Portage, Stark, & Summit Counties, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Electricians:					
Lake Co.:					
Commercial Construction	$15.23	.85	3%+.70		.2%
Lorain (Except Columbia Twp.):					
Commercial Construction	14.95	.75	3%+1.00		.1%
Glaziers:					
Ashtabula, Cuyahoga, Lake & Lorain Cos.	15.53	.60	1.25		.01
Ironworkers:					
Ashtabula (NE ¼ of Co.) Co.	14.00	1.86	1.01		.15
Line Construction:					
Lorain (Rem. of Co.) Co.:					
Cable Splicers; Equipment Ops. & Linemen	14.95	.75	3%+1.00		½%
Groundmen	9.72	.75	3%+1.00		½%
Marble Setters; Terrazzo Workers; & Tile Setters:					
Portage & Summit Cos.	13.47	.91	.70		
Marble Setters' Finishers:					
Portage & Summit Cos.	12.97	.91	.70		
Laborers:					
Stark Co.:					
Building & Construction; Tool Cribman; Carpenters' Tenders; Finishers Tenders; Concrete Handler; Utility Construction Laborer; Guard Rail Erector	10.86	.70	.90		.10
Bottom Men; Scaffold Builder; Tunnel Laborers; Pipe Layers; Air & Power Driven Tools; Burner on Demolition; Swinging Scaffold; Mucker; Caisson Worker; Cofferdam Worker; Powder Men & Dynamite Blaster; Creosote Workers; Mortar Mixers; Form Setter; Mason Tenders; Hod Carrier; Laser Beam Setup Men	11.06	.70	.90		.10
Gunnite Operator	11.46	.70	.90		.10

DECISION NO. OH80-2028 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Power Equipment Operators:					
Ashtabula, Cuyahoga, Lake, & Lorain Cos.:					
Group A	15.07	1.11	1.25		.11
Group B	14.92	1.11	1.25		.11
Group C	14.57	1.11	1.25		.11
Group D	13.79	1.11	1.25		.11
Group E	13.47	1.11	1.25		.11
Group F	11.29	1.11	1.25		.11
Portage, Stark, & Summit Cos.:					
Group A	14.79	1.11	1.25		.11
Group B	14.63	1.11	1.25		.11
Group C	14.28	1.11	1.25		.11
Group D	13.47	1.11	1.25		.11
Group E	13.14	1.11	1.25		.11
Group F	10.93	1.11	1.25		.11

DECISION NO. OH80-2044 - Mod. #2
(45 FR 45806 - July 7, 1980)
Adams, Allen, Ashland, Auglaize, Brown, Butler, Carroll, Champaign, Clark, Clermont, Clinton, Columbiana, Coshocton, Crawford, Darke, Defiance, Delaware, Erie, Fairfield, Fayette, Franklin, Fulton, Gallia, Geauga, Greene, Hamilton, Hancock, Hardin, Henry, Highland, Holmes, Huron, Knox, Lawrence, Licking, Logan, Madison, Marion, Medina, Meigs, Mercer, Miami, Montgomery, Morrow, Muskingum, Ottawa, Paulding, Perry, Pickaway, Pike, Preble, Putnam, Richland, Ross, Sandusky, Scioto, Seneca, Shelby, Tuscarawas, Union, Van Wert, Warren, Wayne, Williams, Wood, & Wyandot Counties, Ohio

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Bricklayers; Caulkers; Cleaners; Pointers; & Stonemasons:					
Brown, Butler, Clermont, Hamilton, Preble (Dixon, Israel, Lanier, Somers & Gratis Twps.) & Warren Cos.	$14.945	.80	.45		.02
Cement Masons:					
Fulton, Hancock, Henry, Putnam, & Wood (Exclu. Perry & Bloom Twps.) Cos.	13.05	.70	1.10		.02
Electricians:					
Ashland, Crawford, Huron (Twps. of Richmond, New Haven, Ripley & Greenwich), Knox (Twps. of Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown, & Jefferson), Marion, Morrow, Richland, & Wyandot (Twps. of Sycamore, Crane, Eden, Pitt & Antrim) Cos.	13.83	.60	3%+.62		.1%
Brown, Clermont, & Hamilton Cos.:					
Up to & incl 18 mi. radius from Hamilton Co. Court House, Cincinnati	15.30	.70	3%+.80		½%
Over 18 mi. radius up to & incl. 21 mi. radius from Hamilton Co. Court House, Cincinnati	15.60	.70	3%+.80		½%
Over 21 mi. radius up to & incl. 25 mi. radius from Hamilton Co. Court House, Cincinnati	15.70	.70	3%+.80		½%
Over 25 mi. radius from Hamilton Co. Court House, Cincinnati	15.85	.70	3%+.80		½%
Butler, & Warren (Twps. of Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union, & Washington) Cos.	15.35	.55	3%+1.00		½%

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Coshocton, Knox (Twps. of Jackson, Clay, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, & College), Licking, Muskingum, Perry, & Tuscarawas (Twps. of Auburn, York, Jefferson, Clay, Rush, Oxford, Washington, Salem, Perry & Bucks) Cos.	$13.10	.50	3%+1.02		.03
Geauga (Rem. of Co.) Co.	15.23	.85	3%+.70		.2%
Medina (Litchfield, Liverpool Twps.) Co.	14.95	.75	3%+1.00		.1%
Glaziers:					
Erie (Exclu. NW Tip of Co. to Rte. #4), Geauga, Huron (N½), & Medina Cos.	15.53	.60	1.25		.01
Lathers:					
Clermont, Hamilton, Highland (except NE Tip), & Warren (S. ½ of Co.) Cos.	13.87		1.10		.075
Marble Setters; Terrazzo Workers; & Tile Setters:					
Brown, Butler, Clermont, Hamilton, Preble (Dixon, Israel, Lanier, Somers, & Gratis Twps.) & Warren Cos.:					
Marble Setters	14.385	.80	.45		
Terrazzo Workers; Tile Setters	14.335	.80	.45		
Medina (Twps. of Wadsworth, Guilford, Westfield, Lafayette, & Sharon), & Wayne (Twps. of Milton & Chippewa) Cos.	13.47	.91	.70		
Marble Setters' Finishers; Terrazzo Workers' Finishers; & Tile Setters' Finishers:					
Adams, Brown, Butler, Clermont, Gallia, Hamilton, Highland, Lawrence, Meigs, Scioto & Warren Cos.:					
Marble Setters' Finishers	13.35				

MODIFICATION PAGE 29

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Marble Sanders; Polishers; Sawyers; & Waxers	$13.515				
Terrazzo Workers' Finishers & Grinders	13.35				
Terrazzo Base Grinders (While operating base grinding machine)	13.77				
Tile Setters' Finishers	13.35				
Medina (Twps. of Wadsworth, Guilford, Westfield, Lafayette & Sharon), Wayne (Twps. of Milton & Chippewa) Cos.	12.97	.91	.70		
Millwrights:					
Brown, Butler, Clermont, Clinton, Hamilton & Warren Cos.	14.84	.60	1.10		.10
Painters:					
Erie, Hancock, Huron, Sandusky, Seneca, & Wyandot Cos.:					
Old Commercial:					
Brush; Rollers; & Wash & Clean Surfaces	11.20	.70	.80		h
Drywall & Paperhangers	11.45	.70	.80		h
Sandblasting; Spray	11.70	.70	.80		h
New Commercial:					
Brush; Rollers; & Wash & Clean Surfaces	12.30	.70	.80		h
Drywall & Paperhangers	12.55	.70	.80		h
Sandblasting; & Spray	12.80	.70	.80		h
Pipefitters; Plumbers; & Steamfitters:					
Carroll (Twps. of Ross, Monroe, Union, Lee, Orange, Perry, & Loudon), Coshocton, Holmes, Muskingum, & Tuscarawas Cos.	15.85	.87	.60		.08
Plasterers:					
Brown, Butler, Clermont, Hamilton, Highland & Warren Cos.	14.895		1.00		.02

MODIFICATION PAGE 30

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Soft Floor Layers:					
Defiance, Fulton, Hancock (Except city of Fostoria), Henry, Paulding, Williams, & Wood (Except city of Fostoria) Cos.	$13.18	1.06	1.25		.05
Laborers:					
Ashland, Crawford, Knox, Morrow, & Richland Cos.:					
Group A	10.76	.70	.90		.10
Group B	10.96	.70	.90		.10
Group C	11.36	.70	.90		.10
Carroll, Coshocton, Delaware, Hancock, Hardin, Holmes, Marion, Seneca, Tuscarawas, Wayne, & Wyandot Cos.:					
Group A	10.86	.70	.90		.10
Group B	11.06	.70	.90		.10
Group C	11.46	.70	.90		.10
Group A:					
Building & Construction Laborers; Carpenters' Tenders; Concrete Handler; Finisher Tenders; Guard Rail Erector; Tool Cribmen; & Utility Construction Laborer					
Group B:					
Air & Power Driven Tools; Bottom Men; Burner on Demolition; Caisson Worker; Cofferdam Worker; Creosote Workers; Form Setter; Hod Carrier; Laser Beam Setup Men; Mason Tender; Mortar Mixers; Muckers; Pipelayers; Plasterers' Tenders; Powder Men & Dynamite Blaster; Scaffold Building; Swinging Scaffold; & Tunnel Laborers					
Group C:					
Gunnite Operator					

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Laborers:					
Brown, Clermont, Clinton & Hamilton Cos.:					
Group 1	$12.35	.80	.80		.10
Group 2	12.45	.80	.80		.10
Group 3	12.50	.80	.80		.10
Group 4	12.55	.80	.80		.10
Group 5	12.70	.80	.80		.10
Group 6	12.85	.80	.80		.10
Group 7	13.10	.80	.80		.10
Butler & Warren Cos.:					
Common Laborers	11.64	.70	.90		.10
Asphalt Rakers; Hand Air Tamper Chisel; Smoothers Hand Air Pump; Tampers; Vibrator Power Tamper Op.	11.74	.70	.90		.10
Mason Tenders; Mortar Mixers; & Scaffold Builders	11.97	.70	.90		.10
Concrete Pumps & Hose Men; Gunnite Operators; & Sandblasters	11.99	.70	.90		.10
Muskingum & Perry Cos.:					
Building & Construction Laborers; Carpenter Tenders; Planters (Landscape); Plumbers Tenders & Tree Trimmers	10.52	.70	.90		.10
Air & Machine Driven Tools Op.; Asphalt Plant Aggremeter Op.; Asphalt Plant Mixer Men; Brick Slingers; Car Pushers & Tunnel Laborers; Caulkers; Cement Handlers; Concrete Puddlers (Behind Mixers); Curb Cutters & Setters; Cutting with Burning Torches; Dumpmen (Batch Trucks); Hand Spikers Op.; Jackhammer Op.; Mason Tenders; Mortar Mixers;					

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Muckers; Pipelayers; Plasterers' Tenders; Proportioning Plant Op.; Pump Men (Under 4"); Road Form Setters; Sewer Bottom Men; Sheeting & Shoring Men; Stone Mason Tenders; Vibrator Op.; & Yarners & Wrenchmen	$10.62	.70	.90		.10
Brick Droppers; Lock Tenders; & Powdermen or Blasters	10.77	.70	.90		.10
Line Construction:					
Ashland, Crawford, Huron (Twps. of Richmond, New Haven, Ripley & Greenwich), Knox (Twps. of Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown & Jefferson), Marion, Morrow, Richland, & Wyandot (Twps. of Sycamore, Crane, Eden, Pitt, Antrim & Tymochtee) Cos.:					
Equipment Operators; Linemen	13.83	.60	3%+.62		½%
Line Truck Driver	8.30	.60	3%+.62		½%
Groundmen	8.99	.60	3%+.62		½%
Brown, Clermont, & Hamilton Cos.:					
Zone I:					
Linemen; Machine Ops.	15.30	.70	3%+.80		½%
Groundmen	11.475	.70	3%+.80		½%
Zone II:					
Linemen; Machine Ops.	15.60	.70	3%+.80		½%
Groundmen	11.70	.70	3%+.80		½%
Zone III:					
Linemen; Machine Ops.	15.70	.70	3%+.80		½%
Groundmen	11.775	.70	3%+.80		½%
Zone IV:					
Linemen; Machine Ops.	15.85	.70	3%+.80		½%
Groundmen	11.89	.70	3%+.80		½%

DECISION NO. OH80-2044 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Butler, Warren (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Twps.) Cos.:					
Linemen	$15.35	.55	3%+1.00		½%
Cable Splicers	15.85	.55	3%+1.00		½%
Groundmen	10.75	.55	3%+1.00		½%
Medina (Litchfield & Liverpool Twps.) Cos.:					
Cable Splicer; Equipment Op.; & Linemen	14.95	.75	3%+1.00		½%
Truck Driver (Winch) Groundman; Groundman	9.72	.75	3%+1.00		½%
Power Equipment Operators:					
Zone I:					
Group A	14.79	1.11	1.25		.11
Group B	14.63	1.11	1.25		.11
Group C	14.28	1.11	1.25		.11
Group D	13.47	1.11	1.25		.11
Group E	13.14	1.11	1.25		.11
Group F	10.93	1.11	1.25		.11
Zone II:					
Group A	14.51	1.11	1.25		.11
Group B	14.35	1.11	1.25		.11
Group C	13.99	1.11	1.25		.11
Group D	13.21	1.11	1.25		.11
Group E	12.88	1.11	1.25		.11
Group F	10.68	1.11	1.25		.11
Zone III:					
Group A	15.07	1.11	1.25		.11
Group B	14.92	1.11	1.25		.11
Group C	14.57	1.11	1.25		.11
Group D	13.79	1.11	1.25		.11
Group E	13.47	1.11	1.25		.11
Group F	11.29	1.11	1.25		.11

DECISION NO. OH80-2048 - Mod. #2
(45 FR 47045 - July 11, 1980)
Lucas County, Ohio

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CHANGE:					
Cement Masons	$13.05	.70	1.10		.02
Soft Floor Layers:					
Commercial	13.18	1.06	1.25		.05
Residential	11.45	1.06	1.25		.05
Power Equipment Operators:					
Group A	14.79	1.11	1.25		.11
Group B	14.63	1.11	1.25		.11
Group C	14.28	1.11	1.25		.11
Group D	13.47	1.11	1.25		.11
Group E	13.14	1.11	1.25		.11
Group F	10.93	1.11	1.25		.11

DECISION NO. OH80-2052 - Mod. #2
(45 FR 45834 - July 7, 1980)
Statewide, Ohio

CHANGE:					
Bricklayers & Stonemasons:					
Brown, Butler, Clermont, Hamilton, Preble (Twps. of Dixon, Gratis, Israel, Lanier, & Somers), & Warren Cos.	14.945	.80	.45		.02
Electricians:					
Ashland, Crawford, Huron (Twps. of Greenwich, New Haven, Richmond, & Ripley), Knox (N½ incl. Clinton, Howard, Liberty, Monroe & Union Twps.), Marion, Morrow, Richland, & Wyandot (Rem. of Co.) Cos.	13.83	.60	3%+.62		.1%
Brown, Clermont & Hamilton Cos.:					
Within 18 Mi. of Hamilton Co. Court House	15.30	.70	3%+.80		½%
From 18 to 21 Mi.	15.60	.70	3%+.80		½%
From 21 to 25 Mi.	15.70	.70	3%+.80		½%
Over 25 Mi.	15.85	.70	3%+.80		½%
Butler Co. & Warren Co., excl. Clear Creek, Franklin & Wayne Twps.	15.35	.55	3%+1.00		½%

DECISION NO. OH80-2052 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Coshocton, Guernsey, Knox (Jackson, Clay, Morgan, Miller, Milford, Hilliard, Butler, Harrison, Pleasant, & College Twps.), Licking, Muskingum, Perry, Tuscarawas (S½ incl. Twps. of Auburn, Clay, Rush, York, Salem, Jefferson, Oxford, Washington, Perry, & Bucks) Cos.	$13.10	.50	3%+1.02		.03
Geauga (except Auburn, Bainbridge, Chester, Middlefield, Parkman, Russell, & Troy Twps.) & Lake Cos.	15.13	.85	3%+.70		.2%
Lorain Co. (Rem. of Co.) and Medina Co. (Twps. of Litchfield & Liverpool)	14.95	.75	3%+1.00		.1%
Painters:					
Erie, Hancock, Huron, Sandusky, Seneca & Wyandot Cos.:					
Brush	12.30	.70	.80		50.00p/yr
Structural Steel	12.75	.70	.80		50.00p/yr
Plumbers & Steamfitters:					
Carroll (Twps. of Ross, Monroe, Union, Lee, Orange, Perry & Loudon), Coshocton, Guernsey, Holmes, Morgan (South of State Rte #78 & from McConnelsville West on State Rte #37 to the Perry Co. line), Muskingum, Noble, & Tuscarawas Cos.	15.85	.87	.60		.08
Truck Drivers:					
Zone I:					
Class I	10.75	34.00a	30.00a	b&c	.05
Class II	10.90	34.00a	30.00a	b&c	.05
Class III	11.25	34.00a	30.00a	b&c	.05
Class IV	11.25	34.00a	30.00a	b&c	.05
Line Construction:					
Ashland, Crawford, Huron (Twps. of Richmond, New Haven, Ripley & Greenwich), Knox (Twps. of Liberty, Clinton, Union, Howard, Monroe, Middlesburg, Morris, Wayne, Berlin, Pike, Brown, & Jefferson), Marion,					

DECISION NO. OH80-2052 (Cont'd)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Morrow, Richland, & Wyandot (Twps. of Sycamore, Crane, Eden, Pitt, Antrim & Tymochtee) Cos.:					
Equipment Operators; Linemen	$13.83	.60	3%+.62		½%
Line Truck Driver	8.30	.60	3%+.62		½%
Groundmen	8.99	.60	3%+.62		½%
Brown, Clermont, & Hamilton Cos.:					
Zone I:					
Linemen; Machine Ops.	15.30	.70	3%+.80		½%
Groundmen	11.475	.70	3%+.80		½%
Zone II:					
Linemen; Machine Ops.	15.60	.70	3%+.80		½%
Groundmen	11.70	.70	3%+.80		½%
Zone III:					
Linemen; Machine Ops.	15.70	.70	3%+.80		½%
Groundmen	11.775	.70	3%+.80		½%
Zone IV:					
Linemen; Machine Ops.	15.85	.70	3%+.80		½%
Groundmen	11.89	.70	3%+.80		½%
Butler, Warren (Deerfield, Hamilton, Harlan, Massie, Salem, Turtle Creek, Union & Washington Twps.) Cos.:					
Linemen	15.35	.55	3%+1.00		½%
Cable Splicers	15.85	.55	3%+1.00		½%
Groundmen	10.75	.55	3%+1.00		½%
Lorain (Exclu. Columbia Twp.), & Medina (Litchfield & Liverpool Twps.) Cos.:					
Cable Splicers; Equipment Op.; & Linemen	14.95	.75	3%+1.00		½%
Truck Driver (winch) Groundman; Groundman	9.72	.75	3%+1.00		½%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. PA78-3054					
MOD. NO. 9					
(43 FR 35868 - August 11, 1978)					
Bucks, Chester, Delaware, Montgomery & Philadelphia Counties, Pennsylvania					
CHANGE:					
Carpenters	$11.72	2.63	1.40	a	.13
ADD:					
Philadelphia only:					
Electricians	13.88	.83	3%+.83		1 3/4%
Millwrights	11.77	2.63	1.40		.13
Ironworkers:					
Structural & Ornamental	13.77	1.34	1.36		.04
Rigger, Machinery Mover	13.20	1.34	1.36		
DECISION NO. TX79-4035 -					
MOD. #6					
(44 FR 56108 - September 28 1979)					
Gregg County, Texas					
CHANGE:					
Bricklayers	$12.10		.45		.05
DECISION NO. TX79-4041 -					
MOD. #5					
(44 FR 56108 - September 28, 1979)					
Taylor County, Texas					
CHANGE:					
Electricians:					
Electricians	11.75	.60	3%		1/4%
Cable splicers	12.00	.60	3%		1/4%
Line construction:					
Lineman	11.75	.60	3%		1/4%
Cable splicers	12.00	.60	3%		1/4%
Groundman	8.81	.60	3%		1/4%
Equipment operator	9.64	.60	3%		1/4%
Flat bed truck driver	7.29	.60	3%		1/4%

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4001 -					
MOD. #8					
(45 FR 1376 - January 4, 1980)					
Armstrong, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts, Sherman, Swisher & Wheeler Cos., Texas					
CHANGE:					
Sheet metal workers	$12.38	.50	.60		.12
OMIT all rates & classifications for plumbers & pipefitters					
ADD:					
Plumbers & pipefitters	11.90	.50	.65	1.06	
DECISION NO. TX80-4004 -					
MOD. #8					
(45 FR 1383 - January 4, 1980)					
Wichita County, Texas					
CHANGE:					
Plasterers	11.75				.01
Plumbers & pipefitters:					
Zone 1	12.10	.50	.85		.05
Zone 2	12.60	.50	.85		.05
DECISION NO. TX80-4006 -					
MOD. #7					
(45 FR 1388 - January 4, 1980)					
Travis County, Texas					
CHANGE:					
Marble, tile & terrazzo workers	10.00	.60			.05
Plasterers	11.74	.60	.55		.01

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4028 - MOD. #6 (45 FR 28013 - April 25, 1980) Galveston & Harris Cos., Texas					
CHANGE: Electricians-Galveston Co.	$14.44	.75	3%+1.40		.08
DECISION NO. TX80-4031 - MOD. #4 (45 FR 38250 - June 6, 1980) Bell, Bosque, Coryell, Falls, Hill & McLennan Cos., Texas					
CHANGE: Building Construction: Plasterers	11.74	.60	.55		.01
DECISION NO. TX80-4032 - MOD. #4 (45 FR 38254 - June 6, 1980) Bexar County, Texas					
CHANGE: Electricians:					
Electricians	12.44	.60	5%		1%
Cable splicers	12.69	.60	5%		1%
Painters: Brush; paperhanger; taper & floater; hand roller	10.05		.30		.05
Brush on all structural steel; spray on any other surface other than steel	10.30		.30		.05

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
DECISION NO. TX80-4033 - MOD. #4 (45 FR 32544 - May 16, 1980) Bowie County, Texas					
CHANGE: Line construction:					
Linemen	$13.20		3%		1/2%
Cable splicers	13.60		3%		1/2%
Hole digger op., heavy equipment ops. (or pole cat equivalent); powderman	12.01		3%		1/2%
Line truck driver (winch op.)	10.82		3%		1/2%
Jackhammerman	9.90		3%		1/2%
Groundman	8.84		3%		1/2%
Truck driver (flat bed, ton & half & under)	9.37		3%		1/2%
Plumbers & pipefitters:					
Within a 25 mile radius of Texarkana	13.93	.60	.70		.05
Outside a 25 mile radius of Texarkana	14.33	.60	.70		.05
DECISION NO. TX80-4036 - MOD. #3 (45 FR 41836 - June 20, 1980) Ector & Midland Cos., Texas					
CHANGE:					
Electricians - Zone 1	12.00	.60	3%		1/10%
Zone 2	12.70	.60	3%		1/10%
Zone 3	13.00	.60	3%		1/10%
DECISION NO. TX80-4037 - MOD. #3 (45 FR 32545- May 16, 1980 Lubbock County, Texas					
CHANGE: Sheet metal workers	12.38	.50	.60		.12

SUPERSEDEAS DECISION

STATE: California

COUNTIES: Imperial, Inyo, Kern, Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura

DECISION NUMBER: CA80-5131

DATE: Date of Publication

Supersedes Decision No. CA80-5117 dated May 23, 1980, in 45 FR 35110

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects and Dredging

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$18.74	$1.30	$1.45		.07
BOILERMAKERS	15.11	1.255	1.25	1.00	.04
BRICKLAYERS; Stonemasons:*					
Area 1	14.09	1.13	1.34		.12
Area 2	15.74	1.15	2.21		.10
Area 3	15.45	1.15	1.65		.07
Area 4	13.35	1.30	1.75		.05
Area 5	15.09	1.30	2.35		.10
Area 6	15.47	1.45	2.00		.05
BRICK TENDERS	11.23	1.25	2.90	.95	.12
CARPENTERS:					
Carpenters	13.67	1.63	2.21	1.00	.10
Saw Filers	13.75	1.63	2.21	1.00	.10
Table Power Saw Operators	13.77	1.63	2.21	1.00	.10
Shinglers; Piledrivermen, Bridge or Dock Caprenters; Derrick Bargemen; Rock Slinger	13.80	1.63	2.21	1.00	.10
Hardwood Floor Layers	13.87	1.63	2.21	1.00	.10
Pneumatic Nailers	13.92	1.63	2.21	1.00	.10
Millwrights	14.17	1.63	2.21	1.00	.10
CEMENT MASONS:*					
Cement Masons	13.61	1.30	1.85	1.25	.08
Cement Floating and Troweling Machine	13.86	1.30	1.85	1.25	.08
Area 1:					
Cement Masons	15.26	1.30	1.85	1.25	.08
Cement Floating and Troweling Machine Operators	15.51	1.30	1.85	1.25	.08
DIVERS:					
Diver, Wet*	32.60	1.63	2.21	1.00	.10
Diver, Stand-by*	16.30	1.63	2.21	1.00	.10
Diver, Tender*	15.30	1.63	2.21	1.00	.10
DRYWALL INSTALLERS	14.63	1.63	2.21	.95	.09
ELECTRICIANS:*					
Area 1:					
Electricians	15.98	.75	3%+1.71		.09
Cable Splicers	16.28	.75	3%+1.71		.09

*See AREA Descriptions - Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:* (Cont'd)					
Area 2:					
Electricians; Technicians	$16.00	$1.10	3%+1.95		.15
Cable Splicers	17.60	1.10	3%+1.95		.15
Area 3:					
Electricians	15.67	1.15	3%+2.70		.12
Cable Splicers	13.42	1.15	3%+2.70		.12
Traffic Signal and Street Lighting:					
Electricians	13.12	1.15	3%+1.95		.12
Utility Technician No. 1	9.84	1.15	3%+1.95		.12
Utiltiy Technician No. 2	9.18	1.15	3%+1.95		.12
Tunnel:					
Electricians	13.52	1.05	3%+1.70		.02
Cable Splicers	13.82	1.05	3%+1.70		.02
Sound Technicians:					
Sound Technicians (on new building construction)	12.67	.75	3%		
Sound Technicians (on modification of existing buildings)	10.74	.75	3%		
Area 4:					
Electricians	17.24	.81	3%+1.45		.02
Cable Splicers	17.14	.81	3%+1.45		.02
Area 5:					
Electricians	15.91	.85	3%+2.40		.04
Cable Splicers	16.41	.85	3%+2.40		.04
Area 6:					
Electricians	14.90	1.21	3%+2.90		.04
Cable Splicers	15.40	1.21	3%+2.90		.04
Tunnel:					
Electricians	16.39	1.21	3%+2.90		.04
Cable Splicers	16.69	1.21	3%+2.90		.04
Area 7:					
Electricians	16.98	1.23	3%+1.50		.03
Cable Splicers	18.68	1.23	3%+1.50		.03
Area 8:					
Electricians	17.00	1.10	3%+1.50		.03
Cable Splicers	18.50	1.10	3%+1.50		.03

*See AREA Descriptions - Page 4

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:* (Cont'd)					
Area 9:					
Electricians	$16.71	$1.20	3%+1.95		.02
Cable Splicers	18.38	1.20	3%+1.95		.02
Area 10:					
Electricians	19.50	1.10	3%+1.50		.03
Cable Splicers	21.00	1.10	3%+1.50		.03
Area 11:					
Electricians	19.00	1.10	3%+1.95		.15
Cable Splicers	20.90	1.10	3%+1.95		.15
ELEVATOR CONSTRUCTORS:*					
Area 1:					
Elevator Constructors	15.41	1.045	.82	a	.035
Area 2:					
Elevator Constructors	16.37	.895	.82	a	.035
GLAZIERS:*					
Area 1	10.90	.67	.90		
Area 2	18.50	1.10	3.00		.07
IRONWORKERS:					
Fence Erectors	13.11	1.39	2.57	2.00	.07
Reinforcing	14.00	1.39	2.57	2.00	.07
Ornamental; Structrual	14.00	1.39	2.57	2.00	.07
IRRIGATION and LAWN SPRINKLERS:*					
Area 1	11.12	10%	16%	13%	1½%
LATHERS:					
Area 1	12.58	1.15	1.85	.90	.05
Area 2	14.00	1.26	1.99		.03
Area 3	15.63	1.63	2.21	1.00	.10
Area 4	7.72	.87		3.20	
Area 5	11.67	.82	1.25	1.50	
Area 6	12.50	.85	1.00	.50	.03
Area 7	14.11	.90	1.41	1.03	.01
LINE CONSTRUCTION:*					
Area 1:					
Groundmen	11.44	.75	3%+1.45		
Linemen	14.30	.75	3%+1.45		
Cable Splicers	14.58	.75	3%+1.45		
Area 2:					
Groundmen	9.94	.90	3%+1.60		.15
Linemen	13.25	.90	3%+1.60		.15
Cable Splicers	14.58	.90	3%+1.60		.15

*See AREA Descriptions - following Page

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Imperial County
Area 2: Inyo, Kern, and Mono Counties
Area 3: Los Angeles, and Orange Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Santa Barbara and San Luis Obispo Counties
Area 6: Ventura County

CEMENT MASONS:
Area 1: Point Arguello, Camp Roberts, Edwards Air Force Base, Naval Ordnance Test Center, Vandenberg AFB

DIVERS:*
Shall receive a minimum of 8 hours pay for any day or part thereof.

ELECTRICIANS:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)
Area 3: Los Angeles County
Area 4: Orange County
Area 5: Riverside County
Area 6: Inyo, Mono, and San Bernardino Counties
area 7: San Luis Obispo County
Area 8: Santa Barbara County (except Vandenberg AFB)
Area 9: Ventura County
Area 10: Vandenberg Air Force Base
Area 11: Kern County (China Lake Naval Ordnance Test Station, Edwards AFB)

ELEVATOR CONSTRUCTORS:
Area 1: Imperial, Inyo, Kern (south of Tehachapi Range), Los Angeles, Mono, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Kern County (north of Tehachapi Range)

GLAZIERS:
Area 1: Imperial County
Area 2: Santa Barbara, San Luis Obispo and Ventura Counties

LATHERS:
Area 1: Inyo, Kern, and Mono counties
Area 2: Los Angeles County (except City of Lancaster)
Area 3: Ventura County
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Orange County
Area 7: Riverside County

LINE CONSTRUCTION:
Area 1: Imperial County
Area 2: Kern County (Remainder of County)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION:* (Cont'd)					
Area 3:					
Groundman, 1st year	$11.43	.81	3%+1.45		.02
Groundman, after 1st year	12.12	.81	3%+1.45		.02
Lineman, Heavy Equipment Operators	14.04	.81	3%+1.45		.02
Cable Splicers	14.69	.81	3%+1.45		.02
Area 4:					
Groundmen	9.86	1.25	3%+1.95		
Linemen	13.14	1.25	35+1.95		
Cable Splicers	13.44	1.25	3%+1.95		
Area 5:					
Groundmen	9.41	1.11	3%+2.00		.04
Linemen	12.71	1.11	3%+2.00		.04
Cable Splicers	13.44	1.11	3%+2.00		.04
Area 6:					
Groundmen	9.65	.85	3%+1.65		.04
Linemen; Line Equipment Operators	13.08	.85	3%+1.65		.04
Cable Splicers	13.38	.85	3%+1.65		.04
Area 7:					
Groundmen	12.14	1.00	3%+1.35		.03
Linemen; Line Equipment Operators	16.18	1.00	3%+1.35		.03
Cable Splicers	16.99	1.00	3%+1.35		.03
Area 8:					
Groundmen	12.93	1.00	3%+1.05		.02
Linemen	14.21	1.00	3%+1.05		.02
Cable Splicers	15.63	1.00	3%+1.05		.02
Area 9:					
Groundmen	12.75	1.10	3%+1.50		.03
Linemen	17.00	1.10	3%+1.50		.03
Cable Splicers	18.50	1.10	3%+1.50		.03
Area 10:					
Groundmen	15.25	1.10	3%+1.50		.03
Lineman	19.50	1.10	3%+1.50		.03
Cable Splicers	21.00	1.10	3%+1.50		.03
Area 11:					
Groundman	15.00	1.10	3%+1.95		.15
Lineman, Equipment Operators	19.00	1.10	3%+1.95		.15
Cable Splicers	20.90	1.10	3%+1.95		.15

*See AREA Descriptions - Page 7

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
MARBLE SETTERS:*					
Area 1	$12.42	$1.50	$1.62	$1.18	
Area 2	13.54	.81	1.17		.08
MARBLE, TERRAZZO & TILE FINISHERS:					
Area 1	9.44	.81	1.17		.08
PAINTERS:*					
Area 1:					
Brush; Paint Burners	14.26	1.23	1.43	.75	.07
Paperhangers	14.76	1.23	1.43	.75	.07
Sandblaster; Iron, Steel and bridge (swing stage)	15.26	1.23	1.43	.75	.07
Sheet Rock Tapers	15.26	1.23	1.43	.75	.07
Brush (Swing Stage); Spray	14.51	1.23	1.43	.75	.07
Steeplejack	15.91	1.23	1.43	.75	.07
Area 2:					
Brush	12.73	.86	.80	.60	.02
Structural Steel and bridge; Paint Burner	12.85	.86	.80	.60	.02
Tapers	14.06	.86	.80	.60	.02
Brush Swing Stage (13 stories or less); Paperhangers; Sandblasters; Spray Painters	13.13	.86	.80	.60	.02
Brush Swing Stage (over 13 stories)	13.10	.86	.80	.60	.02
Structural steel and bridge, Swing Stage (13 stories or less)	13.13	.86	.80	.60	.02
Structural Steel and bridge, Swing Stage (excess of 13 stories)	13.25	.86	.80	.60	.02
Spray Painter; Sandblaster, Swing Stage (excess of 13 stories)	13.35	.86	.80	.60	.02
Spray Painters; Sandblaster, Swing Stage (13 stories or less); Paste Machine; Special coating Spray	12.91	.71	.80	.60	.02
Steeplejack	13.65	.71	.80	.60	.02

*See AREA Descriptions - Following Page

AREA DESCRIPTIONS

LINE CONSTRUCTION: (Cont'd)
Area 3: Orange County
Area 4: Los Angeles County
Area 5: Inyo, Mono, and San Bernardino Counties
Area 6: Riverside County
Area 7: San Luis Obispo County
Area 8: Ventura County
Area 9: Santa Barbara County (except Vandenberg AFB)
Area 10: Vandenberg AFB
Area 11: Kern County (China Lake Naval Ordnance Test Station, Edward AFB)

MARBLE SETTERS:
Area 1: Inyo and Mono Counties
Area 2: Imperial County

MARBLE, TERRAZZO and TILE FINISHERS:
Area 1: Imperial County

PAINTERS:
Area 1: Imperial, Orange, Riverside, Los Angeles (Pomona Area), San Bernardino (excluding western portion)
Area 2: Inyo, Los Angeles (except Pomona Area), Mono, San Bernardino (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area), Kern (east of the Los Angeles Aqueduct)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:*, (Cont'd)					
Area 3:					
Brush	$10.63	.80	$1.00		.03
Brush or Roller (swing stage); Paperhangers; Taping Joint Sheet Rock	10.88	.80	1.00		.03
Spray; Sandblasters	11.13	.80	1.00		.03
Steeplejack	12.13	.80	1.00		.03
Area 4:					
Brush; Pot Tender	13.98	1.25	1.83		.03
Paperhangers; Paste Machine Operators; Iron and Steel	14.23	1.25	1.83		.03
Spray; Taper; Sandblasters	14.48	1.25	1.83		.03
Steeplejack	14.98	1.25	1.83		.03
Parking Lot Striping Work and/or Highway Markers:					
Area 1:					
Striper	11.82	.55	.40	b	
Traffic Delineating Device Applicator; Wheel Stop Installer; Traffic Surface; Sandblaster	10.72	.85	.50	b	
Slurry Seal Operation:					
Mixer	10.72	.85	.50	b	
Squeegee Man	9.14	.85	.50	b	
Applicator Operator	9.14	.85	.50	b	
Shuttleman	9.14	.85	.50	b	
Top Man	7.60	.85	.50	b	
Area 2:					
Traffic Delineating Device Applicator	10.72	.85	.50	b	
Wheel Stop Installer; Surface Sandblaster	10.72	.85	.50	b	
Striper	10.33	.85	.50	b	
Slurry Seal Operation:					
Mixer Operator	10.33	.85	.50	b	
Squeegee Man	9.14	.85	.50	b	
Applicator Operator	8.54	.85	.50	b	
Shuttleman	9.14	.85	.50	b	
Top Man	7.60	.85	.50	b	
PLASTERERS:					
Area 1	12.335	.93	1.85		.12
Area 2	18.95				
Area 3	12.00				
Area 4	15.10	1.00	1.30		
Area 5	14.51	1.30	3.00		.02
PLASTERERS TENDERS:					
Area 1	13.32	1.25	2.90	1.00	
Area 2	10.92	1.25	2.55	.95	
Area 3	11.775	1.25	2.55	1.10	
Area 4	13.08	1.25	2.55	1.15	
Area 5	14.08	1.25	1.83		.03
Area 6	13.58	1.25	2.60	1.10	

*SEE AREA DESCRIPTIONS - See Following Page

AREA DEFINITIONS

PAINTERS: (Cont'd)
Area 2: Inyo, Los Angeles (except Pomona Area), Mono, San Bernardino (west of a line north of Trono including China Lake Area, Johannesburg, Boron, south including the Wrightwood Area), Kern (East of the Los Angeles Aqueduct)
Area 3: Kern County (except the portion lying east of the Los Angeles Aqueduct)
Parking Lot Striping Work and/or Highway Markers; and Slurry Seal Operation:
Area 1: Inyo and Mono Counties
Area 2: Remaining Counties

PLASTERERS:
Area 1: Los Angeles and Orange Counties
Area 2: Riverside and San Bernardino Counties
Area 3: San Luis Obispo County
Area 4: Santa Barbara County
Area 5: Ventura County

PLASTERERS TENDERS:
Area 1: Imperial, Inyo, Mono, Riverside and San Bernardino Counties
Area 2: Kern County
Area 3: Los Angeles and Orange Counties
Area 4: San Luis Obispo County
Area 5: Santa Barbara County
Area 6: Ventura County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PLUMBERS; Steamfitters:*					
Area 1	$15.25	$1.53	2.44	$1.98	.11
Area 2	15.88	1.05	2.25	1.45	.17
Area 3	20.88	1.05	2.25	1.45	.17
REFRIGERATION & AIR CONDITIONING:*					
Area 1	10.70	.96	.85	1.00	.05
Area 2	13.82	2.00	2.00	1.52	.30
ROOFERS:*					
Area 1	12.79	.80	1.05	1.00	
Area 2	12.05	.80	.60		.02
Area 3	12.65	.80	1.00	1.25	
Area 4	13.31	.97	2.05		.065
Area 5	13.37	.645	1.49		
SHEET METAL WORKERS:*					
Area 1	14.96	1.04	2.24		.01
Area 2	14.51	1.14	1.80		.02
Area 3	15.16	1.14	2.52		.10
Area 4	14.16	1.14	2.64		.09
Area 5	13.90	1.14	1.91		.16
Area 6	14.93	1.14	2.52		
SOFT FLOOR LAYERS:*					
Area 1	11.52	.81	1.45		.10
Area 2	12.72	.75	1.20	.75	.08
Area 3	12.80	.85	.85	1.18	.07
SPRINKLER FITTERS:*					
Area 1	15.52	.75	1.05		.08
Area 2	16.83	.83	1.05		.09
TERRAZZO WORKERS:*					
Area 1	12.69	.81	1.17		.08
TILE SETTERS:*					
Area 1	12.69	.81	1.17		.08
Area 2	13.81	1.06	1.40		.10
Area 3	10.50	1.20	1.85		.07
Area 4	12.95	1.03	1.35		
TILE FINISHERS:*					
Area 1	9.96	1.39	1.30		.13

*See AREA DESCRIPTIONS - Following Page

AREA DESCRIPTIONS

PLUMBERS; Steamfitters:
Area 1: Imperial, Los Angeles, Orange, Riverside, San Bernardino, San Luis Obispo, Santa Barbara and Ventura Counties
Area 2: Inyo, Kern, and Mono Counties
Area 3: Edwards AFB, Naval Weapons Center & China Lake Ordnance Test Ctr.

REFRIGERATION and AIR CONDITIONING:
Area 1: Riverside and San Bernardino Counties
Area 2: Los Angeles and Orange Counties

ROOFERS:
Area 1: Imperial County
Area 2: Inyo, Kern and Mono Counties
Area 3: Riverside and San Bernardino Counties
Area 4: Los Angeles, Orange and Ventura Counties
Area 5: San Luis Obispo and Santa Barbara Counties

SHEET METAL WORKERS:
Area 1: Imperial County
Area 2: Kern County and all of Inyo and Mono Counties, Los Angeles County (that portion north of a straight line drawn between Gorman and Big Pines)
Area 3: Los Angeles County (remaining portion)
Area 4: Orange County
Area 5: Riverside and San Bernardino Counties
Area 6: San Luis Obispo, Santa Barbara and Ventura Counties

SOFT FLOOR LAYERS:
Area 1: Imperial County
Area 2: Los Angeles, Orange, Riverside, Santa Barbara, San Luis Obispo, San Bernardino and Ventura Counties
Area 3: Kern County, including that portion lying east of the Los Angeles Aqueduct and that portion of Inyo County included within the Inyo-Kern Naval Reservation

SPRINKLER FITTERS:
Area 1: Imperial, Inyo, Kern, Mono, Orange (except Santa Ana), Riverside, San Bernardino (except Ontario, San Luis Obispo, Santa Barbara and Ventura (except Santa Paula, Point Mugu and Port Hueneme)
Area 2: Los Angeles (Los Angeles City and Area within 25 miles and Pomona), Orange (Santa Ana); San Bernardino (Ontario), and Ventura (Santa Paula, Point Mugu and Port Hueneme)

TERRAZZO WORKERS:
Area 1: Imperial County

AREA DESCRIPTIONS

TILE SETTERS:
Area 1: Imperial County
Area 2: Los Anglees, Orange and Ventura Counties
Area 3: San Luis Obispo and Santa Barbara Counties
Area 4: Riverside and San Bernardino Counties
Area 5: Inyo, Kern and Mono Counties

TILE FINISHERS:
Area 1: Los Angeles, Orange, and Ventura Counties

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

FOOTNOTES:
a. Employer contirbutes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Six Paid Holidays: A through F

b. Employer contributes $.23 per hour to Holiday Fund plus $.14 per hour to Vacation Fund for the first year of employment, 1 year but less than 5 years $.34 per hour to Vacation Fund, 5 years but less than 10 years $.44 per hour to Vacation Fund, over 10 years $.54 per hour to Vacation Fund

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Group 1	$10.63	$1.25	$2.90	.95	.12
Group 2	10.78	1.25	2.90	.95	.12
Group 3	10998	1.25	2.90	.95	.12
Group 4	11.28	1.25	2.90	.95	.12
Group 5	11.48	1.25	2.90	.95	.12
(GUNNITE)					
Group 1	12.62	1.25	2.90	.95	.12
Group 2	11.97	1.25	2.90	.95	.12
Group 3	10.91	1.25	2.90	.95	.12
(TUNNEL)					
Group 1	12.54	1.25	2.90	.95	.12
Group 2	12.66	1.25	2.90	.95	.12
Group 3	12.82	1.25	2.90	.95	.12
Group 4	13.10	1.25	2.90	.95	.12
LABORERS: Point Arguello, Camp Roberts, Edwards AFB, Naval Ordnance Test Center, Vandeberg AFB-					
Group 1	12.63	1.25	2.90	.95	.12
Group 2	12.78	1.25	2.90	.95	.12
Group 3	12.98	1.25	2.90	.95	.12
Group 4	13.28	1.25	2.90	.95	.12
Group 5	13.48	1.25	2.90	.95	.12
LABORERS, Tunnel					
Group 1	14.54	1.25	2.90	.95	.12
Group 2	14.66	1.25	2.90	.95	.12
Group 3	14.82	1.25	2.90	.95	.12
Group 4	15.10	1.25	2.90	.95	.12

LABORERS

Group 1: Cleaning and Handling of Panels Forms; Concrete Screeding for rough strike-off; Concrete, water curing; Demolition Laborer, the cleaning of brick and lumber; Dry Packing of concrete, plugging, filling of Shee-bolt Holes; Fire Watcher, Limber, Brush Loaders, Pilers and Debris Handlers; Flagman; Gas, Oil and/or Water Pipeline Laborer; Laborer, general or construction; Laborer, general cleanup; Laborer, landscaping; Laborer, jetting, temporary water and air lines; Mateiral Hoiseman (walls, slabs, floors and decks); Rigging and Signaling; Scaler; Slip Form Raisers; Slurry Seal Crews (Mixer Operator, Applicator Operator, Squeegee Man, Shuttle Man, Top Man); Striper, concrete or other paved surfaces; Tarman and Mortar Man; Tool Crib or Tool House Laborer; Traffic Delineating Device Applicator; Window Cleaner; Wire Mesh, pulling all concrete pouring operations

Group 2: Asphalt Shoveler; Cement Dumper (on 1 yard or larger Mixer and handling bulk cement); Cesspool Digger and Installer, Chucktender; Chute Man, pouring concrete, the handling of the Chute from Ready Mix Trucks, such as walls, slabs, decks, floors, foundations, footings, curb, gutters and sideqlaks; Concrete Curer, Impervious Membrane and Form Oiler; CuttingTorch Operator (demolition); Fine Grader, highways and street paving, airport, runways, and similar type heavy construction; Gas, Oil and/or Water Pipeline Wrapper, Pot Tender and Form Man; Guineau Chaser; Headerboard Man, asphalt; Laborer, packing rod steel and pans; Power Broom Sweepers (small); Riprap Stonepaver, placing stone or wet sacked concrete; Roto Scraper and Tiller; Sandblaster (Pot Tender); Septic Tank Digger and Installer (Leadman); Tank Scaler and Cleaner; Tree Climber, Faller, Chain Saw Operator, Pittsburgh Chipper and similar type Brush Shredders; Underground Laborer, including Caisson Bellower

Group 3: Asphalt Raker, Luteman, Ironer and Asphalt Spreader Boxes (all types); Buggymobile Man; Concrete Core Cutter, Grinder or Sander; Concrete Cutting Torch; Concrete Saw Man, cutting, scouring old or new concrete; Driller, Jackhammer, 2½ ft. drill steel or longer; Dri Pak-it Machine; Gas, Oil and/or Water Pipeline Wrapper, 6" pipe and over, by any method, inside and out; Hydro Seeder and similar type; Impact Wrench, Mutli-plate; Kettlemen, Potmen and Men applying asphakt, lay-kold, creosote, lime caustic and similar type materials ("applying" means applying, dipping, brushing or handling of such materials for pipe wrapping and waterproofing); Operators of pneumatic, gas, electric tools, Vibrating Machines, Pavement Breakers, Air Balsting, Come-alongs, and similar mechanical tools not seperately classified herein; Pipelayer's Backup Man, coating, grouting, making of joints, sealing, caulking, diapering and including Rubber Gasket Joints, pointing and any and all other services; Rovk Slinger; Rotary Scarificer or Multiple Head Concrete Chipping Scafifier; Steel Headerboard Man and Guideline Setter; Tampers, Barko, Wacker and similar type; Trenching Machine, ahnd propelled

LABORERS (Cont'd)

Group 4: Cribber, Shorer, Lagging, Sheeting and Trench Bracing, Hand-guided Lagging Hammer; Head Rock Slinger; Laser Beam; Oversize Concrete Vibrator Operator, 70 lbs. and over; Pipelayer, including water, sewage, solid, gas or air; Prefabricated Manhole Installer; Sandblaster (Nozzleman), water blasting; Welding in connection with Laborers' work

Group 5: Blasters Powderman, all work of loading holes, placing and blasting of all powder and explosives of whatever type, regardless of method used for such loading and placing; Driller: All power drills, excluding Jackhammer, whether Core, Diamond, Wagon, Track, Multiple Unit, and any and all types of mechanical drills

(GUNNITE)

Group 1: Nozzlemen and Rodmen

Group 2: Gunmen

Group 3: Reboundmen

(TUNNEL)

Group 1: Batch Plant Laborers; Bull Gang Mucker, Trackman; Concrete Crew, including Rodders and Spreaders; Changehouseman; Dumpman; Dumpman (outside); Swamper (Brakeman and Switchman on tunnel work); Tunnel materials handling man; Tool Man

Group 2: Cable Tender; Chuck Tender; Nipper; Steel Form Raiser and Setter's Helper; Vibratorman, Jackhammer, pneumatic tools (except Driller); Loading and unloading Agitator Cars; Pot Tender, using mastic or other materials

Group 3: Balster, Driller, Powderman; Chemical Grout Jetman; Cherry Pickerman; Grout Gunman; Grout Mixerman; Grout Pumpman; Jackleg Miner; Jumbo Man; Kemper and other pneumatic concrete placer Operator; Miner, tunnel (hand or machine); Powderman (Primer House); Primer Man; Shotcrete Man; Steel Form Raiser and Setter; Timberman; Retimber (wood or steel); Tunnel Concrete Finisher; Nozzleman; Operating Troweling and/or Grouting Machine; Sandblaster

Group 4: Shaft, Raise Miner; Diamond Driller

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: DREDGING (Hydraulic Suction Dredges)					
LEVERMAN	$11.60	.95	$2.00	.50	.04
WATCH ENGINEER; Welder	11.02	.95	2.00	.50	.04
DECKMATE	10.54	.95	2.00	.50	.04
WINCHMAN (Stern Winch or Dredge)	10.47	.95	2.00	.50	.04
BARGEMAN; Deckhand; Fireman; Oiler; Leveehand	9.93	.95	2.00	.50	.04
(Clamshell Dredges)					
LEVERMAN	11.60	.95	2.00	.50	.04
WATCH ENGINEER	11.02	.95	2.00	.50	.04
DECKMATE	10.54	.95	2.00	.50	.04
BARGE MATE	10.47	.95	2.00	.50	.04
BARGEMAN; Deckhand; Fireman; Oiler	9.93	.95	2.00	.50	.04
POWER EQUIPMENT OPERATORS:					
Group 1	13.60	1.10	2.65	.90	.14
Group 2	13.88	1.10	2.65	.90	.14
Group 3	14.17	1.10	2.65	.90	.14
Group 4	14331	1.10	2.65	.90	.14
Group 5	14.53	1.10	2.65	.90	.14
Group 6	14.64	1.10	2.65	.90	.14
Group 7	14.76	1.10	2.65	.90	.14
Group 8	14.93	1.10	2.65	.90	.14
Group 9	15.06	1.10	2.65	.90	.14

POWER EQUIPMENT OPERATORS

Group 1: Brakeman; Compressor (less than 600 C.F.M.); Engineer Oiler; Generator; Heavy Duty Repairman; Helper; Pump; Signalman; Switchman

Group 2: Compressor (600 C.F.M. or larger); Concrete Mixer, skip type, Conveyor; Fireman; Hydrostatic Pump; Oiler Crusher (asphalt or concrete plant); Plant Operator; Generator, Pump or Compressor; Rotary Drill Helper (oilfield); Skiploader, wheel type up to 3/4 yard without attachments; Soils Field Technician; Tar Pot Fireman; Temporary Heating Plant; Trenching Machine Oiler; Truck Crane Oiler

Group 3: A-Frame or Winch Truck; Elevator Operator (inside); Equipment Greaser (rack); Ford Ferguson (with dragtype attachments); Helicopter Raidoman (ground); Power Concrete Curing Machine; Power Concrete Saw; Power driven Jumbo Form Setter; Ross Carrier (job site); Stationary Pipe Wrapping and Cleaning Machine

Group 4: Asphalt Plant Fireman; Boring Machine; Boxman or Mixerman (aspahlt or concrete); Chip Spreading Machine; Concrete Pump (small portable); Bridge type Unloader and Turntable; Dinkey Locomotive or Motorman (up to and inlcidung 10 tons); Equipment Greaser (Greaser Truck); Helicopter Hoist; Highline Cableway Singlaman; Hydra-hammer-aero Stomper; Power Sweeper; Roller (compacting); Screed (asphalt or concrete); Trenching Machine (up to 6 ft.)

Group 5: Asphalt Plant Engineer; Backhoe (up to and including 3/4 yard); Batch Plant; Bit Sharpener; Concrete Joint Machine (canal and similar type); Concrete Planer; Deck Engine; Derrickman (oilfield type); Drilling Machine Operator (including water wells); Forklift (under 5 ton capacity); Hydrographic Seeder Machine (straw, pulp or seed); Machine Tool Operator; Maginnis Internal Full Slab Vibrator; Mechanic Berm, Curb or Gutter (aspahlt or concrete); Mechanical Finisher (concrete-Clary, Johnson, Bidwell, or similar); Pavement Breaker (truck mounted); Road Oil Mixing Machine; Roller (asphalt or finish); Rubber-tired Earth Moving Equipment (single engine, up to and including 25 yards struck); Self-propelled Tar Pipelining Machine; Slip Form Pump (power driven hydraulic lifting device for concrete forms); Skiploader (Crawler and wheel type,. over 3/4 yard and up to and including 1½ yards); Stinger Crane (Austin-Western or similar type); Tractor, Bulldozer, Tamper Scraper (single engine, up to 100 h.p., flywheel and similar types, up to and including D-5 and similar types); Tugger Hoist, 1 drum; Tunnel Locomotive (over 10 tna up to and including 30 tons); Welder-general

POWER EQUIPMENT OPERATORS (Cont'd)

Group 6: Asphalt or Concrete Spreading (tamping or finishing); Asphalt Paving Machine (Barber Greene or similar type); Bridge Crane Operator; Cast-in-place Pipe Laying Machine; Combination Mixer and Compressor (Gunite work); Compactor, self-propelled; Concrete Mixer - paving; Concrete Pump (truck mounted); Crane Operator up to and including 25 ton capacity) (Long-boom pay applicable); Crushing Plant; Drill Doctor; Elevating Grader; Forklift (over 5 tons); Grade Checker; Grade-all; Grouting Machine; Heading Shield; Heavy Duty Repairman; Hoist Operator (Chicago Boom and similar type); Kolman Belt Loader and similar type; LeTourneau Blob Compactor or similar type; Lift Mobile; Lift Slab Machine (Vagtborg and similar types); Loader (Athey-Euclid, Sierra and similar type); Mateiral Hoist; Mucking Machine (1/4 yard rubber tired, rail or track type); Pneumatic Concrete Placing Machine (Hackley-Presswell or similar type); Pneumatic Heading Shield (tunnel); Pumpcrete Gun; Rotary Drill (excluding Caisson type); Rubber-tired Earth Moving Equipment (single engine, Caterpiller, Euclid, Athey Wagon, and similar types with any and all attachments, over 25 yards struck); Rubber-tired Scraper (self-loading paddle wheel type, John Deere, 1040 and similar single unit); Skiploader (Crawler and wheel type, over 1½ yards, up to and including 6½ yards); Surface Heaters and Planer; Trenching Machine (over 6 ft. depth capacity); Tower Crane; Tractor Compressor Drill Combination; Tractor (any type larger than D-5-100 flywheel h.p. and over, or similar); Bulldozer, Tamper, Scraper and Push Tractor single engine); Tractor (boot attachments); Traveling Pipe Wrapping, Cleaning and Bending Machine; Tunnel Locomotive (over 30 tons); Shovel, Backhoe, Dragline, Clamshell (over 3/4 yd. and up to 5 cu. yards m.r.c.) (Long boom pay applicable); Self-propelled Curb and Gutter Machine

Group 7: Crane, over 25 ton up tc and including 100 tons m.r.c. (Long boom pay applicable); Derrick Barge (Long boom pay applicable); able); Dual Drum Mixer; Heavy Duty Repairman, welder combination; Hoist, Sitff-legs, Guy Derrick or similar type, up to and including 100 tons (Long Boom pay applicable); Monorail Locomotive (diesel gas or electric); Motor Patrol-blade Operator (single engine); Mu-Multiple Engine Tractor (Euclid and similar type, except Quad 9 Cat); Rubber-tired Earth Moving Equipment (single engine, over 50 yards struck); Rubber-tired Earth Moving Equipment (multiple engine, Euclid, Caterpiller and similar)(over 25 yards and up tc 5 cu. yds. struck); Shovel, Backhoe, Dragline, Clamshell (over 5 cu. yds. m.r. c.) (Long Boom pay applicable); Tower Crane Repairman; Tractor Loader (Crawler and wheel type, over 6½ yards); Welder, certified; Woods Mixer and similar Pugmill Equipment

POWER EQUIPMENT OPERATORS (Cont'd)

Group 8: Auto Grader; Automatic Slip Form; Crane-over 100 tons (Long boom pay applicable); Hoist, Stiff Legs, Guy Derrick or similar types (capable of hoisting 100 tons or more)(Long boom applicable); Mass Excavator, less than 750 cu. yards; Mechanical Finishing Machine; Mobile Form Traveler; Motor Patrol, multi-engine); Pipe Mobile Machine; Rubber-tired earth moving equipment (multiple engine, Euclid, Caterpiller and similar type, over 50 cu. yards struck); Rubber-tired Self-loading Scraper (paddle wheel, auger type self-loading, 2 or more units); Rubber-tired Scraper, pushing one another without Push Cat. Push-pull (50¢ per hour additional to base rate); Tandem Equipment (2 units only); Tandem Tractor (Quad 9 or similar type); Tunnel Mole Boring Machine

Group 9: Canal Liner; Canal Trimmer; Helicopter Pilot; Highline Cableway; Remote Controlled Earth Moving Equipment ($1.00 per hour additional to base rate); Wheel Excavator (over 750 cu. yard)

TRUCK DRIVERS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$12.91	$1.25	$1.33	$1.35	.15
Group 2	12.99	1.25	1.33	1.35	.15
Group 3	13.05	1.25	1.33	1.35	.15
Group 4	13.14	1.25	1.33	1.35	.15
Group 5	13.17	1.25	1.33	1.35	.15
Group 6	13.19	1.25	1.33	1.35	.15
Group 7	13.23	1.25	1.33	1.35	.15
Group 8	13.24	1.25	1.33	1.35	.15
Group 9	13.29	1.25	1.33	1.35	.15
Group 10	13.32	1.25	1.33	1.35	.15
Group 11	13.37	1.25	1.33	1.35	.15
Group 12	13.39	1.25	1.33	1.35	.15
Group 13	13.44	1.25	1.33	1.35	.15
Group 14	13.69	1.25	1.33	1.35	.15
Group 15	13.94	1.25	1.33	1.35	.15
Group 16	14.04	1.25	1.33	1.35	.15
Group 17	14.14	1.25	1.33	1.35	.15
Group 18	14.44	1.25	1.33	1.35	.15
Group 19	14.94	1.25	1.33	1.35	.15

TRUCK DRIVERS

Group 1: Warehouseman and Teamster

Group 2: Driver of vehicle or combinations of vehicles of 2 axles (including all vehicles less than six tons); Traffic Control Pilot Car, excluding moving heavy equipment permit load

Group 3: Truck mounted Power Broom

Group 4: Drivers of vehicles or combination of vehicles of 3 axles

Group 5: Bootman; Cement Distributor; Fuel Truck; Road Oil Spreader Truck; Water Truck, 2 axle

Group 6: Dump, of less than 16 yards

Group 7: Transit-mix, under 3 yards; Dumpcrete, less than 6½ yards

Group 8: Truck Repairman Helper

Group 9: Water Truck, 3 or more axles

Group 10: PB and similar type truck when performing within the Teamsters' jurisdiction; Pipeline and Utility working Truck including Winch, but limited to truck applicable to Pipeline and Untility work, where a composite crew is used; Slurry Driver; Truck Greaser and Tireman (50¢ per hour additional for Tireman)

Group 11: Transit-mix, 3 yards or more; Dumpcrete, 6½ yards and over

Group 12: Driver of vehicle or combination of vehicles of 4 or more axles

Group 13: Dump, 16 yards but less than 25 yards

Group 14: A-Frame of Swedish Crane, or similar type of equipment driver; Fork Lift Driver; Ross Carrier, highway

Group 15: All Off-highway Equipment within Teamsters' jurisdiction (off highway combination of vehicles or equipment with multiple power sources, $1.00 per hour additional); Dump, 25 yards or more; Truck Repairman

Group 16: Truck Repairman Welder

Group 17: Low Bed Driver, 9 axle or over

Group 18: Water Pull, single engine with attachments

Group 19: Water Pull, twin engine with attachments

SUPERSEDEAS DECISION

STATE: INDIANA COUNTIES: *SEE BELOW
DECISION NUMBER: IN80-2085 DATE: Date of Publication
Supersedes Decision No. IN77-2010, dated February 11, 1977 in 42 FR 8912. IN77-2007, dated February 11, 1977, in 42 FR 8940, & IN77-2098, dated May 27, 1977, in 42 FR 27553.
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and garden type apartments up to and including 4 stories.

*Allen, DeKalb & Steuben	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
AIR CONDITIONING MECHANICS	$7.50				
BRICKLAYERS	9.77	.57	.50	1.01	
CARPENTERS	6.56				
CEMENT MASONS	6.56				
DRYWALL HANGERS	9.00				
DRYWALL FINISHERS	6.54				
ELECTRICIANS	6.99				
HEATING MECHANICS	7.50				
INSULATORS	8.13				
LABORERS	5.31				
PLUMBERS	9.00				
ROOFERS	5.99				
SHEET METAL WORKERS	6.88				
TRUCK DRIVERS	6.65				
POWER EQUIPMENT OPERATORS:					
Backhoe	8.30				
Bulldozer	8.75				
Crane	10.20				
Front End Loader	9.92				

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: Iowa COUNTY: Pottawattamie
DECISION NO.: IA80-4049 DATE: Date of Publication
Supersedes Decision No. IA78-4108, dated Nov. 24, 1978 in 43 FR 55173
DESCRIPTION OF WORK: Building Construction in entire County (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$15.52	.70	.71		.03
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	12.36	.82	.60		.05
CARPENTERS:					
Carpenters	10.98	.75	.60	1.00	.08
Piledrivermen	11.105	.75	.60	1.00	.08
Millwrights	11.23	.75	.60	1.00	.08
CEMENT MASONS	11.81	.82	.90		
DRYWALL TAPERS & FINISHERS	10.34	.55			½%
ELECTRICIANS	14.71	.98	3%+.95		
ELEVATOR CONSTRUCTORS	12.76	1.045	.82	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.045	.82	a	.035
GLAZIERS	13.79	.75	.50		.01
IRONWORKERS	10.98	.82	1.00	1.00	.05
LABORERS:					
Common Laborers	9.11	.65	.65		.05
Mason Tenders; mortar mixers	9.285	.65	.65		.05
Pipelayers	9.45	.65	.65		.05
Plasterers' tenders	9.495	.65	.65		.05
LINE CONSTRUCTION:					
Cable splicers; Lineman; welders; technicians; all rigs setting assembled "H" fixtures & steel transmission structures	11.96	.45	7%	b	½%
Groundman; truck driver (without winch); experienced (not less than 6 months)	7.77	.45	7%	b	½%
Groundman; truck driver (with winch)	7.89	.45	7%	b	½%
Blaster; Special equipment operator (hole digging machines, all tractors, transmission lines equipment other than assembled "H" fixtures)	9.57	.45	7%	b	½%
Groundman - 1st 6 months	6.58	.45	7%	b	½%

DECISION NO. IA80-4049

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:					
Brush; Paperhangers	$10.10		.25		
Highwork; spray; stage; structural steel	10.65		.25		
PLASTERERS	11.53	.57	.50		
PLUMBERS	13.04	.95	1.05		.10
ROOFERS:					
Slate; Tile	10.95	.70	.20		.01
Composition	10.65	.70	.20		.01
SHEET METAL WORKERS	12.89	.75			.07
SPRINKLER FITTERS	14.10	.85	1.20		.08
TERRAZZO WORKERS; TILE SETTERS; MARBLE SETTERS	12.22	.30	.40		

FOOTNOTES:

a - Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. Seven paid holidays A thru G.

b - Seven paid holidays A thru G

PAID HOLIDAYS
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving

DECISION NO. IA80-4049 (Cont'd): Page 3

POWER EQUIPMENT OPERATORS:	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$12.32	.90	.90		.10
Group 2	12.085	.90	.90		.10
Group 3	10.78	.90	.90		.10
Group 4	10.015	.90	.90		.10

POWER EQUIPMENT OPERATORS CLASSIFICATION DEFINITIONS

GROUP 1 - Cranes, including those being used as backhoe, dragline, clamshell, etc.; tower cranes; truck cranes and cherry pickers 12½ ton & over rated capacity; derricks; piledrivers and extractors; caisson rigs; side boom and winch truck used for erection of structural steel and moving and setting of heavy machinery; 3 drum hoist; welders; mechanics; locomotive; dredge (levermen)

GROUP 2 - 1 and 2 drum hoists; air and electric tuggers (on power plants or setting and grating); economobiles; plant mixers; farm type tractors (with loaders, backhoes, attachments, etc.); scrapers (tournapull, etc.); endloaders; dredge (engineer); side boom and winch truck other than Group No. 1; motor patrol; bulldozers; push cat; truck cranes and cherry pickers (under 12½ tons); concrete mixers (1 yard and over); ditching machine (8" and over); fork lifts (on steel erection and machinery moving or hoisting above one complete story); concrete pump; dewatering pumps; temporary hoist cage operated; second man on locomotive; vibrating concrete spreader (Gomaco, C-450 or equal)

GROUP 3 - Tractors (under 35 HP) with or without attachments; endloaders (under 35 HP) with or without attachments; air compressors (one or a combination of 250 cfm or more); pumps 3" or over; welding machine 600 amps or combination thereof; conveyors; firemen (boiler); generator (75 KW & over); fork lifts (other than above Group No. 2); gunnite machine; self-propelled rollers; stump chippers; self-propelled tampers; air and electric tuggers (other than above); ditching machine under 8"

GROUP 4 - Oilers; mechanical heaters; truck crane drivers; permanent elevators

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: Mississippi COUNTY: See Below*
DECISION NUMBER: MS80-1104 DATE: Date of Publication
Supersedes Decisions Nos.: MS76-1074 dated July 16, 1976 in 41 FR 29650; MS76-1099 dated September 17, 1976 in 41 FR 40368.
DESCRIPTION OF WORK: Residential Construction consisting of single family homes and apartments up to and including 4 stories.

*Counties: Hinds, Copiah, Rankin, Simpson, Madison Yazoo, Sharkey, Issaquena, Warren, and Claiborne

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Air Conditioning Mechanics	$5.00				
Bricklayers	7.90				
Carpenters	4.92				
Carpet Layers, Soft Floor Layers	5.75				
Drywall Finishers	7.50				
Drywall Hangers	5.43				
Cement Masons	6.10				
Electricians	7.25				
Insulators	4.00				
Ironworkers, reinforcing	4.59				
Laborers:					
Laborers	3.30				
Mason Tender	3.75				
Mortar Mixer	4.13				
Painters:					
Brush	6.01				
Roller	7.50				
Plumbers & Pipefitters	7.25				
Roofers	5:00				
Tile Setters	6.38				
POWER EQUIPMENT OPERATORS:					
Backhoe	5.43				
Bulldozer	4.69				
Loader	6.12				
Pump Operator	5.26				
Roller	4.00				
Trenching Machine	5.20				

SUPERSEDEAS DECISION

STATE: Missouri & Kansas

COUNTIES: Cass, Clay, Jackson Platte & Ray Missouri; Johnson & Wyandotte, Kansas

DECISION No. MO80-4071

DATE: Date of Publication

Supersedes Decision No. MO79-4099 dated December 14, 1979 in 44 FR 72817

DESCRIPTION OF WORK: Residential construction consisting of single family homes and garden type apartments up to and including 4 stories.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	13.27	.60	1.55		.05
BOILERMAKERS	13.87	1.375	1.10		.05
BRICKLAYERS & STONEMASONS	12.59	.95	.35	1.50	
CARPENTERS, MILLWRIGHTS, PILEDRIVERMEN	12.30	.60	.50		.07
CEMENT MASONS	11.675	.65	.50		
ELECTRICIANS:					
Up to and including 3 stories:					
ZONE 1 - Johnson County, Kansas (that portion of Johnson County west of Aubry, Oxford & Shawnee Twps.)	9.30	.45	3%+.30		.05
ZONE 2 - Cass, Clay, Jackson, Platte & Ray Counties, Missouri; & Wyandotte County, Kansas; & remainder of Johnson County, Kansas	9.97	.69	3%+.70	7%	.12
ELECTRICIANS (4 stories):					
ZONE 1 - Western half of Clay & Jackson Counties, Missouri not including Blue Springs; Northern half of Platte County; Northwestern portion of Cass County, Missouri, not including Pleasant Hill	13.38	.69	3%+.70	.95	.12
ZONE 4 - Remainder of Cass Clay, Jackson & Platte Counties, Missouri: Electricians (contracts exceeding 2000 man hours)	13.38	.69	3%+.70	.95	.12

DECISION NO. MO80-4071

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS (4 stories): (Cont'd)					
ZONE 2 - Electricians (contracts not exceeding 2000 man hours	12.38	.69	3%+.70	.95	.12
ZONE 3 - Ray County, Missouri; Electricians (contracts exceeding 2000 man hours	13.38	.69	3%+.70	.95	.12
Electricians (contracts not exceeding 2000 man hours	11.78	.69	3%+.70		.12
ELEVATOR CONSTRUCTORS	14.135	1.195	.95	8%+a	.035
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	1.195	.95	8%+a	.035

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.

GLAZIERS	11.18	.61	1.04	19.7%	.04
IRONWORKERS	12.35	.80	1.50	1.00	.05
LABORERS:					
Building Construction:					
ZONE 1 - Cass, Clay, Jackson & Platte Counties, Missouri; Johnson & Wyandotte Counties, Kansas					
GROUP I	11.25	.45	.40		.10
GROUP II	11.40	.45	.40		.10
GROUP III	11.55	.45	.40		.10
ZONE 2 - Ray County, Missouri					
GROUP I	10.55	.45	.40		.10
GROUP II	10.70	.45	.40		.10
GROUP III	10.85	.45	.40		.10

DECISION NO. MO80-4071

CLASSIFICATION DEFINITIONS

LABORERS
GROUP I - General labor; wiremesh handlers or setters; carpenter tender; track men; flagmen; signalmen; salamander tenders; window cleaners; floor cleaners; landscape man; sod layers; wrecker (for alterations or entire projects).
GROUP II - Plumber laborers (conduit pipe, sewer work, drain tile and duck lines, digging and backfilling), power tool operators; pier hole diggers (over 10 ft.); vibrator, jackhammer, and chipping hammer operators; chain saw operators; concrete saw operators; brush feeders on pulverizers; reinforcing steel handlers; air tamp operators; ditch winch operators; swinging scaffolds cutting torch or burner men; georgie buggies (self-propelled) fork lift; hosemen; insulation man.
GROUP III - Fork lift (masonry); brick tender; plaster tender; stonemasons tender (includes all hod carriers classifications previously shown as mortar men and scaffolding) Barco, Jackson or similar tamp operators; asphalt rakers; power men; mastic hot kettle men; sandblasting and gunnite nozzlemen; wagon and churn drill operators.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LABORERS:					
Site Preparation & Grading ZONE 3 - Johnson & Wyandotte Counties, Kansas; Site preparation, Incidental paving & utilities Clay, Jackson, Platte & Ray Counties, Missouri					
GROUP I	10.50	.60	.60	1.00	.10
GROUP II	10.65	.60	.60	1.00	.10
GROUP III	10.80	.60	.60	1.00	.10
GROUP IV	11.00	.60	.60	1.00	.10
GROUP V	11.30	.60	.60	1.00	.10

DECISION NO. MO80-4071

CLASSIFICATION DEFINITIONS

LABORERS:
GROUP I - Carpenter tenders; salamander tenders; dump man and ticket takers on stock piles; flagman; loading trucks under bins, hoppers and conveyors track men and all other general laborers.
GROUP II - Air tool operators; cement handler (bulk or sack); chain or concrete saw; deck hands; dump man on earth fill; grade checker on cuts and fills; georgie buggies man; material batch hopper man; scale man; material mixer man (except on manholes, coffer dams, abutments and pier hole men working below ground); riprap pavers rock, block or brick; signalman; scaffolds over 10 ft. not self-supported from ground up; skipman on concrete paving; vibrator man; wire mesh setters on concrete paving; all work in connection with sewer, water, gasoline, oil, drainage pipe, conduit pipe, tile and duct lines and all other pipe lines; power tool operator; all work in connection with hydraulic or general dredging operations; form setter helpers; puddlers (paving only).
GROUP III - Crusher feeder; men handling creosote ties or creosote materials; men working with and handling epoxy material or materials (where special protection is required); head pipe layer on sewer work; topper of standing trees; batter board man on pipe and ditch work; feeder man on wood pulverizers; board and willow mat weavers and cable tiers on river work; all laborers working underground tunnels where compressed air is not used.
GROUP IV - Spreader or screed man on asphalt machine; asphalt raker; laser beam man; barco tamper; jackson or any similar tamp wagon driller; churn drills; air track drills and all other similar drills; form setters; cutting torch man; liners and stringline man on concrete paving, curbs, gutters and etc.; hot mastic kettleman; hot tar application; hand blade operator; manhole builders tenders and mortar men on brick or block manholes; sandblasting and gunnite nozzlemen; rubbing concrete; air tool operator in tunnels.
GROUP V - Manhole builder (brick or block); dynamite and powder man.

DECISION NO. MO80-4071

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LATHERS	12.55	.40			
MARBLE & TILE SETTERS	12.65	5%	4.25%		
MARBLE & TILE SETTERS FINISHERS	10.85				
PAINTERS:					
Brush & roller	11.69	.55	.70		.08
Spray	12.69	.55	.70		.08
PLASTERERS	14.45				
PIPEFITTERS	14.54	.72	1.60		.10
PLUMBERS	14.52	1.12	1.20		.12
POWER EQUIPMENT OPERATORS:					
Building Construction (Zone 1)					
GROUP I	12.20	.75	1.00	.75	.10
GROUP II	11.85	.75	1.00	.75	.10
GROUP III	9.45	.75	1.00	.75	.10
GROUP IV	9.95	.75	1.00	.75	.10
GROUP V	10.20	.75	1.00	.75	.10
GROUP VI	12.45	.75	1.00	.75	.10
GROUP VII	12.70	.75	1.00	.75	.10
GROUP VIII	12.10	.75	1.00	.75	.10
GROUP IX	13.20	.75	1.00	.75	.10
GROUP X	12.70	.75	1.00	.75	.10
GROUP XI					
(a)	11.95	.75	1.00	.75	.10
(b)	11.70	.75	1.00	.75	.10
(c)	9.70	.75	1.00	.75	.10

DECISION NO. MO80-4071

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS-ZONE 1

GROUP I - Asphalt paver and spreader; asphalt plant mixer operator; asphalt plant operator; back fillers; backhoe, all types; barber-greene loader (similar type); blade-power, all types; boats-power; boilers (2); boring machines (all types); cableways; cherry pickers (all types); chip spreader; concrete ready-mixed plant, portable (job site); concrete mixer paver; crane-overhead; crusher, rock; derricks and derricks cars (power operated); ditching machines; dozers; dredges - any type power; grade-all-similar type; hoist, endless chain-power operated with power travel; loaders-all types; mechanic and welder; mucking machine; orange peels; pumps-material all types; push cats; scoops all types; self-propelled rotary drill; shovel, power side boom; skimmer scoop; testhole machine; throttle man.

GROUP II - Boilers (1); brooms-power operated (all types); chip spreader (front man); clef plane operator; compressors (1) 150' or over; concrete saws, self-propelled); crab-power operated; curb finishing machine; firemen on rigs; flex plane; floating machine; form grader; greaser hoist; hoist, endless chain-power operated; hopper-power operated; hydra hammer (all types); ladavator-similar type; rollers-all types; siphons, jets, and jennies, sub-grader; tractors over 50 h.p.; compressors (2) 105 ft. or over not more than 20' apart: compressors-tandem any sizes); compressors single, truck mounted; elevator; finishing machine.

GROUP III - Oiler

GROUP IV - Fork lift-masonry; oiler drivers-all types

GROUP V - Tractors (except when hauling material) less than 50 h.p.; "A" frame trucks; fork lift-all types & sizes (except masonry); mixers (with side loaders); pumps (with well points) dewatering systems, test or pressure pumps.

GROUP VI - Clamshells, 80 ft. of boom or over (including jib); crane or rigs 80 ft. of boom or over (including jib); dragline, 80 ft. of boom or over (including jib); piledrivers, 80 ft. of boom or over (including jib)

GROUP VII - Crane or rigs, over 200 ft. of boom

GROUP VIII - Hoists each additional drum over 1 drum

GROUP IX - Master mechanic

GROUP X - Crane-tower or climbing

GROUP XI - Ready mixed concrete plants:
(a) - Crane operator
(b) - Loader operator & plant man
(c) - Conveyor operator

DECISION NO. MO80-4071

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS: Site preparation & grading Johnson & Wyandotte Counties, Kansas; Site preparation, Incidental paving & utilities Clay, Jackson, Platte & Ray Counties, Missouri (Zone 2)					
GROUP I	12.45	.85	1.00	1.05	.15
GROUP II	12.20	.85	1.00	1.05	.15
GROUP III	11.50	.85	1.00	1.05	.15
GROUP IV					
(a)	9.03	.85	1.00	1.05	.15
(b)	10.50	.85	1.00	1.05	.15
GROUP V	12.70	.85	1.00	1.05	.15
GROUP VI	12.45	.85	1.00	1.05	.15

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS:

GROUP I - 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; drill-cat 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 operator; 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 operater; slip-form paver (CMI, REX, or equal); throttle man; truck crane; welding machine maintenance operator-2.

DECISION NO. MO80-4071

CLASSIFICATION DEFINITIONS

POWER EQUIPMENT OPERATORS-Zone 2 Cont'd

GROUP II - A-frame truck; asphalt hot mix silo; asphalt plant fireman, drum or boiler; asphalt plant mixer operator; asphalt plant man; asphalt roller operator; back filler operator; chip spreader; concrete batch plant, dry-power operated; concrete mixer operator, skip loader; concrete pump operator; crusher operator elevating grader; greaser; hoisting engine-1 drum; latourneau rooter; multiple compactor; pavement breaker, self propelled, of the hydra-hammer or similar type; power shield; pug mill operator; stump cutting machine; towboat operator tractor operator over 50 h.p..

GROUP III - Boilers-1; chip spreader (front man); churn drill operator; compressor maintenance operator-1; concrete saws, self-propelled; conveyor operator; distributor operator; finishing machine operator; fireman, rig; float operator; form grader operator; pump; pump maintenance operator, other than dredge; roller operator, other than high type asphalt; screening and washing plant operator; self-propelled street broom or sweeper; siphons and jets; sub-grading machine operator; tank car heater operator-combination boiler and booster; tractor, 50 h.p. or less, without attachments; vibrating machine operator, not hand; welding machine maintenance operator-1.

GROUP IV
(a) Oiler
(b) Oiler drivers, all types

GROUP V - Clamshells, 3 yds. capacity or over; crane or rigs, 80 ft. of boom or over (including jib); draglines, 3 yds. capacity or over; piledrivers, 80 ft. of boom or over (including jib); shovels & backhoes, 3 yds. capacity or over

GROUP VI - Hoists (each additional drum over 1 drum)

DECISION NO. MO80-4071

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ROOFERS:					
Roofers	11.60	.75	.75		.14
SHEET METAL WORKERS	12.73	.75	1.20		.10
SOFT FLOOR LAYERS	10.53	.60	.85	1.00	1%
SPRINKLER FITTERS	14.83	.85	1.20		.06
TERRAZZO WORKERS	12.31	5%	4.25%		
TRUCK DRIVERS:					
Building Construction:					
Zone 1					
GROUP I	10.925	.75	1.00		
GROUP II	10.975	.75	1.00		
GROUP III	11.05	.75	1.00		
GROUP IV	11.175	.75	1.00		
GROUP V	11.075	.75	1.00		
GROUP VI	11.275	.75	1.00		
GROUP VII	11.125	.75	1.00		
GROUP VIII	11.025	.75	1.00		

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS - Zone 1
GROUP I - Warehousemen and stock man.
GROUP II - Flat beds; pick-ups; dump trucks, under 10 yds..
GROUP III - Dump trucks, 10 yds. and over; steel trucks; semi truck drivers.
GROUP IV - 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 (dumpster, euclid, etc.); double bottom units (20 tons capacity and over).
GROUP V - Distributor truck drivers and operators; oilers, greasers and mechanics' tenders.
GROUP VI - Mechanics.
GROUP VII Transit mix, 5 yds. and over.
GROUP VIII Transit mix, under 5 yds..

DECISION NO. MO80-4071

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
TRUCK DRIVERS:					
Site preparation & grading Johnson & Wyandotte Counties, Kansas; Site preparation, Incidental paving & Utilities Clay, Jackson, Platte & Ray Counties, Missouri					
Zone 2					
GROUP I	10.91	1.00	1.25	.75	
GROUP II	11.11	1.00	1.25	.75	
GROUP III	11.42	1.00	1.25	.75	
GROUP IV	11.57	1.00	1.25	.75	
GROUP V	10.69	1.00	1.25	.75	

CLASSIFICATION DEFINITIONS

TRUCK DRIVERS - Zone 2
GROUP I - One team; station wagons; pickup trucks; material trucks, single axle; tank wagon drivers, single axle.
GROUP II - Material trucks, tandem; two teams; semi-trailers; winch trucks-fork trucks; distributor drivers and operators; agitator and transit mix; tank wagon drivers; single axle; tank wagon drivers tandem or semi-trailers; insley wagons; dump trucks, excavating, 5 cu. yds. and over; dumpsters; half-tracks; speedace; euclids and other similar excavating equipment.
GROUP III - A-frame, lowboy, and boom truck driver.
GROUP IV - Mechanics and welders.
GROUP V - Mechanics tender, soilers and greasers.

WELDERS - receive rate prescribed for craft performing operation to which welding is incidental.

"Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5 (a)(1)(ii)."

SUPERSEDEAS DECISION

STATE: New York COUNTIES: Bronx, Kings, Queens, New York, & Richmond

DECISION NO. NY80-3057 DATE: Date of Publication

Supersedes Decision No. NY79-3011 dated May 18, 1979 in 44 FR 29249

DESCRIPTION OF WORK: Building (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Construction Projects

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Asbestos Workers	12.38	1.02	1.82		
Boilermakers	16.34	5%	5%		
Bricklayers	12.00	1.48	3.98		
Carpenters, Soft Floor Layers, Drywall Installers	13.04	1.85	1.78	.95	.05
Millwrights	13.04	1.85	1.78	1.11	.04
Dockbuilder & Piledrivermen	12.94	1.85	1.78		.05
Cement Masons	12.10	2.04	1.67		.09
Diver	15.38	1.875	1.78	1.03	.05
Diver Tender	11.99	1.875	1.78	1.03	.05
Electricians	14.65	1½%+a	7½%+b	8½%+c	1%
Elevator Constructors	11.32	.745	.35+d	e+f	.02
Elevator Constructors Helpers	8.44	.745	.35+d	e+f	.02
Elevator Constructors Helpers (Probationary)	5.66				
Glaziers	13.75	.66	1.91	.67	.01
Ironworkers					
Ornamental Finisher	11.90	1.51	3.30	1.00	.14
Reinforcing	12.54	3.9225	2.1375	1.125	
Structural	12.50	1.86	3.85	1.60+g	.11
Laborers:					
Asphalt Laborers	11.45	1.30	1.55	h	
Asphalt Rakers	11.71	1.30	1.55	h	
Asphalt Tampers	11.47	1.30	1.55	h	
Cement Concrete & Excavation	10.65	1.80	1.85		
Mason Tenders	10.73	.887	1.595		
Laborers (Heavy)					
Blasters	14.75	1.07	1.79	2.00	
Concrete Breakers, Chippers, Jackhammers, Pneumatic Tools, Spades	13.03	1.07	1.79	2.00	
Drill Runner, Air Trac, Wagon Drills	13.30	1.07	1.79	2.00	
Powder Carriers	11.98	1.07	1.79	2.00	
Magazine Keepers	7.47	1.07	1.79	2.00	
Nippers	11.41	1.07	1.79	2.00	
Laborers (Highway)					
Form Setters	12.71	1.30	1.55	h	
Pavers	13.68	1.30	1.55	h	
Rammermen	13.24	1.30	1.55	h	
Puddlers, Concrete Rakers	11.30	1.30	1.55	h	
Laborers (Demolition)					
Barmen	11.60	8%	10%		
Barmen Helpers	11.30	8%	10%		

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vocation	Education and/or Appr. Tr.
Lathers, Metalic	10.79	1.325	1.985	.75+i	.03
Marble Setters:					
Cutters & Setters	11.90	1.21	1.71	j	
Carvers	12.05	1.21	1.71	j	
Poloshers	11.58	1.21	1.71	j	
Crane Operator	9.90	1.21	1.71	j	
Painters					
Brush & Roller	12.00	1.14	1.20	3%	
Spray & Scaffold	14.57	1.14	1.20	3%	
Fire Escape	13.71	1.14	1.20	3%	
Plasterers:					
Kings	12.10	1.45		1.45	
Queens	10.10	1.75		1.35	.01
Bronx, NY, Richmond	10.15	1.10	1.54	.90	.01
Plumbers:					
NY, Bronx	12.10	2.37	2.65	.72	
Kings, Queens	12.75	2.10	2.14	1.19	.22
Richmond	12.79	1.30+k	2.01	1.05	.30
Roofers:					
Composition, Damp Waterproofers	11.05	3.14	2.85		.15
Sheet Metal Workers	14.365	1.925	1.6650		.16
Sprinkler Fitter & Steamfitters	13.88	2.75	1.12	1.00	.07
Stonemasons	14.00	.75	1.00		
Stone Derrickmen & Rigger	14.62				
Terrazzo Workers	11.88	1.32	1.50		
Terrazzo Workers Helpers	9.84	1.21	1.50		
Tile Setters	11.725	1.15	1.10		
Tile Setters Helpers	10.21	1.055	.77		
Pointers, Caulkers & Cleaners	11.82	1.25	2.75		.07
Water Cleaners	12.07	1.25	2.75		.07
Steam Cleaners	12.32	1.25	2.75		.07
Sandblasters	12.92	1.25	2.75		.07
Truck Drivers, Building:					
Ready Mix Concrete, Sand, Gravel and Asphalt	9.44	.9675	1.8525	1+m	
Euclids and Turnapulls	8.825	.9675	1.8525	1+m	
4-Wheel, Hi-Lo Lift Operators	7.525	.9675	1.8525	1+m	
Euclids and Turnapulls (Heavy)	8.825	.9675	1.8525	1+m	
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. Employer contributes $7.00 per Day.

b. Employer contributes $4.00 per day.

c. Paid Holidays: A through F, Washington's Birthday, Columbus Day, and Election Day.

d. Employer contributes $8.00 per day to an Annuity Fund.

e. Employees with 6 months or more but less than 5 years service receive 2 weeks vacation, 5 or more years of service receive 3 weeks vacation.

f. Holidays A through F, Columbus Day, Election Day, Lincoln's Birthday, Washington's Birthday, and Armistice Day.

g. Paid Holidays: A and F provided the employee works a full half day preceding or following the holiday.

h. Holidays: B, C, D, E, Election Day, Columbus Day, and Veterans' Day providing the employee works at least 1 day in the week in which the holiday occurs.

i. Work on Christmas Eve and New Year's Eve will terminate at Noon, but will receive a full days pay.

j. One half days pay for Labor Day.

k. Employer contributes $6.01 per day to Annuity Fund.

l. Holidays: A through F, Lincoln's Birthday, Washington's Birthday, Election Day, Veteran's Day, provided the employee works 2 days in the calendar week in which the holiday falls and each remaining work day during such calendar week.

m. For each 15 days worked within the contract year an employee will receive one day's vacation with pay with a maximum vacation of 3 weeks per year.

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))

BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Double Drum Hoist	13.82	1.05	3.25	.75+a	.10
Stone Derrick, Cranes, Cherry Pickers	13.56	1.05	3.25	.75+a	.10
Hoists, Fork Lifts, House Cars, Plasterer (platform machine), Plasterer Bucket, Plasterer Pump, Compressors-Welding Machines (cutting concrete-tank work), Paint Spraying, Sandblasting, and All Equipment Used For Hoisting Material	13.06	1.05	3.25	.75+a	.10
Cranes: All types-crawler or truck					
100' to 149' Boom	14.03	1.05	3.25	.75+a	.10
150' to 249' Boom	14.28	1.05	3.25	.75+a	.10
250' to 349' Boom	14.53	1.05	3.25	.75+a	.10
350' to 450' Boom	15.03	1.05	3.25	.75+a	.10
Steel Erection:					
Three Drum Derricks	14.76	1.05	3.25	.75+a	.10
Cranes, 2 Drum Derricks, Cherry Pickers	14.12	1.05	3.25	.75+a	.10
Compressors, Welding Machines	12.57	1.05	3.25	.75+a	.10
Tower Cranes	13.53	1.05	3.25	.75+a	.10

FOOTNOTE:

a. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Good Friday (Iron League Only), Decoration Day, Independence Day, Labor Day, Columbus Day, Election Day, Armistice Day, Thanksgiving Day and Christmas Day providing the employee is employed during the payroll week in which the holiday occurs.

HEAVY AND HIGHWAY CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
POWER EQUIPMENT OPERATORS:					
Class 1	13.95	1.05	3.25	.75+a	.10
Class 2	13.85	1.05	3.25	.75+a	.10
Class 3	13.53	1.05	3.25	.75+a	.10
Class 4	13.26	1.05	3.25	.75+a	.10
Class 5	12.97	1.05	3.25	.75+a	.10
Class 6	12.96	1.05	3.25	.75+a	.10
Class 7	12.60	1.05	3.25	.75+a	.10
Class 8	12.32	1.05	3.25	.75+a	.10
Class 9	11.73	1.05	3.25	.75+a	.10
Class 10					
a	14.03	1.05	3.25	.75+a	.10
b	14.28	1.05	3.25	.75+a	.10
c	14.53	1.05	3.25	.75+a	.10
d	15.03	1.05	3.25	.75+a	.10
Class 11	13.31	1.40	.75		.05
Class 12	13.00	1.40	.75		.05
Class 13	12.78	1.40	.75		.05
Class 14	12.27	1.40	.75		.05

FOOTNOTE:

a. Paid Holidays: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veteran's Day, Thanksgiving Day, Christmas Day, providing the employee works one day in the payroll week in which the holiday occurs.

POWER EQUIPMENT OPERATORS
HEAVY AND HIGHWAY CONSTRUCTION

Class 1: Backhoes, Power shovels.

Class 2: Mine hoist, Cranes, etc, used as mine hoists.

Class 3: Gradalls, Ketstones, Cranes (with digging buckets including sand dock cranes, bridge cranes), Trenching machines.

Class 4: Rigs (under direction of a dockbuilder foreman), Derrick boats, Tunnel shovels, Piledrivers.

Class 5: Raise Bore Drill.

Class 6: Mucking machines, Back filling machines, Cranes, Paver dual drums.

POWER EQUIPMENT OPERATORS (CONT'D)
HEAVY AND HIGHWAY CONSTRUCTION

Class 7: Elevator (manually operated), Concrete pavers, Cableways, Land Derricks, Mixers, Power Houses (which contain low pressure units).

Class 8: Power Houses (other than above), Compressors (3 or more in battery), Stone Crusher, Double Drum Hoist, Concrete pumps, Well point pumps, Tugger machines (caissons), Drilled in caissons, Soil solidification equipment, Welding machines (used for steel erection), Concrete plant, Conveyor attachment, Well Drilling machine.

Class 9: River cofferdam pumps, Welding machines, Boilers, High pressure, Compressors (portable, single or two in a battery), not over 100' apart, Concrete breaking machines, Hoists, Single drum, Load Masters, Locomotives and Dinkies over 10 tons, Mixers (concrete with loading attachment), Push button machines.

Class 10: Long Boom Land Cranes:
a---100' to 149'
b---150' to 249'
c---250' to 450'
d---350' to 450'

Class 11: Junior engineers when operating loaders rubber-tired and/or tractor type with a manufacturer's minimum rated bucket capacity of 6 cubic yards and over.

Class 12: Junior engineers when operating the following equipment and attachments: Scrapers, Turnapulls, Tugger hoists used exclusively for handling excavated material, Tractors (rubber tired and/or track type), Hysters and roustabout cranes, Back scratchers, Cherrypickers under 20 tons, Austin Western and machines of a similar nature, Bulldozers, Loaders rubber tired and/or tractor type with a manufacturer's minimum rated bucket capacity or less than 6 cubic yards, Conveyors, Motor Graders, Curb and Gutter Pavers and machines of a similar nature.

Class 13: Junior engineers when operating the flowing pieces of minor equipment: Tractors, Locomotives 10 tons and under, Post hole diggers, Motor Generators, Road Finishing machines, Mixers 16S and under with or without loading devices, Rollers 5 tons and under, Tugger hoists, Dual purpose trucks, Fork lifts, Dempster Dumpsters, Firemen tending to: Steam operated shovels, power boilers, steam operated piledrivers, steam operated derrick boats, steam operated water rigs.

Class 14: Apprentice engineers and oilers (all gasoline, electric, diesel, or air operated), Shovels, Cranes, Draglines, Backhoes, Keystones, Gradalls, Pavers, Trenching machines, Concrete pumps, Gunite machines, Compressors (3 or more in a battery), Power Houses, there duties shall be to assist the engineer in oiling, greasing and repairing of all machines, giving signals when necessary, chaining buckets and scale boxes, driving truck cranes, driving and operating fuel and grease truck.

SUPERSEDEAS DECISION

STATE: Utah COUNTIES: Statewide
DECISION NUMBER: UT80-5128 DATE: Date of Publication
Supersedes Decision No. UT79-5135 dated November 2, 1979, in 44 FR 63459
DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories), Heavy and Highway Projects.

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.11	.77	$1.37		
BOILERMAKERS	13.31	1.275	1.25	1.00	.04
BRICKLAYERS	13.50	.70	.62		.10
CARPENTERS:*					
Building Construction:					
Carpenters	11.90	.65	.65	.25	.03
Saw Operators; Carpenters handling creosote materials	12.15	.65	.65	.25	.03
Millwrights	12.00	.65	.65	.25	.03
Piledrivermen	13.83	.55	.65		.03
Heavy and Highway Construction:*					
Zone 1:					
Carpenters	11.90	.65	.65	.25	.03
Saw Operators; Carpenters handling creosote materials	12.15	.65	.65	.25	.03
Millwrights	12.00	.65	.65	.25	.03
Piledriveremen	13.83	.55	.65		.03
Zone 2:					
Carpenters	12.90	.65	.65	.25	.03
Saw Operators; Carpenters handling creosote materials	13.15	.65	.65	.25	.03
Millwrights	12.00	.65	.65	.25	.03
Piledrivermen	13.83	.55	.65		.03
Zone 3:					
Carpenters	13.90	.65	.65	.25	.03
Saw Operators; Carpenters handling creosote materials	14.15	.65	.65	.25	.03
Millwrights	12.00	.65	.65	.25	.03
Piledrivermen	13.83	.55	.65		.03
CEMENT MASONS:					
Building Construction:					
Cement Masons	11.54	.55	.65	.25	.10
Machine Operator; Mastic Floor Materials	11.79	.55	.65	.25	.10

*See ZONE DESCRIPTIONS - Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
CEMENT MASONS:* (Cont'd)					
Heavy and Highway Construction:					
Zone 1:					
Cement Masons	$11.54	.65	.65	.25	.10
Machine Operator; Mastic Floor Materials	11.79	.65	.65	.25	.10
Zone 2:					
Cement Masons	12.54	.65	.65	.25	.10
Machine Operator; Mastic Floor Materials	12.79	.65	.65	.25	.10
Zone 3:					
Cement Masons	13.54	.65	.65	.25	.10
Machine Operator; Mastic Floor Materials	13.79	.65	.65	.25	.10
DRYWALL INSTALLERS:					
Taping, finishing and texturing (hand or machine)	11.54	.51	.40		.03
ELECTRICIANS:*					
Area 1:					
Zone 1:					
Electricians; Technicians	13.35	.75	3%+.75		8/10%
Cable Splicers	13.60	.75	3%+.75		8/10%
Zone 2:					
Electricians; Technicians	13.85	.75	3%+.75		8/10%
Cable Splicers	14.10	.75	3%+.75		8/10%
Zone 3:					
Electricians; Technicians	14.35	.75	3%+.75		8/10%
Cable Splicers	14.60	.75	3%+.75		8/10%
Zone 3A:					
Electricians; Technicians	14.35	.75	3%+.75		8/10%
Cable Splicers	14.60	.75	3%+.75		8/10%
Zone 4:					
Electricians; Technicians	15.75	.75	3%+.75		8/10%
Cable Splicers	16.00	.75	3%+.75		8/10%

*See AREA and ZONE DESCRIPTIONS - following Page

AREA and ZONE DESCRIPTIONS

CARPENTERS:
Heavy and Highway Construction:
Zone 1: Area 0 to 40 road miles from the following Cities: Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, and Vernal
Zone 2: Area 40 to 60 road miles from the Cities listed in Zone 1
Zone 3: Area over 60 road miles from the Cities listed in Zone 1

CEMENT MASONS:
Heavy and Highway Construction:
Zone 1: Area 0 to 40 road miles from the following Cities: Brigham City, Cedar City, Kanab, Logan, Moab, Monticello, Ogden, Price, Provo, Richfield, St. George, Salt Lake City, and Vernal
Zone 2: Area 40 to 60 road miles from the Cities listed in Zone 1
Zone 3: Area over 60 road miles from the Cities listed in Zone 1

ELECTRICIANS:
Area 1: North section of Utah - Box Elder and Cache Counties; Davis County (north of 41st Parallel); Morgan, Rich, and Weber Counties:
Zone 1: That area 10 miles on either side of Interstate Highway #15, commencing on the south at the 41st Parallel in Davis County, continuing north to Highway #91 - Interstate #15 junction south of Brigham City; at this point go east and north through Logan and continue north to the 42nd Parallel in Cache County on Highway #91
Zone 2: That area not included in Zone 1 that lies east of 112°20' longitude in Box Elder County and that area lying west of 111°35', north of the 41st Parallel in Cache, Morgan, Weber Counties
Zone 3: That area lying east of 111°35' longitude and north of the 41st Parallel in Cache, Morgan, Rich, Weber Counties; also the area in Box Elder County lying west of 112°20' longitude and north and east of Utah Highway #83
Zone 3A: That area from a point 2 miles north of Center Street in Smithfield to the Utah-Idaho State Line and 10 miles east and west from Highway #91
Zone 4: All other area west of Zones 3 and 3A in Box Elder County

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ELECTRICIANS:* (Cont'd)					
In Zones 2, 3, and 3A, on any job or project not exceeding $200,000 electrical, labor and material including, Zone 1 rate shall apply.					
Area 2:					
Zone 1:					
Zone 1A:					
Electricians; Technicians	$13.35	.75	3%+.75		8/10%
Cable Splicers	13.85	.75	3%+.75		8/10%
Zone 1B:					
Electricians; Technicians	14.10	.75	3%+.75		8/10%
Cable Splicers	14.60	.75	3%+.75		8/105
Zone 1C:					
Electricians; Technicians	14.85	.75	3%+.75		8/10%
Cable Splicers	15.35	.75	3%+.75		8/10%
Zone 2:					
Electricians; Technicians	16.85	.75	3%+.75		8/10%
Cable Splicers	17.35	.75	3%+.75		8/10%
ELEVATOR CONSTRUCTORS	12.91	1.195	.95	a	.035
ELEVATOR CONSTRUCTORS' HELPERS	9.04	1.195	.95	a	.035
GLAZIERS:					
Area 1	17.02	.75	.40		.08
Area 2	11.07	.51	.60	.98	
IRONWORKERS:					
Fence Erectors; Ornamental; Reinforcing; Structural	12.00	.75	1.35		.05
LATHERS	12.22	.55	.70		.01

*SEE AREA and ZONE DESCRIPTIONS - following Page

AREA and ZONE DESCRIPTIONS

ELECTRICIANS: (Cont'd)
Area 2: South section of Utah (Remaining Counties):
Zone 1: Davis County (south of 41st Parallel); Salt Lake County; Tooele County (northeast corner beginning at a point where the township line between Township 3 south and Township 4 south, Salt Lake Base Meridian, intersects the east boundary line of Tooele County and thence west along said township line to the southwest corner of Section 32, Township 3 south, Range 4 west, Salt Lake Base Meridian, thence north to the northwest corner of Section 17 of Township 3 south, Range 4 west, thence west to longitude 112.5°, thence north along the line of longitude 112.5° to the north line of Tooele County); Utah County (north of 40th Parallel):
Zone 1A: Ten miles either direction (east or west) from Interstate Highway #15, bounded on the north by the 41st Parallel and on the south by the 40th Parallel
Zone 1B: The balance of Zone 1 that lies in Davis, Salt Lake, and Utah Counties
Zone 1C: That portion of the remainder of Zone 1 that lies in Tooele County
Zone 2: Remainder of Counties and all portions of Counties not included in Zone 1 of the south section of Utah

GLAZIERS:
Area 1: Iron and Washington Counties
Area 2: Remaining Counties

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
LINE CONSTRUCTION WORKERS:					
Groundman	$ 9.57	.45	3%+.50		1/4%
Line Equipment Serviceman	11.49	.45	3%+.50		1/4%
Line Equipment Mechanic:					
Base Shop	12.29	.45	3%+.50		1/4%
Right-of-way	11.49	.45	3%+.50		1/4%
Line Equipment Operators	11.68	.45	3%+.50		1/4%
Linemen	13.00	.45	3%+.50		1/4%
Cable Splicers	14.34	.45	3%+.50		1/4%
MARBLE SETTERS	12.37	.60	.60		.04
MASON TENDERS	11.02	.50	.35		
PAINTERS:					
Area 1:					
Brush; Roller	10.47	.51	.50		.05
Spray; Sandblast; Steeplejack; Brush, Steel and bridge; Brush (swing stage)	10.72	.51	.50		.05
Spray (swing stage); Sandblaster (swing stage); Spray, steel and bridge	10.92	.51	.50		.05
Area 2:					
Brush; Roller	10.70	.51	.30		.02
Brush (swing stage); Brush (steel & bridge); Spray, Sandblaster, Steelejack	11.00	.51	.30		.02
Spray (swing stage); Spray (steel & bridge); Sandblaster (swing stage)	11.25	.51	.30		.02
Wallcovering Hanger	10.95	.51	.30		.02
PLASTERERS' TENDERS	11.15	.50	.35		
PLASTERERS	12.10	.65	.65		.01
PLUMBERS; Pipefitters	12.60	.81	1.10		.06
REFRIGERATION and AIR CONDITIONING	12.60	.81	1.10		.06
ROOFERS	10.94	.57	.35		.05
SHEET METAL WORKERS	13.71	1.10	1.22		.12
SOFT FLOOR LAYERS	9.98	.51	.27		
SPRINKLER FITTERS	13.17	.85	1.20		.08
TERRAZZO WORKERS and TILE LAYERS	12.37	.60	.65		.04

*See AREA DESCRIPTIONS - following Page

AREA DESCRIPTIONS

PAINTERS:
Area 1: Box Elder, Cache, and Rich Counties; and the following Counties north of an east-west line from the north boundary of Farmington: Davis, Morgan, Summit, Tooele, and Weber Counties
Area 2: Remainder of State

WELDER: Receives rate prescribed for craft performing operation to which Welding is incidental.

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for 5 years' service and 6% of basic hourly rate for 6 months' to 5 years' serivce as Vacation Pay Credit. 7 Paid Holidays: A through G.

b. Employees who have been employed for a period of 1 year shall have 3 weeks' vacation with pay. Should a holiday listed below occur within an employee's vacation period he shall be allotted an additional day's vacation. 8 paid Holidays: A through F and President's Day and Pioneer Day.

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day; G-Friday after Thanksgiving

LABORERS: Building Construction	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.27	.50	.35	.25	.04
Group 2	8.40	.50	.35	.25	.04
Group 3	8.52	.50	.35	.25	.04
Group 4	8.77	.50	.35	.25	.04
Group 5	9.27	.50	.35	.25	.04

Group 1: General Laborer

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete Pump (Head Hoseman); Signalman and Dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., Compressor, Compactors, Jackhammer, Vibrator, Concrete Saw, Chain Saw and Concrete Cutting Torch); Pipelayer; Laser Instrument Operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Track and similar Drills

Group 5: Powderman

LABORERS:* Heavy and Highway Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$8.02	$9.52	.50	.35	.25	.04
Group 2	8.15	9.65	.50	.35	.25	.04
Group 3	8.27	9.77	.50	.35	.25	.04
Group 4	8.52	10.02	.50	.35	.25	.04
Group 5	9.02	10.52	.50	.35	.25	.04
Tunnel and Shaft Work						
Group 1	8.17	9.67	.50	.35	.25	.04
Group 2	8.27	9.77	.50	.35	.25	.04
Group 3	8.47	9.97	.50	.35	.25	.04
Group 4	8.92	10.42	.50	.35	.25	.04

*See AREA DESCRIPTIONS- following TRUCK DRIVERS' classifications

Group 1: General Laborers

Group 2: Asphalt Raker; Sandblast Pot Tender; Gunite Nozzleman; Concrete Pump Head Hoseman; Signalman and Dumpman on concrete construction

Group 3: Work of all types using cutting torch; Operators of gasoline, electric or pneumatic tools (e.g., Compressor, Compactors, Jackhammer, Vibrator, Concrete Saw, Chain Saw and Concrete Cutting Torch); Pipelayer; Laser Instrument Operator; Refinery Tank and Vessel Cleaner; Sandblaster

Group 4: Air Tank and similar Drills

Group 5: Powderman

Tunnel and Shaft Work

Group 1: Underground Laborers

Grup 2: Brakeman; Chucktender; Dumpman; Powderman Tender; Puddler; Nipper; Tapman; Vibrator; Screedman

Group 3: Cutting Machine Operator; Drill Doctor; Finisher; Gunite Gunman; Miner; Powder Makeup Man; Spader and Tugger; Steelman; Gunite Groundman; Gunite Nozzleman; Gunite Rodman; Concrete Head Hoseman

Group 4: Shifter

POWER EQUIPMENT OPERATORS:* Building Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$ 9.06	$11.06	$1.28	$1.585	.75	.05
Group 2	9.45	11.45	1.28	1.585	.75	.05
Group 3	9.65	11.65	1.28	1.585	.75	.05
Group 4	9.76	11.76	1.28	1.585	.75	.05
Group 5	10.27	12.27	1.28	1.585	.75	.05
Group 6	10.44	12.44	1.28	1.585	.75	.05
Group 7	10.56	12.56	1.28	1.585	.75	.05
Group 8	10.89	12.89	1.28	1.585	.75	.05
Group 9	10.96	12.96	1.28	1.585	.75	.05
Group 10	11.12	13.12	1.28	1.585	.75	.05
Group 11	11.30	13.30	1.28	1.585	.75	.05
Group 12	11.79	13.79	1.28	1.585	.75	.05
Group 13	12.75	14.75	1.28	1.585	.75	.05
Group 14	13.24	15.24	1.28	1.585	.75	.05
Group 15	13.52	15.52	1.28	1.585	.75	.05

*See AREA DESCRIPTIONS- following TRUCK DRIVERS' classifications

POWER EQUIPMENT OPERATORS
BUILDING CONSTRUCTION

Group 1: Assistant to Engineer; Elevator Operators; Hydraulic Monitor; Material Loader or Conveyor Operators

Group 2: Air Compressor Operator; Concrete Mixer Operator (skip-type); Concrete Pump or Pumpcrete Gun Operator; Generator Operator (100 KW or over); Mixer Box Operator or similar (concrete or asphalt plant continuous mix); Pump Operator; Truck Crane Oiler

Group 3: Front End Loader (up to and including 1 cu. yd. struck M.R.C.); Hoist Operator - 1 drum; Slip form Pumps

Group 4: Air Compressor Operator (2 or more compressors); Signalman; Small Rubber-tired Tractor; Small self-propelled Pneumatic Rollers; Towermobile Operator; Welding Machine (2 or more); Concrete Conveyor, building site

Group 5: A-Frame Truck and Tugger Hoist; Fork Lift (construction job site); Kolman Loader and similar; Loader Operator (over 1 cu. yd. to and including 2 cu. yds. struck M.R.C.); McGinnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mixermobile Operator; Ross Carrier or similar type; Small rubber-tired Tractor (with attachments, including Backhoe); Small Rubber-tired Trenching Machine; Small Tractor with boom; Gradesetter

Group 6: Bridge Crane; Concrete Mixer Operator (paving or batch plant); Drilling Machine Operator (Well or Diamond); Dual Drum Mixers; Hoist Operator - 2 drums; Lull High-lift (40 ft. or similar); Roller Operator or self-propelled Compactors; Tractor Operator (Sheep's Foot and compacting equipment); Trenching Machine; Concrete Conveyor or Concrete Pump, truck or equipment mounted (boom length to apply); Self-propelled Compactor with or without Dozer

Group 7: Tractor Operator (Bulldozer or tractor-drawn Scraper or drag-type shovel or boom attachment, up to and including D-7 or similar)

Group 8: Chicago Boom (including Stiff Leg and Sheer Pole); Concrete Batch Plant (multiple units); Loader Operator (over 2 cu. yds. up to and including 5 cu. yds. struck M.R.C.); Self-propelled boom type Lifting Device (center mount) (10 ton capacity or less M.R.C.)

POWER EQUIPMENT OPERATORS (Cont'd)
BUILDING CONSTRUCTION (Cont'd)

Group 9: Heavy Duty Repairman or Welder; Tractor Operator (Bulldozer or tractor-drawn Scraper or drag-type Shovel or boom attachment, larger than D-7 or similar)

Group 10: Motor Patrol

Group 11: Loader Operator (over 5 cu. yds. up to and including 12 cu. yds. struck M.R.C.); Universal Equipment Operator (Shovel, Backhoe, Dragline, Derrick, Derrick Barge, Clamshell, Crane, Grade-all, etc.) (up to and including 5 cu. yds. struck M.R.C.); Self-propelled boom type Lifting Device (center mount); Tower Crane (Linden type or similar designs and capacity)

Group 12: Remote Controlled (over 12 cu. yds. struck M.R.C. up to 18 cu. yds. M.R.C.)

Group 13: Loader Operator (over 12 cu. yds. struck M.R.C. up to 18 cu. yds. M.R.C.)

Group 14: Operator of Helicopter (when used in erection work)

Group 15: Cranes over 125 tons

POWER EQUIPMENT OPERATORS:* Heavy and Highway Construction	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$10.26	$11.76	$1.28	$1.90	$1.00	.14
Group 2	10.61	12.11	1.28	1.90	1.00	.14
Group 3	10.79	12.29	1.28	1.90	1.00	.14
Group 4	10.90	12.40	1.28	1.90	1.00	.14
Group 5	11.36	12.86	1.28	1.90	1.00	.14
Group 6	11.51	13.01	1.28	1.90	1.00	.14
Group 6-A	11.62	13.12	1.28	1.90	1.00	.14
Group 7	11.92	13.42	1.28	1.90	1.00	.14
Group 7-A	11.98	13.48	1.28	1.90	1.00	.14
Group 8	12.04	13.54	1.28	1.90	1.00	.14
Group 9	12.20	13.70	1.28	1.90	1.00	.14
Group 10	12.64	14.14	1.28	1.90	1.00	.14
Group 10-A	13.60	15.10	1.28	1.90	1.00	.14
Group 10-B	14.05	15.55	1.28	1.90	1.00	.14
Group 11	14.21	15.71	1.28	1.90	1.00	.14

*See AREA DESCRIPTIONS - following TRUCK DRIVERS' classifications.

Underground and Shaft Work:

Underground Work: Employees working underground shall receive $.30 per hour in addition to their straight-time hourly wage rate.

Shaft Work: Employees working within Shafts, Stopes and Raises shall receive $.50 per hour in addition to their straight-time hourly rates.

POWER EQUIPMENT OPERATORS
HEAVY and HIGHWAY CONSTRUCTION

Group 1: Assistant to Engineer; Brakeman - Locomotive; Elevator Operator; Fireman; Asphalt Plant Fireman; Hydraulic Monitor; Material Loader or Conveyor Operator; Partsman - field; Repairman Tender - field; Chainman; Rodman

Group 2: Boxman, asphalt plant; Air Compressor Operator; Concrete Mixer Operator (skip type); Concrete Pump or Pumpcrete Gun Operator; Engineer, Dinky Operator; Generator Operator (100 KW or over); Mixer Box Operator or similar (concrete or asphalt palnt continuous mix); Pump Operator; Screedman; Self-propelled, automatically applied concrete curing machine (on streets, highways, airports and canals); Truck Crane Oiler (Assistant to Engineer)

Group 3: Ballast Jack Tamper; Ballast Regulator; Ballast Tamper - multiple purpose; Front End Loader (up to and including 1 cu. yd. struck M.R.C.); Hoist Operator - 1 drum Line Master; Slip Form Pumps

Group 4: Batch Operator (asphalt plant); Air Compressor Operator (2 or more compressors); Concrete Conveyor, building site; Lube and Service engineer (mobile and grease rack); Motorman; Pavement Breaker Operator (Emsco and similar type); Shuttlecar; Signalman; Slurry Seal Machine or similar; Small rubber-tired Tractors; Small self propelled pneumatic Rollers; Towermobile Operator; Welding Machine (2 or more)

Group 5: A-Frame Truck and Tugger Hoist; Concrete Saws (self-propelled unit on streets, highways, airports and canals); Engineer - Locomotive; Forklift (construction jobsite); Gradesetter; Kolman Loader (and similar); McGinnis Internal Full Slab Vibrator (on airports, highways, canals and warehouses); Mixermobile Operator; Pipe Bending Machine Operator; Pipe Cleaning Machine; Pipe Wrapping Machine; Power Jumbo Operator (setting slip forms, etc., in tunnels); Road Mixing Machine Operator; Ross Carrier or similar type; Small rubber-tired Trenching Machine; Small rubber-tired tractor (with attachments, including Backhoe); Small Tractor with boom; Surface Heater (self-propelled); Loader Operator (over 1 cu. yd. up to and including 2 cu. yds. struck M.R.C.)

POWER EQUIPMENT OPERATORS (Cont'd)
Heavy and Highway Construction

Group 6: Bridge Crane; Chip Box Spreader (Flaherty type and similar); Concrete Conveyor or Concrete Pump, truck or equipment mounted, boom length to apply; Concrete Mixer Operator (paving or batch plant); Deck Engineer (Marine); Drilling Machine Operator (Well or Diamond); Drilling and Boring Machinery, horizontal and vertical (not to apply to waterliners, wagon drills, or jack hammers); Dual Drum Mixers; Elevating Grader Operator; Fuller Kenyon Pump and similar types; Heavy Duty Rotary Drill Rigs (such as Quarry Master, Joy Drills or equal); Hoist Operator - 2 drums; Lull High-lift (40 ft or similar); Mechanical Burm, Curb and/or Curb and Gutter Machine, concrete or asphalt; Mechanical Finisher Operator (asphalt or concrete); Mine or Shaft Hoist; No-joint Pipe Laying Machine; Pavement Breaker; Pavement Breaker with Compressor combination; Pavement Breaker, truck mounted, Compressor combination; Refrigeration Plant; Roller Operator or self-propelled Compactor; Self-propelled Compactor (with multiple-propulsion power units); Self-propelled Pipeline Wrapping Machine Perault, CRC, or similar types); Self-propelled Compactor with or without Dozer; Slusher Operator; Tractor Operator (Sheep's Foot and Compacting Equipment); Tractor Compressor Drill Combination; Trenching Machine

Group 6-A: Side Boom Operator; Tractor Operator (Bulldozer or Tractor-drawn Scraper or Drag-type Shovel or Boom attachment, up to and including D-7 or similar); Instrumentman

Group 7: Asphalt Plant Engineer; Chicago Boom (including Stiff Leg ang Sheer Pole); Combination Backhoe and Loader (3/4 cu. yds. or over M.R.C.); Combination Slusher and Motor Operator; Concrete Batch Plant (multiple units); Domor Loader and Adams Elegrader; Engineer, Crushing Plant; Euclid Loader and similar types; Loader Operator (over 2 cu. yds. up to and including 5 cu. yds. struck M.R.C.); Koehring Skooper (or similar)(up to 5 cu. yds. struck M.R.C.); Mechanical Trench Shield; Mucking Machine Operator Rubber-tired Scrapers (under 35 cu. yds. struck M.R.C.); Saurman type Dragline (under 5 cu. yds. struck M.R.C.); Self-propelled Boom-type Lifting device (center mount) (10-ton capacity or less M.R.C.); Self-propelled Elevating Grade Plane; Soil Stabilizer (P & H or equal); Tri Batch Paver; Tunnel Mole (or similar)

POWER EQUIPMENT OPERATORS (Cont'd)
Heavy and Highway Construction

Group 7-A: Heavy Duty Repairman or Welder; Tractor Operator (Bulldozer or Tractor-drawn Scraper or Drag-type Shovel or boom attachment, larger than D-7 or similar)

Group 8: Combination Mixer and Compressor (gunite); Highline Cableway Signalman; Motor Patrol; Tower Crane (Linden type or similar designs and capacity)

Group 9: DW-10, 20, etc. (Tandem Scrapers); Loader Operator (over 5 cu. yds. up to and including 12 cu. yds. struck M.R.C.); Highline Cableway Operator; Lift Slab Machine (Vagtborg and similar types); Locomotive (over 100 tons) (single or multiple units); Pre-stress Wire Wrapping Machine; Saurman-type Dragline (5 cu. yds. and over struck M.R.C.); Self-propelled boom-type lifting device (center mount)(over 10 tons); Tractor (Tandem Scrapers); Universal Equipment Operator (Shovel, Backhoe, Dragline, Derrick, Derrick Barge, Clamshell, Crane, Grade-all, etc.)(up to and including 5 cu. yds. struck M.R.C.)

Group 10: Automatic Concrete Slip Form Paver; Koehring Skooper (or similar) (5 cu. yds. and over struck M.R.C.); Multiple-propulsion Power Unit Earthmovers (up to and including 75 cu. yds. struck M.R.C.); Power Equipment with shovel-type controls (over 5 cu. yds. up to and including 7 cu. yds. struck M.R.C.); Remote-controlled Cranes and Derricks; Rubber-tired Scrapers (35 cu. yds. and over struck M.R.C.); Slip Form Paver (concrete or asphalt); Sub-grader (automatic Sub-grader - Fine Grader, CMI or similar); Tandem Tractors; Tower Cranes Mobile

Group 10-A: Loader Operator (over 12 cu. yds. struck M.R.C. up to 18 cu.yds. M.R.C.); Multi-purpose Earthmoving Machines (2 or more scrapers)(over 75 cu. yds. struck M.R.C); Power Shovels and Draglines (over 7 cu. yds. struck M.R.C)

Group 10-B: Operator of Helicopter (when used in erection work); Loader (18 cu. yds. and over)

Group 11: Cranes over 125 tons

POWER EQUIPMENT OPERATORS: Steel Erection	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$11.19	$1.28	$1.90	$1.00	.14
Group 2	11.60	1.28	1.90	1.00	.14
Group 3	12.72	1.28	1.90	1.00	.14
Group 4	12.88	1.28	1.90	1.00	.14
Group 4-A	13.21	1.28	1.90	1.00	.14
Group 5	13.76	1.28	1.90	1.00	.14
Group 6	14.23	1.28	1.90	1.00	.14
Group 6-A	14.88	1.28	1.90	1.00	.14
Group 7	16.03	1.28	1.90	1.00	.14
Piledriving					
Group 1-A	10.68	1.28	1.90	1.00	.14
Group 1-B	11.05	1.28	1.90	1.00	.14
Group 1-C	11.28	1.28	1.90	1.00	.14
Group 2-A	11.28	1.28	1.90	1.00	.14
Group 2-B	12.10	1.28	1.90	1.00	.14
Group 3	12.43	1.28	1.90	1.00	.14
Group 3-A	12.90	1.28	1.90	1.00	.14
Group 4	13.50	1.28	1.90	1.00	.14
Group 5	13.69	1.28	1.90	1.00	.14
Group 6	14.93	1.28	1.90	1.00	.14

Underground and Shaft Work:

Underground Work: Employees working underground shall receive $.30 per hour in addition to their straight-time hourly rate.

Shaft Work: Employees working within Shafts, Stopes and Raises shall receive $.50 per hour in addition to their straight-time hourly rate.

POWER EQUIPMENT OPERATORS
Steel Erection

Group 1: Assistant to Engineer (Oiler)

Group 2: Compressor Operator; Generator, gasoline or diesel driven (100 KW or over)(structural steel or tank erection only); Rodman, Chainman; Assistant to Engineer (Truck Crane Oiler)

Group 3: Compressors, Generators and/or Welding Machines or combination (2 to 6)(structural steel or tank erection only); Deck Engineer; Forklift; Instrumentman; Signalman (using mechanical

Group 4: Heavy Duty Repairman; Tractor Operator

Group 4-A: Combination Heavy Duty Repairman - Welder

Group 5: Dual purpose A-frame or Boom Truck; Boom Cat; Chicago Boom; Crawler Cranes and Truck Cranes (15 tons M.R.C. or less); Single drum Hoist; Self-propelled Boom-type lifting device (center mount)(10 ton capacity or less M.R.C.); Tugger Hoist; Overhead Cranes (15 tons M.R.C. or less)

Group 6: Crawler Cranes and Truck Cranes (over 15 tons M.R.C.); Derricks; Gantry Rider (or similar equipment); Highline Cableway; Two or more drum Hoist; Self-propelled boom-type lifting device (center mount) (over 10 tons); Tower Cranes Mobile (including rail mounted); Universal Liebher and Tower Cranes (and similar types); Overhead Cranes (over 15 tons M.R.C.)

Group 6-A: Cranes (over 125 tons)

Group 7: Operator of Helicopter

POWER EQUIPMENT OPERATORS (Cont'd)
Piledriving

Group 1: Deckhand; Fireman; Oiler

Group 1-A: Compressor Operator

Group 1-B: Truck crane Oiler (Assistant to Engineer)

Group 2-A: Operator of Tugger Hoist (hoisting material only)

Group 2-B: Compressor Operator (over 2); Generators; Pumps; Welding Machine (powered other than by electricity)

Group 3: A-Frames; Deck Engineer; Forklift Operators; Self-propelled boom-type lifting device (center mount)(10-ton capacity or less M.R.C.)

Group 3-A: Heavy Duty Repairman and/or Welder

Group 4: Operator of Piledriving Rigs, skid or floating and derrick barges; Operator of diesel or gasoline powered Crane Piledriver (without boiler)(up to and including 1 cu. yd. rating); Truck Crane Operator (up to and including 25 tons) (hoisting material only); Operating Engineer in lieu of Assistant to Engineer tending boiler or compressor attached to Crane Piledriver; Self-propelled boom-type lifting device (center mount)(over 10 tons)

Group 5: Operator of diesel or gasoline powered Crane Piledriver (without boiler)(over 1 cu. yd. rating); Operator of Crane (with steam, flash boiler, pump or compressor attached); Operator of steam powered Crawler or Universal type Driver (Raymond or similar type); Truck Crane Operator (over 25 tons) (hoisting material or performing piledriving work)

Group 6: Cranes (over 125 tons)

TRUCK DRIVERS*	Basic Hourly Rates	Basic Hourly Rates	Fringe Benefits Payments			
			H & W	Pensions	Vacation	Education and/or Appr. Tr.
	AREA 1	AREA 2				
Group 1	$10.025	$11.525	.98	$1.14	$1.00	.10
Group 2	10.075	11.575	.98	1.14	1.00	.10
Group 3	10.125	11.625	.98	1.14	1.00	.10
Group 4	10.15	11.65	.98	1.14	1.00	.10
Group 5	10.225	11.725	.98	1.14	1.00	.10
Group 6	10.25	11.75	.98	1.14	1.00	.10
Group 7	10.30	11.80	.98	1.14	1.00	.10
Group 8	10.40	11.90	.98	1.14	1.00	.10
Group 9	10.45	11.95	.98	1.14	1.00	.10
Group 10	10.475	11.975	.98	1.14	1.00	.10
Group 11	10.55	12.05	.98	1.14	1.00	.10
Group 12	10.575	12.075	.98	1.14	1.00	.10
Group 13	10.65	12.15	.98	1.14	1.00	.10
Group 14	10.70	12.20	.98	1.14	1.00	.10
Group 15	10.75	12.25	.98	1.14	1.00	.10
Group 16	10.95	12.45	.98	1.14	1.00	.10
Group 17	11.025	12.525	.98	1.14	1.00	.10
Group 18	11.125	12.625	.98	1.14	1.00	.10
Group 19	11.15	12.65	.98	1.14	1.00	.10
Group 20	11.20	12.70	.98	1.14	1.00	.10
Group 21	11.26	12.75	.98	1.14	1.00	.10
Group 22	11.35	12.85	.98	1.14	1.00	.10
Group 23	11.45	12.95	.98	1.14	1.00	.10
Group 24	11.47	12.97	.98	1.14	1.00	.10
Group 25	11.70	13.20	.98	1.14	1.00	.10
Group 26	11.95	13.45	.98	1.14	1.00	.10

*See AREA DESCRIPTIONS following TRUCK DRIVERS' classifications

TRUCK DRIVERS

Group 1: Chauffeurs

Group 2: Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-Trailer (Pickup); Gas Station Attendants

Group 3: Water, Fuel and Oil Trucks (less than 1200 gallons)

Group 4: Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-Trailer (carrying capacity less than 10 tons)

Group 5: Washers

Group 6: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(less than 8 yds.); Water, Fuel and Oil Trucks (1200 gallons to less than 2500 gallons)

Group 7: Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-Trailer (carrying capacity 10 tons and less than 15 tons)

Group 8: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(8 yds. and less than 14 yds.); Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-Trailer (carrying capacity 15 tons and less than 20 tons); Water, Fuel and Oil Trucks (2500 gallons to less than 4000 gallons); Sweeper or Vacuum Truck

Group 9: Construction Job Serviceman, Fork Lift, Straddle Truck; Warehouseman (Counter Clerk)

Group 10: Transit Mix Trucks (less than 8 cu. yds.); Concrete Pumping Trucks

Group 11: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(14 yds. and less than 35 yds.); Flat Rack Trucks, Bulk Cement Trucks, Transport Trucks, Semi-trailer (carrying capacity 20 tons and over)

Group 12: Transit Mix Trucks (over 8 cu. yds. to 14 cu. yds.)

Group 13: Tireman and Greaser

TRUCK DRIVERS (Cont'd)

Group 14: Water, Fuel and Oil Trucks (4000 gallons to less than 6000 gallons)

Group 15: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(35 yds. and less than 55 yds.)

Group 16: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarocker and Dumpcrete)(55 yds. and less than 75 yds.); Water Fuel and Oil Trucks (6000 gallons to less than 10,000 gallons); Oil Spreader Operator (on single man operation where Boot Man is not required)

Group 17: Teamster, driving two horses

Group 18: Teamster, driving three or more horses

Group 19: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarocker and Dumpcrete)(75 yds. and less than 95 yds.)

Group 20: Water, Fuel and Oil Trucks (10,000 gallons to less than 15,000 gallons)

Group 21: Teamster Mechanics, Teamster Welder

Group 22: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(95 yds. and less than 105 yds.)

Group 23: Water, Fuel and Oil Trucks (15,000 gallons to less than 20,000 gallons)

Group 24: Dump Trucks - water level capacity (bottom, end and side)(including Dumpster Trucks, Turnawagons, Turnarockers and Dumpcrete)(105 yds. and less than 130 yds.), (all 130 cu. yds. and over to be paid one-half cent ($0.005) per cu. yd. capacity per hour in addition to rate for 105 yds. and less than 130 yds.)

Group 25: Water, Fuel and Oil Trucks (20,000 gallons to less than 25,000 gallons)

Group 26: Water, Fuel and Oil Trucks (25,000 gallons and over)

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29 CFR, 5.5(a)(1)(ii)).

AREA DESCRIPITONS
Laborers
(Heavy and Highway Construction)

Power Equipment Operators

Truck Drivers

AREA 1: All area included in the description defined below which is based upon township and range lines as referenced to the Salt Lake City Base and Meridian:

Commencing at the intersection of the Utah/Nevada border and the Southerly line of township 35 south;
Thence easterly to the S.E. corner of township 35 south, range 17 west;
Thence northerly to the S.E. corner of township 34 south, range 17 west;
Thence easterly to the S.E. corner of township 34 south, range 16 west;
Thence northerly to the S.E. corner of township 30 south, range 16 west;
Thence easterly to the S.E. corner of township 30 south, range 15 west;
Thence northerly to the S.E. corner of township 25 south, range 15 west;
Thence easterly to the S.E. corner of township 25 south, range 14 west;
Thence northerly to the S.E. corner of township 24, south, range 14 west;
Thence easterly to the S.E. corner of township 24 south, range 13 west;
Thence northerly to the S.E. corner of township 23 south, range 13 west;
Thence easterly to the S.E. corner of township 23 south, range 12 west;
Thence northerly to the S.E. corner of township 18 south, range 12 west;
Thence easterly to the S.E. corner of township 18 south, range 11 west;
Thence northerly to the S.E. corner of township 16 south, range 11 west;
Thence easterly to the S.E. corner of township 16 south, range 10 west;
Thence northerly to the S.E. corner of township 15 south, range 10 west;
Thence easterly to the S.E. corner of township 15 south, range 9 west;
Thence northerly to the S.E. corner of township 14 south, range 9 west;

AREA DEFINITIONS (Cont'd)

AREA 1: (Cont'd)

Thence easterly to the S.E. corner of township 14 south, range 8 west;
Thence northerly along the easterly line of range 8 west, crossing the Salt Lake Base Line to the intersection of the easterly line of range 8 west and the northerly border of Utah;
Thence easterly along the northerly border of Utah crossing the Salt Lake Meridian to the Utah/Idaho/Wyoming border;
Thence southerly along the Utah/Wyoming border;
Thence easterly along the Utah/Wyoming border to the intersection of the Utah/Wyoming border and Longitude 111 degrees west;
Thence southerly along Longitude 111 degrees west crossing the Salt Lake Base Line to the intersection of Longitude 111 degrees west and the southerly line of township 4 south;
Thence easterly along the southerly line of township 4 south to the S.E. corner of township 4 south, range 17 east;
Thence northerly to the S.E. corner of township 1 south, range 17 east;
Thence easterly along the southerly line of township 1 south to the intersection of the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the intersection of the Utah/Colorado border and the southerly line of township 7 south;
Thence westerly along the southerly line of township 7 south to the S.W. corner of township 7 south, range 20 east;
Thence southerly to the S.E. corner of township 8 south, range 19 east;
Thence westerly along the southerly line of township 8 south to the S.E. corner of township 8 south, range 12 east;
Thence southerly along the easterly line of range 12 east to the S.E. corner of township 20 south, range 12 east;
Thence westerly along the southerly line of township 20 south to the S.E. corner of township 20 south, range 3 east;
Thence southerly along the easterly line of range 3 east to the S.E. corner of township 27 south, range 3 east;
Thence westerly to the intersection of the southerly line of township 27 south and the Salt Lake Meridian, thence southerly along the Salt Lake Meridian to the intersection of the Salt Lake Meridian and the southerly line of township 39 south;
Thence westerly crossing the Salt Lake Meridian to the S.E. corner of township 39 south, range 2 west;

AREA DEFINITIONS (Cont'd)

AREA 1: (Cont'd)

Thence southerly to the S.E. corner of township 41 south, range 2 west;
Thence westerly to the S.E. corner of township 41 south, range 3 west;
Thence southerly along the easterly line of range 3 west to the Utah/Arizona border;
Thence westerly along the Utah/Arizona border to the Utah/Arizona/Nevada border;
Thence northerly along the Utah/Nevada border to the point of beginning. Commencing at the intersection of the Utah/Colorado border and the southerly line of township 34 south;
Thence westerly to the S.W. corner of township 34 south, range 21 east;
Thence northerly to the S.W. corner of township 29 south, range 21 east;
Thence westerly to the S.W. corner of township 29 south, range 19 east;
Thence northerly to the N.W. corner of township 23 south, range 19 east;
Thence easterly to the N.W. corner of township 23 south, range 22 east;
Thence northerly to the N.W. corner of township 21 south, range 22 east;
Thence easterly to the N.E. corner of township 21 south, range 24 east;
Thence southerly to the N.E. corner of township 31 south, range 24 east;
Thence easterly along the northerly line of township 31 south, to the Utah/Colorado border;
Thence southerly along the Utah/Colorado border to the point of beginning.

AREA 2: All areas not included in Area 1 as defined.

SUPERSEDEAS DECISION

STATE: Wisconsin COUNTY: Racine
DECISION No.: WI80-2083 DATE: Date of Publication
Supersedes Decision No. WI78-2149, dated November 13, 1978 in 43 FR 52672
DESCRIPTION OF WORK: Building and Residential Construction

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
ASBESTOS WORKERS	$13.30	1.05	1.15	1.50	.14
BOILERMAKERS	12.87	1.275	1.00		.05
BRICKLAYERS & STONEMASONS	11.55	.70	.80	.60	.07
CARPENTERS (West of Hwy. #75)					
Carpenters and Soft Floor Layers	12.82	.60	.80		.13
Millwrights	13.42	.60	.80		.13
Carpenters (Residential) West of Hwy. #75	9.46	.60	.80		.13
CARPENTERS (Balance of County)					
Carpenters and Soft Floor Layers	11.50	.60	.85		.05
Millwrights	11.76	.60	.85		.05
Piledrivermen	11.58	.60	.85		.05
CEMENT MASONS	10.61	.60	.85	.50	.01
ELECTRICIANS (Burlington)					
Electricians (Burlington)	12.85	.55	5%	7%	.50%
Residential	8.35	.55	3%	7%	3/4%
ELECTRICIANS (Balance of county)	14.89	.55	3%		] 3/4%
ELEVATORS CONSTRUCTORS:					
Constructors	13.24	1.045	.69	a+b	.03
Helpers	9.27	1.045	.69	a+b	.03
Helpers (Prob.)	50JR				
IRONWORKERS	12.06	1.30	2.50	1.21	.15
LABORERS:					
Laborers	9.45	.60	.85	.50	
Air Tool Operators (Jackhammer)	9.77	.60	.85	.50	
Mason Tender, Mortar Mixer and Plasterers' Tender	9.58	.60	.85	.50	
Vibrator Operator	9.58	.60	.85	.50	
	9.77	.60	.85	.50	
PAINTERS:					
Brush	10.45	.60	1.05		.05
Structural Steel	10.60	.60	1.05		.05
Spray	11.20	.60	1.05		.05
PLASTERERS	11.10	.60	.85		
PLUMBERS AND STEAMFITTERS	12.58	.60	.85	.99	.02
ROOFERS	11.12	.60	.55		
PILEDRIVERMEN (West of Hwy, #75)	12.97	.60	.80		.13

DECISION No. WI80-2083

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
SHEET METAL WORKERS	$11.74	.60	.09	1.15	.09
TERRAZZO WORKERS	12.01	1.20	1.20	.50	.19
TILE SETTERS	10.08	.70	.80	.60	.07

PAID HOLIDAYS: A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day.

FOOTNOTES:

a. Holidays: A through F.

b. Employer contributes 8% per hour of regular hourly rate to Vacation Pay Credit for employee who has worked in business more than 5 years. Employer contributes 6% per hour of regular hourly rate to Vacation Pay Credit for employee who has worked in business less than 5 years.

DECISION No. WI80-2083

POWER EQUIPMENT OPERATORS	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
GROUP I	$12.02	1.05	1.10		.05
GROUP II	11.77	1.05	1.10		.05
GROUP III	11.47	1.05	1.10		.05
GROUP IV	11.37	1.05	1.10		.05
GROUP V	10.96	1.05	1.10		.05
GROUP VI	10.62	1.05	1.10		.05

GROUP I - Cranes, Shovels, Draglines, Backhoes, Clamshells, Derricks, Caisson Rigs, Pile Driver, Skid Rigs, Dredge, Operator and Traveling Crane (Bridge Type), Concrete Paver (over 27E), Concrete Spreader and Distributor

GROUP II - Material Hoist, Tractor, or Truck Mounted Hydraulic Backhoe, Tractor or Truck Mounted Hydraulic Crane (5 Tons or Under), Manhoist, Tractor (Over 40 h. p.), Pulldozer, Endloader, (over 40 h. p.), Forklift (25' and over), Motor Patrol, Scraper Operator, Sideboom, Straddle Carrier, Mechanic and Welder, Bituminous Plant and Paver Operator, Roller (over 5 tons), Rotary Drill Operator and Blaster, Trencher (Wheel Type or Chain type having over 8-Inch Bucket)

GROUP III - Concrete and Grout Pumps, Backfiller, Concrete auto Breaker (Large), Concrete Finishing Machine (Road Type), Roller (Rubber Tire), Concrete Batch Hopper, Concrete Conveyor Systems, Concrete Mixers (14S or over), Screw Type Pumps, and Cypsum Pumps, Tractor, Pulldozer, 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 Auto Breaker, Hydro-Hammer(Small), Booms and Sweeper, Hoists (Mucker) Stump Chipper (Large), Boats, Safety Work, Barges and Launch)

GROUP V - Shoulding 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 15 KW, Pumps over 3", Augers (vertical and Horizontal), Combination Small Equipment Operators; Air, Electric Hydraulic Jacks (Slip Form), Compressors (Under 300 CFM) Welding Machines, Heaters (Mechanical), Prestress Machines, Bobcats, generators (under 150 KW), Pumps (3" and under); Winches (Small Electric), Oiler and Greaser, Boiler Operators (Temporary Heat), Rotary Drill Helper, Conveyor, Forklift (12' and under)

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: Wyoming

COUNTIES: Converse, Goshen, Laramie, Natrona, Niobrara and Platte

DECISION NUMBER: WY80-5129

DATE: Date of Publication

Supersedes Decision No. WY80-5119 dated June 13, 1980, in 45 FR 40467

DESCRIPTION OF WORK: Building Projects (does not include single family homes and apartments up to and including 4 stories)

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
BUILDING CONSTRUCTION					
ASBESTOS WORKERS	$13.64	.75	$1.37		
BOILERMAKERS	12.30	.85	1.00		.02
BRICKLAYERS; Stonemasons:*					
Area 1	12.20	.60	.30		.05
Area 2	11.90	.60	.30		.10
CARPENTERS:					
Carpenters	10.59	.70	.65	.75	.17
Piledrivermen	10.84	.70	.65	.75	.17
CEMENT MASONS:					
Cement Masons	12.15	.55			.05
Working on Swinging Stage or temporary platform over 20 ft. high	12.65	.55			.05
Composition material, epoxy	12.65	.55			.05
ELECTRICIANS:*					
Area 1:					
Electricians	13.50	.75	3%+.50		3/4of 1%
Cable Splicers	13.75	.75	3%+.50		3/4of 1%
Area 2:					
Contracts $150,000 and under:					
Electricians	10.30	.72	3%+.50		3/4of 1%
Contracts over $150,000:					
Electricians	11.70	.72	3%+.75		3/4of 1%
ELEVATOR CONSTRUCTORS	11.71	.895	.56	a	.025
ELEVATOR CONSTRUCTORS' HELPERS	70%JR	.895	.56	a	.025
IRONWORKERS:					
Structural; Ornamental; Reinforcing	13.00	.90	1.45		.15
MARBLE, TILE and TERRAZZO WORKERS:*					
Area 1	11.10	.45	.30		
MILLWRIGHTS	12.41	1.00	.85		.14

*See AREA Descriptions - Page 3

	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
PAINTERS:*					
Area 1:					
Brush and Roller	$12.11	.75	$1.15		.07
Spray, Swing Stage and Hazardous	12.71	.75	1.15		.07
Sandblaster (interior)	14.03	.75	1.15		.07
Paperhanger	12.71	.75	1.15		.07
Drywall Finisher	12.36	.75	1.15		.07
Finishers (machine)	12.71	.75	1.15		.07
PLUMBERS: Steamfitters:*					
Area 1:					
Zone 1	10.17	.80	.75	1.50	.18
Zone 2	11.02	.80	.75	1.50	.18
Zone 3	11.94	.80	.75	1.50	.18
Zone 4	13.16	.80	.75	1.50	.18
Zone 5: (Footnote "b"):					
General contractors $2,500,000.00 or less	10.17	.80	.75	1.50	.18
General contracts over $2,500,000.00	10.97	.80	.75	1.50	.18
Area 2:					
Zone 1	14.03	.90	1.10	2.00+c	.30
Zone 2	14.90	.90	1.10	2.00+c	.30
Zone 3	15.75	.90	1.10	2.00+c	.30
Zone 4	17.06	.90	1.10	2.00+c	.30
Zone 5	18.05	.90	1.10	2.00+c	.30
ROOFERS	11.03			2.00	
SHEET METAL WORKERS:*					
Area 1	10.92	.41	1.10		.02
Area 2	11.63	.53	.41		.08
SPRINKLER FITTERS	13.61	.85	1.20		.08
WELDERS; RIGGERS: Receive rate prescribed for craft performing operation to which welding or rigging is incidental.					

*See AREA and ZONE Descriptions - Page 3

FOOTNOTES:
a. Employer contributes 8% of basic hourly rate for over 5 years' service and 6% of basic hourly rate for 6 months to 5 years' service as Vacation Pay Credit. 7 Paid Holidays: A through F, and the Friday after Thanksgiving Day.
b. Use only in the Cities of Laramie, Torrington, Wheatland, Evanston, Green River and Rock Spring within a 5 mile radius from the Post Office.
c. Paid Holiday: D-Labor Day

PAID HOLIDAYS:
A-New Year's Day; B-Memorial Day; C-Independence Day; D-Labor Day; E-Thanksgiving Day; F-Christmas Day

AREA DESCRIPTIONS

BRICKLAYERS; Stonemasons:
Area 1: Goshen, Laramie and Platte Counties
Area 2: Converse, Natrona and Niobrara Counties

ELECTRICIANS:
Area 1: Goshen, Laramie, Niobrara and Platte Counties
Area 2: Converse and Natrona Counties

MARBLE, TILE and TERRAZZO WORKERS:
Area 1: Converse, Natrona and Niobrara Counties

PAINTERS:
Area 1: Converse, Natrona and Niobrara Counties

PLUMBERS; Steamfitters:
Area 1: Goshen, Laramie and Platte Counties:

Zone 1: 15 miles radius from Cheyenne Post Office
Zone 2: 10 miles radius beyond Zone 1
Zone 3: 15 miles radius beyond Zone 2
Zone 4: Jurisdiction beyond Zone 3

Area 2: Converse, Natrona and Niobrara Counties:

Zone 1: 10 miles radius from Post Office in Casper
Zone 2: 10 miles radius beyond Zone 1
Zone 3: 20 miles radius beyond Zone 2
Zone 4: 40 miles radius beyond Zone 3
Zone 5: Jurisdiction beyond Zone 4

SHEET METAL WORKERS:
Area 1: Converse, Natrona and Niobrara Counties
Area 2: Goshen, Laramie and Platte Counties

LABORERS BUILDING CONSTRUCTION	Basic Hourly Rates	Fringe Benefits Payments			
		H & W	Pensions	Vacation	Education and/or Appr. Tr.
Group 1	$ 8.28	.55	.50	$1.00	.05
Group 2	8.53	.55	.50	1.00	.05
Group 3	8.78	.55	.50	1.00	.05
Group 4	8.78	.55	.50	1.00	.05
Group 5	8.83	.55	.50	1.00	.05
Group 6	8.68	.55	.50	1.00	.05
Group 7	8.58	.55	.50	1.00	.05
Group 8	8.43	.55	.50	1.00	.05
Group 9	9.18	.55	.50	1.00	.05

LABORERS
BUILDING CONSTRUCTION

Group 1: General Laborers: All work pertaining to pre-watering, pre-irrigation, and pre-wetting); Axeman and Hand Faller; Bin Wall Installer; Bituminous Curb Builder; Burner (Cutting Torch); Car and Truck Loader; Carpenter Tender; Cement Mason Tender; Chuck Tender; Concrete Saw; Concrete Worker (wet or dry) (curing and drying); Creosote Material Handler (corrosive enamel or its equal); Dumpman; Erector and Installer (includes the installation of all fences, right of way, median fences, snow fences, etc., guard rails, section rails, reference posts, guide posts, signs and right of way markers); Form Setter (paving); Form Setter Tender (paving); Form Stripper; General Laborer; Gunnite Tender; Hand Operated Vibrator Roller; Jackhammer and Pavement Breaker; Landscaper; Landscaper Tender; Material Handler (lumber, rods, cement, concrete); Mechanical Form Cleaner; Mortar Man on Stone Riprap; Nozzleman (air and water); Operator or pnuematic, electric, gas tamper and similar mechanical tools; Pipe Setter (corrugated, culvert pipe multi-plate, sectional plate and similar type); Pipe Setter Tender (corrugated); Pipe Setter Tender (non-metallic); Pipe Wrapper; Powderman Tender; Power Saw Operator (clearing); Power type Concrete Buggy (push); Power type Concrete Buggy (ride); Riprap Man; Rodman; Sandblaster Pot Tender; Shoring and Lagging Open Ditch; Signalman, grade, concrete, etc.; Scissorman or Hopper Man; Stake Jumper for equipment; Tar and asphalt Pot Tender; Toolroom Man; Unloading and packing of steel rods and mesh (reinforcing); Vibrator - concrete; Watchman and Flagman and Heat Tender and Pilot car Operator; Wrecking and Demolition Crews

Group 2: Semi-Skilled Laborers: Asphalt Raker and Tamper; Gunnite Nozzleman; High Scaler (using air tool from bos'n chair, swing stage life belt, or block and tackle, shall receive 20¢ per hour more than the classified rate); Sandblaster Nozzleman; Sewer Pipe Installer (non-metallic, Caulker, Collarman, Jointer, Mortarman, Rigger, Jacker);

Group 3: Drilling - Blasting: Powderman and Blaster; Wagon Drill, Air Track, Diamond and other drills for blasting powder or grouting

Group 4: Tenders: Fork Lift Operator (masonry work); Hodcarriers; Mason Tenders; Plasterer Tenders; Scaffold Builders; Terazzzo Tenders; Tile Setter Tenders

[FR Doc. 80-28702 Filed 9-18-80; 8:45 am]
BILLING CODE 4510-27-C

LABORERS (Cont'd)
BUILDING CONSTRUCTION (Cont'd)

Group 5: Tunnel - Underground: Drill Doctors; Finishers; Form Setters and Movers; Jackhammer Man; Machine Man; Miners (Drillers); Piling and/or Caisson Workers; Rebar Man; Spaders; Steelman; Timberman; Tuggers

Group 6: Chuck Tender; Nipper; Top Man or Top Lander

Group 7: Brakeman; Vibrator Man

Group 8: Bull Gang Laborer; Mucker

Group 9: Shifter

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)

federal register

Friday
September 19, 1980

Part III

Department of Health and Human Services

Alcohol, Drug Abuse, and Mental Health Administration and Food and Drug Administration

Methadone for Treating Narcotic Addicts; Joint Revision of Conditions for Use

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

21 CFR Part 291

Drugs Used for Treatment of Narcotic Addicts; Joint Revision of Conditions for Use

CROSS REFERENCE: For a rule issued jointly by the National Institute on Drug Abuse; Alcohol, Drug Abuse, and Mental Health Administration; and the Food and Drug Administration that revises certain conditions for use of methadone for treating narcotic addicts, see FR Doc. 80-28799 appearing below.

BILLING CODE 4110-88-M

Food and Drug Administration

21 CFR Part 291

[Docket No. 77N-0252]

Joint Revision of Conditions for Use of Methadone for Treating Narcotic Addicts

AGENCIES: Food and Drug Administration and National Institute on Drug Abuse.

ACTION: Final Rule.

SUMMARY: This rule, issued jointly by the two agencies, revises the conditions for use of methadone for treating narcotic addicts. The Narcotic Addict Treatment Act of 1974 requires the Department of Health and Human Services to establish requirements for practitioners conducting maintenance or detoxification treatment with narcotic drugs. These requirements are the minimum standards for the appropriate methods of professional practice in the medical treatment of narcotic addiction with methadone.

EFFECTIVE DATE: November 18, 1980.

FOR FURTHER INFORMATION CONTACT:
For the Food and Drug Administration: Edwin V. Dutra, Jr., Bureau of Drugs (HFD-30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6490.
For the National Institute of Drug Abuse: Nathan M. Kight, National Institute on Drug Abuse, Alcohol, Drug Abuse and Mental Health Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4877.

SUPPLEMENTARY INFORMATION: Section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (Pub. L. 91-513) requires that the Department of Health and Human Services (HHS) determine the appropriate methods of professional practice for medical treatment of various classes of narcotic addicts. The Narcotic Addict Treatment Act of 1974 (Pub. L. 93-281) was enacted by Congress as a means to ensure that only bona fide narcotic addicts are admitted to maintenance or detoxification treatment, that they receive quality care, and that illicit diversion is limited. Pub. L. 93-281 includes the requirement that practitioners who dispense narcotic drugs for maintenance or detoxification treatment of narcotic-dependent persons must meet the standards issued under authority of Pub. L. 91-513.

The methadone regulations in 21 CFR 291.505 are the only regulatory standards published under HHS authority that concern the use of a narcotic drug to maintain or detoxify narcotic addicts. They were originally published by FDA under section 505 (the new drug provisions) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355) and section 4 of Pub. L. 91-513. This final rule is published jointly for HHS by the Food and Drug Administration (FDA) and the National Institute of Drug Abuse (NIDA) under section 4 of Pub. L. 91-513 and Pub. L. 93-281.

In the **Federal Register** of April 29, 1976 (41 FR 17926), FDA proposed to revise the methadone regulations on physiologic dependence of patients, physician staffing, and urine testing. In the **Federal Register** of October 28, 1977 (42 FR 56897), FDA and NIDA jointly proposed a rule to revise the conditions for use of methadone in maintenance and detoxification treatment. The October 28, 1977 proposal included significant revisions to the methadone regulations in addition to those published on April 29, 1976. This document summarizes and evaluates the comments to both proposals. Numerous comments were received on them from nearly every section of the drug abuse treatment community, including patients, counselors, practitioners, other treatment program staff, State authorities, Federal agencies, hospitals, and professional associations.

A summary of the substantive comments and the agencies' responses appear below.

Note.—The proposed revisions published in the **Federal Register** of October 28, 1977 were separated into 13 categories. The same format is used in this final rule.

Also, this final rule contains numerous editorial revisions, intended to make the regulations clearer and more understandable, consistent with the objectives of Executive Order 12044, "Improving Government Regulations."

FDA advises that the program forms required to be completed by treatment programs and then submitted to HHS and the State authority repeat, although not necessarily verbatim, the requirements found in § 291.505 (a) through (j) (21 CFR 291.505 (a) through (j)). Therefore, to avoid repeating similar requirements, this final rule does not contain a reprinting of the required program forms. Instead, § 291.505(k) lists the required forms and states who must complete them, where they must be submitted, and where they may be obtained. Another editorial revision made to this final rule is the consistent use of the work "record" instead of the words "chart" and "clinical record." These minor changes do not affect the substantive requirements of the rule.

Minimum Standards for Admission

1. Several comments objected to establishing any specific length of time of addiction as a prerequisite to maintenance treatment. They contended that the decision to admit a patient to maintenance treatment should be entirely within the discretion of the treating physician. Each patient is different, and chronology of addiction is impossible to prove. Thus, a required length of addiction history is an arbitrary and unnecessary restriction on a physician's clinical judgment. Current physiological addiction should be the sole requirement. Many comments stated that the length of addiction history should be reduced even more—from the proposed 1 year to 6 months or less—because some persons can become addicted in less than a year and should not be denied treatment, forcing them to search out illegal drugs to satisfy their needs until an arbitrary time has passed.

Any length of time selected could be termed arbitrary. FDA and NIDA believe a 1-year history of addiction is a necessary minimum standard to ensure that only truly dependent persons are admitted to maintenance treatment. However, the minimum standards for admission (including the definition of a 1-year history) and the exceptions to the minimum admission criteria, taken together, are flexible enough not to unnecessarily restrict a physician's clinical judgment.

2. Several comments said that the current requirement of a 2-year addiction history should be retained because relaxing the rule to 1 year would make it too easy to qualify for maintenance treatment and thus would weaken the motivation for some patients to detoxify. The comments contended that patients with a 1-year addiction history can easily detoxify or

become drug free if the incentive to do so is not removed by a liberal 1-year rule. It is nearly impossible to become addicted in 1 year on the poor quality heroin available on the streets today; thus, a 2-year addiction history rule is necessary to guard against addicting a nonaddicted person to methadone by admitting the person into maintenance treatment.

FDA and NIDA do not agree that the 2-year rule should be retained. It was dropped from the proposal to make the methadone regulations more appropriate for all maintenance patients and to provide more flexibility in clinical standards. These needs still exist. The 1-year rule will not interfere with attempts at drug-free treatment or attempts at detoxification. The regulations do not preclude a program from requiring these attempts for patients who satisfy the minimum standards for admission to maintenance treatment but who would benefit more from other kinds of treatment. Thus, for patients who could detoxify easily and patients who are not truly addicted, treatment other than maintenance treatment may and should be employed. Also, a State methadone authority or an individual treatment program may, if it believes it necessary, set more rigid admission standards including a 2-year or longer addiction history.

3. Several comments in support of a 1-year addiction history suggested that additional requirements are necessary. For example, a patient should be required to try to detoxify or to make some other "real attempts" at becoming drug free, or agree to a goal of short-term maintenance, or have a positive urine test before maintenance treatment because 1 year of mere episodic use of a narcotic is required as opposed to 1 year of continuous use. Including episodic use in the definition will result in persons not addicted to heroin becoming unnecessarily addicted to methadone from maintenance treatment because using heroin episodically does not result in addiction. Another comment stated that the 1-year rule is too vague and it would enable occasional users of narcotics to be admitted into maintenance treatment easily. For example, a doctor can conclude there is sufficient evidence of addiction based upon mere episodic use and signs of old needle marks without signs of withdrawal.

FDA and NIDA believe that additional requirements are not necessary to support the minimum admission standards. The minimum standards for maintenance treatment include the requirements of a 1-year history of addiction and, in most cases, current physiologic dependence. Patterns of narcotic use, like episodic and continuous use, can be helpful in assessing the history of addiction and at times be of benefit in helping to determine current physiologic dependence. However, episodic use alone does not satisfy the admission criteria. Section 291.505(d)(3)(i) states clearly that an applicant accepted for admission to maintenance treatment must be also currently physiologically dependent. It is the current physiologic dependence and 1-year history of addiction that satisfies the requirement.

To require a positive urine test would not necessarily assure the existence of current physiologic dependence. Although it is unlikely, it is possible to have a positive urine test and not be currently physiologically dependent. Conversely, it is possible for a person to be dependent on narcotic drugs and have a negative urine test for opiates. Therefore, FDA and NIDA believe that the results of the urine tests should be used as a part of an evaluation in deciding whether to admit a patient but that a positive urine result not be a prerequisite for admission to treatment.

4. One comment asked FDA and NIDA to be specific and clearly define "most of the year." Another comment suggested replacing the phrase in § 291.505(d)(3)(i) "for most of the preceding year" with the phrase "for more than 6 months of the preceding year." Finally, some comments requested the rule state clearly that the factors in § 291.505(d)(3)(i)(*c*) are not requirements but merely factors to be considered in determining current physiologic dependence and that a patient with a 1-year addiction history does not automatically qualify for maintenance treatment.

FDA and NIDA believe the examples in § 291.505(d)(3)(i)(*b*) explain adequately what is meant by "most of the year." A more specific definition would reduce the flexibility this rule intends to give clinicians. The factors listed in § 291.505(d)(3)(i)(*c*) are not requirements but are recommendations which will help a physician to determine whether a patient is currently physiologically dependent. The regulation is revised to clarify this point. Also, just because a patient qualifies for maintenance treatment under the minimum standards does not necessarily mean that maintenance treatment is indicated and that the patient must be admitted.

Exceptions to Minimum Admission Criteria

5. Several comments objected to the exception for persons in penal or chronic care institutions. Some of the objections were: Proof of current addiction should be required because of these persons are able to remain drug free or unaddicted for up to 6 months, they do not belong in maintenance treatment, which is designed to treat persons currently addicted to narcotics. The same admissions standards should apply to all because there is no valid reason to treat those persons who happen to spend some time in a penal or chronic care institution differently from anyone else. If a person who happens to spend more than a month in a penal or chronic care institution is to be treated differently than a person who has not, the regulation should state that after the person is in the institution for a certain length of time the exception would no longer apply. As proposed, this exception would allow a person who is drug free for years in an institution to qualify for maintenance treatment immediately after discharge or release from the institution.

FDA and NIDA agree that, as a general rule, proof of current addiction is necessary to ensure against admitting unaddicted persons into maintenance treatment. Certain situations, however, justify exceptions to this general rule. For example, some persons, although physiologically addicted for at least 1 year in the past, may not be able to document current physiological addiction because their residence in a penal or chronic care institution has effectively precluded their obtaining drugs and not because they were able to remain drug free voluntarily. Because these persons who have a 1-year history of addiction before incarceration or institutionalization are likely to return to drug use upon release from an institution, the methadone regulations have long provided a means for them to enroll in a maintenance program and obtain treatment without forcing them to become physiologically readdicted on illicit drugs. Under the current regulations these persons have only 14 days to enroll for treatment (7 days before or 7 days after release from an institution). This final rule merely gives them a longer time (14 days before release or 6 months after release) to help them assure themselves that they can remain drug free voluntarily in their new environment. The longer time will lessen the need for them to decide hastily to enroll in a maintenance program or to return to the use of illicit drugs if their attempt to remain drug free fails. The

opinion of many experts is that persons with a predetention history of addiction who are going to return to illicit drug use will do so within 6 months after release or discharge.

FDA and NIDA agree that the rule would have allowed a person who remained drug free for several years in an institution to be eligible for maintenance treatment upon release. They do not agree, however, that the exception should no longer apply merely because a person has been in an institution for a certain length of time. FDA and NIDA believe that the exception should apply if the person would have been eligible for treatment before incarceration or institutionalization and if the treatment is medically justified. The phrase "if the program physician finds maintenance treatment to be medically justified" was inadvertently omitted from the proposed rule. That phrase, which is included in the exceptions for the pregnant patient and the previously treated patient, is now included in the penal or chronic care exception of this final rule. This revision will help ensure that only persons who meet the criteria in § 291.505(d)(3)(iii) and who are most likely to return to drug use and only those for whom such treatment is medically justified in the judgment of the program physician are eligible for maintenance treatment under the exception.

6. Several comments objected to requiring residency of 1 month or longer in a penal or chronic care institution to make the exception operational and also objected to the 6-month cutoff point, stating that no time limit should be set.

A person who has not been institutionalized for 1 month or longer should have little difficulty proving current physiologic dependence; however, as more time passes such documentation may become impossible. The impossibility stems not from the person's ability to remain drug free voluntarily but from the inability to obtain drugs while institutionalized. Also, persons who were not eligible for maintenance treatement before residing in a penal or chronic care institution should not be eligible for maintenance treatment any more than persons not institutionalized. The 6-month cutoff point is based on the expert opinion (discussed in the response to comment 5 above) that a person who remains unaddicted voluntarily for more than 6 months is less likely to become readdicted.

7. Some comments questioned the reasoning for a 6-month cutoff point for the penal or chronic care exception, while a 2-year cutoff point applies for the exception for previously treated patients. These comments stated that the rationale for both exceptions is the same, and the cutoff point should be the same. One comment suggested rewording the sections to provide that current physiological dependence is not a requirement for admission to maintenance treatment for anyone if it can be shown that the eligibility requirements had been met within the 2 years before the date of application for admission. Another comment suggested a similar rewording but would limit the time to 6 months.

FDA and NIDA believe the available data in the literature suggest that previously treated maintenance patients who return to drug use after voluntary detoxification do so within 2 years, while it is the consensus of expert opinion that the institutionalized care person who returns to drug use is likely to do so within 6 months. Thus, although the rationale for the two exceptions is similar, the consensus of expert opinion supports the different cutoff points. Also, for the reasons discussed in the response to comment 6 above, FDA and NIDA do not agree that, as a general rule, because a person can show that the minimum standards for eligibility for admission to maintenance treatment were met in the immediate past, that person should be considered eligible now for admission without proof of current physiological addiction.

8. One comment said if the rationale for expanding the time of the exception for institutionalized persons from 1 week to 6 months is to give the person an adequate period in which to adjust to a changed environment and to gain reassurance that the change can occur without drugs, then it seems inconsistent to provide this same person with the opportunity for admission to maintenance treatment before release, i.e., before there is a change in environment.

The exception was established also to give an eligible person the opportunity to enroll in maintenance treatment within 14 days before release because it is recognized that some persons cannot voluntarily remain drug free for any length of time without treatment. Thus, treatment is available for persons for whom it is indicated. Also, the exception gives the patient, the institution, and the treatment program adequate time to make a smooth transition from the institution to the treatment program.

9. Several comments objected to the provision excepting pregnant women from the minimum criteria. They cited a variety of reasons: A pregnant woman not currently addicted to narcotics should be required to try drug-free treatment before entering maintenance treatment as there is some evidence of danger to the fetus from methadone maintenance. There is no sense in addicting a pregnant patient to methadone if she is not currently addicted to any drug because it would lead to drug-dependent newborns. Pregnant women should be admitted to maintenance treatment only in rare cases and only upon proof of current physiological addiction but without regard to the length of addiction history. A pregnant woman should be required to accept prenatal care and not merely be given the opportunity for it. Methadone use without prenatal care is no better than heroin use without it. One comment said that if programs are required to offer prenatal care to pregnant patients, then Federal funding would be necessary to help finance it. Another comment wanted a provision added that prenatal care need not be offered by the program if the patient is already receiving prenatal care elsewhere.

FDA and NIDA advise that each program and each State authority is free to require attempts at drug-free treatment before admitting a patient into maintenance treatment, notwithstanding that the patient meets the minimum admission criteria of the methadone regulations. Because drug-free treatment may not be indicated for all patients, it should not be a requirement for all patients.

The decision to enter maintenance treatment must be made jointly by the pregnant patient and the treating physician after weighing the benefits and the risks involved, but only if this treatment is medically justified and she has a documented narcotic history, regardless of how long it is. The major concern is the risk associated with a return to illicit narcotic use. Among the major medical complications or risks of illicit narcotic use during pregnancy are such diseases as acute and chronic hepatitis, bacterial endocarditis, and tetanus. The risks of these conditions are reduced when the pregnant addict is admitted to and followed closely in a methadone treatment program.

FDA and NIDA believe it is impossible to compel a pregnant patient to accept prenatal care and that methadone maintenance is preferable to heroin use and the risks associated with its extralegal status—e.g., overdose, withdrawal, intravenous use of nonsterile paraphernalia and unkown adulterants. Thus, it is best not to require a pregnant patient to accept

prenatal care before admitting her to maintenance treatment.

Finally, FDA and NIDA do not believe that an additional provision is necessary regarding the opportunity for prenatal care. Section 291.505(d)(3)(iii)(*b*)(*1*) already states that pregnant patients must be given the opportunity for prenatal care either by the methadone program or by referral to appropriate health care providers. Obviously, if a patient is receiving prenatal care the requirement is satisfied without the program's offering its own prenatal care to the same patient. Also, because there are a number of facilities that receive Federal, State, or local funds for prenatal services the agencies do not believe that additional funds specifically earmarked for prenatal care are necessary.

10. One comment objected to the requirement to evaluate a patient's condition 3 months after termination of pregnancy and to document in her record whether she should continue on maintenance or be detoxified. The comment said this decision should be left to the program staff.

Section 291.505(d)(3)(iii)(*b*) merely requires that a determination be made, that it be made within 3 months after termination of pregnancy, and that it be recorded in the patient's record. The decision itself as to the treatment course is left to the clinical judgment of the treating program physician.

11. Several comments objected to the exception for previously treated patients because methadone would be easily accessible, and its availability would encourage episodic use and discourage attempts at remaining drug free. The exception would allow a former maintenance patient to be readmitted into maintenance treatment merely on the fear of using drugs again. Comments further contend that the proposed 2-year time period is unreasonable and that the cutoff period should be 90 days or less.

The regulation now in force requires that a person be physiologically dependent before being readmitted to maintenance treatment. This requirement does discourage some maintenance patients from attempting to detoxify because if they fail to remain drug free after detoxification, they must revert to illicit drug use to qualify for readmission to maintenance treatment. Moreover, available data suggest that 2 years is a critical point of relapse (over 90 percent of patients who return to drug use after detoxification do so within the first 2 years). The agencies believe, therefore, that patients who qualify under the exception will benefit by knowing that if they require additional maintenance treatment, they may obtain it without reverting to illicit drug use.

12. One comment in support of the exception for previously treated patients objected to the 2-year cutoff point as an arbitrary time limit and stated that the program physician should determine whether a former patient in danger of relapse should be readmitted. Another comment supporting this exception believes the requirement of at least 6 months of previous treatment for patients to qualify is an arbitrary time limit.

The 2-year cutoff point is based on the data discussed in the response to comment 11 above. Also, the program physician must find that readmission to maintenance treatment is medically justified and in this sense the readmission is left to the judgment of that physician. Finally, previously treated patients in treatment for less than 6 months do not qualify for readmission under this exception. For the purposes of this exception FDA and NIDA conclude that a patient must have been in treatment for at least 6 months to be considered previously treated because it takes at least that long to engage effectively in the rehabilitation process. Also, in view of the expanded eligibility for readmission, the agencies believe it necessary to impose this minimum period of prior treatment.

13. One comment pointed out a possible inconsistency between the preamble and the proposed rule. The preamble discusses the exception for previously treated patients in terms of patients who had voluntarily detoxified, but the text of the proposed rule did not specify the type of detoxification. This implies that involuntary detoxification would satisfy the rule if the other criteria were met.

The intent of the rule is that former maintenance patients meeting all the criteria under the exception are eligible for readmission to maintenance treatment only if they were voluntarily detoxified. Patients who were involuntarily detoxified or who left treatment against medical advice are not eligible under this exception, and the revised wording reflects this.

14. Several comments objected to admitting persons under 16 years of age to maintenance treatment because persons under 16 should be eligible only for detoxification, and detoxification treatment of these young persons should be conducted away from the "regular" treatment facility to ensure that they never mix with the older patients. One comment wanted clarification of the meaning of the statement "morbidity with heroin is higher than morbidity with methadone." (The statement appeared in the preamble as part of the justification to admit persons under 16 into maintenance treatment.) The comment questioned whether the heroin morbidity rate referred to reflected general rates or those specifically for persons under 16. Several comments said that before patients under 16 are admitted into maintenance treatment, documented failures at drug-free treatment, not merely failure at detoxification, should be required.

Clinical experience shows that detoxification of younger patients has failed often and that they return to the use of heroin, Thus, maintenance treatment may be indicated in certain cases for these younger patients. However, to preclude their indiscriminate admission to maintenance treatment, prior approval is necessary on a case-by case basis from both the appropriate State authority and then FDA. The heroin morbidity rate referred to in the preamble to the proposal of this section is the general rate and not specifically for those under 16, although it is well known that many young teenagers die from heroin overdose. FDA and NIDA agree on the desirability of minimizing contact between younger patients and older ones, but conclude that the issue should be handled at the program level, perhaps through scheduling of appointments for treatment visits.

Finally, requirements that go beyond the minimum standards in these regulations (such as failure at drug-free treatment before admission to maintenance treatment) may be promulgated by a program or a State authority as needed.

15. Two comments said that to account for the "emancipated minor," the final rule should be modified regarding written consent from a parent, legal guardian, or responsible adult designated by the State authority for a patient under 18 years of age prior to admission into maintenance treatment.

FDA and NIDA believe any exception for emancipated minors must be handled at the State level because the legal definition of minor and laws regarding the rights of minors vary from State to State.

Minimum Urine Testing; Uses and Frequency

16. Several comments opposed eliminating all mandatory urine testing because without urine testing it is difficult, if not impossible, to determine whether illicit drug use is occurring and whether take-home patients are taking their methadone. These comments stated that without such accurate information the danger of drug overdose

to methadone patients would increase and proper treatment would become difficult. Another comment suggested that all take-home patients and those patients suspected of illicit drug use have periodic urine tests. One comment suggested that if urine testing is eliminated, then take-home medication should also be eliminated. One comment suggested the proposal be revised to require that all new patients and suspected illicit drug users undergo weekly urine tests until four out of five tests are negative, and for all patients not on a weekly schedule random urine testing quarterly should be required.

One comment stressed that urine testing is the most rational way to monitor and assess a patient's clinical course and without frequent urine testing it is impossible to develop proper treatment plans or measure the relative safety and effectiveness of methadone in programs.

Another comment said the take-home provisions require, among other things, that the program physician, evaluating a patient's responsibility in handling methadone, determine that the potential take-home patient is not currently abusing narcotic and nonnarcotic drugs, including alcohol. This comment suggested that without urine tests there is no objective way to properly and effectively evaluate the patient.

One comment said urine testing plays an important role in patient progress in that it is an effective deterrent against use of other drugs, often helping a patient get past the urge to revert to illicit drug use. Accurate and rapid urine test results are important for certain patients. For these patients urine tests should be conducted on a regular and continuing basis. For other patients, clinical observation by trained program staff may be sufficient to assure the staff that abuse of drugs is not occurring.

One State authority commented that without the benefits of urine testing as a check or control on referral patients, it would have to consider not allowing probationers and parolees into maintenance programs.

One comment stated that a counselor's ability to determine patient behavior would be less efficient in the absence of urine testing because the counselor would be using less reliable, but more time-consuming, techniques. Thus, the comment suggested a higher staffing ratio to compensate.

One comment said that by merely recommending and not requiring frequent urine tests, most programs will collect or test urine samples only from new patients; and although the rule does not prohibit frequent urine tests, most programs will not be able to pay for them because Federal funding only pays for what is required. Thus, the liberal use of urine testing is effectively prohibited unless Federal funds will pay for nonmandated urine tests.

One comment suggested that urine testing for all new patients is necessary and should be required for about the first 3 months or until the new patient is stabilized and has a proper treatment plan established.

Several comments stated that mandatory urine testing is a valuable clinical tool that should not be eliminated merely because some testing laboratories do not provide consistent, high-quality results or because some laboratories delay reporting test results. The comments suggested that there are other solutions to these problems—for example, upgrading the laboratories or recollecting and resubmitting urine samples. One comment suggested that the government publish quarterly the accuracy of testing laboratories used by programs.

One comment stated that urine tests should be required only to confirm clinical observations of illicit drug use and compliance with take-home rules.

After considering carefully each substantive comment about urine testing, FDA and NIDA conclude that some minimum urine testing needs to be required for patients in maintenance treatment programs. They agree partially with those comments that supported the proposal because the current weekly testing may not represent the best use of fiscal resources and at times may adversely affect a patient's progress in treatment and the physician-patient relationship when the results are not accurate. However, the agencies recognize that for some programs urine testing can be a valuable clinical tool to help in developing or reevaluating a treatment plan, in detecting illicit drug use, and in confirming patient responsibility for take-home medication purposes. To reconcile these views, FDA and NIDA are adding to the requirement proposed in § 291.505(d)(4) that: (1) During the first year of maintenance treatment, each patient must have at least eight urine tests; and (2) after the first year of maintenance treatment each patient must have at least quarterly urine tests except that each patient who receives a 6-day take-home supply of medication must have at least a monthly urine test. The required tests must be scheduled randomly at the discretion of the program.

FDA and NIDA believe that the minimum urine testing requirement addresses adequately the issues of diversion, safety, and evaluation discussed above, yet is comparatively inexpensive, provides needed flexibility to practitioners, and interferes minimally with the physician-patient relationship and with a patient's progress in treatment. The final rule is revised accordingly.

As to the reliability of testing laboratories, under § 291.505(d)(4)(i) each testing laboratory selected by a program for urine testing must be in compliance with all applicable Federal proficiency testing and licensing standards as well as with all applicable State standards. Thus, at this time, a publication reporting on laboratory accuracy should not be necessary.

Finally, each State authority may impose requirements on treatment programs within its jurisdiction beyond the minimum standards in the Federal regulations to deal with problems and issues unique to that State. Additional requirements might include, for example, more frequent urine testing as a check or control on patients from penal institutions who are referred to maintenance programs.

17. Several other comments stated that urine testing for various substances, e.g., cocaine, barbiturates, or amphetamines, is useless because few patients use these substances. Another comment stated that an initial screening urinalysis of new patients for use of opiates, barbiturates, amphetamines, cocaine, and other drugs is useless because it will only reveal, as expected, that the new patient uses drugs.

FDA and NIDA do not agree. The urine testing of new patients for the various substances mentioned is intended to help the admitting physician qualitatively distinguish the varied drugs of abuse and confirm his/her clinical impression. We encourage testing for other substances according to local abuse patterns.

18. Many comments objected to the statement that urine test results could not be used to force a patient out of treatment. Several of these comments said that repeated "dirty" urine is proof positive that a patient is using illicit drugs and that treatment is not working. They stressed that repeated violation of program rules must lead to termination from the program because to continue administering methadone to these patients is tantamount to approving their behavior. It also places them in real danger of overdose and possibly death. Another comment said that administering methadone to patients using other drugs would undermine the credibility of the program, interfere with proper treatment, and constitute medical malpractice by the physician. One comment said § 291.505(d)(4)(ii) is

ambiguous because it is not clear whether it prohibits the use of urine test results as evidence of illicit drug use, prohibits the use of urine test results to exclude a patient from treatment because of illicit drug use, or both.

Although repeated "dirty" urine tests may be proof that the current treatment is not working, FDA and NIDA do not agree that this can be the sole criterion for automatically terminating a patient from a maintenance program. The phrase "as the sole criterion" is added to § 291.505(d)(4)(ii) to clarify this point.

19. Another comment said that the terms "presumptive" and "definitive" used in proposed § 291.505(d)(4)(ii) are not readily understood by many people and requested clarification. It recommended that a positive urine test not be required for admission to methadone programs.

A positive urine test is not a requirement for admission to a methadone maintenance program (see the last sentence in § 291.505(d)(3)(i)(*c*)). Although a urinalysis test for drugs is required on admission, conceivably in certain situations a person could experience signs of current dependence, such as withdrawal symptoms, yet have a negative urine test result. The term "presumptive" as used in paragraph (d)(4) means those general testing methods, e.g., immunoassay technique that detect the presence of drugs but identify drugs only by classes such as an opiate or a barbiturate. The term "definitive" as used in that paragraph means general testing methods, such as thin layer chromatography, that may be used to detect the presence of drugs and also identify specific drugs within a class.

20. One commment said that the regulations should be modified to state clearly that the initial screening urinalysis requirement is met if the urine sample is collected before the initial dose of methadone is administered, and that it is not necessary to delay the initial dose until receipt of the results.

Because a positive urine test is not required, FDA and NIDA agree and have revised the regulations accordingly.

21. One comment wanted an explanation of the recommended practice "to collect and analyze urine specimens on a randomly scheduled basis at least monthly."

The phrase, which is in the first sentence of § 291.505(d)(4)(ii), means that although it is not required, it is recommended that programs collect a urine sample from each patient at least once a month and analyze the samples for the cited substances. The date or dates on which the samples are collected each month should be varied to minimize the potential for falsifying the samples.

Patient evaluation; Minimum Admission and Periodic Requirements

22. Several comments suggested that § 291.505(d)(5)(iv), which requires an evaluation of each patient upon admission or readmission, can be interpreted as requiring a psychologist, psychiatrist, or sociological expert to evaluate the patient. They mentioned that an evaluation need not be made by a mental health professional to be proper, and that a trained counselor could adequately conduct an admission evaluation. Many comments said that other admission criteria are vague and certain terms need defining. Some comments asked that "appropriately trained staff member" and "all relevant facts concerning the use of methadone are clearly and adequately explained to the patients" be clearly defined. One comment said that the phrase "the interview be completed upon admission to the methadone program" needs to be more specific (to ensure compliance with § 291.505(d)(5)(iv)(*a*)). Another comment requested a definition for a "periodic treatment plan" and a "primary person." One comment suggested expanding Form FD–2635 to include definitions of these key terms and phrases.

FDA and NIDA do not intend that the admission evaluation interview required by § 291.505(d)(5)(iv)(*a*) necessarily be conducted by a mental health professional and agree that a well-trained program counselor, for example, could conduct the required interview. The regulation is revised accordingly. FDA and NIDA conclude that the terms and phrases mentioned in these comments do not require further clarification because they are already defined in the regulations or their meaning is sufficiently clear in the context in which they are used. For example, the term "primary counselor" is clearly defined in § 291.505(d)(5)(v) as someone whom the person(s) responsible for the program assigns to monitor a patient's progress in treatment. Paragraph (d)(5) contains the time frames within which the required evaluations and assessments must be made.

23. One comment suggested that the initial treatment plan be signed by the patient after he or she reviews it to ensure that the patient and the staff are striving for the same treatment goals. Another comment suggested that § 291.505(d)(5)(v) be modified to merely recommend and not require that a supervisory counselor countersign the initial treatment plan. A comment suggested that there is no purpose in requiring a physician to review a patient's treatment plan annually, but another suggested that the physician review it monthly instead. One comment suggested that the yearly treatment plan evaluation include requiring a physician to justify continuing the patient in maintenance.

FDA and NIDA believe that modifying § 291.505(d)(5)(v)(*a*) as suggested is unncessary. It is not necessary that the treatment plan be signed by the patient as a means of demonstrating agreement to its contents. Patient agreement to a particular treatment course in most areas of medicine is usually obtained in discussions between the physician and the patient. Rarely is such an agreement reduced to writing. However, FDA and NIDA believe that as a recommended practice, each time the treatment plan is evaluated or altered, or both, the patient should be made aware of the changes and why they are being made. The regulation is revised to make this point clear. The supervisory counselor shall countersign the patient's treatment plan to ensure for the record that supervisory staff have reviewed the contents. For the same reason, the treating physician shall review and countersign the patient's treatment plan at least annually. No specific reevaluation requirement is included in the regulations because the question of whether a patient should remain on methadone maintenance treatment should be considered periodically for each patient individually, with the final decision left to the discretion of the program physician.

24. Some comments stated that more than 4 weeks are necessary to develop a proper treatment plan. These comments suggested revising § 291.505(d)(5)(v) by deleting the phrase "or immediately after a patient is stabilized, whichever is sooner." Other comments suggested that the section be revised to require that the initial treatment plan be developed within 14 days of admission to the program.

Most patients can be stabilized on a methadone dose, and an initial treatment plan can be developed for them within 4 weeks after admission to methadone maintenance. For some, however, a longer stabilization period may be needed, and a full 4 weeks may be necessary to develop an initial treatment plan. This might be true for patients admitted under the penal or chronic care exception 14 days before release from the institution. Thus, FDA and NIDA do not agree that § 291.505(d)(5)(v) requires revision; as

written it should accommodate all patients.

25. One comment suggested that the admission evaluation be concerned only with a patient's eligibility for admission to a program and that the psychological and sociological background information be obtained at a later time.

A patient's eligibility for admission is dealt with under the paragraph on minimum standards for admission or the paragraph dealing with exceptions to minimum admission criteria (§ 291.505(d)(3)). The psychological and sociological background of patients is intended to provide a program with information from patients after admission and is needed to develop a proper treatment plan for them.

26. Some comments objected to requiring a treatment plan because the standard for medical records should merely be to reflect what is wrong with the patient and what is being done about it.

In essence, a treatment plan does exactly that—state what is wrong with a patient and what is being done about it. In addition to the purely medical problems a patient brings into a maintenance program, however, the patient often also brings psychosocial, economic, legal, and other problems. Thus, in addition to medical services, the patient may require a comprehensive range of rehabilitative services. The treatment plan is intended as a tool to organize the specific remedial approach which will be used in an attempt to address these specific problems.

27. Several comments agreed that the proposed laboratory tests are necessary, but suggested that they be required instead of only recommended. These comments suggested also requiring a test for hepatitis, a CR test for cancer, and a gonorrhea test for all female admissions. Other comments supported the required laboratory tests as long as they need no be performed before administering the initial methadone dose. These comments said it would be adequate for the tests to be done within a reasonable time, perhaps within 21 days after admission.

From time to time various laboratory tests may be necessary for certain patients but not all. Obviously, any laboratory tests that are only recommended but not specifically required should be conducted only if clinically indicated. The required laboratory tests must be started before the patient receives the initial methadone dose. The patient may receive the initial dose before the results are available and reviewed, but review must be made within a reasonable time. Like the physical examination, in an emergency situation the initial dose of methadone may be given before laboratory tests are reviewed. The regulation is revised to clarify this.

28. One comment objected to requiring any laboratory tests because for some patients they are unnecessary and needlessly expensive and only the treating physician should decide whether to order them. One comment suggested that the serological test for syphilis and the tuberculin skin test be required only if the population in the area of the program suffers from these problems more than the general population. Another comment said that the requirement for a tuberculin skin test should be replaced with a requirement that a patient show proof of a yearly chest x-ray.

In the interest of both the public health and the patient's health, these minimal and basic tests need to be performed on each patient. FDA and NIDA believe that a tuberculin skin test is an economical method of screening treatment program patients. The more expensive chest x-ray or other appropriate tests should be taken only if the skin test is positive.

29. One comment asked whether the medical evaluation in § 291.505(d)(5)(i) must be done before the initial methadone dose is administered to the patient.

The medical evaluation must be done before the patient receives the initial methadone dose (see § 291.505(d)(6)(ii)). The medical director or other authorized physicians within a program are responsible for ensuring that this occurs.

Minimum Program Services

30. Several comments opposed the requirement in § 291.505(d)(6)(i) that programs which do not provide required services at the primary facilities document the existence of formal agreements with other public or private agencies, institutions, or organizations to provide the services. The comments argued that it would often be impossible to comply. Third parties (other agencies, institutions, or organizations) often refuse to enter into formal agreements with methadone programs because Federal funding is not available to pay for the contracts, and the individual programs cannot afford to pay for the contracts themselves. One comment stated that this point is highlighted by the statement that "neither the program nor the hospital must assume financial responsibility * * *." Several other comments opposed the requirement (§ 291.505(d)(6)(iv)) that programs enter into a written agreement with a licensed and accredited hospital to provide emergency care to program patients, pointing out that many of these programs are already "hospital based" and in an emergency the patient would go to the nearest hospital and not necessarily the hospital which has a written agreement with the program.

Based on these comments FDA and NIDA have revised the final regulation by deleting the requirement regarding formal agreements between programs and outside organizations or hospitals to provide services not provided at the primary facility. Instead, these agreements are a recommended practice only. However, each program is required to maintain a written list of organizations or hospitals to which patients are referred for the required services if they are not provided at the primary facility. Also, each patient's record is required to contain specific information about referrals made. The regulation is revised accordingly.

31. Several comments said that the regulations should require or recommend psychiatric services as appropriate, require that each program provide medical and counseling services at other than "normal business" hours (to accommodate employed patients), and require that all program staff who are in direct contact with patients be trained in emergency first aid and cardiopulmonary resuscitation. Another comment requested that more funding be available for both required and recommended services.

FDA and NIDA advise that the suggested requirements are beyond the scope of this rulemaking. Any program or State authority that believes these requirements are necessary may make them. FDA and NIDA do not intend to recommend or require psychiatric services for all patients.

32. One comment stated that the term "services" is too vague and asked exactly what services are required and what is meant by "comprehensive rehabilitative services."

Because the specific type of services necessary may vary with the needs of each patient, the terms are not defined specifically. The determination of services needed must be made individually for each patient based on the clinical judgment of the program staff. "Comprehensive rehabilitative services" are those aimed at correcting a range of problems that narcotic-dependent patients may present. Rehabilitative services may include, for example, vocational counseling and training, job development and placement, legal services, and education.

33. Several comments objected to the requirement that FDA approve any

modification of program services in advance because there could be delays in receiving this approval.

Section 291.505(d)(6)(i)(*d*) merely requires a program to report modification of program services to FDA when the modifications are made. The regulations now specify that prior approval is not necessary in these circumstances.

34. Several comments objected to the requirement that a physician review and countersign work done by a physician's assistant or other health care professional because it would take so much of the physician's time that it would negate the benefit of using health care professionals. One comment objected to this requirement only if the physician's review and countersignature must be completed before the patient receives the initial dose of methadone. Another comment said that a physician should review and countersign only his/her own work.

FDA and NIDA do not agree with this comment because much of a physician's time will be saved if, for example, instead of performing a physical examination and recording the results, the physician reviews and countersigns the record of the health care professional who performed it. The required physician review of the record made by health care professionals must be completed before the patient receives the initial dose of methadone. This review may be done by telephone. But after a physician admits the patient into treatment, the countersignature must be completed and the patient's record dated by the physician within 72 hours.

35. One comment suggested revising the rule to clarify that the medical director must be a licensed physician. The second sentence of § 291.505(d)(6)(ii) requires that the medical director and other authorized program physicians be licensed to practice in the jurisdiction in which the program is located. For clarity, the word "medicine" is inserted in that sentence after the word "practice."

Minimum Staffing Patterns

36. Several comments said that a precise definition of "counselor" is necessary. Several others said that "counselor" must be defined but in general terms. One comment suggested that the regulations outline minimum qualifications and background for treatment program personnel to ensure quality patient care.

Each counselor should be a person qualified by virtue of experience, training, or education to assess the psychological and sociological background of a drug abuser to help determine and implement an appropriate individualized treatment plan for the patient admitted to methadone treatment. FDA and NIDA do not believe, however, that the regulations should outline minimum qualifications for counselors or attempt to define a counselor for methadone treatment programs. Section 291.505(d)(7) requires the person responsible for the program to consider several factors when deciding upon program personnel and staffing patterns. Because the person responsible for a program is ultimately responsible for ensuring quality patient care, FDA and NIDA conclude that no specific requirements beyond those in paragraph (d)(7) should be imposed and that the decision regarding staff should be left to the judgment of the program director.

37. Several comments objected to the ratio of 4 counselors for every 300 patients, suggesting that a ratio of 6, 8, or 10 to 300 would be more appropriate because with only 4 counselors for every 300 patients, patient care would suffer as counselors spend full time on paper work. One comment objected to any minimum staffing ratio because the staffing needs vary from clinic to clinic and because any required minimum would contradict the statement in the preamble that the size of the staff should be determined by the person responsible for the program. One comment suggested that a program be required to have one registered nurse for every 50 patients. A professional organization suggested that each program must have one pharmacist for every 300 patients because pharmacists are familiar with Drug Enforcement Agency regulations and the handling of controlled substances. Another comment said that, as a minimum, each program must have one full-time behavioral science professional responsible for all nonmedical treatment, planning, and services because long-term program success results from addressing the social, vocational, and psychological needs of a patient and a medical doctor is not necessarily the best qualified person to meet these needs. Another comment objected to allowing a health care professional to perform some of the physician's duties, suggesting instead a ratio of one physician for every 300 patients.

FDA and NIDA iterate that, except for the minimum acceptable ratio of counselors to patients, the decision of what staff to employ and in what numbers should be made by the person responsible for the program after that person considers the factors listed in § 291.505(d)(7). FDA and NIDA are persuaded by the comments, however, that the ratio of counselors to patients should be increased to at least 1 to 50. This ratio can be met by a combination of full-time and part-time counselors. For example, in a program for 75 patients, the requirement can be met by maintaining a staff of one full-time and one part-time counselor. The regulation is revised accordingly.

38. One comment suggested that to ensure quality patient care, the health care professional be defined to include only a State-licensed physician, physician's associate, physician's assistant, or nurse practitioner.

Because many States allow health care professionals to perform some functions ordinarily performed by a physician and because the State rules and titles for these persons vary, FDA and NIDA believe that § 291.505(d)(6)(iii), which defines health care professional in general terms, must remain as written.

39. One comment suggested counting the time of health care professionals as a percentage of required physician time, as was proposed in April 29, 1976.

The detailed staffing patterns for physicians and nurses in current § 291.505(d)(4) are eliminated by this final rule. Thus, because there is no requirement as such regarding physician time, there is no need to count the time of health care professionals toward it.

Dosage and Responsibility for Administration

40. Several comments opposed the limitation on the initial dose and total first-day dose of methadone because there is no adequate reason for splitting the first-day dose. Some stated that the regulation is unrelated to actual clinical practice and experience and it unnecessarily restricts a physician's clinical judgment. Others said that if 40 milligrams of methadone is usually necessary to suppress symptoms of withdrawal it makes no sense to split the dose because the effects of a split 40-milligram dose (e.g., two 20-milligram doses) and of a single 40-milligram dose are the same. Several comments stated that the size of the initial dose for a patient depends on the individual patient; thus, the government should not impose across-the-board dose limits. Also, one comment said that 40 milligrams of methadone is needed initially to suppress withdrawal symptoms in detoxification patients and opposed the 20-milligram limit on the initial dose of methadone for these patients.

The most recent clinical experience demonstrates that most patients require an initial dose of between 15 and 30

milligrams of methadone to suppress withdrawal symptoms. Moreover, there have been cases of overdoses resulting from less tolerant narcotic-dependent patients receiving too much methadone initially. For these reasons the initial dose of methadone administered to each patient cannot exceed 30 milligrams. However, some patients may require more than 30 milligrams to suppress withdrawal symptoms. This might be true, for example, of patients who were heavy users of heroin up to the day of admission to maintenance treatment. For such patients the regulations allow up to 10 milligrams more of methadone to be administered 4 to 8 hours after the initial maximum dose. It is conceivable that occasionally more than 40 milligrams of methadone may be required to suppress withdrawal symptoms. The regulations do not prohibit the administration of more than 40 milligrams of methadone to a patient within the first 24 hours if the program physician documents that 40 milligrams of methadone were insufficient to suppress withdrawal symptoms. FDA and NIDA believe that this part of the regulations provides the physician sufficient flexibility to exercise clinical judgment about medication orders and provides sufficient safeguards to lessen the likelihood of accidental overdose.

There is no 20-milligram limit on the initial dose for detoxification. Although 15 to 20 milligrams is the recommended initial dose for detoxification patients, the required upper limits on the initial dose for detoxification patients are the same as for maintenance patients (see § 291.505 (d)(8)(i) and (d)(9)(i)).

41. One comment said that an exception to the dose limit is necessary. Because the first few days are critical in getting the patient to accept treatment from methadone maintenance programs, every effort should be made to make a new patient comfortable by allowing higher doses to those that require it. Another comment said that clinical experience shows a 20-milligram initial dose is adequate. This comment would revise the rule to preclude initial doses larger than 20 milligrams unless an exception is granted on a case-by-case basis.

For the reasons stated in the response to comment 40 above, FDA and NIDA believe that § 291.505(d)(8) is sufficiently flexible on the maximum initial dosage. Thus, the regulation need not be revised to provide for either a specific exception or a different maximum initial dose.

42. One comment agreed with the limitations on initial and first-day dose, but suggested lowering the maximum allowable dose from 100 to 80 milligrams after 6 months of treatment in a maintenance program.

Because each patient is different and may progress in treatment at a different pace, to require a lower maximum dose for all patients in maintenance treatment after 6 months appears unwarranted at this time. The decision as to dosage below the maximum dosage is one that should be made by the treating physician.

43. Several comments did not agree that dosage levels for pregnant patients in maintenance treatment should be as low as possible because some studies show dosage levels are unrelated to pregnancy outcome, e.g., there is no correlation between whether the infant experiences withdrawal and the mother's maintenance level. Other of these comments believed that the use of low doses may encourage pregnant patients to use other drugs which are known to be harmful to a fetus and that the standard for a maintenance dose for a pregnant patient should be a dose sufficient to keep her from wanting or needing other, harmful drugs. Another comment pointed out there is no evidence to show that methadone is harmful to the fetus, but there is clinical experience demonstrating clearly the adverse effects of too low a dose for maintenance patients; thus, dosage levels for pregnant patients should be the same as for other patients.

The numerous published reports in the literature on the effects of methadone (or heroin) on human pregnancy and its outcome are frequently contradictory and confusing—in part, because maternal drug history is often inaccurate and confounded by non-drug-related medical conditions. The requirement to keep the methadone dosage level to pregnant patients to the lowest effective dose results from a balancing of the desire to treat the mother effectively and the desire to protect the fetus from potential adverse effects. The intent is to caution practitioners who administer or dispense methadone to pregnant women to be especially careful not to exceed the minimum dosage level necessary to treat the pregnant patient effectively.

44. One comment said that the government is intruding into the practice of medicine by requiring prior Federal and State approval for doses of methadone larger than 100 milligrams. This comment questioned how a patient who requires over 100 milligrams of methadone should be treated while prior approval is being sought. The comment said the rule must be revised to allow doses of methadone over 100 milligrams if the need is documented by the physician in the patient's medical record. One comment said that requiring justification for doses of 100 milligrams or more would be impractical and asked what is adequate justification under the rule. One comment said that doses between 100 and 120 milligrams are common but that doses over 120 milligrams are rare. Rather than justifying doses of 100 milligrams or more, FDA and NIDA should make 120 milligrams the maximum dose allowed with greater doses reviewed on a case-by-case basis.

Adequate "justification" includes documentation in the patient's records by the treating physician that personal observation, among other things, demonstrated clearly that 100 milligrams of methadone did not suppress withdrawal symptoms or cravings in the patient and that a higher dose was necessary. FDA and NIDA believe that the higher the methadone dose, the greater the risk of diversion. However, the agencies recognize that in certain cases patients may need more than 100 milligrams of methadone to suppress their craving for opiates, i.e., to receive an effective individual dose. Thus, the present requirement was established in an effort to weigh the risks and benefits associated when methadone is administered in doses greater than 100 milligrams. The comments have convinced FDA and NIDA, however, that it may be unwise to require prior approval in each circumstance. Thus, the requirement for prior approval of doses over 100 milligrams of methadone does not appear in the final rule. Instead, the person(s) responsible for the program is required to ensure that the State authority and FDA are promptly notified in writing or by telephone when a patient is administered a dose of methadone larger than 100 milligrams. This notification must be transmitted to the State authority and FDA within 72 hours after the dose is administered. Also, patients receiving more than 100 milligrams daily must ingest the methadone under observation at least 6 days a week.

45. Several comments objected to the provision in § 291.505(d)(9) that only a physician may administer methadone to detoxification patients. These comments believed that, as is the case for maintenance patients, a qualified staff member supervised by a physician is sufficient.

FDA and NIDA agree with this comment and have revised that provision to be consistent with § 291.505(d)(8)(ii), which allows authorized health care professionals to administer or dispense methadone.

46. One comment objected to the requirement that only liquid methadone be used because there is no evidence that use of liquid methadone has prevented diversion. The comment suggested that the use of methadone in tablet form is appropriate.

FDA and NIDA do not agree with this comment. At any rate, it cannot be acted upon in this document because the suggested revision is beyond the scope of this rulemaking.

47. One comment pointed out that the requirement that each daily dose of methadone administered to a patient be recorded daily in the patient's medical record presents a major problem for programs that use a computer for recordkeeping purposes. The comment asked whether the weekly or monthly computer records would satisfy the proposed requirement.

The methadone regulations require that an accurate patient record system be established and maintained. The record system must be traceable to specific patients, and it must show specific dates and quantities of the drugs dispensed. Even a program that uses a computer for keeping records must record the information somewhere at some time for eventual storage in the computer. For dosage information to be accurate and traceable to specific patients, good medical practice dictates that this information be recorded when the dose is dispensed regardless of when it is to be stored in a computer.

48. One comment suggested that § 291.505(d)(8)(i)(*d*) be reworded to clarify that prior approval for doses larger than 100 milligrams of methadone is necessary for all patients and not only new patients.

In the response to comment 44 above, FDA and NIDA explain why prior approval is no longer required.

49. One comment said that there is no reason why a program director need be licensed to practice medicine.

The regulations do not require the program sponsor or program director be licensed to practice medicine. Section 291.505(d)(6)(ii) requires, however, that each program have a medical director licensed to practice medicine in the jurisdiction in which the program is located. FDA and NIDA believe that one who directs the medical affairs of a narcotic treatment program must be a licensed physician.

Maximum Take-Home Medication

50. One comment said establishing a list of criteria for a program physician to consider in evaluating patient responsibility in handling methadone is simplistic and the only criterion should be whether, in the treating physician's clinical judgment, the patient should have take-home medication.

The treating physician must decide if a particular patient benefits from a treatment course that includes take-home medication. However, because methadone is a narcotic subject to abuse if not handled properly by responsible patients under medical supervision, every reasonable precaution must be taken to prevent its potential abuse. Consideration of the criteria listed in § 291.505(d)(8)(iv)(*c*) and enforcement of the take-home requirements in § 291.505(d)(8)(v) help to ensure that take-home medication is given to the patients who not only most benefit from it but who, after careful screening, are also responsible in handling methadone.

51. Several comments stated that reference to financial and family stability should be deleted from the list of criteria because a patient should not be penalized for lack of money or bad family relations. Other comments suggested deleting abuse of alcohol and past criminal activity from the list because many patients do or did have an alcohol problem and many patients do have a criminal record insofar as illicit drug use is concerned. Thus, if these criteria are included, most patients who would benefit from take-home medication are unfairly denied the benefit.

FDA and NIDA do not intend to unfairly deny any patient the benefit of take-home medication. The physician must consider the totality of a patient's experiences before deciding whether the patient can responsibly handle methadone. An adverse finding regarding a single item or combination of items need not mean that take-home medication must be denied to a particular patient.

FDA and NIDA agree that the criteria listed in paragraph (d)(8)(iv)(*c*) should be changed. They have therefore modified references to a patient's background, history, and personal characteristics, the characteristics of his/her community, the patient's past abuse of drugs and alcohol, and financial condition, and the stability of the patient's family relationship. And they have added a provision that consideration be given to whether the rehabilitative benefit to the patient outweighs the potential risks of diversion.

52. Several comments suggested that the program physician's evaluation of the listed criteria include consultation with and consideration of the recommendations of the patient's counselor and any professional staff trained in the behavioral sciences.

Obviously, program staff other than the treating physician should be very knowledgeable about certain of the listed items of information about a patient. For example, the primary counselor who conducts the admission evaluation or the patient's counselor would be most familiar, through daily observation, with the issue of illicit drug use and any serious behavioral problems of the patient. On the other hand, if the patient has had frequent contact with the treating program physician, the physician may be equally or more knowledgeable about these patient problems. Thus, to ensure proper consideration of the listed criteria, the treating physician should consult with appropriate and informed program staff members before determining whether the patient can responsibly handle increased methadone take-home privileges. This was not made clear in the proposed rule. However, the agencies decline to be any more specific in this regulation regarding other professional disciplines with whom the physician should consult. Other than the required minimum staff, each program may have a different staffing pattern based upon patient needs and program resources. Not all programs could comply with a rule requiring a program physician to consult with a behavioral science specialist, for example, before deciding about a patient's take-home privilege. Each program must have a minimum of six counselors for every 300 patients, who will assist in developing and implementing the patient's treatment plan and will monitor the patient's progress in treatment. Thus, this regulation recommends that the program physician consult with those persons before considering the criteria in § 291.505(d)(8)(iv)(*c*). It also recommends that other appropriate staff be included in the consultation. For example, programs that use behavioral scientists would benefit by including them in the consultation. The regulations are revised accordingly to recommend such consultation.

53. Several comments objected to connecting a patient's length of time in treatment to the take-home medication schedule because one factor has nothing to do with the other. Another comment said that the only guide on whether to allow take-home medication should be a patient's progress in rehabilitation and not how long the patient has been in treatment.

Besides being an important element in easing the patients's return to gainful employment, take-home medication is a clinical tool to be used by programs that believe it will enhance a particular

patient's rehabilitation progress. FDA and NIDA believe that for most patients the length of time in treatment and the likelihood of rehabilitation are related. Also, the longer a patient is in treatment the greater the likelihood he or she has of establishing a therapeutic relationship with the counselor and the program and the greater likelihood he or she has of being assessed properly against the criteria listed in § 291.505(d)(8)(iv) (*c*).

54. Several comments objected to the restriction that patients who receive more than 100 milligrams of methodone daily may receive no more than a 1-day take-home supply. They contended that the same criteria for take-home medication should apply to all patients regardless of the size of the methadone dose required to treat them. Patients should not be penalized because they require a large dose of medication. One comment said that the maximum take-home dose should be 60 milligrams per day.

The provisions on the take-home privilege are based upon the recognition that daily attendance at a program facility may be incompatible with gainful employment, education, or responsible homemaking. At the some time, the provisions recognize that diversion may occur when patients take medication from the clinic for self-administration. In the take-home requirements, FDA and NIDA have attempted to strike a balance between the risk of diversion and the benefit of enhancing a patient's progress toward rehabilitation. Because the range of methadone maintenance doses in the country today is generally between 40 and 100 miligrams daily, the general limitation of a 1-day take-home per week for patients who receive more than 100 milligrams of methadone daily is both a necessary and a reasonable precaution against potential safety and diversion problems. (Section 291.505(d)(8)(v)(*b*) does, however, provide for exceptions to the general limitation.)

55. Many comments objected to the provision to allow a patient a 6-day supply of take-home medication because they believe it will cause more diversion of methadone or at least increase the potential for diversion. These comments said that increasing the amount of take-home medication is not in keeping with the data that show a relationship of take-home methadone to diversion, accidental deaths, and adverse reactions.

Some comments said take-home medication should be permitted only in exceptional circumstances like medical emergency or short-term travel, but in no event should it be given to newly readmitted patients. Other comments said that readmitted patients should not be required to wait 3 months before becoming eligible for more than a 1-day supply of take-home medication.

FDA and NIDA do not agree that increased diversion will result from the provision to allow a 6-day supply of take-home medication. The potential diversion issue is addressed in § 291.505(d)(8)(iv)(*c*), which requires a program to screen carefully each patient to determine whether the patient is responsible in handling methadone before it permits or increases take-home privileges. The regulations include provisions which make eligibility criteria for take-home more stringent than the previous "time in treatment" criteria. In addition the regulations require that each patient eligible for take-home consideration demonstrate: (1) Progress in treatment, (2) a need for reduced frequency of clinic visits, and (3) responsibility in handling methadone. Also, take-home privileges must be reduced when there are unexcused program absences. This required take-home screening, which applies to all take-home and not only to 6-day take-home, coupled with specific preadmission screening and individual treatment plan requirements, should reduce potential diversion if the medical director and program staff exercise good clinical judgment and do so diligently. However, because FDA and NIDA agree that the potential for diversion is a major concern, they conclude that additional safeguards regarding the take-home patient are necessary. Additional safeguards are therefore required by § 291.505(d)(8)(v)(*b*). They are intended to help ensure that only the most responsible patient receives a take-home supply of methadone, and they require cancelling or reducing a take-home schedule for a patient who does not prove to be responsible by missing scheduled appointments, for example.

To restrict take-home medication to use in exceptional emergency circumstances would unnecessarily restrict the rehabilitative efforts of patients attempting to become or remain gainfully employed. Moreover, it would deny the use of a clinical tool many drug abuse clinicians believe to be essential in treating narcotic addicts in maintenance programs. These regulations attempt to restrict the take-home privilege only to those patients who have demonstrated responsible behavior.

The readmitted patient, like a newly admitted patient, undergoes a stabilization period upon entering a program. During this period many decisions are made, including development of a treatment plan and the maintenance dosage level for the "new" patient. Also, take-home privileges cannot be expanded until, among other things, a patient demonstrates substantial progress in rehabilitation. Because one measure of progress is the completion of treatment plan goals, the readmitted patient, like a newly admitted patient, may not receive more than a 1-day supply of take-home medication during the first 3 months of treatment. However, this take-home restriction does not apply to a patient who meets the previously treated patient criteria under § 291.505(d)(3)(iii)(*c*).

56. Another comment said the requirement to package take-home medication in child-proof containers must be strictly enforced because there are too many reports of overdose and death to children from methadone found in the home.

FDA and NIDA advise that the methadone regulations already require take-home medication to be packaged in compliance with 16 CFR 1700.14. Also, § 291.505(d)(8)(iv)(*c*) requires that consideration be given to safe storage of take-home medication in the home before a patient may receive the initial or an increased take-home supply of methadone. Programs are encouraged to emphasize these points with their patients constantly.

57. One comment said that an exception to the take-home requirements is necessary for the bedridden patient who is not hospitalized. Another comment suggested a provision to allow all patients take-home medication in extraordinary circumstances such as extended legal holiday weekends, or in emergencies like a flood or severe snowstorm. Another comment suggested adding a provision to the take-home requirements that would allow a State authority to grant exceptions and a provision to require prior approval from a State authority before 6-day take-home is permitted.

Section 291.505(d)(8)(vi) provides for exceptions to the Federal take-home requirements in extraordinary circumstances. However, these exceptions are intended for true emergencies. Although some emergencies like a flood or severe snowstorm may be regarded as exceptional or extraordinary circumstances that warrant an exception, an extended legal holiday is not.

FDA and NIDA do not agree that a specific Federal provision requiring prior approval from the State authority is necessary before 6-day take-home is permitted. A state authority may require prior approval or prohibit take-home medication altogether if it considers it necessary.

58. One comment suggested that each time a patient receives take-home medication, the patient should receive a written statement of the dangers of methadone including the danger to children and others who do not have a narcotic tolerance.

FDA and NIDA advise that upon admission to maintenance treatment, each patient is informed of the specific dangers and adverse results of taking methadone, especially without medical supervision (see Form FD–2635). Also, § 291.505(d)(3)(ii) requires that the person responsible for the program ensure that all relevant facts about the use of methadone are clearly and adequately explained to each patient and that each patient signs Form FD–2635.

59. One comment said that § 291.505(d)(8)(v)(*a*) needs to state clearly that only 1 day of take-home medication is permitted for new patients because it can be interpreted to mean that 2 days of take-home medication during the initial 3 months of treatment is not prohibited.

FDA and NIDA believe that the second and third sentence of that section clearly preclude the suggested interpretation.

60. One comment objected to dropping the requirement that after 2 years of maintenance treatment a patient be evaluated to consider whether he or she should remain in maintenance treatment. The comment stated that such an evaluation should be made periodically.

This requirement was dropped because many people had incorrectly interpreted it to mean that detoxification was required after 2 years. No specific reevaluation requirement is included in the regulations because the question of whether a patient should remain on methadone maintenance treatment should be considered periodically for each patient individually, with the final decision left to the discretion of the physician.

Minimum Standards for Detoxification Treatment

61. Several comments objected to the definition of detoxification, i.e., treatment using methadone for 21 days or less. They maintained that the failure rate of detoxification treatment is high because 21 days is an insufficient time to effectively detoxify most patients. One comment said successful detoxification treatment requires a slow, steady reduction of methadone doses; thus, no time limit should be imposed and the treating physician's clinical judgment should be the only criterion.

The Narcotic Addict Treatment Act of 1974 (Pub. L. 93–281, 21 U.S.C. 802(28)) defines detoxification as "the dispensing, for a period not in excess of 21 days, of a narcotic drug in decreasing doses to an individual in order to alleviate adverse physiological or psychological effects incident to withdrawal from the continuous or sustained use of a narcotic drug and as a method of bringing the individual to a narcotic drug-free state within such period." This definition cannot be changed by regulation. However, FDA and NIDA recognize that some patients need more time to detoxify successfully. Detoxification treatment which will take longer than 21 days may easily be accomplished within the framework of these regulations as long as the patient meets the maintenance treatment criteria.

62. Several comments suggested that 1 week between detoxification attempts is too short because patients would lack the incentive necessary to succeed if they know that if they fail they need wait only 1 week to get back into detoxification treatment. Thus, these comments suggested requiring "waiting periods" of 4 weeks to 6 months between detoxification attempts. Another comment said that more than 1 week between detoxification attempts is necessary to allow a counselor adequate time to assess the reason detoxification failed initially and to determine possible ways to avoid failure in later attempts.

The 1-week waiting period between detoxification attempts is not recommended as the waiting period for all patients; for some patients a longer time may be required and is permissible under the regulation. The regulation as written affords clinicians the flexibility necessary to adapt repeated detoxification treatment to a particular patient's needs. At the same time, it establishes a minimum standard to preclude removing all the incentive to succeed in detoxification treatment that a waiting period of less than a week would involve.

Also, FDA and NIDA advise that § 291.505(d)(9)—*Minimum standards for detoxification treatment*—is expanded to show the differences between the minimum standards for detoxification and those for maintenance treatment. The following standards apply to maintenance treatment but not to detoxification because they cannot be accomplished in 21 days or less: Urine testing except for an initial drug screening urinalysis; periodic treatment plan evaluation; those requirements in paragraph (d)(6) except (ii)(*a*) through (*d*), (iii), and (iv). The recommendation that pregnant patients not be detoxified because of the desire to prevent fetal withdrawal symptoms obviously applies only to the detoxification standards.

Use of Methadone in Hospitals

63. One comment stated that the language in § 291.505(f)(2) is confusing and should state simply that an addicted patient who is hospitalized for any reason other than narcotic addiction may be maintained or detoxified on methadone according to the practitioner's clinical judgment.

To limit the wording of § 291.505(f)(2) to that suggested by the comment omits other important information contained in the section, such as that maintenance treatment may be undertaken only by approved programs or what to do if there is no approved program in the area.

Confidentiality of Patient Records

64. One comment asked whether the deletion of the citation to Part 1401 (now Part 2 of Title 42 of the Code of Federal Regulations) means that compliance with Federal regulations on the confidentiality of alcohol and drug abuse patient records is no longer necessary.

That requirement is still in effect, but because of a recodification is now found in 42 CFR Part 2 instead of Part 1401.

Program Forms

65. Several comments said that there is no reason to require each program physician who is licensed to dispense or administer methadone to complete Form FD–2633. They suggested revising § 291.505(k)(2) to require the medical director to complete Form FD–2633 for each physician in the program.

Although the medical director is ultimately responsible for the medical aspects of a program, each physician within a program must complete Form FD–2633 principally to ensure that he or she understands the physician's responsibilities and is familiar with the various requirements and recommendations governing the use of methadone in a treatment program.

66. Several comments pointed out apparent inconsistencies between the minimum standards and the language of the several forms. For example, one comment said that "the formerly treated patient" exception does not appear in the forms but is included in the minimum standards; that Forms FD–2632

and FD–2633 do not include the changes to the admission criteria regarding documentation of current addiction, guidelines for determining a 1-year history, required laboratory tests, required medical services, and treatment plans; that Form FD–2632 in paragraph IX.A.2 says detoxification treatment with methadone may begin when there are significant signs of withdrawal, and that methadone must be administered by the program physician, but the standards require otherwise. The comment suggested that the forms and the minimum standards be the same in content.

FDA and NIDA are revising the forms to be consistent with the requirements and recommendations of the final rule. It is not their intent, however, to repeat verbatim the language of the regulations in each of the forms.

In response to the Public Health Service's substitution of "FDA–" for "FD–" as the prefix for FDA forms, the prefix will be revised accordingly as new forms are printed. After new forms are available, the regulations that reference these forms will be editorially revised to reflect the "FDA–" designation. Existing forms should continue to be used until revised forms are available.

67. Several comments suggested that § 291.505(k)(1) be reworded (FD–2632 paragraph XIII) to state clearly that prior FDA approval is not necessary to change staff members.

Because not all program changes require prior approval from FDA or the State authority, Form FD–2632 is being revised in paragraph XIII by adding to the end of the sentence the words "if prior approval is required" to clarify this point.

68. One comment suggested omitting use of the word "addicts" from Form FD–2632, paragraph VI, and from Form FD–2633, paragraph III, because it is an inappropriate word that should be replaced by the word "patients."

FDA and NIDA agree and are revising the forms accordingly.

69. One comment wanted the phrase in Form FD–2635 "eventual withdrawal from methadone is an appropriate goal" deleted because for some patients it is not an appropriate goal.

FDA and NIDA believe that for many patients eventual withdrawal from methadone is an appropriate goal. However, years of experience with treatment programs suggest that for some patients eventual withdrawal now appears unrealistic. The regulations are revised accordingly to reflect this knowledge.

70. One comment suggested not using the annual report Form FD–2634 because it is unproductive and time consuming, or replacing it with a quarterly report form because it is difficult to compile the information yearly.

Form FD–2634 provides various government agencies with valuable information, including information necessary for proper funding of Federally-sponsored programs. Programs that find it difficult to compile the required information yearly may compile it quarterly and at year's end combine the quarterly reports onto the annual report form and submit the information at that time.

71. Several comments objected to completing Form FD–2636. The methadone regulations require that this form be completed by hospitals receiving methadone for use in maintenance or detoxification treatment. The comments pointed out that no similar form must be completed to receive methadone for other uses, such as analgesia. These comments said that it is unreasonable and unnecessary to require a hospital to complete a form when it receives a drug for a particular use if it is not required for the same drug intended for a different use. These comments also objected to the requirement that a hospital register, especially to stock methadone for one use and not another.

Special registration to dispense a narcotic drug for maintenance treatment or detoxification treatment is required by statute (Narcotic Addict Treatment Act of 1974, Pub. L. 93–281, 21 U.S.C. 823(g)). This special registration is in addition to the annual registration required by the Controlled Substances Act to prescribe or dispense controlled drugs in schedule II, III, IV, or V. Because under the Narcotic Addict Treatment Act of 1974, HHS is responsible for overseeing the treatment of narcotic dependence with narcotic drugs and because the completion of Form FD–2636 by hospitals gives HHS the information to help discharge its responsibility, FDA and NIDA cannot agree that this is an unnecessary and unreasonable regulation.

Miscellaneous Provisions

72. Many comments objected to § 291.505(d)(15)(iii) regarding termination of a patient from the program for recordkeeping purposes if the patient misses appointments for 2 weeks or more without notifying the program. They maintained that the rule would be too harsh, especially as applied to patients who are on a reduced pickup schedule. One comment asked whether a program would be required to repeat all the admission requirements for patients who "return" to a program after termination from the program under § 291.505(d)(15)(iii).

In the agencies' view, the rule as applied to all patients, including those on a reduced pickup schedule, is not overly harsh. A patient who misses this many appointments is probably demonstrating that he or she does not require his or her usual stabilization dose, and, thus, should not receive it for several reasons, including the danger of overmedication and the possibility that the patient is diverting part or all of the methadone he or she receives or that the take-home patient is not responsible in handling any take-home medication.

A patient whose episode of care is terminated under § 291.505(d)(15)(iii) and who returns for care at a later time must be considered a new patient subject to each of the admission and take-home criteria.

73. Several comments objected to the recommendation that an adequate involuntary termination procedure include an opportunity for the patient to contest, in an informal forum, the decision to terminate him or her from the program. They contended that to do so would take away a valuable clinical tool—quick expulsion from the program—because a review process would be very time consuming. Considerable risk to program staff could result from violent patients who may not be barred from treatment while the review process is pending. Also, this rule would require additional Federal funding because most programs cannot pay for the cost of court appeals and potential consequential or incidental damages should it lose on appeal. Another comment suggested that § 291.505(d)(10) be eliminated because the relationship between a physician and a patient does not lend itself to a due process procedure and if a patient does not obey program rules he or she should be removed from the program. Finally, a physician is not required legally or ethically to treat a patient against his or her will. The comment asked whether proposed § 291.505(d)(10) thus means that the government will attempt to force a physician to treat a patient and, if so, how this would be enforced.

The comments have persuaded the agencies not to require each program to establish a written policy regarding involuntary termination from treatment. However, the agencies have included this concept in the final rule as a recommended practice because they believe that for many programs such a policy would aid in assuring a better patient/program relationship in that each patient will know what is expected

of him or her and what they in turn can expect from the program.

Also, § 291.505(d)(10) has been modified to delete the phrase "due process rights of patients," because this has misled readers into believing such "rights" have been established by judicial interpretation of the Constitution. Whether or not the process is Constitutionally guaranteed, FDA and NIDA believe a methadone treatment patient should not be expelled from a program without at least a written statement of the reasons of expulsion, an opportunity to show that those reasons do not apply or are not true, and the opportunity to rebut the expulsion to the program director or to some physician on the program staff who is entitled to admit persons to the program.

This procedure need not preclude quick expulsion of a patient in a program. "Violent patients" who threaten other patients or staff members may be subject to arrest for assault or breach-of-peace as any other citizens, either with or without expulsion. Additional Federal funding will not be made available to pay legal fees or damages for programs' defense of patient expulsions. The agencies agree that any patient who does not follow program rules based on these regulations should be removed from the program, but they are concerned to ensure that any expulsion is based on infraction of a valid rule and not on the whim or prejudice of a program staff member.

74. One comment said that § 291.505(d)(10) is unnecessary because the State of Michigan Department of Mental Health guidelines governing recipient rights are already available. Another comment suggested that the detailes of the due process procedure under § 291.505(d)(10) be published by the Department of Health and Human Services to explain how a program can comply, and further suggested that § 291.505(d)(10) require that a program offer detoxification treatment to a patient before involuntarily discharging him or her from treatment.

Section 291.505(b)(10) is not unnecessary because, although Michigan has developed rules dealing with involuntary termination procedures, not all States have done so. If Michigan's guidelines meet the recommendations of § 291.505(d)(10), programs may use them to satisfy this section. Also, FDA and NIDA believe that it is not necessary to publish departmental guidelines at this time.

75. Several comments suggested that because of new take-home requirements, the methadone regulations should be revised to require program participation in a "multiple enrollment system" similar to the rule in effect in 1972 (see 37 FR 26799; December 15, 1972) to help prevent diversion.

The reasons given for omitting this requirement (see 39 FR 17449; May 16, 1974 and 39 FR 37636; October 23, 1974) are still valid: Potential for inappropriate breaches of confidentiality, and the ability to control the problem at the program level.

76. Several comments said that the rule must be modified to include specific rules or guidelines for the medication of transfer patients, transient patients, and incarcerated patients. In particular, the comments asked for guidelines on the maximum methadone dose to these patients and whether they are eligible for take-home medication.

The suggested modifications for specific rules are beyond the scope of this rulemaking. However, the agencies believe that this rule and the accompanying recommendations accommodate all patients, including the procedures for transferred, transient, and incarcerated patients.

77. Two comments said that the recommendations which appear throughout the proposed rule should be eliminated because monitoring agencies will interpret them as requirements if they are mixed in with the regulations and although the recommendations represent current good medical practice, they may not in the near future because of rapid changes in this field of medicine and because the regulatory process does not lend itself to rapid change. Thus, the comments stated, the recommendations should be removed from the regulations and be included instead in informational brochures published by FDA/NIDA or published in the scientific literature.

The recommendations represent sound medical practice in the safe and effective treatment of narcotic addicts with methadone, and FDA and NIDA urge that they be followed. Federal monitoring agencies will not interpret the recommendations as requirements merely because they are included in the regulations. Each Federal monitor is experienced in drug inspections and investigations, is thoroughly familiar with the current regulations, and is guided by the relevant compliance program guidance manual, which includes explanations of the requirements for treatment programs and of the recent changes in the regulations. To help ensure that the regulations are interpreted correctly, the Federal Government conducts training sessions throughout the country for its inspectors and investigators as well as for other monitoring agencies, including the various State authority personnel.

Because each program must be familiar with the regulations, FDA and NIDA determined to include the recommendations in the regulations to ensure that each program is also familiar with the recommendations. FDA and NIDA will consider publishing informational brochures as a means of supplementing the published regulations and recommendations if the need arises.

78. One comment objected to § 291.505(d)(10)(ii), which states in part that "upon successfully reaching a drug-free state the patient should be retained in the program for as long as necessary to assure stability in the drug-free state * * *." It is not good psychologically to have such a patient continue to identify with the treatment clinic environment. Thus, regulations must be promulgated to require programs to develop a means of separating these patients from the peer pressure which exists in the treatment clinic. Another comment questioned how a program could compel such a patient to remain in the program.

The intent of this section is not to compel a patient to remain in a program. Rather, the intent is to recommend that the program-patient relationship continue beyond the time when the patient reaches the drug-free state. Patient participation in a program must be voluntary (see § 291.505(d)(3)(ii)). This recommendation is based on the generally accepted finding that drug abuse often involves psychological as well as physiological problems which must be addressed to obtain total rehabilitation and the fact that pressure to return to drug use exists for some time after voluntary discharge from maintenance treatment. The section is reworded to clarify these points. To require separation of maintenance and detoxification patients from patients who have reached the drug-free state appears unnecessary. Such a rule may be imposed by a program or State if it is needed in that program or State.

79. Several comments objected to all the regulations because they give absolute clinical control to physicians, and no share of clinical control to other professionals such as sociologists, psychiatrists, and psychologists.

FDA and NIDA recognize that the proper treatment of narcotic addicts involves to varying extents, contributions from several of the professional disciplines including sociologists, psychiatrists, psychologists, and physicians. However, this revised regulation constitutes the Secretary's standards under the Narcotic Addict Treatment Act of 1974 and is published, in part, under the authority of section 4 of Pub. L. 91–513 (42 U.S.C. 257a), which concerns the medical treatment of

narcotic addicts. Because these are medical standards, it is both necessary and proper that a physician is given the ultimate responsibility and necessary authority in the treatment of a patient. This approach is not inconsistent with the present philosophy of many methadone treatment programs. Also, the particular drug used in this type of treatment is a narcotic. The ultimate responsibility for its proper use and for the patient's care rests with the person who writes the order to administer or dispense it.

80. One comment said that the entire proposal conflicts with the Federal funding criteria published in the **Federal Register** of May 27, 1975.

FDA and NIDA are unaware of a conflict between NIDA Treatment Services Grants (the former Federal funding criteria) and the requirements contained in this final rule. The criteria in NIDA Treatment Services Grants apply only to programs that receive NIDA grants. The methadone regulations apply to all methadone programs, whether receiving NIDA funds or not. Thus, where the NIDA grant criteria are more restrictive than the methadone regulations, the programs receiving NIDA funds must comply with them. For example, the NIDA grants criteria may require extra services or certain staff qualifications that do not appear in the methadone regulations. Therefore, programs that do not receive NIDA grants need not provide the extra services, but programs that do receive NIDA grants must provide the extra services. Programs in those States where treatment standards have been developed which are more restrictive than the Narcotic Treatment Standards must also comply with the State standards.

81. Several comments opposed the regulations as being too flexible. They said none of the recommended practices will be followed and the stricter regulations (published in 1972) should be reinstated because tighter controls are necessary to deal with unethical programs.

FDA and NIDA should not subject all programs to inflexible standards simply because a few programs are unethical. Unethical programs can be dealt with effectively through strict enforcement of the minimum standards in this rule.

82. One comment suggested that patients with iatrogenic addiction (medically related addiction) should be exempt from the minimum standards and treated as patients with a purely medical problem, and they should not be forced into the environment and culture of the "street" addict.

Such an exemption is best handled on a case-by-case basis under § 291.505(d)(12)—*Exemptions from specific program standards.* Because the number of such patients is relatively small, including a specific exemption for them in the regulations appears unnecessary. Also, any practitioner who wishes to treat such a patient separately may apply to FDA for a one-patient program approval. FDA and NIDA are reexamining this issue, however, in light of the most recent information. If they conclude that a specific exemption is necessay or that standards specifically addressed to this type of patient are desirable, it will appear as a proposed rule in the **Federal Register.**

83. One comment suggested amending the rule to include specific guidelines about the patient's right to treatment and the program's right to refuse treatment.

Section 291.505(d)(3)(v) states "If in the professional judgment of the medical director a particular patient would not benefit from methadone treatment she/he may be refused such treatment even if she/he meets the admission standards." This section is clear and no revision is necessary.

84. One comment said a 1-week notice before inspections is necessary because surprise inspections are unfair.

The comment does not state why an inspection without a 1-week notice is unfair or why an inspection after a 1-week notice would not be unfair. The purposes of an official inspection include the means to determine how a program conducts its normal day-to-day operation. The current procedure accomplishes this purpose, and FDA and NIDA see no good reason to modify it at this time.

85. Several comments said that because more take-home medication is allowed and because there are reports of many deaths related to take-home medication, the label of the take-home bottle should include warnings to help with this problem.

One comment suggested the methadone regulations need to be reorganized to make them easier to read and easier for programs to comply with. It stated the reorganization should be done independently of this final rule, yet in conjunction with a reexamination of the costs to programs to provide all the newly required services to their patients, especially for NIDA-funded programs.

FDA and NIDA advise that they are considering the merit of these suggestions. If the suggested changes are determined to be necessary, they will appear in a future **Federal Register** publication.

86. One comment pointed out that FDA published an announcement in March 1975 that the "emergency treatment situation" would be dealt with in the near future but that this proposed rule does not mention that problem. Another comment stated that it is unrealistic to prohibit emergency room physicians from using methadone in an emergency situation because this prohibition is contrary to both good medical practice and to the regulations of the Drug Enforcement Administration.

Because the Drug Enforcement Administration (DEA) has already issued a regulation about emergency uses of methadone for narcotic addicts by physicians who are not specifically registered to conduct a narcotic treatment program (see 21 CFR 1306.07), FDA and NIDA do not believe a duplicate regulation is necessary. FDA and NIDA will not take action against a physician who is in compliance with the DEA requirements in such a situation.

87. One comment suggested this final rule include informational guidelines regarding what the long-term risks are to patients in maintenance treatment. It suggested that an amended informed consent form include the guidelines. Another comment suggested deleting the requirement that a patient sign a consent form to obtain treatment in a methadone program because consent forms are not required for other medical treatment. The comment contended that methadone maintenance and detoxification treatment are no different from other medical treatment and should not be the exception to the rule.

FDA and NIDA are considering the need to revise Form FD-2635 to include more specific information about the possible risks and complications from the use of methadone. FDA and NIDA cannot agree, however, that the patient should no longer be required to sign the consent form as a prerequisite to admission to a methadone program. Requiring a patient to sign a consent form before treatment is not without precedent in medicine. Also, the consent form for methadone treatment serves several important functions—among them, ensuring that the patient is voluntarily participating in the methadone program and understands the possible risks and complications from the use of methadone.

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2. "Methadone and Pregnancy, Special Bibliographies No. 1," National Institute of Drug Abuse prepared by Student Association

for Study of Hallucinogens under contract No. HSM–42–73–216, September 1974.

3. "Drug Abuse Warning Network Phase VI Report, May 1977–April 1978," Drug Enforcement Administration, National Institute on Drug Abuse, prepared by IMS America under DEA contract No. 77–11.

4. "Symposium on Comprehensive Health Care for Addicted Families and Their Children," Services Research Report, National Institute on Drug Abuse, May 20–21, 1976, New York.

5. "Methadone: The Drug and Its Therapeutic Uses in the Treatment of Addiction," Report of the National Clearinghouse for Drug Information, Series 31, No. 1, July 1974.

6. Davis, Miryam and Betty Shanks, "Neurological Aspects of Perinatal Narcotic Addiction and Methadone Treatment," *Addictive Diseases: an International Journal*, 2(2): 213–226, 1975.

7. "Methadone Data From FDA Approved Methadone Treatment Units," collected in the National Drug Abuse Treatment Utilization Survey, April 1978.

Therefore, under the Comprehensive Drug Abuse Prevention and Control Act of 1970 (sec. 4, 84 Stat. 1241 (42 U.S.C. 257a)), the Narcotic Addict Treatment Act of 1974 (sec. 3, 88 Stat. 124–125 (21 U.S.C. 823(g))), and applicable delegations of authority thereunder (37 FR 27646, December 19, 1972; 38 FR 27315–27316, October 2, 1973, and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.1)), Part 291 of Title 21 of the Code of Federal Regulations is amended in § 291.505 by revising the section heading, paragraphs (a)(3), (b)(1)(iii), (2)(iii) and (iv), (c)(4)(i) through (iii), and (d)(1), (3)(i) through (v), (4) through (11); by deleting paragraph (d)(3)(vi); by adding paragraphs (d)(14) through (16); and by revising the introductory text of paragraph (f)(1), the introductory text of (f)(2), (f)(2)(i), (vi), (vii), and (viii), (g), (j)(2), and (k) to read as follows:

§ 291.505 Conditions for use of methadone; appropriate methods of professional practice for medical treatment of the narcotic addiction of various classes of narcotic addicts with methadone under section 4 of the Comprehensive Drug Abuse Prevention and Control Act of 1970.

(a) * * *

(3) "Maintenance treatment" using methadone is the continued administering or dispensing of methadone, in conjunction with provisions of appropriate social and medical services, at relatively stable dosage levels for a period in excess of 21 days as an oral substitute for heroin or other morphinelike drugs, for an individual dependent on heroin. An eventual drug-free state is the treatment goal for many patients; it is recognized, however, that for some patients the drug may be needed for a long period of time.

* * * * *

(b) * * *

(1) * * *

(iii) *Hospital affiliation.* If a program is not physically located within a hospital which has agreed to provide any needed medical care for drug-related problems for the program's patients, it is recommended practice that there be a formal, documented agreement between the program sponsor and a responsible hospital official demonstrating that hospital care, both inpatient and outpatient, is fully available to any patient who may need it for such problems. It is suggested that the program sponsor enter into an agreement with the hospital official to provide general medical care for patients. Neither the program sponsor nor the hospital is required to assume financial responsibility for the patient's medical care.

* * * * *

(2) * * *

(iii) *Responsibility for patient.* After a patient is referred to a medication unit, the program sponsor retains continuing responsibility for the patient's care. The program sponsor is responsible for ensuring that the patient receives needed medical and social services at least monthly at the primary facility.

(iv) *Services.* Medication units are limited to administering or dispensing medication and collecting urine for urine testing, following the procedures outlined in paragraph (d)(4) of this section. If a private practitioner wishes to provide other services besides administering or dispensing medication and collecting urine samples, she/he must submit an application for separate approval.

* * * * *

(c) * * *

(4) * * *

(i) *Form FD–2632 "Application for Approval of Use of Methadone in a Treatment Program."* This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor and submitted in triplicate to the Food and Drug Administration and the State authority.

(ii) *Form FD–2633 "Medical Responsibility Statement for Use of Methadone in a Treatment Program."* This form, required by paragraph (k) of this section, shall be completed and signed by each licensed physician authorized to administer or dispense methadone and submitted in triplicate to the Food and Drug Administration and the State authority. The names of any other persons licensed by law to administer or dispense narcotic drugs working in the program shall be listed, even if they are not at present responsible for administering or dispensing the drug.

(iii) *Form FD–2634 "Annual Report for Treatment Program Using Methadone."* This form, required by paragraph (k) of this section, shall be completed and signed by the program sponsor for every program over which she/he has responsibility for each calendar year of operation. It shall be submitted in triplicate to the Food and Drug Administration and the State authority on or before January 30 of each year.

* * * * *

(d) * * *

(1) *Description of facilities.* Drug treatment services may be provided only through appropriate drug abuse treatment facilities at site(s) approved by Federal, State, and local authorities. A program is required to have ready access to a comprehensive range of medical and rehabilitative services. The name, address, and description of each hospital, institution, clinical laboratory, or other facility available to provide the necessary services is to be given to the Food and Drug Administration and the State authority. This listing is to include the name and address of each medication unit.

* * * * *

(3) *Minimum standards for admission*—(i) *History of addiction and current physiologic dependence.* (*a*) A person may be selected as a patient for a maintenance program, regardless of age, only if a program physician determines that the person is currently physiologically dependent upon a narcotic drug and became physiologically dependent at least 1 year before admission for maintenance treatment. A 1-year history of addiction means that an applicant for admission to a maintenance program was physiologically addicted to a narcotic at a time at least 1 year before admission to a program and was addicted, continuously or episodically, for most of the year immediately before admission to a program. In the case of a person for whom the exact date on which physiological addiction began cannot be ascertained, the admitting program physician may, in his or her reasonable clinical judgment, admit the person to methadone maintenance treatment, if from the evidence presented, observed, and recorded in the patients record, it is reasonable to conclude that there was physiologic dependence at a time approximately 1 year before admission.

(*b*) Although daily use of a narcotic for an entire year could satisfy the

definition, operationally one might be physiologically dependent without daily use during the entire 1-year period and still satisfy the definition. The following, although not exhaustive, are examples of applicants who would meet the minimum standard of a 1-year history of addiction and who, if currently physiologically dependent on the date of application for admission, would be eligible for admission to a maintenance program:

(*1*) Physiologic addiction began in August 1976 and continued to the date of application for admission in August 1977.

(*2*) Physiologic addiction began in January 1977 and continued until April 1977. Physiologic addiction began again in July 1977 and continued until the application for admission in January 1978.

(*3*) Physiologic addiction began in January 1976 and continued until October 1976. The date of application for admission was January 1977, at which time the patient had been readdicted for 1 month preceding his/her admission.

(*4*) Physiologic addiction consisted of four episodes in the last year, each episode lasting 2½ months.

(*c*) It is recommended practice that in determining current physiologic dependence the physician consider signs and symptoms of intoxication, a positive urine speciman for a narcotic drug, and old or fresh needle marks. Other evidence of current physiologic dependence may be obtained by noting early signs of withdrawal (lacrimation, rhinorrhea, pupilary dilation and piloerection) during the initial period of abstinence. Withdrawal signs may be observed during the initial period of hospitalization or while the person is an out-patient undergoing diagnostic evaluation (e.g., medical and personal history, physical examination, and laboratory studies). Increased body temperature, pulse rate, blood pressure and respiratory rate are also signs of withdrawal, but their detection may require inpatient observation. It is unlikely but possible that a person could be currently dependent on narcotic drugs without having a positive urine test for narcotics. Conversely, it is possible that a person could have a positive urine test for narcotics and not be currently physiologically dependent. Thus, a urine sample that is positive for narcotics is not a requirement for admission to detoxification or maintenance treatment.

(*d*) The program physician or an appropriately trained staff member designated and supervised by the physician shall record in the patient's record the criteria used to determine the patient's current physiologic dependence and history of addiction. In the latter circumstance, the program physician shall review, date, and countersign the supervised staff member's evaluation to demonstrate his or her agreement with the evaluation. The final decision for determining physiologic dependence and history of addiction is required to be made by the program physician. Therefore, in the record there is required to be a signed and dated statement by the program physician, which indicates she/he has reviewed all the documented evidence to support a 1-year history of addiction and the current physiologic dependence and that in his or her reasonable clinical judgment the patient fulfills the requirements for admission to maintenance treatment. This review is required to be completed before the initial dose of methadone is administerted.

(ii) *Voluntary participation, informed consent.* The person responsible for the program shall ensure that: Participation in a program is voluntary; all relevant facts concerning the use of methadone are clearly and adequately explained to the patient; all patients, with full knowledge and understanding of its contents, sign the "Consent for Methadone Treatment" form (FD-2635) (see paragraph (k) of this section); for patients under the age of 18, a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) sign the second part of Form FD-2635, "Consent to Methadone Treatment."

(iii) *Exceptions to minimum admission criteria*—(*a*) *Penal or chronic care.* A person who has resided in a penal or chronic care institution for 1 month or longer may be admitted to methadone maintenance treatment within 14 days before release or discharge or within 6 months after release from such an institution without documented evidence to support findings of physiological dependence provided the person would have been eligible for admission before she/he was incarcerated or institutionalized and, in the reasonable clinical judgment of a program physician, treatment is medically justified. Documented evidence of the prior residence in a penal or chronic care institution and evidence of all other findings and the criteria used to determine the findings are required to be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial methadone dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient.

(*b*) *Pregnant patients.* (*1*) Pregnant patients, regardless of age, who have had a documented narcotic dependency in the past and who may be in direct jeopardy of returning to narcotic dependency, with all its attendant dangers during pregnancy, may be placed on a maintenance regimen. For such patients, evidence of current physiological dependence on narcotic drugs is not needed if a program physician certifies the pregnancy and, in his or her reasonable clinical judgment, finds treatment to be medically justified. Evidence of all findings and the criteria used to determine the findings are required be recorded in the patient's record by the admitting program physician, or by program personnel supervised by the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial methadone dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient. Pregnant patients are required to be given the opportunity for prenatal care either by the program or by referral to appropriate health care providers.

(*2*) If a program cannot provide direct prenatal care for pregnant patients in methadone treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there are no publicly funded prenatal referral opportunities, the program cannot provide such services, and the patient cannot afford them or refuses them, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(*3*) Counseling records and/or other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the patient is referred for prenatal services, the physician to whom she is referred is required to be notified that she is in

methadone maintenance treatement, provided that notification is in accordance with the Department of Health and Human Services Confidentiality Regulations (42 CFR Part 2). If a pregnant patient refuses direct treatment or appropriate referral for treatment, the treating program physician should consider using informed consent procedures, e.g., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician, consistent with the confidentiality regulations, shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. It is recognized that programs often request such information but for a variety of reasons do not always receive a response. In such situations, the program physician shall document in the record that such a request was made.

(*4*) Within 3 months after termination of pregnancy, the program physician shall enter an evaluation of the patient's treatment state into her record and state whether she should remain in the maintenance program or be detoxified.

(*5*) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if methadone treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman or her unborn child from the use of methadone. She is required to be told that safe use in pregnancy has not been established in relation to possible adverse effects on fetal development.

(*c*) *Previously treated patients.* Under certain circumstances a patient who has been treated and later voluntarily detoxified from methadone maintenance treatment may be readmitted to methadone maintenance treatment, without evidence to support findings of current physiologic dependence, up to 2 years after discharge if the program attended is able to document prior methadone maintenance treatment of 6 months or more, and the admitting program physician, in his/her reasonable clinical judgment, finds readmission to methadone maintenance treatment to be medically justified. For patients meeting these criteria, the quantity of take-home medication will be determined in the reasonable clincial judgment of the program physician, but in no case may the quantity of take-home medication be greater than would have been allowed at the time that person voluntarily terminated previous treatment. Documented evidence of prior treatment and evidence of all other findings and criteria used to determine such findings must be recorded in the patient's record by the admitting program physician or program personnel under supervision of the admitting program physician. The admitting program physician shall date and sign these recordings or review the health-care professional's recordings before the initial methadone dose is administered to the patient. In the latter case, the admitting program physician shall date and sign the recordings in the patient's record made by the health-care professional within 72 hours of administration of the initial methadone dose to the patient.

(iv) *Special limitation; treatment of patients under 18 years of age.* A person under 18 is required to have had two documented attempts at detoxification or drug-free treatment to be eligible for maintenance treatment. A 1-week waiting period is required after a detoxification attempt, however, before an attempt is repeated. The program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. No one under 16 years of age is eligible for methadone maintenance treatment without the prior approval of the Food and Drug Administration and the State methadone authority. This does not preclude a person under 16 years of age who is currently physiologically dependent on narcotic drugs from being detoxified with methadone if it is deemed medically appropriate by the program physician and is done in accordance with paragraph (d)(9) of this section. No person under 18 years of age may be admitted to a maintenance treatment program unless a parent, legal guardian, or responsible adult designated by the State authority (e.g., "emancipated minor" laws) completes and signs consent form, Form FD–2635 "Consent to Methadone Treatment."

(v) *Denial of admission.* If in the reasonable clinical judgment of the medical director a particular patient would not benefit from methadone treatment, she/he may be refused such treatment even if she/he meets the admission standards.

(4) *Minimum urine testing: Uses and frequency.* (i) The person(s) responsible for a program shall ensure that: An initial drug-screening urinalysis is completed for each prospective patient; at least eight additional random urinalyses are performed on each patient during the first year in maintenance treatment; and at least quarterly random urinalyses are performed on each patient in maintenance treatment for more than 1 year, except that a random urinalysis is performed monthly on each patient who receives a 6-day supply of take-home medication. When urine is collected, specimens from each patient are required to be collected in a manner that minimizes falsification. Each urine specimen is required to be analyzed for opiates, methadone, amphetamines, cocaine, barbiturates, as well as other drugs as indicated. Each laboratory selected for or treatment program which performs urine testing is required to be in compliance with all applicable Federal proficiency testing and licensing standards and all State standards regarding such laboratories or treatment programs. Any changes of laboratories used for urine testing must have approval of the Food and Drug Administration. The person(s) responsible for a program shall ensure that urine test results are not used as the sole criterion to force a patient out of treatment but are used as a guide to change treatment approaches. She/he shall also ensure that when urine test results are used, presumptive laboratory results are distinguished from results that are definitive. It is also recommended practice that the person(s) responsible for the program who uses the results of presumptive urinalysis for patient management show evidence of reasonable access to confirmatory laboratory analysis for use on occasions when this is necessary, e.g., for intake urine testing on all prospective methadone patients, for any loss of patient privileges based on urinalysis, and for indicating frequency of use of other drugs not detectable by a screening method.

(ii) It is recommended practice that after the initial drug screening urinalysis, urine specimens for each patient be collected and analyzed on a randomly scheduled basis at least monthly for opiates, methadone, amphetamines, cocaine, and barbiturates, as well as other drugs as indicated. It is recommended practice that more frequent testing for a specific drug(s) and for a specific person occur when clinically indicated as determined by the reasonable clinical judgment of the medical director. It is recommended practice that results of urine testing be used as one clinical tool for the purposes of diagnosis, and in the determination of treatment plans, as well as used as one technique for overall program evaluation by

monitoring patient drug-using patterns before and during treatment.

(5) *Patient evaluation; minimum admission and periodic requirements*—(i) *Minimum contents of medical evaluation.* Each patient is required to have a medical evaluation by a program physician or an authorized health-care professional under the supervision of a program physician on admission to a program. At a minimum, this evaluation is required to consist of a medical history which includes the required history of narcotic dependence, evidence of current physiologic dependence unless excepted by the regulations, and a physical examination, and includes the following laboratory examinations: Serological test for syphilis, a tuberculin skin test, and a urinalysis for drug determination. The physical examination is required to consist of an investigation of the organ systems for possibilities of infectious disease, pulmonary, liver, and cardiac abnormalities, and dermatologic sequelae of addiction. In addition, the physical examination is required to include a determination of the patient's vital signs (temperature, pulse, and blood pressure and respiratory rate); an examination of the patient's general appearance, head, ears, eyes, nose, throat (thyroid), chest (including heart, lungs, and breasts), abdomen, extremities, skin and neurological assessment; and the program physician's overall impression of the patient.

(ii) *Recommended contents of medical evaluation. (a)* It is recommended practice that the following laboratory examinations be conducted for each patient on admission to a program in addition to the required examinations stated in paragraph (d)(5)(i) of this section.

(*1*) Complete blood count and differential;

(*2*) Routine and microscopic urinalysis;

(*3*) Liver function profile, e.g., SGOT and SGPT.

(*4*) When the tuberculin skin test is positive, a chest X-ray or other appropriate tests;

(*5*) Australian Antigen Hb Ag Testing (HAA Testing);

(*6*) When clinically indicated, an EKG;

(*7*) When appropriate, pregnancy test and a pap smear; and

(*8*) Other tests when clinically indicated.

(*b*) When a person is readmitted to a program, it is recommended that the decision determining the appropriate laboratory tests to be conducted be based on the intervening medical history and a physical examination.

(iii) *Recordings of findings.* The admitting program physician or an appropriately trained health-care professional supervised by the admitting program physician shall record in the patient's record all findings from the admission medical evaluation. In each case the admitting program physician shall date and sign these recordings, or date, review, and countersign these recordings in the patient's record to signify his/her review of and concurrence with the history and physical findings.

(iv) *Admission evaluation.* (*a*) Each patient seeking admission or readmission for treatment services is required to be interviewed by a person, e.g., a well-trained program counselor who should be qualified by virtue of education, training, or experience to assess the psychological and sociological background of drug abusers to determine the appropriate treatment plan for the patient. To determine the most appropriate treatment plan for a patient, the interviewer shall obtain and document in the patient's record the patient's history.

(*b*) A patient's history includes information relating to his/her educational and vocational achievements. If a patient has no such history, i.e., she/he has no formal education or has never had an occupation, this requirement is met by writing this information in the patient's history.

(*c*) It is recommended practice that a patient's history include information relating to his/her psychosocial, economic, and family background, and any other information deemed necessary by the program which is relevant to the application or which may be helpful in assessing the resources, e.g., psychological, economic, educational, and vocational strengths and weaknesses, that a patient brings to the treatment setting. It is recommended practice that each program establish its own methods for measuring those strengths and weaknesses to assess the severity of the patient's problem, establish realistic treatment goals, and develop an appropriate treatment plan to achieve these goals. Such assessments should be made on admission or as soon as the patient is stable enough for appropriate interviewing. Treatment plans should reflect individualization geared to the patient's needs.

(v) *Initial treatment plan.* (*a*) A primary counselor is one who is assigned by the program to develop, implement, and evaluate the patient's initial and periodic treatment plan and to monitor a patient's progress in treatment. The name of this counselor is required to be recorded in the patient's record. The initial treatment plan is required to contain realistic short-term goals which are mutually acceptable to the patient and the program. (It is recommended practice that these short-term goals be designed to expect completion within a finite time period, e.g., 90 to 180 days.) It also is required to state the behavioral tasks expected of a patient that are necessary to complete each short-term goal and the medical, psychosocial, economic, legal or other supportive services needed immediately by each patient, including the projected frequency with which these services will be provided. The primary counselor shall record the contents of a patient's initial treatment plan in the patient's record. It is recommended practice that this information be in sufficient detail to demonstrate that each patient has been assessed and that the services provided are based on the patient assessment findings and the available program and community services.

(*b*) It is recognized that patients need varying degrees of treatment and rehabilitative services which are often dependent on or limited by a number of variables, e.g., patient resources, available program and community services. It is not the intent of this regulation to prescribe a particular treatment and rehabilitative service or the frequency at which a service should be offered.

(*c*) Each patient's initial assessment, including the concomitant treatment plan reflecting the short-term mutually acceptable treatment goals, is required to be documented in each patient's record immediately after the patient is stabilized on a methadone dose or within 4 weeks after admission, whichever is sooner. The program supervisory counselor or other appropriate program personnel so designated by the program physician shall review and countersign all the information and findings required by this paragraph (d)(5)(v) of this section to be recorded in each patient's record.

(vi) *Periodic treatment plan evaluation.* (*a*) The program physician or the primary counselor shall review, reevaluate, and alter where necessary each patient's treatment plan at least once each 90 days during the first year of treatment, and then at least twice a year after the first year of continuous treatment.

(*b*) The program physician shall ensure that the periodic treatment plan becomes part of each patient's record and that it is signed and dated in the

patient's record by the primary counselor and is countersigned and dated by the supervisory counselor.

(c) At least once a year, the program physician shall date, review, and countersign the treatment plan recorded in each patient's record and ensure that each patient's progress or lack of progress in achieving the treatment goals is entered in the patient's record by the primary counselor. When appropriate, the treatment plan and progress notes should deal with the patient's mental and physical problems, apart from drug abuse. The treatment plan is required to include the name of and the reasons for prescribing any medication for emotional or physical problems.

(d) It is recommended practice that changes made to a treatment plan be fully explained to the patient.

(6) *Minimum program services*—(i) *Access to a range of services.* (a) A treatment program shall provide a comprehensive range of medical and rehabilitative services to its patients. These services normally should be provided at the primary facility, but if they are not, it is recommended practice that the program sponsor enter into formally documented agreements with other public or private agencies, institutions, or organizations to render these services. Such facilities should be easily accessible to the patient. Also, for pregnant patients in a treatment program who were not admitted under paragraph (d)(3)(iii)(b) of this section, a treatment program shall give them the opportunity for prenatal care either by the methadone program or by referral to appropriate health-care providers. If a program cannot provide direct prenatal care for pregnant patients in methadone treatment, it shall establish a system of referring them for prenatal care which may be either publicly or privately funded. If there is no publicly funded prenatal care available to which a patient may be referred, the program cannot provide such services, and the patient cannot afford or refuses prenatal care services, then the treatment program shall, at a minimum, offer her basic prenatal instruction on maternal, physical, and dietary care as a part of its counseling service.

(b) Counseling records and other appropriate patient records are required to reflect the nature of prenatal support provided by the program. If the program refers a patient for prenatal services, it shall inform the physician to whom she is referred that the patient is in methadone maintenance treatment, provided such notification is in accordance with the Department of Health and Human Service's Confidentiality Regulations (42 CFR Part 2). If a pregnant patient refuses direct prenatal services or appropriate referral for prenatal services, the treating program physician should consider using informed consent procedures, i.e., to have the patient acknowledge in writing that she had the opportunity for this treatment but refuses it. The program physician shall request the physician or the hospital to which a patient is referred to provide, following birth, a summary of the delivery and treatment outcome for the patient and offspring. The information should be obtained in accordance with the Department of Health and Human Service's confidentiality regulations (42 CFR Part 2). If no response is received, the program physician shall document in the record that such a request was made and no response was received.

(c) Caution should be taken in the maintenance treatment of pregnant patients. Dosage levels should be maintained at the lowest effective dose if continued methadone treatment is deemed necessary. It is the responsibility of the program sponsor to ensure that each female patient is fully informed of the possible risks to a pregnant woman and her unborn child from the use of methadone. The program shall inform each female patient that safe use in pregnancy had not been established in relation to possible adverse effects on fetal development.

(d) Any service not furnished at the primary facility shall be listed when application for approval is submitted to the Food and Drug Administration and the State authority. Modification of any program services is required to be reported to the Food and Drug Administration when these services are added, modified, or deleted.

(ii) *Minimum medical services; designation of a medical director and responsibilities.* Each program shall have a designated medical director who assumes responsibility for administering all medical services performed by the program. The medical director and other authorized program physicians are required to be licensed to practice medicine in the jurisdiction in which the program is located. The medical director is responsible for ensuring that the program is in compliance with all Federal, State, and local laws and regulations regarding medical treatment of narcotic addiction. In addition, the responsibilities of the medical director or other authorized physicians within the program include but are not limited to the following requirements:

(a) Ensuring that evidence of current physiologic dependence, length of history of addiction, or exceptions to criteria for admission are documented in the patient's record before the patient receives the initial methadone dose.

(b) Ensuring that a medical evaluation including a medical history has been taken, and physical examination has been done before the patient receives the initial methadone dose. However, in an emergency situation the initial dose of methadone may be given before the physical examination.

(c) Ensuring that appropriate laboratory studies have been performed and reviewed. However, the initial dose of methadone may be given before the results of the laboratory studies are reviewed.

(d) Signing or countersigning all medical orders as required by Federal or State law. (Such medical orders include but are not limited to the initial medication orders and all subsequent medication order changes, all changes in the frequency of take-home medication, and prescribing additional take-home methadone for emergency situations.)

(e) Reviewing and countersigning treatment plans at least annually.

(f) Ensuring that justification is recorded in the patients's record for reducing the frequency of clinic visits for observed drug ingesting, providing additional take-home medication under exceptional circumstances or when there is physical disability, or prescribing any medication for physical or emotional problems.

(iii) *Use of health-care professionals.* Although the final decision to accept a patient for methadone treatment may be made only by the medical director or other designated program physician, it is recognized that physicians can train program personnel to detect and document narcotic abstinence symptoms and that some jurisdictions allow State-licensed or certified health-care professionals, e.g., physician's assistants, nurse practitioners, to perform certain functions—record medical histories, perform physical examinations, and prescribe, administer, or dispense certain medications—that are ordinarily performed by a licensed physician.

(a) These regulations do not prohibit licensed or certified health-care professionals from performing those functions in narcotic treatment programs if it is authorized by Federal, State, and local laws and regulations, and if those functions are delegated to them by the medical director.

(b) If a health-care professional performs the functions, e.g., determines current physiological dependence and length of history of addiction, that the physician is required by these

regulations to perform, the physician shall review, sign, and date any resulting comments and evaluations written by the health-care professional before the initial methadone dose may be administered to the patient.

(c) When a physician is not available on site to review, sign, and date the comments and evaluations written by the health-care professional, the required physician review may be made by telephone and the initial dose of methadone may be administered to the patient on the physician's oral order. In such cases the health-care professional shall document in the patient's record that no physician was available on site, that the physician review was done by telephone, and that the initial dose of methadone was administered to the patient on the physician's oral order. Also, the physician shall, within 72 hours of this telephone procedure, date and sign the comments and evaluations written by the health-care professional in the patient's record.

(iv) *Emergency or other medical services.* It is recommended practice that each program enter into a written agreement with a licensed and accredited hospital in the community for the purpose of providing necessary emergency, inpatient, and ambulatory care for program patients. Neither the program sponsor nor the hospital is required to assume financial responsibility for the patient's medical care.

(v) *Vocational rehabilitation, education, and employment.* (a) Each program shall provide opportunities directly, or through referral to community resources, for patients who either desire or have been deemed by the program staff to be ready to participate in educational job-training programs or to obtain gainful employment as soon as possible. Each program shall maintain a list of references that may be used for referral purposes if rehabilitative activities are not provided directly. The references are required to include the opportunities for vocational training, education, and employment as well as the community resources that may be available to provide assistance for such activities.

(b) The patient's needs and readiness for vocational rehabilitation, education, and employment are required to be evaluated and recorded in the patient's records during the preparation of the initial treatment plan and reviewed and updated as appropriate in subsequent periodic treatment plan evaluations. It is recognized that some patients are either not ready for, or not in need of, these services. A statement to this effect in the patient's record will suffice to meet the requirement in this paragraph (d)(6)(V). For patients who are deemed ready for and referred for such services, a program staff member designated and supervised by the admitting program physician shall document in the patient's record the type of referral needed and the patient's progress. The patient's progress at the referral agency should be periodically updated.

(7) *Minimum staffing patterns*—(i) *Program personnel.* The person(s) responsible for a program shall determine program personnel requirements after considering the number of patients who are vocationally and educationally impaired; the number of patients with significant psychopathology; the number of patients who are also nonnarcotic drug or alcohol abusers; the number of patients with behavioral problems in the program; and the number of patients with serious medical problems.

(ii) *Supportive services.* The person(s) responsible for the program shall take notice, when considering the staffing pattern, that methadone maintenance treatment programs need to establish supportive services in accordance with the varying characteristics and needs of their patient populations. The person(s) responsible for a program shall also take notice of the availability of existing community resources which may complement or enhance the program's delivery of supportive services and then establish a staffing pattern based on a combination of patient needs and available, accessible community resources.

(iii) *Minimum staff.* The person(s) responsible for a program shall ensure that there is a ratio of at least 1 counselor to 50 patients.

(8) *Frequency of attendance: Quantity of take-home medication; dosage of methadone; initial and stabilization*—(i) *Dosage and responsibility for administration.* (a) The person(s) responsible for the program shall ensure that the initial dose of methadone does not exceed 30 milligrams and that the total dose for the first day does not exceed 40 milligrams, unless the program medical director documents in the patient's record that 40 milligrams did not suppress opiate abstinence symptoms.

(b) It is recommended practice that the initial dose of methadone be given in attempts to control or mitigate abstinence symptoms concomitant to withdrawal of narcotic drugs. Currently there is no absolute method available to determine narcotic tolerance levels. Thus, the initial dose is given empirically. Methadone dosages that are less than the patient's current level of narcotic tolerance may result in the patient's experiencing withdrawal symptoms. Dosages sufficiently greater than the current level of narcotic tolerance can result in central nervous system depression, coma, and death. Therefore, it is important that the initial dose be adjusted individually to the narcotic tolerance of the patient. If the patient has been a heavy user of heroin up to the day of admission she/he may require an initial dose of 15 to 30 milligrams with additional smaller increments 4 to 8 hours later. It is recommended practice that if the patient enters treatment with little or no narcotic tolerance (e.g., recently released from jail or using poor quality heroin), the initial dose be one-half these quantities. If there is any doubt, the smaller dose should be used initially and the patient kept under observation; if the symptoms of abstinence are distressing, an additional 5- to 10-milligram dose should be administered as needed. Subsequently, the dosage should be adjusted individually as tolerated and required. The stabilization dose frequently, but not necessarily, is higher than the dose needed to reduce withdrawal severity. The usual range of methadone maintenance dosages in the country today is between 40 and 100 milligrams daily.

(c) A licensed physician shall assume repsonsibility for the amounts of methadone administered or dispensed and shall record, date, and sign in each patient's record each change in the dosage schedule.

(d) The administering licensed physician shall ensure that a daily dose greater than 100 milligrams is justified in the patient's record and that a daily dose greater than 100 milligrams of methadone is not given to a patient admitted to a program after November 18, 1980, without notifying both the State methadone authority and the Food and Drug Administration within 72 hours after the dose is given to the patient. Notification shall be deemed accomplished if if is mailed, telephoned, or otherwise transmitted within the 72-hour period.

(e) It is recommended practice that the responsible physician regularly review each patient's dosage level, carefully considering either increasing or decreasing the dosage as indicated. It should be noted that according to the official labeling, therapeutic doses of meperidine have precipiated severe reactions in patients currently receiving monoamine oxidase inhibitors or those who have received such agents within 14 days. Similar reactions have not yet been reported with methadone, but if

the use of methadone is necessary in such patients, it is recommended that a sensitivity test be performed in which repeated small incremental doses are administered over the course of several hours while the patient's condition and vital signs are under careful observation. Likewise, physician should also be aware that according to the official labeling, concurrent administration of rifampin may possibly reduce the blood concentration of methadone to a degree sufficient to produce withdrawal symptoms. The mechanism by which rifampin may decrease blood concentrations of methadone is not fully understood, although enhanced microsomal drug-metabolized enzymes may influence drug disposition.

(ii) *Authorized dispensers of methadone; responsibility.* Methadone may only be administered or dispensed by a practitioner licensed under the appropriate State law and registered under the appropriate State and Federal laws to order narcotic drugs for patients, or by an agent of such a practitioner, supervised by and under the order of the practitioner. This agent is required to be a pharmacist, registered nurse, or licensed practical nurse, or any other health-care professional authorized by Federal and State law to administer or dispense narcotic drugs. The licensed practitioner assumes responsibility for the amounts of methadone administered or dispensed, and the licensed practitioner shall record and countersign all changes in dosage schedule.

(iii) *Form.* Methadone may be administered or dispensed in oral form only when used in a treatment program. Hospitalized patients under care for a medical or surgical condition are permitted to receive methadone in parenteral form when the attending physician judges it advisable. Although tablet, syrup concentrate or other formulations may be distributed to the program, all oral medication is required to be administered or dispensed in a liquid formulation. The dosage is required to be formulated in such a way as to reduce its potential for parenteral abuse and accidental ingestion and to be packaged for outpatient use in special packaging as required by 16 CFR 1700.14. Take-home medication is required to be labeled with the treatment center's name, address, and telephone number. Exceptions may be granted when these provisions conflict with State law with regard to the administering or dispensing of drugs.

(iv) *Maximum take-home medication; evidence in support of a finding of responsibility in handling methadone and frequency of take-home medication.* (*a*) Take-home methadone may be given only to a patient who, in the reasonable clinical judgment of the program physician, is responsible in handling methadone. Before the program physician reduces the frequency of a patient's clinical visits, she/he or a designated staff member shall record the rationale for the decision in the patient's clinical record. If this is done by a designated staff member a program physician shall review, countersign, and date the patient's record where this information is recorded. Take-home methadone may be dispensed solely in an oral/liquid form so as to minimize potential for abuse and is required to be packaged in accordance with the Poison Prevention Packaging Act (Pub. L. 91–601, 15 U.S.C. 1471 *et seq.*).

(*b*) It is recommended practice that the liquid vehicle be nonsweetened and contain a preservative so that the program may instruct patients to keep take-home methadone out of the refrigerator to try to minimize the likelihood of accidental overdoses by children or fermentation of the vehicle.

(*c*) The program physician shall consider the following in determining whether, in his/her reasonable clinical judgment, a patient is responsible in handling methadone.

(*1*) Absence of recent abuse of drugs (narcotic or nonnarcotic), including alcohol;

(*2*) Regularity of clinic attendance;

(*3*) Absence of serious behavioral problems at the clinic;

(*4*) Absence of known recent criminal activity, e.g., drug dealing;

(*5*) Stability of the patient's home environment and social relationships;

(*6*) Length of time in methadone maintenance treatment;

(*7*) Assurance that take-home medication can be safely stored within the patient's home; and

(*8*) Whether the rehabilitative benefit to the patient derived from decreasing the frequency of clinic attendance outweighs the potential risks of diversion.

(*d*) It is recommended practice that when considering patient responsibility in handling methadone, the program physician either consult with, or consider the recommendations of, the staff members most familiar with the relevant facts about the patient involved.

(v) *Take-home requirements.* The requirement of time in treatment is a minimum reference point after which a patient may be eligible for take-home privileges. The time reference is not intended to mean that a patient in treatment for a particular time has a specific right to take-home medication. Thus, regardless of time in treatment, a program physician may, in his/her reasonable clinical judgment, deny or rescind the take-home medication privileges of a patient.

(*a*) In maintenance treatment it is required that a patient be under observation while ingesting the drug daily or at least 6 days a week, for at least the first 3 months. If, in the reasonable clinical judgment of the program physician, a patient demonstrates satisfactory adherence to program rules for at least 3 months, substantial progress in rehabilitation and responsibility in handling methadone (see paragraph (d)(8)(iv)(*c*)(*1*) through (*8*) of this section), and his/her rehabilitative progress would be enhanced by decreasing the frequency of his/her clinic attendance, the patient may be permitted to reduce his/her clinic attendance for drug ingestion under observation to three times weekly. Such a patient may receive no more than a 2-day take-home supply of methadone. If, in the reasonable clinical judgment of the program physician, a patient demonstrates satisfactory adherence to program rules for at least 2 years from his/her entrance into the program, substantial progress in rehabilitation and responsibility in handling methadone (see paragaph (d)(8)(iv)(*c*)(*1*) through (*8*) of this section), and his/her rehabilitative progress would be enhanced by decreasing the frequency of his/her clinic attendance, the patient may be permitted to reduce his/her clinic attendance for drug ingestion under observation to twice weekly. Such a patient may receive no more than a 3-day take-home supply of methadone. If, in the reasonable clinical judgment of the program physician, a patient has satisfactorily adhered to program rules for at least 3 consecutive years from his/her entrance into the maintenance treatment program, has made substantial progress in rehabilitation, has no major behavioral problems, is responsible in handling methadone (see paragraph (d)(8)(iv)(*c*)(*1*) through (*8*) of this section), and his/her rehabilitative progress would be enhanced by decreasing the frequency of his/her clinic attendance, the patient may be permitted to reduce clinic attendance for drug ingestion under observation to once weekly only if each of the following additional criteria is met: The program physician has written into the patient's record an evaluation that the patient is responsible in handling methadone (paragraph (d)(8)(iv)(*c*)(*1*) through (*8*) of this section); the patient is

employed (or actively seeking employment), attends school, is a homemaker, or is considered unemployable for mental or physical reasons by a program physician; the patient is not known to have abused any drugs including alcohol in the last year; and the patient is not known to have engaged in criminal activity, e.g., drug dealing, in the last year. A patient permitted to reduce clinic attendance for drug ingestion under observation to once weekly, may receive no more than a 6-day take-home supply of methadone.

(*b*)(*1*) If a patient, after receiving a supply of take-home medication, is inexcusably absent from or misses a scheduled appointment with a treatment program without authorization from the program staff, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation. For such a patient, the program physician shall not reduce the frequency of the patient's clinic attendance for drug ingestion under observation until she/he has had at least 3 consecutive monthly urine tests that are neither positive for morphinelike drugs (except methadone) or other drugs of abuse nor negative for methadone, and until she/he is again determined by a program physician to be responsible in handling methadone (see paragraph (d)(8)(iv)(*c*) (*1*) through (*8*) of this section) and to meet the criteria in paragraph (d)(8)(v)(*a*) of this section).

(*2*) If a patient, after receiving a 6-day supply of take-home medication or other drugs of abuse, has a urine test which is confirmed to be positive for morphinelike drugs (except methadone) or other drugs of abuse nor negative for methadone, the program physician shall place the patient on a 3-month probationary period. If, during this probationary period, the patient has a urine test either positive for morphinelike drugs (except methadone) or other drugs of abuse or negative for methadone, the program physician shall increase the frequency of the patient's clinic attendance for drug ingestion under observation to at least twice weekly. Such a patient may receive no more than a 3-day take-home supply of methadone until she/he has had at least 3 consecutive monthly urine tests which are neither positive for morphinelike drugs (except methadone) or other drugs of abuse nor negative for methadone, and the program physician again determines that the patient is responsible in handling methadone (see paragraph (d)(8)(iv)(*c*) (*1*) through (*8*) of this section) and meets the criteria contained in paragraph (d)(8)(v)(*a*) of this section.

(*c*) In calculating the number of years of methadone maintenance treatment, the period is considered to begin on the first day methadone is administered, or on readmission if a patient has had a continuous absence of 90 days or more. Cumulative time spent by the patient in more than one program is counted toward the number of years of treatment, provided there has not been a continuous absence of 90 days or more.

(*d*) Each patient whose daily dose is above 100 milligrams is required to be under observation while ingesting the drug at least 6 days per week irrespective of the length of time in treatment, unless the program has received prior approval from the State authority and the Food and Drug Administration.

(vi) *Exceptions to take-home requirements.* If, in the reasonable clinical judgment of the program physician:

(*a*) A patient is found to have a physical disability which interferes with his/her ability to conform to the applicable mandatory schedule, she/he may be permitted a temporarily or permanently reduced schedule provided she/he is also found to be responsible in handling methadone.

(*b*) A patient, because of exceptional circumstances such as illness, personal or family crises, travel, or other hardship, is unable to conform to the applicable mandatory schedule she/he may be permitted a temporarily reduced schedule provided she/he is also found to be responsible in handling methadone. The rationale for an exception to a mandatory schedule is to be based on the reasonable clinical judgment of the program physician and shall be recorded in the patient's record by the program physician or by program personnel supervised by the program physician. In the latter situation the physician shall review, countersign, and date the patient's record where this rationale is recorded. In any event, a patient may not be given more than a 2-week supply of methadone at one time.

(9) *Minimum standards for detoxification treatment.* (i) For detoxification from narcotic drugs (not the gradual withdrawal of methadone from patients on methadone maintenance), methadone is required to be administered by the program physician or by an authorized agent of the physician, supervised by and under the order of the physician daily under close observation in reducing dosages over a period not to exceed 21 days. All requirements for maintenance treatment apply to detoxification treatment with the following exceptions:

(*a*) Take-home medication is not allowed during detoxification.

(*b*) A history of 1 year physiologic dependence is not required for admission to detoxification.

(*c*) Patients who have been determined by the program physician to be currently physiologically narcotic dependent may be detoxified with methadone, regardless of age.

(*d*) The recommended initial dose is 15 to 20 milligrams.

(*e*) No urine testing is required except for the initial drug screening urinalysis.

(*f*) The initial treatment plan and periodic treatment plan evaluation required for maintenance patients are not necessary for detoxification patients. However, a primary counselor must be assigned by the program to monitor a patient's progress toward the short-term goal of detoxification and possible drug-free treatment referral.

(*g*) The requirements of paragraph (d)(6) of this section, except (d)(6)(ii)(*a*) through (*d*), (iii), and (iv), do not apply to detoxification treatment.

(ii) A waiting period of at least 1 week is required between detoxification attempts. Before a detoxification attempt is repeated, the program physician shall document in the patient's record that the patient continues to be or is again physiologically dependent on narcotic drugs. The provisions of these requirements, except as noted in paragraph (d)(9)(i) of this section, apply to both inpatient and ambulatory detoxification treatment.

(iii) Detoxification treatment is not recommended for a pregnant patient.

(10) *Discontinuation of methadone use*—(i) *Involuntary termination from treatment.* It is recommended practice that the person(s) responsible for a program develop and post prominently about the program premises at least one copy of a written policy establishing criteria for involuntary termination from treatment. This policy should describe patients' rights as well as the responsibilities and rights of the program staff. At the time a patient enters treatment, an appropriate program staff member designated by the person(s) responsible for the program should inform the patient where the copy of the policy is posted and should inform him/her of the reasons for which she/he might be terminated from treatment, his/her rights under the involuntary termination procedure, and the fact that information about him/her shall be kept confidential in accordance with 42 CFR Part 2.

(ii) *Voluntary withdrawal from methadone use.* As with most types of medical treatment that require chronic daily administration of medication, patients in methadone treatment should be evaluated periodically regarding the risks and benefits of continuing the medication. For some, the eventual withdrawal from methadone is a realistic goal. However, years of experience demonstrate that for others this goal is not yet realistic, even though these patients show vocational, educational, and psychosocial improvement, and are productive members of society. Research and clinical experience have not yet identified all the critical variables that determine when a patient can be successfully withdrawn from methadone and remain drug free. Thus, the determination to withdraw voluntarily from methadone maintenance is empirical and is left to the patient and the reasonable clinical judgment of the physician. Upon reaching a drug-free state, the patient should be encouraged to remain in the program for as long as the program considers it necessary to ensure stability in the drug-free state. The frequency of required program visits for patients for drug-free state may be adjusted at the discretion of the medical director.

(11) *Inspections of programs; patient confidentiality.* A program may be inspected by duly authorized employees of the State authority, and in accordance with Federal controlled substances laws and Federal confidentiality laws by duly authorized employees of the Food and Drug Administration, the Drug Enforcement Administration of the Department of Justice, and the National Institute on Drug Abuse.

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(14) *Research.* When a program conducts research on human subjects or provides subjects for research, there must be written policies and written review to assure the rights of the patients involved. Appropriate informed consent forms are required to be signed by the patient and to be retained in his/her records. All research, development, and related activities in which human subjects are involved that are funded by the Department of Health and Human Service's grants or contracts are required to comply with the Department of Health and Human Service's regulations on the protection of human subjects, 45 CFR Part 46, and confidentiality of information, 42 CFR Part 2. All investigational research involving human subjects conducted for submission to the Food and Drug Administration must be conducted in compliance with 21 CFR 312.1.

(15) *Patient record system*—(i) *Patient care.* The person(s) responsible for a program shall establish a record system to document and monitor patient care. This system is required to comply with all Federal and State reporting requirements relevant to methadone. All records are required to be kept confidential and in accordance with all applicable Federal and State regulations regarding confidentiality.

(ii) *Drug dispensing.* The person(s) responsible for a program shall ensure that accurate records traceable to specific patients are maintained showing dates, quantity, and batch or code marks of the drug dispensed. These records must be retained for a period of 3 years from the date of dispensing.

(iii) *Patient's record.* An adequate record must be maintained for each patient. The record is required to contain a copy of the signed consent form(s), the date of each visit, the amount of methadone administered or dispensed, the results of each urinalysis, a detailed account of any adverse reactions, which must be reported within 2 weeks to the Food and Drug Administration on Form FD-1639, "Drug Experience Report," any significant physical or psychological disability, the type of rehabilitative and counseling efforts employed, an account of the patient's progress, and other relevant aspects of the treatment program. For recordkeeping purposes, if a patient misses appointments for 2 weeks or more without notifying the program, the episode of care is considered terminated and is to be so noted in the patient's record. This does not mean that the patient cannot return for care. If the patient does return for care and is accepted into the program, this is considered a readmission and is to be so noted in the patient's record. This method of recordkeeping helps assure the easy detection of sporadic attendance and decreases the possibility of administering inappropriate doses of methadone (e.g., the patient who has received no medication for several days or more and upon return receives the usual stabilization dose). An annual evaluation of the patient's progress must be recorded in the patient's record(s).

(16) *Security of drug stocks.* Adequate security is required to be maintained over stocks of methadone, over the manner in which it is administered or dispensed, over the manner in which it is distributed to medication units, and over the manner in which it is stored to guard against theft and diversion of the drug. The program is required to meet the security standards for the distribution and storage of controlled substances as required by the Drug Enforcement Administration, Department of Justice (21 CFR 1301.72-1301.76).

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(f) *Conditions for use of methadone in hospitals for detoxification treatment*—(1) *Form.* The drug may be administered or dispensed in either oral or parenteral form (see paragraph (d)(8)(iii) of this section).

(2) *Use of methadone in hospitals*—(i) *Approved uses.* For hospitalized patients, methadone for narcotic addict treatment may be administered or dispensed only for detoxification treatment. If methadone is administered for treatment of heroin dependence for more than 3 weeks, the procedure is no longer considered treatment of the acute withdrawal syndrome (detoxification) but is, rather, considered maintenance treatment. Only approved methadone programs may undertake maintenance treatment. This does not preclude the maintenance treatment of a patient who is hospitalized for treatment of medical conditions other than addiction and who requires temporary maintenance treatment during the critical period of his/her stay or whose enrollment in a program which has approval for maintenance treatment using methadone has been verified (see 21 CFR 1306.07(c)). Any hospital which already has received approval under this paragraph (f) may serve as a temporary methadone treatment program when an approved methadone treatment program has been terminated and there is no other facility immediately available in the area to provide methadone treatment for the patients. The Food and Drug Administration may give this approval upon the request of the State authority or the hospital, when no State authority has been established.

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(vi) *Inspection.* The Food and Drug Administration and the State authority may inspect supplies of the drug and evaluate the uses to which the drug is being put. The identity of the patients will be kept confidential in accordance with confidentiality requirements of 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel.

(vii) *Approval of hospital pharmacy.* Application for a hospital pharmacy to provide methadone for detoxification treatment must be submitted to the Food

and Drug Administration and the State authority and approval from both is required, except as provided for in paragraph (h)(5) of this section. Within 60 days after the Food and Drug Administration receives the application, it will notify the applicant of approval or denial or will request additional information, when necessary.

(viii) *Approval of shipments to hospital pharmacies.* Before a hospital pharmacy may lawfully receive shipments of methadone for detoxification treatment, a responsible official shall complete, sign, and file in triplicate with the Food and Drug Administration and the State authority Form FD–2636, "Hospital Request for Methadone for Detoxification Treatment" (see paragraph (k) of this section) and must have received a notice of approval thereof from the Food and Drug Administration.

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(g) *Confidentiality of patient records.* (1) Except as provided in paragraph (g)(2) of this section, disclosure of patient records maintained by any program is governed by the provisions of 42 CFR Part 2, and every program must comply with that part. Records on the receipt, storage, and distribution of narcotic medication are also subject to inspection under Federal controlled substances laws: But use or disclosure of records identifying patients will, in any case, be limited to actions involving the program or its personnel. In addition to the restrictions upon disclosure in 42 CFR Part 2, and in accordance with the authority conferred by section 303(a) of the Public Health Service Act (42 U.S.C. 242a(a)), every program is authorized to protect the privacy of patients therein by withholding from all persons not employed by such program or otherwise connected with the conduct of its operations the names or other identifying characteristics of such patients under any circumstances under which such program has reasonable grounds to believe that such information may be used to conduct any criminal investigation or prosecution of a patient. Programs may not be compelled in any Federal, State, or local civil, criminal, administrative, or other proceedings to furnish such information, but this paragraph does not authorize withholding information authorized to be furnished under 42 CFR Part 2. Records on the receipt, storage, and distribution of narcotic medication are subject to inspection under Federal controlled substances laws; but use or disclosure of records indentifying patients will, in any case, be limited to actions involving the program or its personnel.

(2) A treatment program or medication unit or any part thereof, including any facility or any individual, shall permit a duly authorized employee of the Food and Drug Administration to have access to and to copy all records on the use of methadone in accordance with the provisions of 42 CFR Part 2. A treatment program may reveal such records only when necessary in a related administrative or court proceeding.

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(2) *Information regarding approved programs and hospitals.* The Food and Drug Adminstration will provide methadone manufacturers and the public with names and locations of programs and hospitals that have been approved to received shipments of methadone for narcotic addiction treatment. All information contained in the forms required by paragraph (k) of this section is available for public disclosure except for names or other identifying information with respect to patients.

* * * * *

(k) *Program forms.* The program sponsor must ensure that the following forms are completed by the proper program staff and submitted to the appropriate State authority and the Division of Methadone Monitoring (HFD–340), Food and Drug Administration, 5600 Fisher Lane, Rockville, MD 20857. Forms are available upon request from the Divisions of Methadone Monitoring (HFD–340), at the same address,

Form

FD–2632—Application for Use of Methadone in a Treatment Program.
FD–2633—Medical Responsibility Statement.
FD–2634—Annual Report Form.
FD–2635—Patient Consent Form.
FD–2636—Hospital Application.

Effective date. This regulation shall be effective November 18, 1980.

(Sec. 4, 84 Stat. 1241 (42 U.S.C. 257a); sec. 3, 88 Stat. 124–125 (21 U.S.C. 823(g)))

Dated: September 11, 1980.

James D. Laurence,

Acting Director, National Institute on Drug Abuse.

Dated: September 11, 1980.

Mark Novitch,

Acting Commissioner of Food and Drugs

[FR Doc. 80–28799 Filed 9–16–80; 8:45 am]

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federal register

Friday
September 19, 1980

Part IV

Department of Energy

Southeastern Power Administration

Georgia-Alabama Projects; Order Extending Confirmation and Approval of Power Rates

DEPARTMENT OF ENERGY

Southeastern Power Administration

[Rate Order No. SEPA-9]

Georgia-Alabama Projects; Order Extending Confirmation and Approval of Power Rates on an Interim Basis

AGENCY: Department of Energy, Southeastern Power Administration (SEPA).

ACTION: Extension of Approval on Interim Basis of Georgia-Alabama Projects' Rates.

SUMMARY: The Federal Energy Regulatory Commission (FERC) has not taken action on the rate schedules for Georgia-Alabama Projects' power approved, on an interim basis, by the Assistant Secretary for Resource Applications and submitted to FERC on August 1, 1979. Since approval by FERC is not assured prior to September 30, 1980, when the interim approval expires, the Assistant Secretary has extended the effective period for the applicable rate schedules as provided in Rate Order No. SEPA-9.

EFFECTIVE DATES: Extension of confirmation and approval of rates on an interim basis effective October 1, 1980.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Chief, Division of Fiscal Operations, Southeastern Power Administration, Department of Energy, Elberton, Georgia 30635;

John J. DiNucci, Office of Power Marketing Coordination, Department of Energy, 12th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20461 (202) 633-8336.

SUPPLEMENTARY INFORMATION: Georgia-Alabama Projects' Rate Schedules GAMF-1-B, GAMF-2-B, ALA-1-B, MISS-1-B, SC-1-B, SC-2-B, CAR-1-B and CAR-2-B were previously approved, on an interim basis, by the Assistant Secretary for Resource Applications pursuant to Delegation Order No. 0204-33, 43 FR 60636, for a period beginning October 1, 1979, and ending September 30, 1980. Rate Order No. SEPA-9 provides that the rate schedules shall remain in effect on an interim basis for an additional 12 months unless such period is extended or until these or substitute rates are confirmed and approved by FERC on a final basis.

Issued in Washington, D.C., September 12, 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Order Extending Confirmation and Approval of Power Rates on an Interim Basis

September 12, 1980.

Pursuant to sections 302(a) and 301(b) of the Department of Energy Organization Act, Pub. L. 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under section 5 of the Flood Control Act of 1944, 16 U.S.C. 825s, relating to the Southeastern Power Administration (SEPA) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-33, effective January 1, 1979, 43 FR 60636 (December 28, 1978), the Secretary of Energy delegated to the Assistant Secretary for Resource Applications the authority to develop power and transmission rates, acting by and through the Administrator, and to confirm, approve and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Assistant Secretary under the delegation. This Rate Order is issued pursuant to the delegation to the Assistant Secretary.

Background

On July 31, 1979, the Assistant Secretary for Resource Applications issued Rate Order No. SEPA-5 confirming and approving on an interim basis, effective October 1, 1979, Wholesale Power Rates Schedules GAMF-1-B, GAMF-2-B, ALA-1-B, MISS-1-B, SC-1-B, SC-2-B, CAR-1-B and CAR-2-B applicable to power from the Georgia-Alabama Projects. These rate schedules were to remain in effect on an interim basis through September 30, 1980, unless such period was extended or until FERC confirmed and approved them or substitute rate schedules on a final basis. The rate schedules, together with a March 1979 Repayment Study and other supporting data, copies of a transcript of a Public Comment Forum and applicable power contracts, were submitted to FERC with the request that the rate schedules be confirmed and approved on a final basis.

Discussion

Because of the extraordinary number of Federal power rate actions submitted for final approval since the issuance of Delegation Order No. 0204-33, FERC has been unable to take action on rate schedules applicable to Georgia-Alabama Projects' power. It is necessary, therefore, for the Assistant Secretary for Resource Applications to extend interim approval of the Georgia-Alabama Projects' Power Rate Schedules for an additional 1-year period.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby extend confirmation and approval on an interim basis, effective October 1, 1980, of attached Rate Schedules GAMF-1-B, GAMF-2-B, ALA-1-B, MISS-1-B, SC-1-B, SC-2-B, CAR-1-B and CAR-2-B. These rate schedules shall remain in effect on an interim basis through September 30, 1981, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis.

Issued at Washington, D.C., this 12th day of September 1980.

Ruth M. Davis,

Assistant Secretary, Resource Applications.

Wholesale Power Rate Schedule GAMF-1-B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in Georgia, Alabama, southeastern Mississippi, and panhandle Florida owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and, respectively, the Georgia Power Company, Alabama Power Company, Mississippi Power Company, and Gulf Power Company (any one of which is hereinafter called the Company).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, Clark Hill, Walter F. George, Hartwell, Millers Ferry, West Point, Jones Bluff, and Carters Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the

limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt of total contract demand.

Energy Charge. 3.65 mills per kilowatt-hour.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to an annual energy quantity specified by contract and prorated on an equal daily amount throughout the year. The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

October 1, 1979.

Availability

This rate schedule shall be available to the Georgia Power Company, the Alabama Power Company, the Mississippi Power Company, and the Gulf Power Company (any one of which is hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric capacity available from the Allatoona, Buford, Clark Hill, Walter F. George, Hartwell, Millers Ferry, West Point, Jones Bluff, and Carters Projects (hereinafter called the Projects) and sold under contract between the Government and the Company.

Character of Service

Electric capacity and energy delivered to the Company will be three-phase alternating current at a nominal frequency of 60 Hertz and will be delivered at mutually agreeable points in the vicinity of the Projects' power stations at approximately 115,000 volts, except that delivery from the Hartwell and Carters Projects will be at approximately 230,000 volts or at points of interconnection between the Companies.

Monthly Rate

The monthly rate for capacity sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt per billing month for monthly dependable capacity made available to the Company for its own use.

Monthly dependable capacity is the monthly capacity, specified by contract, which based on past water records would be available for scheduling by the Companies within the energy limitations also specified by contract, except during the worst water period of record and except for a few minor short-term reductions under flood conditions.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The Company shall take capacity and energy from the Government at such power factor as will best serve the Company's system from time to time, provided that the Company shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities or unreasonably interferes with the delivery of capacity and energy by the Government to the Company and to its other customers.

Service Interruption

When delivery of capacity to the Company is interrupted or reduced due to conditions on the Government's system which have not been arranged for and agreed to in advance, the demand charge for capacity made available will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

Number of kilowatt hours unavailable for at least 12 hours in any calendar day × $1.02/number of days in billing month.

October 1, 1979.

Availability

This rate schedule shall be available to the Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, Clark Hill, Walter F. George, Hartwell, Millers Ferry, West Point, Jones Bluff, and Carters Projects and sold under contract between the Cooperative and the Government.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Herz and shall be delivered at the Walter F. George Project or other points of interconnection between the Cooperative and Alabama Power Company.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt of total contract demand. $0.28 per kilowatt for standby capacity made available, plus $0.035 per kilowatt per calendar day for such capacity as the Cooperative actually utilizes.

Energy Charge. 3.00 mills per kilowatt-hour for scheduled energy.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Cooperative is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by

contract as available to the Cooperative for scheduling on a weekly basis. Energy quantities for a billing month shall be the energy scheduled by the Cooperative for the month.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The Cooperative shall take capacity and energy from the Government at such power factor as will best serve the Cooperative's system from time to time; provided, that the Cooperative shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Service Interruption

When capacity and energy delivery to the Cooperative system for the account of the Government is reduced or interrupted and such reduction is not due to conditions on the Cooperative's system or has not been planned and agreed to in advance, the demand charge for the month for capacity made available shall be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

Number of kilowatts unavailable for at least 12 hours in any calendar day × $1.02/ Number of days in billing month.

October 1, 1979.

Wholesale Power Rate Schedule MISS–1–B

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Cooperative).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, Clark Hill, Walter F. George, Hartwell, Millers Ferry, West Point, Jones Bluff, and Carters Projects and sold under contract between the Cooperative and the Government.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz and shall be delivered at points of interconnection between the Cooperative and Mississippi Power Company.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt of total contract demand.

Energy Charge. 3.65 mills per kilowatt-hour for scheduled energy.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Cooperative is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis. Energy quantities for a billing month shall be the energy scheduled by the Cooperative for the month.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The Cooperative shall take capacity and energy from the Government at such power factor as will best serve the Cooperative's system from time to time; provided, that the Cooperative shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Service Interruption

When capacity and energy delivery to the Cooperative's system for the account of the Government is reduced or interrupted and such reduction is not due to conditions on the Cooperative's system or has not been planned and agreed to in advance, the demand charge for the month for capacity made available shall be reduced as to the kilowatts of such capacity which have been interrupted or reduced in accordance with the following formula:

Number of kilowatts unavailable for at least 12 hours in any calendar day × $1.02/ Number of days in billing month.

October 1, 1979.

Wholesale Power Rate Schedule SC–1–B

Availability

This rate schedule shall be available to the South Carolina Public Service Authority (hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Clark Hill Project (hereinafter called the Project) and sold in wholesale quantities.

Character of Service

Electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second and shall be delivered at a nominal voltage of 115,000 volts at the 115 kv bus of the Project power plant. The actual operating voltage of the Government shall within the limits of good operating practice be suitable for operation with the Customer's system.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt per billing month for dependable capacity made available to the Customer for its own use.

$0.28 per kilowatt per billing month for standby capacity made available, plus $0.035 per kilowatt per calendar day (or fraction thereof) for such capacity as the Customer actually utilizes.

Energy Charge. 3.00 mills per kilowatt-hour for energy declared for the peak period hours and for energy made available to meet stream flow requirements.

2.25 mills per kilowatt-hour for dump energy.

Energy Sold to the Customer

The Customer shall purchase and pay for all dump energy made available by the Government and accepted by the Customer. Additionally, the Customer shall purchase and pay for all energy, exclusive of dump energy, declared and made available from the Project to the Customer's system over and above such energy made available for transmission to the Government's other preference customers.

Billing Month

All project energy shall be accounted for on a weekly basis and the total

quantities of energy billed monthly shall be the sum of the weekly quantities. Energy declared or made available for any week which falls within 2 billing months shall be divided between the months on the basis of weekly schedules for energy delivery furnished by the Customer.

The billing month for power sold under this rate schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The Customer shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Condenser Operation

The Government shall, upon the request of the Customer, cause its generating units (up to the maximum number specified by contract) to be operated as condensers if, in the sole judgment of the Government, such operation is not contrary to good operating practice, is not detrimental to such generating facilities in excess of ordinary wear and tear, and does not overload such generating facilities. Such condenser operation, subject to the preceding limitations, shall be in accordance with procedures and schedules developed and agreed upon from time to time by the operating representatives of the parties hereto. The Customer shall pay the Government $5.65 per generating unit so operated for each hour that such condenser operation is requested by the Customer.

Service Interruption

When capacity made available to the Customer's system is reduced or interrupted for 1 hour or longer, and such reduction or Interruption is not agreed to in advance nor due to conditions on the Purchaser's system, the monthly demand charge for dependable capacity shall be reduced for each on-peak hour (the nearest number of whole hours) that such capacity is reduced or interrupted, by an amount equal to $1.02 divided by the number of peak hours in the billing month times the reduction, in kilowatts, of such capacity; and the amount of energy previously scheduled and not taken during the time of interruption shall be placed in storage to the Customer's account. If the Customer advises the Government within 1 working day after a day in which energy is placed in storage that it does not desire to retain ownership of such energy, the ownership of the energy will revert to the Government and the Customer shall not be obligated to pay for such energy.

October 1, 1979.

Wholesale Power Rate Schedule SC–2–B

Availability

This rate schedule shall be available to any of the following whose requirements or a portion thereof the Government shall contract to supply by delivery from the South Carolina Public Service Authority's (hereinafter called the Authority) system: a municipality or county located in part or completely within the Authority's service area, owning its own transmission or distribution system, and desiring to purchase capacity and energy from the Government for resale to the public in its territory; Central Electric Cooperative, Incorporated; or an electric cooperative not a member of Central, operating under the laws of the State of South Carolina, and located in part or completely within the service area of the Authority desiring to purchase capacity and energy from the Government for resale to ultimate consumers under the provisions of said laws (any one of such municipalities, counties, or cooperatives is hereinafter called the Customer).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Clark Hill Project (hereinafter called the Project) and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the Customer on the Authority's transmision and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt of total contract demand.

Energy Charge. 3.65 mills per kilowatt-hour.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy from the Project each billing month up to a total amount annually of 4,500 hours per kilowatt of contract demand.

For billing purposes, the energy allocated on an annual basis to accompany the Customer's contract demand as assigned to individual delivery points shall be allocated in equal quantities each day throughout the year. Such Customer shall be billed by the Government by delivery points for its contract demand and for its accompanying monthly energy allocation in amounts determined by multiplying its respective daily allocation by the number of days in the billing month. The quantity of energy to be billed under this rate schedule in any billing month shall be the quantity considered to have been transmitted for the account of the Government by the Authority.

Billing Month

The billing month for power sold under this rate schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Authority on its side of the delivery point.

Service Interruption

When the energy delivery to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

October 1, 1979.

Wholesale Power Rate Schedule CAR–1–B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be wheeled pursuant to contract between the Duke Power Company (hereinafter called the Company) and the Government.

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Hartwell and Clark Hill Projects (hereinafter called the Projects) and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 cycles per second delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt of total contract demand.

Energy Charge. 3.65 mills per kilowatt-hour.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy from the Projects to the extent that it is available at the Projects each billing month up to a total amount annually of 4,500 hours per kilowatt of contract demand.

For billing purposes, the energy allocation available on an annual basis to accompany the Customer's contract demand as assigned to individual delivery points shall be allocated in equal quantities each day throughout the year. In those billing months when the quantity of energy available from the Projects, less six and one-half (6-½) percent losses, is sufficient to supply the energy allocations which accompany the total contract demands of all customers purchasing power pursuant to this rate schedule, the Customer will be billed by the Government by delivery points for its monthly energy allocation in an amount determined by multiplying the daily energy allocation by the number of days in the billing month. In those billing months when energy available from the Projects, less six and one-half (6-½) percent losses, is insufficient to supply the energy allocations which accompany the total contract demands of all customers purchasing power pursuant to this rate schedule, the Customer shall be billed by the Government by delivery points for that portion of its monthly energy allocation determined by multiplying the ratio which the total energy available from the Projects for all said Customers' use during the particular billing month bears to the quantity necessary to supply the energy allocations which accompany the total contract demands of all said customers during such month by the quantity of energy necessary to meet the energy allocation of the Customer for said billing month.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted for 1 hour or longer, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced.

October 1, 1979.

Wholesale Power Rate Schedule CAR-2-B

Availability

This rate schedule shall be available to the Duke Power Company (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to electric capacity and energy generated at the Hartwell and Clark Hill Projects (hereinafter called the Projects) and sold under contract between the Government and the Company.

Character of Service

Electric capacity and energy delivered to the Company will be three-phase alternating current at a nominal frequency of 60 cycles per second and will be delivered at approximately 230,000 volts where the Company's transmission line is connected to the bus in the Hartwell switchyard and at approximately 115,000 volts where the Company's transmission line is connected to the bus at Clark Hill.

Monthly Rate

The monthly rate for capacity and energy sold under this rate schedule shall be:

Demand Charge. $1.02 per kilowatt per billing month for dependable capacity made available to the Company for its own use.

Energy Charge. (1) 3.00 mills per kilowatt-hour for energy declared for the peak period hours.

(2) 2.25 mills per kilowatt-hour for energy declared for other than peak period hours.

(3) 2.25 mills per kilowatt-hour for dump energy.

Energy Sold to the Company

The Company shall purchase and pay for all dump energy made available by the Government and accepted by the Company. Additionally the Company shall purchase and pay for all energy, exclusive of dump energy, declared and made available from the Projects to the Company's system in any billing month after first deducting 810,375 kilowatt-hours multiplied by the number of days in said billing month; provided, however, that the energy to be deducted shall first come from minimum release energy and energy declared for the eighty-four (84) peak period hours per week as specified by contract.

Billing Month

The billing month for power sold under this schedule shall end at 12 midnight on the 20th day of each calendar month.

Power Factor

The Company shall take capacity and energy from the Government at such power factor as will best serve the Company's system from time to time, provided that the Company shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities or unreasonably interferes with the delivery of capacity and energy by the Government to the Company and to its other Customers.

Condenser Operation

The Government shall, upon the request of the Company, cause one or two of its generating units at the Projects to be operated as condensers if, in the sole judgment of the Government, such operation does not unreasonably interfere with the delivery of capacity and energy by the Government to any of its customers, is not contrary to good operating practice, is not deterimental to such generating facilities in excess of

ordinary wear and tear, and does not overload such generating facilities. Such condenser operation, subject to the preceding limitations, shall be in accordance with procedures and schedules developed and agreed upon from time to time by the operating representatives of the parties hereto. The Company shall pay the Government $10.15 per generating unit for units at Hartwell and $5.65 per generating unit for units at Clark Hill each hour that such condenser operation is requested by the Company.

Service Interruption

When delivery to the Company is interrupted or reduced due to conditions on the Government's system which have not been arranged for and agreed to in advance, the charge for dependable capacity will be reduced as to the kilowatts of such capacity which have been interrupted or reduced in the proportion that the number of declaration hours during such period of interruption or reduction bears to the total number of declaration hours during the period covered by such charge. For purposes of this rate schedule the delcaration hours consist of 100 hours per week as specified in the contract.

October 1, 1979.

[FR Doc. 80-28959 Filed 9-18-80; 8:45 am]

BILLING CODE 6450-01-M

federal register

Friday
September 19, 1980

Part V

Equal Employment Opportunity Commission

Guidelines on Discrimination Because of National Origin; Proposed Revision

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1606

Guidelines on Discrimination Because of National Origin; Proposed Revision

AGENCY: Equal Employment Opportunity Commission.

ACTION: Proposed revision.

SUMMARY: The Equal Employment Opportunity Commission is proposing a revision of its Guidelines on Discrimination Because of National Origin to clarify them and to specifically inform the public of unlawful employment practices which discriminate on the basis of national origin. These Guidelines reaffirm the Commission's position on national origin discrimination as expressed in Commission decisions and other legal interpretations.

DATE: Comments must be received on or before November 18, 1980.

ADDRESSES: Address all written comments to: Executive Secretariat, Equal Employment Opportunity Commission, 2401 E Street, NW., Room 4096, Washington, D.C. 20506. All envelopes should be marked "National Origin Guidelines" in the lower left corner.

FOR FURTHER INFORMATION CONTACT: Karen Danart, Acting Director, or Raj K. Gupta, Supervisory Attorney, Office of Policy Implementation, 2401 E Street, NW., Room 4002, Washington, D.C. 20506, (202) 634–7060.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission is revising its Guidelines on Discrimination Because of National Origin to clarify them and to incorporate the Commission's position on national origin discrimination as expressed in its decisions and other legal interpretations.

Proposed § 1606.1 is based on § 1606.1(b) of the current *Guidelines on Discrimination Because of National Origin.* It defines national origin discrimination broadly as including, but not limited to, employment discrimination because of an individual's, or his or her ancestor's country of origin, or because of an individual's cultural or linguistic characteristics. The Commission will carefully examine charges involving the denial of equal employment opportunity because of an individual's name, marriage to a person of a particular national origin, or association with persons, organizations, schools or religious institutions identified with a particular national origin.

The first sentence of proposed § 1606.2 is based on § 1606.1(c) of the current Guidelines, and has been revised to conform with the coverage of Title VII. It also recognizes that Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination.

Proposed § 1606.3 is based on the exception in § 1606.1(d) of the current Guidelines. This Section recognizes the national security exception as it appears in § 703(g) of Title VII.

Proposed § 1606.4 reiterates the last sentence in § 1606.1(a) of the current Guidelines and is based on the Commission's long held position that the bona fide occupational qualification exception under § 703(e) of Title VII shall be strictly construed.

Proposed § 1606.5 is based on § 1606.1 (d) and (e) of the current Guidelines. Employers may have citizenship requirements as long as they do not have the purpose or effect of discriminating against an individual on the basis of national origin. See *Espinoza* v. *Farah Mfg. Co., Inc.* 414 U.S. 86, 92 (1973). Where a State law prohibiting the employment of non-citizens is in conflict with Title VII, it is superseded under § 708 of the Title.

Proposed § 1606.6 is derived from several of the concepts stated in § 1606.1(b) of the current Guidelines and affirms that the principles of the *Uniform Guidelines on Employee Selection Procedures,* 29 CFR Part 1607, apply to national origin discrimination. Proposed § 1606.6(b) specifically recognize three selection procedures which tend to exclude individuals on the basis of national origin: Height or weight requirements, fluency-in-English requirements, and training or education requirements which deny employment opportunities to individuals because of their foreign training or education, or which require foreign training or education. Employers must evaluate these selection procedures for adverse impact.

Proposed § 1606.7 recognizes that an individual's primary language is often an essential national origin characteristic. According to estimates from the Survey of Income and Education conducted by the U.S. Bureau of Census in Spring 1976, approximately 28 million persons in the United States (about 13 percent of the total U.S. population) have non-English language backgrounds and may be affected by an employer's speak-English-only rule. The survey identifies persons with non-English language backgrounds as persons whose mother tongue is not English, who normally use languages other than English, or who live in households where languages other than English are spoken. About 21 million, or seventy five percent, of this group are above the age of 18. The study shows the following approximate numbers for each of these language backgrounds: Spanish, 10.6 million; Italian, 2.9 million; German, 2.7 million; French, 1.9 million; Chinese, Japanese, Korean and Vietnamese, 1.8 million; Polish, 1.5 million. Approximately 2.4 million persons in the United States do not speak any English at all.* Under proposed § 1606.7(a), the Commission presumes that totally prohibiting employees from speaking their primary language, violates Title VII because it is a term and condition of employment which discriminates on the basis of national origin by disadvantaging an individual's employment opportunities and by creating a discriminatory working environment. Therefore, where such a rule exists, it will be closely scrutinized. However, proposed § 1606.7(b) recognizes that requiring employees to speak only in English at certain times would not be discriminatory if the employer shows that the rule is justified by business necessity. When the employer believes that the rule is justified by business necessity, proposed § 1606.7(c) requires the employer to clearly inform its employees of the circumstances in which they are required to speak only in English, and the consequences of violating the rule. Notice of the rule is necessary because it is common for individuals whose primary language is not English to inadvertently slip from speaking English to speaking their primary language. Any adverse employment decision against an individual based on a violation of the rule will be considered as evidence of discrimination when an employer has not given effective notice of the rule. The principles set forth in proposed § 1606.7 do not conflict with the Fifth Circuit's decision in *Garcia* v. *Gloor,* 618 F. 2nd 264 (1980). *Gloor* did not involve a speak-English-only rule which was applied at all times. Neither did the facts in *Gloor* involve a bilingual employee whose primary language was not English. In the Court's view, Mr. Garcia, who spoke both English and Spanish, failed to prove that Spanish was his primary language.

*See U.S. Department of Health Education and Welfare, National Center for Education Statistics, Bulletin 78 B-5, August 22, 1978, "Geographic Distribution, Nativity, and Age Distribution of Language Minorities in the United States: Spring 1976"; Waggoner, Dorothy, "Non-English Language Background Persons: Three U.S. Surveys", TESOL Quarterly, Vol. 12, No. 3 at 247–262, September 1978.

Proposed § 1606.8 states that harassment on the basis of national origin is a violation of Title VII and that an employer has an affirmative duty to maintain a working environment free from harassment on the basis of national origin. Proposed § 1606.8(c) applies general Title VII principles to the issue of harassment and states that an employer is responsible for the acts of its supervisory employees or agents, regardless of whether the acts were authorized or forbidden by the employer and regardless of whether the employer knew or should have known of the acts. Proposed § 1606.8(d) distinguishes the employer's responsibility for the acts of its agents or supervisors from the responsibility it has for conduct between fellow employees. This subsection states that liability for acts of national origin harassment in the workplace between fellow employees exists only when the employer, its agents or supervisory employees, knows or should have known of the conduct, and the employer cannot demonstrate that it took immediate and appropriate corrective action. Proposed § 1606.8(e) recognizes that in certain circumstances, an employer may also be responsible for the acts of non-employees with respect to harassment of employees on the basis of national origin.

This revision of the Commission's *Guidelines on Discrimination Because of National Origin* is a significant regulation under Executive Order 12044, (43 FR 12661, Mar. 24, 1978, as amended by E.O. 12221, 45 FR 44249, July 1, 1980). The Commission has determined that these proposed Guidelines will not have a major impact on the economy and that a regulatory analysis is not necessary.

In compliance with Executive Order 12067 (43 FR 28967, July 5, 1978), the Commission has consulted with representatives from the necessary federal agencies. At the end of the 60 day comment period, the Commission will again consult with these agencies on the issues raised through the public comment process.

In compliance with Executive Order 12160 (44 FR 44787, Sept. 28, 1979) and with the Commission's Final Consumer Program (45 FR 38930, June 9, 1980), the Commission will notify members of the public of their opportunity to comment on these Guidelines by placing notices in periodicals likely to be read by individuals affected by the Guidelines, and also by directly mailing the Guidelines to interested groups and individuals.

Dated: September 16, 1980.

Eleanor Holmes Norton,

Chair, Equal Employment Opportunity Commission.

Accordingly, it is proposed to amend 29 CFR Chapter XIV by revising Part 1606 to read as follows:

PART 1606—GUIDELINES ON DISCRIMINATION BECAUSE OF NATIONAL ORIGIN

Sec.

Authority: Title VII, Civil Rights Act of 1964, as amended; (42 U.S.C. 2000e, et seq.).

§ 1606.1 Definition of national origin discrimination.

The Commission defines national origin discrimination broadly as including, but not limited to, the denial of equal employment opportunity because of an individual's, or his or her ancestor's, country of origin; or because an individual has the cultural or linguistic characteristics of a particular national origin. The Commission will examine with particular concern cases where individuals within the jurisdiction of the Commission have been denied equal employment opportunity for reasons which are grounded in national origin considerations, such as (a) marriage to or association with persons of a particular national origin; (b) membership in, or association with, an organization identified with or seeking to promote the interests of national groups; (c) attendance or participation in schools, churches, temples or mosques, generally used by persons of a particular national origin; and (d) because an individual's name or spouse's name indicates a particular national origin.

§ 1606.2 Scope of title VII protection.

Title VII of the Civil Rights Act of 1964, as amended, protects individuals against employment discrimination on the basis of race, color, religion, sex or national origin. The Title VII principles of disparate treatment and adverse impact equally apply to national origin discrimination. The Guidelines apply to all persons covered by Title VII (collectively referred to as "employer" in these Guidelines).

§ 1606.3 The national security exception.

It is not an unlawful employment practice to deny employment opportunities to any individual who does not fulfill the national security requirements stated in Section 703(g) of Title VII.

§ 1606.4 The bona fide occupational qualification exception.

The exception stated in Section 703(e) of Title VII, that national origin may be a bona fide occupational qualification, shall be strictly construed.

§ 1606.5 Citizenship requirements.

(a) In those circumstances, where citizenship requirements have the purpose or effect of discriminating against an individual on the basis of national origin, they are prohibited by Title VII.[1]

(b) Some State laws prohibit the employment of non-citizens. Where these laws are in conflict with Title VII, they are superseded under Section 708 of the Title.

§ 1606.6 Selection procedures.

(a) The Uniform Guidelines on Employee Selection Procedures, 29 CFR Part 1607, equally apply to discrimination on the basis of national origin.

(b) The Commission has consistently held that the following are examples of selection procedures that tend to exclude individuals on the basis of national origin. Therefore, the Commission expects a user of these selection procedures to evaluate them for adverse impact. If any of these has an adverse impact on the employment opportunities of members of a particular national origin, the user must show that the selection procedure is job related by validating it, or otherwise justifying it, under the *Uniform Guidelines on Employee Selection Procedures.*

(1) Height or weight requirements.[2]

(2) Fluency-in-English requirements, such as denying employment opportunities because of an individual's foreign accent,[3] or inability to communicate well in English.[4]

(3) Training or education requirements which deny employment opportunities to an individual because of his or her foreign training or education, or which

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[1] See *Espinoza* v. *Farah Mfg. Co., Inc.*, 414 U.S. 86, 92 (1973).

[2] See CD 71–1529 (1971), CCH EEOC Decisions ¶6231, 3 FEP Cases 952; CD 71–1418 (1971), CCH EEOC Decisions ¶6223, 3 FEP Cases 580; CD 74–25 (1973), CCH EEOC Decisions ¶6400, 10 FEP Cases 260. *Davis* v. *County of Los Angeles*, 566 F. 2d 1334, 1341–41 (9th Cir., 1977) vacated and remanded as moot on other grounds, — U.S. —, 99 S.Ct. 1379 (1979). See also, *Dothard* v. *Rawlinson*, 433 U.S. 321 (1977).

[3] See CD AL68–1–155E (1969), CCH EEOC Decisions ¶6008, 1 FEP Cases 921.

[4] See CD YAU9–048 (1969), CCH EEOC Decisions ¶6054, 2 FEP Cases 78.

require an individual to be foreign trained or educated.

§ 1606.7 Speak-English-only rules.

(a) *When Applied at all Times.* An individual's primary language is often an essential national origin characteristic. Prohibiting employees at all times from speaking their primary language, or the language they speak most comfortably, disadvantages an individual's employment opportunities on the basis of national origin. It may also create an atmosphere of inferiority, isolation and intimidation based on national origin which could result in a discriminatory working environment.[5] Therefore, the Commission believes that a rule requiring employees to speak only English at all times in the workplace is a burdensome term and condition of employment. The Commission will presume that such a rule violates Title VII and will closely scrutinize it.

(b) *When Applied Only at Certain Times.* An employer may have narrowly drawn rules requiring that employees speak only in English at certain times where the employer can show that the rule is justified by business necessity.

(c) *Notice of the Rule.* It is common for individuals whose primary language is not English to inadvertently change from speaking English to speaking their primary language. Therefore, if an employer believes it has a business necessity for a speak-English-only rule at certain times, the employer must inform its employees of the exact circumstances and times when speaking only in English is required and of the consequences of violating the rule. If an employer fails to effectively notify its employees of the rule and makes an adverse employment decision against an individual based on a violation of the rule, the Commission will consider the employer's application of the rule as evidence of discrimination on the basis of national origin.

§ 1606.8 Harassment.

(a) The Commission has consistently held that harassment on the basis of national origin is a violation of Title VII. An employer has an affirmative duty to maintain a working environment free of harassment on the basis of national origin.[6]

(b) Ethnic slurs and other verbal or physical conduct relating to an individual's national origin constitutes harassment when this conduct: (1) Has the purpose or effect of creating an intimidating, hostile or offensive working environment; (2) has the purpose or effect of unreasonably interfering with an individual's work performance; or (3) otherwise adversely affects an individual's employment opportunities.

(c) An employer is responsible for its acts and those of its agents and supervisory employees with respect to harassment on the basis of national origin regardless of whether the specific acts complained of were authorized or even forbidden by the employer and regardless of whether the employer knew or should have known of their occurrence. The Commission will examine the circumstances of the particular employment relationship and the job functions performed by the individual in determining whether an individual acts in either a supervisory or agency capacity.

(d) With respect to conduct between fellow employees, an employer is responsible for acts of harassment in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct, unless the employer can show that it took immediate and appropriate coorective action.

(e) An employer may also be responsible for the acts of nonemployees with respect to harassment of employees in the workplace on the basis of national origin, where the employer, its agents or supervisory employees, knows or should have known of the conduct and fails to take immediate and appropriate corrective action. In reviewing these cases, the Commission will consider the extent of the employer's control and any other legal responsibility which the employer may have with respect to the conduct of such nonemployees.

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[5] See CD 71-446 (1970), CCH EEOC Decisions ¶6173, 2 FEP Cases 1127; CD 72-0281 (1971), CCH EEOC Decisions ¶6293.

[6] See CD CL68-12-43 IEU (1969), CCH EEOC Decisions ¶ 6085, 2 FEP Cases 295; CD 72-0621 (1971), CCH EEOC Decisions ¶6311, 4 FEP Cases 312; CD 72-1561 (1972), CCH EEOC Decisions ¶6354, 4 FEP Cases 852; CD 74-2 (1973), CCH EEOC Decisions ¶6386, 6 FEP Cases 830; CD 74-05 (1973), CCH EEOC Decisions ¶6387, 6 FEP Cases 834; CD 76-41 (1975), CCH EEOC Decisions ¶6632. See also, *Interim Guidelines on Discrimination Because of Sex*, § 1604.11(a) n. 1, 45 FR 25024 at 25025 (April 11, 1980).

federal register

Friday
September 19, 1980

Part VI

Department of Defense

Corps of Engineers, Department of the Army

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United States

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

33 CFR Parts 320 through 330

Proposal To Amend Permit Regulations for Controlling Certain Activities in Waters of the United States.

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Proposed rule.

SUMMARY: The Corps of Engineers is proposing to amend its permit regulations for controlling certain activities in waters of the United States. The amendments are needed to reflect a number of new laws (primarily the 1977 Amendments to the Clean Water Act), Executive Orders, judicial decisions, and policy changes which have occurred since the current regulations were published on July 19, 1977. Additionally, the Corps is proposing an expansion to its nationwide permit program to continue to reduce unnecessary regulatory burdens. The existing nationwide permits found in Parts 322 and 323 would be moved to new Part 330 which would then contain all existing and proposed nationwide permits. Any of the proposed changes and additions to the nationwide permit program found in Part 330 will be effective only after public comment and opportunity to request a public hearing and a case-by-case determination that the new nationwide permits are in the public interest. Many of the proposed changes are based on a review of the current regulations as required by Executive Order 12044, Improving Government Regulations. That order expresses the desire of the President to make Federal regulations simpler and less burdensome on the public. Public participation in this rulemaking is encouraged to achieve that desire.

DATES: Comments must be received on or before 1 December 1980. If the Corps decides to hold a public hearing or hearings on the proposed nationwide permits, a 30-day advance notice will be published in the **Federal Register.**

ADDRESS: Comments should be submitted in writing to: Office of the Chief of Engineers, ATTN: DAEN-CWO-N, Washington, DC 20314. Commments will be available for examinations at the Office of the Chief of Engineers, Room 6235, Pulaski Building, 20 Massachusetts Avenue NW., Washington, DC 20314.

FOR FURTHER INFORMATION CONTACT: Mr. Curtis Clark or Mr. Bernie Goode, Regulatory Functions Branch, phone number (202) 272-0199, or Mr. Martin Cohen, Chief Counsel's Office, phone number (202) 272-0033.

SUPPLEMENTARY INFORMATION:

Why Revisions to the Regulations Are Being Proposed

Revisions to the regulations are being proposed for three basic reasons. First, the present regulations were issued on July 19, 1977, and the subsequent amendments to the Clean Water Act (CWA) of December 27, 1977, included changes to the Section 404 permit program for regulating discharges of dredged and fill material into waters of the United States. Second, the Corps has found its nationwide permit program initiated July 19, 1977, reduces unnecessary regulatory burdens and is seeking public comment on that program and on its proposed expansion. Thirdly, a number of other new laws, Executive Orders, judicial decisions, policy changes, and other regulations bearing on the permit programs have taken effect since the last publication of the regulations on July 19, 1977. These include Executive Order 12044, Improving Government Regulations, March 23, 1978, which requires agencies to review significant regulations with a view towards simplifying them and making them less burdensome on the public.

The Significant Changes

Significant proposed changes are described below. Minor changes such as clarifications, new references, rearrangements, new law citations, and new agency names are not identified in this description but Parts 320–327 and 330, which include all these changes, are presented thereafter in their entirely.

Part 320—General Regulatory Policies

Section 320.1(a): This new section would explain the Corps of Engineers' approach to its regulatory responsibilities.

Section 320.3(a): This revision would recognize that Federal applicants now require state water quality certifications per revisions to Section 401 of the CWA.

Section 320.(a): The public interest factors would be expanded and slightly modified for consistency with other parts of the regulations.

Section 320.4(j): Would be revised to clarify that permit decisions will normally not be deferred pending action on other agency authorizations. A sentence would be added to subparagraph (4) to indicate permits will generally be issued for Federal projects. Subpargraph (7) would be added to establish coordination procedures with affected Indian tribes.

Section 320.4(l): The floodplain policy paragraph has been jointly rewritten with the U.S. Water Resources Council (WRC) to better respond to Executive Order 11988 and WRC's implementing guidelines published February 10, 1978.

Section 320.4(m): This new paragraph would direct attention to water conservation as an important public interest factor consistent with the President's water quality message of June 6, 1978.

Part 321—Dams and Dikes

Section 321.2(b): The definitions of a dam and dike would be combined and clarified to exclude weirs.

Section 321.3(b): Would be revised to allow a Section 9 permit application to be processed concurrently with the applicant seeking Congressional or state legislative approval.

Part 322—Structures and Work

Section 322.2(f): A provision would be added to allow general permits to be issued to avoid unnecessary duplication of the regulatory control exercised by another Federal agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal, in accordance with the procedures set forth in 33 CFR Part 330.

Section 322.3(a)(1) and 322.5(g): These sections would be revised in accordance with National Wildlife Federation v. Alexander, CA 77-1687, U.S. District Court, District of Columbia.

Section 322.4: All nationwide permits would be moved to new Part 330.

Section 322.5(f): During the review of the proposed regulation revisions, a question was raised on the scope of the Corps' evaluation of permit applications for structures in mineral lease areas on the outer continental shelf. About ten years ago, the Corps adopted a policy of limiting its review of such applications to impacts on navigation and national security only because the Department of the Interior (DOI), Bureau of Land Management, considered all other factors of the public interest in its decision on whether or not to grant the lease.

A review of the applicable legislation raises the question of whether the Corps' jurisdiction may not be broader than such limited review. If the Corps' jurisdiction is determined to be broader—to encompass other public interest factors in addition to navigation and national security—then the Corps would be interested in the posibility of entering into a Memorandum of Agreement (MOA) with the DOI with a

view to avoiding the duplication and delay that would result were both the DOI and the Corps to conduct full public interest reviews. The present language, together with a suggested alternative proposal based upon an MOA in recognition of a broader jurisdiction, are presented in the regulation for comment. If the change were to be adopted, the present regulation would remain in effect until the MOA was agreed upon. The Corps solicits public comments on each of these jurisdictional and policy questions.

Appendices A and B would not be changed.

Part 323—Discharges of Dredged and Fill Material

Section 323.2(a): Former category (1), (2), and (3) waters would be consolidated into a single category. There would be three rather than five categories of waters of the United States—navigable waters of the United States and their tributaries, interstate waters, and intrastate, isolated waters. In the case of intrastate, isolated waters, Federal jurisdiction depends on a tie to interstate commerce. A provision would be added to give division engineers the control over such jurisdictional determinations, similar to their current authority to determine jurisdictional limits of navigable waters of the United States. No change would be made in the overall scope of waters of the United States.

Section 323.2 (e) and (f): The terms "natural lake" and "impoundment" would be combined into the single term "lake."

Section 323.2(h): The footnote allowing the use of the median flow rather than the average anual flow to establish the "headwater" would be revised to delete the necessity of notifying the Environmental Protection Agency (EPA) of that use. Most headwater determination decisions have already been made and there have been no known objections to the district engineers' decisions.

Section 323.2(n): A provision has been added to allow general permits to be issued to avoid unnecessary duplication of the regulatory control of another Federal agency as discussed for § 322.2(f), above.

Section 323.4: Former § 323.4, nationwide permits, would be deleted (now in Part 330) and replaced by the Section 404 program exemptions provided for by Sections 404 (f) and (r) of the CWA. It should be noted that the language found in § 323.4 was developed jointly by the Corps and EPA and is found verbatim in the final version of EPA's consolidated regulations published at 40 CFR 123.92. This approach was necessary due to the requirements for consistency between the Corps Section 404 program and the 404 state transfer programs which are subject to EPA approval. If public comment indicates a need to make any substantive changes to the exemption language, the Corps will coordinate with EPA to seek amendments to EPA's regulations.

Section 323.5: This would be a new section to cover transfer by EPA of portions of the Section 404 permit program to requesting and qualifying states per Section 404(h) of the CWA. EPA published proposed transfer regulations on June 14, 1979 (40 CFR Part 123).

Section 323.6: Paragraph (b) would be revised in accordance with the interagency agreements called for by Section 404(q) of the CWA and EPA regulations for Section 404(c) veto procedures (40 CFR Part 231).

Appendix A remains unchanged.

Part 324—Ocean Dumping

Section 324.3(b)(2): The phrase "beyond the territorial sea" would be added at the end of the paragraph since Federal applicants now require state water quality certification per revisions to Section 401 of the CWA.

Part 325—Permit Processing

Section 325.1(b): This would be a new provision for pre-application consultation based on regulations of the Council on Environmental Quality for agency procedural compliance with the National Environmental Policy Act (NEPA). Other Corps procedures and policies for compliance with CEQ's NEPA regulations in its regulatory programs are now found in Appendix B to 33 CFR 230; a number of changes and deletions would be made throughout Part 325 to reflect this.

Section 325.1(d)(2): This new provision would avoid piecemeal applications for work associated with the same project.

Section 325.1(d)(6): This new paragraph would reflect recent policy guidance on safety of impoundment structures.

Section 325.1(g): The fee requirement for letters of Permission would be deleted since activites covered by Letters of Permission are similar in scope to general permits for which no fee is charged.

Section 325.2(a) (1) and (2): The requirement that the public notice be issued not more than 15 days after submission of a complete application has been included in Section 404(a) of the CWA. The basis for the second sentence of 325.2(a)(2) is a stipulation agreed to in a law suit involving the ocean dumping permit program.

Section 325.2(a)(6): This provision would delete the prohibition against divulging the district and division engineer recommendations on applications forwarded for higher authority decision to enhance public knowledge. Such disclosure would be encouraged in appropriate cases.

Section 325.2(b): The revisions to subparagraph (1) would expand and clarify the water quality certification procedures where more than one state is involved. Normal time for states to certify would be decreased from three to two months. Subparagraph (2) would be expanded to cover coastal zone certification procedures where Indian lands are involved.

Section 325.2(c): Division engineers would be given the authority to approve emergency processing procedures. This authority now rests with the Office of the Assistant Secretary of the Army (Civil Works). Any emergency permit of significance will be published as in appropriate. Such special procedures normally would not be authorized for a permit applicant who unreasonably contributes to the emergency situation.

Section 325.2(d): Would be revised to conform with Section 404(a) of the Clean Water Act and the interagency agreements developed pursuant to Section 404(q). Subparagraph (4) would be added to clarify that decisions on permits will normally not be deferred pending action on other agency authorizations.

Section 325.2(e): This paragraph would be added to briefly discuss Corps responsibilities under the Endangered Species Act.

Section 325.3(a)(9): The inclusion of a preliminary determination for NEPA documentation in the public notice would be replaced by notice of a categorical exclusion (if appropriate) in accordance with Appendix B to 33 CFR Part 230.

Section 325.4: Former 325.4 Environmental Impact Statement (EIS) is now covered in Appendix B to 33 CFR 230. New 325.4 would provide guidance on permit conditioning. Conditioning for dam safety inspections would be moved from Part 320 to 325.4.

Section 325.6(c): The specification of a start time for permitted activities would be made optional to reduce the administrative burdens that have resulted from the mandatory start time requirement. "Revalidation" of permits is generally no longer in use and would be removed from the regulations; permits are extended or new permits issued. A three year maximum period

for ocean dumping permits has been added based on a stipulation agreed to in a law suit involving the ocean dumping permit program.

Section 325.7 (b) and (k): The option for the permittee to request a meeting with the district engineer rather than a formal public hearing on modification and suspension procedures would be added.

Section 325.7(d): The authority to revoke a permit would be given to the authority that made the decision on the original permit rather than the Chief of Engineers.

Section 325.8 (b) and (c): District and division engineer authorities have been revised to be consistent with the approach developed for the interagency agreements required by Section 404(q) of the CWA. District engineers would be given the authority to deny permits without public notice for navigation interference or other authorization denials.

Appendix A, Permit Form, would be revised as follows:

1. The term "Federal Water Pollution Control Act (86 Stat. 816, P.L. 92–500)" which appears in three places would be changed to "Clean Water Act (33 U.S.C. 1344)" to reflect the new law citation.

2. The last clause of General Condition "i" would be deleted and set forth separately in new condition "j": "That this permit does not obviate the requirement to obtain state or local assent required by law for the activity authorized herein." This change would eliminate any suggestion that this provision relates to property rights.

3. General Conditions "j" and "k" would be combined into a new condition "k":

"That this permit may be modified, suspended or revoked in whole or in part pursuant to the policies and procedures prescribed in 33 CFR 325.7." This change would eliminate present inconsistencies between the two conditions and the regulation provisions and would avoid the necessity to revise the conditions in the future as the suspension, modification, revocation procedures change in the regulations through rulemaking procedures.

4. General Condition "o" would be revised to delete the start time dates pursuant to the proposed change to § 325.6(c).

5. New General Condition "u" would be added as follows: "That if the permittee, during prosecution of the work authorized herein, encounters a previously unidentified archeological or other cultural resource that might be eligible for listing in the National Register of Historic Places, he shall immediately notify the District Engineer." This notification will enable the District Engineer to initiate procedures required by historic preservation laws (see paragraph 11 of Appendix C to 33 CFR Part 325).

6. The last phrase of Condition "b" under "Discharges of dredged or fill material into waters of the United States" relating to toxic pollutants would be changed from "in other than trace quantities" to "in toxic amounts" to agree with the language of Section 101(a)(3) of the CWA.

7. Condition "d" under "Discharges of Dredged or Fill Material into Waters of the United States" pertaining to wild and scenic rivers would be deleted as its original inclusion as a permit condition was inappropriate.

Appendix B, 1967 MOU with Department of the Interior has been terminated. Appendix B would be revoked and reserved. New agreements, with five federal agencies, under Section 404(q) of the CWA, became effective on March 24, 1980. These agreements would be added as Appendices D through H and are included in this publication. The agreements supersede any contrary provisions now found in 33 CFR Parts 320–329, 42 FR 37122, July 19, 1977.

Appendix C, Procedures for the Protection of Cultural Resources, contains new procedures for compliance with historic preservation laws. The procedures were jointly drafted with the President's Advisory Council on Historic Preservation and published separately in the **Federal Register** on April 3, 1980, as proposed rulemaking.

Part 326—Enforcement

Changes would be made to reduce or eliminate the duplications and delays resulting from the current practice of evaluating the unauthorized work prior to deciding whether legal action is appropriate, then essentially making the same evaluation when an after-the-fact application is received. The proposed revisions concentrate on an initial determination of whether any significant adverse impacts are occurring which would require expeditious mitigation or restoration measures to protect life, property, or a significant public resource. Once that determination is made, such remedial measures can be administratively ordered and a decision can be made on whether legal action is necessary to either enforce the order or to institute criminal action. The full public interest review can then be deferred until the after-the-fact application is processed. In routine, minimal impact cases, district engineers, following issuance of a cease and desist order, may dispense with contacting the other coordinating agencies and go directly to a determination of whether legal action is called for in enforcing the administrative cease and desist order. If legal action were initiated, an after-the-fact application would not be accepted until the legal action is completed. If no legal action is taken, an after-the-fact application would be accepted immediately. Once an after-the-fact application is received, the public interest review may proceed.

Part 327—Public Hearings

The public hearing regulation would be changed to make the public hearing policies consistent under all Corps of Engineers regulatory authorities. As the standard, we would adopt the policies and criteria previously applicable to Section 404 only. This part would also be changed to combine the hearing file with the complete administrative record of the permit action. All the information currently required for the public hearing file is also required to be in the administrative record. This duplication would be eliminated. The requirement for a verbatim hearing transcript would be retained. The mandatory requirement for district counsel to be present at all hearings as a legal adviser to the presiding officer (§ 327.6) would be changed to a discretionary decision.

Part 328—Harbor Lines

This part provides generally that permits are not required for structures and fill behind established harbor lines if their construction commenced prior to May 27, 1970. The Corps is interested in receiving comments on the value of retaining this part in the CFR. If a need for retaining it cannot be established, the Corps proposes to revoke Part 328.

Part 329—Definition of Navigable Waters of the United States

Based on a west coast court decision (*Leslie Salt Co.* v. *Froelke,* 578 F.2d 742) (9th Cir 1978) the shoreward limit of navigable waters of the United States (frequently referred to as "Section 10 waters") in coastal areas is now the mean high water line on both the Atlantic and Pacific coasts (formerly the mean higher water was used on the Pacific coast). Therefore, Part 329 is being amended to delete the second sentence of § 329.12(a)(2). That sentence now reads: "However, on the Pacific Coast, the line reached by the mean of the higher high waters is used."

No other changes are proposed to Part 329, but public comments and suggestions are welcome.

Part 330—Nationwide Permits

This would be a new part containing existing and proposed nationwide

permits. The existing nationwide permits and applicable policies found in 33 CFR 322.4 (Section 10 nationwide permits) and 323.4 (Section 404 nationwide permits) would be combined and relocated to Part 330. Some of those permits and applicable policies would be revised.

The existing nationwide permits took effect upon publication in the Federal Register July 19, 1977. The Corps is very interested in receiving public comment on the present nationwide permits since it will in effect be reissuing those permits when Part 330 is published as final rulemaking. When those permits were adopted July 19, 1977, the Corps' basic criteria for permit candidates were those activities which were substantially similar in nature and that would cause only minimal individual and cumulative environmental impact. The similar/minimal impact criteria are now legislatively endorsed for the Section 404 permit program by Section 404(e)(1) of the CWA. Section 404(q) expresses the desire of Congress "to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this Section," and Executive Order 12044 directs Federal agencies to reduce regulatory burdens on the public wherever legally possible. The Corps is interested in receiving public comment on the expansion of the nationwide permit program to include those activities of other Federal agencies which would have individual or cumulative minimal environmental impact. The Corps also solicits suggestions for future nationwide permit candidates. One feature of the nationwide permit program which the Corps is particularly interested in receiving public comment on is the need for reporting to the district engineer as a prerequisite to working under a nationwide permit. Some say reporting is necessary to insure that the activity is in fact covered, to make the applicant aware of the applicable conditions and management practices, and to facilitate monitoring of individual and cumulative impacts. Others feel the public benefits to be gained by reporting are offset by the resulting delays and paperwork. Furthermore, since many of the activities are of a type which, as a practical matter, will never be reported regardless of regulation requirements; they would theoretically be subject to enforcement actions thus adding further demands on regulatory resources. Perhaps some of the activities should be reported and others not. Any comments on how the Corps can make the nationwide permit system work effectively and efficiently will be welcomed.

A brief discussion of the revised and new nationwide permits follows:

1. *Section 330.3(a):* The nationwide permits for discharges occurring before the phase-in dates for Section 404 jurisdiction over *all* waters of the United States would be consolidated and simplified.

2. *Section 330.4(a):* The four nationwide permits for discharges into certain waters (now at § 323.4–2(a)) would be consolidated and simplified into two permits—(1) discharges above headwaters and (2) discharges into isolated, intrastate waters. The exception for lakes greater than 10 acres in size would be deleted both for simplicity and because of the lack of justification for the exception (there is no such exception in the current regulations for impoundments and wetlands regardless of size). The ability to regulate discharges into any waterbody on an individual basis is available through the discretionary procedures of § 330.7.

3. *Section 330.5(a)(1):* Presently only aids installed by the Coast Guard are included. This revision would expand the coverage to all aids and regulatory markers *regulated* by the Coast Guard. This permit also would avoid dual Federal regulatory control.

4. *Section 330.5(a)(4):* Fish and wildlife harvesting activities would be added to this existing nationwide permit since such activities are or can be adequately regulated through other Federal, state and local fishing and hunting regulatory programs or are so minor in impact as not to require any individual review.

5. *Section 330.4(a)(6):* Seismic operations would be added to avoid delays for geophysical survey activities.

6. *Section 330.5(a)(7):* New nationwide permit to avoid duplicating the regulatory control exercised by EPA under its Section 402 permitting authority. The public concern and impacts of outfall structures are generally related to what comes out of the pipe rather than to the pipe itself.

7. *Section 330.5(a)(9):* New nationwide permit to avoid duplicating controls exercised by the U.S. Coast Guard over vessel anchorages and moorages.

8. *Section 330.5(a)(10):* New nationwide permit to avoid unnecessary Federal control over private mooring buoys.

9. *Section 330.5(a)(11):* New nationwide permit to avoid unnecessary Federal control over temporary markers and buoys.

10. *Section 330.5(a)(12):* Existing nationwide permit would be expanded to include backfill and bedding for intake and outfall structures.

11. *Section 330.5(a)(13):* Existing nationwide permit for bank stabilization applies only to Section 404 authority. It is now proposed to apply it to Section 10 authority as well which necessitates some special conditioning.

12. *Section 330.5(a)(15):* Existing nationwide permit for some bridge-associated fills in tidal waters would be expanded to also apply to non-tidal bridge-associated fills where those fills are regulated by the U.S. Coast Guard as part of the bridge permit. This would reduce dual Federal regulatory control for non-tidal bridges crossing navigable waters of the United States.

13. *Section 330.5(a)(16):* New nationwide permit to recognize that the return water from dredged material placed hydraulically on upland sites is administratively recognized as a 404 discharge but need not be regulated on an individual basis as long as the water quality concerns are protected through the Section 401 certification procedure. Reducing regulatory burdens on upland disposal should encourage such disposal and avoid the confusion now existing on why hydraulic disposal on the upland needs a 404 permit while non-hydraulic disposal does not.

14. *Section 330.5(a)(17):* New nationwide permit to avoid duplicating the regulatory control exercised by the Department of Energy (FERC) under the Federal Power Act of 1920 for small hydropower projects.

15. *Section 330.5(a)(18) and (19):* New nationwide permits for extremely small dredge and fill activities.

16. *Section 330.5(a)(20):* New nationwide permit to avoid regulatory delays associated with oil and hazardous substances containment and cleanup operations.

17. *Section 330.5(a)(21):* New nationwide permit to avoid duplicating the regulatory control exercised by the Department of the Interior under the Surface Mining Control and Reclamation Act of 1977. The provision for an advance review by the Corps would afford the Corps an opportunity to insure that the activity needing a Corps permit would have minimal impacts and thus qualify for the nationwide permit.

18. *Section 330.5(a)(22):* New nationwide permit for work associated with removal of wrecked vessels and navigational obstructions.

19. *Section 330.5(a)(23):* New nationwide permit to reduce duplication of effort and unnecessary paperwork concerning activities of other Federal agencies which would have individual or cumulative minimal environmental impacts.

20. *Section 330.5(a)(24):* New nationwide permit to avoid duplications with state-administered Section 404 permit programs. Administration of the Section 404 program in Waters which are navigable waters of the United States based solely on historical commercial use may be transferred to qualified states pursuant to Section 404(g) of the CWA. However, the Corps retains Section 10 permitting authority in these waters. Thus the discharge of dredged or fill material in such waters would require both a Corps Section 10 permit and State Section 404 permit. Since both EPA and the Corps have adequate control over the state 404 programs to protect the federal interest, a nationwide permit to satisfy the Section 10 jurisdictional authority would avoid paperwork, duplications, and delays.

21. *Section 330.7:* Authority to cancel nationwide permit coverage would be elevated from the district engineers to the Chief of Engineers. Experience has demonstrated this need (See footnote 5 in the proposed regulation.)

22. *Section 330.8:* A 5-year expiration date would be added to accord with Section 404(e) of the CWA.

401 Certification on Nationwide Permits

A number of the nationwide permits proposed in Part 330 involve a discharge into waters of the United States. Section 401 (a)(1) of the CWA provides that discharge permits will not be issued until the state from which the discharge would originate has certified that the discharge will comply with applicable provisions of the CWA. A certification waiver procedure is also provided by Section 401. Because of (1) the nature of the discharges covered by the proposed nationwide permits, (2) the experience to date with the existing nationwide permits, and (3) the controls either provided by the conditions of the nationwide permits or exercised by another agency, the Corps has assumed that all states will want to waive certification requirements (with the exception of nationwide permit § 330.5(a)(16) (runoff from uplands disposal area) which calls for certification as a condition to the permit). However, any state desiring to exercise its Section 401 certification rights for any or all nationwide permits involving a discharge should notify the Corps so that appropriate exceptions or special requirements can be incorporated into the nationwide permit program. Public comment on this issue will also be welcomed.

Coastal Zone Management

Section 307(c) of the Coastal Zone Management Act of 1972 requires non-Federal applicants for permits affecting state coastal zones to certify that the proposed activity would comply with the state's coastal zone management program. While there are no applicants, per se, for nationwide permits, this notice will serve as a certification that the proposed activities covered by the nationwide permits would comply with and be conducted in a manner that is consistent with approved state Coastal Zone Management Programs. The Corps solicits comments on this certification statement, particularly from state agencies responsible for coastal zone management plans.

Public Hearing Requests

Any person may request a public hearing on the nationwide permits proposed in Part 330, including those already existing. Since some of the nationwide permits may be eliminated or revised based on public comment, it is important that requests for public hearing state the particular permit or permits of concern and what those concerns are. If the Corps determines that a public hearing or hearings would assist in making a decision on any of the nationwide permits, a 30-day advance notice will be published in the **Federal Register** advising interested parties of the date(s) and location(s) for the hearing(s).

Nationwide Permit Documentation

The Corps will issue, by publication in the **Federal Register** as final rulemaking, only those nationwide permits found to be in the public interest. The Corps will prepare findings of fact and environmental documentation before adopting any of the nationwide permits. The documentation will include a discussion on the conformity with the EPA guidelines adopted under Section 404(b) of the CWA for the discharge of dredged or fill material in waters of the United States (40 CFR 230).

Note 1

The Department of the Army has determined that the proposed regulation revisions do not contain a major proposal requiring the preparation of a regulatory analysis under E.O. 12044, Improving Government Regulations (43 FR 12661, March 24, 1978).

Note 2

The term "he" and its derivatives used in these regulations is generic and should be considered as applying to both male and female.

Dated: September 11, 1980

E. R. Heiberg III,

Major General, USA, Director of Civil Works.

The Corps proposes to amend Parts 320–327 and adopt new Part 330 as follows:

1. Part 320 is revised in its entirety.

PART 320—GENERAL REGULATORY POLICIES

Sec.

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 320.1 Purpose and scope.

(a) *Regulatory Approach of the Corps of Engineers.* (1) The U.S. Army Corps of Engineers has been involved in regulating certain activities in the nation's waters since 1890. Until 1968, the primary thrust of the Corp's regulatory program was the protection of navigation. As a result of several new laws and judicial decisions, the program has evolved from one that primarily protects navigation only to one that protects the full public interest by balancing the favorable impacts against the detrimental impacts. This is known as the "public interest balance process" or the "public interest review." The program is one which reflects the national concern for both the protection and utilization of important resources. It is a Federal water resource management program designed to ensure that man's use of the nation's waters will serve the best interests of society as a whole. It is a dynamic program that varies the weight given to a specific public interest factor in light of the importance of other such factors in a particular situation.

(2) The Corps is a highly decentralized organization. Most of the authority for administering the regulatory program has been given to the thirty six district engineers and eleven division engineers. Far less than one percent of all permit applications must be referred to the Chief of Engineers or Secretary of the Army for decisions. If a district or division engineer makes a final decision on a permit application in accordance with their delegated authorities, there is no administrative appeal of that decision, except as provided for Federal agencies under agreements pursuant to Section 404(q) of the Clean Water Act.

(3) The Corps seeks to avoid unnecessary regulatory controls. The general permit program described in 33 CFR Part 330 is the primary method of eliminating unnecessary Federal control

over activities which are too minor to justify individual control.

(4) The Corps believes that applicants are not necessarily due a favorable decision but they are due a timely one. Reducing unnecessary paperwork and delays is a continuing Corps goal.

(5) The Corps believes that state and Federal regulatory programs should complement rather than duplicate one another. Use of general permits, joint processing procedures, interagency review coordination and authority transfers (where authorized by law) are encouraged to reduce duplications.

(b) *Types of activities regulated.* This regulation and the regulations that follow (33 CFR Parts 321–330) prescribed the statutory authorities, and general and special policies and procedures applicable to the review of applications for Department of the Army permits for various types of activities that occur in waters of the United States or the oceans. This part identifies the various Federal statutes that require Department of the Army permits before these activities can be lawfully undertaken; the related Federal legislation applicable to the review of each activity that requires a Department of the Army permit; and the general policies that are applicable to the review of all activities that requires Department of the Army permits. Parts 321–324 address the various types of activities that require Department of the Army permits, including special policies and procedures applicable to those activities, as follows:

(1) Dams or dikes in navigable waters of the United States (Part 321);

(2) Other structures or work including excavation, dredging, and/or disposal activities, in navigable waters of the United States (Part 322);

(3) Activities that alter or modify the course, condition, location, or physical capacity of a navigable water of the United States (Part 322);

(4) Construction of fixed structures and artificial islands on the outer continental shelf (Part 322);

(5) Discharges of dredged or fill material into the waters of the United States (Part 323);

(6) Activities involving the transportation of dredged material for the purpose of dumping it in ocean waters (Part 324); and

(7) Nationwide permits for certain categories of these activities (Part 330).

(c) *Forms of authorization.* Department of the Army permits for the above described activities are issued under various forms of authorization. These include individual permits that are issued following a review of an individual application for a Department of the Army permit and general permits that authorize the performance of a category or categories of activities in a specific geographical region or nationwide. The term "general permit" as used in these regulations (33 CFR Parts 320–330) refers to both those regional permits issued by district engineers on a regional basis and to nationwide permits issued by the Chief of Engineers through publication in the Federal Register and applicable throughout the nation. The nationwide permits are found in 33 CFR Part 330. If an activity is covered by a general permit, an application for a Department of the Army permit does not have to be made. In such cases, a person must only comply with the conditions contained in the general permit to satisfy the requirements of law for a Department of the Army Permit. However, some general permits require advance reporting to be effective.

(d) *General instructions.* The procedures for processing all individual permits and general permits are contained in 33 CFR Part 325. However, before reviewing those procedures, a person desiring to perform any activity that requires a Department of the Army permit is advised to review the general and special policies that relate to the particular activity as outlined in this Part 320 and Parts 321 through 324. The terms "navigable waters of the United States" and "waters of the United States" are used frequently throughout these regulations, and it is important that the reader understand the difference from the outset. *"Navigable waters* of the United States" are defined in 33 CFR Part 329. These are waters that are navigable in the traditional sense where permits are required for certain work or structures pursuant to Sections 9 and 10 of the River and Harbor Act of 1899. *"Waters* of the United States" are defined in 33 CFR 323.2(a). These waters include more than navigable waters of the United States and are the waters where permits are required for the discharge of dredged or fill material pursuant to Section 404 of the Clean Water Act.

§ 320.2 Authorities to issue permits.

(a) Section 9 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 401) (hereinafter referred to as Section 9) prohibits the construction of any dam or dike across any navigable water of the United States in the absence of Congressional consent and approval of the plans by the Chief of Engineers and the Secretary of the Army. Where the navigable portions of the waterbody lie wholly within the limits of a single State, the structure may be built under authority of the legislature of that State, if the location and plans or any modification thereof are approved by the Chief of Engineers and by the Secretary of the Army. The instrument of authorization is designated a permit. Section 9 also pertains to bridges and causeways but the authority of the Secretary of the Army and Chief of Engineers with respect to bridges and causeways was transferred to the Secretary of Transportation under the Department of Transportation Act of October 15, 1966 (49 U.S.C. 1155g(6)(A)). See also 33 CFR Part 321. A Department of the Army permit is required for the discharge of dredged or fill material into waters of the United States associated with bridges and causeways pursuant to Section 404 of the Clean Water Act. See 33 CFR Part 323.

(b) Section 10 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10) prohibits the unauthorized obstruction or alteration of any navigable water of the United States. The construction of any structure in or over any navigable water of the United States, the excavation from or depositing of material in such waters, or the accomplishment of any other work affecting the course, location, condition, or physical capacity of such waters is unlawful unless the work has been recommended by the Chief of Engineers and authorized by the Secretary of the Army. The instrument of authorization is designated a permit, general permit, or letter of permission. The authority of the Secretary of the Army to prevent obstructions to navigation in the navigable waters of the United States was extended to artificial islands and fixed structures located on the outer continental shelf by Section 4(e) of the Outer Continental Shelf Lands Act of 1953 as amended (43 U.S.C. 1333(e)). See also 33 CFR Part 322.

(c) Section 11 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 404) authorizes the Secretary of the Army to establish harbor lines channelward of which no piers, wharves, bulkheads or other works may be extended or deposits made without approval of the Secretary of the Army. By policy stated in 33 CFR Part 328, effective May 27, 1970, harbor lines are guidelines only for defining the offshore limits of structures and fills insofar as they impact on navigation interests. Permits for work shoreward of those lines must be obtained in accordance with Section 10 and, if applicable, Section 404 of the Clean Water Act.

(d) Section 13 of the River and Harbor Act approved March 3, 1899 (33 U.S.C.

407) provides that the Secretary of the Army, whenever the Chief of Engineers determines that anchorage and navigation will not be injured thereby, may permit the discharge of refuse into navigable waters. In the absence of a permit, such discharge of refuse is prohibited. While the prohibition of this section, known as the Refuse Act, is still in effect, the permit authority of the Secretary of the Army has been superseded by the permit authority provided the Administrator, Environmental Protection Agency, and the States under Sections 402 and 405 of the Clean Air Act, respectively (33 U.S.C. 1342 and 1345). See 40 CFR Part 124 and Part 125.

(e) Section 14 of the River and Harbor Act approved March 3, 1899 (33 U.S.C. 408) provides that the Secretary of the Army on the recommendation of the Chief of Engineers may grant permission for the temporary occupation or use of any sea wall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the United States. This permission will be granted by an appropriate real estate instrument in accordance with existing real estate regulations.

(f) Section 404 of the Clean Water Act (formerly known as the Federal Water Pollution Control Act) (33 U.S.C. 1344) (hereinafter referred to as Section 404) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the waters of the United States at specified disposal sites. See 33 CFR Part 323. The selection and use of disposal sites will be in accordance with guidelines developed by the Administrator of the Environmental Protection Agency (EPA) in conjunction with the Secretary of the Army and published in 40 CFR Part 230. If these guidelines prohibit the selection or use of a disposal site, the Chief of Engineers shall consider the economic impact on navigation of such a prohibition in reaching his decision. Furthermore, the Administrator can prohibit or restrict the use of any defined area as a disposal site whenever he determines, after notice and opportunity for public hearings and after consultation with the Secretary of the Army, that the discharge of such materials into such areas will have an unacceptable adverse effect on municipal water supplies, shellfish beds and fishery areas, wildlife, or recreational areas (See 40 CFR Part 230).

(g) Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as Section 103) authorizes the Secretary of the Army, acting through the Chief of Engineers, to issue permits, after notice and opportunity for public hearings, for the transportation of dredged material for the purpose of dumping it in ocean waters where it is determined that the dumping will not unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological system, or economic potentialities. The selection of disposal sites will be in accordance with criteria, developed by the Administrator of the EPA in consultation with the Secretary of the Army and published in 40 CFR Parts 220–229. However, similar to the EPA Administrator's limiting authority cited in paragraph (f) of this section, the Administrator can prevent the issuance of a permit under this authority if he finds that the dumping of the material will result in an unacceptable adverse impact on municipal water supplies, shellfish beds, wildlife, fisheries or recreational areas. See also 33 CFR Part 324.

§ 320.3 Related legislation.

(a) Section 401 of the Clean Water Act (33 U.S.C. 1341) requires any applicant for a Federal license or permit to conduct any activity that may result in a discharge of a pollutant into waters of the United States to obtain a certification from the State in which the discharge originates or would originate, or, if appropriate, from the interstate water pollution control agency having jurisdiction over the affected waters at the point where the discharge originates or would originate, that the discharge will comply with the applicable effluent limitations and water quality standards. A certification obtained for the construction of any facility must also pertain to the subsequent operation of the facility.

(b) Section 307(c) of the Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1456(c)), requires Federal agencies conducting activities, including development projects, directly affecting a State's coastal zone, to comply, to the maximum extent practicable, with an approved State coastal zone management program. It also requires any non-Federal applicant for a Federal license or permit to conduct an activity affecting land or water uses in the State's coastal zone to furnish a certification that the proposed activity will comply with the State's coastal zone management program. Generally, no permit will be issued until the State has concurred with the non-Federal applicant's certification. This provision becomes effective upon approval by the Secretary of Commerce of the State's coastal zone management program. See also 15 CFR Part 930.

(c) Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (16 U.S.C. 1432), authorizes the Secretary of Commerce, after consultation with other interested Federal agencies and with the approval of the President, to designate as marine sanctuaries those areas of the ocean waters or of the Great Lakes and their connecting waters or of other coastal waters which he determines necessary for the purpose of preserving or restoring such areas for their conservation, recreational, ecological, or aesthetic values. After designating such an area, the Secretary of Commerce shall issue regulations to control any activities within the area. Activities in the sanctuary authorized under other authorities are valid only if the Secretary of Commerce certifies that the activities are consistent with the purposes of Title III of the Act and can be carried out within the regulations for the sanctuary.

(d) The National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) declares the national policy to encourage a productive and enjoyable harmony between man and his environment. Section 102 of that Act directs that "to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act, and (2) all agencies of the Federal Government shall * * * insure that presently unquantified environmental amenities and values may be given appropriate consideration in decision-making along with economic and technical considerations * * *". See Appendix B of 33 CFR Part 230.

(e) The Fish and Wildlife Act of 1956 (16 U.S.C. 742a, *et seq.*), the Migratory Marine Game-Fish Act (16 U.S.C. 760c–760g) and the Fish and Wildlife Coordination Act (16 U.S.C. 661–666c) and other acts express the will of Congress to protect the quality of the aquatic environment as it affects the conservation, improvement and enjoyment of fish and wildlife resources. Reorganization Plan No. 4 of 1970 transferred certain functions, including certain fish and wildlife-water resources coordination responsibilities, from the Secretary of the Interior to the Secretary of Commerce. Under the Fish and Wildlife Coordination Act and Reorganization Plan No. 4, any Federal agency that proposes to control or modify any body of water must first consult with the United States Fish and

Wildlife Service, the National Marine Fisheries Service, as appropriate, and with the head of the appropriate State agency exercising administration over the wildlife resources of the affected State.

(f) The Federal Power Act of 1920 (16 U.S.C. 791a *et seq.*), as amended, authorizes the Department of Energy (DOE) to issue licenses for the construction, operation and maintenance of dams, water conduits, reservoirs, power houses, transmission lines, and other physical structures of a hydro-power project. However, where such structures will affect the navigable capacity of any navigable waters of the United States (as defined in 16 U.S.C. 796), the plans for the dam or other physical structures affecting navigation must be approved by the Chief of Engineers and the Secretary of the Army. In such cases, the interests of navigation should normally be protected by a recommendation to the DOE for the inclusion of appropriate provisions in the DOE license rather than the issuance of a separate Department of the Army permit under 33 U.S.C. 401 *et seq.* As to any other activities in navigable waters not constituting construction, operation and maintenance of physical structures licensed by the DOE under the Federal Power Act of 1920, as amended, the provisions of 33 U.S.C. 401 *et seq.* remain fully applicable. In all cases involving the discharge of dredged or fill material into waters of the United States or the transportation of dredged material for the purpose of dumping in ocean waters, Section 404 or Section 103 will be applicable.

(g) The National Historic Preservation Act of 1966 (16 U.S.C. 470) created the Advisory Council on Historic Preservation to advise the President and Congress on matters involving historic preservation. In performing its function the Council is authorized to review and comment upon activities licensed by the Federal Government which will have an effect upon properties listed in the National Register of Historic Places, or eligible for such listing. The concern of Congress for the preservation of significant historical sites is also expressed in the Preservation of Historical and Archeological Data Act of 1974 (16 U.S.C. 469 *et seq.*), which amends the Act of June 27, 1960. By this Act, whenever a Federal construction project or Federally licensed project, activity or program alters any terrain such that significant historical or archeological data is threatened, the Secretary of the Interior may take action necessary to recover and preserve the data prior to the commencement of the project. See also Appendix C to 33 CFR Part 325.

(h) The Interstate Land Sales Full Disclosure Act (15 U.S.C. 1701 *et seq.*) prohibits any developer or agent from selling or leasing any lot in a subdivision (as defined in 15 U.S.C. 1701(3)) unless the purchaser is furnished in advance a printed property report containing information which the Secretary of Housing and Urban Development may, by rules or regulations, require for the protection of purchasers. In the event the lot in question is part of a project that requires Department of the Army authorization, the Property Report is required by Housing and Urban Development regulation to state whether or not a permit has been applied for, issued, or denied by the Corps of Engineers for the development under Section 10 or Section 404. The Property Report is also required to state whether or not any enforcement action has been taken as a consequence of non-application for or denial of such permit.

(i) The Endangered Species Act (16 U.S.C. 1531 *et seq.*) declares the intention of the Congress to conserve threatened and endangered species and the ecosystems on which those species depend. The Act provides that Federal agencies must utilize their authorities in furtherance of its purposes by carrying out programs for the conservation of endangered or threatened species, and by taking such action necessary to insure that any action authorized by the Agency will not jeopardize the continued existence of such endangered or threatened species or result in the destruction or adverse modification of habitat of such species which is determined by the Secretary of Interior or Commerce, as appropriate, to be critical. See also 50 CFR Part 17 and 50 CFR Part 402.

(j) The Deepwater Port Act of 1974 (33 U.S.C. 1501 *et seq.*) prohibits the ownership, construction, or operation of a deepwater port beyond the territorial seas without a license issued by the Secretary of Transportation. The Secretary of Transportation may issue such a license to an applicant if he determines, among other things, that the construction and operation of the deepwater port is in the national interest and consistent with national security and other national policy goals and objectives. An application for a deepwater port license constitutes an application for all Federal authorizations required for the ownership, construction, and operation of a deepwater port, including applications for Section 10, Section 404 and Section 103 permits which may also be required and must be issued by the Department of the Army pursuant to the authorities listed in § 320.2 and the policies specified in § 320.4.

(k) The Marine Mammal Protection Act of 1972 (16 U.S.C. 1361 *et seq.*) expresses the intent of Congress that marine mammals be protected and encouraged to develop in order to maintain the health and stability of the marine ecosystem. The Act imposes a perpetual moratorium on the harassment, hunting, capturing, or killing of marine mammals and on the importation of marine mammals and marine mammal products without a permit from either the Secretary of the Interior or the Secretary of Commerce, depending upon the species of marine mammal involved. Such permits may be issued only for purposes of scientific research and for public display if the purpose is consistent with the policies of the Act. The appropriate Secretary is also empowered in certain restricted circumstances to waive the requirements of the Act.

(l) Section 7(a) of the Wild and Scenic Rivers Act (16 U.S.C. 1278 *et seq.*) provides that no department or agency of the United States shall assist by loan, grant, license, or otherwise in the construction of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration. No department or agency of the United States shall recommend authorization of any water resources project that would have a direct and adverse effect on the values for which such river was established, as determined by the Secretary charged with its administration, or request appropriations to begin construction of any such project, whether heretofore or hereafter authorized, without advising the Secretary of the Interior or the Secretary of Agriculture, as the case may be, in writing of its intention to do so at least sixty days in advance, and without specifically reporting to the Congress in writing at the time it makes its recommendation or request in what respect construction of such project would be in conflict with the purposes of this Act and would affect the component and the values to be protected by it under this Act.

§ 320.4 General policies for evaluating permit applications.

The following policies shall be applicable to the review of all applications for Department of the Army permits. Additional policies specifically

applicable to certain types of activities are identified in Parts 321–324.

(a) *Public interest review.* (1) The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity and its intended use on the public interest. Evaluation of the probable impact which the proposed activity may have on the public interest requires a careful weighing of all those factors which become relevant in each particular case. The benefits which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. The decision whether to authorize a proposal, and if so, the conditions under which it will be allowed to occur, are therefore determined by the outcome of the general balancing process (see e.g., 33 CFR Part 294, Planning Process: Impact Assessment). That decision should reflect the national concern for both protection and utilization of important resources. All factors which may be relevant to the proposal must be considered including the cumulative effects thereof: among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shore erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production, and, in general, the needs and welfare of the people. No permit will be granted unless its issuance is found to be in the public interest.

(2) The following general criteria will be considered in the evaluation of every application:

(i) The relative extent of the public and private need for the proposed structure or work;

(ii) The practicability of using reasonable alternative locations and methods to accomplish the objective of the proposed structure or work;

(iii) The extent and permanence of the beneficial and/or detrimental effects which the proposed structure or work may have on the public and private uses to which the area is suited; and

(iv) The probable impact of each proposal in relation to the cumulative effect created by other existing and anticipated structures or work in the general area.

(b) *Effect on wetlands.* (1) Wetlands are vital areas that constitute a productive and valuable public resource, the unnecessary alteration or destruction of which should be discouraged as contrary to the public interest. For projects to be undertaken by Federal, State, or local agencies, additional guidance on wetlands considerations is stated in Executive Order 11990, dated 24 May 1977.

(2) Wetlands considered to perform functions important to the public interest include:

(i) Wetlands which serve significant natural biological functions, including food chain production, general habitat, and nesting, spawning, rearing and resting sites for aquatic or land species;

(ii) Wetlands set aside for study of the aquatic environment or as sanctuaries or refuges;

(iii) Wetlands the destruction or alteration of which would affect detrimentally natural drainage characteristics, sedimentation patterns, salinity distribution, flushing characteristics, current patterns, or other environmental characteristics;

(iv) Wetlands which are significant in shielding other areas from wave action, erosion, or storm damage. Such wetlands are often associated with barrier beaches, islands, reefs and bars;

(v) Wetlands which serve as valuable storage areas for storm and flood waters;

(vi) Wetlands which are prime natural recharge areas. Prime recharge areas are locations where surface and ground water are directly interconnected; and

(vii) Wetlands which through natural water filtration processes serve significant water purification functions.

(3) Although a particular alteration of wetlands may constitute a minor change, the cumulative effect of numerous such piecemeal changes often results in a major impairment of the wetland resources. Thus, the particular wetland site for which an application is made will be evaluated with the recognition that it is part of a complete and interrelated wetland area. In addition, the District Engineer may undertake reviews of particular wetland areas in consultation with the appropriate Regional Director of the Fish and Wildlife Service, the Regional Director of the National Marine Fisheries Service of the National Oceanic and Atmospheric Administration, the Regional Administrator of the Environmental Protection Agency, the local representative of the Soil Conservation Service of the Department of Agriculture, and the head of the appropriate State agency to assess the cumulative effect of activities in such area.

(4) No permit will be granted which involves the alteration of wetlands identified as important by paragraph (b)(2) of this section or because of provisions of paragraph (b)(3) of this section, above, unless the district engineer concludes, on the basis of the analysis required in paragraph (a) of this section, above, that the benefits of the proposed alteration outweigh the damage to the wetlands resource and the proposed alteration is necessary to realize those benefits. In evaluating whether a particular alteration is necessary, the district engineer shall consider whether the proposed activity is primarily dependent on being located in, or in close proximity to the aquatic environment or whether practicable alternative sites are available. The applicant must provide sufficient information on the need to locate the proposed activity in the wetland and must provide data on the basis of which the availability of practicable alternative sites can be evaluated.

(5) In addition to the policies expressed in this subpart, the Congressional policy expressed in the Estuary Protection Act, PL 90–454, and State regulatory laws or programs for classification and protection of wetlands will be given great weight.

(c) *Fish and wildlife.* In accordance with the Fish and Wildlife Coordination Act (§ 320.3(e)) Corps of Engineers officials will consult with the Regional Director, U.S. Fish and Wildlife Service, the Regional Director, National Marine Fisheries Service, and the head of the agency responsible for fish and wildlife for the State in which the work is to be performed, with a view to the conservation of wildlife resources by prevention of their directs and indirect loss and damage due to the activity proposed in a permit application. They will give great weight to these views on fish and wildlife considerations in evaluating the application. The applicant will be urged to modify his proposal to eliminate or mitigate any damage to such resources, and in appropriate cases the permit may be conditioned to accomplish this purpose.

(d) *Water quality.* Applications for permits for activities which may affect the quality of a water of the United States will be evaluated for compliance with applicable effluent limitations, water quality standards, and management practices during the construction, operation, and maintenance of the proposed activity. Certification of compliance with applicable effluent limitations and water quality standards required under provisions of Section 401 of the Clean Water Act will be considered conclusive with respect to water quality considerations unless the Regional Administrator, Environmental Protection Agency (EPA), advises of other water

quality aspects to be taken into consideration. Any permit issued may be conditioned to implement water quality protection measures.

(e) *Historic, cultural, scenic, and recreational values.* Application for permits covered by this regulation may involve areas which possess recognized historic, cultural, scenic, conservation, recreational or similar values. Full evaluation of the general public interest requires that due consideration be given to the effect which the proposed structure or activity may have on the enhancement, preservation, or development of such values (e.g., wild and scenic rivers, registered historic places and natural landmarks, National Rivers, National Wilderness Areas, National Seashores, National Recreation Areas, National Lakeshores, National Parks, National Monuments, estuarine and marine sanctuaries, archeological resources, including Indian religious or cultural sites, and such other areas as may be established under Federal or state law for similar and related purposes). Recognition of those values is often reflected by State, regional, or local land use classifications, or by similar Federal controls or policies. In both cases, action on permit applications should, insofar as possible, be consistent with, and avoid adverse effect on, the values or purposes for which those classifications, controls, or policies were established.

(f) *Effect on limits of the territorial sea.* Structures or work affecting coastal waters may modify the coast line or base line from which the three mile belt is measured for purposes of the Submerged Lands Act and International Law. Generally, the coast line or base line is the line of ordinary low water on the mainland; however, there are exceptions where there are islands or lowtide elevations offshore (the Submerged Lands Act, 43 U.S.C. 1301(a) and United States v. California, 381 U.S.C. 139 (1965), 382 U.S.C. 448 (1966)). Applications for structures or work affecting coastal waters will therefore be reviewed specifically to determine whether the coast line or base line might be altered. If it is determined that such a change might occur, coordination with the Attorney General and the Solicitor of the Department of the Interior is required before final action is taken. The district engineer will submit a description of the proposed work and a copy of the plans to the Solicitor, Department of the Interior, Washington, D.C., 20240, and request his comments concerning the effects of the proposed work on the outer continental rights of the United States. These comments will be included in the file of the application. After completion of standard processing procedures, the file will be forwarded to the Chief of Engineers. The decision on the application will be made by the Secretary of the Army after coordination with the Attorney General.

(g) *Interference with adjacent properties or water resource projects.* Authorization of work or structures by the Department of the Army does not convey a property right, nor authorize any injury to property or invasion of other rights.

(1) Because a landowner has the general right to protect his property from erosion, applications to erect protective structures will usually receive favorable consideration. However, if the protective structure may cause damage to the property of others, adversely affect public health and safety, adversely impact floodplain or wetland values, or otherwise appear not to be in the public interest, the district engineer will so advise the applicant and inform him of possible alternative methods of protecting his property. Such advice will be given in terms of general guidance only so as not to compete with private engineering firms nor require undue use of government resources. The potential for such harm may be a basis for denial of authorization.

(2) A landowner's general right of access to navigable waters of the United States is subject to the similar rights of access held by nearby riparian landowners and to the general public's right of navigation on the water surface. In the case of proposals which create undue interference with access to, or use of, navigable waters, the authorization will generally be denied.

(3) Where it is found that the work for which a permit is desired is in navigable waters of the United States (see 33 CFR Part 329) and may interfere with an authorized Federal project, the applicant should be apprised in writing of the fact and of the possibility that a Federal project which may be constructed in the vicinity of the proposed work might necessitate its removal or reconstruction. The applicant should also be informed that the United States will in no case be liable for any damage or injury to the structures or work authorized by Sections 9 or 10 of the River and Harbor Act of 1899 or by Section 404 of the Clean Water Act which may be caused by or result from future operations undertaken by the Government for the conservation or improvement of navigation, or for other purposes, and no claims or right to compensation will accrue from any such damage.

(4) Proposed activities which are in the area of a Federal project which exists or is under construction will be evaluated to insure that they are compatible with the purposes of the project.

(h) *Activities affecting coastal zones.* Applications for Department of the Army permits for activities affecting the coastal zones of those States having a coastal zone management program approved by the Secretary of Commerce will be evaluated with respect to compliance with that program. No permit will be issued to a non-Federal applicant until certification has been provided that the proposed activity complies with the coastal zone management program and the appropriate State agency has concurred with the certification or has waived its right to do so. However, a permit may be issued to a non-Federal applicant if the Secretary of Commerce, on his own initiative or upon appeal by the applicant, finds that the proposed activity is consistent with the objectives of the Coastal Zone Management Act of 1972 or is otherwise necessary in the interest of national security. Federal agency applicants for Department of the Army permits are responsible for complying with the Coastal Zone Management Act's directives for assuring that their activities directly affecting the coastal zone are consistent, to the maximum extent practicable, with approved State coastal zone management programs.

(i) *Activities in marine sanctuaries.* Applications for Department of the Army authorization for activities in a marine sanctuary established by the Secretary of Commerce under authority of Section 302 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, will be evaluated for impact on the marine sanctuary. No permit will be issued until the applicant provides a certification from the Secretary of Commerce that the proposed activity is consistent with the purposes of Title III of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and can be carried out within the regulations promulgated by the Secretary of Commerce to control activities within the marine sanctuary.

(j) *Other Federal, State, or local requirements.* (1) Processing of an application for a Department of the Army permit normally will proceed concurrently with the processing of other required Federal, State, and/or local authorizations or certification. Final action on the Department of the Army permit will normally not be

delayed pending action by the other Federal, State or local agency (see 33 CFR 325.2 (d)(4). However, where the required Federal, State and/or local certification and/or authorization has been denied before final action has been taken on the Army permit, the application for the Army permit will be denied without prejudice to the right of the applicant to reinstate processing of his application if subsequent approval is received from the appropriate Federal, State and/or local agency. Even if official certification and/or authorization is not required by State or Federal law, but a State, regional, or local agency having jurisdiction or interest over the particular activity comments on the application, due consideration shall be given to those official views as a reflection of local factors of the public interest.

(2) Where officially adopted Federal, State, regional, local or tribal land-use classifications, determinations, or policies are applicable to the land or water areas under consideration, they shall be presumed to reflect local factors of the public interest and shall be considered in addition to the other national factors of the public interest identified in § 320.4(a).

(3) A proposed activity may result in conflicting comments from several agencies within the same State. While many States have designated a single State agency or individual to provide a single and coordinated State position regarding pending permit applications, where a State has not so designated a single source, district engineers will elicit from the Governor an expression of his views and desires concerning the application or, in the alternative, an expression from the Governor as to which State agency represents the official State position in this particular case.

(4) In the absence of overriding national factors of the public interest that may be revealed during the processing of the permit application, a permit will generally be issued following receipt of a favorable State determination provided the concerns, policies, goals, and requirements as expressed in 33 CFR Parts 320–324, and the applicable statutes have been followed and considered: e.g., the National Environmental Policy Act; the Fish and Wildlife Coordination Act; the Historical and Archeological Preservation Act; the National Historic Preservation Act; the Endangered Species Act; the Coastal Zone Management Act; the Marine Protection, Research and Sanctuaries Act of 1972, as amended; the Clean Water Act (see § 320.3), the Archeological Resources Act, and the American Indian Religious Freedom Act. Similarly, a permit will generally be issued for Federal and federally-authorized activities; another Federal agency's determination to proceed is entitled to substantial consideration in the Corps' public interest review.

(5) Permits will not be issued where certification or authorization of the proposed work is required by Federal, State and/or local law or Indian Tribal government and that certification or authorization has been denied prior to final action on the Department of the Army permit.

(6) The district engineers may develop joint procedures with those States and other Federal agencies with ongoing permit programs for activities also regulated by Department of the Army. These may include the use of joint application form; issuance of joint public notices; the conduct of joint public hearings, if held; and the joint review and analysis of information and comments developed in response to the public notice, public hearing, the environmental assessment and the environmental impact statement (if necessary), the Fish and Wildlife Coordination Act, the Historical and Archeological Preservation Act, the National Historic Preservation Act, the Endangered Species Act, the Coastal Zone Management Act, the Marine Protection, Research and Sanctuaries Act of 1972, as amended, the Clean Water Act, the Archeological Resources Act, the American Indian Religious Freedom Act and Executive Orders 11988 and 11990. In such cases, applications for Department of the Army permits may be processed jointly with the State or other Federal applications to an independent conclusion and decision by the district engineer and appropriate Federal or State agency. See 33 CFR 325.2(d)(4).

(7) The district engineer shall develop operating procedures for establishing official communications with Indian Tribes within the district. The procedures shall provide for appointment of a tribal representatives who will receive all public notices, and respond to such notices with the official tribal position on the proposed activity. This procedure shall apply only to those Tribes which accept this option. Any adopted operating procedures shall be distributed by public notice to inform the Tribes of the option.

(k) *Safety of impoundment structures.* To insure that all impound structures are designed for safety, non-Federal applicants may be required to demonstrate that the structure has been designed by qualified persons and, in appropriate cases, that the design has been independently reviewed (and modified as the review would indicate) by similarly qualified persons. (See 33 CFR Part 325).

(l) *Floodplain Management.* (1) Floodplains possess significant natural values and carry out numerous functions important to the public interest. These include:

(i) Water resources values (natural moderation of floods, water quality maintenance, and groundwater recharge);

(ii) Living resource value (fish, wildlife, and plant resources);

(iii) Cultural resource values (open space, natural beauty, scientific study, outdoor education, and recreation); and

(iv) Cultivated resource values (agriculture, aquaculture, and forestry).

(2) Although a particular alteration to a floodplain may constitute a minor change, the cumulative impact of such changes often results in a degradation of floodplain values and functions and results in increased potential for harm to upstream and downstream activities. In accordance with the requirements of Executive Order 11988, district engineers, as part of their public interest review, shall avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains as well as the direct and indirect support of floodplain development whenever there is a practicable alternative. For those activities, which in the public interest, must occur in or impact upon floodplains, the district engineer shall ensure that the impacts of potential flooding on human health, safety and welfare are minimized, the risks of flood losses are minimized, and, whenever possible, the natural and beneficial values served by floodplains are restored and preserved.

(3) In accordance with Executive Order 11988, the district engineer shall avoid floodplain developments whenever practicable alternatives exist outside the floodplain. If there are no practicable alternatives, the district engineer shall consider, as a means of mitigation, alternatives within the floodplain which may lessen any adverse impact to the floodplain.

(m) *Water Conservation.* In his water policy message of June 6, 1978, the President expressed as an important national priority the conservation of our water resources. Water is an essential resource, basic to humans survival, economic growth, and the national environment. Water conservation requires the efficient use of water resources in all actions which involve

the use of water or that affect the availability of water for alternative uses. Full consideration will be given to water conservation as a factor in the public interest review including opportunities to reduce demand and improve efficiency in order to minimize new supply requirements.

2. Part 321 is revised in its entirety.

PART 321—PERMITS FOR DAMS AND DIKES IN NAVIGABLE WATERS OF THE UNITED STATES

Sec.
321.1 General.
321.2 Definitions.
321.3 Special policies and procedures.

Authority: 33 U.S.C. 401.

§ 321.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize the construction of a dike or dam in a navigable water of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401). See 33 CFR 320.2(a). Dams and dikes in navigable waters of the United States also require Department of the Army permits under Section 404 of the Clean Water Act, as amended (33 U.S.C. 1344). Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 323 to satisfy the requirements of Section 404.

§ 321.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "dike or dam" means an impoundment structure that completely spans a navigable water of the United States and that may obstruct interstate waterborne commerce. The term does not include a weir which is regulated pursuant to Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322).

§ 321.3 Special policies and procedures.

The following additional special policies and procedures shall be applicable to the evaluation of permit applications under this regulation:

(a) The Secretary of the Army will decide whether Department of the Army authorization for a dam or dike in a navigable water of the United States will be issued, since this authority has not been delegated to the Chief of Engineers. The conditions to be imposed in any instrument of authorization will be recommended by the District Engineer when he forwards his report to the Secretary of the Army, through the Chief of Engineers, pursuant to 33 CFR 325.11.

(b) Processing a Department of the Army application under Section 9 will not be completed until the approval of the United States Congress has been obtained if the navigable water of the United States is an interstate waterbody, or until the approval of the appropriate State legislature has been obtained if the navigable water of the United States is solely within the boundaries of one State. The District Engineer, upon receipt of such an application, will notify the applicant that the consent of Congress or the State legislature must be obtained before a permit can be issued.

3. In Part 322, § 322.1–322.5 are revised as follows:

PART 322—PERMITS FOR STRUCTURES OR WORK IN OR AFFECTING NAVIGABLE WATERS OF THE UNITED STATES

Sec.
322.1 General.
322.2 Definitions.
322.3 Activities requiring permits.
322.4 Reserved.
322.5 Special policies and procedures.
Appendix A. U.S. Coast Guard/Chief of Engineers Memorandum of Agreement
Appendix B. Delegation of Authority

Authority: 33 U.S.C. 403.

§ 322.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325 those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of Army permits to authorize certain structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) (hereinafter referred to as Section 10). See 33 CFR 320.2(b). Certain structures or work in or affecting navigable waters of the United States are also regulated under other authorities of the Department of the Army. These include discharges of dredged or fill material into waters of the United States, including the territorial seas, pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344; see 33 CFR Part 323) and the Transportation of dredged material by vessel for purposes of dumping in ocean waters, including the territorial seas, pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413; see 33 CFR Part 324). A Department of the Army permit will also be required under these additional authorities if they are applicable to structures or work in or affecting navigable waters of the United States. Applicants for Department of the Army permits under this part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 322.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark, and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. See 33 CFR Part 329 for a more complete definition of this term.

(b) The term "structure" shall include, without limitation, any pier, wharf, dolphin, weir, boom, breakwater, bulkhead, revetment, riprap, jetty, permanent mooring structure, power transmission line, permanently moored floating vessel, piling, aid to navigation, or any other obstacle or obstruction.

(c) The term "work" shall include, without limitation, any dredging or disposal of dredged material, excavation, filling, or other modification of a navigable water of the United States.

(d) The term "letter of permission" means an individual permit issued in accordance with the abbreviated procedures of 33 CFR 325.5(b).

(e) The term "individual permit" means a Department of the Army authorization that is issued following a case-by-case evaluation of a specific structure or work in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed structure or work is in the public interest pursuant to 33 CFR Part 320.

(f) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of structures or work, when

those structures or work are substantially similar in nature, and cause only minimal individual and cumulative adverse environmental impacts. General permits may also be issued to avoid unnecessary duplication of the regulatory control exercised by another Federal agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal, in accordance with procedures set forth in 33 CFR Part 330. General permits may be issued on a nationwide ("nationwide permits") or regional ("regional permits") basis. See 33 CFR Part 330 for details on nationwide permits.

§ 322.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required under Section 10 for structures and /or work in or affecting navigable waters of the United States except for bridges and causeways (see Appendix A) and structures or work licensed under the Federal Power Act of 1920. Activities that were commenced or completed shoreward of established Federal harbor lines before May 27, 1970 (see 33 CFR Part 328) also do not require Section 10 permits; however, if those activities involve the discharge of dredged or fill material into waters of the United States after October 18, 1972, a Section 404 permit is required (see 33 CFR Part 323).

(1) Structures or work are in the navigable waters of the United States if they are within limits defined in 33 CFR Part 329. Structures or work outside these limits are subject to the provisions of law cited in paragraph (a) of this section, if these structures or work affect the course, location, or condition of the waterbody in such a manner as to impact on the physical capacity of the waterbody. For purposes of a Section 10 permit, a tunnel or other structure or work under or over a navigable water of the United States is considered to have an impact on the physical capacity of the waterbody.

(2) Pursuant to Section 154 of the Water Resource Development Act of 1976 (Pub. L. 94–587), Department of the Army permits will not be required under Section 10 to construct wharves and piers in any waterbody, located entirely within one State, that is a navigable water of the United States solely on the basis of its historical use to transport interstate commerce. Section 154 applies only to the construction of a single pier or wharf and not to marinas. Furthermore, Section 154 is not applicable to any pier or wharf that would cause an unacceptable impact on navigation.

(b) *Outer continental shelf.* Department of the Army permits will also be required for the construction of artificial islands and fixed structures on the outer continental shelf pursuant to Section 4(e) of the Outer Continental Shelf Lands Act as amended (see 33 CFR 320.2(b)).

(c) *Activities of Federal agencies.* (1) Except as specifically provided in this subparagraph, activities of the type described in paragraphs (a) and (b), of this section, done by or on behalf of any Federal agency, other than any work or structures in or affecting navigable waters of the United States that are part of the Civil Works activities of the Corps of Engineers, are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under this regulation. Division and district engineers will therefore advise Federal agencies accordingly, and cooperate to the fullest extent in expediting the processing of their applications.

(2) Congress has delegated to the Secretary of the Army and the Chief of Engineers in Section 10 the duty to authorize or prohibit certain work or structures in navigable waters of the United States. The general legislation by which Federal agencies are empowered to act generally is not considered to be sufficient authorization by Congress to satisfy the purposes of Section 10. If an agency asserts that it has Congressional authorization meeting the test of Section 10 or would otherwise be exempt from the provisions of Section 10, the legislative history and/or provisions of the Act should clearly demonstrate that Congress was approving the exact location and plans from which Congress could have considered the effect on navigable waters of the United States or that Congress intended to exempt that agency from the requirements of Section 10. Very often such legislation reserves final approval of plans or construction for the Chief of Engineers. In such cases evaluation and authorization under this regulation are limited by the intent of the statutory language involved.

(3) The policy provisions set out in 33 CFR 320.4(j) relating to State or local certifications and/or authorizations, do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy, e.g., Section 313 and Section 401 of the Clean Water Act.

§ 322.4 [Reserved]

§ 322.5 Special policies.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 10 permits. (See Appendix B). The following additional special policies and procedures shall also be applicable to the evaluation of permit applications under this regulation.

(a) *General.* Department of the Army permits are required for structures or work or affecting navigable waters of the United States. However, certain structures or work specified in 33 CFR Part 330 are permitted by that regulation. If a structure or work is not permitted by that regulation, an individual or regional Section 10 permit will be required.

(b) *(Reserved)*

(c) *Non-Federal dredging for navigation.* (1) The benefits which an authorized Federal navigation project are intended to produce will often require similar and related operations by non-Federal agencies (e.g., dredging an access channel to dock and berthing facilities or deepening such a channel to correspond to the Federal project depth). These non-Federal activities will be considered by Corps of Engineers officials in planning the construction and maintenance of Federal navigation projects and, to the maximum practical extent, will be coordinated with interested Federal, State, regional and local agencies and the general public simultaneously with the associated Federal projects. Non-Federal activities which are not so coordinated will be individually evaluated in accordance with this regulation. In evaluating the public interest in connection with applications for permits for such coordinated operations, equal treatment will, therefore, be accorded to the fullest extent possible to both Federal and non-Federal operations. Furthermore, permits for non-Federal dredging operations will normally contain conditions requiring the permittee to comply with the same practices or requirements utilized in connection with related Federal dredging operations with respect to such matters as turbidity, water quality, containment of material, nature and location of approved spoil disposal areas (non-Federal use of Federal contained, disposal areas will be in accordance with laws authorizing such areas and regulations governing their use), extent and period of dredging, and other factors relating to protection of environmental and ecological values.

(2) A permit for the dredging of a channel, slip, or other such project for navigation may also authorize the

periodic maintenance dredging of the project. Authorization procedures and limitations for maintenance dredging shall be prescribed in 33 CFR 325.6(e). The permit will require the permittee to give advance notice to the district engineer each time maintenance dredging is to be performed. Where the maintenance dredging involves the discharge of dredged material into waters of the United States or the transportation of dredged material for the purpose of dumping in the ocean waters, the procedures in 33 CFR Part 323 and 324 shall also be followed.

(d) *Structures for small boats.* (1) As a matter of policy, in the absence of overriding public interest, favorable consideration will generally be given to applications from riparian owners for permits for piers, boat docks, moorings, platforms and similar structures for small boats. Particular attention will be given to the location and general design of such structures to prevent possible obstructions to navigation with respect to both the public's use of waterway and the neighboring proprietors' access to the waterway. Obstructions can result from both the existence of the structure, particularly in conjunction with other similar facilities in the immediate vicinity, and from its inability to withstand wave action other other forces which can be expected. District Engineers will inform applicants of the hazards involved and encourage safety in location, design and operation. Corps of Engineers officials will also encourage cooperative or group use facilities in lieu of individual proprietor use facilities.

(2) Floating structures for small recreational boats or other recreational purposes in lakes controlled by the Corps of Engineers under a Resources Manager are normally subject to permit authorities cited in § 322.3, above, when those waters are regarded as navigable waters of the United States. However, such structures will not be authorized under this regulation but will be regulated under applicable regulations of the Chief of Engineers published in 36 CFR 327.19 if the land surrounding those lakes is under complete Federal ownership. District engineers will delineate those portions of the navigable waters of the United States where this provision is applicable and post notices of this designation in the vicinity of the lake Resources Manager's office.

(e) *Aids to navigation.* The placing of fixed and floating aids to naviation in a navigable water of the United States is within the purview of Section 10 of the River and Harbor Act of 1899. Furthermore, these aids of particular interest to the U.S. Coast Guard because of their control of marking, lighting and standardization of such navigation aids. A Section 10 nationwide permit has been issued for such aids provided they are approved by and installed in accordance with the requirements of the U.S. Coast Guard (33 CFR Part 330). Electrical service cables to such aids are not included in the nationwide permit (an individual or regional Section 10 permit will be required).

(f) *Outer continental shelf.* Artificial islands and fixed structures located on the outer continental shelf are subject to the standard permit procedures of this regulation. Where the islands or structures are to be constructed on lands are under mineral lease from the Bureau of Land Management, Department of the Interior, that agency, in cooperation with other Federal agencies, fully evaluates the potential effect of the leasing program on the total environment. [Accordingly, the decision whether to issue a permit on lands which are under mineral lease from the Department of the Interior will be limited to an evaluation of the impact of the proposed work on navigation and national security.][1] The public notice will so identify the criteria.

(g) *Canals and other artificial waterways connected to navigable waters of the United States.* (1) A canal or similar artificial waterway is subject to the regulatory authorities discussed in § 322.3, it it constitutes a navigable water of the United States, or if it is connected to navigable waters of the United States in a manner which affects their course, location, physical condition, or physical capacity or if at some point in its construction it results in an effect on the course, location, physical condition, or physical capacity of navigable waters of the United States. In all cases the connection to navigable waters of the United States requires a permit. Where the canal constitutes a navigable water of the United States, evaluation of the permit application and further exercise of regulatory authority will be in accordance with the standard procedures of this regulation. For all other canals the exercise of regulatory authority is restricted to those activities which affect the course, condition, or capacity of the navigable waters of the United States. Examples of the latter may include the length and depth of the canal; the currents, circulation, quality and turbidity of its waters, especially as they affect fish and wildlife values; and modifications or extensions of its configuration.

(2) The proponent of canal work should submit his application for a permit, including a proposed plan of the entire development, and the location and description of anticipated docks, piers and other similar structures which will be placed in the canal, to the District Engineer before commencing any form of work. If construction of the canal in such a manner as to result in an effect on the course, location physical condition, or physical capacity of the navigable waters of the United States has already taken place without a permit, the district engineer will proceed in accordance with 33 CFR Part 326. Where the construction of the canal would result in an effect on the course, location, physical condition, or physical capacity of navigable waters of the United States, an application for a Section 10 permit should be made at the earliest stage of planning. Where the district engineer becomes aware tht the canal construction has already begun, he will advise the proponent in writing of the need for a permit to the extent that the construction will result in an effect on the course, location, physical condition, or physical capacity of navigable waters of the United States. He will also ask the proponent if he intends to undertake such work and will request the immediate submission of the plans and permit application if it is so intended. The district engineer will also advise the proponent that any work is done at the risk that, if a permit is required, it may not be issued, and that the existence of partially completed excavation work will not be allowed to weigh favorably in evaluation of the permit application.

(h) *Facilities at the borders of the United States.* (1) The construction, operation, maintenance, or connection of facilities at the borders of the United States are subject to Executive control and must be authorized by the President, Secretary of State, or other delegated official.

(2) Applications for permits for the construction, operation, maintenance, or connection at the borders of the United States of facilities for the transmission of electric energy between the United States and a foreign country, or for the

[1] The Corps requests public comment on the following substitution for the bracketed sentence (see discussion in preamble):

Accordingly, in deciding whether to issue a permit on lands which are under mineral lease from the Department of the Interior, the Department's documentation and evaluation of environmental and related issues will be given appropriate deference as provided in the Memorandum of Agreement on this subject entered into between the Department of Interior and the Department of the Army and, where the terms of the Memorandum of Agreement have been satisfied, the public interest review will focus solely on an evaluation of the impact of the proposed work on navigation and national security.

exportation or importation of natural gas to or from a foreign country, must be made to the Secretary of Energy. (Executive Order 10485, September 3, 1953, 16 U.S.C. 824(a)(e), 15 U.S.C. 717(b), as amended by Executive Order 12038, February 3, 1978, and 18 CFR Parts 32 and 153).

(3) Applications for the landing or operation of submarine cables must be made to the Federal Communications Commission. (Executive Order 10530, May 10, 1954, 47 U.S.C. 34 to 39, and 47 CFR 1.766).

(4) The Secretary of State is to receive applications for permits for the construction, connection, operation, or maintenance, at the borders of the United States, of pipelines, conveyor belts, and similar facilities for the exportation or importation of petroleum products, coals, minerals, or other products to or from a foreign country; facilities for the exportation or importation of water or sewage to or from a foreign country; and monorails, aerial cable cars, aerial tramways and similar facilities for the transportation of persons or things, or both, to or from a foreign country. (Executive Order 11423, August 16, 1968).

(5) A Department of the Army permit under Section 10 of the River and Harbor Act of 1899 is also required for all of the above facilities which affect the navigable waters of the United States, but in each case in which a permit has been issued as provided above, the district engineer, in evaluating the general public interest, may consider the basic existence and operation of the facility to have been primarily examined and permitted as provided by the Executive Orders. Furthermore, in those cases where the construction, maintenance, or operation at the above facilities involves the discharge of dredged or fill material in waters of the United States or the transportation of dredged material for the purpose of dumping it into ocean waters, appropriate Department of the Army authorizations under Section 404 of the Clean Water Act or under Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, are also required (see 33 CFR Parts 323 and 324).

(i) *Power transmission lines.* (1) Permits under Section 10 of the River and Harbor Act of 1899 are required for power transmission lines crossing navigable waters of the United States unless those lines are part of a water power project subject to the regulatory authorities of the Department of Energy under the Federal Power Act of 1920. If an application is received for a permit for lines which are part of such a water power project, the applicant will be instructed to submit his application to the Department of Energy. If the lines are not part of such a water power project, the application will be processed in accordance with the procedures prescribed in this regulation.

(2) The following minimum clearances are required for aerial electric power transmission lines crossing navigable waters of the United States. These clearances are related to the clearances over the navigable channel provided by existing fixed bridges, or the clearances which would be required by the U.S. Coast Guard for new fixed bridges, in the vicinity of the proposed power line crossing. The clearances are based on the low point of the line under conditions which produce the greatest sag, taking into consideration temperature, load, wind, length or span, and type of supports as outlined in the National Electrical Safety Code.

Nominal system voltage, kV	Feet[1]
115 and below	20
138	22
161	24
230	26
350	30
500	35
700	42
750–765	45

[1] Minimum additional clearance above clearance required for bridges.

(3) Clearances for communication lines, stream gaging cables, ferry cables, and other aerial crossings are usually required to be a minimum of ten feet above clearances required for bridges. Greater clearances will be required if the public interest so indicates.

(j) *Seaplane operations.* (1) Structures in navigable waters of the United States associated with seaplane operations require Department of the Army permits, but close coordination with the Federal Aviation Administration (FAA), Department of Transportation, is required on such applications.

(2) The FAA must be notified by an applicant whenever he proposes to establish or operate a seaplane base. The FAA will study the proposal and advise the applicant, district engineer, and other interested parties as to the effects of the proposal on the use of airspace. The district engineer will therefore refer any objections regarding the effect of the proposal on the use of airspace to the FAA, and give due consideration to its recommendations when evaluating the general public interest.

(3) If the seaplane base would serve air carriers licensed by the Civil Aeronautics Board, the applicant must receive an airport operating certificate from the FAA. That certificate reflects determination and conditions relating to the installation, operation, and maintenance of adequate air navigation facilities and safety equipment. Accordingly, the district engineer may, in evaluating the general public interest, consider such matters to have been primarily evaluated by the FAA.

(4) For regulations pertaining to seaplane landings at Corps of Engineers projects see 36 CFR 327.4.

(k) *Foreign trade zones.* The Foreign Trade Zones Act (48 Stat. 998–1003, 19 U.S.C. 81a to 81u, as amended) authorizes the establishment of foreign-trade zones in or adjacent to United States ports of entry under terms of a grant and regulations prescribed by the Foreign-Trade Zones Board. Pertinent regulations are published at Title 15 of the Code of Federal Regulations, Part 400. The Secretary of the Army is a member of the Board, and construction of a zone is under the supervision of the district engineer. Laws governing the navigable waters of the United States remain applicable to foreign-trade zones, including the general requirements of this regulation. Evaluation by a district engineer of a permit application may give recognition to the consideration by the Board of the general economic effects of the zone on local and foreign commerce, general location of wharves and facilities, and other factors pertinent to construction, operation, and maintenance of the zone.

Appendix A—U.S. Coast Guard/Chief of Engineers Memorandum of Agreement

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Appendix B—Deletion of Authority

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4. In Part 323, §§ 323.1–323.6 are revised.

PART 323—PERMITS FOR DISCHARGES OF DREDGED OR FILL MATERIAL INTO WATERS OF THE UNITED STATES

Sec.

Authority: 33 U.S.C. 1344

§ 323.1 General.

This regulation prescribes, in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices, and procedures to be followed by the Corps

of Engineers in connection with the review of applications for Department of the Army permits to authorize the discharge of dredged or fill material into waters of the United States pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) (hereinafter referred to as Section 404). See 33 CFR 320.2(g). Certain discharges of dredged or fill material into waters of the United States are also regulated under other authorities of the Department of the Army. These include dams and dikes in navigable waters of the United States pursuant to Section 9 of the River and Harbor Act of 1899 (33 U.S.C. 401; see 33 CFR Part 321) and certain structures or work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403; see 33 CFR Part 322). A Department of the Army permit will also be required under these additional authorities if they are applicable to activities involving discharges of dredged or fill material into waters of the United States. Applicants for Department of the Army permits under this Part should refer to the other cited authorities and implementing regulations for these additional permit requirements to determine whether they also are applicable to their proposed activities.

§ 323.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "waters of the United States" means:[1]

(1) All waters, including their adjacent wetlands, that are part of a surface tributary system to and including navigable waters of the United States (man-made, non-tidal drainage and irrigation ditches excavated on dry land are not considered waters of the United States under this definition);

(2) Interstate waters and their tributaries, including adjacent wetlands; and

(3) All other waters of the United States not identified in paragraphs (1) and (2) above, such as isolated wetlands and lakes, intermittent streams, prairie potholes, and other waters that are not part of a tributary system to interstate waters or to navigable waters of the United States *if*, in the opinion of the Division Engineer, the degradation or destruction of such waters could affect interstate commerce.[2] The landward limit of jurisdiction in tidal waters, in the absence of adjacent wetlands, shall be the high tide line and the landward limit of jurisdiction in all other waters, in the absence of adjacent wetlands, shall be the ordinary high water mark.

(b) The term "navigable waters of the United States" means those waters of the United States that are subject to the ebb and flow of the tide shoreward to the mean high water mark and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce. (See 33 CFR Part 329 for a more complete definition of this term.)

(c) The term "wetlands" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas.

(d) The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the United States by man-made dikes or barriers, natural river berms, beach dunes and the like are "adjacent wetlands."

(e) The term "lake" means a standing body of open water that occurs in a natural depression fed by one or more streams and from which a stream may flow, that occurs due to the widening or natural blockage or cutoff of a river or stream, or that occurs in an isolated natural depression that is not a part of a surface river or stream. The term also includes a standing body of open water created by artifically blocking or restricting the flow of a river, stream, or tidal area. As used in this regulation, the term does not include artificial lakes or ponds created by excavating and/or diking dry land to collect and retain water for such purposes as stock watering, irrigation, settling basins, cooling, or rice growing.

(f) The term "ordinary high water mark" means the line on the shore established by the fluctuations of water and indicated by physical characteristics such as a clear, natural line impressed on the bank; shelving; changes in the character of soil; destruction of terrestrial vegetation; the presence of litter and debris; or other appropriate means that consider the characteristics of the surrounding areas.

(g) The term "high tide line" is the line used in Sec. 404 determinations in the absence of wetlands and means a line or mark left upon tide flats, beaches, or along shore objects that indicates the intersection of the land with the water's surface at the maximum height reached by a rising tide. The mark may be determined by a line of oil or scum along shore objects, a more or less continuous deposit of fine shell or debris on the foreshore or berm, other physical markings or characteristics, vegetation lines, tidal gages, or other suitable means that delineate the general height reached by a rising tide. The term includes spring high tides and other high tides that occur with periodic frequency, but does not include storm surges in which there is a departure from the normal or predicted reach of the tide due to the piling up of water against a coast by strong winds such as those accompanying a hurricane or other intense storm.

(h) The term "headwaters" means the point on a non-tidal stream above which the average annual flow is less than five cubic feet per second.[3] The district engineer may estimate this point from available data by using the mean annual area precipitation, area drainage basin maps, and the average runoff coefficient, or by similar means.

(i) The term "dredged material" means material that is excavated or dredged from waters of the United States.

(j) The term "discharge of dredged material" means any addition of dredged material into the waters of the United States. The term includes, without limitation, the addition of dredged material to a specified

[1] The terminology used by the CWA is "navigable waters" which is defined in Section 502(7) of the Act as "waters of the United States including the territorial seas." For purposes of clarity, and to avoid confusion with other Corps of Engineers regulatory programs, the term "waters of the United States" is used throughout this regulation.

[2] In defining the jurisdiction of the CWA as the "waters of the United States," Congress, in the legislative history to the Act, specified that the term "be given the broadest constitutional interpretation unencumbered by agency determinations which would have been made or may be made for administrative purposes." The waters listed in paragraphs (a)(1) and (2) fall within this mandate as discharges into those waterbodies may seriously affect water quality, navigation, and other Federal interests; however, it is also recognized that the Federal government would have the right to regulate the waters of the United States identified in paragraph (a)(3) under this broad Congressional mandate to fulfill the objective of the Act: "to restore and maintain the chemical, physical, and biological integrity of the Nation's waters" (Section 101(a)). Paragraph (a)(3) incorporates all other waters of the United States that could be regulated under the Federal government's Constitutional powers to regulate and protect interstate commerce, including those for which the connection to interstate commerce may not be readily obvious or where the location or size of the waterbody generally may not require regulation through individual or regional permits to achieve the objectives of the Act. Therefore, discharges of dredged or fill material into waters of the United States will require individual or regional permits unless those discharges are permitted through 33 CFR 330.4 as nationwide permits.

[3] For streams that are dry during long periods of the year, district engineers may establish the headwater point as that point on the stream where a flow of five cubic feet per second is equaled or exceeded 50 percent of the time.

discharge site located in waters of the United States and the runoff or overflow from a contained land or water disposal area. Discharges of pollutants into waters of the United States resulting from the onshore subsequent processing of dredged material that is extracted for any commercial use (other than fill) are not included within this term and are subject to Section 402 of the Clean Water Act even though the extraction and deposit of such material may require a permit from the Corps of Engineers. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(k) The term "fill material" means any material used for the primary purpose of replacing an aquatic area with dry land or of changing the bottom elevation of a waterbody. The term does not include any pollutant discharged into the water primarily to dispose of waste, as that activity is regulated under Section 402 of the Clean Water Act.

(l) The term "discharge of fill material" means the addition of fill material into waters of the United States. The term generally includes, without limitation, the following activities: Placement of fill that is necessary to the construction of any structure in a water of the United States; the building of any structure or impoundment requiring rock, sand, dirt, or other material for its construction; site-development fills for recreational, industrial, commercial, residential, and other uses; causeways or road fills; dams and dikes; artificial islands; property protection and/or reclamation devices such as riprap, groins, seawalls, breakwaters, and revetments; beach nourishment; levees; fill for structures such as sewage treatment facilities, intake and outfall pipes associated with power plants and subaqueous utility lines; and artificial reefs. The term does not include plowing, cultivating, seeding and harvesting for the production of food, fiber, and forest products.

(m) The term "individual permit" means a Department of the Army authroization that is issued following a case-by-case evaluation of a specific project involving the proposed discharge(s) in accordance with the procedures of this regulation and 33 CFR Part 325 and a determination that the proposed discharge is in the public interest pursuant to 33 CFR Part 320.

(n) The term "general permit" means a Department of the Army authorization that is issued for a category or categories of discharges of dredged or fill material that are substantially similar in nature and cause only minimal individual and cumulative adverse environmental impacts. General permits may also be issued to avoid unnecessary duplication of the regulatory control exercised by another Federal agency provided it has been determined that the environmental consequences of the action are individually and cumulatively minimal, in accordance with procedures set forth in 33 CFR Part 330. General permits may be issued on a nationwide ("nationwide permits") or regional ("regional permits") basis. See 33 CFR Part 330 for details on nationwide permits.

§ 323.3 Discharges requiring permits.

(a) *General.* Except as provided in § 323.4, Department of the Army permits will be required for the discharge of dredged or fill material into waters of the United States. Certain discharges specified in 33 CFR Part 330 are permitted by that regulation ("nationwide permits"). Other discharges may be authorized by district engineers on a regional basis ("regional permits"). If a discharge of dredged or fill material is not exempted by § 323.4 or permitted by 33 CFR Part 330, an individual or regional Section 404 permit will be required for the discharge of dredged or fill material into waters of the United States.

(b) *Activities of Federal agencies.* Discharges of dredged or fill material into waters of the United States done by or on behalf of any Federal agency, other than the Corps of Engineers (see 33 CFR 209.145), are subject to the authorization procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and district engineers will therefore advise Federal agencies and instrumentalities accordingly and cooperate to the fullest extent in the expeditious processing of their applications.

§ 323.4 Discharges not requiring permits.

(a) *General.* Except as specified in paragraphs (b) and (c) of this section, any discharge of dredged or fill material that may result from any of the following activities is not prohibited by or otherwise subject to regulation under Section 404:

(1)(i) Normal farming, silviculture and ranching activities such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, as defined in paragraph (a)(1)(iii) of this section.

(ii) To fall under this exemption, the activities specified in paragraph (a)(1)(i) of this section must be part of an established (i.e., on-going) farming, silviculture, or ranching operation. Activities on areas lying fallow as part of a conventional rotational cycle are part of an established operation. Activities which bring an area into farming, silviculture, or ranching use are not part of an established operation. An operation ceases to be established when the area on which it was conducted has been converted to another use or has lain idle so long that modifications to the hydrological regime are necessary to resume operations. If an activity takes place outside the waters of the United States, or if it does not involve a discharge, it does not need a Section 404 permit, whether or not it is part of an established farming, silviculture, or ranching operation.

(iii)(A) Cultivating means physical methods of soil treatment employed within established farming, ranching and silviculture lands on farm, ranch, or forest crops to aid and improve their growth, quality or yield.

(B) Harvesting means physical measures employed directly upon farm, forest, or ranch crops within established agricultural and silvicultural lands to bring about their removal from farm, forest, or ranch land, but does not include the construction of farm, forest, or ranch roads.

(C)(1) Minor Drainage means:

(i) The discharge of dredged or fill material incidental to connecting upland drainage facilities to waters of the United States, adequate to effect the removal of excess soil moisture from upland croplands. (Construction and maintenance of upland (dryland) facilities, such as ditching and tiling, incidential to the planting, cultivating, protecting, or harvesting of crops, involve no discharge of dredged or fill material into waters of the United States, and as such never require a Section 404 permit.);

(ii) The discharge of dredged or fill material for the purpose of installing ditching or other such water control facilities incidental to planting, cultivating, protecting, or harvesting of rice, cranberries or other wetland crop species, where these activities and the discharge occur in waters of the United States which are in established use for such agricultural and silvicultural wetland crop production;

(*iii*) The discharge of dredged or fill material for the purpose of manipulating the water levels of, or regulating the flow or distribution of water within, existing impoundments which have been constructed in accordance with applicable requirements of CWA, and which are in established use for the

production of rice, cranberries, or other wetland crop species.[4]

(*iv*) The discharge of dredged or fill material incidental to the emergency removal of sandbars, gravel bars, or other similar blockages which are formed during flood flows or other events, where such blockages close or constrict previously existing drainageways and, if not promptly removed, would result in damage to or loss of existing crops or would impair or prevent the plowing, seeding, harvesting, or cultivating of crops on land in established use for crop production. Such removal does not include enlarging or extending the dimensions of, or changing the bottom elevations of, the affected drainageway as it existed prior to the formation of the blockage. Removal must be accomplished within one year of formation of such blockages in order to be eligible for exemption.

(*2*) Minor drainage in waters of the U.S. is limited to drainage within areas that are part of an established farming or silviculture operation. It does not include drainage associated with the immediate or gradual conversion of a wetland to a non-wetland (e.g., wetland species to upland species not typically adapted to life in saturated soil conditions), or conversion from one wetland use to another (for example, silviculture to farming). In addition, minor drainage does not include the construction of any canal, ditch, dike or other waterway or structure which drains or otherwise significantly modifies a stream, lake, swamp, bog or any other wetland or aquatic area constituting waters of the United States. Any discharge of dredged or fill material into the waters of the United States incidental to the construction of any such structure or waterway requires a permit.

(D) Plowing means all forms of primary tillage, including moldboard, chisel, or wide-blade plowing, discing, harrowing and similar physical means utilized on farm, forest or ranch land for the breaking up, cutting, turning over, or stirring of soil to prepare it for the planting of crops. The term does not include the redistribution of soil, rock, sand, or other surficial materials in a manner which changes any area of the waters of the United States to dry land. For example, the redistribution of surface materials by blading, grading, or other means to fill in wetland areas is not plowing. Rock crushing activities which result in the loss of natural drainage characteristics, the reduction of water storage and recharge capabilities, or the overburden of natural water filtration capacities do not constitute plowing. Plowing will never involve a discharge of dredged or fill material.

(E) Seeding means the sowing of seed and placement of seedlings to produce farm, ranch, or forest crops and includes the placement of soil beds for seeds or seedlings on established farm and forest lands.

(2) Maintenance, including emergency reconstruction of recently damaged parts, of currently serviceable structures such as dikes, dams, levees, groins, riprap, breakwaters, causeways, bridge abutments or approaches, and transportation structures. Maintenance does not include any modification that changes the character, scope, or size of the original fill design. Emergency reconstruction must occur within a reasonable period of time after damage occurs in order to qualify for this exemption.

(3) Construction or maintenance of farm or stock ponds or irrigation ditches, or the maintenance (but not construction) of drainage ditches. A simple connection of an irrigation return or supply ditch to waters of the U.S. and related bank stabilization measures are included within this exemption. Where a trap, weir, groin, wall, jetty or other structure within water of the U.S., which will result in significant discernable alterations to flow or circulation, is constructed as part of the connection, such construction requires a 404 permit.

(4) Construction of temporary sedimentation basin on a construction site which does not include placement of fill material into waters of the U.S. The term "construction site" refers to any site involving the erection of buildings, roads, and other discrete structures and the installation of support facilities necessary for construction and utilization of such structures. The term also include any other land areas which involve land-disturbing excavation activities, including quarrying or other mining activities, where an increase in the runoff of sediment is controlled through the use of temporary sedimentation basins.

(5) Any activity with respect to which a State has an approved program under section 208(b)(4) of CWA which meets the requirements of sections 208(b)(4)(B) and (C).

(6) Construction or maintenance of farm roads, forest roads, or temporary roads for moving mining equipment, where such roads are constructed and maintained in accordance with best management practices (BMPs) to assure that flow and circulation patterns and chemical and biological characteristics of waters of the United States are not impaired, that the reach of the waters of the United States is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized. These EMPs which must be applied to satisfy this provision shall include those detailed EMPs described in the State's approved program description pursuant to the requirements of 40 CFR 123.4(h)(4), and shall also include the following baseline provisions:

(i) Permanent roads (for farming or forestry activities), temporary access roads (for mining, forestry, or farm purposes) and skid trails (for logging) in waters of the U.S. shall be held to the minimum feasible member, width, and total length consistent with the purpose of specific farming, silvicultural or mining operations, and local topographic and climatic conditions;

(ii) All roads, temporary or permanent, shall be located sufficiently far from streams or other water bodies (except for portions of such roads which must cross water bodies) to minimize discharges of dredged or fill material into waters of the U.S.;

(iii) The road fill shall be bridged, culverted, or otherwise designed to prevent the restriction of expected flood flows;

(iv) The fill shall be properly stabilized and maintained during and following construction to prevent erosion;

(v) Discharges of dredged or fill material into waters of the United States to construct a road fill shall be made in a manner that minimizes the encroachment of trucks, tractors, bulldozers, or other heavy equipment within waters of the United States (including adjacent wetlands) that lie outside the lateral boundaries of the fill itself;

(vi) In designing, constructing, and maintaining roads, vegetative disturbance in the waters of the U.S. shall be kept to a minimum;

(vii) The design, construction and maintenance of the road crossing shall not disrupt the migration or other movement of those species of aquatic life inhabiting the water body;

(viii) Borrow material shall be taken from upland sources whenever feasible;

(ix) The discharge shall not take, or jeopardize the continued existence of, a threatened or endangered species as defined under the Endangered Species

[4] The provisions of paragraphs (a)(1)(iii)(C)(1)(ii) and (iii) of this section apply to areas that are in established use exclusively for wetland crop production as well as areas in established use for conventional wetland/non-wetland crop rotation (e.g., the rotations of rice and soybeans) where such rotation results in the cyclical or intermittent temporary dewatering of such areas.

Act, or adversely modify or destroy the critical habitual of such species;

(x) Discharge into breeding and nesting areas for migratory waterfowl, spawning areas, and wetlands shall be avoided if practical alternatives exist;

(xi) The discharge shall not be located in the proximity of a public water supply intake;

(xii) The discharge shall not occur in areas of concentrated shellfish production;

(xiii) The discharge shall not occur in a component of the National Wild and Scenic River System;

(xiv) The discharge of material shall consist of suitable material free from toxic pollutants in toxic amounts; and

(xv) All temporary fills shall be removed in their entirety and the area restored to its original elevation.

(b) If any discharge of dredged or fill material resulting from the activities listed in paragraphs (a)(1)–(6) of this section contains any toxic pollutant listed under section 307 of CWA such discharge shall be subject to any applicable toxic effluent standard or prohibition, and shall require a permit under the State program.

(c) Any discharge of dredged or fill material into waters of the United States incidental to any of the activities identified in paragraphs (a)(1)–(6) of this section must have a permit if it is part of an activity whose purpose is to convert an area of the waters of the United States into a use to which it was not previously subject, where the flow or circulation of waters of the United States may be impaired or the reach of such waters reduced. Where the proposed discharge will result in significant discernible alterations to flow or circulation, the presumption is that flow or circulation may be impaired by such alteration.[5]

(d) Federal projects which qualify under the criteria contained in Section 404(r) of CWA (Federal projects authorized by Congress where an EIS has been submitted to Congress prior to authorization or an appropriation) are exempt from Section 404 permit requirements, but may be subject to other State or Federal requirements.

[5] For example, a permit will be required for the conversion of a cypress swamp to some other use or the conversion of a wetland from silvicultural to agricultural use when there is a discharge of dredged or fill materials dikes, drainage ditches or other works or structures used to effect such conversion. A discharge which elevates the bottom of waters of the United States without converting it to dry land does not thereby reduce the reach of, but may alter the flow or circulation of, waters of the United States.

§ 323.5 Program transfer to States.

Section 404(h) of the Clean Water Act allows the Administrator of the Environmental Protection Agency to transfer administration of the Section 404 permit program for discharges into certain waters of the United States to qualified states. (The program cannot be transferred for those waters which are presently used, or are susceptible to use in their natural condition or by reasonable improvement as a means to transport interstate or foreign commerce shorewared to their ordinary high water mark, including all waters which are subject to the ebb and flow of the tide shoreward to the high tide line, including wetlands adjacent thereto). See 40 CFR part 123 for procedural regulations for transferring Section 404 programs to states. Once a state's 404 program is approved, the Corps of Engineers will suspend processing of Section 404 permits in the applicable waters and will transfer pending applications to the State agency responsible for administering the program.

§ 323.6 Special policies and procedures.

(a) The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 404 permits. (See Appendix A). Applications for permits for the discharge of dredged or fill material into waters of the United States will be reviewed in accordance with guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act. (See CFR Part 230.) If the EPA guidelines alone prohibit the designation of a proposed disposal site, the economic impact on navigation and anchorage of the failure to authorize the use of the proposed disposal site will also be considered in evaluating whether or not the proposed discharge is in the public interest.

(b) The Corps will not issue a permit where the Regional Administrator of EPA has notified the district engineer and applicant in writing pursuant to 40 CFR 231.3(a)(1) that he intends to issue a public notice of a proposed determination to prohibit or withdraw the specification, or to deny, restrict or withdraw the use for specification, of any defined area as a disposal site in accordance with Section 404(c) of the Clean Water Act. However the Corps will continue to complete the administrative processing of the application while the Section 404(c) procedures are underway including completion of final coordination with EPA under 33 CFR Part 325.

Appendix A—Delegation of Authority

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5. In Part 324, §§ 324.1—324.4 are revised.

PART 324—PERMITS FOR OCEAN DUMPING OF DREDGED MATERIAL

Sec.

Authority: 33 U.S.C. 1413.

§ 324.1 General.

This regulation prescribes in addition to the general policies of 33 CFR 320.4 and procedures of 33 CFR Part 325, those special policies, practices and procedures to be followed by the Corps of Engineers in connection with the review of applications for Department of the Army permits to authorize the transportation of dredged material by vessel for the purpose of dumping it in ocean waters at dumping sites designated under 40 CFR Part 228 pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (33 U.S.C. 1413) (hereinafter referred to as Section 103). See 33 CFR 320.2(h). Actvities involving the transportation of dredged material for the purpose of dumping in the ocean waters also require Department of the Army permits under Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403) for the dredging in navigable waters of the United States. Applicants for Department of the Army permits under this Part should also refer to 33 CFR Part 322 to satisfy the requirements of Section 10.

§ 324.2 Definitions.

For the purpose of this regulation, the following terms are defined:

(a) The term "ocean waters" means those waters of the open seas lying seaward of the base line from which the territorial sea is measured, as provided for in the Convention on the Territorial Sea and the Contiguous Zone (15 UST 1606; TIAS 5639).

(b) The term "dredged material" means any material excavated or dredged from navigable waters of the United States or ocean waters.

(c) The term "transport" or "transportation" refers to the carriage and related handling of dredged material by a vessel.

§ 324.3 Activities requiring permits.

(a) *General.* Department of the Army permits are required for the transportation of dredged material for

the purpose of dumping it in ocean waters.

(b) *Activities of Federal agencies.* (1) The transportation of dredged material for the purpose of dumping in ocean waters done by or on behalf of any Federal agency other than the activities of the Corps of Engineers are subject to the procedures of this regulation. Agreement for construction or engineering services performed for other agencies by the Corps of Engineers does not constitute authorization under the regulation. Division and district engineers will therefore advise Federal agencies accordingly and cooperate to the fullest extent in the expeditious processing of their applications. The activities of the Corps of Enginners that involve the transportation of dredged material for dumping in ocean waters are regulated by 33 CFR 209.145.

(2) The policy provisions set out in 33 CFR 320.4(j) relating to state or local authorizations do not apply to work or structures undertaken by Federal agencies, except where compliance with non-Federal authorization is required by Federal law or Executive policy. Federal agencies are required to comply with the substantive and procedural state, interstate, and local water-quality standards and effluent limitations as are applicable by law that are adopted in accordance with or effective under the provisions of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and related laws in the design, construction, management, operation, and maintenance of their respective facilities. (See Executive Order No. 12088, dated October 18, 1978.) They are not required, however, to obtain and provide certification of compliance with effluent limitations and water-quality standards from state or interstate water pollution control agencies in connection with activities involving the transport of dredged material for dumping into ocean waters beyond the territorial sea.

§ 324.4 Special procedures.

The Secretary of the Army has delegated to the Chief of Engineers the authority to issue or deny Section 103 permits. (See Appendix A.) The following additional procedures shall also be applicable under this regulation.

(a) *Public notice.* For all applications for Section 103 permits, the district engineer will issue a public notice which shall contain the information specified in 33 CFR 325.3.

(b) *Evaluation.* Applications for permits for the transportation of dredged material for the purpose of dumping it in ocean waters will be evaluated to determine whether the proposed dumping will unreasonably degrade or endanger human health, welfare, or amenities, or the marine environment, ecological systems or economic potentialities. In making this evaluation, criteria established by the Administrator, EPA, pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, shall be applied including an evaluation of the need for the ocean dumping and including the availability of alternatives to ocean dumping. Where ocean dumping is determined to be necessary, the district engineer will, to the extent feasible, specify disposal sites using the recommendations of the Administrator pursuant to Section 102(c) of the Act. See 40 CFR Parts 220 to 229.

(c) *EPA review.* If the Regional Administrator, EPA, advises the district engineer that the proposed dumping will comply with the criteria, the district engineer shall complete his evaluation of the Section 103 application under this regulation and 33 CFR Parts 320 and 325. If, however, the Regional Administrator advises the district engineer that the proposed dumping will not comply with the criteria, the district engineer will proceed as follows.

(1) The district engineer shall determine whether there is an economically feasible alternative method or site available other than the proposed ocean disposal site. If there are other feasible alternative methods or sites available, the district engineer shall evaluate them in accordance with 33 CFR Parts 320, 322, 323, 325 and this regulation, as appropriate.

(2) If the district engineer makes a determination that there is no economically feasible alternative method or site available, he shall so advise the Regional Administrator of his intent to issue the permit setting forth his reasons for such determination.

(d) *EPA objection.* If the Regional Administrator advises, within 15 days of the notice of the intent to issue, that he will commence procedures specified by Section 103(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 to prohibit designation of the disposal site, the case will be forwarded to the Chief of Engineers for further coordination with the Administrator, EPA, and decision. The report forwarding the case will contain, in addition to the analysis required by 33 CFR 325.11, an analysis of whether there are other economically feasible methods or sites available to dispos of the dredged material.

(e) *Chief of Engineers review.* The Chief of Engineers shall evaluate the permit application and make a decision to deny the permit or recommend its issuance. If the decision of the Chief of Engineers is that ocean dumping at the proposed disposal site is required because of the unavailability of economically feasible alternatives, he shall so certify and request that the Secretary of the Army seek a waiver from the Administrator, EPA, of the criteria or of the critical site designation in accordance with 40 CFR 225.4.

Appendix A—Delegation of Authority

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6. In Part 325, §§ 325.1–325.11 are revised. Appendix B is deleted and reserved, and Appendices D–H are added.

PART 325—PROCESSING OF DEPARTMENT OF THE ARMY PERMITS

Sec.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 325.1 Applications for permits.

(a) *General.* The processing procedures of this regulation (Part 325) apply to any form of Department of the Army permit. Special procedures and additional information are contained in Parts 320 through 324. This Part is arranged in the basic timing sequence used by the Corps of Engineers in processing Department of the Army permits.

(b) *Pre-application consultation for major applications.* The district staff

element having responsibility for administering, processing, and enforcing Federal laws and regulations relating to the Corps of Engineers regulatory program shall be available to advise potential applicants of studies or other information foreseeably required for later Federal action. The district engineer will establish local procedures and policies including appropriate publicity programs which will allow potential permit applicants to contact the district engineer or the staff element to request pre-application consultation. Upon receipt of such request, the district engineer will assure the conduct of an orderly process which may involve other staff elements and affected agencies (Federal, State, or local) and the public. This early process should be brief but thorough so that the applicant may begin to assess the viability of some of the more obvious alternatives as he prepares his permit application. The applicant, at this stage, should be made aware of the full range of alternatives (as discussed in paragraph 14b(5) of Appendix B of 33 CFR Part 230) which the Corps must consider in its permit decision making process. Whenever the district engineer becomes aware of planning for work which may require a Department of the Army permit and which would involve the preparation of an environmental document, he shall contact the principals involved to advise them of the requirement for the permit(s) and the attendant public interest review including the development of an environmental document. Whenever a potential permit applicant indicates the intent to submit an application for work which may require the preparation of an environment document, a single point of contact shall be designated within the district's regulatory staff to effectively coordinate, as they occur, the regulatory process, including the National Environmental Policy Act (NEPA) procedures and all attendant reviews, meetings, hearings, and other actions, including the scoping process if appropriate, leading to a decision kby the district engineer. Effort devoted to this process should be commensurate with the likelihood of a permit application actually being submitted to the Corps. The regulatory staff coordinator shall maintain an open relationship with each applicant or his consultants so as to assure that the applicant is fully aware of the substance (both quantitative and qualitative) of the data required by the district engineer for his use in preparing an Environmental Assessment or an Environment Impact Statement (EIS). The actual development of the scope of data required in cases requiring an EIS should be the product of the formal "scoping" process discussed in 33 CFR Part 230.

(c) *Application form.* Any person proposing to undertake any activity requiring Department of the Army authorization as specified in 33 CFR Parts 321–324 must apply for a permit to the district engineer in charge of the district where the proposed activity is to be performed. Applications for permits must be prepared in accordance with instructions in Engineer Pamphlet 1145–2–1, "A Guide for Applicants," utilizing the prescribed application form (ENG Form 4345, OMB Approval No. OMB 49–R0420). The form and pamphlet may be obtained from the district engineer having jurisdiction over the waters in which the proposed activity will be located. Local variations of the application form for purposes of facilitating coordination with State and local agencies may be used.

(d) *Content of application.* (1) Generally, the application must include a complete description of the proposed activity including necessary drawings, sketches or plans; the location, purpose and intended use of the proposed activity; scheduling of the activity; the names and addresses of adjoining property owners; the location and dimensions of adjacent structures; and a list of authorizations required by other Federal, interstate, State or local agencies for the work, including all approvals received or denials already made.

(2) All activities which are reasonably related to the same project and for which a Department of the Army permit would be required should be included in the same permit application. District engineers should reject, as incomplete, any permit application which fails to comply with this requirement. For example, a permit application for a marina will include dredging required for access as well as any fill associated with construction of the marina.

(3) If the activity would involve dredging in navigable waters of the United States, the application must include a description of the type, composition and quantity of the material to be dredged, the method of dredging, and the site and plans for disposal of the dredged material.

(4) If the activity would include the discharge of dredged or fill material in the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the application must include the source of the material; a description of the type, composition and quantity of the material; the method of transportation and disposal of the material; and the location of the disposal site. (See 33 CFR Parts 324 for additional information requirements on ocean dumping applications.) Certification under Section 401 of the Clean Water Act is require for such discharges into waters of the United States.

(5) If the activity would include the construction of a fill or pile or float-supported platform, the project description must include the use and specific structures to be erected on the fill or platform.

(6) If the activity would involve the construction of an impoundment structure, the applicant may be required to submit general design criteria and standards and other appropriate information in order for the district engineer to satisfy himself that the design will be based on acceptable criteria and standards from a safety standpoint. Non-Federal applicants may be required to demonstrate that the structure has been designed by qualified persons and, in appropriate cases, independently reviewed (and modified as the review would indicate) by similarly qualified persons. No specific design criteria are to be prescribed nor is an independent detailed engineering review to be made by the district engineer.

(e) *Additional information.* In addition to the information indicated in paragraph (d), above, the applicant will be required to furnish such additional information as the district engineer may deem necessary to assist him in his evaluation of the application. Such additional information may include environmental data and information on alternate methods and sites as may be necessary for the preparation of the required environmental documentation.

(f) *Signature of application.* The application must be signed by the person who desires to undertake the proposed activity or by a duly authorized agent if accompanied by a statement by that person designating the agent and agreeing to furnish, upon request, supplemental information in support of the application. In either case, the signature of the applicant or his agent will be understood to be an affirmation that he possesses the requisite property interest to undertake the activity proposed in his application, except where the lands are under the control of the Corps of Engineers, in which cases the district engineer will coordinate the transfer of the real estate and the permit action. When the application is submitted by an agent, the application may include the activity of more than one owner provided the

character of the activity of each owner is similar and in the same general area.

(g) *Fees.* Fees are required for permits under Section 404 of the Clean Water Act, Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, and Sections 9 and 10 of the River and Harbor Act of 1899. A fee of $100.00 will be charged when the planned or ultimate purpose of the project is commercial or industrial in nature and is in support of operations that charge for the production, distribution or sale of goods or services. A $10.00 fee will be charged for permit applications when the proposed work is non-commercial in nature and would provide personal benefits that have no connection with a commercial enterprise. The final decision as to basis for fee (commercial vs. non-commercial) shall be solely the responsibility of the district engineer. No fee will be charged if the applicant withdraws his application at any time prior to issuance of the permit and/or if his application is denied. Collection of the fee will be deferred until the proposed activity has been determined to be in the public interest. At that time, the district engineer will furnish the applicant two copies of the unsigned permit for his signature. He will also notify the applicant of the required fee and will request that any check or money order be made payable to the Treasurer of the United States. The permit will then be issued upon receipt of the application fee and the two signed permit copies. Multiple fees are not to be charged if more than one law is applicable. Any modification significant enough to require publication of a public notice will also require a fee. No fee will be assessed when a permit is transferred from one property owner to another. No fees will be charged for time extensions, general permits or letters of permission. Agencies or instrumentalities of Federal, State or local governments will not be required to pay any fee in connection with permits. This fee structure will be reviewed from time to time.

§ 325.2 Processing of applications.

(a) *Standard procedures.* (1) When an application for a permit is received, the district engineer shall immediately assign it a number for identification, acknowledge receipt thereof, and advise the applicant of the number assigned to it. He shall review the application for completeness, and request from the applicant within 15 days of receipt of the application any additional information he deems necessary for further processing.

(2) Within 15 days of receipt of all required information, the district engineer will issue a public notice as described in § 325.3, below, unless specifically exempted by other provisions of this regulation. The district engineer will issue a supplemental, revised, or corrected public notice if in his view there is a change in the application data that would affect the public's review of the proposal (e.g., new test results on an ocean dumping application).

(3) The district engineer will consider all comments received in response to the public notice in his subsequent actions on the permit application. Receipt of the comments will be acknowledged and they will be made a part of the official file on the application. Comments received as form letters or petitions may be acknowledged as a group to the person or organization responsible for the form letter or petition. If comments relate to matters within the special expertise of another Federal agency, the district engineer may seek the advice of that agency. At the earliest practicable time, the applicant must be given the opportunity to furnish the district engineer his proposed resolution or rebuttal to all objections from other Government agencies and other substantive adverse comments before final decision will be made on the application. The applicant may voluntarily elect to contact objectors in an attempt to resolve objections but will not be required to do so.

(4) The district engineer will follow Appendix B of 33 CFR Part 230 for environmental procedures and documentation required by the National Environmental Policy Act of 1969. A permit application will require either an Environmental Assessment or an Environmental Impact Statement unless it falls under a Categorical Exclusion.

(5) The district engineer will also evaluate the proposed application to determine the need for a public hearing pursuant to 33 CFR Part 327.

(6) After all above actions have been completed, the district engineer will determine in accordance with the record and applicable regulations whether or not the permit should be issued. He shall prepare a Findings of Fact or a Record of Decision (if an Environmental Impact Statement has been prepared) on all applications outlining his determination. The Findings of Fact or Record of Decision shall include the district engineer's views on the probable effect of the proposed work on the public interest including comformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or with the criteria for dumping of dredged material in ocean waters (40 CFR parts 220 to 229), if applicable, and the conclusions of the district engineer. The Findings of Fact shall be dated, signed, and included in the record prior to final action on the application. Where the district engineer has delegated authority to sign permits for and in his behalf, he may similarly delegate the signing of the Findings of Fact. If a permit is warranted, the district engineer will determine the conditions and duration which should be incorporated into the permit. In accordance with the authorities specified in § 325.8, the district engineer will take final action or forward the application with all pertinent comments, records, and studies, including the final EIS or Environmental Assessment, through channels to the official authorized to make the final decision. The report forwarding the application for decision will be in the format prescribed in § 325.11. District and division engineers will notify the applicant and interested Federal agencies that the application has been forwarded to higher headquarters. The district or division engineer may, at his option, disclose his recommendation to the news media and other interested parties, with the caution that this is only a recommendation and not a final decision. Such disclosure is encouraged in permit cases which have become controversial and have been the subject of stories in the media or have generated strong public interest. In those cases where the application is forwarded for decision in the format prescribed in § 325.11, the report will serve as the Findings of Fact.

(7) If the final decision is to deny the permit, the applicant will be advised in writing of the reason(s) for denial. If the final decision is to issue the permit and a standard individual permit form will be used, the issuing official will forward two copies of the draft permit to the applicant for signature accepting the conditions of the permit. The applicant will return both signed copies to the issuing official who then signs and dates the permit. The permit is not valid until signed by the issuing official. Letters of permission will be issued in letter form (signed by the issuing official only). Final action on the permit application is the signature on the letter notifying the applicant of the denial of the permit or signature of the issuing official on the authorizing document.

(8) The district engineer will publish monthly a list of permits issued or denied during the previous month. The list will identify each action by public notice number, name of applicant, and brief description of activity involved. It will also note that relevant

Environmental documentations and the Findings of Fact (Record of Decision if Environmental Impact Statement prepared) are available upon written request and, where applicable, upon the payment of administrative fees. This list will be distributed to all persons who may have an interest in any of the public notices listed.

(b) *Procedures for particular types of permit situations.* (1) If the district engineer determines that water quality certification for the proposed activity is necessary under the provisions of Section 401 of the Clean Water Act, he shall so notify the applicant and obtain from him or the certifying agency a copy of such certification. The district engineer may issue the public notice of the application jointly with the certifying agency if arrangements for such joint notices have been approved by the division engineer.

(i) The public notice for such activity, which will contain a statement on certification requirements (see § 325.3(a)(7)), will serve as the notification to the Administrator of the Environmental Protection Agency (EPA) pursuant to Section 401(a)(2) of the Clean Water Act. If EPA determines that the proposed discharge may affect the quality of the waters of any State other than the State in which the discharge will originate, it will so notify such other State, the district engineer, and the applicant. If such notice or a request for supplemental information is not received within 30 days of issuance of the public notice, the district engineer will assume EPA has made a negative determination with respect to Section 401(a)(2). If EPA does determine another State's waters may be affected, such State has 60 days from receipt of EPS's notice to determine if the proposed discharge will affect the quality of its waters so as to violate any water quality requirement in such State, to notify EPA and the district engineer in writing of its objection to permit issuance, and to request a public hearing. If such occurs, the district engineer will hold a public hearing in the objecting State. Except as stated below, the hearing will be conducted in accordance with 33 CFR Part 327. The issues to be considered at the public hearing will be limited to water quality impacts. EPA will submit its evaluation and recommendations at the hearing with respect to the State's objection to permit issuance. Based upon the recommendations of the objecting State, EPA, and any additional evidence presented at the hearing, the district engineer will condition the permit, if issued, in such a manner as may be necessary to insure such compliance with applicable water quality requirements. If the imposition of conditions cannot, in the district engineer's opinion, insure compliance, he will not grant the permit.

(ii) No permit will be granted until required certification has been obtained or has been waived. Waiver may be explicit, or will be deemed to occur if the certifying agency fails or refuses to act on a request for certification within a reasonable period of time after receipt of such request. The request for certification must be made in accordance with the regulations of the certifying agency. In determining whether or not a waiver period has commenced, the district engineer will verify that the certifying agency has received a valid request for certification. Sixty days shall generally be considered to be a reasonable period of time. If, however, special circumstances identified by the district engineer require that action on an application be taken within a more limited period of time, the district engineer shall determine a reasonable lesser period of time, advise the certifying agency of the need for action by a particular date and that, if certification is not received by that date, it will be considered that the requirement for certification has been waived. Similarly if it appears that circumstances may reasonably require a period of time longer than sixty days, the district engineer may afford the certifying agency up to one year to provide the required certification before determining that a waiver has occured. District engineers shall check with the certifying agency at the end of the allotted period of time before determining that a waiver has occurred.

(2) If the proposed activity is to be undertaken in a State operating under a coastal zone management program approved by the Secretary of Commerce pursuant to the Coastal Zone Management Act (see 33 CFR 320.3(b)), the district engineer shall proceed as follows:

(i) If the applicant is a Federal agency, and the application involves a Federal activity in or affecting the coastal zone or a Federal development project in the coastal zone, the district engineer shall forward a copy of the public notice to the agency of the State responsible for reviewing the consistency of Federal activities. The Federal agency applicant shall be responsible for complying with the Coastal Zone Management Act's directive for ensuring that Federal agency activities are undertaken in a manner which is consistent, to the maximum extent practicable, with approved Coastal Zone Management Program. (See 15 CFR Part 930.) If the State coastal zone agency objects to the proposed Federal activity on the basis of its inconsistency with the State's approved Coastal Zone Mangement Program, the district engineer shall not make a final decision on the application until the disagreeing parties have had an opportunity to utilize the procedures specified by the Coastal Zone Management Act for resolving such disagreements.

(ii) If the applicant is not a Federal agency and the application involves an activity affecting the coastal zone, the district engineer shall obtain from the applicant a certification that his proposed activity complies with and will be conducted in a manner that is consistent with the approved State Coastal Zone Management Program. Upon receipt of the certification, the district engineer will forward a copy of the public notice (which will include the applicant's certification statement) to the State coastal zone agency and request its concurrence or objection. The district engineer can issue the public notice of the application jointly with the State agency if arrangements for such joint notices have been approved by the division engineer. If the State agency objects to the certification or issues a decision indicating that the proposed activity requires further review, the district engineer shall not issue the permit unitl the State concurs with the certification statement or the Secretary of Commerce determines that the proposed activity is consistent with the purposes of the Coastal Zone Management Act or is necessary in the interest of national security. If the State agency fails to concur or object to a certification statement within six months of the State agency's receipt of the certification statement, State agency concurrence with the certification statement shall be conclusively presumed.

(iii) If the applicant is requesting a permit for work on Indian reservation lands which are in the coastal zone, the district engineer shall treat the application in the same manner as prescribed for a Federal applicant in paragraph (b)(2)(i) of this section. However, if the applicant is requesting a permit on non-trust Indian lands and the state CZM agency has decided to assert jurisdiction over such lands, the district engineer shall treat the application in the same manner as prescribed for a non-Federal applicant in paragraph (b)(2)(ii) of this section.

(3) If the proposed activity would involve any property listed or eligible

for listing in the National Register of Historic Places (which is published in its entirety in the **Federal Register** annually in February with addenda published each month), the district engineer will proceed in accordance with Appendix C.

(4) If the proposed activity would consist of the dredging of an access channel and/or berthing facility associated with an authorized Federal navigation project, the activity will be included in the planning and coordination of the construction or maintenance of the Federal project to the minimum extent feasible. Separate notice, hearing, and environmental documentation will not be required for activities so included and coordinated; and the public notice issued by the district engineer for these Federal and associated non-Federal activities will be the notice of intent to issue permits for those included non-Federal dredging activities. The decision whether to issue or deny such a permit will be consistent with the decision on the Federal project unless special considerations applicable to the proposed activity are identified. (See § 322.5(a)).

(5) Copies of permits will be furnished to other agencies in appropriate cases as follows:

(i) If the activity involves the construction of structures or artificial islands on the outer continental shelf, to the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390 Attention, Code N512 and to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852.

(ii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to Defense Mapping Agency, Hydrographic Center and National Ocean Survey as in paragraph (b)(5)(i), of this section, and to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iii) If the activity involves the erection of an aerial transmission line across a navigable water of the United States, to the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland 20852, reference C322.

(iv) If the activity is listed in paragraphs (b)(5)(i), (ii), or (iii), of this section, or involves the transportation of dredged material for the purpose of dumping it in ocean waters, to the appropriate District Commander, U.S. Coast Guard.

(6) A copy of each permit application and each permit issued will be made available to the public. Such permit application or portion thereof will further be available on request for the purpose of reproduction.

(c) *Emergency procedures.* Division engineers are authorized to approve special processing procedures in emergency situations. An "emergency" is a situation which would result in an unacceptable hazard to life, a severe loss of property, or an immediate, unforeseen, and severe economic hardship if corrective action requiring a permit is not undertaken within a time period less than the normal time needed to process the application under required procedures. In emergency situations the district engineer will explain the circumstances and recommend special procedures to the division engineer who will instruct the district engineer as to further processing of the application. Even in an emergency situation, reasonable efforts will be made to receive comments from interested Federal, State, and local agencies and the affected public. Also, notice of any special procedures authorized and their rationale is to be appropriately published. Special procedures normally will not be authorized where the permit applicant has unreasonably contributed to the creation of the emergency situation.

(d) *Timing of processing of application.* In view of the extensive coordination with other agencies and the public and the study of all aspects of proposed activities required by the above procedures, applicants must allow adequate time for the processing of their applications. The district engineer will be guided by the following time limits for the indicated steps in processing permit applications:

(1) The public notice will be issued within 15 days of receipt of all information required to complete an application in accordance with § 325.1.

(2) The receipt of comments as a result of the public notice should not extend beyond 30 days from the date of the notice. However, if unusual circumstances warrant, the district engineer may extend the comment period up to a maximum of 75 days.

(3) District engineers will decide on all applications not later than 90 days after issuance of the public notice, unless (i) precluded as a matter of law or procedures required by law (see below), (ii) the case must be referred to higher authority (see § 325.8), (iii) the comment period is extended more than a total of 45 days from the date of the public notice, (iv) a timely rebuttal or resolution of objections is not received from the applicant, (v) the processing is suspended at the request of the applicant, or (vi) information needed by the district engineer for a decision on the application cannot reasonably be obtained within the 90-day period. Once the cause for preventing the application from being processed in the normal 90-day period has been satisfied or eliminated, the 90-day clock will start running again. For example, if the comment period is extended to 75 days (30 days more than the 45 days mentioned above), the district engineer will, absent other restraints, decide on the application within 120 days from the date of the public notice. Certain laws (e.g., the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the National Historic Preservation Act, the Preservation of Historical and Archeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, and the Marine Protection, Research and Sanctuaries Act) require procedures such as State or other Federal agency certifications, public hearings, environmental impact statements, consultation, special studies and testing which may prevent district engineers from being able to decide certain applications within 90 days.

(4) The district engineer may develop joint procedures with other Federal, state or local agencies where their authorizations are also required in conjunction with the activity (see 33 CFR 320.4(j)). Once the public comment period has closed (or, at the latest, on the ninetieth day following the public notice) and the district engineer has sufficient information to make his public interest determination, he should decide the permit application even through the other agencies have not yet granted their authorizations, except where such authorizations are, by Federal law, a prerequisite to making a decision on the Army permit application. Permits granted prior to other (non-prerequisite) authorizations by other agencies should, where appropriate, be conditioned in such manner as to give those other authorities an opportunity to undertake their review without the applicant biasing such review by making substantial resource commitments on the basis of the Army permit. In an unusual case, the district engineer may decide that due to the nature or scope of a specific proposal, it would be prudent to defer taking final action until another agency has acted on its authorization. In such cases, he may advise the other agency of his position on the Army permit while deferring his final decision.

(5) If the applicant fails to respond within 45 days to any request or inquiry of the district engineer, the district

engineer may advise the applicant by certified letter that his application will be considered as having been withdrawn unless the applicant responds thereto within thirty days of the date of the letter.

(e) *Endangered species.* Applications will be reviewed for the potential impact on threatened or endangered species pursuant to Section 7 of the Endangered Species Act as amended. If the district engineer determines that the proposed activity would not affect listed species or their critical habitats, he will include a statement to this effect in the public notice. If he finds the proposed activity may jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, he will initiate formal consultation procedures with the U.S. Fish and Wildlife Service or National Marine Fisheries Service by including a statement to this effect in the public notice (or will amend any previous notice with a contrary statement). Public notices forwarded to the U.S. Fish and Wildlife Service or National Marine Fisheries Service will serve as the request for information on whether any listed or proposed-to-be-listed endangered or threatened species may be present in the area which would be affected by the proposed activity, pursuant to Section 7(c) of the Act. References, definitions, and consultation procedures are found in 33 CFR Part 306.

§ 325.3 Public notice.

(a) *General.* The public notice is the primary method of advising all interesting parties of the proposed activity for which a permit is sought and of soliciting comments and information necessary to evaluate the probable impact on the public interest. The notice must, therefore, include sufficient information to give a clear understanding of the nature and magnitude of the activity to generate meaningful comment. The notice should include the following items of information:

(1) Applicable statutory authority or authorities;

(2) The name of address of the applicant;

(3) The name or title, address and telephone number of the Corps employee from whom additional information concerning the application may be obtained;

(4) The location of the proposed activity;

(5) A brief description of the proposed activity, its purpose and intended use, so as to provide sufficient information concerning the nature of the activity to generate meaningful comments, including a description of the type of structures, if any, to be erected on fills, or pile or float-supported platforms, and a description of the type, composition and quantity of materials to be discharged or dumped and means of conveyance;

(6) A plan and elevation drawing showing the general and specific site location and character of all proposed activities, including the size relationship of the proposed structures to the size of the impacted waterway and depth of water in the area;

(7) If the proposed activity would occur in the territorial seas or ocean waters, a description of the activity's relationship to the baseline from which the territorial sea is measured;

(8) A list of other government authorizations obtained or requested, including required certifications relative to water quality, costal zone management, or marine sanctuaries;

(9) If appropriate, a statement that the activity is a categorical exclusion for purposes of the National Environmental Policy Act (see paragraph 7 of Appendix B to 33 CFR Part 230);

(10) A statement on cultural resources (see Appendix C);

(11) A statement on endangered species (see § 325.2(e));

(12) A statement(s) on evaluation factors (see § 325.3(b));

(13) Any other available information which may assist interested parties in evaluating the likely impact of the proposed activity, if any, on factors affecting the public interest, including environmental values;

(14) A reasonable period of time, normally thirty days but not less than fifteen days from date of mailing, within which interested parties may express their views concerning the permit application;

(15) A statement that any person may request, in writing, within the comment period specified in the notice, that a public hearing be held to consider the application. Requests for public hearings shall state, with particularity, the reasons for holding a public hearing;

(16) For non-Federal applications, a statement on the requirement for compliance with an approved Coastal Zone Management Program; and

(17) For section 103 (ocean dumping) activities:

(i) A statement as to whether the proposed disposal site has been designated for use by the Administrator, EPA, pursuant to section 102(c) of the Act;

(ii) If the proposed disposal site has not been designated by the Administrator, EPA, a description of the characteristics of the proposed disposal site and an explanation as to why no previously designated disposal site is feasible;

(iii) A brief description of known dredged material discharges at the proposed disposal site;

(iv) Existence and documented effects of other authorized dumpings that have been made in the dumping area (e.g., heavy metal background reading and organic carbon content); and

(v) An estimate of the length of time during which disposal would continue at the proposed site.

(b) *Evaluation factors.* A paragraph describing the various factors on which decisions are based during evaluation of a permit application shall be included in every public notice.

(1) Except as provided in paragraph (b)(3) of this section, the following will be included:

The decision whether to issue a permit will be based on an evaluation of the probable impact including cumulative impacts of the proposed activity on the public interest. That decision will reflect the national concern for both protection and utilization of important resources. The benefit which reasonably may be expected to accrue from the proposal must be balanced against its reasonably foreseeable detriments. All factors which may be relevant to the proposal will be considered including the cumulative effects thereof; among those are conservation, economics, aesthetics, general environmental concerns, wetlands, cultural values, fish and wildlife values, flood hazards, flood plain values, land use, navigation, shoreline erosion and accretion, recreation, water supply and conservation, water quality, energy needs, safety, food production and, in general, the needs and welfare of the people.

(2) If the activity would involve the discharge of dredged or fill material into the waters of the United States or the transportation of dredged material for the purpose of dumping it in ocean waters, the public notice shall also indicate that the evaluation of the impact of the activity on the public interest will include application of the guidelines promulgated by the Administrator, EPA, under authority of Section 404(b) of the Clean Water Act (40 CFR Part 230) or of the criteria established under authority of Section 102(a) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended (40 CFR Parts 220 to 229), as appropriate. See also 33 CFR Part 324.

(3) In cases involving construction of fixed structures or artifical islands on outer continental shelf lands which are under mineral lease from the Department of the Interior, the notice will contain the following statement: "The decision as to whether a permit will be issued will be based on an evaluation of the impact of the proposed

work on navigation and national security."

(c) *Distribution of public notices.* (1) Public notices will be distributed for posting in post offices or other appropriate public places in the vicinity of the site of the proposed work and will be sent to the applicant, to appropriate city and county officials, to adjoining property owners, to appropriate State agencies, to appropriate Indian Tribes or tribal representatives to concerned Federal agencies, to local, regional and national shipping and other concerned business and conservation organizations, to appropriate River Basin Commissions, to appropriate State and Areawide Clearinghouses as prescribed by OMB Circular A–95, and to any other interested party. District engineers will purge mailing lists at least every two years to eliminate unnecessary paperwork and mailings. If in the judgment of the district engineer the proposal may result in substantial public interest, a brief description of the proposed project (without drawings) may be published for five consecutive days in the local newspaper, and the applicant may be required to reimburse the district engineer for the costs of publication. In such cases, the description shall include instructions on how to obtain a copy of the public notice and will give the final date for accepting public comments. Copies of public notices will be sent to all parties who have specifically requested copies of public notices, to the U.S. Senators and Representatives for the area where the work is to be performed, the Field Representative of the Secretary of the Interior, the Regional Director of the Fish and Wildlife Service, the Regional Director of the National Park Service, the Regional Director of the Heritage, Conservation, and Recreation Service, the Regional Administrator of the Environmental Protection Agency (EPA), the Regional Director of the National Marine Fisheres Service of the National Oceanic and Atmospheric Administration (NOAA), the head of the State agency responsible for fish and wildlife resources, and the District Commander, U.S. Coast Guard.

(2) In addition to the general distribution of public notices cited above, notices will be sent to other addresses in appropriate cases as follows:

(i) If the activity would involve structures or dredging along the shores of the seas or Great Lakes, to the Coastal Engineering Research Center, Washington, D.C. 20016.

(ii) If the activity would involve construction of fixed structures or artifical islands on the outer continental shelf or in the territorial seas, to the Deputy Assistant Secretary of Defense (Installations and Housing), Washington, D.C. 20310; the Director, Defense Mapping Agency, Hydrographic Center, Washington, D.C. 20390, Attention, Code N512; and the Director, National Ocean Survey, NOAA, Department of Commerce, Rockville, Maryland, 20852.

(iii) If the activity involves the construction of structures to enhance fish propagation (e.g., fishing reefs) along the coasts of the United States, to the Director, Office of Marine Recreational Fisheries, National Marine Fisheries Service, Washington, D.C. 20235.

(iv) If the activity involves the construction of structures which may affect aircraft operations or for purposes associated with seaplane operations, to the Regional Director of the Federal Aviation Administration.

(v) If the activity would be in connection with a foreign-trade zone, to the Executive Secretary, Foreign-Trade Zones Board, Department of Commerce, Washington, D.C. 20230 and to the appropriate District Director of Customs as Resident Representative, Foreign-Trade Zones Board.

(3) It is presumed that all interested parties and agencies will wish to respond to public notices; therefore, a lack of response will be interpreted as meaning that there is no objection to the application. A copy of the public notice with the list of the addresses to whom the notice was sent will be included in the record. If a question develops with respect to an activity for which another agency has responsibility and that other agency has not responded to the public notice, the district engineer may request its comments. Whenever a response to a public notice has been received from a member of Congress, either in behalf of a constitutent or himself, the district engineer will inform the member of Congress of the final decision.

(d) *Regional permit notices (RCS: DAEN–CWO–52).* For purposes of performing a nationwide analysis of the effectiveness of the regional permit program, Division offices will submit "Public Notices on Regional Permits" reports (RCS: DAEN–CWO–52) by COB on the 15th day, following the end of each quarter, to HQDA (DAEN–CWO–N) Washington, D.C. 20314. Said reports will be in the form of a letter listing the public notices published during the previous quarter to announce proposals or to finalize issuances of regional permits; copies of the public notices are to be made inclosures to the reports. Negative reports will be submitted if no regional permit actions have taken place in the division during the reporting period.

§ 325.4 Conditioning of permits.

District and division engineers are authorized to add special conditions to permits as may be necessary to protect the public interest in accordance with the following policies.

(a) *Primary and secondary effects and associated impacts.* Primary effects will occur directly as a result of the issuance of a permit, or subsequent operations of the activity (e.g., disposal of maintenance dredging material) in the immediate vicinity of the permitted work. They include effects on those aquatic and adjacent upland areas that are part of the overall project as identified in the permit application. Secondary effects include those activities on water or land that can be expected to occur as follow-up to the completion of the permitted activity and the effects associated with it. These include: increased shipping and/or vehicular traffic; needs for housing, schools and other related activities; and the resultant development of surrounding areas beyond those planned or identified in the original permit application. Associated impacts will occur or continue to occur regardless of the issuance of the permit (e.g., clearing of rights-of-way for power lines, use of an existing waterway to transport commercial goods, upland housing that will occur to respond to needs other than the permitted activity).

(b) *Speculative effects and impacts.* Generally, permits will be conditioned only to respond to effects and impacts of the permit which are at least probable rather than speculative. To illustrate, conditioning of permits to respond to associated impacts is generally inappropriate because those impacts would occur or continue to occur regardless of the issuance of the permit. Also, while permits may readily be conditioned to respond to primary effects, whether a permit may be conditioned to respond to a secondary effect will depend on whether it is at least probable, rather than speculative. Finally, that other Federal, State, or local enforcement mechanisms exist to preclude or minimize the probability of certain effects and impacts will be considered in determining whether those effects and impacts are at least probable. District and division engineers will also be guided by the existence of other Federal, State or local laws or programs that adequately and directly accomplish the same purpose intended by the condition. For example, while air quality is a factor to be considered in the public interest review, the

imposition of air quality emission standards as special conditions to a permit generally would be inappropriate since State and Federal enforcement programs to accomplish the same result already exist. Similarly, the imposition through a special condition of effluent limitations on the point source discharges resulting from a permitted activity and establishment of monitoring programs to ensure water quality parameters are met as a result of these related discharges generally would be inappropriate since these concerns are treated by EPA and the states.

(c) *Mitigation.* The Chief of Engineers supports plans to mitigate or avoid fish and wildlife losses in any action taken by the Corps of Engineers. Primary emphasis in the formulation of conditions should be directed toward avoiding or mitigating impacts on fish and wildlife values which are associated with the construction and subsequent operation of the permitted activity. For example, dredging may be prohibited during spawning seasons.

(d) *Land acquisition.* Certain cases will require the *dedication* of particular portions of land located within or in the immediate vicinity of the applicant's project boundaries to mitigate fish and wildlife losses, and this *dedication* of land may involve a set aside of certain lands already owned by the applicant, the acquisition of lands contiguous to the project site by the applicant to manage for fish and wildlife purposes, and even the transfer of land to others for management purposes. In formulating a position on such cases, district engineers should be guided, in addition to the policies on fish and wildlife mitigation, by the policy guidelines enumerated in paragraphs (a) and (b) of this section. Where, however, the land to be acquired is not associated with the impacts of the proposed work, district engineers generally should not become directly involved in negotiations with a permit applicant to achieve commitments on acquiring lands outside the applicant's project boundaries as a primary means of securing another Federal agency's concurrence to the issuance of a permit or of tilting the balance in favor of issuing a permit in the public interest. Although agreements involving the acquisition of such land may evolve, on a case-by-case basis, as a result of discussions involving the permit applications, these agreements generally should not be included as special conditions to the permit, but instead, should remain enforceable only through the parties to the agreement.

(e) *Safety of impoundment structures.* Unless an adequate inspection program is required by another Federal licensing agency or will be performed by another Federal agency, the district engineer will condition permits for non-minor impoundment structures to require that the permittee operate and maintain the structure properly to insure public safety. The district engineer may condition such permits to require periodic inspections and to indicate that failure to accomplish actions to assure the public safety will be considered cause to revoke the permit.

§ 325.5 Forms of authorizations.

(a) *General discussion.* (1) Department of the Army authorizations under this regulation will be in the form of individual permits or general permits. The basic format shall be ENG Form 1721, Department of the Army Permit (Appendix A).

(2) The general conditions included in ENG Form 1721 are normally applicable to all permits; however, some conditions may not apply to certain authorizations and may be deleted by the issuing officer. Special conditions applicable to the specific activity will be included in the permit as necessary to protect the public interest in accordance with § 325.4.

(b) *Individual permits.* (1) *Standard permits.* A standard individual permit is one which has been processed through the public interest review procedures, including public notice and receipt of comments, described throughout Part 325. The standard individual permit shall be issued using ENG Form 1721.

(2) *Letters of permission.* In those cases subject to Section 10 of the River and Harbor Act of 1899 in which, in the opinion of the district engineer, the proposed work would be minor, would not have significant impact on environmental values, and should encounter no opposition, the district engineer may omit the publishing of a public notice and authorize the work by a letter of permission. However, he will coordinate the proposal with all concerned fish and wildlife agencies, Federal and State, as required by the Fish and Wildlife Coordination Act. The letter of permission will not be used to authorize the discharge of dredged or fill material into waters of the United States nor the transportation of dredged material for purposes of dumping it in ocean waters. The letter of permission will be in letter form and will identify the permittee, the authorized work and location of the work, the statutory authority, any limitations on the work, a construction time limit and a requirement for a report of completed work. A copy of the general conditions form ENG Form 1721 will be attached and will be incorporated by reference into the letter of permission.

(c) *General permits.* (1) *Regional permits.* Regional permits are a type of general permit issued by a division or district engineer after compliance with the other procedures of this regulation. Regional permits may be issued for certain clearly described categories of structures or work, including discharges of dredged or fill material, requiring Department of the Army permits. After a regional permit has been issued, individual activities falling within those categories that are authorized by such regional permits do not have to be further authorized by the procedures of this regulation unless the District Engineer determines, on a case-by-case basis, that the public interest requires individual review. The district engineer shall include appropriate conditions as specified in Appendix A and may require reporting procedures. A regional permit may be revoked if it is determined that it is no longer in the public interest provided the procedures of § 325.7 are followed. Following revocation, applications for future activities in areas covered by the regional permit shall be processed as applications for individual permits. No regional permit shall be issued for a period of more than five years.

(2) *Nationwide permits.* Nationwide permits are a type of general permit and represent Department of the Army authorizations that have been issued by the regulation (33 CFR Part 330) for certain specified activities nationwide. If certain conditions are met, the specified activities can take place without the need for an individual or regional permit.

(d) *Section 9 permits.* Permits for structures under Section 9 of the River and Harbor Act of 1899 will be drafted during review procedures at Department of the Army level.

§ 325.6 Duration of authorizations.

(a) *General.* Department of the Army authorization may authorize both the work and the resulting use. Authorizations continue in effect until they automatically expire or are modified, suspended, or revoked.

(b) *Structures.* Authorizations for the existence of a structure or other activity of a permanent nature are usually for an indefinite duration with no expiration date cited. However, where a temporary structure is authorized, or where restoration of a waterway is contemplated, the authorization will be of limited duration with a definite expiration date.

(c) *Works.* Authorizations for construction work or other activity will

specify time limits for completing the work or activity. The time limits may specify a date by which the work must be started, normally one year from the date of issuance, and will specify a date by which the work must be completed. The dates will be established by the issuing official and will provide reasonable times based on the scope and nature of the work involved. An authorization for work or other activity will automatically expire if the permitee fails to request and receive an extension. Permits issued for the transport of dredged material for the purpose of dumping it in ocean waters will specify a completion date for the dumping not to exceed three years from the date of permit issuance.

(d) *Extensions of time.* Extensions of time may be granted by the district engineer for authorizations of limited duration, or for the time limitations imposed for starting or completing the work or activity. The permittee must request the extension and explain the basis of the request, which will be granted only if the district engineer determines that an extension would be in the general public interest. Requests for extensions will be processed in accordance with the regular procedures of § 325.2, including issuance of a public notice, except that such processing is not required where the district engineer determines that there have been no significant changes in the attendant circumstances since the authorization was issued and that the work is proceeding essentially in accordance with the approved plans and conditions.

(e) *Periodic maintenance.* If the authorized work includes periodic maintenance dredging, an expiration date for the authorization of that maintenance dredging will be included in the permit. The expiration date, which in no event is to exceed ten years from the date of issuance of the permit, will be established by the issuing official after his evaluation of the proposed method of dredging and disposal of the dredged material in accordance with the requirements of 33 CFR Parts 320 to 325. In such cases, the district engineer shall require notification of the maintenance dredging prior to actual performance to insure continued compliance with the requirements of the regulation and 33 CFR Parts 320–324. If the permitee desires to continue maintenance dredging beyond the expiration date, he must request a new permit. The permittee should be advised to apply for the new permit six months prior to the time he wishes to do the maintenance work.

§ 325.7 Modification, suspension or revocation of authorizations.

(a) *General.* The district engineer may reevaluate the circumstance and conditions of a permit either on his own motion, at the request of the permittee, or a third party, or as the result of periodic progress inspection, and initiate action to modify, suspend, or revoke a permit as may be made necessary by considerations of the general public interest. Among the factors to be considered are the extent of the permittee's compliance with the terms and conditions of the permit; whether or not circumstances relating to the activity authorized have changed since the permit was issued or extended, and the continuing adequacy of the permit conditions; any significant objections to the activity authorized by the permit which were not earlier considered; revisions to applicable statutory and/or regulatory authorities; and the extent to which modification, suspension, or other action would adversely affect plans, investments and actions the permittee has reasonably made or taken in reliance on the permit. Significant increases in scope of a permitted activity will be processed as new applications for permits in accordance with § 325.2, and not as modifications under this paragraph.

(b) *Modification.* Upon request by the permittee or, as a result of reevaluation of the circumstances and conditions of a permit, the district engineer may determine that protection of the general public interest requires a modification of the terms or conditions of the permit. In such cases, the district engineer will hold informal consultations with the permittee to ascertain whether the terms and conditions can be modified by mutual agreement. If a mutual agreement is reached on modification of the terms and conditions of the permit, the district engineer will give the permittee written notice of the modification, which will then become effective on such date as the district engineer may establish, which in no event shall be less than ten days from its date of issuance. In the event a mutual agreement cannot be reached by the district engineer and the permittee, the district engineer will proceed in accordance with paragraph (c), of this section, if immediate suspension is warranted. In cases where immediate suspension is not warranted but the district engineer determines that the permit should be modified, he will notify the permittee of the proposed modification and reasons therefor, and that he may request a meeting with the district engineer and/or a public hearing. The modification will become effective on the date set by the district engineer which shall be at least ten days after receipt of the notice unless a hearing is requested within that period. If the permittee fails or refuses to comply with the modification, the district engineer will proceed in accordance with 33 CFR Part 326.

(c) *Suspension.* The district engineer may suspend a permit after preparing a written determination and finding that immediate suspension would be in the general public interest. The district engineer will notify the permittee in writing by the most expeditious means available that the permit has been suspended with the reasons therefor, and order the permittee to stop those activities previously authorized by the suspended permit. The permittee will also be advised that following this suspension a decision will be made to either reinstate, modify, or revoke the permit, and that he may within 10 days of receipt of notice of the suspension, request a meeting with the district engineer and/or a public hearing to present information in this matter. If a hearing is requested the procedures prescribed in 33 CFR Part 327 will be followed. After the completion of the hearing (or within a reasonable period of time after issuance of the notice to the permittee that the permit has been suspended if no hearing is requested), the district engineer will take action to reinstate the permit, modify the permit, or recommend revocation of the permit in accordance with paragraph (d), of this section.

(d) *Revocation.* Following completion of the suspension procedures in paragraph (c), of this section, if revocation of the permit is found to be in the public interest, the authority that made the decision on the original permit may revoke it. Prior to deciding whether or not to revoke the permit, the decision authority shall afford the permittee the opportunity to present new evidence not previously available provided, however, that where the decision authority determines that such evidence is significant, he shall provide all interested persons an opportunity to comment and respond with their own evidence. The permittee will be advised in writing of the final decision.

§ 325.8 Authority to issue or deny authorizations.

(a) *General.* Except as otherwise provided in this regulation, the Secretary of the Army, subject to such conditions as he or his authorized representative may from time to time impose, has authorized the Chief of Engineers and his authorized

representatives to issue or deny authorizations for construction or other work in or affecting navigable waters of the United States pursuant to Section 10 of the River and Harbor Act of 1899. He also has authorized the Chief of Engineers and his authorized representatives to issue or deny authorizations for the discharge of dredged or fill material in waters of the United States pursuant to Section 404 of the Clean Water Act or for the transportation of dredged material for the purpose of dumping it into ocean waters pursuant to Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended. The authority to issue or deny permits pursuant to Section 9 of the River and Harbor Act of March 3, 1899 has not been delegated to the Chief of Engineers or his authorized representatives.

(b) *District Engineer's authority.* District engineers are authorized to issue or deny in accordance with this regulation permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended, in all cases not required to be referred to higher authority (see below). It is essential to the legality of a permit that it contain the name of the district engineer as the issuing officer. However, the permit need not be signed by the district engineer in person but may be signed for and in behalf of him by whomever he designates. In cases where permits are denied for reasons other than navigation or failure to obtain required local, State, or other Federal approvals or certifications, the Findings of Fact will be prepared in the general format required for reports under § 325.11. District engineers may deny permits without issuing a public notice or taking other processing steps where required local, state or other Federal permits for the proposed activity have been denied or where he determines the activity will clearly interfere with navigation. District engineers are also authorized to add, modify, or delete special conditions in permits in accordance with § 325.4, except for those conditions which may have been imposed by higher authority, and to modify, suspend and revoke permits according to the procedures of § 325.7(c). District engineers will refer the following applications to the division engineer for resolution.

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When the recommended decision is contrary to the stated position of the Governor of the State in which the work would be performed;

(3) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(4) When the division engineer requests the application be forwarded for decision; and

(5) When the district engineer is precluded by law or procedures required by law from taking final action on the application (e.g., Section 404(c) of the Clean Water Act, Section 9 of the River and Harbor Act of 1899, territorial sea baseline changes).

(c) *Division Engineer's authority.* Division engineers will review, attempt to resolve outstanding matters, and evaluate all permit applications referred by district engineers. Division engineers may authorize the issuance or denial of permits pursuant to Section 10 of the River and Harbor Act of 1899; Section 404 of the Clean Water Act; and Section 103 of the Marine Protection, Research and Sanctuaries Act of 1972, as amended; and the inclusion of conditions in accordance with § 325.4 in all cases not required to be referred to the Chief Engineers. Division Engineers will refer the following applications to the Chief of Engineers for resolution:

(1) When a referral is required by a written agreement between the head of a Federal agency and the Secretary of the Army;

(2) When there is substantial doubt as to authority, law, regulations, or policies applicable to the proposed activity;

(3) When the Chief of Engineers requests the application be forwarded for decision; and

(4) When the division engineer is precluded by law or procedures required by law from taking final action on the application.

When the division engineer takes his final position on an application subject to referral paragraph (c)(1) of this section, he shall notify the Chief of Engineers and provide appropriate information at the same time he notifies the objecting Federal agency.

§ 325.9 Supervision and enforcement.

(a) *Inspection and monitoring.* District engineers will assure that authorized activities are conducted and executed in conformance with approved plans and other conditions of the permits. Appropriate inspections should be made on timely occasions during performance of the activity and appropriate notices and instructions given permittees to insure that they do not depart from the approved plans. Reevaluation of a permit to assure compliance with its purposes and conditions will be carried out as provided in § 325.7. If there are approved material departures from the authorized plans, the district engineer will require the permittee to furnish corrected plans showing the activity as actually performed.

(b) *Non-compliance.* Where the district engineer determines that there has been non-compliance with the terms or conditions of a permit, he should first contact the permittee and attempt to resolve the problem. If a mutually agreeable resolution cannot be reached, a written demand for compliance will be made. If the permittee has not agreed to comply within 5 days of receipt of the demand, the district engineer will issue an immediately effective notice of suspension in accordance with § 325.7(c) and consider initiation of appropriate legal action (33 CFR 326.4).

(c) *Surveillance.* For purposes of inspection of permitted activities and for surveillance of the waters of the United States for enforcement of the permit authorities the district engineer will use all means at his disposal. All Corps of Engineers employees will be instructed to observe and report all activities in waters of the United States which would require permits. The assistance of members of the public and personnel of other interested Federal, State and local agencies to observe and report such activities will be encouraged. To facilitate this surveillance, the district engineer will, in appropriate cases, require a copy of ENG Form 4336 to be posted conspicuously at the site of authorized activities and will make available to all interested persons information on the scope of authorized activities and the conditions prescribed in the authorizations. Furthermore, significant actions taken under § 325.7 will be brought to the attention of those Federal, State and local agencies and other persons who express particular interest in the affected activity. Surveillance in ocean waters will be accomplished primarily by the Coast Guard pursuant to Section 107(c) of the Marine Protection, Research and Sanctuaries Act of 1972, as amended.

(d) *Inspection expenses.* The expenses incurred in connection with the inspection of permitted activity in waters of the United States normally will be paid by the Federal Government in accordance with the provisions of Section 6 of the River and Harbor Act of 3 March 1905 (33 U.S.C. 417) unless daily supervision or other unusual expenses are involved. In such unusual cases, and after approval by the division engineer, the permittee will be required to bear

the expense of inspections in accordance with the conditions of his permit; however, the permittee will not be required or permitted to pay the United Stats inspector either directly or through the district engineer. The inspector will be paid on regular payrolls or service vouchers. The district engineer will collect the cost from the permittee in accordance with the following:

(1) At the end of each month the amount chargeable for the cost of inspection pertaining to the permit will be collected from the permittee and will be taken up on the statement of accountability and deposited in a designated depository to the credit of the treasurer of the United States, on account of reimbursement of the appropriation from which the expenses of the inspection were paid.

(2) If the district engineer considers such a procedure necessary to insure the United States against loss through possible failure of the permittee to supply the necessary funds in accordance with paragraph (d)(1), of this section, he may require the permittee to keep on deposit with the district engineer at all times an amount equal to the estimated cost of inspection and supervision for the ensuing month, such deposit preferably being in the form of a certified check, payable to the order of Treasurer of the United States. Certified checks so deposited will be carried in a special deposit account (guaranty for inspection expenses) and upon completion of the work under the permit the funds will be returned to the permittee provided he has paid the actual cost of inspection.

(3) On completion of work under a permit, and the payment of expenses by the permittee without protest, the account will be closed, and outstanding deposits returned to the permittee. If the account is protested by the permittee, it will be referred to the division engineer for approval before it is closed and before any deposits are returned to the permittee.

(e) *Bonds.* If the permitted activity includes restoration of the waters to their original condition, or if the issuing official has reason to consider that the permittee might be prevented from completing work which is necessary to protect the public interest, he may require the permittee to post a bond of sufficient amount to indemnify the government against any loss as a result of corrective action it might take.

§ 325.10 Publicity.

The district engineer will establish and maintain a program to assure that potential applicants for permits are informed of the requirements of this regulation and of the steps required to obtain permits for activities in waters of the United States or ocean waters. Whenever the district engineer becomes aware of plans being developed by either private or public entities which might require permits for implementation, he should advise the potential applicant in writing of the statutory requirements and the provisions of this regulation. Whenever the district engineer is aware of changes in Corps of Engineers regulatory jurisdiction, he will issue appropriate public notices.

§ 325.11 Reports.

The report of a district engineer on an application for a permit requiring action by the division engineer or by the Chief of Engineers will be in a letter form with the application and all pertinent comments, records, photographs, maps, and studies and environmental documentation as inclosures. The inclosures for all cases referred to the Chief of Engineers will be in duplicate. If an EIS has been prepared, the report shall not be forwarded until 30-days following filing of the final EIS and shall address any comments received on the final EIS. The following items will be included or discussed in the report, if applicable;

(a) Name of applicant and date of application.

(b) Location, character and purposes of proposed activity, including a description of any wetlands involved.

(c) Applicable statutory authorities and administrative determinations conferring Corps of Engineers regulatory jurisdiction.

(d) Other Federal, State, and local authorizations obtained or required and pending.

(e) Date of public notice and public hearings, if held, and summary of objections offered with comments of the district engineer thereon. The comments should explain the objections and not merely refer to enclosed letters.

(f) Views of State and local authorities.

(g) Views of district engineer concerning problable effect of the proposed work on:

(1) Conservation.
(2) Economics.
(3) Aesthetics.
(4) General environmental concerns.
(5) Wetlands.
(6) Cultural Values.
(7) Fish and Wildlife Values.
(8) Flood hazards.
(9) Flood Plain values.
(10) Land use.
(11) Navigation.
(12) Shoreline erosion and control.
(13) Recreation.
(14) Water supply and conservation.
(15) Water quality.
(16) Energy needs.
(17) Safety.
(18) Food production.
(19) Needs and welfare of the public.

(h) Other pertinent remarks, such as:

(1) Extent of public and private need.
(2) Appropriate alternatives.
(3) Extent and permanence of beneficial and/or detrimental effects.

(i) A copy of the environmental assessment or the Environmental Impact Statement. If an EIS is prepared, a summary of comments received on the final EIS together with the district engineer's response to those comments.

(j) A discussion of conformity with the guidelines published for the discharge of dredged or fill material in waters of the United States (40 CFR Part 230) or the dumping of dredged material in ocean waters (40 CFR Parts 220 to 229), as applicable.

(k) Conclusions.

(l) Recommendations including any proposed special conditions.

Appendix A—Permit Form

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Appendix B—[Reserved]

Appendix C—Procedures for the Protection of Historic and Cultural Properties

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Appendix D—Memorandum of Agreement Between the Administrator of the Environmental Protection Agency and the Secretary of the Army

1. *Purposes of the Agreement.* Section 404(q) of the Clean Water Act recognizes that the programs of various Federal agencies either impact or are impacted by the Section 404 permit program and the activities that program regulates. Section 404(q) Memoranda of Agreement (MOAs), therefore, should be designed to ensure timely and constructive involvement, including consideration of the views, of Federal agencies in the Section 404 regulatory permit application process so as (1) to help protect public interests involved; (2) to minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the processing of permit applications; and (3) to assure that, to the maximum extent practicable, a decision is made on the application within 90 days of issuance of the public notice. The purpose of this agreement between the Secretary of the Army and the Administrator of the Environmental Protection Agency, under Section 404(q), is to achieve these objectives of Section 404 of the Clean Water Act.

In particular, the parties agree that:

a. In most instances, decisions on permit applications can be made most timely if made at the lowest level of authority; therefore, the great majority of decisions should be made at this level. Accordingly, the parties will make every effort to resolve

differences at the lowest possible organizational level and will encourage personal contacts for such resolution.

b. Consultations with applicants for major projects prior to formal permit application may help to resolve problems at the Army Corps of Engineers (Corps) District level, and such consultations are encouraged.

c. The opportunity for review by higher authority of a small number of permit applications having unresolved Federal agency objections will help achieve the objectives of this agreement only if (1) issues that may be raised are directly related to the statutory mandates and concerns of the Environmental Protection Agency (EPA), and (2) review is carried out in accordance with clearly specified procedures under appropriate time constraints.

2. *Scope and Interpretation of Agreement.* This agreement applies to the processing of Department of the Army (DA) permit applications under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research and Sanctuaries Act. It does not pertain to permit applications processed under Section 9 of the Rivers and Harbors Act of 1899, nor to Civil Works projects of the Corps of Engineers. As the contest requires, the term "EPA" may mean the appropriate official(s) of EPA. The terms "he" and "his" may also mean "she" and "her" respectively.

3. *Classification of Permits for MOA Purposes.* The permit applications encompassed by this MOA are divided into three classes, as follows:

a. *Class I:* Permit applications where an Environmental Impact Statement (EIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) and (1) the Corps is the lead agency for conducting the review required by NEPA, or (2) the Corps is not the lead agency but the activities subject to Corps permit authority (e.g., discharge of dredge and fill material or structures or other work in the waters of the United States) are of concern to EPA.

b. *Class II:* Permit applications for projects that:

(1) Relate to emerging policy issues, alleged violations or erroneous application of existing policy (set forth, for example, in law, regulation or executive order), or involve some other precedent-setting potential impacting on or relating to the permit program;

(2) Have substantial individual impacts; or

(3) Contribute to a cumulative impact of demonstrably substantial proportions.

In determining whether an impact is "substantial" within the meanings of subparagraphs (2) and (3) above, and thus determining whether a case is within Class II rather than Class III, the parties should consider, anomg other factors, the actual physical extent and quality of the area to be affected, the degree of public interest in the proposal, and the positions of other Federal and state resources agencies.

c. *Class III:* All permit applications not included in Classes I and II.

4. *General Rules for Processing and Review of Permit Applications.* a. All reviews by higher authority will be *sequential.* If the District Engineer makes a determination on the application that is contrary to the stated position of the EPA Regional Administrator, the EPA may have the application reviewed as follows:

(1) *Class I:* The comparable officials of EPA may have the application reviewed by the Division Engineer, by the Chief of Engineers, by the Assistant Secretary of the Army for Civil Works (ASA(CW)), and, finally, by the Secretary of the Army.

(2) *Class II:* The comparable officials of EPA may have the application reviewed by the Division Engineer, by the Chief of Engineers, and, finally, by the ASA(CW).

(3) *Class III:* The EPA Regional Administrator may have the application reviewed by the Division Engineer.

b. For all three classes of applications, EPA must document the issues it wishes to raise on review and shall update such documentation for each subsequent level of review. Such documentation shall include a description of:

(1) the issues;

(2) field level coordination;

(3) agreements or counter-proposals that have been offered;

(4) quantitative and qualitative evaluations of expected cumulative or substantial impacts that could occur; and

(5) proposed resolutions of policy or other issues raised.

c. EPA is entitled to take the position at each level of the review process that an application is within Class II, rather than Class III. Even if the Corps should determine that a case is within Class III rather than Class II, a determination that can be made at any level, EPA would still have the right to have the application elevated to the next level of review until the ASA(CW) makes a final determination of that issue in deciding whether to review the application under this agreement.

d. At each level of review above the District Engineer, unless otherwise constrained by law or regulation, and subject to the rights of EPA to seek further review as provided in this agreement, the reviewing officer will have the authority to (1) decide that the permit should be issued or denied or (2) decide only the issue that has been raised and send the application back to a level where a decision on permit issuance can be made. However, in those istances where either the Chief of Engineers of the ASA(CW) determines that a case is within Class III rather than Class II, he shall indicate the rationale for that determination, but he shall not be obligated to (yet, in his descretion, may) express his opinion on all the issues raised by EPA.

e. At each level of review, EPA will, within the time limits speciefied in paragraph 5 below, have ample opportunity for consultation. More time is allotted for field coordination in recognition of the geographic separation of many coordinating offices and the need for their reliance on postal services; correspondence at the Washington level shall be hand delivered between coordinating offices. Such consultation may be initiated by EPA or the Army and shall be fully documented in accordance with subparagraph b above. The consultations should normally involve meetings, exchanges of written views, or both, as the parties may mutually agree is appropriate. Staff meetings are encouraged for the consultations, but at least one complete exchange of written views on issues shall document agency positions. Except in those instances where negotiations involve final decision-making, the officials named herein may be represented by staff members, provided they have been delegated sufficient authority to negotiate the issues that are the subject of such meetings.

f. EPA has the opportunity to seek review above the district level only once on issues then germane and ripe for review. For example, if the issue raised by EPA concerns an emerging policy and subsequently the MOA review process on that issue is completed and the application is sent back to the District Engineer for decision-making, it would not be permissible for EPA to contend, upon a subsequent decision to issue the permit, that demonstrably substantial impacts had been ignored. However, in all instances in which, after completion of higher level review, the case is sent back to the District Engineer for further decision-making on the application, the District Engineer shall communicate the substance of his proposed decision to the Regional Administrator and provide an opportunity to review it. Should EPA subsequently contend that the District Engineer has misinterpreted the higher level review decision or has faied to apply it appropriately, the Army will decide whether the appeal will be processed sequentially, as specified in paragraphs 4a and 5, or brought directly to the higher Army Authority which made the review decision.

5. *Specific Processing Times and Procedures.* a. *Notices to EPA.* The Corps will send EPA regions public notices for those categories of activities which they have stated an interest in reviewing. Request for such notices should be made in writing to the appropriate District Engineer. In the case of EPA regions which are being provided with public notices on the basis of arrangements currently in effect, those arrangements will continue unless EPA requests a change.

b. *Timely EPA Reports Required.* EPA will send reports with recommendations on the application in time to reach the Corps within the comment period specified in the public notice (normally 30 calendar days). EPA may request an extension of the comment period in writing before the expiration date. The request should be supported with adequate justification and should specify the additional review time needed. The Corps will normally grant the extension but not to allow a total comment period of more than 75 calendar days from the date of the public notice and will not thereafter reopen the comment period, provided that adequate data and information has been provided in a timely manner by the applicant.The parties further understand that normally, if EPA makes no response during the comment period, as extended, it will not report on the application. The parties recognize, however, that other applicable law, including Section 401 of the Clean Water Act, may require EPA to have opportunity to comment further on the application in carrying out its responsibilities under such law, and nothing

herein shall be construed to limit EPA's responsibilities or discretion under such laws.

c. *Timely Corps decisions.* The Corps will make its decision on all applications not later than 90 calendar days after issuance of the public notice unless:

(1) precluded as a matter of law or procedures required by law, regulation, or other memoranda of agreement (see 5e below);

(2) the application must be referred to higher authority (see 5f below);

(3) the comment period is extended to more than 45 days from the date of the public notice;

(4) a timely rebuttal or resolution of objections is not received from the applicant;

(5) the processing is suspended at the request of the applicant; or

(6) information needed by the District Engineer for a decision on the application is unavailable and cannot be obtained within the 90-day period.

In such cases, the processing time limitation will be extended by the number of additional days required to satisfy or eliminate the exceptions identified in items (1) through (6) above. For example, under item (3) above, if the comment period is extended to 75 days (30 days more than the 45 days mentioned above), the Corps will, absent other exceptions, decide on the application within 120 days from the date of the public notice. For items (4), (5) and (6) above, it is understood that the District Engineer will immediately forward to the applicant any EPA request for additional information or report recommending denial or modification of the application, and shall, when he believes it appropriate, convene joint meetings with the applicant and EPA in an attempt to resolve the concerns.

d. *Applicant Initiatives.* It is further understood that where EPA objections are involved, the applicant may:

(1) resolve the objections by agreeing to recommend modifications;

(2) request continued processing despite objections, either with or without providing counter arguments;

(3) request suspension of processing to provide time either for negotiations with EPA or for preparation of counter arguments; or

(4) withdraw the application.

e. *Expediting Compliance with Applicable Laws.* Certain laws (e.g., the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the Preservation of Historical and Archaeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, the Marine Protection, Research and Sanctuaries Act, and the Fish and Wildlife Coordination Act) require procedures such as state or other Federal agency certifications, public hearings, environmental impact statements, special studies and testing, agency jurisdictional determinations, etc., which may prevent the Corps from being able to make its decision on certain applications within 90 days. EPA and the Corps agree to do everything possible to insure that decisions on such applications are made as quickly as possible within the framework of the applicable laws, regulations, this agreement, and other memoranda of agreement.

f. *Review Time Limitations and Officials Involved.* (1) *The District Engineer*—If the District Engineer decides a permit should be issued and there are unresolved objections by EPA he will furnish his determination (and other relevant documents, including those requested in advance by the Regional Administrator, to the extent available) to the EPA Regional Administratior, who then has 20 working days from the date of the District Engineer's letter to request in writing a review by the Division Engineer. The request from the Regional Administrator to the Division Engineer shall include the documentation called for by paragraph 4b above. The District Engineer will forward the application report (case) to the Division Engineer within 20 working days from the date of the Regional Administrator's request for review.

(2) *The Division Engineer*—The Division Engineer will review the record and make his own public interest determination on the application within 30 working days of the date of the District Engineer's report. During this period, he will consult with the EPA Regional Administrator in an attempt to develop a mutually acceptable resolution of the case, he will immediately notify the Regional Administrator in writing of his determination on the application, including, where appropriate, his position on whether the application is within Class II or Class III. For Class I and II applications, EPA has 20 working days from the date of such notifiction to request in writing a review by the Chief of Engineers. The request for review shall be made to the Chief of Engineers by the Assistant Administrator for Water and Waste Management (for cases involving issues under Section 404 of the Clean Water Act or Section 103 of the Marine Protection, Research and Sanctuaries Act) or by the Director, Office of Environmental review (for cases involving EIS-related issues, other than Section 404 discharge of dredge and fill materials, or exclusively involving Section 10 of the Rivers and Harbors Act of 1899). The request shall include the updated documentation called for by paragraph 4b above. The Division Engineer will forward the case within 15 working days from the date of the EPA official's request.

(3) *The Chief of Engineers*—The Chief of Engineers will immediately review the record and make his own public interest determination on the application (or decide isues or make Class determinations as provided for in paragraph 4d) within 30 working days from the date of the Division Engineer's report. During this period, the Chief of Engineers will consult with the Assistant Administrator for Water and Waste Management or the Director, Office of Environmental Review, as the case may be, in an attempt to develop a mutually acceptable resolution of the case. If the Chief of Engineers concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the appropriate EPA offical in writing of his determination on the application including, where appropriate, his determination on its classification. EPA has 15 working days from the date of such notification to request a review of the case by the ASA(CW). The request for review must be made to the ASA(CW) by the Deputy Administrator of EPA and will include the updated documentation called for by paragraph 4b above. The Chief of Engineers will forward the case within 15 working days from the date of the Deputy Administrator's request to the ASA(CW).

(4) *The Assistant Secretary of the Army for Civil Works*—The ASA(CW) will review the record and make his own public interest determination on the application, or decide only the specific issues raised within 30 working days from the date of the Chief of Engineers report, unlesss he decides that a case is within Class III as provided in paragraph 4d. During this period, the ASA(CW) will consult with the Deputy Administrator in an attempt to develop a mutually acceptable resolution of the case. If the ASA(CW) concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Deputy Administrator in writing of his determination on the application. For Class I applications, EPA has 15 working days from the date of such notification to request a review of the case by the Secretary of the Army. The request for review must be made to the Secretary of the Army by the Administrator of the Environmental Protection Agency and will include the updated documentation called for by paragraph 4b above. The ASA(CW) will forward the case to the Secretary of the Army within 15 working days from the date of the Environmental Protection Agency Administrator's request.

(5) The Secretary of the Army, in consultation with the Administrator of EPA, will make a final decision on the application within 45 working days from the date of the ASA(CW)'s report.

(6) Notifications of Corps positions and requests for higher authority reviews will be valid only if signed by the indicted official or an official authorized to act in his absence, except that the Director of Civil Works may routinely act for the Chief of Engineers.

(7) At any step during the procedures prescribed above, the parties may mutually conclude that concerns of EPA have been either fully addressed or that an impasse has been reached but referral of the application to the next higher echelon is unwarranted before a final decision can be made. The absence of a response from EPA during the period allotted EPA to request a referral will indicate that EPA does not desire further referral, but Army officials will contact EPA at the end of such period to verify that a review request was, in fact, not made.

(8) Some permit cases may involve a record of such length and/or issues of such complexity that Army and/or EPA review decisions could not reasonably be anticipated within the time constraints imposed above. This is especially true if additional studies or research, possibly requiring public comment, are essential to the decision at hand. In this event, both agencies will consult and impose new deadlines for review consistent with the objectives of this MOA.

6. *General Permits.* The Corps has found general permits, issued on both regional and

nationwide bases, to be the most effective way, where appropriate, for reducing duplication, paperwork, and delays. EPA and the Corps pledge to cooperate fully to assure the successful continuation of this vital program. It is the intent of the parties to assure enforcement of their terms and conditions. EPA will assist the Corps in its efforts to remain aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

7. *Joint Processing of Permit Applications.* To further expedite Federal decisions on activities requiring Department of the Army permits, District Engineers and Regional Administrators, responsible for administering other Federal permit programs, are encouraged to enter into arrangements to process and evaluate jointly Army and EPA permit applications related to the same activity. This may include the issuance of joint public notices, the conduct of joint public hearings, and the joint review and analysis of information and comments developed in response to the public notice, public hearing, environmental assessment and the EIS (if any), and other laws with regard to which EPA has specific responsibilities.

8. *Effective Date and Duration.* This agreement is effective immediately upon its signing by both the Secretary of the Army and the Administrator of the Environmental Protection Agency and applies to all permit applications in process at that time. After 30 months, the parties will review and revise the agreement as is appropriate. If, however, such revisions are not agreed upon within six months after the 30-month period, then either party may terminate this agreement at the end of such six-month period, provided that all pending cases for which review has been requested under this MOA shall continue to be bound by this MOA, unless the parties mutually agree otherwise. It is further recognized that revisions may become necessary at any time if conflicts result from new law, executive order, or deficiencies not now apparent in this agreement. In such event, the parties will consult to attempt to resolve the issues and amend this MOA accordingly.

Dated: March 17, 1980.

Douglas M. Costle,

Administrator of the Environmental Protection Agency.

Dated: March 24, 1980.

Clifford L. Alexander,

Secretary of the Army.

Appendix E—Memorandum of Agreement Between the Secretary of Agriculture and the Secretary of the Army on Permit Processing

1. *Purpose and Scope.* a. This agreement between the Secretary of Agriculture and the Secretary of the Army is made under Section 404(q) of the Clean Water Act which reads as follows:

(q) Not later that the one-hundred-eightieth day after the date of enactment of this subsection, the Secretary shall enter into agreements with the Administrator, the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

b. Since the reduction of duplication, paperwork, and delays is a goal in all Department of the Army (DA) regulatory programs, this agreement is also applicable to other DA regulatory authorities, particularly Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

c. This agreement does not apply to activities specifically excluded from the Clean Water Act nor to civil works projects of the Corps of Engineers.

2. *Definitions.* a. "Applicant" means the USDA, state or local agency, or private party responsible for initiation of a USDA action and making application for a DA permit.

b. "Corps" means the Corps of Engineers or any official of the Corps of Engineers acting within his regulatory authority on behalf of the Secretary of the Army.

c. "EIS" means an environmental impact statement as required by the National Environmental Policy Act.

d. "Environmental assessment" means a written document identifying the expected environmental impacts of a proposed Federal action and supporting a determination whether or not the action will have a significant effect on the quality of the human environment.

e. "Environmental documentation" means any document prepared by either USDA or the Corps to demonstrate compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and the Council on Environmental Quality's NEPA implementing regulations. Such documents include any of the following: an "EIS," a "finding of no significant impact," or an "environmental assessment."

f. The term "he" and its derivatives used in this agreement is generic and should be considered as applying to both male and female.

g. "Negative declaration" means a written document supporting a determination that a proposed USDA action will not have a significant impact upon the quality of the human environment.

h. "USDA" means the Department of Agriculture or any official of any agency within the Department of Agriculture acting within his authority (1) in the review of a DA permit, (2) in application for a DA permit, or (3) acting as a recipient of a proposal which will require financial or other assistance from USDA and the exercise of DA regulatory authority.

i. "USDA action" means all actions of any kind authorized, funded, cost shared, or carried out by USDA, in whole or in part, examples of which include, but are not limited to:

(1) the granting of licenses, contracts, leases, easements, rights-of-way, permits, grants-in-aid, loans or loan guarantees, or

(2) actions directly or indirectly causing modifications to the land, water, or air.

3. *USDA/DA Coordination.* a. The procedures set forth in this Memorandum of Agreement will be utilized to strengthen the early coordination between USDA and the Corps prior to and during development of projects and the environmental documentation. As soon as practicable within the planning process of a USDA action involving the need for a DA permit, the USDA or the applicant will establish and maintain communication with the Corps for the purposes of reducing duplications and delays. The intent is that the data developed and the evaluation of impacts upon the human environment for all reasonable alternatives will satisfy the requirements of both USDA and the Corps, allow USDA and the Corps to jointly resolve public interest issues within the scope of each agency's responsibilities, and minimize further review of such issues during the permit process.

b. USDA may designate a non-USDA entity to act on its behalf for purposes of working level interstaff communication; however, USDA will retain responsibility to insure that such working level communications satisfies the statutory responsibilities to which USDA is subject.

c. Additional agreements between USDA agencies and the Corps may be developed within the framework of this MOA as mutually agreeable to the Corps and USDA agencies to establish specific procedures for specific programs under USDA authority.

d. The Corps will solicit USDA technical assistance and consult with USDA on elements of the permit program relevant to USDA areas of experitse. In particular, the Corps will solicit the technical advice of the appropriate USDA action agencies for assistance in interpreting the technical aspects of the terms used in Section 404(f) of the Clean Water Act.

4. *Lead Agency for Environmental Processes.* a. When a USDA project requires processing by both the Corps and USDA, USDA will ordinarily be the lead agency for the environmental documentation, and the procedures set forth in paragraphs 4.b and 4.c shall apply.

b. For USDA actions requiring a DA permit, the USDA will be responsible for environmental documentation in accordance with the applicable USDA guidelines and paragraph 3 above. Such documentation will demonstrate, where applicable, consideration of and compliance with the substantive requirements of Federal environmental statutes and executive orders including but not limited to:

National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.)
Executive Order 11988 (Flood Plain Management)
Executive Order 11990 (Protection of Wetlands)
Fish and Wildlife Coordination Act (165 U.S.C. 661–666c)
Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.)
National Historic Preservation Act (16 U.S.C. 470 et seq.)
Archeological and Historic Preservation Act of 1974 (PL 93–291)

Wild and Scenic River Act (16 U.S.C. 1271–1287)
Coastal Zone Management Act of 1972, as amended (16 U.S.C. 1451–1464)

c. As the lead agency, the USDA will be responsible for ensuring that project considerations and the assessments of environmental effects are coordinated with the Corps during project development.

(1) The Corps will be consulted during the evaluation as to whether the proposed USDA action requires the preparation of an EIS.

(2) When the USDA determines that a project requires either an EIS or negative delcaration, the Corps will function as a cooperating agency and will assist the USDA to insure that the environmental documentation adequately covers the portion of, the work requiring a DA permit. the draft environmental documentation will be provided to the Corps for review and comment.

(3) the USDA will provide the Corps a copy of the final environmental documentation at the same time the document is submitted for final USDA approval.

(4) When the consultation between the USDA and Corps on the preparation of the environmental documentation identifies areas of disagreement, the USDA and the Corps will seek to resolve the disagreement prior to USDA approval of the environmental documentation. It is understood that USDA and the Corps may occasionally reach different conclusions regarding the scope of necessary environmental documentation. In such instances, the Corps may find it necessary to prepare additional environmental decumentation for its use.

(5) As provided by CEQ guidelines and USDA procedures, USDA will also attempt to resolve environmental issues raised by other agencies in their comments on the draft EIS, prior to approval of the final EIS.

d. Notwithstanding the provisions of subsection 4.c., USDA and the Corps recognizes that there are certain categories of USDA projects, such as electric power generation proposals, which are so complex and require such a long lead time that, while there may be sufficient information to meet NEPA EIS requirements at an early stage, there is insufficient detailed data available for the Corps to immediately approve and issue a Section 10 or 404 permit. In such instances, the EIS shall not be delayed until detailed structure placement and design is available. The Corps shall, based on experience in processing applications for similar proposals, review the EIS and make a conceptual determination whether there are specific concerns which must be mitigated or which would preclude issuance of a Corps permit regardless of the nature, placement, or design of structures at a proposed site.

5. *Public Hearings.* USDA and the Corps will seek ways to avoid duplicate public hearings. Whenever possible within controlling regulations, joint public hearings will be held.

6. *DA Permits.* a. In order to facilitate early involvement by the Corps in the development of USDA actions which may require a DA permit, the Corps agrees, when requested by USDA or the applicant, to begin its public interest review in advance of receipt of an application, possibly including the issuance of a public notice either by the Corps or jointly with USDA, based on preliminary information available at the draft EIS or draft negative declaration stage. The USDA or the applicant in selecting a plan requiring an application for a DA permit, will consider all reasonable alternatives based on its own public involvement procedures, as well as comments received by and from the Corps as a result of its public interest review.

b. At the appropriate time in preparing the final environmental documentation, USDA will make or cause to be made application for the DA permit. Normally, this will be done as soon as a preferred action is identified and sufficient information can be developed for the Corps to process the application. If USDA provides the location and a general description of the proposed USDA action, with only that level of detail (e.g., approximate quantities) necessary for regulatory review, the Corps agrees to initiate permit processing. Applications shall cover entire projects where the plan and/or EIS cover a package proposal.

c. Unless precluded as a matter of law or procedures required by law, the Corps will issue the public notice not later that fifteen days after receipt of all information required to complete the application for the preferred action.

d. Substantive comments received in response to the permit application public notice shall be furnished to USDA. USDA or the applicant will have the opportunity to provide the Corps comments and/or rebuttal for the case record.

e. The Corps will normally rely on and incorporate the environmental processes and documentation accomplished in accordance with paragraph 4 in its public interest review. the Corps decision document on the permit application is distinct from the environmental documentation.

f. The Corps will make every reasonable effort to minimize the use of special conditions in permits issued for USDA actions and will consult with USDA or the applicant in their preparation. Commitments identified in environmental documents and enforceable by USDA upon an applicant will not normally be repeated in the DA permit except insofar as Corps' regulatory criteria require them. Likewise, the Corps will normally not include any special programs that accomplish the same purpose.

g. To the mazimum extent practicable, the Corps will make a decision to grant or deny a permit not later than ninety days after the public notice is issued.

h. The duration of the DA permit will be commensurate with the expected completion date of the USDA action. The Corps will consult with the USDA or the applicant in establishing completion dates for work covered by the permit.

7. *USDA Review of DA Permits. (Applicable where USDA desires to review and comment on DA permit applications submitted by other agencies and individuals.)*

a. The Corps will send USDA public notices for those categories of activities which USDA has an interest in reviewing. Requests for such notices should be made in writing to the Office of the Chief of Engineers, ATTN: DAEN–CWO–N.

b. USDA will send any comments on the application in time to reach the Corps within the comment period specified in the public notice. USDA may request an extension of the comment period in writing before the expiration date. The request should be supported with adequate justification and should specify the additional review time needed. The Corps will normally grant the extension. In no case will the Corps extend the comment period to more than a total of 75 days from the date of the public notice unless otherwise required by law. If no comments are received within the comment period, the Corps will assume USDA has no comment on the application. USDA need not send letters of "no objection" or "no intent to comment" to the Corps.

8. *Uniform Administration of Corps Regulatory Functions.* The Corps recognizes its responsibility to provide consistent administration of its permit program throughout the country.

9. *General Permits.* The Corps has found general permits issued on both a regional and nationwide basis, to be the most effective way, where appropriate, for reducing duplications, paperwork, and delays. The USDA and the Corps pledge to do everything possible to insure the successful continuation of this vital program. USDA will assist the Corps in remaining aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

10. *Effective Dates and Modification.* This agreement shall become effective on the last signature date below, and remain in effect for three years at which time it shall be subject to renegotiation or extension on mutual agreement. If either party finds within this period that the agreement needs modification, the other party shall be notified in writing of the specific changes desired, with proposed modification language, and the reason(s) therefor. The proposed change(s) shall become effective within 60 days, unless the other party indicates in writing a desire to discuss the proposed change.

Date: March 14, 1980.

Jim Williams,
Secretary of Agriculture.

Date: March 24, 1980.

Clifford L. Alexander,
Secretary of the Army.

Appendix F—Memorandum of Agreement Between the Secretary of Commerce and the Secretary of the Army

1. *Purpose of the Agreement.* Section 404(q) of the Clean Water Act recognizes that the programs of various Federal agencies either impact or are impacted by the Section 404 permit program and the activities that program regulates. Section 404(q) Memoranda of Agreement (MOAs), therefore, should be designed to ensure timely and constructive involvement, including consideration of the views of Federal agencies in the Section 404 regulatory permit application process so as: (1) to help protect the public interests involved; (2) to minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the processing of permit applications; and (3) to assure that, to

the maximum extent practicable, a decision is made on the application within 90 days of issuance of the public notice. The purpose of this agreement between the Secretary of the Army and the Secretary of Commerce, under Section 404(q), is to achieve these objectives of Section 404 of the Clean Water Act.

In particular, the parties agree that:

a. In most instances, decisions on permit applications can be made most timely if made at the lowest level of authority; therefore, the great majority of decisions should be made at this level. Accordingly, the parties will make every effort to resolve differences at the lowest possible organizational level and will encourage personal contacts for such resolution.

b. Consultations with applicants for major projects prior to formal permit application may help to resolve problems at the Army Corps of Engineers (Corps) District level, and such consultations are encouraged.

c. The opportunity for review by higher authority of a small number of permit applications having unresolved Federal agency objections will help achieve the objectives of the agreement only if (1) issues that may be raised are directly related to the statutory mandates and concerns of the Department of Commerce (DOC), and (2) review is carried out in accordance with clearly specified procedures under appropriate time constraints.

d. The National Oceanic and Atmospheric Administration (NOAA) and the National Marine Fisheries Service (NMFS) have, at their respective levels of coordination indicated hereafter, the authority and responsiblility for reporting DOC findings and recommendations on permit applications that are of interest to other bureaus or offices within the Department.

2. *Scope and Interpretation of Agreement.* This agreement applies to the processing of Department of the Army (DA) permit applications under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research and Sanctuaries Act. It does not pertain to permit applications processed under Section 9 of the Rivers and Harbors Act of 1899, nor to Civil Works projects of the Corps of Engineers. As the context requires, the term "DOC" may mean the appropriate officials(s) of any bureau or office within the Department. The terms "he" and "his" may also mean "she" and "her", respectively.

3. *Classification of Permits for MOA Purposes.* The permit applications encompassed by this MOA are divided into three classes, as follows:

a. *Class I:* Permit applications where an Environmental Impact Statement (EIS) has been prepared in accordance with the National Environmental Policy Act (NEPA) and (1) the Corps is the lead agency for conducting the review required by NEPA, or (2) the Corps is not the lead agency but the activities subject to Corps permit authority (e.g., discharge of dredge and fill material or structures or other work in the waters of the United States) are of concern to DOC.

b. *Class II:* Permit applications for projects that:

(1) Relate to emerging policy issues, alleged violations or erroneous application of existing policy (set forth, for example, in law, regulation or executive order), or involve some other precedent-setting potential impacting on or relating to the permit program;

(2) Have substantial individual impacts; or

(3) Contribute to a cumulative impact of demonstrably substantial proportions.

In determining whether an impact is "substantial" within the meanings of subparagraphs (2) and (3) above, and thus determining whether a case is within Class II rather than Class III, the parties should consider, among other factors, the actual physical extent and quality of the area to be affected, the degree of public interest in the proposal, and the positions of other Federal and state resources agencies.

c. *Class III:* All permit applications not included in Classes I and II.

4. *General Rules for Processing and Review of Permit Applications.*

a. All reviews by higher authority will be *sequential.* If the District Engineer makes a determination on the application that is contrary to the stated position of the NMFS Regional Director, DOC may have the application reviewed as follows:

(1) *Class I:* The comparable officials of DOC may have the application reviewed by the Division Engineer, by the Chief of Engineers, by the Assistant Secretary of the Army for Civil Works (ASA(CW)), and, finally, by the Secretary of the Army.

(2) *Class II:* The comparable officials of NOAA/NMFS may have the application reviewed by the Division Engineer, by the Chief of Engineers, and, finally, by the ASA(CW).

(3) *Class III:* The NMFS Regional Director may have the application reviewed by the Division Engineer.

b. For all three classes of applications, DOC must document the issues it wishes to raise on review and shall update such documentation for each subsequent level of review. Such documentation shall include a description of:

(1) the issues;

(2) field level coordination;

(3) agreements or counter-proposals that have been offered;

(4) quantitative and qualitative evaluations of expected cumulative or substantial impacts that could occur; and

(5) proposed resolutions of policy or other issues raised.

c. DOC is entitled to take the position at each level of the review process that an application is within Class II, rather than Class III. Even if the Corps should determine that a case is within Class III rather than Class II, a determination that can be made at any level, DOC would still have the right to have the application elevated to the next level of review until the ASA(CW) makes a final determination of that issue in deciding whether to review the application under this agreement.

d. At each level of review above the District Engineer, unless otherwise constrained by law or regulation, and subject to the rights of DOC to seek further review as provided in this agreement, the reviewing officer will have the authority to (1) decide that the permit should be issued or denied or (2) decide only the issue that has been raised and send the application back to a level where a decision on permit issuance can be made. However, in those instances where either the Chief of Engineers or the ASA(CW) determines that a case is within Class III rather than Class II, he shall indicate the rationale for that determination, but neither of them shall be obligated to (yet, in their discretion, may) express their opinion on all the issues raised by DOC.

e. At each level of review, DOC will, within the time limits specified in paragraph 5 below, have ample opportunity for consultation. More time is allotted for field coordination in recognition of the geographic separation of many coordinating offices and the need for their reliance on postal services; correspondence at the Washington level shall be hand delivered between coordinating offices. Such consultation may be initiated by DOC or the Corps and shall be fully documented in accordance with subparagraph b above. The consultations, should normally involve meetings, exchanges of written views, or both, as the parties may mutually agree is appropriate. Staff meetings are encouraged for the consultations, but at least one complete exchange of written views on issues shall document agency positions. Except in those instances where negotiations involve final decision-making, the officials named herein may be represented by staff members, provided they have been delegated sufficient authority to negotiate the issues that are the subject of such meetings.

f. DOC has the opportunity to seek review above the district level only once on issues then germane and ripe for review. For example, if the issue raised by DOC concerns an emerging policy and subsqeuently the MOA review process on that issue is completed and the application is sent back to the District Engineer for decision-making, it would not be permissible for DOC to contend, upon a subsequent decision to issue the permit, that demonstrably substantial impacts had been ignored. However, in all instances in which, after completion of higher level review, the case is sent back to the District Engineer for further decision-making on the application, the District Engineer shall communicate the substance of his proposed decision to the NMFS Regional Director and provide an opportunity to review it. Should DOC subsequently contend that the District Engineer has misinterpreted the higher level review decision or has failed to apply it appropriately, the Army will decide whether the appeal will be processed sequentially, as specified in paragraphs 4a and 5, or brought directly to the higher Army authority which made the review decision.

5. *Specific Processing Times and Procedures.*

a. *Notices to DOC.* The Corps will send NMFS regions and area offices public notices for those categories of activities which they have stated an interest in reviewing. Request for such notices should be made in writing to the appropriate District Engineer. In the case of NMFS regions which are being provided with public notices on the basis of arrangements currently in effect, those arrangements will continue unless a request for a change is made.

b. *Timely DOC Reports Required.* NMFS will send reports with recommendations on the application in time to reach the Corps within the comment period specified in the public notice (normally 30 calendar days). NMFS may request an extention of the comment period in writing before the expiration date. The request should be supported with adequate justification and should specify the additional review time needed. The Corps will normally grant the extention but not to allow a total comment period of more than 75 calendar days from the date of the public notice and will not thereafter reopen the comment period, provided that adequate data and information has been provided in a timely manner by the applicant. The parties further understand that normally, if NMFS makes no response during the comment period, as extended, it will not report on the application. The parties recognize, however, that other applicable law, including the Endangered Species Act, may require DOC to have opportunity to comment further on the application in carrying out its responsibilities under such law, and nothing herein shall be construed to limit DOC's responsibilities or discretion under such laws.

c. *Timely Corps Decisions.* The Corps will make its decision on all applications not later than 90 calendar days after issuance of the public notice unless:

(1) precluded as a matter of law or procedures required by law, regulation, or other memoranda of agreement (see 5e below);

(2) the application must be referred to higher authority (see 5f below);

(3) the comment period is extended to more than 45 days from the date of the public notice;

(4) a timely rebuttal or resolution of objections is not received from the applicant;

(5) the processing is suspended at the request of the applicant; or

(6) information needed by the District Engineer for a decision on the application is unavailable and cannot be obtained within the 90-day period.

In such cases, the processing time limitation will be extended by the number of additional days required to satisfy or eliminate the exceptions identified in items (1) through (6) above. For example, under item (3) above, if the comment period is extended to 75 days (30 days more than the 45 days mentioned above), the Corps will, absent other exceptions, decide on the application within 120 days from the date of the public notice. For items (4), (5), and (6) above, it is understood that the District Engineer will immediately forward to the applicant any DOC request for additional information or report recommending denial or modification of the application, and shall, when he believes it appropriate, convene joint meetings with the applicant and DOC in an attempt to resolve the concerns.

d. *Applicant Initiatives.* It is further understood that where DOC objections are involved, the applicant may:

(1) resolve the objections by agreeing to recommended modifications;

(2) request continued processing despite objections, either with or without providing counter arguments;

(3) request suspension of processing to provide time either for negotiations with DOC or for preparation of counter arguments; or

(4) withdraw the application.

e. *Expediting Compliance with Applicable Laws.* Certain laws (e.g., the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the Preservation of Historical and Archaeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, the Marine Protection, Research and Sanctuaries Act, and the Fish and Wildlife Coordination Act) require procedures such as state or other Federal agency certifications, public hearings, environmental impact statements, special studies and testing, agency jurisdictional determinations, etc., which may prevent the Corps from being able to make its decision on certain applications within 90 days. NMFS and the Corps agree to do everything possible to insure that decisions on such applications are made as quickly as possible within the framework of the applicable laws, regulations, this agreement, and other memoranda of agreement.

f. *Review Time Limitations and Officials Involved.* (1) *The District Engineer*—If the District Engineer decides a permit should be issued and there are unresolved objections by NMFS he will furnish his determination (and other relevant documents, including those requested in advance by the Regional Director to the extent available) to the NMFS Regional Director who then has 20 working days from the date of the District Engineer's letter to request in writing a review by the Division Engineer. The request from the Regional Director to the Division Engineer shall include the documentation called for by paragraph 4b above. The District Engineer will forward the application report (case) to the Division Engineer within 20 working days from the date of the Regional Director's request for review.

(2) *The Division Engineer*—The Division Engineer will review the record and make his own public interest determination on the application within 30 working days of the date of the District Engineer's report. During this period, he will consult with the NMFS Regional Director in an attempt to develop a mutually acceptable resolution of the case. If the Division Engineer concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Regional Director in writing of his determination on the application, including, where appropriate, his position on whether the application is within Class II or Class III. For Class I and II applications, DOC has 20 working days from the date of such notification to request in writing a review by the Chief of Engineers. The request for review shall be made to the Chief of Engineers by the Assistant Administrator for Fisheries and shall include the updated documentation called for by paragraph 4b above. The Division Engineer will forward the case within 15 working days from the date of the Assistant Administrator's request.

(3) *The Chief of Engineers*—The Chief of Engineers will immediately review the record and make his own public interest determination on the application (or decide issues or make Class determinations as provided for in paragraph 4d) within 30 working days from the date of the Division Engineer's report. During this period, the Chief of Engineers will consult with the Assistant Administrator for Fisheries, in an attempt to develop a mutually acceptable resolution of the case. If the Chief of Engineers concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Assistant Administrator in writing of his determination on its classification. DOC has 15 working days from the date of such notification to request a review of the case by the ASA (CW). The request for review must be made to the ASA (CW) by the Deputy Administrator of NOAA and will include the updated documentation called for by paragraph 4b above. The Chief of Engineers will forward the case within 15 working days from the date of the Deputy Administrator's request to the ASA (CW).

(4) *The Assistant Secretary of the Army for Civil Works*—The ASA (CW) will review the record and make his own public interest determination on the application, or decide only the specific issues raised within 30 working days from the date of the Chief of Engineers report, unless he decides that a case is within Class III as provided in paragraph 4d. During this period, the ASA (CW) will consult with the Deputy Administrator of NOAA in an attempt to develop a mutually acceptable resolution of the case. If the ASA (CW) concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Deputy Administrator in writing of his determination on the application. For Class I applications, DOC has 15 working days from the date of such notification to request a review of the case by the Secretary of the Army. The request for review must be made to the Secretary of the Army by the Administrator of NOAA with the concurrence of the Secretary of Commerce and will include the updated documentation called for by paragraph 4b above. The ASA (CW) will forward the case to the Secretary of the Army within 15 working days from the date of the Administrator's request.

(5) The Secretary of the Army, in consultation with the Administrator of NOAA, will make a final decision on the application within 45 working days from the date of the ASA (CW)'s report.

(6) Notifications of Corps positions and requests for higher authority reviews will be valid only if signed by the indicated official or an official authorized to act in his absence, except that the Director of Civil Works may routinely act for the Chief of Engineers.

(7) At any step during the procedures prescribed above, the parties may mutually conclude that concerns of DOC have been either fully addressed or that an impasse has been reached but referral of the application to the next higher echelon is unwarranted before a final decision can be made. The absence of a response from DOC during the period allotted DOC to request a referral will indicate that DOC does not desire further referral, but Army officials will contact DOC at the end of such period to verify that a review request was, in fact, not made.

(8) Some permit cases may involve a record of such length and/or issues of such complexity that Army and/or DOC review decisions could not reasonably be anticipated within the time constraints imposed above. This is especially true if additional studies or research, possibly requiring public comment, are essential to the decision at hand. In this event, both agencies will consult and impose new deadlines for review consistent with the objectives of this MOA.

6. *General Permits.* The Corps has found general permits, issued on both regional and nationwide bases, to be the most effective way, where appropriate, for reducing duplication, paperwork, and delays. NMFS/NOAA and the Corps pledge to cooperate fully to assure the successful continuation of this vital program. It is the intent of the parties to assure enforcement of their terms and conditions. NMFS/NOAA will assist the Corps in its efforts to remain aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

7. *Joint Processing of Permit Applications.* To further expedite Federal decisions on activities requiring Department of the Army permits, District Engineers and Regional Administrators, responsible for administering other Federal permit programs, are encouraged to enter into arrangements to process and evaluate jointly Army and DOC permit applications related to the same activity. This may include the issuance of joint public notices, the conduct of joint public hearings, and the joint review and analysis of information and comments developed in response to the public notice, public hearing, environmental assessment and the EIS (if any), and other laws with regard to which DOC has specific responsibilities.

8. *Effective Date and Duration.* This agreement is effective immediately upon its signing by both the Secretary of the Army and the Secretary of Commerce and applies to all permit applications in process at that time. After 30 months, the parties will review and revise the agreement as is appropriate. If, however, such revisions are not agreed upon within six months after the 30-month period, then either party may terminate this agreement at the end of such six-month period, provided that all pending cases for which review has been requested under this MOA shall continue to be bound by this MOA, unless the parties mutually agree otherwise. It is further recognized that revisions may become necessary at any time if conflicts result from new law, executive order, or deficiencies not now apparent in this agreement. In such event, the parties will consult to attempt to resolve the issues and amend this MOA accordingly.

Date: March 18, 1980.

Phillip M. Klutznick,

Secretary of Commerce.

Date: March 24, 1980.

Clifford L. Alexander,

Secretary of the Army.

Appendix G—Memorandum of Agreement Between the Secretary of the Interior and the Secretary of the Army

1. *Purposes of the Agreement.* Section 404(q) of the Clean Water Act recognizes that the programs of various Federal agencies either impact or are impacted by the Section 404 permit program and the activities that program regulates. Section 404(q) Memoranda of Agreement (MOAs), therefore, should be designed to ensure the timely and constructive involvement, including consideration of the views, of Federal agencies in the Section 404 regulatory permit application process so as (1) to help protect the public interests involved; (2) to minimize, to the maximum extent practicable, duplication, needless paperwork and delays in the processing of permit applications; and (3) to assure that, to the maximum extent practicable, a decision is made on the application within 90 days of issuance of the public notice. The purpose of this agreement between the Secretary of the Army and the Secretary of the Interior, under Section 404(q), is to achieve these objectives of Section 404 of the Clean Water Act.

In particular, the parties agree that:

a. In most instances, decisions on permit applications can be made most timely if made at the lowest level of authority; therefore, the great majority of decisions should be made at this level. Accordingly, the parties will make every effort to resolve differences at the lowest possible organizational level and will encourage personal contacts for such resolution.

b. Consultations with applicants for major projects prior to formal permit application may help to resolve problems at the Army Corps of Engineers (Corps) District level, and such consultations are encouraged.

c. The opportunity for review by higher authority of a small number of permit applications having unresolved Federal agency objections will help achieve the objectives of this agreement only if (1) issues that may be raised are directly related to the statutory mandates and concerns of the Department of the Interior (DOI), and (2) review is carried out in accordance with clearly specified procedures under appropriate time constraints.

d. The U.S. Fish and Wildlife Service (FWS) has authority and responsibility for reporting DOI findings and recommendations on applications under review by other DOI bureaus. However, it is appropriate for the Corps to consult directly with other DOI bureaus to resolve specific concerns on applications.

e. For DOI Projects:

(1) As soon as practicable within the planning process for a DOI project which would need an Army permit, the appropriate DOI bureau or office shall establish and maintain interstaff communications with the Corps, other Federal and State agencies, and other interested DOI bureaus for the purposes of reducing duplication and delays.

(2) If DOI detemines that its proposed project requires and Environmental Impact Statement (EIS), the Corps and DOI shall cooperate to assure that the EIS adequately covers that portion of the work requiring an Army permit so that the Corps may rely on the DOI EIS to satisfy the National Environmental Policy Act (NEPA) requirements for processing the permit application.

(3) DOI shall make timely applications for Army permits and provide sufficient information for the Corps to process them. Each DOI bureau is responsible for applying for DA permits for its own activites.

2. *Scope and Interpretation of Agreement.* This agreement applies to the processing of Department of the Army (DA) permit applications under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act of 1899, and Section 103 of the Marine Protection, Research and Sanctuaries Act. It does not pertain to permit applications processed under Section 9 of the Rivers and Harbors Act of 1899, nor to Civil Works projects of the Corps of Engineers. As the context requires, the term "DOI" may mean the appropriate official(s) of any bureau or office within the Department. The terms "he" and "his" may also mean "she" and "her", respectively.

3. *Classification of Permits for MOA Purposes.* The permit applications encompassed by this MOA are divided into three classes, as follows:

a. *Class I:* Permit applications where an EIS has been prepared in accordance with NEPA and (1) the Corps is the lead agency for conducting the review required by NEPA, or (2) the Corps is not the lead agency but the activities subject to Corps permit authority (e.g., discharge of dredge and fill material or structures or other work in the waters of the United States) are of concern to DOI.

b. *Class II:* Permit applications for projects that:

(1) Relate to emerging policy issues, alleged violations or erroneous application of existing policy (set forth, for example, in law, regulation or executive order), or involve some other precedent-setting potential impacting on or relating to the permit program;

(2) Have substantial individual impacts; or

(3) Contribute to a cumulative impact of demonstrably substantial proportions.

In determining whether an impact is "substantial" within the meanings of subparagraphs (2) and (3) above, and thus determining whether a case is within Class II rather than Class III, the parties should consider, among other factors, the actual physical extent and quality of the area to be affected, the degree of public interest in the proposal, and the positions of other Federal and state resources agencies.

c. *Class III:* All permit applications not included in Classes I and II:

4. *General Rules for Processing and Review of Permit Applications.*

a. All reviews by higher authority will be *sequential.* If the District Engineer makes a determination on the application that is contrary to the stated position of the DOI

(FWS), the DOI (FWS) may have the application reviewed as follows:

(1) *Class I:* The comparable officials of DOI may have the application reviewed by the Division Engineer, by the Chief of Engineers, by the Assistant Secretary of the Army for Civil Works (ASA(CW)), and, finally, by the Secretary of the Army.

(2) *Class II:* The comparable officials of DOI may have the application reviewed by the Division Engineer, by the Chief of Engineers, and, finally, by the ASA(CW).

(3) *Class III:* The FWS Regional Director may have the application reviewed by the Division Engineer.

b. For all three classes of applications, DOI must document the issues it wishes to raise on review and shall update such documentation for each subsequent level of review. Such documentation shall include a description of:

(1) the issues;

(2) field level coordination;

(3) agreements or counter-proposals that have been offered;

(4) quantative and qualitative evaluations of expected cumulative or substantial impacts that could occur; and

(5) proposed resolutions of policy or other issues raised.

c. DOI is entitled to take the position at each level of the review process that an application is within Class II, rather than Class III. Even if the Corps should determine that a case is within Class III rather than Class II, a determination that can be made at any level, DOI would still have the right to have the application elevated to the next level of review until the ASA(CW) makes a final determination of that issue in deciding whether to review the application under this agreement.

d. At each level of review above the District Engineer, unless otherwise constrained by law or regulation, and subject to the rights of DOI to seek further review as provided in this agreement, the reviewing officer will have the authority to (1) decide that the permit should be issued or denied, or (2) decide only the issue that has been raised and send the application back to a level where a decision on permit issuance can be made. However, in those instances where either the Chief of Engineers or the ASA(CW) determines that a case is within Class III rather than Class II, he shall indicate the rationale for that determination, but neither of them shall be obligated to (yet, in their discretion, may) express their opinion on all the issues raised by DOI.

e. At each level of review, DOI will, within the time limits specified in paragraph 5 below, have ample opportunity for consultation. More time is allotted for field coordination in recognition of the geographic separation of many coordinating offices and the need for their reliance on postal services; correspondence at the Washington level shall be hand delivered between coordinating offices. Such consultation may be initiated by DOI or the Corps and shall be fully documented in accordance with subparagraph b above. The consultations should normally involve meetings, exchanges of written views, or both, as the parties may mutually agree is appropriate. Staff meetings are encouraged for the consultations, but at least one complete exchange of written views on issues shall document agency positions. Except in those instances where negotiations involve final decision-making, the officials named herein may be represented by staff members, provided they have been delegated sufficient authority to negotiate the issues that are the subject of such meetings.

f. DOI has the opportunity to seek review above the district level only once on issues then germane and ripe for review. For example, if the issue raised by DOI concerns an emerging policy and subsequently the MOA review process on that issue is completed and the application is sent back to the District Engineer for decision-making, it would not be permissible for DOI to contend, upon a subsequent decision too issue the permit, that demonstrably substantial impacts had been ignored. However, in all instances in which, after completion of higher level review, the case is sent back to the District Engineer for further decision-making on the application, the District Engineer shall communicate the substance of his proposed decision to the appropriate DOI official and provide an opportunity to review it. Should DOI subsequently contend that the District Engineer has misinterpreted the higher level review decision or has failed to apply it appropriately, the Army will decide whether the appeal will be processed sequentially, as specified in paragraphs 4a and 5, or brought directly to the higher Army authority which made the review decision.

5. *Specific Processing Times and Procedures.*

a. *Notices to DOI.* The Corps will send DOI bureaus and offices public notices for those categories of activities which they have stated an interest in reviewing. Request for such notices should be made in writing to the appropriate District Engineer. In the case of DOI bureaus and offices which are being provided with public notices on the basis of arrangements current in effect, those arrangements will continue unless a request for a change is made.

b. *Timely DOI Reports Required.* DOI will send reports with recommendations on the application in time to reach the Corps within the comment period specified in the public notice (normally 30 calendar days). DOI may request an extension of the comment period in writing before the expiration date. The request should be supported with adequate justification and should specify the additional review time needed. The Corps will normally grant the extension but not to allow a total comment period of more than 75 calendar days from the date of the public notice and will not therefore reopen the comment period, provided that adequate data and information has been provided in a timely manner by the applicant. The parties further understand that normally, if DOI makes no response during the comment period, as extended, it will not report on the application. The parties recognize, however, that other applicable law, including the Endangered Species Act, may require DOI to have opportunity to report further on the application in carrying out its responsibilities under such law, and nothing herein shall be construed to limit DOI's responsibilities or discretion under such law.

c. *Timely Corps decisions.* The Corps will make its decision on all applications not later than 90 calendar days after issuance of the public notice unless:

(1) precluded as a matter of law or procedures required by law, regulation, or other memoranda of agreement (see 5e below);

(2) the application must be referred to higher authority (see 5f below);

(3) the comment period is extended to more than 45 days from the date of the public notice;

(4) a timely rebuttal or resolution of objections is not received from the applicant;

(5) the processing is suspended at the request of the applicant; or

(6) information needed by the District Engineer for a decision on the application is unavailable and cannot be obtained within the 90-day period.

In such cases, the processing time limitation will be extended by the number of additional days required to satisfy or eliminate the exceptions identified in items (1) through (6) above. For example, under item (3) above, if the comment period is extended to 75 days (30 days more than the 45 days mentioned above), the Corps will, absent other exceptions, decide on the application within 120 days from the date of the public notice. For items (4), (5) and (6) above, it is understood that the District Engineer will immediately forward to the applicant any DOI request for additional information or report recommending denial or modification of the application, and shall, when he believes it appropriate, convene joint meetings with the applicant and DOI in an attempt to resolve the concerns.

d. *Applicant Initiatives.* It is further understood that where DOI objections are involved, the applicant may:

(1) resolve the objections by agreeing to recommended modifications;

(2) request continued processing despite objections, either with or without providing counter arguments;

(3) request suspension of processing to provide time either for negotiations with DOI or for preparation of counter arguments; or

(4) withdraw the application.

e. *Expediting Compliance with Applicable Laws.* Certain laws (e.g., the Clean Water Act, the Coastal Zone Management Act, the National Environmental Policy Act, the Preservation of Historical and Archaeological Data Act, the Endangered Species Act, the Wild and Scenic Rivers Act, the Marine Protection, Research and Sanctuaries Act, and the Fish and Wildlife Coordination Act) require procedures such as state or other Federal agency certifications, public hearings, environmental impact statements, special studies and testing, agency jurisdictional determinations, etc., which may prevent the Corps from being able to make its decision on certain applications within 90 days. DOI and the Corps agree to do everything possible to insure that decisions on such applications are made as quickly as possible within the framework of the applicable laws, regulations, this agreement, and other memoranda of agreement.

f. *Review Time Limitations and Officials Involved.*

(1) *The District Engineer*—If the District Engineer decides a permit should be issued and there are unresolved objections by DOI he will furnish his determination (and other relevant documents, including those requested in advance by the FWS Regional Director to the extent available) to the FWS Regional Director who then has 20 working days from the date of the District Engineer's letter to request in writing a review by the Division Engineer. The request from the Regional Director to the Division Engineer shall include the documentation called for by paragraph 4b above. The District Engineer will forward the application report (case) to the Division Engineer within 20 working days from the date of the Regional Director's request for review.

(2) *The Division Engineer*—The Division Engineer will review the record and make his own public interest determination on the application within 30 working days of the date of the District Engineer's report. During this period, he will consult with the FWS Regional Director in an attempt to develop a mutually acceptable resolution of the case. If the Division Engineer concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Regional Director in writing of his determination on the application, including, where appropriate, his position on whether the application is within Class II or Class III. For Class I and II applications, DOI has 20 working days from the date of such notification to request in writing a review by the Chief of Engineers. The request for review shall be made to the Chief of Engineers by the Director of the U.S. Fish and Wildlife Service and shall include the updated documentation called for by paragraph 4b above. The Division Engineer will forward the case within 15 working days from the date of the Director's request.

(3) *The Chief of Engineers*—The Chief of Engineers will immediately review the record and make his own public interest determination on the application (or decide issues or make Class determinations as provided for in paragraph 4d) within 30 working days from the date of the Division Engineer's report. During this period, the Chief of Engineers will consult with the Director of the U.S. Fish and Wildlife Service, in an attempt to develop a mutually acceptable resolution of the case. If the Chief of Engineers concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Director in writing of his determination of the application including, where appropriate, his determination on its classification. DOI has 15 working days from the date of such notification to request a review of the case by the ASA(CW). The request for review must be made to the ASA(CW) by the Assistant Secretary for Fish and Wildlife and Parks (FWP) and will include the updated documentation called for by paragraph 4b above. The Chief of Engineers will forward the case within 15 working days from the date of the Assistant Secretary's (FWP) request to the ASA(CW).

(4) *The Assistant Secretary of the Army for Civil Works*—The ASA(CW) will review the record and make his own public interest determination on the application, or decide only the specific issues raised within 30 working days from the date of the Chief of Engineers report, unless he decides that a case if within Class III as provided in paragraph 4d. During this period, the ASA(CW) will consult with the Assistant Secretary (FWP) in an attempt to develop a mutually acceptable resolution of the case. If the ASA(CW) concludes that further negotiations will not lead to a mutually acceptable resolution of the case, he will immediately notify the Assistant Secretary (FWP) in writing of his determination on the application. For Class I applications, DOI has 15 working days from the date of such notification to request a review of the case by the Secretary of the Army. The request for review must be made to the Secretary of the Army by the Secretary of the Interior and will include the updated documentation called for by paragraph 4b above. The ASA(CW) will forward the case to the Secretary of the Army within 15 working days from the date of the Secretary of the Interior's request.

(5) The Secretary of the Army, in consultation with the Secretary of the Interior, will make a final decision on the application within 45 working days from the date of the ASA(CW)'s report.

(6) Notifications of Corps positions and requests for higher authority reviews will be valid only if signed by the indicated official or an official authorized to act in his absence, except that the Director of Civil Works may routinely act for the Chief of Engineers.

(7) At any step during the procedures prescribed above, the parties may mutually conclude that concerns of DOI have been either fully addressed or that an impasse has been reached but referral of the application to the next higher echelon is unwarranted before a final decision can be made. The absence of a response from DOI during the period allotted DOI to request a referral will indicate that DOI does not desire further referral, but Army officials will contact DOI at the end of such period to verify that a review request was, in fact, not made.

(8) Some permit cases may involve a record of such length and/or issues of such complexity that Army and/or DOI review decisions could not reasonably be anticipated within the time constraints imposed above. This is especially true if additional studies or research, possibly requiring public comment, are essential to the decision at hand. In this event, both agencies will consult and imposed new deadlines for review consistent with the objectives of this MOA.

6. *General Permits.* The Corps has found general permits, issued on both regional and nationwide bases, to be the most effective way, where appropriate, for reducing duplication, paperwork, and delays. DOI and the Corps pledge to cooperate fully to assure the successful continuation of this vital program. It is the intent of the parties to assure enforcement of their terms and conditions. DOI will assist the Corps in its efforts to remain aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

7. *Joint Processing of Permit Applications.* To further expedite Federal decisions on activities requiring Department of the Army permits, District Engineers and appropriate DOI officials, responsible for administering other Federal permit programs, are encouraged to enter into arrangements to process and evaluate jointly Army and DOI permit applications related to the same activity. This may include the issuance of joint public notices, the conduct of joint public hearings, and the joint review and analysis of information and comments developed in response to the public notice, public hearing, environmental assessment and the EIS (if any), and other laws with regard to which DOI has specific responsibilities.

8. *Effective Date and Duration.* This agreement is effective immediately upon its signing by both the Secretary of the Army and the Secretary of the Interior and applies to all permit applications in process at that time. After 30 months, the parties will review and revise the agreement as is appropriate. If, however, such revisions are not agreed upon within six months after the 30-month period, then either party may terminate this agreement at the end of such six-month period, provided that all pending cases for which review has been requested under this MOA shall continue to be bound by this MOA, unless the parties mutually agree otherwise. It is further recognized that revisions may become necessary at any time if conflicts result from new law, executive order, or deficiencies not now apparent in this agreement. In such event, the parties will consult to attempt to resolve the issues and amend this MOA accordingly.

9. The Memorandum of Understanding between the Secretary of the Interior and the Secretary of the Army on permit processing dated July 13, 1967, is hereby terminated.

Date: February 28, 1980.

Cecil D. Andrus,

Secretary of the Interior.

Date: March 24, 1980.

Clifford A. Alexander, Jr.

Secretary of the Army.

Appendix H—Memorandum of Agreement Between the Secretary of Transportation and the Secretary of the Army on Permit Processing

1. *Purpose and Scope.* a. This agreement between the Secretary of Transportation and the Secretary of the Army is made under Section 404(q) of the Clean Water Act which reads as follows:

(q) * * * [t]he Secretary [of the Army] shall enter into agreements with the Administrator [of the Environmental Protection Agency], the Secretaries of the Departments of Agriculture, Commerce, Interior, and Transportation, and the heads of other appropriate Federal agencies to minimize, to the maximum extent practicable, duplication, needless paperwork, and delays in the issuance of permits under this section. Such agreements shall be developed to assure that, to the maximum extent practicable, a decision with respect to an application for a permit under subsection (a) of this section will be made not later than the ninetieth day after the date the notice for such application is published under subsection (a) of this section.

b. Since the reduction of duplication, paperwork, and delays is a goal in all Department of the Army (DA) regulatory programs, this agreement is also applicable to other DA regulatory authorities, particularly Section 10 of the River and Harbor Act of 1899 (33 U.S.C. 403).

c. The procedures set forth in this Memorandum of Agreement will be utilized to strengthen the early coordination between DOT and the Corps prior to and during development of projects and the environmental documentation.

2. *Definitions.* The definitions contained in the Council on Environmental Quality Regulations (40 CFR 1508) are applicable to this Memorandum of Agreement.

a. "Corps" means the Corps of Engineers or any official of the Corps of Engineers acting within his or her regulatory authority on behalf of the Secretary of the Army.

b. "DOT" means the Department of Transportation or any official of any element within the Department of Transportation acting within his or her authority in the application for a DA permit.

c. "DOT Action" means an undertaking authorized, licensed, funded or carried out by the DOT which may require a DA permit, to the extent that is has not been exempted by law from such a requirement or covered in a general permit.

d. "Applicant" means the DOT, state or local agency or private party responsible for initiation of a DOT action and making application for a DA permit.

e. "Environmental documentation" means any document prepared by either DOT or the Corps to comply with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and the Council on Environmental Quality's NEPA implementing regulations.

3. *Lead Agency for Environmental Processes.* a. When a DOT action requires processing by both the Corps and DOT, DOT will ordinarily be the lead agency for the environmental documentation, and the procedures set forth in paragraphs 3b, 3c, and 3d shall apply. For the following exceptions, the lead agency and the procedures to be followed will be agreed upon on a case-by-case basis:

(1) Unusual cases, such as a minor DOT action that is a small part of a large activity requiring a DA permit.

(2) An action requiring action by both the Corps and the Coast Guard other than one involving statutes governing the construction, alteration, or removal of bridges over navigable waters of the United States.

b. As soon as practicable within the planning process of a DOT action involving the need for a DA permit, DOT or the applicant will establish and maintain communication with the Corps for the purposes of reducing duplication and delays. The intent is that the evaluation of impacts upon the human environment for all reasonable alternatives will satisfy the requirements of both DOT and the Corps, allow the Corps to accept DOT resolution of issues raised during the environmental processing, and minimize further review of such issues during the permit process.

c. For DOT actions requiring a DA permit, DOT will be responsible for environmental documentation in accordance with the applicable DOT Orders and paragraph 3a above. These documents will demonstrate, where applicable, consideration of and compliance with the substantive requirements of Federal environmental statutes and executive orders including but not limited to:

National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*)
Executive Order 11988 (Floodplain Management)
Executive Order 11990 (Protection of Wetlands)
Fish and Wildlife Coordination Act (16 U.S.C. 661–666c)
Endangered Species Act (16 U.S.C. 1531 *et seq.*)
National Historic Preservation Act (16 U.S.C. 470 *et seq.*)
Archeological and Historic Preservation Act of 1974 (P.L. 93–291)
Wild and Scenic Rivers Act (16 U.S.C. 1271–1287)
Coastal Zone Management (16 U.S.C. 1451–1464)

d. As the lead agency, the DOT will.

(1) Consult with the Corps during the evaluation as to whether a proposed DOT action is a major action significantly affecting the quality of the human environment or is categorically excluded.

(2) When DOT determines that a project requires either an EIS or an environmental assessment, solicit Corps' participation as a cooperating agency to insure that the environmental documentation adequately covers the portion of the work requiring a DA permit.

(3) Provide a copy of the draft EIS or environmental assessment to the Corps for review and comments.

(4) As provided by CEQ regulations and DOT procedures, attempt to resolve environmental issues raised in comments on the draft EIS, prior to approval of the final EIS.

(5) Provide the Corps a copy of the final EIS or environmental assessment at the time the document is prepared.

4. *Cooperating Agency.* When a DOT action requires processing by both the Corps and DOT, and DOT determines that the project requires either an EIS or an environmental assessment, the Corps will function as a cooperating agency to insure consideration of and compliance with the substantive requirements of the Clean Water Act (33 U.S.C. 1251–1376) applicable to the Corps' regulatory program. The DOT will seek to resolve areas of disagreement with the Corps prior to DOT action on the environmental documentation.

5. *Public Hearings.* The DOT and the Corps will make every reasonable effort, within controlling regulations, to avoid duplicative public hearings. Whenever possible, joint hearings will be held.

6. *DA Permit.* a. The Corps' public interest review will be limited to the geographic vicinity of the specific activity requiring a DA permit. The Corps will normally adopt the DOT environmental processing and documentation, pursuant to Section 1506.3 of the CEQ regulations, and rely on this in its decision document on the permit application. It is understood that DOT and the Corps may occasionally reach different conclusions regarding the environmental documentation. In such cases, the Corps may find it necessary to prepare additional environmental documentation.

b. The Corps agrees, when requested by DOT or the applicant, to begin its public interest review in advance of receipt of an application, possibly including the issuance of a public notice either by the Corps or jointly with DOT, based on preliminary information available at the draft EIS, environmental assessment or categorical exclusion stage. The DOT or the applicant, in selecting a plan requiring an application for a DA permit, will consider all reasonable alternatives based on its own public involvement procedures, as well as comments received by and from the Corps as a result of its review.

c. At the appropriate time, in preparing the final environmental documentation, DOT will make or cause to be made application for the DA permit. Normally, this will be done as soon as a preferred action is identified and sufficient information can be developed for the Corps to process the application. The Corps agrees that the location of the proposed DOT action with approximate quantities; (e.g., of fill, dredged material, etc.) and reasonable estimates of construction grades will be sufficient to initiate permit processing.

d. Unless precluded as a matter of law or procedures required by law, the Corps will issue the public notice not later than fifteen days after receipt of all information required to complete the application for the preferred action.

e. Substantive comments, relative to the issues considered in the Corps' public interest review, received in response to a permit application public notice, will be furnished to DOT. If there are objections to permit issuance, DOT or the applicant may take one of the following actions:

(1) Resolve the objections by agreeing to recommended modifications;

(2) Request continued processing despite objections, with or without providing counterarguments;

(3) Request suspension of processing to provide time either for negotiations with objecting parties or for preparation of a response; or

(4) Withdraw the application.

The Corps may establish appropriate time limits for DOT or applicant response.

f. The Corps will make every reasonable effort to minimize the use of special conditions in permits issued for DOT actions and will consult with DOT or the applicant in their preparation. Commitments identified in environmental documents and enforceable by DOT upon an applicant will not normally be repeated in the DA permit. The Corps will normally not include any special conditions that would duplicate Federal, state or local laws or programs that accomplish the same purpose.

g. To the maximum extent practicable, the Corps will take action on a permit application not later than ninety days after public notice is issued.

h. The duration of the DA permit will be commensurate with the expected completion date of the DOT action. The Corps will consult with DOT or the applicant in establishing starting and completion dates for work covered by the permit.

7. *Consistent Administration of Corps' Regulatory Functions.* The Corps recognizes its responsibility to provide consistent administration of its permit programs throughout the country.

8. *General Permits.* The Corps has found the practice of issuing general permits on both a regional and nationwide basis to be an effective way to reduce duplication, paperwork, and delays. The DOT and the Corps pledge to do everything possible to insure the successful continuation of this vital program. The DOT will assist the Corps in remaining aware of potential cumulative impacts that may occur as a result of construction activities covered by general permits.

9. *Coast Guard Bridge Permits.* This agreement does not contravene the U.S. Coast Guard/Chief of Engineers' Memorandum of Agreement dated April 18, 1973.

10. *Effective Dates and Modifications.* This agreement shall become effective on the last signature date below, and remain in effect for three years, at which time it shall be the subject of renegotiation or extension upon mutual agreement. If either party finds within this period that its terms needs to be modified, the other party shall be notified in writing of the specific change(s) desired, with proposed language, and the reason(s) therefor. The proposed change(s) shall become effective within sixty days, unless the other party indicates in writing a desire to discuss the proposed change(s).

Dated: March 19, 1980.

Neil Goldschmidt,

Secretary of Transportation.

Dated: March 24, 1980.

Clifford L. Alexander, Jr.,

Secretary of the Army.

7. Part 326 is revised in its entirety.

PART 326—ENFORCEMENT

Sec.

Authority: 33 U.S.C. 401 et seq.; 33 U.S.C. 1344; 33 U.S.C. 1413.

§ 326.1 Purpose.

This regulation prescribes the policy, practice, and procedures to be followed by the Corps of Engineers in connection with activities requiring Department of the Army permits that are performed without prior authorization.

§ 326.2 Discovery of unauthorized activity.

When the district engineer becomes aware of any unauthorized activity, he shall immediately issue an order prohibiting further work to all persons responsible for and/or involved in the performance of the activity and may order interim protective work.

§ 326.3 Investigation.

(a) *Initial investigation.* Immediately upon discovery of an unauthorized activity, the district engineer shall commence an investigation to ascertain the facts surrounding the activity. In making this investigation the district engineer may solicit the views of the Regional Administrator of the Environmental Protection Agency, the Regional Director of the U.S. Fish and Wildlife Service, and the Regional Director of the National Marine Fisheries Service, and other Federal, State, and local agencies, as appropriate. He shall also request the persons involved in the unauthorized activity to provide appropriate information on the activity to assist him in his evaluation and in recommending the course of action to be taken.

(b) *Remedial work.* (1) The district engineer shall determine whether as a result of the unauthorized activity life, property or important public resources are in serious jeopardy which would require expeditious measures for protection of those resources. Such measures may range from minor modification of the existing work to complete restoration of the area involved. Important public resources are identified in 33 CFR 320.4. If the district engineer determines that immediate remedial work is required, he shall issue an appropriate order describing the work, conditions and time limits required for protection of the resource.

(2) Restoration by the responsible party on his own initiative shall be allowed if he volunteers to restore and legal action is not otherwise necessary. No authorization will be required when complete and satisfactory restoration is accomplished.

(c) *Acceptance of after-the-fact application.* The district engineer shall accept an application for an after-the-fact permit for all unauthorized activities unless:

(1) Civil action to enforce an order issued pursuant to § 326.2 is required;

(2) Criminal action is appropriate (see § 326.4(a)(1) below); or

(3) Where life, property or important public resources are subject to irretrievable loss, and any remedial work which is ordered pursuant to paragraph (b) of this section has not been completed.

In the above situations, the district engineer may accept an after-the-fact application provided he obtains approval of the next higher authority.

§ 326.4 Legal action.

(a) *Criminal vs. civil action.* District engineers shall be guided by the following policies in determining whether an unauthorized activity requires appropriate legal action:

(1) *Criminal action.* Criminal action is considered appropriate when the facts surrounding an unauthorized activity reveal the necessity for punitive action and/or when deterrence of future unauthorized activities in the area is considered essential to the establishment or maintenance of a viable permit program.

(2) *Civil action.* Civil action is considered appropriate when the evaluation of the unauthorized activity reveals that (i) restoration is in the public interest and attempts to secure voluntary restoration have failed, (ii) the unauthorized activity would be in the public interest if altered or modified but attempts to secure voluntary alteration or modification have failed such that a judicial order is necessary, or (iii) a civil penalty under Section 309 of the Clean Water Act is warranted.

(b) *Preparation of case.* If the district engineer determines that legal action is appropriate, he shall prepare a litigation report which shall contain an analysis of the data and information obtained during his investigation and a recommendation of appropriate civil and criminal action. In those cases where the analysis of the facts

developed during his investigation and/or the after-the-fact application evaluation leads to the preliminary conclusion that removal of the unauthorized activity is in the public interest, the district engineer shall also recommend restoration of the area to its original or comparable condition.

(c) *Referral to local U.S. Attorney.* Except as provided in paragraph (d), of this section district engineers are authorized to refer the following cases directly to the local U.S. Attorney. Information copies of all letters of referral shall be forwarded to the Chief of Engineers, ATTN: DAEN–CCK, for transmittal to the Chief, Pollution Control Section, Land and Natural Resources Division, Department of Justice, Washington, D.C. 20530.

(1) Unauthorized structures or work in or affecting navigable waters of the United States that fall exclusively within the purview of Section 10 of the River and Harbor Act of 1899 (see 33 CFR Part 322) for which a criminal fine or penalty under Section 12 of that Act (33 U.S.C. 406) is considered appropriate.

(2) Civil action involving small unauthorized structures, such as piers, which the district engineer determines are (i) not in the public interest and therefore must be removed, or (ii) the unauthorized activity would be in the public interest if altered or modified but attempts to secure voluntary alteration or modification have failed such that a judicial order is necessary.

(3) Violations of Section 301 of the Clean Water Act involving the unauthorized discharge of dredged or fill material into the waters of the United States where the district engineer determines, with the concurrence of the Regional Administrator, that civil and/or criminal action pursuant to Section 309 of the Clean Water Act is appropriate.

(4) Cases for which a temporary restraining order and/or preliminary injunction is appropriate following noncompliance with a cease and desist order.

(d) *Referral to Office, Chief of Engineers.* District engineers shall prepare and forward a litigation report to the Office, Chief of Engineers, ATTN: DAEN–CCK, for cases not identified in paragraph (c) of this section in which civil and/or criminal action is considered appropriate, including cases involving:

(1) Significant questions of law or fact;

(2) Discharges of dredged or fill material into waters of the United States that are not interstate waters or navigable waters of the United States, or part of a surface tributary system to these waters;

(3) Recommendations for substantial or complete restoration;

(4) Violations of Section 9 of the River and Harbor Act of 1899; and

(5) Violations of the Marine Protection, Research and Sanctuaries Act of 1972.

§ 326.5 Processing after-the-fact applications.

(a) Processing and evaluation of applications for after-the-fact authorizations for activities undertaken without the required Department of the Army permits will in all other respects follow the standard policies and procedures of 33 CFR Parts 320–325. Thus, authorization may still be denied in accordance with the policies and procedures of those regulations.

(b) Where after-the-fact authorization in accordance with this paragraph is determined to be in the public interest, the standard permit form for the activity will be used, omitting inappropriate conditions, and including whatever special conditions the district engineer may deem appropriate to mitigate or prevent undesirable effects which may have occurred or might occur.

(c) Where after-the-fact authorization is not determined to be in the public interest, the notification of the denial of the permit will prescribe any corrective action to be taken in connection with the work already accomplished, including restoration of those areas subject to denial, and establish a reasonable period of time for the applicant to complete such actions. The district engineer, after denial of the permit, will again consider whether civil and/or criminal action is appropriate in accordance with § 326.4.

(d) If the applicant declines to accept the proposed permit conditions, or fails to take corrective action prescribed in the notification of denial, or if the district engineer determines, after denying the permit application, that legal action is appropriate, the matter will be referred to the Chief of Engineers, ATTN: DAEN–CCK, with recommendations for appropriate action.

8. Part 327 is revised in its entirety.

PART 327—PUBLIC HEARINGS

Sec.

Authority: 33 U.S.C. 1344; 33 U.S.C. 1413

§ 327.1 Purpose.

This regulation prescribes the policy, practice and procedures to be followed by the U.S. Army Corps of Engineers in the conduct of public hearings conducted in the evaluation of a proposed Department of the Army permit action or Federal project as defined in § 327.3 below including those held pursuant to Section 404 of the Clean Water Act (33 U.S.C. 1344) and Section 103 of the Marine Protection, Research and Sanctuaries Act (MPRSA), as amended (33 U.S.C. 1413).

§ 327.2 Applicability.

This regulation is applicable to all divisions and districts responsible for the conduct of public hearings.

§ 327.3 Definitions.

(a) Public hearing means a public proceeding conducted for the purpose of acquiring information or evidence which will be considered in evaluating a proposed Department of the Army permit action, or Federal project, and which affords to the public the opportunity to present their views, opinions, and information on such permit actions or Federal projects.

(b) Permit action, as used herein means the review of an application for a permit pursuant to Sections 9 or 10 of the River and Harbor Act of 1899, Section 404 of the Clean Water Act, or Section 103 of the MPRSA, as amended, or the modification or revocation of any Department of the Army permit (see 33 CFR 325.7).

(c) Federal project means a Corps of Engineers project (work or activity of any nature for any purpose which is to be performed by the Chief of Engineers pursuant to Congressional authorizations) involving the discharge of dredged of fill material into waters of the United States of the transportation of dredged material for the purpose of dumping it in ocean waters subject to Section 404 of the Clean Water Act, or Section 103 of the MPRSA. See 33 CFR 209.145. (This regulation supersedes all references to public meetings in 33 CFR 209.145).

§ 327.4 General policies.

(a) A public hearing will be held in connection with the consideration of a Department of the Army permit application, or a Federal project whenever a public hearing would assist in making a decision on such permit application or Federal project. In

addition, a public hearing may be held when it is proposed to modify or revoke a permit. (See 33 CFR 325.7).

(b) Unless the public notice specifies that a public hearing will be held, any person may request, in writing, within the comment period specified in the public notice on a Department of the Army permit application or on a Federal project, that a public hearing be held to consider the material matters in issue in the permit application or Federal project. Upon receipt of any such request, stating with particularity the reasons for holding a public hearing, the district engineer shall promptly set a time and place for the public hearing, and give due notice thereof, as prescribed in § 327.11 below. Requests for a public hearing under this paragraph shall be granted, unless the district engineer determines that the issues raised are insubstantial or there is otherwise no valid interest to be served by a hearing. The district engineer will make such a determination in writing, and communicate his reasons therefor to all requesting parties.

(c) In case of doubt, a public hearing shall be held. HQDA has the discretionary power to require hearings in any case.

(d) In fixing the time and place for a hearing, the convenience and necessity of the interested public will be duly considered.

§ 327.5 Presiding officer.

(a) The district engineer, in whose district a matter arises, shall normally serve as the Presiding Officer. When the district engineer is unable to serve, he may designate the deputy district engineer as such Presiding Officer. In any case, he may request the division engineer to designate another Presiding Officer. In cases of unusual interest, the Chief of Engineers reserves the power to appoint such person as he deems appropriate to serve as the Presiding Officer.

(b) The Presiding Officer shall include in the administrative record of the permit action the request or requests for the hearing and any data or material submitted in justification thereof, materials submitted in opposition to the proposed action, the hearing transcript, and such other material as may be relevant or pertinent to the subject matter of the hearing. The administrative record shall be available for public inspection with the exception of material exempt from disclosure under the Freedom of Information Act.

§ 327.6 Legal adviser.

At each public hearing, the District Counsel or his designee may, at the discretion of the District Counsel, serve as legal adviser to the presiding officer.

§ 327.7 Representation.

At the public hearing, any person may appear on his own behalf, and may be represented by counsel, or by other representatives.

§ 327.8 Conduct of hearings.

(a) Hearings shall be conducted by the Presiding Officer in any orderly but expeditious manner. Any person shall be permitted to submit oral or written statements concerning the subject matter of the hearing, to call witnesses who may present oral statements, and to present recommendations as to an appropriate decision. Any person may present written statements for the hearing record prior to the time the hearing record is closed to public submissions, and may present proposed findings and recommendations. The Presiding Officer shall afford participants an opportunity for rebuttal.

(b) The Presiding Officer shall have discretion to establish reasonable limits upon the time allowed for statements of witnesses, for arguments of parties or their counsel or representatives, and upon the number of rebuttals.

(c) Cross-examination of witnesses shall not be permitted.

(d) All public hearings shall be reported verbatim. Copies of the transcripts of proceedings may be purchased by any person from the Corps of Engineers or the reporter of such hearing. A copy will be available for public inspection at the office of the appropriate district engineer.

(e) All written statements, charts, tabulations, and similar data offered in evidence at the hearing shall, subject to exclusion by the Presiding Officer for reasons of redundancy, be received in evidence and shall constitute a part of the hearing record.

(f) At any hearing, the Presiding Officer shall make an opening statement, outlining the purpose of the hearing and prescribing the general procedures to be followed. The Presiding Officer shall afford participants an opportunity to respond to his opening statement.

(g) The Presiding Officer shall allow a period of 10 days after the close of the public hearing for submission of written comments. After such time has expired, unless such period is extended by the Presiding Officer or the Chief of Engineers for good cause, the hearing record shall be closed to additional public written comments.

(h) In appropriate cases, the district engineer may participate in joint public hearings with other Federal or State agencies, provided the procedures of those hearings meet the requirements of this regulation. In those cases in which the other Federal or State agency allow a cross-examination in its public hearing, the district engineer may still participate in the joint public hearing but shall not require cross examination as a part of his participation.

(i) The procedures in paragraphs (f) and (g) of this section may be waived by the Presiding Officer in appropriate cases.

§ 327.9 Filing of transcript of the public hearing.

Where the Presiding Officer is the initial action authority, the transcript of the public hearing, together with all evidence introduced at the public hearing, shall be made a part of the administrative record of the permit action or Federal project. The initial action authority shall fully consider the matters discussed at the public hearing in arriving at his initial decision or recommendation and shall address, in his decision or recommendation, all substantial and valid issues presented at the hearing. Where a person other than the initial action authority serves as Presiding Officer, such person shall forward the transcript of the public hearing and all evidence received in connection therewith to the initial action authority together with a report summarizing the issues covered at the hearing. The report of the Presiding Officer and the transcript of the public hearing and evidence submitted there shall in such cases be fully considered by the initial action authority in making his decision or recommendation to higher authority as to such permit action or Federal project.

§ 327.10 Powers of the presiding officer.

Presiding Officers shall have the following powers.

(a) To regulate the course of hearing including the order of all sessions and the scheduling thereof, after any initial session, and the recessing, reconvening, and adjournment thereof; and

(b) To take any other action necessary or appropriate to the discharge of the duties vested in them, consistent with the statutory or other authority under which the Chief of Engineers functions, and with the policies and directives of the Chief of Engineers and the Secretary of the Army.

§ 327.11 Public notice.

(a) Public notice shall be given of any public hearing to be held pursuant to this regulation. Such notice should normally provide for a period of not less than 30 days following the date of public

notice during which time interested parties may prepare themselves for the hearing. Notice shall also be given to all Federal agencies affected by the proposed action, and to State and local agencies having an interest in the subject matter of the hearing. Notice shall be sent to all persons requesting a hearing and shall be posted in appropriate government buildings and published in newspapers of general circulation.

(b) The notice shall contain time, place, and nature of hearing; the legal authority and jurisdiction under which the hearing is held; and location of and availability of the draft Environmental Impact Statement or Environmental Assessment.

PART 328—HARBOR LINES [REVOKED]

Part 328 is revoked.

PART 329—DEFINITION OF NAVIGABLE WATERS OF THE UNITED STATES

§ 329.12 [Amended]

In Part 329, § 329.12 (a)(2) is amended by deleting the second sentence which reads "However, on the Pacific Coast, the line reached by the mean of the higher high waters is used."

New Part 330 is added as follows:

PART 330—NATIONWIDE PERMITS

Sec.

Authority: 33 U.S.C. 403; 33 U.S.C. 1344.

§ 330.1 General.

The purpose of this part of the regulations is to describe the Department of the Army's nationwide permit program and to list all current nationwide permits which have been issued by publication herein. A nationwide permit is a form of general permit which authorizes a category of activities throughout the nation. General permits issued by District Engineers on a regional basis are not lised in this part; copies of such can be obtained from the appropriate District Engineer. The two types of general permits are referred to as "nationwide permits" and "regional permits." Regional permits are usually more restrictive than nationwide permits and may require reporting before and after the authorized activity occurs. Regional permits are processed pursuant to 33 CFR Part 325. Nationwide permits are designed to allow the work to occur with little, if any, delay or paperwork. However, the nationwide permits are valid only if the conditions applicable to the nationwide permits are met. Just because a condition cannot be met does not necessarily mean the activity cannot be authorized but rather that the activity will have to be authorized by an individual or regional permit. Additionally, the Chief of Engineers has the discretion, under situations and procedures described herein, to cancel the nationwide permit coverage and require an individual or regional permit. The nationwide permits are issued to satisfy the requirements of both Section 10 of the River and Harbor Act of 1899 and Section 404 of the Clean Water Act unless otherwise stated. These nationwide permits apply only to Department of the Army regulatory programs (other Federal agency, state and local authorizations may be required for the activity).

§ 330.2 Definitions.

The definitions of 33 CFR Parts 321–329 are applicable to the terms used in this part.

§ 330.3 Nationwide permits for activities occurring before certain dates.

The following activities are hereby permitted:

(a) Discharges of dredged or fill material in waters of the United States lying beyond the limits of navigable waters of the United States that occured before the phase-in dates beginning July 25, 1975, for Section 404 jurisdiction over *all* waters of the United States. These phase-in dates may be found in the July 19, 1977, publication of 33 CFR Part 323 (42 FR 37122). The last phase of the jurisdictional expansion took effect on July 1, 1977.

(b) Structures or work completed before 18 December 1968 or in waterbodies over which the District Engineer was not asserting jurisdiction at the time the activity occurred provided, in both instances, there is no interference with navigation.

§ 330.4 Nationwide permits for discharges into certain waters.

(a) *Authorized discharges.* Discharges of dredge or fill material into the following waters of the United States are hereby permitted provided the conditions listed in paragraph (b) of this section are met:

(1) Non-tidal rivers, streams and their lakes and impoundments, including adjacent wetlands, that are located above the headwaters.

(2) Other non-tidal waters of the United States (see 33 CFR 323.2(a)(3)) that are not part of a surface tributary system to interstate waters or navigable waters of the United States.

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That the discharge will not be located in the proximity of a public water supply intake;

(2) That the discharge will not destroy a threatened or endangered species as identified under the Endangered Species Act, or destroy or adversely modify the critical habitat of such species;

(3) That the discharge will consist of suitable material free from toxic pollutants in toxic amounts;

(4) That the fill created by the discharge will be properly maintained to prevent erosion and other non-point sources of pollution;

(5) That the discharge will not occur in a component of the National Wild and Scenic River System.

§ 330.5 Nationwide permits for specific activities.

(a) *Authorized activities.* The following activities are hereby permitted provided the conditions specified in this paragraph and listed in paragraph (b) of this section are met:

(1) The placement of aids to navigation and regulatory markers which are approved by and installed in accordance with the requirements of the US Coast Guard (33 CFR Part 66, Subchapter C).

(2) Structures constructed in artificial canals within principally residential developments where the connection of the canal to a navigable water of the United States has been previously authorized (see 33 CFR 322.4(g)).

(3) The repair, rehabilitation, or replacement of any previously authorized, currently serviceable, structure or of any currently serviceable structure constructed prior to the requirement for authorization; provided such repair, rehabilitation, or replacement does not result in a deviation from the plans of the original structure, and further provided that the structure to be maintained has not been put to uses differing from uses specified for it in any permit authorizing its original construction.

(4) Fish and wildlife harvesting devices and activities such as pound nets, crab traps, eel pots, lobster traps, duck blinds, clam and oyster digging.

(5) Staff gages, tide gages, water recording devices, water quality testing and improvement devices, and similar scientific structures.

(6) Survey activities including core sampling, seismic exploratory operations, and plugging of seismic shot holes and other exploratory-type bore holes.

(7) Outfall structures and associated intake structures [1] where the effluent from that outfall has been permitted under the National Pollutant Discharge Elimination System program (Section 402 of the Clean Water Act) (see 40 CFR Part 122) provided that the individual and cumulative adverse environmental effects of the structure itself are minimal.

(8) Structures for the exploration, production, and transport of oil, gas, and minerals on the outer continental shelf within areas leased for such purposes by the Department of Interior, Bureau of Land Management, provided those structures are not placed within the limits of any designated shipping safety fairway or traffic separation scheme (where such limits have not been designated or where changes are anticipated, District Engineers will consider recommending the discretionary authority provided by § 330.7).

(9) Structures placed within anchorage or fleeting areas to facilitate moorage of vessels where such areas have been established by the US Coast Guard.

(10) Non-commercial, single-boat, mooring buoys.

(11) Temporary buoys and markers placed for recreational use such as water skiing and boat racing provided that the buoy or marker is removed within six months of its installation.

(12) Discharge of material for backfill or bedding for utility lines including outfall and intake structures provided there is no change in preconstruction bottom contours (excess material must be removed to an upland disposal area). A "utility line" is defined as any pipe or pipeline for the transportation of any gaseous, liquid, liquifiable, or slurry substance, for any purpose, and any cable, line, or wire for the transmission for any purpose of electrical energy, telephone and telegraph messges, and radio and television communication. (The utility line and outfall and intake structures will require a Section 10 permit if in navigable waters of the United States.) (See 33 CFR 322. See also nationwide permit (7) above.)

[1] Intake structures per se are not included—only those directly associated with an outfall structure covered by this nationwide permit.

(13) Bank stabilization activities provided:

(i) The bank stabilization activity is less than 500 feet in length;

(ii) The activity is necessary for erosion prevention;

(iii) The activity is limited to less than an averagy of one cubic yard per running foot placed along the bank within waters of the United States;

(iv) No material is placed in excess of the minimum needed for erosion protection;

(v) No material is placed in any wetland area;

(vi) No material is placed in any location or in any manner so as to impair surface water flow into or out of any wetland area; and

(vii) Only clean material free of waste metal products, organic materials, unsightly debris, etc. is used.

(14) Minor road crossing fills including all attendant features both temporary and permanent that are part of a single and complete project for crossing of a non-tidal waterbody, provided that the crossing is culverted or bridged to prevent the restriction of expected high flows [2] and provided further that discharges into any wetlands adjacent to the waterbody do not extend beyond 100 feet on either side of the ordinary high water mark of that waterbody. A "minor road crossing fill" is defined as a crossing that involves the discharges of less than 200 cubic yards of fill material below the plane of ordinary high water. The crossing will require a permit from the US Coast Guard if located in navigable waters of the United States (see 33 USC 301). Some road fills may be eligible for an exemption from the need for a Section 404 permit altogether (see 33 CFR 323.4).

(15) Fill placed incidental to the construction of bridges across navigable waters of the United States including cofferdams, abutments, foundation seals, piers, and temporary construction and access fills provided such fill has been authorized by the US Coast Guard under Section 9 of the River and Harbor Act of 1899 as part of the bridge permit. Causeways and approach fills are not included in this nationwide permit and will require an individual or regional Section 404 permit.

(16) Return water [3] from a contained dredged material disposal area provided the State has issued a certification under Section 401 of the Clean Water Act or has waived its right to do so (see 33 CFR 325.2(b)(1)). The dredging itself requires a Section 10 permit if located in navigable waters of the United States.

(17) Fills associated with small hydropower projects at existing reservoirs where the project which includes the fill is licensed by the Department of Energy under the Federal Power Act of 1920, as amended; has a total generating capacity of not more than 1500 kw (2,000 horsepower); qualifies for the short-form licensing procedures of the Department of Energy (see 18 CFR 4.61); and the individual and cumulative adverse effects on the environment are minimal.

(18) Discharges of dredged or fill material into waters of the United States that do not exceed five cubic yards as part of a single and complete project provided no material is placed in wetlands.[4]

(19) Dredging of no more than five cubic yards from navigable waters of the United States as part of a single and complete project.[4]

(20) Structures, work and discharges for the containment and cleanup of oil and hazardous substances which are subject to the National Oil and Hazardous Substances Pollution Contingency Plan provided the Regional Response Team which is activated under the Plan concurs with the proposed containment and cleanup action.

(21) Structures, work, and discharges associated with surface coal mining activities provided they are authorized by the Department of the Interior, Office of Surface Mines, or by states with approved programs under Title V of the Surface Mining Control and Reclamation Act of 1977; the appropriate District Engineer is given the opportunity to review the Title V permit application and all relevant Office of Surface Mines or State (as the case may be) documentation prior to any decision on that application; and the District Engineer makes a determination that the individual and cumulative adverse effects on the environment from such structures, work, or discharges are minimal.

(22) Minor work or temporary structures required for the removal of

[2] District Engineers are authorized, where regional conditions indicate the need, to define the term "expected high flows" for the purpose of establishing applicability of this nationwide permit.

[3] The return water or runoff from a contained disposal area is administratively defined as a discharge of dredged material by 33 CFR 323.2(j) even though the disposal itself occurs on the upland and thus does not require a Section 404 permit. This nationwide permit satisfies the technical requirement for a Section 404 for the return water where the quality of the return water is controlled by the state through the Section 401 certification procedures.

[4] These nationwide permits are designed for very minor dredge and fill activities such as the removal of a small shoal in a boat slip; they cannot be used for piecemeal dredge and fill activities.

wrecked, abandoned, or disabled vessels or the removal of obstructions to navigation.

(23) Activities, work, and discharges undertaken, assisted, authorized, regulated, funded, or financed, in whole or in part, by another Federal agency or department where:

(i) That agency or department has determined, pursuant to the CEQ Regulation for Implementing the Procedural Provisions of the National Environmental Policy Act (40 CFR 1500 et seq.), that the activity, work, or discharge is categorically excluded from environmental documentation because it is included within a category of actions which neither individually nor cumulatively have a significant effect on the human environment and the Corps district office has been furnished notice of the agency or department's application of the categorical exclusion; or

(ii) That agency or department has otherwise determined that the activity, work, or discharge will individually and cumulatively cause no in order for the nationwide permits identified in paragraph (a) of this section to more than minimal adverse environmental effects, and the Corps district office has been notified of such determination by the agency; and

(iii) The Corps district office fails to object to the application of the categorical exclusion or the determination of minimal adverse environmental effects within fifteen working days of being provided such notice or determination.

(24) Any activity permitted by a State administering its own permit program for the discharge of dredged or fill material authorized at 33 U.S.C. 1344(g)–(1) shall be permitted pursuant to Section 10 of the River and Harbor Act of 1899 (33 USC 403).

(b) *Conditions.* The following special conditions must be followed in order for the nationwide permits identified in paragraph (a) of this section to be valid:

(1) That any discharge of dredged or fill material will not occur in the proximity of a public water supply intake;

(2) That any discharge of dredged or fill material will not occur in areas of concentrated shellfish production;

(3) That the activity will not destroy a threatened or endangered species as identified under the Endangered Species Act, or destroy or adversely modify the critical habitat of such species;

(4) That the activity will not disrupt the movement of those species of aquatic life indigenous to the waterbody (unless the primary purpose of the fill is to impound water);

(5) That any discharge of dredged or fill material will consist of suitable material free from toxic pollutants (See Section 307 of Clean Water Act) in toxic amounts;

(6) That any structure or fill authorized will be properly maintained;

(7) That the activity will not occur in a component of the National Wild and Scenic River System; and

(8) That the activity will not cause an unacceptable interference with navigation.

§ 330.6 Management practices.

In addition to the conditions specified in §§ 330.4 and 330.5, the following management practices shall be followed, to the maximum extent practicable, in the discharge of dredged or fill material under nationwide pemits in order to minimize the adverse effects of these discharges on the aquatic environment. Failure to comply with these practices may be cause for the District Engineer to recommend discretionary authority to regulate the activity on an individual or regional basis pursuant to § 330.7.

(a) Discharges of dredged or fill material into waters of the United States shall be avoided or minimized through the use of other practical alternatives.

(b) Discharges in spawning areas during spawning seasons shall be avoided.

(c) Discharges shall not restrict or impede the movement of aquatic species indigenous to the waters or the passage of normal or expected high flows or cause the relocation of the water (unless the primary purpose of the fill is to impound waters).

(d) If the discharge creates an impoundment of water, adverse impacts on the aquatic system caused by the accelerated passage of water and/or the restriction of its flow, shall be minimized.

(e) Discharge in wetlands areas shall be avoided.

(f) Heavy equipment working in wetlands shall be placed on mats.

(g) Discharges into breeding areas for migratory waterfowl shall be avoided.

(h) All temporary fills shall be removed in their entirety.

§ 330.7 Discretionary authority to require individual or regional permits.

In those instances where the District Engineer determines that the aquatic environment is not adequately protected by a nationwide permit, he may recommmend through the Division Engineer to the Chief of Engineers cancellation of the nationwide permit or permits which apply to future activities of a specific nature or those which apply in a specific waterbody.[5] Once he has obtained approval from the Chief of Engineers and announced the decision to persons affected by the action, he will regulate the activities by processing applications for individual or regional permits pursuant to 33 CFR Part 325. Where time is of the essence, District Engineers may telephonically recommend cancellations through the Division Engineer to the Chief of Engineers (DAEN–CWO–N). If the Chief of Engineers concurs, he may verbally authorize the cancellation by the District Engineer. Both actions will be followed by written confirmation. District Engineers are authorized to reinstate nationwide permit coverage; notification will be provided to affected persons and to the Chief of Engineers (DAEN–CWO–N). Additionally, the District Engineer may prescribe criteria to be followed for the protection of navigaton in order to comply with § 330.5(b)(8).

The nationwide permit for that activity is not valid unless the prescribed criteria are met.

§ 330.8 Expiration of nationwide permits.

The Chief of Engineers will review nationwide permits at least every five years. Based on this review, which will include public notice and opportunity for public hearing through publication in the **Federal Register**, he will either modify, reissue (extend) or revoke the permits. If a nationwide permit is not modified or reissued within five years of publication in the **Federal Register**, it automatically expires and becomes null and void.

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[5] Since nationwide permits are issued by the Chief of Engineers (following notice and opportunity for hearing through publication in the **Federal Register**), it is essential that he maintain control and consistency in the management of these permits. However, because of unusual local situations, there must be flexibility for District Engineers to regulate the activity through an individual or regional permit process. Some situations will demand an immediate decision from the Office of the Chief of Engineers on the cancellation of nationwide permit coverage; this has been provided for by provision for telephonic reporting and approval.